

City of Brampton Integrity Commissioner File 2018-03

REPORT ON COMPLAINT

Complaint

In connection with a brown envelope slipped under his office door, Councillor Pat Fortini complains that Regional Councillor Gael Miles contravened Rules No. 4 (use of City resources), No. 12 (current or prospective employment), No. 14 (harassment) and No. 15 (discreditable conduct) of the Code of Conduct for Members of Council.

In the middle of this proceeding, Regional Councillor Miles filed a cross-complaint against Councillor Fortini. She alleges that Councillor Fortini's conduct in this file, including the allegations he made against her, contravened Rule No. 14 (harassment) and Rule No. 15 (discreditable conduct). Because the cross-complaint relates to what occurred in this proceeding, I am considering it as part of the same proceeding.

The facts of this case have a connection to File 2018-01. I have delayed delivering this report until the report in File 2018-01 was completed and submitted.

Even though the complaint in File 2018-01 was dismissed, I issued a report to Council as a matter of fairness, because the allegations had already been reported in the news media. I am issuing a report in this complaint for the same reason, and also because Council needs to be aware of how the Code of Conduct process is being used.

Summary

Regional Councillor Miles printed out a social media post containing several derogatory comments about Councillor Fortini. The derogatory comments were highlighted, the document was placed in an envelope, and it was slipped under Councillor Fortini's door. I am unable to find who highlighted the text, stuffed the envelope and delivered it to Councillor Fortini's office. Regional Councillor Miles denies it was her.

The *Municipal Act* gives me the discretion to invoke *Public Inquiries Act* powers to issue subpoenas and receive sworn testimony. The *Public Inquiries Act* process is expensive and cumbersome. It would have been disproportionate to the objective of finding who slipped an envelope under a door.

Regional Councillor Miles is the only person – to our knowledge, so far – who handled and printed the document, but we still are unable to make a finding about who highlighted derogatory passages and anonymously delivered the sheet to Councillor Fortini's office.

I find that Regional Councillor Miles reviewed and printed the document for a purpose related to City duties and therefore complied with Rule No. 4(1).

I find that, if a Council Member were responsible, the anonymous delivery of derogatory, highlighted text probably would breach Rule No. 15 and possibly Rule No. 14 of the Code, but in this case it is not possible to find that a Council Member was responsible.

I find that Rule No. 12 (conduct respecting current or prospective employment) does not apply to this case.

As for the cross-complaint against Councillor Fortini, I find that a complaint to the Integrity Commissioner is a protected communication, and therefore the language in a genuine complaint cannot become the basis for a Respondent to make a Code of Conduct complaint against a Complainant.

Background

Wednesday, April 4, was a Council meeting day. At about 4:30 p.m., Councillor Fortini's assistant left the office and locked the door behind her.

Councillor Fortini arrived at the office around 9:00 a.m. the next day. Inside, on the floor, he discovered a brown City of Brampton envelope. The envelope was unaddressed. Within it was a one-page sheet, printed on both sides. The sheet was a printout of someone's Reddit post concerning a news article on the complaint in Integrity Commissioner File 2018-01,¹ a complaint by Regional Councillor Miles against Councillor Fortini.

The Reddit post contained several derogatory, personal comments about Councillor Fortini. It is not necessary to the purpose of this report for me to reproduce the comments. I will describe them as not profane, but definitely insulting. All of the comments related in some way to Councillor Fortini's performance as a Council Member, but several in particular were gratuitous and unnecessarily personal.

Someone had used a pink/purple highlighter to mark seven of the derogatory comments, including one of the comments that I describe as gratuitous and unnecessarily personal.

Councillor Fortini brought the anonymous delivery to the attention of Teresa Olsen, Council Liaison Officer, who informed Peter Fay, City Clerk and Executive Director, Council and Administration.

Mr. Fay had the staff conduct an IT review. The review concluded that the Reddit post had been accessed through the Internet using a computer in the office of Regional Councillor Miles, and printed at 2:48 p.m., April 4, on a City printer.

¹ I never discuss active Code of Conduct proceedings with the news media. Non-disclosure is my consistent practice and, in any event, the *Municipal Act* requires me to maintain confidentiality. At the time of the news story, only the parties and I were aware of that complaint.

Subsequently Regional Councillor Miles acknowledged that she had printed the document. She says it was intended for her files. She denies that she was the one who highlighted it or delivered it.

It is not possible to determine who placed the envelope under Councillor Fortini's door. I have only the acknowledgement of Regional Councillor Miles that she accessed and printed the Reddit post, and her denial that she delivered it.

As a matter of fairness, the Respondent to a Code of Conduct complaint receives a copy of the complaint. Otherwise the complaint is confidential. In the ordinary course, Regional Councillor Miles was emailed Councillor Fortini's complaint. She did not like what the complaint said about her, so she submitted a cross-complaint based on the things Councillor Fortini was alleging.

Councillor Fortini arranged a July 18 neighbourhood meeting in a City recreation centre, where a community safety topic was discussed by residents and the Peel Regional Police. Regional Councillor Miles was not invited. One of the residents informed Regional Councillor Miles of the meeting ahead of time, but then the location was changed and Regional Councillor Miles was not told of the new location. Regional Councillor Miles was unable to attend in any event. The issue of invitations and notice for this meeting was subsequently added to the cross-complaint.

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 Procedure.

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.²
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.

² 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.

- 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.

The complaint was received May 8. Regional Councillor Miles submitted her cross-complaint July 19. (July 31 was the last date on which a complaint could be submitted and still processed prior to the new Council term.³)

Regional Councillor Miles provided material relevant to her cross-complaint on July 20 and July 25.

Positions of the Parties

For reasons that will be outlined in a subsequent section, I find that Rule No. 12 of the Code does not apply to this situation. Consequently, I will not repeat the parties' positions on Rule No. 12.

Position of Councillor Fortini (on the complaint)

Councillor Fortini states that Regional Councillor Miles breached Rule No. 4 by using City computer equipment, printer, stationery supplies and websites to "violate" Councillor Fortini and his office. He states that she used City property to attack him and not to carry out official duties.

He believes that, contrary to Rule No. 14, Regional Councillor Miles violated his space and used bullying tactics to harass him by putting under his door an unaddressed envelope and one-page document of defamatory comments. He notes that it is City policy that all persons be treated fairly in the workplace in an environment free of discrimination and personal harassment.

He also states that she contravened Rule No. 15.

Councillor Fortini devoted considerable effort to identifying the individual behind the Reddit post and explaining that this author was a personal friend of Regional Councillor Miles. Even if correct, this assertion is not relevant because (a) Regional Councillor Miles has already acknowledged that she printed the document and (b) her friendship

³ Effective March 1, 2019, new *Municipal Act* provisions will supersede the existing Brampton rule on election-year complaints.

with the original author does not help to determine who slipped the envelope under the door.

Councillor Fortini clearly was disturbed by the anonymous delivery. He feels that Regional Councillor Miles defamed his character, his integrity, his family and, by extension, the residents who elected him to serve them. In his words, “She has continued to demonstrate that she has no respect for me as an elected official representing the same wards.”

In addition to these sentiments, the complaint included strongly worded allegations that Regional Councillor Miles “has no morals and values” and is a “bully.” It also calls her a “racist who discriminates against minorities” adding, “I will ensure the public is aware of this.”

Position of Regional Councillor Miles (responding to the complaint)

Regional Councillor Miles states that Councillor Fortini was the one who informed the news media of her complaint against him in File 2018-01. She noted that when the news media contacted her to ask about that complaint, she consulted me and then declined to respond.⁴

After the story about File 2018-01 appeared in the news media, a constituent directed her attention to the Reddit post containing the derogatory statements about Councillor Fortini. She states that she did not write the Reddit post or have anything to do with it, and does not know the author’s identity. She also denies being a personal friend of the individual to whom Councillor Fortini attributes authorship. (As explained above, I find that the author’s identity and anyone’s relationship to the author are not relevant to this report.)

Regional Councillor Miles does, however, explain:

I did print the article for my files. I found it interesting that a resident could follow the breaches of the code based on Mr. Fortini’s comments in the paper and on social media. Many people in the City also saw this publication.

On the specific allegations related to the rules in the Code:

- Regional Councillor Miles states that she did not make personal use of City property contrary to Rule No. 4(1). A resident asked her to read a Reddit post that responded to a *Brampton Guardian* news story. Code of Conduct issues and responding to residents are among her responsibilities as a Councillor.
- In relation to Rule No. 14, she states: “I did not harass Mr. Fortini. I did not bully Mr. Fortini. I did not make public statements or write the social media post in

⁴ Typically, if a party to a complaint asks me about communicating with the news media, I ask him or her not to comment or otherwise to divulge details about the complaint while the case is ongoing. This is in the interest of fairness to all parties while the proceeding is active.

question. I did not encourage the writing of the social media post. I did not put anything under his door. I did not defame his character, his integrity, his family and certainly not the residents.”

- In response to the allegation that she breached Rule No. 15, Regional Councillor Miles states that she has a good reputation built on 30 years of service to the community.

Position of Regional Councillor Miles (on the cross-complaint)

Regional Councillor Miles explains her cross-complaint as follows:

Councillor Fortini has repeatedly tried to do reputational harm to me during this term of Council. His comments [described above] as part of this complaint validate this. He has absolutely no grounds to state that I have no morals or values representing my constituents, that I am a bully, that I am a racist who discriminates against minorities and further threatens to ensure the public is aware of this. He has in fact gone too far, breaching the City of Brampton’s Code of Conduct by making these very vicious untrue comments.

She alleges that Councillor Fortini breached Rule No. 14 (harassment) and Rule No. 15 (decorum/discreditable conduct).

In relation to the July 18 meeting, Regional Councillor Miles states that Councillor Fortini has no regard for the Code of Conduct and continues to mislead the public with false information. She provided evidence that a resident had been told the meeting was cancelled because of flooding in a building when in fact the meeting was moved to another location (not cancelled) and there had been no flooding.

Position of Councillor Fortini (responding to the cross-complaint)

Councillor Fortini takes the position that the July 18 meeting was a “private residents’ meeting” that he arranged in response to concerns in a neighbourhood. He booked the location and invited the residents. The meeting involved a confidential community safety topic that remains undisclosed for security reasons. He stated that Regional Councillor Miles was not involved in the discussion and was not invited to the meeting.

Findings of Fact

The findings of fact are detailed above.

Regional Councillor Miles is the only identified person who printed and handled the document containing derogatory content about Councillor Fortini. She denies placing the document under Councillor Fortini’s door. We don’t know who did.

The *Municipal Act* gives me the discretion to invoke *Public Inquiries Act* powers to issue subpoenas and receive sworn testimony. The *Public Inquiries Act* process is expensive and cumbersome. It would have been disproportionate to the objective of finding who slipped an envelope under a door.

Issues

I have considered the following issues:

- A) Did Regional Councillor Miles make personal use of City property or resources, contrary to Rule No. 4(1)?
- B) Did Regional Councillor Miles breach Rule No. 12 by letting the prospect of future employment detrimentally affect the performance of her duties to the City?
- C) Did Regional Councillor Miles harass or bully Councillor Fortini contrary to Rule No. 14?
- D) Did Regional Councillor Miles contravene Rule No. 15 (decorum/discreditable conduct)?
- E) Did Councillor Fortini harass or bully Regional Councillor Miles contrary to Rule No. 14?
- F) Did Councillor Fortini contravene Rule No. 15 (decorum/discreditable conduct)?

A. Rule No. 4(1)

Did Regional Councillor Miles make personal use of City property or resources?

No.

The relevant portion of Rule No. 4(1) provides as follows:

No Member shall use for personal purposes any City property, equipment, services, supplies ... other than for purposes connected with the discharge of City duties ...

Regional Councillor Miles acknowledges that she handled the document and states that she did so in order to file it.

Despite containing derogatory comments, the document was related to all of the following: (a) a news story involving Regional Councillor Miles; (b) a Code of Conduct complaint involving Regional Councillor Miles; (c) things that had been said about Regional Councillor Miles in the execution of her duties; (d) the vote on the Riverstone

purchase; and (e) Council business. Any of these five topics was a legitimate, City-related reason for her to handle and store the document.

Consequently, I find that if Regional Councillor Miles viewed and printed the document for the purpose of filing then she was doing so for a purpose connected with the discharge of City duties and not a personal purpose.

Slipping the document (with insulting passages highlighted) under the door would have been a personal purpose, not a purpose connected with the discharge of City duties. We do not, however, know who did this. Regional Councillor Miles is the only identified person to handle the document and denies it was her.

B. Rule No. 12

Did Regional Councillor Miles let the prospect of future employment detrimentally affect the performance of her duties to the City?

No.

Rule No. 12 applies when an individual lets the prospect of future employment with an external entity (*i.e.*, not the City) affect official dealings related to that entity. That rule does not apply to the present situation.

C. Rule No. 14

Did Regional Councillor Miles harass or bully Councillor Fortini?

In the absence of a finding that Regional Councillor Miles delivered the envelope, no.

Regional Councillor Miles is the only person who to our knowledge handled the document. I am unable to find, however, who slipped it under the door. This means I cannot find that Regional Councillor Miles contravened Rule No. 14.

Further, this was a one-time incident involving just one envelope. In Investigation Report 2017-02 I 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."⁵ Unless the incident is severe,⁵ a single incident does not amount to a course of conduct and therefore is not harassment.⁶ At the same time, anonymous communication often has an ominous, threatening connotation. I do not rule out the possibility that in future the sending of a single anonymous, derogatory communication might be found to contravene Rule No. 14.

⁵ *B.C. v. London Police Services Board*, 2011 HRTO 1644, at paras. 46-48.

⁶ *Honda Canada Inc. v. Keays*, [2008] 2 S.C.R. 362, 2008 SCC 39, at para. 73.

D. Rule No. 15

Did Regional Councillor Miles breach decorum or engage in discreditable conduct by?

In the absence of a finding that Regional Councillor Miles delivered the envelope, no.

I have no hesitation stating that it would breach Rule No. 15 for a Council Member to send to a colleague a derogatory and insulting document such as the one that Councillor Fortini received. In this case, however, there is no finding. Regional Councillor Miles is the only person who to our knowledge handled the document, but I cannot make a finding that she was responsible for its anonymous delivery. This means I cannot find a contravention of Rule No. 15.

E. Rule No. 14

Did Councillor Fortini harass or bully Regional Councillor Miles?

No.

This case has made me address whether a Code complaint can itself become the subject of a Code complaint by the Respondent. I thank both Councillor Fortini and Regional Councillor Miles for their helpful submissions on this point.

Everyone acting in good faith has the right to file a complaint under the Code. A Code complaint is therefore a protected communication. I find that good faith allegations under the Code should not, of themselves, generate a retaliatory Code complaint. A Complainant should not receive a Code complaint merely because a Respondent does not like what the Complainant has alleged.

Further, given the *Municipal Act* confidentiality provisions, a Complainant has an expectation of confidentiality: In other words, someone filing a complaint typically does not intend for those words to be disseminated in public. This is another reason why the words in a Code complaint should not become the basis of a new complaint.

Further, what Councillor Fortini wrote in his complaint was a single occurrence. As explained above, harassment typically involves a course of conduct.

Context is also relevant here. A document containing derogatory comments about Councillor Fortini – that Regional Councillor Miles acknowledges accessing and printing – somehow got slipped under Councillor Fortini's door. In good faith, he filed a Code of Conduct complaint. Expecting that only the Integrity Commissioner and Regional Councillor Miles would see the complaint, he made strong allegations. These facts do not support a finding that he harassed or bullied her.

I have considered the other information provided by Regional Councillor Miles, including that related to locations and invitations for a neighbourhood meeting. This information does not disclose harassment or bullying.

F. Rule No. 15

Did Councillor Fortini breach decorum or engage in discreditable conduct?

No.

As explained above, a good faith complaint under the Code should not give rise to a retaliatory complaint by the Respondent. Making good faith allegations under the Code is neither discreditable conduct nor a breach of decorum.

Further, communications under the Code are confidential. The only audience for a complaint is the Integrity Commissioner and the Respondent. A Code complaint is, therefore, different than a public communication.

The other information provided by Regional Councillor Miles also does not disclose a contravention of Rule No. 15.

Conclusions

Regional Councillor Miles printed and handled a document that contained derogatory content about Councillor Fortini, but she denies placing it under his door. Without knowing who made the delivery, I cannot make a finding that the Code was breached.

On the cross-complaint, I find that Councillor Fortini did not contravene the Code.

I have determined that it is necessary to this report to identify both parties.

Any individual can file a Code of Conduct complaint. 600,000 people live in Brampton. Almost all of the complaints that I receive, however, are generated from within the eleven-member City Council. This complaint was one of them.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
City of Brampton

October 19, 2018

APPENDIX: RELEVANT PROVISIONS OF COUNCIL CODE OF CONDUCT

Rule No. 4

Use of City Property, Services and Other Resources

1. No Member shall use for personal purposes any City property, equipment, services, supplies or services of consequence (for example, agency, board, commission, or City-owned materials, websites, board and City transportation delivery services, and any Members expense budgets) other than for purposes connected with the discharge of City duties, which may include activities within the Member's office of which City Council has been advised..
2. No Member shall obtain financial gain from the use of City developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the City of Brampton.
3. No Member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

Commentary

Members, by virtue of their position, have access to a wide variety of property, equipment, services and supplies to assist them in the conduct of their City duties as public officials. This privilege should not be seen to be abused. In recognizing that members are held to a higher standard of behaviour and conduct, members should not use such property for any purpose other than for carrying out their official duties. Careful attention should be given to the provisions of the City's Councillor expense policy which identifies approved allowable expenses.

During election campaigns, refer to Rule No. 5 and 7.

Rule No. 12

Conduct Respecting Current and Prospective Employment

1. No Member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the City.

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.

Rule No. 16
Conduct Respecting Staff

...

3. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council.
4. No member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff and all members shall show respect for the professional capacities of the staff of the City.

Commentary

Members of Council should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power, or their personal opinions.

Members of Council must recognize that only Council as a whole has the capacity to direct staff members to carry out specific tasks or functions as provided in the Municipal Act. The Administration, under the direction of the Chief Administrative Officer, serves the Council as a whole, and the combined interests of all members as expressed through the resolutions of Council. An individual member should not request staff to undertake extensive work or prepare lengthy reports, other than pursuant to a Council direction.

It is inappropriate for a member to attempt to influence staff to circumvent normal processes in a matter, or overlook deficiencies in a file or application. It is also inappropriate for members to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the Chief Administrative Officer. Any such attempts should be reported to the Integrity Commissioner.