



OFFICE OF THE INTEGRITY COMMISSIONER

REPORT REGARDING THE CONDUCT OF COUNCILLOR JOSH MATLOW

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Integrity Commissioner
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INTRODUCTION

The CEO of Transit Alliance, a transit advocacy group, (the Complainant) filed a complaint alleging that Councillor Josh Matlow contravened the *Code of Conduct for Members of Council* (the Code of Conduct) for statements he made in a radio interview about the City's Executive Director of Strategic and Corporate Policy (referred to below as the Executive Director).

For the reasons that follow, I find that when the Councillor made the statements, he acted contrary to Article XII (Conduct Respecting Staff) of the Code of Conduct. Prior to learning about the complaint, the Councillor apologized for his statements. In consideration of the Councillor's apology, I recommend that Council adopt a finding that the Councillor contravened the Code of Conduct but take no further remedial or punitive action.

THE COMPLAINT

The complaint raised concerns about the Councillor's statements in a radio interview that occurred on the October 25, 2016 edition of the CBC's Toronto morning radio program. During the interview, the Councillor personally named the Executive Director and suggested that he had made untrue statements or misleading suggestions to Council.

The complaint asserted that the Councillor's statement was a "public verbal attack on a city staff member" and therefore contravened Article XII (Conduct Respecting Staff). The Complainant said that the Councillor's statement about the Executive Director was unjustified and that it "damaged the reputation of [the Executive Director]." The Complainant said that the Executive Director was owed an apology.

As described in more detail below, the Councillor publicly stated that he was wrong to suggest that the Executive Director misled Council and apologized. The Complainant was not aware of the apology when the complaint was filed but was informed about it during the intake review. The Complainant advised that she wished for the complaint to be investigated as a matter of accountability.

INQUIRY STEPS

The complaint was filed on November 16, 2016. The exchange of reply and response in accordance with the Complaint Protocol was completed on December 9, 2016. I reviewed the radio interview, the relevant Council debate, the Councillor's apology, and interviewed the Executive Director, the City Manager and the Councillor. On March 9, 2017, as contemplated by the *Code of Conduct Complaint Protocol for Members of*

Council, I provided the Councillor with a statement of proposed findings and an opportunity to make submissions.

FINDINGS

At its July 2016 meeting, City Council considered a staff report titled, "Developing Toronto's Transit Network Plan to 2031." During Council's consideration of the report, the Executive Director answered questions asked by Councillor DeBaeremaeker relating to the terms of a Master Agreement¹ between the City and the Province of Ontario.

On October 24, 2016, the *Toronto Star* published an article about various issues with respect to the Toronto transit network file that (among many other things) specifically referred to the questions and answers between the Executive Director and Councillor DeBaeremaeker.

Councillor Matlow appeared on the October 25, 2016 edition of the CBC's Toronto morning radio program to react to the *Toronto Star* article. The interview lasted approximately nine and a half minutes. In the last minute of the interview, the Councillor said,

If you read over not only what the TTC said but even what the City Manager's staff Peter Notaro [the Executive Director] said at the City Council meeting during the vote, you'll know that there were factually untrue statements made, or misleading suggestions left that swayed the votes.

The Executive Director did not hear the Metro Morning interview but on the same day, several colleagues brought it to his attention. He was bothered by the statement after reflecting on his sense of the role of the public service. He understood that City staff are in the public eye more than public servants at other orders of government, but he found the remark concerning and, in particular, was upset at any suggestion he had misled Council. He reviewed his remarks and remained confident that he had provided his best advice. Having satisfied himself that his advice was sound, the Executive Director moved on from the issue.

The City Manager (the Executive Director's direct superior) was separately informed of the statement, reviewed the interview, and became concerned about how the statement could impact on the personal and professional reputation of his staff member. The City Manager was concerned in this case because the Executive Director's name was used and the interview was in relation to a variety of issues, some of which were unrelated to

¹ Building Canada Fund and the Toronto-Metrolinx Light Rail Transit Master Agreement, 2012.

the Executive Director's role. The City Manager spoke with the Executive Director and, separately, Councillor Matlow about the issue.

The City Manager and Councillor Matlow had several discussions, and the City Manager told the Councillor that he owed the Executive Director an apology.

The Councillor was conflicted about how to respond to the City Manager because he had – and continues to have – concerns about the information leading to the decisions on the transit file. However, on reflection, he realized that he had no basis to support any suggestion that the Executive Director had acted improperly.

At the November 2016 City Council meeting, the Councillor rose on a point of personal privilege and said:

Thank you. I'd like to rise on a point of privilege. This is a matter that I have struggled with and I think that I have a duty to just comment on something that I said in the interview following the Scarborough transit debate. I believed, as I do today, that there was information that I still contest, that I'm still not convinced of. I also believe that I conflated a number of different articles of information that were provided to City Council and I think I made an error by naming a specific member of our City staff. I named Peter Notaro. While I still have questions about the information that was provided, I need to hold myself to the same standard that I repeatedly demand of others, which is that you should make evidence-based decisions. I may have had my beliefs, but I can't demonstrate or prove this gentleman's intention or motivation. In fact it's wrong to say anything that would imply anything other than what he said was what he truly believed. So I say this simply just to put on the record that I was wrong to mention his name and that I do want to offer my sincere, most genuine apology.

The Executive Director and the City Manager were present and watched the Councillor's apology. In this investigation, the Executive Director and the City Manager said that it was important that the Councillor apologized and that because of the apology they considered the matter at an end.

ANALYSIS

The issue in this case is that the Councillor made an unfounded, publicly-broadcast statement that the Executive Director *misled* City Council. The Councillor admitted he had no basis to make any such assertion. He publicly said so and he apologized.

The Code of Conduct and the Toronto Public Service Bylaw

Article XII of the Code of Conduct (Conduct Respecting Staff) addresses the relationship between members of Council and City staff. Article XII affirms that all City staff serve Council as a whole, under the direction of the City Manager. The Code states that,

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.² [Emphasis added.]

The Integrity Commissioner and City Council have considered the application of Article XII to councillors' public statements about members of staff on four previous occasions.³

In December 2015, an important companion to Article XII came into force: the Toronto Public Service Bylaw.⁴ The Bylaw affirms that the Toronto public service has the following values:

- Serve the public well
- Serve Council well and/ or their Board well
- Act with integrity
- Maintain political neutrality
- Uphold Toronto's motto – *Diversity Our Strength*
- Use City property, services, and resources responsibly
- Apply judgement and discretion
- Serve the Public Service well⁵

The Toronto Public Service Bylaw entrenches the values of neutrality and professionalism in the public service. By virtue of Bylaw, members of Council and the public can rely on the political neutrality of the public service. It is for this reason that

² Article XII is set out in its entirety in Appendix A to this Report.

³ Integrity Commissioner Report to Council, July 8, 2013: Councillor Mike Layton, available at <http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-60181.pdf>; Integrity Commissioner Report to Council, July 8, 2013: Councillor Adam Vaughan, available at <http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-60183.pdf>; Integrity Commissioner Report to Council, October 23, 2012: Mayor Rob Ford, available at <http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-56213.pdf>; Integrity Commissioner Report to Council, October 23, 2012: Councillor Michelle Berardinetti, available at <http://www.toronto.ca/legdocs/mmis/2012/cc/bgrd/backgroundfile-51455.pdf>.

⁴ Chapter 192 of the Toronto Municipal Code.

⁵ Available at

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=5d1b1ead0360d410VgnVCM10000071d60f89R CRD>.

members of Council should not treat public servants as *political adversaries* or *political allies* when debating matters of public policy.

In consideration of the prior cases and with the benefit of the Toronto Public Service Bylaw, the following principles can be discerned when applying Article XII to individual councillors' public statements about staff or staff reports:

- When making a public statement about staff reports or staff actions, members of Council should ensure that their comments are in the nature of "fair comment" and related to the substance of the report.
- Extra caution is warranted for public comment broadcast in mass media because staff do not have the same platform or ability to respond as members of Council.
- Members of Council should not single out or impugn personal motivations or agendas to particular members of City staff.
- Concerns about staff performance or conduct should be addressed with the City Manager and should never be aired publicly.

The health of the relationship between Council and staff is a matter of importance⁶ and it is why Article XII is included in the Code of Conduct. Indeed, the Council-staff relationship is one of the key relationships at the City of Toronto; its health goes beyond any personal relationships that may be the focus of any particular investigation.

Application to the circumstances of this case

In the radio interview, the Councillor suggested that the Executive Director misled City Council. To mislead Council, an intentional act, is one of the most serious allegations that one can make about a member of the public service. In this case, the suggestion that he misled Council struck to the very core of the Executive Director's understanding of his role within the City. In consideration of the larger principles at stake, it was understandable why the City Manager deemed it necessary to take up this issue with the Councillor.

The Councillor's statement, made in a mass media forum was not in the nature of fair comment. It unfairly called into question the Executive Director's integrity and professional reputation and suggested he had a motive other than those set out in the Public Service Bylaw. When the Councillor made the statement, he acted contrary to the duty set out in Article XII of the Code of Conduct.

⁶ In 2015, former Deputy Minister of Municipal Affairs Michael Fenn fashioned some very practical advice about successful Council-staff relations. I recommend that members of Council read this advice in its entirety. Fenn, Michael, "Successful Staff/Council Relations: Old Lessons for New Challenges", AMCTO Policy and Management Briefs, Issue 02, August 17, 2015, *available at* http://www.amcto.com/imis15/Documents/Resources%20and%20Pubs/Fenn_Council%20Staff%20Relations_Final%20.pdf (last accessed March 9, 2017).

Remedial action or penalty

In all four cases where Council has considered similar matters, apologies were privately given to City staff after the investigation. On the basis of the apologies provided, the Integrity Commissioner recommended that Council adopt a finding that the member had contravened the Code but that no further action be taken.

In this case, the Councillor publicly apologized for his comments, and I find that the apology offered was sincere and unequivocal. From the perspective of the City Manager and the Executive Director, the matter has been resolved. In my view, no further remedial action is necessary.

CONCLUSION

I find that the Councillor contravened Article XII (Conduct Respecting Staff) of the Code of Conduct. I recommend that Council adopt this finding but – in recognition of the Councillor's statement and his apology – impose no penalty or remedial action on the Councillor.

Respectfully,



Valerie Jepson
Integrity Commissioner
April 20, 2017

APPENDIX A

Article 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.

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.