

R-2

**ROBERT J. SWAYZE**

BARRISTER & SOLICITOR

CERTIFIED BY THE LAW SOCIETY OF UPPER CANADA AS A SPECIALIST IN  
MUNICIPAL LAW - LOCAL GOVERNMENTAL AND USE PLANNING AND DEVELOPMENT

TELE: (519) 942-0070  
FAX: (519) 942-1239  
E-mail: robert.swayze@sympatico.ca

20736 Mississauga Road  
CALEDON, ONTARIO  
L7K 1M7

*Integrity  
Commissioner's  
Report*



---

**DATE:** June 25, 2013

**TO:** The Mayor and Members of Council  
Meeting Date: July 3, 2013

**FROM:** Robert J. Swayze  
Integrity Commissioner

**SUBJECT:** Request for Inquiry – Councillor McFadden

---

**RECOMMENDATION:** That Councillor Sue McFadden be reprimanded by Council for violating the Council Code of Conduct in that:

---

1. She wrote E-mails in a personal business matter to a member of the public which she signed as Councillor,
2. She wrote an E-mail dated December 29, 2011, threatening the member of the public to use her "connections" against him, and
3. Such E-mails utilized the City E-mail system, contrary to Rules 1, 5, 12 and 15.

**BACKGROUND:** I received a request for inquiry (the "Complaint") in accordance with the *Council Code of Conduct Complaint Protocol* on February 26, 2013 from a former resident of Mississauga who was a tenant of a bachelor apartment owned by Councillor Sue McFadden and her husband as to fifty percent and her son as to the other fifty percent (the "Complainant"). The Complaint alleged that the Councillor wrote

a threatening E-mail to him using the City E-mail account and that she used her influence with Peel Regional Police for financial gain, both contrary to the *Council Code of Conduct*.

The Complaint included copies of a series of E-mails between Councillor McFadden and the Complainant giving 30 days' notice that he was vacating the premises and promising to leave certain articles of furniture. The series included an E-mail from the Councillor dated December 29, 2011 after the Complainant moved out, accusing him of taking articles of furniture belonging to her. This E-mail also advised him that she was going to the police, filing theft charges and warning him that she has "connections and resources to take this to court and have you thrown in jail." The series culminated with an E-mail sent on January 2, 2012 advising the Complainant that she had contacted the police who were looking for him and a warrant had been issued for his arrest. This E-mail was signed "kindest regards Councillor Sue McFadden".

Ultimately, the Complainant was arrested and spent two weeks in jail. He was charged with theft of the contents of the apartment including a "murphy bed" which came out of the wall and was installed as a fixture. He pled guilty to the charge and was ordered by the court to make restitution to the Councillor of \$4,000 as well as the court barring him from being in proximity to Councillor McFadden's home or office.

---

**JURISDICTION:**

Upon receipt of a Complaint, I am required to make an initial classification as to whether the inquiry is within my jurisdiction. The second part of the Complaint was the use of influence as a member of Council of the Regional Municipality of Peel (the "Region") with the police service which is wholly administered by the Region. The election to Mississauga Council automatically includes a seat on The Region of Peel Council but it is a separate municipal corporation without a Council Code of Conduct or Integrity Commissioner.

In considering this question of jurisdiction, I consulted Professor David Mullan, the former Integrity Commissioner for the City of Toronto. On the basis of that consultation and my own evaluation of the extent of my authority, I concluded that I have jurisdiction to consider use of influence by a Councillor in any organization when that use of influence is linked to the Councillor's status as Councillor. That conclusion takes on an even greater force when the Councillor's

R-2(b)

role or membership in an organization is predicated (as here) on the Councillor's status as a Councillor. If however, the Region of Peel occupied the field, adopted a Code of Conduct and appointed an Integrity Commissioner, the complaint would more properly be referred to that process.

I also concluded that I have no jurisdiction to investigate Peel Regional Police but did receive their cooperation in this inquiry.

The jurisdiction for investigations is found in Section 223.1 of the *Municipal Act* which empowers an integrity commissioner to perform such duties as may be assigned to him or her by the municipality. Section 4 of the *Council Code of Conduct Complaint Protocol* provides that if a complaint has been classified within the Commissioner's jurisdiction, "the Commissioner shall investigate."

The authority for a municipality to impose sanctions is contained in Section 223.4 (5) which provides as follows:

"(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or the local board, as the case may be, for a period of up to 90 days."

**CONDUCT OF THE INQUIRY:**

In accordance with the Complaint Protocol, I served a copy of the Complaint on Councillor McFadden and received a response from her which was served on the Complainant.

For the purpose of this report, I interviewed in person the Complainant and Councillor McFadden. I also spoke on the telephone with the Complainant's legal counsel and with a representative of Peel Regional Police. In addition, I received a letter from the police responding to certain questions I had asked. The inquiry was delayed for 7 weeks because the Complainant was out of the country during April and most of May.

In her written response to the Complaint Councillor McFadden described her meaning of the word "connections" used in her E-mail dated December 29, 2011 as "simply by way of legal and financial

resources to pursue the charges.” I do not believe that she intended the word to mean that she knew lawyers. In fact she did not hire or speak to a lawyer prior to contacting the police. I believe that she intended the word to mean her connections as a member of Regional Council.

In the interview, I asked her who in the police she first contacted and she named the officer that conducted the theft investigation and referred to her as the community liaison officer. She may have telephoned that officer first, but in fact on the day after she wrote the E-mail dated December 29, 2011, she telephoned Superintendent Bob Devolin, the officer in charge of 11 Division with whom she sat on the board of directors of *Safe City Mississauga*. She followed that telephone call with an E-mail to him listing the items stolen. It was Superintendent Devolin who on January 2, 2012, arranged with the dayshift Staff Sergeant to assign the officer who conducted the theft investigation.

I am advised by letter from Superintendent Devolin that none of the steps taken by the police in response to the complaint were unusual and the same level of service is extended regularly to members of the community. He also assured me that “Councillor McFadden neither asked for nor received any preferential treatment throughout the course of the investigation.”

---

**FINDINGS:**

With respect to the first allegation of the complaint that the threatening E-mail sent by the Councillor violated the Council Code of Conduct, I considered the following rules:

**Rule No. 1**

- c. Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

**Rule No. 5**

1. No Member shall use for personal purposes any City staff services, property, equipment, services, supplies, websites, webboards, or other City-owned materials, other than for purposes connected with the discharge of City duties.

The commentary to Rule 5 states “Members are held to a

higher standard of behaviour and conduct and therefore should not use such property for any purpose other than for carrying out their official duties.” Using the City E-mail for purposes such as running a home business is prohibited but occasional personal use is permitted.

Rule No. 12

1. Members are governed by the City’s *Respectful Workplace* policy. All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

Rule No. 15

1. Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.

Policy No. 03-05-01 is a corporate policy relating to access to and acceptable use of information technology resources. This policy applies to elected officials and requires IT users to be responsible for exercising good judgement regarding the reasonableness of personal use. It strictly prohibits using City IT to run a personal business. It specifically provides that IT resources not be used for threatening communications.

---

I find that Councillor Sue McFadden violated the above four sections of the *Council Code of Conduct* by sending, in a personal business matter, a threatening E-mail dated December 29<sup>th</sup>, 2011, to the Complainant, signing other E-mails as Councillor and by using City IT resources to do so. I recommend that she be reprimanded by Council for such violation.

My consideration of the second allegation of improper use of influence contained in the Complaint is more complex. I will begin with my general observations on the dilemma a councillor faces in these circumstances which I hope will be helpful to all members of council. What should any member of a council do when it is necessary to communicate with staff to utilize any municipal service personally? The councillor is granted access to senior members of staff for the purpose of performing official duties including ensuring that appropriate service is provided to his or her constituents. If senior

staff are contacted, how can the councillor ensure that no special service is provided because of his or her position? Should Councillor McFadden have called the general police number instead of calling someone she knew? What if she called the Superintendent only asking for advice? Should she have requested her husband or son to make the complaint? There are no hard and fast answers to these questions.

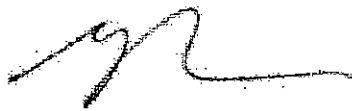
My rulings in this area will always depend on the circumstances of each case. One call she should have made was to the Interim Integrity Commissioner for advice. I would now regard his advice as binding on me. If I were in office at the time, I would have advised her not to call the Superintendent because it invites an accusation that she is using her influence improperly and may put him in a difficult position. My recommendation to the Councillor would have been to call the general police number.

On the basis of the letter received from Superintendent Devolin, I accept that Councillor McFadden did not attempt to use her influence on the police as a member of Regional Council and accordingly did not breach the Council Code of Conduct in this respect. I also accept that Peel Regional Police acted properly throughout the investigation and would have extended the same service to other members of the community.

---

**CONCLUSION:**

This report is in response to a request for Inquiry from a member of the public and is within the jurisdiction of the Integrity Commissioner. The inquiry was carried out in accordance with the *Council Code of Conduct Complaint Protocol*.



---

Robert J. Swayze  
Integrity Commissioner

*Prepared By:* Robert J. Swayze