



OFFICE OF THE INTEGRITY COMMISSIONER

REPORT REGARDING
CONDUCT OF
COUNCILLOR JIM KARYGIANNIS
(PARKING ENFORCEMENT)

Valerie Jepson
Integrity Commissioner
May 31, 2016

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INTRODUCTION

A member of the public (the "Complainant") filed a complaint alleging that Councillor Jim Karygiannis contravened Article XIV (Discreditable Conduct) of the *Code of Conduct for Members of Council* (the "Code of Conduct" or the "Code") because of a series of interactions between the Councillor and the Complainant's family in relation to a parking issue.

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 her family with respect to a parking enforcement matter. I recommend that City Council reprimand Councillor Karygiannis for his conduct.

INVESTIGATION STEPS

The complaint, filed on May 19, 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, I used the powers under the *City of Toronto Act, 2006* and the *Public Inquiries Act, 2009* to summons nine people to testify under oath.

In accordance with the Complaint Protocol, on January 20, 2016, I provided the Councillor with a statement of proposed findings. The Councillor provided me with 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 Accordingly, the findings of fact throughout this report are based on whether it is more likely than not that alleged events occurred.

FINDINGS

The Complainant and her family are long-time residents of Ward 39. At the relevant times, the Complainant lived with her mother, father and two sisters. From the perspective of the Complainant and her family, the Councillor is a well-known and

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.

prominent member of the community, having been a Member of Parliament for several years before becoming the Councillor for Ward 39 in 2014.

Initial Encounter: May 3, 2015

On May 3, 2015, the Complainant was driving home. Unbeknownst to her, she was driving behind the Councillor. The Councillor stopped his vehicle in front of the Complainant's home. The Complainant stopped behind the Councillor. The Complainant waited behind the Councillor expecting him to proceed so that she could make a right hand turn into her driveway. After some time, rather than waiting for the Councillor to proceed, the Complainant drove around the left side of the Councillor's stopped vehicle, turned right into her driveway, and parked her car.

The Councillor then pulled over, parked, got out of his vehicle and stepped on to the Complainant's driveway. The Complainant's father was also in the driveway.

The Councillor first spoke to the Complainant's father, then the Complainant. He testified that he was educating the Complainant's family that parking on the "apron", the area of a driveway between the sidewalk and the road, was prohibited and that since the cars in the driveway were parked on the apron, the family could get parking tickets. The Complainant and her sister testified that the Councillor threatened to have their cars towed.

The Complainant was surprised that the Councillor was talking to her father (instead of addressing her directly) and she assertively responded to him, disputing that it was illegal to park on the apron. (The Complainant and her family have parked on the part of the driveway known as the apron for many years and understood that it was permitted as long as a car was not parked overnight and did not block the sidewalk.)

The Councillor took photos of the cars in the Complainant's family's driveway, walked down the street to speak to a neighbour about apron parking, got in his vehicle and left the street.

I have not been able to make a conclusive finding about what words were exchanged other than to conclude that the topic of parking on the apron was discussed. Overall, I find that the exchange was surprising to the Complainant and her family, argumentative, and heated.

Tweets & Media Attention

Following the confrontation, the Complainant posted about it on Twitter, including a picture of the Councillor near his vehicle. The confrontation attracted media attention.

Subsequent Contact between Councillor and Complainant's Family

Approximately a week later, the Councillor returned to the Complainant's home, knocked on the door, and spoke to the Complainant's sister and her friend (a different sister than referred to above). He stated that there was a car improperly parked in the driveway and he asked that the car be moved. The Councillor spoke in a normal voice and was polite. After the Councillor left, the Complainant's sister and her friend moved the car.

The Councillor took a picture of a car in the driveway and posted it on Twitter, tagging the Complainant.

A few days later, on May 12, 2015, an incident occurred between the Councillor and the Complainant's father at a shisha bar which both men attended regularly. The Complainant's father was sitting with his friends when the Councillor entered the room, walked toward him and abruptly spoke to him about the parking issue. Councillor Karygiannis talked to him in a loud voice and the interaction was brief.

The Councillor explained that he was advising the Complainant's father about the parking bylaw and that violations could result in tickets. He stated that he asked the Complainant's father to please stop parking on the apron and that he may have used words like, "you'll be getting tickets" or "you could end up getting tickets."

The interaction caused the Complainant's father to feel uncomfortable and embarrassed. He was at a place where he met regularly with friends and he felt that he'd been singled out by the Councillor. His overall feeling was that the Councillor was publicly accusing him of doing something wrong. The Complainant's father was willing to talk to the Councillor about the issue but he was upset that the Councillor chose to approach him in public.

The Complainant's father was concerned by the Councillor's statement that his family would get tickets and when he arrived home that night, he checked to see if any tickets were issued.

On at least one other occasion the Councillor parked near the Complainant's home, unannounced, at night to take pictures of cars parked on the apron on the Complainant's street. While remaining in his vehicle, the Councillor took numerous pictures which were provided to Parking Enforcement and to this Office in the course of this investigation. The pictures are of cars only and do not include any individuals.

Following these multiple interactions, the Complainant's family decided together to call the police to report the family's encounters with the Councillor. As explained by the Complainant's father, the Councillor's actions caused his family to be scared of the Councillor.

Complaints to Parking Enforcement

Background – the role of a City Councillor with respect to enforcement

The Toronto Police Service (TPS) is responsible for enforcing the City of Toronto's parking bylaws. The Division of Municipal Licensing and Standards (MLS) is responsible for enforcing other bylaws.

Without encroaching on enforcement activities, councillors can play a helpful role with respect to encouraging bylaw compliance. For example, Councillors can carry out informal "ward tours" to help identify bylaw violations and other problems by *reporting* information, including photos, to parking enforcement or MLS. Councillors can have discussions with constituents about bylaws and can provide information to the public about bylaws in ward newsletters and in local newspapers.

Enforcement activity in relation to apron parking in Ward 39

TPS assigns sergeants to act as area supervisors with responsibility for overseeing parking enforcement in the City. The area supervisor acts as a liaison to councillors, who are able to contact the supervisor directly to address persistent or complex parking issues in their wards. The Sergeant assigned as the area supervisor for Ward 39 was interviewed.

Apron parking is prohibited in the Complainant's neighbourhood. Both the previous ward councillor and Councillor Karygiannis were concerned with apron parking in the ward and on the Complainant's street. Councillor Karygiannis contacted the Sergeant about the general issue of apron parking at a February 18, 2015 Scarborough Community Council meeting (prior to the initial interaction with the Complainant).

After the Councillor's first interaction with the Complainant, the Councillor contacted parking enforcement several times about apron parking on the Complainant's street, including at the Complainant's address. The Sergeant testified that his interactions with the Councillor about apron parking, including apron parking on the Complainant's street, were not – from his perspective – out of the ordinary.

Parking enforcement responded with patrols in the area because the Sergeant knew that apron parking was a pre-existing problem in the neighbourhood and because parking enforcement officers respond whenever a complaint is made (by a member of the public or a councillor).

Within a few weeks after the complaint was filed, the Complainant's family and a friend each received a ticket for apron parking in front of the Complainant's home.

ANALYSIS

I considered the following issues:

- 1) Did Councillor Karygiannis contravene Article VI (Use of City Property, Services and Other Resources) of the Code of Conduct?
- 2) Did Councillor Karygiannis contravene Article XIV (Discreditable Conduct) of the Code of Conduct?

Relevant provisions of the Code of Conduct are reproduced in Appendix A to this report.

Article VI: Use of City Property, Services and Other Resources

Article VI of the Code of Conduct prohibits members of Council from using City resources for purposes other than City business. Based on the alleged circumstances in this case, I considered whether Councillor Karygiannis used the authority and resources of his office (including his phones, email, and staff) to improperly cause or compel parking enforcement against the complainant and her family.

The evidence is that the Councillor made a number of calls to parking enforcement to report apron parking on the Complainant's street. He also reported an enforcement problem and the Sergeant with responsibility for the matter opened an enforcement file.

Based on the testimony of the Sergeant responsible, I am satisfied that the Councillor did not obtain *or request* any special relief or consideration by the TPS in relation to this issue. The Councillor was respectful of the fact that enforcement decisions are made by TPS and his actions did not contravene Article VI.

Article XIV: Discreditable Conduct

Article XIV of the Code of Conduct imposes a duty on councillors to treat the public appropriately and in accordance with their status as public office holders: respectfully and free from bullying, harassment, intimidation, and abuse.

The Councillor's stated intention was that he wished to inform the Complainant and her family that the City bylaws did not permit parking on the apron. The Councillor explained that his actions were consistent with his general practice of informing and educating his constituents about the City's bylaws. He frequently visits and speaks to individuals about concerns in his ward. He testified that he puts a priority on informing members of the public about bylaws that affect health and safety issues. For him, such efforts are part of his responsibility and duty as a councillor to protect the health, safety, and well-being of his constituents. He stated that his activities with respect to the Complainant and her family were no different than any other of his education activities.

I accept that the Councillor wished to inform the Complainant and her family about the bylaw, but this does not explain the vigour with which he pursued the issue in the weeks that followed the initial interaction.

After the initial interaction, the Councillor attended the Complainant's family's home at least twice and he separately contacted the Complainant's father in a community meeting place to – at best – inform him of, or – at worst – threaten him with – the risk of parking tickets. As a result, the Complainant and her family felt that they were being targeted by the Councillor.

The Councillor's interactions with the Complainant's family are of serious concern. His actions led to the reasonable impression that he had more authority to penalize the Complainant's family than he, in fact, has.

I find that the Councillor was frustrated by the Complainant's decision to tweet the initial confrontation and her unwillingness to accept his warning about the parking bylaw. His repeated visits and singular focus formed a pattern of actions that quite understandably surprised the Complainant's family and caused them to feel intimidated.

The Complainant and her family view the Councillor as a powerful political figure in their community and at the City, and they had a reasonable, albeit mistaken, belief that the Councillor had more of a role with respect to parking enforcement than he did. The Councillor bears full responsibility for this misunderstanding.

In this case, the Councillor should not have engaged in further direct dealings with the Complainant and her family after the May 3 confrontation. He was free to report the issue to TPS, which he did. His further actions were not necessary and caused the Complainant to believe that the Councillor was bullying her and her family with parking tickets as a result of their confrontation, a reasonably held belief.

Although the Councillor did not direct the issuance of tickets (he could not), his vigorous pursuit of this issue by repeatedly contacting the family, taking pictures and reporting parking infractions resulted in tickets being issued.

Article XIV of the Code of Conduct states that all members of Council have a "duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation...." The Code of Conduct must be interpreted in consideration of the key statements of principle set out therein. One such principle is that "Members of Council are expected to perform their duties in office ... in a manner that promotes public confidence and will bear close public scrutiny."

Councillor Karygiannis' repeated efforts to inform the Complainant and her family about the bylaw were intimidating and harassing. In this case, his actions have been counter to one of the key principles of the Code of Conduct. Rather than promoting public

confidence, the Councillor's actions have regrettably and likely irreparably undermined the trust and confidence that the Complainant and her family have in their elected representative. His actions were contrary to Article XIV of the Code of Conduct.

Councillor Karygiannis' Position

Throughout this case, Councillor Karygiannis has expressed concern that a finding of a Code breach could improperly fetter his ability to carry out his duties as a councillor. My findings in this case do not prohibit councillors from interacting with, or educating, their constituents about City bylaws. However, councillors must recognize when their interactions with constituents are no longer productive and refer enforcement issues to the appropriate enforcement agency. Further, councillors must be careful to avoid the perception that they are using their influence to target individuals with enforcement actions for personal reasons.

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 measure is an apology or a requirement to repay or reimburse moneys received.³ 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 that the Councillor apologize.

In his formal response to this Complaint, the Councillor expressed regret for his actions in the following terms:

Although I feel that I did not do anything wrong, I can understand how the complainant and her father may have perceived my actions differently and might have felt intimidated. I apologize for any negative feelings that I may have caused [the Complainant] and her father....

The Councillor's sentiments have not changed substantially over the course of this investigation.

From the Complainant's perspective, she pursued this process so that she could obtain clarification about the parking rules⁴ and a determination by this Office about whether the Councillor's conduct was acceptable. She was not satisfied with the apology above

³ *Madger v. Ford, 2013 ONSC 263 (Canlii)* at para 67 (<http://canlii.ca/t/fvsgj>).

⁴ The Complainant also stated that she wished to be provided with accurate information about the parking rules on her street. I have provided the Complainant with contact information to enable her to obtain this information and ask questions that she may have.

but remained open to accepting another apology if the Councillor's conduct was found to have contravened the Code of Conduct.

For a sincere and 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 are appropriate in some cases, they are not necessary for Council to convey the seriousness with which it views councillor misconduct. A public report that a member of Council has contravened the Code of Conduct 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.

There are some factors that suggest that no remedial measure or sanction is necessary. Councillor Karygiannis is a relatively new member of Council, the incidents in this report occurred within his first six months of office, during a time when he was learning about the role of a municipal councillor. He has cooperated with this investigation and he has not previously been found to have contravened the Code.⁵

There are some factors that suggest that a firm remedial action or sanction is necessary. The conduct in this case, involving multiple interactions, created the reasonable perception that the Councillor was targeting enforcement actions at the Complainant's family, even after the Councillor had time to consider his actions. Considering that a councillor's role includes building and maintaining the trust of his or her constituents, the Councillor's conduct is shocking and had the cumulative effect of irreparably harming the Complainant's and her family's trust and confidence in the Councillor. More importantly, the Councillor's actions led to a reasonable belief that the separation between elected officials and enforcement had been blurred and accordingly damaged the trust and confidence that the Complainant and her family had in the institution of the City of Toronto.

Balancing the above considerations, it is my view that because of the repeated interactions and the harm caused, a firm remedial action in the form of a reprimand is necessary to demonstrate Council's commitment to principles and standards in the

⁵ 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.

Code of Conduct and to assure the Complainant and her family of the integrity of the parking bylaw enforcement mechanisms in place at the City of Toronto.

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 City Council:

1. Adopt a finding that Councillor Karygiannis contravened Article XIV (Discreditable Conduct) of the Code of Conduct; and,
2. Reprimand Councillor Karygiannis.

Valerie Jepson
Integrity Commissioner
May 31, 2016

APPENDIX A

Relevant Code of Conduct Provisions

VI. USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

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.

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*.