

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

Preliminary Issues

[1] On October 21, 2013, the Council of the Town of Newmarket approved a motion brought forward at the October 15, 2013 Committee of the Whole, to request that the Integrity Commissioner for the Town of Newmarket [the "Town"] investigate statements directed at Mayor Van Bynen by Councillor Di Muccio to determine if there was a breach of the council Code of Conduct and/or the Town of Newmarket's Procedural By-law.

[2] The Town of Newmarket Code of Conduct (the "Code") was enacted on April 16, 2007 and amended on May 7, 2012, to rescind Part XI that related to Council Member complaints against one another. The Code contains the provision that lists the rules regarding General Conduct.

A Member shall not use indecent, abusive or insulting words or expressions toward any other Member, any member of staff or any member of the public.

[3] The Council Extract of October 21, 2013, contains the authority under which I have conducted this investigation.

[4] The complaint alleged that the comments made by Councillor Di Muccio (the "Respondent") directed 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, a Councillor for the Town of Newmarket, stated that 'others would be aware of the Mayor's comments and that he was a misogynist'.

[5] I requested a meeting with the Mayor and upon his agreement, met with him on October 31, 2013 and took his statements in relation to the complaint.

[6] I requested sworn affidavits from Andrew Brouwer, Clerk of the Corporation of the Town of Newmarket and Ian McDougall, Commissioner of Community Services of the Corporation of the Town of Newmarket. I requested the affidavits from these two senior staff of the Town of Newmarket who were in attendance at the September 23, 2013 Committee of the Whole meeting to provide credible accounts and best recollections of the statements uttered subject of this complaint. Both Mr. Brouwer and Mr. McDougall complied with my request for affidavits which contained their best recollection of the statements made by the Respondent.

[7] On November 5, 2013, I forwarded by electronic mail, a request to the Respondent for written response to the complaint on or before November 12, 2013.

[8] On November 8, 2013, I received an electronic mail correspondence from the Respondent in which she stated that:

"... your stipend for this investigation will be paid from the personal funds of council members - and not by taxpayers - which clearly raises ethical questions...

"I therefore do not recognize you as an integrity commissioner working for the town of

Newmarket...”

“I would hope you will cease using the title of "Integrity Commissioner for the town of Newmarket", as you are employed by individual council members”

[9] On November 8, 2013, I sought clarification of my role as Integrity Commissioner for the Town from Mr. Bob Shelton, Chief Administrative Officer for the Town of Newmarket and received confirmation that I was engaged with the Town to provide Integrity Commissioner services and that this appointment was made by the Council of the Town of Newmarket.

[10] On November 15, 2013, I forwarded an electronic communication to the Respondent stating that “ [g]iven that you had taken the position that I was not engaged as the Town's Integrity Commissioner, and that this may have been the reason why you have not submitted a written response, I am providing you until Monday November 18, 2013 to submit any written comments to me in response to the complaint.”

[11] On November 18, 2013, I again forwarded an electronic communication to the Respondent and attached an affidavit from the Town Clerk regarding comments made at the October 15, 2013 Committee of the Whole meeting. I concluded my communication inviting the Respondent to forward me her comments, if any.

[12] To date, I have received no further correspondence or comment from the Respondent.

The Complaint

[13] At issue in this complaint are the comments of Councillor Di Muccio that Town Council alleges constituted a breach of the Code. In particular, the complaint alleges that Councillor Di Muccio had uttered at the September 23, 2013 Committee of the Whole meeting, the word misogynist and directed the term at Mayor Van Bynen.

The Relevant Provisions of the Code of Conduct and Town Procedural By-law

[14] The purpose of the Code, lists that the goal of the existence of the rules in the Code is to ensure that:

...

- The conduct of Members of Council is of the highest standard; and
- There is fairness and respect for differences and a duty to work together for goodwill and common good.

[15] The section of the Code entitled General Conduct, includes, but is not limited to the following and states that:

A Member shall not use indecent, abusive or insulting words or expressions toward any other Member, any member of staff or any member of the public.

- [16] The section of the Code entitled Public Respect for Town By-laws and Policies states that:

Every Member shall observe and comply with every provision of this Code as well as all other policies and procedures adopted or established by Council.

- [17] Section 13 of the Town's Procedural By-law states that Members are responsible for, where applicable:

Refraining from using any offensive, disrespectful or unparliamentary language about any Member, municipal employee, Meeting attendees and Council or a Committee as a Whole.

Integrity Commissioner's Jurisdiction

- [18] Section 223.3 of the *Municipal Act*, 2001 states that:

(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

(a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or

(c) both of clauses (a) and (b). 2006, c. 32, Sched. A, ; and

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

The Council Extract of October 21, 2013, contains the Council authority under which I have been appointed to conduct this investigation.

Background to the Complaint

- [19] At the September 23, 2013 Committee of the Whole meeting, Committee considered item 26 entitled "Motion – Tax Impacts", a proposed detailed motion consisting of 10 potential budget items. The item under discussion at the time of the utterance subject of this complaint was item 9 – "Calculate the savings of removing the ice from one or both Magna ice pads between the periods of June 15 and August 15, 2014.

[20] Clause 9 included a statement which directed staff “to prepare a report on this item as soon as practicable”. Committee debated when the Committee might reasonably expect the staff report to be brought forward. Affidavit statements recollect that Councillor Di Muccio made comments to the effect that because staff were able to prepare a staff report related to the Town’s loan to the Newmarket Soccer Club within a week of Council’s request, preparation of the requested report should be achievable.

[21] Following Councillor Di Muccio’s comments, the Regional Councillor raised a point of order stating that the staff report related to the Town’s loan to the Newmarket Soccer Club took longer to prepare and was more involved than what Councillor Di Muccio had portrayed in her comments.

[22] The Mayor then ruled Councillor Di Muccio’s comments out of order on the grounds that they were an inaccurate account of the proceedings related to the preparation of the Newmarket Soccer Club loan staff report. The Mayor requested that Councillor Di Muccio retract her comments.

[23] Affidavit statements provide the recollection that a short argumentative exchange then ensued between Councillor Di Muccio and the Mayor. The Mayor stated that he was aware of the time and steps taken to prepare the staff report in relation to the Newmarket Soccer Club loan and asked again for Councillor Di Muccio to withdraw her comments unless she had proof to the contrary. The Mayor did not call Councillor Di Muccio to order in the course of this exchange.

[24] Affidavit statements clarify that Councillor Di Muccio stood up, stating that she had had enough. It was at this time that Councillor Di Muccio referred to the Mayor as a misogynist and that stated that she would not retract her comments. Councillor Di Muccio proceeded to leave the Council Chamber and stated that others would be aware of the Mayor’s comments and that he was a misogynist.

[25] At the October 15, 2013 Committee of the Whole meeting, Council adopted the motion to request that the Integrity Commissioner investigate whether the comments made by Councillor Di Muccio were in breach of the Council Code of Conduct and/or the Town’s Procedural By-law and that in the event that Councillor Di Muccio provide a written apology prior to the motion being adopted by Council, the motion would be withdrawn.

[26] At the October 15, 2013 Committee of the Whole meeting, Mayor Van Bynen was in the Chair and called for any disclosures of pecuniary interest as required by the Municipal Conflict of Interest Act.

[27] Councillor Di Muccio indicated a pecuniary interest with respect to Item 13 on the agenda (Item 17 of the Committee of the Whole Minutes of October 15, 2013) with respect to the Notice of Motion to request an investigation by the Integrity Commissioner.

[28] Mayor Van Bynen requested at this point, that the Regional Councillor chair the meeting.

[29] According to a sworn affidavit by the Town Clerk in which he provides his best recollection of the statements made at the Committee of the Whole meeting, Councillor Di Muccio read a prepared statement with words to the effect of:

“if the Mayor had understood her use of the word misogyny at the Committee of the Whole meeting on September 23, 2013 to be the hatred of women, she apologies and that she was referring to a more modern use of the word misogyny being prejudice towards women”

Respondent's Position

[30] The Respondent did not provide this office with a written response to the complaint, except to state that:

“I [...] do not recognize you as an integrity commissioner working for the town of Newmarket...”

“I would hope you will cease using the title of "Integrity Commissioner for the town of Newmarket", as you are employed by individual council members”

Analysis:

[31] The Oxford dictionary defines:

“offensive” as ‘causing to feel upset, annoyed or resentful’.

“insulting” as ‘disrespectful or scornfully abusive’.

The Parliament of Canada defines “Unparliamentary Language” as:

based on a long-standing tradition of respect for the integrity of all Members. Thus, the use of offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscenities are not in order... In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words at issue were directed; the degree of provocation; and, most importantly, whether or not the remarks created disorder in the Chamber.

[32] Unlike the institution of libel which requires an element of intention to harm the reputation of the other, this intent is not a pre-requisite for an utterance to be offensive, disrespectful or insulting.

[33] The role of the Mayor at the September 23, 2013 Committee of the Whole was that of Chair of the Council meeting. In this capacity, the Mayor's duties included but were not limited to:

- Chairing the Meeting in an objective manner in accordance with the Procedure By-law;
- Enforcing order and good behaviour of all Members at all times;
- Ruling on whether a motion is in order;
- Deciding all questions of order at the Meeting, subject to an appeal by any Member;
- Deciding to acknowledge, and ruling on whether a Point of Order or Point of Privilege

is in order;

[34] The Oxford dictionary defines “Misogynist” as:

a person who dislikes, despises, or is strongly prejudiced against women

[35] It is the recollection contained in sworn affidavits that the Respondent has stated in her statement read at the October 15, 2013 Committee of the Whole meeting, that if the Mayor understood her use and directing of the word “misogynist” to him as meaning the hatred of women, she apologises and that she was referring to a more modern use of the word misogyny being prejudice towards women.

[36] The Respondent has not denied that she used the word “misogynist” and directed this word towards the Mayor.

[37] The current dictionary meaning of the term misogynist includes despising, and being strongly prejudiced against women. While one could take the position that the word has been overused in common political discourse, the term still holds the sting of a serious allegation. Further, the Respondent was understood by those in attendance at the meeting to mean that the Mayor was guilty of highly egregious conduct worthy of censure and that others would be aware of his comments.

[38] In the context of the item under debate, the Mayor acted appropriately in maintaining order as Chair of the meeting and there is no evidence of any gender bias in the Mayor’s comments to the Respondent. There was no evidence which supported the Respondent’s position that the Mayor was preventing her from continuing her line of discussion or cutting her off prematurely, based on any motives other than in the performance of his function as chair and in an effort to maintain order and suggest that topics not germane to the item under discussion or comments without merit, be dealt with according to the rules of the Town’s Procedural By-law.

[39] Further, the Town has a Harassment and Discrimination Policy that was updated on June 15, 2010, which applies to all employees and elected officials. The Policy states that the Town “is committed to a harassment and discrimination free workplace by providing the foundation for and maintaining a work environment for employees and elected officials which is free from harassment.” The Town’s Harassment and Discrimination Free Workplace Program sets out measures and procedures of how an employee and elected official can report an incident of workplace harassment or discrimination and how the Town will address the incident.

[40] The Town’s Harassment and Discrimination Policy intersects with the Town’s Council Code of Conduct, insofar as the Code prescribes that “[a] Member shall not speak in a manner that is discriminatory to any individual based on a person’s race, ancestry, place of origin, citizenship, ethnic origin, creed, gender, sexual orientation, age, colour, marital status, family status or disability.”

[41] It therefore follows that should a Member of Council feel that they are the subject of

discriminatory action, the appropriate course of action should be to follow the procedures set out in the Harassment and Discrimination Free Workplace Policy and the Council Code of Conduct, and not to resort to arbitrarily bypassing the rules set for all employees and Members of Council of the Town of Newmarket.

[42] There is a possibility that the Respondent may have felt uncomfortable when asked to provide evidence to substantiate her comments made towards the Mayor. However, based on a review of all the facts brought forward in this investigation, there was no evidence of any gender animus in the Mayor's request to the Respondent.

Findings

[43] I find 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.

Recommendation

[44] I recommend the following:

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.

Respectfully submitted by:

Suzanne Craig

Suzanne Craig

December 3, 2013

Integrity Commissioner