



**STAFF REPORT  
ACTION REQUIRED**

**Complaint of Violation of Code of Conduct by Councillor Palacio**

<b>Date:</b>	January 9, 2008
<b>To:</b>	City Council
<b>From:</b>	Integrity Commissioner
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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John Sweeney complained that Councillor Palacio violated the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (“Code of Conduct”) by accepting a benefit contrary to Article II (now Article IV) (“Gifts and Benefits”). More particularly, the complainant alleged that the Police Community Partnership – Division 12 (“PCP”) rented Councillor Palacio office space for a constituency office at below market value and this constituted an impermissible benefit. Relying on Clause (2)(a)(i) of Appendix 1 (“Descriptive Categories of Conduct Across Acts”) of the Code of Conduct, he also alleged that Councillor Palacio breached public trust in connection with the purchase and rental of the property in which his constituency office was located. Councillor Palacio denied the allegations and also sought to have the complaint dismissed on the basis that it was politically motivated.

Following an investigation, I concluded that Councillor Palacio had violated Article II of the Code of Conduct by receiving the benefit of a constituency office space at below market value rent. However, I also determined that the violation resulted from an “error of judgment made in good faith” in terms of section 5 (now section 8) of Part B (“Formal Complaint Procedure”) of the *Council Code of Conduct Complaint Protocol* (“Complaint Protocol”). As a consequence, I am reporting the violation to City Council with no recommendation for sanction.

In a preliminary ruling, I refused to entertain the complaint of abuse of public trust on the basis that this was a *Criminal Code* matter beyond my jurisdiction by virtue of section 2(3)(a) (now section 3(3)(a)) of the Complaint Protocol. While accepting that the complaint was at least in part politically motivated, I also concluded, in terms of section 3

(now section 4(1)) of the Complaint Protocol, that it was not frivolous, vexatious or made in bad faith.

## **RECOMMENDATIONS**

The Integrity Commissioner recommends that:

1. City Council adopt the finding that Councillor Cesar Palacio has violated the Code of Conduct; and
2. City Council not impose any sanction on Councillor Palacio on the basis that the violation resulted from an error of judgment made in good faith.

## **Financial Impact**

These recommendations have no financial implications.

## **DECISION HISTORY**

This report results from a complaint under the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (“Code of Conduct”) that Councillor Cesar Palacio violated the Code of Conduct. On the basis of an investigation, I made a decision (Appendix A) that Councillor Palacio had violated the Code of Conduct. As required by the *Code of Conduct Complaint Protocol* (“Complaint Protocol”) and section 162(3) of the *City of Toronto Act, 2006*, I am obliged to report to City Council publicly on any finding of violation of the Code of Conduct.

## **ISSUE BACKGROUND**

Following the 2003 municipal elections, Councillor Cesar Palacio converted his campaign office into his constituency office. The owner of the property charged Councillor Palacio \$400 a month for the premises (utilities included). The owner was a numbered company that held the property on trust for the Police Community Partnership – Division 12 (“PCP”). Councillor Palacio was a director of the numbered company and a guarantor of the mortgage that was registered against the property.

John Sweeney, a member of the PCP made a formal complaint that Councillor Palacio violated the Code of Conduct by accepting a benefit contrary to Article II (now Article IV) (“Gifts and Benefits”). More particularly, the complainant alleged that the PCP rented Councillor Palacio office space for a constituency office at below market value and this constituted an impermissible benefit. Relying on Clause (2)(a)(i) of Appendix 1 (“Descriptive Categories of Conduct Across Acts”) of the Code of Conduct, he also alleged that Councillor Palacio breached public trust in connection with the purchase and rental of the property in which his constituency office was located. Councillor Palacio denied the allegations and also sought to have the complaint dismissed on the basis that it was politically motivated.

## COMMENTS

### Did the Councillor Violate the Code of Conduct?

Councillor Palacio violated the Code of Conduct. The rent of \$400 (utilities included) for the constituency office at 1697 St. Clair Avenue West was clearly below market value rent for that property. Indeed, neither the Councillor nor the PCP had market value rent in mind when they entered into the arrangement for the rental of this storefront. Councillor Palacio based his willingness to pay \$400 on the amount that Members of Council were paying for constituency offices in Civic Centres and the PCP was simply hoping to cover some of its outgoings on the property.

City Council's 2001 Constituency Offices Leases Policy makes it clear that it is not appropriate for Members of Council to "accept office space at a rate that is below market value". That policy recognizes that this is a pecuniary benefit in terms of the gifts and benefits provision in the Code of Conduct. The subsidized rent frees up the Member's Office Expense Account for other uses.

### What Should Be Done About It?

Councillor Palacio did not exploit the subsidized rent to his financial advantage. During two of the three years of the lease on the premises, he could have afforded to have paid market value rent for the premises out of his Office Expense Account. He genuinely believed that he was doing the right thing by ascertaining the cost of Civic Centre constituency space and basing the rent he paid for 1697 St. Clair Avenue West on that figure. He also had an understanding with the PCP that he would either vacate the premises or share them with the PCP should the PCP need them.

In those circumstances, I determined that the violation arose out of an error of judgment made in good faith in terms of section 5 (now section 8) of the Complaint Protocol. As a consequence, I am reporting the violation to City Council without any recommendation for sanction.

### Preliminary Matters

I did not conduct any investigation into the assertion that the Councillor's conduct amounted to an abuse of public trust. The Complaint Protocol (section 2(3)(a), now section 3(3)(a)) specifies that if the subject matter of the complaint is dealt with in other legislation with its own mechanisms, I have no jurisdiction. Not only is abuse of public trust not dealt with in the body of the Code of Conduct, it is also an offence under the *Criminal Code*.

John Sweeney, the complainant was a campaign worker and financial supporter of one of Councillor Palacio's opponents in the 2006 Municipal Elections. He brought this

complaint in the course of the election campaign having raised his concerns first at a meeting of the PCP and, subsequently, at an all candidates' meeting in Councillor Palacio's ward.

There is no doubt that this complaint was politically motivated. However, that in itself does not make the complaint frivolous, vexatious or made in bad faith in terms of section 3 (now section 4) of the Complaint Protocol. Political opponents are not disqualified from making complaints of violation of the Code of Conduct even during a municipal election. In this instance, the complainant's affidavit and the material filed in support of the complaint convinced me that this was a genuine complaint on a serious issue.

My reasons for ruling as I have are developed in greater detail in the decision that I communicated to the parties, attached to this report as Appendix A.

## **CONTACT**

David Mullan, Integrity Commissioner  
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## **SIGNATURE**

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David Mullan, Integrity Commissioner

## **ATTACHMENTS**

Appendix A: Integrity Commissioner Decision on Complaint against Councillor Cesar Palacio



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Integrity Commissioner's Office

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Integrity Commissioner

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Date: January 9, 2008

To: Ulli Watkiss, City Clerk

From: David Mullan, Integrity Commissioner

Subject: Report on Complaint

Nature of Complaint:

John Sweeney complained that Councillor Cesar Palacio violated the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* ("Code of Conduct") by accepting a benefit contrary to Article II (now Article IV) ("Gifts and Benefits"). More particularly, the complainant alleged that the Police Community Partnership – Division 12 ("PCP") rented Councillor Palacio office space for a constituency office at below market value and this constituted an impermissible benefit. Relying on Clause (2)(a)(i) of Appendix 1 ("Descriptive Categories of Conduct Across Acts") of the Code of Conduct, he also alleged that Councillor Palacio breached public trust in connection with the purchase and rental of the property in which his constituency office was located. Councillor Palacio denied the allegations and also sought to have the complaint dismissed on the basis that it was politically motivated.

Summary of Findings:

Councillor Palacio violated Article II (now Article IV) of the Code of Conduct by entering into an agreement to lease a constituency office at below market value rent. However, Councillor Palacio's explanation for his actions and the supporting evidence led me to the conclusion that, in terms of section 5 (now section 8) of Part B ("Formal Complaint Procedure") of the *Council Code of Conduct Complaint Protocol* ("Complaint Protocol"), the violation resulted from "an error in judgment made in good faith". As a consequence, I am reporting the violation to Council but not calling for the imposition of any sanction.

Accepting accommodation for a constituency office at below market value is an impermissible benefit contrary to Article II (now Article IV) of the Code of Conduct. To the extent that Councillor Palacio was a director of the numbered company from which the premises were leased and a co-guarantor of the mortgage over the property in which his constituency office was located, this was not an arm's length transaction and put Councillor Palacio in a situation where his interests as a Member of Council and as a director of the company came into conflict.

Nonetheless, there is no basis for a finding that Councillor Palacio took advantage of the situation to his personal financial gain. In particular, it would have been in his financial interest as a guarantor of the mortgage on the property in at least of two of the three years that he leased the premises to

have paid a lot more in rent and to have charged that to his Council office expense account. In fact, it is clear that Councillor Palacio had little or no awareness of the requirement that he pay market value rent for the premises or that it was inappropriate for a community organization to subsidize his occupation of a constituency office on the basis of a belief on the part of the organization and the Councillor that this would advance their shared objectives.

This matter graphically illustrates the dangers of Members of Council themselves negotiating the lease of a constituency office in a non-arm's length setting. However, the current policy permits this and there were other extenuating circumstances justifying a finding that the violation resulted from "an error of judgment made in good faith". In those circumstances, the release of a public report on a matter that generated considerable controversy during the 2003 municipal election campaign is sufficient.

In a preliminary ruling, I determined that I have no jurisdiction to investigate any complaint of abuse of public trust on the part of Councillor Palacio. Such matters are for the *Criminal Code* and the police, not my office. Secondly, I decided that, while there were political motivations behind this complaint, that in itself is not a reason for dismissing a complaint as frivolous, vexatious or made in bad faith. Where a complainant provides ample support for the conduct of an investigation into whether a Member of Council has violated the *Code of Conduct* on a matter of substance, the fact that the complainant is a political opponent or that an election is pending is no basis for refusing to conduct an investigation.

#### Facts:

#### The Complaint Itself

From December 31, 2003 to March 1, 2007, Councillor Cesar Palacio had a constituency office at 1697 St. Clair Avenue West that he rented from 2019192 Ontario Inc. for \$400 a month.

201292 Ontario Inc. was incorporated in November 2002 as a non-profit corporation for the purpose of purchasing 1697 St. Clair Avenue West. The three initial directors of 2019192 Ontario Inc. were all members of the Executive Council of the PCP, and included Cesar Palacio, who at that point was Executive Assistant to Councillor Betty Disero and Chair of the PCP. 2019192 Ontario Inc. paid \$270,000 for the property, \$120,000 in cash with the balance of \$150,000 secured by a mortgage on the property in favour of Equitable Trust for which the three directors were guarantors. This arrangement took place because the PCP could not itself obtain a mortgage and because lenders wanted personal guarantors of any amount loaned on the property.

The PCP is a community organization that has been in existence for some fifteen years. Its objectives are the promotion of community safety and crime prevention. It is a federally registered charity. Claire Andrews, another member of the Executive Council, held the one issued common share of the corporation in trust for the PCP. The Board of Directors also resolved that all the property of the corporation would be held as a bare trustee for the PCP and subject to the direction of the PCP at all times.

The original reason for the purchase of 1697 St. Clair Avenue West was that the Executive Council of the PCP had concerns that it might lose its existing premises at 1884 Davenport Road, owned by the Toronto Community Housing Corporation and for which it was paying no rent. The PCP harboured fears that this might change and that the Corporation might start charging market value rent. To provide a hedge against that possibility, the Executive Council decided to purchase a property to which it could move if the anticipated imposition of market rental occurred. (In fact, just recently, the Corporation has indicated that it will start charging rent for the premises.)

1697 St. Clair Avenue consists of a storefront property and an upstairs apartment. When the PCP purchased the property through a numbered company, the objective was to rent the downstairs storefront as either store or office space and the upstairs apartment as a residence. For most of the period between December 2002 and the sale of the property in April or May of 2007, the PCP was able to rent the upstairs apartment. However, it never did let the downstairs storefront as commercial premises. There was a combination of reasons for this. The premises needed upgrading, this was not a desirable section of St. Clair Avenue West, and the PCP put very little effort into trying to rent the premises to a commercial tenant. The only form of advertising was a "To Rent" notice in the window of the storefront advertising the storefront at \$1500, a month. This did not produce any inquiries. Claire Andrews explained this lack of effort on the basis that all the members of the Executive Council of the PCP are busy people with day jobs and very little time to devote to finding a tenant for difficult to rent commercial premises.

In March 2003, Councillor Betty Disero resigned her seat on Council and Fred Dominelli replaced her for the balance of her term. Cesar Palacio was then successful in his bid to succeed Betty Disero in the 2003 municipal election. When the election campaign commenced, as the storefront was still vacant, Councillor Palacio rented it as his campaign headquarters.

Following his success in the 2003 elections, Councillor Palacio agreed when the PCP approached him to continue his occupancy of the storefront as a constituency office. He said that the PCP was keen for him to do this as the presence of the Councillor's constituency office on this section of St. Clair Avenue West would contribute to an upgrading of a neighbourhood that was plagued by drug and various other social problems. (Claire Andrews and Don Panos, the Chair of the St. Clair Gardens BIA corroborated this.) It would also enable the PCP to secure some income from a portion of the property that it had not been able to rent. The rent was established at \$400 a month including utilities. While it was not provided for in the lease (a very scant document), Councillor Palacio also stated that his occupancy was at all times subject to an agreement to cede use of the premises to the PCP if needed. This too was corroborated by Claire Andrews to the extent that her understanding was that if the PCP had to leave Davenport Road, it would move in to St. Clair Avenue West and share the premises with Councillor Palacio.

By this time, Councillor Palacio had resigned both as Chair and member of the PCP, though he was still a Director of 2019192 Ontario Inc. and a guarantor of the mortgage on 1697 St. Clair Avenue West. The relevant Council Policy<sup>1</sup> advised but did not compel Members of Council to have City staff negotiate leases for constituency offices. Councillor Palacio did not consider this possibility.

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<sup>1</sup> *Policies/Guidelines to Govern Constituency Office Leases and Policies Respecting Goods, Services and Space Below Market Value*, adopted by City Council at its meeting of July 24, 25, and 26, 2001 ("Constituency Office Leases Policy").

However, at his request, City Staff did provide him with information as to the amount that Councillors were paying for constituency offices located in Civic Centres.

The term of the lease was from December 1, 2003 to August 1, 2006. Thereafter, Councillor Palacio continued occupancy on a month-to-month basis on the same terms until March 1, 2007. In January, he had written to the PCP informing it of his decision to vacate the premises. Shortly thereafter, the numbered company sold the property for \$297,500.

Virtually all the time that he was the tenant of the downstairs premises at 1697 St. Clair Avenue West, Councillor Palacio shared space with the St. Clair Gardens BIA. The BIA approached Councillor Palacio raising this possibility and, after consulting with the PCP and obtaining its approval, Councillor Palacio agreed to the sharing arrangement. However, the BIA neither paid rent nor a share of utilities to either the Councillor or the PCP.

According to Councillor Palacio's Executive Assistant, the Saint Clair Gardens BIA's office space at 1697 St. Clair Avenue West occupied 140.6 of the total 606.2 square feet. The balance consisted of Councillor Palacio's own office space and a meeting area. According to Don Panos and Councillor Palacio, the St. Clair Gardens BIA frequently used this area for meetings. Councillor Palacio and Claire Andrews also stated that the PCP held meetings at this venue. On at least one occasion, the City itself used the meeting area for a community meeting that it had called. As well, the BIA used the premises to store tables, chairs and other goods used for annual festivals and a sidewalk sale. So too did the PCP.

The complainant contested the extent to which both the BIA and the PCP used the premises. As an active member of the PCP and one-time Chair of its Street Patrol Subcommittee and, in that capacity, for a time, its Executive Council, he could not recollect the PCP ever having any kind of meeting at 1697 St. Clair West. According to Mr. Sweeney, the PCP always met at 1884 Davenport Road. The only occasion that he recalled going there was to collect posts from the basement for the PCP's annual barbecue. It is, however, clear that some PCP-sponsored community meetings did take place there though Claire Andrews put the PCP's use at no higher than "the odd time".

As for the BIA, it is clear that its use was more frequent than that of the PCP and that the BIA had a permanent presence at 1697 St. Clair Avenue West in the form of its office space that was staffed regularly. It was also the address that the BIA provided to the Business Improvement Areas division of the City's Economic Development Department. On the other hand, the large sign on the premises did not reveal that this was the office of the BIA. It simply proclaimed the premises as those of "Cesar Palacio City Councillor Ward 17-Davenport Community Office Tel: 416-392-0399". The BIA did, however, have a small sign in the window of the storefront.

Councillor Palacio justified the rent of \$400 on the basis that it was the equivalent of what the City was charging those Members of Council who had constituency offices at Civic Centres. The Director, Council and Support Services confirmed this. Indeed, Councillor Palacio at the time made inquiries about this and that action provides support for his contention that he was acting on the assumption that what was the rent for Members having constituency offices in Civic Centres was an appropriate basis for Members wanting to rent commercial space. He also noted that, at that time, there was no Integrity Commissioner from whom he could seek advice.



The City at this point was charging 80 cents a square foot to a maximum of 500 square feet, or \$400 for slightly less space than was occupied by Councillor Palacio provided the BIA's office space is taken into account. If that space is not taken into account, Councillor Palacio was paying about \$80 a month less than he would have been on an 80 cents a square foot charge. Claire Andrews had a somewhat different take on the basis for the \$400 a month charge. According to her, this was the extra amount that the PCP needed on top of the rent of the upstairs apartment to cover its outgoings on 1697 St. Clair West (including mortgage payments).

What is, however, clear from these varying understandings is that, in coming to terms on the lease of the downstairs of 1697 St. Clair West, neither Councillor Palacio nor the PCP, as represented by Claire Andrews, made any attempt to establish a market value rent for the property. Certainly, the PCP was unable to rent the premises for \$1500 a month, the price at which it was advertised in the window through the first part of 2003. However, even assuming this was unrealistic and that the premises would not have rented at that price even had the PCP been more active and employed a realtor, the sudden drop from that figure to \$400 a month (including utilities) when the PCP approached Councillor Palacio provides strong support for the contention that the PCP no longer was interested in securing market value rent for the premises. To be sure, Councillor Palacio may have been a more pliable tenant because of his willingness to vacate or share at any point if the PCP was forced out of Davenport Road. It may have saved the PCP money in putting the premises into better repair. Also, Councillor Palacio's presence there may have contributed to the PCP's overall purposes – community protection and crime reduction. However, those considerations do not explain by reference to market value the price reduction from \$1500 to \$400.

In reality, Councillor Palacio could have afforded to pay significantly more at least in 2004 and 2005. In 2004, he spent \$42,368 of his Council Office Expense allowance of \$53,100 and \$45,291 in 2005. In 2006, he was, however, much closer to the limit spending \$52,353. It is also the case that Councillor Palacio, as a co-signatory on the mortgage over 1697 St. Clair West, had a financial interest in the PCP's financial viability. Significant operating losses on a property that it owned beneficially through 2019192 Ontario Inc. were certainly not in Councillor Palacio's interests.

### The Complainant

From the moment this complaint was filed, Councillor Palacio argued that it was politically motivated and represented an attempt to undermine his election campaign. Mr. Sweeney, the complainant has been a member of the PCP since 1994. As such, he had raised concerns about the rental arrangements for 1697 St. Clair Avenue West at the PCP's Annual Meeting in September 2006. Mr. Sweeney was also a volunteer for Alejandro Bravo, one of the candidates challenging Councillor Palacio in the 2006 municipal election in what appeared likely to be a close race, a prediction that was accurate. The complainant made the maximum financial contribution to that challenger's campaign. The complaint was filed on November 7, 2006 during the election campaign. This came after the complainant raised the matter at an all candidates meeting on Thursday, October 19, 2006 and considerable media attention, particularly in the "Toronto Star", to the allegations.

### Relevant Provisions:

Article II of the 1999 Code of Conduct under which this complaint was brought provides as follows:

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office.

There then follows a list of exceptions none of which is relevant to this complaint.

Clause (2)(a)(i) of Appendix 1 (“Descriptive Categories of Conduct Across Acts”) of the Code of Conduct provides the following statement on Breach of Trust Conduct:

A member of Council as a public official is held to a higher standard than is a private person for the same activity. A breach of trust occurs when there is an abuse of the public trust by an act (including an omission) done to further or promote private ends or to obtain, directly or indirectly, a benefit. Fraud involves intentional deception, where one individual obtains an advantage over another by false suggestions or suppression of the truth.

The principal reference is to section 122 of the *Criminal Code*.

Section 3 (now section 4(1)) of the *Code of Conduct Complaint Protocol* (“Complaint Protocol”) provides:

If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or where that becomes apparent in the course of an investigation, terminate the investigation.

Analysis:

Was the Complaint Frivolous, Vexatious or Not Made in Good Faith?

There is no doubt that the complainant supported one of Councillor Palacio’s opponents in the 2006 Municipal Election. There is also no doubt in my mind that the complainant wanted to use the events that gave rise to his complaint as a weapon against Councillor Palacio in his bid for reelection.

However, as I have stated elsewhere, to disqualify a Member’s political opponents from making complaints against that Member under the *Code of Conduct* would eliminate from the complaint process many of those most likely to detect and complain about violations of the Code of Conduct. This would be contrary to both the public interest and the responsibilities of this office.

Of course, it is absolutely critical that I do not allow my office to be used inappropriately for purely political ends or to create a situation where my involvement in the investigation of a complaint would have an improper impact on the outcome of an election. On the other hand, to have to refuse to investigate complaints that may have a bearing on a Member’s fitness for office would also be inappropriate.

What is therefore critical is that I assess complaints of this kind very carefully and not proceed to investigate them fully unless the material filed in support of the complaint is detailed and reveals a substantial basis for inquiring whether there has been a violation of the Code of Conduct. In this instance, the complainant was represented by a lawyer<sup>2</sup> and the material filed in support of the complaint certainly raised an issue as to the propriety of Councillor Palacio's rental arrangements with the PCP. I therefore determined that I should commence a formal investigation though at the same time recognizing that unraveling the various elements of the complaint was not going to be feasible during the course of the election.

### Breach of Trust

Early on in the investigation of this complaint, I informed the complainant that I would not be investigating the complaint of breach of public trust. First, Appendix 1 of the Code of Conduct does not create additional categories of misconduct beyond those contained in the body of the Code. It is there for guidance and general informational purposes. Secondly, breach of trust is a criminal offence under the *Criminal Code of Canada*. Section 2(3)(a) (now section 3(3)(a)) of the Complaint Protocol specifically directs me not to investigate allegations of a criminal nature.

### Improper Receipt of a Benefit

If a Member of Council accepts rental accommodation for his constituency office at below market value rent, there is a violation of Article II (now Article IV) of the Code of Conduct. This is made abundantly clear by the following statement in the 2001 Constituency Office Leases Policy at page 2:

Receipt of any cash, goods or services in contravention of these policies can be classified as a benefit to the Councillor as it has the effect of subsidizing the Councillor's global office budget. For example, under these policies it is not appropriate for a Member of Council to accept office space at a rate that is below market value. A subsidized rent arrangement for a constituency office would be classified as a "pecuniary" benefit to the Councillor. The Councillor would have a constituency office and would be able to use the resultant savings within his or her budget for matters other than a constituency office.

Evidence provided by the complainant was to the effect that, at the time that Councillor Palacio entered into the lease with the PCP, storefronts on the same stretch of St. Clair West were renting for somewhere between \$1000 and \$1500 a month.<sup>3</sup> That suggests that \$400 a month (including utilities) was well below market value for the Councillor's constituency office.

Councillor Palacio justified this by reference to the poor state of the premises, the unwritten understanding that he would vacate immediately or share with the PCP should the PCP require the premises for its own purposes, and the sharing of the space with the St. Clair Gardens BIA. He also

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<sup>2</sup> Mr. Sweeney's lawyer, Brian Iler was also a maximum contributor to Alejandro Bravo's election campaign and this certainly fuelled Councillor Palacio's accusations that this was a politically motivated complaint.

<sup>3</sup> A storefront across the road from 1697 St. Clair Avenue West with 1000 square feet has been advertised for rent at \$1600 per month with utilities not included. As for December 3, 2007, it had not been rented. Another building across the road with 2000 square feet did rent recently for \$3500 excluding utilities.

explained the arrangement on the basis that it served the objectives of the PCP, an organization whose cause he continued to support.

There is no doubt that the premises needed work to make them attractive as a commercial proposition and, for that reason, the market value was certainly not as high as \$1500 a month. Indeed, feeble though its efforts were, the PCP's failure to rent them at that price over a period of some months provides support for that conclusion. Thereafter, however, the focus moved away from market value entirely. Rather, the price at which the PCP rented the premises was based on a combination of Councillor Palacio's sense of what it would cost him to rent space from the City in a Civic Centre (were such space available) and the PCP's decision to accept an amount that would contribute to meeting its outgoings on the premises and provide a space to a Member of Council who had had a long association with the organization and shared its objectives. None of these considerations is market value-based. Indeed, setting a price in part by reference to the value that an organization perceives in the presence of a Member of Council who will support its objectives is one of the very dangers that the market value rule is aimed at avoiding, no matter how laudable the organization's objectives or the Member's commitment to its cause.

It is, of course, true that sharing rental premises with another organization has a significant impact on market value. However, the informality of the arrangements with the BIA and, indeed, of Councillor's Palacio's understanding with the PCP that he would vacate or share the premises should the PCP need them both speak once again to the complete lack of concern in this whole transaction for considerations of what constituted a fair or market value rent for the premises. Moreover, Councillor Palacio cannot use his sharing arrangement with the BIA as a basis for the contention that he was indeed paying market value rental. This was a completely gratuitous and informal arrangement entered into on the basis of the combined consent of the Councillor and the PCP.

The probity of the situation is also called into question by reason of the fact that it was clearly not an arm's length transaction. Councillor Palacio was a former Chair of the PCP and, though he had resigned from both that position and his membership around the time he secured his seat on Council, he maintained his interest in and general support for the PCP's cause. More significantly, however, he was still one of the directors of the numbered company that owned the premises in trust for the benefit of the PCP and was a co-signor or guarantor of the mortgage on the property. In negotiating to rent the premises from the PCP (or, more accurately, the numbered company), Councillor Palacio put himself in a position of conflict of interest.

There are, however, mitigating factors. As already mentioned, Councillor Palacio, as a guarantor of the PCP's mortgage, had a financial interest in the affairs of the PCP and in ensuring that it not find itself in financial difficulties over its ownership of the St. Clair Avenue West property. To that extent, it would have been in his self-interest as a guarantor to pay more rent for the property and to charge that extra rent to his office expense account at least in those years during which he had excess funds available in that account. He did not do that and that lends considerable credence to his position, inappropriate though it was, that his renting of the property was for the mutual benefit of himself and the PCP and based on his sense of the going rate for constituency office space in Civic Centres. This was all part of his overall willingness to aid the PCP as reflected initially in his decision when Chair of the PCP to personally act as a guarantor of the mortgage on the property. In

short, it was not a situation where he was ignoring the rules willfully and in aid of his personal financial interests.

Conclusions:

The 2001 Constituency Office Leases Policy suggests that Members of Council have City Staff negotiate leases for constituency offices in the name of the City and subject to terms specified in that report.

Having the lease in the City's name and negotiated by City Staff should remove any concerns regarding compliance with the Code of Conduct or a potential conflict of interest.

In any event, the Policy advises, though does not oblige Members of Council to include in any leases that they personally negotiate certain terms and conditions.

This matter proves the wisdom of that advice. The tangled web of relationships and objectives as well as the informality that characterized Councillor Palacio's leasing of 1697 St. Clair Avenue West would all have been avoided or eliminated as considerations had Councillor Palacio used City Staff to negotiate the lease in the name of the City. Instead, he ultimately put himself under public scrutiny about the whole matter at a time when he could least afford it (during the election campaign) and, more importantly, for the purposes of this report, in violation of the Code of Conduct and the rule respecting receipt of gifts and benefits.

The irony is, however, that had Councillor Palacio been more concerned to protect his personal financial interest, he would have agreed to pay more for the premises and charged that higher amount to his office expense account. That fact alone suggests that Councillor Palacio's lack of regard for (and perhaps even knowledge of) the requirement that he should not accept office accommodation at below market value rent was misguided rather than deliberate or covert. In those circumstances, I have formed the opinion that the appropriate course of action is simply to report the violation to Council and not recommend the imposition of any penalty. In terms of section 5 of the *Complaint Protocol*, this was an error of judgment made in good faith. It is, however, to be hoped that this report will clarify publicly the events giving rise to the controversy over Councillor Palacio's lease of 1697 St. Clair Avenue West.

David Mullan  
Integrity Commissioner