

**Report to  
Rapport au:**

**Council  
Conseil  
27 May 2020 / 27 mai 2020**

**Submitted on May 22, 2020  
Soumis le 22 mai 2020**

**Submitted by  
Soumis par:  
Robert Marleau, Integrity Commissioner/Commissaire à l'intégrité**

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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2020-OCC-GEN-0020**

**SUBJECT: INTERIM REPORT TO COUNCIL ON AN INQUIRY RESPECTING THE  
CONDUCT OF COUNCILLOR CHIARELLI**

**OBJET: RAPPORT PROVISOIRE PRÉSENTÉ AU CONSEIL MUNICIPAL  
RELATIF À UNE ENQUÊTE PORTANT SUR LA CONDUITE DU  
CONSEILLER CHIARELLI**

**REPORT RECOMMENDATIONS**

**That Council receive this report for information.**

**RECOMMANDATIONS DU RAPPORT**

**Que le Conseil municipal prenne connaissance de ce rapport.**

## BACKGROUND

On July 11, 2012, City Council approved the establishment of the Integrity Commissioner position. On July 1, 2013, the Code of Conduct for Members of Council came into effect (City of Ottawa By-law 2018-400).

The City of Ottawa's Integrity Commissioner fulfills the role of Integrity Commissioner, Lobbyist Registrar and Meetings Investigator.

The jurisdiction of the Integrity Commissioner is set out in s. 223.3(1) of the *Municipal Act, 2001* (the "Act"). The Integrity Commissioner in Ottawa is responsible for performing the functions assigned to it by the City which include all of the functions listed in s. 223.3(1), as follows:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act, 2017*, c. 10, Sched. 1, s. 19 (1).

[...]

### Powers and duties

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.

This interim report relates to an inquiry undertaken by the Integrity Commissioner in his role as Integrity Commissioner pursuant to his jurisdiction set out in s. 223.4 of the Act, as follows:

#### Inquiry by Commissioner

223.4 (1) This section applies if the Commissioner conducts an inquiry under this Part,

(a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member; or

(b) in respect of a request made by a local board or a member of a local board about whether a member of the local board has contravened the code of conduct applicable to the member. 2006, c. 32, Sched. A, s. 98.

#### Powers on inquiry

(2) The Commissioner may elect to exercise the powers under sections 33 and 34 of the Public Inquiries Act, 2009, in which case those sections apply to the inquiry. 2009, c. 33, Sched. 6, s. 72 (1).

The Integrity Commissioner's authority to issue an interim report is set out in Section 9 of the Complaint Protocol (Appendix "A" to the Code of Conduct for Members of Council, City of Ottawa By-law 2018-400), as follows:

"The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation."

This is the second interim report submitted to Council respecting an inquiry conducted under s. 223.4(1) of the Act and Section 9 of the Complaint Protocol. Pursuant to s. 223.6(3), this report shall be made available to the public.

The first interim report respecting a delay in completing the inquiry was received by City Council on February 12, 2020.

## **DISCUSSION**

As detailed in my first interim report, I initiated an inquiry in response to several formal complaints alleging that Councillor Rick Chiarelli (the “Respondent”) contravened various sections of the Code of Conduct for Members of Council (By-law 2018-400) (the “Code of Conduct”).

In my first interim report, I advised Council that my investigation was at a standstill pending the Respondent’s decision to participate in an interview or to provide a response to the allegations. I further advised Council that I would allow for a reasonable amount of time for the Respondent to recover from his medical issues and then seek his response to the allegations set out in the formal complaints.

On February 11, 2020, the evening prior to Council’s consideration of my first interim report, the Respondent’s legal counsel issued a letter to City Council and myself, formally requesting that “all current proceedings and related investigations be stayed and/or terminated, on the basis of actual bias and/or Councillor Chiarelli’s reasonable apprehension of bias.” In that letter, the Respondent confirmed he remained prepared to move forward with a judicial review application, but also indicated his intention to “exhaust any and all internal mechanisms, related to the City’s internal policies and procedures, so that it cannot be later argued that a judicial review application was somehow premature.”

Accordingly, further efforts have been made to engage with the Respondent and secure his participation in the investigation.

### **Summary of the complaint process since February 12, 2020**

Through communications with his legal counsel, I have sought to confirm the Respondent’s intention to voluntarily participate in an interview as part of the inquiry.

On February 12, 2020, in response to the letter from the Respondent’s legal counsel, I formally declined the Respondent’s request to stay and/or terminate the inquiry and reiterated my interest in interviewing the Respondent. I requested confirmation of the Respondent’s willingness to participate by February 17, 2020. I was subsequently informed that the Respondent could not provide a firm date or time for an interview due to his ongoing medical issues. Again, no indication was provided that the Respondent would be willing to participate.

In the absence of a specific date and time for an interview, a final effort was made to confirm if the Respondent intended to participate in the investigation. On February 27, 2020, I was informed that the Respondent was “prepared to participate in any investigative process that is fair and balanced,” but that he could not “properly assess the reasonableness of any interview request” until he is medically cleared to return to work. The Respondent’s legal counsel provided two medical certificates indicating the Respondent was to remain off work until March 24, 2020, at which time he would be reassessed by his physicians.

As the Respondent refused to provide a clear commitment to participate willingly in an interview, I opted to invoke the powers of summons under Section 10(1) of the *Public Inquiries Act, 2009*, requiring the Respondent to attend an interview and provide evidence under oath or affirmation. The interview was scheduled for April 6, 2020, approximately 1.5 weeks following the Respondent’s anticipated return to work, as outlined in the medical certificates provided.

On February 28, 2020, I initially sought the authorization of the Respondent’s legal counsel to serve the summons to him, on behalf of his client. I received no response from the Respondent’s legal counsel.

Consequently, on March 4, 2020, I engaged the services of a process server to serve the summons on the Respondent at his home. The process server made four attempts to serve the Respondent. During the first three attempts, the process server observed individuals in the house who would not answer the door.

On the fourth attempt (March 16, 2020), the process server arrived at the Respondent’s home and observed the Respondent sitting at a computer through a front window. As the process server walked up the driveway, he saw the Respondent get up from his chair and move towards the front door. When he knocked on the door, the process server could hear the door then lock. After knocking and ringing the bell, the process server saw the Respondent looking through the front window. The process server waved the envelope at the Respondent and informed him that he was serving a summons from the City of Ottawa. When the Respondent refused to answer the door, the process server placed the envelope at the door and concluded that the documents had been brought to the Respondent’s attention in fulfillment of the service requirements under the *Public Inquiries Act, 2009*. The process server provided a sworn affidavit detailing these events.

In the days after the Respondent was served, the situation involving the COVID-19 pandemic evolved quickly. On March 17, 2020, Premier Ford declared a state of emergency in the Province of Ontario.

On March 20, 2020, in light of the measures in place respecting the COVID-19 pandemic, I advised the Respondent's legal counsel that the interview was postponed until further notice.

Shortly thereafter, on March 25, 2020, the Mayor of the City of Ottawa declared a state of emergency due to the COVID-19 health crisis. Then on March 28, 2020, the Province issued an emergency order prohibiting gatherings of more than five people.

As it became clear the COVID-19 measures would be in place for some time, and in an effort to avoid undue delay, I decided the interview would have to proceed by way of a teleconference.

During this time, the Respondent appeared to resume some of his official duties. Specifically, the Respondent attended the City Council meeting of February 26 and participated in the Special City Council meetings of March 25 and April 8 (by teleconference). He also appeared to be resuming some of his constituency duties and was active on social media (including a personal video message he posted on March 22).

No updates were offered by the Respondent or his legal counsel with respect to the Respondent's medical recovery. It continued to be my understanding that the Respondent's anticipated return to work date was March 24, 2020 (although it is clear that he had already returned to some of his duties almost a month earlier).

On April 14, 2020, I advised the Respondent and his legal counsel that the interview was rescheduled to May 6, 2020 and would proceed as a teleconference. I requested confirmation of the Respondent's participation.

On April 17, 2020, I received a response from the Respondent's legal counsel. I was advised that the Respondent had experienced another medical emergency on April 14, 2020. I was also provided with a medical certificate from the Respondent's reassessment on March 26, 2020 which stated the Respondent was to remain off work until June 29, 2020. I note that, despite that advice, the Respondent participated in the April 8 Council meeting.

In addition to the update on the Respondent's medical situation, the Respondent's legal counsel argued that, in his opinion, the Respondent had not been properly served with

any summons. Taking into consideration the efforts of the previous months, I responded to his legal counsel on April 24, 2020 and provided the Respondent with notice that the May 6, 2020 interview was cancelled and advised that no further requests for interviews would be made. If the interview had proceeded as planned and the Respondent had failed to attend as summonsed, I would have had the option to apply to a court, under the *Public Inquiries Act, 2009* to have Councillor Chiarelli held in contempt for his failure to comply with the summons. However, I determined that I would not pursue this course of action as I do not intend to spend more taxpayers' money in an effort to compel the Respondent's participation.

I further informed the Respondent's legal counsel that in the absence of his participation, I intended to rely on the Respondent's public statements as his response to the allegations set out in the formal complaints and would proceed with making my findings and reporting to Council as appropriate.

Two weeks later, notice of my intent to provide Council with this second interim report was released with the Council Agenda on May 8, 2020. Shortly thereafter, on May 12, 2020, I received a response from the Respondent's legal counsel in which he asserted that the Respondent had in fact provided confirmation of his intention to participate in the investigation in past correspondence. I was further advised that the Respondent's legal counsel had received instructions to move forward with an application for Judicial Review.

The assertion that the Respondent had confirmed his intention to participate in the investigation is simply not true. Correspondence from the Respondent's legal counsel has indicated a willingness to "consider the request" for participation and nothing more. On May 12, 2020, I provided the Respondent with a final opportunity to provide his firm and unequivocal commitment to participate in the investigation when he is medically cleared to do so, by end of day on May 15, 2020. I received no response from the Respondent or his legal counsel.

As of the writing of this report, I have not received notice of an application for Judicial Review.

### **The Respondent's participation in the investigation**

I acknowledge that the Respondent has faced difficult and serious medical challenges. Notwithstanding the Respondent's medical challenges, after more than a fair opportunity to confirm that he will participate in the investigation, my conclusion is that the Respondent has no intention to do so. This has been demonstrated by the

Respondent's refusal to provide any response to the allegations in the initial stages of this process, his unwillingness to voluntarily commit to attend an interview and his efforts to evade service of the summons.

### **Next steps**

I have taken all of the factors into consideration and determined that my investigation will conclude without the Respondent's participation.

As previously stated, I will now proceed to intake the Respondent's public statements as his refutation and denial of the allegations in the formal complaints and formulate my findings accordingly.

If the complaints are sustained, I will file my reports with City Council setting out my findings and recommendations as soon as it is practicable.

### **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

### **CONSULTATION**

As this is considered an internal administrative matter, no public consultation was undertaken.

### **COMMENTS BY THE WARD COUNCILLOR(S)**

This is a city-wide report.

### **LEGAL IMPLICATIONS**

There are no legal impediments to City Council receiving this report.

### **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

### **FINANCIAL IMPLICATIONS**

There are no financial implications associated with this report.

### **ACCESSIBILITY IMPACTS**

There are no accessibility impacts associated with this report.



**TERM OF COUNCIL PRIORITIES**

This report has no direct impacts on the City's strategic priorities or directions identified for the current Term of Council.

**DISPOSITION**

The Integrity Commissioner asks City Council to accept this interim report and await further comment.