

CITY OF HAMILTON INTEGRITY COMMISSIONER, DAVID G. BOGHOSIAN

Citation: Private Complaint re: Councillor Danko Tweet (Re) –
DGB-HamiltonICI-2024-01

Date: May 27, 2024

REPORT ON COMPLAINT

Introduction

[1] Jelena Vermilion filed a Code of Conduct complaint against Councillor John-Paul Danko on April 15, 2024 in respect of a public posting on the social media site X by Councillor Danko on April 3, 2024. It was alleged that the tweet violated s. 2 of the Code of Conduct (“COC”).

Investigation

[2] On April 3, 2024, Councillor Danko “quote tweeted” a CBC article covering the decision of a police group to no longer donate proceeds from its golf tournament to Hamilton’s YWCA following anti-police comments by what the article stated was one of the award winners at the YWCA’s 2024 Women of Distinction event. The event was held on March 7, 2024. The article expressly named Ms. Vermilion as the speaker who uttered negative comments about the police and quoted some excerpts from her acceptance speech in that regard. Councillor Danko’s accompanying tweet about the event, at 8:25 am on April 3, 2024, was as follows:

"There were two recipients that went out of their way to spit in the face of those in attendance. While I just dismiss them as ungrateful, self-righteous, toddlers with a microphone, I'll continue supporting the @YWCA.Hamilton, but certainly won't be at future events either."

[3] About two hours later, at 10:35 am the same day, the foregoing tweet was removed and Councillor Danko then posted the following tweet:

“Earlier, I posted a Twitter message that is beneath the dignity of my office. I sincerely apologize and will strive to do better in future.”

[4] In response to a subsequent inquiry by a media outlet, Councillor Danko is quoted as stating:

“I posted something that I immediately removed and apologized for and, as far as I’m concerned, the matter’s over.”¹

[5] One of Hamilton YWCA 2024 Women of Distinction who was the subject of Councillor Danko’s tweet was the Complainant, Jelena Vermilion. At my request, she provided me with a video of her acceptance speech, which I watched. Statements of interest made during her entirely extemporaneous, ~3.5 minute speech included the following:

- She denounced police violence (but did not go further, such as by saying it was systemic, rampant or widespread);
- She asked the audience to “shame councillors who are not doing their part to serve their constituents,” without providing any context or naming any particular councillors;
- “I also would like you to take a moment to just consider the people who are not here. I think of Chevranna Abdi, a sex worker in 2003 who lost her life from police interaction. I think of other sex workers in town. I think of the woman who was attacked last year;”
- She told the audience that they should all be proud of the work they do, “except maybe policing, that’s my personal opinion.”

[6] I was unable to obtain the video of the other award winners’ speeches to determine what had been said by the other award winner referred to in Councillor Danko’s original tweet.

Councillor Danko’s Response

[7] On April 18, 2024, I wrote to Councillor Danko providing him with the Complaint and requesting his Response within 10 days. Councillor Danko provided his response to me on May 3, 2024. He indicated he had been assisted in responding by a lawyer. The Response can be summarized as follows:

- Legal Submissions
 - Section 2 of Hamilton’s Council Code of Conduct are merely statements of principle, which cannot be applied to make a finding of a breach of the Code of Conduct;
 - A guide written by the Office of the Ombudsman Ontario to assist those drafting codes of conduct states that “if a municipality intends for its code of conduct to apply to members’ conduct on social media and other online platforms...this should be clearly stated in the

¹ https://www.thespec.com/news/council/hamilton-councillor-apologizes-for-toddlers-jab-at-ywca-awards-gala-speakers/article_2b66a7d8-6691-57a2-960b-eadd13eb466d.html.

code.”² He further pointed out that other Ontario municipalities’ codes of conduct have provisions specifically addressing social media use but Hamilton’s does not, suggesting that Hamilton did not intend to regulate councillors’ conduct while using social media.

- Factual Submissions

- Another Hamilton councillor posted a tweet before he did on April 3rd supporting Ms. Vermilion’s comments;
- At 11:20 am on April 3rd, Ms. VERMILION tweeted a reply to Cllr. Danko’s 10:35 am “apology” message with the words “Thank you;”
- The Complainant republished a screen capture of Cllr. Danko’s original, deleted tweet at 11:42 am on April 3rd, followed by “Resignation is the most sincere form of apology;”
- On April 15th, the Complainant not only identified herself as one of the persons referred to in Cllr. Danko’s original tweet but also purported to identify the other award winner who made comments that attracted Cllr. Danko’s criticism, who he had not previously identified;
- The Complainant continued leveraging the impugned statement of his to garner continued media coverage from major local media outlets;
- He had limited to no knowledge of the Complainant prior to the March 7th gala;
- He felt the Complainant’s statements at the Gala were extremely disrespectful to the many Hamilton police officers present at the Gala as well as the police officer who was the Complainant’s co-nominee, as well as that nominee’s family and friends present to support her;
- “Elected officials are often expected to publicly comment on a wide range of issues, both directly related to City business and indirectly related to issues of public interest;”
- “The response of current and former members of Hamilton Police Services to the conduct of the complainant at the 2024 Women of

² “Codes of Conduct, Complaint & Inquiry Protocols, and Appointing Integrity Commissioners: Guide for Municipalities,” Ombudsman Ontario 2023, <https://www.ombudsman.on.ca/resources/brochures,-posters-and-resources/municipal-resources/codes-of-conduct,-complaint-inquiry-protocols,-and-appointing-integrity-commissioners>.

Distinction Awards was determined [by media outlets] to be an issue of public interest;”

- “I sincerely regret that I allowed my personal opinion about the Complainant’s anti-police lives message at the YWCA Women of Distinction Awards, lead to a personal comment about the complainant’s maturity level. I understand that elected officials are held to a higher standard of accountability than members of the public and accept that my comments were unprofessional and may be considered insensitive by some. It was for these reasons that within a very short timeframe I deleted the original Tweet and issued a public apology which the complainant to give credit, and thanked me for.”
- “It is reasonable that I may hold a personal opinion of an individual based solely on my observation of their own behavior and actions;”
- “The Office of the Integrity Commissioner should not be used as a mechanism to settle personal grudges or in retaliation against elected officials for their political views. It is becoming increasingly common for political leaders to be personally targeted by members of the public in retaliation for their political views....Following the original social media comments on April 3rd, 2024, the complainant has extended concerted efforts to leverage the complaints process in order to disparage me personally, far beyond the context of the actual complaint. Therefore, I believe that it is reasonable to conclude that this complaint is vexatious and an attempt to restrict my ability to fulfil my duties as an elected representative;”
- “It is in the public interest and part of my duties as an elected City Councillor to speak publicly about incidents that directly impact members of the Hamilton community and organizations that are community partners with the City of Hamilton.”

[8] On May 13th, I asked for Councillor Danko’s feedback on the application of s. 8.(1) of the Code of Conduct (set out below) in the circumstances, as it had not been raised as a ground for breach by the Complainant but which I had identified as being of relevance to the Complaint after reviewing his submissions about s. 2.(3) of the Code. Not having heard back from him, I emailed him a follow up on May 20th, to which he responded that he would have his response on this narrow issue by the end of the week (May 24th). Not having heard from him by May 24th, I emailed him again on May 25th indicating that unless I had his response by mid-day on May 26th, I would be finalizing my report without his feedback on this issue. I did not hear back from him further by May 27th so I have issued my Report without his submissions on this issue.

Complainant's Reply

[9] On May 4th, I sent Cllr. Danko's Response to the Complainant asking for her Reply within 5 days of my email or such longer time as she might request. I never heard from her following this email.

Applicable Legislation

[10] Hamilton's Council Code of Conduct contains the following provisions:

SECTION 2: KEY STATEMENTS OF GENERAL PRINCIPLE UNDERLYING THE CODE

2. The key statements of principle that underlie the Code of Conduct are as follows:

(3) every Member shall perform his or her duties in office and arrange his or her private affairs in a manner that promotes public confidence and will bear close public scrutiny;

SECTION 8: CONDUCT IN OFFICE, INCLUDING AT COUNCIL AND COMMITTEES

8. (1) Every Member shall conduct him or herself with decorum in the course of his or her performance, or required performance, of his or her responsibilities as a Member, and at meetings of Council and Committees of Council and other meetings, and in accordance with the provisions of the Procedural By-law, and other By-laws of the City, where applicable.

Analysis and Findings

- 1. Does a "statement of principles" section of a code of conduct contain enforceable provisions the breach of which can give rise to a finding of a code of conduct violation?**

[11] Section 2(3) of the Code, which reads "Every Member shall perform his or her duties in office and arrange his or her private affairs in a manner that promotes public confidence and will bear close public scrutiny," is found within a section of the Code entitled "KEY STATEMENTS OF GENERAL PRINCIPLE UNDERLYING THE CODE."

[12] In *Greater Vancouver Regional District v. British Columbia (Attorney General)*,³ a panel of the British Columbia Court of Appeal ("BCCA") considered legislation establishing "regional districts" by the province which contained the following section:

³ 309 BCAC 124, [2011 BCCA 345 \(CanLII\)](#).

3. The relationship between regional districts and the Provincial government in relation to this Act is based on the following principles:

...

- (c) notice and consultation is needed for Provincial government actions that directly affect regional district interests ...

[13] The BCCA held that as the “notice and consultation” provision was contained in a section dealing with general statements of principle, the Legislature did not intend them to have any legal effect; as such, they could not be relied upon as establishing a legal duty.⁴

[14] This principle has been applied by Ontario Integrity Commissioners to similarly find that statements of principle in codes of conduct are merely guides to the interpretation of the other, operative sections of the code and do not set out separately enforceable obligations.⁵

[15] Although I do not personally agree with this interpretation, given the high degree of deference that should be accorded decisions of appellate courts of other provinces and in order to promote consistency amongst decisions of Ontario integrity commissioners unless there are compelling reasons not to, I find that s. 2.(3) of Hamilton’s Code of Conduct does not set out enforceable obligations the breach of which could give rise to a finding of a COC violation.

2. **Can social media posts give rise to a code of conduct violation notwithstanding that such communications are not specifically mentioned in the code of conduct?**

[16] I acknowledge the Ombudsman’s guidance to municipalities that, in fashioning codes of conduct, if social media posts are to be regulated by the code of conduct, that should be clearly stipulated. While, for the sake of certainty and transparency, such express provisions would be ideal, it seems absurd that Code provisions governing communications would exclude social media communications simply because the phrase “social media” is not expressly used in the Code. I say this given the ubiquitousness of social media as a forum of communication in this day and age, and the reach that social media messages can have. Were the interpretation of the Code asserted by Cllr. Danko followed, it would exclude a vast swath of communications from review under the Code of great relevance to the office of councillor without rational basis.

[17] Other integrity commissioners have found that social media posts are encompassed by provisions of codes of conduct governing communications even where the phrase “social media” has not been expressly used or referenced.⁶

⁴ 309 BCAC 124, [2011 BCCA 345 \(CanLII\)](#), at paras. 45-47.

⁵ Wilson (Re), 2017 ONMIC 13 (CanLII), <<https://canlii.ca/t/hzv52>>; Ford (Re), 2013 ONMIC 12 (CanLII), <<https://canlii.ca/t/j1vcj>>.

⁶ *Burton v Inch*, 2023 ONMIC 6 (CanLII), <<https://canlii.ca/t/k45j1>>; *Ayotte v Therrien*, 2022 ONMIC 10 (CanLII), <<https://canlii.ca/t/jrg2q>>.

[18] Accordingly, where current Code of Conduct provisions relate to, or could extend to, public communications,⁷ that should be taken to include communications via social media.

3. Section 8.(1), Code of Conduct

[19] This section of the Code provides that “Every Member shall conduct him or herself with decorum in the course of his or her performance, or required performance, of his or her responsibilities as a Member...”

[20] The first step in the analysis under this section is whether the tweet was “in the course of [Cllr. Danko’s] performance, or required performance, of his or her responsibilities as a Member.”

[21] In my opinion, Councillor Danko has effectively acknowledged that his comments were made in the performance of his responsibilities as a Member when he stated in a later tweet that the impugned tweet “is *beneath the dignity of my office*” [*emphasis added*]. In other words, I find that he acknowledged that the tweet was perceived by him to be closely linked to his role as a City councillor.

[22] I find that this is further confirmed by the statement in his Response in which, after stating he felt the Complainant’s statements at the Gala were extremely disrespectful to the many Hamilton police officers present at the Gala, he stated as an explanation for his response that “Elected officials are often expected to publicly comment on a wide range of issues, both directly related to City business and indirectly related to issues of public interest.”

[23] I find further confirmation of the fact that the impugned statement was made in the performance of his responsibilities as a Member when he states in his Response that “It is in the public interest and part of my duties as an elected City Councillor to speak publicly about incidents that directly impact members of the Hamilton community and organizations that are community partners with the City of Hamilton.”

[24] I therefore find that the impugned tweet communication was made in the course of his or her performance, or required performance, of his or her responsibilities as a Member...”

[25] The next question in the s. 8.(1) analysis is whether the tweet in question was conduct that exhibited “decorum.”

[26] The Cambridge University Dictionary defines “decorum” as “behavior that is socially correct, calm, and polite.”⁸ Wiktionary defines “decorum” as: “appropriate social behavior.”⁹ The

⁷ Such as s. 8(1) (Every Member shall conduct him or herself with decorum in the course of his or her performance, or required performance, of his or her responsibilities as a Member) and 11.(1)(b) and (c) (no Member of Council shall maliciously, falsely, negligently, recklessly, or otherwise improperly, injure the professional or ethical reputation, or the prospects or practice, of any one or more City employees, and every Member of Council shall show respect for the professional capacities and position of officers and employees of the City).

⁸ Cambridge Academic Content Dictionary © Cambridge University Press)

⁹ See <https://en.wiktionary.org/wiki/decorum>.

Britannica Dictionary defines the word to mean “correct or proper behavior that shows respect and good manners.”¹⁰

[27] In *McConnell v Ford*,¹¹ another IC held that even actions done without the intent to harm or with a commendable motive can still lack decorum and contravene the Code.

[28] Councillor Danko’s tweet constituted an ad hominen attack on the messengers (“ungrateful, self-righteous toddlers”) rather than a reasoned critique of the message. In my opinion, the comments fell below the level of acceptable public discourse by a member of Council. They do not constitute socially acceptable, polite behavior that shows respect and good manners. I have no doubt that Cllr. Danko had an admirable motive of defending the honour of the police in making the statement he did; however, it was done in a manner that failed to meet the high standard of “decorum” that members are to be held to.

[29] I find that Councillor Danko’s tweet violated s. 8.(1) of the Code of Conduct.

Penalty

[30] In assessing what constitutes an appropriate penalty in the circumstances, I note the following:

Aggravating Factors

- Ad hominen attack on the messenger rather than a reasoned critique of the message;

Mitigating Factors

- The tweet was quickly taken down, within two hours of it being posted;
- Councillor Danko apologized for the remarks and moreover the Complainant accepted the apology;
- The Councillor did not specifically identify either of the individuals whose behavior he attacked in his tweet (although she was identified in the article he “tweet shared” with the comment) whereas not only did the Complainant identify herself but identified the other award winner who had not previously been publicly identified;
- The Complainant subsequently re-tweeted the offending tweet and it remains up on her feed to this day;
- Cllr. Danko has already faced negative public and media reaction for his comments;

¹⁰ See <https://www.britannica.com/dictionary/decorum>.

¹¹ 2015 ONMIC 4 (CanLII).

- The Complainant has successfully and willfully traded off Cllr. Danko's comments to enhance her media presence and stature in the community;
- There is no indication of malicious intent on behalf of Cllr. Danko;
- Lack of prior finding of misconduct on the part of the councillor for inappropriate public statements.¹²

[31] In consideration of all of the foregoing circumstances, I find that no formal Code of Conduct penalty is required and I therefore recommend none.

Conclusions Regarding the Complaint

[32] I have found that Councillor Danko violated s. 8.(1) of the Code of Conduct.

[33] I have determined that no penalty is warranted in the circumstances and ask that this report be received by Council for information purposes only.

[34] I personally recommend that Council give consideration to amending its Code of Conduct to deal more specifically with councillor communications, particularly via social media. An example of provisions that I believe would adequately fill the existing gap are as follows:

STANDARDS RELATING TO COMMUNICATION

Members are responsible for making honest statements. No member shall make a statement, including through social media, when they know that statement is false or are reckless as to whether it is true. No member shall make a statement with the intent of misleading Council or members of the public.

Members will conduct their communications with each other and members of the public, including by means of social media, in ways that maintain public confidence in the office to which they have been elected or appointed, are open and honest, focus on issues rather than personalities, and avoid aggressive, offensive or abusive conduct.

[35] This concludes my investigation.

Respectfully Submitted,



David G. Boghosian,
Integrity Commissioner,
City of Hamilton

¹² According to the review of past IC decisions in the City's database.