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# Integrity Commissioner's Report

**DATE:** June 19, 2014  
**TO:** The Mayor and Council  
Meeting Date: July 2, 2014  
**FROM:** Robert J. Swayze  
Integrity Commissioner  
**SUBJECT:** Inquiry of Councillor Bonnie Crombie requested by Mr. Mark Cashin and a second complaint from a resident of Mississauga



**RECOMMENDATION:** That Council receive the report of the Integrity Commissioner dated June 19, 2014

**BACKGROUND:** I received a complaint dated April 11, 2014 from Mr. Mark Cashin, a businessman in the City, concerning the activities of Councillor Bonnie Crombie in her campaign for Mayor of the City in that she violated many of the provisions of the *Council Code of Conduct* (the "Code") and other legislation. I received a second complaint dated April 23, 2014 from a complainant who requested that I not reveal the complainant's identity in this report. I will refer to this complainant who is a resident of the City, as "Complainant No. 2". The two complaints overlap in several aspects and I have decided to consider them together.

I have complied with the *Complaint Protocol* by serving both of the complaints on Councillor Crombie and receiving her response which,

in turn, was served on the Complainants. For the purpose of this report, I personally interviewed both complainants, Councillor Crombie and her Executive Assistant. I was also assisted by several City staff members with background information and by the City Solicitor on her legal opinion relating to ownership of information collected by a ward councillor, while in office. My interview of the complainants was held in a board room with an active internet connection supplied by the IT Department. I also benefitted from the research I carried out in the preparation of my last report to the Governance Committee on the impact of social media on municipal elections and making recommendations for changes to the Code in order to include appropriate provisions in that regard.

**PRESENT STATUS:**

Rule 6 of the Code, which relates to elections, was amended by Council on June 11, 2014 mostly as recommended in my report to Governance Committee dated May 7, 2014. Attached to this report as Appendix 1 is Rule 6, as amended by Council. The fundamental principle which the Code attempts to implement, is that public funds should not be spent on campaigning for election by any incumbent councillor. All candidates in a municipal election should run against each other on a "level playing field".

Councillor Crombie's City paid staff maintain a website using the address [www.ward5mississauga.ca](http://www.ward5mississauga.ca) which supports communication to constituents of ward information. It is contrary to the Code to include in that website any reference to campaigning by the Councillor during a municipal election year.

**COMMENTS:**

Both complainants have added several supplementary submissions to their complaint, which collectively number in excess of 40 pages each and include numerous allegations of instances where the Code was violated. I will attempt in this report to deal with them all, some in more detail than others:

**Links to the Campaign for Mayor Site**

Mr. Cashin has pointed out three violations of the Code which are

valid. Complainant No. 2 has reiterated two of them. When I first viewed the Ward 5 website in response to the complaints, the following links were included:

1. A Facebook link directly to the Bonnie Crombie for Mayor website,
2. Past Ward 5 newsletters were included in the site which had links to the campaign site, and
3. An advertisement for a free tax clinic conducted by the Councillor as a public service included a similar link but when I viewed it, the link did not function but the address was clearly in view.

I find in this respect, that the website violated the requirement in the Code that public funds not be spent on campaigning. However, it is important to note that when I served the Councillor with the complaints, the links, the newsletters and the advertisement were removed from the website the next day or shortly thereafter.

#### **Contravention of the *Municipal Elections Act***

Councillor Crombie ran in the last federal election in 2011 and used her [bonniecrombie.ca](http://bonniecrombie.ca) website in that election, then adapted it for her by-election campaign in Ward 5 also in 2011 and now has adapted it again for her mayoral campaign. Mr. Cashin complained to the *Election Campaign Finances Committee* that using the website and re-using her federal signs was a violation of the *Municipal Elections Act* and has included a similar complaint in his submission to me. That committee found otherwise and I am not prepared to rehear his application which is beyond my jurisdiction.

#### **Breach of Privacy Rules**

Both Complainants assert that they and many others, signed up for Ward 5 information giving their E-mail address for that purpose only. They object to receiving campaign fund raising E-mails from the Councillor despite being easily able to unsubscribe. They both argue that privacy rules have been violated.

I agree with the legal advice provided to the City by the City Solicitor

which confirms that information collected by a member of Council while in office, about their constituents including mailing lists, E-mail lists and followers on social media sites, is the property of the Councillor. In addition, Records Management Policy No. 03-02-09 adopted by Council in 2008, differentiates between "official civic records" and "constituency records", the latter of which is deemed not to be within the City's custody or control "and may be dealt with by each elected official as he or she chooses."

I also considered privacy legislation which exempts campaign fund raising by a candidate for election. I suggest that this exemption is an acknowledgement by the legislature that such activity is part of the democratic process and any communication in that respect should be tolerated by voters.

#### **Branding with Public Funds**

When I originally read Mr. Cashin's submissions and those from Complainant No. 2, about "branding" of the Councillor with public funds, I rejected it on the general basis that all serving councillors are branding themselves with the quality of their work in the ward. They use public funds and employ staff to assist them in that public service. Their reputation which emerges at election time is their brand and they are rewarded or suffer from it.

However, Mr. Cashin explained to me in our interview that, in addition to her name, he was referring to the branding of [www.bonniecrombie.ca](http://www.bonniecrombie.ca). In 2011 it was a federal election campaign site and then changed into a municipal by-election campaign web site. At some point in 2013 the address was made to link to the publicly maintained [www.ward5mississauga.ca](http://www.ward5mississauga.ca). He provided to me a chronologically ordered series of photographs of 18 advertisements produced by the Ward 5 staff beginning in 2012 when the web address used was [ward5mississauga.ca](http://ward5mississauga.ca). These included posters, banners, and invitations to events, among other forms of communication, to constituents in Ward 5, all paid for by the City. The use of the Ward 5 URL was changed on the advertisements from and after March 21, 2013 to [bonniecrombie.ca](http://bonniecrombie.ca). At that time, clicking on [bonniecrombie.ca](http://bonniecrombie.ca) linked the user to the ward 5 web site.

His contention is that on or before that date, the Councillor formed the intention to run for Mayor and with professional advice from her staff, developed a strategy to use public funds to brand the [bonniecrombie.ca](http://bonniecrombie.ca) website address, with a plan to change the link from the address to her election for mayor site when she registered to run for Mayor. Any constituents who saved the [bonniecrombie.ca](http://bonniecrombie.ca) address as a favorite in their web browser, expecting to receive Ward 5 information, would now be directed to her election site. Her past newsletters which were included on the Ward 5 website and contained the address, would also now link to her election site.

When faced with Mr. Cashin's accusation, the Councillor denied that she contemplated running for mayor as early as 2013. She admitted to me that her motivation to make the change was to give more exposure to her name as other members of Council had practiced in their advertisements.

I believe Councillor Crombie that she did not intentionally set out to circumvent the Code and use her staff and publicly funded office to brand her campaign web site. The continuous use of [bonniecrombie.ca](http://bonniecrombie.ca) for different purposes is explained by the fact that it is her name without qualifiers and she is legally entitled to use it as long as it is not linked from her Ward 5 website when used for campaign purposes.

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### Other Complaints

Mr. Cashin included several complaints relating to Councillor Crombie and concerning one of her staff based mostly on rumour without any credible evidence. I will not publicize these allegations in this report.

### CONCLUSION:

I am not prepared to recommend sanctions against Councillor Crombie for including in the Ward 5 web site a number of links to her campaign site which I find to have been included through inadvertence. They have all been removed and she assures me that more vigilance will be practiced by her and by her staff. Another factor I considered is that the increasing impact of social media on elections is only recently being understood and the final form of Rule

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6 was only approved by Council this month. Also, the new anti-spam legislation will only come into force on July 1, 2014. With all of these dynamics in a state of flux, Councillor Crombie and her staff are entitled to the benefit of the doubt. I am recommending that this report be received by Council.

**ATTACHMENTS:**

Appendix 1: Rule 6, *Council Code of Conduct* – June 11, 2014



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Robert J. Swayze  
Integrity Commissioner

*Prepared By:* Robert J. Swayze

**APPENDIX 1**

**Rule No. 6**

**Election Campaigns:**

1. Members are required to follow the provisions of the Municipal Elections Act, 1996 and Members are accountable under the provisions of that statute.
2. No Member shall use the facilities, equipment, supplies, services, staff or other resources of the City (including Councillor newsletters, individual websites linked through the City's website and social media accounts used for ward communication) for any election campaign or campaign-related activities and all such sites shall not use the City of Mississauga logo.
  - a) If a member of Council uses any social media account for campaign purposes, such account must not be created or supported by City resources or use the City logo. Social media accounts used for campaign purposes must utilize personal cell phones, tablets and/or computers.
  - b) To avoid confusion with any website or social media accounts used for Council Member work, Council members who choose to create or use social media accounts for campaign communications must include, for the duration of the campaign, a clear statement on each campaign website or social media account's home page indicating that the account is being used for election campaign purposes.
  - c) Despite the foregoing, Members are allowed to place campaign phone numbers, websites and E-mail addresses on the election pages on the City's website, which is available and authorized for use by all candidates for municipal and school board office.
3. In a municipal election year, commencing on June 30th until the date of the election, Members may not publish Councillor newsletters or distribute them in municipal facilities. All newsletters distributed through the mail must be post-marked by no later than June 30th in an election year. Members of Council may, during such period, use City facilities to communicate important notifications to the residents of their ward by E-mail in normal Outlook format or by letter on the Councillor's stationery.

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4. In a municipal election year, commencing on the date of registration by any candidate for municipal elected office, until the date of the election, no such candidate including Members, may directly or indirectly, book any municipal facility for any purpose that might be perceived as an election campaign purpose.
5. Members shall be respectful of the role of the City Clerk in managing the municipal election process and meeting all statutory requirements in respect thereof. The Clerk must ensure all candidates are treated equally and no candidate for elected office should interfere with how the Clerk carries out these duties.

Commentary

Staff should not interpret or provide advice to Members regarding the requirements placed on candidates for municipal office.

The restriction on booking facilities ensures that election-related functions, or those that could appear to be election-related, will not occur at any time there is an advance or regular poll at the facility. The need to set up in advance means that election night parties cannot be held in the same facilities that polling stations are located in. Members should not authorize any event that could be perceived as the City providing them with an advantage over other candidates. It is the personal responsibility of Members to ensure that any use of facilities or the services of municipal staff are carried out in accordance with applicable legislation. Staff are not responsible for monitoring and advising Members or any other candidates, in this regard.

The Municipal Elections Act, 1996 clearly states that it is the responsibility of the City Clerk to conduct the election and take all necessary actions to ensure municipal elections meet all statutory requirements.

6. No Members shall use the services of persons for campaign related Activities during hours in which those persons receive any compensation from the City.
7. The Integrity Commissioner may at any time be consulted with regard to complying with any part of Rule 6 and in particular may rule on whether any activity by staff in a Councillor's office during an election year is prohibited election work or permitted activity sufficiently unrelated to the election.