

ROBERT J. SWAYZE

INTEGRITY COMMISSIONER

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OFFICE OF THE INTEGRITY COMMISSIONER

OPEN SESSION REPORT

TO: Mayor and Members of Greater Sudbury City Council

FROM: Robert Swayze, Integrity Commissioner

DATE: July 25, 2022

MEETING DATE: August 9, 2022

SUBJECT: Supplementary Report to Integrity Commissioner Report deferred by Council on June 28, 2022 – Complaints against Councillor Vagnini

Recommendation:

It is recommended:

That the compensation paid to Councillor Vagnini as a member of Council be suspended for a period of forty (40) days commencing with the next pay period.

Background:

Attached to this report as Appendix A, is a report from the Office of the Integrity Commissioner dated May 31, 2022, which was deferred by Council on June 28, 2022 at the request of the Integrity Commissioner. The report found a contravention of the Council Code of Conduct (the "Code") by Councillor Vagnini in two instances, one related to his showing of a lack of respect for Deputy Chief Jesse Oshell of the Fire Service. The deferral was requested because the CAO/Complainant informed me of a telephone call made by Councillor Vagnini to Deputy Oshell on June 20, 2022 which he alleges was an attempt "to coerce Deputy Oshell to make or agree with a statement that minimizes the effect of the offense described in your latest report."

The following is a description of part of the telephone call by Deputy Oshell:

"The Councillor took the opportunity to share with me that his attorney continues to support he did nothing wrong and was cleared by OPP of any wrongdoing. The Councillor suggested that in the best interests of Fire Services and in my best interests, I could recognize that he apologized to me and that we are amicable so that my claim with the Integrity Commissioner could be withdrawn. It would help with his position on Council or if he chose to run for mayor. At several points in the conversation the Councillor stated that he was not directing me or suggesting anything to me, he was just speaking out loud. The Councillor stated if I wanted to hang up I could, he was cautious to say he was not telling me what to do. I stated that I was not comfortable continuing the conversation and politely discontinued the discussion, ending the call which lasted 15 minutes."

Response From Counsel for Councillor Vagnini

Counsel for the respondent repeated submissions that I have dealt with in the attached report including the suggestion that a CAO cannot file a complaint with me because it is on behalf of the municipal corporation. He argues that I must only accept complaints from identifiable individuals. Over the 14 years I have served as integrity commissioner in many municipalities, I have received countless complaints from municipal and other corporate administrators and in my opinion, these are valid so long as the complainant confirms that they are personally responsible for it. Mr. Archer has done that.

A new submission from Counsel is that a resident of ward 2, had told the respondent verbally that Deputy Oshell "verbally confirmed to her that he had communicated with you and indicated that he was content with the apology he received and did not want to see any further action taken." I quote Deputy Oshell's response to this allegation as follows:

"The email from (*resident of ward 2 name deleted*) is inaccurate and not reflective of the conversation we shared. (*resident of ward 2 name deleted*) is a resident in the same area as my residence and knows me as a rural neighbour. (*resident of ward 2 name deleted*) was under the impression that I had earlier spoken to you, to which I informed (*him or her*) I had not yet spoken to you and had followed my chain of command, reporting my concerns to the Chief and CAO. (*resident of ward 2 name deleted*) asked about the Councillor's apology, and I only acknowledged that it had occurred and was reported to my Chief and CAO. I do agree with (*his or her*) comment about accepting the apology, which as you know I had by that point. (*resident of ward 2 name deleted*) is a well known supportive resident of the Councillor.

Finally, I do notice that much of the communication from Mr. Lacy is a reflection that an apology to me has occurred, that was accepted, and that this in some way absolves the Councillor of his actions and repercussions. The focus appears to be that the Councillor's initial actions towards me were justified and now, after apologizing, are irrelevant. This troubles me as an employee with a justifiable complaint. You may recall that I received the apology after the Councillor was told by Mr. Lacy it would be best to do so, as the Councillor noted to me when it occurred. This was not an unsolicited apology. Regardless I accepted the apology and, as part of my duties, continue to work professionally with the Councillor as required.

I served Counsel for Councillor Vagnini with a first draft of this report on July 15, 2022 and received his further comments today. He continues to argue that a CAO may not file a complaint because he is complaining on behalf of the municipality. I disagree with this contention as explained above. He also raises the fact that the telephone call to Deputy Oshell was not in any way contentious or disrespectful. However, I am of the opinion that it attempted to use his influence as a Councillor to make him accept the apology and withdraw the complaint filed by the CAO. I also support the statement made by the Deputy that the apology does not "absolve the Councillor of his actions and repercussions."

Analysis:

In my opinion the making of the subject telephone call was an inappropriate attempt to use his influence as a member of Council. The use of the words "in my best interest" implies that the Deputy was being threatened. I agree with the CAO that it is contrary to Sections 13 (1) and 13 (2) of the Code. However, I will not change my original recommendation of suspending the compensation paid to him as a member of Council. I strongly recommend that at least 40 days of his compensation be suspended.

Prepared by:



Robert Swayze
Integrity Commissioner

Attachment(s): Appendix A - Report to Council from the Integrity Commissioner deferred on June 28, 2022.

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APPENDIX A

OFFICE OF THE INTEGRITY COMMISSIONER

OPEN SESSION REPORT

TO: Mayor and Members of Greater Sudbury Council

FROM: Robert Swayze, Integrity Commissioner

DATE: May 31, 2022

MEETING DATE: June 28, 2022

SUBJECT: Code of Conduct Complaints against Councillor Vagnini

Recommendation:

It is recommended:

That the compensation paid to Councillor Vagnini as a member of Council be suspended for a period of forty (40) days commencing with the next pay period.

Background:

I received three complaints against Councillor Vagnini, two from Councillor Leduc and one from Mr. Ed Archer, CAO, all in the month of January 2022. I gave notice for each of the three complaints to the Respondent and requested a response to me within the 10 days as prescribed by the *Code of Conduct for Members of Council and Local Boards* (the "Code"). One of the complaints was referred to the Police and, as required by the Code, I stayed all three until the police investigation was completed. I resumed my investigation on April 5, 2022, when I was advised that the police investigation was terminated.

First Complaint

The first complaint from Councillor Leduc related to statements made by Councillor Vagnini in a video of a meeting he organized and posted on social media which included homeless people. City staff were not asked to participate in this video. He chaired the

video meeting and the press report quotes what he and the other participants alleged on the video as follows:

- “Two frozen bodies were pulled out of downtown tents two to three weeks ago.
- A woman froze to death in a tent outside of Tom Davies Square last Thursday.
- There was a double stabbing at a shelter in the city recently.
- The city has been evicting people from their tents.
- There’s \$300 million “sitting there” in a city bank ready to be used to aid in the city’s homelessness crisis.”

The complaint also referred to statements he made at a Finance Committee meeting held on January 18, 2022. City staff from the Social Services Division were present and were asked whether these statements are true. They confirmed there is a homeless problem in Sudbury which is under control. They refuted the statements made in the video and I found the staff response to be both professional and credible. At that meeting Councillor Vagnini indicated that he did not believe the information presented by staff.

In a subsequent press report on January 20, 2022, he was quoted as confirming the above facts relating to homeless people and disbelieving the staff comments.

The complainant alleged that these were false statements, disrespectful of staff and contrary to the following sections of the Code:

16 (2): *“Every Member should refrain from making statements known to be false or with the intent to mislead Council or the Local Board as the case may be, or the public.” and*

14(2): *“Every Member shall be respectful of the role of City officers and employees to provide professional service and advice based on political neutrality and objectivity, and without undue influence from any one or more Members.”*

Second Complaint

The second complaint, also from Councillor Leduc, alleged that Councillor Vagnini made a phone call to Councillor Leduc’s cell phone on January 25, 2022 using vulgar words and threatening his life. The complainant initially refused to tell me the exact words used in

the phone call. However, on April 4, 2022, he sent me an E-mail quoting words from the Councillor which were vulgar and did threaten his life. Councillor Leduc also called the police regarding this phone call and I have been advised that the police investigation has been terminated with no charge laid.

Third Complaint

The third complaint from Mr. Archer was in support of staff of the fire service who refused a request of Councillor Vagnini to supply a fire truck and other bunker gear to a funeral of a former volunteer firefighter who was a friend of the Councillor. The Deputy Chief of the department politely refused to supply the apparatus to the funeral home because of the extreme cold and the risk of damage to the equipment. He was responded to on the phone with:

1. "This is bull****. Don't play that f****ing game with me.
2. F**** off, I can't believe you won't do this.
3. Don't try to tell me this s****."

After the complaint was filed with me, apparently on legal advice, he apologized to the staff member by E-mail.

The Complainant quoted Section 15 of the Code which he alleged was contravened, as follows:

"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; and*
- (b) make all reasonable efforts to ensure that their work environment is free from discrimination, harassment and violence.*

(2) Every Member shall act in compliance with the Ontario Human Rights Code and the Occupational Health and Safety Act, and where applicable, the City's Workplace Violence, Harassment and Discrimination Prevention Policy and Program.

Analysis:

I received a thorough response to the complaints from Counsel retained by the respondent. Respecting the first complaint, he quotes one of my many reports to Councils where I have backed vigorous debate by a councillor in support of their views.

In my opinion, suggesting publicly that staff lied and omitted or misrepresented facts is beyond vigorous debate.

He then suggests that the Councillor did not accuse the staff of lying about the homeless situation but only that he defended his right to raise the information he learned from homeless people. I reject this argument because the detail he presented in his video as quoted in the press, such as people "freezing to death" would have been known by staff. I believe that any such information would have been provided to the meeting if it happened.

On the second complaint, Counsel argues that I had no complaint until Councillor Leduc finally advised me of the actual words spoken on the phone call which was beyond the 60 day limitation on filing complaints. I reject that argument because the formal complaint was sent to me shortly after the phone call. I find that completing the evidentiary support of a complaint does not constitute a new filing of one. However, I was provided with no corroborating evidence to substantiate the life-threatening statements by the respondent and I take note that after an investigation by the police, no charge was laid. I have insufficient evidence to find that the Code was contravened with this phone call and the second complaint is hereby dismissed.

Regarding the third complaint, his vulgar response to the Deputy Fire Chief is clearly contrary to Section 15 quoted above. His Counsel refers to the "laudable" effort to have an appropriate memorial for the deceased as an excuse for the profane language and disrespect of staff which I do not accept.

Before finalizing this report, I served an excerpt of it on the respondent and his Counsel for comment. I rejected most of the comments that were made but did make changes to the report including reducing my recommendation for salary suspension.

It is clear to me that the first and third complaints result from inappropriate behaviour towards staff and a fellow Councillor contrary to the Code and this must stop.

Decision

I find that the cumulative effect of the testimony I have heard in these two complaints reveals an elected member of Council who feels he can be vulgar and disrespectful to his work associates, whether members of staff or Council. It is contrary to the Code sections cited above and I am recommending forty (40) days suspension of the compensation paid to him as a member of Council.

It is important that this member of Council be penalized in a meaningful way so that he changes his behaviour and that he understands that a repeat of this conduct will result in a recommendation from me of a suspension of the maximum ninety (90) days salary.

A handwritten signature in dark ink, appearing to be 'R. Swayze', with a stylized, flowing script.

Robert Swayze
Integrity Commissioner