

**Report to
Rapport au:**

**Council
Conseil**

12 February 2019 / 12 février 2020

**Submitted on February 7, 2020
Soumis le 7 février 2020**

**Submitted by
Soumis par:**

Robert Marleau, Integrity Commissioner/Commissaire à l'intégrité

Contact Person

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2020-OCC-GEN-0009

**SUBJECT: INTERIM REPORT TO COUNCIL ON AN INQUIRY RESPECTING THE
CONDUCT OF COUNCILLOR CHIARELLI**

**OBJET: RAPPORT PROVISOIRE PRÉSENTÉ AU CONSEIL MUNICIPAL
RELATIF À UNE ENQUÊTE PORTANT SUR LA CONDUITE DU
CONSEILLER CHIARELLI**

REPORT RECOMMENDATIONS

That Council receive this report for information.

RECOMMANDATIONS DU RAPPORT

Que le Conseil municipal prenne connaissance de ce rapport.

BACKGROUND

On July 11, 2012, City Council approved the establishment of the Integrity Commissioner position. On July 1, 2013, the Code of Conduct for Members of Council came into effect (City of Ottawa By-law 2018-400).

The City of Ottawa's Integrity Commissioner fulfills the role of Integrity Commissioner, Lobbyist Registrar and Meetings Investigator.

The jurisdiction of the Integrity Commissioner is set out in s. 223.3(1) of the *Municipal Act, 2001* (the "Act"). The Integrity Commissioner in Ottawa is responsible for performing the functions assigned to it by the City which include all of the functions listed in s. 223.3(1), as follows:

1. *The application of the code of conduct for members of council and the code of conduct for members of local boards.*
2. *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.*
3. *The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council and of local boards.*
4. *Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.*
5. *Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.*
6. *Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.*
7. *The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the Municipal Conflict of Interest Act. 2017, c. 10, Sched. 1, s. 19 (1).*

[...]

Powers and duties

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.

This interim report relates to an inquiry undertaken by the Integrity Commissioner in his role as Integrity Commissioner pursuant to his jurisdiction set out in s. 223.4 of 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).

The Integrity Commissioner's authority to issue an interim report is set out in Section 9 of the Complaint Protocol (Appendix "A" to the Code of Conduct for Members of Council, City of Ottawa By-law 2018-400), as follows:

"The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation."

The report is submitted to Council pursuant to an inquiry conducted under s. 223.4(1) of the Act and Section 9 of the Complaint Protocol. Pursuant to s. 223.6(3), this report shall be made available to the public.

The Integrity Commissioner and all people acting under his instructions are bound by a duty of confidentiality under which secrecy is to be preserved with respect to all matters

that come to his or her knowledge in the course of conducting an Inquiry, in accordance with s. 223.5 of the Act, as follows:

Duty of Confidentiality

223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

Exception

(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part. 2006, c. 32, Sched. A, s. 98.

[...]

Section prevails

(3) This section prevails over the Municipal Freedom of Information and Protection of Privacy Act. 2006, c.32, Sched. A, s. 98.

DISCUSSION

As Integrity Commissioner, I have received several formal complaints alleging that Councillor Rick Chiarelli (the “Respondent”) contravened various sections of the Code of Conduct for Members of Council (By-law 2018-400) (the “Code of Conduct”).

My inquiry into the allegations set out in the formal complaints is ongoing; however, I am electing to exercise my discretionary authority to issue this interim report in light of the delay in completing my inquiry.

The Complaint Protocol outlines the procedure for the intake, filing and investigation of allegations set out in formal complaints. It also sets out the reporting procedure. Subsection 9(3) of the Complaint Protocol provides me with the authority to make interim reports as follows:

“The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.”

There is no statutory timeframe established for the completion of Integrity Commissioner inquiries. Nevertheless, under Section 11 of the Complaint Protocol, investigations are expected to be completed generally within 90 days after the intake process. The 90-day deadline for all formal complaints has passed, and all parties have been notified accordingly.

Summary of the Complaint Process to date

Several formal complaints were filed between September 6 and October 8, 2019, in accordance with Part II (Formal Complaint Procedure) of the Complaint Protocol. I undertook an intake analysis of each complaint in accordance with Section 4 of the Formal Complaint Procedure and determined that the matter set out in each complaint was, on its face, a complaint with respect to non-compliance with the Code of Conduct. I was not of the opinion that any matter set out in the complaints was frivolous, vexatious or not made in good faith, or that there were no grounds or insufficient grounds for an investigation.

Between September 17 and October 15, 2019, pursuant to subsection 9(1) of the Complaint Protocol, I provided the Respondent with a Notice of Inquiry for each of the complaints, as well as a copy of each complaint and supporting material, and requested that the Respondent provide written response to the allegations set out in each complaint within ten business days. The Respondent took the position that I did not have jurisdiction over the matters. I determined that I did have jurisdiction and continued the investigations.

The investigative work of gathering documentary evidence and conducting interviews under oath, as provided for in s. 33 of the *Public Inquiries Act, 2009*, began at the end of September 2019.

On October 3, 2019, the Respondent issued a press release stating that his “ability to respond” to allegations against him that had been reported in the media was affected by “ongoing and serious medical challenges”. The press release stated that the Respondent had: “never treated a member of [his] staff (including job candidates) in a sexually harassing, discriminatory, or inappropriate ‘gender-based’ fashion.” The press release also asserted that: “allegations related to workplace gender discrimination or workplace sexual harassment are not matters that are properly placed before the City’s Integrity Commissioner.”

While the Respondent continued to challenge my jurisdiction, I informed the Respondent that I had determined that I have jurisdiction and that my investigations

would proceed. The Respondent advised that he did not intend to offer a substantive response to the allegations in light of the jurisdictional issue and that he would bring a challenge to my decision on jurisdiction in Court. I have not been served with such an application.

On December 10, 2019, a written request was sent to the Respondent to take part in an interview under oath, as provided for in s. 33 of the *Public Inquiries Act, 2009*.

Three days later, on December 13, 2019, the Respondent's legal counsel confirmed to my Office that the Respondent had been admitted to the Ottawa Heart Institute. He advised that the Respondent would undergo open heart surgery and would not be in a position to consider whether to participate in the investigations until his medical recovery had progressed to a stable and acceptable level.

The Respondent has indicated that he will consider a request to attend an interview once his recovery has progressed.

Media reports and Twitter postings state that following a brief discharge from the hospital, the Respondent was readmitted to hospital on January 10, 2020.

Delay in completing the investigation

Currently, the investigations into the allegations set out in the formal complaints have been at a standstill pending the Respondent's decision about whether to participate. With the aim of upholding the principles of procedural fairness and natural justice, before finalizing the investigations, I will allow for a reasonable amount of time for the Respondent to recover from his medical issues. I will then seek his response to the allegations set out in the formal complaints.

In order to ensure that I fulfill my statutory obligations as the City's Integrity Commissioner, after a reasonable amount of time has elapsed without comment from the Respondent, I may choose to resume and conclude the investigations. Once I conclude the investigations, I will produce a final report for Council setting out my findings and recommendations at the earliest opportunity.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

As this is considered an internal administrative matter, no public consultation was undertaken.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide report.

LEGAL IMPLICATIONS

There are no legal impediments to City Council receiving this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

This report has no direct impacts on the City's strategic priorities or directions identified for the current Term of Council.

DISPOSITION

The Integrity Commissioner asks Council to accept this interim report and await further comment.