

**KENT PARALEGAL**  
**Customized Legal Services**  
 Services provided in Small Claims Court, provincial offences, and administrative tribunals.  
 mkent@kentparalegal.com 416-716-6120

**Medical Condition?**   
**Get up to \$40,000 from the Canadian Government**  
 Do you or someone you know have any of these conditions?  
 ADHD, Anxiety, Asthma, Cancer, COPD, Depression, Diabetes, Difficulty Walking, Fibromyalgia, Irritable Bowels, Overweight, Trouble Dressing... and hundreds more.  
 All Ages & Medical Conditions Qualify.  
 Call Ontario Benefits 1-888-588-2937 ext. 101

**Breakfast BINGO!**  **Breakfast BINGO!**  
 Monday to Sunday 10:00 am  
**172 Wayne Ave., Oshawa • 905-725-9164**  
 (1 block S. of Taunton at Sommerville) www.redbarnbingo.ca Lic.0097  
**Twilight BINGO!** Every Saturday & Sunday Starting at 3:45pm **Bingo Every Day!** Monday - Sunday Starting at 12:30 • 6:45 • 10:15

# The Oshawa Express

\$1.00 www.oshawaexpress.ca "WELL WRITTEN, WELL READ" Vol 11 No 11 Wednesday, January 27 2016

## December meeting under investigation

By Joel Wittnebel  
 The Oshawa Express

Why would an education and training session with the Oshawa Power and Utilities Corporation be closed to the public?

Residents were asking that question on Dec. 17 when council did just that, closing the doors on a meeting with the OPUC to discuss "local distribution company trends in Ontario," according to the agenda published online.

Well, someone has taken that question to the provincial ombudsman.

The city recently received a letter dated Jan. 18 from Ontario's watchdog, claiming a complaint had been filed regarding the meeting and an investigation by the office's Open Meeting Law Enforcement Team was being opened.

According to emails between the ombudsman's office and city clerk Sandra Kranc, the watchdog will be looking into documentation connected to the meeting as well as reviewing any audio or video that is available from the meeting.

See OMBUDSMAN Page 3

## Commissioner orders release of emails

*Messages between councillor, lawyer to be made public; city can still file appeal*

By Joel Wittnebel  
 The Oshawa Express

For more than two years, Rob Vella has been at war.

It's not a battle fought with bullets and manpower, but one with paperwork, appeals and patience.

In 2013, the Oshawa resident filed a Freedom of Information request with city hall. Vella was looking to get his hands on a key piece of correspondence that, he figures, could shine a spotlight

See EMAILS Page 6



Photo by Graeme McNaughton/The Oshawa Express

## A musical walk

Singer/songwriter Matthew Winkler provided a heartwarming musical medley while hundreds of people, including Premier Kathleen Wynne and Mayor John Henry, circled the Campus Recreation and Wellness Centre for the annual Walk for Alzheimers. Jessica Scheffee, the special events communications coordinator for the Alzheimer Society of Durham, says the group raised more than \$60,000 at the event.

## Extension granted

City is given more time to develop harbour lands by the federal government

Page 4



## Community work awarded

Oshawa teen given provincial award for her efforts to stomp out racism

Page 7

## Five years of the arts

Gallery celebrates half a decade of monthly arts night

Page 11



## Gens take win over Bulldogs

Oshawa earn a much need 5-2 victory over Hamilton

Page 17



**Prestonvale DENTAL** 905-240-7774  
 Everything begins with a smile

**INTRODUCING DURHAM IMPLANT DENTISTRY**  
**COMPLIMENTARY IMPLANT CONSULTATIONS**  
**FEBRUARY 1 - MARCH 31, 2016**

15 Rosswell Dr. Unit 5, Courtice, Ontario (in the plaza at the corner of Bloor/Rosswell)

**Dr. Lindsay Greisman**  
**Dr. Gerry Catapano**  
**Dr. Shalev Sabari**

- Teeth whitening
- Hygiene services
- Porcelain veneers
- Sedation dentistry
- Cosmetic dentistry
- Cold sore therapy
- Oral surgery
- Orthodontics

www.prestonvaledental.com



# Emails ordered to be released

## COMMISSIONER From Page 1

on the circumstances behind one of the most controversial decisions made by Oshawa councillors in recent memory; the hiring of municipal lawyer George Rust-D'Eye to look into the allegations made by former city auditor general Ron Foster in AG-13-09.

In this report, Foster detailed allegations, many of them against senior employees of Oshawa, in particular former city manager Bob Duignan, claiming their actions compromised the process of the acquisition of 199 Wentworth Street East for their new consolidated operations depot used to house city vehicles and many of the city's operations staff.

Rust-D'Eye was brought in to provide an objective opinion on these claims, which concluded the city highly overpaid for their new piece of prized property. His eventual decision ruled that Foster had no proof to back up his claims and councillors voted not renew Foster's soon-to-expire contract and exterminate the office of the auditor altogether.

It's all a matter of public record now, a blemish in Oshawa's history books.

However, for Vella, the story didn't end there.

The smoke was settling on an explosive Sept. 3, 2013 council meeting, after Rust-D'Eye dropped his final report that created an uproar in the council chambers and led to a pair of arrests by plain-clothed police officers in the gallery.

At that same Sept. 3 meeting, a report from Ontario's Ombudsman was also on the agenda. It followed an investigation into a meeting of council of which the watchdog let the city off the hook.

That meeting took place in May of 2013, the long weekend to be exact, in which Councillors Nancy Diamond, Bob Chapman and former councillor Roger Bouma, met to discuss Foster's report.

Following one of these meetings, Diamond emailed Rust-D'Eye, a personal contact of hers. He had previous dealings with the city (during Diamond's time as mayor) and was a member of the law firm Weirfolds.

It is those initial emails, the first block in a wall that would eventually crumble and topple on top of Foster and his office, that Vella wants to see, and has been fighting hard over the years to acquire.

It's been more than two years since he first fired off that Freedom Of Information (FOI) request, and now he has the Information and Privacy Commissioner (IPC) on his side. If all goes well, Vella figures he may only have a few more weeks to wait.

The process has been a long one with several appeals from the city, and could possibly see one more appeal.

For this story, Vella along with fellow Oshawa city "detectives" Jeff Davis and Lou Devuono, have provided full copies of the IPC decision to The Oshawa Express, along with copies of their lengthy, eventually successful appeal to the IPC, with their evidence to prove why the emails should be released. Here is the story so far.

## A word on process

Citizens of any municipality are able to obtain corporate records from their civic administration barring some exceptions, which are laid out in the Ontario Municipal Act. The exceptions are usually dealt with by council in closed session or confidential reports and documents, and deal with such things as legal matters, land acquisition and personnel.

After an initial request is filed, the city

has 30 days to respond with a fee estimate on the final cost of staff time and copying charges to produce the documents.

If the city rules the documents cannot be released, citizens have the right to appeal the decision to the IPC, who will then make a final ruling on whether the information can in fact be released, using evidence at hand and past precedent to come up with that decision.

At issue in the appeal of Vella's request is whether the city, in fact, had control over the records or emails sent by Diamond to Rust-D'Eye, due to the fact that the councillor used her personal device to send the emails, and whether those emails in fact dealt with city business.

## The emails in question

It was the holiday long weekend in May of 2013 and three councillors were at Oshawa city hall discussing Foster's damaging report.

Councillors Diamond, Chapman and Bouma came to the conclusion that another set of eyes was needed to look into these allegations. Diamond said she would contact Rust-D'Eye for the job.

In the IPC's final ruling, and in the Ombudsman's report that eventually cleared these three councillors of any wrongdoing for this informal meeting, the fact that Diamond connected with Rust-D'Eye over email is noted.

"Based on her personal knowledge of the widely-accepted expertise of a particular municipal law specialist and Integrity Commissioner, she recommended to her two colleagues that she contact that lawyer to explore whether the allegations would be something he would consider examining and, considering the urgency of the investigation, whether he could be available immediately," the ruling reads.

"The councillor submits that her email to the lawyer was sent from her personal iPad, not her city computer, and was not sent using the city's server."

Following the initial correspondence, Diamond also worked with Rust-D'Eye to clarify the language on the motion that would eventually pass through council on May 21 and lead to his hiring.

When asked about this recent ruling, Diamond said she was unaware of the IPC's decision on Jan. 22 and had not read the decision and declined to comment.

## The aftermath of Sept. 3, 2013 and questionable responses

In the months that followed the delivery of Rust-D'Eye's final report, media coverage focused on the arrests and the commotion that tipped chairs and bloodied noses inside Oshawa's council chambers. The scuffle during the council meeting resulted in a halt to proceedings, and some people being handcuffed and led away.

But Vella's mind was set on something else.

In December 2013, Vella filed his initial request for the emails between Rust-D'Eye and Diamond.

In January 2014, while council was still away for the Christmas break, Vella received a response to his query within which the city noted it had 22 pages of such correspondence. Obviously, Vella affirmed with the city that he wanted the information.

However, the records never came. A followup inquiry with the city resulted in a complete flipflop, and then Vella was told that, in fact, no records existed.

But that just didn't fit, as Vella knew from reading media coverage on the



The province's Information and Privacy Commissioner has ruled that email correspondence between Councillor Nancy Diamond and municipal lawyer George Rust-D'Eye be released. The two exchanged emails prior to Rust-D'Eye being brought in by the city to investigate the findings in AG-13-09, the report by former auditor general Ron Foster detailing the purchase of 199 Wentworth St. E., now the city's consolidated operations depot.

Ombudsman's report regarding the informal meeting that took place, and that Diamond admitted to contacting Rust-D'Eye.

So why was the city claiming these emails or documents didn't exist?

And thus we reach the crux of the war.

## The back and forth battle and the waiting game

After his initial Freedom of Information request came back with its varied responses that there were documents and then, there were no documents, he says he received no further help from city hall. Vella says he decided to change tactics and withdrew his request, taking it a step further to the IPC in August 2014.

What followed was a lengthy process that included mediation between the city and Vella. When that solved nothing, further intake was required where more information was given to the IPC adjudicator from both sides to make a decision.

This process allows for both sides to submit information and also respond to any information supplied by the other side.

The city and Diamond pushed their case that the emails were not a council direction and does not, "relate to the city's mandate and functions, but rather to the independent and personal actions of the named councillor in the context of her political or personal activities," the ruling reads.

However, as Vella argued, and the IPC eventually agreed, the actions taken by Diamond and the subject of those emails carried significant weight in the eventual outcome of hiring Rust-D'Eye. In his appeal, Vella states that Diamond, an experienced councillor and former city mayor, should have been well aware of this fact.

"The named councillor is not a novice to council; she was a former Mayor of Oshawa and should have known that she was conducting city business on her iPad.

As a former Mayor of Oshawa, she may have deliberately conducted city business in a medium that she hoped would circumvent efforts made by the public to obtain copies of the emails with Mr. Rust-D'Eye," Vella writes.

While the IPC notes this is only speculation, they do not deny the contents of these emails "played a significant role in council's decision to hire the investigator."

And clearly, the emails dealt with city business, and that the emails "laid the groundwork" for the city's eventual decision, the ruling states.

"The motion that council passed...not only proposes hiring an investigator, but names the investigator and contains detail about the scope of his work and the timelines for the same.

"The record contains, in effect, negotiations between the councillor and the investigator relating to the city's potential hiring of him. This relates directly to the city's mandate and functions."

## A white flag?

Vella's initial request has been taken through every aspect of the municipal access to information system that exists today, save for one step.

Upon receipt of the IPC's ruling, the city has 30 days to release a final decision to Vella.

Either the emails will be released, or the city has the option to appeal the IPC's decision.

If that occurs, Sandra Kranc, Oshawa's city clerk, tells The Express the final decision would be left up to a judicial review.

At this point, the city's next steps are unclear, but for Vella, he knows the war is almost over.

"It's been three years working on this," he tells The Express. "I don't have the emails in my hand, but I know they're coming."