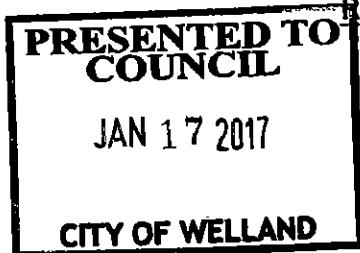


THE CORPORATION OF THE CITY OF WELLAND

IN THE MATTER OF A COMPLAINT against Councillor Pat Chiocchio, dated September 23, 2016, under section 223.4 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and Policy Number HUM-001-0031 of the Corporation of the City of Welland, being a Policy to establish a Code of Conduct for Members of Council.

REPORT OF THE INTEGRITY COMMISSIONER

January 17, 2017



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OVERVIEW AND SUMMARY OF FINDINGS

1. On September 23, 2016, a complaint under the City of Welland's Code of Conduct for Members of Council was made against Councillor Pat Chiocchio (the "**Complaint**"). The Complaint alleges that Councillor Pat Chiocchio used the influence of his office for a purpose other than the exercise of his official duties; to wit, he asked Council to install a three-way stop at the corner of Wellandvale Drive and Goodwillie Drive, in the City of Welland.
2. This report details my investigation and findings with respect to the Complaint. I have reviewed and considered all the documents and submissions associated with the Complaint, visited the intersection, and interviewed the Complainant and Councillor Pat Chiocchio. In reporting on my investigation, I have endeavoured to preserve secrecy with respect to all matters that have come to my knowledge in the course of my duties under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "**Act**").
3. For reasons that follow, I have determined that Councillor Pat Chiocchio did not breach the Code and that the Complaint should be dismissed.

THE CODE

4. On February 5, 2013, the City of Welland approved Policy Number HUM-001-0031, establishing a Code of Conduct for Members of Council (the "**Code**"). The purpose of the Code is to ensure that the Members of Council share a common basis for acceptable conduct. The Code is not intended to replace personal ethics.
5. On or about October 4, 2016, I was appointed as the City's Integrity Commissioner.

6. Among other things, the Code is designed to provide a reference guide and a supplement to the legislative parameters within which the Members must operate; serves to enhance public confidence that the Members of Council operate from a base of integrity, transparency, accountability and common courtesy; and serves to enhance the quality of public administration and governance through high standards of conduct.

7. In accordance with section 223.4 (5) of the Act, section 19 of the Code authorizes Council to impose either of two penalties on a Member of Council following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the Code:

- A reprimand; or
- Suspension of the remuneration paid to the Member of Council in respect of his or her services as a Member of Council or local board, as the case may be, for a period of up to 90 days.

8. The Integrity Commissioner may also recommend that Council or a local board take the following actions:

- Removal from membership on a Committee or local board;
- Removal as Chair of a Committee or local board;
- Repayment or reimbursement of moneys received;
- Return of property or reimbursement of its value; and
- A request for an apology to Council, the complainant or both.

THE FACTS

9. The facts are straightforward. The intersection of Goodwillie Drive and Wellandvale Drive is a "T" intersection; Goodwillie ends at Wellandvale, where there has always been a stop sign. Councillor Pat Chiochio asked Council to convert the intersection into a three-way stop, by adding two stop signs on Wellandvale, on either side of Goodwillie. The two new stop signs have now been installed.

10. The need for a three-way stop sign at Goodwillie and Wellandvale has been studied by the City's Infrastructure and Development Services Department. Based on a consideration of traffic volumes and the technical standards used to determine the need for stop signs, a three-way stop is not, strictly speaking, warranted here. While this engineering review has not been challenged, concerns about the safety of the corner have persisted.

11. Those concerns found their way on to the floor of Council Chambers on July 19, 2016, when Councillor Pat Chiochio put the following motion to Council:

THAT THE COUNCIL OF THE CITY OF WELLAND requests a 3 way stop to be placed at the corner of Goodwillie Drive and Wellandvale Drive due to the safety concerns of the local residents.

12. The motion was presented to Council and carried on July 19, 2016.
13. I interviewed the Complainant on November 28, 2016. It is the Complainant's belief that Councillor Pat Chiocchio wanted to secure the new stop signs as a favour to a former work colleague of the Councillor, who had complained that traffic flowing through the intersection of Wellandvale and Goodwillie posed a danger when backing out of his driveway.
14. The Complainant's conviction that the motion was ill-founded is compounded by his concern that the new stop signs are an inconvenience to other users of these two roads. The inconvenience of the new stop signs to some residents of the north end of Ward 4 is clear from a petition signed by 41 people that was given to me and, I understand, the Clerk's Department.
15. In addition to his worry that Councillor Pat Chiocchio was using his status as a member of Council, the Complainant also took issue with the process by which the stop signs came to be. He notes that, through the motion, Council only "requested" the signs, which, to him, should only have triggered a report from staff, not the installation of the signs. I think this interpretation is debatable but, in any event, the interpretation of the language of the motion is beyond the scope of this investigation and, in any event, immaterial to the issue of the correctness of the use of influence.
16. I interviewed Councillor Pat Chiocchio by telephone on December 15, 2016. He is a long-serving member of Council (14 years), and presents as genuinely interested in assisting his constituents and advancing the interests of the City of Welland. When he is not busy with the business of the City, he is a full-time employee of some 32 years of the Community Services Department of Niagara Region. It was in his capacity as an employee of Niagara Region that he met the area resident (retired now for some 15 years) who called him about the corner and whom he is accused of bestowing a private advantage upon.
17. He told me that, while he knows the individual who asked for the stop signs, he treats everybody fairly, whether he knows them or not. He denies that he used his position as a member of Council for an improper purpose, but maintains that problems with traffic at this particular intersection are real, and he worries about the safety of motorists and pedestrians. The problem has been brought to his attention a number of times, and he has been made aware of a number of "near-misses". Councillor Pat Chiocchio maintains that he brought the motion forward as part of his official duties.
18. The Councillor's involvement began earlier last year, when, acting on the request from his former colleague, he arranged a meeting, which was attended by three staff members, and two residents, including his former colleague. Staff informed him of a study that had been done, which concluded that there was no need to make the intersection a three-way stop, and

the matter was put aside. Two months later, however, he was again called by the resident who reported another near-miss.

19. At about the same time, another member of Council had also been made aware of the problems at the intersection, and was prepared to bring the matter to Council's attention. Councillor Pat Chiochio discussed the issue with his Council colleague and asked if he, Pat Chiochio, could bring the motion, it being his ward and his original initiative. His Council colleague agreed.

20. Moreover, it seems that other members of Council have acknowledged the need to take steps to control the traffic at this intersection, this fact borne out by the success of the Councillor's motion.

THE APPLICABLE SECTIONS OF THE CODE

21. The Complaint references two sections of the Code: Section 2 – "General"; and Section 10 – "Improper Use of Influence". For ease of reference, I will reproduce sections 2 and 10 in their entirety.

SECTION 2 – GENERAL

2. *Improving the quality of public administration and governance can be achieved by encouraging high standard of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, adherence to these standards will protect and maintain the City of Welland's reputation and integrity.*
3. *The key statements of principle that underlie the Code of Conduct are as follows:*
 - a) *Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
 - b) *Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office and conflicts of interest, both apparent and real;*
 - c) *Members of Council shall perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny; and*
 - d) *Members of Council shall seek to serve the public interest by upholding both the letter and spirit of the laws and policies established by the Federal Parliament, Ontario Legislature and Council.*

SECTION 10 – IMPROPER USE OF INFLUENCE

24. *No Member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.*
25. *Examples of types of prohibited conduct under this section include but are not limited to:*
- (a) *the use of one's status as a Member of Council to improperly influence the decision of another person to the private advantage of oneself, family member, City employees, friends or associates (business or otherwise), including attempts to secure preferential treatment beyond activities in which members of Council normally engage on behalf of their constituents as part of their official duties;*
 - (b) *the holding out of the prospect or promise of future advantage through a Member of Council's supposed influence with Council in return for present actions or inaction.*
26. *For the purposes of this section "private advantage" does not include a matter that:*
- (a) *is of general application;*
 - (b) *affects a Member of Council, their family members, City employees friends or associates, business or otherwise, as one of a broad class of persons;*
 - (c) *or that concerns the remuneration or group benefits provided to a Member of Council.*

ANALYSIS

22. I will consider the Complaint in light of the more detailed provisions respecting the improper use of the influence of the office of Councillor, as set out in section 10 of the Code.

23. A breach of section 10 will occur if: 1) a Member of Council uses the influence of their office; and 2) the use of the influence was for a purpose other than for the exercise of their official duties.

Was Councillor P. Chiochio using the influence of his office?

24. As a starting point, I have considered whether a distinction needs to be made between the act of ***using the influence*** of the office, and the act of ***using*** the office. In other words, is a Member of Council using the influence of their office when they discuss or vote on a matter in a Council meeting? While it is probably fair to say that they are often trying to influence the discussion or vote, does their ability to persuade fellow Councillors flow from their status as a Member of Council, or the strength of their arguments?

25. To put it another way, can we say that a Member of Council is using the influence of their office when they are undertaking the work of that office in the Council Chamber? Or does the use of the influence of their office (legitimate or otherwise) happen outside the Council

Chambers, in meetings, letters, emails, telephone calls and personal conversations? Is not the influence of their office the power they hold to affect matters of concern to persons outside the realm of governmental administrative or legislative decision-making?

26. Answering my own questions, I believe there is a difference and that by simply advocating for the three-way stop before his fellow Councillors, Councillor Pat Chiocchio was not using the influence of his office; he was using his office. Accordingly, he cannot be considered to be in breach of the prohibition against the use of the influence of his office.

27. This is not to say, however, that a Member of Council cannot run afoul of other legal and ethical rules while advocating for something at Council, but only that, when in Council, the impropriety will be found, not in the fact of the advocacy, but in the manner in which it is undertaken, or in the discovery that it is being undertaken for reward.

28. Although I believe that this conclusion is correct and effectively leads to the dismissal of the Complaint, if I am wrong, I have also considered whether Councillor Pat Chiocchio was acting outside of his official duties in asking for the intersection improvements.

Was Councillor P. Chiocchio exercising an official duty?

29. It is, of course, permissible for Members of Council to use the influence of their office for proper purposes. To be considered improper, the Code asks whether the Councillor was exercising official duties, or, the example is given, was the Councillor using his office to a "private advantage".

30. However, even when there is a "private advantage" to the Councillor, a family member, or a friend, his or her actions may still be excused if the matter is also of general application, or affects Members of Council, their family members, City employees, friends or associates, business or otherwise, as one of a broad class of persons.

31. Against this backdrop, I have come to three conclusions.

32. First, I find that, in his efforts to improve the safety of the intersection at Wellandvale and Goodwillie, Councillor Pat Chiocchio was engaged in a normal activity on behalf of his constituents, as part of his official duties. Although perhaps encouraged by his former colleague, it seems that the safety of the intersection has been the subject of some concern and study, for some time, and clearly falls within the duty of a Member of Council.

33. Second, I do not believe that Councillor Pat Chiocchio supported the introduction of the three-way stop to the private advantage of a friend, or associate. It would be a stretch to say the Councillor and the person requesting the stop signs were friends, or even associates. It has been over 15 years since they worked together for the Region. To screen out requests of

Members of Council for local improvements such as this, on the basis of such a slight and dated association, would utterly defeat the purpose of local representation, reducing Councillors' accessibility to only those who qualify as near strangers.

34. Finally, even if Councillor Pat Chiochio was improperly using the influence of his office for the private advantage of a friend, I find that the intersection improvements must be considered to be matters that affect that person as one of a broad class of persons, namely, drivers and pedestrians, thereby completely excusing the Councillor's actions.

CONCLUSIONS AND RECOMMENDATIONS

35. For the reasons outlined above, I find that Councillor Pat Chiochio did not breach the Code and dismiss the Complaint.

36. In the result, it is my recommendation to Council that, there being no contravention of the Code, no penalty be imposed on Councillor Pat Chiochio.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of January, 2017.



Harold G. Elston