

COMMITTEE OF THE WHOLE MAY 11, 2010

REPORT OF THE INTEGRITY COMMISSIONER IN RELATION TO COMPLAINT FILE #11.17.09(B)

Recommendation

Integrity Commissioner Recommendations:

That the attached investigation report that concludes with a finding that Regional Councillor Ferri did not violate the Code of Ethical Conduct in relation to his actions and statements at the Ontario Municipal Board hearing of October 27, 2009, be received and adopted by City Council.

Contribution to Sustainability

N/A

Economic Impact

N/A

Communications Plan

The Complainant and the Member of Council have received copies of the attached investigation report. In addition, this report has been placed on the public agenda of the Committee of the Whole meeting scheduled for May 11, 2010.

Purpose

To report to City Council the findings from the investigation of complaint File # 11.17.09(b)

Background

In this complaint, the Complainant alleged that Regional Councillor Ferri breached rules 1(a), (b), (g), (h), 9(1), 13(1) and 15(1) of the Code of Ethical Conduct.

The rules of the Code that were raised by the Complainant require an elected Member of Council to serve and be seen to serve their constituents in a conscientious and diligent manner, perform their functions with integrity and transparency, perform official duties and arrange their public affairs in a manner that promotes public confidence and respect and that will bear close public scrutiny, uphold the letter and spirit of the laws of Canada. Further, the rules require an elected Member of Council to encourage public respect for the City and its by-laws and conduct themselves with appropriate decorum at all times.

In order to ensure that the public has confidence in the actions of Members of Vaughan City Council as leaders of the community, it would be prudent if and when they are called as witnesses for the City that Members obtain a full understanding of the procedure for giving testimony before the Ontario Municipal Board.

Relationship to Vaughan Vision 2020/Strategic Plan

N/A

Regional Implications

There are no Regional implications to the recommendations contained in this report.

Attachments

Appendix A - Integrity Commissioner Complaint Investigation Report for File 11.17.09(b)

Report prepared by:

Suzanne Craig
Integrity Commissioner

Respectfully submitted,

Suzanne Craig
Integrity Commissioner

**RE: REGIONAL COUNCILLOR MARIO FERRI
File 11.17.09(b)**

[1] On November 17, 2009, a complaint by a private citizen was received by the Office of the Integrity Commissioner. In the request, the private citizen (the "Complainant") asked the Office of the Integrity Commissioner to investigate into alleged breaches of Rules 1(a), (b), (g), (h), 9(1), 13(1) and 15(1) of the Code of Ethical Conduct (the "Code").

[2] The complaint relates to allegations of statements made by the Member of Council at an Ontario Municipal Board (OMB) hearing held on October 27, 2009.

[3] On November 18, 2009 the Office of the Integrity Commissioner confirmed receipt of the formal complaint and advised the complainant and the respondent that a complaint file had been opened.

[4] This complaint is governed by the interim Complaint Protocol which was adopted by Vaughan City Council at its meeting held on June 23, 2008, in addition to the Code of Ethical Conduct for Members of Council, City of Vaughan, which came into force on November 2, 2009.

The Complaint

[5] In the complaint, the Complainant alleged that Regional Councillor Ferri breached Rules of the Code, which require an elected Member of Council to serve and be seen to serve their constituents in a conscientious and diligent manner, perform their functions with integrity and transparency, perform official duties and arrange their public affairs in a manner that promotes public confidence and respect and will bear close public scrutiny, uphold the letter and spirit of the laws of Canada, encourage public respect for the City and its by-laws and conduct themselves with appropriate decorum at all times.

The request by Regional Councillor Ferri to undertake mediation of the complaint was not accepted by the Complainant.

The Relevant Provisions of the interim Complaint Protocol for the Code of Ethics and Conduct for Members of Council

[6] Sections 3 and 5 of the interim Complaint Protocol (the "Complaint Protocol") , in addition to the Council direction of June 11, 2007, provide the Integrity Commissioner's jurisdiction to investigate into the alleged contraventions of the Code:

Part A: Informal Complaint Procedure

3. Individuals (including City employees, members of the public, Members of Council or local boards) who identify or witness behavior or activity by a Member of Council that appears to be in contravention of the Code of Conduct for Members of Council – (the "Code of Conduct") may address the prohibited behavior or activity themselves as follows...

Part B: Formal Complaint Procedure

5. Individuals (including City employees, members of the public, members of Council or local boards) who identify or witness behavior or activity by a member of Council that appears to be in contravention of the Code of Conduct for Members of Council , may file a formal complaint with the required information on the prescribed affidavit.

Facts

[7] On October 27, 2009, the Complainant attended an OMB hearing, the subject of which was an appeal of the City by-law authorizing a change to the City of Vaughan ward boundaries.

[8] The matter before the OMB related to a City of Vaughan by-law 89-2009 which redrew the boundaries for the City's five wards.

[9] In April 2009, the City of Vaughan's Committee of the Whole recommended that:

...staff prepare a report on a clear, concise and neutral question to be placed on the ballot for the 2010 General Municipal Election, seeking the opinion of the electors on whether the City of Vaughan should increase its number of wards to six for the 2014 Municipal Election...

[10] In February 2009, one of the Regional Councillors of the City of Vaughan submitted a memorandum with a recommendation which was referred to as Scenario 5D.

[11] On April 16, 2009, Regional Councillor Mario Ferri submitted a memorandum with a recommendation for the ward boundary configuration which was referred to as 5E.

[12] On May 5, 2009, Vaughan City Council unanimously approved the recommended option contained in Regional Councillor Ferri's written submission, referred to in the City Clerk's summary as 5E.

[13] The ward changes under the by-law 89-2009 were numerous and were itemized in chart form in the City's submission.

[14] The OMB stated in its decision that there were "...four options most discussed:

- The status quo ante (i.e., prior to adoption of the By-law under appeal),
- The Clerk's recommended five-ward Scenario 5B,
- The City's adopted By-law 89-2009, and
- Scenario PS1, advanced by some participants, and supported by the District School Board.

[15] The OMB ordered that the appeal be allowed in part with amendments to by-law 89-2009 as prescribed.

Background

[16] Regional Councillor Ferri was advised by Vaughan City legal staff that he may be called as a witness of the City of Vaughan at the hearing before the OMB.

[17] In preparation for attendance at the OMB hearing, Regional Councillor Ferri met with Vaughan City legal staff who drafted a witness statement.

[18] Regional Councillor Ferri was advised that "...it is standard practice for legal representatives to draft various documents created in contemplation of [a board hearing], including witness statements".

[19] Regional Councillor Ferri states that he did not write or review the Witness Statement before it was given to the other parties to the Hearing.

[20] Regional Councillor Ferri was of the belief that, the Witness Statement was not introduced to the OMB hearing as a formal exhibit.

[21] Regional Councillor Ferri relied upon the advice provided by Vaughan City legal staff.

[22] As a general proposition, a Complainant who alleges that a Member of Council has contravened the Code must establish the allegations asserted in the complaint and bears the onus of proving that the breaches put forward in the complaint took place.

[23] In making a determination of findings of the facts brought forward, I can accept all of the information brought forward, some of the information or none. I may also draw reasonable conclusions based on the information that I accept.

Rules of the Code

Rules 1(a), (b), (g), (h), 9(1), 13(1) and 15(1)

[24] Rule 1(a) of the Code requires a Member of Council to serve and be seen to serve their constituents in a conscientious and diligent manner.

[25] Rule 1(b) of the Code requires Members of Council to recognize the public's right to reasonable access to information in relation to how decisions are made, which includes the right to receive complete and understandable information.

[26] Based on the information that I have received from the parties and other information received through investigation and interviews, Regional Councillor Ferri did not prepare or review the witness statement submitted to the OMB in this matter.

[27] Regional Councillor Ferri's attendance at the OMB hearing was to provide testimony about his involvement in the ward boundary review process, meetings of Vaughan Committee and City Council, feedback received from members of the public and the memorandum dated April 14, 2009.

[28] Rules 1 (g) and (h) of the Code point to Members' prohibition to participate in those activities that grant or appear to grant special treatment or advantage to an individual and the Members' requirement to adhere to the laws of Canada at the federal, provincial and municipal level.

[29] Rule 9(1) requires Members of Council to clearly identify to the public how a decision was reached and upon which law, procedure and policy their decision was based.

[30] Rules 13(1) and 15(1) uphold the principles of respect of City by-laws and Members' obligation to conduct themselves in an exemplary manner.

Analysis

[31] Generally speaking, as a matter of practice, a witness statement prepared by City staff for the purposes of an OMB hearing, would not be filed but rather served in support of motion materials. It is at the hearing that the Chair will hear evidence and those called on to be witnesses shall swear an oath to tell the truth.

[32] OMB hearings are less formal than a court proceeding and when evidence is given the parties must swear to tell the truth and those parties opposed may cross-examine. All written documents, including photographs that are entered into evidence must be proven by the witness.

[33] Section **21.01** of the Ontario Municipal Board Rules of Practice and Procedure is entitled **Other Witnesses**. This section provides that "[t]he Board may also require that a witness or a participant who is not presenting expert evidence provide a witness or participant statement. A

witness or participant statement should contain (a) a short written outline of the person's background, experience, and interest in the matter, (b) a list of the issues that they will discuss, and (c) a list of reports that they will rely on at the hearing. A participant statement should also briefly outline the evidence to be presented. The Board may not allow the witness or participant to testify if this statement is required by the Board but is not provided to the other parties."

[34] Simply put, under the rules of practice of the Ontario Municipal Board, a witness statement provides the opposing party with some form of notice of testimony. However, the Board makes its decisions based on the testimony before it.

[35] The Ontario Municipal Board is the arbiter of evaluation of information and evidence that comes before it. It is understood that perjury is not only illegal but a demonstration of a lack of integrity. Lying under oath is not behaviour that merits any pondering of whether the action was to benefit the common good or whether the action was purported to be made in good faith.

[36] The complaint raises the question of whether the Respondent, in his actions before the Ontario Municipal Board, granted or appeared to grant special treatment to an individual or group that was not afforded fairly to others. Further, the assertion in the complaint is that the Respondent's Witness Statement contradicted his testimony and in so doing he failed to conduct himself in an exemplary manner required under the Code.

[37] If we look at the minutes of the Ontario Municipal Board hearing page 34 paragraph 20, Regional Councillor Ferri is asked if the City filed a witness statement on his behalf. He answered in the affirmative. The lawyer for the appellant then asked if he prepared the witness statement and the response was "No, I did not".

[38] On page 36 paragraph 14 of the minutes, the lawyer for the appellant asked if the Respondent has prepared the witness statement and the response is "No, I didn't". From the minutes, we see that the lawyer for the appellant goes on to ask "you neither wrote nor reviewed [the witness statement] words?" and the response of Regional Councillor Ferri is "[b]ut this has been my position...[a]ll along."

[39] The wording in the minutes of the Ontario Municipal Board hearing created the impression that the Respondent's testimony did not correspond with his witness statement. However, both the minutes of the Board hearing and information that I have obtained through investigation demonstrate that Regional Councillor Ferri was being completely honest when he said that he did not write or review the Witness Statement.

[40] It is my understanding from the information that I have obtained that the Witness Statement is not a sworn affidavit, but rather a summary prepared by City legal staff that provides the opposing parties with an overview of what the witness' testimony will be about.

[41] The use of the first person in the Witness Statement may give the impression that the witness had written or reviewed the contents. This begs the question of whether there would have been utility in having the witness review the Witness Statement prior to the Board hearing. To wit, not only lay people, but also the Ontario Municipal Board Chair required some clarification in this regard as is evidenced in his line of questioning on page 36, paragraph 14-25 of the Minutes.

[42] The Complainant states in the complaint subject of this investigation, that the Respondent "...knowingly allowed evidence to be entered at a civil proceeding that is false. This evidence was entered as a witness statement from him, yet he claims he had no knowledge of it prior to it being presented to him at the hearing."

[43] During my investigation and interviews, it became apparent that many in attendance at the Ontario Municipal Board hearing believed that the Witness Statement submitted by the City of Vaughan was prepared by Regional Councillor Ferri. It was not.

[44] My investigation focused on whether or not Regional Councillor Ferri made a false statement and/or allowed evidence to be submitted to the Ontario Municipal Board that was false. Although I do not have authority to evaluate the substance of the matter before the Board, the ward boundary options or the weight of any evidence before the Board, as these are matters that fall outside of my jurisdiction, I have applied the relevant sections of the Code to the behaviour and actions of the Respondent.

[45] Although it is my conclusion that Regional Councillor Ferri did not make a false statement nor did he allow evidence to be submitted to the Ontario Municipal Board that was false, it appears as though he was not made aware of his role as a witness in the proceedings before the Board. The apparent contradiction between the Witness Statement and his testimony appears to have been made because Regional Councillor Ferri had not been advised of the Ontario Municipal Board procedure in relation to witness statements. By his account and substantiated by other information that I have gathered during this investigation, although Regional Councillor Ferri conferred with the author of the Witness Statement and the content was indicative of his position on the matter before the Board, he was only shown the Witness Statement moments before the actual Board hearing.

[46] The Ontario Municipal Board hearing at which Regional Councillor Ferri gave testimony was of extreme importance to the City of Vaughan and its members of the public. The City has grown exponentially from a Town to a municipality of almost 300,000 people. The significance of the Board hearing was raised by the fact that it was held leading up to an election year.

[47] In light of all of the above, and in order to ensure that the public has confidence in the actions of Members of Vaughan City Council as leaders of the community, it would be prudent if and when they are called as witnesses for the City that Members obtain a full understanding of the procedure for giving testimony before the Ontario Municipal Board. In this way, Members of Council will be seen to serve their constituents in a conscientious and diligent manner and perform their official duties with integrity and transparency.

[48] At the conclusion of a complaint investigation, the Integrity Commissioner may make recommendations on sanctions to Council. The sanctions that may be imposed are a reprimand or suspension of the remuneration paid to the member of Council.

Findings

[49] I conclude that Regional Councillor Ferri did not violate the Code of Ethical Conduct in relation to his actions at the Ontario Municipal Board hearing.

Suzanne Craig
Integrity Commissioner