

**Eighth Colloquium on the Legal Profession  
Faculty of Law  
University of Western Ontario**

**The Challenges of Leadership - Leadership and Governance**

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The Chief Justice of Ontario's  
Advisory Committee on Professionalism

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**The Challenges of Leadership - Leadership and Governance**

I. Integrity and Ethics in the Public Sector

Era of greatly heightened public interest in the standards of behaviour of politicians, public servants, and, indeed, the independent watchdogs of government (George Radwanski, Ron Stewart).

Often prompted by scandal and kept in the public attention by long-running public inquiries aimed not just at finding out what happened but making proposals of a going forward variety – Gomery, Bellamy.

Development of Codes of Conduct and Ethics not only for public servants but also politicians.

Incorporation of those standards into primary legislation – most recently the federal *Accountability Act*.

Creation of independent integrity, ethics or conflict of interest offices federally, provincially and territorially, and, now in the case of the City of Toronto, municipally. Frequently associated with the incorporation of broader conceptions of conflict of interest than reflected in traditional notions of pecuniary interests on the part of the member and close family.

II. City of Toronto Integrity Commissioner

a. Functions

Established initially by Council adoption of resolution. But now mandated by *City of Toronto Act, 2006* along with Auditor General, Lobbyist Registrar (Lobbyist Registry and Code of Conduct) and an Ombudsman.

Four functions – advice giving; complaint investigation; reporting to Council on complaints; education. Also responding to special references from Council.

In wings at time of establishment: compulsory lobbyist registry (now a reality but not IC but another independent officer); financial disclosure regime (still under consideration).

Restricted to conduct of members of Council (and now (in principle) the staff of members of Council as well as members of the City's agencies, boards and commissions).

Appointed by and report to Council, not Mayor or City Manager. Recommendatory powers only and sanctions not spelled out anywhere.

Employee of City of Toronto; term fixed by contract approved by Council (one year; two years); no special majority needed for removal.

b. Significant Differences between City IC and Federal, Provincial and Territorial Equivalents

1. No financial disclosure regime – even to this day, though presently stand directed to report back to Council on that issue. Very significant part of Justice Osborne’s work.
2. Only give general advice on conflict of interest and no specific Code of Conduct provision on conflict of interest. Only reference to *Municipal Conflict of Interest Act*. Major aspect of legislation and complaint jurisdiction of federal, provincial and territorial equivalents. (Reflected in title of empowering Acts and name of officer – Conflict of Interest Commissioner.) However, Council has approved in principle a change to include a conflict of interest provision administered by IC in Code of Conduct.
3. Can take complaints from members of public (including City Hall staff) as well as other members.

c. Reach of Code of Conduct

Confidentiality; treatment of staff; use of City resources; discreditable conduct; gifts and benefits; relations with lobbyists; business relationships; prospective employment; special rules re behaviour during election campaigns; behaviour in council and committee; improper use of influence (but not conflict of interest as such).

III. Challenges of position

Meant to be independent, non-partisan, neutral, objective.

However, inevitably caught up in the political world.

See John Ibbotson, “Why politics stalks independent arbiters”, *Globe and Mail*, February 2, 2007.

When target of work is the conduct of politicians, hardly surprising that politicians will react to being called on their conduct at a political level. Indeed, where the complaints come from members of the opposition, the IC will almost inevitably have to operate in an environment where the legitimacy of any complaint is subject to political and public scrutiny.

Where public can complain directly, as in Toronto, another dimension – the division between the political and the ethical. Genuine Code of Conduct complaints as opposed to concerns about the quality of a member’s performance, level of service to constituents,

choice not to pursue a particular matter or to prefer the point of view of another constituent or group of constituents.

Living in a world where you want to cultivate trust so as to create an environment where politicians will think before they act and come for advice and guidance but lurking all the time is the spectre of having to make a formal inquiry into members' conduct and report out to the legislative body, a process that requires independence and distance.

#### IV. The Legal Profession and Leadership in Ethical Public Governance

- a. Mighty contribution to the enterprise as public inquiry commissioners, lawyers to public inquiries, and representing those individuals and groups embroiled in public inquiries.
- b. Public service lawyers engaged in the whole process of development of statutes and codes of ethics.
- c. Integrity and Ethics Commissioners charged with administering existing regimes in a variety of ways and moving their institutions forward through annual reports and pressure for change and improvement.
- d. Special responsibility of lawyer politicians to provide responsible leadership in the development of legislation and the review of the performance of independent officers.
- e. Private sector lawyers in representing clients in relations with government with full awareness of the ethical constraints not just of the profession but also the government institution and officials with which they are dealing, and meticulous attention to those constraints.

Particular tasks to which lawyers suited – drafting in plain language principles, policies and rules of conduct for politicians and public servants; creating workable and procedurally fair processes for the operation of Codes of Conduct; mediating situations where personal interests and ethical responsibilities can come into conflict; interpreting in appropriate ways the reach and meaning of Codes of Conduct; drawing on the experience of operating within a profession that places very high store on ethical conduct and professionalism; continuing the tradition of the profession of altruistic public service engagement.

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