

City of Orillia
Recommendation Report
of the Integrity Commissioner
Respecting a Complaint against Councillor Cipolla
February 2, 2020

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the City of Orillia April 1, 2019. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

- [2] The City of Orillia has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [3] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

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- [4] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the City of Orillia community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [5] Our role differs from other ‘adjudicators’ whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [6] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent to respond to the allegations and provide comment on the preliminary findings.

The Complaint and events leading up to it

- [8] On October 30, 2019 we received a complaint alleging that the Respondent, Councillor Cipolla, contravened the Council Code of Conduct when he pressured a Municipal Law Enforcement Officer to cancel a ticket instead of following appropriate policy, he raised his voice at her, intimidated her, and made her feel uncomfortable when he patted her shoulder.
- [9] On October 24, 2019, Officer Sara, an experienced Municipal Law Enforcement Officer assigned to parking enforcement for the City of Orillia, observed a white Volkswagen parked in a designated accessible space. On the dash was an accessible permit, but the permit number, identification number and dates were covered up.
- [10] Accessible permits are issued for drivers and passengers who meet the criteria (health and mobility reasons) to qualify for these designated parking spaces. Drivers wishing to park in a designated parking space must display an accessible permit so that the dates of issuance and expiry are visible. The Province of Ontario website states:

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Always display your permit on the dashboard or sun visor of the car you are travelling in so the permit number and expiry date is clearly visible.

- [11] Seeing the car parked with an accessible parking permit which was covered up, the officer snapped a photo of the permit and issued a ticket.
- [12] Taking a picture of how the permit was displayed is something that City of Orillia By-law Enforcement does as a matter of practice.
- [13] In May 2019, Orillia instituted a new process for cancellation of accessible parking tickets. This process requires that a Form be filled out, which is reviewed by the Manager of Legislative Services. This process enables the City to ensure permit-holders acknowledge their obligation to properly display the permit at all times when using a designated parking space, and allows staff to track whether this is a first offence, or whether the permit-holder has previously sought and obtained ticket cancellations in the past.
- [14] Shortly after issuing the ticket, when the Enforcement officer had returned to the By-law Enforcement office at the City Centre, the ticket-holder attended at the front desk on the third floor, demanding to speak with the Enforcement officer.
- [15] The officer spoke with the ticket-holder and explained that the ticket was issued because the accessible permit was not properly displayed and the dates were covered up.
- [16] The officer explained the process whereby a review form must be completed in order to be considered for cancellation by the Manager of Legislative Services.
- [17] The ticket-holder was upset, refusing to fill out the form. After threatening to go to the newspapers, he left the City Centre.
- [18] Within moments, the Respondent Councillor Cipolla arrived at the By-law Enforcement office. He went directly to the Enforcement officer, the complainant, and stood over her as she sat at her desk and asked if she had issued the ticket.
- [19] The officer recounted to the Councillor that she had already talked with the ticket-holder a few minutes earlier, explained the need to fill out the form to request cancellation, and that the ticket-holder had refused.
- [20] The Councillor said he knew the ticket-holder personally and presented a copy of the parking permit which he had with him. The ticket-holder's phone number was written on the ticket.
- [21] The Councillor told the officer: "So you can cancel this and he doesn't have to fill out the form." The officer understood this to be a direction, not a request.

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[22] The Councillor then asked whether the officer wanted to call the ticket-holder to let him know it had been taken care of, or if she wanted the Councillor to do this. The officer said the Councillor could do this. The Councillor gave the officer his card and told her to email him with confirmation of the ticket cancellation.

[23] As the Councillor left, he patted her on the shoulder and thanked her.

Process Followed for this Investigation

[24] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.

[25] This fair and balanced process includes the following elements:

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent-Councillor and providing him with an opportunity to respond in full to the allegations
- Reviewing the Code of Conduct and other documentation including emails
- Conducting interviews of persons with information relevant to the complaint
- Providing the Respondent-Councillor with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report. Although no comments were received from the Respondent-Councillor in this instance, we did have an opportunity to hear from him prior to publication of our Recommendation Report to Council.

Applicable Provisions of the Code of Conduct:

[26] The City of Orillia has had a Code of Conduct in place for Council since 2012.

[27] A Code of Conduct provides an ethical guide and framework for Members of Council for conduct and behavior which promotes confidence in the office which they hold as elected officials of municipal government.

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[28] That Code of Conduct sets out, in the Preamble:

“The Council of the City of Orillia will seek to advance the public interest and shall avoid the improper use of the influence of their office...”

[29] Article 12 of the Code set out specific guidance regarding Relationships with Employees.

[30] The Code provisions which are most relevant to this investigation are:

27.12.4 – which requires Members of Council to direct inquiries to the CAO or the appropriate member of Senior Management

27.12.5 – which reminds Members of Council to that no single Member has the authority to give direction to employees

27.12.7 – which cautions Members of Council to refrain from conduct which may interfere or unduly influence employees in the performance of their duties

27.12.8 – which cautions Members of Council to refrain from making requests or taking actions which may be construed as an attempt to influence the administration of justice

27.12.9 – which reminds Members of Council not to use their authority or influence for the purpose of intimidating or influencing any employee with the intent of interfering with the employee’s duties

Findings and Analysis:

[31] The Councillor has been a Member of Council for the City of Orillia for many years. He is well-known in the Orillia business community.

[32] Members of Council in municipalities across Ontario play important roles: setting strategic direction and policies, setting budgets to implement those, and establishing appropriate oversight for administration and management, among other things.

[33] Councillors also play an important role interfacing between citizens, who are their constituents, and the City’s staff who are tasked with implementing Council’s directions. Citizens count on their Members of Council to put them in contact with the appropriate staff to resolve issues and concerns.

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- [34] For many routine situations, there are processes which Members of Council and the public are familiar with, and which any member of the public can access either through the municipal website or by attending at the municipal offices.
- [35] Some citizens expect their councillor to solve problems by intervening in the process. Where there are routine processes, it is unfair and inappropriate for citizens to expect their councillor to interfere with those processes, or to work-around, and effectively thwart such processes which the municipality has put in place.
- [36] Members of Orillia's Council, under the Code of Conduct and the Council-Staff Relations Policy, know that they must direct their requests and concerns to the Chief Administrative Officer or the appropriate member of Senior Management in the absence of an established routine process.
- [37] These policies are put in place for a number of reasons:
- Members of Council should be following the processes put in place to manage the various operational aspects of municipal government
 - Requests to diverge from standard processes must be directed up the chain of command
 - It must be recognized that front line staff are often not in a position to challenge Members of Council or refuse to follow directions
- [38] For concerns about By-law Enforcement issues, Members of Orillia's Council know that they are to direct their concerns to the Manager of Legislative Services.
- [39] This is because By-law Enforcement is, fundamentally, law enforcement. Members of Council ought not to interfere with law enforcement activities at any level. Law enforcement and the administration of justice should be conducted in a fair and even-handed manner, without undue influence from elected officials.
- [40] In the case of By-law Enforcement, concerns should be brought to the attention of the Manager of Legislative Services or, up the chain of command, to the CAO.
- [41] At the City of Orillia, the CAO and Senior Management provide training and orientation to Members of Council at the start of each new Term of Council. Members of Council are reminded during this training that they should not interfere with employees in the exercise of their duties.
- [42] By-law Enforcement is a particular area of concern for Members of Council in any municipality, and Members are always cautioned during their training and orientation not to try to intervene on behalf of constituents. This is because intervening on an enforcement matter to try to fix something for a constituent who is being charged could be construed as interfering in the administration of justice.

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- [43] An analogy would be if an elected member of parliament contacted the Police or the Crown's office to try to have a charge dropped. This could be seen as an attempt to obstruct justice.
- [44] These concepts are readily recognized by elected officials and the public at the Provincial and Federal levels, but are often poorly grasped at the municipal level. As a result, citizens who would never dream of approaching their MPP or MP to deal with charges by law enforcement officers will quite cavalierly ask their Member of Council to 'take care of' municipally-laid charges.
- [45] Members of Council, in an effort to 'be of service' to their constituent, and failing to appreciate the fundamental problem, instead of simply connecting the constituent with appropriate staff or steering them to the relevant process, may unwittingly step into the middle of the issue.
- [46] As important as it is for Members of Council to refrain from intervening inappropriately, it is equally vital that citizens appreciate the dilemma they place their elected officials in when they prevail upon an elected official in such circumstances. In essence, our system of democracy and respect for the rule of law demands the cooperation of all those who function within it.
- [47] We understand that City of Orillia Members of Council are generally extremely diligent in ensuring they direct their concerns to the CAO or appropriate Senior Management.
- [48] Our observation is that the City of Orillia is extremely well-served by its politicians and its City staff.
- [49] We understand that during the training for new Municipal Law Enforcement Officers, the Manager stresses with the officers that Members of Council are not permitted to interfere with by-law enforcement, and to advise the Manager if there are attempts to do so.
- [50] When the Councillor attended, the Manager was away on City business, however, that does not excuse the Member from going directly to the by-law enforcement officer. That is why there is a form and a process – it is not dependent upon who may be in the office at any particular moment of the day.
- [51] The Councillor acknowledges that he attended at the by-law enforcement office to speak with the officer who issued the ticket, with the intention of having the ticket cancelled.

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- [52] The Councillor characterizes his statement to the officer as more of a request and his efforts as simply seeking a way to help, rather than giving the officer direction to cancel the ticket.
- [53] In our view, if the Councillor was simply seeking guidance, that guidance was clearly given when the officer explained that a review form is required to be completed, when seeking cancellation of a ticket.
- [54] Other Enforcement officers in the office at the time of the interaction corroborated the impression of the Enforcement officer, that she was being directed to cancel the ticket.
- [55] We find that the Councillor expected the officer to cancel the ticket on request, and that the Councillor was, in fact, directing the officer to do so.
- [56] In particular, we find that the Councillor purported to direct the officer, interfered with and unduly influenced her in the performance of her duties, and took a step which influenced the administration of justice.
- [57] We find that the Councillor's physical presence, standing over the officer while she sat at her desk, as he was directing her to cancel the ticket, had the effect of intimidating the officer.
- [58] We find that the effect of intimidation was compounded when the Councillor patted the officer on the back as he thanked her and he left the office.
- [59] Although the gesture of patting the officer on the back on his way out was not interpreted as being sexual in nature, it was nonetheless experienced by the officer to be paternalistic and condescending, and we find that it is inappropriate conduct on the part of the Councillor.
- [60] We find that the conduct of the Councillor, and its impact on the officer, underscores the reason Members of Council are required to direct their concerns to the CAO or the appropriate member of Senior Management.
- [61] We find that the conduct of Councillor Cipolla violated the Council Code of Conduct in regard to his conduct in attending at the by-law office, intimidating the officer, and directing the officer to cancel the ticket. In particular, our findings above result in breaches of:
- 27.12.4 by directing inquiries to staff other than the CAO or appropriate member of Senior Management
 - 27.12.5 by giving direction, as a single Member of Council, to an employee

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27.12.7 by engaging in conduct which interfered with or unduly influenced an employee in the performance of her duties

27.12.8 by making a request or taking an action which could be construed as an attempt to influence the administration of justice

27.12.9 by using their authority or influence for the purpose of intimidating or influencing any employee with the intent of interfering with the employee's duties.

Recommendation:

- [62] The contravention by the Councillor is more than a mere technical breach. The rules around unduly influencing employees in their duties, and not attempting to influence the administration of justice, are in place to protect not only staff in the proper performance of their responsibilities but also very much in the public interest.
- [63] The public is best served when the administration of justice is carried out in an impartial way, when citizens are afforded opportunities to file objections and appeals, but no one person can enjoy favouritism because of a relationship with a councillor who is willing to intervene in a process they do not play a legitimate part in. Even with respect to simple operational matters, it is not appropriate for an elected official to seek to cause a member of staff to alter the course of instructions they have been provided by policy, or by their direct supervisors.
- [64] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour.
- [65] Our role is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in reporting out on an investigation to be the making of recommendations that serve the public interest.
- [66] In this regard, the Integrity Commissioner's recommendations may include a reprimand, appropriate remedial actions or a monetary sanction of up to 90-days suspension of pay.
- [67] The purpose of a sanction is to reinforce Council's ethical framework. In other words, the Code of Conduct must have 'teeth'.
- [68] Although a monetary penalty is not remedial, it can serve as a deterrent, sending a message that the behaviour falls below the standard expected of the community's elected representatives.

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[69] We believe this is an instance where a sanction is called for, to signify that such action on the part of Members of Council is not acceptable or appropriate.

[70] We therefore recommend:

1. That Council pass the following resolution:

That having been found to have breached the City of Orillia's Council Code of Conduct, Councillor Cipolla's pay be suspended for a period of 5 days.

2. And that this Report be posted on the City of Orillia's web site for public access.

[71] We wish to conclude by publicly thanking the parties and everyone else who was asked to participate in our investigation. We express genuine appreciation for the sharing of time, knowledge and opinions by everyone concerned. Our task would have been much more difficult had there been a reluctance to contribute.

[72] We will be pleased to be in attendance when this report is considered to answer any questions.