

Municipality of Clarington Integrity Commissioner File 2018-01

REPORT ON COMPLAINT

The Complaint

An individual (the Complainant) alleged that Councillor Wendy Partner (the Respondent) breached sections 8.1, 8.3, 10.1 and 13.1 of the Municipality of Clarington Council Code of Conduct (“Code”) by revealing confidential information, improperly influencing the actions of the municipal staff and misusing the influence of her office.

The Complainant subsequently (June 10) made allegations of obstruction and reprisal contrary to sections 14.1 and 14.2 of the Code. Those issues are not addressed in this report.

Summary of Findings

After carefully considering the evidence obtained during the course of my investigation and the detailed submissions of the parties, I find that the Respondent contravened section 8.3 of the Code by interfering with the independence of a by-law enforcement investigation.

I do not find that section 13.1 of the Code was contravened. I am unable to find whether the Respondent contravened section 10.1 of the Code. I find that section 8.1 of the Code is not a provision that can be contravened.

Background to Complaint

This Code Complaint arises from the investigation and handling of a by-law complaint under Clarington Zoning By-law No. 2005-109 (“zoning by-law complaint”). More specifically, the Code Complaint is based on an allegation that the Respondent instigated the zoning by-law complaint and interfered with the zoning by-law investigation.

On June 29, 2017, the municipality received a zoning by-law complaint, alleging that a sawmill and firewood business were being operated on a particular property contrary to the zoning by-law.

By-law enforcement records show that the property was inspected three times following the complaint: August 14, September 7 and October 11. During the third inspection, the use of the property was determined to be compliant with the zoning by-law. On October 25, the zoning by-law investigation file was closed because no violation had been found.

After the investigation was closed, the property was re-inspected on November 7 and November 8 and, for the first time, determined to be *non-compliant*.

On November 10, the property owners received a letter from one of Clarington's Municipal Law Enforcement Officers, stating that the municipality had received a complaint concerning the use of the property for processing and selling firewood. The letter clearly stated that commercial sale of firewood "is NOT a permitted use," and informed the owners that the use needed to be brought into conformity with the by-law or there was a risk of charges.

On January 2, 2018, the property owner received confirmation from the municipality that the use of the property complied with all relevant by-laws.

The Complainant does not own the property that was subject to the zoning by-law investigation. The Complainant is, however, a family member of the property owners. It is not necessary for me to specify exactly the family relationship. It is sufficient for me to note that they are family. The relevance of this will become apparent later in this report.

Complainant's Allegations

The Complainant states that the two-month period between the November 10 letter and the January 2 confirmation of compliance was one of considerable stress and anxiety for the property owners who faced the possibility of fines and other compliance costs.

The Complainant alleges that during a November 22 phone call, the Respondent revealed her role in encouraging the filing and investigation of the zoning by-law complaint. Both the Complainant and the Respondent agree that they spoke by telephone that day, but there is considerable disagreement over what each one said or revealed over the course of this phone call.

The Complainant alleges that the Respondent revealed, among other things: the name of the person who filed the zoning by-law complaint, specific details of the alleged violation and of the zoning by-law complaint, and that the Respondent was certain that a violation of the zoning by-law was, in fact, taking place.

The Complainant points to this phone call as the basis for believing that the Respondent was the driving force behind the zoning by-law complaint. This phone call is also the basis for the Complainant's belief that the Respondent improperly attempted to influence Clarington staff members to pursue vigorously the zoning by-law complaint. The Complainant alleges that the Respondent's goal was to secure "preferential treatment of the [zoning by-law] complaint to benefit her friend and business associate" (the person who filed the zoning by-law complaint).

I was also provided with a supporting letter (by the Complainant) from a witness who claims to have had a similar experience with the Respondent in the past. The Complainant believes that this establishes the Respondent's *modus operandi* of direct involvement in Clarington by-law enforcement matters.

Respondent's Position

The Respondent disputes the Complainant's version of the phone call. She states that the Code Complainant already knew who had filed the zoning by-law complaint and, in fact, was first to reveal the identity during that phone call. She also denies having any special knowledge of the complaint and did not engage in any prolonged debate about the merits of the zoning by-law complaint because she claimed she was not familiar with the actual zoning.

According to the Respondent, Clarington staff members do not take direction from Council Members. She denies ever having influenced staff members or interfered with their duties.

The Respondent also denies being a close personal friend of the person who filed the zoning by-law complaint.

Complainant's Freedom of Information Request

The Complainant filed a Freedom of Information request to gain access to the emails between the Respondent and the Clarington staff regarding the zoning by-law complaint. I subsequently received copies of these emails from both the Complainant and the Clerk.

The emails disclose a series of communications between the Respondent and, among others, the Manager of Municipal Law Enforcement for Clarington. In the email correspondence, the Respondent clearly expresses her "concern" about the land use and her surprise that the use in question would be permitted. In a subsequent email, the Respondent stated that she only wanted "to know the outcome when the issue is resolved" in order to be "at arm's length with any resident complaints."

Mutual Animosity between the Parties

During the course of this proceeding under the Code, it has been impossible to ignore the animosity between the Complainant and the Respondent. The *cause and origin* of the animosity are irrelevant to the Code Complaint. On the other hand, the *existence* of the animosity is relevant to my analysis under section 13.1 of the Code.

Process Followed

In operating under the Code, I follow a process that ensures fairness to both the individual bringing a complaint (Complainant) and the Council Member responding to the complaint (Respondent).

The fair and balanced process I use is consistent with the requirements of the Complaint Procedure, which is Appendix "A" of the Code. The process includes the following elements:

- The Respondent receives notice of the Complaint and an opportunity to respond.

- The Complainant receives the Respondent's Response and is given an opportunity to reply.
- More generally, the process is transparent in that the Respondent and Complainant get to see each other's communications with me.
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a Response or Reply.

The Respondent received a draft copy of this report and was given an opportunity to comment on it. Her comments on the draft are reflected in this final report.

Preliminary Issue

One of the sections on which the Complainant relies is section 8.1 of the Code. I need to determine whether section 8.1 can be contravened and whether a Code Complaint can be based on section 8.1.

Section 8.1 provides as follows:

Every member acknowledges that staff operate under the direction of the senior municipal administration, and in accordance with the decisions of Council, and are required to serve the Municipality as a whole and not the needs or desires of any individual member.

I find that section 8.1 is merely a statement of principle. More precisely, it states as a fact that each Council Member acknowledges a principle (namely, the principle of the staff's accountability to Council as a whole). As a statement of principle, section 8.1 cannot be contravened and cannot be the subject of a Code Complaint.

The Code is part of a by-law. Principles of statutory interpretation apply.

As a general matter, a statement of principle in legislation does not create an obligation. It merely states the principle(s) that may be used to interpret obligations created elsewhere in the law: see *Greater Vancouver Regional District v. British Columbia (Attorney General)* (2011).¹

Section 8.1 is not worded in the form of a rule or obligation on Council Members that can be the subject of a complaint. As I have found, it is a statement of principle only. This principle is not an enforceable rule.

Another reason that I am not prepared to treat section 8.1 as a binding rule is that it does not set out a clear and enforceable obligation. Council Members are subject to penalties if they contravene the rules in the Code; it necessarily follows that the rules

¹ 309 BCAC 124, 2011 BCCA 345 (CanLII), at para. 45: "Section 3(c) purports only to state a principle ... It is plain and obvious that s. 3(c) creates no legally enforceable obligation ..."

must be clear, certain and unambiguous. Council Members must be able to understand clearly the conduct that is required. In this respect I refer to the observations of Integrity Commissioner Swayze in City of Brampton Report L05 IN (May 12, 2015):

In my experience members of councils in Ontario are busy people serving their community and want certainty in the interpretation of the many rules that apply to them. A code, by definition, is a set of rules of behaviour and should not be interpreted by each councillor according to subjective values. The rules need to be clear and where possible, capable of only one meaning.
[emphasis added]

While I do not agree that being busy is relevant to interpretation of the Code, I accept and adopt Integrity Commissioner Swayze's comments about the need for clarity, certainty and lack of ambiguity in the rules. This is another reason for me to find that section 8.1 cannot be contravened and therefore cannot give rise to a Code Complaint.

Issues

Apart from the preliminary issue, my investigation considered the following additional questions:

- A. Did the Respondent interfere with the duties of municipal staff, contrary to section 8.3(c) of the Code?
- B. Did the Respondent revealed confidential information in her phone call with the Complainant, contrary to section 10.1 of the Code?
- C. Did the Respondent improperly use the influence of her office, contrary to section 13.1 of the Code?

Submissions of the Parties

The parties' submissions are detailed and I considered them in their entirety. The following summary captures highlights of their positions and is not exhaustive.

The Complainant believes that the Respondent instigated the zoning by-law complaint and sought to influence the investigation that followed by communicating with Clarington's staff. As evidence of this, the Complainant cited the Respondent's considerable knowledge of the zoning by-law complaint, which she allegedly disclosed over the course of a phone call. The Complainant submits that this is part of a pattern of direct involvement by the Respondent in by-law enforcement matters dating back several years.

The Complainant also alleges that the Respondent breached the confidentiality provisions of the Code by disclosing (to the Complainant over the phone) the identity of the person who filed the zoning by-law complaint.

The Respondent disputes the allegations and insists that the Complainant was first to reveal the identity of the person who had filed the zoning by-law complaint. She states

that she only refers citizens to the municipality's by-law enforcement processes and does not then seek to influence those processes in an improper way. According to the Respondent, Clarington's staff members take direction from the municipality's senior management and not directly from Council Members. She says that she never attempted to give direction to any Clarington staff member regarding the zoning by-law complaint.

In their respective submissions, both parties encouraged me to interview Clarington staff members to help determine what role, if any, the Respondent had in the zoning by-law complaint.

The Evidence

In coming to my conclusions I conducted interviews of relevant witnesses, reviewed emails and other relevant documents, considered the statements of the parties, and took into account other relevant evidence.

I find as a fact that the person who made the zoning by-law complaint is not a personal friend of the Respondent.

Other findings are set out below.

Analysis and Further Findings

A. Did the Respondent interfere with the duties of municipal staff, contrary to section 8.3(c) of the Code?

Yes.

Section 8.3 of the Code states:

8.3 No member shall,

- (a) maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff;
- (b) compel any member of staff to engage in partisan political activities, or subject any member of staff to threat or discrimination for refusing to engage in any such activity; or
- (c) use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that staff person's duties, including the duty to disclose improper activity.

While section 8.3(c) deals *generally* with improper influence on or interference with the municipal staff, this Code Complaint *specifically* alleges interference and influence in the course of law enforcement. It is appropriate, therefore, to comment briefly on the roles of Council Members and the staff in the context of by-law enforcement.

Clarington is a democracy. Council Members are elected to office. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.²

At the same time, a Council Member's right to express views must respect the independence of law enforcement.

Clarington's municipal law enforcement officers are appointed under subsection 15(1) of the *Police Services Act*. They are peace officers for the purpose of enforcing municipal by-laws³ and while in the discharge of their duties they are provincial offences officers.⁴

Their jobs involve discretion. While law enforcement officers have a duty to enforce the law, they also have a duty to exercise their discretion, including the discretion to write or not to write a ticket, or to pursue or not to continue an investigation.⁵ This discretion is not absolute; for example, the Supreme Court of Canada has stated that a decision based on favouritism, or on cultural, social or racial stereotypes, is not a proper exercise of discretion.⁶ Nonetheless, police discretion (or, in this case, the discretion of by-law officers) is an essential element of the justice system.⁷

Another essential principle is the independence of law enforcement officers.⁸ This principle underpins the rule of law.⁹ Independence means that a law enforcement officer cannot be subject to political direction in deciding whether to lay a charge or whom to charge with an offence.¹⁰

Politicians must respect the independence of law enforcement officers. A Council Member must not try to influence the disposition of a specific by-law enforcement case.

The fact that a Council Member is communicating about a by-law enforcement matter does not necessarily mean that the Council Member has overstepped his or her role. The answer depends on whether the Council Member is impermissibly interfering on the case or is properly communicating.

In the context of a zoning by-law complaint, it is appropriate for a Council Member to hold an opinion on the matter, especially if it relates to use of property within her ward. A Council Member may hold an opinion. What she must not do is to interfere with the independence of those responsible for by-law enforcement.

² *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, at 1193.

³ *Police Services Act*, subs. 15(2).

⁴ *Provincial Offences Act*, subs. 1(1), definition "provincial offences officers," clause (d).

⁵ *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190 at para. 37.

⁶ *Ibid.*, at para. 38

⁷ *Ibid.*, at paras. 51, 86.

⁸ *R. v. Campbell*, [1999] 1 S.C.R. 565.

⁹ *Ibid.*, at para. 29.

¹⁰ *Ibid.*, at para. 33

Council Members receive monthly reports on by-law enforcement activity involving their wards. (My understanding is that these reports are for information only, and not so the Councillors can intervene in the enforcement process.) *Without having received such a report, the Respondent was already aware of the zoning enforcement issue involving the Complainant's family.* Email records indicate that:

- Around November 2 or 3, the Respondent contacted the Clerk and/or the Manager of Municipal Law Enforcement to ask why the zoning by-law enforcement issue involving the Complainant's family was not on the most recent monthly report.
- The Respondent was aware not only of the nature of the allegation (sawmill operated contrary to zoning) but that the property belong to the Complainant's family. In fact, on the emails the property owners were not referred to by their own names but by their relationship to the Complainant. (At least one email incorrectly named *the Complainant* as the property owner.)
- On November 6 the Respondent again told the Clerk that (in the Clerk's words) "there are some by-law issues that she is affiliated with that did not hit her monthly report."

The same morning, November 6, the Manager of Municipal Law Enforcement emailed the Respondent about the status of the investigation into the zoning by-law complaint. According to the Manager of Municipal Law Enforcement:¹¹

An Officer has investigated the saw mill and determined that no operations are contrary to our Oak Ridges Moraine Zoning By-law [No. 2005-109]. ... After discussions with the Officer, they were going to follow up with planning to confirm their findings.

The Respondent sent an email reply the afternoon of the same day. It read, in part, as follows:

Thank you ... I appreciate being added to this file.

The saw mill that is operating in the [name removed by Integrity Commissioner] farm is a huge concern as it is a commercial use that should not be taking place.

... I can't believe we allow this.

... I would like to be in the loop as to what we are doing or if it is within the Planning by-laws.

This email was subsequently forwarded, by the Manager, to the Municipal Law Enforcement Officer directly handling the investigation.

I note that the Respondent's November 6 email expresses inconsistent sentiments. On the one hand, in respect of the zoning by-law, it says the current use of the property "should not be taking place" [and] "I can't believe we allow this." On the other hand, in

¹¹ In quoting from documents, my practice in an investigation report is to correct obvious spelling errors without drawing attention to the correction unless the correction is material. This report also makes some edits to punctuation and capitalization for consistency.

respect of the planning by-law, the Respondent merely asked to be kept in the loop and stated no position.

It is essential to be reasonable and fair when reviewing Council Members' communications. As was noted in the investigation report in Town of Orangeville File 2017-03:

It is important to remember that Council Members, when they send emails, use the language of ordinary people and not of legal drafters or judges. It would be inappropriate, therefore, to pick apart the wording of a Council Member's email as if it were a legal contract or a judicial decision.

A fair and reasonable interpretation of the Respondent's words suggests that there was an attempt to influence a zoning by-law investigation. According to the email, she was unsure of the *planning* implications, but in respect of *zoning*, which was the matter under investigation – what was supposed to be an independent investigation – she said the current use should not be taking place and she could not believe it was allowed. I find that this portion of the Respondent's reply was an inappropriate attempt to influence the by-law enforcement process.

At the time of the Respondent's email, the property had been investigated and determined to be compliant, and the investigation had been closed. The investigation obviously was re-opened, because the property was re-inspected the day following the Respondent's email. Thus, at the time of the Respondent's email, the enforcement proceeding was either ongoing or about to be re-opened. In any event, whether the zoning by-law investigation was still ongoing or had already been completed, it was not appropriate to make statements to the Manager of Municipal Law Enforcement about what the result of the investigation should be. That is essentially what the Respondent's November 6 email communicated. I find that it breached section 8.3(c) of the Code.

Despite what happened November 6, I find that the Respondent's subsequent communications with the by-law enforcement staff were respectful of their independence. For example, on December 6, she sent the Manager of Municipal By-law Enforcement an email that read, in part:

I only want to know the outcome when the issue is resolved as I prefer to be at arm's length with any resident complaints that involve by-law issues ... If you can just let me know the outcome I am good with that.

This December 6 email was properly respectful of the independence of by-law enforcement and it did not contravene section 8.3(c).

The by-law enforcement staff claims not to have felt any pressure as a result of the Respondent's interest in the file and did not consider her emails to be providing direction. The enforcement staff also stated that the investigation was conducted independently and in a manner consistent with past practice, and was not influenced by the Respondent's action. Nonetheless, the fact remains that a closed investigation was re-opened, and a property previously determined to be compliant was re-inspected and determined to be non-compliant, following receipt of the Respondent's email. (It should be noted that by-law enforcement records suggests that compliance status was re-

evaluated upon the discovery, November 7, of a Kijiji advertisement of firewood for sale.)

As a result, I find that a violation of section 8.3(c) of the Code occurred when the Respondent sent the November 6 email. While I note the claim that the Code violation had no impact on the by-law enforcement process, it is impossible to ignore that a closed investigation was re-opened and that property owners previously determined to be in compliance received a notice of non-compliance with the zoning by-law.

I do note that, by December, the Respondent was respectful of the independence of by-law enforcement.

B. Did the Respondent reveal confidential information in her phone call with the Complainant, contrary to section 10.1 of the Code?

I make no finding whether the Respondent breached section 10.1 of the Code.

Among other things, Section 10.1 requires that:

No member shall,

(a) disclose, release or publish by any means to any person or to the public any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;

(b) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;

...

(e) without lawful authority, disclose, or make personal use of, any of the following types of confidential information:

...

(ii) information the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence),

(f) obtain access, or attempt to gain access, to confidential information in the custody of the Municipality except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law.

As previously mentioned, there is considerable disagreement between the two parties over what was said during the course of the November 22 phone call. The Complainant asserts that the Respondent, without any prompting, volunteered the name of the person who filed the zoning by-law complaint. The Respondent disputes this and claims that the Complainant was the first one to reveal the name during the phone call.

The Complainant has a witness who claims to have been on the same phone call and is prepared to confirm that the Respondent disclosed the name first.

I am not in this circumstance able to reconcile the difference in recollections or to find conclusively what occurred. Given my finding on section 8.3, it is not necessary for me to do so.

While I must conduct my own investigations under the Code and am not bound by the inquiries of any other person, I do note that the Clerk previously investigated whether the zoning by-law complaint had been subject to a confidentiality breach. The Clerk was unable to conclude definitively that confidentiality was breached and closed the investigation.

C. Did the Respondent improperly use the influence of her office, contrary to section 13.1 of the Code?

No.

While there is some doubt about whether or not the Respondent persuaded a third person to make the zoning by-law complaint, I find that whatever the Respondent happened to do did not involve *the influence of her office*.

Section 13.1 reads, in part, as follows:

No member shall,

- (a) use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes;
- (b) use his or her office or position to influence or attempt to influence the decision of any other person, for the member's private advantage or that of the member's parent, child, spouse, staff, friend, or associates, business or otherwise;
- (c) attempt to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties ...

There is evidence that the Respondent sought out a third person and cajoled and pestered that person to file the zoning by-law complaint on the Respondent's behalf. The person who filed the zoning by-law complaint was adamant that the Respondent initiated the discussion, the Respondent initiated the idea of making a zoning by-law complaint, and the Respondent repeatedly told the person to file the zoning by-law complaint.

According to this person, the Respondent wanted the zoning by-law complaint filed but insisted that she (the Respondent) could not file it:

Person: "Can't you do it?"

Respondent: "No, you have to do it."

I interviewed this person twice and, each time, the person described, in very clear and forceful language, that the Respondent's insistence on filing a zoning by-law complaint was harassing and unwanted.

On the other hand, the Respondent adamantly and strenuously denies instigating the zoning by-law complaint. In response to a draft of this Report, the Respondent stated:

I can only reiterate the fact that [third person and associate] ... approached me at [location of third person] and asked if I was the Councillor for [location of property]. I said yes and from there [third person] proceeded to ask if it was legal to operate a business in an EP [Environmental Protection] Zone. My response was I could not believe that it would be but that would have to be taken up with Planning as they were the only ones that could really answer that with an accurate definition of what can and can't be done in an EP area.

[Third person] proceeded to tell me pieces about his issue and I said he would have to report that to our Municipal By-Law Department. I told him I would let our By-Law Manager know there could be a complaint coming in but he would have to be the one to report the issue as I could not do anything. Our role as Councillors was to pass any complaint along to Staff.

A few weeks later I ... again was stopped and again I said if it was truly an issue that he wanted investigated, he would have to make the complaint as I could not, it was a decision he would have to make on his own.

... I did NOT SEEK OUT [third person] in order to have such a complaint filed against the Complainant or [his family]. I have nothing to gain by searching for complaints from residents against other residents as Councillors we have enough complaints happen every day. We do not need to go looking for them.

...

If I am asked by a resident to help them that is what I feel we are elected to do. I only gave him guidance as to what his options were if he was TRULY concerned ... and reiterated that if he was that concerned about this, he needed to follow through on his own with the complaint to By-law [Enforcement]. If he felt that I was "commanding" him to make a frivolous complaint, he should have said so and left me alone. He was persistent and insistent that I be the one who followed through with this. He contacted me every time. I did not seek him out, nor would I.

...

... I never "cajoled nor pestered" anyone to file this zoning complaint. I would not have known anything about this had I not gone [to third person's location] that day. I was the one pestered and cajoled and find it hard to believe [third person] said otherwise. I was tired of being pestered every time I went to [third person's location] and said so. I reiterated he call himself and make the complaint if it truly was a concern he really had.

This third person is not a party to this Code Complaint and never expressed any desire to become involved. I reached out to this person for an interview; until then, the person had no knowledge of my investigation. The person's comments to me are entirely consistent with the person's comments to the Clerk in December 2017, while the by-law investigation was taking place. Further, the person's recollection of conversations with the Respondent was clear, consistent and unshakeable.

I gave the Respondent an opportunity to address the person's recollection of events, beyond the Respondent's general denial that she had instigated the zoning by-law complaint. The Respondent described a telephone call initiated *by the person* in order to *seek the Respondent's advice*, and suggested that this was what led to the zoning by-law complaint. Based on the Respondent's description of this phone call, I was subsequently able to establish that it occurred in December 2017 at least a month after

the zoning by-law complaint had been made. In other words, the explanation was not relevant to the central issue, namely, whether the Respondent repeatedly spoke to this person before the zoning by-law complaint was filed.

The Respondent and the third person have different recollections of whether the Respondent sought out this person, insisted, and eventually succeeded in having the person file the zoning by-law complaint. It is unnecessary to resolve the difference in their recollections because, even if the Respondent instigated the zoning by-law complaint, I find that the Respondent did not use the influence of her office within the meaning of section 13.1(a) of the Code.

If the Respondent *had* used the influence of office then I would not hesitate to find a violation of section 13.1(a). I have already noted the mutual animosity between the Complainant and the Respondent. I have also noted that the Code Complainant is a family member of the property owners against whom the zoning by-law complaint was directed. The Respondent maintains that she did not know the identity of the owners of the property that was the subject of the zoning by-law complaint until long after the zoning complaint was filed. The emails that I reviewed indicate otherwise. The Respondent had considerable prior knowledge of both the use of the property and who owned it.

The filing of a zoning by-law complaint directed against family of an individual with whom one has a negative relationship is not part of official duties and is not pursuant to a municipal purpose under section 13.1(a) of the Code. In particular, harming one's adversary or harming the family of one's adversary is not part of official duties and not pursuant to a municipal purpose under section 13.1(a) of the Code.

I cannot find, however, that in dealing with this third person the Respondent *used the influence of her office*. The third person's location and situation are such that the Respondent's office would have no influence on the person. The Respondent and the third person are known to each other through circumstances entirely unrelated to the Respondent's role as a Councillor. Assuming that the Respondent did pester and cajole the person into filing the zoning by-law complaint, I do not find that *the influence of her office* was what caused the result.

I do not find that the Respondent contravened section 13.1(a) of the Code by using the influence of her office for a purpose other than for the lawful exercise of her official duties and other than municipal purposes. For the same reason, I do not find that the Respondent used her office or position in a manner contrary to section 13.1(b) of the Code.

Recommendations

Having found a contravention, I must recommend an appropriate consequence.

To recap: I find that Councillor Partner contravened section 8.3. I do not find a contravention of section 13.1. I cannot find whether she contravened section 10.1.

In my view, several considerations are relevant to the appropriate response.

On the one hand:

- Interference with the exercise of staff's duties is particularly serious when by-law enforcement is involved. By-laws must be enforced independently and without political direction.
- Following the Respondent's communication to the by-law enforcement staff, a closed by-law investigation was re-opened and an initial determination of compliance was reversed.

On the other hand:

- Councillor Partner did not persist in trying to interfere with the independence of a by-law enforcement investigation. Her later communications show respect for the independence of the process.
- The by-law enforcement staff states that Councillor Partner's communication had no actual effect on the independence of the by-law enforcement investigation (despite the investigation being re-opened and an initial determination of compliance getting reversed).

In all the circumstances, I believe that adoption of the finding of a contravention would be a sufficient consequence and that it is not necessary for Council to take additional action against Councillor Partner.

I recommend to Council as follows:

1. That the finding that Councillor Partner contravened section 8.3 of the Code of Conduct be adopted.
2. That Council impose no penalty on Councillor Partner.
3. That following the 2018 election, all incoming Council Members (new and returning) receive training in their obligations under the Code of Conduct.

Respectfully submitted,



Guy W. Giorno
Integrity Commissioner
Municipality of Clarington

July 2, 2018

APPENDIX A: RELEVANT PROVISIONS OF COUNCIL CODE OF CONDUCT

8. CONDUCT RESPECTING STAFF

- 8.1 Every member acknowledges that staff operate under the direction of the senior municipal administration, and in accordance with the decisions of Council, and are required to serve the Municipality as a whole and not the needs or desires of any individual member.
- 8.3 No member shall,
- a) maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff;
 - b) compel any member of staff to engage in partisan political activities, or subject any member of staff to threat or discrimination for refusing to engage in any such activity; or
 - c) use or attempt to further his or her authority or influence by intimidation, threatening, coercing, commanding or influencing improperly any staff member or interfering with that staff person's duties, including the duty to disclose improper activity.

10. CONFIDENTIAL INFORMATION

- 10.1 No member shall,
- a) disclose, release or publish by any means to any person or to the public any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;
 - b) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;
 - c) disclose a matter, the substance of the matter, and information pertaining to a matter, that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential, unless authorized by the Council or legislation to be released, generally or subject to conditions, and such are complied with;
 - d) disclose the content of any matter referred to in the preceding paragraph or the subject-matter of deliberations at a meeting closed to the public meeting, unless such matter has been lawfully and knowingly discussed by Council at a meeting that is open to the public or where Council authorizes the release the information to the public;

- e) without lawful authority, disclose, or make personal use of, any of the following types of confidential information:
 - i. information concerning litigation, negotiation or personnel matters,
 - ii. information the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence),
 - iii. price schedules in any contract, tender or proposal document while such remains a confidential document,
 - iv. information deemed to be "personal information" under the Municipal Freedom of Information and Protection of Privacy Act, or
 - v. any other information or statistical data required by law not to be released; and
- f) obtain access, or attempt to gain access, to confidential information in the custody of the Municipality except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law.

13. NO IMPROPER USE OF INFLUENCE

13.1 No member shall,

- a) use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes;
- b) use his or her office or position to influence or attempt to influence the decision of any other person, for the member's private advantage or that of the member's parent, child, spouse, staff, friend, or associates, business or otherwise;
- c) attempt to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties; or
- d) hold out the prospect or promise of future advantage through the member's supposed influence within Council, in return for any action or inaction.