

City of Brampton Integrity Commissioner File 2017-02

REPORT ON COMPLAINT

The Complaint

Councillor Gurpreet Dhillon (the Complainant) alleged that Regional Councillor Elaine Moore (the Respondent) contravened Rules No. 8, No. 14 and No. 15 of the Code of Conduct for Members of Council during the May 8, 2017, meeting of the Member Services Committee.

The allegations arise from a verbal altercation between the Complainant and Respondent. While it is common ground that the altercation occurred, the two Council Members disagree on what was said, on who is to blame, and on whether the Code was breached.

Summary of Findings

An integrity commissioner probably lacks jurisdiction to consider a complaint arising from an alleged breach of decorum at a Council meeting or committee meeting.

In the event that I do have jurisdiction, I find that both Council Members contributed to the verbal altercation. For the reasons outlined below, I will not make a finding that singles out one of the two participants (the Respondent) for contravening Rule No. 8 or Rule No. 15 of the Code.

Rule No. 14 would not apply because a single incident at one meeting is not a course of conduct and does not amount to harassment.

Background

The committee meeting was open, but the only people in attendance were eight Council Members and eight employees of the City. The news media were not present. No members of the public were present.

Held in Boardroom CH-6A, the meeting was not televised and was not recorded.

The meeting minutes record a recess between 10:40 a.m. and 10:47 a.m. The recess was precipitated by a heated exchange between the Complainant and the Respondent.

According to the Complainant, during this exchange the Respondent did the following:

- Called the Complainant a “South Asian Councillor.”
- Said that “South Asian Councillors” act like “Mayors for the entire City.”

- Insinuated that the Complainant did not speak to women respectfully.
- Said that the Complainant has or had “mommy issues.”
- Told the Complainant, “Go lick your wounds, a**hole.”

While prior incidents were not the subject of the complaint, the Complainant also said that previously he had experienced, from several Council Members, “constantly being cut off, mocked, interrupted, and even openly laughed at during meetings ...” (He subsequently provided a video clip from a prior meeting as evidence of what he described.)

The Respondent has a different recollection of what occurred. According to her:

- The Complainant interrupted when it was the Respondent’s turn to speak. (She adds that this was “often a pattern of behaviour of” the Complainant.
- At no point were her comments said in a manner, or intended to be, disparaging or disrespectful to the Respondent as a member of the South Asian community. Instead, the Respondent says she was expressing empathy with the fact that many residents of South Asian descent will reach out to a Council Member of South Asian descent instead of their area Councillor, and was showing understanding of the pressure the Complainant felt to respond to the many calls and requests he received.
- As the Complainant was interrupting her, the Respondent calmly asked him why it was that whenever either Councillor Gael Miles or the Respondent spoke, the Complainant felt it necessary to put them down. The Complainant responded by asking if the Respondent was calling him sexist.
- The Respondent said that those words (“sexist”) were the Complainant’s words, not hers, but said she did believe he had some “mommy issues.”
- The Complainant then rose from his chair and placed himself in a physical position of power over the Respondent. He voiced several criticisms of the Respondent, including:¹
 - “This City is in the mess it is because for too many years you haven’t done your job.”
 - “Do you want me to be lazy like you?”
 - “I care about the taxpayer, not like you.”
 - “Just look at the downtown with all the boarded up windows. This is because you haven’t done your job.”

¹ The Respondent explains, “While I have put these in quotations; I acknowledge they are not verbatim; however, they are a sampling of the comments he directed at me while continuing to stand and pointing his finger at me.”

- The Respondent remained sitting while the Complainant stood and criticized her.
- The Respondent did not make an offensive comment about “licking wounds” to the Complainant or anyone else.
- The Respondent feels that this complaint (File 2017-02) was made partly in retaliation for her 2016 complaint against Councillor Dhillon (addressed in Integrity Commissioner Swayze’s March 8, 2017, report) and partly because she had previously cautioned him about the importance of professional communication with the staff.²

The Complainant was given an opportunity to reply to the Respondent’s position, and did so. He rejected each of the Respondent’s denials, and said the Respondent’s recollection was not accurate. He also said that the four quotations (“This City is a mess ... haven’t done your job”) appearing a few paragraphs above were incorrectly attributed to him.

The Complainant made the following additional points:

- When someone does not agree with the Respondent’s position, she frequently accuses that person of being rude.
- At no time did the Complainant put down the Respondent or Councillor Miles.
- The Complainant suggested that Respondent was exhibiting racism toward him as a visible minority.
- The Respondent should not have tried to psychoanalyze the Complainant and her belief about his treatment of women.
- It is extremely unlikely that the Complainant would ever stand up in the middle of a public meeting (with staff members and fellow Councillors present) and look down upon a fellow Council Member, especially a woman.
- The Complainant is 6 feet-4 inches tall, weighs 225 lbs., and has a deep voice, a beard and a turban. He cannot change his appearance, if that is what intimidates the Respondent. He says he did not at any time try to place himself in a position of physical power over her.

² According to the Respondent: “Additionally, I believe it is continued bad feelings over an incident that took place where one of mine and Councillor Gibson’s Constituency Assistants felt that Councillor Dhillon was asking her to divulge confidential information about mine and Councillor Gibson’s calendar and schedule; and in the same conversation he had made comments to her about his ward mate, Councillor Sprovieri, that made her feel very uncomfortable. After she spoke with me about the conversation, Councillor Gibson and I sent an email to Councillor Dhillon respectfully and politely asking him not to put our staff in an uncomfortable position again, and to keep conversation at a professional level above all, respecting confidentiality.”

- The Respondent takes issue with people who disagree with her and was looking for a reason to make the Complainant look bad.
- The Respondent has a history of being combative and rude during meetings.
- The Respondent's mention of the earlier complaint (against Councillor Dhillon) and of the caution she previously made to him are irrelevant.

At this point I wish to emphasize that the above bullets (pages 1-3) are not my findings of fact. I have merely summarized the recollections of the Complainant and the Respondent.

Immediately prior to the verbal altercation, the topic being discussed by the committee was the "Council Office Protocol," a two-page memorandum to Council Members from Ms Teresa Olsen, Council Liaison Coordinator, dealing primarily with the role and duties of Constituency Assistants.³ Council Members have different views on the purpose of Constituency Assistants, including on whether the preferred model should be "administrative staffing" (which is Brampton's current, approved model) or "political staffing" (the model employed at the provincial and federal levels and in some other municipalities). In this context, part of the discussion involved the Complainant's intention to visit 40 parks over the course of the summer and the staffing needs associated with such travel.

I mention the subject matter of the discussion only in order to provide context. In my opinion, the topic is irrelevant to whether the Code was contravened. Decorum and respect must be shown no matter what subject happens to be discussed at a particular moment.

Positions of the Parties

Complainant's Position

The Complainant submits that the Respondent breached the following three provisions of the Code:

- Rule No. 8, which requires a Council Member to act with decorum and to show courtesy when another Councillor has the floor.
- Rule No. 14, which states that harassment of one Council Member by another Council Member is misconduct under the Code.⁴

³ On this point, the operative portion of the motion adopted by the committee was, "THAT the Council Liaison Coordinator be directed to meet with each Member of Council to determine their specific administrative needs with a particular emphasis on developing an administrative framework and the supporting policies and procedures to assist them in achieving the best functional approach to serve their constituency demands."

⁴ Rule No. 14 contains an obvious typographical error, but the error does not affect the present Complaint. In the recommendations section of this report I propose that the error be corrected.

- Rule No. 15, which provides that Council Members shall conduct themselves with appropriate decorum at all times.

The Complainant argues that three alleged comments, in particular, breached the Code: (i) the Respondent's alleged "South Asian" comment, (ii) the alleged suggestion that the Complainant was sexist and had "mommy issues" and (iii) the alleged statement, "Go lick your wounds, a**hole."

The Complainant explained as follows his concerns about the alleged comments:

In regards to my park tour, Councillor Moore questioned why I would visit 40 parks in a month, and then suggested that I follow the same scheduling model as a previous "South Asian" Councillor, Avtar Aujla. She then stated that "South Asian" Councillors act like "Mayors for whole City," stereotyping an entire community.

... I do not appreciate Councillor Moore generalizing any group residing in Brampton, assuming that my park tour is for "South Asian" Bramptonians only, viewing me as anything other than Canadian, or comparing me, the work I do, or the way I manage my time, to another "South Asian" Councillor. In my opinion, any elected official in 2017 shouldn't be engaging in this type of innuendo.

I was elected to serve my constituents and have done so to the best of my ability, and do not believe it was appropriate to bring ethnicity into the conversation.

...

Councillor Moore then made a comment insinuating that I did not speak to women respectfully, presumably because I have been outspoken against Councillor Moore's records to which I then questioned if she was implying I was sexist. She then said that I have "mommy issues."

It was at this point I felt shocked, disappointed, and disgusted, and knew that Councillor Moore's comments were now out of the political realm, and into a personal one.

Taken aback, shocked, and insulted, I then asked her if she knew my mother in making such an uncalled for comment. As a husband, son, and a proponent of women's rights, I felt that, again, Councillor Moore was out of line with her comments.

...

Not being a member of the committee, and there only for the discussion, I left to attend another appointment shortly after this exchange. However, as per multiple witnesses, upon my exit Councillor Moore loudly shouted "go lick your wounds, a**hole" after I left.

...

In conclusion, the actions by Councillor Moore on May 8th have no place in City Hall, or elsewhere, and were disrespectful to the Bramptonians who have elected us. Her words to me that day were insensitive, insulting, and uncalled for and I demand an apology.

The Complainant also said that he had previously been mocked, interrupted and laughed at by other Council Members, and been the subject of inappropriate comments, and the those Council Members were not called to order. He claimed that at this particular meeting, nobody came to his defence or called the Respondent to order. While these are important issues, they are not presently before me. The present Complaint is not directed against other Council Members who were in the room that

day, nor does it allege specific Code contraventions on prior occasions. Assuming I have jurisdiction, I would be limited, therefore, to focusing on whether the Respondent's conduct, that day, contravened the Code.

Respondent's Position

The Respondent acknowledges that a heated exchange occurred at the meeting. She accepts full responsibility for her actual comments⁵ and her role in the disruption caused. She says that when the meeting resumed she apologized to the committee for the role she played in the disruption. Following the meeting, she personally apologized to several staff members for putting them in the uncomfortable position of having to witness the verbal exchange.

According to the Respondent, however, both she and the Complainant were equally responsible for the disruption, and for making unfair and hurtful comments. She states that the Complainant engaged in "active, equal and willing participation in the exchange." She feels the Complainant's demand for an apology is inappropriate; a one-way apology would mean the Complainant does not take responsibility for his equal role in what transpired.

On the specific allegations made by the Complainant, the Respondent states as follows:

... I categorically deny that I "loudly shouted" "go lick your wounds, a**hole", or that I said such a comment to anyone in the room.

...

I further made a comment that for three years I had shared an office with former Councillor Avtar Aujla, a South Asian Councillor that I remain friends with today.

At no point were my comments said in a manner, or intended to be disparaging or disrespectful to Councillor Dhillon as a South Asian; in fact my comments were intended and offered in the spirit of understanding that it is natural for many of our residents of South Asian descent to reach out to a South Asian Councillor on Council, rather than their area Councillor.

Former Councillor Aujla and I had many conversations about this during her time on Council particularly since she and I shared an office and we became quite close because we were the only two new Councillors elected at the time; and because it was her experience that South Asians from across the City reached out to her and she used to say she felt like the Mayor of the South Asian community.

My comments were made purely in the context of my relationship and friendship with former Councillor Aujla and an acknowledgement to Councillor Dhillon that I had some measure of understanding of the pressures he feels to respond to the many calls and requests he receives.

As Councillor Dhillon was interrupting me, I calmly asked him why it was that whenever either Councillor Gael Miles or myself spoke, he felt it necessary to put us down. (I believe these were my exact words.)

Councillor Dhillon immediately shot back at me asking me if I was calling him a sexist.

⁵ Here the Respondent is referring to the comments she actually made, not to alleged comments that she did not make.

I acknowledge and take full responsibility for responding to him that those were his word, not mine, but that I did believe he has some mommy issues.

...

I did not at any point in time make the offensive comment about licking wounds to him or anyone else in the room, and am truly offended that Councillor Dhillon would make such an accusation.

...

My record will show that I have always been always been respectful in debate, and to my colleagues, both at and away from the Board or Council table. I express opinions and arguments on issues, not personality and certainly not ever on race, religion, culture, gender, age, or sexuality.

... For those who have followed me politically, and my family and friends know that I am a fierce advocate for particularly the LGBTQ community, for fighting for fairness and truth, and for holding colleagues and staff accountable.

While difficult for me to understand, I accept that Councillor Dhillon believes my comments were deliberately meant to be disparaging.

I would argue that the record and my reputation which spans almost 28 years in politics simply do not support his belief.

To support her claim that both the Complainant and the Respondent shared equal responsibility for what occurred, the Respondent makes the following additional points:

- As the Respondent was speaking, the Complainant interrupted to respond to her opinion. Interruption is a pattern of behaviour by the Complainant.
- As previously noted, the Respondent claims that the Complainant rose and placed himself in a physical position of power over the Respondent. (The Respondent says the Complainant has not used this tactic in his exchanges with male colleagues.)
- As previously noted, the Respondent claims that the Complainant made several disparaging and unfair comments toward her (see page 2).
- The Respondent asserts that the Complainant's statements and physical approach were deliberately meant to be intimidating, demeaning and insulting to her personally.
- The Respondent says that the Complainant would routinely exhibit a "dismissive and condescending attitude" toward the Respondent and Councillor Miles. His interruption at the meeting in question prompted the Respondent to ask the Complainant why he felt it necessary to put down the Respondent or Councillor Miles whenever one of the two was speaking.
- The Respondent alleges that, after the recess, the Complainant came back into the room and tried to revive the discussion by asking the Respondent if she knew his mother. The Respondent says she immediately responded that the conversation was over, to which the Complainant replied, "Why is the

conversation over? Because you said it was over? Why do you get to be the one to decide if the conversation is over?”

- According to the Respondent, during this time the committee chair repeatedly asked the Complainant to stop. The Respondent repeated that the conversation was over because she had no intention of re-engaging. The Complainant then gathered his papers and left the room.

Finally, the Respondent does not agree that other Council Members ignored the verbal altercation. She states that Councillor Palleschi asked the Complainant to “settle down” and, in fact, asked both the Respondent and the Complainant to stop. Further, the committee chair, Councillor Gibson, repeatedly called for order, and called a brief recess when it was clear that order would not be achieved.

The Complainant’s Reply

The Complainant submitted a lengthy reply to the Respondent’s position. He says that by mentioning the Complainant’s own comments and conduct, the Respondent is trying to blame the victim. He feels that the Respondent is trying to deflect attention from the three alleged comments on which the Complaint is based, namely, (i) the Respondent’s alleged “South Asian” comment, (ii) the alleged suggestion that the Complainant was sexist and had “mommy issues” and (iii) the alleged statement, “Go lick your wounds, a**hole.” The Complainant also challenged the accuracy of the Respondent’s statements.

The Complainant characterizes his disagreement with the Respondent as “the back and forth of normal debate between politicians.” He says “that when someone does not agree with Councillor Moore’s position, she frequently accuses them of being rude. I have been on the receiving end of her lectures on many occasions – I think she forgets that I am a colleague and her equal.”

Similarly, he says, “Councillor Moore is an experienced politician who appears to have a need to dominate and bully those who disagree with her position. I have worked very hard to ignore her hurtful comments in the past, however, [I] can no longer allow her disrespect to continue.”

This is not the first time, according to the Complainant. He alleges that the Respondent “has made many outrageous comments in the past that I have just tried to ignore – but this time she crossed the line.”

Specifically, the Complainant claims that since the Complainant’s arrival on Council (December 2014), the Respondent has “felt it necessary to publically psychoanalyze me.” At the meeting in question she was “now making inappropriate and insensitive comments about the way she believes I treat women.”

The Complainant alleges that the Respondent “actually has a history of being very combative, rude and inappropriate” at meetings. He provides several alleged examples, at least one of which did not occur exactly as he suggested.⁶

As for his own prior conduct, the Complainant denies ever having put down the Respondent or Councillor Miles.

The Complainant expresses displeasure that the Respondent apologized to others who were present in the meeting, but not to the Complainant.

He rejects the suggestion that both of them were equal participants. According to the Complainant, “Only one individual [the Respondent] expressed inflammatory and offensive remarks that day.”

The Complainant notes that the Respondent acknowledges the “mommy issues” comment. He considers this an admission of “us[ing] inflammatory and inappropriate language in attempt to insult, embarrass, and diminish me in front of senior staff and others – behaviour which is inappropriate for a Councillor.”

The Complainant questions how the Respondent’s past relationship with a former Councillor of South Asian descent, someone elected more than a decade ago, is relevant to how the Complainant does his job or to this Complaint. He says that the mention of former Councillor Aujla is further demonstration of the Respondent’s disrespect for him.

The Complainant calls for all future meetings of the Member Services Committee to be held in the Council Chambers so that the meetings can be recorded.

The Complainant’s concluding thoughts included the following:

Though I was reluctant to even put in an official complaint, I thought about it for weeks and eventually it became clear to me that if I didn’t take this step, the harassment and bullying would continue.

...

Councillor Moore ... has disrespected me on many occasions, and in this response has defended her outrageous behaviour.

At this specific meeting she questioned and mocked my integrity in front of senior staff, damaged my reputation, and at the same time tried to cast doubt about what kind of man I am.

I understand that everyone makes mistakes and Councillor Moore made a series of mistakes – she should own up to all of it.

⁶ The Complainant alleged a “public outburst” in which the Respondent told “the Mayor to ‘wipe that smirk off her face’.” The Respondent had actually said, January 18, 2017, “you can sit over there with a smirk on your face, I guess, if you want to ...” A reporter inaccurately paraphrased the comment into “wipe that smirk.” The Complainant was in the chair when this comment was made and so (the Respondent argues) should have known that no wipe-that-smirk comment was ever made.

Issues

The Complaint and subsequent investigation raised the following issues:

- Did the Respondent contravene Rule No. 8, by failing to act with decorum and/or to show courtesy when another Councillor had the floor?
- Did the Respondent contravene Rule No. 14, by engaging in harassment of another Council Member?
- Did the Respondent contravene Rule No. 15, which provides that Council Members shall conduct themselves with appropriate decorum at all times?

Before addressing the above three issues, I must first consider whether Brampton's Integrity Commissioner has jurisdiction over statements made during Council and committee meetings. I must then also resolve whether I may take into consideration the conduct (or alleged conduct) of the Respondent or the Complainant at meetings prior to the meeting that is the subject of this 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.⁷
- 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.

⁷ 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.

- 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.

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 ample opportunity to settle their differences and I tried to help them to do so.

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 to explore the prospect of a resolution. The pause was also intended 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 to permit time for possible settlement.

I note that a pause carries no additional cost to the City. My practice is always to give the parties necessary time to resolve matters without the issuance of an investigation report, if they are willing and this is feasible. Only when I was satisfied that this would not be possible did the process resume.

Unfortunately, settlement was not possible. Where a settlement cannot be achieved, apart from noting this fact in the report, I do not comment on why settlement was not possible. I also keep confidential what the parties may have said in connection with any possibility of settlement.

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

I have interviewed witnesses, reviewed relevant documents, and examined video footage (though not of this meeting, which was not recorded).

Subsection 5(3) of the Complaint Protocol states that before finding a violation of the Code I must give the affected Council Member notice and an opportunity to comment. Because this report does not contain a finding of violation, subsection 5(3) of the Complaint Protocol is not applicable.

Analysis and Findings

In addition to the specific issues of compliance or non-compliance with Rule No. 8, Rule No. 14 and Rule No. 15, this Complaint investigation also requires that I consider, first, whether the Integrity Commissioner has jurisdiction over matters arising from statements made during Council and committee meetings, and, second, whether I should take into consideration conduct (or alleged conduct) at meetings prior to the meeting that is the subject of this Complaint.

I will consider the issues after summarizing the evidence.

Everyone in attendance at this particular committee meeting⁸ recalls a heated argument between the Complainant and the Respondent. Most witnesses agree that both the Complainant and the Respondent were yelling or, at least, speaking very loudly so that each could be heard over the other. The witnesses generally were surprised that the situation escalated so quickly.

Based on evidence obtained from witnesses as well as the statements of the Complainant and the Respondent, I find that what occurred was as follows:

During the discussion on staffing, the Complainant mentioned the importance of his Constituency Assistant attending meetings and events, and cited the role of MPs' and MPPs' constituency assistants. He argued for mobility and flexibility, and said it was "childish" to need to seek permission to have his Constituency Assistant travel. Another Council Member spoke (disagreeing with the Complainant), followed by the Respondent. The Respondent stated that she disagreed with the Complainant, that the current permission requirement is not childish, and that when one Constituency Assistant is out "gallivanting" with a Councillor the other Constituency Assistant must pick up the slack.

After several other individuals had spoken, the Complainant again had the floor. He mentioned his workload, his desire to do more for the City, and the limitations placed upon his ability to serve when his Constituency Assistant cannot attend meetings with him. He mentioned his annual "parks tour" of 40 parks in Wards 9 and 10 where he would hold localized town hall meetings. He explained why his Constituency Assistant would be needed to help plan and execute this activity.

The Complainant's mention of the "parks tour" prompted a reaction from two Council Members. One questioned the number 40 and whether the Complainant would be visiting parks in *other* wards. (The Complainant said he would not be.) The other was the Respondent, who also questioned why the Complainant would visit so many parks. The Respondent specifically referred to going down the "South Asian Councillor road," in which one feels pressure to be Mayor for the whole City.⁹

⁸ This statement excludes one individual who left prior to the verbal altercation.

⁹ The recollection of the Respondent recalls is that she stated that former Councillor Aujla "used to say she felt like the Mayor of the South Asian community."

At this point the order of events is uncertain. Either:

- the Complainant criticized the record of long-serving Councillors such as the Respondent, saying they were not doing their jobs, following which the Respondent accused the Complainant of putting down female Councillors, which led to the “sexist” and “mommy” comments (explained below),

or

- the Respondent accused the Complainant of putting down female Councillors, which led to the “sexist” and “mommy” comments (explained below), following which the Complainant criticized the record of long-serving Councillors such as the Respondent, saying they were not doing their jobs.

Regardless of the sequence, it is clear that the Respondent did rhetorically ask the Complainant why he made a habit of putting down the Respondent and Councillor Miles. The Complainant asked if the Respondent was calling him sexist,¹⁰ and the Respondent replied that she was. The Respondent then said that the Complainant had “mommy issues.”

The common recollection is that the mention of “mommy issues” was followed by a raising of voices (on both sides) until the committee chair called a recess.

Witnesses are divided, however, on whether it was before or after the “sexist”/“mommy issues” comments that the Complainant disparaged the record of long-standing Councillors. Some recall that the Complainant’s criticism led the Respondent to ask about him putting down her and Councillor Miles. Others recall that the criticism occurred after the Respondent mentioned “mommy issues.”

As context, I note that several witnesses indicate that it was common (*i.e.*, at other meetings) for the Complainant to disparage the record of long-standing Councillors. Witnesses also indicate that the Complainant (at other meetings) appeared to dislike being contradicted or corrected by Councillor Miles and by the Respondent.

Witnesses are divided on who initiated the verbal altercation, but they assign fault to both sides. Some say both parties were equally responsible for starting the incident. Others say the Complainant triggered the altercation. Still others say it was the Respondent. Significantly, however, almost all witnesses (even those who identify one or the other as the starter) agree that fault for the verbal altercation belongs to both.

Interestingly, several witnesses recall the Complainant and Respondent each calling the other “racist,” though this was not mentioned by either party. I take this as a sign of how heated was the exchange.

On the specific question of whether the Respondent said, “go lick your wounds, a**hole,” I am unable to make a finding. Most witnesses claim not to have heard this

¹⁰ Councillors Miles and Moore are currently the only two women on Council, apart from the Mayor.

statement, or not to recall.¹¹ One witness recalls that precise statement and took a contemporaneous note. Another witness recalls “go lick your wounds” and is sure there was no profanity. A third witness (who does not recall whether the statement was made) says the Respondent does not swear. As for the two parties, the Complainant insists that the Respondent made this statement, and the Respondent insists she did not.

Several witnesses, as well as the Respondent, agree that on the following day the Complainant made a comment to a group about licking his wounds. This comment indicates at minimum that the Complainant believed “go lick our wounds” was said the day previous, though it does not shed light on whether profanity was used.

I find that in all likelihood the Respondent used the words, “go lick your wounds.” In the circumstances, I am unable to determine whether “a**hole” was uttered.

Just before the committee chair called a recess, the Complainant had gotten up from his seat and was standing as he addressed the Respondent.

The recess lasted seven minutes.

Following the recess, when the Complainant returned to the room he attempted to continue the exchange by asking the Respondent whether she knew his mother. The Respondent told him the conversation was over and the Complainant replied, “Why is the conversation over? Because you said it was over? Why do you get to be the one to decide if the conversation is over?”

Asked by the committee chair to stop, the Complainant collected his papers and left the room.

A) Preliminary: Does the Integrity Commissioner have jurisdiction over statements made during a meeting of Council or a committee?

I doubt that I do.

In 2012, Brampton’s then-Integrity Commissioner, the Honourable Donald R. Cameron, entertained a complaint under section 2.1 of the Code then in effect.¹² Section 2.1 of the former Code dealt with decorum and harassment, and was analogous to current Rules Nos. 8, 14 and 15. The 2012 complaint was based on statements allegedly made by a Council Member at a meeting of Council. While Integrity Commissioner Cameron dismissed the complaint, he appeared to be acting on the assumption that the Code *did* apply, and his jurisdiction *did* extend to, statements made at meetings. Integrity Commissioner Cameron did not, however, expressly consider the effect of the Procedure By-law.

¹¹ On the more general question of whether there was swearing during the verbal altercation, some say (without recalling specifics) that there was, some say that there was not, and the rest don’t recall.

¹² City of Brampton, Report No. BIC-030-192 (December 14, 2012), Integrity Commissioner Donald Cameron.

On the other hand, in the City of Toronto, integrity commissioners have consistently taken the position that they do not have jurisdiction over the behaviour of Council Members during Council and committee meetings. Professor David Mullan, the first municipal integrity commissioner ever appointed in Canada, noted that the *Municipal Act* requires that each municipality pass a procedure by-law¹³ and that the procedure by-law provides a clear mechanism for enforcing decorum and orderly conduct during meetings. Integrity Commissioner Mullan concluded:¹⁴

In general, the Integrity Commissioner does not have authority under the Code of Conduct to review complaints about the behaviour of Councillors at Council and Committee meetings. The behaviour of Councillors at Council, while regulated by the Code of Conduct, is the responsibility of Council (acting primarily through the Mayor or his deputy). Absent a resolution of Council requesting the Integrity Commissioner to become involved, this self-policing is part of the statutory rights and privileges of Council.

Subsequently, Toronto's Interim Integrity Commissioner Lorne Sossin,¹⁵ Integrity Commissioner Janet Leiper¹⁶ and Integrity Commissioner Valerie Jepson¹⁷ have all declined to exercise jurisdiction over comments made during meetings. As Integrity Commissioner Jepson has explained:

The strong policy principle behind this approach is that the Integrity Commissioner ought not to interfere with the conduct and management of any particular meeting. This makes good sense. The Speaker, or any Chair of a meeting, requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with the procedural bylaw and as specifically stated therein, to oversee order and behaviour of members (s. 27-43(C)). So, if a councillor uses an insulting term against another councillor, in an effort to ensure decorum, the speaker might rule the question out of order and seek some remedial measure such as an apology or – in a serious case – an ejection from the meeting. In most cases, these issues are resolved and the meeting proceeds. There would be little gained by a subsequent referral to the Integrity Commissioner to review the actions.¹⁸

I also note, as Toronto's integrity commissioners have observed, that federal and provincial integrity commissioners/ethics commissioners do not exercise jurisdiction over comments made in the House or in committee. In Parliament, the Legislature, and committees, responsibility for enforcing order rests with the Speakers and the committee chairs.

Brampton's Procedure By-law (see Appendix 2) sets clear rules of decorum and gives a committee chair all the tools necessary to enforce order.

¹³ *Municipal Act, 2001*, subsection 238(2).

¹⁴ City of Toronto, Report on Complaint (April 6, 2005), Integrity Commissioner David Mullan, at 4.

¹⁵ City of Toronto, Integrity Commissioner Annual Report-2009 (July 29, 2009), Interim Integrity Commissioner Lorne Sossin, at 12.

¹⁶ City of Toronto, Integrity Commissioner Annual Report-2010 (June 28, 2010), Integrity Commissioner Janet Leiper, at 4.

¹⁷ City of Toronto, Report from the Integrity Commissioner on Violation of Code of Conduct: then-Mayor Rob Ford (September 22, 2015), Integrity Commissioner Valerie Jepson, at 10.

¹⁸ *Ibid.* Note that in Toronto a Speaker, and not the Mayor, chairs meetings of Council.

Section 11.1 provides that no member shall, speak disrespectfully of any person, use offensive words or unparliamentary language, or speak on any subject other than the subject in debate.

Sections 6.9, 6.10 and 6.11 provide that it is the duty of the chair of a meeting to restrain the members within the rules of order, to enforce the observance of order and decorum, and to undertake all matters required to permit the meeting to proceed in an orderly manner.

Section 11.2 empowers the chair to enforce decorum and order through measures that include: advice and correction, request for apology and/or withdrawal, warning, calling a member to order, naming the member and offence in the minutes, and expulsion. Section 11.3 provides for an appeal to the committee (or Council, as the case may be).

It seems evident that the subject matter of this Complaint falls squarely within the boundaries of the rules and enforcement mechanisms of the Procedure By-law. Under these circumstances, and following precedent, I do not believe that I have jurisdiction over the Complaint, or, if I do, that I should exercise it.

To my knowledge this is the first time that this jurisdictional issue has been considered in the City of Brampton. I will, therefore, proceed to set out my investigative findings, so that they are on the record in the event that I am wrong about jurisdiction,

B) Preliminary: Should I make findings about what happened at prior meetings?

No.

Both the Complainant and the Respondent have relied on conduct that occurred at previous meetings. The Complainant alleges that the Respondent has a history of, among other things, making inappropriate comments to him, of bullying those who disagree with her, and of interpreting any disagreement with her as rudeness. The Respondent alleges that the Complainant has a history of treating women Councillors (the Respondent and Councillor Miles) disrespectfully.

Further to both parties' allegations, I began to gather evidence of what transpired at previous meetings. I have concluded, however, that it is unnecessary and inappropriate to consider what occurred on prior occasions.

This Complaint relates to what happened, or is alleged to have happened, at a specific Member Services Committee meeting. No complaints were ever filed in connection with previous meetings of this committee, other committees or Council. Whether the Code was breached at *this* meeting is not affected by anything that occurred at *other* meetings. Certainly nothing that occurred at a previous meeting – if in fact anything did occur – could justify contravening the Code at *this* meeting. I therefore decline to make findings on either the Complainant's or the Respondent's claims of what happened at prior meetings.

C) Did the Respondent contravene Rule No. 8, by failing to act with decorum and/or to show courtesy when another Councillor had the floor?

I set out this finding only in the event that I am wrong about my jurisdiction.

The evidence is that both the Complainant and the Respondent took part in the verbal altercation. Both contributed to what happened.

Only one participant, however, filed a Complaint against the other. The Complainant formally complains about the Respondent. The Respondent is not officially complaining about the Complainant. Nonetheless, the evidence is that both individuals were involved in what took place.

A finding that one of the two individuals contravened Rule No. 8 would not be consistent with the evidence and would not fairly reflect what occurred.

The Complainant invites me to focus on three particular aspects of the verbal altercation (“South Asian Councillors,” “sexist”/“mommy issues,” and “lick your wounds”) and to make findings just on that basis. With great respect, I disagree with that approach. I do not suggest that these comments¹⁹ were proper. They were not, however, the only improper portions of the verbal altercation. In other words, it cannot be suggested that, but for these comments, the verbal exchange would have been fine. The entire exchange was regrettable and should be treated as such. To try to isolate selected, improper portions of the exchange is both unhelpful and unsound.

The Respondent’s position is to apologize for her share of responsibility for the entire exchange. The Complaint’s position is that three particular comments (by the Respondent) crossed the line. I find that the more accurate and complete picture comes from viewing the exchange in its entirety.

Again, I do not suggest that these particular comments were proper. For instance, one should avoid categorizing anyone, Councillor or not, by that individual’s ethnic origin. Further, “Lick your wounds” is not a polite expression, whether or not followed by a swear word.

Meanwhile, the mention of “mommy issues” I hesitate to label at all. The Respondent states that she was responding to a consistent pattern of putting down women on Council. (As already explained, it is beyond the scope of this proceeding to determine what actually transpired at prior meetings.) If the Respondent perceives sexism then an integrity commissioner should not dictate the language available to her to describe her reality. I would be reluctant to find a contravention of the Code just because alleged sexism was denounced in a manner that made some listeners feel uncomfortable.

¹⁹ My findings on what was said are set out at pages 12 to 14, above.

D) Did the Respondent contravene Rule No. 14, by engaging in harassment of another Council Member?

No.

Brampton's Respectful Workplace Policy defines harassment as "a course of vexatious comments or actions that are known, or ought reasonably to be known, to be unwelcome."

As the definition indicates, typically harassment involves a *course of conduct* or a pattern. Unless the incident is severe,²⁰ a single incident does not amount to a course of conduct and therefore is not harassment.²¹

I would not find that a brief outburst at a single committee meeting constitutes harassment within the meaning of Rule No. 14.

I also note that the text of Rule No. 14 contains an apparent typographical error. Because the Code only covers the conduct of Council Members, it follows that the wording of Rule No. 14 is meant to apply to the conduct of Council Members. Significantly, the juxtaposition of "of" and "by" means that Rule No. 14(2) literally applies to things done *to* Council Members instead of things done *by* Council Members.

The current text of Rule No. 14(2) is:

Harassment **of** a member **by** another member, staff or any member of the public is misconduct.
[emphasis added]

This is likely an error as the provision is not meant to include a circumstance in which a staff member or member of the public harasses a Council member.

What is probably meant is:

Harassment **by** a member **of** another member, staff or any member of the public is misconduct.
[emphasis added]

I recommend that Rule No. 14 be amended to correct the apparent error.

E) Did the Respondent contravene Rule No. 15, which provides that Council Members shall conduct themselves with appropriate decorum at all times?

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

This rule is not limited to decorum during Council and Committee meetings. Rule No. 8, previously considered, addresses meeting conduct. Rule No. 15 applies, "at all times."

²⁰ *B.C. v. London Police Services Board*, 2011 HRTO 1644, at paras. 46-48.

²¹ *Honda Canada Inc. v. Keays*, [2008] 2 S.C.R. 362, 2008 SCC 39, at para. 73.

When conduct at a meeting is concerned, however, Rule No. 15 provides nothing that Rule No. 8 does not already address.

The findings and analysis, above, related to Rule No. 8 apply.

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 ..."

Recommendations

1. Rule No. 14(2) should be amended to replace "of" with "by" and "by" with "of" in the first line.
2. Committee meetings should take place in rooms where the proceedings can be recorded.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
City of Brampton

July 2, 2018

APPENDIX 1: RELEVANT PROVISIONS OF COUNCIL CODE OF CONDUCT

Rule No. 8 Conduct at Council

1. Members shall conduct themselves at Council with decorum. Respect for all persons appearing before Council and for fellow members and staff requires that all members show courtesy and not distract from the business of the Council during presentations and when other members have the floor.

Commentary

A Member of Council recognizes the importance of cooperation and strives to create an atmosphere during Council and Committee meetings that is conducive to solving the issues before Council, listening to various point of view and using respectful language and behaviour in relation to all those in attendance.

...

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.

APPENDIX 2: RELEVANT PROVISIONS OF COUNCIL CODE OF CONDUCT COMPLAINT PROTOCOL

PART B: FORMAL COMPLAINT PROCEDURE

...

Initial Classification by Integrity Commissioner

2. (1) Upon receipt of the request, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation or other Council policies as described in subsection (3).
- (2) If the complaint is not, on its face, a complaint with respect to non-compliance with the Code or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

...
 - (c) if the complaint on its face, is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure ...
- (3) The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- (4) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but, where possible, shall not disclose information that could identify a person concerned.

Integrity Commissioner Investigation

...

7. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

**APPENDIX 3: RELEVANT PROVISIONS OF PROCEDURE BY-LAW
(BY-LAW 160-2004, AS AMENDED)**

6. DUTIES OF THE CHAIR

It shall be the duty of the chair of a meeting to:

...

6.5 direct discussion such that all comments shall be through the chair;

...

6.9 restrain the members, when engaged in debate, within the rules of order under this Procedure By-law;

6.10 enforce on all occasions the rules and the observance of order and decorum amongst the members, and the conduct of members in accordance with section 11;

6.11 undertake all matters required to permit the meetings to proceed in an orderly and efficient manner;

...

6.15 adjourn the meeting without question or suspend the meeting to a time to be named by him, if he considers it necessary, because of grave disorder.

...

11. CONDUCT OF MEMBERS AT MEETINGS

11.1 No member shall:

- (1) speak disrespectfully of any person;
- (2) use offensive words or unparliamentary language;
- (3) speak on any subject other than the subject in debate or for which he has received approval to address council; or
- (4) disobey the rules or a decision of the chair or of the council or committee on questions of order or practice or upon the interpretation of the rules.

11.2 Procedures that may be used by the chair in the event of a breach of order are as follows, in increasing order of severity provided that the chair may use any such procedure regardless of order of severity where circumstances warrant:

- (1) advise and correct the member;
- (2) request an apology or withdrawal of a remark from the member;

- (3) warn the member;
 - (4) call the member to order, by which the member shall be seated and not speak further until recognized by the chair;
 - (5) name the member, by which the member shall be called to order and further, that the member's name and offence shall be entered into the minutes; and
 - (6) expel or exclude the member.
- 11.3
- (1) When a member desires to appeal a ruling of the chair regarding conduct, the member shall give notice to the chair that his ruling is being appealed and shall state the nature of the appeal.
 - (2) If there is an appeal to the council or committee with respect to the ruling regarding conduct, then the chair shall immediately take a vote to sustain the decision of the chair, without debate, and the decision shall be final.
 - (3) No person in attendance during a meeting shall:
 - (1) speak disrespectfully of any person;
 - (2) use offensive words or unparliamentary language;
 - (3) disrupt the meeting or disregard City guidelines for attending Council or committee meetings;
 - (4) disobey the rules or a decision of the chair or of the Council or committee on questions of order or practice or upon the interpretation of the rules.