



## memorandum

**TO:** HONOURABLE MAYOR AND MEMBERS OF COUNCIL  
**FROM:** SUZANNE CRAIG, INTEGRITY COMMISSIONER  
**DATE:** APRIL 10, 2015  
**SUBJECT:** COMMUNICATION – COMMITTEE OF THE WHOLE MEETING, APRIL 14, 2015  
ITEM 8.1

c 5
Communication
CW: April 14/15
Item: 8

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### **Recommendation**

The Integrity Commissioner makes the following recommendation:

That this communication be received by Council

### **Contribution to Sustainability**

Not applicable.

### **Economic Impact**

Not applicable.

### **Communications Plan**

Members of Council will receive copies this written communication which will be available for the Committee of the Whole meeting of April 14, 2015. In addition, this communication will be placed the City of Vaughan's public website.

### **Purpose**

The purpose of this communication is to update Members of Council on the preliminary investigation findings of the Code complaint #0114.

### **Background**

Code of Conduct Complaint Investigation Report – Item 8.1

### **Relationship to Vaughan Vision 2020/ Strategic Plan**

This communication promotes the commitment of the City of Vaughan Mayor and Members of Council to openness and transparency in government decision-making. In addition, this communication promotes Service Excellence through the public reporting of activities of the independent ethics officer in relation to accountability and transparency in municipal government.

### **Regional Implications**

Not applicable

### **Attachments**

Appendix 1 – Interim Report

Appendix 2 – Respondent's Original Response to Complaint d30, 2015 dated January - redacted



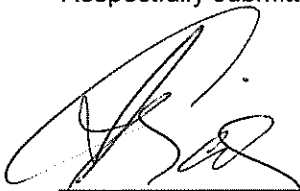
# memorandum

Appendix 3 – Complainant's Issue #2  
Appendix 4 (a) – (g) – Scripted emails  
Appendix 5 – Code Protocol

**Report prepared by:**

Suzanne Craig, Office of the Integrity Commissioner

Respectfully submitted,

  
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Suzanne Craig  
Integrity Commissioner

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## A. Summary

This report presents the preliminary findings of my investigation under the City of Vaughan Code of Ethical Conduct (the “Code”) relating to the conduct of Regional Councillor and Deputy Mayor Michael Di Biase (the “Respondent”) in connection to a complaint raising four issues:

1. the allegation of an inappropriate relationship between the Respondent and a longtime City of Vaughan contractor, identified in the complaint as Maystar General Contractors (“Company A”), the result of which was a benefit for the Respondent in exchange for his co-operation and assistance with the business of the municipality in relation to Company A;
2. the allegation that the Respondent interfered in various tendering processes of the City in contravention of the procurement rules;
3. the allegation of the inappropriate pressure exerted by the Respondent on various staff of the City of Vaughan with a view to exercising influence or assisting Company A with the business of the municipality; and
4. the allegation of voting without declaration of a pecuniary interest as required by the *Municipal Conflict of Interest Act*, on land planning matters regarding Block 27.

I find that Issue #1 involves allegations which on their face are allegations of a criminal nature under the *Criminal Code*. The Complaint Protocol for Council Code of Conduct (the “Complaint Protocol”), section 6(3)(a) provides that where an allegation of criminal conduct is made, I must advise the complainant to pursue the allegations with the Police Service. As a result, I did not investigate the issue and make no findings in that regard.

On Issue #2, I find that the purpose of the Code has been seriously undermined by the actions of the Respondent. The Respondent’s action trigger the City’s procurement rules by inquiring with City staff and third parties about particular tenders, pre-qualification results and scores during the Blackout period and ongoing City procurement process. The Respondent was told by senior officials of the City, in particular, the City Solicitor who is no longer with the City, the serious risk posed to the City by a Member of Council inserting or attempting to insert him or herself inappropriately into the procurement process at any time but in particular, during the Blackout period. After the pre-qualification process ended, the Respondent exchanged e-mails with a private citizen, and used information contained in e-mails drafted by the private citizen to directly criticize two competitors of Company A, his preferred company, to the Mayor, Councillors and City Staff, and as the basis for a Council resolution to examine the procurement process. I have allowed the Respondent a period until April 14, 2015, to provide comments to my preliminary findings. I will provide my recommendations to Council pursuant to Rule No. 20 of the Code Protocol, under separate communication, upon receipt and review of the Respondent’s comments.

On Issue #3, I find that the Respondent applied inappropriate pressure to Staff with a view to exercising influence or assisting Company A with the business of the municipality. In respect of the allegations of interference with Staff, I find that when City staff responded to the Respondent's requests for information during the Blackout period, by advising him that there is a process that must be followed, they were met with defiance, abusive language and intimidating actions. I also find that the Respondent's actions have triggered Rule 19(1) and (2), with regard to reprisals and obstruction. I have allowed the Respondent to provide comments to my preliminary findings and have provided him a time extension until April 14, 2015. I will provide my recommendations to Council pursuant to Rule No. 20 of the Code Protocol, under separate communication, upon receipt and review of the Respondent's comments.

I find that Issue #4 falls outside the six month limitation period in the Code of Conduct. As a result, I did not investigate that issue and make no findings on issue #4.

In this report, I discuss my investigative process, my decisions on jurisdiction and my preliminary findings on the allegations in the complaint.

## **B. The Complaint**

On December 3, 2014, I received a complaint under the Code. The complaint was submitted on the City's Complaint Form as an affidavit with two appendices, and is witnessed by a Commissioner for taking Affidavits as required by the Code of Conduct Complaint Protocol. The Complainant attached two appendices to the Complaint Form.

- In Complaint Appendix 1, the Complainant wrote that he has reasonable grounds to believe that the Respondent had contravened several sections of the Code, namely sections: 1 (a), (b), (c), (d), (e), (g), (h), (i); 2 (1); 3 (6), (2), (3); 7 (1); 8(1); 9 (1); 13 (1); 14 (1); 15 (1); 16 (2), (3) and 18.
- In Complaint Appendix 2, the complainant provided particulars. While the complainant identified them as two issues, in my view they are sufficiently distinct that I have analyzed them as four separate issues. What I refer to as Issues #1-3 were raised in Complaint Appendix 2, as 'Issue 1' to the Complaint, and what I refer to as Issue #4 was raised in Complaint Appendix 2, as 'Issue 2' to the Complaint.

**Issue #1:** The Complainant raised an allegation involving the relationship between the Respondent and Company A. The complainant alleged that Company A was involved in the construction of the Respondents cottage located 90 kilometres to the north of the City. The complaint alleges that the Respondent used his influence as Councillor to further Company A's business interests within the City of Vaughan, and that Company A paid contractors for the work they performed on the Respondent's cottage. The complaint notes that this "would be considered a violation of the Ethical Code of Conduct and also a violation of provincial statutes."

**Issue #2:** The complaint also alleged that the Respondent used his position as a Member of Council to influence Members of the Vaughan Public Library and Vaughan City staff to award the construction contract of the Pleasant Ridge Library to Company A. The complaint continues

by alleging that the Respondent “may have tried to interfere in the tendering process in the matter of the Vaughan Civic Centre Resource Library” and that this “may have been the subject of a closed session meeting”. The Complainant identified members of City staff who could corroborate the information which he suggested would lead to a finding of contravention of the Code.

**Issue #3:** The complaint alleged that the Respondent “has used his influence as a Councillor to further [Company A’s] business interests within the City of Vaughan”. In discussion with the Complainant, this was clarified to be an allegation that the Respondent applied inappropriate pressure on Staff to use his influence to further Company A’s business interests.

**Issue #4:** Finally, the complaint alleges that the Respondent failed to declare an interest in a planning matter involving Block 27 at a June 7, 2011 Committee of the Whole meeting. The complainants stated that he fully understood that the vote exceeded the six month time period allowed for consideration of violations under the Ethical Code of Conduct. (Appendix 3)

## **C. Process**

### **1. The Complaint**

On December 3, 2014, after receiving the complaint, I spoke with the Complainant. He advised that he had information from sources outside of the City that current and former City staff persons felt harassed and intimidated by the Respondent regarding questions around various procurement processes and that these sources did not want their names disclosed by the Complainant.

On December 4, 2015, I spoke with 3 City staff persons, 2 of whom, the Commissioner of Strategic and Corporate Services and the City Solicitor, are no longer with the City, and sought clarification in relation to Issues #2 and 3 of the complaint.

On December 5, 2014, I wrote to the Complainant informing him that I was undertaking an investigation of the complaint and that I was forwarding the complaint to the Respondent.

On December 5, 2014, I wrote to the Respondent providing Notice of a Complaint Investigation and a copy of the complaint, requesting that the Respondent provide my office with a written response to the complaint on or before December 16, 2014. On December 15, 2014, I received correspondence from the Respondent’s legal counsel advising me that due his court schedule and the upcoming holiday season, he was requesting a time extension in order to provide my Office with the Respondent’s comments to the complaint. I granted an extension until January 30, 2015. In January 2015, I forwarded correspondence to the Respondent’s legal counsel with a copy of the Code Protocol flow chart to clarify the complaint process.

On Tuesday February 3, 2015 I forwarded correspondence to the Respondent’s legal counsel, with a copy to the Respondent, indicating that I had not received comments in response to the complaint and that I would be making note of this omission for my files. On the same date, after

having received the Respondent's correspondence through interoffice mail, I again wrote to the Respondent's legal counsel advising that I had received their correspondence, that my office is located offsite and not in the City of Vaughan City Hall and as a result, though his correspondence was dated Friday January 30, 2015, it had arrived at my office On February 3, 2015.

On February 5, 2015, I received correspondence from the Respondent's legal counsel advising that he had forwarded me the Respondent's comments in response to the complaint, on Friday January 30, 2015 via fax and courier. On February 5, 2015 I wrote to the Respondent's legal counsel indicating that my office was not located at City Hall and confirming again that I had received his correspondence.

On February 5, 2015, I forwarded the Respondent's comments to the Complainant pursuant to section 10 of the Code Complaint Protocol.

## **2. The Respondent's Initial Response to Complaint**

Through his legal counsel, the Respondent raised a number of issues after receiving the complaint. The redacted response is attached as Appendix #1, and is referred to in this Report. The Respondent made a preliminary jurisdictional objection that the complaint did not comply with the procedure required by the Code of Conduct Complaint Protocol, which I discuss below. Having considered the Code and Complaint Protocol and the Respondent's submissions, I determined that I did not have jurisdiction to continue with Issues #1 and #4, as set out in Section D2 and D3, below. I did proceed to investigate Issues #2 and #3, as described in Section E below.

## **3. The Investigation**

I initially made the determination that Issues 2 and 3 potentially triggered Rules 1, 3, 7, 9, 13, 14, 15, 16, and 18 of the Code. During the course of my investigation, I determined that there were grounds to examine a potential breach of Rule 19.

I conducted interviews with 32 individuals, 6 of whom I also requested provide me with documentary evidence. I did not exercise my summons powers under the *Public Inquiries Act* and all information that I received during interviews and requests for documents were provided voluntarily under the exercise of the Code Protocol Investigations powers. Section 10 of the Code Protocol states:

- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

I reviewed public and confidential City documents, the City's past and current procurement by-law, emails, video surveillance, audio recordings of Committee and Council meetings, and minutes of in-camera Board meetings.

I also obtained copies of the Respondent's emails sent from his City e-mail account from the City's Information and Technology Department, in accordance with an IRR request approved by the Interim City Manager pursuant to section 10(2) of the Code Protocol. The request was for e-mails to and from the Respondent from January 1, 2013 to October 31, 2014, including the key words: Father Ermanno Bulfon Community Centre, FEBCC, Vaughan Public Library, VPL, bocce, bocce court, CCRL, VCCRL, Civic Centre Resource Library. The City policy is quite clear that as part of the Integrity Commissioner's authority, during the course of an investigation, he or she is allowed to access all information held by the City, including emails delivered, received and stored on the City server relevant to the investigation.

I note that Section 223.5 of the *Municipal Act* contains the statutory provision outlining the Integrity Commissioner's duty of confidentiality. It states that "[t]he 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."

Rule 19 of the Code is entitled Reprisals and Obstruction. This rule states that:

1. No Member shall obstruct the Integrity Commissioner in carrying out of her or his responsibilities;
2. No Members shall threaten or undertake any act of reprisal against a person initiating an inquiry or complaint under the Code of Conduct or who provides information to the integrity Commissioner in any investigation

In addition to the stated intent of Rule 19, this provision works together with the confidentiality provisions of the *Municipal Act, 2001* to ensure that the Integrity Commissioner may conduct her investigations without obstruction from a Councillor, and that those who provide information to the Integrity Commissioner are not subject to reprisal or threats from a Councillor.

#### **D. Preliminary Issues**

##### **1. Jurisdiction to Proceed With the Investigation**

The Respondent challenged my jurisdiction to proceed with the investigation, asserting that the complaint was frivolous, vexatious or not made in good faith, or else that there were no grounds or insufficient grounds for an investigation.

Section 5 of the Code Protocol states that individuals "*who identify or witness behavior or an activity by a member of Council* that they believe is in contravention of the Code, may file a



formal complaint.”

Section 8 of the Code Protocol provides:

If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, and where this becomes apparent in the course of an investigation, terminate the investigation.

(a) **Frivolous, vexatious, or not made in good faith**

Many Ontario statutes contain provisions that allow an administrative decision-maker to refuse to investigate, or to dismiss a complaint where the complaint is frivolous, vexatious or not made in good faith. In general, in the administrative law context a complaint is frivolous or vexatious when it is a waste of time or when it aims to harass the subject of the complaint. For example, in the context of the *Ontario Human Rights Code*, the Human Right Tribunal has determined:<sup>1</sup>

... [F]or the complaint to be trivial or frivolous, the issues must be unimportant, petty, silly, or insignificant enough to be a waste of the tribunal's time. In addition, a complaint completely without factual or legal basis might be considered trivial or frivolous. A vexatious complaint is one that aims to harass, annoy or drain the resources of the person complained against. A complaint made in bad faith is one pursued for improper reasons — a vexatious complaint is an example of one made in bad faith.

‘Bad faith’ in general connotes the conscious doing of a wrong. Thus, the Information and Privacy Commission has held that bad faith has been defined as:<sup>2</sup>

The opposite of “good faith”, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one’s rights, but by some interested or sinister motive. ... “bad faith” is not simply bad judgement (sic) or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.

Importantly, so long as a complaint is properly addressed to matters within the Code of Ethical Conduct, in my view merely having a collateral purpose for making a complaint does not by itself mean the complaint is made in ‘bad faith.’ As the Code itself notes in the Introduction, “Democracy is an active process – one that requires ongoing engagement between citizens and their elected officials. Ethics and integrity are at the core of public confidence in government

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<sup>1</sup> *Modi v. Paradise Fine Foods Ltd.*, 2007 HRT0 30 at para. 18

<sup>2</sup> *Town of Ajax (Re)*, 2015 CanLII 2437 (ON IPC) at para. 18.

and in the political process.” A valid complaint that addresses Conduct caught by the Code will generally not be in bad faith, in the absence of actual or constructive fraud, design to mislead or deceive, or a dishonest purpose.

The Respondent claims that the complaint is frivolous, vexatious and not made in good faith in various parts of his response, *inter alia*:

“Rule 1 (a) and (b) is not applicable as they apply to requests for information or inquiries from members of the public. Further no one is required to provide a response to an inquiry such as this as it is **frivolous, unreasonable and harassing**. Having failed to persuade the voters in the last election campaign that there was any substance to the complaint made to the media, [the Complainant] seeks to now have the Integrity Commissioner carry out an **investigation into his improperly and clearly politically motivated complaint.**”

.....

“The speculative nature of his request and his **desire to cast aspersions** on the Regional Councillor is seen in the statements that the investigation is to proceed to interview persons who ‘would have’ or ‘ought to have’ direct knowledge of the matters. The failure to set out the facts those persons had or even out to have had demonstrates a desire to cause an investigation to be made without any proper factual foundation and **reveals improper motivation.**”

In my view, the complaint is neither frivolous nor vexatious, nor was it made in bad faith. The issues raised in the complaint are important and significant: they are not a waste of my time. The complaint has some factual and legal basis. Moreover, it is not clear that the aim of the complaint is to harass, annoy or drain the resources of the Respondent without merit.

I find that the complaint was not made in bad faith. I find no sinister motive or wrongdoing motivating the complaint. The fact that the Complainant and Respondent have been political rivals does not colour the complaint with bad faith. A complainant is allowed to have a collateral motive in making the complaint, including a desire to challenge and publicize public decision making.

(b) **No grounds or insufficient grounds**

I am required to not investigate a complaint where there are no grounds or insufficient grounds for the complaint. This is a very low threshold.

Concerning sufficient grounds, the Respondent writes:

The complainant has failed to set out 'reasonable grounds; for his belief that Regional Councillor Michael Di Biase has contravened the Code of Conduct in that:

(a) In Appendix I he has merely listed sections of the Code of Conduct without stating any grounds for belief that any of these sections have been contravened, and

(b) In Appendix 2 he has failed to set out what public records he is referring to and relies on his own statements of self-interest and conjecture to bootstrap up an argument for his unfounded allegations. His 'findings' are nowhere set out in support of an allegation of inappropriate relationship. His claim to belief regarding contraventions is, in itself, inappropriately and illegally founded.

[...]

"The statement concerning "reason to believe" that the Regional Councillor has been the vocal proponent of [Company A] once again is bereft of any factual basis in support. The complainant also fails to list any factual basis to support his bald allegations concerning his "reason to believe" that members of the Vaughan Public Library Board were influence by Regional Councillor Di Biase or that he may have tried to interfere in the tending process in the matter of the Civic Centre Resource Library. [The Complainant] encourages the Integrity Commissioner to conduct a fishing expedition in hopes of finding some support for his baseless allegations."

The letter continues in respect of the Company A allegations:

[The Complainant] alleges that the information gathered was from his 'research of public records and my activities'. His production of copies of Regional Councillor Di Biase's personal emails is unexplained. Clearly, [the Complainant's] actions in obtaining access to personal emails are illegal. Further [the Complainant] misrepresented himself by posing as a potential client to elicit information about the cottage construction. The information he seeks to rely on was obtained illegally and under false pretenses. It would be contrary to the establishment of an Integrity office to have that same office condone such activities by founding an investigation on illegally obtained materials and misrepresentations. Indeed, to do so would compromise the integrity of the Integrity Commissioner."

"[The Complainant] suggests that the Integrity Commissioner use the CBC article as the basis for her investigation. Again, to do so in this case would compromise the integrity of that office. [The Complainant] was registered as a rival candidate in the 2014 municipal election and, as the opponent of Regional Councillor Di

Biase, was the source of the article he seeks to have the Commissioner rely on. The CBC article was founded on the information provided by [the Complainant]. Further, the CBC could not get confirmation of the alleged claims by [the Complainant]. When they interviewed the personnel from the companies. The reported findings of the article were those of [the Complainant] and not the CBC, as claimed in [the affidavit]. In fact, when interviewed by the CBC, the representatives of the supplier stated that [Company A] was not the general contractor. The CBC article goes on to state that 'in all the cases involving Company A referenced, Mr. Di Biase casts his votes in accordance with the advice and recommendations of municipal staff'."

"If the Integrity Commissioner feels it appropriate to use the illegally obtained personal emails, a careful review of those emails evidences the fact that Company A is not the general contractor. All of the correspondence from Regional Councillor Di Biase was sent directly to the contractors/suppliers and all correspondence from the contractors/suppliers was sent directly to him. There was no indication that Company A was the general contractor."

I reviewed the media article that the Complainant included as supporting documentation to his complaint. The Complainant has included the actual CBC News article of October 24, 2014.

In addition, the Complainant provided me with verbal information in support of his complaint, information which he did not include in his written submission in order to protect the individuals who had provided him with some of the information on which he relied to make his claim. The Complainant surmised that his complaint would be forwarded in its entirety to the Respondent and had concerns that by including the names of certain individuals, he would be putting them at risk of a possible reprisal from the Respondent.

I find that there are sufficient grounds to investigate. A complainant, in particular a member of the public, should not be held to such a high standard of proof that they are unable to reasonably bring forward a complaint. This would be a barrier to the effective operation of the office of the Integrity Commissioner. If the threshold is set too high, the public interest in enforcing City Council's standards as contained in the Code would be stymied.

The objective of Code complaint investigation is to discover facts upon which to make a reasonable decision on whether there has been a contravention of the Code Rules. There is nothing in the Code Protocol that requires a Complainant to rely on "public records"; in fact, very often complaints are brought forward on the belief that a contravention has occurred and the records of which the Complainant has knowledge exist and are internal to the City.

Likewise, a complainant need not have personally witnessed the conduct, nor do they have to meet the threshold of "proving" that there has been a breach of the Code in order to have a *bona fide* complaint under the Complaint Protocol.

As a procedural safeguard, this Office has established the practice over the past 5 years of speaking with an individual Complainant and conducting a preliminary review prior to deciding whether or not to commence an investigation. This practice was followed in this case.

As a counter-balance to the low threshold for undertaking an investigation, the Complaint Protocol creates further safeguards. The Complaint Protocol permits the Integrity Commissioner to discontinue an investigation where it becomes apparent that there are insufficient grounds to continue. Further, the Member of Council may make representations on whether there has been a breach of the Code.<sup>3</sup> Finally, the Integrity Commissioner will only make findings and recommendations after completion of an investigation.

## **2. Issue #1 – Allegations of Criminal Conduct**

Issue #1 involves an allegation regarding the relationship between the Respondent and Company A. The complainant alleged that Company A, a construction firm had done business with the City since 2002, that Company A was involved in the construction of the Respondents cottage located 90 kilometres to the north of the City. The complaint also alleged that Company A paid contractors for the work they performed on the Respondent's cottage. The complaint also indicates that the Respondent has been a vocal proponent of Company A, and has used his influence as a Councillor to further Company A's business interests within the City of Vaughan.

Section 6 (3)(a) of the Code Protocol provides that:

If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant should be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

I have reviewed the Criminal Code, and have determined that the complaint on its face is an allegation of a criminal nature, either under section 123 (municipal corruption) or breach of trust (section 122).

I discuss these provisions below.

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<sup>3</sup> (City of Toronto, Office of the Integrity Commissioner, CC41.3, November 13, 2013, City of Vaughan Code Protocol Rule 8)

**(a) Municipal Corruption: Section 123**

The relevant provision reads:

*Municipal corruption*

123. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

(a) to abstain from voting at a meeting of the municipal council or a committee of the council;

(b) to vote in favour of or against a measure, motion or resolution;

(c) to aid in procuring or preventing the adoption of a measure, motion or resolution; or

(d) to perform or fail to perform an official act.

*Definition of “municipal official”*

(3) In this section, “municipal official” means a member of a municipal council or a person who holds an office under a municipal government.

**(b) Breach of Trust/Fraud by Official: Section 122**

The breach of trust provision in section 122 of the *Criminal Code* provides:

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Section 122 punishes fraud and breach of trust by persons who hold an office, or are appointed to discharge a public duty.

The essential elements of the s. 122 offence are:

- The defendant was an "official" within the meaning of s. 118;
- The act was committed in the general context of the carrying out of the defendant's duties; and

- The act constituted a fraud or breach of trust.<sup>4</sup>

Municipal councillors are officials within the meaning of section 118. Section 118 defines an "official" as a person who,

(a) holds an office, or

(b) is appointed or **elected** to discharge a public duty.

An elected municipal official may be convicted under this section.<sup>5</sup>

(c) **Elements of Breach of Trust**

The leading decision on the elements of the breach of trust offence is the 2006 decision of the Supreme Court in *R. v. Boulanger*.<sup>6</sup> The Court held that "public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit."<sup>7</sup>

In *R. v. Boulanger*, the Supreme Court held that in order to convict an individual of the offence of breach of a public trust by a public officer, five elements must be proven beyond a reasonable doubt. They are:<sup>8</sup>

1. The accused was an official;
2. The accused was acting in connection with the duties of his or her office;
3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, **partial**, corrupt, or oppressive purpose. (emphasis added)

The Court noted that "partiality" denotes an unfair bias in favour of one thing, compared to another (para. 65). With respect to item #5, the Court held that reflects a central concern: "that public officials, entrusted with duties for the benefit of the public, carry out those duties honestly

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<sup>4</sup> *R. v. Lippé* (1996), 111 C.C.C. (3d) 187 (Que. C.A.); *R. v. Perreault* (1992), 75 C.C.C. (3d) 425 (Que. C.A.), leave to appeal to S.C.C. refused (1993) 77 C.C.C. (3d) vi

<sup>5</sup> *R. v. Sheets* (1971), 1 C.C.C. (2d) 508 (S.C.C.)

<sup>6</sup> *R. v. Boulanger*, 2006 SCC 32, [2006] 2 S.C.R. 49

<sup>7</sup> *Boulanger*, at para. 52

<sup>8</sup> *Boulanger*, at para. 58

and for the benefit of the public, and that they not abuse their offices for corrupt or improper purposes.”<sup>9</sup>

I have written to the Complainant in accordance with section 6(3)(a) of the Complaint Protocol, indicating that the Complainant must pursue Issue #1 with the Police Service, since on its face the allegation is of a criminal nature.

### **3. Issue #4 Barred by Limitation Period**

On Issue #4, the complaint alleges that the Respondent failed to declare an interest in a planning matter involving Block 27 at a June 7, 2011 Committee of the Whole meeting. I find that the matter raised in Issue #4 of the complaint fall outside of the 6 month limitation period within which an alleged violation must have taken place in order to be addressed under the Code Protocol, and I did not investigate this complaint.

The Complainant states in the final paragraph of the complaint “I fully understand that the vote in question exceeds the 6 month time period allowed for consideration of violations under the Ethical Code of Conduct however I would like the Integrity Commissioner to review this matter and provider her comments as to what could or would have been breached under the [Code] had the matter fallen within the 6 month time frame”.

In his response to the complaint the Respondent states that:

“[The Complainant] recognizes that this complaint is statute barred. Nonetheless, he would like the Integrity Commissioner to ignore the limitation period and speculate and provider her comments on what violations could or would have been breached.”

“This request that the rule of law be ignored is further evidence of the impropriety and improper motive of [the Complainant]. Given the nature and purpose of the office of the Integrity Commissioner, it would be again a compromise of the integrity of that office for the rule of law to be disregarded as requested by [the Complainant].”

Section 6(3) of the Code Protocol provides that if the complaint, including the supporting affidavit, is not, on its face a complaint with respect to non-compliance with the Code or the subject of the complaint is governed by other legislation or a complaint procedure under another City policy, the Integrity Commissioner shall advise the complainant in writing that the matter does not fall within the Integrity Commissioner’s jurisdiction to investigate. I have so indicated to the Complainant in respect to the alleged irregularities in the Respondent’s voting record on

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<sup>9</sup> *Boulanger*, at para. 55



land planning matters regarding Block 27. Since the matter involves a vote at Council, I note that the Complainant, independent of the current complaint, may within 6 years of the date of a contravention under the *Municipal Conflict of Interest Act*, bring an application before the courts.

**E. Issues #2 and 3: Preliminary Findings re Insertion Into Procurement Process**

**1. Code Rules Relevant to The Procurement**

Interference with rules relating to procurement are located in various parts of the Code. Rule 1 sets out Key Principles underlying the Code. Rule 1 (c) provides in part:

Members of Council shall avoid the improper use of influence of their office, and conflicts of interest, both apparent and real....

Rule 7 expands on the principle set out in Rule 1(c)(i), as it deals with the improper use of influence. Rule 7(1) provides:

No member of Council shall use the influence of his or her office for any purpose other than for the exercise of her or his official duties.

The Commentary to the Rule explains the role of Councillors in relation to City staff. The Commentary provides:

Pursuant to corporate policy, the City Manager directs City Commissioners, who in turn, direct City staff. City Council and not individual Members of Council appropriately give direction to the City administration.

Rule 3 deals with confidential information. It provides in relevant part:

1. No Member shall 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.

2. No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.

3. No Member shall directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

5. No Member shall permit any persons other than those who are entitled thereto to have access to information that is confidential.

6. No Member shall access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

Rule 18 provides that: "Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them."

Turning to conduct regarding staff, a number of rules are relevant. Rule 16 governs Conduct Respecting Staff. It provides in relevant part:

2. No member shall use, or attempt to use, their authority for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering in staff's duties, including the duty to disclose improper activity.

3. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council.

4. No member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff and all members shall show respect for the professional capacities of the staff of the City.

The Commentary to Rule 16 provides that "it is inappropriate for a member to attempt to influence staff to circumvent normal processes in a matter..."

Rule 15, discreditable conduct, provides that: "Members shall conduct themselves with appropriate decorum at all times." Rule 1(i) also governs relations with Staff. It provides:

Members of Council shall fulfill their roles as set out in the Municipal Act and respect the role of staff in the administration of the business affairs of the City.

Taken together, these sections of the Code set out the relevant rules for Councillors in relation to a procurement process, including relations with City staff. Councillors should avoid participation in activities that grant or appear to grant any special consideration, treatment or advantage to an individual which is not available to every other individual. Councillors must respect the importance of confidential information. Councillors must not attempt to use their influence for the purpose of intimidating, threatening, or influencing staff members in the performance of their duties. The Code rules are premised on the position that City staff under the direction of the City Manager, serve Council as a whole. Individual Members of Council do not have authority to request confidential information, in particular as it relates to a specific tender during the Blackout Period and ongoing procurement process.

Under the City's Procurement rules, contractors' submissions in response to the RFPQs and the information contained within the submissions are deemed to be confidential since they contain third party financial, technical and commercial information which is proprietary. Submissions constitute records under the custody and control of the City and are therefore governed by the rules of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

Disclosure to third parties, the public or individual Members of Council, of the information contained in contractors' submissions could be deemed to be a contravention of the rules of MFIPPA, in addition to potentially putting the City at legal risk.

Finally, the Rules require that Members maintain professional and cordial relations with City staff, and shall not attempt to use their authority to intimidate, threaten, or influence staff.

## **2. Preliminary Procurement Investigation Findings**

The City issued a Request For Pre-Qualification (RFPQ) for the Father Ermanno Bulfon Community Centre Construction Project (FEBCC) on February 18, 2014 through electronic tendering system and Daily Commercial News. 34 prospective contractors picked up this RFPQ.

The RFPQ closed on March 4, 2014 and 30 contractors responded, none of which were disqualified. Scoring methodology was established by an Evaluation Committee before submissions were scored.

10 contractors were pre-qualified and were notified in writing on May 15, 2014. Tender documents were provided on May 22, 2014 and the tender closed on June 18, 2014

One of the contractors [Company A] who did not pre-qualify wrote to the City to complain that it should have pre-qualified because it had completed significant projects for the City and claimed that scoring was unfair. In the debrief with City administrative officials, Company A commented that it should be pre-qualified because "*it has always prequalified...and they make donations to Vaughan charities*". Of note, in an interview with a former member of City staff, the former employee told me that when she asked the Respondent why he thought Company A felt the process was unfair, the Respondent said to the former employee in a meeting with another City staff member— "they (Company A) told me and they helped a lot of good causes in the City".

The City issued a RFPQ for the Civic Centre Resource Library Construction Project (CCRL) on January 10, 2014 through electronic tendering system and Daily Commercial News with 31 prospective contractors picking up the RFPQ.

The RFPQ closed on January 27, 2014 and 21 contractors responded. 1 contractor disqualified due to ongoing litigation with the City on another matter. Scoring methodology was established by Evaluation Committee before submissions were scored.

7 contractors pre-qualified and were notified in writing on May 13, 2014, with Tender documents being provided on May 20, 2014. Two contractors who did not prequalify wrote to the City to complain, one of which [Contractor A] stating that it should have pre-qualified because "*it has always pre-qualified....and they make donations to Vaughan charities*".

### **3. Preliminary Findings re Blackout Period**

Best practices have established that in order for a procurement process to be fair and to be perceived to be fair, there should be one contact staff person with whom contractors can communicate. Elected officials and City staff are not to be involved in the procurement process during certain periods so that the prospective vendors will not have or will not be seen to have preferential access to information or an unfair advantage in the process. Pursuant to the City of Vaughan Procurement documents, the working definition for Blackout Period is “the period of time the call for bids being, Requests for Proposals, Tender or Quotation, is issued up to including the date the Contract is recommended for award by the Committee of the Whole”. In the 2 RFPQs subject of this investigation, the recommendation report from the department was not public information given that the approval was required by the Director of Purchasing Services and the recommendations were reconsidered in a meeting of May 8, 2014. In both the FEBCC and the CCRL RFPQs, there were provisions that indicated a Blackout Period from the date of issue of the RFPQ and including the date the pre-qualified contractors were recommended. Any communication between a contractor and City Elected Officials is grounds for disqualification. The Blackout Period for RFPQ14-051 was from February 18, 2014 to May 12, 2014. The Blackout Period for FRPQ14-007 CCRL was from January 7, 2014 to May 13, 2014.

The Respondent approached staff and verbally asked for pre-qualification results to be sent to him in hard copy and not via email on April 28, 2014 and May 12, 2014. These requests for information were both made within the Blackout Period.

Subsequent email requests were sent by the Respondent to staff requesting pre-qualification results to be sent to him on May 28, 2014 and June 6, 2014, both outside the Blackout Period but during the ongoing procurement process.

### **4. Preliminary Findings re Conduct Respecting Staff**

I am unable to provide excerpts from all the interviews that I conducted as I am required by the provisions of the *Municipal Act*, to maintain the confidentiality of individuals with whom I speak. Section 223.5 of the *Municipal Act* contains the statutory provision outlining the Integrity Commissioner’s duty of confidentiality. It states that “[t]he 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.”

It is the position of this Office that I was obligated to avoid the disclosure of some information received during the course of my investigation where I believed that this information will clearly identify individuals. However, there is information that I received from more than one individual and/or that I received from individuals whose identity is not likely to be inferred from the listing of comments below and I have included these comments as I believe them to be pivotal to an understanding of my decision that I tender to Council at the end of this report

Comments I received include the following:

City staff person A. "I was approached by Regional Councillor Di Biase at [a meeting] and he asked me about the [CCRL]. When I told [Regional Councillor Di Biase] that there was a [procurement] process that had to be followed, he told me to stop wasting time and don't be a trouble maker and cause problems"

City staff person B. "If there were problems with [Company A] Regional Councillor Di Biase told me 'just deal with it.' When I told [Regional Councillor Di Biase] that there is a public tendering process and scoring for contractors had to follow a process, [Regional Councillor Di Biase] said 'just deal with it and make it happen.' "

Board Member 1. With reference to an in-camera meeting dealing with an ongoing procurement matter that had still yet to go to Council for a decision, [Regional Councillor Di Biase] said 'Just give the job to [Company A]'

Board Member 2. With reference to an in-camera meeting dealing with an ongoing procurement matter that had still yet to go to Council for a decision, [Regional Councillor Di Biase] when told by City staff that [Company A] was disqualified from the procurement process, said 'Just give the job to [Company A]'

Board Member 3. "Citizen representatives [on the Board] were uncomfortable when [Regional Councillor Di Biase] said 'oh, just give it to [Company A]'

Board Member 4. "Citizen Board members were angry with what [Regional Councillor Di Biase] said and a few were intimidated because of what [Regional Councillor Di Biase] said."

Board Member 4. "I was surprised that [Regional Councillor Di Biase] would say 'just give the job to [Company A]' in front of the citizen Board members".

City staff person C. "[Regional Councillor Di Biase] came to me and asked for copies of all the proposals submitted by all proponents and how [City staff] came up with the scores. When [Regional Councillor Di Biase] told me that [Company A] was unhappy that they didn't get pre-qualified, I asked him how he knew and he said '[Company A] told me' "

City staff person C. "After I told [Regional Councillor Di Biase] that speaking with a proponent during the Blackout Period of the procurement process puts the City at risk, [Regional Councillor Di Biase] continued asking for the information just not to me" (...) "I know this because my staff came and told me that [Regional Councillor Di Biase] was 'advocating' in favour of [Company A]."

City staff person D. "When I was asked and I told [Regional Councillor Di Biase] that [Company A] did not qualify, he said 'you have to be ----ing kidding me. They have to pre-qualify.' I said there was a process and we followed the process but he was not happy with my push back to him."

City staff person E. "I could tell [Regional Councillor Di Biase] did not like my answer and he just looked at me and said '...don't make waves...' and walked away. After that the relationship [with Regional Councillor Di Biase] was strained."

City staff person F. "When he asked me about the delay in procurement for the bocce courts and I explained the [City] process, [Regional Councillor Di Biase] said 'Just make it happen.' "

City staff person G. "[Regional Councillor Di Biase] said 'Where is the Commissioner? I want to know where he is right now! You better tell him to call me back or its going to be a horrible day for him at Committee' "

City staff person H. 'Tell your boss, when I call, respond to your ----ing phone'

City staff person I. " When I told [Regional Councillor Di Biase] I couldn't give him the information because there was an ongoing procurement process, he said 'I'll get it.' "

City staff person J. "When [Regional Councillor Di Biase] asked me for the results of the pre-qualification, I said the results were not ready and he said 'send me the result in an envelope to my office not by email and take care of my guys' and I said when the results are ready they will be sent to all according to our procurement process."

## **5. Preliminary Findings re Confidential Information and Scripted Emails**

When City staff and Members of Council told the Respondent that his questions to staff during the RFPQ and ongoing procurement process were contrary to the rules prohibiting Members of Council from inserting themselves into the procurement process, there are several examples of the Respondent responding by emails after the Blackout Period, the verbatim text of which originated from an individual not employed by the City.

The sequence of events shows that the Respondent forwarded confidential information in connection with the business of the City to the outside source requesting a response be drafted for him. Once the response was received by the Respondent from the outside source, the Respondent cut and pasted the scripted response verbatim and used this scripted email in response to queries from senior City staff, other Members of Council and for Motions before Council. (see Appendix 4(a)-(g) ). While there are additional examples contained in Appendix 3, I set out three particular examples below.

### **(a) Scripted E-mail: May 26 and May 28 Comparison**

On May 26, 2014 at 3:09 a.m., a private individual not employed by the City provided an e-mail to the Respondent entitled "Response to Barb" (See Appendix #4(c)). That e-mail is two pages long, and raises a number of issues in respect of the pre-qualification process for both the Father

Ermano Bulfon Community Centre and the Civil Centre Resource Library. An e-mail which is essentially identical to the e-mail provided to the Respondent by the private individual was then sent by the Respondent to Barbara Cribbett, Interim City Manager, and copied to the Mayor and Members of Council, Re: Pre-Qualification on May 28, 2014 at 11:42 a.m. (Appendix #4(c)). While the entire e-mail is essentially scripted (cut and pasted) from the May 26 e-mail, I set out below specific examples indicating the minor changes made:

**Example #1:** Comparison – Difference in 3 paragraphs Between May 26 Private Individual Letter and Letter sent to Interim City Manager, under the same heading, “Father Ermano Bulfon Community Centre”, with the 3 minor word changes in the Respondent’s e-mail shown by underlining:

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document I reviewed did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting Ltd. using the link you provided in your response. In reviewing the projects listed on the web site, only one project was found under Municipal, which was a \$600K concrete job for the City of Brampton. Under Educational, 4 schools were listed, one currently under construction for \$1.5 million (not completed). Two (Kleinburg PS, and Robert Munsch PS) Remo Construction WAS NOT the General Contractor. The last one listed was Mount Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this projects.

Based on my brief review of this one company who made the list, I’m confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years.

**Example #2:** Comparison – No difference in two paragraphs between May 26 Private Individual Letter and May 28 Letter sent to Interim City Manager, under the heading “Civic Center Resource Library”:

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the City that they did not pre-qualify.

I also reviewed the link you provided for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, a majority of the projects listed were done by Construction management, and I could not determine from the information listed if any of their projects received LEED accreditation.

**Example #3:** Comparison – Difference in 2 paragraphs Between May 26 Private Individual Letter and Letter sent to Interim City Manager, the word changes shown by underlining and strike-out

Barb, I do not wish to hold up ~~the~~ these projects, but as you can appreciate there are some serious concerns regarding the process. I also understand that we are receiving questions and inquiries from contractors regarding the pre-qualification process. I would suggest that the Auditor and the Commissioner of Finance (with responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents. That they also review the scoring, and the process for third party reference checks to ensure standards were followed and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. Therefore, I don't believe it is fair to ask them to evaluate a process they administered to determine if it was done fairly. I trust that you will act on my suggestion as it will provide ~~transparency for the~~ a fair and transparent review of the pre-qualification process, and avoid any perception of cover up.

**(b) Scripted E-mail May 29**

Similar concerns arise with respect to an e-mail provided by the private individual to the Respondent on May 29, 2014 at 1:28 p.m. (Appendix 3(f)). Essentially the same e-mail is again cut and pasted, and sent by the Respondent to Councillor Marilyn Iafrate and Interim City Manager Barbara Cribbett, copied to the Mayor and Members of Council at 2:20 p.m., approximately one hour after he received it.

What is unusual about this e-mail is that the private individual drafted paragraphs for the Respondent, such as "I was surprised", "I looked up the information", and the Respondent used those statements verbatim in his e-mail to the Councillors. The private individual again suggested the process that the Respondent raised.



Having done a comparison of the two e-mails, there are no changes in these paragraphs, or indeed, to the e-mail as a whole received from the private individual then sent to Councillors and City staff, save for some punctuation changes:

Thanks for the response Marilyn. I believe the perception of a cover could be raised incorrectly if we have the same individuals involved in the process, review the process. Its as simply as that, I was making a point as to why I suggested the auditor be involved....

....On Sunday night, I looked up the information via the links and it raised some serious concerns (as noted in my e mail). I received some additional from Asad on Monday, and after a brief review, I sent my findings and concerns to the city manager.

During that time frame, I learned that at least one company sent in a letter of objection (Also noted in my e-mail). And from my limited knowledge of the procedures, this should trigger a bid review. I suggested to Barb that review should not have the same individuals who were directly involved in the pre-qualification process.

I have provide the City manager and council with the information I gathered, along with my comments. The fact that is getting the attention it has would lead me to believe you that "something does not add up"

**(c) Drafting of Motion to Council by Private Individual**

Finally, the outside individual drafted a Member's Resolution regarding the Pre-Qualification process and sent it to the Respondent by e-mail on June 9, 2014 at 1:13 AM. The Respondent moved essentially the same resolution on June 17, 2014. The private individual's e-mail is at Appendix #3(a), page 1, and the Respondent's Resolution on page 2. The "Whereas" clauses are essentially identical. In terms of the operative part of the resolution, I set these out in the chart below, indicating changes between the version provided by the private individual and the version moved by the Respondent, ignoring format changes:

<b>Private Individual E-mail, June 9, 1:13 a.m.</b>	<b>Respondent's Resolution at Council June 17</b>
It is therefore recommended that a review of the pre-qualification process involving these two projects be done by the City Auditor, beginning with but not limited to the reviewing the bid submission to determine	It is therefore recommended <u>in keeping with the City's commitment to continuous improvement</u> , that a review of the pre-qualification process involving these two projects be done by the City Auditor; <u>beginning with The review of the submissions should include</u> but not limited to <del>the reviewing the bid submission to determine</del> the following:
The information submitted fully complied with the strict criteria listed in the bid documents	The information submitted fully complied with the strict criteria listed in the bid documents
Review the scoring to ensure consistent application of the scoring principles as set out in the bid documents	<del>Review</del> the scoring <u>be reviewed</u> to ensure consistent application of the scoring principles and the <u>awarding of points to each bidder</u> as set out in the bid documents
Ensure the collection of references was done as per the city's procedures and the awarding of points done in a consistent manner	<del>Ensure</del> the <u>request and</u> collection of references was done as per the <u>eCity's</u> procedures and the awarding of points <u>for each category</u> was done in a consistent manner
This will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to our business practices and procedures	<del>This</del> That will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to <del>our</del> the City's business practices and procedures

## 6. Harms re Improper Insertion into Procurement Process

The issue of access by municipal councillors to the details of the responses and information in relation to the City's Request For Pre-Qualification ("RFPQ") and Request For Proposals ["RFP"] and tenders, has been the subject of several reports in various municipalities in Ontario and was a significant issue addressed by the Bellamy Inquiry. Commissioner Bellamy made significant recommendations in relation to Councillors and the procurement process, premised on the basis that procurement processes "should be structured so that they are and clearly appear to be completely free from political influence or interference."<sup>10</sup> Her recommendations include the following:<sup>11</sup>

<sup>10</sup> Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, Report, The Honourable Madam Justice Denise E. Bellamy ("Bellamy Report"), Vol. 2, Good Government, p. 99, Recommendation 129, City of Toronto, 2005

<sup>11</sup> Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, Report, The Honourable Madam Justice Denise E. Bellamy ("Bellamy Report"), Vol. 2, Good Government, pp. 99-103, City of Toronto, 2005

130. Councillors should separate themselves from the procurement process. They should have no involvement whatsoever in specific procurements. They have the strongest ethical obligation to refrain from seeking to be involved in any way.

131. Members of Council should not see any documents or receive any information related to a particular procurement while the procurement process is ongoing.

132. Councillors who receive inquiries from vendors related to any specific procurement should tell them to communicate with one or more of the following three people, as is appropriate in the circumstances:

- a. the contact person in the tender document, in accordance with the contact rules in place
- b. the fairness commissioner
- c. the person in charge of the complaints process, as set out in the tender documents

The issue of who has access to detailed information with respect to a particular procurement is particularly sensitive, in that the highest standards of integrity and fairness are expected by the bidders, the public and government officials the procurement process in a government setting. In order to demonstrate that the procurement process has been exercised with integrity and fairness, strong emphasis is placed on transparency. That means that the decision making process should be as public as possible. However, in order to protect the legitimate interests of the bidders, the transparency of the process cannot be absolute. Bids often contain confidential and proprietary information that if publicly disclosed, could cause significant damage to the bidder.

The role of Council in the procurement process, generally speaking, is to set out the procurement policies that City staff should operate within. To that end, a municipal Council must set out the City's procurement policy within the Purchasing and Procurement By-laws and related Purchasing Policies that outline, among other things:

- The conditions under which bids must be sought
- The conditions under which work can be sourced without a competitive process
- The approval process
- Bid disqualification and dispute resolution process

Some examples of policies that address the need for transparency are: having Council receive, on an annual basis, reports on the Consultants used by the City and having staff report on the non-competitive sourcing that occurred in the previous year. On an exception basis, many procurement policies require staff to report to a Standing Committee when an award is being recommended to one proponent other than the low bidder, when there is an unresolved dispute

with a bidder or when there are other issues (environmental, labour relations)

As an additional oversight measure, many municipal Councils have also passed a policy that allows for the use of an independent fairness monitor that staff can engage to monitor the more complicated and risky procurements. Also, where there are concerns that staff, Council members or the bidders may have acted inappropriately, the resources of the Auditor General's or Integrity Commissioner's office are available to Council to conduct an investigation.

The underlying premise of the obligation of Members of Council to avoid inserting themselves into the City procurement process is to ensure the integrity of the bidding process and fairness in business practices. Commissioner Bellamy expressed this concern as follows, and I agree with the concern in this case.<sup>12</sup>

The reason for prohibiting councillors from participating in specific procurement processes is both simple and powerful. If a politician can control the procurement process, success in public tenders risks becoming a form of political leverage. A politician may offer to help a bidder in return for a political or financial favour. Taxpayer money then goes not to the bidder who offers the best value but to the bidder who offers the most strategic advantage to the politician in control.

The Code provisions contained in rules 1 and 7 are in place with a view to ensuring that municipal elected officials do not act in a manner that would cause a reasonable person to think that she/he would show favor toward someone or that she/he can be improperly influenced. A Member of Vaughan Council is required to consider whether her or his relationships and affiliations could prevent her or him from acting fairly and objectively when performing their duties for the City. If she or he cannot be fair and objective because of a relationship or affiliation with a group, the Member should refrain from participating in the discussion and decision-making, not insofar as any potential financial gain, but rather in relation to a real or perceived granting of favor towards the group.

In October 2011, the Honourable Justice Douglas Cunningham released his report on the Mississauga Judicial Inquiry. Entitled Updating the Ethical Infrastructure, the Commissioner provided several recommendations to ensure ethical decision-making and behaviour for municipal elected officials. Commissioner Cunningham notes in his report that "...those who are fortunate enough to enjoy friendships with the [elected Members of Council] have derived benefits from those relationships".<sup>13</sup>

In Commissioner Cunningham's report, he speaks about "friendships with the [Members of Council]" and how those businesses with this status have "derived benefits from" the friendships.

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<sup>12</sup> Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report, The Honourable Madam Justice Denise E. Bellamy ("Bellamy Report"), Vol. 2, Good Government, p. 101, City of Toronto, 2005

<sup>13</sup> Mississauga Judicial Inquiry Report, Updating the Ethical Infrastructure, The Honourable J. Douglas Cunningham, p.187, City of Mississauga, 2011

The Code recognizes that the decision-making authority for the municipality lies with Council, not an individual Councillor and that it is the role of the officers and employees of the municipality to implement Council's decisions. Members of Council recognize and respect the role of City staff and affirm that only Council as a whole has the capacity to direct staff members. Council as a whole must be able to access information, on a need to know basis, in order to fulfill its decision-making duties and oversight responsibilities and this is a legitimate role of Council, the Board of Directors of the municipality. However, this does not mean broad stroke access by an individual Member of Council to any information they feel is necessary for them to make decisions, especially not in the area of procurement where there are rules around the Blackout Period, rules that the former City Solicitor went to great lengths to explain to the Respondent in painstaking detail.

Where information is needed, the Procedural by-law identifies in what way the information can be provided to Council as a whole. Individual Members of Council also recognize that the information that they receive as members of the decision-making body of Council is subject to the confidentiality and disclosure rules of Provincial and Federal statutes and City of Vaughan by-laws, which means confidential information, including discussions at closed meetings of Council and legal matters, is not to be shared with constituents or third parties, or script writers until the information becomes public.

#### **F. Reason for Interim Report**

I tender this Interim complaint investigation report to the Council of the City of Vaughan for their consideration.

I have provided a copy of my preliminary complaint investigation findings to both the Complainant and the Respondent, pursuant to Section 12(1) of the Code Protocol. I have refrained from tendering my final report and any recommendations to Council, until April 17, 2015, to allow for the Respondent to provide comments.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read 'Suzanne Craig', written over a large, loopy flourish.

Suzanne Craig  
Integrity Commissioner

**DELIVERED BY FACSIMILE AND COURIER**

January 30, 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**

**Overview**

The formal complaint does not comply with the proper procedure set out in the Code of Conduct. The complainant has failed to set out "reasonable grounds" for his belief that Regional Councillor Michael DiBiase has contravened the Code of Conduct in that:

- a. In Appendix 1 he has merely listed sections of the Code of Conduct without stating any grounds for belief that any of these sections have been contravened, and
- b. In Appendix 2 he has failed to set out what public records he is referring to and relies on his own statements of self-interest and conjecture to bootstrap up an argument for his unfounded allegations. His "findings" are nowhere set out in support of an allegation of inappropriate relationship. His claim to belief regarding contraventions is, in itself, inappropriately and illegally founded.

Notwithstanding the failure of to comply with the proper procedure by setting out a proper affidavit which in turn swears to the facts he relies on and the fact that he is asking you to invoke your powers to conduct what is clearly a fishing expedition, Regional Councillor Michael DiBiase respects and follows the Code of Conduct and accordingly, will respond to this specious and unfounded complaint.

**Appendix 1**

With respect to the shopping list set out in Appendix 1, the response is as follows:

Rule 1 (a) and (b) is not applicable as they apply to requests for information or inquiries from members of the public. Further no one is required to provide a response to an inquiry such as this

as it is frivolous, unreasonable and harassing. Having failed to persuade the voters in the last election campaign that there was any substance to the complaint made to the media, seeks to now have the Integrity Commissioner carry out an investigation into his improperly and clearly politically motivated complaint.

The inquiry is not an inquiry but a complaint. Rule 1 (c) is not applicable as it deals with the *Municipal Conflict of Interest Act* (hereinafter "MCI"). The Integrity Commissioner has no authority to receive or investigate complaints regarding alleged contraventions under the MCI.

The remainder of the list alleging breaches of certain provisions of the Rules are not applicable nor are these allegations supported by any alleged facts. merely paraded these sections and made a bald allegation of alleged contraventions without any supporting facts. Regional Councillor DiBiase complies with all of the Rules.

## **Appendix 2: Issue 1**

### **General**

With respect to issue 1 set out in Appendix 2 the general response is as follows:

· relies on a media report which merely contains his own bald allegations.

Notwithstanding the denial made by Regional Councillor DiBiase the complainant considers it to be a lie without offering any factual basis for that allegation. Again, a bald statement backed by no facts.

The statement concerning "reason to believe" that the Regional Councillor has been the vocal proponent of once again is bereft of any factual basis in support. The complainant also fails to list any factual basis to support his bald allegations concerning his "reason to believe" that members of the Vaughan Public Library Board were influenced by Regional Councillor DiBiase or that he may have tried to interfere in the tendering process in the matter of the Civic Center Resource Library. encourages the Integrity Commissioner to conduct a fishing expedition in hopes of finding some support for his baseless allegations.

The speculative nature of his request and his desire to cast aspersions on the Regional Councillor is seen in the statements that the investigation is to proceed to interview persons who "would have" or "ought to have" direct knowledge of the matters. The failure to set out the facts those persons had or even ought to have had demonstrates a desire to cause an investigation to be made without any proper factual foundation and reveals improper motivation.

### **Specific**

More specifically in respect of Appendix 2 Issue 1, the following is submitted:

· alleges that the information gathered was from his "research of public records and my activities". His production of copies of Regional Councillor DiBiase's personal emails is unexplained. Clearly, actions in obtaining access to personal e-mails are illegal.



Further, [redacted] misrepresented himself by posing as a potential client to elicit information about the cottage construction. The information he seeks to rely on was obtained illegally and under false pretenses. It would be contrary to the establishment of an Integrity office to have that same office condone such activities by founding an investigation on illegally obtained materials and misrepresentations. Indeed, to do so would compromise the integrity of the Integrity Commissioner.

[redacted] suggests that the Integrity Commissioner use the CBC article as the basis for her investigation. Again, to do so in this case would compromise the integrity of that office.

[redacted] was registered as a rival candidate in the 2014 municipal election and, as the opponent of Regional Councillor DiBiase, was the source of the article he seeks to have the Commissioner rely on. The CBC article was founded on the information provided by [redacted]. Further, the CBC could not get confirmation of the alleged claims by [redacted] when they interviewed the personnel from the companies. The reported findings of the article were those of [redacted] and not the CBC, as claimed in [redacted] affidavit. In fact, when interviewed by the CBC, the representative of the supplier stated that [redacted] was not the general contractor. The CBC article goes on to state that "in all the cases involving [redacted] referenced, Mr. DiBiase casts his votes in accordance with the advice and recommendation of municipal staff".

If the Integrity Commissioner feels it appropriate to use the illegally obtained personal e-mails, a careful review of those emails evidences the fact that [redacted] is not the general contractor. All of the correspondence from Regional Councillor DiBiase was sent directly to the [redacted] contractors/suppliers and all correspondence from the contractors/suppliers was sent directly to him. There was no indication that [redacted] was the general contractor.

## Appendix 2: Issue 2

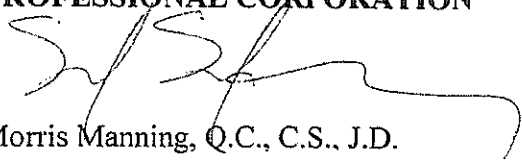
[redacted] recognizes that this complaint is statute barred. Nonetheless, he would like the Integrity Commissioner to ignore the limitation period and speculate and provide her comments on what violations could or would have been breached.

This request that the rule of law be ignored is further evidence of the impropriety and improper motive of [redacted]. Given the nature and purpose of the office of the Integrity Commissioner, it would be again a compromise of the integrity of that office for the rule of law to be disregarded as requested by [redacted].

Yours very truly,

**MORRIS MANNING, Q.C.**

**PROFESSIONAL CORPORATION**

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

## **Issue 2**

I have analyzed Councillor DiBiase's voting record on land planning matters regarding Block 27. Councillor DiBiase has consistently declared a conflict of interest in matters regarding Block 27 however he failed to declare an interest on a planning matter regarding Block 27 at the June 7, 2011 Committee of the Whole meeting. Minutes of the meeting reveal that Councillor DiBiase did not declare an interest on Report 30, item 21 however he did declare an interest on Report 30, item 26. I have provided the matrix below to show Councillor DiBiase's voting record on matters regarding Block 27

Council Meeting Minutes Report #1	15	January 25, 2011	Disclosure of Interest - Yes
Council Meeting Minutes Report #39	1	September 27, 2011	Disclosure of Interest - Yes
Council Meeting Minutes Report #29	3	June 26, 2012	Disclosure of Interest - Yes
Council Meeting Minutes Report #39	7,8	October 30, 2012	Disclosure of Interest - Yes
Council Meeting Minutes Report #26	1	June 24, 2014	Disclosure of Interest - Yes
Committee of Whole Report #30	21	June 7, 2011	Disclosure of Interest - No
Committee of Whole Report #30	26	June 7, 2011	Disclosure of Interest - Yes

**Craig, Suzanne**

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**From:** . yahoo.com>  
**Sent:** Monday, June 09, 2014 1:13 AM  
**To:** Di Biase Michael;  
**Cc:** Di Biase, Michael  
**Subject:** Resolution

Member's Resolution

Submitted by Regional Councillor Michael Di Biase

Whereas, the City of Vaughan is committed to a transparent and fair tendering/bid process; and,

Whereas, the City of Vaughan in June of 2013 developed " NEW PROCESSES AND PROCEDURES" that was immediately implemented into major projects which included the Civic Centre Resource Library and FEBCC projects; and,

Whereas, the City have received complaints and inquiries from at least two bidders regarding the pre-qualification process for these two projects; and

Whereas, at least two members of council have raised concerns regarding the pre-qualification process involving these two projects; and,

Whereas, a project audit or bid process review is not an uncommon practice; and,

Whereas, The internal auditor has audited other capital projects as part of his departmental audit program; and,

It is therefore recommended that a review of the pre-qualification process involving these two projects be done by the City Auditor, beginning with but not limited to the reviewing the bid submissions to determine;

1. The information submitted fully complied with the strict criteria listed in the bid documents.
2. Review the scoring to ensure consistent application of the scoring principles as set out in the bid documents, and awarding of points to each bidder
3. Ensure the collection of references was done as per the city's procedures and the awarding of points done in a consistent manner

This will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to our business practices and procedures.

W.G

## MEMBER'S RESOLUTION

<b>Meeting/Date:</b>	<b>COMMITTEE OF THE WHOLE - JUNE 17, 2014</b>
<b>Title:</b>	<b>PRE-QUALIFICATION PROCESS</b>
<b>Submitted by:</b>	<b>Regional Councillor Michael Di Biase</b>
<p><i><b>Whereas</b></i>, the City of Vaughan is committed to a transparent and fair tendering/bid process; and,</p> <p><i><b>Whereas</b></i>, the City of Vaughan in June of 2013 developed "NEW PROCESSES AND PROCEDURES" that was immediately implemented into major projects which included the Civic Centre Resource Library and Father Ermanno Bulfon Community Centre projects; and,</p> <p><i><b>Whereas</b></i>, the City has received complaints and inquiries from at least two bidders regarding the pre-qualification process for these two projects; and</p> <p><i><b>Whereas</b></i>, at least two members of Council have raised concerns regarding the pre-qualification process involving these two projects; and,</p> <p><i><b>Whereas</b></i>, a project audit or bid process review is not an uncommon practice; and,</p> <p><i><b>Whereas</b></i>, the internal auditor has audited other capital projects as part of his departmental audit program; and,</p> <p><i><b>Whereas</b></i>, an audit or review of processes is not an uncommon practice; and</p> <p><i><b>Whereas</b></i> the City's auditor has audited other processes and capital projects as part of his departmental audit program; and,</p> <p><i><b>It is therefore recommended</b></i> in keeping with the City's commitment to continuous improvement, that a review of the pre-qualification process involving these two projects be done immediately by the City Auditor. The review of the submissions should include but not limited to the following:</p> <p><i><b>That</b></i> the information submitted fully complied with the strict criteria listed in the bid documents; and,</p> <p><i><b>That</b></i> the scoring be reviewed to ensure consistent application of the scoring principles and awarding of points to each bidder as set out in the bid documents; and,</p> <p><i><b>That</b></i> the request and collection of references was done as per the City's procedures and the awarding of points for each category was done in a consistent manner; and</p> <p><i><b>That</b></i> this will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to the City's business practices and procedures.</p>	

Respectfully submitted,

**Attachments**

n/a

**Craig, Suzanne**

---

**From:** @yahoo.com>  
**Sent:** Tuesday, May 06, 2014 12:25 PM  
**To:** Di Biase, Michael;  
**Subject:** Re: copy of the communication submitted to Clerks

Okay. Thank you. Make your comments, ask your questions and move the item.  
W.G

---

**From:** "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>  
**Sender:**  
**Date:** Tue, 6 May 2014 11:47:01 -0400  
**To:** @yahoo.com @yahoo.com>  
**Subject:** FW: copy of the communication submitted to Clerks

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**From:** Singleton, Margie  
**Sent:** Tuesday, May 06, 2014 11:39 AM  
**To:** Di Biase, Michael  
**Subject:** RE: copy of the communication submitted to Clerks

Good Morning Michael,

Yes I am in agreement with the contents and proposed direction identified in the Memo.

Do you have concerns or queries? I hope you will be comfortable supporting the Motion as recommended.

Thank you

*Margie Singleton, BA, MLS  
Chief Executive Officer  
Vaughan Public Libraries  
905.653.READ (7323) X 4101  
[margie.singleton@vaughan.ca](mailto:margie.singleton@vaughan.ca)*

**Enrich Inspire Transform**

Our Mission: Vaughan Public Libraries offers welcoming destinations that educate, excite and empower our community

---

**From:** On Behalf Of Di Biase, Michael  
**Sent:** Tuesday, May 06, 2014 10:42 AM  
**To:** Singleton, Margie  
**Subject:** RE: copy of the communication submitted to Clerks

Good Morning Margie,

Thank you for the email, have you had an opportunity to review the communication to Council contained in this email? If so, are you in agreement with it, or do you have any concerns that should be noted?

**Craig, Suzanne**

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**From:** [REDACTED]@yahoo.com>  
**Sent:** Monday, May 26, 2014 3:09 AM  
**To:** Di Biase Michael  
**Cc:**  
**Subject:** RESPONSE to Barb.

Hello Barb, thank you for responding to my memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that I could get the answers to my simple questions, and that the information provided would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent process.

While I do understand that the information submitted by the contractors "is understood to be confidential" all submissions and documentation are the property of the owner (City) and would be governed by MFIPPA. That would mean that the owner may be required to disclose the information, however, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

**Father Ermano Bulfon Community Centre:**

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting LTD using the link you provided (thank you). In reviewing the projects listed, only one was found under Municipal, which was a \$600K concrete job for the City of Brampton Brampton. Under Educational, 4 schools were listed, One currently under construction for \$1.5 million. (not completed). Two (Klienberg PS, and Robert Munsch PS) REMO Construction WAS NOT the contractor. The last one listed was Mount

Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this project.

Based on my brief review of this one company who made the list, I'm confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years. I'm also not clear who did the reference check for this prequalification? Who sent out the template, and who totaled the reference scores?

### **Civic Centre Resource Library:**

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the city that they did not pre-qualify.

I also reviewed the link you provide for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, majority of the projects listed were done by Construction management, and I could not determine from the information listed if any of their projects received LEED accreditation.

Barb, I do not wish to hold up the projects, but as you can appreciate there are some serious concerns regarding the process. I would suggest that the Auditor and the Commissioner of Finance ( with responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. I trust that you will act on my suggestion as it will provide transparency for the review, and avoid any perception of cover up.

## **Craig, Suzanne**

---

**From:** Di Biase, Michael  
**Sent:** Wednesday, May 28, 2014 11:42 AM  
**To:** Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Hello Barb,

Thank you for responding to the memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that the answers to my basic questions would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent pre-qualification process.

I do understand that the information submitted by the contractors "is understood to be confidential". However, all submissions and documentation are the property of the owner (City) and would be governed by MFIPPA. I would expect that would mean that the owner may be required to disclose the information. However, in this situation, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

Below are some comments and observations that raises concerns regarding the pre-qualification process.

### **Father Ermano Bulfon Community Centre:**

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document I reviewed did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting Ltd. using the link you provided in your response. In reviewing the projects listed on the web site, only one project was found under Municipal, which was a \$600K concrete job for the City of Brampton. Under Educational, 4 schools were listed, one currently under construction for \$1.5 million(not completed). Two (Kleinburg PS, and Robert Munsch PS) Remo Construction WAS NOT the General Contractor. The last one listed was Mount Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this project.

Based on my brief review of this one company who made the list, I'm confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years.

### **Civic Centre Resource Library:**

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the City that they did not pre-qualify.

I also reviewed the link you provide for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, a majority of the projects listed were



done by Construction Management, and I could not determine from the information listed on the web site if any of their projects received LEED accreditation.

Barb, I do not wish to hold up these projects, but as you can appreciate there are some serious concerns regarding the process. I also understand that we are receiving questions and inquiries from contractors regarding the pre-qualification process. I would suggest that the City's Auditor and the Commissioner of Finance ( who has the responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents. That they also review the scoring, and the process for third part reference checks to ensure standards were followed and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. Therefore, I don't believe it is fair to ask them to evaluate a process they administered to determine if it was done fairly.

I trust that you will act on my suggestions as it will provide a fair and transparent review of the pre-qualification process, and avoid any perception of a cover up.

*Michael DiBiase*  
*Regional Councillor*

---

**From:** Cribbett, Barbara  
**Sent:** Friday, May 23, 2014 4:27 PM  
**To:** Di Biase, Michael  
**Cc:** Mayor and Members of Council  
**Subject:** Pre-Qualification

Regional Councillor Di Biase:

The attached memos from you are related to two Request for Pre-qualification (RFPQ) processes for general contractors recently completed by staff teams with the process facilitated by the Purchasing Services Department (RFPQ14-007 – Civic Centre Resource Library and RFPQ14-051 – Father Ermanno Bulfon Community Centre Fitness Expansion)

The evaluation processes resulted in a list of successful prequalified bidders for each project. The successful bidders have been notified.

Civic Centre Resource Library

In the case of the Civic Centre Resource Library, the tender documents have already been released to the prequalified bidders, with a closing date of June 10, 2014. Pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the CEO of Vaughan Public Libraries, the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, Director of Planning and Communications, VPL and a representative from Zaz Architects, with facilitation provided by Purchasing Services.

Father Ermanno Bulfon Community Centre

In the case of the Father Ermanno Bulfon Community Centre, the tender documents have already been released to the prequalified bidders, with a closing date of June 9, 2014. Again, pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, and the Manager of Buildings, with facilitation provided by Purchasing Services.

#### General

When third party reference checks are conducted, the references are asked to self-complete a template form and rate/score the performance of the bidder. The forms completed by the references are returned to City staff and the scores provided by the references are simply totaled and combined with the overall score.

The bid documents state that all information, or information prepared and submitted by the Contractors is understood to be confidential, therefore any further information from the proposals is not being provided to you. However, as you have specifically asked about Graham Construction & Engineering, information regarding some of their projects can be seen on their website: [www.graham.ca](http://www.graham.ca). under Projects – Commercial. In addition, information regarding Remo General Contracting Ltd. can be seen on their website: [www.remogc.ca](http://www.remogc.ca).

Barb Cribbett  
Interim City Manager  
City of Vaughan  
905-832-8585 Ext. 8475  
[Barbara.Cribbett@vaughan.ca](mailto:Barbara.Cribbett@vaughan.ca)

**Craig, Suzanne**

---

**From:** .@yahoo.com>  
**Sent:** Thursday, May 29, 2014 11:53 AM  
**To:** Di Biase, Michael  
**Subject:** Response.

Alan, thank you for your response. However, how can we determine "if there are significant findings of unfairness" without a review? And as noted in my e-mail, I'm aware of at least one formal complaint.

I did review the information that the city manager provided and noted some concerns on my own that require further review.

I simply asking the city manager to perform a further review to address the concerns noted. Just so that everyone is aware, the city does have a "bid review process" to address complaints. I'm simply pointing out that we should NOT be asking individuals involved in the process to perform a review of themselves.  
W.G

---

**From:** "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>  
**Sender:**  
**Date:** Thu. 29 May 2014 11:29:02 -0400  
**To:** yahoo.com @yahoo.com>  
**Subject:** FW: Pre-Qualification

---

**From:** Shefman, Alan  
**Sent:** Thursday, May 29, 2014 10:56 AM  
**To:** Di Biase, Michael; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Michael

My primary concern is that you are directing your focus on a specific pre-qualification process. I do not believe that is our role. If you have concerns about the fairness or efficiency of the pre-qualification process in general I would support a motion asking the City Manager to conduct a review and prepare a report.

I will not support a review of any specific process unless there are significant findings of unfairness or we receive a formal complaint. I do not think it is appropriate to act for a developer who wants to challenge our procedures but is not willing to come forward through proper channels to make that challenge.

Please consider preparing a recommendation that allows us to consider the larger issues so that we can determine whether the procedures we use are fair, efficient and effective.

Alan

**Alan Shefman, Councillor**

Ward 5 - Thornhill  
City of Vaughan  
[alan.shefman@vaughan.ca](mailto:alan.shefman@vaughan.ca)  
905-832-8585 x8349

2141 Major Mackenzie Drive  
Vaughan, ON L6A 1T1

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**From:** Di Biase, Michael  
**Sent:** May 29, 2014 10:30  
**To:** Shefman, Alan; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Dear Alan,

I offered a suggestion to the City Manager to address the questions being raised by contractors. In my brief review of the information Barb provided, it did raise some concerns as I noted in my e-mail.

I believe a review of the process by the auditor will send a message that we are serious about a fair and equitable process.

Alan, if you want this address as a motion, I will have to draft a resolution and include the information noted in my e-mail. I would prefer that the city manager perform a review and report back to council.

I would like to hear from my colleagues on how best to proceed giving the information noted in my e-mail.

*Michael DiBiase*  
*Regional Councillor*

---

**From:** Shefman, Alan  
**Sent:** Wednesday, May 28, 2014 4:16 PM  
**To:** Di Biase, Michael; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Mike

I am very concerned about this email and what an individual member of Council is asking for. I just don't think it's appropriate since this issue has been generated by one contractor.

If you have a GENERAL concern about our purchasing/prequalification/tendering process it would be appropriate to bring this up at a committee meeting and ask the City Manager to prepare a report on the process to Committee. If you got support from other members of Council then a report would, in due course, be presented to Council.

Alan

**Alan Shefman, Councillor**

Ward 5 - Thornhill  
City of Vaughan  
[alan.shefman@vaughan.ca](mailto:alan.shefman@vaughan.ca)  
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---

**From:** Di Biase, Michael  
**Sent:** May 28, 2014 11:42  
**To:** Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Hello Barb,

Thank you for responding to the memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that the answers to my basic questions would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent pre-qualification process. I do understand that the information submitted by the contractors "is understood to be confidential". However, all submissions and documentation are the property of the owner (City) and would be governed by MFIPPA. I would expect that would mean that the owner may be required to disclose the information. However, in this situation, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

Below are some comments and observations that raises concerns regarding the pre-qualification process.

**Father Ermano Bulfon Community Centre:**

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document I reviewed did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting Ltd. using the link you provided in your response. In reviewing the projects listed on the web site, only one project was found under Municipal, which was a \$600K concrete job for the City of Brampton. Under Educational, 4 schools were listed, one currently under construction for \$1.5 million(not completed). Two (Kleinburg PS, and Robert Munsch PS) Remo Construction WAS NOT the General Contractor. The last one listed was Mount Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this project.

Based on my brief review of this one company who made the list, I'm confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years.

#### **Civic Centre Resource Library:**

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the City that they did not pre-qualify.

I also reviewed the link you provide for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, a majority of the projects listed were done by Construction Management, and I could not determine from the information listed on the web site if any of their projects received LEED accreditation.

Barb, I do not wish to hold up these projects, but as you can appreciate there are some serious concerns regarding the process. I also understand that we are receiving questions and inquiries from contractors regarding the pre-qualification process. I would suggest that the City's Auditor and the Commissioner of Finance ( who has the responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents. That they also review the scoring, and the process for third part reference checks to ensure standards were followed and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. Therefore, I don't believe it is fair to ask them to evaluate a process they administered to determine if it was done fairly.

I trust that you will act on my suggestions as it will provide a fair and transparent review of the pre-qualification process, and avoid any perception of a cover up.

*Michael DiBiase*  
*Regional Councillor*

---

**From:** Cribbett, Barbara  
**Sent:** Friday, May 23, 2014 4:27 PM  
**To:** Di Biase, Michael

**Cc:** Mayor and Members of Council  
**Subject:** Pre-Qualification

Regional Councillor Di Biase:

The attached memos from you are related to two Request for Pre-qualification (RFPQ) processes for general contractors recently completed by staff teams with the process facilitated by the Purchasing Services Department (RFPQ14-007 – Civic Centre Resource Library and RFPQ14-051 – Father Ermanno Bulfon Community Centre Fitness Expansion)

The evaluation processes resulted in a list of successful prequalified bidders for each project. The successful bidders have been notified.

#### Civic Centre Resource Library

In the case of the Civic Centre Resource Library, the tender documents have already been released to the prequalified bidders, with a closing date of June 10, 2014. Pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the CEO of Vaughan Public Libraries, the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, Director of Planning and Communications, VPL and a representative from Zaz Architects, with facilitation provided by Purchasing Services.

#### Father Ermanno Bulfon Community Centre

In the case of the Father Ermanno Bulfon Community Centre, the tender documents have already been released to the prequalified bidders, with a closing date of June 9, 2014. Again, pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, and the Manager of Buildings, with facilitation provided by Purchasing Services.

#### General

When third party reference checks are conducted, the references are asked to self-complete a template form and rate/score the performance of the bidder. The forms completed by the references are returned to City staff and the scores provided by the references are simply totaled and combined with the overall score.

The bid documents state that all information, or information prepared and submitted by the Contractors is understood to be confidential, therefore any further information from the proposals is not being provided to you. However, as you have specifically asked about Graham Construction & Engineering, information regarding some of their projects can be seen on their website: [www.graham.ca](http://www.graham.ca). under Projects – Commercial. In addition, information regarding Remo General Contracting Ltd. can be seen on their website: [www.remogc.ca](http://www.remogc.ca).

Barb Cribbitt  
Interim City Manager  
City of Vaughan  
905-832-8585 Ext. 8475

Barbara.Cribbett@vaughan.ca

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**Craig, Suzanne**

---

**From:** .@yahoo.com>  
**Sent:** Thursday, May 29, 2014 12:24 PM  
**To:** Di Biase, Michael  
**Subject:** Response: Deb

Deb, Thanks for weighing in on this issue.

I trust that you have read the concerns I raised after reviewing the information provided by the city manager. I would also hope that after reviewing my concerns, you would agree that at a minimum those questions raised deserved answers.

As you're also aware that the city has a bid review process to address bid concerns.

I trust that you would also agree that we cannot ask individuals directly involved to perform a review on themselves.

I made that observation to Barb and suggested we ask the auditor and the commissioner in charge of purchasing to perform the review of the process.

W.G

---

**From:** "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>  
**Sender:** [Michael.DiBiase@vaughan.ca](mailto:Michael.DiBiase@vaughan.ca)  
**Date:** Thu, 29 May 2014 11:37:31 -0400  
**To:** .@yahoo.com< .@yahoo.com>  
**Subject:** FW: Pre-Qualification

---

**From:** Schulte, Deb  
**Sent:** Thursday, May 29, 2014 11:35 AM  
**To:** Shefman, Alan; Di Biase, Michael; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

I agree one hundred percent with Alan.

Deb Schulte  
Local & Regional Councillor  
City of Vaughan

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---

**From:** Shefman, Alan  
**Sent:** Thursday, May 29, 2014 10:56 AM  
**To:** Di Biase, Michael; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Michael

## Craig, Suzanne

---

**From:** Di Biase, Michael  
**Sent:** Thursday, May 29, 2014 2:14 PM  
**To:** Schulte, Deb; Shefman, Alan; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Dear Deb,

Thanks for weighing in on this issue.

I trust that you have read the concerns I raised after reviewing the information provided by the City Manager. I would also hope that after reviewing my concerns, you would agree that at a minimum those questions raised deserved answers.

As you're also aware that the City has a bid review process to address bid concerns.

I trust that you would also agree that we cannot ask individuals directly involved to perform a review on themselves.

I made that observation to Barb and suggested we ask the auditor and the commissioner in charge of purchasing to perform the review of the process.

*Michael DiBiase*  
*Regional Councillor*

---

**From:** Schulte, Deb  
**Sent:** Thursday, May 29, 2014 11:35 AM  
**To:** Shefman, Alan; Di Biase, Michael; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

I agree one hundred percent with Alan.

Deb Schulte  
Local & Regional Councillor  
City of Vaughan

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[Click here.](#)

---

**From:** Shefman, Alan  
**Sent:** Thursday, May 29, 2014 10:56 AM  
**To:** Di Biase, Michael; Cribbett, Barbara

**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Michael

My primary concern is that you are directing your focus on a specific pre-qualification process. I do not believe that is our role. If you have concerns about the fairness or efficiency of the pre-qualification process in general I would support a motion asking the City Manager to conduct a review and prepare a report.

I will not support a review of any specific process unless there are significant findings of unfairness or we receive a formal complaint. I do not think it is appropriate to act for a developer who wants to challenge our procedures but is not willing to come forward through proper channels to make that challenge.

Please consider preparing a recommendation that allows us to consider the larger issues so that we can determine whether the procedures we use are fair, efficient and effective.

Alan

**Alan Shefman, Councillor**

Ward 5 - Thornhill  
City of Vaughan  
[alan.shefman@vaughan.ca](mailto:alan.shefman@vaughan.ca)  
905-832-8585 x8349

2141 Major Mackenzie Drive  
Vaughan, ON L6A 1T1

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**[Ward5.vaughan.ca](http://Ward5.vaughan.ca)**

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**From:** Di Biase, Michael  
**Sent:** May 29, 2014 10:30  
**To:** Shefman, Alan; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Dear Alan,

I offered a suggestion to the City Manager to address the questions being raised by contractors. In my brief review of the information Barb provided, it did raise some concerns as I noted in my e-mail.

I believe a review of the process by the auditor will send a message that we are serious about a fair and equitable process.

## Craig, Suzanne

---

**From:** @yahoo.com>  
**Sent:** Thursday, May 29, 2014 1:28 PM  
**To:** Di Biase, Michael  
**Subject:** Response.

Thanks for the response Marilyn. I believe the perception of a cover could be raised incorrectly if we have the same individuals involved in the process, review the process. Its as simply as that, I was making a point as to why I suggested the auditor be involved.

I do agree with you that this is getting blow up into a major issue. I received the list of the pre qualified bidders last week. After a reviewing it. I was surprised by some names on the list. I sent a memo to John Henry and Barb asking some basic questions regarding my observations. I'm sure you (and others have done the same) in asking questions when you have a concern.

To my surprise, I received limited information, and was given two web links and basically told to look up the information.

On Sunday night, I looked up the information via the links and it raised some serious concerns (as noted in my e-mail). I received some additional from Asad on Monday, and after a brief review, I sent my findings and concerns to the city manager.

During that time frame, I learned that at least one company sent in a letter of objection. (Also noted in my e-mail). And from my limited knowledge of the procedures, this should trigger a bid review. I suggested to Barb that review should not have the same individuals who were directly involved in the pre qualification process.

I have provide the City manager and council with the information I gathered, along with my comments. The fact that is getting the attention it has would lead me to believe you that "something does not add up"

W.G

---

**From:** "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>

**Sender:**

**Date:** Thu, 29 May 2014 12:44:51 -0400

**To:** @yahoo.com @yahoo.com>

**Subject:** F'W: Pre-Qualification

---

**From:** Iafrate, Marilyn

**Sent:** Thursday, May 29, 2014 12:12 PM

**To:** Di Biase, Michael; Cribbett, Barbara

**Cc:** Mayor and Members of Council

**Subject:** RE: Pre-Qualification

I'm being quite frank now when I say that all this doesn't sound right and we are being dragged into a matter that we as councilors should not be involved in. I don't understand why you would use the term "cover up" unless someone out there is feeding this to you and therefore they not councillors should be dealing directly with city staff.

**Craig, Suzanne**

---

**From:** Di Biase, Michael  
**Sent:** Thursday, May 29, 2014 2:20 PM  
**To:** Iafrate, Marilyn; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

Thanks for the response Marilyn. I believe the perception of a cover could be raised incorrectly if we have the same individuals involved in the process, review the process. It's as simple as that, I was making a point as to why I suggested the auditor be involved.

I do agree with you that this is getting blown up into a major issue. I received the list of the pre-qualified bidders last week. After reviewing it, I was surprised by some names on the list. I sent a memo to John Henry and Barb asking some basic questions regarding my observations. I'm sure you (and others have done the same) in asking questions when you have a concern.

To my surprise, I received limited information, and was given two web links and basically told to look up the information.

On Sunday night, I looked up the information via the links and it raised some serious concerns (as noted in my e-mail). I received some additional information from Asad on Monday, and after a brief review, I sent my findings and concerns to the City Manager.

During that time frame, I learned that at least one company sent in a letter of objection. (Also noted in my e-mail), and from my limited knowledge of the procedures, this should trigger a bid review. I suggested to Barb that review should not have the same individuals who were directly involved in the pre-qualification process.

I have provided the City Manager and Council with the information I gathered, along with my comments. The fact that is getting the attention it has would lead me to believe that "something does not add up".

*Michael DiBiase*

*Regional Councillor*

---

**From:** Iafrate, Marilyn  
**Sent:** Thursday, May 29, 2014 12:12 PM  
**To:** Di Biase, Michael; Cribbett, Barbara  
**Cc:** Mayor and Members of Council  
**Subject:** RE: Pre-Qualification

I'm being quite frank now when I say that all this doesn't sound right and we are being dragged into a matter that we as councilors should not be involved in. I don't understand why you would use the term "cover up" unless someone out there is feeding this to you and therefore they not councillors should be dealing directly with city staff.

## Craig, Suzanne

---

**From:**  
**Sent:** Tuesday, June 24, 2014 12:20 PM  
**To:** Di Biase, Michael  
**Subject:** Fw: New City Hall Resource Library

---

**From:** Di Biase, Michael <Michael.DiBiase@vaughan.ca>  
**Sent:** Tuesday, June 24, 2014 10:33 AM  
**To:** Singleton, Margie; Di Biase, Michael  
**Cc:** Mayor and Members of Council; 'yahoo.com'; ; DeFrancesca, Rosanna;  
'Iafrate, Marilyn'; ;  
'Pradeep Puri'; Rosati, Gino; 'Devender Sandhu'; Cribbett, Barbara; Henry, John; Pittari, Joe; Noronha, Lloyd; Shatil,  
**Subject:** RE: New City Hall Resource Library

Hi Margie,

According to the capital program, (and the capital budget forecast approved in 2014), it has Vellore being designed in 2017 and construction in 2018. No mentioned of blocks 40/41/42 ??

But more importantly the library reserve balance in 2018 is only \$1.8 million. So when is the expected realistic construct dates based on the next DC Revision.

And are the values included in the capital forecast accurate as the land value and construction estimates appears to be low based on current market values.

*Michael Di Biase*  
*Regional Councillor*

---

**From:** Singleton, Margie  
**Sent:** Tuesday, June 24, 2014 9:44 AM  
**To:** Di Biase, Michael  
**Cc:** Mayor and Members of Council; 'rtcapone@yahoo.com'; ; DeFrancesca, Rosanna;  
'Iafrate, Marilyn';  
'Rosati, Gino'; 'Devender Sandhu'; Cribbett, Barbara; Henry, John; Pittari, Joe; Noronha, Lloyd; Shatil,  
Singleton, Margie  
**Subject:** RE: New City Hall Resource Library

Hello Michael,

I apologize for the delay in responding, but wanted to ensure accuracy of information. Please find initial responses to your queries below. Please let me know if you require additional information.

Thank You

Margie Singleton, BA, MLS

**Craig, Suzanne**

---

**From:** @yahoo.com>  
**Sent:** Tuesday, June 24, 2014 10:12 AM  
**To:** Di Biase, Michael  
**Subject:** Re: New City Hall Resource Library

Thanks. The REVISED response is::

According to the capital program, (and the capital budget forecast approved in 2014), it has Vellore being designed in 2017 and construction in 2018. No mentioned of blocks 40/41/42 ??

But more importantly the library reserve balance in 2018 is only \$1.8 million. So when is the expected realistic construct dates based on the next DC Revision.

And are the values included in the capital forecast accurate as the land value and construction estimates appears to be low based on current market values.

W.G

---

**From:** @yahoo.com>  
**Date:** Tue, 24 Jun 2014 14:09:22 +0000  
**To:** Di Biase, Michael<Michael.DiBiase@vaughan.ca>  
**ReplyTo:**  
**Subject:** Re: New City Hall Resource Library

Thanks. The response is::

According to the capital program, (and the capital budget forecast approved in 2014), it has Vellore being designed in 2017 and construction in 2018. No mentioned of blocks 40/41/42 ??

But more importantly the library reserve balance in 2018 is only \$1.8 million. So when is the expected realistic construct dates based on the next DC Revision.

W.G

---

**From:** "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>  
**Sender:**  
**Date:** Tue, 24 Jun 2014 09:44:52 -0400  
**To:**  
**Subject:** FW: New City Hall Resource Library

fyi