

Integrity Commissioner

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Introduction

- Council requested staff provide an update on the following accountability tools now 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 & Sills inquiries.
- The changes reflected growing public concerns for ensuring accountability & transparency in municipal administration

Background (Cont'd)

- The legislative amendments included the creation of a new Part 6 of the Act dealing solely with “Accountability & Transparency”.
- Among other things, Part 6 of the 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 to-date including Toronto, Brampton & Vaughan (see Table “A” included in Presentation Information Package for complete list).
- IC appointments in Ontario have taken several different forms (full-time, part-time, etc.) – for ex. Toronto employs an IC on a part-time basis while Vaughan employs an IC on retainer basis.

Integrity Commissioner - Costs

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

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

Integrity Commissioner – Costs (Cont'd)

- There is currently no money 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.

Integrity Commissioner - Job Description

- While the actual job descriptions for ICs vary from one municipality to another, most include the following responsibilities:
 - Provision of advice
 - Complaint investigation
 - Complaint adjudication
 - Education (internal & external)
- Sample job descriptions from various Ontario municipalities have been provided in the Presentation Information Package.

Integrity Commissioner - Complaint Intake Process

- IC complaint intake procedures also vary across Ontario but generally, complaints:
 - ✓ Are submitted to the Clerk in writing using a prescribed form
 - ✓ Set-out the grounds for the belief of the alleged contravention
 - ✓ Include a supporting affidavit that sets out the evidence in support of the complaint
 - ✓ Are forwarded to the IC by the Clerk

IC Powers

- In conducting an inquiry, the IC may elect to exercise the powers under the Public Inquiries Act.
- The municipality & its local boards are required to give the IC any information the IC believes is necessary to conduct the inquiry, including:
 - Accounts
 - Financial records
 - Electronic data processing records
 - Reports
 - Files

IC Powers (Cont'd)

- The IC (& every person acting under his/her instructions) is required to preserve secrecy with respect to all matters that come to his/her knowledge in the course of the inquiry.
- In this respect, the IC is exempt from the Municipal Freedom of Information & Protection of Privacy Act (MFPPA).

IC Powers (Cont'd)

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

IC Reports

- If the IC reports to the municipality or to a local board his/her opinion about whether a Member of Council/Local Board has contravened the applicable Code of Conduct, the IC may disclose in the report any information they deem necessary for the purposes of the report.
- The municipality &/or local board shall ensure the report(s) received from the IC are made available to the public.

Code of Conduct

- The Act now specifically allows Ontario municipalities to establish Codes of Conduct for Members of Council & Local Boards
- In accordance with the Act, Codes can address the following:
 - 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 Toronto, Hamilton and Brampton (see Table “A” included in Presentation Information Package for full list).
- The format and content of the Codes differ across Ontario.
- Sample Codes of Conduct have been provided in Presentation Information Package.

Penalties for Violating Code of Conduct

- The municipality may impose either of the following penalties on a Member of Council or Local Board if IC reports that a contravention of the Code of Conduct has occurred:
 - A reprimand
 - 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 few notable IC decisions relative to Code of Conduct violations is included in the Presentation Information Package.
- 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, misunderstandings and even distrust between and among the public, staff & 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 (see Table “B” in the Presentation Information Package).

Mississauga Judicial Inquiry

- **The inquiry made the following recommendations regarding the IC position:**
 - The Municipal Act must be changed such that the responsibility for maintaining personal impartiality does not rest entirely on the IC.
 - 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)

- 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.
- To enhance impartiality, an IC should NOT be a municipal employee.
- An IC's tenure should be fixed in length, non-renewable & reasonably long.

Mississauga Judicial Inquiry (Cont'd)

- The remuneration of an IC should be fixed at a reasonable cost to avoid concerns about undue influence.
- Resources permitting, an IC should conduct educational outreach work with the public, & the development industry so they understand the municipal accountability regime.
- 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)

- The Province should require that, where a municipality has created the Office of the IC, the municipality is required to identify a source of funding in the event an inquiry is called by the IC
- 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 recommendations 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:
 - Give strong consideration to making municipal Codes of Conduct mandatory
 - 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 and Management Letter, sound Financial Policies and 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 and Standing Committee Agendas and Reports](#) (including the posting of these documents on the Town's website; [Planning notice requirements](#) (including courtesy notices requirements); [Web-streaming of Council and 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 and 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.

Next Steps

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