

Integrity Commissioner

Presentation to Special General Committee Meeting

September 5, 2012

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(Referred to Council Workshop
by General Committee on June 25, 2012)

Introduction

- Council requested staff provide an update on the following accountability tools contained within the Municipal Act:
 - The Integrity Commissioner Position; &
 - The Lobbyist Registrar Position & Associated Registry System
- This presentation is on the Integrity Commissioner.

Background

- The Municipal Act was amended in 2007 to address a number of issues largely resulting from the Bellamy (Toronto) & Sills (Waterloo) inquiries.
- The changes reflected growing public interest in ensuring greater accountability & transparency in municipal government administration.

Background (Cont'd)

- The legislative amendments included the creation of a new Part 6 of the Act dealing solely with “Accountability & Transparency”.
- Part 6 of Act now permits Ontario municipalities to:
 1. Appoint an Integrity Commissioner (IC)
 2. Establish a Code of Conduct for Members of Council & Local Boards
- Exception: City of Toronto Act mandates Toronto have an IC, Code of Conduct, Auditor General & Lobbyist Registrar.

Integrity Commissioner – General

- The role of an IC is to perform, in an independent manner, any functions assigned by the municipality with respect to:
 - The application of a Code of Conduct for Members of Council &/or for Members of Local Boards; &
 - The application of any procedures, rules & policies of the municipality &/or of Local Boards governing the ethical behaviour of Members.
- An IC is *not* required to be a municipal employee.

Integrity Commissioner - General

- Approximately 22 Ontario municipalities have appointed ICs including Toronto, Brampton, Richmond Hill & Vaughan (see Handout for complete list).
- IC appointments have taken 2 different forms: Part-Time (ex. Toronto) or Retainer (ex. Oakville).

Integrity Commissioner - Costs

- The costs associated with the IC position vary depending on the type of appointment selected.

Municipality	Budget	Position Type
Richmond Hill	\$40,000 annual budget	Retainer
Kitchener	\$2,000 retainer \$150/hour	Retainer
Toronto	\$200,000 annual budget	Part time

Integrity Commissioner - Job Description

- Most IC job descriptions include:
 1. Provision of Advice;
 2. Complaint Investigation;
 3. Complaint Adjudication; &
 4. Education (Internal & External)

Integrity Commissioner - Complaint Intake Process

- Complaints generally:
 - ✓ Are submitted to the Clerk in writing using a prescribed form;
 - ✓ Set-out the grounds for the complainants belief that a contravention has occurred;
 - ✓ Include a supporting affidavit that outlines the evidence in support of the complaint; &
 - ✓ Are forwarded to the IC by the Clerk.

IC Powers

- In conducting inquiry, IC may exercise powers under Public Inquiries Act.
- The municipality & its local boards to give IC any information IC believes is necessary to conduct inquiry (ex. Accounts, Financial Records, Reports & Files).
- The IC is required to preserve secrecy with respect to all matters that come to his/her knowledge through the inquiry.

IC Powers (Cont'd)

- If the IC has reasonable grounds to believe a contravention of any other Act/Criminal Code has occurred, they must refer the matter to the appropriate authorities.
- Should this occur, the IC must suspend inquiry until any resulting police investigation &/or charge(s) have been disposed of.
- The IC must report suspension of the inquiry to Council.

IC Reports

- Upon completion of investigation, IC will produce a Report for the municipality.
- The Report will summarize alleged contravention(s) & provide the IC's opinion as to whether or not contravention(s) occurred.
- If contravention(s) occurred, the IC will make recommendations for reprimanding the Member of Council/Local Board involved.
- Council is not required to endorse the IC recommendations & may choose to not take any action.
- Once received by the municipality, IC Reports are public documents.

Code of Conduct

- The Municipal Act now specifically allows Ontario municipalities to establish Codes of Conduct for Members of Council & Local Boards
- In accordance with Act, Codes can address:
 - Ethical behaviour of Members of Council & Local Boards;
 - Standards for appropriate interaction between Members of Council/Local Boards & municipal staff, residents & key stake holders; &
 - Appropriate use of Corporate resources.

Code of Conduct

- Approximately 26 Ontario municipalities have adopted Codes of Conduct to-date including: Vaughan, Richmond Hill, Aurora, & Toronto (see Handout for full list).
- The format/content of Codes of Conduct differ across Ontario.
- Sample Codes of Conduct have been provided for information.

Penalties for Violating Code of Conduct

- A municipality may impose either of the following penalties on a Member of Council or Local Board if IC determines that a contravention of the Code of Conduct has occurred:
 - A reprimand; or
 - Suspension of the remuneration paid to the Member for a period of up to 90 days.

Penalties for Violating Code of Conduct (Cont'd)

- A summary of a notable IC decisions relative to Code of Conduct violations has been distributed via a Handout.
- 2 of the most notable are:
 - Township of West Lincoln – Councillor's pay was suspended for 60 days for discreditable conduct.
 - City of Toronto – Mayor ordered to reimburse donations solicited using City letterhead.

Value of Code of Conduct

- Based on staff's research, it seems that Codes of Conduct have served municipalities well especially where: 1) an IC has been appointed; & 2) where the Codes have addressed Council Staff relations.
- Equally however, their absence has created confusion, misunderstanding & even distrust between & among the public, staff & municipal Councils.

Mississauga Judicial Inquiry

- In 2009, Mississauga City Council adopted a resolution to appoint a judge to conduct an inquiry into 2 matters.
- Justice J. Douglas Cunningham was appointed as Commissioner to Inquiry.
- Inquiry Report “Updating the Ethical Infrastructure” makes several recommendations regarding the position of IC & municipal Codes of Conduct (summary provided in Handout).

Mississauga Judicial Inquiry

- **Inquiry made the following recommendations regarding the IC position:**
 1. The Municipal Act must be changed such that the responsibility for maintaining personal impartiality does not rest entirely on the IC.
 2. The Act should be amended to include additional safeguards with respect to the Office of the IC - such as a minimum term of appointment to provide security of tenure; & a requirement that municipalities indemnify the IC.

Mississauga Judicial Inquiry (Cont'd)

3. While the powers of the IC are recognized in the Municipal Act, they are not in the Municipal Conflict of Interest Act (MCIA) – the MCIA should be amended to recognize the role of the IC to investigate & report on matters covered by the MCIA.
4. To enhance impartiality, an IC should NOT be a municipal employee.
5. An IC's tenure should be fixed in length, non-renewable & reasonably long (term of 5-7 years is appropriate).

Mississauga Judicial Inquiry (Cont'd)

6. The remuneration of an IC should be fixed at a reasonable cost to avoid concerns about undue influence.
7. Resources permitting, an IC should conduct educational outreach work with the public, & the development industry so they understand the municipal accountability regime.
8. An IC should report publicly on complaints received as well as on advice provided. To encourage Members of Council & staff to seek advice from the IC, the names of those requesting advice should be removed from published reports.

Mississauga Judicial Inquiry (Cont'd)

9. The Province should require that, where a municipality has created the Office of the IC, the municipality must identify a source of funding in the event an inquiry is called by IC.
10. In order to assist smaller municipalities in avoiding the costs of maintaining their own Offices of the IC, a roster of ICs should be created through the Association of Municipalities of Ontario. ICs on this roster would be available on an on-call basis, & they would be funded accordingly.

Mississauga Judicial Inquiry (Cont'd)

- **The inquiry made the following recommendation regarding Codes of Conduct:**
 - The most well-intentioned Code of Conduct will not be effective without a proper enforcement regime – the IC plays a vital role in this regard.

Municipal Act Review

- In December, 2011, the Association of Municipal Clerks, Managers & Treasurers on Ontario (AMCTO) made a submission to the Ministry of Municipal Affairs & Housing requesting they consider a number of “themes” for the 5 Year Review of the Municipal Act.
- One of the themes suggested was “enhancing the integrity of municipal governance”.
- Under this theme, AMCTO urged the Province to:
 1. Give strong consideration to making municipal Codes of Conduct mandatory; &
 2. Carefully review the recommendation of the Mississauga Judicial Inquiry regarding ICs, etc. before proceeding with legislation in this area.

Concluding Remarks

- Markham currently demonstrates accountability & transparency through providing a sound governance framework, comprised of a system of policies, procedures & practices, categorized as follows:
 1. Legislated Requirements (i.e. fulfilling various legislative responsibilities as governed by provincial statutes such as the [Municipal Act](#), [Planning Act](#) & the [Development Charges Act](#))

Concluding Remarks (Cont'd)

2. Fiscal Accountability, Oversight & Reporting (i.e. Annual Report/Budget Document, Purchasing By-law, External Auditor Opinion & Management Letter, sound Financial Policies & Procedures.)
3. Performance Measurement & Reporting (Annual Report, Annual Departmental Business Plans, Municipal Performance Management Program)

Concluding Remarks (Cont'd)

3. Open Government (Public Distribution of [Council & Standing Committee Agendas & Reports](#) (including the posting of these documents on the Town's website; [Planning notice requirements](#) (including courtesy notices requirements); [Web-streaming of Council & Standing Committee Agendas](#)).
4. Employment Standards ([Employment of Related Individuals; Use of Information Technology Policy](#))

Concluding Remarks (Cont'd)

5. Internal Accountability & Ethical Standards ([Code of Ethics & Conduct for Town employees](#)):
 - This system is fully explained in Markham's [Accountability & Transparency Policy](#) available on the Intranet.

Concluding Remarks (Cont'd)

- With amendments to the Municipal Act in 2007, municipalities now have a number of legislative tools to ensure accountability & transparency in municipal operations.
- The public has increasingly come to view the existence (or not) of these tools as hallmarks of a transparent organization.

Concluding Remarks (Cont'd)

- There are currently no funds set aside in Markham's operating budget for an IC position.
- Should Council choose to move forward with implementing an IC position staff will submit this request as part of the 2013 Budget process.

Next Steps

- Staff is seeking direction from Council on potential next steps with respect to:
 - The Integrity Commissioner Position; &
 - A Code of Conduct.