

**OFFICE OF THE INTEGRITY
COMMISSIONER**

March 15, 2021

Summary of the Complaint

This report presents my findings in respect of the formal complaint under the City of Barrie Code of Conduct (the “Code”) in which the conduct of Councillor Sergio Morales (the “Respondent”) was alleged to contravene the Code.

On August 12, 2020, I received a Formal Complaint (the “complaint”). The complaint alleged that:

Councillor Sergio Morales violated section 5.3 [of the Code] by focusing on personalities rather than issues and by making serious allegations about ... the conduct of another councillor...

The complaint went on to state that the Respondent stated:

On the motion on the floor Mayor Lehman, you just showed that you’re a leader, Councillor..., you have continually shown that you are not a leader.

You talk about mental health...you have created a toxic workplace...and you’ve done that for over a year.

Councillor ...I am tired of you pouting every time something doesn’t go your way. I’ve said it before Councillor ..., it detracts away from the great potential that you have.

Further, Complainant sets out in the complaint that:

The above excerpts are some of the most egregious examples, however, the Member’s remarks were inappropriate, unprofessional, and may violate further sections of the Code beyond 5.3.

The Complainant was concerned that these statements about the Councillor’s character and conduct were made publicly, unchallenged and without evidence.

Relevant Sections of the Code:

This Complaint triggers section 5.3 and 20.6 of the Code. Section 5.3 is one of the General Standards of Conduct. In addition to standalone rules, the General Standards function as guiding principles for the Integrity Commissioner’s interpretation of all of the rules of the Code.

5.3 Members will conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected, are open and honest,

focus on issues rather than personalities, avoid aggressive, offensive or abusive conduct.

20.6 Without limiting the generality of the foregoing, Members shall not:

- a) Make inappropriate comments or gestures to or about an individual where such conduct is known or ought reasonably to be known to be offensive to the person(s) to whom they are directed or are about;

Background to the Complaint

Typically, pursuant to the rules of the Procedural By-law, any motion may be introduced under prescribed circumstances. It is my understanding that these rules apply to both Committee and Council meetings.

7.1 Any motion may be introduced at a regular Council meeting without notice if the Council, without debate, dispenses with notice on the affirmative vote of at least two-thirds of the members present and voting.

At the meeting subject of the Complaint, the Mayor took a vote to waive the rules of procedure to have Presentations moved ahead of Direct Motions, so that members of Committee could hear the proponent's presentation prior to the motion without notice and direct motion being considered.

At a previous meeting, the Committee had waived the rules of procedure in the proposed manner. The previous motion to which the Complainant had referred and used as an example of the "hypocrisy" of Committee, was passed at Council on July 13, 2020 to implement resident waterfront parking passes only on a number of streets in Barrie until October 15, 2020. A number of temporary signs needed to be installed in order to allow Barrie to enforce these parking restrictions. Council approved that \$42,000 be spent on the temporary parking signs.

At the August 10th meeting, the motion that was approved was: 20-A-081 SHAK'S WORLD OPPORTUNITIES:

That staff in the Recreation and Culture Services Department be directed to meet with Shak's World to identify opportunities including the leasing of the former City of Barrie Youth Centre at 59A Maple Avenue as well as City facilities to host her proposed programming and their prepared Business Plan and report back to General Committee on September 14, 2020

In response to Committee's failure to grant the requested exemption from the rules, the Complainant said that this was an example of how institutional bias produced unfair outcomes to underrepresented group.

Then Respondent said:

On the motion on the floor Mayor Lehman, you just showed that you're a leader, Councillor ..., you have continually shown that you are not a leader.

You talk about mental health...you have created a toxic workplace...and you've done that for over a year.

Councillor ... I am tired of you pouting every time something doesn't go your way. I've said it before Councillor ..., it detracts away from the great potential that you have.

I made the following observations about the August Committee meeting:

- A. The Mayor took a vote to waive the rules of procedure to have presentations moved ahead of Direct Motions, so that members of Committee could hear the presentation prior to the motion without notice and direct motion being considered;
- B. The Proponent had not completed many of the requirements that grant proponents are required to fulfil;
- C. As a result, the motion was not granted and the Committee insisted that the rules of procedure must be followed;
- D. While not the purported intent, there was a reasonable belief on the part of the Respondent that the Complainant was levelling allegations of racism against Council.
- E. The Respondent could have put forward his position that the Complainant's comments at Committee were out of order without focusing on personal comments levelled at the Complainant personally.

The Respondent's reply to the Complaint:

The Respondent denied having breached section 5.3 of the Code with his comments uttered at the August 10th Committee meeting.

In summary, the Respondent believed that the Complainant's comments were a continuation of a "pattern of behaviour of shaming Council, lecturing us, and taking it upon himself to 'be disappointed on Council's' behalf because it appeared before the vote that we were not going to support the last minute money ask for Shak's World."

The Respondent stated that the Complainant often attempts to "shame" Council as a group, "berating [Council] every time we make or are about to make a decision [that the Complainant] does not ideologically agree with".

The Respondent points out that his comments during the Shak's World (the "Group") presentation were objective and not disparaging or an example of a double standard but rather he was pointing out that he did not appreciate the fact that a presentation turned into a "money ask, on the spot, with no warning, notice", especially since in the Respondent's view the community group's presentation did not fully explain the program, and did not submit a business plan.

The Respondent took issue with the presentation turning into a "money ask on the spot" as well as taking issue with Complainant "berating [Members] for not giving [the proponent] the money, and implying that [Committee's] decision to not give the money,

on the spot, was inappropriate and an indication of systematic racism among “municipal governments”.

The Respondent’s position was that the Complainant not receiving a seconder on his motion “spoke to the culture of fear and toxicity and the tendency of Councillors to rally around certain political perspectives”.

Consideration of informally resolving the Complaint:

After receiving the Complaint and conducting a preliminary review to determine if the matter was with respect to a Code infraction , I gave notice of receipt of the Complaint to the Respondent.

I completed my preliminary findings on the matter and forwarded the same to the parties for their consideration. In exercise of my discretion as Integrity Commissioner for the City of Barrie and acting on my belief that the complaint before me was a candidate for an attempt for informal resolution, I reached out to both parties to discuss whether the request for an informal resolution could be pursued. Both parties agreed to attempt a mediated resolution of the formal complaint.

After an initial mediation session, the parties appeared to have agreed to my recommended next steps in the process. However, after requesting information from the Respondent on several occasions without receiving any reply, I suspended the mediation process. The Complainant acted in good faith throughout the informal resolution process and made a genuine effort to work with my Office to resolve the complaint informally. The Respondent failed to respond to several email requests from this Office. Subsequently, the Respondent did contact me on March 9, 2021 to advise that there were circumstances that prevented him from responding to the several email requests for response from my Office. While I acknowledge that this has been a challenging time for many, including the Respondent, the Respondent’s lack of response amounted to non-compliance with my recommended terms of settlement at the conclusion of the mediation process and rendered the informal resolution unsuccessful. Section 22 of the Code is entitled Reprisals and Obstruction.

22.1 Members of Council shall respect the integrity of the Code of Conduct. Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is therefore prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his or her responsibilities, as, for example, providing inaccurate or misleading information to the Integrity Commissioner, refusing to answer inquiries or by the destruction of (records) documents or the erasing of electronic communications

While I do not find that the Respondent intended to obstruct the investigation, his not responding to several of my emails had the effect of preventing an informal resolution and delayed my bringing this report to Council. The Respondent did not intend to obstruct or hinder my office in concluding this matter, however he is reminded that as a general rule,

refusing to answer inquiries of the Integrity Commissioner may lead to a finding of a breach of the Code.

Integrity Commissioner Analysis:

Comments at the August 10th Meeting

It appears that the Respondent's comments made after his request for a point of order, were made because he *believed* the Complainant's comments linked the Committee's refusal to immediately approve the funding for the group (to lease the location) to systemic institutional bias. With the benefit of hindsight, I have concluded that the Complainant did not intend to say or suggest that Council or individual Members were/are racist; however, I find that in making his comments, a reasonable person could have perceived that the Complainant attempted to shame Council by making inappropriate comments about the nature of the reasons for not having voted to approve the funding request put forward at Committee.

Based on the information that I received from individuals other than the Complainant and the Respondent, Members of Committee perceived that the Complainant was calling Members racist or participants of systemic racism by denying approval of funding to a racialized group as a result of the Complainant's comments about the hypocrisy of having earlier approved funding. While not the purported intent of the Complainant, there was a reasonable belief on the part of the Respondent and Members of the Committee that the Complainant was levelling allegations of racism against Council.

The Complainant's comments at the August 10th Committee meeting, suggested that he believed that the decision of the Committee to not approve the request of the group for the grant, was an example of how institutional bias produced certain outcomes. Discussion about systemic racism as a product of institutional policies is important and a Member of Council asking questions to ensure that the decision of Committee does not have this effect is important. It is clear that with time to process the comments, the Complainant acknowledged how the comments could reasonably have been received. The Complainant's intent was not to cast aspersions on his fellow Committee Members but rather to shine a light on institutional policy inequities. A Member of Council is permitted to raise this important concern in a respectful manner. The Complainant's comments were perceived to be levelling accusations at the Committee rather than the process. As pointed out by Commissioner Jepson, former City of Toronto Integrity Commissioner¹,

“While [the Respondent] is free to make the choices that he makes, he must also bear the responsibility for his actions. His actions were inconsistent with the obligation to act with decorum, to meet the highest standards of conduct and to

¹ [Ontario](#) > [Municipal Integrity Commissioners of Ontario](#) > 2015 ONMIC 4 (CanLII)

act with respect to his Council colleagues. He acted contrary to the *Code of Conduct* without sufficient justification.

[...]

As is reflected in the *Code of Conduct*, members must have a collegial and professional relationship with each other. The manner by which members of Council treat each other is a measure of the strength of the institution.

Though the above noted decision related to a physical altercation/harassment by the former Mayor of the City of Toronto against another councillor and not a comment during debate on an issue, the principle that requires a member notwithstanding their choices to act with decorum, remains the same. Upon my review of the recorded meeting, I found that while Members of the Committee demonstrated their support of the group's initiatives, their decision to delay approval was premised on their concerns that the motion was late and there was insufficient information to warrant an approval at that time for the funding.

While there is likely a need for a deeper discussion when the policies and decision-making of government institutions are not reflective of an equity consideration, and when the outcomes impact both the people who work within government institutions and the constituents in the communities they govern, it is also true that it is legitimate for Members of Committee to take steps to ensure that procedural rules are followed before approving a funding request. To conduct such due diligence is appropriate and is not tantamount to actions of systemic institutional bias. The Complainant had the option to request an exception to the policy for granting immediate funding, if in fact a policy with clear criteria existed. This did not occur.

“Institutional bias”, “discrimination” and “systemic discrimination” may not all mean the same thing, however in the context of the August 10th Meeting, the suggestion by the Complainant was that the actions of the Committee Members was an example of “systemic discrimination” and I find that given the proponent belongs to a racialized group, the discrimination, if it was inferred, was based on race. In some municipal jurisdictions, there is a Speaker that manages the conduct of Members at a meeting and it is not the role of the Integrity Commissioner to rule on the conduct and management of Committee or Council meetings. In this way, when a Member of Committee or Council “uses an insulting term against another councillor, in an effort to ensure decorum, the speaker might rule the question out of order and seek some remedial measure such as an apology or – in a serious case – an ejection from the meeting. In most cases, these issues are resolved and the meeting proceeds. There would be little gained by a subsequent referral to the Integrity Commissioner to review the actions”.²

The Speaker, or any Chair of a meeting, requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with the procedural bylaw and as specifically stated therein, to oversee order and behaviour of members At the City of

² [Ontario](#) > [Municipal Integrity Commissioners of Ontario](#) > 2015 ONMIC 4 (CanLII)

Barrie, the Code sets out in section 18 that Members shall conduct themselves with decorum at Council and Committee meetings in accordance with the provisions of the City of Barrie's Procedural By-law 2019-100 as amended from time to time. The inclusion of this provision in the Code allows the Integrity Commissioner to have concurrent jurisdiction with the Chair of Committee or Council, to receive complaints regarding matters of decorum at meetings. While the Chair of the August 10th meeting ruled that he , "... didn't hear the [Complainant] accuse Council of being racist", this ruling was made early in the meeting and throughout the duration of the meeting, the Complainant continued to imply that the Committee's decision to deny funding approval was tantamount to an action of systemic discrimination based on the proponent belonging to a racialized group.

One of the Councillors at the August Committee voiced the need for more rigor around the rules governing funding decisions at the City so that discretion in the absence of clear guidelines does not lead to inconsistent treatment and a potential for bias. It is important to recognize that the discussion that took place at the August 10th meeting did result in positive debate. The Complainant is correct that in order to eradicate systemic discrimination that is the effect of certain institutional policies, the institution in this case the City of Barrie, must define the problem and then work to remove the institutional structures of decision-making, the outcome of which promotes institutional biases and lack of equity.

Based on my discussions with individuals, including the Complainant, it was not the intention of the Complainant to suggest that Members of Council Planning Committee members were racist. His comments were levelled at the inherent systemic inequities of the decision-making process of the Committee, and not at the members who make up the Committee.

The Code is in place to require Councillors to focus on the agenda item and not be distracted by personal attacks. The Code allows any Member of Council to point out what they believe to be flaws in the institutional decision-making system that have the outcome of undergirding a discriminatory system. However, the Code requires that these observations be made in a respectful non-aggressive manner without leveling accusations against Members of Committee. The Members of Committee were here fulfilling their statutory and fiduciary duties at the August 10th Planning Committee meeting and they did so appropriately.

Did the Respondent's Comments breach sections 5.3 and 20.6 of the Code?:

The Respondent's comments that he "had made a conscious effort not to go after [the Councillor] on a personal basis" and other comments about him being "drained" and "shaking", "living in fear of [the Councillor] attacking me", "[the Councillor] pouts when he doesn't get his way "and that your comments detract away from the great potential [the Councillor] has", were comments that evidenced a deep frustration and likely a cumulative reaction to several incidents including the comments at the August 10th meeting. Notwithstanding my comments above and any frustration that the Respondent may have experienced, the Respondent's comments were personally attacking the Complainant and not permitted conduct under the Code. The Respondent's concerns

about the Complainant's perceived "shaming" and veiled suggestion that the denial of the funding was endemic of and/or motivated by an underlying treatment based on the group's race or ethnicity, could and should have been communicated differently with less commentary on a personal level levelled at the Complainant.

Regarding the Respondent's comments, while it was reasonable for the Respondent to have perceived the Complainant's comments as inferring that the Committee's decision to delay approval of the funding request was based on a race-based bias, to perceive the comments as justifying a personal attack is conduct not permitted by the Code. The Respondent was bound by the rules of the Code, including one of the General Standards of the Code of Conduct set out in section 5.3 of the Code and section 20.6.

Even if the Respondent believed that the Complainant's comments at the August 10th Committee meeting were inappropriate and were an example of a pattern of behaviour of the Complainant that the Respondent wanted him to cease, levelling comments about the individual Councillor and not the issue ran afoul of the ethical obligation of Respondent to focus on issues rather than personalities, avoid aggressive, offensive and abusive conduct. Where a Member of Council believes that a colleague has contravened the Code rules, they are invited to contact the Integrity Commissioner rather than levelling personal attacks and insults at one another and demonstrating aggressive behaviour at Council or Committee. Members are held to a higher standard of conduct becoming of the public office they were elected to hold. This standard is required by the Code. Council members deserve to exercise their roles in an environment shrouded in decorum becoming of the office of an elected official. The public deserves to have elected officials who behave in a manner that properly represents and respects them. Parliamentary decorum is required of elected officials at all levels of government in Canada, including at the municipal level of government. While there have been recent examples of municipal elected officials in jurisdictions across Ontario falling short of their ethical obligations, the Code of Conduct is a bylaw of the City of Barrie, all Members are bound by its rules and this Office will not tolerate inappropriate behaviour, name-calling or verbal attacks no matter how heated a debate may become.

Findings:

The Respondent's comments subject of this Complaint were not in line with the rules of the Code. The Respondent ought to have known, that he should not have levelled personal attacks against the Complainant at the August 10th Committee meeting. A Council or Committee debate and discussion may appropriately include voicing one's disagreement on a position of another Member of Council. However, that disagreement or concern that a Member has stepped outside of the rules of the Code must be made in accordance with the procedural rules and through a vote with a proper number of Members that make up quorum and with respect for the office the other Member holds.

Under section 20.6 of the Code, a Member of Council is barred from making inappropriate comments about an individual, including a colleague on Council, where

such conduct is known or ought reasonably to be known to be offensive to the person(s) to whom they are directed or are about. I find that, the Respondent's comments such as, " [I] am living in fear of [the Councillor] attacking me", "[the Councillor] pouts when he doesn't get his way ", "your comments detract away from the great potential [the Complainant] has" and "[the Councillor] is not a leader", are comments that the Respondent ought to have known to be offensive and as such, were in contravention of section 20.6 of the Code.

As I stated above, the Complainant was incorrect in defining the Committee's August decision to defer approval of the grant to the Proponent as based on inappropriate motives. However, the Complainant's comments do not justify or exonerate the Respondent from his ethical responsibilities to refrain from insulting and offending a Council colleague. The Respondent is a Member of Council and is bound by the rules of the Code. Further the comments were made in a public forum. If the comments had been made in a closed session, the comments would still have been captured by the Member's obligations under the Code to refrain from personally attacking a Member and instead to focusing on the issues, however, making the comments in a public meeting compounded the error in judgement of the Respondent because the access to the comments were to a broader audience.

Integrity Commissioner's Recommendation:

Pursuant to section 27.3 of the Code, I make the following recommendation:

1. The imposition of the penalty of a reprimand to the Respondent; and
2. The imposition of the remedial action of a requiring a written apology from the Respondent to the Complainant;
3. The written apology to the Complainant should:
 - a. acknowledge and recognize that calling out the Complainant and publicly saying that the Complainant is not a leader and the other disparaging comments were not in compliance with the Code.
 - b. include a recognition that taking personal attacks against other Members of Council is not permitted under the Code.
4. That the written apology be tendered to the Integrity Commissioner within 5 days of Council's decision on the matter;
5. That Council allow the Integrity Commissioner to be seized of the matter and maintain jurisdiction to receive the written apology from the Respondent.

Sincerely,


Suzanne Craig
Integrity Commissioner

