
Office of the Integrity Commissioner

**Report to City Council Re City Council Resolution CR702/2017,
Dated November 06, 2017.**

**In the Matter of a Complaint Brought Pursuant to the Code of Conduct
of the City of Windsor Against Councillor Rino Bortolin.**

The Complaint:

At its Meeting on the 6th of November, 2017, City Council adopted a Resolution of Council as follows:

Decision CR702/2017

THAT the Integrity Commissioner for the City of Windsor **BE DIRECTED** to investigate, in accordance with the **Complaint Protocol for Members of Council and Others Governed by the Code of Conduct**, the statement made by Councillor Bortolin and published in the Windsor Star on October 18, 2017, wherein the Councillor stated, “there is no money for a \$3000 alley light *where that person got beat up and raped last week.*”

A Preliminary Matter:

The Decision of Council comes with no additional documentation and no indication of the specific **Code** provisions that Members of Council believed Councillor Bortolin might have violated. In a phone conversation with Councillor Bortolin, I advised him that I would be examining his statement in light of Rule 16 (Transparency and Openness in Decision Making), Rule 17 (Failure to Adhere to Council Policies and Procedures), and Rule 20 (Compliance with the Code of Conduct) of the **Code of Conduct** as well as section 14 (Conduct of Members of Council and Local Boards) of the *Procedure By-law* of the City.

The lack of supporting documentation was raised by Councillor Bortolin as a preliminary issue. In essence, he was seeking “further and better particulars”. No further information was available, however. In an email to Councillor Bortolin, I indicated that, in my opinion, I had the authority to interpret the Decision of Council with reference to the context in which the conduct complained of occurred and in which the Resolution was passed and, thereby, determine the relevant provisions of the **Code of Conduct**. As I pointed out to Councillor Bortolin, the corollary of this determination, of course, is that I am also limiting the scope of my inquiries – and, consequently, my Report to Council -- to those provisions only.

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Having viewed the video of the Council debate on **CR702/2017**, I am convinced that Members of Council viewed Councillor Bortolin's statement to the *Windsor Star* primarily in the context of Rule 16 of the **Code of Conduct** and section 14.1(e) of the *Procedure By-law*. The latter provision can be enforced by Council through Rule 17 of the **Code of Conduct**. Rule 20 provides sanctions for violations of the **Code of Conduct**. I am reinforced in my view because of the multiple mentions of the "Advisory Bulletin" which was in the package of materials provided to Council Members just prior to Councillor Bortolin's statement to the *Windsor Star*. (*Advisory Bulletin Regarding Member Statements and Conduct Regarding Decisions of Council, Effective Date 15 October 2017.*)

Decision:

1. **IT IS RECOMMENDED** that Council accept the Report of the Integrity Commissioner and find that Councillor Bortolin violated Rules 16.2 and Rule 17.0 of the **Code of Conduct of the City of Windsor** when he made certain statements to the *Windsor Star*;
2. **IT IS FURTHER RECOMMENDED** that Council impose the sanction of "Reprimand" on Councillor Bortolin in regard to his violation of Rules 16.2 and 17.0 of the **Code of Conduct**; and
3. **IT IS FURTHER RECOMMENDED** that Council, as a further action for remedial purposes, request that Councillor Bortolin apologize to Council in the Council Chambers during a Council Meeting.

The Code of Conduct and the Procedure By-law:

Rule 16 of the **Code of Conduct** provides:

RULE NO. 16 – TRANSPARENCY AND OPENNESS IN DECISION MAKING

16.0 Members shall endeavour to conduct and convey Council business and all their duties in an open and transparent manner other than for those decisions which by virtue of legislation are authorized to be dealt with in a confidential manner in closed session, so that stakeholders can observe the process and rationale which was used to reach decisions, and the reasons for taking certain actions.

16.1 Members shall accurately communicate the decisions of City Council, even if they disagree with the majority decision of Council, and by so doing affirm the respect for and integrity in the decision-making processes of Council.

16.2 A Member may state that they did not support a decision or voted against a decision. However, Members shall refrain from making disparaging comments about other Members or about Council's processes and decisions.

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16.3 When communicating with the public, a Member shall at all times refrain from speculating or reflecting upon the motives of other Members in respect of their actions as a Member of Council.

16.4 Members shall note that section 14.1(e) of the *Procedure By-law* states that Members shall not criticize any decision of Council except for the purpose of introducing a motion for reconsideration under s.13 of the *Procedure By-law*.

Section 14.1(e) of the *Procedure By-law* provides:

14.1 Members of Council/Committees shall:

e) not criticize any decision of the Council except for the purpose of introducing a motion for reconsideration under Section 13 of this by-law.

Rule 17 of the **Code of Conduct** provides:

RULE NO. 17 – FAILURE TO ADHERE TO COUNCIL POLICIES AND PROCEDURES

17.0 Members of Council are required to observe the terms of all policies and procedures adopted by Council.

17.1 This provision does not prevent a Member of Council from requesting that Council grant an exemption from a policy.

Findings:

1. Councillor Bortolin made the following statement to the *Windsor Star* as reported on the 18th of October 2017: "When I have to continually go back to residents and say there is no money for a \$3000 alley light where that person got beat up and raped last week, it's hard. They say: 'Whatever. You just got Christmas lights, you just got a trolley.'"
2. Councillor Bortolin does not dispute the fact that he made the statement nor that the contents of the statement are accurate. Further, he concedes that the statement was false. He does suggest that the context in which the statement was made is important and that one should recognize that the statement was "hyperbolic".
3. To place the statement in its context: The statement was made following a Council decision to spend in excess of \$750, 000 to restore a vintage streetcar. According to Councillor Bortolin, his frustration emanated from two sources: first, that he and the residents of his Ward have not received what they perceive to be adequate funding for improvements that will enhance public safety and security (such as alley lighting) in the Ward; and second, that the Budget process was and is, in his view, seriously flawed.
4. As to hyperbole: Councillor Bortolin suggests that his comments were not so much "inaccurate" as they were "hyperbolic". He further indicates that he "immediately responded with an apology for the choice of words".
5. On the other hand, the debate in Council shows a genuine concern for the reputation and integrity of the City of Windsor. Members of Council expressed their concerns

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that Councillor Bortolin's statement will be taken as fact by residents of the City as well as by potential business developers, tourists, and visitors to the detriment of the City more generally.

6. Members of Council noted that Councillor Bortolin is a passionate individual who, as one Councillor put it, "wears his heart on his sleeve". However, Councillors indicated that "words matter" and that, when one is in a position of leadership, it "matters what we say". Therefore, above all, it is important to be accurate.
7. As noted above, some Councillors, pointing to the Integrity Commissioner's recently released *Advisory Bulletin Regarding Member Statements and Conduct Regarding Decisions of Council, (Effective Date 15 October 2017)* saw this as a lack of respect for Council decisions and fellow Councillors.

Conclusions:

1. In my view, Councillor Bortolin, through his statement to the *Windsor Star*, violated Rule 16.2 of the **Code of Conduct** which states that "Members shall refrain from making disparaging comments . . . about Council's processes and decisions." To "disparage" is to "bring reproach or discredit; to run down". (Many other similar definitions can be found in the leading dictionaries.) There can be no doubt that Councillor Bortolin's statement to the *Windsor Star* was "disparaging" in that it brought reproach and discredit to Council, to its procedures and decisions.
2. Further, it is my view that, in making these "disparaging" comments, Councillor Bortolin violated Rule 16.1 of the **Code of Conduct** in that he failed to "... affirm the respect for and integrity in the decision-making processes of Council", One can certainly interpret his statement as attacking the integrity of the decision-making processes of Council, at least in regard to this decision.
3. Furthermore, there can be no doubt that Councillor Bortolin violated section 14.1(e) of the *Procedure By-law* which provides that "Members of Council ... shall not criticize any decision of the Council except for the purpose of introducing a motion for reconsideration under Section 13 of this by-law." Councillor Bortolin's statement was highly critical of Council's decision to fund the restoration of the vintage streetcar.
4. In so doing, Councillor Bortolin failed "to observe the terms of all policies and procedures adopted by Council" – in this case section 14.1(e) of the *Procedure By-law* -- and thereby violated Rule 17.0 of the **Code of Conduct**.

Sanctions:

1. As a preliminary point, the following should be noted: In my view, Councillor Bortolin's statement violated Rules 16.1, 16.2. and 17 of the **Code of Conduct**. This does not mean, however, that Councillor Bortolin should be subject to multiple or enhanced sanctions. There is only one act/statement here and it should be treated as one violation of the **Code of Conduct**. The concept of avoiding double punishment should apply here.
2. Under Rule 20.0 of the **Code of Conduct**, Council may impose either of two penalties for a violation of the Code of Conduct: (i) a reprimand; or (ii) suspension of remuneration

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paid to the Member . . . for a period up to 90 days. It is my recommendation to Council that it impose the penalty of “reprimand” on Councillor Bortolin.

3. Under Rule 20.1, the Integrity Commissioner may, for remedial purposes, also recommend that Council take one or more of the following actions: (i) revocation of a Member’s membership on a committee or local board; (ii) removal of a Member from the Chair of a committee or local board; (iii) repayment or reimbursement of monies received; (iv) return of property or reimbursement of its value; and (v) a request for an apology to Council, the complainant, or both.
4. In my opinion, only one of these possible actions would be appropriate, for remedial purposes, in the circumstances of this case and that is to request that Councillor Bortolin apologize to Council in the Council Chambers during a Council Meeting. (I note here, parenthetically that an apology on social media, or even in the mainstream media, is insufficient for the purposes of the **Code of Conduct**.) I recommend that Council take this action as well.

A Final Note: Rule 16 of the Code and Section 14.1(e) of the *Bylaw* and the *Charter of Rights*:

Some might argue that Rule 16 of the **Code** and Section 14.1(e) of the *Bylaw* violate section 2(b) of the *Canadian Charter of Rights and Freedoms*. Section 2(b) states that “Everyone has the following fundamental freedoms . . . thought, belief, opinion, and expression . . .” It is not the role of the Integrity Commissioner to determine the constitutional validity of provisions of the **Code of Conduct** or of the *Procedure By-law*; that is left to the Courts. It is worth pointing out, however, that one’s right to freedom of expression is not absolute; it is subject to “such reasonable limits . . . as are demonstrably justified in a free and democratic society”.

I would argue that provisions such as Rule 16 of the **Code** and section 14.1(e) of the *By-law* – commonly referred to as “anti-disparagement” or “loyalty” provisions – constitute such reasonable limits in the context of Municipal governance. To put it somewhat differently, it is arguable that the Mayor and Councillors are more limited, than are members of the public, in what they permitted to say precisely because they hold elected positions of leadership and authority in our Municipal governance structure.

To expand on this: City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and, at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor. They enter into contracts, employ workers, buy and sell property, engage in entrepreneurial activity, and so forth -- all at the direction of and in accordance with the policy set by the “Board” but known in this case as the Municipal Council.

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made,

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Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how Councillor Bortolin's statement – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or go on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. They should not be disrespectful and their comments should not be disparaging or inaccurate. Indeed, in the same *Windsor Star* article, Councillors Marra and Kusmierczyk provided reasons why they had voted against the streetcar proposal. Their statements met the appropriate standard required of Councillors when explaining why they had voted against a particular proposal; unfortunately, Councillor Bortolin's comments failed to meet that standard.

· This concludes my Report.

Signed at Windsor, Ontario, on the 20th of April, 2018.

SIGNATURE:



Bruce P. Elman
Integrity Commissioner

Office of the Integrity Commissioner

CONTACT

Bruce P. Elman

Integrity@citywindsor.ca

Telephone: 519-990-0166