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COMMUNICATION	
CW -	JUNE 5/18
ITEM -	5.1

memorandum



TO: HONOURABLE MAYOR AND MEMBERS OF COUNCIL

FROM: SUZANNE CRAIG, INTEGRITY COMMISSIONER AND LOBBYIST REGISTRAR

DATE: THURSDAY, MAY 31, 2018

SUBJECT: ITEM # 5.1, REPORT NO. 21: COMMITTEE OF THE WHOLE – JUNE 5, 2018
OFFICE OF THE INTEGRITY COMMISSIONER ANNUAL REPORT AND LOBBYIST REGISTRAR UPDATE

Purpose

To provide Council with the Integrity Commissioner and Lobbyist Registrar 2016-2017 Annual Report (Attachment 1) and Examples of Advice from the Integrity Commissioner (Attachment 2).

Background

As required under Part B of the Complaint Protocol for the Council Code of Conduct, and as part of the role of the Integrity Commissioner's Office, an annual report shall be submitted to City Council to outline the annual activities of the Office.

Attachments

1. Integrity Commissioner and Lobbyist Registrar 2016-2017 Annual Report
2. Examples of Advice from the Integrity Commissioner

Respectively submitted,

A handwritten signature in blue ink, appearing to read "Suzanne Craig".

Suzanne Craig
Integrity Commissioner and Lobbyist Registrar

Office of the
**Integrity Commissioner
and Lobbyist Registrar**
City of Vaughan



2016-2017 ANNUAL REPORT

“Vaughan continues to go above and beyond its statutory accountability requirements in its efforts to deliver a quality of government service for its municipal residents and businesses that has served as a model for other municipalities in Ontario and beyond.”

Suzanne Craig,
Integrity Commissioner

Office of the Integrity Commissioner
and Lobbyist Registrar

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ATTACHMENT:
Advice from the Integrity Commissioner

MESSAGE FROM THE INTEGRITY COMMISSIONER



Suzanne Craig,
Integrity Commissioner

This report covers the 2017 reporting year. The last report covered a period during which this office faced extraordinary operating challenges including the absence of administrative support* vital to an accountability office. The lack of an appropriate level of administrative support significantly impeded the timely reporting obligations of this office.

Under the leadership of the City Manager Daniel Kostopoulos, this office has been kept apprised of the ethical milestones achieved by the City that have been created to work in concert with the rules of the Council Code of Conduct to enhance ethical decision-making and accountability. Mr. Kostopoulos' vision for the City has been instrumental in facilitating the provision of necessary resources to carry out the statutory accountability and oversight functions of this office in an effective and timely manner.

In the 2017 reporting year, I have been greatly encouraged to see Vaughan City Council put its commitment to accountability and transparency into action through the bold statement condemning workplace harassment and staff intimidation following the submission of Complaint Investigation Report #0117.

As I stated unequivocally in that report, there was a substantial power imbalance between a member of staff and a Member of Council. Courts and tribunals now

**Full-time administrative staff compliment was hired January 2016.*



recognize that a substantial power imbalance can erode, if not impede, a Complainant's belief that they can refuse unwanted advances. Most victims of workplace harassment fear unforeseen consequences which could be either personal or work-related. In these cases, it is not uncommon for victims of workplace harassment to tolerate unwanted behaviour longer than expected, as was found in Complaint Investigation Report #0117.

At the City of Vaughan, City Council's unanimous adoption of the Integrity Commissioner's Report, categorically underscored that in the face of the Respondent's claim that the victim did not voice her opposition; silence or the lack of "no" is not consent.

Complainants who have suffered sexual harassment must be able to come forward with complaints, as the Complainant did in Report #0117. To encourage such bravery, the City must ensure that the Respectful Workplace Policy is rigorously enforced, including vigilance against reprisals and other conduct that stifles complaints. As noted by the Honourable Marie Deschamps, Justice of the Supreme Court of Canada¹, in her external report on sexual harassment in the Canadian Armed Forces, numerous organizations are struggling to address the prevalence of inappropriate sexual conduct. The time is right for the issue of sexual harassment to be tackled because it not only harms victims, but the integrity and professionalism of the City as a whole.

I am pleased with the level of involvement that my office has had to date with the Chief Human Resources Officer and his staff, with the goal of creating ongoing training to educate staff and Members of Council on the City's Human Resources policies, particularly in the context of addressing workplace harassment, recruitment and the roles and responsibilities of staff and Members of Council.

My deepest appreciation is given to Ms. Cathy Passafiume, whose tireless work goes unseen and whose professionalism continues to provide this Office and the City with an unwavering commitment to excellence.

“In January 2018, the City of Vaughan implemented the mandatory lobbyist registry program which was a significant step in demonstrating Council's unwavering commitment to raise the bar and be a national leader to deliver transparency, openness and excellence in government.”

¹The Honourable Marie Deschamps, *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces (March 27, 2015)*, accessible at: [http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/caf-community-support-services-harassment/era-final-report-\(april-20-2015\)-eng.pdf](http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/caf-community-support-services-harassment/era-final-report-(april-20-2015)-eng.pdf).

1.0 ACCOUNTABILITY AND IMPARTIALITY

1.1 Bill 68 – Modernizing Ontario’s Municipal Legislation Act, 2016

Bill 68 amended the Municipal Act, the City of Toronto Act and the Municipal Conflict of Interest Act (MCIA), adding new opportunities for increasing the accountability and transparency of municipal councils across the Province of Ontario.

One of the key changes ushered in with the new legislation is the requirement that all municipalities have an integrity commissioner.

Under the new legislation, the provisions affecting the accountability sections of the provincial statutes will come into force in March 2019.

The City of Vaughan instituted the Office of the Integrity Commissioner in 2008 and was one of the first municipal governments in Ontario to voluntarily appoint an Integrity Commissioner to oversee the Code of Conduct for Members of Council.

The new amendments to the MCIA have brought about significant changes to the accountability regimes of municipalities. Of importance are the provisions that will allow integrity commissioners to receive and investigate complaints about compliance with the codes of conduct and the MCIA.

Currently, section 5 of the MCIA sets out rules that apply if a member has a pecuniary interest in a matter and is present at a meeting where the matter is subject to consideration. A new subsection 5 (2.1) sets out special rules that apply where the matter under consideration is whether to impose a penalty on the member under subsection 223.4 (5) or (6) of the Municipal Act, 2001.

A new section 5.1 of the Act requires a member to file a written statement after the member discloses a pecuniary interest under section 5.

Of particular importance for this office is that under the new rules, in addition to an elector, an integrity

commissioner of a municipality or a person demonstrably acting in the public interest, may make an application to a judge in respect of a complaint under the MCIA about a member of municipal council.

On April 11, 2017, I attended the Standing Committee on Policy Bill 68 to provide independent comments on the proposed changes to the municipal governance statutes.

I informed the committee that in a recent decision handed down by the Divisional Court, in referencing the role and expertise of a municipal integrity commissioner, Justice Marrocco A.C., referencing the salient findings from the Bellamy Report, stated that:

“[i]n a municipal government..., [the Office of the Integrity Commissioner] is valuable for the following reasons.

Page 44: An integrity commissioner can help ensure consistency in applying the [municipality's] code of conduct. Compliance with policy improves when:

- Busy councillors and staff cannot be expected to track with precision the development of ethical norms. The Integrity Commissioner can therefore serve as an important source of ethical expertise.
- An Integrity Commissioner provides significant profile to ethical issues inside City government and sends an important message to constituents about the City's commitment to ethical governance.
- An individual will need authoritative advice and guidance.
- Without enforcement, the rules are only guidelines. Although research shows that a values-based approach to ethics policy, focusing on defining values and encouraging employee commitment, is preferable to a system of surveillance and punishment, where the public interest is involved, there should be a deterrent in the form of consequences for bad behavior. The rules must have teeth.

Page 46: An effective Integrity Commissioner system provides two basic services:

- 1 An advisory service, to help councillors and staff who seek advice before they act.
- 2 An investigative or enforcement service, to examine conduct alleged to be an ethical breach.

No matter how comprehensive the rules, there will on occasion be situations where the ethical course of action is not clear and an individual will need authoritative advice and guidance².

In explaining to the Standing Committee the challenges faced by integrity commissioners, I pointed to the issue of tenure of office and indemnification. The absence of provisions to address these issues, ran the risk of seriously eroding the independence of the integrity commissioner and the very accountability and ethics framework contemplated by legislation to govern actions and behaviour of elected officials in the public interest. Currently, section 223.3(1) of the Municipal Act states that:

...[the Act authorizes] 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...

In the absence of a term of appointment, I informed the Standing Committee that the integrity commissioner's independence is often compromised when she or he, in fulfilment of the role of accountability officer, submits a report with recommendations unfavourable to one or more Members of Council. There exists the real risk that the ability of the integrity commissioner to faithfully and thoroughly investigate a code complaint, is comprised by the ability of the Council to deny budgetary funds required to carry out the integrity commissioner's mandate or for the Council to arbitrarily end the integrity commissioner's appointment in response to her submission of an unfavourable report accountable under the same set of rules.

²As quoted from pages 44 and 46 of the decision are taken from *Michael DiBiase v. City of Vaughan; Integrity Commissioner of the City of Vaughan* ("Michael DiBiase v. City of Vaughan"), 2016 ONSC 5620, 2016 CarswellOnt 14568 (Ont. Div. Ct.).

1.2 Mandatory Lobbyist Registry

The City of Vaughan's mandatory Lobbyist Registry came into force in January 2018. Implementing the registry demonstrates the City of Vaughan's commitment to a culture of excellence in governance. The implementation of a Mandatory Lobbyist Registry is an important step in enhancing transparency and accountability.

As explained by experts in the field, in general, lobbying consists of activities that can influence the opinions or actions of a public office holder. Under the definition of "lobby" in the City of Vaughan By-law "lobbying is communicating with a public office holder by an individual who represents a business or financial interest with the goal of trying to influence any legislative action, including, but not exclusively, development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution or the outcome of a decision on any matter before Council or Committee of Council, or staff member acting under delegated authority." Lobbying typically involves communicating outside of a public forum such as a Council meeting or a public hearing. It is often, but not always, done by people who are paid or compensated in other ways for their efforts.

What we see throughout Canada, at the federal, provincial and municipal

level is that lobbying is one way stakeholders can help public office holders make informed decisions. When transparent to the public and in accordance with the By-law, lobbying public office holders of a city is a legitimate and potentially helpful activity. At the municipal level Council is supreme. Further, individual Members of Council often have relationships, knowledge and receive information, that when received in a transparent way and when part of a rule-based process (i.e. a detailed purchasing policy that outlines the role of Councillors in the fact-finding, pre-qualification, RFQ and RFP stages of tenders), allows opportunities to come forward without the perception of self-interest or bias.

Lobbying is a common and legitimate activity. Registering lobbying activities allows both public office holders and the public to know who is attempting to influence municipal government. That is why, in 2006, the drafters of the amendments to the Municipal Act, included provisions for the establishment of a lobbyist registry and registrar. Granted, not all municipalities are required to enact such elaborate rules and systems. However, at the foundation of the 2006 amendments was the desire of the Ontario legislature to recognize the general trend in municipal government to develop rules around ethical conduct for elected officials so that they may carry out their duties with impartiality and equality of service for all.

A vibrant and diverse world-class city such as Vaughan, asks questions that need to be addressed, including:

- 1 how to attract and retain a vibrant and diverse business community and professional workforce at the City; and
- 2 what is the role of an individual Member of Council before and during a municipal government procurement or planning process?

Under the leadership of Mayor Maurizio Bevilacqua, Vaughan Council has approved the creation of a mandatory Lobbyist Registry which allows the public to see who is communicating with public office holders about governmental decisions. The implementation of this important governance and accountability structure has established an independent mechanism to provide transparency and assurance to the citizens of Vaughan that Council decisions are made without undue influence by any members of Council on staff.

1.3 Emerging Issues

"The perception of real or apparent conflicts of interest will significantly erode the public's confidence in how elected officials discharge their duties of office."

In my last Annual Report, I pointed to the activities of Council Members in community events as an issue that required Council's attention. These activities included their participation in fundraising events and in events sponsored by community groups about local issues. I stated that fundraising plays an integral part in the City's support to groups in the community and their ability to respond to local issues. However, I emphasized that the perception of real or apparent conflicts of interest will significantly erode the public's confidence in how elected officials discharge their duties of office.

The Councillor Expense Policy and Code of Conduct Review Task Force made recommendations to Council that amended the rules around Councillor expenses to ensure the appropriate use of their office while avoiding real or perceived conflicts of interests. The Code of Conduct for Members of Council contemplates and recognizes that Members of Council, as leaders, will be asked to help the community in group-specific matters, for which either a Member of Council has a long-standing relationship of participation or the presence of the Member will bring a level of recognition to the initiative required for its success. Members of Council must strike a balance between an appropriate use of their office, name recognition and image (photos), to help the community and participation in activities which may reasonably give rise to the perception

of self-promotion. The key principles found in Rule 1 of the Code provide markers that identify an appropriate use of a Member's office. A careful consideration of the key principles will assist Council in determining the various types of community events and activities that are carried out as part of their official City role and in a way that will foster and enhance respect for municipal government and respect for the members of the public.

Avoidance of conflicts of interest, real or perceived, go to the heart of the impartiality of Council decision-making. A conflict of interest arises when a member's duty to act in the public interest is or may be affected by her or his private interest. Generally, the Task Force found that a "private interest" will be pecuniary in nature. However, a private interest can also be non-pecuniary, if it confers a real and tangible benefit on the member or their family or associate.

“Through the work of the Council Expense and Code of Conduct Review Task Force, the City addressed ongoing accountability issues highlighted in my previous report.”

2.0 ACTIVITIES OF THE OFFICE OF THE INTEGRITY COMMISSIONER IN 2016-2017

In 2016, (July- December), the Office received four informal complaints and five formal complaints in relation to the Code of Ethical Conduct for Members. Of the five formal complaints, one was mediated with recommendations to the Complainant to pursue outstanding issues with the appropriate entities, three were dismissed at the intake stage as either outside jurisdiction, insufficient information and one complaint was sustained and the report went to Council with recommendations. In 2017, there were 12 informal complaints and four formal complaints filed against Members of Council. Of the four formal complaints, one was withdrawn/abandoned, two were dismissed at the intake stage as outside the jurisdiction of the integrity commissioner and one was sustained as a Code of Conduct contravention. In the period between July and December 2016,

14 inquiries were received from the public in relation to the application of the Vaughan Code, 22 inquiries from City staff and 12 inquiries from Members of Council. In 2017, this Office received 280 inquiries that were not related to the Code and

rejected as beyond the jurisdiction of the Integrity Commissioner. This was down significantly from 320 the previous year. There were 20 Code related requests for advice from members of council, 37 from City staff and 102 from the public.



**2017 INTEGRITY COMMISSIONER ACTIVITIES
CODE COMPLAINTS AND INQUIRIES**

Formal complaints



Informal complaints



Inquiries on Code application

From the public



From City staff



From Members of Council



{ Total Code-related }
175

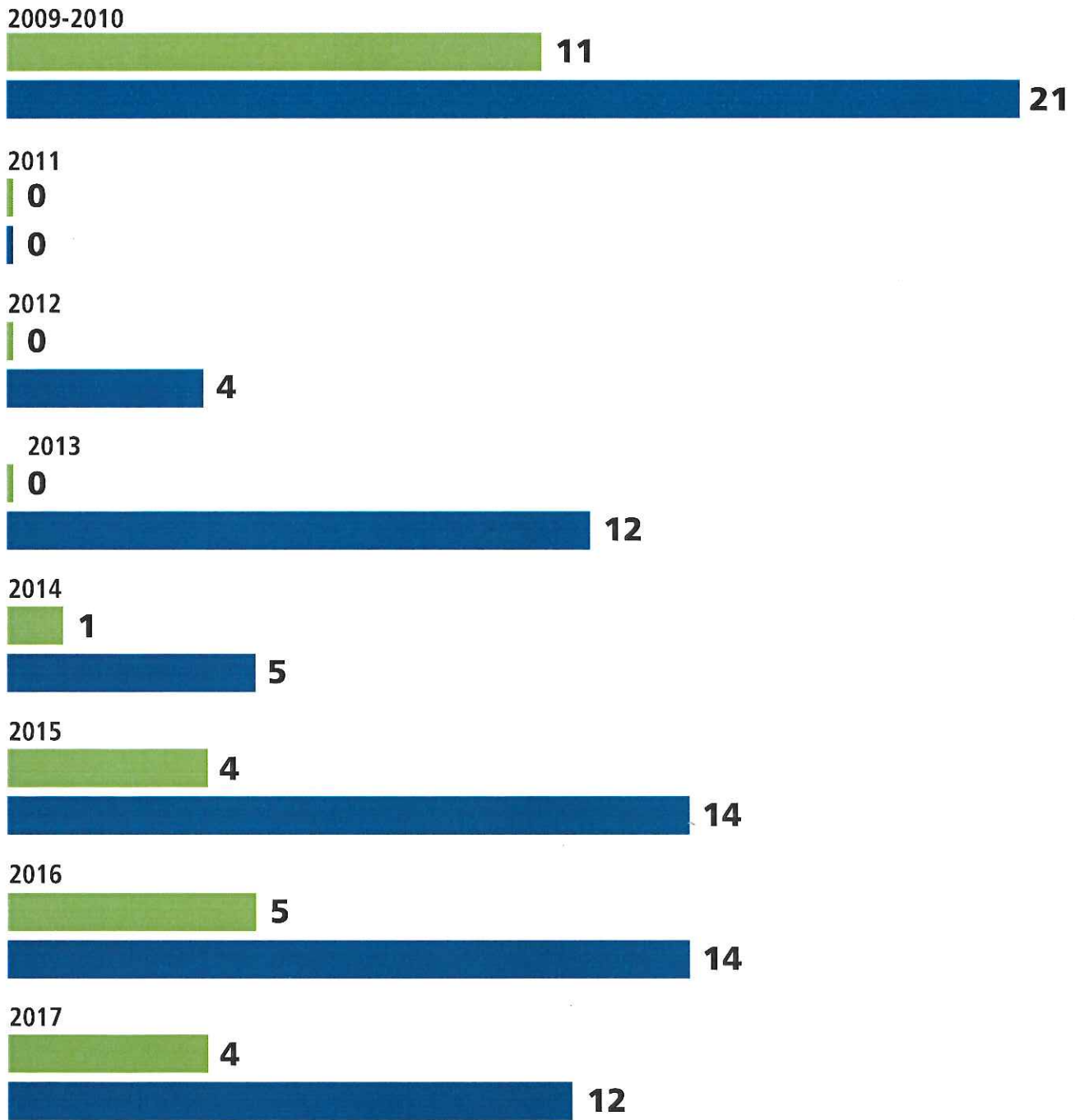
2017 Statement of Expenditures

*Salaries and Benefits	235,830
Membership Fees/Dues	1,251
Cellular Line Charges	263
General Line Charges	3
General Dept Meals	59
Seminars & Workshops	530
Office Supplies	1,777
Copier/Fax Lease Charges	2,628
Office Lease	27,123
Professional Fees	27,813
Sundry Expenses	137
Hardware Equipment	2,176
Total Operating Cost	299,589

*Office staff complement

Expenditure chart includes expenditures for Lobbyist Registrar activities start up an operational activities from June 2017 to December 2017

COMPLAINTS RECEIVED BY THE INTEGRITY COMMISSIONER 2009-2017



■ Formal Complaints
 ■ Informal Complaints

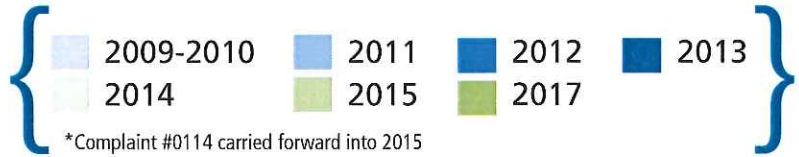
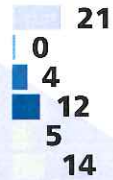
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ACTIVITIES OF THE CITY OF VAUGHAN OFFICE OF THE INTEGRITY COMMISSIONER 2009-2017

Formal complaints

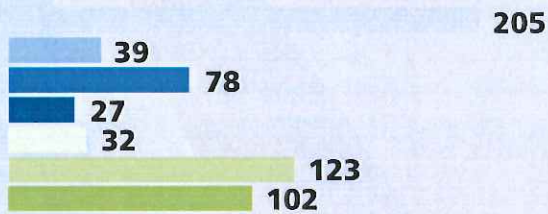


Informal complaints

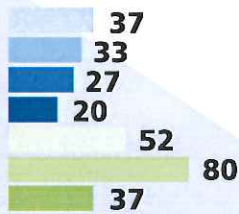


Inquiries on Code Application

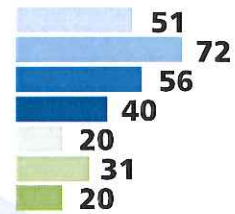
From the public



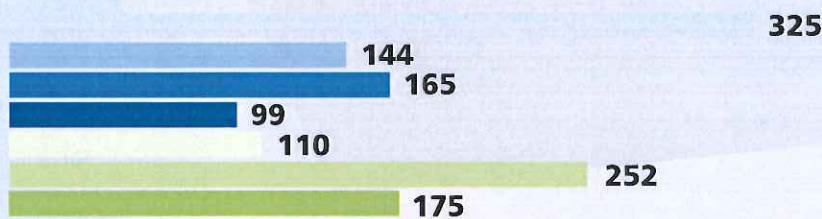
From City staff



From Members of Council

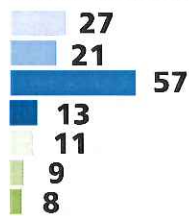


Total Code Related

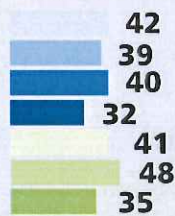


Inquiries Non-Code Application

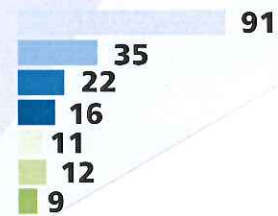
Inquiries about staff from staff



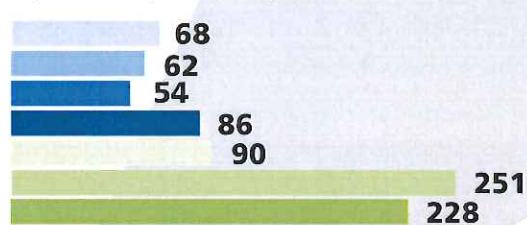
Inquiries about process from City staff



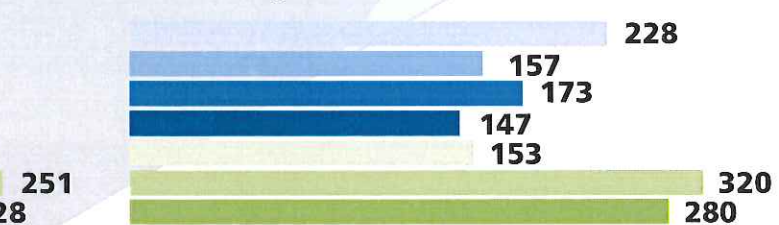
Inquiries about staff from public



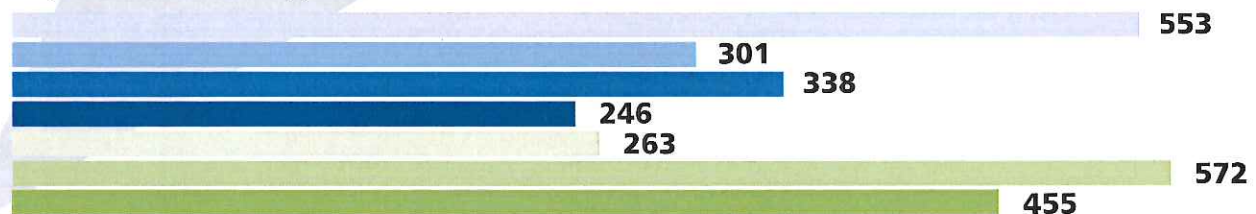
Inquiries about process from public



Total non-Code related



Inquiries on Code Application



3.0 SIGNIFICANT ISSUES

3.1 City of Vaughan Code Complaint #0116 and 0117

This Office dedicated considerable time and thoughtful consideration in 2017 to the investigation of Code Complaints #0116 and #0117. In complaint #0117, I considered the substantial power imbalance between the Complainant and the Respondent within the context of workplace harassment. Courts and tribunals now recognize that a substantial power imbalance can erode, if not impede, a Complainant's belief that they can refuse unwanted advances. The victim fears unforeseen consequences which could be either personal or work-related. In these cases, it is not uncommon for victims of harassment to tolerate unwanted behaviour longer than expected.

The Ontario Human Rights Commission notes that a person does not have to object to the harassment at the time it happens for there to be a violation, or for the person to claim their rights under the Code. Even though a person being harassed may take part in sexual activity or other related behaviour, this does not mean they consent.

In Complaint #0117, there was a Respondent who was both the Complainant's functional manager, and a prominent city politician. The Complainant tolerated the Respondent's behaviour with the misguided belief that her frequent protestations would remedy the situation...

In my Complaint Investigation Report, I stated that the Complainant chose to come forward with the complaint, notwithstanding a fear of reprisal and the unwelcome scrutiny that might be levelled against her if she did so. In Complaint #0117, the Complainant, demonstrating unwavering courage, advised me that it is her belief that nobody should be subject to working in an environment in which one is fearful that they will be subject to continuous sexual harassment. She told me that she "knew what people would think." However, she was convinced that nothing in her private life, her financial situation, or her choices gave the Respondent, her employer, a City Councillor, the right to sexually harass her.

In the second significant complaint in 2017, Complaint #0116, I found that the allegation of the complaint had

been sustained and that the actions of the Respondent constituted an improper use of influence of office through his attempt to interfere with the decision-making.

Rule 7 of the Code states: 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.

In my complaint investigation report, I set out that such conduct 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. I also found that holding out the prospect or promise of future advantage through a Member's influence within Council in return for present action or inaction by the beneficiary is a clear violation of a Member's ethical obligations.

The report reiterated the ethical principle enshrined in the Code that Members are required to be free from bias and prejudgment in respect of the decisions that are part of a Member's

political and legislative duties. I found that the test for determining whether there is a reasonable apprehension of bias in respect of a Member is the same as the test established by courts with respect to an administrative tribunal:

"...[W]hat would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly." (Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General), [2015] 2 SCR 282 at para. 20)

3.2 New Mandatory Lobbyist Registry

It is with great pleasure and honour that I accepted the appointment as the City's first Lobbyist Registrar of the Mandatory Lobbyist Registry.

In January 2018, the mandatory lobbyist regime came into force. The Lobbyist Registry was developed in-house by the Office of the Chief Information Officer staff, and the costs were absorbed within OCIO's approved budget. These start-up costs consisted of staff time and purchased software required for the development and launch of the application.

The Lobbyist Registry and Lobbying

By-law were designed to ensure both transparency of City decision-making, as well as the creation of rules such that business dealings with the City of Vaughan are conducted in an ethical and accountable way.

Lobbying is a common and legitimate activity. The adoption of a mandatory Lobbyist Registry allows both public office holders and the public to know who is attempting to influence municipal government. That is why the Ontario legislature included provisions for the establishment of a lobbyist registry and registrar in its 2006 amendments to the Municipal Act. The basis for the 2006 amendments was the intent to develop rules around ethical conduct for municipal elected officials so that they may carry out their duties with impartiality and equality of service for all residents of their city.

"Lobbying is a common and legitimate activity."

Some Ontario municipalities have created a Lobbyist Registry, after instances where Councillors inserted themselves into the procurement process in contravention of City

policies.³ The Vaughan Lobbyist Registry was instituted to build on the City's commitment to accountable government decision-making and not as a result of punitive action to address ethical shortcomings. The mandatory Lobbyist Registry allows the public to see who is communicating with public office holders about governmental decisions. Both Justices Bellamy and Cunningham have recommended in their inquiry reports, the creation of lobbyist registries are to ensure transparency in procurement at the municipal level.

"Both Justices Bellamy and Cunningham have recommended in their inquiry reports, the creation of lobbyist registries to ensure transparency in procurement at the municipal level."

³ 2017 OECD Global Anti-Corruption & Integrity Forum, *In the Public Interest: Taking Integrity to Higher Standards*, Paris, France March 31, 2017

In 2006, the drafters of the amendments to the Municipal Act, included provisions for the establishment of a lobbyist registry and registrar. While not all municipalities are required to enact elaborate rules and systems, it is important to underscore that at the foundation of the 2006 amendments was the intent of the Ontario legislature to recognize the general trend in municipal government to develop rules around ethical conduct for elected officials so that they may carry out their duties with impartiality and transparency.

Lobbying is a legitimate activity that facilitates Council's receipt of information necessary to make effective decisions that are responsive to the needs of their community. The City has taken another significant and positive step towards strengthening accountability by approving the mandatory Lobbyist Registry, which came into force on January 1, 2018.

Registering lobbying activities does not prohibit individuals and businesses from interacting with government officials in an effort to have their ideas considered: it brings these activities into the light and allows the public to legitimately weigh who is talking with whom so that the reasons for government decisions are transparent."

A 2017 Global Forum on integrity stated that a significant number of

the global population believe that their government is "either largely or entirely run by a few big interests acting in their own best interests." At the forum, international ethicists and public integrity officers discussed how lobbyists walk a thin line between "sharing information, agenda setting and undue influence. Special interest groups inform and influence lawmakers who, in response, sometimes tweak laws, policies and regulations..."⁴

The outcome is what is commonly known as "policy capture," in which integrity violations and advantages contribute to an increasingly unequal society. Being close to decision-makers in politics and public administration can be a valuable asset, however, problems arise when different interest groups do not wield the same power or have access to the same opportunities to influence policy-making.⁵

The direction of Vaughan City Council is to create a lobbying regime in which lobbying conducted by interested parties is a positive contributor to debate and is an important part of the governing process. The lobbying of Members of Council and staff on municipal issues can enhance the deliberative process by providing the perspective of stakeholders that might otherwise be lost. A balance must be struck between greater transparency of the lobbying process to enhance the public's perception

that decisions are being made in accountable way, and the prevention of one group informing or influencing City lawmakers to the exclusion of other groups with other perspectives.

With a view to avoiding policy capture, to date, this Office has met with senior executives of all City program areas and held a public information session, inviting key stakeholders to hear about how the new City of Vaughan lobbyist registry works. In addition, I have delivered introductory overviews to key industry stakeholders and groups with the goal of sharing the "made in Vaughan" model of public engagement and transparency and learning more about how the business and community groups interface with City public officials.

Recently, to assist the public and staff in response to questions received, my Office is developing an Interpretation Bulletin with respect to the status of not for profits and ratepayers groups under the Lobbying Bylaw. Over the next six months, the Office will continue to listen to staff, the public and elected officials to craft a workable, fair and effective registry program that allows different interest groups to engage and access public office holders on a level playing field.

⁴ 2017 OECD Global Anti-Corruption & Integrity Forum, *In the Public Interest: Taking Integrity to Higher Standards*, Paris, France March 31, 2017

⁵ 2017 OECD Forum, *ibid*

4.0 MOVING FORWARD

As the City's chief accountability officer, I exercise my statutory authority independent of the administration. My goal remains to perform the duties of this office conscious of the need for the consistent application of the rules of the accountability and transparency provisions of the Municipal Act, with empathy, impartiality and the utmost professionalism.

Though the mandatory Lobbyist Registry is in the early stages of its development, there are significant opportunities to learn from the experiences, positive and otherwise, of the lobbyist registries at the Federal and Provincial levels of government. A 2017 report identified that while "registries generally received high marks for accessibility...a serious shortcoming among Canada's lobbyist registries is that only some types of activity intended to influence public officials need to be registered as lobbying."⁶

The report goes on to say that "various forms of communications, and lobbying by certain types of non-profits, may be excluded from registry reporting, and the thresholds for the amount of time spent on lobbying activities that triggers a requirement to register may also be set too high..."

The City of Vaughan Mandatory Lobbyist Registry tracks communication between public office holders and people or businesses who access government decision-makers with respect to influencing changes to legislation, regulations, program, policies, etc., outside of the normal communication or public engagement process. The intent of the new accountability mechanism is to ensure that everyone can be confident that government is doing business fairly and in a transparent way.

Generally, not-for-profit organizations do not have to register if they lobby while acting in their official capacity. However, when a member of a not-for-profit lobbies for a financial benefit or for a purpose that is generally beyond the purpose of the not-for-profit, or when a consultant lobbyist communicates on behalf of a not-for-profit, the entity or the consultant lobbyist must register.

In the six months since the mandatory lobbyist registry has been in force, this office has received a significant number of questions from City staff, the public, for-profit businesses and not-for-profit entities, about the status of not-for-profits under the City of Vaughan's lobbying regulations.

I am greatly encouraged to see this level of interest and engagement in this new accountability resource, which demonstrates a willingness on the part of the City of Vaughan, residents and businesses to ensure a strong and fair relationship between the participants of the democratic process.

⁶ 2017 Report by Shareholder Association for Research & Education



City of Vaughan

Office of the Integrity Commissioner
and Lobbyist Registrar

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EXAMPLES OF ADVICE

From the Integrity Commissioner



- 1** A Member of Council has been asked by a community organization to sell tickets for an upcoming fundraising event, with all proceeds going to the not for profit activity.

It was the Commissioner's opinion that the Member should not accept tickets for events, the acceptance of which is based on the understanding that the Member will "sell" tickets or blocks of tickets for the event organizer or group. In June 2017, the Council Expenditure and Code of Conduct Task Force Chair, Councillor Marilyn lafrate, submitted on behalf of the Task Force, amendments to the Code, which included a codified version of the recommendations by the Integrity Commissioner that Members not "sell" fundraising tickets on behalf of a group.

- 2** A Member wanted to use their Councillor Expense budget for distribution of their Councillor newsletter in a local newspaper.

It was the Commissioner's advice that any action that a Councillor carries out must be made with a view to upholding the key principles that underpin the Code of Conduct, which are:

- To serve and be seen to serve your constituents in a diligent manner;
- Performing your functions with integrity and transparency
- Not to extend or be perceived to extend preferential treatment to family, groups of friends that you would not extend to all other residents of the City

In keeping with the principles of the Code, a Councillor's newsletter should not be a veiled attempt to promote oneself. Communication by way of a Councillor Newsletter, through any media, should follow the format and contain the content of Councillor/City business or relevant regional business, as a means of informing the community.

Based on the information provided to the Commissioner, the fact that the newspaper distribution boundaries are not the same as the Ward boundaries, is relevant. However, the possibility that some may suggest a Ward Councillor should only provide their Newsletter to their Ward residents is not a consideration that supersedes the overarching Code principle at play here, which is serving a Member's constituents in a conscientious manner by communicating and informing them of relevant City/Regional business in the most cost-effective way.

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3 A Member was asked by residents in their community to host a community Movie Night. The Member asked the Commissioner if they could use their elected official title to promote the community Movie Night.

The Commissioner advised that this was a permissible activity under the Code. Rule 2.3 of the Code of Conduct allows Members to lend their support to and encourage, community donations to not-for-profits groups. Further, rule 2.3 of the Code states that nothing included herein affects the entitlement of a Member of Council to:

- i. Use her or his office expense budget to run or support community events subject to the terms of the Councillor Expense Policy section relating to Community Expense Events...
- ii. ...
- iii. ...
- iv. Collaborate with the City of Vaughan and its agencies to hold community events as long as a member does not handle any funds on behalf of any charitable organization or Community group and remains at arm's length from the financial aspects of these community and external events.

4 A Member was provided with 2 tickets to a fundraising gala. The Member will not be attending but will be giving the tickets to family members. Is there still a Code obligation to declare the receipt of a gift?

Rule 2 of the Code, is the only rule that deems the actions of a family member to be that of the Member. Rule 2 states "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.

As a result, if a Member of Council receives a gift or benefit (in this case, tickets to a fundraising dinner) and the Member's spouse attends, for the purposes of the Code, the gift is seen to have been provided to the Member. If the value of the tickets exceeds the Code threshold, the Member is required to complete a Councillor Information Statement and submit the declaration to the Integrity Commissioner.

5 A Member and their family attended the opening event for a new restaurant in the Member's ward. The Member did not incur any cost at the event. The Member asked the Commissioner if the meals should be declared as a gift under Rule 2 of the Code.

It was the Commissioner's advice that as the restaurant is in the Member's ward, provided that the value of the dinner was reasonable and this was the first such invitation the Member received from the restaurant, the event falls under the recognized exception, as outline in rule 2(g) of the Code: (g) food and beverages consumed at banquets, receptions or similar events, for charitable, not for profit and community purposes, if:

1. attendance serves a legitimate public duty purpose; and
2. the value is reasonable and the invitations infrequent.

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6 A community organization is applying for funding from a government agency, and has asked a Member of Council to write a letter in support of its application. The Member asked the Integrity Commissioner if writing a letter of support would constitute an improper use of influence or otherwise contravene the Code of Conduct for Members of Council.

It was the Commissioner's opinion that since the agency was a quasi-judicial body, writing letters of support or recommendation on behalf of a community organization could be viewed as an improper use of influence of office. A general letter could be provided if the letter was written in such a way that it could not be construed that the Member was seeking preferential treatment from the agency decision makers as a result of the Member's official City status and if the Member limits their comments to stating that: the organization has been operating in Vaughan/partnering with Vaughan for a number of years and has been a vital part of the community or that the organization has successfully completed work under contract at the City stating the year, duration and nature of the work.

7 A Member was asked by a constituent group to meet regarding a matter that was under the jurisdiction of an agency of another level of government.

The Commissioner advised that a Member can meet with constituents to discuss Ward matters. However, the Member should be careful to not give the impression that she/he has the authority to take further steps as an individual Member of Council, to further the constituents' cause. An individual Members of Council should not intervene on matters at another level of government that have an established process or procedure. The Commissioner advised that if allowed under the City's procedural by-law, the Member may consider raising the issue at an appropriate Committee of Council for discussion by Council.

8 A Member was invited by an organization to attend an educational trip. The invitation was extended to women in politics at different levels of government with the purpose of encouraging women to consider participating in public office.

It was the Commissioner's opinion that accepting the gift fell within recognized exception of rule 2(f) of the Code, which states the exception to the prohibition of the acceptance of gifts and allows:

(f) food, lodging, transportation...provided by provincial. Regional and local governments or political subdivisions of them...or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity at an official event