

RE: CITY OF BARRIE CODE OF CONDUCT COMPLAINTS #0219 AND #0419

Background:

A formal complaint was made on May 14, 2019 (“Complaint 1”) by a Ward Councillor (the “Complainant”) Member of Barrie City Council alleging that the “Respondent”, the Chair of the Barrie Accessibility Advisory Committee and the Active Transportation and Sustainability Advisory Committee contravened the Code of Conduct for Members of Council and Local Boards (the “Code of Conduct” or the “Code”). The complaint alleges generally that the Respondent made comments on their Facebook page that ran afoul of the rules of the Code. The Complainant did not specify which sub-rule of the Code was alleged to have been breached, however, in a conversation with the Complainant, it was made clear that section 20.6(a) and (b) of the Code were triggered:

20.6 [...] Members shall not:

- (a) Make inappropriate comments or gestures to or about an individual where such conduct is known or ought reasonable to be known to be offensive to the person(s) to whom they are directed or are about;
- (b) Display materials or transmit communications that are inappropriate, offensive, insulting or derogatory[...]

Concurrent to the investigation of Complaint 1, I received a second Code Complaint (“Complaint 2”)(together with Complaint 1, the “Complaints”) against the same Respondent.

Pursuant to section 27.4 of the Code, I have determined that the Respondent contravened the Code in respect of the Complaints but did so by inadvertence. I have not recommended any penalties. Although I make this finding, the Complaints raised serious concerns in respect to the general standards of conduct of Members under the Code. I have decided to provide extensive reasons for my findings to clearly explain how this decision was made. The code complaint investigation procedure (the “Code Protocol”) sets out the process to be followed in respect of complaints received by the Integrity Commissioner. I have followed this process. I address Complaint 2 after setting out the investigation findings of Complaint 1.

Integrity Commissioner’s jurisdiction:

Section 223.3 of the *Municipal Act*, 2001 states that:

(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing

in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.

[...]

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality

Relevant Code rules

3.1 Application

This Code of Conduct and the references within it, shall apply to all members of Barrie City Council and members of Local Boards and Council Committees including those citizens and/or staff appointed by City Council.

5.13 Members of Committees/Local Boards

Members of the public appointed to committees or Local Boards are appointed at the pleasure of Council. They do not hold office nor do they represent a constituency within the community, nor do they represent Council, or the committee or the Local Board unless mandated to do so. Members of the public appointed to committees and Local Boards must respect both the word and the spirit of this Code as it applies to them and *also as it applies to Members of Council*.(emphasis added)

5.12 Members of Council

- a) May not impugn or malign a debate or decision or otherwise erode the authority of Council

20.6 Without limiting the generality of the foregoing, Members shall not:

- a) Make inappropriate comments or gestures to or about an individual where such conduct is known or ought reasonably to be known to be offensive to the person(s) to whom they are directed or are about;
- b) Display materials or transmit communications that are inappropriate, offensive, insulting or derogatory.

The Complaint 1:

1. The allegations in the complaint

On May 14, 2019, I received a complaint under the Code. The complaint was submitted on the City Complaint Form/Affidavit, to which the Complainant added one (1) page of additional information, which was the May 6th Facebook post of the Respondent.

The Complainant wrote that he had reasonable grounds to believe that the Respondent had contravened several provisions of section 5 of the Code General Standards of Conduct and section 20 of the Code.

The Complaint alleged that the Respondent's Facebook post "accused [him] of being a homophobe" in contravention of section 5 and 20 of the Code.

In addition, the Complainant attached to the Complaint, a copy of the Respondent's Facebook Post.

I attach the above as Appendix 1 to this Complaint.

2. The Respondent's Reply to Complaint 1

In his reply to the Complaint, the Respondent stated:

"I did not call any individual person, or even Council as a whole homophobic. The air of discussion definitely made the 2SLGBTQ+ community feel even more marginalized in and by the City than they already do, hence my post. I did not make it without consultation with leaders from the [...] Community. I do believe it's on CIS white guys of privilege and ideally with agency to make such call-outs to kickstart important discussion.

I could perhaps understand a formal complaint being submitted had I ever made reference to ***any*** of my volunteer roles within the Community and made that part of my message, however I did not. I have not used my social media account to promote I am Chair of anything.

I respectfully submit that while my comments were abrasive, they did not specifically call Councillor McCann a homophone. They raised question as to the appropriateness of spending \$400,000 on tennis courts, \$400,000 on public wifi, but refusing to spending \$7000 on a Crosswalk to celebrate and welcome a marginalized population. [...]

In closing, it feels like this is an attempt to bully me into silence via the Integrity Commissioner for having started an uncomfortable conversation about Council's harmful position and hurtful statements surrounding an issue that they likely haven't received Unconscious Bias training on.

It feels to me that this is incredibly inappropriate and perhaps egregious for the Councillor to attempt. As a community volunteer who is not a public figure nor an elected official, Councillor McCann's actions appear to be over the top and an abuse of the integrity commissioner process.

Respectfully Yours
[...]

3. The Respondent's Supplementary Reply to Complaint 1

On July 26, 2019, I provided the Respondent with a copy of my draft findings to Complaint 1, inviting them to forward any comments they may have that I would take into consideration in the drafting of my final report.

On August 8th, the Respondent submitted a supplementary reply with which he raised several concerns, the most significant of which are set out below:

The draft findings:

- referenced comments made on the Respondent's Twitter account, while the complaint referenced comments made in the Respondent's Facebook post
- left out "important contextual points" from the Respondent's original reply
- include a comment from the City of Guelph's integrity Commissioner in respect of the appropriate use of social media and that the draft findings incorrectly concluded that the Respondent made comments on social media that he would not make in person to the Complainant or any other Member of Council

The Respondent goes on to state that the actions subject of the complaint, which are comments made on their personal Facebook page, are not captured by section 3.1 of the Code. In fact, the Respondent comments that the Code rules apply to Members of Council and Local Boards... including those citizens and/or staff appointed by City Council and not personal Facebook comments. The Respondent asks where in the Code, reference is made that Committee members are held to a higher standard of behaviour in their personal lives.

The Respondent takes issue with the reference in the draft report that their comments were glib and explains that his comments were:

"made BEFORE Council had made any decision. I dismissed their conversation and explained I spoke to LGBTQ2S+ Leaders BEFORE posting. NOT GLIB; abrasive but informed and with meaning"

[...]

"I did not use my status as a member of a local Board (I sit on MANY) to denigrate any decision of Council, I commented about the way a discussion made a marginalized population feel"

[...]

"To suggest my comment was made in a disparaging way is subjective and not back up by the contextual background. Similarly the suggestion my comment invested the public to believe that Council had acted outside of the OHRC is not supported by the facts. I would strongly suggest that you contact some members of the LGBTQ2S+ community who were in the Chambers themselves before you comment on the damaging nature of the discussion.

[...]

“In closing, I will accept what you decree and am appreciative of the learning which will come from all of this for current and future volunteer Committee members.”

Facts:

The Respondent is an Advisory Committee member. They sit as Chair of the Barrie Accessibility Advisory Committee and the Active Transportation and Sustainability Advisory Committee.

The Respondent has a personal Facebook page and Twitter account on which the post subject of this complaint was made.

On the May 6, 2019 Facebook post, the Respondent wrote:

Tonight I'm watching #Barrie City Council openly display homophobia as they refuse to spend \$7000 on a rainbow crosswalk. #Pathetic \$400,000 for Tennis courts was ok through eh **Robert Thomson & Mike McCann**. You guys just burned through more than \$7000 of Staff time arguing this. What a joke

The Respondent also made numerous replies to comments on his post including “\$7000 is too much money as per Thomson and McCann.” In response to the comment “maybe if the rainbow wore a little tennis skirt...”, the Respondent stated “nailed it”. In response to a posting of an article indicating that Councillor McCann had raised the \$7,000 from private donors before lunch, the Respondent wrote “#inappropriate”. He also stated that he had a three hour conversation with Councillor Thomson who “was able to recognize the significant harm created by his well intentioned hold of this item on Monday”.

On the same day, the Respondent posted to Twitter, with the same statement – except that the last two sentences were not included.

In response to a comment on the post, the Respondent wrote:

Ostensibly it passed unanimously; unfortunately some members do not recognize the damage their comments have had on the LGBTQ2S+ community. This latest attempt to suggest fundraising is appropriate is virtue signalling [sic] at its finest. i'm [sic] pissed.

The Respondent did not call an individual Member of Council a homophobe. However, the Respondent did state they were watching “[Barrie] City Council openly display homophobia as they refuse to spend \$7000 on a rainbow crosswalk”.

The Respondent's Twitter and Facebook posts

In both the original and supplementary response to Complaint 1, the Respondent claims that comments subject of this complaint were made on their personal social media accounts and suggests that the absence of any reference to volunteer roles on Committees of the City means that the Code rules do not apply to statements made in that forum. In addition, in the supplementary reply, the Respondent raises concerns that the preliminary findings referenced comments made on the Respondent's Twitter account, while Complaint 1 referenced comments made in the Respondent's Facebook post.

As I have explained in a previous report¹, the position of an elected or appointed office creates a larger audience with which one communicates on social media or otherwise. While I confirm the Respondent's statement that they did not reference their appointed Advisory Committee role as part of the Facebook or Twitter posts, as a citizen appointee to a municipal government agency, the Respondent's conduct is governed by the Code rules that require a Member to arrange their public affairs in a way that promotes public confidence and respect, in a conscientious and diligent manner. Further, by posting comments on personal social media accounts, the Respondent exposed the comments to a wide audience beyond personal friends and family and because of the Respondent's official role on City Advisory Committees, enhanced credibility was given to the assertions.

Social media platforms have their own standards for acceptable use and/or community guidelines. For example, Twitter's terms of service sum up good behavior online:

Twitter's purpose is to serve the public conversation. Violence, harassment and other similar types of behavior discourage people from expressing themselves, and ultimately diminish the value of global public conversation. Abuse/harassment: You may not engage in the targeted harassment of someone, or incite other people to do so.²

Use of personal social media accounts is one's right and creates an apparent casual environment where conversations or exchanges can occur between a small number of people. However, it is important to note that social media platforms are designed for individuals to easily copy and share content, allowing specific messages, pictures, videos, including direct communications to distributed far beyond the immediacy of the original group for whom the post was intended.

Given that social media can be impersonal, instant, and far-reaching, Ontario courts have recognized that statements made on social media can have more damaging effects than statements made elsewhere.³ As a result of the public nature of social media, prohibitions on hate speech, threats, and spam are standard, and the limits apply to all contents of a post, including,

¹ City of Barrie Integrity Commissioner's Report #0119, p.15

² The Twitter Rules: Safety, paragraph 4 <https://help.twitter.com/en/rules-and-policies/twitter-rules>

³ See Kumar v. Khurana, supra, note 12, at 208 (quoting Barrick Gold Corp v. Lopehandia (2004), 71 O.R. (3d) 416, [2004] O.J. No. 2329 (C.A.))

for example, tags, titles, and thumbnail images for YouTube videos. Importantly, elected Members of Council and appointed Members of a Local Board or Committee should be mindful that comments made on social media accounts may be subject to constituents relying on the statements as coming from the official.

The 2015 guidance for Guelph's members of council contains a common-sense statement that can be of assistance to members in all municipalities in their use of social media:

"Perhaps the best advice is to approach online worlds in the same way we do the physical one—by using sound judgment and common sense."⁴

In their Supplementary Response, the Respondent raises concerns with the above-noted reference to the 2015 City of Guelph policy. In fact, the Respondent states that:

On page 5, you include a comment from Guelph, I sent my comments and explanation to each and every member of Council following the meeting, i have no problem speaking what I said in text to their faces, please do not assume otherwise without asking me.

To be clear, the above-noted reference to the City of Guelph policy was made to clarify that whether a person is making their comments online or in person, “sound judgement” should be exercised in order to be in compliance with Code rules. Rule 20.6 of the Code sets out the obligation for all Members to refrain from making inappropriate comments or gestures to or about an individual where such conduct is known or ought reasonable to be known to be offensive to the person to whom they are directed or about. Further, this Code provision prohibits Members from displaying materials or transmitting communications that are inappropriate, offensive, insulting or derogatory. Arguably, everyone has a right to have their own social media page on whatever platform they may choose. The Code does not in any way prohibit a Member from having social media accounts. However, since most social media accounts are “public by default”, Member of Council and Local Boards of the City of Barrie, must use the same measure of conscientiousness in online speech that they are expected to use in other public venues.

In other words, any elected official or appointed Member should ask themselves if it would be conscientious and appropriate under the Code to utter certain comments in a public forum in person or whether the comments are offensive, insulting or derogatory.

Analysis:

I provide this Report to Barrie City Council, in fulfillment of my responsibilities under subsection 27.4 of the Code. However, in addition to my obligation to set out reasons for complaint investigation findings, in my view, a report to Council is also warranted because the issue of the Respondent's glib comments in respect of a decision of Barrie City Council has the

⁴ <http://guelph.ca/news/social-media/social-media-principles-and-guidelines-for-elected-officials/>

ring of a cavalier dismissal of any positive elements of the decision-making process of the municipal body. In the supplementary reply to the complaint, the Respondent takes issue with my reference to their comments as *glib*.

Whether or not the Respondent's comments were made as sitting Chair of a City Advisory Committee or in their personal capacity, the comments about Barrie City Council openly displaying homophobia were made on a **public social media platform**.

In respect of general standards of conduct, the Code requires Members of the public appointed to committees and Local Boards to respect both the word and spirit of the Code as it applies to them. In this vein, Members of Local Boards and Committees are required to conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected (or appointed): be open and honest, focus on issues rather than personalities and avoid aggressive, offensive or abusive conduct.

Whether these social media profiles were tied to the Respondent's office does not matter, because the comments were publicly available for anyone to read and they were (i) impugning or maligning a debate or otherwise erod[ing] the authority of Council and (ii) making inappropriate comments about members of council, individually and as a whole. In a well-researched municipal social media policy⁵, the Integrity Commissioner sets out the best practice for Local Board and Committee Members in respect of social media use in a section entitled *Respecting Each Other and the Public*:⁶

18. Just as Torontonians expect members of local boards to maintain decorum when conducting the business of the local board, they also expect members to act with decorum on social media. Members must never use social media as a platform to treat members of the public, one another, or staff without respect. Members should not engage in or encourage bullying, flaming, or shaming of other social media users. These types of interactions on social media misplace the focus of the interaction on attacking individuals rather than engaging in constructive discussion or debate. This manner of communication is inconsistent with the Code of Conduct and unbecoming of the office that members hold.

A Member cannot claim that publicly accessible social media platforms are "personal". As stated by Commissioner Valerie Jepson⁷, "[t]he settings on most social media platforms are, as described in Twitter's terms and conditions, "public by default." Any item online may be reused, reconstituted, and even parodied multiple times. As a result, it is up to the individual to limit what others see and to post appropriate content. Accordingly, Twitter cautions, "you are what you tweet" and YouTube encourages each person to, "pause before you post", warning that

⁵ Interpretation Bulletin: Use of Social Media by Members of Local Boards, May 2016.

⁶ Ibid, section 18.

⁷ Integrity Commissioner Report Regarding Social Media, Valerie Jepson, City of Toronto Integrity Commissioner, April 2016, p.9

"criticism and insult can escalate...". The principles above cited in respect of Twitter use, hold true for all social media platforms.

As of July 10, 2019, the Respondent had 3,371 followers on his public Twitter page. The Respondent has no restrictions on it so it may be viewed by anyone – whether or not the individual has a Twitter account. The Respondent has a small restriction which limits access to their Facebook page to those with Facebook accounts – but given the pervasive use of Facebook, this leaves their Facebook page accessible to millions of people.

Subsection 5.2 and 5.6 are two of the general principles of the Code which guide the interpretation and application of the Code provisions. These fundamental guiding principles inform ethical behaviour for City of Barrie Members of Council and Local Board and Committee Members. They are not stand-alone provisions which lead to a finding of a breach of the Code but rather inform the analysis of whether a Member's conduct has violated rules of the Code. The General Standards of Conduct include the following principle statements:

5.2. Members shall at all times serve and be seen to serve their constituents in a conscientious and diligent manner.

5.6 It shall be the duty of all Members to abide by all applicable legislation, policies and procedures pertaining to their position as a Member

My analysis of the Respondent's comments took into consideration the above-noted guiding principles provisions and throughout this investigation, it became clear that there is a need for greater assistance to Local Board and Committee members to understand their obligations under the Code of Conduct, with respect to comments made in person, digitally or virtually.

In making findings of fact, Integrity Commissioners are to adhere to the standard of proof for fact-finders in civil cases identified by the Supreme Court of Canada: a balance of the probabilities.⁸ The balance of probabilities standard requires a fact finder to "scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."⁹ In the case at hand, while the Respondent did not refer specifically to the Complainant as a "homophobe", the Respondent referred to Barrie City Council as displaying "homophobia" and cast aspersions on two Members of Council by linking in the same sentence "#Pathetic" in bold to "Robert Thomson & Mike McCann".

I recognize and confirm that by virtue of their considerable work in the community, individuals appointed to City Local Boards and Committee bring a knowledge of community issues that underscore the value of their participation. Inevitably, a Member of a local board of Advisory Committee will participate in decisions in which their personal positions on matters may intersect, mirror or conflict with those taken by the body for which have been appointed. Members of Council who are representing a ward have an obligation to inform their constituents in fulfillment of their representative role. A Board Member does not. The Respondent has no obligation to talk about the City and say they are representing their constituents and, in fact, the

⁸ Supreme Court of Canada in *C. (R.) v. McDougall*, 2008 SCC 53 (S.C.C.) [*McDougall*],

⁹ *Ibid*, para. 49

Respondent did not. The pivotal issue of this complaint is the use of social media to transmit information about individuals in their personal capacity or Chair of Accessibility in terms of public facing. The issue is that the Respondent is a Member of a City of Barrie Local Advisory Committee and along with this title, albeit afforded to a voluntary capacity, the Respondent is required to abide by the standards set out in the Code. In accordance with the provisions of the Code, once appointed to an Advisory Committee, similar to Members of Council, Committee Members are held to a higher standard of behavior and conduct than an ordinary private citizen. For this reason, ***a Member should be careful not to publicly denigrate a decision of Council, or make comments about individuals where such conduct is known or ought reasonably to be known to be offensive to the person(s) to whom they are directed or are about; or display materials or transmit communications that are inappropriate, offensive, insulting or derogatory.***

This report is not suggesting that the merits of one decision over another are not fair to discuss. The democratic process is in place to ensure that elected and appointed representatives can engage in constructive debates. However, the Respondent, as an appointed Member of an Advisory Committee of the City of Barrie, falls within the regulatory parameters of the Code. As a result, the Respondent's comments are governed by the rules of the Code. Individuals who are appointed to Local Board are held to a higher standard. In respect of the City of Barrie's elected and appointed Members, comments, criticism, even heated debate, forms part of the political vernacular and is expected by the public and permitted under the Code. What is not permitted under the Code and what Members are prohibited from using are denigrating, insulting, offensive comments.

By formulating one's comments on a publicly accessible social media page in an apparently superficial and unconstrained way¹⁰, the Respondent's comments were fundamentally incompatible with the expectation that an Advisory Committee Member would carry out their responsibilities with the highest standards of dignity inherent to the position of Member, as mandated by sections 20.6 (a) and (b) of the Code.

The concern raised by the Complainant in this case is not that the Respondent's disagrees with a decision of Council, but rather the disagreement with Council's decision was made in a disparaging way and that the reference made to the Complainant in his official capacity as an elected official as "#Pathetic" was offensive, insulting and derogatory. The Complainant cited in his supporting documentation to the Complaint, that during the May 6th Council deliberations, he had the City's financial responsibility as his focus. The Complainant does not deny being supportive of sports program, including the construction of tennis courts, as a long time and well-known supporter of sports programs in the City. Conversely, when one considers the criteria for membership on the City Advisory Committees it is also obvious that members will, more often than not, come with some exposure or personal connection to positions on City business beyond the mandate of the body to which they belong.

At its core, Complaint 1 appears to arise from Respondent's dissatisfaction with a discussion at Council about how to allocate funds on particular City initiatives and the Respondent's

¹⁰ Webster's Dictionary: Glib: marked by ease and informality; showing little forethought or preparation

characterization of that discussion as displaying homophobia. The amount of time that Council debates on a particular agenda item and the commentary made by Members of Council during the debate, is governed by the rules of the Procedural By-law, carried out by the Chair of Council upon recommendations of the City Clerk. All members of the public are at liberty to debate the merits or criticize a decision of Council. However, there is a distinction made between what is permissible behaviour, and comment of the general public and that of an elected or appointed official. The Code of Conduct limits comments by elected and appointed officials and prohibits them from criticizing decisions of Council.

Having had the opportunity to review the particular circumstances of this case, I observe that there is an absence of a clear understanding of how Members of local boards may appropriately use social media. Council Members and Local Board and Committee Members are not precluded from using social media, however, once elected or appointed to office, the Code of Conduct prohibits denigrating or belittling the actions and decisions of Council in any forum. When participating in Council or Committee meetings, or as part of official comments by virtue of the use of City resources, disagreement with a position taken by a Member of Council is part of the democratic process and is allowed at the designated times pursuant to the rules of the City's procedural by-law and in accordance with the Code rules. Even outside of their official capacity, a Member remains bound by the rules of the Code insofar as their public comment is captured by those rules, in particular section 5 and 20.6.

In the response to the Complaint, the Respondent admitted that their comments were "abrasive". However, I find that the Respondent's comments were not just abrasive. The Respondent ought reasonably to have known that the Facebook and Twitter posts were not only a strongly worded voicing of disagreement with the discussions at Council, but rather rose to the level of disparaging language with reference to two identified City Councillors paired with comments that Barrie City Council was displaying "homophobia", which invited the public to equate Barrie City Council's actions as contrary to the Ontario Human Rights Code.¹¹ The Respondent's statement undermines confidence in the City's and Council's decision-making process. In addition, while the Respondent did not "accuse [the Complainant] of being a homophobe" as set out in Complaint 1, the comments in the Respondent's Facebook and Twitter posts alluding to the Complainant's actions as "#Pathetic" were nonetheless unwelcome insulting, offensive and disrespectful to the Complainant.

¹¹ Protected Grounds: "Sexual orientation" is a personal characteristic that forms part of who you are. It covers the range of human sexuality from lesbian and gay, to bisexual and heterosexual. Sexual orientation is different from gender identity, which is protected under the ground of "sex." The *Code* makes it against the law to discriminate against someone or to harass them because of their sexual orientation.

This right to be free from discrimination and harassment applies to employment, services and facilities, accommodation and housing, contracts and membership in unions, trade or professional associations. Homophobic conduct and comment are prohibited as part of the *Code's* protection against discrimination based on sexual orientation, no matter what the target's sexual orientation is, or is perceived to be.

Complaint 2:

This complaint alleged that the Respondent acted contrary to the Code in connection with the following issue:

That in response to the July City Barrie Council meeting at which the item of the establishment of a safe consumption site was deferred pending the receipt of a consultant's report on the item, a [named individual] posted:

“On the news [the Complainant] just looked unhealthy. I didn't realize that he lost his composure during the meeting”

In response, the Respondent made the following post:

“[named individual]...cocaine?”

With regard to the Respondent's social media post, I found that the actions of the Respondent failed to treat the Complainant with “dignity, understanding and respect” in advancing the public interest in contravention of section 5.12(e). The Respondent's July social media post was insulting and offensive to the Complainant, suggesting without merit that the Complainant made use of an illegal narcotic. This was contrary to the Respondent's obligations under the Code.

As I have stated in an earlier Code Complaint Investigation report ¹² an allegation of defamation is an allegation enforceable by the courts. The Code Complaint Procedure, section 25.5 provides that where a matter is covered by other policies or legislation, the complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner. As a result, I did not investigate this complaint with a view to making findings on whether or not the statements contained in the Facebook post are defamatory.

1. The allegations in Complaint 2

The Complainant alleged that the Respondent had contravened section 5.12(e) and section 20.6 of the Code.

The Complainant attached to Complaint 2, a copy of the Facebook post, setting out the Respondent's conversation thread. Given the timeframe within which the two complaints were filed and given the similar subject matter, I decided that there was not a need to continue an investigation of the second complaint. From May 2019 to July 2019, this Office received a very large number of Code complaints. Notice of receipt of the complaint was provided to the Respondent on September 17, 2019. A reply to Complaint was not received.

In respect to Complaint 2, the statement made in the Facebook post did not reflect an opinion on an important issue affecting the community. To be very clear, certainly the discussions at

¹² City of Barrie Integrity Commissioner Code Investigation Report #0119

Council and at other public fora about the establishment of a safe consumption site, is of paramount importance to the community. However, the statement of the Respondent in their social media post was offensive and spurious. The Respondent did not have any information that would reasonably substantiate the statement in the post. To simply state "...cocaine?" was adding nothing to the public dialogue on the establishment of a safe consumption site." The statement was neither a fair nor accurate characterization of the Complainant.

2. The Complainant's Position

The Complainant stated that the post was viewed by many individuals and that the social media account was not private. The Complainant further stated that the comment damaged his reputation in the community because it attributed use by the Complainant of an illegal narcotic to a physical condition over which he had no control. I reiterate that an allegation of defamation is enforceable by the courts and the Office of the Integrity Commissioner does not have jurisdiction to review or assess whether or not alleged comments have had the effect of damaging his reputation.

3. The Respondent's Position

At the time of writing this report, I have not received a reply from the Respondent.

As was set out above in respect to Complaint 1, in which the same Member was named as Respondent, the concern raised by the Complainant in this case is not that the Respondent disagrees with a decision of Council, or that the subject of the social media posts does not merit discussion, but rather the commentary on the Complainant's physical appearance when discussing the Council's decision was made in a disparaging way and that the reference made to the Complainant in his official capacity, as "[having a particular physical appearance because of [...cocaine [use]]", was disrespectful to the Complainant.

Conclusion:

Local Boards and Advisory Committees provide important local input and recommendations to Council. Once appointed, Members of Advisory Boards are held to a higher standard of behavior and conduct than the general public. For the reasons stated above, I find that the Respondent's conduct did contravene the Code of Conduct. However, pursuant to section 27.4 of the Code, I find that the Respondent's violation of the Code was inadvertent. In particular, the Respondent believed that because the post was on their personal social media pages without reference to their position as a member of a local board, it was not captured by the Code of Conduct rules.

In Complaint 1, the Respondent was wrong in his belief that making insulting comments about Council's actions and the Complainant was not captured by the Code because they were made on their personal pages. The Respondent is a Member of an Advisory Committee of the City of

Barrie and made these comments in a public forum. Once appointed, Committee Members are held to a higher standard of conduct than private citizens. An appointed Member of any City Advisory Committee is certainly allowed to have personal opinions on matters in their private sphere. In addition, Members may voice disagreement and make comments about matters before them during Council or Committee debates pursuant to the rules of the procedural by-law and within the parameters of the rules of the Code of Conduct. However, they must not make disparaging public comments about Council's decision-making process on any publicly accessible forum.

I have not received a reply from the Respondent, however, based on my review of Complaint 2, the Respondent's comments suggesting that the Complainant's appearance at Council was as a result of his use of illegal narcotics was not insulting and offensive, was an incorrect interpretation of a Member's Code obligations. The Respondent is a Member of an Advisory Committee of the City of Barrie and made these offensive comments in a public forum. As I have stated above in respect to Complaint 1, once appointed, Committee Members are held to a higher standard of conduct than private citizens. An appointed Member of any City Advisory Committee is certainly allowed to have personal opinions on matters. However, they must not make disparaging, insulting or offensive comments about Council's decision-making a Member of Council or the public.

As in the other decision, I find that Respondent's actions/comments were captured by the rules of the Code of Conduct. I do not find that the Respondent ought to have known otherwise. In respect of the actions subject of Complaint 1 and 2, I find that the Respondent did contravene the Code but that the contravention was committed through inadvertence.

What does the Code Protocol require in respect of section 27.4 in setting out that the Integrity Commissioner may find that the contravention occurred through inadvertence [...]? In one Court decision ¹³, inadvertence is said to involve "oversight, inattention, carelessness and the like." Based on the information that I reviewed during this investigation, the Respondent has not demonstrated an understanding about the obligations of a Member under the Code. The Respondent received no training with respect to the Code, and it is not unreasonable for them to have made this error. I find that Respondent believed that their actions were not captured by the rules of the Code of Conduct, when in fact they were. I do not find that the Respondent ought to have known otherwise.

This is exactly the type of circumstance in which the Integrity Commissioner may exercise her discretion not to recommend a penalty under the Code. Accordingly, I find, in respect of each complaint, that the Respondent did contravene the Code but that the contravention was committed through inadvertence and thus have not recommended a penalty be imposed.

¹³ Campbell v. Dowdall [1992] O.J. No. 1841, p.17

Going forward, however, with the release of this decision, it will be unlikely that members Local Boards or Advisory Committees of the City of Barrie will be able to rely upon a lack of understanding of the contents of the City's By-laws to save themselves from their obligations under the Code of Conduct where matters captured of the City's ethics document come before the Integrity Commissioner for review.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Suzanne Craig', written in a cursive style.

Suzanne Craig
Integrity Commissioner