

John Craig Consulting

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March 6, 2013

Mayor and Members of Council
The City of Barrie
70 Collier Street,
Barrie, Ontario
L4M 4T5

Attention: Ms. Dawn McAlpine, City Clerk

Dear Sirs and Madams;

Re: 2012 Annual Report of the Integrity Commissioner for the City of Barrie

Please find attached my annual report, which is provided to you in accordance with our contract. This report covers my activities and other matters for the entire year of 2012.

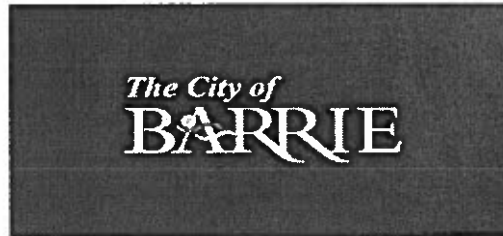
I hope you will find this report helpful and informative. The recommendations contained in the report are provided for your consideration.

I am available to answer any questions you may have at your convenience.

Regards,

A handwritten signature in black ink, appearing to be 'John E. Craig', written in a cursive style.

John E. Craig
Integrity Commissioner
City of Barrie



CITY OF BARRIE
INTEGRITY
COMMISSIONER
2012 ANNUAL REPORT

John E. Craig
Integrity Commissioner
March 6, 2013

Introduction

The Code of Conduct for Members of Council and Local Boards and Committees came into effect on December 1, 2010. This is my second annual report and covers entire year of 2012.

Barrie is among the growing majority of medium to large municipalities in Ontario that have now adopted Codes of Conduct. I would like to commend the Mayor and Members of Council for their ongoing commitment to the standards of behaviour codified by the City of Barrie Code of Conduct. In so doing, you have demonstrated a dedication to one of the fundamental principles of good governance.

Jurisdiction

The Code of Conduct applies to the Mayor and Members of Council, and Members of most Local Boards and Committees. The role of the Integrity Commissioner is primarily three-fold: (a) to ensure that members and the general public are aware of the application of the Code and to answer inquiries; (b) to provide advice to members concerning compliance; and (c) to conduct investigations into complaints of Code violations.

The role of the Integrity Commissioner is enshrined in sections 223.3 to 223.8 of the *Municipal Act*, 2001. In summary, the Act authorizes a 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:

- 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; and
- 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.

The Act also addresses matters of confidentiality, process and reporting requirements.

The City of Barrie retains its Integrity Commissioner under contract specifically to perform the following services:

1. Conduct investigations in accordance with the Municipal Act in response to all requests received by the Municipality for investigation of an alleged breach of the Municipality's Code of Conduct by a member of the Council of the Municipality, or a committee or local board thereof;
2. Provide information to members as to their obligations under the Code of Conduct;
3. Provide advice to individual members regarding specific situations as they relate to the application of the Code;

4. Provide advice to members on other policies and procedures that relate to the ethical behaviour of members;
5. Provide information to the Public regarding the Code and the obligations of members under the Code;
6. Provide an annual report to Council on the activities of the Integrity Commissioner.

Activity

During the year 2012 two formal complaints alleging violations were filed under the Code of Conduct. The first complaint, ICB030212 - was completed and my report dated June 6th, 2012 was presented to Council meeting as General Committee on June 11th, 2012. The second complaint, ICB112712 - was filed late in the year and was ongoing at year end. Both complaints were centered on allegations of improper handling of confidential information.

Over the past twelve months several members of Council have consulted me for advice on the application of specific provisions of the Code of Conduct. I have also provided information to staff in response to their questions. Guidance of a general nature regarding member responsibilities under the Municipal Conflict of Interest Act was also offered in response to queries.

Although there have been relatively few direct inquiries from members of the public the Code of Conduct web page was reviewed on 420 occasions in 2012 – a substantial increase from the 113 views recorded in 2011, indicating a growing public awareness and interest in the Code.

During the year, I attended two meetings of the Integrity Commissioners of Ontario. These meetings included dialogue with my colleagues from other municipalities on current issues and best practices. In depth discussions among ICO members occurred concerning the Commissioner's Report on the Mississauga Judicial Inquiry, changes to the Public Inquiries Act, the Magder v. Ford court decisions and the need for changes to the Municipal Conflict of Interest Act. We also met to discuss common issues with a representative of the Information and Privacy Commissioner's Office and several of our peers at the federal and provincial level. Panel discussions and presentations were organized involving academics and experts in various related fields. This dialogue has been very helpful for sharing and developing ideas for improvements to Code protocols.

Best Practice Influences - Proposed Amendments to the Barrie Code of Conduct

I consider it part of the duties of the Integrity Commissioner to keep Council members informed about best practices in the area of municipal codes of conduct. Barrie's Code is an excellent example of how a municipal council can take responsibility for the actions of its members. The Code continues to reflect many of the current best practices and ideas about ethical behaviour at the local government level.

Recommendations Outstanding from 2011 Annual Report:

In my 2011 Annual Report I proposed several amendments for improving Barrie's Code of Conduct:

- Eliminate the Clerk's responsibilities from the complaint process to prevent concerns a complainant may have regarding confidentiality, and strengthen the independence of the Integrity Commissioner. Complainants would deal directly with the Integrity Commissioner.
- Re-define the term "family member" to include parent, spouse, child, siblings and in-laws, and substitute this term where applicable in the Code.
- Lower the dollar amounts for gifts to \$250 (maximum value) and \$150 (disclosure required).

I note that there has been no action on these proposed improvements to the Code. I therefore again propose that these changes be adopted by Council for the reasons outlined in my previous report and encourage this Council to actively participate in the ongoing process of updating the ethical and behavioural standards first established by the previous Council.

The Public Inquiries Act, 2009:

The range of investigative tools available to the Integrity Commissioner was broadened by the recent proclamation of the *Public Inquiries Act, 2009*. An Integrity Commissioner is now authorized under the Act to summon witnesses and documents including from third parties. Any evidence requested may be required to be given under oath. The IC may apply to the Divisional Court with a stated case for contempt when a witness fails to comply with the proper requests of an IC.

Magder v. Ford

The recent court case involving the Mayor of Toronto raised several issues related to Codes of Conduct and the *Municipal Conflict of Interest Act* (MCIA). The case involved an application for a declaration that Mayor Ford had contravened the *Municipal Conflict of Interest Act* when he participated in a discussion and voted on a motion to overturn a previous Council action authorizing a sanction against him arising from a breach of the Code of Conduct. The matter was ultimately decided by the Divisional Court following an appeal against a decision of the Superior Court of Justice.

In concluding that Mayor Ford had not contravened the MCIA the Courts found that:

- When an individual seeks to rely on an error of law, good faith requires that he or she make some enquiry about the meaning and application of the law, rather than rely on his or her interpretation. Willful blindness to one's legal obligations cannot be a good faith error in judgment.

- The MCIA applies to a Code of Conduct matter before Council provided that the member has a pecuniary interest in the matter.
- The member is not precluded from speaking to a report on his conduct unless it involves an economic sanction.
- Mayor Ford had a pecuniary interest in the matter before Council; however, he could not be found to be in contravention of the MCIA because the Council did not have the authority to impose the kind of sanction it had previously decided to impose.
- There is a distinction between the specific authority for imposing either of two “penalties” outlined in the *City of Toronto Act* and other “remedies” or actions (cannot be for punitive purposes) the municipality could apply under the general authority provisions of the Act. (This distinction would apply to the authority provided under the *Municipal Act*, which provides for the Codes of Conduct for other municipalities).

The findings of the courts will be discussed more fully by the Integrity Commissioners of Ontario at our next meeting in April. At this time I do not see any implications for the Barrie Code of Conduct except with respect to process. A member, who may be subject to an economic sanction, if one is recommended by the Integrity Commissioner, should declare a conflict of interest in accordance with the provisions of the *Municipal Conflict of Interest Act*.

Contract vs. Ethical Obligations

An issue that has recently been discussed among my colleagues is the question of what an Integrity Commissioner should do in situations where he or she has become aware of a breach of the Code of Conduct, either through inquiries being conducted resulting from a complaint on another matter; or, as a result of witnessing or otherwise being unintentionally exposed to compelling evidence.

In Barrie, the role of the Integrity Commissioner is defined in the contract for Integrity Commissioner Services. It does not authorize or impose any obligation on the Integrity Commissioner to undertake any review, action or otherwise report in any way a breach of the Code of Conduct, unless a complaint is first filed. Being confronted with a breach of the Code with no recourse creates an ethical struggle for Integrity Commissioners. Opinion is split among my colleagues as to an appropriate reaction.

I have chosen to rely on the precise wording of the contract for my services and take no action in such situations. In all written advice and reports arising from complaints, I will include a disclaimer indicating that my findings and conclusions are specific to the matter at hand and do not include any other information that I became aware of as a result of an inquiry or complaint.

Conclusion

Thank you for the opportunity to act as the City's Integrity Commissioner for another year. I look forward to your continuing support for the promise of ethical behaviour utilizing the standards outlined in Barrie's Code of Conduct. I wish to thank Members of Council for their confidence in my work and their sincerity during our consultations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John E. Craig', enclosed within a circular scribble.

John E. Craig
Integrity Commissioner
City of Barrie

