

Integrity Commissioner

Report to Council on an Inquiry Respecting the Conduct of Councillor Darouze

September 6, 2019

THE COMPLAINT

- 1 Two members of the public (the “Complainants”) filed a complaint alleging that Councillor Darouze had contravened Section 5 (Confidential Information) and Section 7 (Discrimination and Harassment) of the Code of Conduct for Members of Council (the “Code of Conduct”).
- 2 The Complainants alleged that the Councillor improperly obtained and used personal information to establish a spousal relationship between the Complainants and confirm the male Complainant’s employment with the Ottawa Police Service (“OPS”). The Complainants further alleged that the Councillor used this information to harass the male Complainant at his workplace with the intent of intimidating the female Complainant, who had engaged with the Councillor on social media and criticized the Councillor’s claims regarding police service in Ward 20.

SUMMARY AND FINDINGS

- 3 For the reasons set out in this report, I find that Councillor Darouze has not breached Section 5 (Confidential information) of the Code of Conduct.
- 4 Based on the sworn evidence of eight witnesses and the conclusion of the Investigator, I find that Councillor Darouze contravened Section 7 (Discrimination and Harassment) of the Code of Conduct when he sent an email to the then Chief of Police alerting him to the social media activity of the female Complainant, identifying her as the wife of an OPS officer, implying that the Officer was sharing internal police information with his wife and asking for the Chief’s attention to the matter.

INQUIRY PROCESS AND STEPS

- 5 The Complainants submitted their formal complaint on March 12, 2019. I met and interviewed them on March 18, 2019 to review the allegations. I offered to attempt to resolve the issue through the informal complaint process. The Complainants felt strongly about their grievance and requested an investigation pursuant to the Formal Complaint Procedure of the Complaint Protocol.
- 6 Following an intake analysis, I concluded that the complaint was not frivolous or vexatious and that there were sufficient grounds for a formal investigation. The Complainants and the Councillor received notice of the inquiry on April 2, 2019.

7 In conformity with the Complaint Protocol, I provided the Councillor with a copy of the complaint, to which he provided a written response on April 15, 2019. The Councillor's response was provided to the Complainants on April 17, 2019, who then submitted a subsequent response on May 1, 2019. The Councillor was provided with a copy of that rebuttal as part of his interview on June 3, 2019.

8 The *Municipal Act, 2001* stipulates:

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. 2006, c. 32, Sched. A, s. 98.

9 Accordingly, the names of the Complainants and witnesses are not disclosed in this report.

Delegation of Investigative Powers

10 The formal investigation began on May 1, 2019. I retained the services of an independent investigator to complete the investigation.

11 The Investigator was delegated the responsibility for the investigation in accordance with Section 223.3 of the *Municipal Act, 2001*:

Delegation

223.3 (3) The Commissioner may delegate in writing to any person, other than a member of council, any of the Commissioner's powers and duties under this Part. 2006, c. 32, Sched. A, s. 98.

Same

223.3 (4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 98.

12 The Investigator was tasked with gathering evidence, conducting interviews under oath and providing a detailed analysis of the relevant facts as part of an investigative report.

13 Between May 13, 2019 and June 4, 2019, the Investigator conducted interviews of eight witnesses under oath, including the two Complainants and the

Councillor. The Investigator also reviewed a significant amount of documentation, including information relevant to the investigation collected from representatives of the Ottawa Police Service.

- 14 On June 27, 2019, the Investigator provided both the Complainants and the Councillor with a copy of his draft report along with an opportunity to identify any errors or omissions in that document within five business days. The Complainants responded on July 5, 2019. The Councillor asked for the initial deadline to be extended by an additional week to July 12, 2019. In light of the holiday weekend and the heavy legislative agenda preceding the summer break, the deadline extension was granted. Shortly before the new deadline, the Councillor requested a subsequent deadline extension of July 31, 2019 in order to consult a lawyer. In the interest of procedural fairness and natural justice, I granted the second deadline extension. The Councillor responded on July 24, 2019.
- 15 On July 29, 2019, the Investigator submitted his final investigation report.
- 16 I reviewed the investigation report, along with the sworn testimony and evidence gathered by the Investigator. Based on the testimony, the analysis of the facts, and the Investigator's findings, I prepared my draft report to City Council with my own findings and draft recommendations.
- 17 Again, while not required by the Complaint Protocol, but in the spirit of procedural fairness, I provided the Councillor with a copy of my draft report to City Council for comment. The Councillor responded and indicated he had no additional comments.
- 18 Pursuant to the Complaint Protocol, I filed my final report with the City Clerk on September 6, 2019.

BACKGROUND

- 19 In his report to me, the Investigator provides the following as background for the complaint:

"The Councillor was first elected in Ward 20 in 2014 and re-elected in the October 22, 2018 municipal election.

The Councillor's Ward 20 is geographically large and is predominantly rural with widely dispersed population. The villages include Osgoode, Metcalfe,

Greely, Vernon and Kenmore. The ward presents, according to staff in the Councillor's office interviewed by this office, a number of common issues for residents including excessive speed of motorists driving rural roads and response time for first responders including fire, paramedics and police. The Councillor advised as follows: "...so when I took over as a Councillor, everybody's biggest concern in rural communities is speeder."

In September 2015, the female Complainant, a resident of Osgoode, initially met the Councillor when he was in her neighborhood. She had communicated with the Councillor first in March 2016 with respect to concerns about an adjacent property to hers being used as a kind of local dumping ground. There were concerns about possible contamination of the land and risks to the Complainants' property. The female and her spouse corresponded with City officials and to a limited extent with the Councillor. It should be noted that the discussions led to a result that was satisfactory to the Complainants. The Councillor advised however that he found that the Complainants had acted unreasonably in questioning actions and decisions of City land use officials.

The Councillor testified that in 2015 he had met an OPS officer with a badge on his vest bearing the same surname of the female Complainant and he assumed that they were spouses. He had no other occasion to physically meet the male Complainant.

There was a Facebook page for residents of Osgoode, known as *Osgoode Around the Village*. I learned that this is a relatively small group and is available only to its members. The Councillor advised that he was not a member of this group but that he was aware of those Facebook discussions which were brought to his attention by others. A number of the entries for that Facebook group are from the female Complainant. These relate to vehicles speeding in Osgoode and concern for the safety of children in the village. There were also her posts with respect to paramedics and ambulance service for the area. The female Complainant had a particular interest in first-responders deployment in her community and this is reflected in a number of her posts.

In all of her Facebook posts, the female Complainant used her maiden surname. She stated that she used her maiden surname to make it clear she was expressing her opinions and not those of anyone else including her spouse. Given that her spouse was an Ottawa Police Service officer in a rural

area with a not-common surname, there were also concerns for the personal safety of the officer and her family. Although the female Complainant was active on social media, her spouse did not participate in any social media communication. He had and has no social media profile. Both of the Complainants, under oath, advised that whatever she posted on Facebook were her opinions and were expressed independently of her spouse. The male Complainant did not review or preview her posts. She did not seek his consent as to the content.

On July 16, 2017 the female Complainant posted the following message:

“In all honesty, I think the majority of speeders live in the village. No one comes through Osgoode to get anywhere. (maybe Metcalfe residents) I think if we all just drive a tad slower it would prevent issues. I know there will always be the village idiots that will rip through town. We can’t stop them and neither will stop signs. My biggest concern is kids trying to get across Osgoode main to go to the park.”

An extended conversation follows that post and then the female Complainant posted the following message:

“Radar is useless when people text all their friends their [sic] is a trap. Ottawa police do not have the resources to do radar hardly anywhere let alone Osgoode. Sadly. There are 2 officers assigned to Osgoode, Metcalfe, Greely Vernon (riverside south as well sometimes when short staffed) at any given time. And sometimes they get called into the city. It is the reality. We need to as a community report traffic issues to the police (not 911) and then it will get in their stats and the moron chief perhaps will do something about staffing rural areas appropriately.”

The Councillor confirmed that he was aware of these posts but had no particular reaction and took no action with respect to them. This was confirmed by the Councillor’s staff, to the best of their knowledge. He did acknowledge that the message of contacting police to report traffic issues but not via 911 was useful.

The background to police deployment is that at beginning of 2017 the Ottawa Police Service made changes to deployment of officers through its Service Initiative and collapsed 15 zones into 10. It also meant the loss of some community police officers in some rural areas in order to maximize police

presence in larger population centres within the city. In areas of Ward 20, it would mean likely longer response times. Whereas officers were previously dispatched out of Leitrim, which is relatively close to Osgoode, when they came to be dispatched out of Orleans as a consequence of the Service Initiative it would mean significantly longer response times for Ward 20. There would also be a change in that there would no longer be community police officers readily visible and available in villages like Osgoode. The Councillor acknowledged that as a result of SI there was “some cut for community policing” but he thought that had little impact in his Ward.

Interviews with the Councillor’s staff revealed several things. First, speeding in this rural Ward is a major concern for residents and the source of frequent calls to the Councillor’s city hall office. The staff members were not familiar with the Complainants and other than the 2016 correspondence related to land use of the neighbouring property were not aware of communication involving the Complainants or either of them.

In 2018 the Councillor was running for re-election with the voting day being October 22, 2018. One of the other candidates had raised police deployment and response times as an important issue in that campaign. The Councillor participated in an all-candidates political forum on September 13, 2018. He made certain claims about changes he was responsible for which he announced had improved police coverage in the ward.

The female Complainant attended that forum and disagreed with the Councillor’s claims or at least some of them although she said nothing at the time. On September 20, 2018, she posted on Facebook criticism of the Councillor and his claims about improved police coverage in the ward. This resulted in several Facebook posts in which the female Complainant and the Councillor were critical of positions advanced by the other. This included the following:

[from the female Complainant to the Councillor] “...*you never changed where police are dispatched from. Osgoode town and the whole zone has always been out of Leitrim station not Orleans. I will also tell you there are 2 police officers in this “zone” which includes Osgoode, Metcalfe, Greely, Carlsbad springs, and if stuff hits in the fan they are gone to the city....there is rarely 2 officers in this whole area...It makes me mad that [the Councillor] thinks there is enough police coverage.*”

[from the Councillor to the female Complainant]” *I can’t wait for the email request from you so we go through the proper channels for clarifications! **Spreading fears and misleading our community is not cool. I take this very serious!*** [emphasis added]

[from the Councillor to the female Complainant] “...if you would like to discuss the police operations, I would be able to arrange for you and **your “inside source” family member** to meet with community and/or senior police staff members to clarify the points you seem to believe are false. I’m available to arrange this in the Metcalfe Ward office, City Hall, Greely Police office or any police location you wish. [emphasis added]

*There is never an appropriate forum to **spread incorrect information about Ottawa Police Service or police operations, (especially Facebook) but I’m sure your husband could misinform you of that too.***

I didn’t realize you become a police operation expert on social media setting!”

[from the female Complainant]. “Please Pm [refers to Private Messenger feature on Facebook] me”

[from the Councillor to the female Complainant] “**I don’t play games!** You have my email address.” [emphasis added]

Only about 12 hours after the Facebook exchange, the Councillor, on September 21, 2018 sent an email to the then Chief of Police to which he had attached copies of the Facebook posts of the female Complainant.

“Good afternoon Chief,

I’d like to bring to your attention an issue that has been circulating with a resident of Osgoode Village, who happens to be the wife of an OPS officer.

Since the new SI was implemented, I have been sharing this with residents and highlighting the positive changes such as, boundary changes, station deployment and community police resources for my Ward. Additionally, I’ve been emphasizing the fact that the location in Greely is not closed and is used for Rural South officers.

*This resident has spoken ill of OPS in a public forum claiming these changes are false. Our City is one large family and I am concerned that OPS operations are being discussed on social media platforms by family members of our officers in such a negative perspective. I appreciate her husband's years of service with OPS, but I'm very concerned about the **scare tactics being used to upsetting the community**. [emphasis added]*

*Last night on Facebook, **she posted everything I've claimed about OPS** **SI changes is false**, and I told her that was not the correct forum to hold this conversation. Additionally, I invited her to email my city office so we could arrange a meeting with OPS staff and her, as well as her husband through proper channels. The conversation from Facebook has been included in this email as per the 5 screen shots attached. [emphasis added]*

*I would like to see if you and other officers from our community to inspector Brydon would be available to meet and clarify these issues. If the information that has been relayed to me since these changes is incorrect, or **if her husband is relaying incorrect information to her to scare the public**, I think it would be best to resolve this once and for all so we are all on the same page. If you feel that it's best to meet at one of the police stations or offices, I would gladly do so at your convenience. [emphasis added]*

I have yet to receive her request for the meeting on my city email; however, I have her coordinates from her past communications with my office, which I have provided below. [here the name (both married and maiden surname) and address are given]

Please let me know how you would like to proceed to address these community concerns.

Warmest regards,

George"

The Chief of Police forwarded the above email and attachments to the Inspector responsible for this area of the city on October 4, 2018. The Inspector met with the appropriate Staff Sergeant and considered the letter.

They determined that the information in the female Complainant's Facebook post was accurate and not misleading. It was also not a violation of any OPS policy/procedure. The information was not any kind of confidential internal information that should not be in the public domain. It was determined that the male Complainant should be provided with a copy of the email and advised that there would be no action taken by the OPS in response to the email. Subsequently, the Staff Sergeant met with the male Complainant and provided him with a copy of the email of September 20, 2018. That was the first time the male Complainant had seen the Facebook posts from his wife. He was assured that no action would be taken by the OPS. The OPS however has retained the email on file."

ANALYSIS

20 Based on the evidence provided in the Investigator's report, I considered the following two questions:

- 1) Did the Councillor contravene Section 5 of the Code of Conduct by improperly obtaining or using confidential personal information about the Complainants to further his private interests?
- 2) Did the Councillor's email to the Chief of Police amount to bullying, harassment or intimidation of the Complainants in contravention of Section 7 of the Code of Conduct?

Section 5 - Confidential Information

21 On the first question, Section 5 of the Code of Conduct stipulates:

5. Confidential Information

1. *By way of their office, Members of Council acquire confidential information from a variety of different sources including confidential personal information related to constituents who have contacted their office. Confidential information includes information in the possession of, or received in confidence by the City that the City is either prohibited from disclosing, or is required to refuse to disclose under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Members of Council shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or*

seek to further the member's private interest or improperly to further or seek to further another person's private interest.

2. *In accordance with the rules under MFIPPA and the Procedure By-law, Members of Council shall not;*

1. *Where a matter has been discussed in camera, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the in camera meeting (Subsection 42(1)d) of the Procedure By-law); and*

2. *Disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.*

22 The Investigator reported on Section 5 as follows:

"The Code of Conduct explicitly states that this instrument is a complement to existing legislation including the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

Although there is no explicit reference to "personal information" in the Code of Conduct, I find that the reference to "confidential personal information" in section 5.1 of the Code includes "personal information" within the meaning of MFIPPA. The City of Ottawa and the Ottawa Police Service are both "institutions" subject to MFIPPA. Personal information is defined in section 2 of MFIPPA to include "recorded information about an identifiable individual including information relating to the "marital status", "employment history of the individual", "any identifying number, symbol or other particular assigned to the individual", the "personal opinion or views of the individual except if they relate to another individual". However, a disclosure of personal information according to section 14(4) that discloses the "classification, salary range and benefits or employment responsibilities of an individual who is or was an officer or employee of an institution" does not constitute an unjustified invasion of personal privacy.

The individual Councillor is not an "institution" subject to MFIPPA and is not bound, by virtue of that statute, by its requirements for treatment of personal information in the custody or control of the municipality. Nonetheless, this

lacuna is partially addressed by the provision in section 5 and particularly section 5.2. of the Code of Conduct.

The question then is whether the Councillor used or disclosed the personal information of the Complainants or either of them in violation of section 5.

There are three prerequisites for such a finding:

- (1) The personal information must have been obtained in his capacity as a Councillor
- (2) The personal information is not available to the general public and
- (3) The Member's use of the personal information was to further or seek the Member's private interest.

In this case, the Councillor advised, under oath, that he was informed by the female Complainant when he first met her at her Osgoode residence in 2015 that her spouse was an OPS officer. The female Complainant acknowledges that interaction although doesn't specifically recall mentioning her spouse's occupation. The Councillor further advised that at a 2015 fair in Ward 20 a short time after his encounter with the female Complainant he spoke with a uniformed OPS officer with the name tag bearing the same last name as the female Complainant and understood that this was her spouse. The male Complainant acknowledges that he may well have attended the fair in question, but he has no recollection of the encounter described by the Councillor."

- 23 The Investigator made the following finding with respect to Section 5 of the Code of Conduct:

"I find that the personal information of the male Complainant was obtained by the Councillor in his official capacity. I further find that the personal information of the male Complainant, namely his name and occupation, would have been available to the general public by reason of section 14(4) of the *Municipal Freedom of Information and Protection of Privacy Act*. At the time the Councillor gathered the personal information of the male Complainant it is not clear that this was to further his private interest.

In relation to the land adjacent to that owned by the Complainants and concern for contamination of that land, the Complainants sent a joint email that was copied to the Councillor which identified both complainants as

owners of their property. From that he inferred the relationship of the two Complainants to each other.

In his email to the Chief of Police, the Councillor stated: “I appreciate her husband’s years of service with OPS, ...”. When asked about what knowledge the Councillor gathered about the male Complainant, he denied that he had sought or obtained information from the OPS, the Chief, senior officers within the OPS, the Police Services Board about the male Complainant. He stated he was referring to the fact that he had briefly met the male Complainant in 2015 and knew that his years of service would have been at least three years. The Councillor denied obtaining any other personal information of the male Complainant in terms of his work as a police officer.

Given this evidence I find, on a balance of probabilities that the Councillor did not contravene section 5 of the Code of Conduct.”

Section 7 – Discrimination and Harassment

24 On the second question, Section 7 of the Code of Conduct stipulates:

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 Violence and Harassment in the Workplace Policy.

25 The Investigator reported on Section 7 as follows:

“The relevant portion of this section is the “duty to treat members of the public... with respect and without abuse, bullying or intimidation.”

The Councillor testified that there was widespread fear among his constituents, that this was attributable to the Facebook posts of the female Complainant of September 20, 2018 and that the only purpose of the email to the Chief of Police was to get to the bottom of the apparent confusion over police deployment in Ward 20.

The Complainants assert that nothing in the subject Facebook posts was inaccurate or misleading and that the purpose of the email was to bully the

Complainants and intimidate them from further public criticism of the Councillor.

My office considered the following questions:

- 1) Was there widespread fear among Ward 20 constituents that can be linked to the Facebook posts of the female Complainant of September 20, 2018?
- 2) Was the subject email to the Chief of Police a genuine effort by the Councillor to resolve the apparent confusion over police deployment?

1) Fear and confusion

In his written response to the complaint, the Councillor stated:

“More recently, this past fall [the female Complainant] was commenting on social media again about lack of police in the ward and speaking very poorly of OPS. I engaged with her to invite her to come to my office to speak with police and myself to discuss the matter in an appropriate forum since this was unnecessarily causing fear among the community. Since my community is very aware of who her husband is and that is an officer with OPS, **her motives are completely mischievous with the intent to provide false data. By the next morning, I had so many people reach out with their concerns** that I felt these actions caused an impact throughout the ward. This time I felt it was serious enough to bring the Chief’s attention.” [emphasis added]

When asked what he meant by “scare tactics”, the Councillor responded as follows:

“Like, fear! By telling people we don’t have enough police, by telling—by putting this outside on social media, “we’re not protected by the Ottawa Police”. That’s to me, that’s fear, that’s a scare tactic on people, that’s not—I want to make sure that we really, we have the people or we don’t have the people. I—you as an off-you, Chief, are you telling me—am I right? Do I have enough officers to protect my community, or we don’t have enough officers? Because the w...”

The Councillor was emphatic that he had received many calls from constituents alarmed or at least very concerned with the assertions made by

the female Complainant in her September 20 Facebook post. In his written response to the complaint, the Councillor stated: "By the next morning, I had so many people reach out with their concerns that I felt these actions caused an impact throughout the ward."

What is apparent in the Facebook posts that the Councillor included with his email to the Chief of Police of September 21, 2018 are two posts from different individuals. Both of those individuals that responded to the female Complainant's posts appear to either disagree with her or at least indicate that they were not persuaded that there is a problem. It appears that the Councillor, at least initially, had characterized these posts as evidence of the fear that he was claiming existed in his Ward.

He agreed that only about 12 hours elapsed between the Facebook exchange and his email to the Chief of Police. When asked repeatedly how many calls he received from constituents responding to the Facebook exchange in that short time, he stated for the first time that many of the calls he had received antedated the Facebook exchange. He then advised that he might have received two calls after the September 20 email exchange.

Of particular interest, when asked to detail the complaints he attributed to the Facebook posts in question, he stated:

"George, are you lying? Are you sure there is—we have enough police? I heard that we don't have enough police" And all these are—and people are fear, because we are in a rural area and people now getting the word out that we're not protected, and we don't have enough police officers and that's not the truth. And I want to know, for sure from the police themselves, when they tell me that my community is protected, and if someone's telling I'm wrong, they're telling that this information is wrong and we don't have enough police officer, I need to know about it."

In his testimony, the Councillor disclosed that this was a big issue raised by his opponent in the municipal election campaign. He stated:

"So, when people start putting their name, and it is the opponent—my opponent was always talking about the policing. So those information was coming out, and I'm trying to, kind of, back—so that was the community fear, every time I go to an event, and everybody's up in arms on me...."

When asked was this a big issue in your re-election campaign, he responded:

“Yes, yes, because they made it a big issue, but there was no issue.”

When asked whether there was another candidate or candidates who were specifically focusing on police protection, he responded:

“Yes, and on the information that—on the information that he was attacking—I shouldn’t say attacking—the information they were coming at me in the community from it, and they keep saying “they have the sources, they have the sources”.

In another exchange during his interview, the following exchange occurred:

Q. So, so, all of this upset you’re talking about, you’re laying all of this at the feet of the [female Complainant]. But you’ve also told me there’s another candidate who running against you for re-election who’s also making an issue of police deployment, right?

A. Yes

In a further exchange during his interview, the following was said:

Q. Okay, why did you include the words, in your email to the Chief, “...if her husband is relaying incorrect information to her to scare the public”? And I guess, how would you know what information the husband was sharing with his wife, and why would you suggest that the purpose would be to “scare the public”?

A. Because, to bring you back to the conversation we had, because those allegation in the community, they bring lots of fear to the residents and to the safety of the residents in my ward. And, that’s basically her comment and direct information about the program and the deployment and the operation of the police. ...”

Q. But you’re suggesting to the Chief that [male Complainant] has responsibility for scare tactics being used to upset the community. You suggest he’s relaying incorrect information to scare the public. But we’ve already agreed—you don’t know what was said between [the Complainants].

- A. So, if the information that it is—we're talking about, if the information were, they will, they are—so, sharing the information of Ottawa Police to—it doesn't matter, his wife, his neighbor—those are information they shouldn't be shared. Those are information from Ottawa Police and for us to know how we are, our community being served.”

When asked for records that would corroborate his explanation, he asserted that these were all phone calls on his personal phone. He acknowledged there was no record of these calls. Curiously, in his representation to the Chief of Police he made no reference to these earlier phone calls and the only attachment was the September 20th Facebook exchange.”

- 26 Of particular interest is that neither the Councillor, his office at City Hall nor his satellite office in Metcalfe could provide the Investigator any evidence or records pointing to any significant surge in phone calls on his office phone that could be related to anything the Complainant had said about police deployment. Significantly, there is no evidence or records of any particular spike in constituent feedback, in any format, between the exchange of Facebook posts on September 20, 2018 and the time the Councillor sent his email to the Chief of Police.
- 27 The Investigator also reported that:

“...The Councillor admitted that, until the fall of 2018, he also used his personal Facebook account for City business but then learned that was not appropriate and ceased use of his personal account for City business. He did not provide from his personal Facebook account any evidence to corroborate his claims of widespread concern and confusion. He also had an Instagram account but advised that was only for personal business.

2) Purpose in sending the September 21, 2018 email to the Chief of Police

The Councillor has provided several different explanations for his purpose in writing to the Chief of Police.

In his written response to the complaint he stated:

“My only hope in sending this email to the Chief was to show OPS that this was in fact happening. I would think that if it was deemed necessary, **they could gently remind staff that information about police operations**

that was being shared by themselves or family members should remain accurate and not demeaning.” [emphasis added]

Initially when questioned however, the Councillor indicated that his motivation for sending the letter was to get clarity for himself and his constituents on police deployment. He denied that he was influenced by the proximity of the municipal election and the fact another candidate was discussing the issue of police deployment.

Subsequently in the interview, he acknowledged that he was also annoyed at the challenge to his statements on police deployment that he attributed to the male Complainant and he thought it important that the Chief knew what this officer was allegedly doing to undermine the OPS.

The Councillor testified that he had never considered what possible consequences there could be for the male Complainant.

The Councillor made no effort to speak directly with the male Complainant to clarify concerns of the Councillor even though he was apparently convinced that was the source of the criticisms expressed by the female Complainant.

He testified that he hadn't considered raising his concern about the male Complainant with the appropriate official(s) within the OPS chain of command. The normal OPS sequence for someone with a complaint about an officer entails approaching first the officer's Staff Sergeant, then elevate the concern to the appropriate Inspector, then to the Superintendent, then Deputy Chief and finally the Chief. The Councillor said his first thought was to send this to the Chief of Police and leave it to him to decide how the OPS would deal with the male Complainant. He stated that he went to the Chief because "he can give me speedy attention into that".

The Councillor was asked why he didn't simply request a meeting and why he included in his email the underlined comments that suggest wrongdoing on the part of the male Complainant. He then insisted that he was confident that the male Complainant was fully complicit in each of the Facebook posts in question. When asked directly what evidence he had to support his assertion he advised he had none and was relying on his understanding of married persons and what information they would share with each other. When asked explicitly whether there were any representations with respect to police deployment from the Complainants that the male Complainant had either

authorized his wife to post her comments or had ghost-written them, he acknowledged there was nothing of that sort.

Despite the urgency the Councillor described in sending his September 21, 2018 email to the Chief of Police, he admitted that he did nothing to follow up with the Chief apart from a chance encounter several weeks later when he asked the Chief whether he had received his letter and he was told that it had been received. Given the urgency he described in quickly responding to what he claimed were many concerns from his constituents to the September 20, 2018 Facebook posts, one might have expected the Councillor to be pressing the Chief of Police for some responsive action. His unconcern for follow up action after September 21, 2018 appears inconsistent with his justification for sending the email to the Chief of Police.

Furthermore, I considered the very different reaction of the Councillor to the female Complainant's post of July 16, 2017 which he had seen at the time. Despite the fact she asserts insufficient police resources and explains the consequences and even uses pejorative language to describe the Chief of Police, the Councillor's only comment was that at least she had reminded others to report traffic issues to the police but not via the 911 line. He testified that this Facebook post caused fear in the ward and that this was a serious concern for him. His explanation for his seeming indifference was that he took no action because the post wasn't directed at him. He then said this wasn't really a concern since it was someone "venting" and he wasn't elected to police what the female Complainant said on Facebook. One apparent difference between his seeming indifference to the female Complainant's post of July 16, 2017 and his very strong reaction to her posts on September 20, 2018 is that the later posts would have occurred late in the 2018 municipal election campaign and were critical of the Councillor.

When he was asked why he didn't accept the female Complainant's suggestion on September 20, 2018 to take the conversation off-line by using Private Messenger, he responded as follows:

Q. But why, she offered to -private message as I understand it is kind of taking the conversation offline. So, it's not available to everybody (Sure) on Facebook, why wouldn't, why did you not take her up on that offer?

A. Because if- the minute you start going into private message, it goes into my private-those messages- I don't answer anybody on my private messages, to constituents. And second of all, then she could say I said that, she said that – I didn't want to play that game. Because I had, **I've had my, I had an experience with the individual before.** I don't want my role to be translated. Because I knew that's not going to end it. So, when 3200 Lane [refers to discussions between Complainants and the City about adjacent property to that owned by the Complainants] came in, I tried to kind of give back and forth information when the other issue came up, but there's **no way I can win because sometimes you understand, sometimes-we're all elected official and we all have people that they have a target on you. And it doesn't matter what you give them. Even if you give them the answer, they are not going to be happy with it so I save both of us the hassle.**"
[emphasis added]

The Councillor's words and behavior indicate an animus towards the Complainants. He was apparently unhappy with his experience with them in 2016 over a land use issue and appears to have viewed all of the subsequent criticism of him and his public statements on police deployment from residents in his ward as criticism attributable to a few posts of the female Complainant on Facebook. He assumed that the male Complainant was complicit in the critical Facebook posts. Despite his insistence that the email to the Chief of Police was simply to clarify a misunderstanding, the animus towards the Complainants is evident in the text of the email and his statements when interviewed under oath. His conduct both before sending his email to the Chief of Police and subsequently is inconsistent with simply seeking clarification of a misunderstanding."

28 The Investigator made the following finding with respect to Section 7 of the Code of Conduct:

"In reviewing all of the evidence, it is clear that speeding and police deployment was a significant issue for the residents of Ward 20. It is also clear that questions around police deployment were widespread in the Ward. The female Complainant obviously upset the Councillor with posts that were at times aggressive and used pejorative language about the Chief of Police. There is no evidence that the female Complainant disclosed, in her Facebook

posts, any confidential internal OPS records or plans. She expressed an opinion as any citizen is entitled to do about the delivery of service in her neighbourhood. The evidence is that she acted alone in her Facebook posts and in fact, on the evidence given under oath, the first time her husband saw the Facebook posts of September 20, 2018 was when his superior officer showed them to him along with the Councillor's email to the Chief of Police. The Councillor exaggerated the response to the female Complainants Facebook posts of September 20, 2018. The evidence certainly does not support the Councillor's contention that widespread concern about police deployment was triggered or attributable to a small number of Facebook posts from the female Complainant. The evidence is that this was an issue in the 2018 municipal election and that another candidate in Ward 20 was making an issue of police deployment and discussing this at election events before the October 22, 2018 vote.

I find that his reaction to the Facebook posts of the female Complainant was unjustified and excessive. I find that in sending his September 21, 2018 email to the Chief of Police and identifying both Complainants and revealing that the male Complainant was an OPS officer he did so for the primary reason of silencing the female Complainant and causing the male Complainant grief in his workplace. The Councillor's exaggerated claims of fear and harm, his contradictory explanations, and his aggressive response to legitimate public debate on the question of police deployment in rural Ottawa weakens his credibility in this case. Considering all of the circumstances and the Councillor's own evidence, this office finds that his explanation is not credible. On a balance of probabilities, I find that the major motivation of the Councillor was to bully and intimidate the Complainants and each of them in the hope that female Complainant might cease her critical Facebook commentary of him."

FINDINGS

- 29 Based on the Investigator's report, I have prepared my own findings with respect to the allegations against Councillor Darouze.

Section 5 of the Code of Conduct

- 30 Having reviewed the evidence and the sworn testimony of the witnesses, I concur with the Investigator's conclusion and find that Councillor Darouze did not violate any confidences and did not breach Section 5 of the Code of Conduct.

Section 7 of the Code of Conduct

- 31 The evidence and the information provided by OPS to the Investigator clearly reveals that the female Complainant did not post false or confidential information regarding police service standards. The OPS also confirmed that the information was public.
- 32 No evidence was found to corroborate the Councillor's claim that the male Complainant shared OPS information with his spouse.
- 33 Throughout the investigation, Councillor Darouze has consistently defended his actions. In his response to the draft investigation report, the Councillor expressed regret that the Complainants perceived his actions to be harassing but maintained that his intent was always to clarify information related to policing in the ward.
- 34 The Councillor stated in his response to the investigation report:
- “My intent behind the email was not malicious, nor intended to bully, and I strongly believe the complainant shared this to cause uncertainty in the community. What other motives would someone have to make false claims about such a serious situation?”
- 35 The evidence does not support the Councillor's claims that the female Complainant's Facebook posts led to fear and uncertainty in the community.
- 36 Having reviewed the evidence and the sworn testimony of the witnesses, the written submissions of the Councillor and of the Complainants, I concur with the Investigator's conclusion and find that Councillor Darouze did breach Section 7 of the Code of Conduct when he sent an email to the then Chief of Police alerting him to the social media activity of the female Complainant, identifying her as the wife of an OPS officer, implying that the Officer was sharing internal police information with his wife and asking for the Chief's attention to the matter.

RECOMMENDATIONS

- 37 As provided for in both the *Municipal Act, 2001* and the Code of Conduct for Members of Council, I may make recommendations to City Council with respect to sanctions and other corrective actions when I am of the opinion that a contravention of the Code of Conduct has occurred.
- 38 Section 223.4(5) of the *Municipal Act, 2001* and Section 15 of the Code of Conduct for Members of Council authorize Council to impose either of the following penalties:
1. A reprimand.
 2. Suspension of the remuneration paid to the member in respect of his or her service as a member of council or a local board, as the case may be, for a period up to 90 days.
- 39 Section 15 also authorizes the Integrity Commissioner to recommend Council impose any of the following sanctions or other remedial action:
- Written or verbal public apology;
 - Return of property or reimbursement of its value or of monies spent;
 - Removal from membership of a committee; and
 - Removal as chair of a committee.
- 40 Councillor Darouze was cooperative at every stage of the investigation and was candid in his responses. I recognize the Councillor is passionate about his community. I am also mindful that this is the first time the Councillor will have been found to have contravened the Code of Conduct.
- 41 However, the Councillor's actions have had a negative impact on the Complainants, in particular the male Complainant who was not involved in the Councillor's dealings with the female Complainant. Further, I am of the opinion that Councillor Darouze does not believe his actions crossed a line.
- 42 A public report respecting a contravention of the Code of Conduct is significant. However, I believe further corrective actions are warranted to reinforce the standards set out in the Code of Conduct.

43 Therefore, I recommend that City Council:

1. Receive this report, including the finding that Councillor Darouze has contravened Section 7 of the Code of Conduct;
2. Direct Councillor Darouze to issue a sincere written apology to both Complainants within 7 days of Council receiving this report;
3. Direct Councillor Darouze to write to the Interim Chief of Police, within 7 days of Council receiving this report, to make him aware of this report and request that his email to the Chief of Police, dated September 21, 2018, be removed from the personnel file of the male Complainant; and
4. Reprimand Councillor Darouze in accordance with Section 15 of the Code of Conduct (Compliance with the Code of Conduct).

44 This report is made pursuant to Part II, Section 11 of the Complaint Protocol.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Marleau". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Marleau".

Robert Marleau, C.M.
Integrity Commissioner