



**ADR**  
CHAMBERS

Integrity Commissioner Office  
for the City of Markham

BEN DRORY, J.D., M.B.A., Q.Med., Q.Arb

May 13, 2016

SENT BY COURIER AND EMAIL TO: (KKitteringham@markham.ca)

Ms. Kimberley Kitteringham, City Clerk  
City of Markham  
Anthony Roman Centre  
101 Town Centre Boulevard  
Markham, ON L3R 9W3

**Re: Complaint Reference Number MIC-004-0023  
Councillor Alan Ho**

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Dear Ms. Kitteringham:

This is my report respecting a complaint brought by Ms. Eira Keay (the "Complainant") against Councillor Alan Ho under the *Council Code of Conduct* (the "Code"), arising out of a debate during the City Council meeting of January 25, 2016. In accordance with the preamble to the *Code Investigation Protocol* ("Investigation Protocol"), via section 223.4(1) of the *Municipal Act*, Council, a Member of Council, or a member of the public may request for the Integrity Commissioner to conduct an inquiry about whether a member of Council has contravened the *Code*.

#### **Original Written Submissions**

By affidavit dated February 22, 2016, Ms. Keay alleged that Councillor Ho violated sections 16.1 and 17.2 of the *Code*. Those provisions read as follows:

#### ***16. Conduct at Meetings***

*16.1 Members will conduct themselves at Council and in City related business meetings with decorum and in accordance with the City's Procedural By-law. Members will show respect for deputants and fellow Members and Staff by being courteous and not distracting from the business of council during presentations and when other members have the floor.*

#### ***17. Conduct of Members***



...

*17.2 Members will be respectful of other Members, Staff and the public and their views and will encourage others to do the same.*

Ms. Keay stated, in part, in her affidavit:

*I was streaming in to the Council Meeting #1 on January 25, 2016 when New Business 8(2) the India Business Mission was being discussed. I was appalled to hear Ward 2 Councilor Ho make disrespectful remarks to several fellow Council Members.*

*In a recorded vote 9-3 in favour of adding \$8,900 to the India trip budget Councillors Valerie Burke, Don Hamilton & Karen Rea were the three Nay votes. Arguments put forth by Hamilton & Rea against: costs for additional Councillors to attend should not be passed onto the taxpayer. Rea also said "I don't support trade missions; never have and nothing has changed."*

*That is when I heard Councillor Ho counter that those who oppose trade missions "talk from ignorance". He then quoted a Chinese saying—that frogs will sit at the bottom of the well and only see as big as the well opening. He also said "the frogs don't see how big the sky actually is."*

...

*Attachments.<sup>1</sup>*

- 1. Newspaper article Economist & Sun Jan. 28, 2016*
- 2. Letter to Editor Al Eppich*
- 3. Email Jan. 27 from E. Keay to A. Ho requesting a meeting*
- 4. Email Feb. 16 & return email from A. Ho Feb. 17, 2016*

Acting according to s. 4(IV)(a) of the Investigation Protocol, I served Ms. Keay's complaint and supporting material upon Councillor Ho, with a request for a written response to be provided by way of affidavit.

Mr. Ho responded, in part, as follows, by affidavit dated February 25, 2016:

...

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<sup>1</sup> Attachments were included as part of original affidavit.



*I understand that something I said recently at the Jan 25<sup>th</sup> Council meeting was lost in translation. I think I need to elaborate a little more on the “Frog in the Well” adage.*

*Simply put, the frogs in the well should have the freedom to choose to stay contentedly on the bottom of the well or be one of the frogs who jumps out to expand their horizons.*

*And as Councillors, we have the responsibility to Markham of expanding our horizons to see the bigger picture.*

*The last thing I wanted to do was to upset anyone with this analogy. I apologize if my words offended anyone, especially my peers on Council.*

...

I served Councillor Ho’s response upon Ms. Keay, with a request for a written reply. I also invited both parties to meet with me, or otherwise personally discuss the matter.<sup>2</sup>

Ms. Keay replied the next day (February 26, 2016), which I shared with Councillor Ho:

*In reply to Mr. Ho’s affidavit I have the following comments:*

- 1. I met with Mr. Ho prior to filing my complaint and indicated that if he would publicly apologize to his colleagues, and members of the public, at a Council meeting I would not file a complaint. He agreed to do so and then never followed through. Therefore, his apology in this affidavit seems disingenuous and simply a way of not having to apologize in public, which he previously agreed to do.*
- 2. I researched the Chinese expression of calling someone a frog on the bottom of a well immediately after I heard Mr. Ho use it at the Council meeting and I have researched it again since seeing the explanation in Mr. Ho’s affidavit. Once again his explanation seems disingenuous since the common understanding of the expression is that it is synonymous with calling someone ignorant. It is, in fact, an insult. I can provide both written evidence of this interpretation as well as testimony from other Chinese residents of Markham.*

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<sup>2</sup> In accordance with section 4(v), of the Investigation Protocol, section 33 of the *Public Inquiries Act* allows the Integrity Commissioner to speak with anyone relevant to the complaint, and access and examine any of the information relevant to the complaint.



3. *The City of Markham is made up of many nationalities, but over 52% of our residents are of Chinese background. Therefore, since Markham Council meetings are live streamed, it would be possible for 52% of residents to have understood that Mr. Ho called his colleagues ignorant. This does not include those residents from other cultures who have previously heard the expression and understood its meaning. Nor does it include those residents like myself who were offended by Mr. Ho's tone and other comments during that live-streamed discussion.*
4. *The audio tape of that meeting is an important piece of evidence because, as in any discussion, the speaker's tone is relevant as well as the context in which the comments were made. If you do not intend to order the audio tape from the City Clerk I will be happy to do so.*

Ms. Keay later provided me with a web-link to the audio recording of the Council meeting.

Ms. Keay alleged (and produced evidence to the effect) that the "frogs in a well" expression is a metaphor to a person with a narrow field of vision but believes oneself infallible—in general, it is a derogatory term to mock others.

The relevant Council exchange was as follows:

**Mayor Scarpitti:** *Councillor Ho.*

**Councillor Ho:** *Thank you Mr. Mayor, I will make it very short because we are running out of time. I echo with Regional Councillor Armstrong very much. I think this kind of trade mission is so so important to all the Council members, in particular the new Councillors, so I support this kind of funding to subsidize other Council members, and I think, well, the set part of the Council members who are opposing to this kind of thing is ignorance because there's a saying in our Chinese culture saying that there are frogs on the bottom of the well, to them the size of the sky is only the size of the opening of the well. They don't know how big the sky is, and I think from time to time we heard a lot of comments or expressions about some sort of issues, in particular the Women Service Committee issues, and without this kind of global knowledge a lot of Council members they probably make mistakes or make wrong judgments or make wrong comments, that kind of thing, so I strongly encourage them to take on this kind of business mission trip, and treat them as one of our orientation courses, in particular for the new members. I think that is important. Thank you.*

**Mayor Scarpitti:** *Okay. Thank you. Councillor Rea.*



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*Councillor Rea: Thank you. I take offence Councillor Ho to your point that you said that some of us are ignorant because we oppose the trade missions. It's a democracy, we're all entitled to our opinion and we should all be respectful of each other's positions on that. Thank you.*

*Mayor Scarpitti: I really don't want to engage in a debate...*

*Councillor Ho: So, okay. Well, again, this is a democracy it's free for me to express this kind of feeling. Thank you.*

### Discussions With Ms. Keay, Councillor Rea, and Councillor Ho

#### Ms. Keay

Ms. Keay stated that Councillors can disagree, but they should be respectful.

She indicated she met with Councillor Ho and asked for a public apology. In the final 10 minutes of the meeting they finally got to her original concern. She left the meeting with the understanding that Councillor Ho would give an apology at the next Council meeting.

Councillor Ho did not apologize at the next Council meeting on February 16. Ms. Keay emailed him, and Councillor Ho responded that he had forgotten about it and nobody mentioned it to him anymore.

#### Councillor Rea

Councillor Rea felt that Councillor Ho's comments were rude.

Councillor Rea felt that Councillors are entitled to an opinion and can agree to disagree, but there are important professional expectations for elected officials and they shouldn't say anything disrespectful. She provided me with emails she had received from residents (some of which Councillor Ho had also received) relating to Councillor Ho's comments. Portions of those emails read as follows:

#### #1 (sent to Councillor Ho, Jan. 29)

*Mr. Ho*

*I read the article in the Markham Economist and Sun dated January 28, 2016 on Trade Missions with great interest.*

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<sup>3</sup> The writers' identities are deliberately omitted for privacy reasons.



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*In light of your comments, I have the following questions that perhaps you could address so that in the future I will not "talk from ignorance". I will hopefully be as educated as the people who travel on these missions.*

*I assume that the trips are paid in hard cash, not old sayings.*

...

*If there are no concrete numbers to justify such trips, I wonder if I can pay my tax bills with some of your sayings as opposed the usual cash that seems to be required. I have a million catchy sayings that are equally inappropriate that I could share.*

...

*I am simply a frog who is desperate to "see how big the sky actually is". And I would like to hope that it is not a toad full of warts.*

...

**#2 (sent to Councillor Ho, Jan. 26)**

Mr. Ho

*I briefly listened to some of the meeting yesterday.*

*Wanted to remind you of the code of conduct. ...if I was a newbie you would be written up already.*

*In the real world of business you would be in the HR office and possibly looking for new employment.*

*Bullying and behavior of others is in the spotlight these days.*

*Please in future learn some manners.*

*Another sad day for Markham*

...

**#3 (sent to Councillor Rea, Feb. 15)**





*Hello Karen,  
Can you ask Mr. Ho to outline all of the benefits of recent trade missions to us  
frogs at the bottom of the pond paying for the delegates to the journey?*

...

### Councillor Ho

Councillor Ho said that politicians must be able to voice opinions. He believed that the residents' emails about the frogs were written by political opponents. Councillor Ho did not believe he violated the *Code*. Councillor Ho explained that for the Chinese community, it is common to speak using sayings, idioms, and proverbs. The "frogs in the well" phrase itself didn't carry any insult or implication—it is just about having the option to choose, to find out the truth or bigger picture. The majority of what Councillor Ho said actually focused on supporting trade missions.

Councillor Ho spoke about his meeting with Ms. Keay. He stated he had never intended at any time to apologize at a Council meeting.

### Analysis

A reference to the Office of the Integrity Commissioner invites me to investigate a matter with respect to the entirety of the *Code*, considering both its rule and spirit.

Sections 16.1 and 17.2 of the *Code* were set out earlier in this report. Those provisions are sufficient to analyze this case. I add, however, that section 3.1(e) is also on point:

#### **3. Purpose**

*3.1 The Code of Conduct identifies the City's expectations for the conduct of Members and establishes guidelines for appropriate conduct to ensure that:*

...

- (e) there is fairness and respect for differences of opinion and a duty to work together for the common good.*

*The Code of Conduct also serves to uphold the principles, goals and values of the city and provide standards for appropriate interaction between members, Staff, the public and Elected Officials.*



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The two key issues were the use of the term “ignorant” by Councillor Ho, and the “frogs in the well” comment. I believe that the “frogs in the well” comment may have been derogatory. It may also have been a cultural misunderstanding, though. I am more concerned that Councillor Ho said that the Members of Council opposing trade missions were ignorant.

I am not convinced that Councillor Ho intended to insult anyone when he made his comments. He is a passionate believer in trade missions. But the Office of the Integrity Commissioner focuses on the impact of a Councillor’s words or actions as opposed to intent, and whether the words could reasonably be interpreted as being disrespectful. I believe it is reasonable for someone who is called ignorant to feel as though the speaker was not treating them with respect. In general, it is extremely important that Councillors be able to speak freely and strongly advocate for their views. That is fundamental to democracy. But the *Code* mandates that Members be respectful of each other, staff, and the public. Councillors speaking assertively and taking strong positions does not constitute disrespect, but calling others ignorant is, in my view, disrespectful.

### Conclusion

While Councillor Ho may not have intended to be disrespectful, his comments were not respectful of other Members and the public. I therefore find that Councillor Ho’s comments constituted a minor breach of section 17.2 the *Code*.

Accordingly, I recommend that Council impose a reprimand on Councillor Ho. However, in accordance with section 19.2 of the *Code*, that decision ultimately belongs to Council.

An earlier draft of this Report was previously sent to Councillor Ho, in accordance with section 4(VI) of the Investigation Protocol, via both courier and email, providing him with reasonable notice of the basis for my proposed finding and an opportunity to comment on it. Councillor Ho elected not to avail himself of the opportunity.

Yours very truly,

Ben Drory, J.D., M.B.A., Q.Med., Q.Arb.  
Office of the Integrity Commissioner