

*For the **Regular Meeting** of City Council
To be held on **Tuesday, October 10, 2023 At 6:00 P.M.**
In the **Council Chamber or Via Electronic Participation**
Tom Davies Square*

Addendum

(Two-thirds Majority Required to Deal with the Addendum)

Declarations of Pecuniary Interest and the General Nature Thereof

ADD- 1 Correspondence for Information Only

Code of Conduct Complaint – October 2023

This report provides information from the City's Integrity Commissioner regarding a Code of Conduct complaint made against Councillor Leduc.

Code of Conduct Complaint – October 2023

Presented To:	City Council
Meeting Date:	October 10, 2023
Type:	Correspondence for Information Only
Prepared by:	Eric Labelle Clerk's Services
Recommended by:	General Manager of Corporate Services

Report Summary

This report provides information from the City's Integrity Commissioner regarding a Code of Conduct complaint made against Councillor Leduc.

Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)

This report refers to operational matters and has no direct connection to the Community Energy and Emissions Plan.

Financial Implications

There are no financial implications associated with this report.

CITY OF GREATER SUDBURY INTEGRITY COMMISSIONER, DAVID G. BOGHOSIAN

Citation: Leduc (Re)

Date: September 11, 2023

REPORT ON COMPLAINT

Introduction

This report addresses a complaint alleging breaches of the City of Greater Sudbury's Code of Conduct by Councillor Bill Leduc, specifically in relation to Section 15 (appropriate treatment of others), Section 12 (decorum), and Section 4 (principles of serving the public interest with integrity, accountability, and transparency) (“the Complaint”).

Background

On April 27, 2023, the Election Compliance Audit Committee (the “Committee”) met to consider an Application for a Compliance Audit (the “Application”), submitted by Anastasia Rioux (the “Applicant”) with respect to the 2022 City of Greater Sudbury Municipal Election and the campaign finances of William (Bill) Leduc, Candidate for the office of Councillor, Ward 11. On reviewing the documents and materials submitted by the Applicant and the Candidate and on hearing the oral submissions from the Applicant and the Candidate, the Committee ordered a compliance audit of Councillor Leduc’s election campaign finances. The Committee appointed KPMG to conduct the audit. As of the date of this decision, the results of this audit have not been released.

On May 25, 2023, the Committee met again to consider a substantially similar application for a Compliance Audit submitted by Christopher Duncanson-Hales. The committee rejected Mr. Duncanson-Hales’s application on the basis that a Compliance Audit had already been ordered at the April 27, 2023 meeting.

I stress that nothing in this report shall be construed as passing judgment on the merits of the issues related to the Compliance Audit, which are not within the jurisdiction of the Integrity Commissioner.

The Complaint

On June 6, 2023, the City’s previous Integrity Commissioner received a complaint regarding allegedly inappropriate statements made by Councillor Leduc during a radio interview on April 25, 2023 and during the Committee meeting on May 25, 2023. Both statements concerned the applications for a Compliance Audit of Councillor Leduc's 2022 campaign. Due to the change of

Integrity Commissioners shortly after the Complaint was received, the investigation was unfortunately delayed.

The April 25, 2023 Radio Interview

On April 25, 2023, in an interview was broadcast on the CBC program “Morning North with Markus Schwabe,” Mr. Leduc commented on the complaints made to the Election Compliance Audit Committee with regards to his election expenses. He said that the evidence of non-compliance brought before the committee was “tampered evidence” that “did not reflect the event properly.” He further asserted that the individuals “admitted that they tampered with the video they supplied.”

The May 25, 2023 Committee Meeting

At the May 25, 2023 meeting, the Complainant alleges that Councillor Leduc made the following threatening and denigrating statements toward members of the public involved in a public process:

Mr Leduc: All I want to make clear is to this posse and this political group that I’ve been targeted, they’ve come straight out and said ‘posse stands for hunting.’ ok? Guess what folks, the tables have turned on you, ok? And I’m no longer going to be hunted by your little group. Thank you.”

The Complaint notes that the term “posse” was first introduced by one of the Applicants in reference to herself and her colleagues.

The Code of Conduct

Greater Sudbury's Code of Conduct (“the Code”) outlines the expected behavior and ethical standards for members of Council. The Complaint alleges that Councillor Leduc breached the following sections of the Code:

Section 4

- (1) Every Member shall serve, and be seen to serve, the public in a conscientious and diligent manner.
- (2) Every Member shall perform their functions with integrity, accountability and transparency and avoid the improper use of the influence of their office, and conflicts of interest, both apparent and real.
- (3) Every Member shall perform their Official Duties in a manner that promotes public confidence.
- (4) Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and the By-laws, rules, procedures and policies of Council pertaining to their position as an elected official.

(5) Members should act in a manner which recognizes that the public has a right to open government and transparent decision making, while acknowledging all rules regarding confidentiality contained in this Code of Conduct and in other legislation.

Section 12

(1) Every Member shall conduct themselves with decorum in the course of their performance, or required performance, of their responsibilities as a Member, and at meetings of Council, Committees of Council or meetings of the Local Board as the case may be, and other meetings, and in the case of Members of Council, in accordance with the provisions of the City's Procedure By-law, and other By-laws of the City, where applicable.

Section 15

(1) Every Member shall:

(a) treat other Members, City officers and employees, and members of the public, appropriately, and without abuse, intimidation, harassment or violence;

Investigation

On August 17, 2023, I forwarded the Complaint to Councillor Leduc via email for his response. I advised him that, in accordance with s. 21.(7) of the Code, a written response was required within ten days. I also mentioned that if, for example, due to holiday scheduling, he required more time to respond, I invited him to propose an alternate deadline. That same day, Councillor Leduc responded to me by email advising that his lawyer had reviewed the evidence and concluded that he had not breached the Code. I replied that, irrespective of his counsel's opinion, I required a written response addressing the substance of the Complaint.

On August 23, 2013, Mr. Leduc replied that the term "tamper" was used to suggest an alteration of the video footage for a purpose other than its intended use. He asserted that the individuals involved in videotaping had not obtained proper consent to record at the event. He made no comments on his statements at the May 25, 2023 meeting and provided no further submissions.

In the course of my investigation, I reviewed the complete audio file of the April 25th radio interview and the video recording of the May 25th Committee meeting.

Findings

Preliminary Procedural Matter: Complainant's Request for Anonymity

The Complainant requested anonymity in relation to their complaint, pursuant to s. 21.(7) of the Code. The Complainant asserted that, since the conduct complained of involved "attacking the personal reputations of identifiable members of the community," they wished to remain anonymous to avoid reprisal. The Complainant was not one of the individuals who submitted the compliance audit Applications and, in response to my inquiries, asserted they had no personal relationship or political allegiance with Mr. Duncanson-Hales, the candidate who Councillor Leduc defeated in the November 2022 election in Ward 11. I have granted their request as I

believe the reason for it is reasonable, there is no prejudice to Councillor Leduc in doing so and I do not regard the request as any form of an abuse of process.

The Comments Made by the Councillor During the April 25, 2023 Radio Interview

Councillor Leduc stated that the video evidence submitted in support of the Application was “tampered” with. The Complainant states that the Applicant “may have indicated elsewhere that the videos were edited for time,” but that there is a “vast difference between editing a video and tampering with it.” Councillor Leduc countered that that the term “tamper” was used to suggest an alteration of the video footage for a purpose other than its intended use, not a suggestion of dishonesty.

The Oxford Dictionary defines “tamper” as follows:

1. interfere with (something) in order to cause damage or make unauthorized alterations. As in “someone tampered with the brakes on my car.”
2. exert a secret or corrupt influence upon (someone).

I find that “tampering” has negative connotations in that use of the term would lead a reasonable listener to believe that the Applicant’s evidence in support of her Application was misleading and had been intentionally altered to harm the Councillor. Councillor Leduc provided no evidence suggesting that the video as edited was misleading, nor was there any finding by the Audit Committee that the video was edited in a misleading way relative to the campaign finance issue before them, which was what Councillor Leduc’s comments were directed toward. Based on the evidence before me, there is nothing to suggest that the video presented to the Committee was edited such as to create a misleading impression. Comments such as Mr. Leduc’s—vague assertions of misdeeds against members of the public with no evidence to support them—are not in keeping with a councillor’s responsibilities under the Code. I find that these comments constitute a violation of Section 15.(1)(a) of the Code in that they were not appropriate in the circumstances and were abusive to the members of the public who had made the complaint against him as they imply dishonesty and bad faith.

The Comments Made by the Councillor at the May 25, 2023 Committee Meeting

Preliminary Issue: Does the Integrity Commissioner Have Jurisdiction Over Councillor Leduc’s Comments at the Committee Meeting?

There is some consensus among Integrity Commissioners in Ontario that they do not have jurisdiction over the behavior of Council members during Council and committee meetings. The rationale for this holding has been that the *Municipal Act, 2001* requires that each municipality pass a procedure by-law and that the procedure by-law provides a clear mechanism for enforcing decorum and orderly conduct during meetings.

In Greater Sudbury, Procedure By-Law 2019-50, Article 23 speaks to decorum at meetings and provides that the Chair is responsible for enforcing the Rule of Decorum, first by calling the member to order and, if the member persists, requesting a vote without debate as to whether that

member should be ordered to leave the meeting. In accordance with the Procedure By-law, the Chair of the May 25, 2023 Committee meeting was responsible for enforcing the Rules of Decorum.

However, at least in the context of the Greater Sudbury Code of Conduct, I must respectfully disagree that conduct that occurs at Council and committee meetings falls outside the jurisdiction of the Integrity Commissioner.

Section 12 of the Code, which the Integrity Commissioner is expressly tasked with enforcing, specifically refers to conduct at Council and committee meetings. Given these specific, express references, it must be taken that Council, in passing the Code, intended for the Integrity Commissioner to have jurisdiction over conduct during Council and committee meetings.

Furthermore, from a policy perspective, it appears sensible for the Integrity Commissioner to have such jurisdiction. There are significantly more consequential remedies for breaches of appropriate decorum at Council and committee meetings upon a finding that the Code of Conduct has been breached compared to available remedies under the Procedure By-law, which would result, at most, in the expulsion of a member from the balance of a meeting. Furthermore, given the pace at which debate at such meetings can proceed, inappropriate statements or other conduct may be overlooked in the course of the meeting and their significance only realized after the meeting has ended. In such circumstances, the aggrieved party would have no recourse in the absence of a Code of Conduct complaint. In addition, in the context of committees of Council, the chair may well be a layperson, not an elected official, and may not appreciate the powers available to them to address misconduct during the course of such meetings either generally or at the time the misconduct occurs.

For these reasons, I find that I do have jurisdiction over the comments made by Councillor Leduc at the May 25th Committee meeting.

Did the Comments Made at the May 25th Meeting Breach the Code?

Considering that the Applicant herself referred to her and her colleagues as a “posse”, the Councillor’s use of that term in response does not appear to me to have been abusive or otherwise inappropriate.

The statement “the tables have turned on you, ok”, taken in isolation, could be construed as a threat, however, in my opinion, when read in the context of the statement as a whole, it lacks sufficient particularity to rise to such a level and thus to a level that could be considered abusive or intimidating. Furthermore, the last sentence of the statement simply indicates that Councillor Leduc is no longer going to be hunted, suggesting that the previous sentence was not intended to be a threat of corresponding consequences.

In summary, I do not find any violation of the Code of Conduct in respect of the statements made at the May 25th meeting.

Conclusions Regarding the Complaint and Appropriate Remedy

I have found that the statements of Councillor Leduc during the April 25th radio interview breached section 15 of the Code of Conduct but that his statements during the May 25th Committee meeting did not.

With respect to the radio interview, I find that, while objectionable and impertinent, Councillor Leduc's comments did not quite rise to a level warranting sanction by Council.¹ It is possible that he made the impugned statements in the heat of the moment, although it is equally possible that he attended the interview planning to make those allegations. Councillor Leduc did not provide any explanation in this regard. On balance, I do not recommend that Council take any further action with respect to the Complaint. Certainly, if subsequent complaints are made about statements made by Councillor Leduc against these or other members of the public and those complaints are found to be valid, this infraction will undoubtedly be factored into consideration of the appropriate sanction at that time.

Respectfully Submitted,



David G. Boghosian,
Integrity Commissioner

¹ In *Kirwan (Re)*, 2019 ONMIC 17 (CanLII), <https://canlii.ca/t/j3xm1>, Integrity Commissioner Swayze found that a reprimand was appropriate when a councillor made repeated personal attacks against residents on his Facebook page (generating nine complaints).