



ADMINISTRATIVE REPORT

Report Date: June 10, 2009
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VanRIMS No.: 08-2000-20
Meeting Date: June 18, 2009

TO: Standing Committee on City Services and Budgets

FROM: City Clerk, in Consultation with the City Manager, the Director of Legal Service and the General Manager of Human Resources

SUBJECT: Report Recommendations of Mr. Richard Peck, Q.C.

CONSIDERATION:

- A. THAT Council, for a term concurrent with Council's term of office, appoint a respected individual who is knowledgeable and experienced in issues of ethics and integrity who, at the request of Council, will investigate and report on alleged ethical breaches of the City's Code of Conduct.

RECOMMENDATION:

- B. THAT Council instruct the City Manager to undertake activities and initiatives, generally as described in this report and summarized in Appendix A, in response to Mr. Peck's recommendations to improve good government of the City and the conduct of its business.

CITY MANAGER'S COMMENTS

The City Manager has engaged in constructive discussion with Mr. Peck with respect to his report recommendations and the City's responses to those recommendations. The activities and initiatives outlined in the responses address the principles of Mr. Peck's recommendations and represent a major step forward in ensuring appropriate handling of confidential information, improving transparency, and promoting ethical conduct of City business.

The City Manager provides the foregoing item for Council's consideration, and recommends approval of the recommendation that follows.

COUNCIL POLICY

The *Vancouver Charter*, section 176 authorizes Council to engage a barrister to investigate and report upon:

- “(a) any alleged misfeasance, breach of trust, or other misconduct by
 - (i) any member of the Council;
 - (ii) any member of any other administrative body;
 - (iii) any employee of the city;
 - (iv) any person having a contract with the cityin regard to the duties or obligations of such member, employee, or person to the city;
- (b) any matter connected with the good government of the city or the conduct of any part of its business, including any business conducted by any other administrative body.”

Council approved the City’s Code of Conduct on May 15, 2008.

PURPOSE

This report provides a staff response to the recommendations arising from Mr. Richard Peck’s investigation into the leak of a confidential document from an in-camera meeting of Vancouver City Council on October 14, 2008.

BACKGROUND

At the end of November, 2008, pursuant to sections 176 and 177 of the *Vancouver Charter*, the City engaged Mr. Richard Peck, Q.C. to perform an “inquiry by barrister”. His instructions were to “investigate and report” on the leak of a confidential in-camera document related to the Olympic Village project. The investigation could include “any alleged misfeasance, breach of trust, or other misconduct” by “any member of Council” or “any employee of the city” in regard to the “duties or obligations” of that person “to the city”. Further, Mr. Peck could investigate and report on “any matter connected with the good government of the City or the conduct of its business”.

Mr. Peck submitted a report to City Council on March 11, 2009. The report stated that the inquiry would be conducted in two phases. Phase one would focus on the adequacy of city policies and procedures relating to in-camera meetings, the treatment of sensitive documents and the use of confidential information. The second phase of the inquiry would only proceed if necessary, given the Vancouver Police investigation on the same matter, and would focus on circumstances around confidential information that was disclosed outside an in-camera Council meeting.

Mr. Peck has indicated that, given the recent findings of the VPD, a second phase of the inquiry is not recommended.

Mr. Peck’s report provides eighteen recommendations related to improving in-camera meeting procedures and the handling of confidential materials, as well as recommendations related to upholding and maintaining integrity by staff and elected officials in the performance of their duties. The cost of this inquiry by barrister to date has been approximately \$47,000.

DISCUSSION

A staff team, with involvement from City Clerk's, the City Manager's office, Legal Services, and Human Resources has reviewed each of Mr. Peck's recommendations.

For the purposes of this report, the staff team's responses to the recommendations which follow have been grouped in sections according to subject matter and follow-up actions. A summary table of the responses to the individual, sequentially numbered recommendations in Mr. Peck's report is attached as Appendix A.

SECTION A - STORAGE AND ACCESS FOR CONFIDENTIAL ELECTRONIC RECORDS

Mr. Peck's Recommendation #1: The City should create a central electronic repository for confidential information that cannot be accessed without a password.

Mr. Peck's Recommendation # 2: The password should be person-specific and should be capable of being recorded on a log-in/log-out basis.

Response:

The City's new VanDocs electronic records and document management software and revised best-practice models for security and access will provide a secure, central electronic repository, in accordance with Mr. Peck's recommendations #1 and #2.

In October, 2008, the City commenced a multi-year implementation of the "VanDocs" electronic records and document management system (ERDMS), which provides a central repository for the City's electronic records. The system will be systematically deployed to every City desktop where employees work with electronic document-based records.

The VanDocs software provides the benefit of superior access controls and document protection technology. Access to City records is controlled according to the Security Access Model and Security Framework.

The Security Access Model controls access to records and folders in VanDocs are principally based on the hierarchy of the organization. Users can restrict access to individual records to groups or individuals. In the Security Framework access to VanDocs data to maintain the system is governed by City policy and restricted to those technical and support personnel who need access. The audit function in VanDocs can be used to monitor all activities.

Fundamental to the Security Access Model is the control on access to the City network by the use of a personal password. This fundamental access control authenticates the user and provides access, according to each user's access rights, to folders and records in VanDocs.

SECTION B - HANDLING OF CONFIDENTIAL INFORMATION

Mr. Peck's Recommendation #3: The City Clerk, or their designate, should oversee the circulation and duplication of any confidential information.

Mr. Peck's Recommendation #8: Confidential information should be printed on paper with an identifiable colour scheme (ie. purple paper).

Mr. Peck's Recommendation #10: Confidential information distributed to Council should be marked with a numerical or alphabetical identifier, which is recorded by the City Clerk.

Mr. Peck's Recommendation #11: Numbered confidential documents which are distributed at in-camera Council meetings should be returned to the City Clerk individually, and each Council member should be required to sign out once they have returned their assigned document.

Mr. Peck's Recommendation #12: No member of Council shall be permitted to leave the Council chamber for any reason unless they have returned their confidential documents to the City Clerk and have signed out.

Response:

By July, 2009, the City Clerk's Department will complete a best-practices review of confidential information handling. After consideration of select best-practices, as well as Mr. Peck's recommendations #3, #8, #10, #11 and #12, improvements in the handling of confidential information and related workflow will be recommended in a report.

The superior capacity for electronic document control provided by VanDocs will be utilized to enhance security around confidential documents, minimizing the need to manage printed confidential records.

SECTION C - IMPROVING TRANSPARENCY ON CONFIDENTIAL MATTERS

Mr. Peck's Recommendation #4: The City Secretariat should adopt a policy which requires each individual staff member who purports to draft a confidential report to also draft a public report on the same issues. The focus of the report should be to inform the public as to the matters to be covered in the in-camera meeting in as much detail as possible without revealing the identities of the parties involved or the precise nature of the issue to be discussed.

Response:

The City's current procedures for scheduling a matter for reporting and/or discussion in a closed meeting of Council stringently adhere to the requirements of *Vancouver Charter* section 165.2 "Meetings that may or must be closed to the public" ("in-camera" meetings).

Rather than preparing companion “public” reports to each in-camera report as suggested in Mr. Peck’s recommendation #4, it is recommended that the Director of Legal Services and the City Clerk draft a policy related to the disclosure of in-camera information, with a focus on routinely making in-camera information public at the earliest possible opportunity.

SECTION D - MAINTAINING CURRENT BEST PRACTICES WITH CONFIDENTIAL INFORMATION

Mr. Peck’s Recommendation #5: The City should endeavour to limit the amount of information that is declared to be confidential and the amount of time spent by Council in-camera.

Mr. Peck’s Recommendation #7: The City should work to keep accurate records regarding the amount of time spent in-camera and the number of documents or meeting topics declared confidential.

Mr. Peck’s Recommendation #9: Confidential information distributed to Council should be marked as “confidential”.

Response:

The City’s current procedures demand strict adherence to the requirements of *Vancouver Charter* section 165.2 “Meetings that may or must be closed to the public” (“in-camera” meetings) in order to schedule an item for reporting or discussion in an in-camera meeting, thereby appropriately limiting the amount of information that is declared to be confidential, as per Mr. Peck’s recommendation #5.

Current meeting recording-keeping practices include tracking and recording of in-camera rationale, as well as the date, time and length of all in-camera meetings meeting, as suggested in Mr. Peck’s recommendation #7.

Staff also track the number of agenda items by meeting type. The following table contrasts the number of agenda items Council has considered to date in 2009 by meeting type, including in-camera meetings.

Number of Agenda items before Council, January to May, 2009*:

| Month: | Regular Council (incl. Special) | Transportation and Traffic | City Services and Budgets | Planning and Environment | Public Hearings | In-Camera |
|----------|---------------------------------|----------------------------|---------------------------|--------------------------|-----------------|-----------|
| January | 21 | 2 | 6 | 0 | 5 | 9 |
| February | 31 | 3 | 4 | 8 | 2 | 6 |
| March | 39 | 3 | 12 | 13 | 7 | 22 |
| April | 35 | 4 | 7 | 6 | 1 | 5 |
| May | 30 | 10 | 10 | 9 | 5 | 15 |

* does not include approval of minutes, administrative motions or resumption of unfinished business items

Finally, staff will continue to produce all confidential documents with a prominent “CONFIDENTIAL” watermark in the background, as suggested in Mr. Peck’s recommendation #9.

SECTION E - CODE OF CONDUCT AMENDMENTS AND ORIENTATION PROGRAM

Mr. Peck's Recommendation #6: The City should amend the Code of Conduct to include a definition of "confidential information", and example of such is the one employed by the City of Toronto.

Mr. Peck's Recommendation #13: Training on Codes of Conduct should be mandatory for all City staff and Councillors.

Mr. Peck's Recommendation #14: Political staff should be required to adhere to the same ethical guidelines that apply to Councillors and City staff. Councillors should have their staff execute an agreement to abide by the City's Codes of Conduct.

Mr. Peck's Recommendation #16: Subject to collective bargaining restraints, all staff and Councillors should be required to sign an annual declaration that they are aware of the Codes of Conduct, are versed in them, and will uphold them.

Mr. Peck's Recommendation #18 (a & b): The City should request that the Provincial Government amend the *Vancouver Charter* in the following ways:

- a. The Charter should require the City to enact a separate Code of Conduct for members of Council and advisory body members;
- b. The Charter should prescribe specific penalties for a contravention of the Code of Conduct;

Response:

The City of Vancouver's Code of Conduct was approved by Council in May, 2008, and represents an amalgamation of a number of previous policies on such matters as acceptance of gifts, conflict of interest, and appropriate use of City resources. The new Code of Conduct has been posted in the Policies and Procedures section of the City's internal web site since May, 2008, but no formal orientation to the Code of Conduct has been provided to any of the parties to whom the Code applies.

Mr. Peck's first recommendation regarding Vancouver's Code of Conduct, recommendation #6, is to add a definition of "confidential information". As Mr. Peck specifically refers to the City of Toronto's definition of "confidential information", it is stated below for reference:

"Confidential information includes information in the possession of, or received in confidence by the City, that the City is either prohibited from disclosing, or is required to refuse to disclose under the Municipal Freedom of Information and Protection of Privacy Act (often referred to as "MFIPPA"), or other legislation. Generally, the Municipal Freedom of Information and Protection of Privacy Act restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

The City of Toronto Act, 2006 allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation to remain confidential. For the purposes of the Code of Conduct, "confidential information" also includes this type of information."

As a point of comparison, the City has developed a "working definition" for confidential information in the context of city records as part of the VanDocs project which was described in Section A above. The definition is as follows:

"Confidential information is recorded information that could reasonably harm the interests of individuals or the City if disclosed to persons who are not authorized to access the information. Within the City, authorization to access confidential information is given to those who require it in order to undertake work-related tasks. Access to information of this nature should be managed and controlled in VanDocs.

A definition of "confidential information" in Vancouver's Code of Conduct may assist in understanding and interpreting the Code. As conduct expectations pertaining to confidential information are quite explicated stated in the Code of Conduct, and as Vancouver's Code applies to a broad spectrum of individuals from staff to elected officials, it is felt that a brief, plain-language definition of "confidential information" would be of the most value.

The following definition of "confidential information" is suggested for addition to the Code of Conduct:

"Confidential information is information that could reasonably harm the interests of individuals or organizations, including the City of Vancouver, if disclosed to persons who are not authorized to access the information".

To further the understanding of the definition, examples of confidential information will be included with Code of Conduct orientation programs discussed below.

In regard to Mr. Peck's recommendation #13, for a training program on the Code of Conduct, a staff team from Human Resources and the City Clerk's Department has developed a strategy for providing orientation to the Code of Conduct to the organization. Orientation sessions are proposed for roll out across the City organization, including sessions for advisory body members and for elected officials, and sessions for new employees. Information about the Code of Conduct will also be included in future local government Candidate Information Guides, as well as advertisements for advisory body vacancies.

In keeping with Mr. Peck's recommendation #14, the Code of Conduct definition of "Staff" should be amended to explicitly include political staff.

In response to Mr. Peck's recommendation #16, it is proposed that all non-unionized staff be asked to sign annual declarations or reminders to ensure that individuals are aware of the codes of conduct, are versed in them, and will uphold them. Similarly, consultation will be undertaken with union leaders on behalf of staff who are members

of bargaining units, to ensure that those employees are also aware of the codes of conduct, are versed in them, and will uphold them.

As the Code of Conduct requires a number of amendments, and consultation with union leaders is required on the amendments and the orientation plan, staff will prepare a separate report to Council on this subject.

With respect to Mr. Peck's recommendation #18 a and b, It is not recommended that references to the Code of Conduct and prescribed penalties for violation of the Code be requested as amendments to the *Vancouver Charter* at this time. This subject is discussed further in relation to the Integrity Commissioner in Section G below.

SECTION F - ENHANCED OATH OF OFFICE

Mr. Peck's Recommendation #15: The Oath of Office should be amended to include some reference by prospective Councillors to respecting their "duty of confidentiality" and an oath to abide by the Code of Conduct.

Response:

The current Oath of Office for elected officials is prescribed by the *Vancouver Charter*, section 140, and B.C. Regulation 380/93. The complete wording of the Oath under Regulation 380/93 is:

- I,[*name of person elected or appointed*]....., do solemnly affirm that:
- I am qualified to hold the office of councillor for the City of Vancouver to which I have been elected;
 - I have not, by myself or any other person, knowingly contravened the *Vancouver Charter* respecting vote buying or intimidation in relation to my election to the office;
 - I will faithfully perform the duties of my office, and will not allow any private interest to influence my conduct in public matters;
 - as required by the *Vancouver Charter*, I will disclose any direct or indirect pecuniary interest I have in a matter and will not participate in the discussion of the matter and will not vote in respect of the matter.

Vancouver Charter, section 140(3), allows that "A person taking office on Council may also make an oath of allegiance."

It is recommended that the City Manager ask the City Clerk and the Director of Legal Services, before the December, 2011 inauguration of a new Council, to develop an oath of allegiance for elected officials in the City of Vancouver, to augment the Oath of Office prescribed by Regulation 380/93.

The Oath of Allegiance would contain reference to elected officials respecting their "duty of confidentiality" and abiding by the City of Vancouver's Code of Conduct.

SECTION G - INTEGRITY OR ETHICS COMMISSIONER

Mr. Peck's Recommendation #17: A full-time or part-time integrity or ethics commissioner should be hired.

Mr. Peck's Recommendation #18 (c,d,e & f): The City should request that the Provincial Government amend the *Vancouver Charter* in the following ways:

- c. The Charter should direct the establishment of an Office of the Integrity Commissioner, similar to that created by COTA;
- d. The Integrity Commissioner should have duties and powers similar to those held by the Integrity Commissioner for Toronto as set out in COTA;
- e. The Integrity Commissioner should have the jurisdiction to investigate complaints against members of Council and City employees;
- f. The Integrity Commissioner should be independent of City Council, while reporting to Council on matters investigated under its statutory mandate.

Response:

Mr. Peck's recommendation to establish an integrity or ethics commissioner similar to the model utilized in Toronto was considered carefully by the City of Vancouver staff team, and included an examination of the provisions related to the Integrity Commissioner in the City of Toronto Act and discussion with City of Toronto staff. The staff team learned that the City of Toronto's Commissioner is called upon on an as-required basis, and that the annual budget for the Commissioner's office is approximately \$200,000, not including "overhead" costs such as office space or administrative support.

In assessing the adoption of such a model in the City Vancouver, the history of demand for the services of such an individual in Vancouver and the cost of establishing and maintaining an office of the Integrity Commissioner were weighed along with the benefits of such a program.

Should Council wish to adopt an integrity or ethics commissioner model, it is recommended that incremental steps be taken to allow the City to gain knowledge and experience in utilizing a commissioner's services prior to amending legislation and establishing a budget for a permanent Commissioner's office.

As a first step, staff recommend that Council consider appointing an individual for a term concurrent with Council's term of office, to call upon as needs arises. Alternatively, Council may wish to establish a list of potential appointees from which to choose as each need arises. The appointment of such an individual or individuals to investigate perceived breaches of ethics can be made under the current authority provided in the *Vancouver Charter*, sections 176 and 177.

After working with an ethics and integrity specialist on a number of issues, monitoring the frequency and type of advice required, and assessing the relative value of the service, Council will determine whether legislative changes to enable an Integrity Commissioner should be pursued. Should Council choose to request amendments to the Charter to authorize the establishment of an Integrity Commissioner, addition of the

related Code of Conduct and penalties for violation of the Code would be requested at that time.

FINANCIAL IMPLICATIONS There are no immediate extraordinary financial implications related to Consideration A or Recommendation B of this report.

CONCLUSION

The City is committed to building on Mr. Richard Peck's recommendations for improving the good government of the City of Vancouver and the conduct of its business. Decisions and actions will be guided by the City's key principles of Integrity, Accountability, Responsibility, Leadership, Respect and Openness.

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| <div>Appendix A</div> <div>REPORT FROM MR. RICHARD PECK, Q.C.</div> <div>SUMMARY OF RECOMMENDATIONS AND RESPONSES</div> | | |
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| 1. | The City should create a central electronic repository for confidential information that cannot be accessed without a password. | The new VanDocs electronic records and document management system that is currently being implemented across the City provides a central electronic repository with superior data security. |
| 2. | The password should be person-specific and should be capable of being recorded on a log-in/log-out basis. | The City's network access protocols, in conjunction with the VanDocs system's proposed Security Access Model, will provide person-specific, log-in/log-out document access. |
| 3. | The City Clerk, or their designate, should oversee the circulation and duplication of any confidential information. | The City Clerk's Department will conduct a best-practices review in relation to handling of confidential information, and recommend improvements to current processes. |
| 4. | The City Secretariat should adopt a policy which requires each individual staff member who purports to draft a confidential report to also draft a public report on the same issues. The focus of the report should be to inform the public as to the matters to be covered in the in-camera meeting in as much detail as possible without revealing the identities of the parties involved or the precise nature of the issue to be discussed. | The City's current procedures for scheduling a matter for discussion in a closed meeting of Council stringently adhere to the requirements of <i>Vancouver Charter</i> section 165.2 "Meetings that may or must be closed to the public" ("in-camera" meetings). Rather than preparing companion "public" reports, the City will focus efforts on developing policy aimed at routinely releasing in-camera information at the earliest possible opportunity. |
| 5. | The City should endeavour to limit the amount of information that is declared to be confidential and the amount of time spent by Council in-camera. | Staff will continue to carefully assess each in-camera item, to ensure that it meets the legal test and intent of <i>Vancouver Charter</i> section 165.2 "Meetings that may or must be closed to the public". |
| 6. | The City should amend the Code of Conduct to include a definition of "confidential information", and example of such is the one employed by the City of Toronto. | It is recommended that the Code of Conduct be amended to include a definition of "confidential information" adapted from the City's current records policy definition. All proposed amendments to the Code of Conduct will be brought forward in a separate report. |

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| 7. | The City should work to keep accurate records regarding the amount of time spent in-camera and the number of documents or meeting topics declared confidential. | Staff will continue to keep accurate records of all in-camera meetings, including detail on the date, time and length of each meeting. |
| 8. | Confidential information should be printed on paper with an identifiable colour scheme (ie. purple paper). | To be examined as part of the confidential information workflow review (see recommendation 3). |
| 9. | Confidential information distributed to Council should be marked as "confidential". | Staff will continue to produce all confidential documents with a "confidential" watermark background. |
| 10. | Confidential information distributed to Council should be marked with a numerical or alphabetical identifier, which is recorded by the City Clerk. | To be examined as part of the confidential information workflow review (see recommendation 3). |
| 11. | Numbered confidential documents which are distributed at in-camera Council meetings should be returned to the City Clerk individually, and each Council member should be required to sign out once they have returned their assigned document. | To be examined as part of the confidential information workflow review (see recommendation 3). |
| 12. | No member of Council shall be permitted to leave the Council chamber for any reason unless they have returned their confidential documents to the City Clerk and have signed out. | To be examined as part of the confidential information workflow review (see recommendation 3). |
| 13. | Training on Codes of Conduct should be mandatory for all City staff and Councillors. | It is recommended that current staff, political staff, elected officials and advisory body members will be oriented to the Code of Conduct and that the Code of Conduct orientation be integrated into the new employee orientation. Details of the orientation plan will be brought forward in a separate report (see recommendation 6 above). |
| 14. | Political staff should be required to adhere to the same ethical guidelines that apply to Councillors and City staff. Councillors should have their staff execute an agreement to abide by the City's Codes of Conduct. | It is recommended that the Code of Conduct apply to staff, including political appointees, elected officials and advisory board members alike. |

| <p style="text-align: right;">Appendix A</p> <p style="text-align: center;">REPORT FROM MR. RICHARD PECK, Q.C. SUMMARY OF RECOMMENDATIONS AND RESPONSES</p> | | |
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| 15. | The Oath of Office should be amended to include some reference by prospective Councillors to respecting their “duty of confidentiality” and an oath to abide by the Code of Conduct. | It is recommended that an Oath of Allegiance for elected officials in the City of Vancouver be developed, to augment the Oath of Office currently prescribed by BC Regulation 380/93. The Oath of Allegiance would include reference to a “duty of confidentiality” and an oath to abide by the City’s Code of Conduct. |
| 16. | Subject to collective bargaining restraints, all staff and Councillors should be required to sign an annual declaration that they are aware of the Codes of Conduct, are versed in them, and will uphold them. | Where possible and practical, parties bound by the Code of Conduct will sign declarations or receive periodic reminders indicating understanding and intent to uphold the Code of Conduct. |
| 17. | A full-time or part-time integrity or ethics commissioner should be hired. | Following careful and due consideration of the integrity commissioner model and related costs, it is recommended that Council consider appointment of a volunteer ethics or integrity consultant to engage on an ad hoc basis to investigate alleged breaches of the Code of Conduct. After some experience with an ethics or integrity consultant, Council may wish to pursue changes to the Vancouver Charter to allow establishment of a permanent Office of the Integrity Commissioner. |
| 18. | The City should request that the Provincial Government amend the <i>Vancouver Charter</i> in the following ways: | |
| | a) The Charter should require the City to enact a separate Code of Conduct for members of Council and advisory body members; | Should Council choose to request amendments to the Charter to authorize the establishment of an Integrity Commissioner, addition of the related Code of Conduct and penalties for violation of the Code would be requested at the same time. |
| | b) The Charter should prescribe specific penalties for a contravention of the Code of Conduct; | (see recommendation 18a) |

| REPORT FROM MR. RICHARD PECK, Q.C. SUMMARY OF RECOMMENDATIONS AND RESPONSES | | | Appendix A |
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| | c) The Charter should direct the establishment of an Office of the Integrity Commissioner, similar to that created by COTA; | Charter amendment not recommended at this time (see recommendation 17) | |
| | d) The Integrity Commissioner should have duties and powers similar to those held by the Integrity Commissioner for Toronto as set out in COTA; | Charter amendment not required (see recommendation 17) | |
| | e) The Integrity Commissioner should have the jurisdiction to investigate complaints against members of Council and City employees; | Charter amendment not required (see recommendation 17) | |
| | f) The Integrity Commissioner should be independent of City Council, while reporting to Council on matters investigated under its statutory mandate. | Charter amendment not required (see recommendation 17) | |