

Subject:

FW: Response to Deputation

**Council Expenditure & Code of
Conduct Review Task Force**
March 8, 2016

Item- 1

From: Carrie Liddy [mailto:carrie.liddy@gmail.com]

Sent: Monday, March 07, 2016 3:07 PM

To: Iafrate, Marilyn; Rosati, Gino; Ferri, Mario; DeFrancesca, Rosanna; Racco, Sandra; Abrams, Jeffrey

Cc: Craig, Suzanne

Subject: Fwd: Response to Deputation

Dear Councillor Iafrate

Please place the Integrity Commissioner's response to my deputation on the agenda for tomorrow. As I previously stated, the Integrity Commissioner stated she would complete a response to my deputation, and the response is below.

I wish to complete two deputations : the first to address the Integrity Commissioner's response and the second to suggest amendments to the code of conduct.

Lastly, please respond if you have received Ms Wilson's response, as per the resolution passed in the last meeting. I note there are no documents on the agenda posted on the website. I am unable to respond and will address her letter after it is posted. I will address the Integrity Commissioner's response tomorrow should you allow a deputation.

Thank you

Carrie

Sent from my iPad

Begin forwarded message:

From: "Craig, Suzanne" <Suzanne.Craig@vaughan.ca>

Date: March 7, 2016 at 12:54:48 PM EST

To: "Carrie (carrie.liddy@gmail.com)" <carrie.liddy@gmail.com>

Cc: "Craig, Suzanne" <Suzanne.Craig@vaughan.ca>

Subject: Response to Deputation

Good afternoon, Ms. Liddy:

Re: November, 2015 Written Deputation

http://www.vaughan.ca/council/minutes_agendas/Communications/CLEX1118_15_C1.pdf

Further to your deputation of November 12, 2015 at the Council Expenditure and Code of Conduct Review Task Force, I am pleased to provide you with the following:

On January 1, 2016, Bill 8, the MPP and Public Sector Accountability and Transparency Act came into force. As a result of legislative changes, the Office of the Ontario Ombudsman now has authority to oversee Ontario's 444 municipalities, 82 school boards, and 21 universities. The Ombudsman can receive and investigate complaints about Ontario's municipalities including about municipal councils, local boards and municipally-controlled.

There are approximately 43 municipalities that currently have Integrity Commissioners who investigate complaints respecting alleged breaches of the local Codes of Conduct. The Integrity Commissioners are empowered by the Municipal Act and the City of Toronto Act. Integrity Commissioners have been appointed and codes of conduct established in response to legislative changes made to the Municipal Act and the City of Toronto Act in 2006. In that year Accountability and Transparency sections were enacted in respect to both pieces of legislation. The accountability systems were mandatory in Toronto and discretionary in the other municipalities. The City of Toronto enacted in due course, the Office of the Integrity Commissioner, Ombudsman and Lobbyist Registrar. No other municipal governments have appointed a local Ombudsman and only Hamilton and Ottawa have established Lobbyist Registrars.

Subsection 14(1) of the Ombudsman Act states:

*14. (1) The function of the Ombudsman is to investigate **any decision or recommendation made or any act done or omitted in the course of the administration** of a governmental organization and affecting any person or body of persons in his, her or its personal capacity (highlight added)*

The term “governmental organization” has now been replaced with “public sector body”, to include municipalities. The Ombudsman will continue to have jurisdiction over actions or omissions done “in the course of administration”. Administration is not defined in the Act, but the commonly held definition can be found in *BCDC v Friedmann* [1984] 2 SCR 447:

In my view, the phrase “a matter of administration” encompasses everything done by governmental authorities in the implementation of government policy.

The role of an Integrity Commissioner relates to the actions, decisions, conduct and/or behaviour of *elected officials*, and their duties as elected officials. The Municipal Act, and the various municipal Codes of Conduct make no reference to the Integrity Commissioner exercising a function in relation to the policies, programs and service levels of the municipality through the actions or failure to act or wrongdoing of and by municipal staff.

When looking at the City of Toronto’s Ombudsman, we see that the function of a local Ombudsman is to “investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality”. While it is acknowledged that elected officials as a result of their actions or behaviour could conceivably affect policies and programs, or the behaviour of staff, the statutory function of a municipal Integrity Commissioner is the review of actions of elected officials in respect of a Code of Conduct... The municipal Ombudsman, on the other hand, represents an avenue of recourse to members of the public who have complaints about the policies, programs, or service levels of the municipality, or about the actions or failure to act or act appropriately of and by municipal staff

While the Municipal Act gives considerable discretion to municipalities in the creation and enforcement of Codes of Conduct for Members of Council, there are distinct statutory provisions for the creation of roles and powers of each accountability officer listed in Part V.1 of the Act. In some jurisdictions, the City of Ottawa most notably, there is already the combination of three accountability functions, (Integrity Commissioner, Lobbyist Registrar and Closed Meeting Investigator.) being held by one individual. The statutory provisions that govern both the Integrity Commissioner and the Lobbyist Registrar centre on ethical behaviour and actions in respect of elected officials and therefore, the organization decision to have both functions held by one individual is neither legally prohibited nor functionally problematic.

There is no statutory impediment that prevents a municipal government from having the accountability function of a local Integrity Commissioner and that of a local Ombudsman be held by one individual. This organizational decision is one that will be determined by the municipality. The previous Provincial Ombudsman has stated that his office is one “of last resort, and that issues should be resolved locally wherever possible”. If and until such time as the City of Vaughan undertakes a discussion on whether to create a local Ombudsman Office, complaints regarding actions, omission or decisions of the administration and staff may be handled through the City’s official complaint mechanisms and in the alternative or in the absence of identified and transparent complaint processes, through the Office of the Provincial Ombudsman.

Should you require further information, please do not hesitate to contact my assistant, Cathy Passafiume at 905-832-8585 ext. 8314.

Suzanne Craig
Integrity Commissioner
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