



ADR
C H A M B E R S

Integrity Commissioner Office
for the City of Markham

ADDENDUM TO REPORT

**Re: Complaint Reference Number IC-35-1118
Councillor Karen Rea**

Background

On February 20, 2019, in response to an earlier draft of the investigation report provided to the Parties for comment, counsel for the Respondent (Councillor Rea) provided a letter with several points for reconsideration, as well as an affidavit sworn by Councillor Rea on February 19, 2019.

On February 22, 2019, the Complainant's counsel also responded with a letter and affidavit sworn by the Complainant on the same date.

As a result of taking the Parties' comments into consideration, I have amended certain language within the investigation report for the purpose of providing clarity to the findings. However, please note the initial conclusions remain unchanged for reasons that follow.

Issues

Councillor Rea's State of Mind following the Incident

Councillor Rea's counsel "[...] strongly dispute[d] the finding that Councillor Rea did not feel a genuine threat to her safety," noting that the Police Report of PC KK was the only evidence to the contrary, and because of its nature (as hearsay), it should be given much less weight than the direct evidence of Councillor Rea from the investigation interview, and subsequently submitted affidavit. The statement attributed to Councillor Rea in the Police Report was challenged by Councillor Rea who stated that she did not tell PC KK that she "[...] did not feel a genuine threat to her safety," rather, she told him she did not expect to be found at "[...] the bottom of the Toogood Pond," (i.e. that she did not expect to be murdered). The draft investigation report was amended to note Councillor Rea's disagreement with PC KK's characterization of her state of mind.

Councillor Rea's counsel argued that fairness in evaluating evidence dictates that less weight ought to be placed on the Police Report due to its nature as hearsay. It was also argued that less weight, if any, should be given to the email from the Complainant to

Complainant Witness #1 immediately following the incident, as it was argued said email is a self-serving prior statement lacking probative value. It was argued conversely that greater weight ought to be assigned to the affidavits of Respondent Witness #1 and Respondent Witness #2, who were giving direct evidence of their impressions of Councillor Rea's seemingly distressed demeanour following the incident at the Duchess.

It was also argued by Councillor Rea that the video evidence shows Complainant Witness #1 to have been too far away from the initial discussion to have credibly heard the Complainant's retort.

The Complainant in turn argued that there are inconsistencies in Councillor Rea's story. Notably, he pointed out that Councillor Rea's evidence is that she told PC KK she did not expect to be killed (i.e. found "[...] the bottom of the Toogood Pond,") but, in contrast, the affidavit of Respondent Witness #1 states that "[...] I remember [Councillor] Rea telling me that he [the Complainant] said she might not survive the entire length of her term. I understood this to be a threat to [Councillor] Rea's life."

Analysis re: State of Mind

Regarding Councillor Rea's state of mind following the incident at the Duchess, greater weight was placed on Councillor Rea's direct statements (and now subsequent affidavit), along with the evidence of Respondent Witness #1 and Respondent Witness #2 (with respect to their observations of Councillor Rea's demeanour) than on the Police Report. While it is noted the Police Report "challenged" her evidence, there was nevertheless no finding that she was feigning concern or that the challenge posed by the inconsistency was fatal to her defence in the relevant aspect of the complaint. Indeed, this is reflected by the fact that the "false police report" portion of the Complaint was found in Councillor Rea's favour. The following excerpts from the initial draft report (which remain in the final report) are highlighted to exemplify this point:

"She expressed a genuine concern that the Complainant had threatened her. She shared this concern contemporaneously with Respondent Witness #1 and Respondent Witness #2." [p. 15]

"Councillor Rea has been consistent in expressing her belief that the Complainant engages in intimidation tactics and, most significantly, had done so with her in the Duchess." [p. 15]

The conclusion that Councillor Rea did not observe proper decorum did not turn on whether she correctly or incorrectly perceived the Complainant's words as a threat; rather, it turned primarily on the evidence that she:

- a) Instigated an argument with the Complainant by confronting him with her comment ("Aren't you going to congratulate me? You're stuck with me for a further four years"), despite (according to her statement given during the investigation interview) telling Complainant Witness #3 moments earlier that she

did not want to talk to the Complainant at all that day, and despite already being of the belief that the Complainant was someone who routinely carried out intimidation tactics against adversaries;

- b) Clearly (as demonstrated by video and affidavit evidence) pursued the Complainant several steps into the sitting area of the Duchess following their initial verbal exchange, raised her voice to a level that drew public attention, shook her finger in the Complainant's direction and, instead of walking away at her first or second opportunity, turned back twice to continue her denouncement of the Complainant's statements, all in full view of the public and the Complainant's entourage, most significantly including two minors under his charge.

Justifying Councillor Rea's Reaction

Secondly, Councillor Rea's counsel responded that if she had a good faith basis to file the Police Report (i.e. that she believed the Complainant was attempting to intimidate her), she should not be faulted for reacting without "perfect calm and poise", particularly because she was a woman by herself in a bar and the Complainant is a "[...] large man (accompanied by other males)". Councillor Rea's counsel stated: "[t]o suggest otherwise is to ignore the vulnerable position in which women all too often find themselves in our society."

The Complainant reiterated his position that Councillor Rea instigated the incident and continued to engage him in an aggressive manner, even though he tried to move away from her.

Analysis re: Justifying Councillor Rea's Reaction

The standard being applied is not one of perfection but of reasonable adherence to the City's *Code*. I again note that the preponderance of evidence supports the conclusion that Councillor Rea was the instigator of the incident, and that she not only followed the Complainant after hearing what she believed to be an intimidating remark, she subsequently turned back to him repeatedly, publicly engaging him with a raised voice and pointed finger, while members of the public, associates of the Complainant, and minors under his care looked on.

Political Context

Thirdly, Councillor Rea's counsel raised the issue of "political context", noting that the Complainant has ongoing lawsuits against her and members of the public. Councillor Rea's counsel probed the appearance of "[...] publicly reprimand[ing] [Councillor Rea] simply because she did not react with perfect calm and poise to a large man who she believed, in good faith, to be intimidating her." Her counsel further raised the underlying implications of a developer having a City Councillor publicly reprimanded over a dispute between them.

Calling Councillor Rea's reaction "perfectly human", her counsel also asked: "What message would it send to women in the public sphere — who are all too often criticized for overreacting or being overly sensitive — to tell them that they are not acting with "proper decorum" when they confront their intimidator?"

The Complainant took exception to being called an "intimidator", as well as to Councillor Rea's "[...] bottom of the Toogood Pond" comment, which he perceived as a racial innuendo against his Italian heritage. The letter from his counsel pointed to the contrasting evidence of each side with respect to the contention that the Complainant had acted intimidatingly, arguing that "[...] the more consistent evidence clearly suggests otherwise," (i.e. that he is not Councillor Rea's "intimidator"). The Complainant argued that the issue is not one of "[...] man versus woman," but of "[...] two adults [having] a chance encounter at a local restaurant full of men, women and children [...]", and that characterizing it otherwise "[...] inflames and sensationalizes the issue."

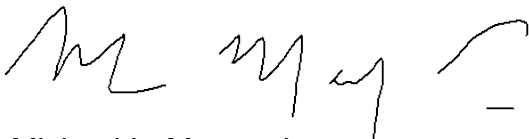
Analysis re: Political Context

I note again what has been noted above regarding the circumstances and Councillor Rea's actions as evidenced by the video, which was further supported by several affidavits. The benchmark for a Councillor's conduct is not one of "perfect calm and poise" in circumstances of conflict, but is instead a reasonable adherence to the standards set out in the *Code*. Councillor Rea's instigation of the incident (*supra* at page 2), followed by her loudly, publicly, and disrespectfully engaging the Complainant (*supra* at page 3) over an apparent misinterpretation of his words, is neither conduct that merely lacks in "perfect calm and poise", nor does it meet the level of reasonable adherence to the standard set out in Section 17 of the *Code*, which governs the conduct of Council Members "at all times".

The conclusion of the report is not gendered, nor was it intended to be. The circumstance of Councillor Rea being unaccompanied in a bar was thoroughly considered along with the other evidence in arriving at the result. I did not find a reasonable justification for Councillor Rea's conduct due to her gender (or for any other reason), nor did I decide the result of the investigation because of it. Had a male Councillor behaved in the same manner in identical circumstances, the standard set out in the *Code* would be equally applied and the result would have been the same.

All of which is respectfully submitted.

Yours truly,
ADR CHAMBERS INC.



Michael L. Maynard
Office of the Integrity Commissioner