

To: The Council of the Town of Richmond Hill
From: Amberley Gavel Ltd., Integrity Commissioner
Date: May 18, 2018
Subject: Recent complaints under the town's code of conduct for elected officials

Since we last reported to the Council, we have received a number of complaints regarding elected officials pursuant to the code of conduct.

Five of those complaints were found either to have no basis or they were not valid complaints pursuant to the requirements of the code. It would be inappropriate to name the councillors about whom the complaints were filed. We believe it is sufficient just to report that the complaints were in regard to public comments made by the councillors and it would appear that personal political differences were at the heart of each of these complaints rather than breaches of the code of conduct.

However, we have received four complaints that we believe it is appropriate to report on at this time.

Complaint 1.

This complaint alleges that Councillor Greg Beros breached the code of conduct in a recent newsletter sent to his constituents wherein he used terminology such as “The Town of Richmond Hill is headed for financial ruin”. He also made it clear in the newsletter that he disagreed with administration's advice with respect to the type of facilities that would be needed to best deliver services in future. It was alleged that in the newsletter he was “challenging the professional competence and credibility of the town's....staff.”

In the newsletter it was made quite clear that the majority of members of council voted against Councillor Beros’ recommendations with respect to future office accommodation for the town and that his approach had not been accepted. He did not reference individuals or their votes.

Similarly Councillor Beros did not specifically criticize the competence of staff individually or collectively but made it clear that he believed that future work space requirements were different from what was proposed. Again, that is not an uncommon circumstance.

Elected officials are entitled to hold different opinions from their colleagues and with the advice that they receive, even after a majority has decided otherwise.

What is somewhat unusual is for a member of council to use municipal resources to criticize a decision made by the council.

While it is not uncommon for a member of council to use a newsletter, paid for by the municipality or from his own resources, to reflect him or herself in what they believe to be a favorable light to their constituents, it is unusual to take this blatant of a political position.

However Councillor Beros' actions in this most recent newsletter were neither a breach of the newsletter policy nor the code of conduct.

Richmond Hill is not the only municipality where this kind of an issue has been raised.

We recommend Council review its newsletter policy in order to minimize the politicization of these communications in future

Complaint 2.

This complaint was filed with respect to the behavior of Councillor Tom Muench wherein he approached a council colleague at a public event and allegedly spoke forcefully regarding his colleague's participation as a speaker at an event in his Ward.

From our investigation, it was clear that another member of council, while not party to the words that were spoken, was sufficiently concerned about the conversation as he viewed it, to intervene in order to reduce the apparent level of conflict.

Apparently, at the heart of the conversation, was Councillor Muench's concern with respect to another member of council having a higher profile at an event in his Ward than he was accorded.

While it's expected that an elected official in the province or the federal government, will be front and center in the writing that they represent. However here is a key difference in municipal government.

Members of council may be elected in ward elections; however, they have a statutory duty to represent the entire municipality as a member of council.

Once elected, who's to say that a member of council cannot venture into another Ward? In a municipality such as Richmond Hill there a number of positions that are elected at-large and members with political ambitions can be expected to seek visibility across the municipality.

In this circumstance, had Councillor Muench taken the time to inquire why his colleague had a higher profile at this event than he did he would have discovered that it was a result of a specific personal invitation from the event host.

With respect to this complaint, we find that Councillor Muench breached the code of conduct in not treating his colleague in a respectful manner.

Complaint 3.

This complaint alleged that Councillor Muench In a letter to his ward constituents deliberately misled them with respect to the actions of four of his Council colleagues on a transportation matter.

Rather than citing the actual decision that was made by Council, Councillor Muench named Regional Councillors Spatufora and Hogg and Mayor Barrow and Councillor West as having sponsored a motion ” to delay infrastructure investment.”.

Despite the lengthy documentation provided to me by I was unable to determine that a motion to “delay infrastructure investment” was ever before council.

As indicated earlier in this report, there is nothing in the town's policy that would prevent someone from communicating to their residents that they disagree with a decision that had been made by the council.

However in this instance, Councillor Muench went beyond disagreeing with a decision of council and specifically misrepresented the actions taken by four named colleagues.

We consider this to be a breach of the code of conduct. A recommendation with respect to sanctions will follow at the end of the report.

Complaint 4.

This allegation was filed by “A”, a former Administrative Assistant to Councillor Tom Muench. The assistant’s identity is not important for this investigation and we will refer to the party as “A”.

This complaint was entitled a “respect in the workplace complaint” and since the Town's code of conduct permits us to deal with complaints under other policies and procedures adopted from time to time by the Town, we proceeded with this investigation.

“A” had brought his complaint to the Director of Human Resources prior to forwarding it to us and “A” had been reassigned to other duties in the municipality at the time we received the complaint.

Administrative assistants to members of council are term employees who report to the Deputy Clerk but who will provide administrative and professional support to a member of council.

Their duties include dealing with constituent matters, engaging in research for the Councillor managing budgets and expense claim details, managing the Councillor's calendar, responses to constituents, and providing support for special events and meetings including attendance at such. The position description indicates that the administrative assistant supports and obtains day-to-day work assignments and directives from the member of council.

In summary, the complaint is in regards to “abusive behavior that I have experienced from Councillor Tom Muench over the last 18 months. This abusive and controlling behaviors is against the Town of Richmond Hill code of conduct as well as respect in the workplace policy It includes comment that “ the abusive Behavior involves being controlling, power tripping, talking down, yelling, swearing, threatening.... “

The complaint listed some fourteen different examples or instances to support the complaint.

In our interviews with “A” we found “A” to be a credible witness although almost all of the instances that were cited were private occurrences that would not have been witnessed by another party.

When provided by us with the details of this complaint, Councillor Muench countered with some specific rebuttals; however, he also added other instances that he believed supported his complaints with respect to the performance of “A”.

During the course of the investigation we discovered two other matters that we found to be inappropriate.

The first was that Councillor Muench as of April 2018 had yet to participate in the online training set up by the municipality for all elected officials dealing with workplace harassment, despite numerous emails from various parties within the municipality pointing out that he had not done so.

In our first interaction with him following the complaint being filed with us we strongly recommended he do so. He then did it.

The second discovery had to do with the application of funds raised for Community BBQ in his Ward.

The Councillor's administrative assistant at the time, "A", had been quite successful in raising more funds than were necessary to support the community event.

The Town's policy is that such funds raised, which become the property of the corporation once received, be used only for the community event and that any surplus can be applied to charitable or community purposes as recommended by the member of council.

In the case of councillor Muench's 2017 event, we were informed and reviewed the financial records of the town including invoices and payment records, that clearly detailed that a number of signs (800) had been paid for which the design and purpose was to be determined at a future date.

It is clear from the invoice that these are far more than would be needed for a typical Community event. ``A` indicated to us that he believes that they were included as part of the order, as directed by Councillor Muench, likely to be used as election signs in 2018.

We confronted Councillor Muench with the invoices and the allegation and his response was that the order has been placed by "A" and that he was unaware of this prepayment for signs to be designed and delivered at a future date.

We did note that the Councillor's signature was not on the order or expense claim as the existing practice at the town is for the administrative assistant and the special

events coordinator to approve and submit such claims to the finance department for payment.

We recommended in future all expenses on behalf of or by a Councillor when submitted for reimbursement be signed by the elected official even if the reimbursement form is prepared by a member of staff.

As is often the case in complaints regarding harassment and or respect in the workplace, many of the events take place without observation by a third party.

We find Councillor Muench to be an articulate, passionate, and energetic individual. Clearly he has an assertive personality and conducts himself in it active way.

We found "A" to be significantly less assertive individual, however, also articulate and at a point in his career where cooperation with his employers is very important.

We also looked to the definition of harassment for guidance.

The Occupational Health and Safety Act defines workplace harassment as, "engaging in a course of vexatious comment or conduct against the worker in a workplace that is known or ought reasonably to be known to be unwelcome."

Since Councillor Muench did not participate in the training provided by the town to all elected officials with respect to workplace harassment we cannot be sure that at the time the events and cited in the complaint took place that he was fully aware of the terms and the implications although he clearly should have been and his behaviour should be judged accordingly

In an investigation such as this we are permitted to, and frequently find ourselves having to reach a conclusion based on a balance of probabilities.

In this case although we do not find that every one of the complaints filed by “A” would meet the definition of harassment, we are sufficiently satisfied that “A”’s version of what transpired on several occasions would meet the test.

Based on the above, we find the Councillor Muench did indeed breach the code of conduct with respect to his treatment of “A”.

We also are concerned that resources that were accepted as donations by the town were diverted possibly for an inappropriate future use. Again, we accept the submission by “A” with respect to the events that transpired leading to the payment for signs that were yet to be designed and delivered. We recommend that the town request a refund from the supplier or a credit toward future purchases by the corporation rather than by the Councillor.

Sanctions

The Municipal Act permits councils to impose one of either a reprimand, or a suspension of pay up to the equivalent of 90 days remuneration, following a finding of a breach of a code of conduct.

In each of the cases cited above the complainant requested a personal apology

That option was available to Councillor Muench when he received each of the complaints and to our knowledge he did not act on any of those requests. Council does not have the authority to require those apologies although based on our findings they would be appropriate still.

Since we're dealing with three different complaints it's within our authority to recommend, and council's authority to impose, three separate sanctions, one for each breach of the code of conduct.

In the case of the newsletter criticism of his Council colleagues by name, we recommend the council publicly reprimand Councillor Muench.

In the case of the inappropriate confrontation of his Council colleague following a public event such that another member of polygon Council chose to intervene, we also recommend a public reprimand by Council.

In the case of the harassment complaint by "A" we consider this particularly serious in light of the councillor's dereliction with respect to taking training that was repeatedly offered to him. And in conjunction with the associated allegation of directed

misrepresentation with respect to payment of an invoice for signs, we recommend the suspension of pay equivalent to 30 days remuneration.

We would like to thank all parties involved in the co-operation that they showed to us.

We would also reiterate our recommendations that the elected official newsletter policy and the expense policy for elected officials be reviewed from both of procedural and a intent point of view in order to prevent future issues such as those that arose in the course of this investigation.

Nigel Bellchamber

for

Amberley Gavel Ltd.

May 2018