



OFFICE OF THE INTEGRITY COMMISSIONER

REPORT REGARDING
CONDUCT OF
COUNCILLOR JIM KARYGIANNIS
(UBER DRIVER)

Valerie Jepson
Integrity Commissioner
May 31, 2016

TABLE OF CONTENTS

INTRODUCTION.....	3
INVESTIGATION STEPS.....	3
MAKING FINDINGS OF FACT.....	3
FINDINGS	4
ANALYSIS.....	6
Article XIV: Discreditable Conduct	6
APPROPRIATE REMEDIAL ACTION	7
CONCLUSION	9

INTRODUCTION

A member of the public (the Complainant) filed a complaint alleging that Councillor Jim Karygiannis' conduct contravened Article XIV (Discreditable Conduct) of the *Code of Conduct for Members of Council* (the "Code of Conduct" or the "Code") when he confronted the Complainant, her parents, and an Uber driver (the "Driver") on July 31, 2015. It was alleged that the Councillor's words and actions toward the Complainant, her parents and the Driver constituted abuse, bullying, or intimidation prohibited by Article XIV of the Code of Conduct.

For the reasons that follow, I find that Councillor Karygiannis contravened Article XIV (Discreditable Conduct) of the Code of Conduct for acting in an intimidating manner toward the Complainant and the Driver. A finding of a contravention is significant. Although I recommend no remedial action or sanction, I expect that Councillor Karygiannis will review this report and Council's consideration of same and commit himself to adhering to the Code of the Conduct in all of his future interactions.

INVESTIGATION STEPS

The complaint, filed on August 18, 2015, was received and classified pursuant to the *Code of Conduct Complaint Protocol for Members of Council* (the "Complaint Protocol"). Responses and replies were exchanged.

Following a review of the responses and replies, the powers in the *City of Toronto Act, 2006* and the *Public Inquiries Act, 2009* were invoked to compel relevant records from Uber and the Complainant was interviewed under oath. The Driver was also contacted to provide a statement. The essential facts were not materially in dispute.

In accordance with the Complaint Protocol, on March 21, 2016, I provided the Councillor with a statement of proposed findings. I met with the Councillor and his lawyer and received written submissions, which I have taken into consideration in this final report.

MAKING FINDINGS OF FACT

In making findings of fact, I adhere to the standard of proof for fact-finders in civil cases identified by the Supreme Court of Canada, a balance of the probabilities.¹ The balance of probabilities standard requires a fact finder to "scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."²

¹ *F.H. v. McDougall*, [2008] 3 SCR 41, 61; 2008 SCC 53 (SCC), available at <http://canlii.ca/t/20xm8> (internal citations omitted).

² *Ibid.* at 61.

Accordingly, the findings of fact throughout the following analysis are based on whether it is more likely than not that alleged events occurred.

In his submissions in response to the proposed statement of findings, the Councillor asserted that because he had not been able to cross examine the witnesses, he was not able to adequately respond to the allegations. I have considered the Councillor's submissions in light of my obligations to ensure procedural fairness in Code of Conduct investigations and am satisfied that the statement of proposed findings provided the Councillor with sufficient information for him to meet the case against him and to provide evidence or information³ and I have taken his submissions into account in this final report.

FINDINGS

On the evening of July 31, 2015, the Complainant and her boyfriend were visiting her parents at their home located in the Councillor's ward. The Complainant ordered an Uber vehicle to pick her up and drive her to her home in midtown Toronto.

The Driver was *en route* to pick up the Complainant and on her parents' street. He stopped at another house on the street where a group of people were congregating outside. The Driver asked the group of people if any of them had ordered an Uber. No one had. He then continued down the street until he arrived at the Complainant's parents' home and he pulled into the driveway.

Unbeknownst to the Driver, Councillor Karygiannis was among the people with whom the Driver had spoken.

Councillor Karygiannis (in his vehicle) followed the Driver to the Complainant's parents' home. He parked on the street, got out of his vehicle, walked onto the driveway and spoke to the Driver who remained sitting in his own car.

In a loud voice, the Councillor told the Driver that by driving the Uber vehicle, he was breaking Ontario laws and municipal rules and regulations.

The Driver was surprised and concerned by the Councillor's intervention. He stated that he thought the Councillor was going to "put" him in jail or "arrest" him, so much so that he asked the Councillor to "give him a break" and not report him. There is no evidence that the Councillor told the Driver that he intended to put him in jail or cause any enforcement action.

³ See *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, paras. 20-21, 28.

There was some dispute about the proximity between the Councillor and the Driver and whether the Councillor leaned inside the car. I find that he stood in close enough proximity to the Driver that it contributed to the Driver's feelings of apprehension.

The Councillor also spoke to the Complainant's father to tell him that Uber was uninsured and unsafe. The Complainant's father asked the Councillor to leave the property and the Councillor walked off the driveway to the sidewalk.

The Complainant told the Councillor he was making her uncomfortable and she asked him to leave. A further brief confrontation ensued between all present.

The Councillor took a photo of the Uber vehicle from the sidewalk, stepped into his vehicle, and drove away.

In this investigation, the Councillor defended and justified his actions as being part of his broader activities to advocate his point of view with respect to the issue of the regulation of ground transportation services.⁴ The Councillor is a vocal public critic of the UberX service operating in Toronto. Among other things, he has posted multiple media releases about the issue on his website, and spoken about it at Council and to the media. I find that when interacting with the Driver, the Complainant and her parents, the Councillor used wording that was similar to his many public statements on the ride sharing regulation issue.

After the Councillor left, the Complainant and her boyfriend got into the Driver's car and they proceeded to her home in mid-town Toronto.

During the ride downtown, the Complainant, her boyfriend, and the Driver discussed the interaction. The Driver told the Complainant that the person on the driveway was a city councillor, a fact which surprised the Complainant.

The Complainant explained that she was aware that over the past year there was a tense climate in the City with respect to the use of Uber and she had heard stories of other Uber users being confronted by taxicab drivers as a way to demonstrate against Uber's growing presence in the City. Prior to being informed that he was a councillor, she assumed that the individual was a taxicab driver, expressing frustration about Uber.

⁴ Neither the substance of the Councillor's policy position nor his public statements are the subject of this investigation.

ANALYSIS

Article XIV: Discreditable Conduct

The issue under investigation in this complaint was whether Councillor Karygiannis' conduct on July 31, 2015 was contrary to the Code of Conduct, and in particular, Article XIV (Discreditable Conduct).

Article XIV states:

XIV. DISCREDITABLE CONDUCT

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*.

Article XIV imposes a duty on councillors to treat the public appropriately and prohibits bullying, harassment, intimidation, and abuse.

The Councillor approached the Driver, stood in close proximity to him in a threatening manner, asked him why he was driving for Uber and told him that he was breaking the law, with the result that the Driver was concerned that he would be arrested or "put ... in jail". The Councillor acted in such a way that the Driver, who recognized the Councillor as a public figure, thought the Councillor was going to facilitate his arrest.

The Councillor submits that the Driver's perception was not reasonable and he maintains that he did not suggest that he would take any actions to facilitate his arrest. Rather, his focus was on informing and educating.

I find that the Councillor's actions were aggressive and the Driver's surprise, concern and apprehension about the Councillor's intervention was therefore entirely understandable, although the Councillor did not state that he intended to personally take enforcement actions.

The Councillor asserts that he cannot be held responsible for how another individual perceives his actions. I disagree. The Councillor always has a choice about what he says to whom and when. As a public figure, he must always act with due regard and care for the risk that he may be perceived to have more authority than he, in fact, has.

With respect to his dealings with the Complainant and her family, the Councillor: was on the Complainant's parents' driveway; was uninvited; had a confrontation with the

Complainant's father; was asked to leave; had to move out of the driveway to the public sidewalk; and left. Considering that he had not been invited by the Complainant or her family onto their driveway and had to be asked to leave, I find that the Councillor acted in an aggressive manner.

The Councillor did not identify himself as a City Councillor in his interactions with the Complainant or the Driver but, as noted, he justified his intervention as being connected to his overall advocacy position with respect to regulation of ride sharing services and in furtherance of his duty to inform and educate the public about the applicability of City bylaws. It is therefore necessary to make the following observations about the role of members of Council in relation to bylaw enforcement.

When an individual's rights, or a possible penalty is at stake, such as a contravention of a City bylaw, members must recognize that Council has delegated authority to specialized City staff who follow specific processes to ensure that their actions are procedurally fair and legally enforceable. Individual councillors do not have authority to enforce City bylaws and must be mindful not to give the impression that they have more authority than they actually have.

I acknowledge that members can, and frequently do, work closely with City staff and other enforcement agencies to raise awareness of and encourage compliance with bylaws. For example, members of Council assist by carrying out informal ward tours, informing MLS through ordinary channels of possible bylaw issues and by developing newsletters or flyers to raise awareness.

Members of Council have a role to play with respect to raising awareness and encouraging compliance with municipal bylaws but it does not include aggressive interventions in the nature of the one that caused the confrontation at the heart of this complaint. Members of Council should never act in such a way that could result in an individual's concern, like that of the Driver in this case, that an individual councillor could facilitate an arrest or time in jail.

In consideration of the sequence of events in their entirety, I find that the Councillor acted in an inappropriate, aggressive and intimidating manner – and in a manner contrary to Article XIV of the Code of Conduct – when he followed the Driver, and confronted him, the Complainant's father and the Complainant.

APPROPRIATE REMEDIAL ACTION

The Code of Conduct and the *City of Toronto Act, 2006* contemplate that contraventions may require remedial actions or sanctions. An example of a remedial action is an

apology or a requirement to repay or reimburse moneys received.⁵ The *City of Toronto Act, 2006* enables Council to impose one of two sanctions: a reprimand or a suspension of remuneration.

I first considered whether City Council should direct the Councillor to apologize.

In his formal response to this complaint the Councillor expressed regret about the "negative feelings that [he] may have caused" the Complainant. The Complainant was not satisfied with this apology because it was accompanied by the Councillor's justification for his actions. The Councillor's sentiments have not changed over the course of this investigation.

The Councillor continues to justify his actions, although he has advised me that he plans to be more "circumspect" in the manner with which he relates to the public about enforcement matters. For a meaningful apology to occur, the Councillor must be prepared to accept responsibility for his actions. It is my view that requesting or coercing an additional apology from the Councillor would not be productive at this stage.

I then considered whether to recommend that Council impose any other remedial action or sanction. While remedial actions and sanctions may be appropriate in some cases, they are not necessary for Council to convey the seriousness with which it views councillor misconduct. A report that a member of Council has contravened the Code of Conduct will form part of the public record and is significant, particularly for a relatively new member of Council. When City Council adopts a finding that one of its members has contravened the Code, it sends a message that it is committed to the principles and standards set out therein.

While the Councillor's actions were surprising and clearly contrary to the Code of Conduct, his conduct amounts to a single, brief, heat-of-the moment exchange. The Councillor has cooperated with this investigation. The incidents in this report occurred within his first eight months of office, during a time when he was learning about the role of a municipal councillor. He has indicated that he plans to adjust his conduct in the future. He has not previously been found to have contravened the Code of Conduct.⁶ These factors do not justify his conduct. Rather, they are mitigating factors in favour of leniency with respect to a possible sanction or remedial action.

⁵ *Madger v. Ford*, 2013 ONSC 263 (Canlii) at para 67 (<http://canlii.ca/t/fvsgj>).

⁶ Today, I also issued another report that concludes that Councillor Karygiannis contravened Article XIV (Discreditable Conduct) of the Code of Conduct in relation to a separate set of facts. A prior contravention of the Code can be a relevant factor when considering appropriate remedial actions or sanctions. However, I have not considered this other contravention when arriving at my recommendation in this case. It is not fair or appropriate to do so because the circumstances took place in the same general period of time and Council has yet to consider the report and the findings therein.

Balancing the above considerations, and with particular regard to the fact that this interaction was a single, brief exchange during a time when the Councillor was learning about his role, it is my view that no sanction or remedial action is necessary. However, I expect that Councillor Karygiannis will review this report and Council's consideration of same and seek further advice from this Office or City staff to assist him with deepening his understanding of the role of a member of Council. Should further similar conduct occur in the future, remedial actions or sanctions may be necessary.

The evidence in this case speaks to the policy rationale of Article XIV. Article XIV is merely an articulation of what any member of the public expects from elected officials. In the Complainant's own words, "I think that you are held at a much higher standard. If you are ... working for the public that means that your actions, your behavior, are for the public to see."

Councillor Karygiannis is reminded that every interaction he has with the public can impact the trust and confidence that Torontonians have in City Council. This case is not about the ability of members of Council to take strong policy positions or to inform constituents about bylaws. This case is about the manner in which a councillor engages individuals and the expectation that members of Council will conduct themselves in a manner that is becoming of the office they hold.

CONCLUSION

For the reasons set out above, I conclude that the Councillor contravened Article XIV (Discreditable Conduct) of the Code of Conduct. I recommend that Council:

1. Adopt a finding that Councillor Karygiannis contravened Article XIV (Discreditable Conduct) of the Code of Conduct.

Valerie Jepson
Integrity Commissioner
May 31, 2016