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CHAMBERS

Integrity Commissioner Office
for the City of Richmond Hill

August 29, 2019

Final Investigation Report

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E-mail: danschell@adr.ca

Sent by email to:

Council of the City of Richmond Hill

c/o Stephen M.A. Huycke

Director of Legislative Services, City Clerk

City of Richmond Hill, ON, L4B 3P4

stephen.huycke@richmondhill.ca

Re: Complaint Reference Number IC-65-0519

Dear Mayor and Members of Council:

This is my report respecting a complaint brought by Councillor Karen Cilevitz (the "Complainant" or "Councillor Cilevitz") against Councillor Carmine Perrelli, Deputy Mayor of the City of Richmond Hill/Regional and Local Councillor ("Councillor Perrelli" or the "Councillor") under the Council Code of Conduct of the City of Richmond Hill (the "*Code*").

In accordance with the Complaint Procedure of the *Code*, via section 223.4(1) of the *Municipal Act, 2001*, Council, a Member of Council, an employee of the city, or a member of the public may request that the Integrity Commissioner conduct an inquiry about whether a member of Council has contravened the *Code*.

The Complaint

In her complaint, Councillor Cilevitz alleged that Councillor Perrelli violated the provisions dealing with respectful communications and respect in the workplace. The provisions of the *Code* relied upon by Councillor Cilevitz include the following:

3.1(a) "abusive conduct" means unwarranted and unjustified aggressive and/or provoking comment(s), threat(s), purposeful and persistent ignoring of staff, coercion, persistent criticism or condemnation, public humiliation and act(s) of physical or verbal aggression. Such comments or conduct may: (a) be

methodical, planned, sudden, irrational or unpredictable; and/or (b) include the improper use of power and/or authority inherent in a position held by an individual;

7.6 The content of any Member's communications, regardless of method of communication, shall be accurate, honest and respectful of other persons, including other Members, Staff and the public.

9.1 Members shall conduct themselves with decorum at all Council and committee meetings in accordance with the provisions of the Procedure By-law.

10.0 Respect in the Workplace

10.1 Without limiting the generality of Section 7 and Section 9 of the Code, Members shall be governed by Richmond Hill's Respect in the Workplace Policy, and any similar policy or procedure, made pursuant to the Occupational Health and Safety Act and the Human Rights Code.

10.2 Members have a duty to treat members of the public, one another and Staff appropriately and without engaging in workplace harassment, workplace sexual harassment, abusive conduct, discrimination or workplace violence as further set out in Richmond Hill's Respect in the Workplace Policy.

10.3 Members have a further responsibility to support a workplace within Richmond Hill that is free of workplace harassment, workplace sexual harassment, abusive conduct, discrimination and workplace violence.

Investigation Process

I received and reviewed the Complainant's written complaint and her sworn affidavit of May 16, 2019.

I served the Complainant's complaint and supporting material upon Councillor Perrelli, with a request for a written response.

I received the response from Councillor Perrelli dated May 30, 2019.

I also invited both parties to meet with me, or otherwise personally discuss the matter.

I examined the video recording of the Meeting several times.

I subsequently met with both the Complainant and Councillor Perrelli to review their positions on the subject matter of the complaint. My meeting with the Complainant was with the presence of her counsel.

In addition, I spoke to Pat Pollock, a resident in Ward 5 of Richmond Hill ("Ms. Pollock"). The Complainant requested that I interview Ms. Pollock as part of my

investigation.

I have to determine if Councillor Perrelli's comments at the end of the Meeting constitute a violation of any provisions of the *Code*.

Complainant's Position

In her affidavit in support of the complaint, the Complainant alleged that on Wednesday, April 17, 2019, between approximately 7:30 p.m. and 9:11 p.m. at Council Chambers, Councillor Perrelli violated the *Code*. At that date and time, a Council Public Meeting (the "Meeting") was held in Council Chambers. The Council Public Meeting Revised Agenda reflects that a number of items were discussed, including Zoning By-law Amendment Applications and Draft Plans of Subdivision Applications. The Complainant states that near the end of the Meeting, she was chastised and berated by Councillor Perrelli for her alleged breach of a by-law, contrary to Councillor Perrelli's obligations pursuant to the *Code*. Councillor Perrelli's address to the public about the Complainant started at timestamp 1:31:59 of the video recording of the Meeting.

Councillor Perrelli stated at the end of the Meeting that the Complainant did not respect the by-laws or procedure; that she violated the rules, the by-laws, the laws; and that he was going to bring an Integrity Commissioner complaint against her.

According to the Complainant, Councillor Perrelli's statements at the Meeting were an attempt to berate and belittle the Complainant in public.

The Complainant provided a detailed background about the history of her troubled relationship with Councillor Perrelli, that dates back to 2011. In March 2019, the Complainant commenced a defamation action against Councillor Perrelli and others with respect to events that transpired in December 2018. She believes that Councillor Perrelli's behavior at the Meeting was done in retaliation for her defamation action against Councillor Perrelli.

Councillor Perrelli's Reply

The essence of Councillor Perrelli's response is that he says that the statements made by him during the Meeting were factual and accurate, and were not a violation of any policy, procedure, legislation, or legal principle. Councillor Perrelli said that he has had nothing but a professional relationship with the Complainant. Councillor Perrelli's position is that his statements at the Meeting were made in the spirit of fair comment, truth and parliamentary privilege.

In my meeting with him, Councillor Perrelli advised me that the Meeting was a regularly scheduled Council public meeting. He advised that he spoke up near the end of the Meeting so that the Complainant would have an opportunity to apologize for breaching the by-law.

According to Councillor Perrelli, he didn't berate the Complainant.

Information Provided by Pat Pollock, Observations from the Public Gallery

Ms. Pollock is a resident in Ward 5 in Richmond Hill. Ms. Pollock advised me that she was in attendance at the Meeting. She attended for the purpose of gaining information with respect to property development in Richmond Hill.

Ms. Pollock identified several issues in terms of Councillor Perrelli's behavior towards the Complainant at the Meeting.

First, Ms. Pollock stated that when the Complainant was speaking, Councillor Perrelli talked behind his hand to Councillor Liu or Councillor Muench, not listening to the Complainant.

Second, Ms. Pollock said that Councillor Perrelli used a point of order to disrupt Council and block Council's procedure from going forward. Ms. Pollock noted that Councillor DiPaola introduced an amendment that was confusing, and she believed orchestrated so that the application in question would not be forwarded to staff. Ms. Pollock advised that Councillor Perrelli derailed motions put forward by the Complainant, preventing her from doing her job.

Third, Ms. Pollock said that Councillor Perrelli interrupted Councillor Cilevitz while she was speaking. Mayor Barrow asked Councillor Perrelli to stop interrupting.

Finally, Ms. Pollock referred to Councillor Perrelli's remarks toward the end of the Meeting. According to Ms. Pollock, Councillor Perrelli criticized the Complainant. Ms. Pollock felt that Councillor Perrelli's communication at the end of the Meeting was "degrading, disrespectful, bullying".

Analysis

A reference to the Office of the Integrity Commissioner invites me to investigate a matter with respect to the entirety of the *Code*, considering both its rules and the spirit behind the language used when addressing the subject matter of the complaint.

Portions of the *Code* were set out earlier in this report. Those provisions are sufficient to complete my analysis of the issue before me.

In my meeting and written communication with the Complainant, I found her to be sincere, forthcoming and thorough in her presentation. In my meeting with Councillor Perrelli, he also struck me as a sincere, conscientious councillor.

Standard of Proof

The standard of proof is on the balance of probabilities in respect of this civil

matter. As the Supreme Court of Canada clearly stated: "...there is one civil standard of proof at common law and that is proof on a balance of probabilities...": *F.H. v. McDougal*, [2008] S.C.J. No. 54 (S.C.C.) at para. 40.

Credibility Assessments

Regarding the statements of the Complainant and the Member, both of whom I interviewed, I have considered the generally accepted factors in assessing their credibility in this complaint including their demeanour, ability and opportunity to observe, power of recollection, interest, bias, prejudice, sincerity, inconsistency, and the reasonableness of their statements when considered in the light of all the evidence: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at pp. 356-8, per O'Halloran J.A.

John Sopinka, in his text, *The Trial of an Action* (1981, Toronto, Ontario: Butterworths) at p. 77, wrote of the role of the assessment of credibility through probabilities as follows:

Probability is the great touch-stone of all evidence. A witness whose credibility strays from the truth will often have built into it some inherent improbability.

As the British Columbia Court of Appeal stated in *Faryna v. Chorny*, *supra*:

...the real test of the truth of a story of a witness... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Findings

The facts in this matter are not disputed and the credibility of Councillors Cilevitz and Perrelli is not at issue. The issue is whether Councillor Perrelli's statements at the Meeting violated his obligations under the *Code*.

The primary section of the *Code* that has application is Section 10.0 – Respect in the Workplace. Section 10.2 provides in part that Council Members shall treat each other appropriately and “without engaging in workplace harassment, workplace sexual harassment, abusive conduct, discrimination or workplace violence as further set out in Richmond Hill’s Respect in the Workplace Policy”.

I have examined the definitions of “Workplace Harassment” and “Workplace Sexual Harassment” and do not find that Councillor Perrelli’s comments about the Complainant fall into either of these categories. Further, there was no violence or discrimination exhibited by Councillor Perrelli.

This leaves the definition of “Abusive Conduct”. I note that the definition of “Abusive Conduct” includes unwarranted and unjustified public humiliation. Further, the conduct may be planned or sudden and unpredictable. Based upon

this definition, I do find that Councillor Perrelli's statements at the end of the Meeting constituted unwarranted public humiliation.

I find that Councillor Perrelli genuinely believed that the Complainant committed a violation with respect to a Residents Meeting that she organized. In this regard, the Richmond Hill Policy for Councillor-Held Residents Meetings on High Density Development Applications (the "Policy") provides that where a Councillor opts to hold a residents meeting on a development application and the development is either adjacent to a regional road or the application is a high density development application which is in close proximity to a regional road, the Councillor shall inform all members of Council of the date, time and location of the meeting. In a related Code of Conduct Complaint a finding was in fact made that Councillor Cilevitz did in fact breach the Policy by not providing notice of the Residents Meeting.

Councillor Perrelli could have avoided declaring his displeasure in a public council meeting about his perception that the Complainant breached the Policy. He could have spoken to Councillor Cilevitz privately or communicated in writing privately to her. Alternatively, Councillor Perrelli could have dealt with his concern solely through his complaint to the Integrity Commissioner, as he indicated that he intended to in his commentary at the end of the Meeting. (In fact, he did launch such a complaint as noted above, and a violation was found to have occurred by Councillor Cilevitz). However, by dealing with his concern the way that he did in the public Council meeting, Councillor Perrelli engaged in an "unwarranted public humiliation" and that is prohibited in the *Code*.

Section 10 of the *Code* also incorporates the Richmond Hill's Respect in the Workplace Policy. The definition of "Abusive Conduct" found in this policy is identical to the definition in the *Code*. The Respect in the Workplace Policy provides examples of abusive conduct that include: "patronizing or condescending behaviour or language which undermines the self-respect of the person to whom it is directed".

The Respect in the Workplace Policy also provides that: "all members of Council have a responsibility.....to refrain from engaging in workplace harassment, workplace sexual harassment, abusive conduct, discrimination and workplace violence" (Section 1).

When Councillor Perrelli stated in the Meeting that the Complainant violated the Policy relating to residents meetings, and that he would be making a report to the Integrity Commissioner, these statements could reasonably be seen as humiliating and condescending. The Complainant advised me that these statements undermined her self-respect, and I believe her in this regard. Furthermore, I find that the comments objectively were abusive in the sense that they constituted a public humiliation of the Complainant.

Thus, I find that Councillor Perrelli's statements about the Complainant in the Meeting constituted abusive conduct pursuant to both the *Code* and the Respect

in the Workplace Policy.

I accept Councillor Perrelli's statement to me that he was taken by surprise at the Meeting when he found out about the Residents Meeting for the first time. Further, I accept his position that his commentary at the end of the Meeting was unplanned and unorchestrated. I do not agree with the Complainant that Councillor Perrelli's commentary during the Meeting was done in retaliation for her defamation action. I find that Councillor Perrelli was genuinely concerned that a breach had taken place with respect to the residents meeting.

Nevertheless, Councillor Perrelli's comments about the Complainant at the end of the Meeting were derogatory and upsetting to the Complainant and it was reasonable for the Complainant to have been upset. I therefore find on the preponderance of the evidence, that Councillor Perrelli engaged in "abusive conduct" when he criticized the Complainant in a public forum.

Councillor Perrelli referred me to a number of cases, following his review of my draft report. The first in this line of cases is *Senez v. Montreal Real Estate Board* [1980] 2 S.C.R. 555. This case does not deal substantively with the issue of what constitutes humiliation, but rather considered a two-year limitation period for the institution of proceedings. It therefore is of no assistance in this matter.

The second case cited by Councillor Perrelli is *Campbell v. Attorney General of Canada* 2009 FC 1252. This case dealt in part with the issue of whether the Plaintiff was harassed by her co-workers. Harrington, J. in finding that she was not harassed, noted that the test was an objective one. It is to be determined objectively from the perspective of a reasonable person. That is the test that I used in reaching my determination in this investigation.

The final case of the three referred to by Councillor Perrelli is *Girao v. Zarek Taylor Grossman Hanrahan LLP*, 2011 FC 1070. That case dealt with the issue of whether the defendant law firm breached the Plaintiff's privacy rights by posting information on its website. The case did not present an analysis of the issues I dealt with in the present investigation.

My review of these cases did not, therefore, alter the conclusion I reached in this investigation.

Conclusion and Recommended Remedy

To address the matters that I have identified in my investigation, specifically that Councillor Perrelli has contravened section 10 of the Council Code of Conduct and Section 1 of the Respect in the Workplace Policy, I make the following recommendation to Council of the City of Richmond Hill:

Council shall impose a reprimand on Councillor Perrelli for having contravened section 10 of the Council Code of Conduct and Section 1 of the Respect in the Workplace Policy in the circumstances of the instant Complaint.

I note that an earlier version of this report was sent to Councillors Perrelli and Cilevitz for their review and comments. I carefully reviewed all the comments before finalizing this report.

Dated at Toronto, this 29 day of August 2019.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "D Anschell". The signature is written in a cursive style with a large initial "D".

Deborah C. Anschell
Integrity Commissioner of the City of Richmond Hill
c/o ADR Chambers Inc.
Office of the Integrity Commissioner