

Report on an Inquiry Respecting the Conduct of Councillor Kelly

Karen E. Shepherd
Integrity Commissioner

November 20, 2024

Table of Contents

Report on an Inquiry Respecting the Conduct of Councillor Kelly 1

 Executive Summary 3

 Commissioner’s Mandate 3

 Code of Conduct for Members of Council 3

 The complaints 3

 Investigation 4

 Summary of findings 4

Inquiry Process 5

 Response to the allegations 5

 Investigation 6

 Duty of confidentiality 7

Findings of fact 7

 Determination on the allegations 7

 Background 8

 July 3, 2024 9

Analysis 19

 Section 4 of the Code of Conduct (General Integrity) 19

 Section 7 of the Code of Conduct (Discrimination and Harassment) 21

Conclusion 23

Executive Summary

Commissioner's Mandate

As Integrity Commissioner for the City of Ottawa, I am responsible for the application of the Code of Conduct for Members of Council, which includes receiving and investigating complaints about whether a Member of Council has contravened the Code of Conduct. In this case, I received four formal complaints respecting the conduct of Councillor Clarke Kelly.

Following an intake analysis, confirmation of my jurisdiction to investigate and submissions from the parties, I initiated an investigation under subsection 9(2) of the Complaint Protocol into the formal complaints. This report is prepared pursuant to Section 11 of the Complaint Protocol and contains the findings and conclusions of my investigation.

Code of Conduct for Members of Council

The Code of Conduct for Members of Council (Code of Conduct) sets the standards of behaviour expected of Members of Council. The Code of Conduct came into force on July 1, 2013.

Members of Council have an obligation to uphold the values and rules set out in the Code of Conduct.

The complaints

I received four formal complaints alleging that on July 3, 2024, Councillor Kelly aggressively confronted staff of the West Carleton Kids Korner Daycare ("the Daycare"). During the confrontation, it is alleged that Councillor Kelly used profanities towards and about daycare staff, aggressively attempted to access a locked/secure space, and berated daycare staff including the owner.

The complaints alleged that Councillor Kelly's conduct was in breach of Section 4 (General Integrity) and Section 7 (Discrimination and Harassment) of the Code of Conduct for Members of Council.

Two of the complaints further alleged that the Respondent's conduct was in breach of Section 10 (Conduct Respecting Staff). As the alleged misconduct did not involve municipal staff, the parties were advised that this section would not be considered.

Investigation

The formal complaints were filed between July 8 and 12, 2024. Following an intake analysis, I determined the complaints were within my jurisdiction to investigate and there were sufficient grounds to initiate an inquiry. Copies of the complaints and supporting documentation were provided to the Respondent on July 25, 2024 with a request for a written response by August 19, 2024.

I received a reply from the Respondent on August 18, 2024. I reviewed all the information provided and determined the matter required further investigation. On August 28, 2024, the parties were notified of my determination and advised that I was proceeding to the next stage of the inquiry. Given the overlapping nature of the four formal complaints, I exercised my discretion to conduct one investigation. As authorized under Section 223.3(3) of the *Municipal Act, 2001*, I delegated my authority to conduct the investigation, including conducting interviews and reviewing documentary evidence, to an independent investigator.

The Investigator conducted interviews with eleven individuals between September 12 and October 4, 2024. The investigation included a review of security video footage, video of the July 3, 2024 Planning and Housing Committee meeting, news clippings and e-mail correspondence. The Investigator made factual findings on a balance of probabilities about whether the allegations were substantiated.

In preparing my report, I reviewed the Investigator's report, the recorded interviews and the documentary evidence collected. I conducted my own review of the Investigator's conclusions to determine whether I accepted the factual findings and analysis, and then determined whether there had been a breach of the Code of Conduct.

On November 1, 2024, the Respondent was provided the opportunity to provide comments on a draft of this report.

Summary of findings

The investigation considered whether the Respondent (Councillor Clarke Kelly) contravened the following sections of the Code of Conduct:

- Section 4 – General Integrity
- Section 7 – Discrimination and Harassment

Having completed the investigation, I conclude that the allegations, in part, were substantiated and find, on a balance of probabilities, that the Respondent contravened the Code of Conduct.

Inquiry Process

Response to the allegations

The Complaint Protocol sets out the process for receiving, investigating and reporting on formal complaints.

As part of this process, I provided Councillor Kelly, who is the Respondent, with a copy of the formal complaints with a request for his written response to the allegations. This step provides respondents with the initial opportunity to respond substantively to the allegations set out in the formal complaint and to provide relevant information, background, and documentation. I received Councillor Kelly's response on August 18, 2024.¹

In his response to the allegations, Councillor Kelly categorically denied swearing at or in front of the daycare staff or the children in their charge. He stated that the only time he swore was to the daycare owner and expressed regret for his use of vulgarities toward her. Councillor Kelly acknowledged that he should not have let his frustration with the daycare owner and the daycare operations to get the better of him.

Councillor Kelly indicated his Office had made efforts to address issues with the Daycare and associated summer camp in a positive and professional manner before the incident of July 3rd. These issues involved use of the public washrooms and noise associated with the summer camp. The Councillor's Office had been told by representatives of Capital Sports Management Inc. (responsible for managing the building) that the Daycare was supposed to be taking certain actions (e.g. supervised trips to the washroom). At the time of the incident, Councillor Kelly felt these requests were not being honoured by the Daycare.

Councillor Kelly also described a series of professional and personal challenges he had been experiencing, not to excuse the use of profanities, but to provide context for his behaviour that day. He concluded his response by outlining follow-up actions he had taken to ensure a similar incident did not occur again in the future, including utilizing the services of the City's Employee Assistance Program for assistance with managing

¹ Section 9 of the Complaint Protocol provides that the complaint and supporting material will be provided to the Member with a request for a written response within ten business days. Due to a planned closure of my Office at the beginning of August 2024, I requested a response from the Councillor by Monday, August 19, 2024.

anger and staying healthy. He indicated that he took responsibility for his actions and intended to learn from his mistake.

In addition to his response, Councillor Kelly provided a second document highlighting what he believed to be several inaccuracies and claims in the sworn affidavits that were unjustified and factually inaccurate.

I reviewed all the information provided and determined that the matter required further investigation. On August 28, 2024, I notified all parties that I was proceeding to the next stage of the inquiry.

Investigation

Given the overlapping nature of the four formal complaints, I exercised my discretion to conduct one investigation.

As authorized under Section 223.3(3) of the *Municipal Act, 2001*, I delegated my authority to conduct the investigation, including conducting interviews and reviewing documentary evidence, to an independent investigator.

Interviews were conducted with eleven individuals between September 12 and October 4, 2024: five staff members of the daycare (including the owner and two of the complainants²), two staff members in the Ward 5 Office, one City of Ottawa representative, two Capital Sport Management Inc. (CSMI) representatives, and the Respondent.

The following documentary evidence was also requested and reviewed as part of the investigation: security video footage (no audio) from the Daycare, security video footage of the main areas of the West Carleton Community Complex (no audio) from Corporate Security, video of the July 3, 2024 Planning and Housing Committee meeting, news clippings from media coverage of the incident, documentation to support the impact of the summer camp on the work environment and email communications between various parties.

In accordance with the Complaint Protocol, on November 1, 2024, I provided Councillor Kelly with a copy of my draft report and invited him to provide comments on the draft report within five business days. Councillor Kelly provided a response to the draft final report on November 11, 2024. The Councillor provided comments, which are incorporated in this report, and stated that overall, he found the conclusion of the report

² Only those complainants who directly witnessed what occurred or had first-hand knowledge were interviewed as part of the investigation.

to be fair. Councillor Kelly reiterated that he has taken steps to ensure he is better equipped to deal with difficult situations under pressure and is committed to making sure this never happens again.

Duty of confidentiality

As a municipal Integrity Commissioner, I am bound by a duty of confidentiality set out in Section 223.5 of the *Municipal Act, 2001* as follows:

Duty of confidentiality

223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

In preparing this report, I am mindful of subsection 223.6(2) of the *Municipal Act, 2001* which provides that I may, “disclose in the report such matters as in the Commissioner’s opinion are necessary for the purposes of the report.”³ I have determined that it is not necessary to disclose the names of witnesses in the report and exercised my discretion to remove all witness names from the report.

Findings of fact

Determination on the allegations

In determining findings of fact, I used the standard of proof required of fact finders in civil cases, the balance of probabilities. The balance of probabilities standard requires that the evidence be “clear, convincing and cogent”⁴ and that I “scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”⁵

To determine whether the Respondent’s alleged actions or behaviour breached the Code of Conduct for Members of Council, the first step is to make factual determinations on a balance of probabilities.

³ [Subsection 223.6 \(2\)](#) of the *Municipal Act, 2001*.

⁴ F.H. v. McDougall, 2008 SCC 53 at paragraph 46

⁵ Ibid. at 49

Background

The Investigator provided the following background information concerning the site:

- The West Carleton Community Complex (WCCC) is located at 5670 Carp Road, Ottawa, ON. The WCCC is a City-owned facility that is managed by Capital Sports Management Inc. (CSMI).
- The Ward 5 Office is located in the north part of the WCCC and includes Councillor Kelly's office, two staff offices, a kitchenette and a visitor reception area.
- The WCCC also provides space for several City services including a client service centre, paramedic, fire, and police; City staff are usually present on an irregular basis.
- CSMI leases space to the West Carleton Kids Korner Daycare ("the Daycare"), located in the south part of the WCCC.
- Another part of the building called the Roly Armitage Hall, also known as Chambers, is also leased out for various activities. Chambers is a large hall situated immediately adjacent to Councillor Kelly's suite of offices.
- During the summer months, the Daycare leases Chambers for a summer camp for school age children. In total, approximately 90 to 100 children may be in and around the WCCC on a given summer day.

As noted in Councillor Kelly's response to the allegations, Councillor Kelly and his staff had raised issues concerning the Daycare's summer camp. The Investigator summarized the following findings about what occurred leading up to the events of July 3, 2024 as follows:

- Complaints from Councillor Kelly's Office largely concerned sound attenuation and issues pertaining to the lack of both cleanliness of the public washrooms (located adjacent to Councillor Kelly's office suite), and supervision of children using the public washrooms. These issues arise when the Daycare is running its summer camps, during which time the Daycare uses parts of the building removed from the Daycare facility itself.
- Representatives of CSMI acknowledged that issues concerning noise in Chambers and washroom cleanliness had been raised by Councillor Kelly's staff member since the summer of 2023. Neither could offer any explanation as to the reason nothing had been done to address the concerns. One representative

confirmed that any changes to the building would have to be approved by the City of Ottawa but did not indicate that steps had been taken to seek such approval.

- Both CSMI representatives spoke of the need for users of WCCC to be “reasonable” and to accept that with children using the public washroom, there will be messes.
- By late 2023 / early 2024, City staff from Parks and Recreation knew of the complaints. City staff deferred to CSMI as having full responsibility for managing the WCCC.

July 3, 2024

The allegations are generally summarized as follows:

On July 3, 2024, Councillor Kelly aggressively confronted staff of the West Carleton Kids Korner daycare. During the confrontation, it is alleged that Councillor Kelly used profanities towards and about daycare staff, aggressively attempted to access a locked/secure space, and berated daycare staff including the owner.

In his report, the Investigator noted the progression of events on July 3, 2024 could be broken down into three distinct, but related, interactions. I have carefully reviewed the Investigator’s report and findings, the recordings of the interviews, and the documentary evidence and summarize the three interactions below.

First Interaction

July 3, 2024 was the first day in the Ward Office for Councillor Kelly and his staff following the start of the Daycare’s summer camp program. Councillor Kelly was in his office, participating virtually in a hybrid meeting of the Planning and Housing Committee. The meeting began at 9:30 a.m.

The Daycare’s summer camp was operating out of Chambers and using outside space adjacent to the WCCC building.

During the Planning and Housing Committee meeting, Councillor Kelly became increasingly frustrated with the noise outside his exterior office windows.

At one point, a daycare worker was leading a group of pre-schoolers who had been playing outside back to the Daycare along the cement walkway outside the Councillor’s exterior office windows.

While attending the online meeting, according to Councillor Kelly, he became frustrated about the children banging their hands on his exterior office windows and at least one older child banging a lacrosse stick on a metal post about ten feet away from his window. He said he motioned to a daycare worker through the window to move the children away from the window area.

When no action was taken, Councillor Kelly left his office to confront the daycare worker. He opened an exterior door from his office suite, which opens to the cement walkway immediately outside his exterior office windows.

One of the complainants, another daycare worker who witnessed the first interaction (Witness 1), confirmed Councillor Kelly did not enter completely onto the concrete walkway, but held his door open with one hand because the exterior door would have closed and locked.

According to Witness 1, Councillor Kelly asked her co-worker, who was leading the group of pre-schoolers, to remove toys and children from the area. Witness 1 said Councillor Kelly went back inside and watched the group pass. As the daycare worker passed, Witness 1 said Councillor Kelly opened the door again and said "Thanks" in what was described as a sarcastic manner and slammed the door shut. The daycare worker then said words to the effect of "Have a nice day" and Councillor Kelly again opened to door in what was described as an aggressive manner, asking the daycare worker "Do you have something you want to say to me?"

Witness 1 described Councillor Kelly's demeanour as aggressive and combative but said he did not use profanities.

For his part, Councillor Kelly explained that he was bothered by continued noise outside his exterior office window. His expectation was that efforts had been taken to mitigate the noise and commotion of the children, but that morning the noise continued unabated.

Councillor Kelly said that when he opened the exterior door to the cement area, he asked the closest daycare worker to move the toys and children away from his exterior office windows. In his response to the allegations, Councillor Kelly indicated that he had on several other occasions before July 3, 2024, opened the exterior door of his office to politely ask the staff to move children away from the window. He added that, in his mind, those requests had always led to a respectful and positive exchange between himself and daycare staff.

On July 3rd, according to Councillor Kelly, the daycare worker replied, "Those aren't my toys." Councillor Kelly admitted he thought the daycare worker's response was rude and

he probably looked visibly upset by her response. He told the daycare worker he didn't care whose toys they were and asked for them to be moved.

Councillor Kelly said he then went back inside. He was speaking with his staff members when he noticed a group of daycare staff looking towards the window and pointing, but the toys had not been moved. At this point, Councillor Kelly confirmed he opened the exterior door, but insisted he did not walk towards the daycare worker and had his hand on the door at all times. He then said, "Do you have anything you want to say?" but was merely asking if the daycare worker had something else to say to him. Councillor Kelly said the daycare worker replied, "Have a good day" and walked away.

In his response to the allegations, Councillor Kelly stated that "provocation was a mitigating factor" for his conduct in this instance. During his interview, Councillor Kelly clarified that he did not mean he felt provoked by the children. He said he is not against the Daycare providing what he recognized as a service needed in the community. However, that morning, he said he felt provoked by the overall situation causing him to feel the issues raised by him and his staff since 2023 had been ignored and would continue to be ignored.

The Investigator concluded that:

- Given Councillor Kelly's own statement that he was "kind of fired up in that moment" and the comment he made later to the daycare owner about the attitude he had gotten from daycare staff, the account of Witness 1 that Councillor Kelly came across as aggressive is preferred.
- By all accounts, Councillor Kelly did not use vulgarities during this exchange. Adjectives such as aggressive, combative, loud, etc., are relative and subjective, but given Councillor Kelly's own words that he felt ongoing pressures and frustrations, they do capture the overall narrative provided by all witnesses of Councillor Kelly's actions. Councillor Kelly was frustrated and took that frustration out on the daycare worker.

After reviewing the evidence, I agree with the Investigator's conclusion and find that, on a balance of probabilities, Councillor Kelly confronted the daycare worker in an aggressive manner.

Second Interaction

Immediately following his interaction with the daycare worker outside, it is alleged that Councillor Kelly came back into his office suite and used loud, inappropriate language to his staff concerning the daycare worker and the noise of the children.

At this time, a daycare worker (Witness 2) was in Chambers with a small group of children working quietly on a craft.

Witness 2 said she and the children were not making much noise, so it was easier to hear what was going on next door. For this same reason, she believed persons in the Councillor's office suite likely would not have known anyone was in Chambers at that time.

Witness 2 heard Councillor Kelly's raised voice coming through the wall from his office suite. She said she was certain it was him speaking because she had heard him speak before and later recognized the Councillor's voice in the hallway outside the Daycare (in the third interaction) as the same voice she overheard when she was in Chambers.

Present in Councillor Kelly's Office that day were two of his staff members, one of whom is female and whose voice could not be mistaken for Councillor Kelly's. The other staff member denied that he had made the alleged comments, leaving Councillor Kelly as the sole source.

Witness 2, who at that time did not know of the earlier contact between Councillor Kelly and the daycare worker outside, said she heard Councillor Kelly speaking angrily and swearing.

Though she could not recall everything he said, Witness 2 did recall Councillor Kelly using an expletive (i.e. b****) in reference to an unknown individual. She also said she was surprised at the number of "F" bombs that were being used because she had not heard him curse before. She said the young school age children in her care also heard Councillor Kelly speaking angrily but she was not positive they recognized the swearing.

Witness 2 felt she should report the outburst to the daycare owner. She first sent her children outside, leaving them with other daycare workers, and began to clean up the crafts before going to the Daycare. She said Councillor Kelly was initially still in his office speaking loudly as she cleaned up the crafts, but then the speaking stopped. By the time she entered the WCCC main hallway, she saw Councillor Kelly standing in front of the Daycare ringing the doorbell.

Witness 2's evidence is supported by security video footage which shows her entering the main hallway of the WCCC from the direction of Chambers at 10:55:03 a.m. Before Witness 2 comes into the frame, Councillor Kelly is seen exiting his office suite and walking in the direction of the Daycare. One of Councillor Kelly's staff members is also seen exiting the office suite and passing Witness 2, who is standing in the hallway entrance. Witness 2 then follows both of them up the staircase to the Daycare.

Witness 2 said she wanted to immediately brief the daycare owner about Councillor Kelly's outburst because 1) she was aware of noise and washroom issues raised by Councillor Kelly during the summer of 2023, and 2) she was concerned that the children were going to repeat the language to other children or their parents. She confirmed she did not feel physically threatened by Councillor Kelly but became more concerned when she saw him at the Daycare door and felt there was a possibility that tensions could escalate.

Witness 2 remained in the Daycare immediately following the confrontation with the daycare owner, described in the third interaction below.

Following the first interaction, Councillor Kelly stated that he told his staff members he was going to talk to the daycare owner. Councillor Kelly admitted that he was upset following his interaction with the daycare worker outdoors but could not recall whether he used expletives in reference to the daycare workers when speaking with his staff. He said, "I couldn't tell you whether I called them b***** or used the F word."

In interviews with the Councillor's two staff members, the female staff member could not recall exactly what Councillor Kelly had said, while the male staff member could not definitively recall if Councillor Kelly had made any comments before confronting the daycare owner in the third interaction. Both confirmed that Councillor Kelly was visibly upset by the first interaction with the daycare worker outside.

The female staff member recalled Councillor Kelly saying he was going to speak with the daycare owner. While the male staff member could not recall the Councillor saying anything, he encouraged his colleague to follow Councillor Kelly as he exited the office suite because the staff member expected a confrontation.

Councillor Kelly and members of his staff all said they felt the Councillor's office area was a safe location where they could speak frankly to one another. They said the use of vulgarities was not uncommon in the privacy of the office environment.

One of the Councillor's staff members said that when Councillor Kelly returned to his office from the interaction with the daycare owner, he recalled Councillor Kelly saying the daycare owner was not doing a good job. He recalled swearing happening and "quite a few "F" bombs being dropped" by Councillor Kelly, including phrases such as:

- "This is f***ing ridiculous"
- "I don't want to f***ing deal with this"

The Investigator determined that it was more likely than not that Councillor Kelly used phrases identified by Witness 2 who was present in Chambers and drew the following conclusions:

- Councillor Kelly did not deny having made vulgar comments in his office suite prior to confronting the daycare owner.
- Neither the Councillor nor his staff could recall exactly what was said in the office prior to Councillor Kelly confronting the daycare owner (in the third interaction), nor could any of them recall snippets of what was said, but all said Councillor Kelly was upset and none denied that vulgarities were used.
- Although the timeline differs, the attributions by Witness 2 in Chambers and the Councillor's staff member appear to match each other. Since Witness 2 is known not to have been in Chambers immediately after Councillor Kelly returned to his office, and since no one in Councillor Kelly's office prior to the confrontation with the daycare owner could recall what was said, Witness 2's account is preferred.
- Councillor Kelly's issue in this incident is his contention that he did not knowingly direct vulgar language at, or in the presence of, children or daycare workers. He did not deny having used such language.
- There is no supportable evidence to confirm Councillor Kelly directed his comments at anyone. In fact, Witness 2 was clear that her belief was that Councillor Kelly did not know anyone was in Chambers. Given Councillor Kelly's own complaints about the thin walls and leakage of sound between the rooms, he knew, or should have known, it was highly likely that anyone on the other side of the wall would hear him clearly.
- To be clear, at no time did Councillor Kelly enter Chambers to shout at or use vulgarities directed at daycare workers or children.

I have carefully considered the evidence and the Investigator's conclusion with respect to the second interaction. I note that Councillor Kelly and his staff could recall or attempt to recall what was said before and after the second interaction, but when it came to specifics about what was said behind closed doors, they could not recall nor confirm what may have been said. It is noteworthy that no one would confirm or categorically deny that Councillor Kelly swore during this period.

In any case, both of Councillor Kelly's staff members recognized Councillor Kelly was upset and at least one of them felt it was necessary for a staff member to go with Councillor Kelly as he left to speak with the daycare owner.

I accept the evidence of Witness 2 who was in Chambers and who overheard what was said in Councillor Kelly's office.

I also accept the evidence of Councillor Kelly and his staff that the office space is private and the use of profanity in the office was not uncommon. However, all three confirmed that noise from Chambers could be heard in the visitor reception area of the office suite. For this reason, Councillor Kelly ought to have known that the reverse would also be true.

Taking into consideration the evidence of Witness 2, Councillor Kelly and his staff members, I agree with the Investigator's conclusion, and I find that, on a balance of probabilities, Councillor Kelly did use the language alleged in his office suite before leaving to confront the daycare owner.⁶

Third Interaction

At approximately 10:55 a.m., Councillor Kelly left his office to confront the owner of the Daycare. Councillor Kelly first attempted to enter the Daycare through the front door but was unable to do so as it was locked. After he rang the doorbell, a daycare worker opened the door and Councillor Kelly asked to speak with the daycare owner.

A short time later the daycare owner exited the Daycare through the kitchen door, a door that also opened into the main hallway of the WCCC. An exchange of words ensued, during which Councillor Kelly used profanities. Following the brief interaction, Councillor Kelly and his staff member returned to his office.

The Investigator provided the following breakdown of security video footage to contextualize Councillor Kelly's interaction with the daycare owner:

- Security video footage from Corporate Security shows that Councillor Kelly exited his office suite at 10:54:41 and began walking the length of the main hall toward the daycare. His staff member followed him out at 10:54:49. At 10:55:03, the daycare worker [Witness 2] exited Chambers by the door into the main hallway and followed Councillor Kelly and his staff member toward the daycare. At 10:56:20, Councillor Kelly came back into frame returning to his office. At

⁶ In his response to the draft final report, Councillor Kelly indicated that he did not believe the conclusion that vulgarities were used within the walls of his office was unreasonable. He noted that he is normally very careful within his office when he knows that children are present in Chambers. He further noted that on July 3rd, the noise from outside was so loud and distracting that he did not hear there was a small group on the other side of the wall and didn't know anyone was there. He apologized for his use of language and expressed regret that children overheard it.

10:56:20, his staff member came into frame following Councillor Kelly back to the office. A total of 1 minute and 39 seconds had elapsed.

- Time stamps on the daycare security video footage differ from Corporate Security by approx. five minutes. The daycare security video footage shows that at 10:51:09, Councillor Kelly began to climb the steps to the daycare main door. At 10:51:16 he tried the door and found it locked. At 10:51:20 he rang the doorbell one time. At 10:51:23, a daycare worker opened the door and spoke with him. At 10:51:26, the daycare worker turned away from Councillor Kelly, presumably to speak with the daycare owner.
- At 10:51:31, [Witness 2] who had been in Chambers, climbed the steps and entered the daycare via the main door being held open by the Councillor. At 10:52:07, Councillor Kelly turned away from the main door to what witnesses described as the door from the kitchen being opened by the daycare owner.
- From the time Councillor Kelly tried the door until he turned to presumably meet with the daycare owner, 51 seconds had elapsed. Removing the time Councillor Kelly stood waiting, the interaction with the daycare owner lasted approx. 48 seconds.

The evidence of the witnesses in relation to the third interaction are summarized by the Investigator as follows:

- Councillor Kelly was “fired up” and although exact content of the conversation could not be recalled, Witness 3 recalled Councillor Kelly saying phrases including “this is f***ing ridiculous”, “the daycare has to go”, “staff are rude”, “your staff can’t control these f***ing kids”. Witness 3 said the interaction lasted only a few seconds and was one sided with Councillor Kelly doing almost all of the talking. As Councillor Kelly finished and turned to walk away, the daycare owner said words to the effect “And you’re the councillor for this area where these children reside”. Witness 3 said Councillor Kelly replied “Yeah” and continued to walk away.
- Witness 4, who was in the kitchen at the time, confirmed that the daycare owner went to the door from the kitchen to the hallway and heard Councillor Kelly saying the Daycare was being too loud. She could not recall exactly what Councillor Kelly said but said she recalled “lots of F bombs”. Witness 4 described Councillor Kelly as aggressive, angry. She said his tone of voice went from loud to shouting over time. Witness 4 believed the interaction went on for

2 – 3 minutes with Councillor Kelly doing almost all of the talking. Witness 4 said there were no children in the kitchen at the time.

- Witness 2, who had been present in Chambers, said she entered the kitchen at the end of the interaction between the daycare owner and Councillor Kelly and heard only the very last part of it. Witness 2, who is a 19-year-old college student, said she started to cry after overhearing the confrontation because she felt very intimidated by Councillor Kelly's language in his office and with the daycare owner.

The Respondent's evidence was summarized by the Investigator as follows:

- Councillor Kelly confirmed the daycare owner held the kitchen door open as they spoke. He said that from his vantage point he did not see if there was anyone else in the kitchen.
- Councillor Kelly said he told the daycare owner it was the first day of summer camp and it already was not going well. He explained he was having great difficulty holding thoughts in his head at his desk. Councillor Kelly told the daycare owner he had asked her staff to move toys near his office then said, "You should have seen the f***ing attitude I got from your staff." He did not remember exactly what he said, but stated he used the F word at least one more time.
- Councillor Kelly confirmed and readily admitted that he used inappropriate language toward the daycare owner. He apologized for his actions, but said he felt frustrated that although he and his staff had raised concerns the previous summer, nothing had been done to find a balance between the daycare / summer camp and his need to conduct City business in his constituency offices.

By Councillor Kelly's own admission, a confrontation with the daycare owner occurred, during which Councillor Kelly used profanities. Having reviewed the evidence and testimony, I find that Councillor Kelly, not only used profanity in this exchange, but confronted the daycare owner aggressively through his tone and manner.

One of the specific allegations is that Councillor Kelly aggressively attempted to access the Daycare's locked/secure space. As verified in the security video footage, Councillor Kelly attempted to access the Daycare and, when he realized the door was locked, used the doorbell to get the attention of daycare staff. Once the door was opened by the daycare worker, Councillor Kelly held the door open, but never attempted to enter the Daycare. When the daycare owner came into the hallway from another

door, he let the main entrance door close. Accordingly, I do not find that Councillor Kelly aggressively attempted to access the Daycare's locked/secure space.

Aftermath

Following the third interaction, the daycare owner contacted the Ottawa Police Service via the non-emergency line. The interactions with Councillor Kelly had a negative impact on her and her staff and the daycare owner felt concerned about similar future encounters.

The Investigator noted that Police attended and investigated the matter, and no criminal charges resulted. Councillor Kelly was informed that the Police were following up about a complaint received from the daycare owner following the negative interaction earlier that day. They did not ask him any questions and seemed mostly concerned with ensuring that the two parties avoided any further interactions.

That same day, the daycare owner issued a message to parents of the children attending the daycare programs to explain her understanding of what had transpired. In a second message the following day, the daycare owner "walked back" some of her comments from the previous day after she had received further details from her staff.

For his part, Councillor Kelly issued a public statement to address what he believed to be misleading statements in the daycare owner's message to parents. He also indicated that his Office had previously made efforts to address their concerns with the Daycare's summer camp. Councillor Kelly acknowledged that he had confronted the daycare owner and used profanities in that exchange. He expressed his regret for the use of profanities and stated, "I should have taken time to collect myself before going to speak with the owner. My failure to do so does not excuse my use of profanities when speaking with her."

The situation received considerable media attention, both television and print media. The Investigator noted that no one interviewed in the investigation admitted to having notified the media and, in fact both Councillor Kelly and the daycare owner assumed the other had done so.

The Investigator further noted that in the days that followed the July 3rd incident, pylons were added to the cement area outside Councillor Kelly's office as a barrier to keep the children away from the exterior office windows. Then on August 27, 2024, steps were finally taken to begin a review of the possibility of sound attenuation between Chambers and the Councillor's suite of offices.

Analysis

In respect of the substantiated allegations, the question to be determined is whether Councillor Kelly's conduct breached the Code of Conduct, and in particular, Section 4 (General Integrity) and Section 7 (Discrimination and Harassment).

Section 4 of the Code of Conduct (General Integrity)

For the reasons set out below, **I find that the Respondent breached Section 4 of the Code of Conduct** in respect of the substantiated allegations.

Section 4 reads as follows:

Section 4 - General Integrity

- (1) Members of Council are committed to performing their functions with integrity, accountability and transparency.
- (2) Members of Council are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an elected official.
- (3) Members of Council recognize that the public has a right to open government and transparent decision-making.
- (4) Members of Council shall at all times serve and be seen to serve the interests of their constituents and the City in a conscientious and diligent manner and shall approach decision-making with an open mind.
- (5) Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.
 - a. Members shall file a disclosure statement with the Integrity Commissioner, in the form provided by the Integrity Commissioner, within 60 days of being elected and annually thereafter. The statement shall disclose the Member's private interests, and the private interests of the Member's parent(s), spouse, or child(ren).
- (6) Members of Council shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.
- (7) For greater clarity, this Code does not prohibit members of Council from properly using their influence on behalf of constituents.

Section 4 sets out a series of high-level principles Members are expected to uphold. In establishing the Code of Conduct, City Council adopted a high standard of ethics and included the set of principles as a rule within the Code of Conduct.

In his report, the Investigator notes that, “[a] person holding a position of City Councillor is held to a higher standard of conduct, but that standard is less than perfection.”

For his part, Councillor Kelly acknowledged that his swearing at the daycare owner was inexcusable, particularly as an elected official. He reasoned that he is not immune to human mistakes but took responsibility for his actions and promised to learn from this mistake.

As noted above, I find that Councillor Kelly aggressively confronted daycare staff in the first interaction, used profanities about daycare staff in the second interaction, and used profanities and aggressively confronted the daycare owner in the third interaction.

While Councillor Kelly took accountability for his actions after the fact, I do not find that Councillor Kelly acted with accountability during the encounters. As he held the Daycare door open, waiting to speak to the daycare owner, Councillor Kelly had the opportunity to compose himself and avoid the aggressive confrontation and use of profanities that followed.

In all instances, Councillor Kelly allowed his frustrations to get the better of him. I conclude that his conduct breached his obligation, as set out in Section 4 of the Code of Conduct, to perform his duties with integrity and accountability.

I find the Respondent in breach of Section 4 of the Code of Conduct for Members of Council.

Section 7 of the Code of Conduct (Discrimination and Harassment)

For the reasons set out below, **I find that the Respondent breached Section 7 of the Code of Conduct** in respect of the substantiated allegations.

Section 7 reads as follows:

Section 7 - Discrimination and Harassment

All members of Council have a duty to treat members of the public, one another and staff with respect and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The Ontario Human Rights Code applies and, where applicable, the City's Workplace Violence and Harassment Policy.

Section 7 places an obligation on Members of Council to treat members of the public with respect and prohibits bullying, intimidation, and abuse at all times.

In the first interaction, Councillor Kelly began with a reasonable request to have the children and toys moved away from his exterior office windows. Councillor Kelly could have left it at that. Instead, when he felt that the daycare worker was unhelpful and rude about his request, he opened the door to confront the daycare worker. In that confrontation, the Councillor asked the daycare worker in an aggressive manner, "Do you have something you want to say to me?"

It is his conduct in the latter part of the interaction that I find problematic. As the Investigator noted, "[t]his comment goes more to a power imbalance than a means of achieving a goal and becomes a vehicle for bullying or intimidation." Councillor Kelly was no longer concerned with the distraction and noise from the children, but rather confronting what he perceived to be rudeness on the part of the daycare worker.

With respect to the second interaction, I acknowledge that Councillor Kelly and his staff have an unspoken agreement that swearing is an accepted behaviour in their work environment. That said, Councillor Kelly's use of profanities in this interaction went beyond casual use and included specific statements about individuals who work for the daycare and the daycare's operations.

Regrettably, Councillor Kelly's comments and profanity were overheard by a daycare worker and children in Chambers. While I believe Councillor Kelly did not intend for his comments to be overheard, I believe it is reasonable that he should have known someone could easily hear him given his complaints about the lack of noise attenuation

between his office and Chambers.⁷ His comments and profanity had a negative impact on the daycare worker who overheard them.

Turning to the third interaction, there is no question Councillor Kelly's conduct was inappropriate. Under the circumstances, it is understandable that Councillor Kelly was frustrated and felt the need to address the situation. That said, the manner in which Councillor Kelly spoke to the daycare owner, particularly the use of profanities, was aggressive and intimidating.

In fact, Witness 2, who was in Chambers, expressed that she felt very intimidated by Councillor Kelly's language in his office and with the daycare owner. She said she thought of quitting her job because she did not want to deal with this again over the summer.

I find that Councillor Kelly's actions on July 3, 2024 were aggressive and amounted to bullying and intimidation of the staff of the Daycare, including the owner.

Section 7 also requires that Members create and foster a safe and healthy work environment that is free from discrimination and harassment.

Based on my review of the evidence and testimony, I do not find that Councillor Kelly engaged in discrimination or harassment. Discrimination refers to the unfair treatment of a person or group based on protected characteristics. Harassment generally refers to a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.⁸

Councillor Kelly's actions that day fall within the realm of bullying and intimidation, but they do not meet the threshold for discrimination or harassment. While not acceptable conduct, Councillor Kelly's interaction with daycare staff and the daycare owner were brief incidents in which he was responding to stressful conditions in his workplace.

Councillor Kelly has accepted responsibility for his conduct in his interaction with the daycare owner and acknowledged it fell below the standard of acceptable conduct expected of an elected official.

⁷ As noted in footnote 6, Councillor Kelly stated that he is normally very careful within his office when he knows that children are present in Chambers. However, the noise from outside was so loud and distracting that he did not hear there was a small group on the other side of the wall and did not know anyone was there.

⁸ Ontario Human Rights Code ("OHRC") s. 10 (1)

I conclude that Councillor Kelly's conduct in each of the three interactions breached his obligation, as set out in Section 7 of the Code of Conduct, to "treat members of the public, one another and staff with respect and without abuse, bullying or intimidation".

I find the Respondent in breach of Section 7 of the Code of Conduct for Members of Council.

Conclusion

Section 15 of the Code of Conduct for Members of Council and Section 223.4(5) of the *Municipal Act, 2001* authorize the Integrity Commissioner to make recommendations to Council regarding sanctions and other remedial action when the Integrity Commissioner is of the opinion that there has been a violation of the Code of Conduct.

Section 15 of the Code of Conduct reads as follows:

- (1) Members of Council are expected to adhere to the provisions of the Code of Conduct. The *Municipal Act, 2001* authorizes Council, where it has received a report by its Integrity Commissioner that, in his or her opinion, there has been a violation of the Code of Conduct, to impose one of the following sanctions:
 - (a) A reprimand; and
 - (b) Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.
- (2) The Integrity Commissioner may also recommend that Council impose one of the following sanctions:
 - (a) Written or verbal public apology;
 - (b) Return of property or reimbursement of its value or of monies spent;
 - (c) Removal from membership of a committee; and
 - (d) Removal as chair of a committee.
- (3) The Integrity Commissioner has the final authority to recommend any of the sanctions above or other remedial action at his or her discretion.

I have given the matter of sanctions and/or remedial measures considerable thought. I believe sanctions should correspond to the conduct in question and be applied in a progressive manner as appropriate. I am also of the view that a public report and a finding of a breach of the Code of Conduct is meaningful.

The progression of events that ended with Councillor Kelly's confrontation with the daycare owner on July 3, 2024 lasted no more than 10 minutes. That said, the impact of those 10 minutes on those working in the Daycare as well as parents of some of the children in attendance that day was notable.

As I determined in my analysis, Councillor Kelly acted in an aggressive manner towards daycare staff. He failed to seize the opportunity to compose himself before confronting the daycare owner and let his frustrations get the better of him. Councillor Kelly has expressed regret for his actions and acknowledged that his conduct fell below the standard expected of him. However, to my knowledge, Councillor Kelly has never extended an apology to any individual directly involved or affected by his actions or words that day.

In my deliberations, I gave consideration to factors that might mitigate the need for a sanction. Councillor Kelly is a relatively new member of Council and this is the first investigation into his conduct. Further, Councillor Kelly co-operated fully in this investigation and was forthcoming in his responses and providing documentation.

Since his interaction with the daycare owner, Councillor Kelly has accepted responsibility for his conduct on July 3rd and expressed his regret for the use of profanity. Councillor Kelly proactively took steps to engage the services of the City's Employee Assistance Program for assistance with managing anger and staying healthy⁹ and has expressed a commitment to learning from his mistake and avoiding future similar incidents.

I believe the context within which Councillor Kelly's conduct occurred is important. Councillor Kelly's concerns related to noise and the cleanliness and use of the WCCC's public washrooms during the Daycare's summer camp program are well documented. I believe Councillor Kelly has a reasonable expectation of a professional work environment. Before the start of the 2024 summer camp program, Councillor Kelly and his staff made efforts to address their concerns through the appropriate channels.

Though not an excuse for Councillor Kelly's conduct that day, it does not appear that any action was taken in response to complaints from the Councillor's Office about the noise and bathroom issues associated with the summer camp in 2023. It is regrettable that the various parties could not come to an agreement or implement measures that

⁹ According to evidence provided by Councillor Kelly, he engaged the services of the City's EAP program shortly after the incident.

might have mitigated the noise and disruption of the summer camp program for the summer of 2024.

Taking all the above factors into account, I considered whether to recommend that City Council impose a sanction. A reprimand serves as a formal acknowledgement that the conduct in question is not acceptable. A suspension of pay is generally meant to deter future misconduct.

As noted in this report, Councillor Kelly has expressed regret for his actions, acknowledged that his behaviour was inappropriate and has taken proactive steps to avoid a similar interaction in the future. This is the first report respecting Councillor Kelly's conduct and he fully co-operated with the inquiry. For these reasons, I am of the view that a suspension of pay is not necessary as a measure of deterrence.

However, as the behaviour did not meet the standards expected of elected officials, I am of the view that a reprimand is an appropriate sanction. By imposing a reprimand, City Council demonstrates its commitment to the ethical standards set out in the Code of Conduct.

Therefore, I recommend that City Council:

1. Receive this report, including the finding that Councillor Kelly contravened Section 4 (General Integrity) and Section 7 (Discrimination and Harassment) of the Code of Conduct; and
2. Reprimand Councillor Kelly for his conduct on July 3, 2024.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'KES', with a long horizontal line extending to the right.

Karen E. Shepherd
Integrity Commissioner