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DELIVERED BY E-MAIL

<p style="text-align: center;"><u>c 6</u> Communication cw: <u>Apr 14/15</u> Item: <u>8</u></p>

April 13, 2015

Ms. Suzanne Craig
Integrity Commissioner
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

Dear Ms. Craig:

Re: Code of Conduct Complaint #0114

You had no jurisdiction to place your report before the Committee of the Whole as your mandate was ended. Accordingly, for that reason alone, your report cannot be considered by the Committee of the Whole or by the Council.

Your actions as set out herein demonstrate why your report and recommendation should be rejected by the Committee of the Whole and by the Council. Your actions further demonstrate why you should not be allowed to continue to act in this matter.

While I sought to obtain from you evidence and a reasonable period of time in order to respond to that evidence on behalf of Deputy Mayor and Regional Councillor DiBiase, you denied both and imposed a time limit to receive my response. Despite stating that I had until Tuesday, April 14, 2015 to respond before the matter would become public, you released your report and the reasons for your recommendation to the media on Friday evening, April 10, 2015. This act, by itself, breaches the very confidentiality provisions you raised to prevent my access to information and documentation which would have enabled Councillor DiBiase to defend these false allegations.

This is in response to your report dated March 27, 2015 concerning Deputy Mayor and Regional Councillor Michael DiBiase, a man who has devoted himself to public service for 25 years.

On April 7, 2015 I advised that I would deliver my response to your findings within two weeks. You sought my response on or before April 14, 2015 thereby giving me less than the time required. Although Rule 12 of the Complaint Protocol allows you to file an interim report, which would allow for the requested extension, you have not seen fit to do so. It would appear that your desire to have the report made public had and has overtaken your duty of fairness to my

client. This is seen by the fact that you did not wait to receive my response before putting the matter on the agenda of the Committee of the Whole, thereby making public the fact of the investigation.

I have your letter of April 9, 2015 in response to my letter of April 9, 2015 requesting full disclosure of the evidence you relied on, purporting to give my client "an opportunity to respond" to your findings and recommendations. You have not given him a meaningful opportunity to respond.

I did not request appendices to the report. I requested copies of all of the evidence you relied on. Nonetheless, I am pleased to receive material which you not only failed to previously disclose but intended to attach to your report without so disclosing. It is noted that you kept secret from my client the fact that you were going to include appendices with the result that had he responded previous to this letter, he would have been blindsided by you. If he had responded, he would not have known the context of the e-mails because you did not give them to him. Nor would he have known the rationale that you applied for your recommendation for the penalty. He would not have been aware that you were improperly relying on an informal complaint which was closed and therefore was to remain confidential. Again, it reveals a continuous pattern of denial of natural justice and abuse of process by denying information and documents.

Given your unfair and unreasonable timetable, which does not take into consideration the fact that there is no proper time to investigate or test the limited material provided, let alone see and test the evidence not provided, there is no urgency to this matter. Further, given your unfair refusal to provide the full evidence concerning the allegations, my response is necessarily limited.

Despite my letter to you dated January 30, 2015 pointing out the deficiencies in the complaint process, which you chose to ignore in your report, on the eve of making the report public you now reveal that you are putting my letter as an Appendix to your report. Notwithstanding its inclusion, you still have not responded to the improprieties of the complaint.

You have reached a conclusion with which Deputy Mayor and Regional Councillor DiBiase strongly disagrees. Additionally, you have done so by breaching the principles of fundamental fairness. Had my client been given a proper amount of information and documentation concerning the allegations, he would not only be able to answer those allegations but would be able to demonstrate why your conclusion was wrong in fact and law.

Your report states the Respondent was given an opportunity to respond to the complaint. This creates the false impression to the public and his colleagues that Deputy Mayor and Regional Councillor DiBiase was given an opportunity to respond to all of the allegations set out in your report. You know that is not the case.

The Councillor was asked to respond to his political opponent Lorello. He did so by my letter dated January 30, 2015. That letter pointed out that the complaint was not well founded as it failed to comply with the City's approved complaint protocol and was driven by improper political motives.

You did not see fit to address those legal issues in your report. Instead, you dealt with allegations; information and documentation obtained through your expanded investigation and reached your erroneous conclusion based on evidence which you have decided to withhold from Councillor DiBiase.

You condemned him without first giving him an opportunity to know the evidence against him. This is a breach of fundamental fairness; a denial of natural justice.

As you are more than well aware, the principles of natural justice guarantees a right to know the evidence against you and to be given an ample opportunity to respond to it before a decision is made.

Further, the manner in which you gathered the “evidence” you relied on and viewed as “pivotal” also breaches the rules of natural justice.

Your breach of the rules of natural justice and the manifest unfairness of your report is seen as follows:

1. As pointed out in the initial response by Councillor DiBiase, the complaint by his political opponent R. Lorello did not contain the names of any witnesses, specific facts to support the general complaint or any documents;
2. Your report of March 27, 2015 references interviews with 32 individuals and documents provided by 6 of them in an investigation going well beyond the scope of the initial complaint. None of the information or documents referred to was provided to Councillor DiBiase to enable him to respond prior to you reaching your conclusion;
3. You reviewed e-mails taken illegally from Councillor DiBiase and not only used them but failed to provide copies to him to enable him to respond prior to you reaching your conclusion.
4. Regarding Section 10 of the complaint protocol, you did not provide copies of the submitted materials you reviewed at the beginning of your investigation that prompted you to interview 32 individuals and access the Regional Councillor’s server.

If you had informed Councillor DiBiase of the case you say was made against him and provided the information, evidence and documentation you relied on, Councillor DiBiase would have been able to address and defend himself against the comments made by his accusers, rebut their allegations, have you come to a different conclusion and provide a balanced report on your findings. In addition, if you had requested e-mails or documentation from the Regional Councillor from his server, he would have had an opportunity to determine whether you had a right to that material and if so, would have gladly complied. Instead, he is left to ask the following questions, the answers to which he should have been given, along with an opportunity to respond, before you judged him:

- a. Who are the 32 individuals and what information did they give you as to time, dates and places concerning the allegations?
- b. How did these 32 individuals suddenly come forward “voluntarily”?
- c. What documents did 6 of those individuals provide?
- d. Where are the copies of the public and confidential City documents; the City’s past and current procurement by-law, e-mails, video surveillance, audio recordings of Committee and Council meetings and minutes in camera?
- e. On what authority or law did you rely to obtain copies of a Regional Councillor’s e-mails?
- f. Where is the City’s written policy, adopted by Council, dealing with your ability to rummage through Councillors’ e-mails?
- g. Where is the policy or by-law which enables the hiding behind a claim of confidentiality to keep secret from the accused all of the accusers, their accusations and their documents?
- h. What evidence did you rely on to make the scandalous allegation that there was any breach of Rule 19(1) and (2) including who were the accusers and what proof did they offer?
- i. Who was the member of City staff you refer to in relation to procurement investigation findings and what information/documentation did he/she provide?
- j. Who was the “staff” allegedly approached by Councillor DiBiase who you relied on regarding findings with respect to black out period and what information/documentation did he/she provide?
- k. On what legal basis do you seek to justify refusal to identify the accusers City Staff persons A - J and Board members 1-4 and the full information/documentation they provided?
- l. Who is the individual not employed by the City from whom you claim a verbatim text was responded to by Councillor DiBiase and what statement did you receive from him/her?
- m. Why were actual and complete copies of the alleged scripted e-mails not provided to the Regional Councillor?
- n. Who is the outside individual who drafted the Members Resolution and what information did he/she provide?

- o. Where is the full statement of the City Solicitor who is no longer with the City, when was it given and what documents were provided by the Solicitor?
- p. Who are the City “staff” who alleged what you call a “culture of fear” and why have copies of their allegations not been given to the Regional Councillor?

If the above information, documents and evidence had been provided, in addition to other evidence flowing from that, the Regional Councillor would have been able to respond. Unfortunately, you withheld all of the information and documents he needed to defend himself and to rebut these false allegations that you relied on to find that he was in contravention of the Rules.

The Committee of the Whole and the public should be entitled to a balanced report of your findings, including Regional Councillor DiBiase’s rebuttal of the allegations made against him. Unfortunately, as a result of your denying him the opportunity to review all the evidence you viewed as “pivotal” and denying him reasonable time to respond, he is precluded from putting before the Committee his defence of the allegations.

Further, without being given full information concerning alleged meetings wherein he acted in the manner you allege, a full opportunity to test the credibility or reliability of the accusers is denied. There are indications in your report of individuals being concerned about the calling into question of their professional decision making. When issues of personal interests or work relationship may be a factor in the complaints, credibility issues arise. In order to fairly deal with those issues, the duty of procedural fairness and natural justice in this case required the identification of the accusers and the details of the evidence provided by those individuals prior to any decision being made, not after.

The proposed recommendation itself is seriously flawed and demonstrates a further breach of natural justice in that you improperly:

- a. Reference issues finally determined in an Informal Complaint process. In that process, which you publicly stated was thoroughly investigated and closed;
 - i. It was not Councillor DiBiase’s intent to insert himself into the procurement process;
 - ii. Mr. DiBiase has a deep concern for people and for the City of Vaughan;
 - iii. The City Manager indicated that she did not have a problem with a member of council having questions regarding procurement issues;
 - iv. Mr. DiBiase’s words may have been misinterpreted;
 - v. There is no reason to believe that Mr. DiBiase acted in bad faith;
 - vi. You referred to Mr. DiBiase as “highly professional”.

- b. Seek to buttress your recommendation in the present matter by your self-serving references to your purported prior interaction with the Regional Councillor;
- c. Reference once again, as you did in your report, the allegation concerning access to information without providing detailed evidence to enable a refuting of that evidence prior to your recommendation;
- d. Despite your own recognition of the unavailability of any actual proof of such wrongdoing (“information that strongly indicates”) base your recommendation on suggestion rather than proof.

It is also worth noting that the informal complaint and this formal complaint dealt with the same procurement issues. It is curious as to why the informal complaint is being referenced in the recommendations and treated as a separate incident. Even more puzzling is why the formal complaint dealing with the issues have a different conclusion. You do not detail what evidence was relied on to support this change and why that evidence not provided.

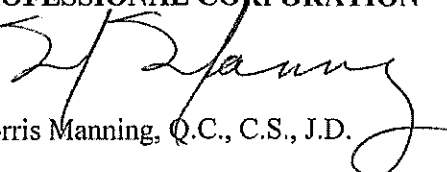
Your actions insofar as your alleged prior dealings with my client give rise to a reasonable apprehension of bias. You have clearly used your prior dealings and private conversations with my client to somehow support allegations which you recognize are not provable, in order to justify your recommendation. In that regard, I ask that you not file your report and remove yourself from this matter. The entire matter should be turned over to an independent and unbiased person who has not had dealings with my client and who will follow the rules of natural justice.

The lack of complete disclosure of all of the information and documentation resulted in a non-transparent investigation process that significantly prejudiced my client by finding that he had committed serious wrongdoings. Complete disclosure was necessary to allow Councillor DiBiase to be fully informed of all the details regarding the manner in which the investigation was conducted in order to fully answer the allegations and to demonstrate your decision was wrong. Without having all of the evidence, he simply cannot respond.

The secrecy provisions you rely on are in place to keep information about the status and merits of a complaint or comments received from witnesses from the general public and/or staff. They are not in place for a Commissioner to use as a sword against a Councillor. Further, they are not in place to prevent Councillor DiBiase from being able to defend himself. Your interpretation and application of these provisions denies him the ability to defend himself and is therefore wrong in law.

Canadian law is based on the principles of fairness. Indeed, the Courts have long held as a fundamental principle that in investigations and hearings into serious allegations which affect rights and privileges, the person carrying out the investigation and judging actions must act fairly. Commissioners have an obligation to give the person accused all of the evidence alleged against them and a proper opportunity to refute that evidence. Natural justice requires this as an absolute minimum. Natural justice was denied in this case.

Yours very truly,
MORRIS MANNING, Q.C.
PROFESSIONAL CORPORATION


Morris Manning, Q.C., C.S., J.D.