

DECISION OF THE INTEGRITY COMMISSIONER

TOWNSHIP OF THE NORTH SHORE

ALLEGATION: CONTRAVENTION OF THE CODE OF CONDUCT

BY: COUNCILLOR MELODY ROSE



I. EXECUTIVE SUMMARY

- [1] These reasons relate to inquiries under section 223.4(1) of the *Municipal Act, 2001*, (the "*Municipal Act*") about Councillor Melody Rose ("Councillor Rose"), an elected member of the Township Council ("Council") for the Township of North Shore (the "Municipality").
- [2] The Requestor alleged that Councillor Rose contravened the Township of North Shore Code of Conduct ("Code of Conduct") when she:
- Did not disclose the individual responses she received from constituents [in reply to a Flyer Councillor Gamble circulated to households in the Municipality] to the Clerk in accordance with the Municipality's policy regarding the use of electronic mail and the retention of municipal records bylaw.
 - Came unprepared to Council meetings, often asking questions of the Clerk-Treasurer about matters that were included in the Council Meeting package sent out to Councillors well in advance of Council meetings.
 - Did not sign a sympathy card for the passing of the Clerk-Treasurer's stepfather. It is alleged that this was done on purpose, and to be hurtful towards the Clerk-Treasurer.
 - Advised certain constituents by email about her intended absence from the Council meeting on March 4, 2020, and not the Clerk-Treasurer which allegedly resulted in a member of the public contradicting the statement of the Clerk-Treasurer when she advised that she was unaware of Councillor Rose's whereabouts. For clarity, two members of Council and the Clerk had been in Council Chambers awaiting the start of the meeting on March 4, 2020. Councillor Gamble had already sent his regrets and it was anticipated that Councillor Rose would attend the meeting. When she did not and the Clerk was questioned, she advised that she did not know why Councillor Rose had not arrived for the meeting. The member of the public stated that they had received an email from Councillor Rose advising that she would not be attending the meeting.
 - By her actions toward a staff person on a number of occasions contravened the *Occupational Health and Safety Act* ("OHSA").

Mailout

- [3] After former Mayor Condie resigned his position, Councillor Gamble took it upon himself to author and mail a Flyer to households in the Municipality. This was done without the authority of Council.

- [4] In the Flyer Councillor Gamble requested that individuals contact any or all members of Council and provided email addresses for them to do so.
- [5] Councillor Rose reported receiving several responses to Councillor Gamble's Flyer.
- [6] Councillor Rose was requested to file the responses she received with the Clerk [the keeper of all municipal records] because these responses were in fact municipal records.
- [7] Councillor Rose refused. She reported that she did not feel comfortable providing these responses as she did not have the consent of the individuals who sent her their viewpoint and that some respondents told her that they were concerned about retaliation.
- [8] Councillor Rose contravened both the Municipality's "Retention of Municipal Records Bylaw and the Acceptable Use Policy when she refused to provide the Municipal Clerk with the responses she received as a result of the Flyer Councillor Gamble circulated.
- [9] This action is contrary to section 5.10 of the Council Staff Relations Policy in which members of Council must respect the statutory authority of the position of the Municipal Clerk.
- [10] Therefore, Councillor Rose also contravened section 1.2 (f) of the Code of Conduct by not adhering to Municipal policy.

Unprepared for Meetings

- [11] It was alleged that Councillor Rose failed to attend Council meetings prepared. She would often ask the Clerk-Treasurer questions that had already been answered in the materials in the Council Meeting Packages.
- [12] The evidence supports that Councillor Rose did on occasion ask questions of the Clerk-Treasurer that were specifically already addressed in the Council package. Councillor Rose reported that she did this to gain clarity as she sometimes had conflicting information from a previous response the Clerk-Treasurer had made.
- [13] There was insufficient evidence to support a finding that Councillor Rose's actions were contrary to the Council Staff Relations Policy or the Code of Conduct.

Disrespected the Clerk-Treasurer

- [14] It was alleged that Councillor Rose failed to sign a sympathy card for the Clerk-Treasurer when her stepfather passed away.
- [15] Two (2) members of Council [Deputy Mayor Barton and Councillor Green] had signed the card. Councillors Rose and Gamble did not sign the card.
- [16] Councillor Rose advised that she specifically recalled signing the card. We do not believe her assertion. We find that both she and Councillor Gamble purposefully failed to sign the card.
- [17] However, failure of Councillor Rose to participate in signing the sympathy card, while seemingly disrespectful in the workplace, is a personal choice. Council as a body did not pass a resolution requiring all members to sign the sympathy card. Councillors Rose and Gamble were not obligated by a decision of Council or by any specific policy adopted by Council to sign the card.
- [18] It clearly was a political/personal choice and is not a contravention of the Code of Conduct.

Emails related to the March 4, 2020 Council Meeting

- [19] It was alleged that Councillor Rose failed to notify the Clerk-Treasurer that Councillor Rose was not going to be in attendance for the Council meeting scheduled for March 4, 2020, but that members of the public had been notified that Councillor Rose would not be attending the meeting.
- [20] There was insufficient evidence to determine on a balance of probabilities that this occurred. Additionally, this matter does not meet the threshold of a contravention of the Code of Conduct. Had there been a pattern of behavior beyond this one specific incident, our finding may have been different.

Contravention of the *Occupational Health and Safety Act*

- [21] It was alleged that Councillor Rose contravened the *Occupational Health and Safety Act* (“OHSA”). Allegations of this nature are not within the jurisdiction of the Integrity Commissioner. Upon hearing of the allegations, the Integrity Commissioner is required to suspend their inquiry until the matter was investigated.

[22] The findings of the third-party investigation were reviewed and as a result it has been determined that there was no breach of the Code of Conduct.

II. LEGISLATIVE FRAMEWORK

[23] Under section 223.4(1)(a) of the Municipal Act, Council, a member of Council or a member of the public may make a request for an inquiry to the Integrity Commissioner about whether the member has contravened the Code of Conduct applicable to that member.

[24] The *Municipal Act* requires that municipalities adopt a Code of Conduct.

Section 1.2 (b) of the Code of Conduct States:

“Members must serve and be seen to serve their constituents in a conscientious and diligent manner.”

Section 1.2 (d) of the Code of Conduct states:

“Members are expected to conduct themselves and perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.”

Section 1.2 (f) of the Code of Conduct states:

“Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Municipal Council.”

Section 7.1 of the Code of Conduct states:

“Every Member has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the municipality’s Workplace Anti-Violence, Harassment and Sexual Harassment Policy.”

Section 8.1 of the Code of Conduct states:

“Under the direction of the senior administrative staff, and in accordance with the decisions of Council, staff and Officers are required to serve the municipal corporation as a whole. Every Member shall be respectful of the role of staff and Officers to

provide advice based on political neutrality and objectivity and without undue influence from any Member or group of Members. Accordingly, no Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any staff person or Officer.”

Section 8.2 of the Code of Conduct states:

“Members shall acknowledge and respect the fact that staff carry out directions of Council, through senior staff, including but not limited to the treasurer, clerk, director of public works, and administer the policies of the Municipality. No Member shall perform, direct or attempt to undermine the duties of any staff person or Officer except in accordance with the Municipality’s procedural by-law.”

- [25] Section 270 of the *Municipal Act* was amended on March 1, 2019, to require that municipalities adopt a policy regarding the relationship between members of council and the officers and employees of the municipality¹. Council has adopted such a policy.

Section 5.10 of the Council Staff Relations Policy states:

Professionalism

“Members of Council, Staff and Officers must treat each other with professionalism. When Council requests that Staff and Officers appear before Council, they must comply and be prepared for any questions Council has. Advance notice of questions to Staff provides an opportunity for Staff to provide quality reports and advice.”

Section 5.11 of the Council Staff Relations Policy states:

Respect

“Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others’ intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Municipality.”

- [26] Sections 254, 255 and 256 of the *Municipal Act* require municipalities to disclose upon request, retain/preserve and properly dispose of municipal records.

[1]

¹ Section 270(1)2.1 of the *Municipal Act*, 2001, S.O. 2001, c.25

Additionally, Council has adopted a Retention of Municipal Records bylaw for this purpose. Section 1(c) defines a municipal record as:

“Record” means information however recorded or stored, whether imprinted form, on film, by electronic means or otherwise, and includes documents, financial statements, minutes, accounts, correspondence, memoranda, plans, maps, drawing, photographs and films”.

[27] The Municipality has adopted an Acceptable Use Policy that, among other things, describes the use of Electronic Mail. Section 5.1.1.6 specifically states that users of Municipal email [which includes members of Council] must:

Know that electronic mail messages are considered Township data, and that Users should have no expectation of privacy in their electronic mail messages sent or received.

[28] When a matter is referred to us, we may then conduct an inquiry in accordance with the Municipality’s Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

[29] The requests before us were properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the Township of North Shore.

[30] The Requestor alleged that Councillor Rose failed to act in accordance with the Township of North Shore Code of Conduct (“Code of Conduct”) and the Council Staff Relations Policy when she:

- Did not disclose the individual responses she received from constituents [in reply to a Flyer Councillor Gamble circulated to households in the Municipality] to the Clerk in accordance with the Municipality’s policy regarding the use of electronic mail and the retention of municipal records bylaw.
- Came unprepared to Council meetings, often asking questions of the Clerk-Treasurer about matters that were included in the Council Meeting package sent out to Councillors well in advance of Council meetings.
- Did not sign a sympathy card for the passing of the Clerk-Treasurer’s stepfather. It is alleged that this was done on purpose, and to be hurtful towards the Clerk-Treasurer.
- Advised certain constituents by email about her intended absence from the Council meeting on March 4, 2020, and not the Clerk-Treasurer which allegedly resulted in a member of the public contradicting the statement of the Clerk-Treasurer when she advised that she was unaware of Councillor Rose’s whereabouts. For clarity, two members of Council and the Clerk had been in

Council Chambers awaiting the start of the meeting on March 4, 2020. Councillor Gamble had already sent his regrets and it was anticipated that Councillor Rose would attend the meeting. When she did not and the Clerk was questioned, she advised that she did not know why Councillor Rose had not arrived for the meeting. The member of the public stated that they had received an email from Councillor Rose advising that she would not be attending the meeting.

- By her actions toward a staff person on a number of occasions contravened the *Occupational Health and Safety Act* (“OHSA”).

IV. THE INQUIRY PROCESS

- [31] The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a member has contravened the Code of Conduct that is applicable to that member.
- [32] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint which resulted in the decision to conduct an inquiry into the matters.
- [33] Darren Nesbitt, a professional investigator with Investigative Solutions Network (ISN), was assigned as an agent of the Integrity Commissioner to carry out an investigation into the Requestors allegations. The inquiry followed the process outlined in section 5 of the Integrity Commissioner Inquiry Protocol which included reviewing the available evidence, interviewing the Requestors, witnesses and Councillor Rose.
- [34] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Township's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:
- whether or not the individual had first-hand knowledge of the situation,
 - whether or not the individual had an opportunity to observe the events
 - whether or not the individual may have bias or other motive,
 - the individual's ability to clearly describe events

- consistency within the story
- the attitude of the individual as they are participating
- any admission of dishonesty²

V. THE FACTS

Mailout

- [35] Randi Condie resigned his position as Mayor for the Municipality.
- [36] Council declared the seat vacant in accordance with the *Municipal Act* and was considering the options for filling the vacancy [appointment or by-election].
- [37] Council directed the Clerk-Treasurer to notify constituents by way of a newsletter mailout of the procedures surrounding the vacant Mayor's position. And this direction was followed.
- [38] Councillor Gamble authored and mailed a Flyer to approximately 200 households in the Municipality asking them if they would prefer the vacant Mayor's seat be filled by appointment or by-election. He requested that individuals contact a member of Council and provided email addresses for each Councillor.
- [39] This Flyer was not reviewed by or approved by Council. Nor were the other members of Council aware that Councillor Gamble was including all email addresses and not just his own.
- [40] All members of Council received responses from interested residents.
- [41] Acting Mayor Barton and Councillor Green submitted their responses to the Clerk.
- [42] At the January 22, 2020 Council meeting, Councillor Rose presented the fact that she received responses to Councillor Gamble's Flyer from constituents. She did not present any numbers wishing to fill the spot by appointment.
- [43] The Clerk formally requested that Councillor Rose provide the responses to her.

[1]

² *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11.
Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009), 185 LAC (4th) 176 (Alta.Arb.)

- [44] Councillor Rose refused to provide the responses. She claimed that she did not have the consent of the parties who had submitted responses to her to disclose their information. Additionally, she alleged that a number of the parties were concerned about retaliation and did not want their responses disclosed.
- [45] The Flyer is a municipal record, in accordance with the definition of “record” in the Municipality’s Retention of Municipal Records Bylaw [Bylaw 18-06].
- [46] Further, section 5.1.1.6 of the Acceptable Use Policy provides that all Electronic Mail is a Municipal Record and needs to be preserved by the Municipality.
- [47] The Clerk is the statutory officer of the Municipality responsible for the preservation, retention, and destruction of municipal records.

Unprepared for Meetings

- [48] Councillor Rose was elected to Council for the Municipality during the 2018 municipal election.

The Requestor alleged that Councillor Rose had come to Council meetings unprepared to discuss/debate the matters before Council. It was also alleged that Councillor Rose did not attempt to ask questions of municipal staff, and specifically the Clerk-Treasurer, prior to Council meetings. It was further alleged that Councillor Rose was advised by the Deputy Mayor to seek responses to these questions prior to the Council meetings and to not continually put the Clerk Treasurer on the spot.

- [49] A witness reported that “*When the Clerk provides Councillor Rose with an answer, Councillor Rose will say, “That’s not what you told me last time” kind of thing. Councillor Rose does this to grandstand in front of her supporters in the audience*”.
- [50] It was agreed that Council packages are distributed to Council well in advance of the Council meeting and members of Council are expected to review the material.
- [51] Councillor Rose reported that she believes she is prepared when she attends Council meetings most of the time but not 100% of the time. She admitted that she could be more prepared but that it can be challenging with the monumental amount of information that they receive.

- [52] Councillor Rose admitted that she does at times ask questions that were already answered in the material in the Council package. She advised that on occasions she does ask these questions for clarification purposes.
- [53] Councillor Rose denied that her actions were grandstanding. She reported that she has received three different answers to the same question, which causes her confusion. Councillor Rose advised that most often these questions are procedural in nature and that she believed the responses were not in keeping with what was stated in the *Municipal Act*.

Disrespected the Clerk-Treasurer

- [54] The Clerk-Treasurer's stepfather passed away December 31st 2019. Deputy Mayor Barton picked up a sympathy card for Council members to sign.
- [55] Councillor Rose did not sign the card.
- [56] The card had been left on the Council table between Councillors Gamble and Rose at the January 22, 2020, Council meeting.
- [57] It was reported that at the conclusion of the meeting Councillors Rose and Gamble removed all of their documents and the unsigned card was the only thing left behind.
- [58] At an emergency Council meeting March 19, 2020, another sympathy card was passed around to Council for signing. This one had to do with the passing of a firefighter. Both Councillors Rose and Gamble signed this card.
- [59] The Clerk-Treasurer reported feeling significantly disrespected when Councillor Rose failed to sign the sympathy card and that this added additional stress to the workplace.
- [60] Councillor Rose advised that she specifically recalled signing the card.
- [61] The card did not contain Councillor Rose's signature.

Emails related to the March 4, 2020 Council Meeting

- [62] Council was scheduled to meet on March 4, 2020.

- [63] Councillor Gamble advised he was not going to be in attendance.
- [64] Deputy Mayor Barton and Councillor Green attended Council chambers along with members of the public.
- [65] Councillor Rose did not attend.
- [66] Three (3) members of Council are quorum. A quorum is required for a Council meeting to be held. By Councillor Rose not attending, there was not a quorum of Council and that resulted in the meeting being automatically adjourned.
- [67] When the Deputy Mayor questioned if Councillor Rose would be attending the meeting the Clerk-Treasurer advised that Councillor Rose had not given notice that she would not be attending.
- [68] Allegedly, a member of the public questioned the Clerk-Treasurer and cited that an email had been sent out advising that Councillor Rose would not be in attendance.
- [69] It was alleged that Councillor Rose failed to notify the Clerk-Treasurer of this meeting.

Contravention of the *Occupational Health and Safety Act*

- [70] A Requestor alleged that Councillor Gamble contravened the *OHSA* on a number of occasions by his actions/behaviour.
- [71] In accordance with section 223.8 of the *Municipal Act*:

223.8 *If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act, other than the Municipal Conflict of Interest Act, or of the Criminal Code (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council. 2006, c. 32, Sched. A, s. 98; 2017, c. 10, Sched. 1, s. 23.*

- [72] We determined it necessary to suspend this inquiry until the allegations that Councillor Gamble contravened the *OHSA* were investigated separately to this inquiry. These allegations were referred to an independent third-party having expertise in such investigations.

[73] The findings of the third-party investigation were reviewed.

VI. THE ISSUE

Mailout

[74] We considered:

- a. Whether Councillor Rose contravened a municipal policy when she failed to surrender responses received from constituents as a result of the Flyer distributed by Councillor Gamble to the Municipal Clerk.
- b. Whether Councillor Rose contravened the Council Staff Relations Policy when she failed to surrender the responses he received to the Municipal Clerk.
- c. Whether Councillor Rose contravened the Code of Conduct when she failed to surrender the responses he received to the Municipal Clerk.

Unprepared for Meetings

[75] We considered:

- a. Whether Councillor Rose contravened the Code of Conduct when she was unprepared for meetings.

Sympathy Card

[76] We considered:

- a. Whether Councillor Rose contravened the Council Staff Relations Policy when she failed to sign the sympathy card for the loss of the Clerk-Treasurer's stepfather.
- b. Whether Councillor Rose contravened the Code of Conduct when she failed to sign the sympathy card for the loss of the Clerk-Treasurer's stepfather.

Emails related to the March 4, 2020 Council Meeting

[77] We considered:

- a. Whether Councillor Rose contravened the Code of Conduct when she did not advise the Clerk-Treasurer of her intention to not attend the March 4, 2020, Council meeting.

Contravention of the *Occupational Health and Safety Act*

- [78] We considered:
- a. Whether Councillor Rose contravened the *OHSA*.

VII. THE OPINION

Mailout

- [79] Councillor Gamble authored and mailed a Flyer to municipal households requesting that they provide feedback to Council about their preferred method of filling the vacant seat of the Mayor. And that he did so without the support of Council. No resolution was passed supporting Councillor Gamble's actions.
- [80] Councillor Rose received responses from constituents and reported the same in an open session of Council but refused to provide the responses to the Clerk.
- [81] Councillor Rose contravened both the Municipality's "Retention of Municipal Records Bylaw and the Acceptable Use Policy when she refused to provide the Municipal Clerk with the responses received as a result of the Flyer Councillor Gamble circulated.
- [82] This action is contrary to section 5.10 of the Council Staff Relations Policy in which members of Council must respect the statutory authority of the position of the Municipal Clerk.
- [83] Therefore, Councillor Rose also contravened section 1.2 (f) of the Code of Conduct by not adhering to Municipal policy.

Unprepared for Meetings

- [84] It was alleged that Councillor Rose was unprepared for meetings. There is insufficient evidence before us to demonstrate that asking questions of the Clerk-Treasurer at Council meetings that were already addressed in the Council packages is sufficient to be a contravention of the Council Staff Relations Policy or the Code of Conduct.
- [85] Section 5.10 of the Council Staff Relations Policy expressly requires that Staff and Officers who appear before Council are to be prepared for any questions that

Council may have. It goes on to say that advance notice of the questions should be given to staff prior to the meeting so that Staff/Officers can provide quality reports and advice.

- [86] There is no specific prohibition related to asking questions about material or information already contained in the Council packages. In fact, it may be completely appropriate in various circumstances to ask questions about the information to foster debate and public awareness.

Sympathy Card

- [87] Based on the evidence before us, the sympathy card was to be signed by Council as a body [meaning by all members of Council] to show respect for the loss that the Clerk-Treasurer and her family had suffered in the passing of her stepfather.
- [88] Two (2) members of Council [Deputy Mayor Barton and Councillor Green] had already signed the card. The card was placed on the table between Councillors Rose and Gamble for their signature.
- [89] We do not believe Councillor Rose's assertion that she signed the card. We find that both she and Councillor Gamble purposefully failed to sign the card.
- [90] Council as a body did not agree to provide a card to the Clerk-Treasurer. To be clear, a resolution of Council was not passed authorizing or requiring that a sympathy card be signed on behalf of the Municipality to be given to the former Clerk-Treasurer.
- [91] Individual Council members were not obligated to sign the card. Councillors Rose and Gamble made a political and/or personal choice not to sign the sympathy card. While this action may appear to be disrespectful based on personal expectations, members of Council are within their rights to choose not to participate when a formal decision of Council has not been made to the contrary.
- [92] Therefore, Councillor Rose did not contravene the Code of Conduct when he did not sign the sympathy card.

Emails related to the March 4, 2020 Council Meeting

- [93] A Council meeting was scheduled for March 4, 2020. Councillor Rose did not attend, quorum was not achieved, and the meeting was automatically adjourned.

[94] The allegation is that Councillor Rose circulated an email to members of the public but not the Clerk-Treasurer.

[95] There was insufficient evidence to determine on a balance of probabilities that this occurred. Additionally, this matter does not meet the threshold of a contravention of the Code of Conduct. Had there been a pattern of behavior beyond this one specific incident, our finding may have been different.

Contravention of the *Occupational Health and Safety Act*

[96] The findings of the third-party investigation were reviewed and as a result it has been determined that there was no breach of the Code of Conduct.

VIII. CONCLUSION

[97] With respect to our findings, we recommend the following:

- a) For the contraventions of the Code of Conduct related to the collection of responses related to the Flyer sent out by Councillor Gamble, that Councillor Rose be required to:
 - Immediately provide to the Municipal Clerk all responses she received in relation to the Flyer.

DATED January 31, 2021