

Town supports Bill 5, Integrity Commissioner concerned with current form

Lawmakers in Aurora have made the unanimous decision to endorse Bill 5: Stopping Harassment and Abuse by Local Leaders Act, and to send a copy of the motion to provincial leaders.

"I do think there's lots of work to be done, but this is the first step in showing our support, that we need to address this, and that there is some accountability," said Ward 2 Councillor Rachel Gilliland.

In the February 28 Council meeting, Integrity Commissioner Jeffrey A. Abrams presented several "practical limitations and concerns" in adopting the Bill in its current form.

The Bill amends the Municipal Act, 2001, requiring municipal Councillors and members of local boards to comply with workplace violence and harassment policies, and permits municipalities and local boards to direct the Integrity Commissioner to apply to the court to vacate a member's seat.

"The ultimate goal is to prevent very bad behavior and to deal with those who refuse to abide by the accepted standards of behavior," said Abrams.

"We support the objective of Bill 5 in principle, but, as is often the case, it is in the details where it falls down. This is an important issue to a lot of people. It is important that it'd be gotten right."

A major concern brought to Council pertained to the high-risk nature of going forward with the process of supporting a court application for a member's removal from office, which Abrams noted was a costly, timely, and uncertain process.

Most importantly, he said, a focus on preparing a case for eventual court application could interfere with the informal course correction opportunities.

Based on cases from the Municipal Conflict of Interest Act (MCIA), Abrams said that judges can be reluctant when faced with the choice to remove a duly-elected official from office, preferring to leave the decision to the electorate.

"And even if a court application is undertaken, it will take more time and more money with uncertain outcomes," he said.

As a suggestion, Abrams said that Council should make an early choice on whether to remove the member from office if the facts are proved to be true, rather than choosing to give direction to the Integrity Commissioner to commence a court application after being provided with a report.

"Unless we have that election upfront, we have to be prepared to write a report that is sufficient to hand over into the court process. And you can imagine, with an allegation of harassment, how robust that would have to be. And I don't think that the writers of the Bill have thought that through."

If the decision to remove the member from office is voted in favor, then a report would be prepared to support court applications; however, Abrams suggested a "less adversarial" approach be taken if the Committee voted not in favor of removing the member from office.

"Because not every incident of bad behavior should be addressed with the formality, expense, timeframes, and animosity associated with litigation," he said, adding that the potential of removal from office should not drive every investigation.

Abrams suggested going to the courts for the most egregious cases of workplace harassment.

The current Integrity Commissioner process, he agreed, is not satisfactory in a serious case of harassment, where the victim would have to wait for uncertain remedies for the conclusion of a court application.

He added that a more helpful legislative change would include in the Municipal Act that municipalities, when considering Integrity Commissioner reports, can impose constraints and remedies targeted to preventing and resolving the behavior complained of preventing its recurrence.

If a Council member abuses staff, the right to have staff could be denied, or the presence of a chaperone required, or enforce constrained times and days when the member may be on premises similar to a restraining order, Abrams said, to provide a few examples.

These practical, curative and almost immediate remedies need not be restricted to harassment cases, he said. If a financial transgression is involved, deny them a corporate credit card or deny them the discretionary budget. If a breach of confidentiality, maybe they can't attend in closed sessions. If micro aggressions in the course of Council meetings is the issue, allow for their speaking privileges to be limited.

Council should be able to impose constraints and remedies targeted to preventing and resolving the behavior complaint and preventing its reoccurrence when recorded when considering recommendations from its Integrity Commissioner.

Abrams said Principles Integrity supports Bill 5 in principle, however, that there are defects to its current form. If the Bill's main intent is to have members follow municipal harassment policies, he noted that it can be done through current Ontario regulations very quickly.

Our concern is that adopting the Bill in the current form, while I agree with the purpose of it, will have a significant impact on our ability as Integrity Commissioners to achieve the course correction.

Abrams said his remarks are gleaned from his broad-based experience as an Integrity Commissioner. Principles Integrity is appointed to York Region, East Gwillimbury, and about 50 other municipalities and public bodies across Ontario in addition to Aurora, he said.

In response to the feedback presented by Abrams, Emily McIntosh and Jenna Weck from the Women of Ontario Say No Bill 5 advocacy group said that it was unfair to declare that the Bill is unpragmatic when it is still in the early stages of development.

To speak to your Integrity Commissioner's points, a lot of great feedback there. And our comment to that is it's premature, said Weck.

She noted that the Bill is still in its first reading. If Bill 5 is passed, extensive conversations will be held on how the bill can be improved.

It is extremely problematic to put the focus on the pragmatism of a Bill that isn't even passed, because we have nothing today to protect not just women people, today, of all backgrounds.

They also noted that if the current violence and harassment policies were sufficient enough to keep members of office accountable, they wouldn't be advocating for the Bill. We wouldn't be here if that was that if that was passed. That hasn't happened yet. And in addition, it doesn't offer that opportunity for removal, Weck said.

Your colleagues also noted that it would only be in the rare circumstances that they believe something would go to the courts. And, yes, that costs more money. But those circumstances are rare, and also I find it personally, but on behalf of this movement, problematic to apply a fiscal lens. We are talking about people and workplace safety, not manufacturing processes in a plant.

By Elisa Nguyen