International Municipal Lawyers Association
2013 Annual Conference
September 29 -October 2, 2013
San Francisco, CA

Canadian Department Program

ACCOUNTABILITY, TRANSPARENCY AND ME

BY

Robert J. Swayze

Supporting Material:

1. Municipal Act (Ontario) Section 223.1
2. Code of Conduct, City of Toronto, 2007
3. Integrity Commissioner's public Report to Council, City of Guelph on May 28, 2012.
4. Integrity Commissioner's public Report to Council, Town of Carleton Place on October 9, 2012
5. Integrity Commissioner's public Report to Council, City of Mississauga on July 3, 2013

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PART V.1
ACCOUNTABILITY AND TRANSPARENCY

Definitions

223.1 In this Part,

"code of conduct" means a code of conduct described in section 223.2; ("code de déontologie")

"grant recipient" means a person or entity that receives a grant directly or indirectly from the municipality, a local board or a municipally-controlled corporation; ("bénéficiaire d'une subvention")

"local board" means a local board other than,

(a) a society as defined in subsection 3 (1) of the *Child and Family Services Act*,

(b) a board of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*,

(c) a committee of management established under the *Long-Term Care Homes Act, 2007*,

(d) a police services board established under the *Police Services Act*,

(e) a board as defined in section 1 of the *Public Libraries Act*,

(f) a corporation established in accordance with section 203,

(g) such other local boards as may be prescribed; ("conseil local")

"municipally-controlled corporation" means a corporation that has 50 per cent or more of its issued and outstanding shares vested in the municipality or that has the appointment of a majority of its board of directors made or approved by the municipality, but does not include a local board as defined in subsection 1 (1); ("société contrôlée par la municipalité")

"public office holder" means,

(a) a member of the municipal council and any person on his or her staff,

(b) an officer or employee of the municipality,

(c) a member of a local board of the municipality and any person on his or her staff,

(d) an officer, director or employee of a local board of the municipality, and

(e) such other persons as may be determined by the municipality who are appointed to any office or body by the municipality or by a local board of the municipality. ("titulaire d'une charge publique") 2006, c. 32, Sched. A, s. 98; 2007, c. 8, s. 218 (5).

Code of conduct

223.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality. 2006, c. 32, Sched. A, s. 98.

No offence

(2) A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence. 2006, c. 32, Sched. A, s. 98.

Integrity Commissioner

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

(a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or

(c) both of clauses (a) and (b). 2006, c. 32, Sched. A, s. 98.

Powers and duties

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.

Delegation

(3) The Commissioner may delegate in writing to any person, other than a member of council, any of the Commissioner's powers and duties under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 98.

Status

(5) The Commissioner is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 98.

Inquiry by Commissioner

223.4 (1) This section applies if the Commissioner conducts an inquiry under this Part,

(a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member; or

(b) in respect of a request made by a local board or a member of a local board exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry. 2009, c. 33, Sched. 6, s. 72 (1).

Information

(3) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry. 2006, c. 32, Sched. A, s. 98.

Same

(4) The Commissioner is entitled to have 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 or a local board that the Commissioner believes to be necessary for an inquiry. 2006, c. 32, Sched. A, s. 98.

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 32, Sched. A, s. 98.

Same

(6) The local board may impose either of the penalties described in subsection (5) on its member if the Commissioner reports to the board that, in his or her opinion, the member has contravened the code of conduct, and if the municipality has not imposed a penalty on the member under subsection (5) in respect of the same contravention. 2006, c. 32, Sched. A, s. 98.

Duty of confidentiality

223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

Exception

(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part. 2006, c. 32, Sched. A, s. 98.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

Report to council

223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall

not disclose confidential information that could identify a person concerned. 2006, c. 32, Sched. A, s. 98.

Report about conduct

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report. 2006, c. 32, Sched. A, s. 98.

Publication of reports

(3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 98.

Testimony

223.7 Neither the Commissioner nor any person acting under the instructions of the Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part. 2006, c. 32, Sched. A, s. 98.

Reference to appropriate authorities

223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council. 2006, c. 32, Sched. A, s. 98.

CODE OF CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS (RESTRICTED DEFINITION) CITY OF TORONTO

Authority: **Consolidated Code of Conduct for Members of Council, including:**

"Code of Conduct for Members of Council Inclusive of Lobbyist Provisions" adopted, as amended, by City Council on September 28 and 29, 1999 (Clause 2 of Report 5 of the Administration Committee) and as amended by:

"Amendments to Code of Conduct for Members of Council" approved by City Council on September 25, 26 and 27, 2006 (Clause 26 of Report 7 of the Policy and Finance Committee) that under Council action (2) came into force on February 8, 2007 following City Council's approval on February 5, 6, 7 and 8, 2007 of the appeal mechanisms and legal support program in CC2.5 "Amendments to the Code of Conduct Complaint Protocol under Members Code of Conduct"

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[1] Prepared by Integrity Commissioner for Ease of Reference

PREAMBLE:

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, adherence to these standards will protect and maintain the City of Toronto's reputation and integrity.

To these ends, during its first term as a unified City, the City of Toronto, as one of several initiatives, adopted a *Code of Conduct for Members of Council.* Subsection 157(1) of the *City of Toronto Act, 2006* now requires the City to establish codes of conduct for members of Council and of certain local boards of the City. In response to this requirement, the City has revised and updated the original *Code of Conduct.* It is intended to supplement and be compatible with the laws governing the conduct of members.

The key statements of principle that underline the *Code of Conduct* are as follows:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;

- Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;

- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and

- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and the City Council.

I. STATUTORY PROVISIONS REGULATING CONDUCT:

This *Code of Conduct* operates along with and as a supplement to the existing statutes governing the conduct of members. Four pieces of provincial legislation govern the conduct of members of Council:

- the *City of Toronto Act, 2006*, and Chapter 27, Council Procedures, of the Municipal Code (the Council procedures by-law) passed under section 189 of that Act;
- the *Municipal Conflict of Interest Act*;
- the *Municipal Elections Act, 1996*; and
- the *Municipal Freedom of Information and Protection of Privacy Act.*

The *Criminal Code* of Canada also governs the conduct of members of Council.

II. APPLICATION:

This *Code of Conduct* applies to all members of Council (including the Mayor).

This *Code of Conduct* also applies, subject to any necessary modification, to members of local boards (restricted definition) as defined in section 156 of the *City of Toronto Act, 2006* and, by reference to A3 (as amended) of Clause 2 of Report No. 5 of the Administration Committee as amended and adopted by City Council at its meeting on September 28 and 29, 1999, to all other appointments to City agencies, boards and commissions (subject to any necessary (legal) modification) .

(The provisions of the *Municipal Conflict of Interest Act* also apply to local boards, as defined in that Act, with decision-making power.)

III. DEFINITIONS:

In the *Code of Conduct*, the terms "child", "parent" and "spouse" have the same meanings as in the *Municipal Conflict of Interest Act*:

"child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

"parent" means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

"spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage

IV. GIFTS AND BENEFITS:

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of Office, unless permitted by the exceptions listed below.

For these purposes, a fee or advance paid to or a gift or benefit provided with the member's knowledge to a member's spouse, child, or parent, or to a member's staff that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift to that member.

The following are recognized as exceptions:

(a) compensation authorized by law;
(b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
(c) a political contribution otherwise reported by law;
(d) services provided without compensation by persons volunteering their time;
(e) a suitable memento of a function honouring the member;
(f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country;

(g) food and beverages consumed at banquets, receptions or similar events, if:
    1. attendance serves a legitimate business purpose;
    2. the person extending the invitation or a representative of the organization is in attendance; and
    3. the value is reasonable and the invitations infrequent; and

(h) communication to the offices of a member, including subscriptions to newspapers and periodicals.

Except for category (c), these exceptions do not apply to lobbyists. Lobbyists are not permitted to make a gift or provide a benefit under this provision unless it is a political contribution permitted by law.

In the case of categories (b), (e), (f), (g), and (h), if the value of the gift or benefit exceeds $300, or if the total value received from any one source during the course of a calendar year exceeds $300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner.

The disclosure statement must indicate

1. the nature of the gift or benefit;
2. its source and date of receipt;
3. the circumstances under which it was given or received;
4. its estimated value;
5. what the recipient intends to do with any gift; and
6. whether any gift will at any point be left with the City.

Any disclosure statement will be a matter of public record.

On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, create a conflict between a private interest and the public duty of the member. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the member to justify receipt of the gift or benefit.

Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift or remit the value of any gift or benefit already consumed to the City.

Except in the case of category (f), a member may not accept a gift or benefit worth in excess of $500 or gifts and benefits from one source during a calendar year worth in excess of $500.

V. CONFIDENTIAL INFORMATION:

Confidential information includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

The *City of Toronto Act, 2006* allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential. For the purposes of the *Code of Conduct*, "confidential information" also includes this type of information.

No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

Under the Procedural By-law (passed under section 189 of the *City of Toronto Act, 2006*), a matter that has been discussed at an in-camera (closed) meeting remains confidential. No

member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

The following are examples of the types of information that a member of Council must keep confidential:

- items under litigation, negotiation, or personnel matters;
- information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- price schedules in contract tender or Request For Proposal submissions if so specified;
- information deemed to be "personal information" under the *Municipal Conflict of Interest Act*; and
- statistical data required by law not to be released (e.g. certain census or assessment data).

Members of Council should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

VI. USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES:

No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, web sites, Council transportation delivery services and Councillor global budgets) for activities other than the business of the Corporation. Nor should any member obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

VII. ELECTION CAMPAIGN WORK:

Members are required to follow the provisions of the *Municipal Elections Act, 1996.* No member shall use the facilities, equipment, supplies, services or other resources of the City

(including Councillor newsletters and websites linked through the City's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on City property during regular working hours. No member shall use the services of persons during hours in which those persons receive any compensation from the City.

VIII. IMPROPER USE OF INFLUENCE:

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

For the purposes of this provision:

"private advantage" does not include a matter:

(a) that is of general application;
(b) that affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
(c) that concerns the remuneration or benefits of a member of Council.

IX. BUSINESS RELATIONS:

No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the *Municipal Conflict of Interest Act*.

A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

X. CONDUCT RESPECTING CURRENT AND PROSPECTIVE EMPLOYMENT:

No member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the City.

XI. CONDUCT AT COUNCIL:

Members shall conduct themselves with decorum at Council in accordance with the provisions of Chapter 27, Council Procedures, of the Municipal Code (the Council procedures by-law).

XII. CONDUCT RESPECTING STAFF:

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

Under the direction of the City Manager, staff serves the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the City.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles are captured in the Schedule to the *Code of Conduct* and include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.

XIII. CONDUCT RESPECTING LOBBYISTS:

Lobbying is a permissible but regulated activity. In the City of Toronto, it is defined in terms of any communication between a paid lobbyist, or a voluntary lobbyist on behalf of a for-profit entity, and a public official (including a member of Council) in respect of a broad range of subject matters.

Members of Council are responsible for upholding the terms of Chapter 140, Lobbying, of the City of Toronto Municipal Code (the lobbying by-law, inclusive of the lobbyists' code of conduct).

More particularly, members of Council should not engage in communications in respect of the list of subject matters contained in Chapter 140 with a person who is not registered as required by Chapter 140.

Members of Council should also not knowingly communicate with a registered lobbyist who is acting in violation of Chapter 140.

In the event that a lobbyist is in violation of Chapter 140, members of Council should either refuse to deal with the lobbyist on those terms or, where appropriate, terminate the communication with the lobbyist at once and communicate the violation or attempted violation to the Lobbyist Registrar.

[This provision shall come into force when Chapter 140, as enacted under the *City of Toronto Act, 2006,* comes into force. Until then, Part X, now renumbered as Part XIII, of the original *Code of Conduct* remains in effect.]

XIV. DISCREDITABLE CONDUCT:

All members of Council have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies, as does the Human Rights, Harassment and Hate Activity Policy Framework adopted by Council at its meeting of December 16 and 17, 1998.

XV. FAILURE TO ADHERE TO COUNCIL POLICIES AND PROCEDURES:

A number of the provisions of this *Code of Conduct* incorporate policies and procedures adopted by Council. More generally, members of Council are required to observe the terms of all policies and procedures established by City Council.

This provision does not prevent a member of Council from requesting that Council grant an exemption from a policy.

XVI. REPRISALS AND OBSTRUCTION:

Members of Council should respect the integrity of the *Code of Conduct* and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is therefore prohibited. It is also a violation of the *Code of Conduct* to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications.

XVII. ACTING ON ADVICE OF INTEGRITY COMMISSIONER:

Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.

XVIII. COMPLIANCE WITH THE CODE OF CONDUCT:

Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the *Criminal Code* of Canada or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act.*

In addition, subsection 160(5) of the *City of Toronto Act, 2006*, authorizes Council to impose either of two penalties on a member of Council or a local board (restricted definition) following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the *Code of Conduct*:

1. A reprimand; or

2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or the local board, as the case may be, for a period of up to 90 days.

Other Actions:

The Integrity Commissioner may also recommend that Council or a local board (restricted definition) take the following actions:

1. Removal from membership of a Committee or local board (restricted definition).

2. Removal as Chair of a Committee or local board (restricted definition).

3. Repayment or reimbursement of moneys received.

4. Return of property or reimbursement of its value.

5. A request for an apology to Council, the complainant, or both.

SCHEDULE TO THE CODE OF CONDUCT
ROLES AND RESPONSIBILITIES OF THE COUNCIL MEMBERS AND STAFF

Notes:

1. This Schedule has not yet been updated to reflect the changes made in 2006 to the Municipal Code Chapter 27, Council Procedures, by By-law No.1045-2006 for example, the role of the Speaker.

2. To access the former version of the Schedule (i.e. not yet amended as per note #1) please select Schedule to the Code of Conduct: Roles and Responsibilities of the Council Members and Staff.

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Robert J. Swayze

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COUNCIL REPORT

TO	**Guelph City Council**
FROM	Integrity Commissioner
DATE	May 28, 2012
SUBJECT	**Referral of Newspaper article to the Integrity Commissioner**

SUMMARY

Purpose of Report:
To provide comments on an article in the Guelph Mercury published on April 20. 2012 and attached to this report as Appendix 1.

Council Action:
To review and receive this report.

RECOMMENDATION

THAT Council receive the report of the Integrity Commissioner dated May 28, 2012, on the referral of a newspaper article.

BACKGROUND

At its meeting of April 24, 2012, Council referred to me the article in the Guelph Mercury published on April 20th and attached to this report as Appendix 1. Unless otherwise instructed by Council, I have interpreted the referral as requiring my comment on the report in the context of the *Code of Conduct for Council and Local Boards* (the "Code") and not as a direction to conduct a full investigation of the content of the article.

The article reports an action by five councillors to make a joint application to the Ministry of the Environment (the "MOE") under the *Freedom of Information and Protection of Privacy Act* (Provincial) to obtain a copy of a report on the Waste Resources Innovation Centre on Dunlop Drive. Councillor Guthrie is quoted as disclosing a statement in a confidential memorandum from Janet Laird, the Executive Director of Planning, Building, Engineering and Environmental Services, that staff felt there were inaccuracies in the report. Both Councillors Guthrie and Kovach are also quoted with negative comments on staff.

For the purpose of this report, I have interviewed in person, the Mayor and the CAO only, as the head of Council and staff respectively. On Friday, May 11, 2012, I E-mailed the five named councillors requesting confirmation of their participation in the application, the identity of who reported it to the press and why they took this action. To make deadlines for preparing and filing this report, I requested a response by Wednesday, May 16. I have had responses from all 5 of the councillors, one by way of a short meeting. My E-mail was marked confidential and I will treat the author of the responses similarly but not all of the content. Some of the responses continued the complaints about staff which I will not repeat in this public document. All the councilors confirmed their participation in the joint application but I was not informed as to who informed the press. Three of the five who were not interviewed, advised me that they did not know that the MOE request would be reported to the press until the article appeared. One of the responses stated: "I am not certain that any of us specifically notified the media".

I am mindful of the rules of natural justice and will not in this report be stating the position of the Mayor or CAO in this matter, (my only full personal interviews) because I have not offered a full interview to the other councilors and given them the opportunity to respond. If any member of Council feels that the conclusions I draw in this report are unfair or inaccurate, he or she may request a resolution of Council directing me to carry out an investigation on any topic in accordance with the protocol attached to the Code.

REPORT

The article reports an incident between staff and five councillors and reviewing this report with some of the responses to my E-mail, it seems clear that the relationship with staff and these councillors is not what it should be. It is critical to the successful operation of a municipality that staff and all councillors cooperate with each other and it is the duty of all of them.

It is important that councillors understand their role and relationship with staff in their common objective to serve the public. In my experience, the expression, "Council is king" is common to all municipal staff in the Province, including Guelph. Staff spend considerable energy ensuring that all of their actions are authorized by Council. Council is always in control. However, councillors need to recognize that Council speaks only as a unit through resolutions or by-laws. When an individual Councillor enters any department in the City, with a few exceptions for the Mayor only, it must be understood that he or she has no executive authority in that department. The councillor is entitled to enter and have access to most of the records of the department. However, he or she cannot expect that all staff members will drop what they are doing instantly and devote their time to the councillor. These are usually busy people with deadlines and pressures related to their job. In these difficult economic times and tight budgets, the department may also be short staffed.

If a councillor has a problem with a staff member, it is appropriate for him or her to take it up with that person's supervisor, preferably at the executive director level or the CAO. If he or she is not satisfied with the staff response, Council action can be requested in closed session. In the case at hand, it appears that Councillor Guthrie

resolved to make the external FOI application before exhausting his internal remedies. Finally, in my opinion, there is never justification for a councillor reporting complaints about staff to the press when, if they are justified, they can be solved internally by a majority vote of Council which must be respected by all councillors as the position of the City. All councillors, including the newly elected ones, must understand that they have been elected to become part of a team with staff and cannot air publicly private Human Resource issues.

I can only interpret the publicly reported joint FOI application as a negative statement by the five councillors protesting their perception of the competence or loyalty of Guelph City staff. There is no other purpose in having more than one applicant, nor in making the application public. For this reason, granting an interview with the press and reporting the application is contrary to the Code. None of the councillors has admitted contacting the press but two of them participated in an interview for the article. In that interview, divulging a statement in the confidential memorandum from staff by Councillor Guthrie is contrary to the Code. Unless misquoted, the negative statements in the article on staff by both Councillors Guthrie and Kovach are also contrary to the Code.

There is also an issue of timing. The report issued by the MOE was postdated to April 26, 2012 which is the date of the already scheduled meeting of the Organic Waste Processing Facility Public Liaison Committee (the "PLC") which was intended to consider the report. All councillors enjoy a general City policy applying to every meeting which ensures that staff reports are given to them before members of the public so that they can review them and be prepared to deal with questions from the public or the media. The same courtesy should have been extended to the Executive Director who wanted to read it first.

It may be that staff was unrealistic in thinking that they could obtain changes to the report from MOE, the City's regulator for the facility. Perhaps staff should have released the report a few days earlier but there is no indication in the articles I have read or in the responses to my E-mail, as to why the release of the report to Councillor Guthrie or the others was so urgent. He knew, or at least he or one of the other four councilors should have known, about the PLC meeting and that the report would be available to them shortly. In fact it was made available long before the usual process time for a Provincial FOI request which reinforces my conclusion that the application was only symbolic.

CONCLUSIONS

I am not recommending that I carry out a detailed investigation in this matter which would likely end in a warning to certain councillors as a first offence. If problems continue and I receive a creditable complaint from a member of staff or a direction from Council, I will recommend carrying one out and, if applicable, I will take into consideration the breaches of the Code already identified in this report. I do not want to recommend sanctions against councillors at this time because some of them are new and may be confused as to their role as councillors. Hopefully this report has been helpful to them. I feel that it is in the best interests of all concerned to move on. I suggest that the Mayor and CAO discuss setting up a series of team building meetings to attempt to improve the relationship between

senior staff and all of Council. There are facilitators who specialize in this area and can be hired.

All of which is respectfully submitted to Council.

CORPORATE STRATEGIC PLAN

This report supports strategic goal 5: "A community-focused, responsive and accountable government".

FINANCIAL IMPLICATIONS

This report suggests team building meetings between Council and staff with facilitation at an unknown cost.

DEPARTMENTAL CONSULTATION

N/A

ATTACHMENTS

Appendix 1 – Article published April 20, 2012, Guelph Mercury

Prepared and Recommended By:

Robert J. Swayze
Integrity Commissioner
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"original signed by Robert J. Swayze"

_____

Robert Swayze
Integrity Commissioner

Print

GuelphMercury.com

City of Guelph denies Guelph councillors access to environmental report



City hall. File photo/Guelph MercurySource: Guelph Mercury

Scott Tracey, Mercury staff

April 20, 2012

GUELPH – Five city councillors have chipped in $1 each to seek from the province information city staff has refused to release to them.

Coun. Cam Guthrie submitted a Freedom of Information request to the provincial Environment Ministry in an attempt to access a report sent to the city earlier this month about air quality at the Waste Resource Innovation Centre on Dunlop Drive.

Guthrie said councillors received an email from city staff on April 5 indicating the report had been received, but that staff felt there were inaccuracies in the document which would be taken up with the ministry.

Guthrie said he emailed two staff members and asked to see the report, and after the holiday weekend went to see one of them to make the request in person. He said he was told he could not see the report.

Guthrie said immediately after that exchange he encountered some other councillors while waiting for a committee meeting to start "and I was sort of venting and someone suggested putting in an FOI, so I decided that's what I would do."

Guthrie and councillors Gloria Kovach, Andy Van Hellemond, Jim Furfaro and Bob Bell each shared the $5 cost of submitting the application, Kovach said in an interview Friday.

"It's information councillors wanted to see, but we were being told we're not allowed to see it," Kovach said.

Guthrie said he has been told his request has been discussed with the city's legal staff "and it could be coming back at an in-camera meeting."

However, City of Guelph Chief Administrative Officer Ann Pappert wrote in an email Friday "once a report is finalized all members of Council will be provided with a copy and at present, I do not believe this matter is a closed session report item."

Guthrie said he is frustrated he felt the need to go over the city's head to get such information.

"It shouldn't have come to this," he said. "I want to be fully informed on issues before I hit the Yes or No button.

"Some have said I tend to ask too many questions … but I need to be accountable to taxpayers and how can I be accountable if I don't have all the information?" he added.

Kovach said having difficulty getting information from city staff is not new.

She is still awaiting a response to a question posed in February, for example, about the cost of holding off-site meetings at Cutten Fields. Kovach said the city used to have a lot of meetings at the facility on College Avenue, but since the new city hall and Clair Road Emergency Services Centre were built there is ample city-owned meeting space.

Instead of an answer to her question, Kovach received from Pappert a lengthy email outlining city protocols for dealing with councillor inquiries.

Pappert wrote the request would fall under a section of the city's Governance Manual dealing with "new projects and initiatives" because it would "cause the re-allocation of staff resources away from existing priorities.

"Individual members of council do not have authority to direct staff work," Pappert wrote, quoting the Governance Manual.

Kovach isn't buying it.

"I've never experienced anything like this," she said Friday. "This (information) should be easy to get. The time it took to write the email they probably could have provided the information I was looking for."

In an email Friday, Pappert said there is a mechanism in place for requesting information such as that for which Kovach was looking.

"(Councillors) would raise it in open transparent forum – a standing committee or Council meeting," the CAO wrote. "They would be asked to describe their request and seek the support of their colleagues as part of the democratic process."

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REPORT TO THE COUNCIL OF CARLETON PLACE

FROM: Robert J. Swayze, Integrity Commissioner

DATE OF REPORT: September 26, 2012

DATE OF MEETING: October 9, 2012

BACKGROUND

I was appointed Integrity Commissioner for the Town of Carleton Place by Resolution of Council passed on May 29, 2012 and I am pleased and honoured to so serve. I also serve as Integrity Commissioner for the Councils of Mississauga, Oakville, Guelph, Brantford and Port Hope. One of my duties is to independently conduct investigations upon receipt of a valid Complaint from members of Council, Town employees or any member of the public, alleging that the Carleton Place Council Code of Conduct (the "Code") has been contravened by a member of Council. Section 6 of the Code sets out the procedure I am to follow in such investigations.

I received a Complaint dated July 24th, 2012 signed by the Mayor and the CAO that Deputy Mayor Sonnenburg contravened the Code by sending an inappropriate E-mail on July 18, 2012 to the Director of Public Works with a copy to a member of the public. The Complainants invited me to review other E-mails written by the Deputy Mayor criticizing staff and several added E-mails written by others describing behaviour by him alleged also to be contrary to the Code. This material accompanied the Complaint and measured approximately 3 cm. thick. I initially read the Complaint as applying only to the July 18 E-mail but received on September 6, 2012, a further note from the CAO expanding the Complaint to include two subsequent E-mails from the Deputy Mayor dated August 3rd and August 24th respectively. This expanded complaint also requested that the E-mails in the additional material originally submitted be given full consideration as part of the investigation.

As required by Section 6 of the Code, I obtained confirmation that the Deputy Mayor was served with a copy of the Complaint. He is required to respond to it within 10 days, but instead, I proposed that he meet with me and that the time for his response would be extended to 10 days after the meeting. He countered with his need to retain a lawyer and to apply to the Town for funding. He then advised me that he would not retain a lawyer and agreed to meet with me on August 31st, 2012. On that date, I attended at the Town Hall and interviewed the Mayor, the CAO, the Clerk and the Deputy Mayor.

Subsequently I confirmed with the Deputy Mayor that he also received the Expanded Complaint on September 6, 2012. I was then advised that Council refused to provide funding to retain a lawyer on September 11, 2012. I extended the date for responding to the Complaint and the Expanded Complaint several times with the final date being set as 4:30 pm on September 21, 2012.

I am required by the Code to make an initial classification of the Complaint as to whether it is within my jurisdiction or covered under legislation other than Section 223 of the *Municipal Act*. I have concluded that the behaviour set out in the Complaint is within my jurisdiction to investigate and is covered by the Code. Some of the E-mails in the additional material complain about the conduct of the Deputy Mayor in the interaction between him and the Mayor and other councillors. For me to find this alleged activity to be contrary to the Code, I would need to complete a full inquiry and in the interest of saving cost, I have decided not to do so at this time. Accordingly, I have limited this investigation to E-mails written by the Deputy Mayor over the course of the past two years which, on their face, are contrary to the Code and require no additional investigation.

The Code is binding on all members of Council and provides in part that "Members of Council . . . shall treat every person including other Members of Council, corporate employees, individuals providing services on a contract for service, students or placements, and the public, with dignity, understanding and respect for the right to equality and the right to an environment that is safe and free from harassment and discrimination." Harassment is defined as "engaging in a course of vexatious comment or conduct that is know or ought to be known, to be unwelcome."

COMMENTS

In my opinion, democracy is demonstrated best at the local level. The issues are understandable and close to home. The groups of decision makers are small and relationships are close. Political parties do not complicate the process and informal caucuses create majority decisions. Critical to this intimate dynamic is the relationship between Council and staff. Councillors need to learn that they have no individual executive power over staff except when sitting as a unit, where Council is paramount. In my experience, staff in all municipalities, expend considerable energy ensuring that all of their activity is in accordance with policy or specific direction approved by Council. Working as senior staff in a municipality is not without pressure, particularly when you can be fired by a seven person council with only four votes. Normally in this setting, a strong mutual respect is engendered between Councillors and staff. Both need each other to do their job and get things done.

For the purpose of this inquiry, I have reviewed the record of Council beginning with a meeting of the previous Council held on November 12, 2010 when Council directed that the Deputy Mayor's "remuneration be suspended for a period of 30 days for sending out derogatory E-mails concerning staff and directing staff in their job". My review did not

extend to account for the circumstances behind this extraordinary action but I speculate that it must have resulted from extreme frustration on the part of a majority of Council during that term. My review of the record did encompass 2011and 2012 which includes reprimands by Council, warnings to the Deputy Mayor, requirements that he apologize, etc.

The E-mail dated July 18, 2012 from the Deputy Mayor complained about initially, was in reference to a request from a member of the public to trim an overgrown tree blocking a sidewalk. It was unprofessional in that it criticized the CAO sarcastically and it was sent to a member of his staff with a copy also to the member of the public making the request. The most egregious E-mail from the Deputy Mayor to the CAO was copied to me (intentionally by him) as well as others on August 3, 2012, three days after my notice to him that I was commencing an investigation. It was in response to an E-mail from the Treasurer giving notice on his last Friday that he will be on holidays for two weeks. Taking exception to the late vacation notice might have been fair comment but he also again made inappropriate and insensitive slurs about the CAO with copies also to the Mayor and the Treasurer. I have read many other E-mails from the Deputy Mayor in the additional material and others sent to me directly by him, some more offensive than others. Since finding out my address in less than two months, I have received 30 E-mails from him. He refers to his habit of copying many members of staff and Council on everything as "my scatter gun approach". I am advised that his contacting of staff by telephone or in person seems to be acceptable for the most part and my meeting with him gave me the same impression. He needs to be encouraged to use this interface with staff instead of E-mail. The sending of these inappropriate E-mails seems to be compulsive behaviour on his part and must stop.

I am appalled by the time, energy and cost expended by staff and Council over the past two years, on reacting to the inappropriate conduct of one member of Council. It is inexcusable for the Deputy Mayor to continually harass the CAO openly with copies to his staff and it has been hurtful to him and damaging to staff relations. The CAO has advised me of serious complaints from his staff as a result of the E-mails from the Deputy Mayor. The Mayor has recounted dealing with members of staff in tears in her office for the same reason.

CONCLUSION

I have considered all of the possible sanctions against the Deputy Mayor which may have the potential of changing him into a positive and cooperative member of Carleton Place Council in accordance with his obligations under the Code. He has been reprimanded by Council before without effect. His E-mails display a routine of making offensive comments and then apologizing. Another apology will not achieve any solution. He has also formally promised to stop sending offensive E-mails and directing staff which was followed by more of the same. I am left with suspension of remuneration for sending E-mails which I find to be offensive. I am convinced that he must be made aware that each time he presses the "Send" button that it will cost him money.

Accordingly, I am recommending that his remuneration be suspended immediately for one week which is a token amount to penalize him for his sending of offensive E-mails referred to in this report. If during the balance of the term of this Council, I am sent by any member of staff or Council an E-mail written by him which I conclude breaches the Code, I will suspend two weeks of his pay and so on in increasing amounts in my discretion. With each E-mail I receive that I find objectionable, he will be given notice and ten days to respond before I apply the sanction, if any.

RECOMMENDATION

That Council direct the Treasurer to suspend the remuneration of Deputy Mayor Ed Sonnenburg for one week commencing the end of the pay period following this Council meeting;

That during the balance of the term of this Council, any member of Council or staff may send to the Integrity Commissioner copies of E-mails written and published by the Deputy Mayor after the date of this report, concerning Town matters to any member of Council, staff or the public and if the Integrity Commissioner determines that any such E-mail is contrary to the Council Code of Conduct, he may direct the Treasurer to suspend the remuneration to the Deputy Mayor for a period specified by the Integrity Commissioner in his discretion, but not to exceed 90 days for any such E-mail and the Treasurer is hereby authorized to comply with such direction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Robert J. Swayze
Integrity Commissioner
Town of Carleton Place

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Integrity Commissioner's Report

DATE: June 25, 2013

TO: The Mayor and Members of Council
Meeting Date: July 3, 2013

FROM: Robert J. Swayze
Integrity Commissioner

SUBJECT: **Request for Inquiry – Councillor McFadden**

RECOMMENDATION: That Councillor Sue McFadden be reprimanded by Council for violating the Council Code of Conduct in that:

1. She wrote E-mails in a personal business matter to a member of the public which she signed as Councillor,
2. She wrote an E-mail dated December 29, 2011, threatening the member of the public to use her "connections" against him, and
3. Such E-mails utilized the City E-mail system,

contrary to Rules 1, 5, 12 and 15.

BACKGROUND: I received a request for inquiry (the "Complaint") in accordance with the *Council Code of Conduct Complaint Protocol* on February 26, 2013 from a former resident of Mississauga who was a tenant of a bachelor apartment owned by Councillor Sue McFadden and her husband as to fifty percent and her son as to the other fifty percent. (the "Complainant") The Complaint alleged that the Councillor wrote

a threatening E-mail to him using the City E-mail account and that she used her influence with Peel Regional Police for financial gain, both contrary to the *Council Code of Conduct*.

The Complaint included copies of a series of E-mails between Councillor McFadden and the Complainant giving 30 days' notice that he was vacating the premises and promising to leave certain articles of furniture. The series included an E-mail from the Councillor dated December 29, 2011 after the Complainant moved out, accusing him of taking articles of furniture belonging to her. This E-mail also advised him that she was going to the police, filing theft charges and warning him that she has "connections and resources to take this to court and have you thrown in jail." The series culminated with an E-mail sent on January 2, 2012 advising the Complainant that she had contacted the police who were looking for him and a warrant had been issued for his arrest. This E-mail was signed "kindest regards Councillor Sue McFadden".

Ultimately, the Complainant was arrested and spent two weeks in jail. He was charged with theft of the contents of the apartment including a "murphy bed" which came out of the wall and was installed as a fixture. He pled guilty to the charge and was ordered by the court to make restitution to the Councillor of $4,000 as well as the court barring him from being in proximity to Councillor McFadden's home or office.

JURISDICTION:

Upon receipt of a Complaint, I am required to make an initial classification as to whether the inquiry is within my jurisdiction. The second part of the Complaint was the use of influence as a member of Council of the Regional Municipality of Peel (the "Region") with the police service which is wholly administered by the Region. The election to Mississauga Council automatically includes a seat on The Region of Peel Council but it is a separate municipal corporation without a Council Code of Conduct or Integrity Commissioner.

In considering this question of jurisdiction, I consulted Professor David Mullan, the former Integrity Commissioner for the City of Toronto. On the basis of that consultation and my own evaluation of the extent of my authority, I concluded that I have jurisdiction to consider use of influence by a Councillor in any organization when that use of influence is linked to the Councillor's status as Councillor. That conclusion takes on an even greater force when the Councillor's

role or membership in an organization is predicated (as here) on the Councillor's status as a Councillor. If however, the Region of Peel occupied the field, adopted a Code of Conduct and appointed an Integrity Commissioner, the complaint would more properly be referred to that process.

I also concluded that I have no jurisdiction to investigate Peel Regional Police but did receive their cooperation in this inquiry.

The jurisdiction for investigations is found in Section 223.1 of the *Municipal Act* which empowers an integrity commissioner to perform such duties as may be assigned to him or her by the municipality. Section 4 of the *Council Code of Conduct Complaint Protocol* provides that if a complaint has been classified within the Commissioner's jurisdiction, "the Commissioner shall investigate."

The authority for a municipality to impose sanctions is contained in Section 223.4 (5) which provides as follows:

"(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or the local board, as the case may be, for a period of up to 90 days."

CONDUCT OF THE INQUIRY:

In accordance with the Complaint Protocol, I served a copy of the Complaint on Councillor McFadden and received a response from her which was served on the Complainant.

For the purpose of this report, I interviewed in person the Complainant and Councillor McFadden. I also spoke on the telephone with the Complainant's legal counsel and with a representative of Peel Regional Police. In addition, I received a letter from the police responding to certain questions I had asked. The inquiry was delayed for 7 weeks because the Complainant was out of the country during April and most of May.

In her written response to the Complaint Councillor McFadden described her meaning of the word "connections" used in her E-mail dated December 29, 2011 as "simply by way of legal and financial

resources to pursue the charges." I do not believe that she intended the word to mean that she knew lawyers. In fact she did not hire or speak to a lawyer prior to contacting the police. I believe that she intended the word to mean her connections as a member of Regional Council.

In the interview, I asked her who in the police she first contacted and she named the officer that conducted the theft investigation and referred to her as the community liaison officer. She may have telephoned that officer first, but in fact on the day after she wrote the E-mail dated December 29, 2011, she telephoned Superintendent Bob Devolin, the officer in charge of 11 Division with whom she sat on the board of directors of *Safe City Mississauga*. She followed that telephone call with an E-mail to him listing the items stolen. It was Superintendent Devolin who on January 2, 2012, arranged with the dayshift Staff Sergeant to assign the officer who conducted the theft investigation.

I am advised by letter from Superintendent Devolin that none of the steps taken by the police in response to the complaint were unusual and the same level of service is extended regularly to members of the community. He also assured me that "Councillor McFadden neither asked for nor received any preferential treatment throughout the course of the investigation."

FINDINGS:

With respect to the first allegation of the complaint that the threatening E-mail sent by the Councillor violated the Council Code of Conduct, I considered the following rules:

Rule No. 1

c. Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

Rule No. 5

1. No Member shall use for personal purposes any City staff services, property, equipment, services, supplies, websites, webboards, or other City-owned materials, other than for purposes connected with the discharge of City duties.

   The commentary to Rule 5 states "Members are held to a

higher standard of behaviour and conduct and therefore should not use such property for any purpose other than for carrying out their official duties." Using the City E-mail for purposes such as running a home business is prohibited but occasional personal use is permitted.

Rule No. 12

1. Members are governed by the City's *Respectful Workplace* policy. All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

Rule No. 15

1. Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.

   Policy No. 03-05-01 is a corporate policy relating to access to and acceptable use of information technology resources. This policy applies to elected officials and requires IT users to be responsible for exercising good judgement regarding the reasonableness of personal use. It strictly prohibits using City IT to run a personal business. It specifically provides that IT resources not be used for threatening communications.

I find that Councillor Sue McFadden violated the above four sections of the *Council Code of Conduct* by sending, in a personal business matter, a threatening E-mail dated December 29th, 2011, to the Complainant, signing other E-mails as Councillor and by using City IT resources to do so. I recommend that she be reprimanded by Council for such violation.

My consideration of the second allegation of improper use of influence contained in the Complaint is more complex. I will begin with my general observations on the dilemma a councillor faces in these circumstances which I hope will be helpful to all members of council. What should any member of a council do when it is necessary to communicate with staff to utilize any municipal service personally? The councillor is granted access to senior members of staff for the purpose of performing official duties including ensuring that appropriate service is provided to his or her constituents. If senior

staff are contacted, how can the councillor ensure that no special service is provided because of his or her position? Should Councillor McFadden have called the general police number instead of calling someone she knew? What if she called the Superintendent only asking for advice? Should she have requested her husband or son to make the complaint? There are no hard and fast answers to these questions.

My rulings in this area will always depend on the circumstances of each case. One call she should have made was to the Interim Integrity Commissioner for advice. I would now regard his advice as binding on me. If I were in office at the time, I would have advised her not to call the Superintendent because it invites an accusation that she is using her influence improperly and may put him in a difficult position. My recommendation to the Councillor would have been to call the general police number.

On the basis of the letter received from Superintendent Devolin, I accept that Councillor McFadden did not attempt to use her influence on the police as a member of Regional Council and accordingly did not breach the Council Code of Conduct in this respect. I also accept that Peel Regional Police acted properly throughout the investigation and would have extended the same service to other members of the community.

CONCLUSION:

This report is in response to a request for Inquiry from a member of the public and is within the jurisdiction of the Integrity Commissioner. The inquiry was carried out in accordance with the *Council Code of Conduct Complaint Protocol.*



Robert J. Swayze
Integrity Commissioner

Prepared By: Robert J. Swayze