

June 20, 2016

INTEGRITY COMMISSIONER

TO: Committee of the Whole
SUBJECT: Code of Conduct Complaints
ORIGIN: Integrity Commissioner

RECOMMENDATIONS

THAT the report of the Integrity Commissioner dated June 20, 2016 regarding Code of Conduct Complaints be received.

BACKGROUND

I was appointed Integrity Commissioner for the Town of Newmarket after a competitive process, by by-law enacted on October 5, 2015. Prior to my appointment, Council had directed staff to investigate best practices on policy issues related to the ethical behavior of members of Council and adopted an Interim Code Complaint Process. It was also directed that future Code complaints be held in abeyance until the review is completed. An exhaustive review was carried out with the assistance of a facilitator and a new Code of Conduct was not adopted until February 29, 2016.

Three Code of Conduct complaints were received by the Clerk prior to my appointment and held in abeyance as directed by Council. The three complaints were forwarded to me when I was appointed and since then I have received 13 additional complaints. Of the 16 complaints, the first 12 have been considered by me under the former Code of Conduct as amended by the Interim Complaint Process. The other 4 were received by me after the adoption of the new Code and will be considered under the new Code. These 4 are in process and will be dealt with in a future report. All of the complainants have requested anonymity and their identity will not be disclosed in this report.

I have served 6 of the complaints on the members of Council complained about and requested a response within 10 days as required by the Code of Conduct. Some Councillors requested extensions to the time for response which were granted. Responses to the complaints have now been received within the prescribed time by all Councillors served. I have interviewed several Councillors by telephone but have decided that it is not necessary for me to personally interview any of them. For the purpose of this report, I have consulted extensively with staff in personal meetings, by telephone, E-mail and must express my sincere thanks for their cooperation in this very complicated exercise. I have corresponded with the complainants on numerous occasions and conducted two personal interviews.

On March 24, 2016, I delivered a confidential decision with reasons, respecting one of the complaints, which summarily dismissed it. In an interview with a complainant, another complaint was withdrawn (Complaint No. 2) and I have notified the Councillor complained about. I have decided that I will render a decision on the balance of all complaints (10) under the Old Code on the day this report becomes public. My decision is contained in this public report for 5 of the 10 complaints. For the balance of the complaints (5) under the old Code, I regard it in the public interest to communicate my decision to the complainant and the Councillor complained about, only by confidential E-mail.

COMMENTS

Complaint No. 1

This complaint was against Councillor Hempen for supporting fund raising for the reconstruction of a park at Maple Leaf Public School and for supporting a motion before Council to waive site plan fees for such construction. The complainant has a curious objection to the use of his influence as a Councillor to benefit a community project because it will enhance the Councillor's reputation and that of his business. Councillor Hempen was criticized also for including reference to the Maple Leaf Park project in his campaign material for the last election.

In my opinion, community work by all Councillors, subject to some rules, should be encouraged and in my experience, waiving planning fees for charities is properly and frequently done by all municipalities. This complaint is hereby dismissed.

Complaint No. 3

This complaint also related to fund raising by Councillor Broome-Plumley for a skating rink in a Town park. The complainant objects because the Councillor obtained funds from her employer, New Roads Automotive Group, which is again referred to as improper use of influence as a Councillor. I cannot find any conflict in raising funds from the Councillor's employer. In this case, the influence came not from her position with the City but from her position in the company. This complaint is hereby dismissed.

My analysis of fund raising for charities and community groups starts with a comparison to election campaign fund raising. Election financing is tolerated as part of our law to avoid the alternative that only wealthy people can run for office. There is still a risk that members of Council might be influenced to favour those who contribute. A campaign donation is of more direct benefit to a member than a donation to that member's favorite charity.

Most Codes of Conduct throughout the Province permit charitable fund raising and most impose rules for such activity similar to those contained in the new Code for Newmarket. The most publicized example in Toronto has caused some confusion. The Toronto Integrity Commissioner ordered Mayor Ford to pay back \$3,150.00 of football donations because there was a specific prohibition against registered lobbyists making donations. The donations he received from other people not registered as lobbyists were not prohibited and were paid to the school.

A major topic considered by Council during the Code review was in the area of fund raising by Councillors. I was consulted in the study and gave the advice that the rules now contained in the new Code are appropriate and community fund raising by Councillors should now be encouraged.

Complaint No. 5

This is a complaint against Councillor Vegh relating to his expenses for attending a conference in Toronto. The complainant acknowledges that Councillors' attendance at conferences is appropriate but since this one is in Toronto, he should not have stayed overnight and he should have used transit instead of his car. The complainant also states that there were cheaper hotels than the Delta, where the Councillor stayed. To quote the complainant: "The stay cannot be justified given that thousands of Newmarket residents travel using GO Transit to Toronto each and every work day. Mr. Vegh's actions do not jive with the standards of the community of Newmarket."

I can find nothing in the Code of Conduct which supports this complaint as a contravention and the complainant made no reference to the Code. Councillors hold an important position in the municipal corporation and in the community. They should be empowered to make decisions such as staying longer at a conference for networking with their colleagues. Complaint No. 5 is hereby dismissed.

Complaint No. 6

This is a complaint against Deputy Mayor Taylor for participating in a discussion of the budget at the Committee of the Whole meeting on December 7, 2015. The Town budget of expenditures (exceeding 100 million dollars in total) contained the purchase of space for the Town Home Page in the amount of \$73,000 from the Newmarket Era, a newspaper owned by Metroland Media. Mr. Taylor's wife is vice president of marketing for Metroland Media which owns 110 community newspapers in Ontario.

The complainant alleges that he was active in the budget discussion, but the Deputy Mayor advises that there was no discussion of the advertising line item. On January 18, 2016 when the budget was passed, the Deputy Mayor requested that the advertising portion of the budget be voted on separately and declared a conflict of interest.

I find that Deputy Mayor Taylor did not contravene the Code of Conduct as he declared a conflict of interest. The Complainant also alleges that engaging in the discussion of the budget was an abuse of his influence, which I reject. Complaint No. 6 is hereby dismissed.

Complaint No. 11

This is another complaint against Deputy Mayor Taylor that he received \$560.16 from the Town's *Work at Home Program* for half the cost of a computer. This program is offered to all employees and Councillors to encourage the use of computers and can be enrolled in every 36 months. The Deputy Mayor advises that this is the first time he has participated in 10 years. The complainant alleges that the CAO did not sign off as required and that the computer is used contrary to the intent of the program. I have received the form signed by the CAO and determined that there are

no restrictions imposed by the program on the use of the computer. Complaint No. 11 is hereby dismissed.

Complaints Numbered 4, 7, 8, 9, and 10

I have decided that including the remaining 5 complaints in this public report is not in the public interest and have dismissed all of them in confidential E-mails to the complainant in each case, with copies to the Councillor complained about. All complaints I receive will be summarized each year in an annual report which will not identify the persons involved.

For more information on this report, contact Robert Swayze, Integrity Commissioner at 519-942-0070 or robert.swayze@sympatico.ca

A handwritten signature in blue ink, appearing to be 'RS', with a long horizontal stroke extending to the right.

Robert Swayze
Integrity Commissioner