



STAFF REPORT ACTION REQUIRED

Report on Violation of Clause XI of the Code of Conduct for Members of Council

Date:	March 22, 2007
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

During the 2006 municipal election campaign, Councillor Maria Augimeri, in an attempt to rally support against then Councillor Peter Li Preti's candidacy for re-election, left a voice mail message with Judy Sgro M.P. to the effect that Councillor Li Preti was under active police investigation. Ms. Sgro passed a tape recording of that message on to Councillor Li Preti and he filed a complaint with the Integrity Commissioner alleging that Councillor Augimeri's conduct amounted to a violation of then Clause XI ("Discreditable Conduct") of the *Code of Conduct for Members of Council* ("Code of Conduct").

For reasons developed more fully in my report to the parties on the complaint and attached to this report as an Appendix, I have concluded that Councillor Augimeri did violate the Code of Conduct as alleged.

RECOMMENDATIONS

The Integrity Commissioner recommends:

- (1) that Council request Councillor Augimeri to make a full and unconditional apology in writing to Dr. Peter Li Preti (with copies to the City Clerk and the Integrity Commissioner) for her violation of the Code of Conduct; and
- (2) should Councillor Augimeri not make that apology, that Council reprimand her formally.

IMPLEMENTATION POINTS

If Council adopts this report including the recommendations as to sanction, Councillor Augimeri should be given until the next meeting of Council to apologize to Dr. Li Preti. Should she not do so, Council should reprimand her at that point.

FINANCIAL IMPACT

These recommendations have no financial implications.

DECISION HISTORY

This report follows an investigation of a complaint made under the Code of Conduct Complaint Protocol on October 5, 2006 by then Councillor Li Preti that Councillor Maria Augimeri had violated Clause XI of the Code of Conduct.

ISSUE BACKGROUND

Councillor Maria Augimeri left a voice mail message on Judy Sgro M.P.'s voice mail messaging system contending that Councillor Peter Li Preti was under active police investigation. The clear purpose of this message was to persuade Judy Sgro not to provide further support for Councillor Li Preti's candidacy in the forthcoming 2006 Municipal election. Judy Sgro provided Councillor Li Preti with a tape of this message and, after consulting with me, he filed a formal complaint that this amounted to a violation of then Clause XI of the Code of Conduct. According to the complaint, it was discreditable conduct for Councillor Augimeri to leave such a message. In terms of the language of the provision, it amounted to one member of Council treating another member of Council unfairly.

Councillor Augimeri did not contest the fact that she had left the message. However, she attempted to justify it as accidental and that she had meant to refer to an investigation that ostensibly took place following the 2000 municipal elections. She also argued that what was at stake was a private communication between her and Judy Sgro and that this did not come within the Code of Conduct in general and Clause XI in particular. As well, she asserted that, by going public with the matter after his electoral defeat, Dr. Li Preti had disintitiled himself from invoking the Integrity Commissioner's jurisdiction.

COMMENTS

The Integrity Commissioner does not have general jurisdiction over the conduct of incumbent members of Council during an election campaign. However, where that conduct comes within the scope of one of the provisions of the Code of Conduct, the Integrity Commissioner may act. In this instance, albeit that the communication with Judy Sgro was for campaign purposes, it, nonetheless, could give rise to a finding that

one incumbent member of Council had treated another incumbent member of Council unfairly in terms of Clause XI. It also did not matter for jurisdictional purposes that Councillor Augimeri intended the message primarily for Judy Sgro and expected that Judy Sgro would not inform Councillor Li Preti.

It was irresponsible and reckless for Councillor Augimeri to leave a message on Judy Sgro's general office voice mail addressed to one of her assistants in which she made a claim that she was not able to sustain to the effect that then Councillor Li Preti was under active police investigation. This information was potentially very damaging of Councillor Li Preti's re-election prospects and it was conveyed for the very purpose of persuading a person of some influence to, at the very least, do nothing further to support Councillor Li Preti. Fortunately, there was no evidence or even suggestion that the contents of the communication actually went any further or otherwise played any role in the outcome of the election.

The fact that, in the wake of his electoral defeat, Dr. Li Preti revealed the details of this matter including the fact that I was investigating his complaint was not a reason for me to discontinue that investigation. He was under no confidentiality constraint as to either the allegations or the progress of my investigation. Indeed, he had shown restraint in not making this an issue during the election campaign and in not pressing me to conclude my investigation and report publicly before election day.

In all of the circumstances, for reasons developed more fully in my report on the complaint to the parties, I have concluded that this was a serious violation of the Code of Conduct. In those circumstances, I am recommending that Councillor Augimeri apologize unconditionally in writing to Dr. Li Preti and, if she fails to do that, that Council reprimand her formally.

CONTACT

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SIGNATURE

David Mullan, Integrity Commissioner

ATTACHMENTS

Appendix: Report on Complaint to Parties

APPENDIX

Date: March 22, 2007

To: Ulli Watkiss, City Clerk

From: David Mullan, Integrity Commissioner

Subject: Report on Complaint

Nature of Complaint:

Peter Li Preti, a member of the previous Council complained that Councillor Maria Augimeri violated the *Code of Conduct for Members of Council* ("Code of Conduct") by engaging in discreditable conduct contrary to Clause XI. More particularly, it is alleged that the Councillor treated Mr. Li Preti unfairly in terms of that Clause by asserting in a voice mail message left for a Member of Parliament on a general voice mail messaging system that Councillor Li Preti was currently under police investigation.

Summary of Findings:

Councillor Augimeri admitted that she left the voice mail message that gave rise to the complaint and that there was no basis for her contention that then Councillor Li Preti was "being actively investigated by police". I have rejected her argument that the Councillor engaged in an abuse of process in bringing this matter to my attention by way of formal complaint or by revealing it to the media in the aftermath of the November Council election. To leave such a voice mail message on the voice mail messaging system of a Member of Parliament constituted "discreditable conduct" under Clause XI of the Code of Conduct. I will therefore be recommending to Council that it request Councillor Augimeri to make an unconditional written apology to Mr. Li Preti under pain of a formal reprimand.

Facts:

Councillors Peter Li Preti and Maria Augimeri were both candidates for re-election in the November municipal election. Councillor Li Preti had been seeking campaign support from Judy Sgro, Member of Parliament and herself a former member of the City of Toronto Council.

On Wednesday, September 27, 2006, Councillor Augimeri phoned Ms. Sgro's office and left a voice mail message on the office messaging system. The message was addressed to one of Ms. Sgro's assistants. That message was as follows:

Hi [name deleted], this is Councillor Maria Augimeri. I am returning your call. Yeah, I wanted to. I have no problems in sharing my, my list with, ah, Judy who has always worked well in the past but I am so (emphasis on the so) disappointed and so (emphasis again on the so) upset at what I heard this week and that she was actively recruiting people for Councillor Peter Li Preti's campaign. It's just, you know, ahm, he is not suitable to be a Councillor. Judy knows the background he has with [name deleted] and that he is, you know, actively being investigated by police and I don't know why she would lend her name and credibility to someone like this, someone who is obviously unsuited, and ah...I just, ah, I just, I just can't believe it. I am very, very upset.

The message is recorded as having been sent on Wednesday at 4:36 p.m. from phone number 416-392-1050 and as having lasted 56 seconds.

Subsequently, a member of Ms. Sgro's staff directed her to the message and she listened to it. Thereafter, on Friday, September 29, 2006, Ms. Sgro met with then Councillor Li Preti and informed him of the message and provided him with a taped copy. On October 3, 2006, Councillor Li Preti drew the matter to my attention and I advised him that if he wanted me to take the matter any further, he should file a formal complaint under Part B of the *Council Code of Conduct Complaint Protocol* ("Complaint Protocol"). This he did by way of an affidavit sworn on October 5, 2006. Included along with his complaint was a tape of the relevant message.

At that juncture, I then set in motion the process under the Complaint Protocol. That involved sending the complaint and a copy of the tape to Councillor Augimeri and asking her for a response within ten office days. My inquiries proceeded over the course of and beyond the period of the election campaign. At no point did then Councillor Li Preti urge me to finalize my investigation and issue a report before the municipal election on November 13. However, not having received a response to the complaint within the time allowed by the Complaint Protocol, I did write to Councillor Augimeri on November 7, 2006 (with a copy to Councillor Li Preti) informing her that, in the absence of any response, I had reached the tentative conclusion that she had indeed violated Clause XI of the Code of Conduct.¹

Councillor Li Preti subsequently was defeated in his bid for reelection, though there is no suggestion that Councillor Augimeri's intervention had any influence on the outcome. There was no evidence coming out of my inquiry that the message left on Judy Sgro's voice mail went any further. A week later, on November 20, 2006, Councillor Li Preti held a press conference at which (among other matters) he disclosed his complaint against Councillor Augimeri and the contents of my letter to Councillor Augimeri of November 7, 2006.

On November 28, 2006, Councillor Augimeri filed her written response to the complaint. She admitted that she had indeed left the voice mail message though expressed shock to hear that she had said that then Councillor Li Preti was under active police investigation. She stated that she had meant to say that Councillor Li Preti had been under police investigation in 2001. (It is my understanding that, following the 2000 municipal elections, at Councillor Augimeri's request, the

¹ Councillor Augimeri then contacted my office and provided an explanation for failing to respond to the complaint. I accepted that explanation and gave permission for a late filing.

Toronto Police conducted a preliminary inquiry into Councillor Li Preti's election campaign spending but did not proceed to a criminal investigation. Councillor Li Preti was not aware of this.)

Aside from asserting that the misinformation was "entirely unintentional and inadvertent", Councillor Augimeri also claimed that she expected that the information would go no further than Judy Sgro's office. She then criticized Councillor Li Preti for misusing my office and for going public with the complaint in the wake of his defeat at the election. She characterized this as an attempt to discredit her as well as Councillor Perruzza, the successful candidate and her former Executive Assistant. Indeed, she asserted that Councillor Li Preti had engaged in misconduct by revealing the contents of my November 7, 2006 letter to the media, an action that compromised the confidentiality of my investigation and denied her a fair hearing. In short, she asked me to dismiss the complaint "as an abuse of process which falls outside the scope of this office and detracts from its important purpose".

Relevant Provisions:

Code of Conduct

XI. DISCREDITABLE CONDUCT:

All members of Council have a duty to treat members of the public, one another and staff fairly and to ensure that their work environment is free from discrimination and harassment....

Complaint Protocol

3. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation. Save in exceptional circumstances, the Integrity Commissioner will not report to Council on any such complaint except as part of an annual or other general report.

Analysis:

I do not have general jurisdiction over the conduct of candidates (including incumbents) during a municipal election campaign. However, election-related conduct (such as the use of City resources for campaign purposes) can give rise to a violation of specific provisions of the Code of Conduct. Included within that range of possibilities is conveying false information about a fellow Councillor for the purposes of discrediting him (whether for election or other purposes). This can amount to discreditable conduct under Clause XI of the Code of Conduct. In the language of that provision, this may constitute a breach of the duty to treat "one another...fairly".

At the very least, Councillor Augimeri was reckless in leaving potentially very harmful information about Councillor Li Preti in a voice mail message addressed to Ms. Sgro's assistant and intended to be conveyed to Ms. Sgro. Moreover, I reject any contention that this conduct does not engage

Clause XI because it was a private message that Councillor Augimeri did not intend to be shared with Councillor Li Preti, let alone the community at large.

The Councillor addressed the message to a staff member. It is therefore clear that she had no intention of confining knowledge of its contents to Ms. Sgro. There is nothing in the transcript of the message to suggest that the information should be kept confidential and not shared with others. Indeed, according to Ms. Sgro, the various members of her office all apparently knew about the message and its contents. Indeed, it bears the inference that Ms. Sgro should not only withdraw her support of Councillor Li Preti's candidacy on the basis of the information but also use it to influence others not to support that candidacy. Moreover, Ms. Sgro's actions in informing Councillor Li Preti were perfectly understandable and justified as were Councillor Li Preti's communications with my office and speedy filing of a formal complaint.

To recklessly convey to a Member of Parliament and her staff that a fellow Councillor is under active police investigation is a serious ethical lapse. There is no doubt in my mind that it constitutes discreditable conduct in terms of Clause XI of the Code of Conduct. Aside from the fact that the information was conveyed to another elected official with a view to influence her conduct towards the target of the message, the manner in which it was done also courted the serious risk that the news would be spread and jeopardize the complainant's re-election prospects. Fortunately, as mentioned already, there was no suggestion or evidence that the communication went any further or that it was otherwise a factor in the outcome of the election.

The fact that Councillor Li Preti himself revealed the information in the wake of his electoral defeat has no real bearing on whether there was misconduct on the part of Councillor Augimeri in the first place. Indeed, there was nothing to stop Councillor Li Preti going public on this issue during the election campaign itself. However, for whatever reason, he chose not to do so and not to make an election issue of the matter. Rather he waited until the election was over. I am not willing to treat his release of the information at that point as amounting to bad faith on his part or an abuse of the process of my office.

When someone files a complaint with my office, my general policy is to keep the existence of that complaint confidential save to the extent necessary for the conduct of my inquiries and I do not provide information to the media or others about the progress of my investigations.² However, the Complaint Protocol does not create any obligation of confidentiality on the parties to the complaint nor do I seek to impose it. More particularly, my letter to Councillor Augimeri of November 7, 2006 and copied to Councillor Li Preti was not marked confidential. As a consequence, neither he nor Councillor Augimeri was bound by any constraint of confidentiality.

Conclusions:

Councillor Augimeri violated Clause XI of the Code of Conduct by leaving a voice mail message on a Member of Parliament's voice messaging system alleging that a colleague (seeking re-election) was actively being investigated by the police. This conduct was reckless at best and amounted to a

² I do not however feel bound by that policy when one and particularly both of the parties to a complaint go public with it as sometimes happens.

serious violation of the ethical standards expected of Members of Council in their conduct in relation to their peers.

As a consequence, in my report to Council on this complaint, I will be recommending that it request Councillor Augimeri to make a full, unqualified written apology to Dr. Li Preti. If she refuses or fails to do that, I will recommend that Council formally reprimand her.

David Mullan
Integrity Commissioner