

## **REPORT OF THE INTEGRITY COMMISSIONER ON A COMPLAINT UNDER THE TOWN OF NEWMARKET COUNCIL CODE OF CONDUCT**

### **Addendum to Report**

[1] On December 9, 2013 Council of the Town of Newmarket considered a report that concluded the investigation into a complaint against Councillor Maddie Di Muccio. The complaint alleged that the comments made by Councillor Di Muccio (the “Respondent”) direct at Mayor Van Bynen (the “Mayor”) at the September 23, 2013 Committee of the Whole meeting were a breach of the Code. In particular, the complaint alleges that the Respondent states that the Mayor was a “misogynist”.

[2] In the report, I made the following recommendations:

1. That Council suspend the remuneration paid to the Respondent for a period of thirty (30) days;
2. That the above noted penalty be waived should the Respondent provide a written apology to the Mayor on or before December 13, 2013;
3. That I remain seized of this matter and reserve the option to vary my recommendation on or before December 16, 2013.

### **Information Received after December 9, 2013**

[3] On December 11, 2013 Councillor Di Muccio contacted me via email correspondence and stated that :

- a) she attempted to contact me on November 15, 2013 to discuss the investigation;
- b) she was advised by the Commissioner of Corporate Services at the Town of Newmarket in response to her request for contact information for the Integrity Commissioner that she could have the Integrity Commissioner’s gmail account (which the Councillor claimed is not secure) and that she could contact the Integrity Commissioner via the Commissioner of Corporate Services or the Town Clerk (which the Councillor claimed is also not secure).
- c) Due to her expectation that her confidentiality would have been in jeopardy if she “shared personal details in either fashion”, she believed that she was prevented from participating in the Code complaint investigation.

[4] On December 12, 2013, Councillor Di Muccio sent an email correspondence to me at [icnewmarket@gmail.com](mailto:icnewmarket@gmail.com) that stated:

Mayor Van Bynen and Integrity Commissioner Craig:

Ms. Craig was provided with more details that should have her re-considering the validity of her report and recommendations.

I want to give her as much time as she needs prior to the Friday's deadline to re-submit this report to Council.

I have an engagement that will keep me in [ a City] on Friday and I am not certain when I will be returning. Should I decide to provide both of you with something in writing as demanded in Ms. Craig's original report, please make plans to be available between 8:30 and 11:59 pm at the Municipal Offices at 395 Mulock to receive it. I'm sorry but I cannot give you a more definite time because I do not know when my business in [ a City] will wrap up.

Please do not think that this is indication that I will in fact show up tomorrow night. I expect that presented with the overwhelming facts of the case, that Ms. Craig will do the appropriate thing and outright reject Mr. Van Bynen's complaint as her legal training has no doubt led her to this irrefutable conclusion.

[5] On December 13, 2013 at 9:07 p.m., an email correspondence was sent to me at [icnewmarket@gmail.com](mailto:icnewmarket@gmail.com) from a personal wireless device, with copy to the Mayor, Members of Council, the Town Clerk and Mr. Singer, Barrister, that stated:

Ms Craig,

Yesterday I advised you when I would be available to you and Mayor Van Bynen at the municipal office in order to comply with the deadline you wrote about in your report.

Attached is a photo that provides evidence that I attended, although you or Mr Van Bynen did not.

You will notice that I am now represented. On Monday, someone from my solicitors office will be attending council and require 30 minutes to speak in council chambers.

Thank you,  
Councillor Di Muccio

[6] On December 11, 2013, I also received an email correspondence sent to me at [icnewmarket@gmail.com](mailto:icnewmarket@gmail.com) from a member of the public who had made a deputation at the December 9, 2013 special meeting.

[7] On December 16, 2013, I sent an email to Mr. Singer in which I stated that:

I understand that Councillor Di Muccio is now represented by legal counsel. As you were copied on the email of December 13, 2013, I am making the assumption that you are acting as Councillor Di Muccio's legal counsel and this is why I am writing to you.

The email of December 13, 2013 had a photo attachment which shows Councillor Di Muccio in the municipal offices holding a document. In point 3 of my recommendation to Council, it was stated that I remain seized of this matter and reserve the option to vary my recommendation on or before December 16, 2013.

I am writing you this email to ask if you can advise what document Councillor Di Muccio is holding in the photo and what, if any expectation there is in relation to the complaint investigation report.

Sincerely,  
Suzanne Craig

[8] Mr. Singer replied to me at [icnewmarket@gmail.com](mailto:icnewmarket@gmail.com) and stated:

Dear Ms. Craig

You are correct in that I have been retained by the Councillor.

The document is a written apology as set out in Ms DiMuccio's emails to you and the Mayor last week advising that she would be delivering same to the Town offices after hours on Friday due to a commitment in Milton which prevented her from delivering it earlier in the day.

Yours very truly,

DARRYL SINGER  
Barrister

## **Conclusion:**

[9] In my report that was adopted by Council on December 9, 2013, I had found that the Respondent breached the General Conduct provision of the Council Code of Conduct by using insulting words or expressions towards another Member of Council.

[10] It is important that every member of Council respect the integrity of the Code of Conduct for Members of Council (the “Code”) and inquiries and investigations conducted under it. The effectiveness of the Code requires that each member of Council co-operate in every way possible in securing compliance with the Code’s application and enforcement.

[11] I acknowledge that the Respondent has indicated in her email of December 11, 2013 that “[d]ue to an expectation that [her] confidentiality would have been in jeopardy if[she] shared personal details [by sending information to the Integrity Commissioner by way of [icnewmarket@gmail.com](mailto:icnewmarket@gmail.com) or in an envelope addressed to the Integrity Commissioner and given to either the Commissioner of Corporate Services or the Town Clerk], she may have had the perception that it was not secure to contacted me and respond to me by way of email or sealed envelope delivered to the Town Clerk or Commissioner of Corporate Services.

[12] While, I have not, to date, experienced any breach of confidentiality in communications with the public, staff of the Town or Council Members, through either the use of [icnewmarket@gmail.com](mailto:icnewmarket@gmail.com) or through receipt of sealed correspondence from the Commissioner of Corporate Services of the Town Clerk, I acknowledge that the Respondent may have had the perception of a lack of security of her correspondence. A feeling that one’s confidentiality will be safeguarded is a cornerstone of the confidentiality provisions of the *Municipal Act* in relation to the duties of an Integrity Commissioner and a required element so that an Integrity Commissioner may receive all relevant information and that no obstruction occurs.

[13] While having a dedicated office at the Town for the Integrity Commissioner may be an unnecessary and costly undertaking, certainly other options which have been used in other jurisdictions (like a locked onsite mailbox) should be considered by the Town.

[13] I acknowledge that the Respondent demonstrates in her email comment, recognition of the importance of ensuring an expectation of confidentiality with personal information and other confidential information.

[14] According to the email correspondence from Mr. Singer dated December 16, 2013, the Respondent had brought “a written apology” to the Town offices on December 13, 2013. While, I am unable to discern from the photo attachment in the Respondent’s December 13<sup>th</sup> email, what the correspondence states, I accept Mr. Singer’s statement on behalf of his client that the

Respondent has provided this and it is my position that if or how the Respondent provides a written apology is entirely left up to her discretion.

[15] Recommendation 2 of the original report to Council discussed at the December 9, 2013 meeting states that:

...the above noted penalty be waived should the Respondent provide a written apology to the Mayor on or before December 13, 2013.

[16] While the Respondent could have sent her correspondence to the Mayor in the same way she sent notice of having attended the Town offices (by email and attachment), my report only stated the recommendation that *should* a written apology be provided *to the Mayor* the penalty be *waived*.

Respectfully submitted,

*Suzanne Craig*

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