

Committee of the Whole (2) Report

DATE: Tuesday, October 22, 2024

WARD(S): ALL

TITLE: FORMAL CODE OF CONDUCT COMPLAINT INVESTIGATION
REPORT #071624(1), 071624(2)

FROM:

Suzanne Craig, Integrity Commissioner and Lobbyist Registrar, Office of the Integrity Commissioner and Lobbyist Registrar

ACTION: DECISION

Purpose

Under Part B of the Complaint Protocol for the Vaughan Council Code of Ethical Conduct (the “Code”), following the investigation of a formal Code complaint, the Integrity Commissioner shall report her findings to Council.

Report Highlights

- This Report sets out the findings of 2 Complaints. The first Complaint that alleged that the Respondent’s conduct contravened Rules 10, 13, 15 of the Code of Conduct for Members of Council and Local Boards by:
 - making derogatory comments about a matter that was subject of litigation before the OLT knowing that the Respondent would be unable to respond;
 - commenting himself on the matter before the OLT, denigrating Council’s decision-making; and
 - making disparaging comments about a majority of Members of Council.
- The second Complaint alleged that the Respondent did not conduct himself with appropriate decorum in contravention of Rule 15 of the Code, when he:
 - removed the Complainant Member of Council from an email thread initiated by a resident, and making disparaging comments about the Complainant (and Council) without her knowledge and to ascribe a negative motive to the Complainant’s lack of action.

Report Highlights continued

While I did not consolidate the Complaints, I determined that due to the overlap between them, as well as the information contained in the Respondent's responses, I have set out my findings in a single report.

I find that the allegations of the Complaints have been sustained.

Recommendations

1. That Council issue a formal Reprimand to Local and Regional Councillor Mario G. Racco in relation to his actions in contravention of the Code set out in the findings in the Complaint Investigation Report; and
2. That Council suspend the remuneration paid to Local and Regional Councillor Mario G. Racco for a period of 10 days.

Background

The Complaints relate to a contentious development project at Langstaff Road and Highway 400. A developer made a planning application concerning 661 and 681 Chrislea Road to Vaughan Council. The matter was considered at a Council meeting on December 12, 2023.

The Complaint alleged that the Respondent made offensive statements in emails dated June 26 and July 5, including those which denigrated a Council decision.

The Complainant alleged in Complaint 2 that the Respondent removed her from an email thread inappropriately. She alleged that he did so to damage her reputation with the residents as she would continue to appear silent (i.e., not "for the people").

Previous Reports/Authority

N/A

Analysis and Options

As set out in the *Commentary* to Rule No. 13, a "Member must not denigrate a City by-law in responding to a citizen, as this undermines confidence in the City and the rule of law."¹ Municipal officials are free to vigorously debate and discuss matters of public interest, however, they must act reasonably and respectfully and satisfy themselves as to the truth of any allegations.

¹ Hogg & Wright at para 38:13. See also Conseil scolaire francophone de la Colombie-Britannique v British Columbia, 2020 SCC 13 at para 153.

The Respondent went beyond stating his position that he disagreed with a decision of Council. He referred to their “childish actions”. The Respondent’s “childish actions” comment is an allegation that Vaughan Council responded in a *childish* way to the Minister’s actions, through the council decision they made. This was not about the right of a Member of Council to dissent. Referring to Council’s actions as “childish” can only be reasonably viewed as disparaging of members and denigrating of Council’s decision.

The intentional removal of the Complainant from the email thread is inappropriate and does not evidence the Respondent behaving in an exemplary manner. By removing the Complainant from the thread and criticizing the lack of response from others on council (which includes the Complainant), the Respondent ensured that the Complainant could not respond.

Removing a fellow Council Member from an email thread is not an act of efficacy as suggested by the Respondent. A Member of Council may decide to remove staff or individuals or organizations external to the City of Vaughan. The Code does not preclude a Member from limiting to whom they will include in a response. However, when the email “to” line, includes 2 Members of Vaughan Council and when one Member (the Respondent in this case) removes the email address of the other from the email thread, and includes all others on the original email, this action is deliberate and not a function of email management efficacy and had the result of causing, the Councillor to not view the ongoing comments and questions of a resident of Vaughan and not provide her comments whether through email response or inviting the resident to a meeting or a discussion by phone.

Rule 15 of the Code requires that Members act with appropriate decorum. The Respondent failed to do so; his conduct was not exemplary. He manufactured a situation to prove his point – that other members of council are not helping the resident – when the resident had reached out to two members of council, including the Complainant. There is no adequate explanation for this conduct.

Financial Impact

N/A

Operational Impact

N/A

Broader Regional Impacts/Considerations

N/A

Conclusion

In deciding on a recommendation, I considered the purpose of an accountability regime and having Code of Conduct rules.

I determined that the actions of the Respondent warrant more than a reprimand but that the length of any suspension of pay should not be overly punitive but that a meaningful sanction was necessary to prevent repetition of the offence by the Respondent or others.

The Role of Council when receiving Integrity Commissioner Code of Conduct Reports

When the Integrity Commissioner submits to Council a Code of Conduct Complaint Investigation Report, Council:

- receives the Report which contains the Integrity Commissioner's findings and recommendations;
- may accept, vary or reject the Integrity Commissioner recommendation on sanctions, if any;
- may ask the Integrity Commissioner questions of clarification on her process. Questions seeking clarification go to the Integrity Commissioner. The Member subject of the Complaint is not investigated at Council;
- may not ask questions of the Member who has been investigated. The Integrity Commissioner is the third-party investigator and fact finder and the only person who may question the Member in the course of the investigation process. Once the Integrity Commissioner's Report is before Council, the investigation is complete and Members may not re-open the Integrity Commissioner's Investigation or attempt to fetter the fulfilment of her statutory role.

Section 223.6(2) of the *Municipal Act* sets out that:

Report about conduct

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board 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.

The Integrity Commissioner is the finder of fact and has statutory authority to manage Code complaints pursuant to provisions of the Complaint Protocol. The Code of Conduct regime set out in Part V.1 of the *Municipal Act* does not contemplate questioning of the Respondent by Council or further consideration of the underlying facts of the complaint after the Integrity Commissioner has made a report. Neither may the Respondent raise new issues or request a reconsideration by the Integrity Commissioner or Council or any matters relating to the investigation.

Exception to disqualifying pecuniary interest, consideration of penalty

Section 5 (2.1) of the *Municipal Conflict of Interest Act* (the “MCIA”) states that if a matter is under consideration at a meeting or a part of a meeting of Council to consider whether to suspend the remuneration paid to the member under [subsection 223.4 \(5\)](#) or [\(6\)](#) of the *Municipal Act, 2001*:

1. Despite clauses (1) (b) and (c), ***the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.*** (emphasis added)
2. Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration. [2017, c. 10](#), Sched. 3, s. 3.

The Respondent may attend and speak at the meeting (or submit a written statement). The Respondent is not permitted to vote on the matter.

For more information, please contact: Suzanne Craig, Integrity Commissioner and Lobbyist Registrar 905-832-2281 x8301.

Attachments

1. Formal Code of Conduct Complaint Investigation Report #071624(1), 071624(2)

Prepared by

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