

**Subject: Report to Council on an Inquiry Respecting the Conduct of
Councillor Chiarelli**

File Number: ACS2022-OCC-GEN-0023

Report to Council 9 November 2022

Submitted on August 18, 2022 by Karen Shepherd, Integrity Commissioner

Contact Person: Karen Shepherd, Integrity Commissioner

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Ward: Citywide

**Objet : Rapport au Conseil sur une enquête concernant la conduite du
conseiller Chiarelli**

Dossier : ACS2022-OCC-GEN-0023

Rapport au Conseil le 9 novembre 2022

Soumis le 18 août 2022 par Karen Shepherd, Commissaire à l'intégrité

Personne ressource : Karen Shepherd, Commissaire à l'intégrité

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Quartier : À l'échelle de la ville

REPORT RECOMMENDATION

The Integrity Commissioner recommends that City Council:

- 1. Suspend the notice requirements in Section 13 of the Complaint Protocol of the Code of Conduct for Members of Council (Appendix A of By-law 2018-400) and Subsection 29(6) of the Procedure By-law to consider this report at its meeting on November 9, 2022 for the reasons described in this report;**
- 2. Receive this report, including the finding that the Respondent, Councillor Chiarelli, has contravened Sections 4 and 7 of the Code of Conduct for Members of Council;**

3. Suspend the remuneration to be paid to the Respondent in respect of his service as a Member of Council for 90 days; and
4. Require that the Respondent make a written or verbal public apology for his actions.

RECOMMANDATION DU RAPPORT

Le commissaire à l'intégrité recommande que le Conseil municipal :

1. Suspendre les obligations d'avis énoncées à l'article 13 du protocole de plaintes dans le Code de conduite des membres du Conseil (annexe A du Règlement n° 2018-400) et au paragraphe 29(6) du *Règlement de procédure* afin que le présent rapport soit examiné lors de la réunion du Conseil du 9 novembre 2022 pour les raisons qui y sont décrites;
2. Prenne connaissance du présent rapport, dont la conclusion selon laquelle l'intimé, le conseiller Chiarelli, a contrevenu aux articles 4 et 7 du Code de conduite des membres du Conseil;
3. suspende la paye de l'intimé en ce qui concerne ses services à titre de membre du Conseil pendant 90 jours;
4. exige que l'intimé présente des excuses publiques de vive voix ou par écrit pour ses actes.

BACKGROUND

The attached report relates to an inquiry undertaken by the Integrity Commissioner pursuant to her jurisdiction set out in Section 223.4 of the *Municipal Act, 2001* (the "Act") as follows:

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 about whether a member of the local board has contravened the code of conduct applicable to the member. 2006, c. 32, Sched. A, s. 98.

Powers on inquiry

(2) The Commissioner may elect to 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).

Where the Integrity Commissioner reports to Council, Section 223.6 of the Act sets out the following specific requirements:

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.

The Complaint Protocol of the Code of Conduct for Members of Council (Appendix A to By-law 2018-400) sets out the framework for the Integrity Commissioner receiving complaints, conducting investigations and reporting to Council.

Section 11 of the Complaint Protocol requires the Integrity Commissioner to report to Council where a complaint is sustained in whole or in part and outline the Integrity Commissioner's findings, the terms of any settlement and/or any recommended corrective action.

This report is submitted to Council under subsections 223.4(1), 223.6(2) and 223.6(3) of the Act and Section 11 of the Complaint Protocol.

DISCUSSION

The attached report is the Integrity Commissioner's final report respecting a formal

complaint concerning the conduct of Councillor Chiarelli (the Respondent).

The formal complaint, filed by a former member of the Respondent's staff, contained five specific allegations concerning the Respondent.

During the Integrity Commissioner's intake analysis, the Commissioner concluded there were sufficient grounds for a formal investigation.

The Integrity Commissioner also determined that the first allegation was outside her jurisdiction as it contained allegations related to conduct that took place prior to July 1, 2013, the date the Code of Conduct for Members of Council came into effect. Accordingly, the first allegation was not investigated.

The Integrity Commissioner retained the services of an independent investigator to complete the investigation. The Investigator was delegated the responsibility for the investigation in accordance with subsections 223.3(3) and 223.3(4) of the Act:

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.

The attached report was filed with the City Clerk on August 18, 2022. By reason of the municipal election, the Integrity Commissioner could not report to Council until after Voting Day (October 24, 2022). Specifically, subsection 223.4 (9) of the *Municipal Act, 2001* sets out the following rules that apply during a regular municipal election year:

(9) The following rules apply during the period of time starting on nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in section 5 of that Act:

1. There shall be no requests for an inquiry about whether a member of council or of a local board has contravened the code of conduct applicable to the member.

2. The Commissioner shall not report to the municipality or local board about whether, in his or her opinion, a member of council or of a local board has contravened the code of conduct applicable to the member.
3. The municipality or local board shall not consider whether to impose the penalties referred to in subsection (5) on a member of council or of a local board.

For this reason, the Integrity Commissioner requests Council waive the notice requirements in Section 13 of the Complaint Protocol of the Code of Conduct for Members of Council (Appendix A of By-law 2018-400) and Subsection 29(6) of the Procedure By-law to consider this report at the first regular meeting following Voting Day and the end of the statutory “blackout period”.

The attached report contains the Integrity Commissioner’s findings and recommendations related to the four allegations that the Integrity Commissioner determined to be within her jurisdiction.

FINANCIAL IMPLICATIONS

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

LEGAL IMPLICATIONS

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide report.

CONSULTATION

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

ACCESSIBILITY IMPACTS

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

RISK MANAGEMENT IMPLICATIONS

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

RURAL IMPLICATIONS

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

TERM OF COUNCIL PRIORITIES

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

SUPPORTING DOCUMENTATION

Document 1 – Report on an Inquiry Respecting the Conduct of Councillor Chiarelli

Document 2 – Appendix 1

DISPOSITION

Decisions made by Council as a result of this report will be implemented.