

## CODE OF CONDUCT REVIEW

### Background

[1] On December 22, 2014, I entered into an agreement with the Town of Newmarket to "review, investigate and provide findings as necessary on the application of the Council Code of Conduct and associated policies with respect to a Code complaint received by the Chief Administrative Officer on December 1, 2014".

[2] The Commissioner, Corporate Services of the Town of Newmarket provided me with the letter dated November 12, 2014 (received by the Chief Administrative Officer – CAO – on December 1, 2014). The complaint referred to "previous correspondence" in relation to the CAO's response to an "earlier complaint". The December 1, 2014 letter concluded by requesting that the "Town of Newmarket retain an Integrity Commissioner to investigate the conduct of the Regional Councillor [Taylor] and Ms. Thorogood for non-compliance with the Town of Newmarket's Code of Conduct bylaw."

[3] The documents that I was provided to review and/or investigate were: 1. The letter dated November 12, 2014 (received by the CAO) on December 1, 2014; 2. A copy of a Basic Search Results from Canada Revenue Agency, Charities Listing for the Newmarket Children's Dream Charity; 3. A copy of the NewRoads Children's Dream Charity Golf Classic registration form; and 4. An email chain between the CAO and a former Town of Newmarket Councillor dating March 2013, in which the matter subject of this complaint was discussed.

[4] In order to conduct a preliminary review to determine whether or not there were grounds to commence an investigation under the Town of Newmarket Council Code of Conduct, I requested from the Town, the following documents:

- a) Town of Newmarket Council Code of Conduct (2007);
- b) Guidelines for Internet & e-Mail Acceptable Use Policy No. IT.1-01;
- c) Corporate Policy Manual Internet & e-Mail Acceptable Use Policy No. IT.1-01

[5] As part of my preliminary review, I spoke with the Chief Administrative Officer, the Commissioner of Corporate Services, Regional Councillor Taylor, the Complainant.

### The Town of Newmarket Council Code of Conduct and Relevant Policies

[6] On April 16, 2007, the Town of Newmarket approved By-Law number 2007-42, which proclaimed into force the Council Code of Conduct (the "Code"). The Code rules apply to all Members of Newmarket Town Council and establish guidelines for appropriate conduct of elected officials to ensure that:

- The decision-making process of Town Council is open, accessible and equitable;
- Decisions are made through appropriate channels of government structure;
- Public office is not to be used for personal gain;
- Newmarket residents have confidence in the integrity of their local government;
- The conduct of Members of Council is of the highest standard; and
- There is fairness and respect for differences and a duty of work together for goodwill and common good.

In relation to the matter before me, there are two rules, in particular, of the Code which are triggered:

1. Part III – Conflict of Interest
2. Part VII – Use of Town Property

In addition, Part XI of the Code sets out the complaint procedure. It sets out the provision for an informal resolution to the complaint through which the complainant shall attempt to meet with the Member of Council. In the event that the complaint cannot be resolved informally, the Code provides that the complainant may request that “the CAO investigate the complaint and/or arrange for a third party to mediate the dispute”.

[7] The current language of the Code states that “[i]n the event the dispute cannot be resolved after exhausting the steps set out [in the section outlining the informal complaint procedure], Council may hold a special meeting of Committee of the Whole to determine if the member has breached this policy. The meeting shall be closed to the public”. However, in my previous work with the Town, I have advised and the Town Council has agreed, that *should I determine that an investigation is required*, in the spirit of the Accountability and Transparency provisions of the *Municipal Act*, I would follow a fair and objective complaint investigation procedure concluding with the presentation of my findings in a report to Council in open session.

[8] Part VII of the Code references the Council-Staff request for Information and Use of Resources Policy, CAO. 1-01 and the Use of Corporate Resources and Election Campaign Activities Policy Corp. 1-01. This Code rule requires Members of Council to respect Town property, limiting the use of Town property or services to activities connect with the discharge of official duties or associated community activities having the sanction of Council or its committees.

[9] Part III of the Code references the *Municipal Conflict of Interest Act*. In the Toronto Computer Leasing Inquiry, Commissioner Bellamy recommended that rules concerning conflict of interest should form part of a municipal code of conduct. As a result, following the 2006 amendments to the *Municipal Act*, many municipal councils in Ontario developed codes of conduct and have included mention of conflicts of interest in their codes. However, an integrity commissioner does not have legislative authority to address issues subject of the enforcement of the rules of the *Municipal Conflict of Interest Act* (the “MCIA”), which provides for court proceedings against the councillor to be commenced by an elector. The MCIA is restricted to the pecuniary interests of members of council in the deliberative and legislative contexts.

### **Additional considerations**

[10] In the matter before me, I was asked by the Town to review a matter submitted by the Complainant. In my early discussions with the CAO, as part of my preliminary review, I was advised that he had received a similar complaint in 2013. The CAO’s review of the 2013 complaint, included the following:

- A review of the policy guidelines respecting the concern expressed to determine if the alleged behaviour represented a prohibited use of Corporate resources;
- A discussion with Regional Councillor Taylor and his executive assistant respecting the complaint. This included inquiring about the use of his administrative assistant in any activities of the charity. The CAO advised me that he was reassured by Regional Councillor Taylor and by his executive assistant that the staff time in relation to the charity work occurred during non-Town compensated hours;
- A review of the executive assistant's job description and confirmation that this position reports directly to the Regional Councillor. The CAO explained to me that, pursuant to the guidelines for the Town's Internet and e-mail Acceptable Use policy, volunteer activities approved by a supervisor is identified as an acceptable use.
- In addition, the CAO advised me that he reviewed the Council Code of Conduct which sets out the responsibility of the Elected Officials to ensure that Town property is not used for personal gain or any private purpose and that he discussed this rule matter with the Regional Councillor and was told that the event Charity Golf Tournament is for charity and does not relate to personal gain or private purpose. The CAO advised that he had relied on the information provided to him by the Regional Councillor, provided a response to the complainant and considered the matter concluded with no need for further investigation.

[11] In correspondence from and at my meeting with the Complainant, he requested that I look at a decision of the City of Toronto Integrity Commissioner. In this complaint report, the Toronto Integrity Commissioner investigated a complaint against the former Mayor who was alleged to have solicited donations for his charitable foundation from registered lobbyists. The City of Toronto has rules against receiving donations from registered lobbyists.

[12] The City of Toronto complaint dealt with the allegation that the Member of Council had improperly used City property to solicit donations for a private charitable Foundation, using City staff, mailing lists found on City software, City facilities, the City logo and a City Hall return address. The Toronto Integrity Commissioner concluded that "a clear boundary must be kept between the [Member's] public duties and his private fundraising. The public must be confident that the relationships between elected officials and suppliers, developers and lobbyists are clear and transparent".

### **Conclusion**

[13] It is my understanding that the Town of Newmarket has been considering amendments to its current Code of Conduct. Based on the parameters of the complaint that the Town of Newmarket requested that I review, I am satisfied that I did not have to initiate an investigation to make a determination in relation to the allegations of the actions of the Regional Councillor.

[14] In discussions with the CAO, it was made clear to me that there had been a similar complaint brought to the CAO in 2013 (referenced in the email chain noted above paragraph [3]) and it had been reviewed with findings submitted to the complainant. The CAO explained to me that this was a Councillor to Councillor complaint and since this type of complaint was not

allowable under the Code, he had told the complainant that the complaint could be pursued further by bringing the matter to the Committee of the Whole. With reference to the second matter raised in the complaint, I am satisfied that the Regional Councillor's executive assistant did not carry out volunteer assistance to the NewRoads Charity Golf Classic during Town compensated hours.

[15] Notwithstanding the previous review of the matter, I do note that the Town municipal address has been listed on the Canada Revenue Agency Charity Listing for the Newmarket Children's Dream Charity. As stated by the Toronto Integrity Commissioner during the above-noted Toronto complaint investigation, the Member's charity, "was not officially sanctioned [municipal] business, in contrast to internal fundraising drives... which [are] corporately sponsored fundraising efforts [of the municipality]". While there are some similarities between the matter subject of the Toronto Integrity Commissioner's report and the matter before me, in discussions with the Newmarket Regional Councillor, it appears to me that the matter has reached the level of Code complaint because of the absence of policy guidelines and directive and not because of a willful desire to improperly use Town resources.

[16] I would suggest that recommendations for changes in Town policy, be it strengthening the Code of Conduct, or clarification on appropriate use of official email address, should be part of a broad debate with public input rather than the subject of a Code complaint. However, I recognize that this complaint has brought to light the need for policy clarification. There is a significant amount of meaningful work done throughout the GTA by charitable organizations sponsored by elected officials. Some municipalities, like the City of Vaughan have set valuable precedents in accountability and transparency in relation to Code provisions that strike a clear balance between allowing Members of Council to lend their support to and encourage community donations to registered charitable and not for profit groups and the blurring of lines of interaction with Town businesses and lobbyists.

[17] Use of municipal resources for non-Town sanctioned business, whether that be an email or municipal Town address, is not appropriate under the Code or otherwise. However, web postings have been removed, the CAO has advised that he has received assurances from the Regional Councillor regarding after hours use of staff time, the staff in question has confirmed their desire to voluntarily participate in assisting the charity outside of compensated Town hours and the Golf Tournament is organized by a committee. As leaders of municipal communities, elected Members of Council bring important focus to worthy endeavors. With the appropriate rules to ensure arm's length involvement, Members of municipal councils may use their name recognition to support community events. This is a recognized practice in several municipalities and has been endorsed through Council approved policies. The importance and impact to the Newmarket community of a charity like the Newmarket Children's Dream Foundation and the fundraising efforts therein, should not be diminished by the need for ramped up accountability rules for elected officials.

[18] I have not found under the parameters of my current assignment, that an investigation of this matter is required in relation to the actions of Regional Councillor Taylor.

[19] I do recommend that the Town develop clear and enforceable policy rules to ensure that Members of Council do not directly or indirectly manage monies or solicit donations in relation to charitable organization's fundraising. \* To be clear, there is a difference between support to and encouragement of community endeavors and solicitation of donations. I encourage the Town to review best practices of other municipalities, to explore policy development to codify this distinction.

\*The Mayor's Charity Golf Tournament is to be distinguished from the subject of this review as the Mayor is a role recognized by statute, as Head of Council and Chief Executive Officer of the Corporation.

Prepared by:

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