

City of Brampton Integrity Commissioner File 2018-01

REPORT ON COMPLAINT

Complaint

Regional Councillor Gael Miles complains that by making news media and social media comments about the Riverstone purchase, Councillor Pat Fortini contravened Rules No. 10(1), No. 15(1), No. 16(3) and No. 16(4) of the Code of Conduct for Members of Council.

Summary

I find that most of Councillor Fortini's statements were expressions of political opinion. I therefore do not accept the Complainant's argument that his statements were false and misleading. Opinions are debatable. It is not for an Integrity Commissioner to pronounce a political opinion false or true.

Councillor Fortini made three inaccurate statements. One was his social media post that Regional Councillor Miles had finalized a ward newsletter on the Riverstone purchase before the purchase was approved by Council.

If find that Rule No. 10(1) does not affect the right of the minority to dissent from a majority decision and does not affect the right to explain one's vote. Councillor Fortini was in compliance with Rule No. 10(1).

I find no violation of Rule No. 15(1).

I find Rule No. 16(3) does not apply to the situation and therefore was not contravened.

If find that an expression of disagreement, especially when not related to any individual staff member, does not contravene Rule No. 16(4).

Background

The purchase of Riverstone Golf and Country Club is described in the City's official communications as follows:

At the Council meeting on December 13, 2017, Brampton City Council authorized staff to proceed with the purchase of the Riverstone Golf Club, including the clubhouse building and surrounding valley lands. The clubhouse, located at Don Minaker Drive and Ebenezer Road, will be converted to a new recreation centre to serve the city's east side.

...

The price in the Agreement of Purchase and Sale is \$9 million plus a \$2.6 million contribution for capital improvements. The purchase price includes the clubhouse building and surrounding parcels of land. The capital improvement contribution will enable the seller to do renovations to convert the clubhouse to a public recreation centre.

...

Council directed staff to evaluate the property's potential and negotiate a deal if the purchase was found to be a good value for taxpayers and of long-term benefit to residents. Staff negotiated a purchase price of roughly half of what it would cost to build a new community centre.¹

The motion that Council adopted reads as follows:

1. That By-law 291-2017 be passed to authorize the Mayor and City Clerk to execute all documents necessary between The Corporation of the City of Brampton and 830460 Ontario Limited to effect the purchase of Riverstone Golf Club, capital improvement work and associated table and valley lands and all other documents and supplementary agreements as may be required in connection therewith, on terms and conditions acceptable to the Commissioner, Community Services and in a form acceptable to the City Solicitor or designate, in accordance with the following:
 - a. Acquisition of the clubhouse, clubhouse lands, and proximate parking (Parcels "A" and "B") for \$9 M, including all chattels;
 - b. A \$2.6 M contribution from the City to the Vendor to facilitate the Vendor undertaking capital improvements, as identified by staff, to the clubhouse for completion, prior to closing;
 - c. The conveyance of the all valley lands and associated buffers (Parcels "D", "E", "F", "G", "H" and "I") and the assumption of all remediation and redevelopment works, as identified in an agreement between the City and the Vendor, by the City;
 - d. The Vendor retaining the tablelands identified as Parcel "C" but with the registration of a protective covenant such that the redevelopment of the parcel be restricted to Low Density Residential development only;
2. That following the conveyance of the valley lands and associated buffer lands, that Public Works staff work with the Toronto and Region Conservation Authority (TRCA) and the Ministry of Natural Resources and Forestry (MNRF) to "naturalize" the valley lands; and
3. That the Commissioner of Community Services be authorized to execute agreements or other documents necessary for the completion of the City's purchase of Riverstone Golf Club, capital improvement work and associated table and valley lands, on terms satisfactory to the Commissioner of Community Services and in a form acceptable to the City Solicitor, or designate.

¹ City of Brampton, "The Future of Riverstone: Questions and Answers" (Feb. 9, 2018).

The decision was made on a 6-4 vote.² Regional Councillor Miles voted in favour. Councillor Fortini voted against.

Following the decision, Councillor Fortini made several public comments critical of the decision.

A podcast of an interview conducted by Marco Patrone contains four sound clips of statements by Councillor Fortini.³

First sound clip:

You know that really, kind of, blew everyone away the way the money was spent. Most of the stuff was all behind closed doors. And what I was very upset about was we've been talking about this over two and a half years now and it came to Council for voting and we did not know it was a final vote.

Second sound clip:

No consultation, no town hall meeting. I said, "Let's bring it to March. Let's see what the residents –"

I understand we're not going to keep every resident happy but they have the right to talk. We have the right to knock on their door for the votes but it's OK we make our own decision behind closed doors?

Appraisals were never discussed in the open: what was it worth? It was all behind closed doors, and that bothers me.

Third sound clip:

Where Riverstone is, we have, already, Gore Meadows up the street. One block away we have a community centre, Ebenezer. So at the end of the day, they were talking about a senior facility; and now it's not a senior facility; it's a recreation facility. So the seniors lost out and they're all very upset.

Fourth sound clip:

But the residents are saying that all over Twitter and Facebook –

[interjection by Marco Patrone: Hold on, what are they saying?]

You know, "I wonder why everybody supported it. I wonder if they've been paid off. I wonder if this. I wonder that they donated through the campaigns."

I received zero funding from any developer. Nothing. I used, in two elections, I spent 72 thousand of my own money. I only received two thousand, 800 dollars in donations from my friends and neighbours.

² Yea: Bowman, Gibson, Miles, Moore, Palleschi, Whillans. Nay: Dhillon, Fortini, Jeffrey, Sprovieri. Absent: Medeiros

³ *Peel Weekly News*, Weekly Podcast, "Interview with Brampton Councillor Pat Fortini" (Jan. 31, 2018).

I didn't get no money. I didn't want it, because when you take developers' money and stuff, at the end, they're going to say, "Well, I give you five cheques in your campaign, or I give you this, now I need this."

So this way I owe you nothing, you owe me nothing.

The interviewer wrote an accompanying article in the *Peel Daily News*.⁴ The following passages of the article report statements of Councillor Fortini that not contained in the podcast.⁵

Fortini said the deal was a fiasco, "one of the worst I'd ever seen for taxpayers, when you're paying 2 1/2 times more than the land is valued at. We don't know if it's contaminated. We don't know anything."

Public opposition to the deal blew up on social media sites, fuelled by criticism over the lack of public consultation and the sudden change of heart by some councillors who had initially opposed it.

Councillor Gael Miles, who championed the deal, had a financial relationship with the owner of the money losing facility, having received political donations from Giampaolo Group.

She defended the deal, saying, "Riverstone golf club and clubhouse is an opportunity the city has been given. If you haven't been there already, it is an absolutely beautiful facility. It has a saltwater pool, a complete recreation and fitness area and it has a beautiful banquet hall."

...

Fortini says he and other opponents to the deal weren't told it was the final vote.

"I didn't know anything about it, John Sprovieri didn't know, Gurpreet didn't know. I thought the discussion was still going back and forth like when you put an offer in, negotiation. All of the sudden, it was kind of final. So that kind of troubled me, how some people knew and others didn't.

...

Medeiros, Gurpreet Dhillon and Fortini were part of a wave of new councillors in recent years who came in on a promise of change, but Fortini says the old guard still outnumbers those who want reform.

With an election coming in October, Fortini says more change could be on the way.

"If we change two or three councillors that would be a good thing. They got this group there. It's very tight and they have to do things their way," he said.

⁴ Marco Patrone, *Peel Weekly News* (Jan. 31, 2018), "Public wary, suspicious of Riverstone 'fiasco,' says Brampton Councillor."

⁵ The article reports some of Councillor Fortini's statements slightly differently than they appear on the podcast recording. Where there are differences I have chosen to accept the podcast version of the Councillor's statements.

Regional Councillor Martin Medeiros was quoted in the same article.

Roughly two months following the decision, Councillor Fortini and Regional Councillor Medeiros were interviewed by Ajj Di Charcha on 5AAB TV's "Live Show."⁶ During the broadcast, Councillor Fortini made the following comments about Riverstone:

The Riverstone: We've been negotiating for them for the last two years. There was a Council resolution passed that we were supposed to look for a senior facility in the east end. So at the end of the day they always kept coming back with Riverstone.

Riverstone on the reassessment of the property was appraised at about four million dollars. We end up paying 11.6 million, only one parcel. What the whole incident is, on other pieces these guys could actually build houses on. Now who knows if they're going to build estate homes or town houses, what they're going to build. We're going to give them zoning for that. But the actual golf course never belonged to them. It was TRC [Toronto and Region Conservation Authority]. They had a 40-year lease on that. So now we just inherited that 26 years of lease and we have to make naturalized which we didn't even know what the price tag is going to. That's why I didn't want to support it. There's renovations to be done inside – we don't know – we don't have a list of renovations. It's like going to a restaurant, you eat and then they give you the bill: "Here you've got to pay for it."

So now they're having an open house there today. It didn't make sense having an open house after it's been purchased. Seniors were never involved. Residents were never involved. No town hall. It was all done mostly behind closed doors, a little bit in the open and a lot of the councillors unfortunately supported it.

...

Going back two years ago, I remember our City solicitor – we had a little discussion on the Riverstone because certain residents were worried they were going to build townhouses there – and the agreement is that on both parcels they could bring an application to the City but to rezone that area he has to naturalize all the golf course, the TRC conservation area, which would have cost millions. So the money he made there he would have lost it there. Now we just inherited those millions, and we don't know what the cost is going to be.

I've always said you could build anywhere you want for 300 dollars a square foot. 20,000 square feet would have cost 6 million dollars. We have lots of land. And you put it mainly on Queen Street or an area seniors can get to, not on Riverstone.

[Ajj Di Charcha: So it's not very accessible for seniors –]

No.

⁶ The interview is posted online: <https://www.facebook.com/5aabtv.ca/videos/911593629021960/>

...

In my area, Bramalea was built Bramalea before Brampton. We have a lot of recreation centres. Now we're going to be renovating them all, because you kind of let it go. It's like letting go in your house or your car and then all of a sudden you need so much.

Like Councillor Medeiros says, we've got Gore Meadows. There's Ebenezer also there for the seniors

[Ajj Di Charcha: And the Gore Meadows facility is a remarkable facility. That is a world class recreation facility for our residents. It's beautiful.]

So going back two weeks ago, we had residents coming from Castlemore golf course. They're saying, "We want you to buy Castlemore because we want residential there." Where's it end here now? Well we did Riverstone, why not that? At the end of the day it was money wasted. And if that TRC conservation land which is a golf course, if that's contaminated, it's going to cost millions of dollars. We don't even know. No soil testing. Nothing done.

Because Regional Councillor Miles has only complained against Councillor Fortini, I have not reproduced the comments of Regional Councillor Medeiros, who spoke longer than Councillor Fortini and presented a number of arguments to support his opinion that the Riverstone purchase was a "bad deal." The program host, Ajj Di Charcha, also expressed opposition to the decision, and spoke for nearly as long as Councillor Fortini.⁷

Councillor Fortini also posted on social media concerning Riverstone. The posts to which Regional Councillor Miles objects were the following:⁸

Let's all please thank our City Councillors that supported Riverstone for such a great deal for the taxpayers of Brampton.

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This newsletter [referring to a newsletter of Regional Councillor Miles that mentioned the Riverstone decision] was approved at the Region first week of December which was before the Riverstone deal was approved by City Council

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What about the blank cheque to naturalize all the 70 acres of valley lands with no soil testing for contamination. And the second blank cheque for renovations that we still have no answer on what the renovation is going to be. No consultation with the public of Riverstone or seniors. Again all [behind] CLOSED doors. LOL. This was such a GREAT deal 2 ½ times more than it was appraised.

⁷ During the Riverstone portion of the interview, Ajj Di Charcha spoke for 2 minutes, 13 seconds, Councillor Fortini spoke for 2 minutes, 49 seconds, and Regional Councillor Medeiros spoke for 3 minutes, 51 seconds.

⁸ In quoting from documents, my practice in an investigation report is to correct obvious spelling errors, typographical errors and minor grammatical errors without drawing attention to the correction unless the correction is material. This report also edits punctuation and capitalization for consistency.

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It was purchased four times more than assessment property tax from [MPAC]. Very, very bad deal for taxpayers.

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I can't say the price as it was in camera and you don't have all the details. So I use [MPAC] as an example but trust me it was way, way overpaid. And lots of more money to be spent over the years ahead.

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My ? is why not put out an RFP to build one. And developer can build state of the art building for \$400 sq. foot with land. And why after three years we have been asking for senior facility, Riverstone was always on the radar. Triple M is one of the biggest developers. It was on sale for almost one year. We had a legal agreement when all the development around Riverstone was built , [now] we just helped [him] break the legal agreement thanks to the City.

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The golf course or valley lands do not belong to Riverstone. They belong to the TRC. The legal agreement was if the golf course closed the valley land would come to the City. So please if you have all that info then I think you would think differently as you are a smart person.

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In two elections I have never called or reviewed any donations from anyone but my friends. Spent 72 thousand dollars of my own money. It's just shameful and very upset[ting] for the hard-working residents that work very hard to pay for their home and then to not have the residents in the area involved in the discussion before a deal is made. Just shameful.

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So we are allowed to disclose the amount paid for the losing golf club. Riverstone club \$11.6 million with renovation. Plus \$1 million to convert the 63 acres of valley lands which will take a lot more than \$1 million.

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I did ask for a town hall with all the residents surrounding the Riverstone golf course before any decision was made but I was turned down by 6 to 4 votes.

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Because that property value was \$6.2 million and [he] can build more homes and make more millions. He ate the meal and gave us the left overs LOL.

According to the Complaint, Councillor Fortini also spoke about the Riverstone decision at a February 6 meeting of the Brampton Seniors Council. Everything he is alleged to have said at this meeting duplicates one or more of the comments above. I have, therefore, declined to consider that meeting separately.

One month following the Council decision, the Brampton chapter of CARP wrote an open letter to the Mayor and Councillors. Portions of that letter read as follows:

... Brampton Carp has carefully and thoughtfully read the published staff report, news and media release from the City of Brampton and reviewed the associated video of the council meeting. An overriding issue for Brampton Carp is the complete lack of any public engagement throughout the process of purchasing the Riverstone property.

In the staff report, "Riverstone Golf Club Capital Improvement Work and Associated Table and Valley Lands Ward 8", there is no mention of the cost to acquire this facility. The purchase price of \$9 million dollars to acquire these lands and the \$2.5 million dollars remediation award was later announced by a city press release. We understand that negotiations would be an 'in camera' situation but there was no indication that the purchase and sale agreement would be debated at that council meeting.

We understood that the "Riverstone Golf Club Capital Improvement Work and Associated Table and Valley Lands Ward 8" Report was a status report not a purchase and sale report. So we would like some clarity on the process of how the purchase price was arrived at including appraisals!

Brampton CARP understands that the staff originally required the developer to remediate and redevelop the golf course upon cessation of golf course operation. It now appears that the purchase and sale relieved the developer of that responsibility and as a result made the project a city enterprise and thus a taxpayer undertaking. What is the rationale for this change of strategy?

In trying to assess what the process was in the purchase and sale of Riverstone, Brampton CARP wonders how the valley lands will be remediated and naturalized without spending a great deal of money to re-shape those lands for conservation purposes. Perhaps city council could shed some light on what the remediation will be and what the short and long term costs might be.

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Will the \$2.6 million pay-out to the developer to refurbish Riverstone cover all the necessary renovation, refit, redecoration and repair issues, so that upon completion of this effort all buildings will be "turnkey" situations for the city? Further is there a detailed project plan for this phase of the transition? What are the budget details regarding the \$1.5 million dollars required annually to support the Riverstone undertaking?

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As mentioned above Brampton CARP's overriding concern with the Riverstone deal is the complete lack of public engagement or consultation throughout the process. To our knowledge no seniors' group in Brampton, not even the Senior Citizens' Council, which represents some seventy seniors' groups in the city and well over 10,000 seniors, was consulted. They may have welcomed a consultation opportunity and CARP would have been open to be part of that process as well.

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.⁹
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a response or reply.
- Where appropriate I will, however, invite a Complainant to clarify a Complaint. When a Complaint has been clarified the Respondent is provided with the original document and all communications between the Complainant and me related to clarification.
- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

Positions of the Parties

Position of Regional Councillor Miles

The Complainant's primary position is that Councillor Fortini has made false and misleading statements.

She identifies 14 different statements that she considers to be false or misleading:

- (i) The public is asking on social media whether supporters of the purchase received campaign contribution or were "paid off."

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

- (ii) The City paid 2.5 times the land's value.
- (iii) The City doesn't know whether the land is contaminated.
- (iv) Councillors "don't know anything" about the deal.
- (v) The property was appraised at \$4 million.
- (vi) The owner could build townhouses on the lots.
- (vii) The golf course is on land leased from Toronto and Region Conservation Authority for 40 years.
- (viii) Council does not know what the renovations will cost.
- (ix) Seniors and residents had no say.
- (x) A new building could be constructed on the land for less than the purchase price.
- (xi) The facility will not be accessible to seniors.
- (xii) Before City Council approved the purchase, Regional Councillor Miles approved a constituent newsletter announcing the purchase.
- (xiii) Campaign contributions can influence Councillors' decision making.
- (xiv) Councillor Fortini spent \$72,000 of his own money on his two campaigns.

I use the same numbering – (i) through (xiv) – to refer to these statements throughout the rest of this report.

Regional Councillor Miles argues that the making of false and misleading statements about a Council decision is a contravention of Rule No. 10(1).

She further argues that making statements (v), (vi), (vii), (viii), (ix), (x), (xi), (xiii) and (xiv) constituted discreditable conduct, contrary to Rule No. 15(1).

She also takes the position that statements (ii), (iii), (iv) and (x) harmed the reputations of staff members and breached Rules No. 16(3) and No. 16(4).

Position of Councillor Fortini

Councillor Fortini rejects any suggestion that he was disrespectful of the staff or of the Council or that he questioned the integrity of Council's decision making process.

He stands behind his position that the Riverstone deal is bad and that the City paid too much. He states his factual claims are accurate and, in many cases, public knowledge.

His concerns about excess costs are his own opinion, based on his experience in the construction industry.

He bases his claim that the City paid 2.5 times the value on the MPAC assessment of the property.

He notes that contamination is possibility and points to the lack of an environmental assessment.

According to Councillor Fortini, it was Regional Councillor Miles herself who raised the possibility that townhouses might be built on the property. According to him, she attempted to mobilize community support for her position by warning residents about the prospect of townhouses being built in their backyards.

Councillor Fortini agrees that he used the wrong total when he told the interviewer that he spent \$72,000 of his own funds on his two election campaigns. (The actual total was \$47,247.95.¹⁰) He argues that the error is not material because his campaign financial statements are public records that anyone can access online.

He maintains the belief that there was insufficient community engagement and that the City misinformed seniors. Councillor Fortini points out that Brampton CARP issued a letter that voiced the same concerns.

On the specific rules in the Code:

- Councillor Fortini states that he has upheld Rule No. 10. He says Regional Councillor Miles has filed a complaint against him because she wants him to be silent about a deal that had no transparency and accountability to residents.
- Councillor Fortini says that he has complied with Rule No. 15. He says he is allowed to speak publicly about any topic that affects his constituents as long as he does not disclose confidential information.
- Councillor Fortini believes that he is in compliance with Rule No. 16. He says it is his right, just like the right of all other Councillors, to give views on a topic discussed at Council in open session. The Councillors who voted in favour of the deal give their comments on TV, phone interview, newspaper, social media and other news, and Councillor Fortini did the same. He states that at no time did he mention any staff member by name or discredit any staff member in any way.

Councillor Fortini points out that Regional Councillor Miles has been active in the news media and on social media promoting her views. As far as he is concerned, elected officials are allowed to express their opinions without disrespecting any one individual and they do not contravene the Code in doing so. Other Councillors who voted against

¹⁰ Of his own funds, Mr. Fortini contributed \$30,725.95 to his 2010 campaign, and \$16,522 to his 2014 campaign.

the Riverstone deal have also been very vocal on this matter also and have expressed their dissatisfaction in the news media. He says that Council Members represent the taxpayers and should be allowed to state their views clearly and be transparent to residents.

Findings of Fact

I have carefully reviewed all the evidence, and have examined in detail all of Councillor Fortini's public comments.

With three exceptions, I do not find that Councillor Fortini made false or misleading statements.

Many of Councillor Fortini's comments were expressions of opinion. As such, they are not statements that an Integrity Commissioner can determine to be true or false. They are the Councillor's opinions. That is all.

The Riverstone transaction was a major decision of Council and the subject of healthy discussion and debate in the City. The fact that Councillors disagreed on the decision and on how to make the decision is not untoward; it reflects a fully functioning democracy.

Comments made by a Council Member during the course of political debate must be understood in that context. It is extremely common for a political actor to voice a conclusion, such as: "There was no consultation." When made in the course of political discussion, this conclusion is not a statement of fact; it is an opinion. A statement like "no consultation" might mean there was literally no consultation, but more commonly it means there was no consultation that the speaker finds acceptable, valid or sufficient. As such, the conclusion of "no consultation" is not a factual claim that can be proved or disproved; it is a political opinion that is subject to debate.

Many of the statements that Regional Councillor Miles considers to be false are in reality expressions of Councillor Fortini's opinion, not factual claims. Expressions of political opinion lie outside an Integrity Commissioner's purview. It is not for me to pronounce them true or false. Instead, these statements of opinion are tested through political debate.

For each of the 14 statements that she challenges, Regional Councilor Miles offers a rebuttal and uses the rebuttal to argue that the statement is false. For the reasons I provide above, rebutting an opinion does not establish that an opinion is false; rebuttal is simply part of political debate over opinions.

I find that the following statements of Councillor Fortini are clearly opinions and, therefore, not subject to a determination that they are false (or true):

- Statement (iv): Councillors don't know anything about the deal:¹¹ This is not a factual claim. It is a rhetorical way of expressing the opinion that Councillors lacked sufficient information. The statement is neither true nor false. It is an opinion subject to political debate.
- Statement (viii): Councillors do not know how much the renovations will cost:¹² This is not a factual claim that literally no information was provided. It states an opinion that the insufficiency of provided information creates uncertainty about the ultimate cost.
- Statement (ix): Seniors and residents had no say:¹³ This is the clearest example of a political opinion, as opposed to a factual assertion. It expresses the opinion that consultation was inadequate or unacceptable. The statement is neither true nor false. It is an opinion subject to political debate.
- Statement (xi): New building will not be accessible to seniors: Regional Councillor Miles assumes that Councillor Fortini was talking about accessible building design, and so labels his statement as false. In fact, it is clear from the interview tape that Councillor Fortini was talking about *whether the location is convenient* to seniors.¹⁴ That is a matter of opinion that can be debated. It cannot be categorized as false or true.
- Statement (xiii): Campaign contributions can influence Councillors' decisions: While Councillor Fortini did not make the precise statement that Regional Councillor Miles attributes to him, he did imply that the acceptance of contributions can create pressure on politicians.¹⁵ This is a political opinion that gets debated; it is not a statement that can be pronounced true or false.

I find that the following statements are also statements of opinion. Even though they cite numbers, the statements are conclusions based on political opinion about how to approach an issue:

¹¹ The exact words included, "We don't know anything" and "I didn't know anything about it, John Sprovieri didn't know, Gurpreet didn't know. I thought the discussion was still going back and forth like when you put an offer in, negotiation. All of the sudden, it was kind of final. So that kind of troubled me, how some people knew and others didn't." (*Peel Daily News*, Jan. 30, 2018).

¹² For example: "And the second blank cheque for renovations that we still have no answer on what the renovation is going to be." (social media posting)

¹³ The exact words were: "Seniors were never involved. Residents were never involved. No town hall." (5AAB TV interview) "No consultation, no town hall meeting." (*Peel Weekly News*, Weekly Podcast)

¹⁴ That portion of the interview was as follows: "[Fortini:] I've always said you could build anywhere you want for 300 dollars a square foot. 20,000 square feet would have cost 6 million dollars. We have lots of land. And you put it mainly on Queen Street or an area seniors can get to, not on Riverstone. [Ajj Di Charcha:] So it's not very accessible for seniors – [Fortini:] No." (5AAB TV interview)

¹⁵ The exact words were: "I didn't get no money. I didn't want it, because when you take developers' money and stuff, at the end, they're going to say, 'Well, I give you five cheques in your campaign, or I give you this, now I need this.' So this way I owe you nothing, you owe me nothing." (*Peel Weekly News*, Weekly Podcast)

- Statement (ii): The City paid 2.5 times the value of the land: Councillor Fortini arrives at this conclusion by taking the MPAC assessed value and comparing it to the purchase price. Whether to use the MPAC assessment is a matter of opinion. It is not for the Integrity Commissioner to evaluate an opinion.
- Statement (iii): The City doesn't know whether the land is contaminated: Councillor Fortini's position is that because certain steps (e.g., environmental assessment) have not been taken, this possibility cannot be ruled out. This is a political opinion rendered during the course of debate.
- Statement (v): The property was appraised at \$4 million: Councillor Fortini is relying on the MPAC assessment. Others might disagree with the approach. This does not make his conclusion "false." It is an opinion that is subject to debate.
- Statement (x): A new building can be constructed on the land for less than the purchase price: This is a point of debate. Councillor Fortini and Regional Councillor Miles are on opposite sides of the debate. Neither side can be labelled "false."

Quite common, in political debate, is for a politician to refer to comments and feedback from members of the public. How a politician interprets public sentiment is essentially a matter of opinion, not a statement of fact that can be proved false or true. Nonetheless, Regional Council Miles argues that Councillor Fortini falsely described how Bramptonians were reacting on social media (statement (i)). In her words:

Although there has been media around the Riverstone Acquisition, I have yet to see any comments on social media other than Councillor Fortini's, alleging bribery and corruption on Council in the newspaper. ...

...

In the same article he states the public are suspicious, raising issues why Council supported the purchase and alleging payoffs. It is inappropriate for a member of Council to repeat these allegations in a public forum. It is even worse if the Councillor himself is making these statements to destroy confidence by the public in his colleagues. I have spent a lot of time scouring social media for these allegations. Some people were opposed to the purchase but I could not find any allegations of pay offs, other than those comments by Councillor Fortini himself to the media.

According to the podcast, what Councillor Fortini actually said was the following:

But the residents are saying that all over Twitter and Facebook –

[interjection by Marco Patrone: Hold on, what are they saying?]

You know, "I wonder why everybody supported it. I wonder if they've been paid off. I wonder if this. I wonder that they donated through the campaigns."

The existence of social media reaction was real. According to one news story:

Public opposition to the deal blew up on social media sites, fuelled by criticism over the lack of public consultation and the sudden change of heart by some councillors who had initially opposed it.

I find that a politician's comments about the mood and reaction of the public are expressions of opinion not statements of fact. It is not my place to label such opinions as true or false.

I cannot find that statement (vi) (concerning townhouses) was false, given that Councillor Fortini states that he was referring to something that Regional Councillor Miles had communicated to the local community.

This leaves three statements that were inaccurate: (vii) reference to the Toronto and Region Conservation Authority lease, (xii) claim that Regional Councillor Miles's newsletter was approved before the Riverstone decision was made and (xiv) error in adding up Councillor Fortini's total contributions to his own campaigns.

Issues

I have considered the following issues:

- A) Did Councillor Fortini contravene Rule No. 10(1) by not accurately communicating Council's Riverstone decision?
- B) Did Councillor Fortini contravene Rule No. 15(1) (discreditable conduct)?
- C) Did Councillor Fortini contravene Rule No. 16(3) (neutrality of staff and undue influence)?
- D) Did Councillor Fortini contravene Rule No. 16(4) (injure reputation of prospects of the staff)?

A. Rule No. 10(1)

Did Councillor Fortini contravene Rule No. 10(1) by not accurately communicating Council's Riverstone decision?

No.

As I have indicated, most of Councillor Fortini's statements were matters of opinion. An opinion cannot be labelled false or inaccurate.

The three inaccurate statements that Councillor Fortini made were not characterizations of Council's decision.

Brampton is a democracy. The minority always has the right to dissent from majority decisions. Rule No. 10(1) cannot be interpreted as removing the right to dissent.

What Rule No. 10(1) requires is that the majority decision be accurately communicated. This does not prevent criticism of a decision. It merely requires that the criticism depict the decision accurately. I find that this occurred.

A Council Member is always entitled to explain why he or she voted a particular way. This is not a privilege conferred by the Code; it is a basic democratic right. I find that this is what Councillor Fortini did.

The commentary to Rule No. 10(1) states that, "A member should refrain from making disparaging comments about Members of Council and Council's processes and decisions." This commentary must be interpreted in light of the right to dissent and the right to explain one's vote.

B. Rule No. 15(1)

Did Councillor Fortini contravene Rule No. 15(1) (discreditable conduct)?

No.

Councillor Fortini's statements were mostly expressions of political opinion. They were neither discreditable nor breaches of decorum.

The three inaccurate statements that he made were not discreditable and were not breaches of decorum.

Regional Councillor Miles takes particular exception to Councillor Fortini's comments about campaign contributions. According to her:

Councillor Fortini made comments alleging that Councillors were influenced in their decision making if they accepted contributions to their political campaigns. Contributing to election campaigns, or accepting donations is not illegal if they are declared in financial statements as campaign contributions. Implying that this would compromise a member's ability to vote impartially is really inappropriate as it is an acceptable part of the political process in Canada. Councillor Fortini implies in the article that Councillors who accept campaign contributions from developers run the risk of being compromised. Councillor Fortini is aware the Giampaolo Group of Companies made contributions to six members of Council's election campaigns and his remarks implying that this influenced Councillors ability to vote impartially on the Riverstone Acquisition and is very inappropriate.

I respectfully disagree with the Regional Councillor Miles. I find that Councillor Fortini's comments on campaign contributions complied fully with Rule No. 15.

To be clear, I take no position on the substance of what Councillor Fortini said about campaign contributions. That is a political debate into which the Integrity Commissioner should not enter. My finding is limited to the application of Rule No. 15.

Applying Rule No. 15, I find that the following expression of opinion,

I didn't get no money. I didn't want it, because when you take developers' money and stuff, at the end, they're going to say, "Well, I give you five cheques in your campaign, or I give you this, now I need this."

So this way I owe you nothing, you owe me nothing.

is neither discreditable nor a breach of decorum.

I repeat my findings in Joint Reports 2017-03/2017-05. Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:¹⁶

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

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:¹⁷

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

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

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

The essence of the market-place of ideas argument is that control and regulation of expression is intolerable because we can trust no government to know the truth. Those who purport to legislate the truth invariably turn out to be tyrants. The market-place of ideas argument prescribes an open process precisely because we cannot agree on what is the truth.

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

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

¹⁶ Report No. BIC-030-192, note **Error! Bookmark not defined.**, at p. 3.

¹⁷ City of Brampton, Report No. BIC-32-1112 (December 18, 2012), Randy Pepper, Delegate of the Integrity Commissioner, at pp. 2-3.

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

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

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

C. Rule No. 16(3)

Did Councillor Fortini contravene Rule No. 16(3) (neutrality of staff and undue influence)?

No.

I find that Rule No. 16(3) does not apply to this case.

This provision applies to the role of the staff to provide advice based on political neutrality and objectivity and without undue influence.

There is no suggestion that neutrality or objectivity was threatened or that any staff member was exposed to undue influence.

D. Rule No. 16(4)

Did Councillor Fortini contravene Rule No. 16(4) (injure reputation of prospects of the staff)?

No.

Regional Councillor Miles argues that by expressing his disagreement with the decision Councillor Fortini was harming the reputation of the staff members who recommended the decision.

I do not accept that argument. Disagreeing with a staff recommendation and explaining the reason for disagreement cannot amount to a contravention of Rule No. 16(4). Otherwise nobody would ever be able to disagree with a staff recommendation.

Further, Councillor Fortini did not identify any staff member or make any comments about the performance, capabilities, character or competence of a staff member or of the staff as a whole. All he did was to exercise the democratic right to dissent and to explain why. He complied with Rule No. 16(4).

Conclusion

Councillor Fortini did not contravene the Code. I dismiss the complaint.

I have determined that it is necessary for the purposes of this report include in it the identities of both parties.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
City of Brampton

October 19, 2018

APPENDIX: RELEVANT PROVISIONS OF COUNCIL CODE OF CONDUCT

Rule No. 10 Media Communication

1. Members of Council will accurately communicate the decisions of Brampton's Council, even if they disagree with a majority decision of Council so that there is respect for and integrity in the decision making processes of Council

Commentary

A Member of Council may state that he or she did not support a decision, or voted against the decision. A member should refrain from making disparaging comments about Members of Council and Council's processes and decisions.

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.