

KEEPING CURRENT

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Council Resolution Restricting Communications of Councillor Unreasonable and Punitive

By Stephen Thiele

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Municipal governments are said to have the most influence on the day-to-day lives of residents. Accordingly, city staff and elected representatives, who in Ontario run as independent candidates because there are no formally recognized municipal electoral organizations, play an important role in shaping municipal government policy and crafting decisions that are ultimately enacted as by-laws. Indeed, the role of a municipal council, or councillor, is set out under [section 224](#) of the [Municipal Act, 2001](#) (the "Act") or [section 131](#) of the [City of Toronto Act, 2006](#). In carrying out their role, however, the views of an elected representative may clash with the views of city staff.

In some cases, the city staff person will complain that the clash of views with an elected councillor goes too far and requires investigation by an Integrity Commissioner for allegations that the elected representative has breached a Code of Conduct that governs the behaviour of a member of council. Under the Act, where a breach of the Code of Conduct is found, council has the final

authority to impose a penalty against the elected representative. However, not all penalties are reasonable or allowable.

In [Villeneuve v. North Stormont \(Township\), 2022 ONSC 6551](#), the Chief Administration Officer (the "CAO") of the respondent municipality filed an integrity commissioner complaint against the applicant councillor for breach of the municipality's Code of Conduct. The CAO complained that the councillor had engaged in recurring disrespectful conduct toward her, had publicized confidential information about her salary, and had voted in a conflict of interest. The Integrity Commissioner concluded that on two occasions the councillor had breached the Code of Conduct.

The first occasion was during an email exchange that concerned the resignation of a senior staff person. The second occasion was during a council meeting when the councillor questioned the CAO about certain expenditures.

The Integrity Commissioner concluded that the content and tone of the councillor's emails were abusive. In the

emails, the councillor expressed to the CAO that it was “irresponsible and completely unacceptable” and “completely irresponsible and unacceptable” that Council had not been made aware of the resignation of the municipality’s Fire Prevention Officer.

With respect to the councillor’s comments at the council meeting, the Integrity Commissioner determined that she had used “intemperate language” to express her dissatisfaction with the financial disclosure provided by the CAO.

The Integrity Commissioner recommended that the councillor’s pay be suspended for 45 days and that for a period of 9 months all emails the councillor wanted to send to the CAO had to go through the Mayor.

Although Council accepted the recommendation in connection with the suspension of pay, it determined that the councillor should not be permitted to email the CAO or staff directly for 14.5 months, with all communications to go through the Mayor.

The Councillor challenged, among other things, the reasonableness of the findings of the Integrity Commissioner and the decision of council to restrict her communications with the CAO and staff. The councillor contended that the latter decision was unreasonable and *ultra vires*.

With respect to the Integrity Commissioner’s findings that the councillor had breached the Code of Conduct on two occasions, the councillor argued that she was just doing her job, that she was entitled to ask questions and state her views.

On a subsequent application for judicial review, the majority of the Divisional Court found that the Integrity Commissioner’s findings were reasonable and should not be overturned on judicial review. In general, the standard of review for the findings of an Integrity Commissioner is reasonableness.

The majority of the court stated that the email exchange between the councillor and the CAO could be seen as attacking the CAO’s professionalism because the councillor characterized his conduct as “irresponsible”. With respect to the statements made at the council meeting, the majority of the court found that the Integrity Commissioner’s conclusion that the councillor had publicly berated staff was reasonable.

In a dissenting opinion, Justice Ramsay concluded that the Integrity Commissioner’s findings were unreasonable and could not be justified on the findings of fact made by the Integrity Commissioner. Although the CAO was not obligated to notify individual councillors about the Fire Prevention Officer’s resignation, Justice Ramsay stated that to characterize the councillor’s comments as abusive or disrespectful applied an “impossibly sensitive” standard to the email exchange.

On the issue of the councillor’s comments made at the public meeting, Justice Ramsay stated as follows:

Elected councillors should not be inhibited in the exercise of their function by the potential for an integrity investigation based on criticism in council meetings of the acts of staff or undue sensitivity to the feelings of the chief administrative officer. Councillors owe a duty to the electors to concern themselves with the due administration of the municipality.

Despite upholding the Integrity Commissioner’s findings, the majority of the court determined that Council’s resolution to require all of the councillor’s emails to the CAO and staff to go through the Mayor was *ultra vires*. Even though a council can require remedial actions in addition to a reprimand or a suspension of pay, the



restrictive communications sanction imposed by Council was overbroad and not connected to the conduct under consideration. The communications sanction was unreasonable and punitive. This ruling did not affect the 45-day suspension of the councillor's remuneration.

This case demonstrates that elected representatives should be careful when choosing their words to communicate disagreements with city staff. Words or language that may be viewed as berating a city staff member or characterizing their conduct as unprofessional could result in a finding that a Code of Conduct was breached and result in a suspension of pay. However, the dissenting opinion of Justice Ramsay, also recognizes that there may be an inherent tension between the roles of an elected representative and a city staff member and that decision-makers, whether Integrity Commissioners or municipal councillors, should not be overly sensitive to an elected representative's questioning of staff on items that are of concern to a municipality or the public. Given Justice Ramsay's dissent it will be interesting to see if the councillor takes any steps to appeal the ruling of the majority of the court.

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If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** in our dispute resolution group at 416.865.6651 or via email at sthiele@grllp.com.

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