



**INTEGRITY  
COMMISSIONER REPORT  
ACTION REQUIRED**

**Report on Violation of Code of Conduct: Mayor Rob Ford**

<b>Date:</b>	April 28, 2014
<b>To:</b>	City Council
<b>From:</b>	Integrity Commissioner
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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Councillor Ainslie complained that Mayor Ford contravened the *Code of Conduct for Members of Council* ("*Code of Conduct*") by sending a "robocall" message to Ward 43 residents. The call unfairly accused Councillor Ainslie of not listening to his constituents on the Scarborough Subway vote. This was a breach of Article XIV (Discreditable Conduct) of the *Code of Conduct*. It is recommended that City Council ask the Mayor to apologize to Councillor Ainslie.

**RECOMMENDATIONS**

The Integrity Commissioner recommends that:

1. City Council adopt the finding that Mayor Ford violated the *Code of Conduct*.
2. City Council request that Mayor Ford apologize to Councillor Ainslie in writing and on the floor of Council.

**Financial Impact**

This report will have no financial impact on the City of Toronto.

**DECISION HISTORY**

On November 5, 2013, Councillor Paul Ainslie filed a formal complaint that Mayor Rob Ford violated the *Code of Conduct*. An investigation was conducted into the complaint

and I concluded that Mayor Ford violated the *Code of Conduct*. As required by the *Code of Conduct Complaint Protocol*, and section 160(3) of the *City of Toronto Act, 2006*, I am obliged to report to City Council publicly on finding of a violation of the *Code of Conduct*.

## ISSUE BACKGROUND

A formal complaint was filed on November 5, 2013 by Councillor Paul Ainslie alleging that Mayor Ford made automated telephone calls (robocalls) from his office in City Hall to members of Ward 43-Scarborough East on October 11, 2013 concerning Councillor Ainslie's vote on the decision between Light Rapid Transit ("LRT") or Subway expansion in Scarborough. Councillor Ainslie complained that the calls violated three provisions in the *Code of Conduct*:

1. **Article XIV** (Discreditable Conduct): By failing to explain the Councillor's support for the LRT option in Scarborough and misrepresenting Councillor Ainslie's position to his constituents.
2. **Article VI** (Use of City Property, Services and Other Resources): By using the Mayor's office as a point of origin for calls that the Mayor paid for himself and said publicly were not official City Business calls;
3. **Article VII** (Election Campaign Work): By providing information to try and influence how Ward 43 constituents would vote in the next election period and making calls paid for unlawfully outside the official campaign period;

A copy of the complaint was provided to Mayor Ford. Mayor Ford was asked to respond to two of the three allegations: those dealing with Use of City Resources and Discreditable Conduct. The issue of campaign financing is addressed by the *Municipal Elections Act, 1996* which is not under the jurisdiction of this office. Accordingly, Mayor Ford was not asked to respond to this aspect of the complaint.

Mayor Ford provided a written response to the complaint on January 20, 2014. The response included a transcript of the call as follows:

*Hi, it's Mayor Rob Ford. My office is located at 100 Queen St. W, and I can be reached at 416-397-3673. We are now building a Scarborough Subway extension to Sheppard Avenue. This is truly a phenomenal victory for the people of Scarborough who have been waiting a long time for proper rapid transit. 9 out of the 10 Scarborough Councillors supported their residents, and voted for the Scarborough Subway Extension.*

*I would personally like to thank the councillors who joined me and supported a brighter future for Scarborough. It was extremely, extremely unfortunate that your Councillor Paul Ainslie was the only Scarborough councillor who did not listen to his constituents and voted against the Scarborough subway. In fact, he led the*

*charge against building subways in Scarborough. Unfortunately, this led to his resignation from my executive committee. We are moving forward with a team that support the mandate Toronto taxpayers gave me. And please have a safe and enjoyable thanksgiving.*

Mayor Ford said that the call was not a breach of Article XIV (Discreditable Conduct) because its contents did not "abuse, bully or intimidate" the Councillor. Mayor Ford said that the intention behind the calls was to communicate the result of an item of City business to members of the public. The Mayor said he wanted to notify residents of the successful passing of the vote and the Councillor's voting record on the matter. For this reason, the call was made for city business and therefore, the provisions of Article VI (Use of City Property, Services and Other Resources) of the *Code of Conduct* were not breached by the call.

Mayor Ford also cited the powers of the Mayor under the *City of Toronto Act, 2006*, which include "upholding and promoting the purposes of the city and promoting public involvement in the City's activities." He said that the public should be aware of a Council decision on a project of this magnitude. Mayor Ford said there was no misrepresentation as the content of the call was factual. He quoted Canadian Radio-television and Telecommunications Commission ("CRTC") requirements for unsolicited telecommunications which require such calls "...to begin with a clear message identifying the person on whose behalf the call is made, including a mailing address and a local or toll-free number at which a representative of the originator of the message can be reached."

A copy of the response from the Mayor was provided to Councillor Ainslie on January 23, 2014. Councillor Ainslie responded by repeating that the conduct of the Mayor constituted a violation of the *Code of Conduct* and requested the matter be investigated by my office.

## **The Investigation**

Councillor Ainslie also provided media reports on comments made by himself and Mayor Ford. On October 16, 2013, Councillor Ainslie held a press conference in which he accused the Mayor of bullying. Councillor Ainslie said he would be complaining to this office as well as the CRTC. Councillor Ainslie later advised that the CRTC declined jurisdiction.

Mayor Ford held a media scrum in which he said that it was "his job" to "tell the taxpayers how their money's being spent." Mayor Ford said that the call told people how [Councillor Ainslie] voted, "no more, no less, I didn't get personal. I didn't say anything."

Mayor Ford told the press that he paid for the robocalls himself. He wrote the script and sent it out after discussing it with his advisers. In other media reports, the Mayor noted that the cost of the calls was "a few hundred bucks."

Mayor Ford was interviewed about the matter. He said that he wanted to inform constituents of the Scarborough Rapid Transit vote at City Council's October 8, 9, 10, 11 and 13, 2014 meeting. He did not believe he had done anything wrong. Mayor Ford said he thought he had support from every Scarborough Councillor until the time of the October Council meeting when Councillor Ainslie voted for a LRT system instead of subway expansion. Some of the media reports at the time suggested that another Councillor assisted the Mayor with the decision to send out the robocall. When asked about this, the Mayor would not discuss who assisted him and said that he would accept sole responsibility for the calls.

After the Scarborough Rapid Transit vote at the October Council meeting, Mayor Ford said that many constituents contacted his office to ask for information about the vote. He described it as a "controversial issue." Mayor Ford said that when he said Councillor Ainslie had "led the charge" against building subways this meant that Councillor Ainslie moved the motion for LRT.

Mayor Ford said that he was disappointed that Councillor Ainslie did not vote for subways. He thought all of the Scarborough councillors would vote in favour of subways. He said that he believed the majority of people in Scarborough wanted a subway. Mayor Ford felt it was his obligation to tell people that Councillor Ainslie had supported LRT rather than subway expansion. He was asked why he did not inform the constituents in other Scarborough wards about the outcome of the vote and he responded that it would have "cost too much money to do that." He paid for the calls himself because he did not want to use public money. He noted that if members could use public money for these kinds of calls then "everybody would promote themselves."

During the interview, Mayor Ford asked whether or not robocalls are permitted by City policy. He said that he did not understand why Councillor Ainslie was so upset because he could have made his own robocalls to explain why he voted the way that he did. Mayor Ford has not spoken to Councillor Ainslie about the matter since the vote in Council.

### **Are Robocalls Permitted by City Policy?**

The Constituency Services and Office Budget Policy ("Office Budget Policy") applies to members of Council and in part to the Office of the Mayor. The Policy allows members of Council to use robocalls to reach out to constituents with one specific limitation: "any automated phone campaigns, such as robocalls or any similar automated virtual town halls" may not be made after August 1 of an election year. Robocalls are used by some members to reach out to constituents and to provide information, for example, about public meetings.

Members of Council (including the Mayor) who use personal funds for office expenses must keep to the limits set by the Office Budget Policy. They must also report use of personal funds for office expenses to the Office of the City Clerk.

Mayor Ford did not report the use of his personal funds for this expenditure as required by the Office Budget Policy. He took the position that the invoice was private and the cost of the robocalls did not need to be reported.

## COMMENTS

The complaint raised three provisions of the *Code of Conduct*. Each will be discussed in turn.

### 1. Article XIV - Discreditable Conduct

Councillor Ainslie complained that the robocall violated Article XIV (Discreditable Conduct) which reads:

All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies and if applicable, the *City's Human Rights and Anti-harassment Policy* and *Hate Activity Policy*.

There are two aspects to the robocall which are problematic and they are interrelated. The first is the assertion in the call, from the Mayor as head of Council, that a fellow elected member had not listened to his constituents. The Mayor said "*It was extremely, extremely unfortunate that your Councillor Paul Ainslie was the only Scarborough councillor who did not listen to his constituents and voted against the Scarborough subway.*"

In 2013, Councillor Ainslie held a number of community meetings and consulted with his constituency about the issue of LRT and subways in Scarborough. Councillor Ainslie provided a list of 31 community meetings that he convened between January and October 2013. Constituents discussed ward matters, including their views on transit. At most, if not all of these meetings, Councillor Ainslie described the issue as a "hot topic" of contention. His votes, in July and October 2013, were made after consulting with his ward on the issues.

Mayor Ford acknowledged that he did not speak to Councillor Ainslie about the reasons for his vote prior to recording the call.

After the vote and the robocall, Councillor Ainslie circulated a newsletter which included an open letter to his constituents describing both the LRT and subway options, the implications of each for the people in Ward 43 and the reason for his vote at the October 2013 Council meeting. If Mayor Ford had spoken to the Councillor directly he could have received information about the basis for Councillor Ainslie's change of mind

on the issue of LRT versus subways in Scarborough, including Councillor Ainslie's concerns about increases in property taxes, the impact of the decision on transit services in Ward 43 (which was not an area through which either the LRT or subway expansion was slated to serve) and the change in levels of funding from two other levels of government. Mayor Ford did not give the Councillor that opportunity.

The second problematic aspect of the call was that it was made directly to the constituents of Councillor Ainslie's ward. Reaching into another Councillor's ward to speak about an issue brings a heightened obligation to be accurate and fair to the representative of that ward. This is a matter of respect toward one's fellow representative and for citizens. People should not be discouraged from looking to their elected representative for service. Careful, accurate comment is important to confidence in City government.

The portion of the call which asserted that Councillor Ainslie "did not listen to his constituents" was unfair. Although the Mayor said that he did not "get personal," the call crossed that line by saying that the Councillor had not listened to his constituents. It alleges disrespect. Mayor Ford did not seek out a better understanding of the Councillor's position on using LRT as an alternative to subways for rapid transit expansion in Scarborough. He did not provide any opportunity for the Councillor to explain to him the rationale for his change in vote or how he took into account the interests of the residents in Ward 43. Mayor Ford did not acknowledge that Councillor Ainslie had consulted with his ward residents prior to making his decision.

In 2009, City Council considered the application of Article XIV to a situation where one member of council made unfair public statements about another member. In the Integrity Commissioner's report to Council dated February 13, 2009, a member of Council was found to have breached the *Code of Conduct* for unfairly accusing another member of being in a conflict of interest. His remarks were found to be "unfair and inappropriate." The Integrity Commissioner at that time wrote:

*Discreditable conduct, however, includes not only deliberately lying, but also acting in a manner that treats other Councillors unfairly. In these circumstances, [the Councillor] failed to take reasonable steps to ensure his information about [the Councillor's role] was accurate nor did he demonstrate care or diligence in how he conveyed the information, or due regard for the consequences of his statements.*

*I wish to take the opportunity, however to remind Councillors of the duty which I believe Article XIV imposes. That duty includes a positive obligation on all Councillors to treat each other with respect, and to conduct the affairs of the City in a collegial and professional fashion.*

The Mayor did not distribute the call to any of the wards in which the proposed subway line would directly operate. Although he described the result of the vote as a "phenomenal victory" for the people of Scarborough, he made the call only to Ward 43

residents. He named no other members of Council. He had not previously made calls of this nature to provide voting record information directly to members of the public, a function that is served by the Office of the City Clerk. Instead, the content emphasized the Mayor's unhappiness with Councillor Ainslie's vote by describing it as "extremely, extremely unfortunate." These aspects of the call lead me to conclude that the Mayor wished to provide Ward 43 residents with a negative impression of Councillor Ainslie.

The words in the former Integrity Commissioner's report apply here. They are an eloquent reminder of the role Article XIV plays in guiding the conduct of members with each other, as well as the public. As in the 2009 decision, Mayor Ford failed to take adequate steps to consider the accuracy of his assertion that Councillor Ainslie did not listen to his constituents. Accordingly, I find that there was a breach of Article XIV of the *Code of Conduct*.

## **2. Article VI - Use of City Property, Services and other Resources**

The second part of the complaint was that Mayor Ford breached Article VI (Use of City Property, Services and Other Resources). This provision reads:

No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, websites, Council transportation delivery services and member of Council expense budgets) for activities other than the business of the Corporation. Nor should any member obtain personal financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

The Mayor's response was that the robocall was about "city business." This question must be answered because it will help define the use of the Office Budget Policy in future and the use of robocalls by members of Council. The starting point is to look at the content of the call as a whole, and the audience, to determine whether the content was about "city business."

Portions of the call related to the Mayor's stated agenda: subways. The calls were received by a group of Toronto residents who are affected by the vote because of its impact on taxes and transit. Both of these issues are City-wide matters. The Mayor used his office, identified himself as the Mayor and provided his City of Toronto telephone number. The content of the robocall congratulated those members who supported the subway expansion vote. He also used the call to wish the recipients a "safe and enjoyable Thanksgiving" leaving the impression of a public service announcement.

As discussed above though, the distribution area and the description of Councillor Ainslie's vote implies that the primary reason for the call was to unfairly taint Councillor Ainslie's reputation with his constituents. This is not City business.

However, in considering this aspect of the complaint, I did not find the Mayor's use of his office telephone to record this message was a use of City resources sufficient to engage Article VI (Use of City Property, Services and Other Resources) of the *Code of Conduct*. Although there was some use of City resources in the recording of the call, the amount involved could fairly be described as nominal. The Mayor chose rightly not to use his budget for the cost of the calls, which indicates he turned his mind to the expenditure and the fact that it was not an appropriate use of public dollars. As described above, this is more properly a matter of discreditable conduct than about the mechanism used to place the call.

### **3. Article VII - Election Campaign Work**

Article VII provides:

Members are required to follow the provisions of the *Municipal Elections Act, 1996*. No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters and websites linked through the City's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on City property during regular working hours unless permitted by City policy (e.g., all candidates meetings). No member shall use the services of persons for election-related purposes during hours in which those persons receive any compensation from the City.

The *Code of Conduct* is directed at the improper use of City resources, and includes a prohibition against using City resources for election campaign purposes. Matters of campaign financing fall under a separate regime established by the *Municipal Elections Act, 1996*. This statute has its own enforcement process. Complaints relating to campaign financing are not within the jurisdiction of this office.

The calls in this case did not take place in an election year. The communications were specific to the issue and there was no mention of electioneering or voting. Accordingly, I did not find there were sufficient grounds to require a response on this aspect of the complaint.

### **RECOMMENDATION**

City Council has the jurisdiction to request that a member apologize where there has been a breach of the *Code of Conduct*. In the past, members have offered apologies voluntarily in similar circumstances. This is a best practice because it indicates insight into the issue and the complaint. In Council's 2009 decision described above, Mayor Ford was the member involved in a prior finding of discreditable conduct. In that case,



he apologized verbally for his comments. City Council also required that he apologize in writing and on the floor of Council to the member and to Council and that he pledge to re-commit himself to uphold the *Code of Conduct*.

In this case, Mayor Ford was briefed via his staff about this report and the recommendation he apologize to Councillor Ainslie. If a satisfactory apology is not provided by the Mayor prior to consideration of this report by Council, I recommend that City Council request that the Mayor apologize to Councillor Ainslie under the authority found in Article XVIII of the *Code of Conduct* (attached). This corrective action would reflect the view of City Council that the *Code of Conduct* requires respectful communications by members and would serve as a reminder to Mayor Ford of his obligations in relation to the *Code of Conduct*.

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**SIGNATURE:**

*Original signed*

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Janet Leiper  
Integrity Commissioner  
JL/ww

**Attachment 1: Article XVIII of the *Code of Conduct for Members of Council*  
(Compliance with the Code of Conduct)**

## **Attachment 1 - Article XVIII of the *Code of Conduct for Members of Council***

### **XVIII. COMPLIANCE WITH THE CODE OF CONDUCT**

Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the *Criminal Code* of Canada or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act*.

In addition, subsection 160(5) of the *City of Toronto Act, 2006*, authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the *Code of Conduct*:

1. A reprimand; or
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.

#### **Other Actions**

The Integrity Commissioner may also recommend that Council or a local board (restricted definition) take the following actions:

1. Removal from membership of a Committee or local board (restricted definition).
2. Removal as Chair of a Committee or local board (restricted definition).
3. Repayment or reimbursement of moneys received.
4. Return of property or reimbursement of its value.
5. A request for an apology to Council, the complainant, or both.