



Staff Report

Administration

Report To: Council
Meeting Date: November 13, 2019
Report Number: FAF.19.246
Subject: Integrity Commissioner Report, Complaint dated July 14, 2019
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.19.246, entitled "Integrity Commissioner Report, Complaint dated July 14, 2019";

AND THAT Council consider the recommendation to Council included in the Integrity Commissioner's Report dated November 6, 2019, as it relates to the breach of "Section 8, Respect for the Role of Staff" and "Section 13, Discrimination and Harassment" of the Code of Conduct for Members of Council and Local Boards, POL.COR.07.07 by Deputy Mayor Bartnicki.

B. Overview

The purpose of this report is to attach the Integrity Commissioner's Report dated November 6, 2019, in response to a complaint dated July 14, 2019 received under the Code of Conduct for Members of Council Policy, POL.COR.07.07.

C. Background

In accordance with the "Code of Conduct for Members of Council" Policy No. POL.COR.07.07, as revised, and the "Protocol Policy for Complaints Related to Council Members and Local Boards", Policy No. POL.COR.18.04, formal complaints under the Code of Conduct shall be submitted to the Clerks Department in written form. Within 48 hours of receipt of the complaint, the Clerk will forward the complaint to the Integrity Commissioner who will process the complaint in accordance with Section 223.3 of the *Municipal Act, 2001*. The complaint to which this Report applies was forwarded to the Integrity Commissioner on July 15, 2019 and processed by the Integrity Commissioner in accordance with the Code of Conduct.

The Code of Conduct requires that the Integrity Commissioner shall report the results of the investigation in an open meeting of Council.

D. Analysis

See attachment #1

E. The Blue Mountains Strategic Plan

Goal #4: Promote a Culture of Organizational & Operational Excellence

F. Environmental Impacts

N/A

G. Financial Impact

1. Integrity Commissioner fees.

H. In consultation with

Suzanne Craig, Integrity Commissioner

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required.

J. Attached

1. Attachment 1, Report of Integrity Commissioner, Suzanne Craig dated November 6, 2019 in response to a Complaint dated July 14, 2019
2. Attachment 2, Code of Conduct for Members of Council and Local Boards, POL.COR.07.07
3. Attachment 3, Protocol Policy for Complaints Related to Council Members and Local Boards, Policy POL.COR.08.04

Respectfully Submitted,

Corrina Giles
Town Clerk

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TOWN OF THE BLUE MOUNTAINS CODE OF CONDUCT COMPLAINT

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 Deputy Mayor (the “Respondent”) in connection with a complaint received July 15, 2019 (the “Complaint”).

The Complaint relates to conduct of the Respondent towards an individual (the “Complainant”), who is active in community engagement initiatives, most notably, participating as the moderator of informal community meetings hosted by a community group.

Following my investigation of the Complaint, I have determined that it raised two issues:

- an allegation of workplace harassment of the Complainant by the Respondent 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 and without personal or human rights harassment;
- an allegation that the Respondent undertook actions that did not adhere to Rule 8 which required Members to be respectful of the fact that staff work for the Town as a body corporate [...] and, that Members shall be respectful of the fact that staff carry out the directions of Council and administer the policies of the Municipality and are required to do so without any undue influence from any individual Member or group of Members.

With regard to Issue 1, I find that the actions of the Respondent did breach Rule 13 of the Code, which prohibits such intimidation. Engaging in behaviour that is perceived to be intimidating is a breach of Rule 13. How the Respondent invited the Complainant and another individual to a meeting at the Town, to raise issues of alleged “inappropriate behaviour” of the Complainant at a community group meeting on May 21, 2019, was contrary to the Respondent’s obligations under the Code. I explain my reasons below in the report.

On Issue 2, I find that the Respondent’s conduct, though contrary to Rule 8, was not intended to and did not interfere with Town staff’s professional role. Although the Respondent should have known that her conduct was contrary to the Code and that staff take direction from the Chief Administrative Officer (“CAO”) and not individual Members of Council, the behaviour subject of this Complaint was not an attempt to improperly influence Town staff in the performance of their duties.

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, and my recommendations with respect to the appropriate sanction.

II. The Allegations in the Complaint

On July 15, 2019, I received the Complaint that named the Deputy Mayor of the Town as the Respondent.

The Complaint set out the following:

The Complainant stated that on May 27, 2019, immediately prior to a meeting of the Council Communications Advisory Committee (CCAC) on which the Complainant sits, together with the Deputy Mayor, the Respondent requested a meeting with the Complainant and another individual. The Respondent did not indicate the subject of the meeting request.

[...]

[At the meeting], the Respondent then asked the Complainant and another individual if they would object to the meeting conversation being recorded; and

[...]

put [the] iPhone on the table. I was still in the dark as to what was to be discussed. [Their] demand left me feeling unnerved and intimidated. I could not imagine what topic of conversation could warrant [their] demand.

[...]

At this point I felt something untoward was about to happen and wanted an additional witness to these extremely aggressive and intimidating behaviors. I knew that the [Respondent] was behaving inappropriately, and I needed a witness – in addition to [the other individual] – to this troubling encounter. The [Respondent] left the office and returned immediately with [a named staff person]. Neither [the other individual] nor I were identified or introduced. It was not explained how a proper record could be taken if [the named staff person] did not know the identities of those whose words were to be recorded.

[...]

We were told in vague terms by the [Respondent] that [a named staff person] who was called in by the Respondent to be a witness to the meeting] was bound by a confidentiality agreement. The [Respondent] then accused me of “inappropriate behaviour” at an informal gathering at which [they] had been speaking. [The Respondent] acknowledged that [they] had not witnessed any of the accusations and that they were based entirely on hearsay. The [Respondent] alleged that I had been making faces behind [their] back while [they were] speaking. I immediately denied these false claims.

The gathering to which [the Respondent] referred was the [community group] meeting of May 21, 2019- to which I had invited [the Respondent and council colleague ...] to brief attendees on their progress as newly-elected councillors.

[...]

When I asked [the Respondent], who had made these allegations, [they] raised [their] voice and said words to the effect that “ I can tell you if you want this to get really serious.” The [Respondent’s] remarks, body language and tone were combative and unyielding. [The Respondent] ambushed, trapped and bullied me and [the other individual] – but the accusations were being made solely against me.

[...]

After about 30 minutes of the verbal bullying and intimidation, the [Respondent] excused [the other individual] and [the named staff person] [...] Once we were alone, the [Respondent’s] harsh manner and tone continued, leaving me feeling cornered. [The Respondent] then told me that they had not told [the Respondent’s spouse] of the allegations toward me. This was done in a threatening manner, suggesting that I would have something to fear if [the Respondent’s spouse] were told of the allegations.

[...]

[Sometime later] I asked the CAO that [the named staff person’s] notes- and all copies – be destroyed.

Upon receiving the above Complaint, I conducted an initial classification to determine if the matter was, on its face, a complaint with respect to non-compliance with the Code. I determined that there were sufficient grounds in respect of Rule 8 and 13 of the Code to commence an investigation.

Upon commencing my investigation, I wrote to the Respondent on July 22, 2019 to advise that I had received a formal Code complaint and provided them an opportunity to review the Complaint Form/Affidavit and the supporting documentation and respond to the complaint on or before August 1, 2019.

After my receiving the Respondent’s reply and supporting documentation to the same, I interviewed a number of witnesses: some with knowledge of the incident subject of the complaint and others with knowledge of the underlying events. In the course of my investigation, the Complainant and some witnesses raised issues about the Respondent’s and the Complainant’s behaviour that fall outside of the strict ambit of the current complaint. I note that these issues relate to events that occurred before the Respondent was elected to municipal office in October 2018. I will address this issue below

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, I have omitted the identities of the Complainant and witnesses in this report. As well, I have provided only a summary of certain particular witness statements made to me in the course

of my investigation, to allow the Respondent to reply to the complaint. It should be noted that the Respondent objected to the fact that I did not provide them with an opportunity to receive or comment on the Complainant's comments to me during the investigation. Section 8 of the Complaint Protocol only requires the Integrity Commissioner to provide the Complainant with a copy of the Member's response to the complaint.

In coming to this decision, I have considered the need for Council and the public to understand the factual basis for my findings and my recommendations, and I have concluded that only the details provided in this report are necessary to understand my findings and recommendations.

A. *Issue 1 - Allegations of Contravention of Rule 13*

According to the Complaint, the Respondent is alleged to have confronted the Complainant and [the other individual] at a May 27, 2019 Council Communications Advisory Committee ("CCAC") meeting and told them "there was something to discuss after the meeting".

The Complainant and other individual attended at the Mayor's office as it was the only private office available and the Respondent advised that the Mayor had regularly allowed Members of Council to use this office for meetings. After the meeting had begun, the Respondent asked if there would be any objection to the meeting being recorded or if the preference was to have a staff person take notes. Both the Complainant and the other individual advised that they would be more comfortable to have someone take minutes as suggested by the Respondent. The Respondent then left the room and returned shortly thereafter and directed [a named staff person] to come into the Mayor's Office and according to the Complainant, "accused" the Complainant of 'inappropriate behaviour' at an informal gathering at which [the Respondent] had been speaking".

The Complaint makes reference to the Respondent's "raised voice", veiled threats ("I can tell you if you want this to get really serious"); and " [the Respondent saying] in a threatening manner", that their spouse had not be told about the allegations. The Complaint further references "verbal bullying and intimidation", "underhanded approach", and "aggressive behaviour".

In substance, the Complaint alleges that the Respondent's request for an unscheduled meeting on May 27th without providing the Complainant with the benefit of the reasons for holding a meeting, the verbal bullying and intimidation and veiled threats, amount to harassment as contemplated by the Code of Conduct.

B. *Issue 2 – Respect for the Role of Staff*

In the Complaint, the Complainant raised the additional allegation that the Respondent interfered with Staff's neutral performance of their duties and did not respect the fact that Staff work for the Town as a body corporate and do not take direction from individual Members of Council, in contravention of Rule 8.

According to the Complainant:

- The Respondent brought [the named staff person] into the unscheduled meeting and introduced the staff person by name without naming the Respondent or [the other individual] or providing a purpose for the meeting. [The named staff person's] "discomfort" with being placed in the situation of being required to participate in the meeting "was visible".

III. Relevant Provisions of the Code

A. *Harassment under Rule 13*

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]

For the purposes of the Code, engaging in behaviour that is perceived to be intimidating is a breach of Rule 13. Members of Council have an obligation under this Rule of the Code to treat members of the public and one another with respect and without abuse. The Town's Workplace Violence and Harassment Policy does not apply directly to members of council. Instead, it appears that what was intended was to exclude them from the application of the Policy for investigating an allegation, which would be addressed through the Code process.

Rule 13 of the Code requires Members to refrain from any course of conduct or any comments that would generally under the Policy, constitute workplace harassment. That term is not defined. However, it is clear from the language of the Code that it captures more than human rights harassment on the basis of the protected grounds under the Ontario Human Rights Code. Rather, it also captures "personal harassment" and "sexual harassment" (which has no application to this complaint). Personal harassment goes beyond harassment on the basis of human rights

characteristics to capture, for example, threats or assault, making aggressive or threatening gestures, persistently criticizing, demeaning or ridiculing a person, and hazing or pranks.

While the Town's Workplace Violence and Harassment Policy ("Harassment Policy") does not strictly apply to Members, it contains definitions which help to interpret the Code's harassment provision. The Harassment Policy defines harassment as:

"Workplace Harassment and Bullying" is a health and safety issue that is covered under the [Occupational Health and Safety] Act. The Act defines "workplace harassment" as:

- Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

Workplace harassment may have some or all of the following components:

- it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect
- it is hostile, abusive or inappropriate and can be delivered via direct or indirect communication

...

In addition, behaviour that intimidates, isolates or discriminates against the recipient may also be included.

Usually, harassment as set out in workplace harassment policies is offensive behaviour that is repeated after an employee knows it is unwelcome. However, harassment may also occur **from a serious, single remark or action and need not be directed at a particular individual.**

Under the Harassment Policy, the test for harassment is set out as:

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. For example, someone may make it clear through his or her conduct or body language that the behaviour is unwelcome, in which case the person must immediately stop that behaviour.

B. Respect for the Role of Staff under Rule 8

Under Rule 8, Members are prohibited from acting towards staff in a way that: pressures staff to engage in partisan politics on fear of reprisal for refusing to engage in such activities, interferes with staff's duties, and exerting undue influence in directing staff outside of the approved processes for staff direction, typically through the Chief Administrative Officer ("CAO").

Rule No. 8 – Respect for the Role of Staff

Members shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making recommendations that reflect their

professional expertise and corporate perspective. Members must not falsely or maliciously injure the professional reputation of staff Members and shall be respectful of the fact that staff carry out the directions of Council and administer the policies of the municipality and are required to do so without any undue influence from any individual Member or group of Members of Council.

Where a Member has a concern about personnel matters, he or she should speak with the Mayor and/or Chief Administrative Officer about the concern or alternatively raise the issue with Council during an *in-camera* session.

A Member's conduct can breach Rule 8 if it is disrespectful of staff's professional capacity or if it interferes with staff's duties. The issue is whether the impugned conduct was intended to or had the effect of undermining staff's professional role in a manner that breaches Rule 8.

C. Contextual History

The Complaint relates to the Respondent's conduct at a meeting on May 27, 2019, including the process for calling that meeting and the substance of it. The Complainant contends that at the May 27th meeting, the Respondent explained that they had called the meeting to discuss the Complainant's allegedly "inappropriate behaviour" at an informal gathering that took place on May 21, 2019. That informal gathering was hosted by a community group, and the Respondent and another Member of Council were invited to speak.

The Complaint goes on to say that at the May 27th meeting, the Respondent acknowledged not having witnessed any of the alleged May 21st "inappropriate behaviour". The Respondent explained that this behaviour consisted of "making faces behind [their] back while [they were] speaking". The Respondent and another Member of Council had been invited to a community group meeting to brief attendees on their progress as newly-elected councillors. In the response to the Complaint, the **Respondent states**:

[The Complainant's] behaviour on May 21st was targeted towards me and observed and reported by several witnesses (names attached). [The Complainant] was not targeting the other speaker, [...], who also spoke on that evening. [The Complainant] and [the other individual], [...], were notified of this observation by one of the witnesses during the event. I was advised by four witnesses over the course of the following five days.

The Complainant however, submitted to me that they had explained to the [Respondent] that their gestures were not 'targeted towards' the Respondent, but rather were intended to move the meeting along and to ensure that the proceedings went according to schedule. However, the Complainant submits that the Respondent refused to acknowledge the explanation and insisted that the gestures were targeted and disrespectful.

In the Complaint, the Respondent is said to have had their back to the Respondent at all times during the remarks at the May 21st community group gathering.

The Complaint sets out that the Complainant explained that what had been interpreted and conveyed to the Respondent by some attendees of the May 21st event as "making faces" and acting

inappropriately during a meeting, was instead the Complainant and the other individual “exchanging looks and gestures as [they] tried to keep the meeting on schedule as [they] do at every [community group] meeting”. The explanation given for having had to exchange looks and gestures was that the Respondent had “hijacked the meeting by introducing an unplanned group exercise [...] ignored our requests to continue taking questions from the floor” as the purpose for the invitation to the community group meeting was “to provide “updates/insights” – “not stage a group exercise”. This explanatory background in the Complaint concluded by setting out that the other Member of Council “with whom the [Respondent] was sharing the podium at the[community group] meeting tried to get [the Respondent] to continue taking questions from the floor but was rebuffed”.

The alleged behaviour of the Complainant that is purported to have taken place at the May 21st community group meeting is not the subject of this Code complaint; however, given the Respondent’s position that the reason for the May 27th meeting was to address the Complainant’s conduct on May 21st, it is important to comment on that meeting as well. Many of the individuals with whom I spoke during this investigation provided me with their recollections of the May 21st event. The witnesses described that the Complainant was making facial gestures while the Respondent was speaking. Based on the information that I received, and on a balance of probabilities, it appears reasonable that the Complainant’s explanation of making facial gestures towards the other moderator, was in order to keep the meeting on track through non-verbal communication. However, it was also reasonable for the Respondent to have felt that the Complainant’s actions were disrespectful given the accounts of the event which were received from some attendees of that meeting. In comments to the draft report, the Complainant disagrees that it was reasonable for the Respondent to have felt disrespected and that the accounts of the events received were “hearsay”. The individuals with whom I spoke confirmed that they saw facial gestures and that it was difficult to ascertain, depending on where one was sitting, whether the facial gestures were directed at the Respondent or were in an effort to meet the eye of the other moderator, with a view to moving the meeting along on schedule. During the investigation of this Complaint, I did speak with several individuals who were in attendance at the May 21st community group meeting, and I have confirmed that it was reasonable for the Respondent to have believed , given the explanation of some in attendance, that the gestures complained about were made while the Respondent was speaking and could be perceived to be directed at the Respondent.

Given the information provided to the Respondent, it was not unreasonable for the Respondent to seek to have a conversation with the Complainant about the May 21st meeting (by engaging in an informal complaint process of a possible Code complaint against the Complainant). The Code does not prevent a Member of Council or a Local Board from having difficult discussions about contentious matters. This report is not suggesting that requesting a meeting to pursue an informal resolution of a potential Code infraction is not allowed under the Code of Conduct. However, as a Member of Council, the Respondent must ensure that they abide by the Code rules, in particular, in respect of displaying behaviour that treats the public and other Members with respect and without abuse, bullying or intimidation and without engaging in workplace harassment.

During this investigation, the parties and the witnesses provided me with historical context to the Complaint. I set out a summary briefly below:

In the fall of 2016, the Respondent applied to the Town of The Blue Mountains for a vacant seat on the Library Board. Prior to the Respondent being appointed to the Library Board, the Library Board had gone through a controversial restructuring resulting in the termination of all staff. Following the staff terminations, several board members resigned. There is no suggestion in the Complaint that the Respondent was in any way responsible for the staff terminations and in fact, this Report is not making such a statement.

The Respondent was appointed to the Library Board in January 2017. It was the sentiment of many at the time, that the Board had agreed to a mass termination of Library employees through an unfair and a less than transparent process. The apparent lack of transparency caused several in the community to come to the defense of those terminated and form VOCAL (Voices of Our Community for Accountable Leadership). According to a 2016 article¹, which referenced a press release handed out at the event, VOCAL defined itself as “a voluntary group whose immediate aim is to help understand and resolve the current crisis at the L.E. Shore Library. We believe that, in essence, it is a crisis of leadership” Some of the members who spearhead VOCAL appear to have come together with others prior to the 2018 municipal election, to create a community group.

In the Fall of 2017, the Respondent became Chair of the Library Board and continued in this role until the new Board was appointed in January 2019. Towards the end of this period of tenure on the Library Board, the 2018 municipal election campaign began. The Respondent ran for election to the municipal council of the Town of The Blue Mountains, running first for Councillor and then for Deputy Mayor. There are currently conflicting and spotty recollections of Facebook posts around the election time, however, it is around this time that some posts on the [community group] Facebook page began to discredit the Respondent and the Respondent’s supporters.

While many of the posts that individuals have advised were on the community group social media site have been removed, individuals have kept screenshots of regular posts which appear to have supported certain candidates, which did not include the Respondent.

Based on the volume of information that I received from individuals during this investigation, I decided to take into consideration the witness accounts of historical context as background information to the Complaint. I received this background information both from the witnesses provided to me by the Complainant and from those provided to me by the Respondent, in addition to other individuals with whom I spoke. These statements provided a historical narrative of the municipality and shed light on the divisive positions between certain groups in the Town that underpin the Respondent’s position that they had been the subject of political bullying and disrespectful social media posts. They also provide an explanation about why the Respondent believed the witness accounts of the May 21st meeting and elected to address the purported events of the May 21st meeting with the Complainant at the May 27th meeting subject of this Complaint.

¹ <http://www.thornburypaper.ca/community-group-gets-vocal-about-library-issues/>

IV. The Process Leading Up to this Report

A. The Complaint Process

I set out below a summary of the complaint process.

- On July 15, 2019, I received the Complaint electronically at the Office of the Integrity Commissioner (the “Commissioner’s Office”). As Integrity Commissioner for the Town, I do not have an Office at the Town’s municipal address and therefore, I receive most correspondence addressed to the Integrity Commissioner in electronic format.
- On July 22, 2019 I contacted the Complainant acknowledging receipt of the Code complaint. I advised that I had conducted an initial classification review of the Complaint and the supporting documentation and that I had decided to open a complaint investigation file.
- On July 22, 2019, I forwarded to the Respondent a copy of the Complaint Form and supporting documentation. The Respondent requested a time extension to provide a reply to the Complaint as they were away. I granted a 2-week extension.
- On August 12, 2019, I received the Respondent’s written reply to the Complaint.
- On August 14, 2019, pursuant to the Code Protocol, I forwarded a copy of the Respondent’s reply to the Complainant. On August 23rd, the Complainant provided me with comments in respect of the Respondent’s written reply to the Complaint.
- On September 5th, 6th, 9th, 11th, 12th, 13th, 16th and Oct 2nd, I conducted telephone and onsite in-person witness interviews. I interviewed 15 individuals.
- On October 8, 2019 I provided the Complainant and the Respondent with a copy of my preliminary findings.
- On October 11, 2019 I received the Respondent’s 11-page response to my draft findings.
- On October 20, 2019 I received comments on my draft findings from the Complainant.

B. The Respondent’s Response to the Complaint

On August 12, 2019, the Respondent provided a written response to the complaint. The Respondent denied any contravention of the Code of Conduct.

The Respondent stated that:

I am in the process of retaining legal counsel to explore the extent to which my rights and reputation have been damaged and options beyond this process.

I categorically deny any contravention of the Code of Conduct of the Town of The Blue

Mountains, particularly Sections 8 and 13, as alleged by [the Complainant] in [the] Formal Complaint

I believe that [the] complaint of July 14th is:

- an obvious reprisal for my having addressed his breach of the Code of Conduct on May 21st through the Informal Complaint Procedure on May 27th; and
- a continued attempt to discredit and intimidate me.

The Respondent goes on to say that:

1. [The Complainant's] behaviour on May 21st was targeted towards me and observed and reported by several witnesses. [The Complainant] was not targeting the other speaker, [...] who also spoke on that evening. [The Complainant] and [the other individual][...] were notified of this observation by one of the witnesses during the event. I was advised by four witnesses over the course of the following five days.

2. Witnesses have also observed an ongoing pattern by [the Complainant] to bully, intimidate and discredit me on social media, ([community group] Facebook) before, during and after the election. Although many of the offensive posts have recently been deleted or hidden from public view, [...].

3. During the meeting on May 27th, I addressed my concern to [the Complainant], and not to both [the Complainant and the other individual] since [the Complainant] was the only party reported to me to have been making faces targeted at me. It was reported by one witness that she spoke directly to [the other individual] and I included [the other individual] because [they] had knowledge of the behavior from one witness and I believed it would contribute to a more comfortable situation for all concerned to have [the other individual] present.

4. Had I intended to intimidate, bully or threaten, I would have openly responded to [the Complainant's] posts and commented on [...] behaviors more publicly, or filed a Formal Complaint immediately, rather than following the Informal Complaint Procedure in an attempt to resolve the issue of ongoing disrespect. I also demonstrated respect for [the Complainant] and the process by maintaining confidentiality before and after the complaint, with the exception of hearing the concerns of the four members of the public.

5. The meeting room – the Mayor's office - was the only confidential meeting space available. I had checked with [a staff person #2] as to whether other meeting spaces were available prior to the meeting of the Community Communications Advisory Committee, but I did not state the reason I was looking for a meeting space. [A staff person #2] indicated that all meeting rooms were in use or booked for meetings. The Mayor was away, and he has allowed me and others to meet in his office previously. The Mayor's Office is located closest to the main office area and connected to the meeting space that we had been using, making it the safest and most convenient option. I do not have a closed meeting space at Town Hall. I did not feel that the issue should go unaddressed further because [the community group] was meeting again the following day and I had planned to attend.

6. Upon entering and before I sat down, (door was still open, both [the Complainant] and [the other individual] sat down facing the door immediately) I indicated my need to record our meeting since I was alone and requested whether [they] preferred me to use my cell phone or to have a staff member take notes. They chose a staff member, indicating “we never know where a recording goes”. I turned in the doorway and asked [a named staff person] if the CAO was in, and then the Clerk and Deputy Clerk in turn. [The named staff person] indicated that none of them were in their offices at that time. (I had also emailed the Director of HR earlier specifying that I was going to use the Informal Complaint Procedure and putting her on notice to attend if the parties wished. [...]) However, she too was out of her office.

7. When asked if [the named staff person] was able to take notes during a brief meeting, [the named staff person] immediately and willingly responded and entered the room. [The named staff person] was completely free to say [they] didn’t have time, couldn’t or were uncomfortable doing so. I maintain a friendly but professional and respectful relationship with Town staff and do not engage them in partisan politics or personal matters. I have spoken with [the named staff person] since about unrelated subjects [...] and [they have] not indicated any discomfort or hesitation to speak with me; Nor have we spoken about that meeting since.

8. At the end of the meeting, I offered to make copies of the notes for [the Complainant] and [the other individual]. Only then did I learn that the notes were in shorthand. [The named staff person] indicated that [they were] unsure of when [they] would be able to transcribe and type the notes and I assured [...] that it was not urgent, having believed that the issue had been resolved to the satisfaction of all parties.

9. [The Complainant] accepted responsibility for the perceptions of the observers regarding having made faces targeted at me and he apologized verbally in the presence of [the other individual] and [the named staff person] a number of times. I immediately accepted his apology and we shook hands. I indicated that I hoped we could all move on respectfully.

10. We agreed to confidentiality while everyone was present. [The other individual] and [the named staff person] left the room first, followed by [the Complainant] and I. With the door already open, I stated quietly to [the Complainant] that I had not informed anyone including my husband (who did not observe the behaviour since he left early on May 21st) in order to reassure [the Complainant] of confidentiality, especially because my husband and I share some mutual friends with [the Complainant...], and we sometimes attend the same social events. I wanted to reassure [the Complainant] that we (neither my husband or myself) would not be sharing information related to this issue with those friends or anyone else.

11. [The Complainant] confirmed receipt of my email [...] detailing the apology on June 6th and responded that he “too looked forward to putting this behind us”.

12. [The Complainant] and [the other individual] breached the agreement regarding confidentiality, first to the Mayor and then to the CAO, between May 27th and May 30th.

[The Complainant] and [the other individual] then requested to the CAO that the notes of the meeting of May 27th be destroyed. The CAO contacted me, and we spoke. I responded that I would support the notes being destroyed once we met again to confirm understanding of what was discussed in his presence. [...]

13. The CAO sent an email dated June 6th at 12:42 pm to both [the Complainant] and myself to confirm that no further action was required. [The Complainant] responded at 12:44 pm and confirmed that “no further action is required and that the notes taken by [the named staff person] will be destroyed, with no copies having been made”. With that assurance, I believed that the issue had been resolved and responded to [the Complainant] with copy to the CAO stating “I confirm that I accepted your apology for the inappropriate behaviour at [a community group meeting] on May 21st and that we shook hands when we met to discuss this on May 27th. I also confirm that I am in agreement with destroying the notes taken during our meeting, and now hope we can all move forward with respect for each other. Please confirm receipt of this email”. [The Complainant] responded at 1:09 confirming receipt and stated, “As per our discussion, no offence was intended by any of my behaviours. I, too, look forward to putting this behind us.”

The Respondent’s position is summarized by stating that:

Given my perceptions of the positive outcome of the meeting, the emails exchanged, and the fact that we have both been in meetings and even spoken face-to-face and one on one on June 11th, I was shocked to receive the Formal Complaint.

Key facts include the following:

1. [The Complainant’s] Formal Complaint is dated seven weeks after the meeting of May 27th, and we have both attended several meetings at Town Hall and at [a community group meeting] and have spoken face-to-face without any indication of concern on [their] part;
2. [The Complainant] requested that the notes of the meeting be destroyed on May 30th;
3. [The Complainant] confirmed that “no further action is required” on June 6th at 12:44;
4. I agreed to the destruction of the notes on June 6th at 12:55 as a gesture of good faith in an effort to move forward with mutual respect;
5. [The Complainant] confirmed my email stating [they] agreed with “putting the matter behind us”.
6. I do not believe the CAO would have acted on the destruction of the notes had he believed there would be any form of reprisal on the part of either part.

The Respondent concludes by stating that:

I categorically deny any breach of the Code of Conduct as alleged by [the Complainant] in [the] Formal Complaint of July 14th, 2019. Further, [the Complainant’s] use of false but descriptive language is a misleading and false account of May 27th; this complaint is frivolous and vexatious. Given [the Complainant’s] email response to the CAO and me indicating that an apology was provided and accepted, the assurance that “no further action is required”, and the request for the destruction of the notes of the meeting to which I agreed based on the email assurances, this complaint is not made in good faith.

As evidence to their understanding of what constitutes harassing behaviour, and that they would not engage in such behaviour, the Respondent advises that:

I have a current Criminal Background Check and a Vulnerable Sector Screening and have done extensive work with school boards and police departments to prevent bullying and harassment in my professional career. I have also volunteered and worked for Victims Services Bruce Grey Perth where I received additional training in these areas. The prevention of bullying and harassment is extremely important to me. As such I am deeply concerned as a professional and as a citizen by any bullying and harassment, understanding the deep and permanent damage that these experiences can cause. I continue to stand up against these, even posting a warning on my own Facebook page when a citizen commented negatively about [the Complainant] and other members of [a community group]

As an elected official, I am frequently subjected to ongoing bullying and harassment by a few members of the public[...] My attempt to address [the Complainant's] inappropriate and very public behaviours targeted towards me on May 21st through the Informal Complaint Procedure was an attempt to establish a more respectful relationship, but also a duty to the public, many of whom witnessed his ongoing behaviour and comments.

[The Complainant's] Formal Complaint seven weeks later is simply further evidence of the ongoing attempts by [the Complainant] to discredit, harass, bully and intimidate me and those who support me, particularly on [a community group] Facebook. In bringing this false complaint, [the Complainant] continues to be disrespectful to the voters who elected me as Deputy Mayor.

C. The Respondent's Supplementary Response to the Complaint

On October 8, 2019, I provided a copy of my draft findings to the Respondent with a cover letter inviting the Respondent to provide comments on errors or omissions, which I would take into consideration in my Final Report. On October 11, 2019, I received the Respondent's Supplementary response to the Complaint.

The Respondent begins by stating that the supplementary comments "are made with all due respect for your authority and process and not as criticism or denial.". The Respondent goes on to explain that the definition of *Discrimination and Harassment* set out in the Code, was taken from the *Ontario Human Rights Code* and that contraventions of that statute can only be found on the basis of protected grounds, such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status. Since the Complaint does not set out a contravention of the Code on the basis of the Human Rights Code protected grounds, the Respondent contends that the alleged breach did not occur. In addition, the Respondent reasons that the *Occupational Health and Safety Act* ("OHSA") which contains a definition of "workplace harassment" that applies to workers.

The Respondent reiterates that holding the meeting of May 27, 2019 is not an example of intimidation and bullying solely because advance notice of the meeting was not provided to the

Complainant. The Respondent continues to state that the meeting was part of the informal complaint process set out in the Complaint Protocol. While being the subject of the Code complaint, the Respondent explains that the basis for the Complaint being filed in the first place, is grounded in actions of the Complainant, who “is responsible for ongoing ‘communications that may constitute harassment, whether in person, in writing, by public comment and on-line, including by social media’ via ongoing defamatory Facebook posts directed at me since 2016. The Complainant continues to make disparaging comments about those who disagree with his points of view, particularly with respect to the former councillor [...]” While I can certainly receive these comments from the Respondent, I cannot attest to their veracity. I did receive contextual comments from witnesses during the course of this investigation and their comments did touch on events not squarely within the ambit of this investigation. However, I did not investigate nor do I make any findings on the comments made by the Respondent in the Supplementary response.

In the Supplementary response, the Respondent goes to great lengths to point out that the Code Protocol sets out the process to be followed when an individual wants to address behaviour or activity that they believe violates the Code. In fact, the Respondent believes that they followed the informal complaint procedure by “simply” asking if the Complainant was available to meet after the Communications Committee meeting. The Respondent suggests that the purpose of the meeting would have come as no surprise to the Complainant and the other individual, since “both had been advised by a witness that the behavior [at the May 21st meeting] was offensive.

The Respondent states that they followed all of the steps of the Informal Complaint Procedure:

(a, c) At the beginning of the meeting, I stated that I wanted to discuss a confidential matter and asked if they preferred to record using a cell phone or to have a staff member take notes. They chose a staff member. I identified the behavior that had been reported by the witnesses and stated that it was an infraction of the Code of Conduct since they are both appointed members of an Advisory Committee. (

(b) I stated that the behavior was perceived to be disrespectful and requested that it not continue. The Complainant acknowledged the behaviour, said he did not intend to be disrespectful and apologized.

(g.i) I immediately accepted his apology and offered my hand to shake. He took it, apologizing a second time. At the end of the meeting, I assured the Complainant of confidentiality, including to my husband who shares a mutual friend with the Complainant. The Complainant stated that he would send me a note later and apologized again.

(d) I reported the meeting to the CAO.

Given the positive outcome of the meeting, I did not follow steps (f), (g.ii) and (h).

Further, the Respondent stands on their original response that their actions were not intimidating or harassing. In fact, the Respondent states that:

“Nowhere does the Protocol state or even suggest that the individual provide advance notice or invitation. Therefore I do not believe that the manner in which I “invited the Complainant and another individual to a meeting at the Town, to raise issues of alleged

inappropriate behaviour...was contrary to [my] obligations under the Code and under the Town's Workplace Harassment Policy". The Respondent goes on to state that it is important that the public "are made aware of these "facts" for which there is detailed evidence, including emailed/written statement, that show that the Complainant:

(a) acknowledged his behaviour of May 21st stating that he did not intend to be disrespectful;

(b) apologized for that behaviour several times during the meeting;

(c) shook my hand when I accepted his apology and said he would send me a note later;

(d) confirmed receipt of my email detailing the apology (June 6) and wrote that he "too looked forward to putting this behind us"

(e) requested that the notes of the meeting be destroyed, stating in an email that "no further action is required and that the notes taken by [staff member] will be destroyed with no copies having been made" to which I replied "I confirm that I accepted your apology for the inappropriate behavior at [a community group meeting] on May 21st and that we shook hands when we met to discuss this on May 27th. I also confirm that I am in agreement with destroying the notes taken during our meeting, and now hope that we can all move forward with respect for each other."

The Respondent explains that their actions on May 27th were preferable to what would have happened if they had given some form of advance notice of the request for a meeting. "There would have been more reason to feel stressed and intimidated if I had sent the complainant an email or registered letter requesting a meeting to discuss his violation of the Code of Conduct by making faces and rude gestures behind me as was witnessed by several others. I agree that the complainant did not like it that I was actually calling him out on his behaviour; however this was not harassment, bullying or intimidation"

With respect to the alleged contravention of Rule 8 – Respect for the Role of Staff- the Respondent sets out in their Supplementary response that "I merely asked [the named staff person if they] were "able to take notes" at the request of the complainant.". Further, the Respondent explains that "my request to staff was based on the complainant's request to have a staff member record and that otherwise [the staff person] would not have been included at all as I had maintained total confidentiality to that point." In a complete dismissal of any wrongdoing, the Respondent states that there was no evidence that the staff person was uncomfortable, since " [the staff person] did not indicate in any way " that they felt uncomfortable. "[The staff person] is fully capable of objecting or stating that [they are] not comfortable or that the CAO would need to approve if [the staff person] felt uncomfortable or that [the staff person] couldn't at that time because of other duties. None of this happened and therefore I do not believe this is not a Rule 8 contravention."

The Respondent objects to the reference by the Complainant that during the meeting there were "raised voices" and that the Respondent was "combative and unyielding", given as reasons that this "was not corroborated by the staff member and was not heard by anyone in the outer office".

It should be noted that I did speak with the staff person who confirmed that they were uncomfortable with having been asked to join the meeting and take notes.

With respect to the Complainant's comments on the Respondent's original response to the Complaint, the Respondent suggests that procedural fairness would dictate that they receive a copy of the Complainant's comments to their response to the Complaint. However, pursuant to section 8(1) (c) of the Complaint Protocol, the Integrity Commissioner is only required to provide to the Complainant, a copy of the Respondent's response to the complaint with a request that any written reply be provided within ten (10) days. Only where the Complainant raises new allegations for which the Integrity Commissioner investigates and bases her findings, will there be a procedural fairness obligation to provide the Respondent with an opportunity to respond to any new issues raised in the comments that the Complainant may have supplied to the Integrity Commissioner. Section 8(1)(d) of the Complaint Protocol states that the Integrity Commissioner shall provide the Respondent with advance notice of the findings and any sanctions or remedial actions to be recommended to Council. This was provided to the Respondent on October 8, 2019.

V. The Investigation Process

I set out below the investigation process that I carried out in respect of each of the issues identified in the Complaint.

Upon receiving the Complaint, I conducted an initial classification to determine if the allegation raised in the Complaint, was on their face, a complaint under the Code.

I conducted interviews with 15 individuals in respect of my investigation of the allegations. I did not exercise my summons powers under the *Public Inquiries Act* and all information that I received during interviews and requests for documents were provided voluntarily pursuant to my exercise of the Code Protocol investigation powers. Section 8 of the Code Protocol states:

(2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any Town work location relevant to the complaint for the purpose of investigation and potential resolution.

In the course of my investigation, I also reviewed the relevant Town Policy, emails, video and audio recordings, Facebook pages and certain other materials.

VI. 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.

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.

This relevant Code principle underscores 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.

A. What types of Harassment are covered by the Code?

The Respondent takes the position that the Code only prohibits harassment based on the protected grounds enumerated in the Ontario Human Rights Code.

The Ontario Human Rights Code states at s. 4(2) that “Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.” This legislation focuses on protecting individuals from discrimination and harassment based on the protected grounds. However, it is not the only provincial legislation to protect employees in their workplaces. OSHA prohibits workplace harassment defined “as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.” This legislation protects workers from “personal harassment” which is not related to human rights characteristics.

Like the Ontario legislation, the language of the Code is not limited to human rights harassment. The Code also states that:

Members have a duty to treat members of the public and one another with respect and **without abuse, bullying or intimidation.**

The Code captures any conduct by councilors which does not treat members of the public with respect or that amounts to bullying or intimidation, regardless of whether such harassment relates to a protected ground. While I am not tasked with determining whether or not the Respondent’s conduct violated the Human Rights Code or OSHA, I must consider whether the conduct violated the Code provisions. I conclude that it did.

It is somewhat troubling that the Respondent takes such a narrow view of the discrimination and harassment provisions in the Code, in light of the employer’s obligations to employees under OSHA and the Human Rights Code. While some institutions took a narrower view of harassment, the changes to OSHA made clear that workplace harassment was far broader than anti-discrimination.² Harassment includes bullying and intimidation and is generally repetitive or a

² *Bart v McMaster University*, 2016 ONSC 5747 (Div. Ct)

pattern of conduct, or a single serious incident. An action that was not repetitive or so serious that it rises to the threshold of harassment, nevertheless can be intimidating and therefore a breach of the Rule 13.

B. The Respondent's Reason for Holding the May 27th Meeting

The Respondent justified their behaviour of convening a meeting with the Complainant as conduct in accordance with the Informal Code Complaint process pursued to address the alleged “inappropriate behaviour” of the Complainant at a May 21st [community group] meeting. Part A of the Code Protocol does set out the Informal Complaint Procedure which encourages any individual who identifies conduct by a Member that appears to contravene the Code of Conduct, to follow certain steps, such as:

- Advising the Member that the conduct appears to contravene the Code of Conduct;
- Ask the Member to acknowledge and agree to stop the conduct;
- Document the incidents where the Member may have contravened the Code

However, individuals who believe that a Member of Council or Local Board has contravened the Code of Conduct are also invited to:

- Tell the Member which parts of the Code of Conduct may have been contravened;
- Ask the Integrity Commissioner to help with an informal discussion of the complaint with the Member to resolve the issue.

On May 27th, directly after an Advisory Committee meeting, the Complainant and the other individual were asked to participate in a meeting, without knowing what the meeting would be about or prior notice of the meeting being scheduled. While, as pointed up by the Respondent in the Supplementary response, there is no obligation set out in the Protocol that requires advance notice to be provided, there was no *invitation* to attend the meeting to informally discuss a Code matter with a view to resolution which left the Complainant ill prepared to enter into a facilitated informal discussion. Indeed, the Complainant attended the meeting without knowing its purpose because they were summonsed to it by the Respondent. The Complainant believed they were coerced into participating in the meeting. Four individuals were in attendance at the May 27th meeting. While the Respondent and one other individual disagreed that the Respondent's tone was aggressive or threatening, two individuals recounted that the Respondent's tone was aggressive and three individuals at the meeting told me that it was uncomfortable and awkward. One individual advised that after the meeting, they felt “dumbfounded” by how the meeting was convened and that the matter could have been dealt with differently instead of using the “sledgehammer” process adopted by the Respondent.

By virtue of being elected to office, a Member of Council is placed in a *de facto* position of authority over many staff, volunteers, and other members of the public. If a Member believes that the conduct of another elected Member or appointed Member of a Local Board violates the Code, the aggrieved individual may certainly pursue the complaint through the informal complaint process. However, acting in a way that facilitates a fertile ground for information resolution, necessarily requires preparation, clarity and voluntary participation of all parties. However, in pursuing an informal resolution to the complaint through holding the May 27th meeting, the

Respondent had forethought to speak with the HR Director but not the Respondent until just before the meeting was to take place.

While the Respondent suggests in the Supplementary Response that they were following the Protocol Policy for Complaints, the Respondent also states they had advised the Director of HR of the intention to hold a meeting to address a Code of Conduct issue. The Respondent is well aware that the appropriate person to give guidance on the application and interpretation of the Code rules and processes, is the Integrity Commissioner. This is what the Informal Complaints Procedure contemplates: a third party can attend, which may be the Integrity Commissioner or another neutral party, however, the guidance on how to proceed, should be sought from the Integrity Commissioner. The Respondent does not explain why they reached out to the Director of HR. The Respondent ought to have followed the informal process by engaging the Integrity Commissioner, and as set out below, if they intended to hold a formal meeting with staff assistance, they ought to have requested that the CAO direct a staff member to attend. All of these preparations would have made calling a meeting more conducive to voluntary attendance with a view to resolution of alleged Code contraventions.

Based on the accounts of individuals who were present at the May 21st meeting, the Respondent believed the Complainant acted inappropriately during that meeting. It was reasonable to approach the Complainant, a Member of a Local Board, to discuss the matter. However, the manner in which the Respondent proceeded was problematic. Rather than requesting a meeting to discuss the events of the May 21st meeting, the Respondent omitted to explain the purpose of the meeting, stated they would record the meeting on their own personal iPhone and moderated the meeting themselves.

In the Supplementary response to the Complaint, the Respondent states that they were not required under the Complaint Protocol to give reasons for the meeting in advance of the meeting. I disagree with taking such a literal interpretation of the steps to be taken during the Informal Complaint Procedure. It would not have been difficult for the Respondent to explain at the time of the invitation to the meeting what the purpose of the meeting was, nor would it have been unreasonable to expect the Respondent to have organized the meeting in a way that a neutral party was in attendance to facilitate the discussions. The Respondent confirms that they have chaired many organizations and understand meeting governance. It is not unreasonable to have expected the Respondent to have set up the May 27th meeting in a way that was more conducive to a voluntary facilitated informal process.

I do not accept that this was a meeting held pursuant to the Informal Complaint Protocol. In any event, that does not insulate the Respondent's behaviour from review.

C. Did the Respondent Violate Rule 13?

The Respondent forcefully denied that their comments were intimidating and threatening. The Respondent's supplementary comments make clear that they considered whether the behaviour could have been perceived as intimidating; the Respondent stated that they believed that it could have been if they had not invited the other party to be present along with the Complainant. However, this did not eliminate the risk that the meeting could be and was perceived as intimidating (as discussed in more detail below).

The Complainant perceived the manner in which the Respondent sought the meeting to be extremely intimidating. The Complainant felt compelled to attend the meeting. In addition, information obtained during the investigation substantiates that the Respondent was viewed as “making their points in a ‘stern’ and ‘controlling’ way. In and of itself, acting in a stern way when conducting a serious but informal meeting, is not a contravention of the Code. Following the meeting, the Respondent spoke one-on-one with the Complainant and stated that they would not mention to their spouse anything about the meeting that just took place. There was certainly evidence of the existence of a conflict between the Complainant and the Respondent. As a result, it is not unreasonable for the Complainant to have perceived the Respondent’s comment as an attempt to intimidate. In a Workplace Harassment Information bulletin developed by the City of Toronto³, “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)

The meeting on May 27th did take place. The Respondent’s comments alleged in the Complaint have been substantiated throughout the investigation. The words used by the Respondent are not in dispute. The Respondent confirmed that they had made the comments set out in the Complaint. How the Complainant perceives the Respondent to be behaving must be viewed from the Complainant’s perspective not what the Respondent intended it to be. The Respondent disputed the Complainant’s interpretation of the May 27th meeting as having “called [the Complainant] into a closed-door meeting, bullied [the Complainant], threatened [the Complainant] and used the Mayor’s office to intimidate [the Complainant]”. The Respondent characterized their behaviour as an acceptable pursuit of the informal complaint process. To be clear, a person’s comments may be intimidating regardless of their intent.

While I find that the Respondent’s actions were intimidating to Complainant and thus contrary to Rule 13 of the Code, the behaviour that I investigated and found to have occurred, did not rise to the level of harassment. While I accept that the Respondent did not intend for their actions at the May 27th meeting to be intimidating and disrespectful, it was, in fact, perceived in that way by at least one third party to this Complaint. In totality, the individual components in place led me to a finding of contravention of Rule 13. Taken as a whole, the Respondent disregard for staff’s neutrality and respect for the rules of the staff council protocol, how the meeting on May 27th was convened, the absence of notice and introductions, the subtle tone of control, all made the meeting anything but conducive to a resolution of the purported “inappropriate behaviour” of the Complainant that the Respondent alleged was the basis of the Informal Code complaint process meeting. The alleged “inappropriate behaviour” of the Complainant was not subject of this Code investigation. From the witnesses’ accounts, it is reasonable to believe that the Respondent did believe that the Complainant acted disrespectfully on May 21st. However nonetheless, the Respondent is required to adhere to the rules set out in the Code *Municipal Act*, which include, the

³Resolving Conflict: Preventing Incivility and Workplace Harassment City of Toronto, Human Rights Office –Equity, Diversity & Human Rights Division,

rule that Council as a whole has only one employee, the CAO and that Council directs staff through the CAO.⁴

Perhaps if this incident had not been played out against the backdrop of the contentious environment of the previous council and the polarizing effect of some individual posts on the [community group] Facebook, this matter may have had a different outcome. This statement was viewed by the Complainant when providing comments to my draft findings, as speculation. However, as Integrity Commissioner, I must make a determination through the application of the rules of the Code and Code Protocol to the facts on a balance of probabilities. This Complaint did not take place in a vacuum. Every complaint has context and circumstances that can be considered, to some extent, by the decision-maker, when reaching a conclusion. If the Respondent had not been subject of personal attacks on social media, they may have not felt so under siege and may have decided to schedule a meeting ahead of time and advise the attendees that the purpose of the meeting was to engage in an informal discussion of the witnessed potential Code violations against the Complainant. In addition, the Respondent could have asked a neutral third party, such as the Integrity Commissioner, to moderate the meeting or at least, asked the Integrity Commissioner for guidance on the application of the rules and an explanation of the informal complaint process. For the parties to this Complaint, the May 27th meeting, subject of this complaint, became the tipping point of what was percolating under the surface politically and in the community long before the election, reaching as far back as the 2016 Library Board terminations. This may not seem relevant to some in respect of my current role in investigating this complaint, but having spoken to 15 individuals, in addition to the Complainant and the Respondent, after having combed through information provided by witnesses, in my view, it is not unreasonable to include in this Report, reference to the above-noted contextual situation. I am in no way suggesting that the Complainant was responsible for the personal attacks of the Respondent on social media. However, to ignore the fact that there were online personal attacks, would omit information that is relevant to the circumstances that were present in the community that formed the context of the Respondent's concerns.

The question to be asked is did the actions of the Respondent constitute harassment under the Code? In response to this question, I consider the following. A subset of workplace harassment is workplace incivility. As discussed at a recent governance presentation by a municipal law expert, workplace incivility is a relatively new term and has been defined as:

Low intensity deviant behavior with ambiguous intent to harm the target. Uncivil behaviors are characteristically rude and discourteous displaying a lack of regard for others.

Workplace incivility appears to be the most low-key, chronic, and ubiquitous form.⁵

Scholars write that, "on the contrary, the opposite of incivility, or civility, may require a level of respect for one's fellow human beings that is often lacking in today's workplace."⁶ In fact, while

⁴ Sections 224 and 229, Municipal Act, 2001, S.O.

⁵ Presentation to the Council of The Blue Mountains, September 30, 2019, Fred Dear, Municipal Lawyers, Former City Solicitor and Integrity Commissioner

⁶ Pearson, C. M., Andersson, L. M., & Porath, C. L. (2005). Workplace incivility

the Respondent's intent for holding the May 27th meeting may have been to follow the process set out in the Informal Code procedure, their actions of convening the meeting and low-intensity incivility perceived by the Complainant and [the other individual] during the meeting, may not rise to the level of workplace harassment under the Town's policy, or harassment, generally in labour decisions, but does meet the threshold of intimidation under Rule 13 of the Code. This type of behaviour if continued, would likely form a pattern of behaviour that would meet the threshold of harassment.

In coming to this conclusion, I have considered the additional evidence provided to me by witnesses, the Respondent and the Complainant. Despite the Respondent's suggestion that they have themselves been subject to political harassment by others, this was not the subject of the Code complaint before me and I made no findings in that regard. I find that the actions of the Respondent amount to intimidation and undermined the purpose of Rule 13 – ensuring that Members of Council demonstrate respect for members of the public and one another.

The Office of elected Member of Council is a position of honour and privilege. The Respondent was obliged to display conduct that recognizes that Members of Council must treat individuals with respect when conducting official Council business. In light of the information provided to me during this investigation, I find that the Complainant was intimidated, and the evidence shows on a balance of probabilities that the Respondent's behaviour constituted a breach of Rule 13. While the Respondent is new to municipal Council and did not have an understanding of how to conduct an Informal Complaint procedure following the May 21st community group meeting, given the many qualifications and having a long history of participating in public organizations in which its members are subject to governance rules, it is difficult to understand why the Respondent would not have been familiar with ethical principles of the Code of Conduct and at least, sought the guidance of the Integrity Commissioner. The Respondent ought to have found a way to address the dispute in a respectful manner. While the Respondent failed to do so, it was a relatively minor transgression compared to the discriminatory and harassing behaviour that Rule 13 seeks to protect against. I therefore make only a recommendation of a Reprimand and no further penalty.

Issue #2 – Respect for the Role of Staff

In the Respondent's reply to the Complaint, mention was made of the named staff person's opportunity to voice displeasure with being asked to attend the May 27th meeting. I do not accept that it is reasonable to believe that a staff person being asked to attend a meeting to take notes by the Deputy Mayor of a municipality would believe that they had the option to decline to attend.

I have determined that the Respondent's conduct in directing the named staff person to attend the May 27th meeting to take notes, was contrary to the Code Rule 8 that requires all directions to staff to go through the CAO and not individual Members of Council. While I appreciate that the Respondent sought to have a record of the meeting and that the Complainant preferred to have a notetaker rather than a recording of the conversation and thus demonstrated conscientiousness, the meeting could have been scheduled with notice and with discussion to the CAO to request the attendance of a Town staff person, if such attendance was necessary. Alternatively, the Respondent could have invited a non-staff person to take notes of the meeting. The Respondent knew that there

is a process in place at the Town for convening meetings where staff will be in attendance and also knew that there is a process under the Code for addressing alleged contraventions informally. I find that even though the Respondent did not believe that their actions constituted interference with the named staff person's professional obligations as Town staff, the Respondent ought to have sought guidance from the Integrity Commissioner in respect of how to address a complaint through the informal procedure. In respect of the issue with the role of staff, I find that the Respondent did contravene the Code Rule 8 but that the contravention was committed through inadvertence.

What does the Code Protocol require in respect of section 10 in setting out that the Integrity Commissioner may find that the contravention occurred through inadvertence [...] In one Court decision⁷, inadvertence is said to involve "oversight, inattention, carelessness and the like." The Respondent is a first time Member of Council at the beginning of the Council term. While the Respondent has had experience working with public boards, the governance protocols differ from the rules of an elected Member of Council in municipal government. As a result, I find that it is not unreasonable for the Respondent to have made this error with respect to what actions constitute interference by a Member of Council with staff's obligations .

In light of the information that I have received throughout this investigation, it would be beneficial for all Members of Council to be reminded that as of March 1, 2019, amendments to section 270 of the Municipal Act, 2001 require the Municipality to adopt and maintain a policy with respect to the relationship between Members of Council and the Officers and Staff of the Municipality.

In addition all Members of Council are also reminded that pursuant to Part A of the Protocol Policy for Complaints Related to Council Members and Local Boards, where a Member of Council or a Local Board believes that they have witnessed behaviour contrary to the Code rules, while they may seek an appropriate neutral third party, including the Integrity Commissioner, to help with an informal discussion of the complaint with the Member to resolve the issue, guidance should be sought from the Integrity Commissioner, on the interpretation and application of the Code and Complaint Protocol rules.

Finally, this investigation has underscored the need for clear definitions of what constitutes harassment, intimidation, bullying and incivility for the purpose of adherence to Code obligations by Members of Council and Local Boards. I understand that the appropriate Town staff are in the process of bringing forward amendments to the Respect in the Workplace policies. I invite the Council to ensure that relevant changes are also applied to the Code of Conduct for Members of Council and Local Boards.

⁷ *Campbell v. Dowdall* [1992] O.J. No. 1841, p.17

Recommendations

The Office of the Integrity Commissioner recommends:

Penalty:

1. That the Respondent receive a Reprimand in respect to actions in contravention of Rule 13 of the Code.

Respectfully submitted on November 6, 2019



Suzanne Craig
Integrity Commissioner



Policy

POL.COR.07.07

Code of Conduct for Members of Council and Local Boards

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Policy Statement

Policy direction for the behaviour of Members of Council in the performance of their duties and responsibilities as elected community representatives.

Purpose

Subsection 223.2(1) of the *Municipal Act, 2001* authorizes a municipality to establish codes of conduct for Members of the council of the municipality and of local boards. Subsection 223.3(1) also authorizes a municipality to appoint an Integrity Commissioner who would be responsible for performing in an independent manner the functions assigned by Council with regard to the application of a Code of Conduct.

Subsection 223.2(1) of the *Municipal Act, 2001* will require a municipality to establish codes of conduct for Members of the council of the municipality and of local boards. Subsection 223.3(1) also authorizes a municipality to appoint an Integrity Commissioner who is responsible for performing in an independent manner the functions assigned by Council with respect to the application of the code of conduct, the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards, the application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards, requests for advice by members of council and of local boards about obligations under the code of conduct, procedures, rules, policies or the *Municipal Conflict of Interest Act* and the provision of education information to

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members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of local council and members of local boards and about the *Municipal Conflict of Interest Act*.

Where a municipality has not appointed an Integrity Commissioner, subsection 223.3(1.1) of the *Municipal Act* requires it to make arrangements for all of the responsibilities set out in subsection 223.3(1) to be provided by the Commissioner of another municipality.

The Code of Conduct sets minimum standards for the behaviour of Council Members in carrying out their functions. It has been developed to assist Council to:

1. Understand the standards of conduct that are expected of them and the law that applies in relation to these standards;
2. Fulfill their duty to act honestly and exercise reasonable care and diligence; and
3. Act in a way that enhances public confidence in local government.

Application

This policy applies to Members of the Council of The Corporation of the Town of The Blue Mountains in the performance of their duties and responsibilities as elected community representatives, as well as Members of Town Committees and Local Boards.

Definitions

Municipality – means The Corporation of the Town of The Blue Mountains.

Members – means Members of Council, Town Committees and Local Boards of the Town of The Blue Mountains.

Committee - means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the Members are also Members of one or more Councils or local boards.

Local Board - means a local board established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities but does not include The Blue Mountains Police Services Board or The Blue Mountains Public Library Board, a school board, a hospital board or a conservation authority.

Integrity Commissioner -The person(s) appointed by Town Council By-Law in accordance with Section 223.3 of the *Municipal Act, 2001* and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the Code of Conduct for Members of Council and Local Boards.

Code of Conduct for Members of Council and Local Boards

1. Statement of Principle

A written Code of Conduct helps to ensure that the Members of Council, Committees and Local Boards of the municipality share a common basis of acceptable conduct. These standards are designed to provide a reference guide and a supplement to the legislative parameters within which the Members must operate. These standards for Members exist to enhance public confidence that The Blue Mountain's elected and appointed representatives will serve the public with integrity, justice and courtesy.

Members are responsible for making honest statements. No Member shall make a statement when they know that statement is false. No Member shall make a statement with the intent to mislead Council Members and the public.

The Town of The Blue Mountain's Code of Conduct is a general standard that augments Provincial laws and municipal policies and by-laws that govern conduct. It is not intended to replace personal ethics.

This Code of Conduct is consistent with the existing statutes governing the conduct of Members. (i.e. the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*) The *Criminal Code of Canada* also governs the conduct of Members of Council. Members are expected to uphold the letter and spirit of the laws of Canada, Ontario and the laws and policies adopted by Council.

All Members to whom this Code of Conduct applies shall serve their constituents in a conscientious and diligent manner. No Member shall use the influence of office for any purpose other than the exercise of his or her official duties. Members shall seek to avoid conflicts of interest, both apparent and real. Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and will bear public scrutiny.

1. Gifts and Benefits

No Member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly to the performance of his or her duties of Office, unless permitted by law. Members shall make decisions based on impartial and objective assessment, free from the influence of gifts, favours, hospitality and entertainment.

Members shall decline any personal gift where the acceptance of such gift would imply a contractual agreement with or obligation to the donor. In particular, Members shall decline any gift, payment, hospitality or entertainment paid for by a person or persons seeking to do business with the Town or of anyone known to the Member to be lobbying a Member on behalf of such a person.

This section does not apply to tokens, mementoes, souvenirs, or such gifts or benefits up to

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and including a value of \$300.00 that are received as an incident of protocol or social obligation that normally accompanies the responsibilities of office. Tokens, mementoes, souvenirs or gifts with a value of greater than \$300.00 shall be the property of the municipality.

This section does not apply to compensation authorized by law, services provided without compensation by persons volunteering their time, a political contribution otherwise reported by law, in the case of Members running for office or food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity

No Member shall seek or obtain by reason of his or her office any personal privilege or advantage with respect to Town services not otherwise available to the general public and not consequent to his or her official duties.

2. Confidentiality

All information, documentation or deliberation received, reviewed or taken in closed session of Council and its Committees and Local Boards are confidential.

Members shall not disclose or release by any means to any Member of the public either in verbal or written form any confidential information acquired by virtue of their office, except when required by law to do so. Where a matter has been discussed at a closed session meeting and the information remains confidential, no Member shall disclose the content of the matter or the substance of deliberations of the closed session meeting.

Members shall not permit any persons other than those who are entitled thereto to have access to information that is confidential.

Particular care should be exercised in ensuring confidentiality of the following types of information:

- Labour relations and personnel matters;
- Information about suppliers provided for evaluation which might be useful to other suppliers;
- Matters relating to the legal affairs of the Town of The Blue Mountains;
- Information that infringes on the rights of others (i.e. sources of complaints where the identity of the complainant was given in confidence);
- Items under litigation or negotiation;
- Price schedules in contract tender or Request for Proposal submissions if so specified;
- Information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- Statistical data required by law not to be released (e.g. certain census or

assessment data).

This list is provided as an example and is not exclusive. It is recommended that requests for information be referred to the Office of the Clerk to be addressed as either an informal request for access to municipal records or as a formal request under the *Municipal Freedom of Information and Protection of Privacy Act*.

3. Use of Town Property

Subject to Section 5, no Member shall use for personal purposes any Town property, equipment, services, supplies or services of consequence other than for purposes connected with the discharge of Town duties or associated community activities of which Town Council has been advised.

No Member shall obtain financial gain from the use of Town developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the Town of The Blue Mountains.

No Member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

4. Use of Town Technology Resources

The Town of The Blue Mountains licenses the use of computer software from a variety of vendors. The Town does not own the software or its documentation. Software is normally copyrighted, and no individual may copy or distribute the software unless expressly permitted to do so under the applicable licence.

5. Work of a Political/Personal Nature

Members shall comply with Town Policy POL.COR.18.01, Use of Corporate Resources for Election purposes and no Member shall use Town facilities, services or property for his or her re- election campaign. Further, no Member shall use the services of Town employees for his or her re- election campaign, during hours in which the employees are in the paid employment of the Town.

No Member shall use Town facilities, services or property for his or personal business gain. No Member shall use the services of Town employees for his or her personal business during the hours in which the employees are in the paid employment of the Town.

6. Conduct at Meetings

Members shall conduct themselves with decorum at Council, Committee and Local

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Board meetings in accordance with the provisions of the Town's Procedural By-law.

Respect for deputations and for fellow Members and staff requires that all Members show courtesy and not distract from the business of Council, Committees and Local Boards during presentations and when other Members have the floor.

7. Representing the Town

Members shall make every effort to participate diligently in the activities of the Agencies, Committees and Local Boards to which they are appointed.

8. Respect for the Role of Staff

Members shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective. Members must not falsely or maliciously injure the professional reputation of staff. Members shall be respectful of the fact that staff carry out the directions of Council and administer the policies of the municipality, and are required to do so without any undue influence from any individual Member or group of Members of Council.

Where a Member has a concern about personnel matters, he or she should speak with the Mayor and/or Chief Administrative Officer about the concern or alternatively raise the issue with Council during an *in camera* session.

Members must not invite or pressure any Member of staff to engage in partisan political activity nor subject staff to discrimination or reprisal for refusing to engage in such activities.

9. Business Relations

No Member shall borrow money from any person who regularly does business with the Town unless such person represents an institution or company whose shares are publicly traded and who is regularly in the business of lending money.

No Member shall act as a paid agent before Council or any Committee or Local Board of Council or any Agency at which the Town is represented.

10. Expenses

Members shall comply with the provisions of the Town's applicable policies relative to per diem payments and expenses governing reimbursement for attendance at conferences, seminars, training courses and workshops.

Members shall be reimbursed for their out-of-pocket expenses incurred in accordance

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with approved Town policies while attending official functions and representing the Town in their official capacity.

11. Encouragement of Respect for the Town and its By-Laws and Policies

Members shall encourage public respect for the Town and its by-laws and policies. Members shall abide by the provisions of any policies adopted by Council, committees or local Boards which apply to the conduct of Members.

13 Discrimination and Harassment

Members have a duty 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 and 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.

14 Advice

Members seeking information about their responsibilities under this Code of Conduct are encouraged to request advice from the Integrity Commissioner appointed by Town Council.

A request by a Member for advice from the Integrity Commissioner under the Code of Conduct, any procedure, rule or policy of the municipality or of the local board, as the case may be, or for advice respecting their obligations under the *Municipal Conflict of Interest Act* shall be made in writing. If the Integrity Commissioner provides such advice, that advice shall be in writing.

Advice provided by the Integrity Commissioner to a Member may be released with the member's written consent. If a member releases only a part of the advice provided to the member by the Commissioner, the Commissioner may release part or all of the advice provided to the Member without obtaining the Member's consent.

15. Respect for Code of Conduct

Members should respect the process for complaints made under the Code of Conduct.

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Members 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.

Consequences of Non-Compliance

Where Council or a Local Board (as applicable) receives a report from the Integrity Commissioner that there has been a violation of the Code of Conduct by a Member of Council or Local Board, Council or the Local Board may impose either of the following penalties on the Member as permitted by the *Municipal Act, 2001*:

- (a) a reprimand;
- (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council for a period up to 90 days.

Council or the Local Board as the case may be, may, on the basis of a recommendation from the Integrity Commissioner take any or all of the following actions and require that the Member:

- (i) provide a written or verbal apology;
- (ii) return property or make reimbursement of its value of money spent;
- (iii) be removed from the Membership of a Committee; or
- (iv) be removed as chair of a Committee.

References and Related Policies

The *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, Procedural By-law No. 2018-20, Town Policies:

- POL.COR.07.01 Accountability & Transparency;
- POL.COR.07.02 Sales & Other Disposition of Land;
- POL.COR.07.03 Provision of Notice & Manner of Giving Notice;
- POL.COR.07.04 Delegation by Council of Powers & Duties;
- POL.COR.07.05 Purchase of Goods & Services;
- POL.COR.07.06 Hiring of Employees;
- POL.COR.18.04 Protocol Policy for Complaints Related to Members of Council and Local Boards;
- Town of The Blue Mountains Strategic Plan.

Review Cycle

This policy will be reviewed in each term of Council by Council in conjunction with the Integrity Commissioner.



Policy

Protocol Policy for Complaints Related to Council Members and Local Boards

POL.COR.18.04

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Date Approved:	May 28, 2018
Department:	Administration
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By-Law No.:	2018-33

Protocol

PART A - INFORMAL COMPLAINT PROCEDURE

Individuals are encouraged to use the Informal Complaint Procedure first to address behaviour or activity of a Member of Council, Local Committee or a Local Board (a “Member”) that they believe violates the Code of Conduct. With the consent of the complaining individual and the Member, the Integrity Commissioner may participate in this process. The parties are encouraged to take advantage of the Integrity Commissioner’s potential role as a mediator/conciliator of issues relating to a complaint.

Any individual who identifies or witnesses conduct by a Member that appears to contravene the Code of Conduct may address the conduct in the following manner:

- a. advise the Member that the conduct appears to contravene the Code of Conduct;
- b. Ask the Member to acknowledge and agree to stop the conduct;
- c. document the incidents where the Member may have contravened the Code of Conduct including dates, times, locations, other persons present, and any other relevant information;
- d. tell a relevant third party about the concerns regarding the Member’s actions;
- e. tell the Member which parts of the Code of Conduct may have been contravened;
- f. ask the Integrity Commissioner to help with an informal discussion of the complaint with the Member to resolve the issue;

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- g. if applicable:
 - (i) confirm to the Member that his or her response is satisfactory, or
 - (ii) advise the Member that his or her response is unsatisfactory;
- h. consider the need to make a Formal Complaint Procedure as set out in Part B, or any other applicable legal process or complaint procedure.

The Informal Complaint Process is not a precondition to making a formal complaint as described in Part B.

PART B - FORMAL COMPLAINT PROCEDURE

Formal Complaints: Requests for Inquiry

1. Any individual may request an inquiry by the Integrity Commissioner into whether a Member has contravened the Code of Conduct by filing a formal complaint as follows:
 - (a) all complaints shall be in writing on the prescribed form and shall be dated and signed by an identifiable individual;
 - (b) the complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct and must be accompanied by a description of the evidence and/or documents that support of the allegation;
2. Council or a Local Board may request an inquiry by the Integrity Commissioner about whether a Member of Council or the Local Board as the case may be has contravened the Code of Conduct.

Filing of Complaint and Classification by Integrity Commissioner

3. The complaint shall be filed with the Clerk who shall forward the matter to the Integrity Commissioner to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council procedures, policies or rules as set out in Section 3.

Complaints Outside of the Integrity Commissioner Jurisdiction Under the Code of Conduct

4. If the complaint, including the supporting material, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint relates to matters addressed by other legislation or complaint procedure under another Town policy or rule, the Integrity Commissioner shall advise the complainant in writing to follow the

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alternative procedure. In particular, and in the following circumstances the Integrity Commissioner is to advise as follows:

Criminal Code

- (a) if the complaint alleges a criminal offence under the *Criminal Code*, the complainant shall be advised to take the complaint to the appropriate police service;

Municipal Conflict of Interest Act

- (b) Where an elector or person demonstrably acting in the public interest applies in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act, the Integrity Commissioner shall proceed in accordance with section 223.4.1 of the Municipal Act (Effective March 1, 2019).

Municipal Freedom of Information and Protection of Privacy Act

- (c) if the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the Clerk to deal with under access to information and privacy policies;

Parallel Proceedings for the Same Complaint

- (d) if the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding related to the Municipal Conflict of Interest Act, a Human Rights complaint or similar process, or civil proceedings, the Integrity Commissioner may, in his/her discretion and in accordance with legislation, suspend any investigation pending the result of the other process; and

Outside Jurisdiction: Referrals and Reasons

- (e) if the complaint is, for any other reason, not within the jurisdiction of the Integrity Commissioner the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Periodic Reports to Council

- 5. The Integrity Commissioner shall report annually to Council on the activities of the office. In that report, the Integrity Commissioner shall report on all complaints received and their

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disposition, including complaints deemed not to be within the jurisdiction of the Integrity Commissioner.

Refusal to Conduct Investigation

6. Where the Integrity Commissioner concludes at the outset, or during an investigation that:
 - (a) a complaint is frivolous or vexatious,
 - (b) a complaint is not made in good faith, or
 - (c) there are no grounds or insufficient grounds for an investigation,the Integrity Commissioner shall not be required to conduct an investigation and in the case of an ongoing investigation, shall terminate the investigation.

Opportunities for Resolution of Formal Complaints

7. Where 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.

Investigation

8. (1) The Integrity Commissioner will proceed as follows in conducting an inquiry pursuant to section 223.4 of the *Municipal Act*, and, where applicable, the *Public Inquiries Act, 2009*:
 - (a) provide the Member with an outline of the complaint with sufficient detail to allow the Member to understand the complaint against him or her;
 - (b) request that the Member provide a written response to the allegations to the Integrity Commissioner within ten (10) days;
 - (c) provide a copy of the Member's response to the complainant with a request that any written reply be provided within ten (10) days; and
 - (d) provide the Member with advance notice of the findings and any sanctions or remedial actions to be recommended to Council.
- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to any person, access and examine any other documents or electronic materials

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and may enter any municipal or Local Board work location relevant to the complaint for the purpose of investigation and potential resolution.

- (3) The Integrity Commissioner may make interim reports to Council or the Local Board where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the formal complaint investigation.
- (4) It is intended that all reports will be presented before Council within ninety (90) days of the filing date. Where due to relevant circumstances the report is not presented to Council within 90 days the Integrity Commissioner shall address the reasons for the delay within the report.
- (5) The Integrity Commissioner shall retain all records related to the complaint and investigation.

Reporting and Recommendations

9. (1) The Integrity Commissioner shall generally report to the complainant and the Member no later than ninety (90) days after the official receipt of the complaint. If the investigation process takes more than ninety (90) days, the Integrity Commissioner shall advise the parties of the date, if possible, that the report will be available.
- (2) Where a Member has been found to have contravened the Code of Conduct, the Integrity Commissioner shall report to Council or the Local Board outlining the findings, the terms of any settlement and/or any recommended remedial action or sanction.
- (3) Where the Integrity Commissioner finds that there are no grounds or jurisdiction to investigate a complaint, except in exceptional circumstances, the Integrity Commissioner shall not report to Council the result except as part of an annual or periodic report.
- (4) The Integrity Commissioner may disclose such information as in the Commissioner's opinion is necessary in the written reasons given by the Commissioner in relation to an inquiry into whether a Member has contravened the Code of Conduct.
- (5) The Clerk shall provide a copy of the report to the complainant and the Member whose conduct has been investigated. The Member shall, subject to Subsection 9(5), have the right to address the report when it is considered by Council or the Local Board.
- (6) If the report of the Integrity Commissioner recommends or Council considers whether to suspend the remuneration paid to the Member, the Member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting, however the Member is not permitted to vote on any question in respect of the matter. (Effective March 1, 2019)

Findings

10. If the Integrity Commissioner determines that:
 - (a) there has been no contravention of the Code of Conduct, or
 - (b) a contravention occurred but:
 - (i) the Member took all reasonable measures to prevent it,
 - (ii) it was trivial,
 - (iii) it was committed through inadvertence, or
 - (iv) it resulted from an error of judgment made in good faith,

the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*.

Report to Council

11. Upon receipt of a report from the Integrity Commissioner, the Clerk shall place the report on the next regular agenda of Council or the Local Board for consideration by Council or the Local Board.

Duty of Council

12. Council or the Local Board shall consider the Integrity Commissioner's report at the meeting at which it is tabled.

Termination of Inquiry When Regular Election Begins

- 13.(1) If an inquiry has not been completed before nomination day for a regular election as set out in section 31 of the Municipal Elections Act, 1996, the Commissioner shall terminate the inquiry on that day.
 - (2) If an inquiry is terminated under subsection (1), the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in section 5 of the Municipal Elections Act, 1996, the person or entity who made the request or the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.
 - (3) The following rules apply during the period of time starting on nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, 1996, and ending on voting day in a regular election, as set out in section 5 of that Act:

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1. There shall be no requests for an inquiry about whether a Member has contravened the Code of Conduct.
2. The Commissioner shall not report to the municipality or local board about whether, in his or her opinion, a Member has contravened the Code of Conduct.
3. The municipality or local board shall not consider whether to impose the penalties referred to in the Code of Conduct.

Public Disclosure

- 14.(1) The Integrity Commissioner and every person acting under his or her instructions 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.
 - (2) The Commissioner may disclose such information as in the Commissioner's opinion is necessary and provided for in section 223.5 of the *Municipal Act*
 - (2) The Integrity Commissioner shall retain all records related to the complaint and investigation.
 - (3) At the time of the Integrity Commissioner's report to Council or the Local Board, the identity of the Member who is the subject of the complaint shall not be treated as confidential information.
 - (4) All reports from the Integrity Commissioner to Council or the Local Board will be made available to the public by the Clerk and on www.thebluemountains.ca.

Delegation

15. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council or Local Board, any of the Integrity Commissioner's powers and duties.

Code of Conduct — Formal Complaint Form

COMPLAINT OF _____

I, _____ (full name), of the (City, Town etc.)

_____ (municipality of residence) in the Province of Ontario.

STATE:

1. I have personal knowledge of the facts as set out in this complaint, because

(insert reasons e.g. I work for... I attended a meeting at which...I am a member of.... etc.)

2. I have reasonable and probable grounds to believe that:

_____ (specify name of Member)

a member of the Council/Town Committee/ Local Board (circle applicable body) of the Town of Blue Mountains, has

contravened section(s) _____ (specify section(s)) of the Code of Conduct of the Town of Blue Mountains.

3. The particulars of this complaint are:

(Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space please attach to this form. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B etc. and attach them to this complaint form.

This complaint is made for the purpose of requesting that this matter be reviewed and/or investigated by the Town of Blue Mountains appointed Integrity Commissioner and for no other purpose.

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DATED this ____ of _____, 2____
(day) (month) (year)

Signature

Printed Name