



ADR
CHAMBERS

Integrity Commissioner Office
for the City of Markham

Training Session
The Honourable Donald R. Cameron, Q.C.
Monday, January 27, 2014

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- Under section 223.4(1) of the *Municipal Act, 2001*, Council, a Member of Council, or a member of the public may request the Integrity Commissioner to conduct an inquiry about whether a Member of Council has contravened the *Council Code of Conduct*
- A request for an inquiry must be in writing and must be accompanied by a sworn supporting affidavit
- A *Code of Conduct* complaint respecting a member who is seeking re-election may not be filed within 90 days of the next general election

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- The Integrity Commissioner will only address matters that, on their face, are a complaint with respect to non-compliance with the *Code of Conduct*
- If a complaint, on its face, is with respect to non-compliance with a Council policy that has a separate complaint procedure, the person making the complaint (the “Complainant”) will be advised that the matter will be processed under that procedure

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- If the Integrity Commissioner is of the opinion that the referral of a matter to him is frivolous, vexatious, or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation
- Under section 223.3(3) of the *Municipal Act, 2001*, the Integrity Commissioner may delegate in writing to any person, other than a Member of Council, any of his powers and duties

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- The Integrity Commissioner may elect to investigate a complaint by exercise of the powers of a commission under the *Public Inquiries Act* (with summons to witnesses and documents, evidence on oath, cross-examination and open hearings)
- The Integrity Commissioner will serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response be sent to the Integrity Commissioner within 10 days and will serve a copy of the response upon the Complainant with a request for a written reply within 10 days

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- The Integrity Commissioner is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality
- The Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information relevant to the complaint, and enter any City work location relevant to the complaint for the purpose of investigation and settlement

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- The Integrity Commissioner will not issue a report finding a violation of the *Code of Conduct* on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction (suspend pay (up to 90 days) or reprimand)
- The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- The Integrity Commissioner shall report to the Complainant and the Member, if possible, no later than 90 days after the making of the complaint
- Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining his findings and/or recommended penalty and the terms of any settlement
- Where the complaint is dismissed, the Integrity Commissioner generally will not report to Council except as part of an annual or other periodic report

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- Any recommended corrective action or penalty must be permitted by the *Municipal Act* and shall be designed to ensure that the inappropriate behaviour or activity does not continue and is not repeated
- If the Integrity Commissioner determines that there has been no contravention of the *Code of Conduct* or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- The City Clerk shall give a copy of any report to the Complainant and the Member that was involved
- The report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been reported to the Members of Council

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- Council will consider and respond to a report within 90 days after the day the report is laid before it
- The municipality may impose either of the following penalties on a Member of Council if the Integrity Commissioner reports to the municipality that, in his opinion, the Member has contravened the *Code*:
 - A reprimand
 - Suspension of the remuneration paid to the Member in respect of his or her service as a Member of Council, for a period of up to 90 days

COUNCIL *CODE OF CONDUCT* COMPLAINT PROTOCOL

- The Integrity Commissioner must preserve secrecy with respect to all matters that come to his knowledge in the course of his duties
 - There is an exception for matters that disclose a breach of the *Criminal Code*, which information the Integrity Commissioner must report to the authorities
- The Integrity Commissioner may, in his Annual Report, summarize advice he has given to Members but shall not disclose confidential information that could identify a person concerned

CUNNINGHAM REPORT, 2011, MISSISSAUGA

- Recommendation 15 – The focus of the *Code* should be on the spirit, principles, and goals underlying its creation, and it is not intended to be strictly interpreted
- Recommendation 17 – The *Code* does not prohibit members of Council from properly using their influence on behalf of constituents

ROB FORD CASE

- Pursuant to s. 223.2(2) of the *Municipal Act, 2001*, a by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence
- Paragraph 68 of the Divisional Court decision in the case of *Madger v. Ford*, 2013 ONSC 263 (on appeal from the judge of first instance):

“What is objectionable in the present case is the fact that a so-called remedial measure is being used for a punitive purpose. In Decision CC 52.1, City Council ordered Mr. Ford to pay monies to certain donors when he had never received such monies personally. While the application judge [of first instance] called the reimbursement obligation a remedial measure, in our view, this was a penalty imposed on Mr. Ford. Indeed, the Integrity Commissioner described the payment as a sanction in her report. Her language in support of that sanction is the language of deterrence and denunciation...”

ROB FORD CASE

- Paragraph 68 continued:
“... Her report was adopted by Council, and the language of sanction is found in Decision CC 52.1. Certainly, from the perspective of an individual who is required to pay monies he never received personally, this is a financial sanction or penalty.”
- Appeal was made to the Supreme Court of Canada, but leave to appeal was denied

ADR CHAMBERS OFFICE OF THE INTEGRITY COMMISSIONER

- The Integrity Commissioner will investigate potential ethical violations; however, he will not investigate complaints that he deems to be purely political
- Contact the Integrity Commissioner at any time with questions in complete confidentiality
 - The Integrity Commissioner will respond to requests for advice within 10 days of his receipt of the request, if possible

ADR CHAMBERS OFFICE OF THE INTEGRITY COMMISSIONER

- If a conflict arises:
 - (a) declare your interest;
 - (b) leave the meeting;
 - (c) don't participate in the discussion; and
 - (d) don't vote on the motion