



OFFICE OF THE INTEGRITY COMMISSIONER

REPORT REGARDING THE CONDUCT OF COUNCILLOR MICHAEL THOMPSON

**Valerie Jepson
Integrity Commissioner
June 15, 2018**

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INTRODUCTION

On February 2, 2017, Councillor John Filion made a complaint alleging that Councillor Michael Thompson contravened Article VIII (Improper Use of Influence) of the *Code of Conduct for Members of Council* ("Code of Conduct") by making – or directing his staff to make – inquiries on behalf of G Group, the principal of which is Councillor Thompson's friend, Albert Gasparro. (Referred to herein as the "First Complaint.")

On November 7, 2017, Councillor Filion made a second complaint alleging that Councillor Thompson contravened Articles XIV (Discreditable Conduct) and XVI (Reprisals and Obstruction) of the Code of Conduct for spreading rumours about him as an act of retaliation for the First Complaint. (Referred to herein as the "Second Complaint.")

For the reasons that follow, I find that Councillor Thompson contravened Article VIII of the Code of Conduct for using his office to assist and advocate for G Group regarding its development project at 5220 Yonge Street (the "Project"). I do not find a contravention regarding other articles of the Code of Conduct.

I recommend that City Council:

- adopt a finding that Councillor Thompson contravened Article VIII (Improper Use of Influence) of the Code of Conduct;
- direct that Councillor Thompson refrain from using his office to make further inquiries or advocate for matters at the request of or on behalf of Albert Gasparro or G Group; and,
- reprimand Councillor Thompson.

INVESTIGATION STEPS

The exchange of response and reply for the First Complaint, as contemplated by the Code of Conduct Complaint Protocol for Members of Council (the "Complaint Protocol"), was completed on March 3, 2017 and the investigation commenced immediately. I compelled electronic records from the offices of Councillor Thompson and Filion directly, and through the City's Risk Management, Cyber Security & Compliance division. I obtained corporate searches and directed open source internet research about the relationship between Councillor Thompson and Mr. Gasparro.

I interviewed eight people, including the parties to this complaint, City staff, and Mr. Gasparro. Those with specific knowledge of the events were interviewed under oath.

The investigative steps relating to the First Complaint were concluded in late-August 2017, and on September 28, 2017 I provided Councillor Thompson with a Proposed Statement of Findings, to provide him with an opportunity to respond. I received a detailed response from Councillor Thompson's legal counsel on October 25, 2017. That response, as well as Councillor Thompson's earlier formal response to the First Complaint, is summarized and addressed throughout the balance of this report.

On November 7, 2017, Councillor Filion filed the Second Complaint alleging that Councillor Thompson was smearing his reputation and retaliating against him for filing the First Complaint. I determined that the two complaints should be joined and followed the Complaint Protocol with respect to the new allegations. The exchange of response and reply for the Second Complaint was completed by December 7, 2017. Councillor Thompson's second formal response is also summarized and addressed throughout the balance of this report.

The investigation into the Second Complaint consisted of second interviews with Councillors Filion and Thompson, and *as it relates to Councillor Filion's conduct* consideration of evidence obtained in the context of another ongoing investigation. As will be explained in more detail below, in August 2017 the Auditor General requested that my office conduct an inquiry *into Councillor Filion's conduct*, which contained allegations similar in nature to assertions that Councillor Thompson made in his defence of the First Complaint. Accordingly, I relied on some of the evidence gathered in that respecting Councillor Filion's Second Complaint.

On May 14, 2018 I informed Councillor Thompson (through his counsel) of my intention to recommend that he be reprimanded with respect to the First Complaint, and I received submissions from him about that issue.

I have intentionally refrained from listing the names or titles of City staff interviewed because I do not believe they are necessary to understand the findings. In so doing, I am exercising my discretion to only include information necessary to understand the report, informed by my duties under section 162 of the *City of Toronto Act, 2006* and the Ontario Divisional Court's 2016 decision¹ respecting the identical reporting obligation in the *Municipal Act, 2001*.²

¹ *Michael Di Biase v. City of Vaughan and Integrity Commissioner of the City of Vaughan*, 2016 ONSC 5620 (CanLII)

² *Municipal Act, 2001*, S.O. 2001, c. 25. See particularly section 223.6.

OVERVIEW OF COMPLAINTS AND ISSUES FOR INVESTIGATION

The essence of the First Complaint was that Councillor Thompson used his position as councillor and Chair of the Economic Development Committee to benefit his friend. Councillor Thompson admitted that he made inquiries on behalf of G Group, but he defended his actions in three ways. First, he said that there is no restriction against councillors involving themselves in other wards, and he referred to prior guidance issued by former Integrity Commissioner David Mullan. Second, he said that the actions he took (or directed) on behalf of G Group were no different than he would have taken for any other applicant similarly situated. Third, he said that actions taken by Councillor Filion toward the G Group were so manifestly unjust that he had no choice but to intervene.

The First Complaint also alleged that Councillor Thompson had urged City staff to act within "specified periods of time." I determined that this allegation required consideration of Article XII (Conduct Respecting Staff) of the Code of Conduct.

The Second Complaint asserted that Councillor Thompson was involved in a "concerted effort" to damage Councillor Filion's reputation by "spreading insinuations and allegations that [he] was involved in improper activities and [he has] received financial benefit for so doing." Councillor Filion asserted that Councillor Thompson was engaging in this activity as retaliation against him for making the First Complaint. Within the Second Complaint, Councillor Filion referred to an anonymous letter that contained allegations about his conduct that was circulated to some city councillors and city staff in summer 2017. The Second Complaint asserted that Councillor Thompson's actions were contrary to Article XIV (Discreditable Conduct) and XVI (Reprisals and Obstruction).

Councillor Thompson responded that the Second Complaint was without merit, and advised that the existence of the First Complaint was known at City Hall because of interviews that had taken place, or because Councillor Filion had told people about it. Councillor Thompson added that he had "sought advice from a small number of other Councillors, asking them about how they would respond to his concerns about Councillor Filion's alleged unjust actions "vis-a-vis" G Group. Councillor Thompson was aware of the anonymous letter, but disclaimed any role in relation to it.

FINDINGS OF FACT

In making findings of fact, I apply the standard of proof identified by the Supreme Court of Canada for fact-finders in civil cases—a balance of probabilities.³ This 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."⁴

Background Overview

In July 2012, City Council approved the redevelopment of land located at 5220 Yonge (the "Land"), located within Councillor Filion's ward. However, before zoning bylaws could be amended, or necessary agreements between the City and the then-owner (Centrium) finalized, Centrium abandoned the redevelopment project.

In December 2013, G Group acquired the Land and sought to re-engage Councillor Filion and the City. G Group is a real estate development and construction company with experience primarily in Mississauga. Albert Gasparro is the CEO of G Group. G Group is referred to herein as the Applicant.

On December 15, 2015, the Applicant applied for a revised Zoning By-law Amendment, a Site Plan, Rental Housing Demolition, and Conversion. Those applications are collectively referred to in this report as the "Application". In March 2017, City Council considered and made necessary approval decisions with respect to the Application.

Relationship Between Councillor Thompson and Albert Gasparro

Councillor Thompson is a long-time friend of one of the Applicant's principals, Albert Gasparro. They first met in 1984 when they worked together at New York Life Insurance Company, and they have remained in contact since that time, regardless of their changing roles and professions. Mr. Gasparro attended Councillor Thompson's Council swearing-in at the Councillor's invitation. Mr. Gasparro described Councillor Thompson as a "very old friend" who he stays in touch with regularly.

Councillor Thompson knew Mr. Gasparro's now-adult children when they were young. There are years when the two men see more of each other than others. It was established that they spoke and saw each other frequently in 2016 and 2017 (the period of time during which significant activity took place in relation to the Application). During that time period, the Councillor's staff also arranged tickets for Mr. Gasparro to TIFF and

³ *F.H. v. McDougall*, [2008] 3 SCR 41, 61; 2008 SCC 53 (SCC), available at <http://canlii.ca/t/20xm8>.

⁴ *Ibid.* at 61.

Toronto Fashion Week. On one occasion, Councillor Thompson arranged for Mr. Gasparro to be his invited guest at a business opening in the Entertainment District.

City staff who were interviewed believed that Councillor Thompson "knew" or "was friends" with Mr. Gasparro. Councillor Thompson testified that he told City staff he was "friends" with the "principals of" the Applicant. Councillor Thompson vouched for the Applicant's *bona fides* to staff based on his own personal knowledge, telling staff that the principals of the Application were "good guys." Councillor Thompson testified that he told staff about this relationship because he did not wish to hide the fact, and because he believed that if staff thought he was "crossing the line", they would tell him.

I find that Councillor Thompson and Mr. Gasparro have a bond and a kinship between them; they are familiar with each other's lives, and their lives are connected.

Project Engagement

The two men have another notable connection. Councillor Thompson is a co-founder of an organization called Project Engagement. Councillor Thompson and Mr. Gasparro both testified about the genesis of the organization and their roles in it. According to their testimonies, Councillor Thompson and Mr. Gasparro worked together in an *ad hoc* manner to support the community by providing Christmas hampers to families in need. After a few years of informal operation, Mr. Gasparro asked his son to become involved. Councillor Thompson then joined with Mr. Gasparro's son to found the organization that is now known as Project Engagement.

However, Councillor Thompson said that although he is a co-founder of Project Engagement, he has very little ongoing involvement in the organization's activities. Nonetheless, the evidence is that staff in Councillor Thompson's office volunteer their time on Project Engagement, the Councillor and his staff are concerned about communications about Project Engagement's activities, and Project Engagement's website itself indicates that the Councillor is a founder. Councillor Thompson remains publicly and prominently associated with Project Engagement.

On Project Engagement's website, G Group is listed as a 'Partner' and 'Sponsor' for 2015, and as a 'Partner' for 2016.

Ownership or Similar Interest in the Applicant, the Land or the Application

Councillor Thompson testified under oath that he has no ownership interest, either direct or indirect, in the Applicant, which Mr. Gasparro corroborated under oath. I uncovered no information to suggest that Councillor Thompson has any financial interest in the Applicant, the Land, or the Project.

G Group Meets with Councillor Filion

Representatives of the Applicant met with Councillor Filion in May 2013 prior to acquiring the Land; again in August 2013 after conditionally acquiring the Land; and, again in December 2013 after acquiring the Land, firm. Email records during that time period indicate that Mr. Gasparro's son was involved in arranging the meetings for his father through a contact in Councillor Filion's office. These calls were redirected to the staff person responsible for planning matters in Councillor Filion's office.

In September 2013, as a result of the above meetings, staff in Councillor Filion's office was working to gather information for the Applicant about options for complying with affordable housing obligations for the Project.

In September 2013, Mr. Gasparro also contacted staff in Councillor Thompson's office to obtain assistance about one of the issues already under discussion between the Applicant and Councillor Filion (relocation of an impacted tenant). Unbeknownst to each other, staff in Councillor Thompson and Councillor Filion's offices continued liaising with City staff on the tenant relocation issue between February and April 2014.

Councillor Filion and Mr. Gasparro exchanged emails in January 2014, and City staff met with representatives of the Applicant in February 2014. Councillor Filion kept informed about progress through briefings from City staff, including a meeting that occurred on March 5, 2014.

A Referral to a Consultant?

It is unnecessary for me to make detailed findings of fact about what happened or was said at the above-described meetings. The descriptions of the meetings as told by Mr. Gasparro and Councillor Filion are generally similar, and are consistent with records from the same time period. Mr. Gasparro and his associates sought to gain Councillor Filion's support and to have a friendly relationship. Councillor Filion consistently directed the Applicant to City staff, and reiterated that the terms of the 2012 approvals by City Council (when Centrium was the owner/applicant) were strict and that he was supportive of the Project if the terms of those approvals were respected.

Mr. Gasparro found it frustrating that Councillor Filion directed him to staff because he wished to have a main communication line with the Councillor. Councillor Filion repeatedly conveyed that he would not be the main contact, and that he should speak with City Staff. The evidence is clear that Councillor Filion sought updates from City staff about progress of the file.

There is one particular issue that requires further comment. In defence of the First Complaint, Councillor Thompson testified and submitted (through legal counsel) that Mr.

Gasparro told him that Councillor Filion told Mr. Gasparro that he should hire a particular consultant, George Belza, to help with the Application. The reason this is relevant, says Councillor Thompson, is that he and Mr. Gasparro believe it was because G Group refused to hire Mr. Belza that Councillor Filion sought to undermine the Project.

Mr. Gasparro testified that Councillor Filion told him two times to hire Mr. Belza. Councillor Filion denied that this happened, but testified that it was possible that Mr. Belza's name came up during those meetings. He said the reason Mr. Belza's name could have come up is because Mr. Belza had been retained by counsel for the prior land owner (Centrium), and had a role in devising the existing approvals. The facts about Mr. Belza's prior involvement were confirmed through testimony obtained from Mr. Belza and records obtained from the City.

Councillor Filion attends almost all planning meetings with a senior staff person assigned to planning matters in his office. This staff member produced all of the notes taken during meetings on this file. There was no reference to Mr. Belza in these notes, but there was reference to the fact that the Applicant hired the same architect as the prior owner – a fact that Mr. Gasparro testified to. This stood out to me because it was in the context of a discussion about ways that G Group could try to expedite the process.

Notwithstanding Mr. Gasparro's view that the Project was "simple" and was to be based on the 2012 approval, I find that there were many components to the Project that required additional work. The evidence is that the Application was complex—indeed, it required a fresh application to the City, new zoning bylaws, a section 37 agreement⁵ (including resolution of issues owing to a shared social facility with an adjacent property *owned and under construction by a completely different development company*), concerns about ensuring commercial use of one of the towers, and engineering problems. The development also required the City to sell certain land to the Applicant. As I have come to understand it, the land transaction provided the City with leverage to arrive at an agreeable outcome, and so it was necessary for there to be significant coordination across City divisions.

I find that Councillor Filion mentioned Mr. Belza during one or more of his meetings with Mr. Gasparro, and Mr. Gasparro understood Councillor Filion to be suggesting or recommending that he retain Mr. Belza to help with the Project. However, I find that the reason Councillor Filion mentioned Mr. Belza's name was because of Mr. Belza's prior experience with the *very property* that G Group had purchased and was trying to move

⁵ A "section 37 agreement" refers to an agreement to establish terms between the City and certain development applicants to provide benefits to construct or improve community facilities.

forward with. I conclude that there was nothing more to the fact that Councillor Filion mentioned Mr. Belza than what I have found above.

As is described more fully in another report being filed today,⁶ there is a rumour among some players in the North York land use planning field that there is an improper arrangement or referral scheme between Mr. Belza and Councillor Filion. As I conclude in the other report, the evidence does not support that assertion.

The Land Sale

In early 2014, City staff began taking steps to address one component of the transaction—the sale of two small parcels of City land to the Applicant that were critical to the overall Project. In Summer 2014, Councillor Filion convened a meeting across City divisions before moving forward with the sale aspect of the Application. Mr. Gasparro spoke with Councillor Filion and his staff in August 2014 requesting his assistance to move the project through the process. Councillor Filion asked Mr. Gasparro to continue working with City staff.

Representatives of the Applicant met with City staff in December 2014, and Councillor Filion inquired about progress in a meeting with City staff in early-January 2015.

Councillor Thompson invited Mr. Gasparro and his son to attend a special dinner to honour Shimon Peres in July 2015. Councillor Thompson's office phone logs indicate that he and Mr. Gasparro spoke in August 2015. Councillor Thompson's office arranged for Mr. Gasparro to attend TIFF in September 2015. In October 2015, Councillor Thompson and Mr. Gasparro attended an event together hosted by Liberty Entertainment Group.

In his formal response to the Proposed Statement of Facts, Councillor Thompson indicated that his Executive Assistant is also friends with Mr. Gasparro, and so some of the phone calls to his Office may not have been intended for the Councillor. However, this fact does not assist Councillor Thompson because the staff of members of Council are representatives, or alter egos, of their supervising member. In any event, the evidence is that the executive assistant took the steps that he took relating to the file because Councillor Thompson expected him to do so.

A New Application is Required

In Fall 2015, City staff had discussions with Councillor Filion about procedural issues respecting the Application. City staff were trying to determine whether a fresh

⁶ Integrity Commissioner Report Regarding the Conduct of Councillor John Filion (June 15, 2018)

application was required. Councillor Filion and City staff discussed different options for community consultation, if necessary.

City staff met with representatives of the Applicant in October, and in November 2015, City staff determined that a new application was required. An application was so filed in December 2015.

I find as a fact that there was a view among some City staff that the Applicant experienced some challenges because they were unfamiliar with some of the procedural requirements and expectations of the approval process in Toronto. That is relevant, and I find that some of the delays the Applicant experienced were attributable to the Applicant's own actions and unfamiliarity with the relevant procedures.

Councillor Filion met with City staff about the Application in February 2016.

In May 2016, Community Planning staff completed their review of the Application and reported back to the Applicant. Mr. Gasparro was upset, among other things, about some of the requirements the Applicant was being asked to comply with regarding an existing tenant on the Land, and he expressed his concern with staff in Councillor Thompson's office.

Councillor Thompson Becomes More Involved

Starting in June 2016, Councillor Thompson's staff began to regularly follow up with City staff regarding the Application. Councillor Thompson or his staff also escalated the file to the Deputy City Manager, and brought it to the attention of the Mayor's Office.

Around that time Councillor Thompson and his staff formed a view that Councillor Filion was intentionally attempting to delay the progress of the file, or that Councillor Filion was placing unreasonable requests on City staff. I found no evidence that Councillor Filion had any role in relation to City staff's conclusions and recommendations, although he was pushing staff to be sure that the Project would be built with a commercial component.

Throughout the duration of the file, Councillor Filion and his staff were asking questions about the terms of the sale, the section 37 agreement, whether the City had sufficient assurance regarding the use of the development, and the conveyance of public space adjacent to the development. Councillor Filion testified that he was skeptical of the Applicant's commitment to build commercial space. The Applicant is not the only developer in Councillor Filion's ward who has faced this kind of skepticism from Councillor Filion. In the course of this file, and the inquiry completed on referral from

the Auditor General, I have learned that commitments and/or obligations to build commercial space is a frequently-fought battle in Councillor Filion's ward.

Staff in Councillor Thompson's office arranged for Mr. Gasparro to use Councillor Thompson's TIFF tickets in September 2016. Starting that month, staff in Councillor Thompson's office began keeping a detailed log of contacts with City staff and Mr. Gasparro regarding the Application. The log indicates that from September 2016 until the Application was approved in March 2017, Councillor Thompson's staff *made at least 60 contacts* with City staff relating to the Application. These inquiries were usually prompted when Mr. Gasparro called expressing dissatisfaction with the amount of time City staff were taking to resolve issues.

In Fall 2016, a new engineering issue arose that took time to resolve. Mr. Gasparro was again frustrated about the length of time it took for staff to respond and deal with the issue. The evidence is clear that Councillor Filion had no role in raising or flagging the engineering issue.

In September 2016, there was some sense that the Application could be brought before the November 8, 2016 City Council meeting. In the early weeks of October 2016, City staff continued to work on drafting terms to address concerns raised by Councillor Filion. Councillor Filion wanted to be sure that the City had done all that it could to guarantee that the Project would include a commercial component.

In October 2016, Councillor Thompson contacted my office for advice about what he perceived Councillor Filion to be doing. I provided Councillor Thompson with information about how to make a complaint.⁷ I also told Councillor Thompson that he may wish to seek written advice from me. Councillor Thompson did not file a complaint and did not seek my written advice.

The Matter Heads to City Council

On at least two occasions, the matter did not proceed to the next possible Council meeting because City staff determined that the matter was not ready. City staff developed informal communication strategies to convey this news to Councillor Thompson's office and to provide assurances that efforts were underway to move the matter forward.

In 2017, staff from several City divisions were working to bring all components of the matter forward to necessary committees and, eventually, City Council. Councillor Thompson's office was following up. Councillor Filion persisted in his efforts to ensure

⁷ I include these facts because Councillor Thompson referred to it in his response to the Proposed Statement of Findings.

that the terms of the City land conveyance and the section 37 agreement contained sufficient language to ensure that the project would contain some commercial components. This involved, for Councillor Filion's part, discussions with senior City staff and lending support for other solutions and assurances that could be offered to G Group such as possible tenants for the commercial space.

The matter was eventually brought to the March 2017 City Council meeting, and after a significant concession by the Applicant, the necessary approvals were obtained with Councillor Filion's support.

The Impact of Councillor Thompson's Involvement

In some of his dealings on this file, Councillor Thompson told City staff that he was friends with, or knew, the Applicant. But in other cases, he and his staff indicated that the reason he was making the inquiries was because he was the Chair of the Economic Development Committee.

Mr. Gasparro testified that, from his perspective, it was not until Councillor Thompson became involved that the matter began to progress. He explained that he believed that "things started to break" when City staff became aware that there was "another pair of eyes" on the file. He explained that he called or spoke to Councillor Thompson because "he was the only guy [he] really knew" at the City.

Councillor Thompson and his staff urged no specific substantive outcome (e.g., sale price, terms), but they persistently advocated for timely review by staff. Staff working on the file were responsive to questions and queries from Councillor Thompson's staff, and felt a duty to report in about progress on the matter. Staff were similarly responsive to Councillor Filion and his staff, although the evidence is clear that he was not making as many inquiries regarding status and progress.

Disparaging Comments

The evidence is that Councillor Thompson spoke to a handful of Council colleagues and the Mayor's Office about the concerns raised by Mr. Gasparro. He also contacted people with experience in land use planning in North York to ask questions about Councillor Filion's approach to dealing with developers. These inquiries pre-dated the First Complaint. Councillor Thompson also testified that he received unsolicited contacts from people who were dissatisfied with Councillor Filion for various reasons.

Councillor Thompson, as well, took issue with what he believed to be disparaging statements made by Councillor Filion about his conduct, likely prior to Councillor Filion's decision to file the First Complaint. He said that Councillor Filion was casting

aspersions on him, telling colleagues that Councillor Thompson was only helping with the matter because of his friendship (among other things).

I refer to Councillor Thompson's concerns not because they are the subject of this investigation, but to situate Councillor Filion's concerns in context.

With respect to the anonymous letter referred to in Councillor Filion's Second Complaint, Councillor Thompson testified that he had no role in relation to that letter at all. I accept his evidence, based on his testimony and also because it became clear to me there is a long list of individuals who have propagated this rumour for years before – I find – it ever came onto Councillor Thompson's radar.

DISCUSSION AND ANALYSIS

Article XII (Conduct Respecting Staff)

Article XII, together with City policies, recognizes that councillors will advocate for constituents and seek information and make other requests of staff, but that councillors doing so would contravene the Code if they interfere with staff's ability to do their duties by using, or attempting to use, their "authority or influence for the purpose of intimidating, threatening or coercing, commanding or influence any staff member with the intent of interfering with that person's duties."

I have concluded that the diligent interventions by Councillor Thompson and his staff did not direct any substantive staff actions or outcomes. I am satisfied that, although persistent, the inquiries were respectful of the City staff's professional responsibilities. There were times when City staff had to set new timelines and pushed back when requests were unreasonable or impractical. This is not a welcome situation to put staff in, but I am satisfied that the interactions did not contravene Article XII.

Article XIV (Discreditable Conduct)

Article XIV (Discreditable Conduct) requires members of Council to treat each other appropriately and without abuse, bullying and intimidation. Councillor Thompson was concerned about Councillor Filion's conduct, believed it was serious, he consulted others about it, and made calls to inquire about others' experience with Councillor Filion.

In consideration of the overall context and the state of affairs between the two councillors at the time, I do not find that Councillor Thompson's actions toward Councillor Filion were abusive, bullying or harassing. Further, his inquiries about Councillor Filion were made to form part of his defence and, even though I have

ultimately found that these efforts could not assist him, it would be unfair to conclude that he was prohibited from making such inquiries.

Article XVI (Reprisals and Obstruction)

Article XVI says that members should respect the Code and investigations under it, and not undertake reprisals against complainants for providing information to the Commissioner. Councillor Filion felt that Councillor Thompson was retaliating against him for making his First Complaint.

Councillor Thompson's inquiries into Councillor Filion's conduct pre-dated the First Complaint, and for the purpose of forming his defence continued throughout the duration of the investigation.

Councillor Filion was entitled to file the complaint, and it indeed gave rise to a serious issue. However, Councillor Thompson was entitled to make a defence, and I find his actions and conversations were furthering his efforts to defend himself. If Councillor Filion learns of future disparagement or reprisals from Councillor Thompson after this disposition of the complaint, he can return to this Office to initiate a fresh complaint.

Article VIII (Improper Use of Influence)

Article VIII (Improper Use of Influence) requires that members use the influence of their office exclusively for their official duties. It begins by broadly stating:

VIII. Improper Use of Influence

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Article VIII is a broad obligation, stated in the positive that members should only use the influence of their office to exercise their official duties.

After stating the broad obligation, the text of Article VIII continues as follows (emphasis added):

Examples of prohibited conduct are the use of one's status as a member of Council to *improperly influence* the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, *friends, or associates, business or otherwise*. This would include attempts to secure preferential treatment beyond activities in which members *normally engage on behalf of their constituents as part of their official duties*.

For the purposes of this provision, "private advantage" does not include a matter:

- (a) that is of general application;
- (b) that affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits of a member of Council.

These portions of Article VIII immediately above are an elaboration (or aide to understanding) of the broad duty, and arguably establish limitations on the breadth of the duty.

The Code of Conduct must be interpreted in a manner that is consistent with and supports the Preamble and the Code's key statements of principle. While the principles cannot trigger a stand-alone breach, the conduct (or "offence") provisions of the Code of Conduct must be interpreted consistently with these broader objectives.

The Preamble to the Code of Conduct states (emphasis added):

The key statements of principle that underline the *Code of Conduct* are as follows:

...

- Members of Council should be committed to performing their functions with integrity and to *avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real.*
- Members of Council are expected to perform their duties in office *and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.*

The application of Article VIII was canvassed in a 2016 report⁸ about whether then-Councillor Doug Ford contravened the Code of Conduct when he or his staff made inquiries and arranged meetings with City staff on behalf of two companies who had businesses outside of Councillor Ford's ward. The investigation established that then-Councillor Ford made inquiries and arranged meetings with City staff on behalf of: (1) a company who was both a client of the Councillor's label business and a possible vendor to the City; and (2) a company who was both a client the Councillor's label business and a City stakeholder. I concluded that the inquiries and arranging meetings with City staff were exercises of influence, and that Councillor Ford contravened Article VIII because

⁸ Report Regarding the Conduct of Former Councillor Doug Ford (<http://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-99042.pdf>) (the "Doug Ford Report").

he failed to keep a clear separation between his different roles as a councillor and as a business owner. In making this finding, I considered the nature of the relationships, the knowledge of the Councillor and the nature of the interventions by the Councillor.

I summarized the duty in Article VIII as follows (at page 20):

Article VIII requires that members use the influence of their office exclusively for their official duties. Article VIII recognizes that in some cases members of Council can use their influence to lead to a benefit of general application. What is prohibited is for members to improperly use the influence of their office to the private advantage of themselves or others. Improper influence can include attempts to secure preferential treatment with City staff.

I also considered Article VIII in a January 2016 report regarding Mayor John Tory.⁹ I concluded that Mayor Tory did not contravene Article VIII when he moved a motion that allegedly benefited a client of two former campaign aides. I concluded that there was no benefit to the client, and that in any event there was no evidence that the motion had even been discussed with the Mayor or his staff. In other words—the Mayor had no knowledge of the clients' objectives, and therefore there could be no intention to use his office to advance the clients' interests.

Friendships or Association

In his response to the Proposed Statement of Findings, Councillor Thompson submitted that a distinction must be drawn between the relationship at stake in the case regarding Councillor Doug Ford and the relationship in the case at hand. As I understand Councillor Thompson's submission, a friendship is arguably different than an ongoing business relationship. The issue is whether influence on behalf of a friend, when there is no financial interest at stake, is the same as an interest when there is a financial or business connection?

Considering the broad language in Article VIII, there is no reasonable basis to conclude that the type of relationship should be determinative of whether there is an issue under Article VIII. The explanatory text makes no distinction between the various types of relationships – in fact the list is open-ended. Although it is not determinative, the type and nature of the relationship is a factor that requires consideration when interpreting and applying Article VIII.¹⁰

⁹ Investigation Report Regarding the Conduct of Mayor John Tory (<http://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-88691.pdf>).

¹⁰ The *nature* of the business relationship was a factor in the analysis in the Doug Ford Report.

Therefore, it is helpful to consider why a friendship could give rise to concerns about improper influence. Friendships can create a duty of loyalty that arises from the special kinship or bond between friends. Even if there may be nothing tangible to gain, a person exercising official authority could understandably be motivated to assist a friend – either to help the friend's situation or to further the friendship itself. Friendships last many years. Favours granted now can be returned later, or can be payback for earlier favours. There is a cynical view of government decision-making that to get action at City Hall one must know someone.¹¹

In any case, there is another connection between Councillor Thompson and the Applicant: the Applicant's support of Project Engagement. Project Engagement and its success is associated with Councillor Thompson and it generates goodwill for him. Without the support of donors and sponsors like the Applicant, the good works of Project Engagement would be limited.

Overview

To find a contravention of Article VIII, I must be satisfied that Councillor Thompson improperly used the influence of his office for the intention of assisting Mr. Gasparro or the Applicant. The advocacy and intervention provided by Councillor Thompson and his staff was beneficial to the Applicant. Councillor Thompson was fully informed of the Applicant's position, and the interventions were so specific to the particular file that no case can be made that it was of general application, or coincidentally beneficial to the Applicant.

Councillor Thompson takes no issue with a finding that his actions were helpful to the Applicant – he intended those interventions to be helpful – but he says that Article VIII was not contravened because:

- there is no restriction against councillors involving themselves in matters outside of their own ward, relying on prior guidance issued by former Integrity Commissioner David Mullan;
- Councillor Filion's actions were corrupt or so manifestly unjust toward G Group that he had no other choice but to intervene; and,
- the actions he took and directed were no different than he would have taken for any other applicant in a similar situation.

¹¹ I was surprised to learn that the Merriam Webster Dictionary has a definition for the phrase "Friends in high places" as follows: "people. a person knows who have social or political influence or power. She got the job because she has friends in high places." (<https://www.merriam-webster.com/dictionary/friends%20in%20high%20places>) I include this reference not as an interpretative aide but rather to serve simply as an illustration of how trite and widespread the perception is, across all governments, that only those with friends in high places can get results.

I will consider the first and second justifications together, then turn to the third.

The Actions Were Justified Because the Ward Councillor Failed to Provide Sufficient Service

Councillor Thompson justifies his actions on the basis of his belief that Councillor Filion had, effectively, mistreated G Group by failing to provide an appropriate level of service and support (at best) or (at worst) by engaging in a retaliatory campaign to thwart the Applicant's objectives because of their unwillingness to retain a particular consultant.

I accept that it was long ago established by former Integrity Commissioner Mullan that there is no restriction against one councillor involving themselves in another's ward, as a matter of representative democracy. I also agree with Councillor Thompson that his purported reasons could be reasonable bases to consider becoming involved in a matter outside of his ward.

However, the fact that it is permissible for a member of Council to become involved in another councillor's ward does not mean that the obligations of the Code of Conduct fall away. That alone completely disposes this aspect of Councillor Thompson's defence.

Councillor Thompson vigorously persisted making this defence in our interviews and through his submissions. He submits that his concerns about Councillor Filion's impropriety must be taken into account to understand his decision to intervene.

Respectfully, when approached by his friend Mr. Gasparro, Councillor Thompson could have commiserated with the experience, suggested strategies to help Mr. Gasparro continue to work with Councillor Filion, or refer him to another councillor. (In fairness, Councillor Thompson advised that he did contact two councillors to see if they could assist; but neither was interested in becoming involved.)

After exhausting these avenues, Councillor Thompson should have advised his friend that there was nothing further he could do for him or sought my written advice about the scope of activities he could properly engage with regarding Mr. Gasparro. Instead, Councillor Thomson effectively opened a file for the matter in his office, and after September 2016 became the quarterback for the file within the City.

Even if there was truth to the worst allegation about Councillor Filion – which I have expressly found there was not – it would not override Councillor Thompson's own obligations under the Code of Conduct.

The Actions He Took and Directed Were No Different than He Would Have Taken for Any Other Applicant in a Similar Situation

Councillor Thompson states that the nature of his interactions in this file were no different than those he would take on another similar file. He urged me to establish a definition of "activities in which members normally engage on behalf of their constituents as part of their official duties." No such definition exists; but even if there was one and Councillor Thompson's activities fell within it, the inescapable fact I cannot help but return to is that the only reason Mr. Gasparro contacted Councillor Thompson is because they are friends. And it is my conclusion that Councillor Thompson was motivated in significant measure by a sense of loyalty and duty to his friend, and this is what makes the use of influence improper within the meaning of Article VIII.

The level of advocacy was also at the highest end of activities in which a councillor could possibly engage. The influence exerted by Councillor Thompson and his staff consisted of follow up calls, provision of information, and escalation of the file within the Toronto public service. Councillor Thompson sought for the file to be prioritized and proceed to the next step. He escalated the issue to senior City staff in a coordinating way that, while not uncommon for complex files, is something he has a special privilege to request.

As I have previously observed¹², the ability of members of Council to arrange meetings and make inquiries to City staff is an exercise of a councillor's influence. Members of Council occupy a unique role, and reasonably expect City staff to be responsive to their requests for assistance on behalf of residents. *There are only 45 people in the City of Toronto who wield this kind of influence: the members of Toronto City Council.* When requesting updates, escalating concerns, or arranging meetings between residents and City staff, members of Council exercise a unique and privileged authority, and it must be carried out in accordance with the Code of Conduct.

Summary

The Councillor and Mr. Gasparro are good friends. They have a kinship, and there is every reason to expect they will be friends for a long time. Competing interests, such as friendship, can "confuse" a decision-maker.¹³ It is not the existence of such relationships that pose the problem, but the failure to deal with them properly.

¹² The Doug Ford Report, *supra*, at p. 25.

¹³ The Honourable Justice Bellamy used the word "confuse" to describe why avoiding conflicts of interest matters. She said, "Conflicts of interest confuse decision-makers and distract them from their duty to make decisions in the best interests of the public, which can result in harm to the community." (Toronto Computer Leasing Inquiry; Toronto External Contracts Inquiry; Volume II – Good Government (2005) at p. 38.)

Regrettably, I have concluded that Councillor Thompson's friendship with Mr. Gasparro clouded his judgement. He accepted everything that Mr. Gasparro told him without scrutiny, and "went to bat" for him. Unfortunately, this reality underlines precisely why he should have refrained from exercising his authority in the way that he did. He was not objective.

This report does not stand for the proposition that members of Council cannot, in answer to a request from a friend, provide information, refer a matter to another councillor, or even put in an occasional salutary good word for the friend among Council colleagues or City staff – hopefully after first consulting with the Integrity Commissioner. Such interactions, in my view, do not necessarily give rise to issues under the Code of Conduct. There is room within the Code of Conduct for members of Council to have and develop social relationships – to be human beings. Members of Council inevitably have existing friendships and relationships when they are elected, and will develop more the longer they are in office. There is room within the Code has room for occasional informal good words, or referrals to City staff or other councillors.

Councillor Thompson went much further than a casual salutary good word. He provided significant assistance by essentially quarterbacking the Applicant's file. And along the way, I fear he probably irreparably harmed his relationship with a fellow Council colleague. The entire situation is regrettable, but it is my hope that there is a lesson to be learned from this unfortunate saga.

I find that Councillor Thompson contravened Article VIII of the Code of Conduct.

PENALTY OR REMEDIAL ACTION

A report that a member of Council has contravened the Code of Conduct is significant and forms part of the public record. 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 Code's principles and standards. In addition to a public report, the Code of Conduct and the *City of Toronto Act, 2006* contemplate that contraventions may require remedial actions or sanctions. Examples of remedial measures are an apology, or a requirement to repay or reimburse moneys received.¹⁴ The *City of Toronto Act, 2006* enables Council to impose one of two sanctions: a reprimand or a suspension of remuneration.

There are several factors that City Council can consider when deciding on an appropriate action in response to the findings. Some factors suggest that leniency is appropriate. Councillor Thompson was cooperative and forthright in this investigation. He did not attempt to influence the professional advice of City staff. He is a long-

¹⁴ [Madger v. Ford, 2013 ONSC 263 \(Canlii\) at para 67 \(http://canlii.ca/t/fvsgj\)](http://canlii.ca/t/fvsgj).

standing member of City Council, and this is the first time he will have been found to have contravened the Code. Councillor Thompson did not conceal his assistance and support of his friend; he was transparent throughout that he was making the inquiries and vouching for G Group because he personally knew them to be "good guys." I believe that the finding of contravention, alone, is of significant consequence to Councillor Thompson.

However, other factors suggest that remedial actions and penalties must be considered. The Councillor's Office continued to make inquiries on behalf of G Group after this inquiry began. Councillor Thompson was first informally advised that his interventions for G Group could have Code of Conduct implications in October 2016. He did not seek advice at that time, and the lion's share of his interventions occurred after then. The evidence is that Councillor Thompson expected City staff to tell him if he was crossing the line. That was an unreasonable position to put City staff in, and it shows that he was aware from an early stage that he was operating in a grey area.

Councillor Thompson is not prepared to accept that his actions contravened the Code of Conduct, to acknowledge such or to apologize. More comment is merited on this point. Councillor Thompson states that because he has a principled disagreement about the application of the Code of Conduct, his failure to acknowledge his misconduct should not be held against him. Through his legal counsel, Councillor Thompson submitted that he disagrees in principle with the "notion that a friend of a City Councillor ought to be denied services that the Councillor could readily provide to someone who is not a friend." This is essentially the same point that Councillor Thompson made throughout his defence of this case, and it is addressed and dismissed within the analysis above.

Councillor Thompson asserts that he has done nothing wrong, in part, because he self-determined whether his actions were acceptable considering his intentions. It is difficult for any person to objectively and appropriately assess whether one has conflict of interest, especially when the motivating interest is a lifelong friend, as in this case. Thinking that we can regulate ourselves is a blind spot for all of us. When Councillor Thompson self-determined this issue, he couldn't see what was in the blind spot. It is why most codes of conduct in the public sector require public officials to avoid participating in decisions or exerting influence – at all – over matters that impact their friends and family. It is why Article VIII exists in the Toronto Code of Conduct.

Mr. Gasparro believes that but for the intervention of his friend, the Project would be stalled. The fact that any City stakeholder has this belief is, on its face, damaging to the reputation of City Council, and accordingly the City of Toronto.

As public office holders, all members of Council must recognize that regardless of intentions, their actions impact, both positively and negatively, on the trust and confidence that people have in City Council. Giving favours or "going to bat" for a friend on a transaction is simply unacceptable conduct for an elected official in the modern age. Such behaviour perpetuates the most cynical stereotypes of elected officials, and must therefore be addressed seriously when it happens.

It is my opinion that City Council should send a clear message to Councillor Thompson that his actions fell short of the standards set out in the Code of Conduct. I encourage members of Council to remember that of the more than the 2.7 million people who live in Toronto, only 45 of them can direct the kinds of actions that Councillor Thompson did on behalf of his friend – the principal of a development company seeking Council approval.

In consideration of the factors set out above, my advice to City Council is that it accept these findings, impose a remedial action to prevent Councillor Thompson from further advancing his friend's interest using the influence of his office, and reprimand him to emphasize the importance of adhering to the Code of Conduct. In summary, I recommend that City Council:

- adopt a finding that Councillor Thompson contravened Article VIII;
- direct that Councillor Thompson cease providing assistance to Mr. Gasparro; and
- reprimand Councillor Thompson as an expression of its commitment to the Code of Conduct.

Respectfully,



Valerie Jepson
Integrity Commissioner
June 15, 2018