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**CODE OF CONDUCT COMPLAINT 2020-09
and MCIA APPLICATION 2020-10
INTEGRITY COMMISSIONER REPORT**

THE CORPORATION OF THE CITY OF THOROLD

**John Mascarin
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November 24, 2020

**INTEGRITY COMMISSIONER REPORT
CODE OF CONDUCT COMPLAINT 2020-09
MCIA APPLICATION 2020-10**

I. SUMMARY

A formal complaint was filed with the Integrity Commissioner on November 13, 2020 (the “**Complaint**”) alleging that Councillor Victoria Wilson (the “**Councillor**”) of The Corporation of the City of Thorold (the “**City**”) contravened Section 4 of the Township’s Code of Conduct for Members of Council and Local Boards (the “**Code**”).

A related formal application was also filed on the same date with the Integrity Commissioner (the “**Application**”) alleging that the Councillor had contravened subsection 5.2(1) of the *Municipal Conflict of Interest Act*.¹ This Application was filed pursuant to section 223.4.1 of the *Municipal Act, 2001*.²

II. APPOINTMENT & AUTHORITY

Aird & Berlis LLP was appointed as Integrity Commissioner for the City pursuant to subsection 223.3(1) of the *Municipal Act, 2001* by Council by By-law No. 28-2019 on February 20, 2019.

Council adopted the Code and its Complaint Protocol (the “**Complaint Protocol**”) on October 1, 2019 by By-law No. 126-2019.

As Integrity Commissioner, we are appointed to act in an independent manner on the application and enforcement of the Code and sections 5, 5.1 and 5.2 of the MCIA.

We are required to preserve secrecy in all matters that come to our knowledge as Integrity Commissioner during the course of our duties. At the same time, the City is required to ensure that reports received from the Integrity Commissioner are made available to the public.

The Complaint and the Application were properly filed pursuant to Part B, Sections 1(1) and (2) of the Complaint Protocol and subsections 223.4(1) and 223.4.1 of the *Municipal Act, 2001*.

The allegations raised in the Complaint and the Application arise from the same set of circumstances and will be set out in greater detail below.

This is a report on the investigation of the Complaint made in accordance with Part B, Section 11 of the Complaint Protocol and subsection 223.6(2) of the *Municipal Act, 2001* as well as on the decision related to the inquiry of the Application pursuant to subsection 223.4.1(17) of the *Municipal Act, 2001*.

¹ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (the “**MCIA**”).

² *Municipal Act, 2001*, S.O. 2001, c. 25.

III. CODE OF CONDUCT PROVISIONS AT ISSUE

The Complaint alleges that the Councillor contravened Section 4 of the Code by virtue of her actions on October 6, 2020 and at a meeting of Council that same day. We have construed the specific wording of the Complaint to relate only to Sections 4.1(a) and (c) of the Code, which are set out below:

4.0 General Obligations

4.1 In all respects, a Member shall:

- (a) make every effort to act with good faith and care;
- ...
- (c) seek to advance the public interest with honesty;

IV. MCIA PROVISION AT ISSUE

The Application alleges that the Council contravened subsection 5.2(1) of the MCIA which provides as follows:

Influence

5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

V. MATERIALS REVIEWED

In order to undertake our investigation and prepare this Report, we have reviewed and considered the following materials:

- Complaint 2020-09;
- Application 2020-10;
- Written correspondence from the complaint/applicant dated November 16, 2020;
- Agenda and Minutes of the meeting of Council held on October 6, 2020 (the “**Council Meeting**”);
- Video recording of the Council Meeting; and
- Report CAO2020-07 – Council Remuneration (Agenda Item 16 a).

VI. BACKGROUND AND FACTUAL CIRCUMSTANCES

The facts constituting the Complaint and the Application are virtually identical but will be set out separately below as each described the circumstances slightly differently:

(a) Complaint

The facts constituting the contravention of Section 4 of the Code are set out as follows in the Complaint:

Victoria Wilson contacted other municipal counsellors [*sic*] by telephone asking them which way they would vote on her motion for an increase to councillors pay on Oct 6, 2020 and if they would support her motion for such. This is not acting in good faith and care and not advancing public interest with honesty or loyalty to residents.

(b) Application

The facts constituting the contravention of subsection 5.2(1) of the MCIAC are set out in similar, but not identical, terms as follows in the Application:

On October 6, 2020 Victoria Wilson contacted other municipal counsellors [*sic*] asking them how they were going to vote on her motion for an increase to councillors pay and if they would support her motion for such.

(c) Clarification Requests

We wrote to the complainant/applicant on November 16, 2020 seeking clarification with respect to the allegations in both the Complaint and the Application which we found lacking in detail and not supporting reasonable or probable grounds to merit a full investigation in either case. We noted that we were not prepared to summarily dismiss either the Complaint or the Application at that time but that we would hold them in abeyance pending a written response to our requests for clarification.

(i) Complaint

With respect to the Complaint we set out the requirement in Section 1(1)(b) of Part B of the Complaint Protocol (Appendix "B" to the Code) as follows:

...the complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct and must be accompanied by a supporting sworn affidavit setting out the evidence in full in support of the allegation.

We also noted that Section 1(3) of Part B of the Complaint Protocol provides as follows:

Complainants who file a formal complaint under Sections 1(1) or 1(2) must provide a full and complete record of evidence to the Integrity Commissioner who is under no obligation whatsoever to, but may, seek additional information to supplement or complete the evidentiary record to substantiate or support the allegations set out in the complaint or request.

We advised the complainant that the Complaint was lacking in detail and in specificity. The allegation, as we understand it, is that the Councillor failed to comply with Sections 4.1(a) and (c) of the Code because she solicited the views of her fellow members on a matter relating to a motion that she was seeking to make at the Council Meeting on Agenda Item 16 a (dealing with council remuneration). The minutes of the Council Meeting indicated that the Councillor moved a motion to approve the wages of the councillors and the mayor. The motion was carried.

We requested that the complainant provide a detailed explanation of how the Councillor failed to comply with her obligations under Section 4.1(a) and (c) of the Code.

We received a response from the complainant on the same day which we set out in full as follows:

The details to the complaint are as follows. Councillor Wilson contacted each member of council by telephone prior to bringing forward her motion because she wanted to ensure that she had the support of other councillors prior to bringing the motion forward. She also knew we currently have a split council with 4 councillors always supporting the Mayor and 4 always against with the mayor casting the deciding vote. She knew that 1 councillor was going to be absent and unable to vote that being councillor Jim Handley and that should he have been present her motion was not going to pass as the mayor was against the motion as well as you can see in the council meeting but because it did not end in a tie he could not legally vote on the matter. I spoke with a few councillors myself as a private citizen about the matter and was told by them that she contacted them privately to solicit their support on the motion for the pay increase. This does not maintain the best interest of the public and serves to cause financial gain on her part with the raise in salary. This is something that never should have been done. her motion did have the right to be brought forward but she did not and should not have contacted any other member asking for their support on her motion. She knew in advance of the outcome of the vote and thus why she brought it that week. She knew that councillor handley would vote against her motion, and based on the mayor clearly being against the raise as he stated in the meeting but was not able to vote because council did not end in a tie, her motion would not have passed which she knew. She deliberately brought the motion forward at that time to ensure it would pass and now gains financially as a result. The fix was clearly in.

(ii) Application

With respect to the Application we noted that the allegation was clear that the Councillor contacted other members of Council by telephone to see how they would vote on the matter of council remuneration. In our correspondence to the applicant, we set out subsection 5.2(1) of the MCI in its entirety and advised the applicant that, in our view, the provision expressly addressed a council member's influence on an officer or employee of the municipality.

The applicant's response did not address this issue except to state that the Councillor's action in contacting other members of Council "does not maintain the best interest of the public and serves to cause financial gain on her part with the raise in salary. This is something that never should have been done."

VII. ANALYSIS

(a) Complaint

In writing to the complainant on November 16, 2020, we expressed the view that “soliciting the views of her fellow members as to a matter of importance before raising it on the floor of Council does not amount to acting in bad faith, constitute a lack of care or a failure to advance the public interest with honesty to residents.” The complainant’s additional submissions do not change our view of the matter.

We believe that the complainant’s primary assertion is that the Councillor should not have contacted others members of Council and that she should simply have allowed the debate to occur in the Council Chambers. In our view, this ignores the political realities of how elected representatives carry out their functions.

Taken to its logical end, the complainant’s position would assert that members of Council should not discuss the business of Council except during a public meeting. However, this is simply not how municipal business is conducted.

In its Annual Report 2014-2015, the Ontario Ombudsman’s Open Meeting Law Enforcement Team reported as follows:

Our Office has always maintained it is healthy in a democracy for government officials to share information informally. To expect council members never to talk to one another outside of a public meeting is unrealistic and would have an unnecessarily chilling effect on free discourse.³

We note that the complainant did not allege that the Councillor contacted all members of Council or a number of members sufficient to constitute a quorum at a single one time. The complainant appears to assert that the Councillor individually telephoned some or all of the members of Council to solicit their views on the vote on council remuneration. This is not a matter related to an illegal closed meeting conducted by telephone.

It is our opinion that, in doing so, the Councillor did not act inappropriately. This view is again supported by the Ontario Ombudsman in another report as follows:

To be clear, the *Municipal Act, 2001* does not create an absolute prohibition against members of council discussing city business outside chambers. It is a healthy thing in a democracy for government officials to share information informally before making policy decisions. I agree that to expect council members never to talk to one another outside of a public meeting is unrealistic and would have the effect of unnecessarily chilling speech.⁴

The Councillor did nothing wrong in canvassing her fellow members. In fact, it may be argued that she acted as a prudent and careful politician should to ensure that she would be successful in moving the motion. The Councillor is not at fault under the Code for having done her homework or for having acted strategically.

³ Ontario Ombudsman, *Open Meeting Law Enforcement Team - Annual Report 2014-2015* at page 9.

⁴ Ontario Ombudsman, *City of London – “In the Back Room”* (October 22, 2013) at page 25.

(b) Application

The Application as submitted is wholly lacking in merit. The purpose of subsection 5.2(1) of the MCIA is to safeguard the public interest by ensuring that members of council cannot utilize their office to influence a “matter that is being considered by an officer or employee of the municipality” in making any decision or recommendation. The applicant made no submissions that an “officer or employee” of the City was being influenced. The applicant simply noted that “other councillors” were solicited for their views by the Councillor.

Moreover, the Application seeks to assert that the Councillor acted “to cause financial gain on her part with the raise in salary.” She was entitled to do this. In fact, clause 4(i) of the MCIA expressly provides that sections 5 and 5.2 do *not* apply to a pecuniary interest in any matter that a member may have in respect of any “allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member.” As such, the Councillor was entitled at law to seek to influence the vote *before* the Council Meeting.

In accordance with subsection 223.4.1(16) of the *Municipal Act, 2001*, we provided notice to the applicant that we would not be making an application to a judge for a determination as to whether the Councillor contravened section 5.2 of the MCIA.

VIII. CONCLUSIONS

For the reasons noted above, both the Complaint and the Application are dismissed.

This Report has been prepared for and is forwarded to Council solely for the purpose of reporting. Subsections 223.4.1(17) and 223.6(2) of the *Municipal Act, 2001* provide that this Report is to be made public.⁵

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for the City of Thorold

Dated this 24th day of November, 2020

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⁵ It has always been our practice as Integrity Commissioner to not publicly report to Council on Code of Conduct complaints that have been summarily dismissed. However, in this case (as noted above), the Complaint was inextricably linked to the Application. With respect to applications filed under the *Municipal Act, 2001*, s. 223.4.1(17) expressly provides that “[a]fter deciding whether or not to apply to a judge, the Commissioner shall publish written reasons for the decision.” Accordingly, we are compelled to provide formal written reasons for our determination, which are to be “published”. For completeness, we have prepared a combined report that provides reasons relating to both the Complaint and the Application.