



ADR
CHAMBERS

Integrity Commissioner Office
for Niagara Region

MICHAEL L. MAYNARD

Interim Integrity Commissioner

Niagara Region

E-mail: mmaynard@adr.ca

August 9, 2021

SENT BY EMAIL TO:

Ann-Marie Norio, Clerk

Ann-marie.norio@niagararegion.ca

Re: Investigation Report
IC-13741-0521

Dear Ms. Norio:

I wish to advise that I, along with my delegated associate (Benjamin Drory), have now completed our investigation of the above referenced Complaint, which was brought to the Office of the Integrity Commissioner for investigation under the Region's *Code of Conduct for Members of Council* ("Code").

I am enclosing a copy of our Investigation Report.

Though our investigation resulted in no finding of a *Code* contravention by the Respondent Member, I have determined that there is significant public interest in the matters contained in our Report, and I am accordingly recommending that it be placed on the public agenda for the next meeting of Council. I therefore confirm, in accordance with s. 223.6 (2) of the *Municipal Act*, all information contained in the attached Report is necessary for the purposes of the Report itself.

I can also advise that the Parties, Councillor Ip and Councillor Gale, have been provided with a copy of this Investigation Report.

This matter is now concluded, and our file will be closed accordingly.

Yours very truly,

A handwritten signature in black ink, appearing to read 'm m' followed by a long, sweeping horizontal stroke that curves upwards at the end.

Michael L. Maynard
Interim Integrity Commissioner, Niagara Region

Cc: Councillor Laura Ip
Councillor Bob Gale



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for Niagara Region

MICHAEL L. MAYNARD

Interim Integrity Commissioner
Niagara Region

E-mail: mmaynard@adr.ca

BENJAMIN DRORY

Investigator
Office of the Integrity Commissioner

E-mail: bdrory@adr.ca

August 9, 2021

SENT BY EMAIL TO:

Regional Councillor Laura Ip

And to:

Regional Councillor Bob Gale

cc: Ann-Marie Norio, Regional Clerk

Re: Investigation Report – IC-13741-0521

Dear Councillors Ip and Gale:

1.0 Mandate of Integrity Commissioner and Delegation of Investigative Powers

1.1 – Introduction

This is our Investigation Report respecting an application brought by Regional Councillor Laura Ip (“Councillor Ip”) against Regional Councillor Bob Gale (“Councillor Gale”) on May 14, 2021, concerning the Region of Niagara’s *Code of Conduct for Members of Niagara Region Council* (the “Code of Conduct”, or alternately “Code”). This report has been prepared in accordance with Mr. Michael L. Maynard’s appointment as the Interim Integrity Commissioner for the Region of

Niagara (the “Region”), pursuant to s. 223.3(1) of the *Municipal Act, 2001*.

1.2 – Delegation

Following Mr. Maynard’s appointment as the Interim Integrity Commissioner for the Region, upon the retirement of Mr. Edward T. McDermott, Mr. Maynard delegated his powers and duties to me on July 28, 2021, to investigate and prepare the report for this matter, subject to his review and approval, pursuant to section 223.3(3) of the *Municipal Act, 2001*.

1.3 – Investigative Process

The *Municipal Act* does not direct a specific procedure that an Integrity Commissioner must follow in handling *Code of Conduct* Complaints. I followed a process that ensured fairness to both parties. As part of my investigation, I reviewed:

- Councillor Ip’s Request for Investigation/Affidavit, dated May 14, 2021;
- Councillor Gale’s formal response, dated May 26, 2021;
- Councillor Ip’s reply, dated May 27, 2021; and
- Councillor Gale’s Supplemental Responses, dated May 31, 2021 and June 8, 2021.

I also reviewed videos of the Regional Council meetings that were the subject of the complaint, the Region’s Procedural By-Law, and case law from other municipalities germane to the issues in question.

2.0 The Parties’ Positions

Both parties submitted extensive written submissions. I have summarized their substance herein, rather than reproducing them in their entirety.

2.1 – Complaint

Councillor Ip alleged that Councillor Gale violated several provisions in the *Code*, most notably the following provisions:

As representatives of the Region, every member of Council has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that the municipal work environment is free from discrimination and harassment.

And:

Members of Council shall not maliciously or falsely injure the professional or ethical reputation of staff.

Councillor Ip wrote that at the April 22, 2021 Regional Council meeting,¹ Councillor Gale sought the Regional Clerk's advice respecting whether he should be declaring a conflict of interest on item 9.4 (acceptance of the minutes of the April 14, 2021 Corporate Services Committee ("CSC") meeting), as he had already declared a conflict at the CSC meeting. Shortly following this question, an unknown staff member could be heard saying "how long have you been a Councillor?"² The item continued, but Councillor Ip noted that Councillors Nicholson, Diodati, and Gale all commented later in the meeting about how insulting the remark was, and insisted that staff review the tape to determine who made it.

Councillor Ip wrote that at the April 29, 2021 Special meeting of Regional Council,³ Councillor Gale raised a "point of personal privilege", and used it to speak about the 'disparaging' remark against him for more than two minutes – during which he attacked the integrity of the Region's leadership, and specifically Acting CAO Ron Tripp. She noted that a couple councillors attempted to call a point of order, remarking that Councillor Gale shouldn't be using a point of personal privilege to "trash staff", and that his statements were "inappropriate" and "too far of a reach" – but Councillor Gale insisted there was to be no debate or discussion about his point of personal privilege, and he proceeded with his prepared remarks.

Councillor Ip felt that Councillor Gale's comments were particularly concerning given that the Region was actively recruiting for a new CAO. She felt that the tone and content of Councillor Gale's comments demonstrated disrespect for staff, and that he was actively bullying and harassing the Acting CAO.

Councillor Ip wrote that a week later (May 6, 2021), staff sent a message to councillors informing them that the "offending staff member" in question had sent a formal apology on April 23, 2021, in which said staff took responsibility for the comment, apologized, and ensured it would not reoccur, and the Acting CAO and Commissioner of Corporate Services deemed the issue to have been resolved with no further action required.

¹ <https://www.youtube.com/embed/BSz9EM2B6Mg>, beginning at 1:34:30

² Note 1, at 1:34:57

³ <https://www.youtube.com/embed/kEMqSi8tttQ>, from 1:02:49 to 1:08:38

Councillor Ip wrote that Councillor Gale's statements at the April 29, 2021 Special meeting therefore occurred after he received the apology from the staff member, but he positioned his comments to make it appear that staff took no action. She added that Councillor Gale mischaracterized how the staff's remark came to be – i.e., it wasn't in response to him asking questions about purchasing and the awarding of contracts, but rather arose from his question about declaring a conflict – which Councillor Ip felt Councillor Gale should be fully aware of, given how long he has been on Regional Council.

Councillor Ip concluded that by publicly attacking the Acting CAO, Councillor Gale failed to maintain and promote the public trust, and failed to recognize the influence afforded by his role.

2.2 – Response

Councillor Gale described the complaint as frivolous and vexatious. He said he raised a point of order at the April 22, 2021 Regional Council meeting, asking if he had to express the same conflict again at Council if he had expressed a "conflict of interest" on the item at Committee. He noted that prior to receiving a response from the Regional Clerk, an open microphone captured two comments from unknown persons. I note myself that there is universal agreement from multiple corners that at least one of the comments was inappropriate.

Councillor Gale wrote that Councillor Nicholson expressed concern about the incident later in the meeting, and asked the Regional Chair to review it – to which the Regional Chair agreed.⁴ Councillor Gale added that Councillor Diodati also said he heard the comment, and that it was unprofessional, to which the Regional Chair responded that Councillor Gale's question was legitimate, and he would review the tape.⁵

Councillor Gale wrote that on the evening of April 23, 2021, he received an email from a staff member (the "Impugned Staff"), who he said wrote to him, cc'ing the Regional Chair and the Acting CAO:

Councillor Gale,

I'm writing further the highly unfortunate incident at Council last night. I made an offhand comment in a momentary lapse in judgment that I sincerely regret. It is

⁴ Note 1, from 3:08:10 to 3:09:41

⁵ *Ibid*, from 3:10:39 to 3:11:48

not reflective of the high standard of professionalism that I hold myself accountable to and strive to maintain, I must apologize for any offence my comments caused, which was in no way intended.

Councillor Gale stated that he wrote back to the Impugned Staff on Monday, April 26, 2021:

Good morning [Impugned Staff],

I am sending this message to acknowledge receipt of your email.

Regards, Bob

Councillor Gale wrote that because there had been two comments made, he waited to hear how the Regional Chair would publicly report back to Council on the incident; but there was no such item on the April 29, 2021 agenda, nor did the Chair make any comments at the start of the meeting. Accordingly, Councillor Gale said he raised a “point of personal privilege” at 1:02:50, which the Chair recognized. He noted that the Region’s Procedural By-Law⁶ states the following:

17. POINTS OF PRIVILEGE AND ORDER

17.1 When a Member believes that his or her rights, privileges or integrity, or those of the Members collectively have been prejudicially affected, that Member may ask leave of the Chair to raise a question of privilege and after leave is granted, the Member shall state the point of privilege to the Chair and the point of privilege shall be immediately decided by the Chair.

...

17.3 It shall be the duty of the Chair to decide all points of privilege and order and, if called upon to do so, to state the rule applicable to any point of order, practice or procedure. The Chair’s ruling on a point of order shall be made without debate and shall be final subject only to an immediate appeal from such ruling by a Member.

Councillor Gale provided the prepared statement he read, as follows:

Last week, there was a disparaging comment made, in reference to me, as a Regional Councillor. You’ll remember that the issue was raised by both Councillor

⁶ <https://www.niagararegion.ca/government/bylaws/pdf/procedural-by-law.pdf>

Nicholson and Mayor Diodati. And you said you would review the matter.

What I do want to raise in this Point of Privilege is that the circumstances that led to the disparaging comment is the type of leadership espoused by those in senior positions.

Over the past two years I have asked important questions related to purchasing and the awarding of contracts. I will never apologize for this because it is what the people of Niagara elected me to do. Accountability isn't just a buzzword for me. It's the way I live my life. Just like many of our amazing residents.

Perspective is important here. Each year, we are responsible for \$1.5 billion in taxpayer's money, and it is our job as Councillors to ask questions, make decisions, and ensure accountability and transparency. It is with this lens that I bring matters forward. It is a lens of service and accountability. Especially as so many of our residents are suffering emotionally and financially because of COVID, through no fault of their own. My intention is to get timely information so that we can make informed decisions. Our communities deserve this from us.

We as a council must serve those who entrusted us. And for clarity, we as a council have one employee. Just one. The CAO. As we are in the process of selecting a new CAO, I am asking each of you to take note of what's happening. I want you to be aware of the culture that created the opportunity for last week's events to transpire. We need a leader who will inspire and unite and work to bring the priorities of this council forward. () For the people of Niagara. They deserve it, and it's our responsibility to them. Thank you, Mr. Chair.*

Councillor Gale wrote that Councillor Redekop attempted to interrupt his Point of Privilege with a Point of Order, at the point marked by the asterisk (*) – to which Councillor Gale objected, and asked the Regional Chair to consult with the Regional Clerk – who reviewed the Procedural By-Law, and advised that there is no Point of Order on a Point of Privilege, per s. 17.1.

Councillor Gale wrote that Councillor Redekop then began debating his Point of Privilege, stating he felt it was inappropriate for Councillor Gale to “trash” a senior member of staff, who had no opportunity to respond. The Chair turned to the Clerk for advice again, who cited section 17.6 of the Procedural By-Law:

17.6 When the Chair considers that the integrity of the Chief Administrative Officer or a member of the staff has been impugned or questioned, the Chair may permit the Chief Administrative Officer or other staff member present to make a

statement to the Council.

The Chair was then advised, upon inquiring, that the CAO didn't wish to respond.⁷

Councillor Gale wrote that the Regional Clerk sent the following email to all Council members on May 6, 2021, on behalf of Todd Harrison, Commissioner of Corporate Services:

Councillors Gale, Nicholson, Diodati, and Regional Council:

In response to concerns first raised by Councillor Nicholson and then by Councillor Diodati at the Regional Council meeting of April 22, 2021 with respect to what was believed to be an inappropriate comment made by a staff member about Councillor Gale, we can confirm that this matter was followed up both that evening and into the next day. We can confirm the staff member emailed Councillor Gale on April 23, 2021, acknowledged the comment, expressed regret for making it, accepted accountability, and apologized for it. ... [W]e understand that Councillor Gale acknowledged receipt of staff member's email.

The Region has a Respectful Workplace Conduct Policy, along with Respectful Workplace Conduct Procedures and Guidelines. The Policy applies to all staff and Councillors ... including measures in which we achieve this; one of them being through appropriate conflict resolution processes and resources.

When employees (or in this case Councillor Gale) are subjected to inappropriate behaviour, they (or in this case other Councillors that were in attendance) may express their concerns appropriately to the identified contact persons in accordance with this policy, which are outlined therein. ...

Per the policy, the first step in the process is "Early Resolution"; known as the "Informal Early Resolution Process" ...

...

Informal complaints shall be managed first by the early resolution process and shall be documented to record each incident. This will be forwarded in writing and submitted to their immediate non-union supervisor or manager, with a copy to Human Resources on the applicable reporting form if a formal complaint is

⁷ Note 3, at 1:06:57

necessary.

Given that this circumstance is not a course of vexatious or malicious conduct, rather an unfortunate isolated incident that staff member has acknowledged, accepted responsibility for, expressed regret, and formally apologized, no further action will be taken in this manner.

*Respectfully,
Todd Harrison
Commissioner, Corporate Services/Treasurer*

Councillor Gale took issue with several aspects of Councillor Ip's complaint. He denied that he used his Point of Privilege to attack the integrity of the Acting CAO, and said the purpose of his statement was to object to continuous attempts to prevent him from seeking information on issues. He said the work environment isn't conducive or welcoming to councillors asking questions to make informed decisions, and said he stated *"What I do want to raise in this Point of Privilege is that the circumstances that led to the disparaging comment is the type of leadership espoused by those in senior positions"* – by which he was referring to his Council colleagues, and not CAO Ron Tripp.

With respect to his statement *"As we are in the process of selecting a new CAO, I am asking each of you to take note of what's happening. I want you to be aware of the culture that created the opportunity for last week's events to transpire"*, Councillor Gale said this was again talking about the culture generated by his Council colleagues, who would be selecting the next CAO – who, as Council's only employee, needs to be part of creating a welcoming environment to the public, staff, and councillors, and be a productive model for Council, staff, and the corporation.

Councillor Gale wrote that Councillor Ip should be aware of the Rules of Procedure, and that there is no Point of Order on a Point of Privilege, which the Regional Clerk confirmed. He wrote that the Chair is to make a ruling on a Point of Privilege, without debate, and if there is an immediate appeal to the Chair's ruling, then there is to be an immediate vote by Council on the ruling, regarding whether to sustain it or not.

Councillor Gale denied that he was actively "bullying and harassing the Acting CAO"; he stated that Mr. Tripp hadn't approached him suggesting his comments were offensive, and never communicated with him about the incident. He added that the Acting CAO declined to speak when the Chair provided him the opportunity to do so during the meeting – ostensibly because, from Councillor

Gale's perspective, he was aware the statement referred to the culture of leadership of Council.

Councillor Gale denied that the issue of the Impugned Staff's comment had been resolved. He stated that no review had occurred and been reported back to Council, and if that was the purpose of Commissioner Harrison's May 6, 2021 email, then it was unclear that the Regional Chair delegated that responsibility to the Commissioner. Councillor Gale was unaware of any authority the Commissioner had to decide no further action was required, and added that although the Impugned Staff's defamatory comment was made publicly, nothing thereafter was public, except for his own Point of Privilege. Councillor Gale denied that he had "accepted the apology", and said he only confirmed being in receipt of the email, which contained a conditional apology. He stated that nobody (e.g., the Commissioner, Acting CAO, or Regional Chair) ever contacted him to determine if he agreed with their review, actions, and conclusions, and added that Councillor Ip never took the opportunity to contact him with her concerns either, prior to filing the present *Code* complaint.

Councillor Gale concluded that he didn't consider the April 22, 2021 matters resolved, and still awaited a formal response from the Regional Chair to Council. He stated that if Commissioner Harrison's May 6, 2021 email was the final response, then he rejected its conclusions both in terms of process and content.

2.3 – Reply

Councillor Ip replied that whether a councillor had to keep "repeating" conflicts at every meeting is something that anybody on Council should know. She disputed that Councillor Gale even declared a conflict at the April 14, 2021 CSC meeting, based on the video of that meeting.⁸ Councillor Ip acknowledged that there seemed to be two people commenting at the time of the Impugned Staff's remark on April 22, 2021, but she couldn't decipher what the other comment was or who said it – and because nobody could decipher the second comment, nobody could assume that it was "disparaging".

Councillor Ip stated that Councillor Gale didn't indicate to Council at the April 29, 2021 Special meeting that an apology had been sent and received; councillors only learned about it via Commissioner Harrison's email a week later. She noted that when Councillor Gale asked to raise the Point of Personal Privilege, he didn't indicate what it concerned. She disputed that Councillor Gale's prepared

⁸ https://www.youtube.com/embed/MvdXhM_O1rE? from 7:57 to 8:09

statement even related to his asking questions about purchasing and contracts, when the originating circumstances were merely whether Councillor Gale needed to declare a conflict of interest a second time.

Councillor Ip wrote that Councillor Gale's prepared statement was interpreted by herself, several of her colleagues, some staff, and many members of the community to be about the Acting CAO – and in fact Councillor Gale never referenced his Council colleagues, but mentioned the Acting CAO and the recruitment of a new CAO. She felt that nothing in Councillor Gale's comments made clear they were directed towards Council, and that she wasn't the only one who heard Councillor Gale's comments as an attack on staff's leadership – specifically the CAO's.

Councillor Ip stated she is aware of the Rules of Procedure, including that one cannot simply use a Personal Point of Privilege for anything one wants – and certainly not to attack staff or mischaracterize why they are making the statement. She added that it would have been inappropriate for the Regional Chair to publicly report back to Council on Human Resources matters, and that the Acting CAO might have had reasons to not wish to speak to Councillor Gale's comments during the meeting, or approach him about it.

2.4 – Supplemental Response

Councillor Gale filed Supplemental Responses on May 31, 2021 and June 8, 2021, both of which predominantly took issue with various alleged behaviours by Councillor Ip. There is no basis in this process for a Respondent to raise a counter-complaint against a Complainant; therefore, nothing in this report will consider the comments in Councillor Gale's Supplemental Responses, which were unrelated to the matters in the present dispute and are not permitted in this process.

3.0 Relevant case law and analysis

I acknowledge that the Procedural By-Law provisions Councillor Gale identified (ss. 17.1, 17.3, and 17.6) are ultimately determinative of this case. Nonetheless, the substance of Councillor Ip's complaint raised legitimate *Code of Conduct* concerns, which merit elaboration.

The *Code of Conduct* is itself part of the Procedural By-Law (Appendix "A"), which Members are obliged to respect by virtue of s. 15 of the Procedural By-Law:

15. CODE OF CONDUCT

15.1 *A code of conduct setting out general standards for acceptable conduct by Members in performance of their public duties is set out in Appendix “A” to this By-law.*

The relevant *Code of Conduct* provision reads as follows:

Influence on Staff

Under the direction of the Chief Administrative Officer, Regional staff serve Council as a whole. Without a specific delegation from Council, no individual member of Council has executive authority over municipal staff. Members of Council shall be respectful of the fact that staff work for the Region as a body corporate and are charged with making recommendations to Council that reflect their professional expertise and a corporate perspective without undue influence from any member or group of members. Members of Council shall not maliciously or falsely injure the professional or ethical reputation of staff.

Integrity Commissioners in other municipalities have considered the meaning of similarly-worded provisions, and have also considered whether they have jurisdiction to address public statements that take place during Council meetings – which is subject to unique rules.

Toronto’s former Integrity Commissioner (“Commissioner Jepson”) considered Article XII of its Code of Conduct (“Conduct Respecting Staff”) in a 2018 report.⁹ There, a councillor participated in an interview on a local radio station, during which he suggested that the CEO of the Toronto Transit Commission (“TTC”) deliberately misled Council in a briefing note respecting the Scarborough LRT. The TTC’s CEO took issue with the councillor’s insinuation that some staff’s advice was questionable and untrustworthy, and that the CEO’s personal motives weren’t honourable. The councillor replied that the contents of the briefing note were untrue, and that there seemed to be a pattern of City staff providing information that appeared influenced by the politicization of City Hall, rather than objective advice.

Toronto’s *Code of Conduct* included a provision “[N]o member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and

⁹ Report Regarding the Conduct of Councillor Josh Matlow (June 18, 2018) <https://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-117207.pdf>

all members shall show respect for the professional capacities of staff". Commissioner Jepson also noted that Toronto's Public Service By-Law entrenched characteristics of political neutrality and professionalism in the public service.

Commissioner Jepson referred to writings by Michael Fenn and David Siegel,¹⁰ which she said helpfully examined the nuances of the relationship between municipal councils and a professional public service. She wrote that Fenn and Siegel highlighted that municipal councils are elected by popular vote, and are accountable to an electorate to answer for their actions – which can be referred to as “political accountability”, and is a critical component of our democratic system of government. But Fenn and Siegel remarked that while the public service must also be aware of local concerns, they bring a different perspective than Council – “senior staff members derive their legitimacy from specialized professional expertise” – and the occasional tension between political accountability and professional expertise that sometimes results between Council and staff is a “healthy dynamic”, which can lead to good public policy. Commissioner Jepson commented that the health of the relationship between Council and staff is a matter of public interest, and Members of Council and staff each have separate and important roles to play – so accordingly, Members of Council shouldn't treat public servants as political adversaries or allies when debating public policy matters.

Commissioner Jepson noted that against this backdrop, Fenn and Siegel advised that elected officials shouldn't “air dirty laundry in public”, although they recognized certain realities. Fenn and Siegel stated:¹¹

Municipal government operates in a political arena, with all that implies. As a result, a councillor may quite properly – or even simply for political reasons – accuse staff of being incorrect, lacking in research or creativity, being insensitive to community concerns, or being too slow to deal with an issue. Staff may not like it, but they have broad shoulders and it is the right of the democratically elected representative to say such things if they are warranted.

But there are limits that should not be exceeded. Best practice says it is the duty of the head of council and the CAO to act decisively when these limits are exceeded. A councillor should never accuse a staff member publicly of stupidity, unethical

¹⁰ Michael Fenn and David Siegel, “The Evolving Role of City Managers and Chief Administrative Officers”, IMFG Papers on Municipal Finance and Governance (2017: No. 31)

https://munkschool.utoronto.ca/imfg/uploads/420/imfgpaper_no31_cao_fennsiegel_may_5_2017.pdf

¹¹ *Ibid*, s. 6.5

behaviour, or incompetence. If an elected representative feels that way about a member of staff, he or she should take it up with the CAO (or with the head of council, in the case of the CAO), in private. Likewise, if a staff member feels his or her integrity or honesty is being questioned, or if workplace interactions with a councillor are inappropriate or demeaning, he or she should take the matter up with the CAO and take advantage of the protections afforded to all employees, including in serious cases, access to the municipal integrity commissioner.

Commissioner Jepson asserted that, in considering whether councillors' statements about staff contravene Article XII:¹²

- 1. When questioning staff reports or actions, members of Council should ensure that their comments are in the nature of "fair comment"... City Council discharges its duties when it is robustly and fairly scrutinizing the information and advice that staff provide.*
- 2. However, members of Council should not publicly state or imply that a particular public servant, or a group of public servants, acted for political or private motivations or in a way that is negligent or that failed to meet professional standards. ... [T]hese types of statements will not normally be tolerated by the Speaker or a Chair in a Council proceeding, and could result in a Councillor being found to have contravened the Code of Conduct.*
- 3. Extra scrutiny should be applied to public statements about the public service that are broadcast in mass media. This is because staff do not have the same platform as members of Council to engage in the public arena. (They do not have a political accountability.)*

Commissioner Jepson determined that the councillor in question had breached Article XII of the Code of Conduct by his comments about staff in the radio interview, and recommended a reprimand.

However, another series of cases have considered whether integrity commissioners have jurisdiction in the first place to rule on complaints about a Member's decorum or conduct during Council meetings.

An instructive case is *Moore v. Maika*,¹³ in which the Township of Madawaska

¹² Note 10, p. 11

¹³ *Moore v. Maika*, 2018 ONMIC 7 (CanLII)

<https://www.canlii.org/en/on/onmic/doc/2018/2018canlii140173/2018canlii140173.html>

Valley's Integrity Commissioner, Guy Giorno ("Commissioner Giorno"), analyzed his jurisdiction over a *Code of Conduct* complaint, in which a Member was accused of making inappropriate statements during a Council meeting. Commissioner Giorno wrote:

65. In the City of Toronto, integrity commissioners have consistently taken the position that they do not have jurisdiction over the behaviour of Council Members during Council and committee meetings. Professor David Mullan, the first municipal integrity commissioner ever appointed in Canada, noted that the Municipal Act¹⁴ requires that each municipality pass a procedure by-law and that the procedure by-law provides a clear mechanism for enforcing decorum and orderly conduct during meetings. Integrity Commissioner Mullan concluded:¹⁵

"In general, the Integrity Commissioner does not have authority under the Code of Conduct to review complaints about the behaviour of Councillors at Council and Committee meetings. The behaviour of Councillors at Council, while regulated by the Code of Conduct, is the responsibility of Council (acting primarily through the Mayor or his deputy). Absent a resolution of Council requesting the Integrity Commissioner to become involved, this self-policing is part of the statutory rights and privileges of Council."

66. Subsequently, Toronto's Interim Integrity Commissioner Lorne Sossin,¹⁶ Integrity Commissioner Janet Leiper¹⁷ and Integrity Commissioner Valerie Jepson¹⁸ have all declined to exercise jurisdiction over comments made during meetings. As Integrity Commissioner Jepson has explained:

"The strong policy principle behind this approach is that the Integrity Commissioner ought not to interfere with the conduct and management of any particular meeting. This makes good sense. The Speaker, or any Chair of a meeting, requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with the procedural bylaw and as specifically

¹⁴ *Municipal Act, 2001*, S.O. 2001, c. 25, s. 238

¹⁵ City of Toronto, Notice of Motion J(36): Report on Complaint of Violation of the Code of Conduct (April 6, 2005) <https://www.toronto.ca/legdocs/2005/minutes/council/cc050412.pdf> (beginning at p. 241)

¹⁶ City of Toronto, Integrity Commissioner Annual Report 2009 (July 29, 2009), p. 9 <https://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-22620.pdf>

¹⁷ City of Toronto, Integrity Commissioner Annual Report 2010 (June 28, 2010), p. 4 <https://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-31794.pdf>

¹⁸ City of Toronto, Report on Violation of Code of Conduct: then-Mayor Rob Ford (September 22, 2015), p. 10 <https://www.toronto.ca/legdocs/mmis/2015/cc/bgrd/backgroundfile-84167.pdf>

stated therein, to oversee order and behaviour of members (s. 27-43(C)). So, if a councillor uses an insulting term against another councillor, in an effort to ensure decorum, the speaker might rule the question out of order and seek some remedial measure such as an apology or – in a serious case – an ejection from a meeting. In most cases, these issues are resolved and the meeting proceeds. There would be little gained by a subsequent referral to the Integrity Commissioner to review the actions.”

67. I also note, as Toronto’s integrity commissioners have observed, that federal and provincial integrity commissioners/ethics commissioners do not exercise jurisdiction over comments made in the House or in committee. In Parliament, the Legislature, and committees, responsibility for enforcing order rests with the Speakers and the committee chairs.

...

72. It seems evident that the subject matter of this Complaint falls squarely within the boundaries of the rules and enforcement mechanisms of the Procedural By-law. Under these circumstances, and following precedent, I do not believe that I have jurisdiction over the Complaint, or, if I do, that, I should exercise it.

Interim Integrity Commissioner Maynard has also declined jurisdiction over statements made during a Council meeting in the Town of Grimsby, based upon these same precedents.¹⁹

Section 4.3 of the Region’s Procedural By-Law further reinforces this principle, which states:

4. ROLE OF THE CHAIR

4.3 It shall be the duty of the Chair, with respect to any meetings over which he or she presides, to:

(a) preserve order and decide all questions of order, subject to appeal, and without argument or comment, state the rule applicable to any point of order if called upon to do so;

...

(e) enforce on all occasions the observance of order and decorum among the

¹⁹ <https://grimsby.civicweb.net/FileStorage/12E02E56FEEE449593BFA3B67828753A-IC%20Investigation%20Report%20-%20IC-12378-0121%20-%20Kadwell%20.pdf>

Members;

4.0 Analysis and Findings

4.1 – Question(s) to be Determined

The questions to be determined in this matter are:

- a. Does the Integrity Commissioner have jurisdiction to consider this complaint?; and
- b. If the Integrity Commissioner does have jurisdiction to consider the complaint, did Councillor Gale breach the *Code of Conduct*?

4.2 – Findings

At the outset, I note that both the Integrity Commissioner and I disagree with Councillor Gale's assertion that Councillor Ip's complaint was frivolous and vexatious. The materials canvassed herein make clear that the relationship between a municipality's council and staff is a matter of public interest, and that it is best practice for councillors to raise issues they might have about particular staff behind closed doors. These are meaningful issues that merit scrutiny.

However, a series of authoritative case precedents, dating back to the country's first municipal Integrity Commissioner in 2005, establishes that an Integrity Commissioner has no "free-standing" jurisdiction over a Member's decorum or statements at Council and/or Committee meetings, unless Council as a whole provides the Integrity Commissioner with such direction. In the absence of such direction, deference should appropriately be extended to the Procedural By-Law – and the appropriate individual to address such matters is not the Integrity Commissioner, but rather the Chair of the meeting – which respects the self-policing that is part of Council's statutory rights and privileges.

Having found that the Integrity Commissioner has no jurisdiction to address this matter, there is no basis for me, as his delegate, to comment respecting the second question to be determined.

Respectfully submitted by,



Benjamin Drory, Investigator

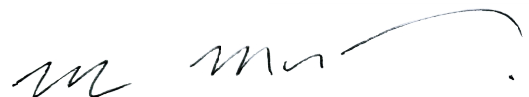
7.0 Endorsement and Issuance of Report

I, Michael L. Maynard, Interim Integrity Commissioner for Niagara Region, have reviewed the evidence, process, and results of my delegate, Mr. Drory's, Investigation and Report. I agree with and endorse this Report in respect of Complaint IC-13741-0521, and hereby issue it to Councillor Ip and Councillor Gale in conclusion of this matter.

I have further determined that there is sufficient public interest in the subject matter and content of this Report that it is appropriate to release the full Report to Council, despite there being no finding of a *Code* contravention.

I further note that s. 223.6 (2) of the *Municipal Act* provides that, "If the Commissioner reports to the municipality [...] his or her opinion about whether a member of council [...] 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." I confirm that I find all matters detailed in this Report necessary for inclusion herein.

Accordingly, I hereby request that the Regional Clerk place this Report on the public agenda for the next regular meeting of Regional Council, pursuant to s. 223.6 (3) of the *Municipal Act*, so that Council may receive it in open session.



Michael L. Maynard
Interim Integrity Commissioner, Niagara Region