

Council Expenditure & Code of
Conduct Review Task Force

February 12/16

Item- 1

From: Carrie.liddy@gmail.com
Sent: Thursday, November 12, 2015 12:16 PM
To: lafrate, Marilyn
Cc: Abrams, Jeffrey; Richard Lorello; Ferri, Mario; Rosati, Gino; DeFrancesca, Rosanna; Craig, Suzanne; Rigakos, Demetre; Mirabella-Siddall, Laura; McEwan, Barbara; Bellisario, Adelina; njaved@thestar.ca; amartinrobbins@ymg.com
Subject: Written deputation for November 18 meeting

Councillor lafrate,

Please accept this deputation as the written port in of my submission to the Task Force. It is submitted under item 3 of the Task Force's mandate.

Thank you

Mr Abrams,

Please post as communications, when you post the agenda and meeting item on the City's website. Please confirm the meet g date, time and location.

Thank you

Deputation of Carrie Liddy, resident of Vaughan for Nivember 18 Task Force meeting on
Council Expenditures and Code of Conduct

Governance of the City of Vaughan is the responsibility of Council. This is addressed several times in the Muncipal Act and
Ethical Code of Conduct.

In Vaughan, there are two codes of conduct: the Code of Ethical conduct for Council and the code of conduct for staff. This deputation addresses the "gap" in the codes of conduct of the City of Vaughan.

Specifically: There is a "gap" between the two codes and that gap is Senior Management oversight.

The mandate of this task force is to review the Council code of ethical conduct. This deputation addresses only one item that has been identified for review, and that is the gap between the two codes of conduct, and which code (or a third code or option) should be amended to include senior staff.

The Legislated Governance

The Municipal Act clearly assigns responsibility for senior staff to Council, as noted in s.224 (d) and (d.1)

An excerpt from the Municipal Act Ontario 2001:

S. 224 it is the role of council to:

(d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;

(d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;

Additionally, there are two sections of the act that should be noted and they are : the mandatory administration position and duty of the Clerk s.228 and ; powers that cannot be delegated, s.23.3

City Manager position is not mandatory, however Council may appoint a city manager and if they do, duties and delegated responsibilities must be defined.

Code of Ethical Conduct

The current code does address overall good governance, in rule 1 and addresses staff in rule 3, however does not specifically address the Municipal Act governance requirements of council's responsibility and accountability for senior staff, the Clerk and the City Manager.

The code of ethical conduct for Council is the implementation of the legislation and at least two positions (Clerk, City Manager) are covered in council specific responsibility.

I note, the Act does not limit the senior staff that Council is responsible for, however does explicitly define the minimal senior staff positions council is responsible for to include the Clerk and City Manager, once a City Manager is put in place.

Solutions to Resolve the identified gap

The Municipal Act has three oversight positions and Vaughan has enacted one of the three: Integrity Commissioner, Ombudsman and Commissioner Lobbyist Registrar.

Vaughan has an established Integrity Commissioner and since 2009, the Commissioner has worked hard to gain the confidence of Council, staff and the public.

The Integrity Commissioner provides oversight to Council and the code of ethical conduct outlines the rules that establish parameters for the Integrity Commissioner to carry out her role. This task force has the mandate to review the code of conduct and report to Council before December 2015.

As stated above, rule 1 does address governance of the City and the prelude to the Code of Conduct outlines the framework to include the governing legal authorities , with the Municipal Act being the primary legislation the code of conduct must comply with.

The code is mean't to be a set of rules that explicitly define the acceptable conduct for Council members, however, although the rules are fairly comprehensive, they are meant to define the legal conduct, not limit it.

As such, it may well be argued that Council's responsibility for oversight of all senior staff conduct is already covered under rule 1, and the framework, and the rule must simply be expanded to explicitly outline the detail. At a minimum, the Clerk and City Manager already are under direct governance responsibility by Council and rule 1 of the code should be enhanced to specifically identify this.

Considering the above, the easiest and most cost effective way to address the "gap" (as defined as senior management not having oversight under either code) may be for the task force to exercise its mandate by adding a clause to rule 1.

Ombudsman and Lobbyist Registrar

The Municipal Act identifies two additional oversight positions and because of the gap in the governance structure of Vaughan , the oversight of the senior management "gap" partially lie within the Ombudsman position and the existing Integrity Commissioner role.

As above, the Council code of ethical conduct should be amended to detail the explicit responsibility of Council under s.224 and the oversight role of the Integrity Commissioner having jurisdiction over matters that include the Clerk and City Manager (through the code of ethical conduct and Municipal Act.)

However, given there is still a number of senior staff other than the Clerk and City Manager, that do not clearly fall under Council's responsibility and Council's code of conduct, there are options to address the gap:

- 1) define senior staff to include all senior staff and amend the code of conduct to address s.224 to include all senior staff ,or
- 2) include the mandatory positions of the Clerk and City Manager in the code of ethical conduct and appoint the Integrity Commissioner as temporary Ombudsman with a duo oversight role to define which oversight position to address all senior staff.

As the Lobbyist Registry was an election promise, (not yet addressed by Vaughan Council) and given the overlaps of the oversight roles with regards to Vaughan, it is suggested that the Integrity Commissioner also review this role at the same time, however , that is a practical consideration outside of the Task force mandate.

I note that York Region has a report online addressing a possible joint Ombudsman position. The response from RFI issued earlier did not result in clear direction for the region and the Region has issued an RFP that is due November 19 with a report to York Region Council due in December. Vaughan Council will have to consider the item in a public meeting, given this is an expenditure of Council. The timeline, therefore is that Vaughan will likely not be in a position to resolve the Ombudsman's oversight issue until spring of 2016 .

There are serious matters already before the police, where portions of the matters could be separated and dealt with by a Vaughan Ombudsman. The suggestion for appointing the Integrity Commissioner temporary Ombudsman is a practical solution that could result in portions of the police matters addressed immediately by Vaughan Ombudsman and not wait for a more permanent solution.

It is not a foregone conclusion that York Region will be hiring an Ombudsman and if an Ombudsman is hired whether the service can be shared. Each municipality must decide whether to use the service or not, if it is offered. A public must be held to address the permanent solution. The Ontario Ombudsman has jurisdiction over all municipalities, including Vaughan starting January 1 2016, regardless if the Region or Vaughan delegates the position.

Recommendations

The Task force resolves to bring the following resolution to Council:

1) the code of conduct be amended to include specific reference to s.224(d) and 224(d.1) of the Municipal Act and the applicable detail be prepared and submitted by the Integrity Commissioner

2) On a temporary basis, the Integrity Commissioner be appointed Ombudsman with the specific task of :

- a) defining the role of the Ombudsman with regards to reviewing the Code of Conduct for staff , s.224 Council responsibility , senior staff other than the Clerk and City Manager and fully reconcile the gap between the two codes.
- b) provide information to Council as temporary Ombudsman to assist in Vaughan Council making a decision on whether to hire a full time, part time or shared Ombudsman or if oversight can be covered by an amendment to broadly define senior staff in the code of conduct and a separate Ombudsman

3) The Integrity Commissioner also be assigned , on a temporary basis, the Commissioner Lobbyist Registrar and specifically be assigned the task to review the Lobbyist Registry Office with a goal of identifying a possible dual role for the Integrity Commissioner Office, however, this is a recommendation outside of the task force mandate and should be considered separately by Council.

4) Task force Chair (or any Council member of the Task Force) obtain an external legal opinion (if required) regarding s.224 (etc) and application under the code of ethical conduct , and utilize the \$5,000 reimbursement clause under the code of conduct.

5) The proper resources be allocated out of the 2016 budget to carry out the work of the temporary positions, and expanded code of conduct.

6) The Task force carry on the work mandated under item 3 and report to Council periodically in 2016 for other amendments to the code of ethical conduct

Excerpts from the Municipal Act:

Powers that cannot be delegated

23.3 (1) Sections 9, 10 and 11 do not authorize a municipality to delegate any of the following powers and duties:

- 1. The power to appoint or remove from office an officer of the municipality **whose appointment is required by this Act.** (See Clerk and City Manager below)
- 2. The power to pass a by-law under Parts VIII, IX and X.

3. The power to incorporate corporations in accordance with section 203.
4. The power to adopt an official plan or an amendment to an official plan under the *Planning Act*.
5. The power to pass a zoning by-law under the *Planning Act*.
6. The powers to pass a by-law under subsections 108 (1) and (2) and 110 (3), (6) and (7).
7. The power to adopt a community improvement plan under section 28 of the *Planning Act*, if the plan includes provisions that authorize the exercise of any power under subsection 28 (6) or (7) of that Act or under section 365.1 of this Act.
8. The power to adopt or amend the budget of the municipality.
9. Any other power or duty that may be prescribed. 2006, c. 32, Sched. A, s. 15.

224 it is the role of council to:

- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, **including the activities of the senior management of the municipality**;

Clerk

228. (1) A municipality **shall appoint a clerk** whose duty it is,

- (a) to record, without note or comment, all resolutions, decisions and other proceedings of the council;
- (b) if required by any member present at a vote, to record the name and vote of every member voting on any matter or question;
- (c) to keep the originals or copies of all by-laws and of all minutes of the proceedings of the council;
- (d) to perform the other duties required under this Act or under any other Act; and
- (e) to perform such other duties as are assigned by the municipality. 2001, c. 25, s. 228 (1).

Note: with regards to (d) MFIPPA designates the Mayor as Head under the act (responsible for records, FOIs, disclosures to the public, record keeping and/or provisioning of records /disclosures to council etc) and the Mayor has delegated the responsibility of the Head to the Clerk.

Chief administrative officer

229. A municipality **may appoint** a chief administrative officer who shall be responsible for,

- (a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and
- (b) performing such other duties as are assigned by the municipality. 2001, c. 25, s. 229.

Sent from my iPad

On Nov 11, 2015, at 4:49 PM, Iafrate, Marilyn <Marilyn.Iafrate@vaughan.ca> wrote:

Thank you.

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

Sent: Wednesday, November 11, 2015 9:33 AM

To: Abrams, Jeffrey

Cc: Iafrate, Marilyn; Richard Lorello; Ferri, Mario; Rosati, Gino; DeFrancesca, Rosanna; Craig, Suzanne; Rigakos, Demetre; Mirabella-Siddall, Laura; McEwan, Barbara; Bellisario, Adelina

Subject: Re: Task force meeting

Thank you Mr Abrams

I have now located the mandate for the task force and the mandate includes "review the code of ethical conduct". (I cut and pasted the Council resolution below). The item is a stand alone item and specifically included in the mandate.

I am submitting a written deputation that I wish to be placed on the agenda with regards to item 3 of the mandate of the task force.

I will probably require the full five minutes as is allowed under the procedural rules, however i will submit a written deputation in order to be able to limit the oral deputation to five minutes or less.

The topic of my requested deputation is as follows:

"Item 3 of the Task Force mandate is to review the Code of Ethical Conduct applicable to Vaughan Council.

Council has overall responsibility for governance, and this is reflected in Council's ethical code of conduct, the Municipal Act and various supporting legislations. Gaps in the City of Vaughan's governance have been identified by members of the public and were discussed in general at the last Task Force meeting.

Given the ethic code of conduct is the governing policy over Council's conduct and given Council is responsible for all governance in the City of Vaughan and given there are serious gaps in governance identified in the last task force meeting, I am submitting a "public" resolution as to how to resolve the gap.o

~~My deputation will address the gap identified in my earlier written deputation, (and as a followup to Mr. Lorello's oral assertions)~~ however I will narrow and specifically address the gap within the context of

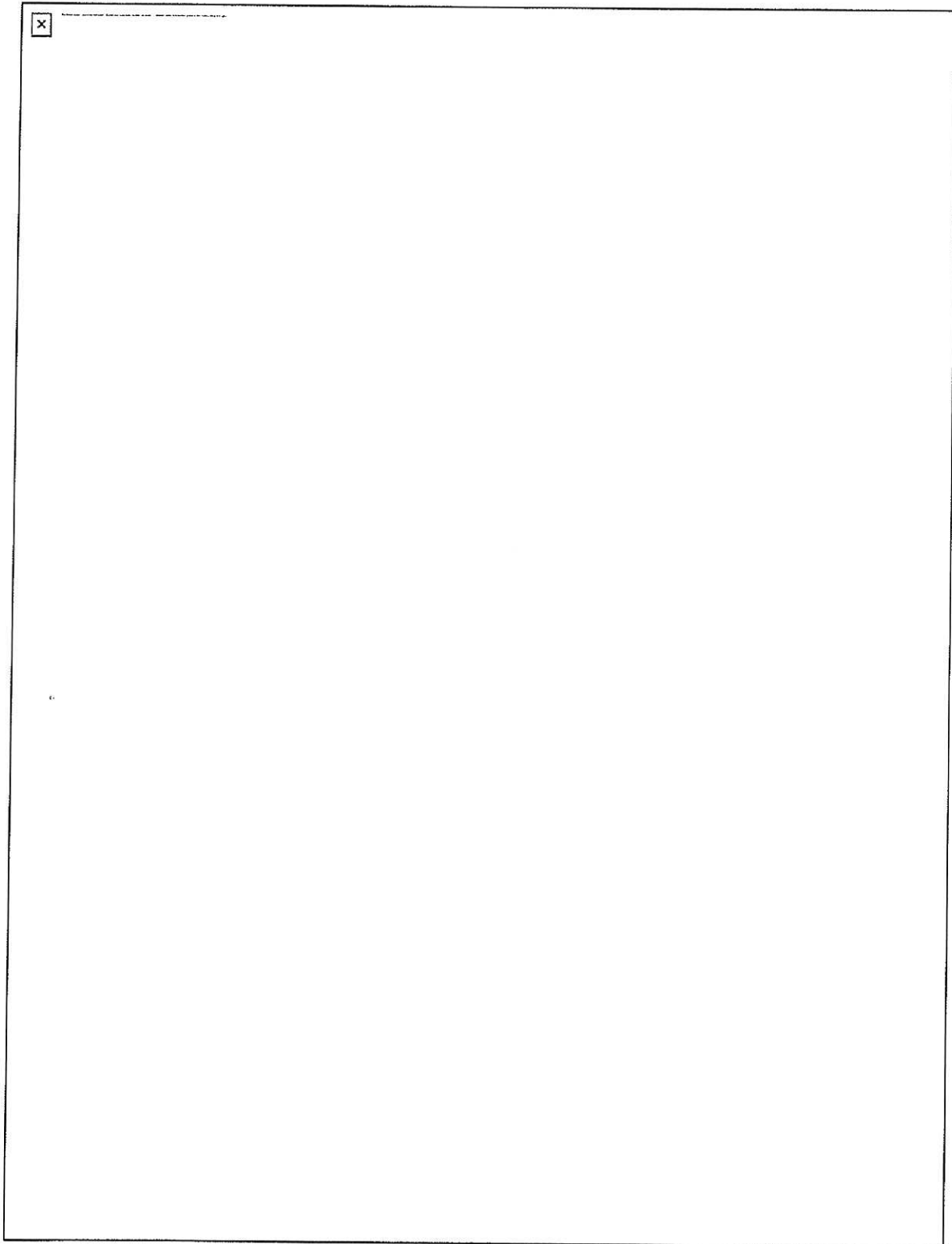
both the prelude to the creation of the task force and item 3 of the Council authorized mandate. I note the mandate was approved by Council and recommendations due in December 2015."

As above, I will submit a written deputation in advance of the meeting to provide background to facilitate a five minute oral deputation. I am requesting the Task force vote on this item, as the mandate includes a report to Council in December.

Please confirm the location, time and date of the meeting.

I look forward to positive discussions and public participation in those discussions.

Thank you.



Sent from my iPad

On Nov 11, 2015, at 8:50 AM, Abrams, Jeffrey <Jeffrey.Abrams@vaughan.ca> wrote:

Ms Liddy,

Here is a link to the extract for Item 8 of Report No. 10 of the Finance, Administration and Audit Committee, which was adopted by Council on June 23, 2015:

http://www.vaughan.ca/council/minutes_agendas/Extracts/10Finance0615_15ex_8.pdf

Jeffrey A. Abrams

City Clerk

905-832-8585, ext. 8281 | jeffrey.abrams@vaughan.ca

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<image001.png>

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

Sent: Wednesday, November 11, 2015 8:45 AM

To: Abrams, Jeffrey

Cc: Iafrate, Marilyn; Richard Lorello; Ferri, Mario; Rosati, Gino; DeFrancesca, Rosanna; Craig, Suzanne; Rigakos, Demetre; Mirabella-Siddall, Laura; McEwan, Barbara; Bellisario, Adelina

Subject: Re: Task force meeting

Mr Abrams

I am unable to locate any records from the June meeting you are referring to. Please provide the meeting documents or a link to the meeting minutes and records.

Thank you

Sent from my iPad

On Nov 10, 2015, at 7:10 PM, Abrams, Jeffrey <Jeffrey.Abrams@vaughan.ca> wrote:

Ms Liddy,

I have been asked to comment on whether the matters you have raised in the email below are properly matters that can be considered by the Council Expenditure and Code of Conduct Task Force (the "Task Force"). This is being done in the interest of directing you to the appropriate Council committee so that you may provide your input.

The mandate of the Task Force was originally limited to Council Office budgets and the expenditures funded from those budgets. In June of this year the mandate of the Task Force (and its title) were expanded to also include consideration of the Code of Ethical Conduct for Members of Council (the "Code of Conduct") given the interplay between the administration of Council's Expense Policy and the Code of Conduct.

That being the case, the Task Force's mandate does not extend to matters relating to the role of an Ombudsman, nor to accountability and transparency matters generally, nor to the appointment of officials.

Public reports on these and other topics will soon be presented to Council's standing committees, and your input will be welcome with respect to the respective agenda items. You are of course also welcome to address the Task Force on matters on its agenda.

Notwithstanding the foregoing, your communication below will be forwarded to the Task Force for consideration at its next meeting.

As mentioned at the Task Force meeting on November 4, 2015, if you wish to bring to the City's attention non-policy concerns about City staff, please bring those matters to the attention of the Chief Human Resources Officer.

Jeffrey A. Abrams

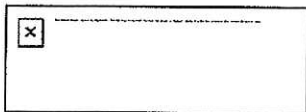
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From: Carrie.liddy@gmail.com [<mailto:carrie.liddy@gmail.com>]

Sent: Thursday, November 05, 2015 11:31 AM

To: Iafrate, Marilyn

Cc: Richard Lorello; Ferri, Mario; Rosati, Gino; DeFrancesca, Rosanna; Craig, Suzanne; Abrams, Jeffrey

Subject: Re: Task force meeting

Councillor Iafrates

Thank you for your response and your diligence in bringing accountability to Vaughan.

I look forward to the meetings.

Sent from my iPad

On Nov 5, 2015, at 11:16 AM, Iafrate, Marilyn <Marilyn.Iafrate@vaughan.ca> wrote:

Ms. Liddy I confirm receipt of you e-mail and I have noted that you have already copied the Integrity Commissioner and the City Clerk.

The next few task force meetings should bring clarity to some/all of the questions or concerns you have raised in your e-mail below.

With thanks,
Marilyn Iafrate
Councillor
Ward 1

On Nov 5, 2015, at 5:26 AM, "Carrie.liddy@gmail.com" <carrie.liddy@gmail.com> wrote:

Councillor Iafrate

First, let me thank you for allowing public participation in the task force meeting yesterday.

The open discussion and ability for the public to both give deputations and respond to council and staff comments moves accountability forward in a significant manner.

I want to more or less reiterate two points discussed yesterday and add a written deputation to each of those two items, for inclusion in the next meeting which, I note has not been determined.

I may submit another enhanced deputation after the meeting date, time and agenda is announced.

1) Two codes of conduct

There are two codes of conduct that are relevant to the governance of Vaughan: Council and staff/administration.

The Integrity Commissioner is fully responsible for Council's code of conduct, however no one is accountable for staff/administration oversight and governance

In the last few months, there have been serious concerns raised under the Council code of conduct, and the investigation and **response** from the council members placed the issue outside of the jurisdiction of the Integrity Commissioner.

What has become very apparent is that there is a significant gap in the oversight and governance of the City of Vaughan and that gap is: **when a jurisdictional block is leveraged to place a serious concern outside of the governance of the Integrity Commissioner, there is no recourse within the current governance structures of Vaughan.**

What is very important to recognize is that the issues do not go away. They in fact are both identified and specifically unresolved. In other words, with no proper oversight available (administrative code of conduct) and after using jurisdiction to deny any recourse through the Integrity Commissioner, the matters are unresolved, not addressed and present enormous liabilities to the City.

In the absence of recourse within City governance structures, the only avenues available are **the police and the courts.** (I note there are multiple ongoing investigations with the police and the courts are likely the next step)

There was a loosely defined "confidential" process described by the Director of Human Resources, however confidential human resources processes do nothing to address public discourse. The confidentiality aspects of human resources do not in any way satisfy public accountability and in fact work against accountability and builds public distrust. That's not to say personal discipline matters should be made public, however confidential personnel processes cannot be used to avoid public accountability.

Human Resources cannot address matters already identified as criminal or quasi-criminal and matters that fall under Council purview such as (as an example) misappropriation / misuse of tax funds.

2) addressing the gap in Administrative oversight

There was some discussion on Ombudsman v Integrity Commissioner rules, and the City Clerk seemed to allude the Region would be addressing an Ombudsman's role. The provincial Ombudsman's expansion of duties was also brought up and impact however is unknown.

I want to bring the section of the Municipal Act that applies to an Ombudsman's role to your attention:

Ombudsman

223.13 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Ombudsman who reports to council and whose function 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, its local boards and such municipally-controlled corporations as the municipality may specify and affecting any person or body of persons in his, her or its personal capacity. 2006, c. 32, Sched. A, s. 98.

The role of the Ombudsman is again specific to jurisdiction. For example if the Region gets an Ombudsman, his/her jurisdiction will be limited to the Region. The expansion of powers of the provincial Ombudsman also is without a doubt, untested and not likely to be of impact on matters only related to Vaughan.

Neither of these solutions are practical and waiting to determine the usefulness of a regional or provincial ombudsman does not address Vaughan's administrative governance needs.

The outcome of the meeting yesterday did not appear to have any urgency and there was reference to a plan to get to a study to research a vaguely designed report to council, several months delay in preparing the vaguely described report and no public involvement.

There are multiple matters that need to be addressed now.

I recommend the following resolutions be addressed by the task force at the next meeting:

- 1) the Integrity Commissioner role be expanded to appoint Ms Craig as dual Ombudsman and Integrity Commissioner, with two stipulations:
 - a) the expanded dual role be temporary until an Ombudsman governance function is established for Vaughan
 - b) proper resources be added to the Integrity Commissioner's office to enable proper implementation of the additional oversight.
- 2) The gap in the governance oversight for Vaughan be properly addressed in a serious and accountable manner with a Public task force established to make recommendations to council.

The public task force responsibilities should include addressing the Municipal Act requirements for an Ombudsman as specified by section 322.12 included above.

The temporary dual role of the Integrity Commissioner should be transitioned into whatever the final staff/administrative governance model becomes.

A time table should be established to ensure proper governance is in place within a maximum of one year with a goal of six months

Thank you

Sent from my iPad

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