

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 June 30, 2022 (the “Complaint”) about disparaging comments about another Member of Council (the “Councillor”).

The Complaint sets out the following:

At the Town of The Blue Mountains Committee of the Whole meeting of Tuesday, June 28, 2022 (the “Meeting”), the Respondent:

... made disparaging remarks about Councillor Hope’s contribution to the attainable housing file. When given an opportunity by Councillor Hope through a point of privilege to re-think his words, [the Respondent] insisted that his remarks, which suggest that Councillor Hope acted with malicious intent, stood as presented.

The particulars of the conduct is as follows:

1. [The Respondent] said that [the Councillor] “had been working hard to get this project deferred for a long time’ and that [the Councillor’s] actions were “an example of politics getting in the way of practicality”.
2. As a point of privilege, [the Councillor] stated that “I have been accused of working to defer (this project)...” and requested that he back up his statement with evidence.
3. [The Respondent] then stated that there had been a “lot of correspondence, that [the Councillor] was working with citizens to challenge everything -its height, look and feel...all of those issues have been answered...the last straw for me...I’m not going to apologize for what is on the public record.”
4. [The Councillor] replied that she was representing the concerns of citizens, specifically about the 3-storey height limit as outlined in the Official Plan and that the community remains deeply divided on this matter, as demonstrated by the survey of 600 residents for the Official Plan Review. [The Councillor] suggested to [the Respondent] that there had been difference of opinion on this matter and that she thought that sharing these various opinions is “what Council is all about”.

I find that the Respondent's statements at the June 28, 2022 meeting was a contravention of the Code. The Respondent's comments were not statements of fact or responsible communication about public matters regarding Town business. The Gateway development project had been delayed and the Councillor's comments at different Committee and Council meetings in bringing forward concerns of some in the community, was not, on its face, with a view to disrupt and prevent a positive and practical outcome for the Town. The project was delayed for several reasons, including concerns raised by some members of the public (whether that is a large or small segment of the public is not within the scope of this investigation to determine). The Councillor did not single-handedly cause the delay of the project, nor do I have evidence that she worked in a subversive way to let "politics get in the way of practicality". Unless part of the public record, working (with a group of citizens) to intentionally delay a Town initiative is not an example of transparency. Approval of a matter at Council requires a majority or unanimity, depending on the rules of the Procedural By-law. A Councillor's voting record of having consistently voted "nay" on an item is not evidence of working on the "behest" of a small group.

The Respondent made the following comments starting at 44.41 on June 28, 2022:

"I know she's been working hard to get this project deferred for a long time, and unfortunately it has taken this long, we did engage with the community, she was very involved in the engagement with the community, and so I think this is again an example of politics getting in the way of practicality."

If one were to take this statement and read it alone, on its face and without context, it does not appear to be a disparaging statement. However, given the length of the discussion at the Meeting, the history of the item and the totality of the discussion leading up to the Respondent's comments, the statement carries a negative connotation (i.e., "an example of politics getting in the way of practicality" can in no way be taken as lauding or approving of the actions of a colleague Member of Council). Simply put, the Respondent was not simply making a statement of fact. The Respondent was neither congratulating the Councillor for vigorously representing constituents, he was not saying that he disagreed with the Councillor's position but respected her actions, nor was he saying her voting record showed that when at Council when the Gateway project was being discussed, she voted in the negative. The Respondent linked "working hard to get this project deferred for a long time" to the project being deferred for a long time and this being unfortunate (for the Town), and despite Council/the Town having engaged the community "she was very involved in the engagement with the community" (which suggested a different kind of engagement from Council/the Town having engaged the community). Engaging with the community, in and of itself, forms part of the role of a Member of Council, but in the Respondent's statement, the Councillor's being "very involved in the engagement with the community" has a pejorative connotation and appears to suggest an engagement different from and not aligned with the Town. The Respondent concludes by making an indictment of the Councillor's conduct saying that it "is again an example of politics getting in the way of practicality" (which is a pejorative

statement).

After being asked to retract his previous statement, the Respondent then starting at 57.32 stated:

“Yes, so it’s well known than there is a lot of correspondence to that effect that Councillor Hope was working with citizens to challenge every aspect of this,but now the last straw for me was now that its taken so long to get there addressing all these issues, now we want to defer it yet again for another year, and I don’t think we (um) I understand the strategy and so I am not going to apologize for what is in the public record. Thank you.”

The Respondent refers to “a lot of correspondence” that demonstrates that the Councillor has been “working with citizens to challenge every aspect of this [Gateway Project approval]. Taken together with the previous statement of “working hard to get this project deferred for a long time”, the second statement suggests that the Councillor has been working with citizens to challenge every aspect of the Gateway Project, so the Project is deferred, with the outcome of a protracted delay, and this [working with citizens to challenge every aspect of the project] has been going on for a long time.

After a careful review of this Complaint, the Respondent’s detailed reply and supporting documentation and other information, I concluded that the Respondent’s actions were not in compliance with the Code.

II. Relevant Code Rule

13. Discreditable Conduct

All Members

have a duty to treat Members of the public, one another, and Employees appropriately and without Abuse, Bullying, Violence, or Intimidation.

In the Complaint, the Complainant alleges that the Respondent’s comments constituted a form of intimidation and abuse through uttering inaccurate statements and accusations that damaged Councillor Hope’s reputation.

Rule 18 of the Code is entitled Respect for the Role of Employee. Included in this rule is the provision that Members must not falsely or maliciously injure the professional reputation of an Employee. Rule 13 of the Code does not include the words “a Member shall not falsely or maliciously injure the professional or other reputation of another Member of Council”, however, it is a reasonable interpretation of Rule 13 and has been so interpreted generally by municipal integrity commissioner, to include in the general prohibition against abusive conduct, conduct that falsely or maliciously injures the reputation of a fellow Member of Council.

III. Process

June 30, 2022 - I received a Formal Complaint under the POL.COR.21.06 Code of Conduct for Members of Council, Local Boards and Advisory Committee (the "Code"). The Complainant contacted me and advised that they did not want to put the municipality through the time and expense of a Code complaint investigation. As a result, the Complainant told me that if the Respondent would agree to retract his statement made at the June 28th meeting, in a timely manner, the Complainant would be amenable to withdrawing the Complaint.

July 3, 2022 - I provided the Respondent with Notice of Receipt of a Formal Complaint and communicated that in accordance with section 10 of the Complaint Procedure, I believed that there was an opportunity to informally dispose of the Complaint. Section 10 of the Complaint Procedure states that:

If the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the Complainant and the Member agree, an informal resolution of the Complaint may be attempted with the assistance of the Integrity Commissioner.

July 5, 2022 - The Respondent replied that:

I stand by my remarks and consider them "fair comment" given Councillor Hope's record of public comments and interactions with the public with regards to the Gateway Project that I have been made aware of. There is no implication that she acted outside of her role of Councillor. Councillor Hope has constantly raised issues with the Gateway Project, both publicly, and I am told privately, at the behest of a small group of constituents who have been vocal opponents of the project. I don't have a problem with this. I believe that me bringing this to the attention of the public during the debate of her wanting to defer the decision of the transfer of the land to the next council, is appropriate and relevant and fair comment.

While I don't relish taking the time from more important matters to prepare documentation of Councillor Hope's actions with regards to the Gateway Project over the past few years, which support my making the above remarks, I believe that an investigation and report may be the best way forward to resolve this matter in an open and transparent manner. ...

I stand by my remarks but reiterate that there was nothing in my remarks to imply that Councillor Hope was doing anything outside of her role as Councillor. She is free to raise as many issues as she wants to drag things out to cater to a relatively small part of the community, (i.e., politics getting in the way of practicality). Similarly, I should have the right to point that out to the community at large. Ultimately it is the community who will decide what kind of representation they want.

July 5, 2022 – The Complaint wrote:

I have offered the [Respondent] an opportunity to put forward a retraction statement about his false allegations about [the Councillor] trying to delay the Gateway project, an affordable housing project which is badly needed in our community. It would appear that the [Respondent] is confused by a Councillor “doing their job” by representing disparate points of view from the community and the wilful delaying of an important initiative. It is an unacceptable outcome that a Councillor’s reputation is maligned by the leader of council for simply executing on the sacred mandate that has been assigned to them by the electors.

July 22, 2022 – Within the prescribed timeframe, and in accordance with section 11 of the Complaint Procedure, the Respondent submitted to me his reply to the Complaint. The reply comprised of the following:

- 2 pages of a summary overview
- 4 pages of a summary of public comments and questions asked by Councillor Hope over the past 2 years with respect to the BMAHC and the Gateway Project
- 1 page Motion passed June 7, 2022, at the Town of The Blue Mountains Committee of the Whole (“Exhibit A”)
- 87-page Business Model developed for The Blue Mountains Attainable Housing Corporation by Strategy Corp in June 2019 (“Exhibit B”)
- 6 pages of emails- (Exhibit C, D, E) 1 from a member of the public to the Respondent (with copy to 3 members of the public and Councillor Hope’s personal email address); 1 email from Councillor Hope to the Executive Director of the Blue Mountains Attainable Housing Corporation (“BMAHC”) (with copy to a member of the public); 1 email from a member of the public to a member of the public (with copy to a member of the public and the Executive Director BMAHC)
- 3 pages (Exhibit F) BMRA Position Paper on the BMAHC 2021 -2023 Budget Document
- 8-page (Exhibit G) Summary of Meetings of the Town of The Blue Mountains at which the Gateway Project was discussed and Voting Record

July 25, 2022 – In accordance with subsection 11(c) of the Complaint Procedure, I forwarded the Respondent’s reply to the Complaint to the Complainant.

August 12, 2022 – I forwarded the Final Code Complaint Investigation Report to the parties. In accordance with subsection 11(d) of the Complaint Procedure, the Integrity Commissioner is required to provide the Member being investigated with advance notice of the findings and any sanctions or remedial actions to be recommended to Council. Generally speaking, advance notice means giving the Respondent a copy of the findings prior to the matter being considered by Council.

Of importance to this matter is the provision in subsection 223.4.(7) of the Municipal Act, 2001 which provides that if an Integrity Commissioner has not completed an inquiry

before nomination day for a regular election, the inquiry is automatically terminated on that day. Nomination day is August 19, 2022. To assist in my understanding of the alleged improprieties and the actions of the two Members of Council subject of this Complaint, I have reviewed several pages of emails, newspaper articles, reports to Council, and other documents and I have reviewed videos of meetings of Council. Given the need to complete this investigation prior to the August 19th election blackout deadline, I focussed my review and did not seek out all information available (i.e. personal emails, etc.).

IV. The Respondent's Reply to the Complaint

The Respondent replied that:

I stand by my remarks, but reiterate that there was nothing in my remarks, which refer only to what is in the public record, to imply that Councillor Hope was doing anything outside of her role as Councillor. ***There is evidence, as detailed below, that she might have been working against Council decisions with members of the public.*** In my response to her point of privilege, I however, made it clear I was referring only to what is in the public record. She is free to raise as many issues as she wants to drag things out to cater to a relatively small part of the community, (i.e., politics getting in the way of practicality). Just as she is free to speak against the Gateway project, I have the right and indeed the obligation to point out her record on the Gateway Project. I maintain that all my statements are honest and accurate.

I was prompted to make my remarks after her comments made starting at 27.45, which I found, when taken in their entirety, to be misleading and obfuscating. In her remarks she started by stating her personal commitment to attainable housing (28.55-29.35). She then went on to overstate the amounts which have already been committed to the Attainable Housing Corporation for operational funding stating "already we've committed \$2.0 M for operating costs, part of it being loan and part of it being forgivable loan, \$1.2M of the \$2.0M." She knew well or ought to have known that the amount approved on June 7, 2022 was a repayable loan up to a maximum \$1.2 M. (Exhibit A). Overstating the loan and suggesting part of it was forgivable has the effect of making the project look more expensive to the taxpayer than it is.

She went on to ask the decision on the transfer of land be deferred to the next council (30.01-30.55) and suggests that the \$4.0 M could be used in other ways. She then goes on to ask for a Housing Needs Assessment (31.50-33.05) , stating "without shaking her finger at anyone we needed it a long time ago" and then suggesting that Council did not know what we were doing by stating "we need to know what we were doing and why we're doing it" (33.00-33.05). She knows full well, or ought to know that there are many reports including the Business Model developed for The Blue Mountains Attainable Housing Corporation by Strategy Corp in June 2019, (Exhibit B) after the benefit of public consultation and receiving public feedback collected from a very successful community engagement process that utilized a two session Attainable Housing Visioning Workshop process in the

spring of 2019. This document reconfirmed the Town's need for attainable housing identified by previous studies due to both increasing rental and ownership prices, as well as economic productivity issues because of housing affordability challenges.

She suggested that "there be no more operational funding support requested by the BMAHC, that this is the end". (33.15-33.50).

Significantly, she showed her true sentiments with regard to attainable housing when at (38.15-38.25) she stated "the \$1.6 M to \$1.8 M has been paid out in hard cash so we're kissing that good-bye, - we're investing it in attainable housing ..."

While her comments were interspersed with professions of support for attainable housing, her proposals to defer the decision on the transfer of land, and cutting-off further operational funding support (after overstating the amount of funding provided to date) would have a negative effect on funding applications and have the BMAHC run out of funds before the project can be completed, essentially resulting in the demise of the BMAHC.

Councillor Hope's voting record and particularly her public comments with respect to the Gateway Project support my statements. Councillor Hope is well known in the community, and to Town Staff and BMAHC Staff as an opponent of the project. As evidence of this community recognition, I attach as Exhibit C, an e-mail to me from [a named member of the public #1], a vociferous opponent of the project, dated April 25, 2021. I note that it is copied only to perhaps the most strident opponents of the project: [a named member of the public #2, a named member of the public #3, and a named member of the public #4], as well as Councillor Hope, but not to other members of Council, and that it was sent to Councillor Hope's personal e-mail Paula Hope[...]. The [named member of the public] are known associates of [named member of the public]. [Named member of the public] is Councillor Hope's "friend [...]" who she introduced to [named staff person] the then Executive Director of the BMAHC via an e-mail dated July 11, 2020. (EXHIBIT D).

I am aware that [named member of the public], a fervent opponent of the project, regularly corresponded with [the then Executive Director of the BMAHC] on a variety of concerns regarding the BMAHC, and in February 2016, shortly after Council approved moving forward with planning amendments to allow going to four stories, started a petition "Stop High Rise Buildings in Thornbury" <https://www.change.org/committeeforthornbury> in opposition to the Gateway Project. [...]

As [a named member of the public's] e-mail was sent to Councillor Hope's personal e-mail [email address], the full degree of Councillor Hope's involvement in working with opponents of the project can only be determined through an examination of her e-mail correspondence with the individuals listed above.

The evidence presented above suggests that Councillor Hope may have worked closely with opponents of the project. ***Without access to her personal e-mails, however, there is no proof, so in my remarks before Council, I clearly stated that my remarks were based on what is in the public record.*** There is ample evidence in the public record to support my remarks. Councillor Hope's voting record is tabulated on the attached spreadsheet. (EXHIBIT F), and her remarks are summarized below. I have only gone back as far as June 16, 2020. [emphasis added]

V. The Complainant's Supplementary Submissions

On July 1, 2022, the Complainant provided the following:

During a Committee of the Whole meeting on Tuesday, June 28, 2022, before members of Council in a meeting which is live-streamed to between 300-800 members of the community, the [Respondent] disparaged [Councillor Hope] by accusing [her] of "working hard to get this project (attainable housing) deferred for a long time...she was involved with the community...this is an example of politics getting in the way of practicality".

On a point of privilege, [Councillor Hope] gave the opportunity to the [Respondent] to reconsider his remarks with the statement, "I have been accused of working to defer the (approval of this project)". The [Respondent] replied that "there is a lot of correspondence that (Councillor Hope) was working with citizens to challenge every...(its height, density, its look and feel)...all of those issues have been answered...the last straw for me...now it has taken so long to get there and now its being deferred even further...I'm not going to apologize for what is on the public record." There is no merit to any of these statements, the [Respondent] would not be able to find any documentation that [Councillor Hope] intentionally tried to slow down the Gateway project as this documentation does not exist. As a Councillor, it is [Councillor Hope's] role to represent the community's thoughts on all matters before Council, including concerns with the Gateway project about exceeding the height limitation of the Official Plan which is set at 3 storeys. As [Councillor Hope] said in the Committee of the Whole meeting, bringing different points of view for discussion was the role of Council.

Attainable housing is a crisis in [Town of The Blue Mountains] affecting all members of the community. To suggest that [Councillor Hope] had been intentionally delaying the project, with malice intent, is a falsehood and is injurious to [her] reputation. It is for this reason that [this formal code complaint has been filed] asking the [Respondent] to retract his statement in the same setting in which he made his original statement which was in the Council Chambers in a livestreamed and recorded meeting. If the [Respondent] sees his way to retracting his statement in this context, [the Complainant] will request no further action. If he does not retract his statement, the formal complaint will go forward, and his breach of conduct will be shared with the public in the Council Chambers.

Unfortunately, the media has picked up the [Respondent's] language about [Councillor Hope] "delaying" the Gateway project as opposed to "deferring" the decision (Complainant's words) to the new Council, given that the RFP for the project will be completed in November, after the new Council has been elected (Councillor Hope's argument which was never reported). Please find attached the June 29th Collingwood Today article entitled, "TBM council votes to give land to attainable housing corporation" in which the reporter has written, "Coun. Paula Hope sought to have the decision on the transfer of land *delayed*". The [Respondent's] inaccurate positioning of [Councillor Hope's] management of this issue has gone past the Council Chambers into the press, and further, [a named private citizen] heard comments on [Councillor Hope's] role with "delaying" the decision on the 99.3 radio station.

This outcome is unacceptable to me and I must ask the [Respondent] to retract his statement and remove this cloud over [Councillor Hope's] reputation which was created by inaccurate statements and accusations, generated by him. As stated earlier, if this retraction is not forthcoming in a timely manner, I will be given no other choice than to ask that this formal complaint be pursued.

VI. Analysis

The Councillor took strong exception to the statements the Respondent had made at the Meeting. In evaluating the Respondent's conduct with respect to Rule 13 of the Code, I am required to determine if the Respondent's justification – that his statements were fair comment- is borne out.

Councillor Bias:

Elected officials do not come to a position on Council without interests or personal perspectives. In fact, it is this spectrum of knowledge and viewpoints that make the coming together of individual Members of Council as one decision-making body, a strength for the community. However, an elected official must avoid pecuniary and non-pecuniary conflicts of interest, including perceived bias and prejudgement. Allegations of bias can be evaluated by the integrity commissioner and generally can be avoided by a Member of Council by avoiding any comments that may lead a reasonable person to believe that the Member is entrenched in a particular position and has a closed mind.

In the Supreme Court decision *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, the court stated that "the Councillor's participation in the initial discussions between the developer and the City was to be commended and encouraged as a normal part of his duties. Persons for or against a development proposal should feel free to discuss it with their Municipal Councillor, and the Councillor should be free to express an initial reaction

without running the risk of being disqualified from subsequent participation in the decision-making process”¹

The Court further observed in the above cited case that “the Councillor was still capable of having an open mind concerning the merits of the development as a whole and as to the kinds of condition which should be imposed upon the developer as a pre-condition to rezoning”.

In *McGill v. Corporation of the City of Brantford*², the Court found that:

“It must be assumed that the Legislature knew the functions, and the mode of developing such a project from its inception to the advanced stages, and nonetheless designated the [municipal] council as the body to hold the hearing. In these circumstances, all that can be required of the council is to put aside their tentative views individually and collectively, hear the objections, consider them honestly and fairly, see if they can be accommodated and then make the final decision. No more and no less can be expected of them.”

I must be clear that this Complaint is not an investigation of the conduct of the Councillor. However, the Respondent raised in his reply several issues that he believes justify his comments as fair comment and thus I have had to review if on its face, the Councillor’s conduct that the Respondent alleged in his statement, was within her role or an example of bias. The Code deals with non-pecuniary interests such as improper use of influence and bias. In order for the Integrity Commissioner to arrive at a finding of contravention of the Code in this regard, a complainant would have to provide evidence in their supporting documentation to the complaint that the position taken by a Member was immovable and that they were incapable of changing their position even after hearing positions of members of the public and/or staff, including those contrary to their stated position. This would require a demonstration that a Member was not amenable to persuasion by speakers, evidence, staff, and consultant reports, such that their minds were so closed that they were incapable of being persuaded to change. The added allegation that a Member’s entrenched position is also brought forward at the behest of a small group in the community, would require evidence in support. The fact that a Member of Council holds a particular position on a matter, that may also be representative of concerns of some members of the community, does not in and of itself, mean that the Member has an entrenched, immovable or adverse position to the Town or is purposefully working to delay a particular outcome (against the community engagement of the Town).

VII. Were the Respondent’s Comments at the June 28, 2022 Council Meeting “Fair Comment”

In a court decision, the Ontario Court of Appeal provided helpful advice to municipal councillors when considering acceptable commentary at Council. In this decision³ the Court confirmed for municipal councillors that they do not enjoy absolute privilege for

¹ *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 SCR 1170

² *McGill v. Corporation of the City of Brantford* (1980), 12 M.P.L.R. 24, at p.35

³ *Gutowski v. Clayton*, 2014 ONCA 921, December 24, 2012

offensive and defamatory statements they make during municipal council meetings. I have also reported this year on the principle of Councillor fair comment. The core issue in the Court decision was whether the Court should extend absolute privilege to what some Members of Council were calling offensive or defamatory statements made by municipal councillors in the course of council meetings.

On appeal, all parties and the Court accepted that the present state of law only gives a **qualified** privilege to municipal councillors for their remarks in council. What this means, according to Justice Blair, is that “municipal councillors are not liable in defamation for statements they make **during council meetings, unless** the [Councillor who makes the complaint] is able to demonstrate that the statements were made with **malicious intent** on the part of the councillor”.

The Court noted that in contrast to statutory privilege extended to members of the federal and provincial legislatures, no such statutory protection was extended to members of municipal council.

The parties in this example case were all elected Members of Council of the County of Frontenac and at a May 2013 Council meeting, the defendant Councillor Jones made a motion, alleging that the plaintiff, Councillor Gutowski, had engaged in a form of corruption and the “peddling of political favours”, and had lost the trust of council. Councillor Jones also alleged to have asked rhetorically, “What other tricks has she been up to?”

In this case, the Councillors who were accused of making offensive statements [“peddling of political favours” and “what other tricks has she been up to”], put forward their belief that there is an overriding value that Canadian society places on the right to freedom of expression and speech in public disclosure, and municipal councillors need to be able to exercise that right in order to perform their role properly and effectively, inform the public and set the record straight.

In response, the Court stated that without any evidence to justify the need for a change in the law, the Court refused to extend absolute privilege to such statements made at a municipal council and deemed them to be outside of the protection of qualified privilege. In denying absolute privilege, the Court in the above case cited the decision of the Supreme Court in *Prud'homme*, where the Court said:

The English and Canadian courts... have held that words spoken at a meeting of a municipal council are protected by qualified privilege...Accordingly, the fact that words spoken at a meeting are defamatory does not, in itself, mean that a municipal councillor will be liable, therefore. In order to succeed in his or her action, the plaintiff must prove malicious intent or intent to harm on the part of the councillor.⁴

The Supreme Court went on to state:

...freedom of expression takes on singular importance, because of the intimate connection between the role of that official and the preservation of municipal

⁴ *Prud'homme v. Prud'homme*, 2002 SCC 85, [2002] 4 SCR 663

democracy. Elected municipal officials are, in a way, conduits for the voices of their constituents: they convey their grievances to municipal government...**That freedom of speech is not absolute.** It is limited by...the requirements imposed by other people's right to the protection of their reputation..., reputation is an attribute of personality that any democratic society concerned about respect to the individual must protect[...].

Although it is not specifically mentioned in the Canadian Charter, the good reputation of the individual represents and reflects the innate dignity of the individual, a concept which underlies all the Canadian charter rights. (emphasis added)

The Court concludes that:

Accordingly, while elected municipal officials may be quite free to discuss matters of public interest, they must act as would the reasonable person. **The reasonableness of their conduct will often be demonstrated by their good faith and prior checking they did to satisfy themselves as to the truth of their allegations.** These are guidelines for exercising their right to [fair] comment, which has been repeatedly reaffirmed by the courts. (emphasis added)

The Legislature has not felt it necessary to extend absolute privilege to the speech of municipal councillors. As a result, municipal councillors are not protected from misspeaking or unreasonably not checking with the veracity of their statements to the detriment of the reputation of another Member of Council.

Generally speaking, as Integrity Commissioner for the Town, in addition to my investigator role, I also have a duty to provide general education and guidance to Members of Council and Local Boards with respect to their obligations under the Code. As a general proposition, Members of Council are encouraged to raise their discontent with colleagues' actions or concerns of bias that they wish to underscore for the public, through established channels as set out in the Code of Conduct. The use of innuendo or hyperbole to articulate and promote a position that has been raised and promoted by Council and not supported by a Councillor arguably because the Councillor has always voted in the negative on a project and has been included in emails from opponents of the project, should be distinguished from fair comment which is necessary for the fulfilment of the official duties of the Member. If a Member of Council believes that a Councillor has worked at the "behest" of a small group of opponents to a Town project to the point where a "strategy" has been employed to purposefully, intentionally, and baselessly delay approval of the project, and the Member believes the public should be aware of this subterfuge, then the Member should avail themselves of the Code of Conduct complaint process requesting that the Integrity Commissioner investigate into these allegations. Frustration at the proliferation of misinformation regarding Town initiatives and projects is certainly a concern at the Town and a matter for which the head of council should be concerned. However, if a Member believes a Councillor colleague has intentionally delayed a project, in other words, worked adverse to the Town's position, especially at the behest of anyone, that is a matter that should be brought forward in the form of a formal Code complaint to the Integrity Commissioner.

VIII. Conclusion

The reciprocity of interest or duty between the Respondent and the public was a relevant consideration in my assessing whether qualified privilege (or fair comment) applied in his statements at the Meeting of Council.

A privileged occasion is described in *Hill v. Church of Scientology of Toronto*⁵:

...a privileged occasion is...an occasion where the person who makes a communication has an interest or 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.

In the matter at hand, the citizens of the Town constituted an audience with an interest in receiving the Respondent's statement about the project (cost, etc.), which was a matter of significant and often controversial debate. The Respondent could not be deemed to have a defense of fair comment even assuming that privilege applied at the Meeting, in that he spoke with what appeared to be a disregard for having all the facts, insisting that the Councillor worked hard with opponents to put politics before practicality and intentionally delay the project. The facts that formed part of the public record, were that the Councillor consistently voted in the negative when the matter was at Council. Voting in the negative on items at Council does not, in and of itself, denote working against the approval of a project or working to delay a project. It could, if found during an investigation that a Council had no intention of listening to any information brought forward by staff or consultants, but it is not *de facto* evidence of working to delay a project.

At the Meeting, there was a lot of emotion as evidenced by the tone and content of the comments of the Respondent. While it may be viewed as unwise for the Integrity Commissioner to intervene to referee political speech through a Code complaint investigation, in the circumstance of this Complaint, the Respondent did call into question the actions of the Councillor. By way of guidance and caution to Members of Council, including the Councillor in this Complaint, I reiterate what I pointed out in an earlier Memorandum to the Town dated July 2019 on page 3:

There is no doubt that an elected member of the Town of The Blue Mountains Council could champion a community cause: for example, to advocate for the municipal support of community preservation of parkland. However, promoting or **championing** the position of one site over another for the location of attainable housing development may result in violations of the Code of Conduct, as this action may be perceived as prejudgment or bias. (emphasis added)

[...] A Member of Council cannot circumvent the rules of the Procedural By-law or the decision-making processes of the Town...with the effect of wearing both the hat of a member of the public to make submissions for Council consideration and the official decision-making hat of a Member of Council.

⁵ *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 (S.C.C.):[143]

Receiving information from and bringing forward positions held by members of the community on issues before Council, is a legitimate exercise of official duties of a Member of Council. Acting as the shadow opposition to Council in concert with friends, associates, or others in the absence of the transparent communication through Committee and Council meetings, is tantamount to participating in lobbying activities without the lobbyists registering their activities.

A strong accountability and transparency framework contributes to effective governance by ensuring that the municipality is accountable to the public for its actions, and by clearly defining the manner in which its governance practices will be made transparent to the public. Lobbying Members of Council and staff on municipal issues can enhance the deliberative process by providing the perspective of stakeholders that might otherwise be lost. Lobbying Members of Council in secret does not bode well for good governance. Greater transparency of who has communicated with which Members of Council and about what, will enhance the public's perception that decisions are being made in an accountable way and facilitate in clarifying if a Member is working at the behest of a special interest group.

IX. Findings

As one Integrity Commissioner commented in a 2017 Code of Conduct Complaint investigation report:

The Code is a public declaration of the principles of good conduct and ethics that the members of Council have decided its stakeholders could reasonably expect from them in the performance of their duties as elected representatives. Attaining an elected position within the community is a privilege which carries significant responsibilities and obligations.

The purpose of the Code is to reassure the community that their elected representatives will be held to a high standard as they govern, and to remind the members of Council of this obligation. Practically speaking, this means that members of Council must rise above the frustrations they face, the inadequacies they find, and the failings they encounter. They must not lower the quality of the public discourse, but raise it.⁶

In determining if the Respondent's statements amounted to maliciously or falsely injuring the reputation of the Councillor, one could consider if such statement could impact her prospects for the future and if her future as an elected official has been compromised, as a direct result. Municipal elected officials are evaluated by the public at the ballot box every four years and a candidate for a municipal office may share their voting record and stance of matters of interest to the community during the political campaign leading up to the municipal election. In other words, any candidate in a municipal election may tell their truth, disclose their voting record at Council meetings and the reasons for their positions

⁶ Municipal Integrity Commissioners of Ontario › 2017 ONMIC 6 (CanLII)

taken (as long as they do not disclose confidential information or information discussed at closed meetings).

The Respondent's public reference to the Councillor "... working hard to get this project deferred for a long time" and that her actions were "an example of politics getting in the way of practicality" was inaccurate. The Councillor did have a lot to say at the Council meetings and the item was often deferred but having a lot to say and voting in the negative does not, de facto, amount to intentionally working to delay an item. Did the Respondent say, "the Councillor worked against the Town's best interest and together with a small group of strident and vocal opponents to the project, did everything in her power to delay the project for a long time to the detriment of the Town's best interests"? No, he did not say this. Of relevance to my finding that notwithstanding those words were not used, the effect was as if he did, is the commentary of an academic paper in which the author explains the importance of context and innuendo in determining harm. While as Integrity Commissioner, I cannot receive or investigate complaints alleging defamation, as this can only be enforced by the courts, the discussion in this paper around how courts determine harms is relevant to my reasons upon which I base a Code contravention finding.

To be defamatory, a statement must tend to harm reputation. However, Canadian case law shows that disparaging statements are often assumed to be defamatory, even when they may have little potential to harm reputation because a right-thinking audience member is unlikely to believe them. The author argues that this is the result of an overly literal approach to ordinary meaning, a disregard for how right-thinking people interpret statements, and a tradition of not adducing evidence of context to prove meaning.⁷

In this paper, the writer states that many believe it would be unreasonable to conclude that people take an individual's comments pejoratively, during a public debate, when the statements are simply intended as a statement of opinion. However, the author goes on to say that sometimes this assumption is incorrect because it ignores the fact that a particular audience may have entrenched views or knowledge about the author of the statements, the complainant or the subject matter in question, or may make credibility judgements based on the importance of who makes the statements and how likely the statements would be believed without the audience necessarily checking on its veracity.⁸

Based on my review of the information before me in this Complaint and the limited time available for me before the August 19th deadline to complete the investigation, I have determined that the Respondent's statements are contrary to the spirit and intent of the *Code of Conduct*. The implication of the Respondent's comments was that the Councillor was working with a small group of residents to prevent or delay the approval of the Gateway project on the basis of her political position (whatever that may be). Working with residents is a part of a Councillor's official duties and would not in and of itself, run afoul of the Code rules. Working with a small or large group to undermine the

⁷ But Names Won't Necessarily Hurt Me: Considering the Effect of Disparaging Statements on Reputation, Hilary Young, [Queen's Law Journal](#) › [vol 37 no 1](#) › 2011 CanLIIDocs 529, p.3

⁸ *Ibid.*

legitimate work of Council, staff and corporations with connections to the Town (i.e., the BMAHC) is not consistent with a Councillor's official duties and would not be conduct condoned under the Code. However, it this was the Respondent's underlying belief, this would have to be proven through a Code investigation. If the Respondent believed this to be the case, the appropriate way to address the alleged his concern with the alleged behaviour of the Councillor would be to bring forward a Code of Conduct complaint. The Respondent replied to the Complaint stating that "Councillor Hope has constantly raised issues with the Gateway Project, both publicly, and I am told privately, at the behest of a small group of constituents who have been vocal opponents of the project. I don't have a problem with this. I believe that me bringing this to the attention of the public during the debate of her wanting to defer the decision of the transfer of the land to the next council, is appropriate and relevant and fair comment".

As set out earlier in this report, the Respondent's statements were not fair comment. Stating that a Councillor raises issues from the community is fair comment. Stating that a Councillor has consistently voted against a project is fair comment, even though it is an elected official's right when based on their informed review of the information and facts brought to Council, to vote based on their convictions. Stating that a Councillor has worked hard to delay, at the behest of a small group of constituents who have been vocal opponents of the project" letting "[her] politics get[ting] in the way of practicality" [of conduct the business of the Town], is not fair comment, but rather an allegation of a Councillor using their status as a Member to improperly influence the decision of Council to the private advantage of oneself or friends, or associates or otherwise, which , if subject of a Code complaint and sustained, is a Code violation. The Respondent's statement implied that the Councillor's conduct was tantamount to constituting a clearly improper use of influence, contrary to the Code, and likely would be seen as using her office for an improper purpose. Such an allegation could be damaging to that Councillor's reputation in the eyes of the public. The Complainant emphasized in the Complaint that the Respondent declined to retract the statement on the floor of Council and apologize to Councillor when given an opportunity to do so during the discussion at Council on June 28, 2022, thus there was no mistaking what the Respondent intended.

In the words of the former Integrity Commissioner of the City of Toronto,

Councillors will of course from time to time disagree about positions and engage in political rhetoric in order to criticize the judgment of other Councillors. Councillors must be permitted sufficient leeway for public criticism in order for municipal democracy to thrive. There must also be, however, limits on the legitimate scope for public criticism. One such limit is imposed by [the rules of the Code relating to treating one another, staff, and the public appropriately, without abuse or intimidation].⁹

⁹ CITY OF TORONTO INTEGRITY COMMISSIONER, LORNE SOSSIN, VAUGHAN V. FORD, 2009 ONMIC 1, 2009-02-13

In conclusion, I found no evidence that the Respondent knowingly and intentionally made false allegations in an attempt to harm the Councillor's reputation. Discreditable conduct, however, includes not only deliberately making statements that discredit another colleague with an intent to harm, but also acting in a manner that treats other Councillors unfairly.¹⁰ Unlike a case of defamation (a complaint alleging defamation can only be enforced through the courts), the Code complaint process does not require proof of malicious intent or intent to harm on the part of the Respondent. Rather, the Code requires the Integrity Commissioner to review the effect of the conduct of the Respondent, and if there was harm, this harm can only be justified (i.e., the Member will not run afoul of the Code) through the "fair comment" defense. The "fair comment" defense will shield the Member from being found in contravention of the Code, if the statement was necessary for the Respondent to fulfil their official role and duty (in other words, they would have fallen short of their duty as a public official if they had not made the statement), even in the absence of malicious intent. In the circumstances of the matter before me, I find that the Respondent failed to take reasonable steps to ensure his information about the Councillor's role in "working hard to get this project deferred for a long time..." was accurate, and he did not demonstrate care or diligence in how he conveyed the information, or due regard for the consequences of his statements or how the statements could be received by his audience. Consequently, I find that the Respondent's conduct disparaged the Councillor, and while the statements did not rise to the level of, Abuse, Bullying, Violence, or Intimidation, as contemplated under rule 13 of the Code, the Respondent's statement had the effect of injuring the reputation of a fellow Member of Council.

As the Respondent has stated that he stands on his statements and given that this is the end of the Council term, I have decided to make no recommendations on this matter.

Respectfully submitted,

August, 15, 2022



Suzanne Craig
Integrity Commissioner

¹⁰ *Ibid.*