
TOWNSHIP OF CENTRE WELLINGTON INTEGRITY COMMISSIONER,
GUY GIORNO

Citation: Linton v. Kitras, 2020 ONMIC 01

Date: January 25, 2020

REPORT ON COMPLAINT FILE #3 OF 2019

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THE COMPLAINT

1. Mayor Kelly Linton (Complainant) alleges that Councillor Stephen Kitras (Respondent) contravened the Code of Conduct for Members of Council when he circulated an email expressing views on various matters before Council.
2. I received several complaints on essentially the same subject. I determined that it was prudent to proceed with this representative complaint, and then following Council's disposition of it to address any others.

SUMMARY

3. The Respondent acknowledges that he should not have publicly mentioned the CAO's performance evaluation, and apologizes for the mistake.
4. I find no evidence that campaign contributions influenced appointments to advisory committees.
5. While Council has every right to promote team building, collaboration and partnership, the Code of Conduct is silent on these matters. This means that the Integrity Commissioner has no jurisdiction over the allegation that someone is not a team player.
6. I find no contravention of sections 10, 13.5(i) and 13.5(ii) of the Code.

BACKGROUND

7. The Complainant has served on Township Council since 2010, and as Mayor since 2014. The Respondent was elected to Council in 2014 and re-elected in 2018.
8. I find that the Complainant and the Respondent have very different philosophies of how Council should operate.
9. The Complainant has more than two decades' experience as a management consultant in the broader public sector, primarily at the municipal level. The leadership development training (Taking a LeapTM) that he and his firm offer to governments and other organizations stresses, among other things: team building, team cohesion, team trust, team confidence in leadership, collaboration, managing conflict, and emotional intelligence.
10. The Complainant has engaged in thought leadership on the proper role and effective functioning of municipal councils. In a July 2018 article, "Moving Beyond

‘Squeaky Wheel’ Leadership,” he offered the following advice to readers of *Municipal World*.¹

Good local leaders employ innovative techniques to engage their whole community – not just the Squeaky Wheels. Here are three steps to effectively neutralize the pressure to default to SWL [squeaky wheel leadership]:

Step 1: Establish a strategic plan ...

Step 2: Connect with your community – Citizens these days smell fake politicians a mile away! The best councils and the leaders find authentic ways of connecting with their community. Leaders should mix and match a variety of old and new communications methods. ... The principle is simple: make it as easy as possible for as many to connect to their local government. Engaging the many isolates the Squeaky Wheel outliers, thus giving local leaders the intelligence needed to align their priorities to the community's priorities.

Step 3: Stay the course — The leadership characteristic needed most these days is courage. After establishing your strategic priorities and engaging your community, now your job as a leader really begins. It is up to you to stay the course and get things done. I have seen good leaders crack under the constant pressure of highly-motivated Squeaky Wheels who continue to push their personal agendas day in and day out. Politicians need to understand that not everyone is going to like them, and councils' decisions will never be universally accepted. The best leaders figure out that sometimes you just need to say “no” — regardless of whether you are going to lose votes in the upcoming election. Composed, fact-based, and consistent leadership requires courage to stay the course. There are no shortcuts. ...

SWL is not good leadership. It results in inconsistent, reactive decision making that frustrates and disengages most people. It is time for municipal leaders across Canada to establish clear priorities, connect with their citizens, and demonstrate the courage needed to get things done. It is this kind of leadership that will enable your community to unlock its potential.

11. The Respondent is an artisan who has owned and operated an international business since 1988, and holds several patents for his works. I find that he has a different philosophy than the Mayor. In an intentional contrast to the Mayor's thought-leadership article, the Respondent makes a point of expressly identifying with residents of the Township who are perceived to be “squeaky wheels.”

12. The Respondent fundamentally disagrees with the Mayor on whether team concepts apply to those holding municipal elected office. Last year the Respondent wrote:

For myself, as someone who has previous experience, teambuilding is much too ambitious for the state of things in Centre Wellington and maybe not even legally appropriate or

¹ In quoting from documents in an investigation report, my practice is to edit punctuation and capitalization for consistency. Where necessary, I also correct obvious spelling errors without drawing attention to the correction unless the correction is material.

relevant. We are all independents that represent our Wards. Group thinking is not the ideal I aspire to. I am concerned for my constituents.

13. The Respondent has written that he is “concerned that it [the concept of team] does not reflect the legal reality of the *Municipal Act* for councillors, staff and public.”

14. These quotations are significant. The Respondent does not see himself as a team player because he believes this would compromise independent representation of his constituents.

15. I find that the Complainant and the Respondent also have very different philosophies of the Council-staff relationship.

16. As I have noted, the Mayor believes (and, as an organizational consultant, he teaches) that relationships between leaders and subordinates must be characterized by trust, confidence and collaboration. He believes that leaders and subordinates together must form a cohesive team. I find that these beliefs inform his thinking about the ideal relationship between the Council and the Township staff.

17. I find that the Respondent, on the other hand, feels that Council needs to reassert its role atop the organization as “the authority and deciding body.” In 2018 he referred to the status quo in Centre Wellington as “bureaucratic managerialism,” and he campaigned on restoring “Council’s authority and leadership” over the CAO and staff. He also thinks that Council too often adopts staff recommendations without questioning them. Further, the Respondent is on record expressing the opinion that “poor behaviour by some staff and other elected representatives” during the previous Council term (2014-2018) created a “broken relationship” and left him feeling “mistrust.”

18. Juice Inc. (a consulting firm) and its co-founder Brady Wilson were retained by the Township staff to present and facilitate three half-day sessions with councillors and the senior staff members. Mr. Wilson led the following workshops on the following dates: Team Cohesion: The Oxygen Poker Experience (December 6, 2018), Integrative Thinking: Align on Team Norms (March 25, 2019), and Integrative Thinking: Align on Good Governance (April 8, 2019). The Respondent was absent from the first session but present for the second and third.

19. The session names suggest (and a review of the workshop output confirms) that Mr. Wilson/Juice Inc. focused on team-building and partnership-strengthening (a) among Council Members and (b) between Council and the staff. I find that the themes and results of Juice Inc. sessions were generally consistent with the Mayor’s philosophy of cohesive, collaborative, trust-based leadership.

20. On the other hand, the Respondent has made no secret of his displeasure with the Juice Inc. effort and work product. He criticized the output as being: “cliché slogans,”

logically inconsistent, vague, incompatible with the Council's "representative and oversight role" under the *Municipal Act*, too thin (merely an "executive summary without commentary to understand it"), and not worth the \$17,000 cost to the Township.

21. The above summary of facts provides general context for the Complaint. Its immediate background consists of two staff reports placed on the agenda of the June 17 Committee of the Whole meeting.

22. Staff report COR2019-49, prepared by the Manager of Legislative Services / Municipal Clerk, recommended the adoption of an amended Council Code of Conduct.

23. Staff report COR2019-50, by the same author, recommended a draft Council-Staff Relations Policy.

24. The Respondent says that the agenda package was circulated June 13 and he read it, including the reports, June 14.

25. The Respondent had several concerns about the proposed, amended Code of Conduct and the proposed Council-Staff Relations Policy. On June 15, under the subject line "To all concerned citizens," he sent an email to 13 individuals in the community. One of the recipients, Kirk McElwain, is a current Township councillor. Four recipients are former Township or County councillors.

26. The email made four criticisms of the proposed Code, and urged readers to form delegations to appear at the June 17 meeting to speak against it.

27. The email addressed several other topics, including the performance review of the CAO, the Juice Inc. workshops, comments made at an election candidates' meeting, and political contributions to the Complainant's election campaign.

28. The body of the email reads as follows:

Attention Pease Read!!!

Dear Concerned Citizens,

The council meeting on June 17, 2019 is going to be instituting a new code of conduct for elected representatives of Centre Wellington. After the open meeting there will be the performance review of the CAO. I submitted my review. Mine was edited seriously ... Enough said about. Closed Meeting after Open meeting.

Please ... Please read the coming agenda concerning the code of conduct including the minutes outlining the Juice consultants' Executive summary. It is a terrible bunch of clichés for the rules of thumb that can be interpreted by authorities any way you want. Do you seriously want staff to act like a military organization? "We will get the job done after the decision is made". What if it makes no fiscal sense? Community sense? Tax increase anyone!!! Or for councillors, "no hands from the past." Does that mean you cannot support or speak publically against a previous decision or live under the threat that the staff feel threatened or it is disrespected?

Is Democracy an absolutism so rigid of only the majority gets to speak? We are independent elected representatives, not part of a dictator party structure (Canada) or the Politburo are we?

The CAO picked this orientation consultant, not Council, at the cost of \$1700 dollars per hr. Your money!!!!!! What do you think? Was it worth it?

There are many things wrong with the "new Code of Conduct." In my preliminary reading (5 minutes) I see big problems.

1) In the area of conflict of interest, nothing about election donations which we know have exploded for the Mayor from developers in the last election. These backers have been put on the Economic Development and Growth Committees.

2) In the social media councillors will have to submit a copy to the "Communications Officer" for approval to be made public. This is censorship. Why be an elected representative if citizens have freer speech than your representative.

3) There is no staff code of conduct regarding Transparency and accountability act to, not have staged information, emphasizing staff info over citizens' ability to speak and that the most current accurate information be presented. There needs to be for the code of conduct an accountability clause for the staff.

4) I warned you about the by-law officer ... councillors will not be able to criticize building code or bylaw rules and enforcement.

On October 10 2018, at the Save your Water elect meeting, all the candidates were asked what they wanted for Centre Wellington for the next 10-15 years in the future.

Many Utopian dreams were expressed. I told everyone that I was not a romantic. That we had a choice in 12 days between Bureaucratic Managerialism and Democracy. Choose those that want democracy and empowering citizens, not developers and corporate staff.

This code of conduct is truly incomplete and bad. It needs you to spread the word and become delegations that you want free speaking representatives, not controlled speech representatives.

Remember NO SQUEAKY WHEELS!!!

This is an assault on democracy. Speak up at the next council meeting, June 17, 2019.

Please read the agenda. ... Please pass along. ... Please form delegations and speak up. If this passes without serious revision ... welcome to Potterville, Canada. (It is a Wonderful Life)

If you want me to support you ... then support your elect representative in this threat.

Please previous elected officials speak up.

I am not a social media person ... but email is considered social media. This may be the last email I can send without permission.

Best,
Councillor Stephen Kitras
Ward 5

29. The mentions of “Juice consultants” and “no hands from the past” refer to Juice Inc. and the sessions facilitated by Mr. Wilson.

30. The line “No Squeaky Wheels” evokes the Mayor’s thought-leadership article. The Respondent says he was telling his audience that the Mayor considered them “squeaky wheels.”

31. According to the Respondent, Potterville “is a metaphor for a possible future community without the ability to criticize policy and decisions made by Council.”²

32. The words “It is a wonderful life” refer the classic film, *It’s a Wonderful Life* (1946). The Respondent explains this as meaning the “small-town feeling and the warm neighbourliness [that] could disappear.”

33. One of the recipients of the Respondent’s email circulated the email to other people, including all Council Members and the *Wellington Advertiser*.

34. At the June 17 Committee of the Whole meeting, no one from the community came forward as a delegation to speak about the draft Code of Conduct or the draft Council-Staff Relations Policy. In the end, the Committee recommended that Council defer its consideration of both documents.

PROCESS FOLLOWED

35. 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). 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.
- The Respondent is made aware of the Complainant’s name. I do, however, redact personal information such as phone numbers and email addresses.

² Because the Respondent explained his meaning, it was unnecessary for me to inquire whether Potterville is an allusion to the 2017 movie *Pottersville* (a comedy about the faking of Bigfoot in a small American town), to the 2002 train derailment that forced the evacuation of Potterville, Michigan, or to something else.

- 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 the clarification.
- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

36. Typically I interview both parties and any witnesses that I believe have relevant evidence. In this case, the Respondent preferred to replace my oral interview with written questions and answers. I agreed, and accepted his written answers to my questions. I also interviewed the Complainant and several witnesses.

POSITIONS OF THE PARTIES

37. In this section I am summarizing the positions of both parties. This section does not contain my findings. For convenience, I do not start every sentence with the words, "The Complainant/Respondent says." Nonetheless, everything in this section is a position taken by either the Complainant or the Respondent, and inclusion in this summary does not mean I am adopting it.

38. The parties also provided extensive input on other issues, not covered below. Regardless of what is summarized below, I have taken all their submissions into account.

POSITION OF THE COMPLAINANT (MAYOR LINTON)

39. The Complainant alleges that the email constituted intimidation, contrary to section 10 of the Code of Conduct. The email used inflammatory language to inflame a group of individuals so that they would publicize criticism of the Mayor, the CAO, and the other Council Members (the ones to whom the Respondent did not send his email). The original recipients were chosen because they hold the same negative opinions as the Respondent and they have bases of citizen support with whom they could share the information.

40. The Complainant alleges that the Respondent contravened section 13.5(i) of the Code by falsely injuring or impugning the Complainant's professional and ethical reputation as Mayor/Head of Council. The email implies that the Complainant is an undemocratic, unaccountable, controlling leader who behaves like a dictator.

41. The email also implies that the Complainant lacks integrity in the area of conflict of interest. The implication that he appointed people to advisory committees simply

because they were campaign contributors is slanderous and inaccurate. The Complainant complied fully with all financial disclosure requirements. Of 17 citizen members of two committees, only four were 2018 campaign contributors.

42. The Complainant further alleges that, contrary to section 13.5(ii) of the Code, the following language of the email was indecent, abusive or insulting:

- “Do you seriously want staff to act like a military organization?”
- “We are independent elected representatives, not part of a dictator party structure (Canada) or the Politburo are we?”
- “In the area of conflict of interest, nothing about election donations which we know have exploded for the Mayor from developers in the last election. These backers have been put on the Economic Development and Growth Committees”
- “This is an assault on democracy. Speak up at the next council meeting, June 17 2019.”
- “If this passes without serious revision ...welcome to Potterville, Canada. (It is a Wonderful Life)”
- “If you want me to support you ... then support your elected representative in this threat. Please previous elected officials speak up.”

43. Finally, the Complainant alleges that by mentioning the CAO’s performance review, the Respondent breached the confidentiality requirements of sections 7 and 7.2 of the Code.

POSITION OF THE RESPONDENT (COUNCILLOR KITRAS)

44. Councillor Kitras submitted a 5299-word Response, plus 81 pages of supporting documents. In lieu of a telephone or in-person interview with me, he wanted to respond to questions in writing, and did so. I have read and considered all his submissions and answers, even those which are not summarized below.

45. The Respondent apologizes for mentioning the CAO’s performance review, characterizing this as “accidental slip.” He is willing to apologize to the CAO.

46. He notes that the fact of a CAO performance review was listed on a public document (the Committee of the Whole/Council Tracking List) as early as June 2018, and therefore mentioning that a review would occur was communicating a fact that was already public information. He says he erred in thinking that the date of the review (June 17, 2019) was already public, and learned about the mistake on August 14. He states, “I am sincerely sorry for making that mistake and it was not done for malicious reasons.”

47. The Respondent explains that the words “I submitted my review. Mine was edited seriously” refer what happened in November 2017, when the performance review process was submitted to Council.

48. Apart from the apology over mention of the performance review, the Respondent stands by his email and maintains that he complied with the Code of Conduct.

49. First, he asserts that his comments are protected as free speech. He also notes that the bar for defamation of politicians is set very high.

50. Second, he states that his comments were directed to the proposed Code of Conduct and the proposed Council-Staff Relations Policy, not to individual people. Nobody was named and nobody was identifiable.

51. Specifically, he explains that his language (military organization, dictatorship, Politburo, controlled speech, assault on democracy, threat) referred to the documents he was criticizing, not to specific people. A large portion of his written Response details a concern that the proposed Code and proposed Council-Staff Relations Policy would limit speech by Council Members and make their communications subject to vetting or approval by the staff.

52. The Respondent also reiterates his disagreement with the team concept, which flows through proposed Code and proposed Policy and which he attributes to Juice Inc.: “The idea of ‘team’ which was pushed by Brady Wilson is not what I was elected by constituents for. They elected me as an individual for my individual Ward.”

53. Finally, he states that the impacts on Council Members of the proposed Code and proposed policy were matters of public interest and that is why he shared the information by with residents by email.

POSITION OF THE COMPLAINANT IN REPLY

54. The Complainant notes that many of the actions mentioned by the Respondent are efforts of Council, in partnership with the staff, to improve intra-Council and Council-staff relations. “The intent behind these proactive measures seems to have been completely lost on him.”

55. The Complainant states that the most serious contravention is the Respondent’s false allegation that campaign contributors were appointed to Township advisory committees. Two of his 2018 campaign contributors were *already* on the Economic Development Task Force between 2014-2018. This means that, of 17 total citizen committee members, only two individuals joined after having made 2018 campaign contributions.

FINDINGS OF FACT

56. Many of the relevant facts are set out under the heading “Background” at the beginning of his report.
57. All Council Members received the email (though only one received it directly from the Respondent). Many of the senior Township staff members heard about the email. Some witnesses perceived the email as being critical of the Mayor and the CAO and, to a lesser extent, of the senior staff. Other witnesses felt that the email was about the Code and the Council-Staff Relations Policy.
58. I find that the perception that the email contains criticism of the Mayor and CEO is largely based on the tone of the document and on the Respondent’s prior reputation. It also arises from the fact that the email challenges many of the themes associated with the Mayor’s leadership (see discussion in the Background section). I find that this perception is not based on the actual substance of what the Respondent wrote.
59. The email was not covered by the news media.
60. There is no evidence that the email had any effect on Council Members’ consideration of the proposed Code or the proposed Council-Staff Relations Policy. Certainly there is no evidence that it influenced Council Members in favour of the Respondent’s position.
61. Several witnesses, however, expressed concern that the email fits into a pattern of criticism of the senior staff that is negatively affecting staff morale. They say that the Respondent has a reputation for being demanding, challenging and critical of the staff, and view the email as an extension of this.
62. During this case, my own dealings with the Respondent reveal, and therefore I find as a fact, that he can be accusatory, challenging and argumentative, in addition to prolix. (As will be seen, however, I do not believe that exhibiting these qualities is a contravention of the Code.)
63. Finally, I find no evidence that positions on advisory committees were distributed on the basis of campaign contributions.

ISSUES AND ANALYSIS

64. I have considered the following issues arising from the email and the Complaint:

- Did the Respondent contravene sections 7 and 7.2 (Confidential Information) by discussing the CAO's performance review?
- Did the Respondent engage in intimidation, contrary to section 10?
- Did the Respondent maliciously or falsely injure or impugn the professional or ethical reputation of the Complainant, contrary to section 13.5(i)?
- Did the Respondent contravene section 13.5(ii) by using indecent, abusive or insulting words or expressions?

65. It is very clear that the Respondent rejects the concept of team that is promoted by the Mayor and (to my understanding) supported by most other Members of Council. This is not conjecture. The Respondent has openly and repeatedly documented his position that municipal councils should not operate as a team because, in his opinion, the team concept can thwart individual representation and stifle dissent.

66. It is obvious why the Respondent's position has led to tension on Council, but tension itself is not automatically a Code of Conduct issue. It is not an issue in this investigation whether the Respondent is right or wrong to oppose team building, or whether the Respondent is frustrating attempts to achieve cohesion and collaboration. The Code of Conduct is silent on such items.

67. This report should not be interpreted as suggesting that teamwork, cohesion and team trust are unimportant. To be clear, the Township and the Council are perfectly within their rights to attempt to build team and to strengthen a sense of partnership, both within Council and between Council and the staff. These are not, however, matters for the Integrity Commissioner. They simply are not covered by the Code.

THE ROLE OF COUNCIL MEMBERS

68. Before turning to the four issues, I wish to comment briefly on the role of municipal councillors.

69. Centre Wellington is a democracy. Council Members are elected to office. The democratic nature of the office means that Council Members have political and representational roles in addition to their legislative (law-making) role. The Courts have confirmed that municipal councillors have hybrid political and legislative functions,³ that

³ *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170 at 1196.

they are representatives of the communities that elect them,⁴ and that members of the public have the right to address their municipal representatives on issues of concern.⁵ The *Municipal Act* confirms that a role of the Council is “to represent the public.”⁶

70. It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.⁷ Some of those views may involve a change in law or a change in direction. Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code of and other legislation and by-laws, nothing prevents a Council Member from taking, defending and seeking to implement a position would alter the *status quo*. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.⁸

71. Unsurprisingly, my investigation confirmed that different Council Members in Centre Wellington have different styles of communication and different approaches to interacting with the public. Many of them would not follow the Respondent in trying to incite the public against a proposal they opposed; they might oppose the measure by other means. It is important to remember, however, that these are political choices and it is not for the Integrity Commissioner to declare that one approach is superior to another. I adopt the following observation from *Farr v. Murphy*, 2017 ONMIC 19 (at para. 39):

I am mindful that this Complaint arises from a dispute between two politicians and in, particular, focuses on how one politician (Warden Murphy) chose to communicate and express herself. I use the word “politician” with deliberate reason. The positions that politicians espouse, their disagreements with other politicians, their comportment in public life, the ways they defend their reputations, and how they communicate with the public, including how they communicate with the public through the news media, are all matters of individual political judgment. As long as the conduct is lawful and inside the ethical boundaries of the Code of Conduct, individual political judgments are beyond the purview of an Integrity Commissioner. Subject to the law and rules of ethics, accountability for the exercise of political judgment resides in the political process, not in an Integrity Commissioner investigation.

⁴ *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 3, at 1193.

⁵ *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 3, at 1193-4.

⁶ *Municipal Act*, clause 224(a).

⁷ *Re Cadillac Development Corp. Ltd. and City of Toronto*, note 4.

⁸ *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

CONFIDENTIAL INFORMATION (SECTIONS 7 AND 7.2)

72. Did the Respondent contravene sections 7 and 7.2 (Confidential Information) by discussing the CAO's performance review?

73. The Respondent has acknowledged an error and apologized for how the CAO performance review was mentioned in his email. Further, the Respondent is offering to apologize directly to the CAO.

74. I recommend that Council accept the acknowledgement and apology.

INTIMIDATION (SECTION 10)

75. Did the Respondent engage in intimidation, contrary to section 10? No.

76. Assuming without deciding that the Complainant is correct, and that the Respondent used inflammatory language to incite the public to put pressure on other Council Members, there was no violation of the Code. Trying to motivate people to support one's viewpoint (or trying to motivate people to oppose a contrary viewpoint) is part of the democratic process.

77. It is suggested, however, that the Respondent's choice of language – the words he used to rouse and to energize supporters – was improper.

78. Other Integrity Commissioners have held that they have no jurisdiction over political speech as long as it complies with the Code. As former Brampton Integrity Commissioner Donald Cameron noted in 2012:

I cannot and will not be a referee of free speech in a political arena provided it stays within the bounds ... of the Code.⁹

79. Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:¹⁰

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

⁹ City of Brampton, Report No. BIC-030-192 (December 4, 2012), Integrity Commissioner Donald Cameron, at p. 3.

¹⁰ City of Brampton, Report No. BIC-32-1112 (December 18, 2012), Randy Pepper, Delegate of the Integrity Commissioner, at pp. 2-3.

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 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.

80. 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 adopt them for purposes of this complaint.

81. It is not my place to determine how the Respondent should or should not articulate his position on the Code of Conduct and the Counsel-Staff Relations Policy. I am reluctant to find that certain arguments (used to energize and mobilize the voters) are out of bounds.

82. Consequently, I do not find that Respondent contravened section 10.

INJURING OR IMPUGNING REPUTATION (SECTION 13.5(i))

83. Did the Respondent maliciously or falsely injure or impugn the professional or ethical reputation of the Complainant, contrary to section 13.5(i)? No.

84. First, it is not certain that this section even applies to the reputation of a Council Member. The provision refers to “the professional or ethical reputation, or the prospects or practice of staff.” The Complainant is not part of the staff.

85. Second, apart from the mention of campaign contributors, none of the words complained of actually identify the Mayor. The Mayor says people will understand that

words like “dictator party structure” to refer to him. The Respondent says those words are criticisms of the proposed Code and proposed Policy and do not apply to the Mayor or any other individual. A breach of the Code should only be found on the clearest of evidence; here the evidence is not sufficiently clear to establish that the Respondent was talking about people and not merely about the documents.

86. Third, while the Mayor is deeply concerned about what was said regarding his campaign contributors, the Mayor also has articulated a response that debunks the criticism. With great respect, I note that this – responding to what the other side says – is how politicians traditionally handle criticism. If an unfair or inaccurate criticism is made in the course of political debate, then political debate offers its own remedies to address those inaccurate or misleading comments. Specifically, the other side has the ability to correct the record, to provide context, to counter attack, and to defend the conduct.

87. In my view, utilizing the tools of political debate to respond to unfairness and inaccuracy in political debate is far more appropriate than having Integrity Commissioners police the truth and fairness of political speech: *Re Maika*, 2018 ONMIC 11, at para. 139.

88. In any event, I do not believe it is the place of an Integrity Commissioner to interfere in political debate of this nature. I repeat my finding of no evidence that positions on advisory committees were distributed on the basis of campaign contributions. At the same time, I am reluctant to silence the criticism. To uphold this point of the Complaint I would need to find that making an unfounded allegation of patronage contravenes the Code. In my view, that would be a precipitous step. While there is no evidence here that the criticism is founded, for centuries, in all jurisdictions, allegations have been made that political supporters sometimes receive patronage appointments. The freedom to hold politicians to account is a basic right, and the scrutiny of appointments is generally understood to be healthy in a democracy. Allegations of patronage (founded and unfounded) are so routine in Canada that I cannot conclude this type of routine political debate is out of bounds in Centre Wellington.

89. Again, here I have found no indication of improper appointments. I simply do not believe that the Code should be used to shut down debate on the topic.

90. I find that there was no breach of section 13.5(i).

INDECENT, ABUSIVE OR INSULTING WORDS OR EXPRESSIONS (SECTION 13.5(ii))

91. Did the Respondent contravene section 13.5(ii) by using indecent, abusive or insulting words or expressions? No.

92. I reiterate my observation that it is not the role of an Integrity Commissioner to police political speech. I repeat my earlier observations about discussion of campaign contributions and committee appointments.

93. I find that the remaining language that the Complainant feels contravened section 13.5(ii) is absolutely not indecent, abusive or insulting. For example, “assault on democracy” is a common expression in politics. A search shows that the term has been used at least one dozen times in the Ontario Legislature. In the House of Commons, it was spoken 27 times *in the last three years alone*. It is not indecent, abusive or insulting.

94. Words like “Politburo” and “dictatorship” are also used, in both Parliament and the Ontario Legislature, to criticize the government, and are not ruled out of order. The single word “threat” (without clear reference to what the threat is), is not indecent, or abusive, or insulting. Neither is Potterville or Pottersville.

95. I find no contravention of section 13.5(ii).

CONTENT

96. Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

RECOMMENDATION

97. I recommend that Council accept the acknowledgement of Councillor Kitras that he should not have mentioned the CAO’s performance review in his June 15 email, and accept his apology for the same.

Respectfully submitted,

Guy Giorno
Integrity Commissioner
January 25, 2020