

Report on Councillor Josh Matlow's Tweet criticizing a committee decision

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OFFICE OF THE
**INTEGRITY
COMMISSIONER**
TORONTO

Introduction

1. This report describes my investigation of an allegation that on April 27, 2021 Councillor Josh Matlow breached the *Code of Conduct for Members of Council* (the “Code of Conduct”) when he Tweeted the following comment about the outcome of a vote at the Economic and Community Development Committee:

The committee referred the motion off to staff with zero timeline for it coming back. During this pandemic summer, the very time when we don’t want people congregating indoors, placing unreasonable restrictions on the use of our parks is cowardly, dangerous, inequitable & wrong.

2. I reviewed the complaint and determined it to be within my jurisdiction and that there were sufficient grounds to investigate the allegation. However, for the reasons set out below, I do not find Councillor Matlow’s conduct is prohibited under the rules of the Code of Conduct.

The Allegations of Misconduct and Councillor Matlow’s Reply

The Allegations of Misconduct

3. Deputy Mayor Michael Thompson filed a complaint on May 5, 2021 alleging that Councillor Matlow’s Tweet was discreditable conduct for purposes of Article XIV (Discreditable Conduct) of the Code of Conduct and submitted a screenshot of this Tweet. As Deputy Mayor Thompson publicly announced in Committee, as Chair, his intention to pursue this matter after the meeting, I have referred to him by name as the complainant.

Councillor Matlow’s Response

4. Councillor Matlow acknowledged he Tweeted these remarks and said he believed the decision of the committee was “cowardly” and he wished that they had demonstrated courage on an issue that he believed was important for “equity and public health.” He said he stood by his remarks, but he also acknowledged he deleted the Tweet a few minutes after he had posted it.

Investigation

Committee Proceedings

5. The Economic and Community Development Committee (the “Committee”) met on April 27, 2021 and considered the following motion: Agenda Item EC21.15 - Enjoying a Drink Outdoors: Providing Safe, Responsible and Equitable Options for All Torontonians.
6. Councillor Matlow is not a member of the Committee. He sent a communication to the Committee on April 12, 2021 which became the basis for this agenda item. Although Chapter 27 of the Toronto Municipal Code, Council Procedures (the “Council Procedures”)

allows members of Council who are not members of a committee to attend its meetings, ask questions and make statements, they are not allowed to make motions or vote on items at that committee. Members of Council who are not members of a committee, however, are afforded the ability to communicate to a committee to ask them to consider a matter “not on the meeting agenda but within the committee's mandate.”¹ This affords such members a procedural courtesy to put a matter, in the form of an agenda item, before their peers even if they themselves are not permitted to vote on an item. Agenda Item EC21.15 was just such an item.

7. The Committee met by public videoconference and, as is standard practice, the meeting was streamed live on the City of Toronto's YouTube channel, where a recording of it can still be viewed. There was a very typical debate on this agenda item. Some members of the public spoke in favour of the proposed measures in their deputations, some spoke against. Councillor Matlow spoke in favour, some councillors spoke against (including councillors who were not members of the Committee). Some voting members did not speak at all in the debate on this item. The tone of the meeting was business-like and cordial. Councillor Matlow, for instance, had decided to participate by joining while he was in a park. Ultimately, however, the Committee did not agree to adopt Councillor Matlow's proposal. Instead, it voted to refer the subject to City staff. Immediately after this vote, the Committee recessed for lunch.
8. After the Committee voted, Councillor Matlow Tweeted these remarks. He also Tweeted other comments regarding the meeting that did not employ similar rhetoric as the Tweet that is subject of this complaint. Those Tweets indicated how disappointed he was with the outcome but did not name any members of the Committee.
9. Almost immediately, members of the Committee saw all these Tweets and at least one member, as Councillor Matlow advised me, complained to him about the Tweet referring to their decision as “cowardly.” Councillor Matlow then deleted that Tweet. Following the lunch recess, Deputy Mayor Thompson, spoke from the chair about this Tweet and advised the other members he would speak with them about pursuing “the appropriate action to take with respect to this matter.”
10. Although the complaint about Councillor Matlow concerned his reaction to what had transpired at Committee, he posted the Tweet after he left the Committee. As the conduct at issue took place outside Committee, it was within my jurisdiction to investigate upon receipt of a complaint. Had Councillor Matlow used this language in debate, the Chair could have dealt with it according to the Committee's procedures. In that case, I would only have jurisdiction to investigate such remarks if the Committee moved to ask me to do so.

¹ Council Procedures § 27-17.5. A (2) Members' options for presenting communications.

11. Although the Tweet was posted after Councillor Matlow left the Committee meeting, it was helpful for me to contact the voting members of the Committee who had been present because it was alleged Councillor Matlow's remarks were directed at them personally. The extent to which members took exception to these remarks varied. Some members told me they were offended by the Tweet and some chose not to respond to my inquiry at all. While the collective response from the Committee's members is not determinative of my findings, it was relevant for me to contact them as the Tweet at issue was critical of their decision.

Findings

Councillor Matlow's Actions

12. The substance of policy debates and voting outcomes are not matters that can, or should be, reviewed under the Code of Conduct. My jurisdiction is limited to examining personal conduct of members of Council.
13. In the legislative process, motions are often amended, defeated or referred for further study by staff. Councillor Matlow posted this Tweet right after the Committee dealt with his proposal in a way that he disliked. Councillor Matlow's remarks were deliberate rather than inadvertent. He told me he deleted them within a few minutes of posting only because a colleague had expressed displeasure. He did not retract or apologize for these remarks. He said to me he stood by them, which seems contradictory given that he almost immediately deleted them.
14. Although Councillor Matlow quickly deleted this Tweet, it was immediately picked up by online media and remains "live" to this day. Metaphorically, deleting this Tweet could not "unring that bell" in the world of online content. Deleting a comment is not the same as retracting a statement. A retraction is a public acknowledgement that something needs to be withdrawn because it is inaccurate or hurtful. As a courtesy, a retraction is often then coupled with an apology.

What is prohibited under Article XIV (Discreditable Conduct)?

15. Article XIV (Discreditable Conduct) states:

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*.

16. As former Integrity Commissioner Lorne Sossin noted in a report² considering whether a councillor's remarks about another councillor were discreditable conduct:

Councillors will of course from time to time disagree about positions and engage in political rhetoric in order to criticize the judgment of other Councillors. Councillors must be permitted sufficient leeway for public criticism in order for municipal democracy to thrive. There must also be, however, limits on the legitimate scope for public criticism. One such limit is imposed by Article XIV of the *Code*, and the duty on Councillors to treat one another "appropriately."

Discreditable conduct, however, includes not only deliberately lying, but also acting in a manner that treats other Councillors unfairly.

17. In that case, a member of Council filed a complaint about what another member said about him in a radio interview. He was accused of having a conflict of interest and having voted on a matter concerning it. However, the minutes of Council showed the member had not been present for the vote. Even if he had been, it was also established he would have had no conflict. Commissioner Sossin found this was discreditable conduct because the member did not have due regard for the direct personal consequences these statements would have. No penalty was recommended, though, because the comments were later retracted and an apology was made on the same radio program.
18. In another report³, former Integrity Commissioner Janet Leiper considered a complaint about a member of Council made by a person running against her in an upcoming municipal election. In that matter, the member told a newspaper that her political opponent was a "criminal." The person had no criminal record and Commissioner Leiper found this sort of name-calling to be discreditable conduct. No penalty was recommended because an unqualified apology was made and accepted before the matter was considered by Council.
19. In those two cases, an individual was singled out and a factually incorrect statement was made about that individual.
20. In contrast, the remarks in this case do not single out any one person; they are aimed at the Committee, which is a collective entity. Objectively, the critical comment is directed at the collective judgement of the Committee rather than the character of individual Committee members. No one appears to have suffered an adverse personal consequence because of the Tweet. As such, I believe on the spectrum of political discourse, the Tweet was political rhetoric critical of a legislative outcome rather than an incorrect statement of a factual nature or a remark individually impugning someone's personal character. As such, Councillor

² Report on Code of Conduct Violation by Councillor Ford (February 13, 2009)

<https://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-18977.pdf>

³ Report on Violation of Code of Conduct for Members of Council: Councillor Maria Augimeri (August 1, 2014) <https://www.toronto.ca/legdocs/mmis/2014/cc/bgrd/backgroundfile-72911.pdf>

Matlow's Tweet does not amount to discreditable conduct for purposes of the Code of Conduct.

21. Ironically, if anyone has suffered an adverse personal consequence because of the Tweet, it may be Councillor Matlow. Deleting a Tweet because it has offended your colleagues, but not apologizing for it, is a half-measure that does not go unnoticed. Although leeway in political debate is granted under the Code of Conduct, Members may find that observing higher standards in their political rhetoric will help them accomplish their legislative objectives.

Conclusion

22. As I have made no finding of misconduct, no penalty or remedial measure is recommended.
23. Because the remarks I investigated were directed at the Committee's decision and the Chair discussed with other Committee members that he would be pursuing this matter, all members of Council (not just the Committee's members) will have an interest in knowing the outcome as will the public. For these reasons, I am reporting on the outcome of my investigation to Council.

Respectfully submitted,

Jonathan Batty
Integrity Commissioner