



ADR
C H A M B E R S

Integrity Commissioner Office
for the Town of Grimsby

July 20, 2020

Sent by email to: Councillor Randy Vaine
rvaine@grimsby.ca

and to: Councillor Dorothy Bothwell
dbothwell@grimsby.ca

Dear Councillor Vaine and Councillor Bothwell,

Re: Code of Conduct Complaint (Councillor Vaine against Councillor Bothwell)
Complaint Reference Number: IC-190-0320

Introduction

Councillor Vaine has brought a complaint against Councillor Bothwell alleging that Councillor Bothwell is abusive and demeaning to staff and is therefore acting contrary to provisions in the Councillors' Code of Conduct.

Councillor Vaine does not indicate which provisions of the Code of Conduct that he relies on, nor does he make reference to By-Law 19-18 (a by-law to establish a council-staff partnership and relationship policy).

The Code of Conduct states, under the heading of "Conduct", that "every member of Council has the duty to treat...staff appropriately and without abuse, bullying or intimidation..." By-Law 19-18 stipulates in S.6.1 under the heading of "Guiding Principles" that "members of Council understand that they have no individual capacity to direct staff in their duties...".

Specific Allegations by Vaine

Councillor Vaine alleges that Councillor Bothwell made derogatory remarks towards an employee; that Councillor Bothwell sent 190 emails to the said employee as a form of harassment; that Councillor Bothwell, in a closed Council meeting, asked that the said employee be fired; that Councillor Bothwell was rude and disrespectful of staff in her involvement around an issue before the Heritage Committee of Council; and, that Councillor Bothwell commented in open council session that Councillor Vaine had missed attending various committee meetings and that Councillor Bothwell rolled her eyes.

I will deal with the facts pertaining to each of these allegations sequentially.

Derogatory Remarks

Councillor Vaine has recently provided me with an email dated August 30, 2019 from the aforesaid employee to Councillor Bothwell. I choose not to reproduce this email in order to protect the identity of the employee but of necessity, I must recount it in part. The most salient aspect of the email relates that a personal meeting between the employee and Councillor Bothwell took place in mid June of 2019. Although the employee and Councillor Bothwell had been corresponding for many months they had never met one another in person. At that meeting the employee, in the email, states that Councillor Bothwell inappropriately asked the employee if he was Italian; then she gave a negative sigh; and then she stated that she got rid of two Italians during the last election.

By way of explanation from Councillor Bothwell, she states that she had never met the employee before. In order to “break the ice” she introduced herself to the employee at a meeting which in fact took place on July 11, 2019, and told him that she was of Dutch background, then asking him if he was Italian. She does not recall sighing. She further states that she told the employee that she defeated Councillor DeFlavio in the most recent municipal election. She states that she does not know what is meant by “getting rid of Italians” and has no idea of what he is implying. She denies making any such comment.

Councillor Bothwell further advises that the subject email was sent to her on August 30, 2019, shortly after the employee received a discipline letter from the Town and almost two months after the meeting of July 11.

190 emails

In the aforesaid email from the employee to Councillor Bothwell, he alleges that Councillor Bothwell sent him over 190 emails over the past 5 months, up to the date of the email (Aug. 30, 2019). The email states that “she take her requests to our new CAO and or through Council and provide me with clear direction through Council as a whole.” The employee also states that it is clear to him that Councillor Bothwell has issues with him administratively and personally (see allegations under Derogatory Remarks).

Councillor Bothwell has advised me that the allegation regarding emails is not accurate with respect to numbers in her estimation. She also states that number would include emails send and received. What Councillor Bothwell believes was significant is that all emails dealt with a serious constituent matter in her Ward 4, the largest Ward in Grimsby. The subject matter involved site alteration and the majority of the emails related to residential concerns over site alteration and the drafting of a site alteration by-law. It is also important to note that for most of this time the Tower of Grimsby was operating without a CAO.

Councillor Bothwell stated in Council, that the employee be fired

Councillor Vaine alleges that Councillor Bothwell demanded that the aforesaid employee be fired, during a Council meeting.

Councillor Bothwell does not dispute that she said in Council that the employee should be fired. She stated to me that she made these remarks during a closed Council meeting.

The employee was ultimately dismissed from his employment with the Town.

Rude and Disrespectful to staff at the Heritage Committee

Councillor Vaine alleges that Councillor Bothwell was rude and disrespectful to staff and placed unreasonable demands on their time.

Unfortunately, Councillor Vaine provides little in the way of particulars to support this allegation.

Councillor Bothwell advises that Councillor Vaine was likely referring to her activity and involvement on behalf of constituents regarding a Heritage Railway property and her diligence in determining that staff did not follow proper process in the progress of this matter.

Missed Meetings

Councillor Vaine alleges that Councillor Bothwell tried to embarrass him during an open Council meeting where committee assignments for various Councillors were being discussed. He advises that Councillor Bothwell stated that he was absent for a number of committee meetings.

Councillor Bothwell stated to me that she had no intention of embarrassing Councillor Vaine but was merely stating it would be unwise to expand Councillor Vaine's committee assignments if he was already too busy to manage pre-existing assignments.

Analysis

I am troubled by the nature of the alleged derogatory remarks; however, I am also troubled by the manner in which this complaint has been advanced.

The email of August 30, 2019 was cc'd to a number of senior Town of Grimsby staff. It was also forwarded separately to Councillor Vaine who acknowledged receiving the email on August 30 or shortly thereafter. Despite the alleged inflammatory remarks contained in the email, no conduct complaints were made by the employee or anyone else. The complaint ultimately came from Councillor Vaine, but not until early February of 2020. It is no excuse to say that the CAO had not yet started and I thought he would

deal with this. The issue came to Councillor Vaine's attention on August 30 and Councillor Vaine does acknowledge that the new CAO began shortly thereafter or may have already started with the Town. Councillor Vaine brought this complaint only after a series of nasty Council meetings that seriously split the Town Council into two factions, beginning a cascade of conduct complaints to the Integrity Commissioner from both factions. I seriously question the sincerity of this Code of Conduct complaint.

That being said, the allegations of the derogatory remarks are concerning. While I am prepared to accept Councillor Bothwell's "ice breaking" explanation for her remarks, in this day and age where elected officials are expected to be leaders in diversity and equity, to have such a conversation frankly surprises me. Councillor Bothwell should not, however, be surprised that just having this conversation could easily be intimidating for a staff person, particularly when it is initiated by an elected official in a position of some power, authority and stature. Councillor Bothwell should remember that public officials have a responsibility to treat everyone with dignity and respect and to act with humility. You are not entitled to take liberties with staff just because you have been elected. Her comments come very close to crossing the line but I accept her explanation in spite of it being awkward and inappropriate at best.

With respect to the 190 emails, that does on its face seem excessive and could very easily lead to a conclusion of attempting to harass or bully an employee contrary to the Code of Conduct under the heading "Conduct" and contrary to the spirit of By-Law 19-18. Given that Councillor Bothwell was advocating directly on behalf of constituents on a very important community matter, I am not prepared to conclude that her intent was to harass or bully or intimidate an employee or to direct staff in their duties. As I stated earlier there is often a perceived power imbalance between elected officials and staff. This Town council passed By-Law 19-18 on March 4, 2019. This By-Law outlines in detail the relationship between elected officials and staff, their respective roles and their working relationship. It should be incumbent on Councillor Bothwell and all members of council to read, understand and have respect for this document, in particular, S.2.9 which states "Achieve and maintain an environment of mutual respect and trust, mindful at all times of each other's roles in achieving the objectives of Council."

Insofar as the dismissal of the employee is concerned, Councillor Vaine acknowledged to me that Councillor Bothwell's remarks about firing the employee occurred in a closed Council meeting. He further acknowledged that Human Resource matters that come before Council are reserved for closed Council meetings. Accordingly, I see nothing inappropriate in Councillor Bothwell's conduct insofar as this allegation is concerned. Further, Councillor Vaine has advised that the employee's termination occurred through the actions of the CAO and proper process was followed without influence from Councillor Bothwell.

Next is the allegation regarding rude and disrespectful behavior towards staff at the Heritage Committee. Again, Councillor Vaine has provided little in the way of particulars. I am accordingly left with the conclusion that Councillor Bothwell was acting vigorously on behalf of her constituents to ensure that any changes to a railway property by the Heritage Committee were as a result of a full and proper process being

followed. I do not believe that Councillor Bothwell intended any untoward behavior in this endeavor.

I further find that it was appropriate for Councillor Bothwell to comment in an open session of Council that Councillor Vaine had missed a number of committee meetings. She made this comment in the context of Councillor Vaine seeking additional committee work. Her comments were not intended to embarrass or discredit Councillor Vaine and I accept them as such.

Councillor Vaine also alleges that Councillor Bothwell "rolled her eyes and made various signs of ignorance and contempt for staff." These allegations are vague and I reject them as they are provided with no contextual background.

Conclusion

I would accordingly conclude that there was no breach of the Code of Conduct and I therefore recommend that no sanction be imposed on Councillor Bothwell, notwithstanding the reservations I have expressed. I urge that Councillors have regard for their own By-Law 19-18 as they interact with Town staff.

Dated this 20th day of July 2020



Charles A. Harnick
Integrity Commissioner, Town of Grimsby