

**Report to
Rapport au:**

**Council
Conseil**

25 November 2020 / 25 novembre 2020

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**Submitted by
Soumis par:
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2020-OCC-GEN-0033

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

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

REPORT RECOMMENDATIONS

The Integrity Commissioner recommends that City Council:

- 1. Suspend the notice requirement in Section 13 of the Complaint Protocol (Appendix A to By-law 2018-400) to consider this report.**
- 2. Receive this report, including the finding that Councillor Chiarelli has contravened Section 4 and Section 7 of the Code of Conduct.**
- 3. Impose the following sanctions for each individual contravention of the Code of Conduct:**

- a. **Complaint 1 – Suspension of the remuneration paid to Councillor Chiarelli in respect of his service as a Member of Council for 90 days;**
 - b. **Complaint 2 – Suspension of the remuneration paid to Councillor Chiarelli in respect of his service as a Member of Council for 90 days.**
- 4. **Direct that the effective starting date for the above recommendations for suspension of remuneration follow the end of the suspensions of remuneration of Councillor Chiarelli approved by Council on July 15, 2020 and be applied consecutively.**
- 5. **Remove Councillor Chiarelli from the membership of all committees of Council and any other boards, local boards, agencies or commissions he has been appointed to by Council for the remainder of the 2018-2022 term of office.**
- 6. **Suspend all delegated authorities of Councillor Chiarelli to hire staff and to order and approve any budgetary expenditures for the remainder of the 2018-2022 term of office and that the said delegated authorities shall be vested as recommended by the City Clerk in a separate report to Council.**

RECOMMANDATIONS DU RAPPORT

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

- 1. **suspende l'exigence d'avis prévue à l'article 13 du Protocole régissant les plaintes (annexe A du Règlement n° 2018-400) pour que ce rapport puisse être examiné.**
- 2. **prenne connaissance du présent rapport ainsi que de la conclusion selon laquelle le conseiller Chiarelli a enfreint les articles 4 et 7 du Code de conduite;**
- 3. **impose les sanctions suivantes pour chacune des contraventions au Code de conduite :**
 - a. **Plainte no 1 – Suspension de la rémunération versée au conseiller Chiarelli pour ses services en qualité de membre du Conseil pour une période de 90 jours;**

- b. Plainte no 2 – Suspension de la rémunération versée au conseiller Chiarelli pour ses services en qualité de membres du Conseil pour une période de 90 jours;**
- 4. demande au personnel de veiller à ce que les recommandations susmentionnées relativement à la suspension de la rémunération prennent effet immédiatement après la fin des suspensions de la rémunération du défendeur approuvées par le Conseil le 15 juillet 2020 et qu'elles soient consécutives;**
- 5. retire conseiller Chiarelli de tous les comités et autres conseils, conseils locaux, organismes ou commissions au sein desquels il a été nommé par le Conseil pour le reste de son mandat qui a débuté en 2018 et prendra fin en 2022;**
- 6. suspende tous les pouvoirs qu'il a délégués au conseiller Chiarelli au regard de l'embauche de personnel ainsi que de l'engagement et de l'approbation de toutes dépenses budgétaires pour le reste de son mandat jusqu'en 2022, et veille à ce que les pouvoirs ainsi retirés au défendeur soient dévolus, conformément aux recommandations, au greffier municipal dans un rapport distinct au Conseil.**

BACKGROUND

On July 11, 2012, City Council approved the establishment of the Integrity Commissioner position. 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 Section 223.3 of the *Municipal Act, 2001* (the "Act"), 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.

The attached report relates to an inquiry undertaken by the Integrity Commissioner in his role as Integrity Commissioner pursuant to his jurisdiction set out in Section 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 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 Section 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.

Where the Integrity Commissioner reports to Council, Section 223.6 of the *Municipal Act, 2001* sets out the following specific requirements:

Report to council

223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned. 2006, c. 32, Sched. A, s. 98.

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 receiving complaints, conducting investigations and reporting to Council. Section 11 of the Complaint Protocol requires that the Integrity Commissioner 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 of the Code of Conduct for Members of Council (Appendix A of By-law 2018-400).

Notice of Intent to Report to Council

The Integrity Commissioner is required to provide notice of intent to report to Council.

Section 13 of the Complaint Protocol of the Code of Conduct for Members of Council (Appendix A of By-law 2018-400) provides as follows [emphasis added]:

Report to Council

13. Upon receipt of a report, the Clerk shall indicate, on the **next regular agenda of City Council**, Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of City Council.

Subsection 29(6)(b) of the Council Procedure By-law provides as follows [emphasis added]:

29(6)(b) Notice of a report from the Integrity Commissioner or the Election Compliance Audit Committee **shall be given at the meeting of Council prior to the meeting where the report is to be considered** by Council and shall be released with the Agenda five calendar days in advance of the Council meeting at which it is to be considered.

The November 12, 2020 meeting of City Council was cancelled. Consequently, as part of the November 4, 2020 Special Council meeting, the Integrity Commissioner issued notice of intent to submit this report for consideration at the November 25, 2020 Council meeting, fulfilling the requirements of the Council Procedure By-law. The Integrity Commissioner requests suspension of Section 13 of the Complaint Protocol to permit Council to consider this report given that Notice has been issued publicly at a meeting of Council, albeit not a “regular” meeting as required by the Complaint Protocol.

DISCUSSION

The attached report is the Integrity Commissioner’s final report respecting two separate formal complaints filed by former employees concerning the conduct of Councillor Chiarelli.

Between September 16, 2019 and October 8, 2019, two individuals filed a formal complaint and sworn affidavit alleging that Councillor Chiarelli’s conduct during their respective job interviews and employment in his office contravened Section 4 (General Integrity), Section 7 (Discrimination and Harassment) and Section 10 (Conduct Respecting Staff) of the Code of Conduct for Members of Council (“Code of Conduct”).

Following a preliminary review of the information submitted, the Integrity Commissioner determined that the complaints were not frivolous or vexatious and concluded there were sufficient grounds for a formal investigation.

As the allegations set out in the formal complaints were analogous in nature, the Integrity Commissioner conducted one inquiry. However, each complaint has been treated separately, each with individual findings and recommendations.

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 *Municipal Act, 2001*:

Delegation

223.3 (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

223.3 (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 outlines the Integrity Commissioner's individual findings and recommendations for each of the two formal complaints.

RURAL IMPLICATIONS

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

CONSULTATION

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

COMMENTS BY THE WARD COUNCILLOR(S)

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.

RISK MANAGEMENT IMPLICATIONS

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

FINANCIAL IMPLICATIONS

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.

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 to Council on an Inquiry Respecting the Conduct of Councillor Chiarelli

Document 2 - Report to Council on an Inquiry Respecting the Conduct of Councillor Chiarelli - Appendices

DISPOSITION

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