

The Town of the Blue Mountains Formal Code of Conduct Complaint #021122 Investigation Report

I. Summary

This report presents the findings of my investigation under Town of the Blue Mountains Code of Conduct (the “**Code**”) relating to the conduct of the Mayor (the “Respondent”) in connection with a complaint received February 11, 2022 (the “Complaint”).

The Complaint relates to alleged conduct of the Respondent towards two members of the public (the “Complainants”). In particular, the Complainants allege that they were subject by the Respondent “between April 2020 & March 2021, individual and collectively, in written correspondence & remarks delivered at public meetings” to “behaviours [that] were threatening, derogatory, offensive, bullying, abusive, intimidating and [that] represent sustained harassment & persecution.”.

I find that the Respondent’s statements in emails and otherwise to the Complainants were not contraventions of the Code. They were statements of fact or his opinion and were responsible communication about public matters regarding Town and staff business. I find that the Respondent did not contravene Rule 6 as his statements at and with respect to Town meetings were meant to clarify the Town’s position on matters of broad public discourse. The Respondent’s conduct was not contrary to Rule 13 and was not intended to and did not rise to the level of harassment abuse, bullying or intimidation

The subject of this Complaint carries public significance that impacts the broader community. There has been a longstanding mistrust of the actions of the local government in the Town of Blue Mountains. Because of the nature of the allegations, I determined that it was necessary to conduct a full and thorough investigation to determine if the allegations of harassment, intimidation and bullying were borne out. Left unaddressed, harassment or intimidating behaviour would set an inappropriate tone for Members of Council and Local Boards. When staff or the public consider bringing forward a complaint, there should be an expectation that their decision to hold elected officials accountable will not lead to reprisals causing them to lose their job or have their reputation tarnished. The combination of fear of reprisal and loss of employment may be a barrier to reporting Code complaints for staff, in particular for persons identified by a Complaint in a small municipality or community. In many cases, the individual who raised allegations of harassment under the Code has experienced negative impacts on their work life, personal life and health on top of the immediate challenges of harassment at the Town. When the complainants are members of the public, including those who are volunteer local board members, there is an added imperative that this Office thoroughly review the allegations in the pursuit of fulfilling the purpose of the Code and the mandate of this Office. Conversely, a politician who is accused of harassment requires a full investigation to determine if, in fact, such conduct took place so that the public may be informed of whether or not the allegations were borne out.

After careful review of this complaint, I concluded that the Respondent did not breach the Code. In the balance of the report, I discuss my investigative process, my assessment of whether or not there has been a contravention of the Code by the Respondent, my findings on the allegations in the complaint, my reasons for those findings. I have also concluded with recommendations on

amendments to the Code with respect to limitation periods.

II. My Process

After my initial classification review , I wrote the Complainants on February 23, 2022 setting out my preliminary considerations, with a view to obtaining supplementary submissions, upon which I would make a determination on whether the Complaint was made within a reasonable period after the allegedly improper conduct took place.

At the conclusion of my preliminary classification, I advised the complainant of two issues for which I sought their supplementary submissions:

- i. The Complaint referred to conduct that took place between April 2020 and March 2021. Given that the most recent allegations were to have occurred almost one year prior to the filing of the complaint and that many municipal Codes of Conduct contain a complaint filing limitation period of 6 months, I asked for submissions about the delay.
- ii. Most of the issues overlapped with matters which formed part of an earlier complaint or which related to the application of Town policies and procedures, so I sought submissions on what, if anything, was a new complaint.

The Complainants provided supplementary submissions on February 26th. In summary, their position was that “regardless of any previous ruling on your part, these materials represent further evidence of the mayor’s ongoing efforts to harass and intimidate me and targeting my wife was just one of the methods he employed to do so.”

Given that there were some new allegations and that the allegations were serious, I determined that an investigation was warranted. I also considered whether an investigation was warranted given the delay in bringing the complaint. I considered three factors: the time elapsed since the alleged misconduct; the nature of the alleged misconduct; and public confidence in the Code. While there was substantial delay which weighed against conducting the investigation, the allegations were serious and public confidence in the Code weighed in favour of conducting an investigation.

The Complaint relates to allegations of bullying, intimidation and sustained harassment. This Officed has stated that all allegations of Code contraventions are taken seriously, however, allegations of harassment are especially troubling and to leave such concerns unattended would run counter to the purpose of the Code. Because there was no express limitation period in the Code, the complainants were not put on notice of a deadline to make their complaint. Accordingly, I commenced an investigation.

Whether or not the absence of a limitation for filing formal complaints was an intentional decision of Council or an oversight, it is an issue that should be considered by Council.

III. The Complaint

On February 11, 2022, I received the Complaint that named the Mayor of the Town as the Respondent. The Complaint and supporting documentation is 69 pages. Exhibit A is numbered

sub 1-13 which the Complainants define as the “explanations of the questionable behaviours captured in each of the thirteen items. Exhibit B is numbered sub 1-8 and the Complainants define as “explanations of the questionable behaviour captured in each of the 8 items”. Exhibit C sets out a series of meetings and allegations. Exhibit D is made up of Correspondence from Complainant 2 to Mayor and Council “asking for an end to the bullying and harassment toward her and her family. Council voted against receiving the letter at the Mayor’s urging.”; and a string of emails detailing challenges putting in front of Council comments or correspondence that were critical of the Mayor- and the Mayor’s inappropriate tracking of Complainant 2’s efforts.

On April 11, 2022, I forwarded the formal Notice of Complaint to the Respondent with a request for a written reply.

On April 13, 2022, the Respondent requested an opportunity to seek clarifications on the Complaint.

On April 19, 2022, I received the Respondent’s written reply to the Complaint.

On April 20, 2022, in accordance with the Code Complaint Protocol, I forwarded a copy of the Respondent’s written reply to the Complainants.

On April 26, 2022, I received the Complainant’s comments in response to the Respondent’s reply.

After my receiving the Respondent’s reply, I spoke to some Town staff with knowledge of the terms of reference of committees of Council and the matters subject of the complaint. In the course of my investigation, I reviewed COW, CCAC and Council videorecorded meetings and minutes.

I provided the Complainant and the Respondent with a copy of my draft findings prior to drafting a final investigation report with submission to Council.

The Respondent did not raise any concern of errors or omissions of fact.

The Complainants commented that they were disappointed with the draft investigation findings that they believed to defend the Respondent’s accusations of the Complainants spreading misinformation. The Complainants commented that they believed the allegations of the Complaint were supported by the Town’s records. Further, the Complainants set out that the Respondent’s comments are slanderous “and yet they are core to your conclusions. Who is liable for this slander if you are to make it public?” Finally, the Complainants stated that the findings of the report suggest that staff have been complaining about their behaviour and they refute this.

I considered the Complainants comments in the final decision set out in this Report.

As set out in the Town’s Complaint Protocol POL.COR.18.04 (the “Complaint Protocol”), the Integrity Commissioner is not required to provide any documentation provided from witnesses during the complaint investigation. It is established jurisprudence that the statutory scheme, pursuant to section 223.5 of the *Municipal Act*, provides that the Integrity Commissioner shall preserve secrecy with respect to all matters that come to her knowledge in the course of her duties.

Accordingly, as is my practice and the best practice confirmed by the courts, I have omitted the identities of the witnesses in this report.

IV. The Allegations in the Complaint

A. Issue 1 – Allegations of Contravention of Rules 13 and 15

In the Complaint, the Respondent is alleged to have participated in a pattern of conduct that rose to the level of harassment that began shortly after Complainant 1 was appointed as Chair of the Committee of Council (the “Committee”). Complainant 1 alleges that the Respondent misrepresented the actions of Complainant 1 and the Committee for which they chaired, in breach of Rule 13 of the Code (Discrimination and Harassment) which sets out the duty to treat Members of the public, one another and staff appropriately and without abuse, bullying or intimidation. Further, the Complaint alleges that the Respondent’s attacks against Complainant 1 escalated after Complainant 2 lodged a formal complaint with the Office of the Integrity Commissioner, thus contravening Rule 15 of the Code (Respect for Code of Conduct) which sets out that Members shall not act in reprisal or threaten reprisal against a person who makes a complaint or against a person who provides information not the Integrity Commissioner during an investigation.

B. Issue 2 – Contravention of Rule 6

The Complaint alleged that, as part of a pattern of conduct, the Respondent undertook actions that accused the Complainants of “relaying false information” and “misinformation”, in contravention of Rule 6 of the Code (Conduct at Meetings) which requires a Member to show respect for deputations and for fellow Members and staff showing courtesy and not distracting from the business of Council or Committees during presentations and when other Members have the floor. One example of this set out in the Complaint was with respect to a motion passed at Council regarding the height of attainable housing buildings. The offending comments are found in many emails, but in particular in a letter dated August 27, 2020 and a letter of February 16, 2021.

In the Aug 27th letter, the Respondent sets out examples of:

“[s]ome in our community...sowing the seeds of division by ...spreading of inaccurate and misleading information. Honest debate is healthy but spreading misinformation and using language tinged with elitism is toxic to our community.

Recent examples include people spreading misinformation about attainable housing and reference to people who might live there as “those people” and reference as to what might happen if we allow attainable housing in our community. Often this is done on social media. The position of the Town to date has been not to engage directly with these people, as to do so would give them credibility which they do not deserve.

[...]

I wish you well in your new role and hope that the committee will make how the Town should deal with the issue of the spreading of inaccurate and misleading information a priority”

In the second letter dated February 16, 2021, the Respondent writes:

“It has been brought to my attention by a resident that you re-posted a post by [Complainant 2] on the weekend that contained factually incorrect information, including the following:

- The Town was opening up the Official Plan to allow high rise (up to 5 story buildings in Thornbury
- That our sewage treatment plant overflowed for the entire month of April 2019

I am also advised that you and [Complainant 2] have now removed the posts in question.

[...]

As leaders in the community, we all have the responsibility to correct misinformation rather than to forward it along. This is particularly true for myself as Mayor and for you as Chair [...]. Please make sure that this does not happen again.”

The subject of Complainant 2 post to which the February 16th letter refers, purports that a sewage discharge following a spill lasted 4 weeks, and that the problems with the sewage are well documented. The Complainants posit that for the Respondent to say what he did is something that is patently false and they feel that Complainant 1 is being subjected to treatment that would not be the case had Complainant 2 not filed a formal Code of Conduct complaint against the Respondent around the same time.

Some of the alleged misconduct does not fall within the Code. With reference to the allegation detailed in Exhibit D supporting documentation to the Complaint, Council voting 5-2 against receiving a communication from Complainant 2 that asked the Mayor to stop “his abusive and bullying behaviours”, this matter falls within the rules of the Town’s Procedural By-law. The decision to not receive the correspondence from Complainant 2 was made by Council. The fact that the Mayor raised the fact that the correspondence was with respect to a Formal Code complaint was the Mayor stating a fact and matters relating to Code complaints are not deliberated at Council except if the Integrity Commissioner’s Code complaint investigation report is before Council for receipt.

V. Relevant Provisions of the Code

A. *Harassment under Rule 13*

1. Obligations Regarding Discrimination and Harassment

Rule 13 of the Code requires Members of Council (“Members”) to:

treat members of the public and one another with respect and without abuse, bullying or intimidation.

All persons shall be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. Members are not to engage in any course of conduct or make comments that would constitute workplace harassment.

Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status or any other grounds under the provisions of the Ontario Human Rights Code.

Members are responsible for communications that may constitute harassment, whether in person, in writing, by public comment and on-line, including via social media.

[emphasis added]

Rule 13 of the Code states that:

13. 4. Members are responsible for avoiding communications that may constitute Harassment, Intimidation, Bullying or disrespectful behavior, whether in Person, in writing, by public comment and on-line, including via Social Media.

A Member may be found to have breached the Code if any of the above have occurred. A pattern of conduct in which a Member's actions are intimidating, uncivil, disrespectful or rude, may lead to a finding of Harassment. A pattern of behavior that is perceived to be hurtful (e.g., disrespectful or frustrating) by the target, may constitute Harassment or Intimidation even if the Member did not intend their behavior to have that effect.

The Definitions section of the Code set out that:

Harassment: may include behaviour as defined in the Ontario Human Rights Code subsection 10(1) as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". However, Harassment under the Code is not limited to behaviour as defined by the Ontario Human Rights Code. Harassment may also include behaviour or actions that constitute Abuse, Bullying or Intimidation under the Town's Workplace Harassment and Human Rights policies.

Under the Harassment Policy, the test for harassment is explained:

It does not matter whether a person intended to offend someone. The test of harassment is whether that person knew or should have known that the comments or conduct were unwelcome to the other person.

Respect for the Code of Conduct under Rule 15

Under Rule 15, Members are required to respect the Process for Complaints made under the Code and shall not act in reprisal or threaten reprisal against a Person who makes a Complaint or against a Person who provides information to the Integrity Commissioner during an investigation.

B. Conduct at Meetings under Rule 6

Under this Rule, Members are required to conduct themselves with decorum at meetings in accordance with the provisions of the Town's Procedural By-law. This includes respect the deputations and fellow Members and Employees, showing courtesy and not distracting from the business of Council during presentations and when other Members have the floor.

Courtesy and avoiding distracting from the business of Council during presentations does not mean that vigorous debate is not permitted. This Rule requires rules of order, deference to the rulings of the Chair and not speaking over another, in accordance with the Procedural By-law and general rules of parliamentary decorum.

VI. The Parties' Positions

The Respondent's Response to the Complaint

On April 19, 2022, the Respondent provided a written response to the Complaint. The Respondent refuted all allegations and denied any contravention of the Code of Conduct. I set out the Respondent's reply to the Complaint in its entirety.

The Respondent stated that:

At all times I have acted within the bounds of my responsibilities as Mayor. I bear no animus towards the [Complainants] or anyone else, whether or not they are critical of Council or myself or not. I have never bullied, harassed or trolled the [Complainants] or shown any animus towards them.

I am aware that [Complainant 2] and [Complainant 1] show animus toward me and other members of Council and regularly post posts critical of me and other members of Council on social media. While I do not follow social media much, I have been advised that this has reached a level where they have been criticized by other members on social media of monopolizing the conversation, and I understand that their posting privileges have now been curtailed by the administrator of the Town of The Blue Mountains Community Forum. People regularly ask me what I think of their behavior. I refrain from being critical and I only respond with humour, noting that "One of the great things about being Mayor is that there are people who are passionate about you."

With respect to the details of their complaint I respond as follows:

1. I note that the complaint states that it refers to "behaviours to which we were subjected to by Mayor Alar Soever between April 2020 & March 2021." I would note that the timing of the complaint coming one year after the alleged behaviours, may have more to do with the stated goal of [Complainant 2] of trying to ensure the defeat of myself and other members of Council in the next election, rather than any legitimate purpose. I am advised that shortly after our recent selection process to select a Council member to fill a vacancy [Complainant 2] e-mailed at least one of the unsuccessful candidates offering to work with them with the goal of ensuring

our defeat. While she is free to do this, this in my view speaks to the motivation and timing of the current complaint.

2. The complaint states “Upon declaring his candidacy in 2018, he asked [Complainant 1] to assume leadership of the group.” This is not true. The Citizen’s Forum started as a political discussion group of which I was the informal founder. Being a gathering of people, meeting in a bar, it had no governance structure. As it evolved and grew, it operated under the guidance of a steering committee of volunteers including myself, which assisted with organizing events and meetings. [Complainant 1] was one of these volunteers and offered to take on administering the contact list and sending out meeting notices when I left to run as Mayor. Over time I am given to understand the steering committee and the group fell into disarray.

With respect to the allegations with respect to the CACC, I stand by my actions and remarks as Mayor. As Mayor, I am an ex-officio member of all committees and as Mayor under the Municipal Act I have responsibility to:

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- I to provide leadership to the council;
- (c.1) without limiting clause(c), to provide information and recommendations to the council with respect to the role of council described in clauses 224
- (d) and (d.1); to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality

In the case of the CACC, concerns were expressed to me by [a staff person] and others that the committee was “dysfunctional” and was acting to direct staff on matters rather than to provide advice to Council. This prompted my attending the CACC meeting and the correspondence with [Complainant 1] which was provided with [the] complaint. In the correspondence I merely relay the concerns of others and myself. I have also been asked from time to time to attend meetings of other committees and provide advice to members.

4. With respect to the misinformation with respect to the sewage treatment plant overflow, I stand by my comments, and I rely on the documentation provided by staff.

5. With respect to Council rejecting receipt of [Complainant 2’s] letter. This was a Council decision, and during debate I relinquished the Chair so as to not unduly influence the debate through my role as Head of Council.

In summary, I believe that all times I have acted within the bounds of my responsibilities as Mayor. I bear no animus towards the [Complainants] or anyone else, whether or not they are critical of Council or myself. I will however voice my concerns when issues arise that can negatively affect our community. I have never, as alleged, bullied, harassed or trolled the [the Complainants] or shown any animus towards them. I am aware that [Complainant 2] and more lately [Complainant 1] have shown animus towards me and other members of Council, through their postings on social media. This started on the evening of June 9th, 2020, when in a presentation to a Zoom Meeting of Citizen's Forum, I expressed dismay at Fake News being disseminated on Social Media and referred to a posting by [Complainant 2] (without mentioning her name).

I am advised that following that meeting, [Complainant 2] sent a series of e-mails to her associates full of vitriol about me. I do not know the detailed contents of the e-mails as this was something that was not divulged to me. It is something that only [Complainant 2] can provide. Subsequently the attacks on social media continued, and [Complainant 2] filed her Integrity Commissioner complaint against me. After I was exonerated the attacks on myself as well as Councillor Sampson ramped up, and have now culminated in my case with this complaint.

While the Respondent may suggest reasons why a complaint was filed, the objective of Code complaint investigation is to discover facts upon which to make a reasonable decision on whether there has been a contravention of the Code Rules. There is nothing in the Code Protocol that requires a Complainant may not have "other motives" for bringing forward a complaint, though I make not finding in this regard.

A complainant need not meet the threshold of "proving" that there has been a breach of the Code in order to have a *bona fide* complaint under the Complaint Protocol. As a procedural safeguard, this Office has established the practice over the past years of conducting a preliminary review prior to deciding whether or not to commence an investigation. This practice was followed in this case.

As a counterbalance to the low threshold for undertaking an investigation, the Complaint Protocol creates further safeguards. The Complaint Protocol permits the Integrity Commissioner to discontinue an investigation where it becomes apparent that there are insufficient grounds to continue. Further, the Member of Council may make representations on whether there has been a breach of the Code.¹ Finally, the Integrity Commissioner will only make findings and recommendations after completion of an investigation.

¹ (City of Toronto, Office of the Integrity Commissioner, CC41.3, November 13, 2013, City of Vaughan Code Protocol Rule 8)

The Complainants' Supplementary submissions

The Complainants set out in response to the Respondent's reply that:

It is difficult to make a measured response to Mayor Soever's collection of lies, contradictions, sarcasm, innuendo, hearsay, ascribed motives and blame shifting. There's a well-established pattern of the mayor blame shifting when confronted with his own missteps and inappropriate actions. In your email of March 24, 2021, you wrote that "all MofC [Members of Council] ... have obligations under the Code – i.e. not to base comments ... on "what a Member may have heard" and not to make assumptions and personal attacks against individuals. In short, they will be put on notice – yes, fair warning so to speak." The tone and content of the Mayor's response represent further examples of his bullying and include evidence of his trolling us. His response to our Code Complaint clearly demonstrates that he continues to ignore your direction. By his own admission, he has been doing so for some time. It appears he has a small army employed to report on our comings and goings. And when "regularly [talking with people about our] behaviour," he sarcastically laughs it away at our expense. Our complaint provides ample evidence of the Mayor's continual bullying and harassment – which continues in his response. Nothing in the Mayor's response takes anything away from the fact-based complaints that we have brought forward. He is continuing to contravene sections 6, 13 and 15 of the Code of Conduct of the Town of The Blue Mountains. Please hold him accountable

The Complainants' Comment on the Investigation Findings

Following the receipt of the findings of this complaint investigation, the Complainants commented that the allegations of the Complaint were supported by the Town's records and that the Respondent's comments subject of the complaint are "slanderous". The Complainant's comments conclude by asking, "who is liable for this slander if you are to make [the Respondent's comments] public?" Allegations that the language of a Member of Council is defamatory language pursuant to the *Libel and Slander Act, R.S.O. 1990* is not within my jurisdiction as Integrity Commissioner to receive or investigate. Allegations of defamation or slander are enforceable by the courts. The Code Complaint Procedure, under section 6, Part B provides that where a matter is covered by other policies or legislation, the complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner. The allegation of slander was not raised in the Complaint. As a result, I did not investigate the issue and I have made no findings on whether or not the statements contained by the Respondent are slanderous or defamatory.

In addition to the above, the Complainants' commented that the findings of the report suggest that staff have been complaining about their behaviour. I am unable to provide excerpts from the interviews that I conducted as I am required by the provisions of the *Municipal Act*, to maintain the confidentiality of individuals with whom I speak. Section 223.5 of the *Municipal Act* contains the statutory provision outlining the Integrity Commissioner's duty of confidentiality. It states that "[t]he Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part." It is the position of this Office that I am obligated to avoid the disclosure of some information received during the course of my investigation where I believed

that this information will clearly identify individuals.

VII. Findings of the Integrity Commissioner

When making decisions on acceptable conduct, Members of Council and Local Boards are required to comply with the Code. The Code rules provide them with a reference guide and a supplement to the legislative parameters within which they have taken an oath of office to operate. When evaluating the integrity and ethical conduct of a Member of Council and Local Boards my role is to apply the rules of the Code to the facts gathered throughout the investigation and make a determination as to whether there has been a breach of the Code. I set out below my findings of fact regarding the Complaint.

The Mayor of a municipality holds the position of elected official and Chief Executive Office under section 226.1 of the *Municipal Act*. This role is tasked with upholding and promoting the purpose of the municipality as head of council. Were this elected position on Council to misconduct himself in a manner compromising the principles of ethics that he took the oath of office to uphold, it would be a very serious matter. This Office is charged with investigating complaints in a manner which upholds the principles of accountability and transparency enshrined in the Code. It is the prerogative and responsibility of this Office to decide in which circumstances and to what extent it is in the public interest to conduct an investigation and report to Council.

Issue #1 – Allegations of contravention of Rule 13- Discrimination and Harassment

All members of the Town Council and Local Boards have a duty to treat members of the public, one another and staff members respectfully and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. This principle applies to all forms of written and oral communications, including via social media.

These relevant Code principles underscore that Members of Council and Local Boards hold positions of privilege. Therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community as a whole and have high regard for the integrity of Council.

The documents in support of the Complaint set out several examples of what the Complainants define as *a pattern of conduct that includes bullying, intimidation, sarcasm, lies, blame-shifting*, all of which, if borne out, would amount to harassment and a contravention of the Code.

I set out examples of the Complainants' supporting documentation below:

The Complainants feel disappointed with the Respondent's comments in correspondence and at Council and believe the letters (emails) taken as a whole, demonstrate a pattern of intimidation, bullying and harassment. The Complainants believe that all of their questions to the Town, and in particular to the Respondent, are received by the Respondent as criticisms and not questions.

The Complainants state that they had told the Respondent the following, in response to his two allegations of [the Complainants] spreading misinformation. The Complainants state that the

timeline details the overflow incident of April 2019 and that they based their comments on staff reports. The Complainants state the problem was not “contained in a period of hours.” And thus, “the point we raised is not ‘patently false’.” The supporting documentation to the Complaint sets out:

In conclusion, the breach over a two-day period and the continual discharging of the lagoons in order to bring the system back to an optimal operational level resulted in the entire event lasting a minimum of one month.

This is not misinformation but information based on the facts represented in the documents obtained from reports prepared by TBM’s [named staff person], Wastewater Supervisor; [named staff person], manager of Water and Wastewater Services; and [named staff person], Director of Infrastructure and Public Works.

Leveraging your position as mayor to come after [the Complainants] as you have now on multiple occasions in the public forum is wholly inappropriate. We look forward to your public retractions and apologies.

The Respondent denies the Complainants’ interpretation of his comments as intimidating, threatening and bullying. The Respondent explained to the Complainants that he is fulfilling his role as Mayor and Chief Executive Officer of the municipality, in addition to ensuring a safe workplace for staff who have brought forward concerns of being intimidated and harassed by the Complainants.

Throughout my review of this Complaint, it was evident that there exists conflict between the Complainants and the Respondent, which I would characterize as a difference of opinion on substantive issues. The Complainants perceive the Respondent’s comments to them as attempts to intimidate. As I have pointed out in a previous investigation, in a Workplace Harassment Information bulletin developed by the City of Toronto², “conflict” is explained in the following way:

...conflict refers to hostile feelings between two or more individuals in which interactions are perceived to be harmful (e.g., disrespectful or frustrating). Conflict typically includes a *perception* that harm is intentionally inflicted by the other party and where each party believes his/her perspective is right or true and the other's perspective is wrong or incorrect. When adhering to this standpoint, parties typically fail to fully understand or appreciate the other's perspective, resulting in conflict. (Emphasis added)

I find that the Respondent’s actions were not intimidating to the Complainants and did not rise to the level of harassment. thus, the Respondent’s actions were not in violation of Rule 13 of the Code.

Issue 2(a) – Accusing the Complainants of spreading “misinformation”

The Complainants allege that the Respondent undertook actions that accused them of “relaying false information” and “misinformation” in contravention of Rule 6 of the Code (Conduct at

²Resolving Conflict: Preventing Incivility and Workplace Harassment City of Toronto, Human Rights Office –Equity, Diversity & Human Rights Division,

Meetings) which requires a Member to show respect for deputations and for fellow Members and staff showing courtesy.

Having reviewed the words spoken, I do not believe that there has been a violation of Rule 6.

The purpose of Rule 6 is to underscore that as leaders in the community, Members are held to a higher standard of behaviour. During their interaction with the public at Town meetings when the public engages with the elected and appointed representatives through in-person deputations or email communications forwarded to the Town Clerk, Members' conduct and language should be respectful and understanding of the power imbalance that exists when the public speaks at Council. Legislative bodies often adopt such standards to ensure the good conduct of their members, which may serve as a reference point in determining what is or is not discreditable conduct. For example, the Rules of Order and Decorum of the Parliament of Canada forbids the use of offensive, provocative or threatening language in the House, including personal attacks and insults. The Office of Mayor is a position of honour and privilege. The Respondent was obliged to comport himself in such a way that brings respect to the Office. The Respondent's conduct subject of this Complaint met his obligations.

Rule 6 of the Code addresses conduct at council meetings. The Chair of a public meeting is expected to raise points of order when meeting participants including fellow members of council or public deputants, do not show respect to other meeting participants or meeting rules. If the comments of a Member in response to a deputant's comments do not rise to a level that on its face and trigger the engagement of the Code of Conduct, generally speaking the matter will not run afoul of the Code.

Nonetheless, councillors must feel able to fulfill their duties in the public interest by making statements which may not be universally accepted. Rule 6 is a narrow limit on speech that is made in the exercise of public duty, in good faith, and without malice.

As I have stated in previous Code complaint investigation reports, the law recognizes that there are occasions in which Members of Council are permitted to speak without fear of criminal, civil, or other sanction, which would include Code sanctions. A privileged occasion is described by the Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*:

...a privileged occasion is ... an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.³

...

Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by

³ [1995] 2 S.C.R. 1130 (S.C.C.) at para 143

libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.⁴

In a 2004 Supreme Court decision, the Court explained the good faith defence for speech a municipal Member of Council in Quebec who was alleged to have acted with malice. The decision states:

“In the common law, malice is presumed once the plaintiff establishes that the defendant spoke the offensive words about him or her. The defendant may try to rebut that presumption by citing qualified privilege. If the defendant succeeds in establishing that the criteria for that defence have been met, the presumption of malice will fall and give way to a presumption of good faith. The plaintiff must then establish that the defendant acted in bad faith or had malicious intent.”⁵ In a civil defamation action against a municipal councillor, a qualified privilege defence may apply.

Following the reasoning in the above-noted court decision, in order for a municipal Council Member’s comments to be covered by immunity from the sanctions of the Code of Conduct, the member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment of their core function as a Member of Council that to prohibit the comments would undermine the ability of the Member to do their work efficiently.”⁶ When a Council Member’s comments are covered by qualified privilege, this means that there is the existence of a presumption of malice. In other words, the Member’s comments are likely to be received as having “ill will” and it is up to the Council Member to demonstrate that their comments were made to fulfill their official duties. In the current Complaint, the Respondent made the comments, that the Complainants allege to be in contravention of the Code, in fulfilment of his official duties and in the public interest, hence, the comments are covered by qualified privilege and deemed to be in good faith.

Included in the principle of qualified privilege is the right of a Member of Council to comment on substantive issues before Council, as long as his or her comments are made in good faith, that is, as long as the comments are necessary in the exercise of the duties of office. This issue was reviewed in a Supreme Court decision ⁷ in which the Court determined that qualified privilege of municipal councillors can be defeated with proof of malice. In *Prud’homme*, the Respondent councillor was alleged to have made statements at council that were, in the opinion of the appellants, “full of malicious insinuations making them out to be bad citizens”⁸. The Court went on to say that:

“[i]n the case that is the subject of this appeal, the respondent’s actions were not performed as a private matter. They fell within the four corners of his actions as a municipal

⁴ Ibid footnote paragraph 108.

⁵ *Prud’homme v Prud’homme*, 2002 SCC 85, 2002 CSC 85, 2002 CarswellQue 2710

⁶ 2005 SCC 30 , [2005] 1 S.C.R. 667 at para 41 and 46

⁷ *Prud’homme*, p.21.

⁸ Ibid, p.12.

councillor”. He was acting in this instance as a member of a public authority [...], in the performance of important political duties.”⁹ If a municipal councillor, notwithstanding in exercise of their official duties, makes statements with the intent to harm another individual, their statements will be deemed *malicious* and the councillor cannot avail him/herself with the defence of qualified privilege.

In the Court’s words, situations in which a Member of Council’s statements are not covered by qualified privilege “occurs when a person spreads unpleasant things about someone else, when he or she should have known them to be false. A reasonable person will generally refrain from giving out unfavourable information about other people if he or she has reason to doubt the truth of the information [and] the case of a scandalmonger who makes unfavourable but true things about another person without any valid reason for doing so.”¹⁰

In my view, the same concepts ought to apply in a review of a breach of Rule 6 of the Code.

Generally speaking, when a Member makes a statement of fact or opinion on a matter of public debate, in the exercise of his duties during a Council meeting or with respect to a public deputation or public Communication, this is not unethical or contrary to the Code. The Respondent’s clarification that a public Communication raises matters that were subject of a formal Code complaint investigation is a comment by a municipal councillor that enjoys qualified privilege, insofar as it is fair comment in the discharge of their legislative and deliberative functions, and the Council’s work in carrying out the municipality’s business.

The Complainants have ascribed to the Respondent’s comments, a much stronger, different and intimidating meaning than what is actually used. As noted, I reviewed the actual words spoken. I accept that a reasonable individual attending to the words ascribed by the Complainants (rather than the actual words) might believe that the Respondent’s comments were made for a purpose for which they were not. However, within the context of the Respondent’s comments and the actual words used (uttered and written), the Respondent was carrying out his duties as Mayor. To be clear, I am not suggesting that the Complainants have acted with malice; however, I do not find that the words actually spoken or written by the Respondent meant or had the effect of what the Complainants suggest.

Often members of the public will undertake their own independent research, collect their own data, or monitor Committee and Council meetings reaching conclusions that form their opinion. Stating and disseminating one’s opinion is sharing one’s assessment of the information about which one may have professional or informal knowledge. However, if one espouses the view that comments that reflect their opinion are instead irrefutable fact, this position may undermine the Town’s public statements. As a result, Respondent would be justified in attempting to clarify and correct matters that relate the business of the Town.

However, this freedom of speech is not absolute. It is limited by the requirements imposed by a third party’s right to protect his or her reputation. The court stated in its decision that the elected

⁹ Ibid, p.16.

¹⁰ Ibid, p.17.

official is free to discuss matters of public interest but must nevertheless act as a reasonable person would. This guidance from the court sets out the parameters and limits of free speech of municipal elected officials, including at a municipal meeting. Weighing the actions of the Respondent against the ethical requirements of Rule 6 of the Code, I find that the Respondent did not in so doing, denigrate the reputation of or intimidate the Complainants.

Issue #2(b) – Allegations of the Respondent’s causing the Town to refuse the Complainant’s Correspondence placement on the Public Agenda:

The communication that Complainant 2 forwarded to the Clerk to be inserted into the public record was content that relates to Code of Conduct matters. Matters that relate to the application of the Code of Conduct, including Code investigation reports, Annual Reports, Memoranda and enforcement of the Code rules, fall within the statutory jurisdiction of the Integrity Commissioner. Authority in respect of any investigation and determination of compliance or breach of the Code of Conduct, rests with the Integrity Commissioner.

The Complainant’s Communication that was submitted to the Town was with respect to the subject of an investigation report in April 2021. Section 223.5 of the *Municipal Act* states that (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve the secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties.

Parties to informal and formal Code complaints are acting under the instructions of the Integrity Commissioner and, as a result, are required to preserve the secrecy of the matters discussed during the Code investigation process. While the Integrity Commissioner's authority does not extend to private citizens, any individual who voluntarily participates in the Code complaint process, that is files a Code complaint, accepts that the process is managed and enforced by the Integrity Commissioner and confidentiality is mandated by section 223.5 of the *Municipal Act*. The confidentiality also includes preservation of confidentiality of the name of the complainant. In the 2016 Divisional Court decision, *Di Biase v. City of Vaughan; Integrity Commissioner of the City of Vaughan*, 2016 ONSC 5620, the court set out the degree of participation to which the parties are entitled is determined by considering the factors set out by the Supreme Court in *Baker*. The Court goes on to say:

The Complaint Protocol, which is a City bylaw and therefore also part of the statutory scheme, does not contemplate participation by the applicant after responding to the complaint. It does not require that the subject of the investigation receive preliminary findings or get the opportunity to respond to those findings. [119] Section 223.5 of the *Municipal Act*, which is also part of the statutory scheme, provides that the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of her duties. [120] The statutory scheme provides the Integrity Commissioner with significant autonomy regarding the disclosure of her investigation. Specifically, section 223.6(2) of the *Municipal Act* provides as follows: 223.6 (2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of

conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report. 2006, c. 32, Sched.

As Integrity Commissioner for the Town, I wrote an Annual Report tabled on December 13th, 2021, setting out the activities of this Office, which included the complaint investigation report that addressed Complainant 2's Code complaint. The recourse for disagreement with the findings of a Code complaint report is an application for judicial review to the courts. While a complainant may disclose that they filed a complaint, this disclosure does not relieve Members of Council, staff or the Integrity Commissioner from their confidentiality obligations. This obligation extends to all elements of the Complaint save what was included in the public report. Re-adjudication and further discussion of any matters covered during the course of the Code investigation, is not contemplated by the rules of the Municipal Act or the rules of the Complaint Protocol. Thus, the Respondent's raising the fact that the Communication of Complainant 2 was raising matters subject of a Formal Code complaint, was a statement of fact and not an attempt to disrespect the author of a deputation.

On the other hand, the interpretation and enforcement of the Town's Procedural Bylaw and the decision to receive Communications from the public are matters that fall within the jurisdiction of the Town Clerk. With reference to the allegation detailed in Exhibit D supporting documentation to the Complaint, I confirm that Council voted against receiving a communication from Complainant 2. The decision to not receive the correspondence from Complainant 2 was made by Council and not by the Respondent. The statement by the Respondent is one of fact. Matters relating to Code complaints are only subject of Council discussions if the Integrity Commissioner's Code complaint investigation report is before Council for receipt. The Respondent's statement was not tantamount to "abusive and bullying behaviours". The enforcement of receipt of public correspondence at a Council meeting is a matter that falls within the rules of the Town's Procedural By-law.

VII. Conclusion:

Having spoken with some Members of Council, staff and others, the general reputation for truthfulness of the Respondent provides me with evidence upon which to weigh the allegations of the Complaint in addition to the evidence and information I received. To be clear, I have no authority to evaluate nor have I evaluated the character or credibility of the Complainants. What is before me are allegations of Code contraventions of the Respondent. The Integrity Commissioner is an investigator who must determine if the facts gather provided during an inquiry are sufficient to make a determination on a finding of contravention of Code rules by a Member in the specific circumstances of the complaint or dismissal of the complaint because of insufficient grounds or a lack of jurisdiction. While complainants in situations such as the Complaint before me, may believe that their complaint is taking an unacceptably long time to complete, this Office will provide a complainant with reasons for the delay and or dismissal. A review of a 69-page complaint with allegations of misconduct that span two years, merits a thorough objective investigation. Reaching out to individual Members of Council, some staff, some others and reviewing documentation takes time.

As I pointed out in the reasons above, in order for a Member's comments to be covered by immunity from the sanctions of the Code of Conduct, the member seeking its immunity must show

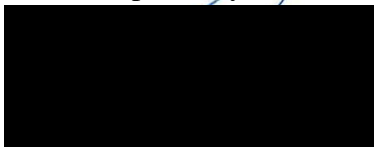
that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment of their core function as a Member of Council that to prohibit the comments would undermine the ability of the Member to do their work efficiently. In this matter, I determined that the Member's utterances and correspondence which I reviewed during this investigation, constituted fair commentary and were not misleading or harassing. The statements of opinion by the Respondent reflected views that the Respondent had a right to express, and they did not contravene the Code. Given the weight of elected office, a Member of Council is required to exercise caution in how they express their opinion, measure their words and provide commentary to avoid misunderstanding and misrepresentation of their position. As I pointed out in a previous Code complaint investigation report, the Respondent has been advised of being held to a higher standard than that of a member of the public and with reference to **the allegations of the complaint before me**, the Respondent has not contravened the relevant Code rules.

As an administrative quasi-judicial body, I make findings of fact in respect of allegations made against a Member of Council, based on a balance of probabilities that requires that one party provides information that proves that their version of the facts is more probable than that of the other party. I find that the Respondents statements through emails and otherwise to the Complainants are statements of fact and fair comment in that his statements consist of his responsible communication about a matter of public interest regarding Town and staff business.

Recommendations

- 1. The Office of the Integrity Commissioner finds that the Respondent has not contravened Rules 6 and 13 of the Code and makes no findings on the Respondent's conduct with respect to Rule 15 for the reasons set out above;**
- 2. That Council consider an amendment to the Code of Conduct for Members of Council, Local Boards and Advisory Committees to include a limitation period within which complaints will be received by the Integrity Commissioner.**

Respectfully submitted,



Suzanne Craig
Integrity Commissioner