



INTERIM INTEGRITY COMMISSIONER REPORT ACTION REQUIRED

Report on Violation of Code of Conduct by Councillor Ford

Date:	February 13, 2009
To:	City Council
From:	Interim Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

During a radio broadcast, Councillor Ford alleged that Councillor Vaughan was in a conflict of interest where a committee on which Councillor Vaughan served voted to appoint one of Councillor Vaughan's donors to a City committee. Councillor Ford's remarks were inaccurate and inappropriate. His conduct breached Article XIV of the *Code*. In light of his prompt on-air retraction and apology, I have further concluded that no sanction is necessary in these circumstances.

RECOMMENDATION

The Interim Integrity Commissioner recommends that:

1. City Council adopt the finding that Councillor Rob Ford has violated the Code of Conduct; and
2. City Council not impose any sanction on Councillor Ford.

Financial Impact

This report will have no financial impact.

DECISION HISTORY

This report results from a complaint that Councillor Rob Ford violated Article XIV (“Discreditable Conduct”) of the *Code of Conduct for Members of Council*.

On the basis of an investigation, I made a decision (Appendix A) that Councillor Ford had violated the Code. As required by the *Code of Conduct Complaint Protocol* (“Complaint Protocol”) and section 162(3) of the *City of Toronto Act, 2006*, I am obliged to report to City Council publicly on any finding of violation of the *Code of Conduct*.

ISSUE BACKGROUND

Councillor Rob Ford regularly appears on a Thursday morning Talk Radio program on Radio 640. On the morning of September 25, 2008, one of the issues Councillor Ford raised was the appointment of A.G. to the Sinking Fund Advisory Committee.

Councillor Ford first named the members of the Civil Appointment Committee (CAC), and concluded this list by mentioning Adam Vaughan. He then stated that A.G. had donated \$250.00 to Adam Vaughan’s election campaign.

The host of the program asked, “For \$250.00, you’re saying he is buying influence?” Councillor Ford replied that “I’m saying there is a conflict here.” Subsequently, in the same exchange, he referred to Councillor Vaughan’s role in the appointment of A.G. as a “major conflict.” Councillor Ford also indicated on-air that he was sharing confidential information by publicizing the appointment.

Councillor Vaughan took strong exception to the statements Councillor Ford had made. On the floor of Council later on September 25, 2008, Councillor Vaughan clarified that he was not present at the CAC at the time the appointment of A.G. took place, and further that he had no knowledge of A.G.’s donation to his campaign, and therefore no reason to believe he was in a position of conflict. Further, he indicated that as a member of the CAC, he had no direct role in the selection of candidates for the Sinking Fund Advisory Committee, but rather the role of the CAC was to oversee the process undertaken by the City Manager and staff in putting forward candidates for appointment.

On September 29, 2008, counsel for Councillor Vaughan served Councillor Ford with notice under section 5(1) of the *Libel and Slander Act*, R.S.O. 1990 c.L.12, indicating Councillor Vaughan’s intent to commence a civil suit against Councillor Ford.

On October 2, 2008, a week after the original broadcast, both Radio 640 and Councillor Ford issued an on-air apology to Councillor Vaughan. Councillor Ford stated, that contrary to what he had said the week before, Councillor Vaughan was not in a conflict of interest when A.G. was appointed to the Sinking Fund Advisory Committee, and that Councillor Vaughan had not participated in that appointment. He further stated on the broadcast that “I sincerely apologize to Councillor Adam Vaughan.”

Councillor Vaughan’s complaint asserts that Councillor Ford’s conduct represents a violation of Article XI of the Member’s *Code of Conduct* (the “Code”), which provides,

“All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse.”

COMMENTS

Investigation

My investigation into this Complaint consisted of reviewing the complaint filed by Councillor Vaughan, speaking with both the complainant and respondent Councillors, reviewing the tape of the original 640 Radio broadcast from September 25, 2008, the discussion on the floor of City Council on September 25, 2008, and the broadcast of Councillor Ford’s retraction and apology a week later on October 2, 2008.

Generally, if a civil proceeding were under way, the Integrity Commissioner would refrain from further investigation until that proceeding is complete. In this case, however, Councillor Vaughan indicated his intention not to pursue the civil proceeding under the Libel and Slander Act, and for this reason, there is no basis to delay reporting.

Analysis

Councillor Ford’s public reference to Councillor Vaughan being in a conflict of interest with respect to the appointment of A.G. to the Sinking Fund Advisory Committee was inaccurate and inappropriate and constitutes a violation of Article XIV of the *Code of Conduct*.

Councillor Vaughan was not in attendance at the meeting of April 24, 2008, at which the CAC sent directions to the City Manager to broaden the search for candidates to the Sinking Fund Advisory Committee. During the meeting of September 8, 2008, at which the vote on the slate of candidates proposed by the Deputy City Manager and Chief Financial Officer occurred, Councillor Vaughan is noted as arriving late and he has indicated he was not present for the vote.

Councillor Ford failed to engage in any investigation to determine if Councillor Vaughan knew of A.G.’s donation, or whether he was present for the vote on A.G.’s appointment. Indeed, Councillor Ford indicated during the on-air broadcast that he was not even certain that the individual appointed was the same “A.G.” who had donated to Councillor Vaughan’s campaign.

As all Councillors ought to be aware, the *Code of Conduct* contains no general conflict of interest provision. Therefore, it would not have constituted a conflict of interest even if Councillor Vaughan had known of the donation and had been present for the vote, as long as he had done nothing to influence the choice of candidates proposed by the City Manager.

The implication of Councillor Ford's comments was that Councillor Vaughan appeared to be repaying a favour by voting for the appointment of one of his donors to a City committee (additionally, there is a financial dimension to this alleged conflict, as membership on the Sinking Fund Advisory Committee is a position with a stipend of \$5,000.00). If a Councillor sought to secure an appointment of any kind for an individual in return for that individual's donation to or support for their election campaign, it would constitute a clearly improper use of influence, contrary to the Code, and likely would be seen as evidence of corruption. Such an allegation could be extremely damaging to that Councillor's reputation in the eyes of the public.

The Sinking Fund Advisory Committee position was advertised in accordance with the City's Public Appointments Policy. The applications were reviewed by the Deputy City Manager and Chief Financial Officer in light of Council approved criteria. The applicants are short-listed and interviewed, and proposed appointments are then submitted to the CAC for ratification. This is the process which was followed with respect to the appointment of A.G., whose appointment was ratified on September 24, 2008, the day before the Radio 640 broadcast. In short, there is no evidence that Councillor Vaughan acted improperly in any way with respect to the appointment of A.G.

Within a week of the statement being made on the radio program, Councillor Ford had publicly retracted it, and apologized on-air to Councillor Vaughan.

Councillor Vaughan, in his complaint, asserted that the statements by Councillor Ford represented an "irresponsible and deliberate" attempt to malign his integrity and reputation. Councillor Vaughan emphasized that Councillor Ford declined to retract the statement on the floor of Council and apologize to Councillor Vaughan when given an opportunity to do so during a discussion at Council on September 25, 2008.

Councillors will of course from time to time disagree about positions and engage in political rhetoric in order to criticize the judgment of other Councillors. Councillors must be permitted sufficient leeway for public criticism in order for municipal democracy to thrive. There must also be, however, limits on the legitimate scope for public criticism. One such limit is imposed by Article XIV of the *Code*, and the duty on Councillors to treat one another "appropriately."

I found no evidence that Councillor Ford knowingly made false allegations in an attempt to harm Councillor Vaughan's reputation. Discreditable conduct, however, includes not only deliberately lying, but also acting in a manner that treats other Councillors unfairly. In these circumstances, Councillor Ford failed to take reasonable steps to ensure his information about Councillor Vaughan's role in the appointment of A.G. was accurate, nor did he demonstrate care or diligence in how he conveyed the information, or due regard for the consequences of his statements. Consequently, his conduct breached Article XIV of the *Code*.

Councillor Ford did, however, retract the statement, acknowledge that it was inaccurate, and apologize for any harm caused to Councillor Vaughan on the same radio show where the statement originally was made.

In these circumstances, I do not see a basis for a sanction based on Councillor Ford's breach of Article XIV of the *Code*.

I also wish to deal with one matter that arose during the course of investigating this complaint. In January of 2009, a fundraiser on behalf of Councillor Vaughan was advertised. The purpose of the fundraiser, organized by "Friends of Adam", included raising funds to defray Councillor Vaughan's legal expenses in responding to Councillor Ford. The advertisement read, in part:

"When Rob decided to go public with false accusations about Adam Vaughan's integrity and conduct through the public appointments process - enough was enough! Through Vaughan's legal counsel an on-air apology was delivered on Ford's regular radio appearance. The matter, which is not entirely resolved, is still under investigation by the City of Toronto's Integrity Commissioner. Suggested donation: \$10. Proceeds will be used to pay the legal bill incurred in getting the apology!"

When this was brought to my attention, I indicated to Councillor Vaughan that while the fundraiser itself was not improper under the Code, I believe all parties should avoid situations where one Councillor is raising funds to pursue litigation against another Councillor over matters within the purview of the Integrity Commissioner. Both the appearance and the substance of litigation between colleagues on City Council may undermine public confidence in Council and its governance. Councillors should not be discouraged from seeking legal advice or acting on the advice received. My hope, though, is that Councillors would have sufficient confidence in the Integrity Commissioner's office to address these kinds of situations, and that this would obviate the need for recourse to civil remedies.

Conclusion

During a radio broadcast, Councillor Ford alleged that Councillor Vaughan was in a conflict of interest where a committee on which Councillor Vaughan served voted to appoint one of Councillor Vaughan's donors to a City committee. Councillor Ford's remarks were inaccurate and inappropriate. Consequently, I have concluded that his conduct breached Article XIV of the *Code*. In light of his prompt on-air retraction and apology, I have further concluded that no sanction is necessary in these circumstances.

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.

CONTACT

Lorne Sossin
Interim Integrity Commissioner
Phone: 416-397-7770; Fax: 416-392-3840
Email: lsossin@toronto.ca

SIGNATURE

LS/cb
Encl: Appendix A: Decision on Complaint against Councillor Rob Ford

To: Ulli Watkiss, City Clerk
From: Lorne Sossin, Interim Integrity Commissioner
Subject: Report on Complaint
Date: February 13, 2009

Nature of Complaint:

Councillor Vaughan complained that during a radio broadcast, Councillor Ford alleged that he was in a conflict of interest where a committee on which he served voted to appoint one of Councillor Vaughan's donors to a City committee. Councillor Ford's remarks were inaccurate and inappropriate. He alleged that Councillor Ford's conduct breached Article XIV ("Discreditable Conduct") of the *Code of Conduct*.

Summary of Findings:

The implication of Councillor Ford's comments was that Councillor Vaughan appeared to be repaying a favour by voting for the appointment of one of his donors to a City committee (additionally, there is a financial dimension to this alleged conflict, as membership on the Sinking Fund Advisory Committee is a position with a stipend of \$5,000.00). If a Councillor sought to secure an appointment of any kind for an individual in return for that individual's donation to or support for their election campaign, it would constitute a clearly improper use of influence, contrary to the Code, and likely would be seen as evidence of corruption. Such an allegation could be extremely damaging to that Councillor's reputation in the eyes of the public.

The Sinking Fund Advisory Committee position was advertised in accordance with the City's Public Appointments Policy. The applications were reviewed by the Deputy City Manager and Chief Financial Officer in light of Council approved criteria. The applicants are short-listed and interviewed, and proposed appointments are then submitted to the CAC for ratification. This is the process which was followed with respect to the appointment of A.G., whose appointment was ratified on September 24, 2008, the day before the Radio 640 broadcast. In short, there is no evidence that Councillor Vaughan acted improperly in any way with respect to the appointment of A.G.

Within a week of the statement being made on the radio program, Councillor Ford had publicly retracted it, and apologized on-air to Councillor Vaughan.

Findings:

I found no evidence that Councillor Ford knowingly made false allegations in an attempt to harm Councillor Vaughan's reputation. Discreditable conduct, however, includes not only deliberately lying, but also acting in a manner that treats other Councillors unfairly. In these circumstances, Councillor Ford failed to take reasonable steps to ensure his

information about Councillor Vaughan's role in the appointment of A.G. was accurate, nor did he demonstrate care or diligence in how he conveyed the information, or due regard for the consequences of his statements. Consequently, his conduct breached Article XIV of the *Code*.

Relevant Provision:

The relevant provision of the Code of Conduct is as follows:

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*.

Analysis:

During a radio broadcast, Councillor Ford alleged that Councillor Vaughan was in a conflict of interest where a committee on which Councillor Vaughan served voted to appoint one of Councillor Vaughan's donors to a City committee. Councillor Ford's remarks were inaccurate and inappropriate. Consequently, I have concluded that his conduct breached Article XIV of the *Code*. In light of his prompt on-air retraction and apology, I have further concluded that no sanction is necessary in these circumstances.

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.

I also wish to deal with one matter that arose during the course of investigating this complaint. In January of 2009, a fundraiser on behalf of Councillor Vaughan was advertised. The purpose of the fundraiser, organized by "Friends of Adam", included raising funds to defray Councillor Vaughan's legal expenses in responding to Councillor Ford.

When this was brought to my attention, I indicated to Councillor Vaughan that while the fundraiser itself was not improper under the Code, I believe all parties should avoid situations where one Councillor is raising funds to pursue litigation against another Councillor over matters within the purview of the Integrity Commissioner. Both the appearance and the substance of litigation between colleagues on City Council may undermine public confidence in Council and its governance. Councillors should not be discouraged from seeking legal advice or acting on the advice received. My hope, though, is that Councillors would have sufficient confidence in the Integrity Commissioner's

office to address these kinds of situations, and that this would obviate the need for recourse to civil remedies.

Lorne Sossin
Interim Integrity Commissioner

LS/cb