



**INTEGRITY
COMMISSIONER REPORT
ACTION REQUIRED**

**Report on Violation of Code of Conduct for Members of
Council: Councillor Adam Vaughan**

Date:	July 8, 2013
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

On April 8, 2013, a member of the public filed a formal complaint with the Office of the Integrity Commissioner alleging that Councillor Adam Vaughan had violated Article XII (Conduct Respecting Staff) of the *Code of Conduct for Members of Council* ("*Code of Conduct*") as a result of public comments made by Councillor Vaughan to a variety of media outlets about the City Manager's Report entitled *New Casino and Development in Toronto* ("The Casino Report").

This report recommends to Council a finding that Councillor Vaughan breached Article XII of the *Code of Conduct*. An apology was made to the City Manager, who was completely satisfied with that outcome. For the reasons set out below, no further action is recommended to City Council.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. Council adopt a finding that Councillor Vaughan breached Article XII of the *Code of Conduct*.
2. Council adopt a finding that no further action be taken because Councillor Vaughan has apologized to the City Manager.

Financial Impact

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

DECISION HISTORY

On April 8, 2013, a member of the public filed a complaint with the Office of the Integrity Commissioner pursuant to the *Code of Conduct Complaint Protocol for Members of Council* (the “*Complaint Protocol*”) and section 160 of the *City of Toronto Act, 2006*.

An investigation was conducted into the complaint. This report on that complaint is brought in accordance with the *Complaint Protocol* and section 162(3) of the *City of Toronto Act, 2006*.

ISSUE BACKGROUND

Investigation

The formal complaint alleged that on April 8, 2013, The Casino Report was released. Councillor Vaughan made a number of comments to the media about the report including:

There is nothing real in this report and if you vote to put a casino in place after this God help you. These are hypothetical projections based on a bunch of fantasy numbers and at the end of the day I wouldn't go to the casino and bet on this one. Let's just get rid of this and move on. [To CP 24]

These are hypothetical numbers based on fantasy numbers, there is nothing real in this report.
[To CityNews]

None of the math works here. The casino is cut in half and the hosting fee is higher? There is nothing real in this report.
[To CBC]

The numbers are ridiculous and the whole project is a fantasy.
[To CTV]

The complaint attached links to these comments and to others made by Councillor Vaughan about the report. A copy of the complaint was provided to Councillor Vaughan who responded by letter dated April 24, 2013. In his reply, Councillor Vaughan did not dispute that he had made the comments, but asserted that he stood by his comments because they were not intended to injure the reputation of any member of City staff and he did not believe that his

comments had injured the reputation of any member of City staff. Councillor Vaughan stated in his letter (which was co-signed by Councillor Layton, who was subject to a parallel complaint for his comments) that:

...it is the role of a City Councillor to evaluate the policies and the programs of the City. This of course includes evaluating the policies put forward within reports presented to us.

Councillor Vaughan wrote that there is a clear distinction between criticism and malicious attempts to injure the professional and ethical reputation of City staff. He noted that he had not named any particular member of staff. Accordingly, he argued that the comments did not breach Article XII of the *Code of Conduct*.

A copy of the response was provided to the complainant, who wrote in reply that the role of a City Councillor to evaluate policies and programs of the City does not give a City Councillor "carte blanche" to maliciously or falsely injure the professional or ethical reputation of staff which is protected under Article XII of the *Code of Conduct*. The complainant said that although no staff member was named by Councillor Vaughan, the report was authored, signed and presented by the City Manager.

The complainant also pointed out that as a Certified General Accountant, the City Manager is subject to the ethical principles of his governing body which requires members to act with "trustworthiness, integrity and objectivity" and to "not be associated with any information which the member knows, or ought to know, to be false or misleading, whether by statement or omission." The complainant wrote that the comments made by Councillor Vaughan, in particular the use of phrases such as "There is nothing real in this report," and "The numbers are ridiculous," amounted to an allegation that the City Manager had breached his own ethical principles and that the remarks failed to show respect for the professional capacities of staff.

The investigative steps taken were as follows:

- Review of affidavit and material filed in support;
- Review of press clippings associated with the comments for context;
- Meeting with City Manager;
- Review of the *New Casino and Convention Development in Toronto* report;
- Follow up by telephone and email with the complainant;
- Meeting with Councillor Vaughan, Councillor Layton and City Manager;
- Follow-up correspondence to Councillor Vaughan concerning complainant request for a public apology.

The City Manager was interviewed about the impact of the comments and to receive his views on the matter. He was not involved in the laying of the complaint and had not been approached by the complainant in advance of the complaint. Nevertheless, the City Manager agreed that he would like to receive an apology for the remarks which characterized his report in terms such as "nothing real" and "fantasy." These characterizations, which were repeated throughout the day, caused others to call his motives and reputation into question.

FINDINGS

The Casino Report

The Casino Report was released on April 8, 2013. It was created after a request was made to the City Manager in 2012 by City Council to conduct a public consultation, provide further analysis and report back with recommendations.

City staff, under the direction of the City Manager, analyzed specific locations, and looked at economic, city building, social, health and fiscal criteria. The Casino Report was divided into three parts: the first was a staff analysis and possible approach for expanded gaming in the City of Toronto; the second, the results of the public consultations, meetings and polls; the third section contained staff recommendations and discussion on implementation.

The report included estimates of matters such as market demand, necessary gaming space to support City revenue conditions which the report recommended include not less than hosting fees of \$100 million. The estimates and assumptions on which these figures were based are described in the report. The review of economic and employment issues included consultations with other North American cities. The hosting fee projections were based on the City's hosting fee request to the province and on information from OLG data for other casinos.

The report similarly discussed provincial indications that there would be a standard funding formula across the province for all municipalities. The report noted that a Toronto casino as part of a larger integrated entertainment complex (IEC) should be treated as a unique opportunity due to its potential to generate revenue, including by way of sales and income taxes to other orders of government.

The report recommended 47 different conditions be met as part of any decision by Council to approve a casino in downtown Toronto. These conditions involved financial requirements, to transportation, design and social considerations.

The results of the public consultation were also part of this report. These included the results from a survey of 902 Torontonians, as well as a 17,780 public feedback forms obtained via the public consultation process. These figures were set out in tables as part of the report and revealed that there was public opposition to a casino ranging from 50% (poll result) to 73% (public consultation forms). The detailed reports from these consultations and the poll were attached to the report.

The options presented by the City Manager for a casino in downtown Toronto were either to provide consent subject to the conditions described in the report, or to decline consent to establish a new casino in downtown Toronto. Other recommendations were made in relation to the expansion of the Woodbine gaming facility.

The Public Comments

Councillor Vaughan commented to multiple media outlets about the report. One news outlet described his response to the report as follows:

Speaking with CP24 following its release, Coun[cillor] Adam Vaughan dismissed the findings out of hand:

"There is nothing real in this report and if you vote to put a casino in place after this God help you," he said. "These are hypothetical projections based on a bunch of fantasy numbers and at the end of the day I wouldn't go to the casino and bet on this one. Let's just get rid of this and move on."

The City Manager was not quoted in the article in which these comments were made.

In a report from CityNews, the City Manager was quoted as saying, "I acknowledge this will be a difficult decision for council. It's perhaps one of the more complex and important matters council will debate this term." The City Manager noted that he had "never experienced the degree of public interest and civic engagement in a single policy decision, other than the debate on new revenues and taxes for Toronto under the City of Toronto Act." The City Manager noted that the report was not meant to be a definitive recommendation, but was to inform city council's policy decision.

In this article, Councillor Vaughan was quoted as follows:

"The casino based on this report, is dead" Vaughan said. There's no way you can cut the casino in half, sustain the revenue, get a

hosting fee 10 times bigger than anyone else in the province and then pretend that those numbers are real."

Further in the CityNews article, the City Manager responded to a question about the projections that called for a guaranteed minimum hosting fee of \$100 million annually. He said "Those are real numbers. They're not fictitious numbers. " In the same article, the Premier was quoted from a comment in question period noting that she was not familiar with the numbers [in the report].

In other comments, Councillor Vaughan told the CBC that:

- the report was full of "fantasy numbers"
- None of the math works here...The casino is cut in half and the hosting fee is higher. There is nothing real in this report."

Councillor Vaughan was also quoted by CTV as saying "The numbers are ridiculous."

The Application of the *Code of Conduct*

The applicable portions of Article XII (Conduct Respecting Staff) of the *Code of Conduct* reads:

XII. CONDUCT RESPECTING STAFF

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

Under the direction of the City Manager, staff serve the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

Article XII in its entirety is appended as Attachment 1. This part of the *Code of Conduct* addresses the relationships between elected members of Council and members of the public service. It requires attention to the boundaries between staff roles and roles of elected politicians. It functions as a protection for staff members who are expected to provide their best advice to City Council, while remaining objective and apolitical in carrying out their functions. It also functions

to remind members of Council that they can better serve the public by observing the boundaries and differing roles as between the public service and elected officials.

In this case, the public engagement around casino development was high. The issue drew significant media interest. Councillor Vaughan, as a downtown Councillor, was particularly vocal in his views about the proposal and he had every right to speak out on his views. He was entitled, as he put it in his letter of response, to "evaluate policies put forward within reports presented to [City Council]."

However, in expressing his opposition to the idea of a downtown casino, Councillor Vaughan used language with more than one media outlet that could fairly be described as injurious to the professional reputation of staff. The use of words such as "nothing real here" and "fantasy numbers" suggest that the City Manager, who signed the report, had no basis for any of its contents or projections. On a purely literal reading of these words and application to the report, members of the public could conclude that somehow the entire report was made up, and that it was wholly unreliable. This is not a fair characterization of the City Manager's report which stated its assumptions, invited Council to form its own views and provided options and conditions.

This is not to say that all of what Councillor Vaughan had to say was problematic. In coming to these conclusions, I looked at the context of the remarks. The CBC and CityNews reports make it clear that Councillor Vaughan was talking about the hosting fees when he made his comments about the numbers. It is also fair to note that projections that required political decisions beyond the control of City council might not ultimately have happened. This would have been fair to staff and fair comment about the report. This process is not a value judgement on the likelihood of the underlying conditions being met had Council voted in favour of pursuing a casino in downtown Toronto. The task is to consider whether the words amounted to a breach of Article XII.

I find that the repeated use of the phrase "nothing real" when applied to the report is an unfair portrayal of the report. So was the use of the word "fantasy." These words and phrases imply incompetence, gross negligence or worse on the part of the author. They deride an entire report that included public consultations, projections based on certain assumptions and statements that reveal those assumptions. I find that in describing the City Manager's report in these terms, the Councillor showed disrespect for the professional capacity of staff. This is a breach of Article XII of the *Code of Conduct*.

Resolution

A meeting was arranged among Councillor Vaughan, Councillor Layton and the City Manager, with the complainant being advised but not present. During the meeting, the City Manager expressed to both Councillors the impact of these words and the understanding that although not intended maliciously, that there had been a negative impact as a result of the repetition of the words used to characterize the report. It was an open and candid discussion which led to apologies being extended to the City Manager and an acknowledgement of the factual points of disagreement. The City Manager was fully satisfied with this outcome and this was communicated to the complainant.

The complainant requested one further action by Councillor Vaughan: that is to put the apology to the City Manager in writing with a copy to the other members of Council. The rationale for this request was that because the criticisms had been done publicly, that the corrective action should similarly be made public. The complainant made it clear that this was not required by the City Manager. Councillor Vaughan offered to rise in Council on a point of privilege to address the matter. Ultimately, it is for Council to decide on whether the matter has been satisfactorily resolved.

My recommendation in this report is that Council order no further actions or any sanction. My reasons for this recommendation are threefold. First, the apology extended by Councillor Vaughan to the City Manager was accepted and no further action was requested by the City Manager who was the person affected by the conduct. Second, this report is being made in public under City Council's Complaint Protocol. Therefore although the words of apology have not been made public, the fact of the apology is public and that affords a public recognition of the wrong done to the City Manager. Finally, I find that Councillor Vaughan was not motivated by malice or ill will towards the City Manager; rather, he failed to choose his words with care and did not think about the impact of his words on the City Manager.

Conclusion

In all of the circumstances, I recommend that City Council take no further action.

CONTACT

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SIGNATURE

(Original signed by Janet Leiper)

Janet Leiper
Integrity Commissioner
JL/ww

ATTACHMENT:

Article XII (Conduct Respecting Staff) – *Code of Conduct for Members of Council*

Article XII – Code of Conduct for Members of Council

CONDUCT RESPECTING STAFF

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No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.