

ADDENDUM TO COMPLAINT #020823 INVESTIGATION REPORT

Summary

This is the Addendum to the Complaint Investigation Report 0220823, which presented my conclusions as part of the investigation under the City of Barrie Code of Conduct (the “Code”) relating to the conduct of the Councillor Clare Riepma, (the “Respondent”) Ward 1 Councillor, for the City of Barrie in connection with a complaint raising the issue of disclosure of confidential information, including personal information and aspects of deliberations of Council that were subject of an in-camera meeting. As part of my regular process, after having completed my investigation, I prepared my draft report and provided it to the Respondent. In that report, I found a that the Respondent breached the Code. I obtained additional information from the Respondent, and ultimately determined that the complaint was not timely under the language of the Code. However, because I had completed my investigation, I am obligated under the Code to report to Council. I have drafted this Addendum to address the new information that I received after completion of the draft report.

Limitation Period

Section 24.5 of the Code states that:

24.5 An organization, Employee, Member or member of the public having reasonable grounds to believe that a Member has breached this Code, may proceed with a complaint. Complaints must be submitted no more than one year after the alleged violation occurring. No action will be taken on a complaint received beyond these deadlines.

In the course of my investigation, I received insufficient evidence to determine that the limitation period had elapsed before the complaint was filed. I provided a copy of my draft report to the Respondent. In providing his comments on my report, the Respondent advised me that he had determined the date of his meeting with [the named individual].

After receiving that information, I have determined that the complaint was filed more than one year after the alleged violation occurred. I conclude that the alleged disclosure to the public of information distributed in a closed meeting took place 1 year and 2 months before the Code complaint was filed with my Office. This places the alleged violation by the Respondent 2 months beyond the limitation period set out in the Code. The Integrity Commissioner appointed to a municipality must abide by the rules of her *home statute*. In a 2016 Division Court decision, the court defined a municipal integrity commissioner’s home statute as, rules of the Code of Conduct and Complaint Protocol as interpreted by the commissioner.¹

¹ Michael Di Biase v. City of Vaughan; Integrity Commissioner of the City of Vaughan, 2016 ONSC 5620 DIVISIONAL COURT FILE NO.: 309/15 20160919

I considered whether a municipal integrity commissioner has discretion to apply a discoverability analysis to the timelines of the limitation period set out in the Code.

The purpose of limitation periods has been described by the Ontario Court of Appeal in *Deaville v. Boegeman*² as:

"When limitation periods were under consideration by the common law courts in the 18th and the 19th centuries, the judges described these limitation statutes as 'statutes of repose' or 'statutes of peace': *Tolson v. Kaye* (1822), 3 Brod. & B. 217; 129 E.R. 1267; *A'Court v. Cross* (1825), 3 Bing. 329 at p. 332; 130 E.R. 540; *Hunter v. Gibbons* (1856), 26 L.J. Ex. 1 at p. 5; *Scales v. Jacob* (1826), 3 Bing. 638 at p. 645; 130 E.R. 660. The emphasis then was as it is today, on the necessity of giving security to members of society. Citizens would not expect to be disturbed once the limitation period had expired. Today when a limitation period has expired it is considered that, generally speaking, a defendant need no longer be concerned about the location or preservation of evidence relevant to the particular claim or relevant to a claim which has not been made. Further, the defendant is, presumably, at that stage free to act and plan his life without concern for stale claims or claims of which he has no knowledge which have arisen out of the original incident. When considering the purpose of limitation periods, the maxim, although used frequently in other connections, 'expedit reipublicae ut sit finis litium' is appropriate; it is indeed in the public interest that there should be an end to litigation: *Smith v. Clay* (1767), 3 Bro. C.C. 646; 29 E.R. 743.

"... Limitation periods ... were not enacted to be ignored" and ... the Supreme Court has described the effect of a Limitation of Actions Act as follows:

"... plaintiffs are expected to act diligently and not 'sleep on their rights'; statutes of limitation are an incentive for plaintiffs to bring suit in a timely fashion."³

Recognizing the purpose of limitation periods, I considered whether the limitation period ought to be extended in circumstances where the alleged breach of the Code was unknown until recently. The meeting with the Mayor occurred on June 20, 2023. However, the Code does not contain a discoverability provision. The trigger for the running of the limitation period is the date of the alleged misconduct, not when the complainant learns of the alleged misconduct, like complaints under the *Municipal Conflict of Interest Act*. Accordingly, I have determined that the complaint is barred by the one year time limitation in the Code.

As part of my investigation process, I provided my draft findings to the Respondent. In that report, I found that there had been a breach of the Code. I determined that the Respondent did disclose confidential in-camera documents to a member of the public in

² *Deaville v. Boegeman* (1984), 6 O.A.C. 297; 14 D.L.R.(4th) 81; 48 O.R.(2d) 725; 47 C.P.C. 285 (C.A.), at p. 86 (D.L.R.)

³ *K.M. v. H.M.*, [1992] 3 S.C.R. 3; 142 N.R. 321; 57 O.A.C. 321; 96 D.L.R.(4th) 289, at p. 30 S.C.R.

contravention of section 10 of the Code. After receiving my draft findings, the Respondent then provided me with supplementary submissions in which he stated that he was in the habit of writing notes of all of his meetings in his diary. As a result, the Respondent advised that:

Further to our conversation today, I have reviewed my diary entries and can confirm that I met with [a named individual] on April 13, 2022 and I returned his documents to him on April 22, 2022. I have not met with [them] since nor have I spoken to [them].

Typically, I do not accept additional evidence in response to my draft findings.⁴ When I provided my draft findings to the Respondent, I advised him that I was providing them with the draft findings to afford them procedural fairness. Once the investigation has been completed, a Respondent is generally not permitted to introduce new evidence. However, given that I had been searching for an answer to this key question of when the disclosure took place, I determined that I would allow the Respondent to introduce this key fact at a late stage in the investigation process as I could not ignore this information. I urge Respondents to check their records carefully in investigations by my Office and provide me with critical evidence in their written responses and during investigation interviews.

At the time of receiving the Respondent's additional submissions, I had fully completed the investigation of the Complaint. However, as a result of this additional information provided by the Respondent, I am time barred from making a finding. In accordance with section 27.2 of the Code:

27.4 If upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred, however, the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, **the Integrity Commissioner shall set this out in its report to Council.**

Before advising of the requisite facts to determine that the complaint was out of time, I determined that the actions of the Respondent seriously undermined the public trust that undergirds the confidentiality requirements of closed meetings. But for the application of the limitation period, I would have found a breach of the Code.

⁴ [70] The general common law rule is that a decision-maker is *functus officio* when they make a final decision in respect of the matter before it": *Chandler v. Alberta Association of Architects*, [1989 CanLII 41 \(SCC\)](#), [1989] 2 S.C.R. 848, at p. 861. In *Chandler*, the Supreme Court held that:

As a general rule, once a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within [certain] exceptions...

Conclusion:

I acknowledge the Respondent's contrition, acknowledgement of the seriousness of the confidentiality obligations, and that his disclosure of the confidential documents was inadvertent.

I am satisfied that the Code limitation period expired. I accept that any recommendation is barred by the limitation period. Nonetheless, I have reported to Council as I had completed my investigation process before receiving additional information.

Going forward, I recommend that the City institute a secure distribution process for the return and destruction of confidential documents.

I also note that I was very impressed by the helpful and speedy responses by IT staff to my queries about whether there had been tampering with City servers, confidential portals, or printers and whether the confidential documents were disclosed by a Member inappropriately gaining access to City servers. While it did not hamper my investigation, I did note that the main document management system does not allow the City to retain the auditing level of details needed to further support investigations and discovery requests.

Respectfully submitted,

January 5, 2024



Suzanne Craig
Integrity Commissioner