

City of Brampton Integrity Commissioner Files 2017-03 and 2017-05

REPORTS ON COMPLAINTS

The Complaints

This document constitutes my two reports in relation to two complaints. For reasons that will become obvious I am presenting the two reports together. Both complaints follow, and flow out of, the events addressed by the complaint and investigation report in File 2017-01. In particular, the two complaints relate to certain reactions to the email exchange that was central to File 2017-01. To make it easier for readers to understand, I will refer to the email exchange considered in File 2017-01 as the “newcomers” email exchange.¹

One complaint (File 2017-03) was lodged by Mayor Jeffrey against Councillor Sprovieri. She asked whether Councillor Sprovieri contravened the Code of Conduct for Members of Council by using disrespectful and harassing language in an email.

One week after being informed of the Mayor’s complaint against him, Councillor Sprovieri filed a complaint (File 2017-05) against her. He alleged that the Mayor breached the discreditable conduct rule (Rule No. 15)² of the Code of Conduct when she made public statements about the “newcomers” email exchange (the one that was the subject of File 2017-01).

Typically I refer to the individual who files a complaint as the Complainant and the Council Member who is the subject of the complaint as the Respondent. This report deals with two separate investigations. The Mayor is the Complainant in File 2017-03 and the Respondent in File 2017-05, and Councillor Sprovieri is the Complainant in File 2017-05 and the Respondent in File 2017-03. To avoid misunderstanding I will not refer to either as “Complainant” or “Respondent.”

Summary

I find that Mayor Jeffrey did not contravene Rule No. 15 of the Code. There is no basis for such a finding.

I find that the way in which Councillor Sprovieri forwarded the “poisoning” email means that the “poisoning” email became a communication from Councillor Sprovieri.

¹ The term “newcomers” is taken from the passage in one of Councillor Sprovieri’s emails reading as follows: “I hope that the newcomers will learn the values of the white people so that Brampton and Canada will continue to be a favourite destination for people who want a better and peaceful lifestyle.”

² Rule No. 15 is a very brief section that uses different language in the heading and in the body. Its heading is “Discreditable Conduct” but the text of the rule does not contain these words. The body of the rule states, “Members shall conduct themselves with appropriate decorum at all times.” In this report, I will refer to Rule No. 15 as both the “discreditable conduct” rule and the “decorum” rule.

I find that the Mayor's statements are not relevant to whether Councillor Sprovieri's email contravened the Code. Councillor Sprovieri's words must be assessed on their own merits, and should not receive any special or favourable consideration just because they happen to respond to the Mayor.

I find that Councillor Sprovieri did not contravene Rule No. 14 of the Code, because a single email is not a course of conduct and does not constitute harassment.

I find that Councillor Sprovieri did not contravene Rule No. 15, because (as held in previous City of Brampton Integrity Commissioner reports) it is not my place to assess the merits of political debate.

Background

At some point on or prior to July 7, 2017, Councillor Sprovieri received an email that read as follows:³

Hi John,

I see they are really out to get you... and can't help but wonder if this is "punishment" for your **integrity** on the fluoride issue.

You have my support :) I've been leaving the following comment under the articles where Mayor Jeffrey is quoted as saying she hopes you get diversity training.

"I'm a Champion of the people and I don't like how my colleague thinks, feels and hopes. In the name of diversity, I think he should be trained to think, feel and hope the way I do... the way we are all supposed to do! And I'll just continue poisoning babies and illegally mass-drugging a million people with a one-size-fits-all tooth-damaging industrial fluoride acid in the name of oral health! See how wonderful things are when we all just agree not to think for ourselves?"

[bolding and italics in original]

For ease of understanding, I will refer to the resident's email as the "poisoning" email.

The words in italics are, obviously, not the Mayor's words. The author of the "poisoning" email was using sarcasm to express an opinion on the fluoridation issue.

On July 7, Councillor Sprovieri forwarded the "poisoning" email to all other Council Members (ten in total). In doing so, he copied six members of the news media and two Brampton employees. Councillor Sprovieri introduced the email in these words:

Hello Colleagues,

As you are aware, I have been under siege the past few days about my controversial email exchange with a constituent. You may be interested to know that while I did receive two negative emails, I have also received many that support my [although not expressed clearly, but is understandable] view.

³ In quoting from documents, my practice in an investigation report is to correct obvious spelling errors without drawing attention to the correction unless the correction is material. This report also edits punctuation and capitalization for consistency.

Below you will see one that brought a good feeling to me.

John.

Mayor Jeffrey filed a complaint (2017-03) over whether, by sending the “poisoning” email, Councillor Sprovieri contravened Rule No. 14 (harassment) and Rule No. 15 (decorum).

Councillor Sprovieri then filed his own complaint (2017-05) against the Mayor, alleging that Mayor Jeffrey had contravened Rule No. 15 (decorum) when she made public statements related to his “newcomers” email exchange. Councillor Sprovieri took exception, in particular, to the following statements made, or reported to have been made, by the Mayor.

“I find it disheartening to hear such insensitive language being used by a member of my council”
(*Brampton Guardian*, July 6)

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“Unfortunately, this is not an isolated incident” (*Brampton Guardian*, July 6)

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“I urge my colleague to seek some diversity training in order to better understand the role of multiculturalism in building our national fabric” (*Brampton Guardian*, July 6)

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“Unfortunately, my office was recently included on an email exchange between Councillor Sprovieri and a resident on corporate email.

“I believe the original intent of the correspondence was to complain about hiring practices at the City of Brampton but it has become clear that the correspondence has now deteriorated into a disrespectful, crude and insensitive tirade about ethnicity.

“As a City, and as a country that is struggling to find the right language and respect for indigenous people and their role in our past, I find it disheartening to hear such insensitive language being used by a member of my Council. Unfortunately, this is not an isolated incident. I urge my colleague to seek some diversity training in order to better understand the role of multiculturalism in building our national fabric.” (email from Mayor Jeffrey, July 4)

In support of his position, over a period of four months, Councillor Sprovieri sent me 16 emails, not including attachments, many of which were voluminous. Most of the emails forwarded resident emails or local news stories related to the “newcomers” email exchange or the Mayor’s leadership.

Positions of the Parties

In this section I summarize the parties’ positions. The statements that follow are their positions and should not be taken as my findings.

Mayor's Position in File 2017-03

While “complaint” is the word that we typically use to describe referrals to the Integrity Commissioner,⁴ the *Municipal Act* speaks of “a request ... about whether a member of council or of a local board has contravened the code of conduct ...”⁵

I mention this because the Mayor’s initial position was not an allegation so much as it is, in line with the *Municipal Act* wording, a request whether Councillor Sprovieri had contravened the Code. The Mayor explained:

Councillor Sprovieri has strong feelings on the issue of fluoridation and unfortunately he believes it appropriate to use this type language in suggesting those who disagree with him are morally wrong.

...

I am forced at this point to ask that you evaluate the email and determine whether Councillor Sprovieri broke the Council Code of Conduct by disseminating disrespectful and harassing language.

As the proceedings continued, and the parties were given the opportunity to elaborate upon their positions, the Mayor outlined more precisely her concern that Councillor Sprovieri had engaged in workplace harassment by circulating the “poisoning” email. The Mayor’s arguments included the following:

- Councillor Sprovieri used his Brampton email account and sent the communication to the rest of Council, so this constituted “workplace” conduct.
- The “poisoning” email insinuated that the Mayor poisoned babies, and Councillor Sprovieri explicitly condoned that message.
- Councillor Sprovieri did nothing to distance himself from the language of the “poisoning” email. Any reasonable person would conclude he condones the email he forwarded.
- Councillor Sprovieri did not need to forward the “poisoning” email; he chose to do so. He chose to do so in order use a third party to convey thoughts or words he wanted to say but knew he could not (for fear of breaching the Code). He used a resident’s “poisoning” email to provide the cover that he was looking for to attack the Mayor.
- Councillor Sprovieri encouraged the resident through continued dialogue that resulted in the inappropriate communication. In effect, he used a surrogate to

⁴ The Council Code of Conduct Complaint Protocol, as the name suggests, deals with “complaints.” A complaint is defined as, “A request for an investigation of a complaint that a Member has contravened the Code of Conduct.”:

⁵ *Municipal Act*, subsection 223.4(1).

advance his views. His action was deliberate, calculated and designed to inflict damage. It violates the spirit and letter of the Code.

- This is not an issue of free speech. It is not an issue of debate on fluoridation or public policy. It is not a matter of public interest. It is not about the morality of a policy choice (fluoridation). The issue here is workplace harassment – Councillor Sprovieri condoning and supporting harassing comments he forwarded on his corporate email account to colleagues.

Councillor Sprovieri's Position in File 2017-03

Councillor Sprovieri's position was communicated through his many emails to me and through representations submitted by his counsel, Mr. Wesley Jackson.

According to Councillor Sprovieri, the issue began when, following the "newcomers" email, the Mayor publicly urged Councillor Sprovieri to seek diversity training. This was a personal attack on Councillor Sprovieri's character.

A resident sent the "poisoning" email following the Mayor's public statement about the "newcomers" email. The "poisoning" email was the resident's criticism of both the Mayor's response to the "newcomers" email and the Mayor's position on fluoridation.

Councillor Sprovieri's own email contains no vulgar, profane or harassing language, casts no aspersions, and exhibits no disrespect or harassment toward any identifiable person or institution. The Mayor's concern lies with the forwarded "poisoning" email not Councillor Sprovieri's email. In any event, the "poisoning" email is not itself disrespectful or harassing, it contains no curse words or vulgar words, and is not of a salacious, racist, sexual or profane nature. The "poisoning" email is satire or parody that criticizes the Mayor on a public policy topic.

Councillor Sprovieri and his counsel make the following additional points:

- All communications relevant to File 2017-03 were emails sent and received outside of Council or committee meetings. There was no direct contact.
- The resident who authored the "poisoning" email disseminated it widely through social media and on the Internet. It was accessed and read by many people independently of Councillor Sprovieri's forwarding it.
- Both the resident and Councillor Sprovieri possess the right of free speech.
- The Mayor's positions on issues are "fair game for political commentary." (The Councillor's submission offers critiques of several of the Mayor's positions.)
- The Mayor's position on Fluoridation is a matter of public interest.

- Councillor Sprovieri is supportive of the movement to remove fluoride from drinking water. The Mayor has publicly indicated her support for fluoridation. Both positions “are fair game for public commentary and criticism.”
- “The anti-fluoridation movement argues that Fluoridation of Water is an illegal medication of the masses without consent, and without adequate testing and safety protocols. The chemical agents added to the water supply are, as a matter of physical composition, poisonous and hazardous materials ... Logically, where one accepts the premise that our water is being poisoned by the addition of poisonous and hazardous chemical materials without adequate testing and safety protocols ... it does actually follow that the Region of Peel is poisoning babies who are fed formula made from tap water ...”
- Regardless of whether one accepts the assertion and conclusion (in the above bullet) they are both are a matter of legitimate public policy debate.

Councillor Sprovieri’s lawyer’s submissions conclude as follows:

The Councillor enjoys a right of free speech, which he has exercised to criticize his detractors on matters of legitimate public policy, which issues are matters of public interest as each issue has received notable public media attention. The Mayor may not enjoy being the subject of such biting satire, and the satire or parody may be too hyperbolic to constitute effective advocacy, but nonetheless, the satire squarely addresses fair grounds for commentary and did not cross the proverbial line into a personal attack on a prohibited ground which would engage the definition of harassment.

In other words, as inflammatory as the turns of phrase may have been in the [“poisoning” email], “evocative prose” is not “harassment”. Insofar as it may be considered disrespectful for a member of council to forward such a piece of satire, in this instance, it was a reasonable response to the media attention invited by the Mayor herself.

Councillor Sprovieri’s counsel also objected to the Mayor’s reply to the Councillor’s response.⁶ Counsel argued that the Mayor was introducing new material and new statutory references that were not in her original complaint. Without deciding the merits of the objection, I have decided not to consider the new elements in the Mayor’s reply.

Councillor Sprovieri’s Position in File 2017-05

The Councillor submits that the Mayor’s statements concerning his “newcomers” email were a deliberate attack on his personal character, in order to make me look bad. He feels that, for her own political purposes, the Mayor alleged he has a history of being insensitive.

Councillor Sprovieri disputes that the Mayor was concerned about protecting the reputation of the City. By going public, he says, the Mayor “fueled the fire” and drew

⁶ After the Council Member who is the subject of a complaint responds, the individual who made the complaint has the opportunity to reply.

more attention to the situation than if she had asked the Councillor to explain his “newcomers” email.

The resident to whom the “newcomers” email was directed had previously sent strongly-worded communications that were critical of some aspects of the City’s operations and staffing.⁷ The Councillor notes that the Mayor had also received these communications from the resident.⁸ Consequently, according to Councillor Sprovieri:

- The Mayor understood exactly what Councillor Sprovieri’s “newcomers” email was intended to say.
- The Mayor should have taken action sooner to respond to the resident’s communications (the implication being that Councillor Sprovieri responded with the “newcomers” email because the Mayor had not reacted).

Councillor Sprovieri concludes by stating that Mayor Jeffrey “should have helped in the situation instead of exploiting an opportunity to discredit me ... a dedicated mayor would promote unity and harmony and not discord amongst Council Members and the residents.”

The additional material provided by the Councillor includes resident emails and copies of news stories. I reviewed all of it.

Mayor’s Position in File 2017-05

The Mayor feels that Councillor Sprovieri’s complaint against her is an attempt to distract from his own embarrassing comments in the “newcomers” email.

Councillor Sprovieri’s “newcomers” email was more than a communication with a constituent because he chose to share it widely (with Council Members, news media and others). This discredited the City and the Council. The Mayor felt she had to respond to Councillor Sprovieri’s email to protect the reputation and image of Brampton.

According to the Mayor, her response was pursuant to her obligations as Mayor:

As Mayor I have a responsibility to uphold the good name of Brampton and ensure that any actions or statements made by Members of Council are dealt with in an appropriate manner. My comments were reflective, appropriate and clear. In responding I was fulfilling the responsibility I was entrusted to by the citizens of Brampton.

The Mayor says it is ironic for Councillor Sprovieri to claim the Mayor contravened Rule No. 15 (decorum). His “newcomers” email contravened Rule No. 15 and was anything but exemplary.

⁷ My investigation report in File 2017-01 confirms this point.

⁸ My investigation report in File 2017-01 confirms this point.

Mayor Jeffrey does not agree that her comments were motivated by personal animosity toward Councillor Sprovieri. She says they “were motivated by [his] unprofessional and divisive statement.”

Relevance to File 2017-03 of the Mayor’s Comments

A significant portion of Councillor’s communications to me (communications that applied to both File 2017-03 and 2017-05) related to the Mayor’s response to his “newcomers” email. As indicated above, Councillor Sprovieri feels that the Mayor’s public statements “fueled the fire” and made the situation worse.

On the other hand, the Mayor takes the position that what she said is not relevant to her complaint about the Councillor’s email. According to the Mayor, what the Mayor may have said about the “newcomers” email is “is irrelevant to the complaint Councillor Sprovieri intentionally used corporate email to harass me by forwarding and condoning an offensive email against me.”

In the “Analysis and Findings” section, below, I explain my finding that the Mayor’s comments are not relevant to whether Councillor Sprovieri contravened the Code by forwarding the “poisoning” email.

Relevance of the Councillor’s 2014 “Jokes”

The Mayor’s July 4 email, which is one of the statements the Councillor complains about in File 2017-05, states, “Unfortunately, this is not an isolated incident.” This is a reference to the 2014 incident in which the Councillor used his Brampton email account to send 30 “Jewish jokes” to a resident who then shared them with 53 other individuals.

Mayor Jeffrey also raises the incident in her submissions to me, and Councillor Sprovieri devotes considerable time to respond to it.

Because of the 2014 incident, the Mayor observes that this (the “poisoning” email) is not the first time Councillor Sprovieri has made inappropriate use of his Brampton email account.

I find that the 2014 incident is not relevant to these proceedings and ought not to be considered. Subsection 1(4) of the Complaint Protocol makes clear that only recent (or recently discovered) conduct can give rise to a complaint:

The Integrity Commissioner shall not accept any complaint from any person which arises from the conduct of a member(s) that occurred, or such conduct was first learned of by the complainant, six (6) months prior to receipt of such complaint by the Integrity Commissioner.

The 2014 events are not, strictly speaking, the *basis* for either complaint (File 2017-03 or File 2017-05), but the same principle should apply to exclude them from being considered in these proceedings. The 2014 “joke” incident is not relevant.

A significant part of the Councillor's effort has been devoted to making the point that, because a Jewish resident thought his 2014 "jokes" were funny and appropriate, these "jokes" should not be considered improper. In finding that the 2014 incident is not relevant to these proceedings, I expressly do not endorse or accept Councillor Sprovieri's line of argument.

I wish to repeat that I have, above, merely summarized the positions of the Complainant and the Respondent. These are their positions, not my findings.

Issues

I have considered the following issues:

- A) Did Mayor Jeffrey contravene Rule No. 15 (decorum)?
- B) Was the "poisoning" email a communication from Councillor Sprovieri?
- C) Are the Mayor's comments relevant to File 2017-03, which involves Councillor Sprovieri's forwarding of the "poisoning" email?
- D) Did Councillor Sprovieri contravene Rule No. 14 (harassment)?
- E) Did Councillor Sprovieri contravene Rule No. 15 (decorum)?

Process Followed

In operating under the Code, I follow a process that ensures fairness to both the individual bringing a Complaint (Complainant) and the Council Member responding to the Complaint (Respondent). The process is governed by the Council Code of Conduct Complaint Protocol.

This fair and balanced process includes the following elements:

- The Respondent receives notice of the Complaint and is given an opportunity to respond.
- The Complainant receives the Respondent's response and is given an opportunity to reply.
- More generally, the process is transparent in that the Respondent and Complainant get to see each other's communications with me.⁹

⁹ Occasionally, in my discretion, I may decline to share a communication when the communication is irrelevant to the investigation or I will not consider the communication and (in either case) the other party is not prejudiced by the lack of sharing.

- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a response or reply.
- Where appropriate I will, however, invite a Complainant to clarify a Complaint. When a Complaint has been clarified the Respondent is provided with the original document and all communications between the Complainant and me related to clarification.
- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

As I have explained, because this report covers two related complaints, each with its own complainant and a respondent, it refers to the parties by their names instead of "Complainant" and "Respondent."

During this process, the parties had full opportunity to provide information and to make representations. I have taken each party's submissions and communications with me into account.

This case seemed like an ideal candidate for settlement. One reason the process continued as long as it has is because I wanted to give the parties time to settle their differences. (Subsection 4(1) of the Council Code of Complaint Protocol expressly provides that the Integrity Commissioner "may attempt to settle [a] complaint.") I paused the proceeding to give the parties an ample opportunity for resolution and also to allow the parties to consider the matter with the benefit of distance from the actual events. In this respect the pause was deliberate, as often the passage of time makes an intractable difference possible to resolve.

Subsection 6(1) of the Complaint Protocol says that "generally" the Integrity Commissioner shall report within 90 days of the making of the Complaint. The word "generally" indicates that there may be exceptions, such as when the process is paused. I note that a pause carries no additional cost to the City. My practice is always to pause when circumstances warrant.

Analysis and Findings

A) Did Mayor Jeffrey contravene Rule No. 15 (decorum)?

No.

According to Rule No. 15, "Members shall conduct themselves with appropriate decorum at all times."

The Commentary adds that, “As leaders in the community, members are held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary.”

As I found previously, in Investigation Report 2017-01, Rule No. 15 is not limited to decorum during Council and Committee meetings. (Rule No. 8 addresses meeting conduct.) The rule applies, “at all times.” It therefore covers the sending of emails and the making of statements to the news media.

Oxford defines “decorum” as “Behaviour in keeping with good taste and propriety.” Merriam-Webster defines it as, “Propriety and good taste in conduct or appearance.”

Integrity Commissioner Donald R. Cameron had occasion to consider section 2.1 (the predecessor of both Rule No. 14 and Rule No. 15) in Report No. BIC-030-192. In that case, he found that the words complained of were calm and measured, not disrespectful, not “venomously mean, and destructive” and not a diatribe.¹⁰

I find that Commissioner Cameron’s description also applies to the Mayor’s words about the “newcomers” email.

There is absolutely no basis to find that the Mayor’s emails and statements about Councillor Sprovieri’s “newcomers” email were other than decorous, proper and respectful.

The Mayor did not contravene Rule No. 15.

B) Was the “poisoning” email a communication from Councillor Sprovieri?

Yes.

Councillor Sprovieri did not author the “poisoning” email, but he chose to forward it to ten Council Members, six news media and two City employees.

In forwarding the email, Councillor Sprovieri wrote, “Below you will see one [email] that brought a good feeling to me.”

This language – “brought a good feeling to me” – is reasonably understood as agreement with the sentiments that follow.

In these circumstances, I find that the “poisoning” email became a communication from Councillor Sprovieri to the 18 recipients of his email.

¹⁰ City of Brampton, Report No. BIC-030-192 (December 4, 2012), Integrity Commissioner Donald Cameron, at p. 3.

C) Are the Mayor's comments relevant to File 2017-03, which involves Councillor Sprovieri's forwarding of the "poisoning" email?

No.

Whether an email constitutes harassment, whether it is respectful, and whether it displays decorum, all depend on the content of the email. The communication that prompted the email is not relevant to these considerations.

Whatever Mayor Jeffrey said or wrote has no bearing on whether Councillor Sprovieri's words were respectful, non-harassing, and compliant with the Code.

Councillor Sprovieri's words (including the words of the "poisoning" email that her forwarded) must be assessed on their own merits, and should not receive any special or favourable consideration just because they happen to respond to the Mayor.

D) Did Councillor Sprovieri contravene Rule No. 14 (harassment)?

No.

I agree with the Mayor that Councillor Sprovieri was engaged in *workplace* conduct. The next issue is whether this conduct constituted harassment.

I considered Rule No. 14 in Investigation Report 2017-02, and found that typically harassment involves a *course of conduct* or pattern. This finding is consistent with Brampton's Respectful Workplace Policy, which defines harassment as "a course of vexatious comments or actions that are known, or ought reasonably to be known, to be unwelcome."

Unless the incident is severe,¹¹ a single incident does not amount to a course of conduct and therefore is not harassment.¹²

At issue is a single email from Councillor Sprovieri (the email that forwarded the "poisoning" email). I find that one email does not constitute harassment within the meaning of Rule No. 14.

E) Did Councillor Sprovieri contravene Rule No. 15 (decorum)?

No.

I have found that the manner in which Councillor Sprovieri forwarded the "poisoning" email means he adopted the content of the "poisoning" email as his own.

¹¹ *B.C. v. London Police Services Board*, 2011 HRTO 1644, at paras. 46-48.

¹² *Honda Canada Inc. v. Keays*, [2008] 2 S.C.R. 362, 2008 SCC 39, at para. 73.

The remaining question is whether Councillor Sprovieri's "poisoning" email contravenes Rule No. 15.

The contentious passage reads as follows:

I'll just continue poisoning babies and illegally mass-drugging a million people with a one-size-fits-all tooth-damaging industrial fluoride acid in the name of oral health!

I make the following findings about the email, including this passage:

- It refers to the Mayor. The Mayor is not named, but the passage refers to her. Any reasonable observer would understand that this is about the Mayor.
- It is satire. No reasonable observer would mistake these for the Mayor's actual words.
- It is a political commentary about the Mayor's position on fluoridation. There is no mistaking the context, as "fluoride" is mentioned in the very passage.

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:¹³

I cannot and will not be a referee of free speech in a political arena provided it stays within the bounds of s. 2.1 [now Rules Nos. 14 and 15] of the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:¹⁴

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure. As expressed by Jackson J., in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), at p. 642, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein". Robert J. Sharpe explains the futility of basing this axiom merely upon some yearning for ultimate truth, in "Commercial Expression and the Charter" (1987), *37U.T.L.J.* 229, at p. 236:

The essence of the market-place of ideas argument is that control and regulation of expression is intolerable because we can trust no government to know the truth. Those who purport to legislate the truth invariably turn out to

¹³ Report No. BIC-030-192, note 10, at p. 3.

¹⁴ City of Brampton, Report No. BIC-32-1112 (December 18, 2012), Randy Pepper, Delegate of the Integrity Commissioner, at pp. 2-3.

be tyrants. The market-place of ideas argument prescribes an open process precisely because we cannot agree on what is the truth.

Hence the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy.

In a defamation context, the Supreme Court noted more recently in *WIC Radio Ltd. V. Simpson*, [2008] 2 SCR 420 at para. 2,

An individual's reputation is not to be treated as regrettable but unavoidable road kill on the highway of public controversy, but nor should an overly solicitous regard for personal reputation be permitted to "chill" freewheeling debate on matters of public interest.

In view of the above law, I find that the Integrity Commissioner has a *very* limited role in relation to the "freewheeling debate on matters of public interest" which is not engaged by Councillor Palleschi's reported comments. I have therefore concluded that the allegations of the BSO/Mr. Todd against Councillor Palleschi do not require further investigation and the complaint should be dismissed.

I agree with Integrity Commissioner Cameron's and Delegate Pepper's statements concerning the role of the Integrity Commissioner in relation to political speech and adopt them for purposes of these proceedings.

It is not my place to determine how Councillor Sprovieri should or should not articulate his position on fluoridation. I am reluctant to find that certain arguments (for or against fluoridation) are out of bounds.

Consequently, I do not find that Councillor Sprovieri's forwarding of the "poisoning" email contravened Rule No. 15.

Conclusion

Section 7 of the Complaint Protocol provides, in part:

If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct ... the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

This is the report mentioned in section 7 of the Complaint Protocol.

Alternatively, I find that this is an exceptional circumstance under subsection 6(3), which states that there shall not be a report, "Where the complaint is dismissed, other than in exceptional circumstances ..."

Recommendation

None.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
City of Brampton

July 10, 2018

APPENDIX: RELEVANT PROVISIONS OF COUNCIL CODE OF CONDUCT

Rule No. 14 Harassment

1. Members shall be governed by the City's current policies and procedures as amended from time to time, regarding a respectful workplace, workplace harassment prevention and workplace violence prevention.
2. Harassment of a member by another member, staff or any member of the public is misconduct.
3. Upon receipt of a complaint that relates to Rule No. 14, the Integrity Commissioner may investigate it under the terms of the Complaint Protocol.

Commentary

It is the policy of the City of Brampton that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment.

The City of Brampton's [sic] is developing a Respectful Workplace Policy (Harassment and Discrimination) to ensure a safe and respectful workplace environment and appropriate management of any occurrences of harassment and discrimination as defined by the policy.

Rule No. 15 Discreditable Conduct

1. Members shall conduct themselves with appropriate decorum at all times.

Commentary

As leaders in the community, members are held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary.