



Councillor Josh Matlow

Ward 22, St. Paul's

City Hall, 100 Queen Street West
2nd Floor, Suite A17
Toronto, Ontario M5H 2N2

Tel: 416-392-7906
Fax: 416-392-0124
councillor_matlow@toronto.ca
www.joshmatlow.ca



City Clerk
Toronto City Hall
100 Queen St. W.

Re: Findings of Integrity Commissioner

Dear Mayor & Council,

I had hoped for a resolution in the matter of Mr. Byford's Integrity Commissioner Complaint that could be satisfactory to both parties, but I am writing to inform you that I cannot accept the findings in Integrity Commissioner's Report. While I appreciate that providing judgement on this matter was a difficult undertaking, the Report does not provide an accurate portrayal of my actions, omits details that are fundamental to the issues at hand, and asks that I suspend my knowledge of the facts in this matter to avoid penalty.

I am providing the following statement of facts for you to assess whether it was reasonable to voice my concerns in the manner that I did. Regardless of where you stand on the issue of the Scarborough Subway, I submit that as representatives of our communities we not only have a right, but a duty to speak out on matters of public interest.

Metro Morning Statements re Mr. Byford

1. Mr. Byford states in the Report that I "essentially said that what I and other TTC colleagues had said (via the briefing note) was not true and further implied that my motives were less than honourable."
2. As the full transcript from the Metro Morning interview demonstrates, the only time I mentioned Mr. Byford in the interview is in the context of him admitting that construction of the Scarborough LRT (SLRT) could start at the north end of the line.
3. I did not make the issue regarding the Briefing Note about Mr. Byford; Mr. Byford made it about Mr. Byford.
4. Given the above, I am left to assume that the bases for The Integrity Commissioner's finding that I contravened Sec XII of the Code of Conduct hinges on:
 - o My general comments about the politicization of staff in regards to the Scarborough transit debate, including the Briefing Note

- My public statements that the briefing note is misleading and contains factual errors
- My refusal to accept the Auditor General's findings
- Not following proper procedure in making my complaints regarding the inaccuracy of the Briefing Note

Politicization

5. The Report gave emphasis to the following excerpt from my comments made during an October 26, 2016 Metro Morning interview: "In the Scarborough transit case it is evident [politicization] happened," assumedly as evidence of wrongdoing on my part.

6. It is reasonable that I would find it "evident" that the Scarborough transit debate has been a politicized process based on well-documented public information, and;

7. Information relayed to me in the form of a [text message](#) by the complainant,.

8. Gary Webster, Former TTC General Manager, was fired by the TTC Board for providing his professional advice that LRTs were a better solution to provide transit in Scarborough.

9. According to the City Clerk, the motion to revert from the SLRT to the subway was [improperly allowed on the floor of Council](#) due to a ruling by the Mayor's appointed Speaker that went against Council procedures.

10. A Metrolinx cost-benefit analysis comparing the SLRT and a subway determined that the Scarborough subway as "not a worthwhile use of money". Metrolinx buried the report, and only acknowledged its existence when the [Toronto Star](#) obtained a copy through a freedom of information request.

11. In a July 17, 2015 Toronto Star [article](#), former Chief Planner Jennifer Keesmaat responded to a question about the controversial ridership figures initially used to justify the Scarborough subway:

"Should there have been an extensive due-diligence process before those numbers were quoted and used publicly? Yes. Was there? No"

12. In the same article, Ms. Keesmaat also explicitly characterized the advice provided to Council on the Scarborough subway as politicized:

"If the objective here is to parse the planning analysis that was on the floor of council as being problematic, I would like to suggest: Yes. We didn't go through a fulsome process. We were not given the opportunity to go through a fulsome process. We were not expected to go through a fulsome process because it was a politically driven process."

13. During a walk in the Rosehill Reservoir just days before the briefing note was released, Mr. Byford informed me that he had "never felt more politicized in his life". Telling me, among other things, that Mayor Tory's Chief of Staff told him, and other

Staff, to refer to the 1-stop subway extension as an "express subway", in order to sell it to the public.

14. Mr. Byford informed me that the briefing note was prepared at the request of the TTC Chair and for the Mayor's office in a text message dated July 4, 2016.

15. The Toronto Star [article](#) that I cited during the Metro Morning interview stated that the Briefing Note was shared exclusively with the Office of the TTC Chair and the Mayor's Office against Council procedure. The TTC never made the document available in a public forum.

16. The Briefing note was soon after leaked to CP24 by the Mayor's Office.

17. Mr. Byford did not dispute the actions described in '13' or '14' in a December 7, 2017 Toronto Star [article](#) and the Mayor's Office did not dispute the events described in '16'. I therefore find it both odd and unfair that neither '13', '14', nor '16' are included in the Report given the obvious impact this information would have on my assessment of whether the briefing note was 'politicized'.

18. Scarborough transit is not the only verified instance of staff being politicized. A few other examples include:

- Former City Manager Pennachetti signed a report that recommending that the Port Lands include a monorail and a ferris wheel.
- Former City Manager Pennachetti and Finance staff released a [misleading](#) memo stating that former Mayor Ford had saved the City almost \$1 billion. Included in the figure were both savings to individuals at the expense of City revenues (vehicle registration tax) and vice versa (increased user fees), hypothetical savings from actions not taken, and "efficiencies" that were actually service cuts.
- City Planning staff spent years developing a prioritized list of transit projects through the *Feeling Congested* process. Additional GO stations were not even on the list, yet Staff recommended that SmartTrack be funded ahead of the other priorities on that list.

19. The Integrity Commissioner's Report states that:

"Councillor Matlow says that his public comments were not intended to disparage Mr. Byford, he also made submissions in this inquiry that he believes there was political influence brought to bear on the production and distribution of the briefing note and that this influence impacted Mr. Byford and his team.

It is, therefore, difficult to reconcile Councillor Matlow's statements that he did not intend to say what he continues to say in response to this inquiry."

20. I submitted to the Integrity Commissioner that I accepted that the AG found that "Mr. Byford did not deliberately mislead Council," which is a claim that I have never made and would be virtually impossible to prove. I certainly have no knowledge of, nor have I claimed that "there was political influence brought to bear" on the production of the Briefing Note.

21. My underlying concern is that inaccurate information was presented to Council that influenced the vote on a major transit project that will cost the City billions more to provide less service to residents. As a result of my underlying concern, I am still very troubled by the evidence cited above that raises reasonable questions about the continued politicization of Staff in regards to Scarborough transit.

Auditor General's Findings

22. In response to my claim that while I have no evidence of intent, the Briefing Note is indeed misleading, the Integrity Commissioner suggests that I have to accept the conclusions reached by the Auditor General on a complaint that is not mine, and ignores the facts I presented to the Integrity Commissioner in a previous submission.

23. The Report did not state that the AG found significant errors in the briefing note. These errors put the price of the LRT at least \$570M higher than it should have been. The AG excuses these mistakes and "vindicates" the TTC by saying that this amount was within an acceptable range for a cost on a project at this stage of design based on a Class 3 estimate as set out by the Association for the Advancement of Cost Engineering (AACE).

24. The TTC, however, did not engage in a formal cost estimate as defined by the AACE so should not have been afforded this variance.

25. According to the AACE, a Class 3 cost estimate requires that specific work is undertaken in its preparation, including: unit costs, flow diagrams, utility flow diagrams, preliminary piping and instrument diagrams, developed layout drawings, and essentially a complete engineered process.

26. The errors cited by the AG in the briefing note did not come from overestimating unit costs such as rolling stock or a per km cost of constructing the right-of-way, or any other process consistent with preparing a Class 3 cost estimate as set out in the [AACE Cost Estimate Classification System](#) because they did not engage in that process in the development of the briefing note.

27. The TTC applied escalation incorrectly based on faulty assumptions on a project that was not theirs and did not check their assumptions with Metrolinx despite ample opportunity. The AG found that they did not even remove \$320M from the cost when told they were double counting by the CEO of Metrolinx.

28. Further, the AACE expects that a Class 3 estimate for a \$20M project would require between 150-1,500 hours of work to prepare. One could reasonably assume that an estimate for the Scarborough LRT should take much longer given that the project cost is at least \$1.48B. Documents uncovered by the AG show that several TTC Staff took approximately a week to prepare the Briefing Note.

29. The Auditor General also did not include the information described in '13', '14', or '16' in her report on the briefing note. The AG obviously could not report on the events involving Mr. Byford and myself as she would not have known about them at the time

she was deliberating on the matter. I find it confusing that she did not investigate the leak of the Briefing Note to CP24.

Other Problematic Information in the Briefing Note

There were a number of other claims made in the briefing note and issues relating to its preparation that informed my statements on Metro Morning, at Audit Committee, and at Council, that were not addressed by the Auditor General, including:

Responsibility

30. The TTC provided a briefing note on a project that was not theirs, rather it was Metrolinx's – a fact that is not easy to discern by reading the briefing note

31. The briefing note makes no mention that the costs would be the province's responsibility under the still-signed Metrolinx Master Agreement

32. The "timing" section of the briefing note suggests that City Staff and TTC would be designing the LRT

Funding

33. The briefing note states that "with the change in technology, confirmation of contributions from funding partners may be required."

34. The Province is bound by the Master Agreement

35. The Federal government had made it clear in public that their funding was committed to Scarborough regardless of the technology used

36. It is reasonable to expect that the above facts would be known by senior staff at the TTC. Even if the TTC, perhaps reasonably, felt that confirmation may be required it should have been presented as a caveat to the above facts.

37. Instead, funding for the LRT was left in doubt, without any context

Stouffville Corridor

38. The briefing note states that the "the LRT plans would have to be reviewed with Metrolinx to and identify and resolve any conflicts as the running structure is in the same corridor".

39. The Metrolinx [Environmental Study Report](#) for Stouffville Corridor Rail Service Expansion for GO RER prepared in 2014 stated that "the improvements (electrification) to the Stouffville corridor were developed while both of the above rapid transit solutions for the Scarborough RT corridor (subway and LRT) were under consideration, and would be compatible with either.

40. I have an email that shows that after Gary Carr, a senior TTC official, was tasked with preparing the briefing note he had a meeting with the very person from Metrolinx in charge of the Stouffville corridor. He does ask the Metrolinx official whether the SRT can operate in the corridor during GO RER construction, information that makes the subway option more attractive, but does not ask whether the LRT could fit in the corridor.

41. Instead, the question is left hanging in the briefing note, giving the impression that the LRT might not even be possible given the introduction of GO RER.

Verification

42. City Council recently debated a fare integration strategy with Metrolinx. Staff didn't just guess Metrolinx's position, they consulted with them extensively before providing us information and even linked to Metrolinx reports.

43. In the ward I serve, I am aware that the TTC regularly meets with Metrolinx to discuss the Eglinton bus barns site as the Eglinton Crosstown project progresses

44. It is reasonable to expect that senior TTC Staff, who meet with Metrolinx officials on a regular basis, would either be aware of the information above or would consult the documents cited above, many of which I easily found online with simple google searches.

45. Further, Councillors should be able to expect that if any information gaps were identified in the preparation of this briefing note, on another organization's project, that they would consult with that other organization to make sure they have their facts straight.

Balancing Information

46. Any objective analysis of the Scarborough LRT should have included, at a minimum, balancing information stating that:

- capital costs would be borne by Metrolinx
- provides more stops for a lower cost
- serves more priority neighbourhoods
- Could be built faster
- More advanced stage of design than the subway
- Would be in its own corridor and capable of travelling at the same top speed as a subway

Proper Procedure for Complaint Regarding Briefing Note

47. In her Report, the Integrity Commissioner states that:

"Serious concerns about staff misconduct should be raised with the public servant's supervisor, the City Manager, the applicable governing board, or as a last resort, the Auditor General through the disclosure of wrongdoing mechanism in the TPS Bylaw."

48. The suggestion cited in '47' is that I did not attempt pursuing any of the avenues outlined with regards to complaints about misleading or inaccurate information presented to Council and the public on the Scarborough Subway.

49. Over the past 5 years I have brought concerns regarding the information presented on the Scarborough Subway to the two previous City Managers, the former Chief Planner, the former TTC CEO, the former Ombudsman, and the Auditor General. I have yet to see a review of the issues I have raised.

Conclusion

There is a significant and crucial difference between suggesting that information provided to Council was "deliberately misleading" and "politicized", yet the two appear to be conflated and interchangeable in the Integrity Commissioner's Report. The former suggests intent, and perhaps even malice.

The Report states that my comments in the Metro Morning interview, and elsewhere, make a direct and specific link to Mr. Byford's, and TTC Staff's, *intent* in the preparation of the Briefing Note that I certainly did not make. Where I made a specific comment in regards to the late Mr. Notaro, I apologized for mentioning his name.

"Politicization", on the other hand, refers to a general culture. I deliberately used the word "politicization" because I was referring to a culture that I have observed at City Hall, and detailed above.

I don't think that TTC staff intentionally set out to deceive Council and I have never stated as such. The evidence suggests that they were given a task by their perceived boss (The Mayor and the Chair of the TTC) to find what hurdles would be involved in moving forward with the LRT and they delivered.

The Toronto Public Service by-law and the TTC's Code of Conduct required TTC Staff to investigate each of the hurdles more fully, and to provide balancing information to show the positives of the LRT project. That these measures were not taken in the preparation of the briefing note is a symptom of the politicized nature of City Hall in regards to Scarborough transit.

A rule that requires Councillors not to question the objectivity of staff, must surely require the objectivity of Staff. In a political environment, it is unreasonable to assume that every staff member will always do everything right, under every circumstance, and never be susceptible to the political environment in which they are employed, especially if it might impact their career.

I submit that the objectivity and neutrality required was reasonably seen to be breached by Staff through providing inaccurate information and omitting critical facts in the briefing note on the Scarborough LRT. Given that this briefing note influenced a multi-

billion dollar Council decision, I believe it is not only within my rights to question the actions of Staff, but it is incumbent upon any public officeholder in a similar situation to do so publicly.