COMPLAINT INVESTIGATION REPORT
Under the City of Barrie Council and Committee Member Code of Conduct
Concerning Councillor Keenan Aylwin

Summary
This report presents the final findings of my investigation under the City of Barrie Code of Conduct (the "Code") relating to the conduct of Councillor Keenan Aylwin (the "Respondent") in connection with a complaint raising two issues. The complaint alleges that the Respondent breached several sections of the Code, however, during my initial classification of the complaint, I reformulated the complaint into 2 issues:

1. The allegation that on March 21, 2019 the Respondent made comments on his Facebook page that the Complainant, as one of 2 Conservative Members of Parliament in Barrie is, among other things, "playing footsies with white supremacists who have inspired violence through Yellow Vest Canada social media channels and elsewhere". The Complainant alleged that the Respondent made statements that were in breach of his obligation as a Member of Council under section 5 of the Code to "treat members of the public with dignity understanding and respect" and to not make states "known to be false…or with the intent to mislead Council or the public" The complaint alleges that the Respondent's Facebook post that the two Conservative MPs in Barrie "… have been silent on their leader's appearance on the same stage as a neo-Nazi sympathizer […] at a United We Roll rally, is tantamount to the two Conservative MPs in Barrie "playing footsies with white supremacists who have inspired violence through Yellow Vest Canada social media channels and elsewhere". Further, the complaint alleges that there is a direct link between the absence of "a clear apology from both [the Complainant and the other Conservative Barrie MP] "for the harm that they have caused by not denouncing [a named individual], anti-immigrant groups and all white supremacists and hateful rhetoric" and "the real-life violence…perpetrated against Muslims and other vulnerable communities here in Canada and abroad". In making the claim that the Complainant was associating with white supremacists, the Respondent breached sections 5 (subsection 5.12 (e)) and 20 (subsection 20.6 (b)) of the Code.

2. The allegation that the statements made in the Facebook post of March 21, 2019 by the Respondent, his agent and others "on the internet and elsewhere" that were motivated by the original post, constituted defamation under the *Libel and Slander Act*, R.S.O. 1990, c. L.10. I declined to investigate this portion of the complaint as such a review is outside of my jurisdiction. Under , section 25.5 of the Code, where a matter is covered by other policies or legislation, the Integrity Commissioner will advise the Complainant that the matter cannot be pursued through the Code complaint process.

The Complainant is the first MP of the new Electoral District of Barrie-Innisfil and a member of the Shadow Cabinet, serving as the Deputy Opposition Whip in Her Majesty's Loyal Opposition. He is a former municipal councillor for the City of Barrie.

With regard to Issue #1, 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). While I found that the Respondent could have exercised a higher level of diligence in determining the veracity of the statements that he made on his Facebook post, he did rely on certain statement made in several reputable news media outlets and therefore his statements did not rise to the threshold of "…making statements with the intent to mislead Council or the public" (s. 5.12(f)). I found that the Respondent's action of making the Facebook post did constitute discreditable conduct and a breach of Rule 20.6 (b) of the Code, which prohibits Members of Council displaying materials or transmitting communications that are inappropriate, offensive, insulting or derogatory.

The Respondent's March 21st Facebook post were insulting and offensive to the Complainant. This was contrary to the Respondent's obligations under the Code. Even though it was not made out through this investigation that the Respondent intended to cause harm through the statements made in the March 21, 2019 Facebook post, I found that the Respondent did make statements in his posting which were offensive and derogatory and apparently failed to review the Complainant's public statement denouncing "the racist attacks in New Zealand" specifically, and hatred and violence, generally.

I found that Issue #2 relates to the allegation that the content of the Facebook post identified as Exhibit A in the complaint, contains defamatory language pursuant to the *Libel and Slander Act, R.S.O. 1990.* I have determined that the 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 the issue and I have made no findings on whether or not the statements contained in the Facebook page are defamatory.

Generally speaking, in a Code investigation, complainants are required to first establish that the matter is on its face, a complaint with respect to non-compliance with the Code.[1] A *prima facie* case, in this context, is one that covers the allegations made and that, if they are believed, is complete and sufficient to justify a finding by the Integrity Commissioner in the complainant's favour, in the absence of an answer from the Respondent. Once the *prima facie* case is established, the onus then shifts to the Respondent to provide a reasonable explanation for the behaviour that otherwise is contrary to City Council's ethics rules. It is up to the Integrity Commissioner, after having reviewed the facts submitted by the parties, on a balance of probabilities, to make a

[1] Code of Conduct, City of Barrie, section 25.2(e)

determination of whether the Respondent's actions were, in fact, in breach of her or his ethical duties under the Code.

In response to the Complaint, the Respondent admitted that he had made the Facebook post subject of this investigation. During my investigation, I noted that after having made his original posting, the Respondent did not attempt to clarify or correct his posting and, in fact, allowed others who viewed his post on Facebook to enter into the fray by weighing in on the Complainant's name and professional reputation in the comments to his posting.

In determining the appropriate sanctions and corrective actions at the conclusion of the investigation into the complaint allegations, I considered the gravity of the conduct, the responsibility of the Respondent for that conduct, and the submissions of the parties.

In this report, I discuss my investigative process, my decisions on jurisdiction, my findings on the allegation in the complaint with respect to Issues #1, my reasons for those findings, and my recommendations to Council.

Process

I wrote to the Respondent advising that I had received a Formal Code of Conduct Complaint, in which he was named as the Respondent. As is the practice of this Office, I conducted a preliminary review of the complaint to determine if the matter was, on its face, a complaint with respect to non-compliance with the Code. I advised that if during the preliminary review, I found that the complaint, including the supporting affidavit, was not, on its face, a complaint with respect to non-compliance with the Code or the complaint is covered by other legislation or complaint procedure under another Council or City policy, I would advise the Complainant in writing, of this decision.

Upon review of the information provided in the complaint, the supporting documentation and other information that I received in relation to the allegations of Code contraventions, I made the determination that the complaint, on its face, triggered provisions of the Code and I commenced an investigation.

I set out in my correspondence to the Respondent, that I required a written response to the complaint by April 2, 2019. I received a response from the Respondent within the requested timeframe and provided this response to the Complainant for comment.

The Complainant did not provide any additional information in reply.

During the course of my initial classification of the Complaint, I determined that section 5.1-5.8 contain general standards of the Code that inform the Integrity Commissioner's application of the rules contained therein. As a result, I reformulated the complaint and investigated whether there was a contravention of section 5.12(e) and (f) of the Code and section 20.6 (b).

Both the Complainant and the Respondent received a copy of my interim findings and were given an opportunity to identify any errors in the interim report or provide any comments they wanted me to take into consideration in the drafting of my final report. On May 2nd and May 3rd respectively, I received comments from each party.

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

5.12 Members of Council:

[…]

e) Must seek to advance the public interest with honesty and **treat members of the public with dignity, understanding and respect**;

f) May not make statements known to be false or **make a statement with the intent to mislead Council or the public**

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

b) Display materials or transmit communications that are inappropriate, **offensive, insulting or derogatory**;

The Complaint:

1. **The allegations in the complaint**

On March 25, 2019, I received a complaint under the Code. The complaint was submitted on the City Complaint Form/Affidavit, to which the Complainant added several pages of

additional information, including the March 21st Facebook post, correspondence from his lawyer, and a Statement of Support from the Iman of the Barrie Mosque Noor Ul Islam.

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 had made a Facebook post dated March 21, 2019 at 1:10 pm in contravention of section 5 and 20 of the Code.

In addition, the Complainant attached to the Complaint, a copy of the following:
Exhibit A – The Respondent's Facebook post of March 21, 2019
Exhibit B- Notice of Defamation sent to the Respondent by the Complainant's lawyer
Exhibit C – Sections of the Code of Conduct that he alleged to have been violated
Exhibit D - A Statement of Support from the Iman Mateen Barrie Mosque Noor Il Islam

2. The Respondent's Reply to the Complaint

In his reply to the Complaint, the Respondent stated that his comments about the Complainant were made on a personal Facebook page.

He went on to say that:

> "I made the post to express my opinion exercising my right to free speech in accordance with Section 2(b) of the Charter of Rights and Freedoms;
> In making the post, I asked local MPs to speak up and to engage in dialogue regarding an issue that is at the forefront of much political discussion currently;
> I have reviewed the Code of Conduct and, in particular, the sections highlighted by [the Complainant]
> The statements made in my Facebook post reflect my opinion on an important issue that affects our community. The statements, while strongly worded, were not discourteous, offensive or aggressive, are my honest understanding based on information known to me, and I invited [the Complainant] to enter into a public dialogue about the issue."

The Respondent concluded by stating that the Complainant had not contacted him personally to discuss the Facebook post, but nonetheless he would welcome a "respectful and open dialogue regarding the issues raised".

The Complainant did not wish to pursue informal resolution of the matter.

3. The Respondent's Supplementary Response

On April 30, 2019, I provided both the Respondent and the Complainant with a copy of my draft complaint investigation report which contained my interim findings. I invited both parties to provide me with their comments on any errors or omissions of fact in the report

and any further comments they may have on or before May 3, 2019. I said that I would take their comments into consideration in the drafting of my final complaint investigation report.

On May 2nd the Complainant indicated that he had no further comments or submissions.

On May 3rd, I received correspondence from the Respondent in which he provided comments in respect of my interim findings. He indicated that there were errors in my interim report "based on a misreading of [his] Response to the Complaint " and that these were "… positions [he does] not in fact hold".

The Respondent went on to state that:

> ", the reference in my Response to the Complaint to the post being on my "personal" Facebook page although accurate, was not meant to suggest that the Code therefore does not apply. I accept that it does. Whether or not that page is "linked" on the City's website is, I believe, immaterial".

He further stated that:

> "The occasion for my Post, as your Draft Report recognizes, was the occurrence of the recent tragic events in New Zealand, on which a large number of Canadians from all social and political groups felt compelled to comment. I believe that your final report should, if it refers to qualified privilege at all, at least acknowledge that an expression of opinion on such an occasion, by an elected politician, to his Facebook friends and followers, or even to the community at large, can at least arguably be expression that is protected by a qualified privilege."

The Respondent states that I erred in my finding that the Facebook post alleged that the MPs were themselves people who used "white supremacy rhetoric for political gain". He states that "[a] reader at this point could not, and would not, understand that the Complainant is one of the people in positions of power referred to. He goes on to say that the statement is a general statement, and a true statement, commenting on the causes of the tragic events reported in New Zealand "…[h]owever, it is not an opinion that in any way reflects on the Complainant. Indeed, the Post does not state that the Complainant used any rhetoric at all. The critique with respect to the Complainant is that he did not speak out, not that he spoke inappropriately."

The Respondent goes on to say in his supplementary reply to the complaint, that his Facebook post was not saying that the Conservative leader was "using white supremacist rhetoric" but rather it was pointing out that "people in power [were] failing 'to make the connection' between such rhetoric on the part of [a name individual] and resulting violence".

The Respondent goes on to say in his statement in the Facebook post that:

> "two Conservative MPs in Barrie that have been silent on their leader's ***appearance on the same stage*** as a neo-Nazi sympathizer…at a United We Roll rally…"

was a “fair and accurate characterization” the CBC, the Toronto Star, the Globe and Mail and the National Observer “reported the occurrence of the same events in the same or similar terms”. The Respondent defends this statement by explaining in his supplementary response to the complaint that “if …the standard is that I ‘reasonably ought to have checked’ the statements to ensure veracity… then that standard was surely met in light of the national media coverage and the fact checking that went along with it”.

The Respondent continues in his supplementary response to say that he is aware of the fact that the Complainant “had immediately denounced hatred and racism following the horrific events in New Zealand.” However, the Respondent claims his Facebook post pointed to the Complainant’s “[failure] to specifically denounce [a named individual],anti-immigrant groups, and all white supremacist and hateful rhetoric”.

In response to the interim report findings that the Respondent had not provided any facts to support the statement in the Facebook post that “…the MP has caused harm by not denouncing his list of subjects”, the Respondent relies on this statement being his opinion and one “with which many have agreed”.[2]

Finally, the Respondent clarifies in his supplementary response that by saying that the Complainant was “playing footsies with white supremacists” is not a statement of fact but rather a “commonly used characterization of conduct”. The Respondent states that:

> “In my Post, it was and would be understood to be another way to characterizing the Complainant’s silence, and lack of action. Indeed, by including the next paragraph beginning “Even worse”, the post is expressly identifying that the allegation made against both MPs (being silent) is different, and less bad, from actually having a direct connection to white supremacists, e.g. by being their Facebook-friend.

4. The Complainant’s Position

In the Complaint, the Complainant stated:

> “His claim that the Leader of the Conservative Party of Canada Andrew Scheer “appeared on the same stage” with [a named individual] is patently false. The Honourable Andrew Scheer spoke to a group of oil and gas workers and their families on a stage ***ON*** Parliament Hill while [a named individual] spoke at a rally ***OFF*** Parliament Hill on a separate stage not connected in any way to the oil and gas rally nor was it in any proximity to where Andrew Scheer spoke.

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[2] The Respondent states that “Notably, the Chair of the Canadian Anti-Hate Network, Bernie M. Farber, has drawn similar, if not more direct conclusions in an opinion piece published on February 27, 2019: ● The Star: “Groups like YVC and their supporters within the UWR convoy only give strength to those like the Bissonnettes and Bowers of this world. Worse yet, political leaders who ignore such hatred are not just willfully ignorant but clearly stand with the victimizers against the victims.”

The Complainant goes on to state that as at April 6, 2019, the Facebook post was still active on the Respondent's page and the Complainant underscored in his correspondence to me that "each day that it is, it further damages my reputation in the community because it is being viewed and shared within social media channels."

Included in the Complainant's supporting documentation to the complaint was a letter from Imam Barrie Mosque Noor Ul Islam which states in part:

> I'm writing this letter addressing our relationship. [The Complainant] is a friend and ally of the Barrie Mosque and during his time as MP, that friendship and association has grown stronger. He has attended Friday prayers and many of our events year over year, building his ties to the Barrie Mosque and our community.
>
> I spoke with [the Complainant] on the morning of Friday, March 15, 2019, following the tragic and heinous loss of human life in attacks on two mosques in Christchurch, New Zealand. I have also read [the Complainant's] statement condemning the attacks and denouncing the hateful and racist actions.
>
> [The Complainant] visited our Mosque last week, along with Barrie-Innisfil MPP Andrea Khanjin, the Barrie Police Chief Kimberley Greenwood, her deputy and others. There, he spoke about the senseless killing of innocent Muslim worshippers in New Zealand and extended his condolences and support in our time of grief.
>
> [The Complainant's] presence and continual support for the Barrie Muslim community has shown him to be a decent man who cares deeply about all his constituents, regardless of religion, race, or ethnicity.
>
> The recent negative assertions do not reflect the character of the man I know as my elected representative and friend. In these difficult times, I believe that honest and mindful dialog is paramount and the solution to all the difficulties afflicting our society. My hope is that as we come to terms with these horrific terrorist acts, we can have discussions that are friendly and supportive and do not propagate further hate in our world.

Analysis:

The Code of Conduct constrains the free expression of Municipal Councillors

The constitutional right to freedom of expression under s. 2(b) of the *Charter* is not absolute or unlimited. Some limitations apply broadly such as hate speech and perjury provisions in the *Criminal Code* and defamation laws. Other limitations apply only to select individuals, such as those subject to contractual or statutory confidentiality obligations. The expression of professionals is often limited by rules of professional

conduct.[3] Similarly, the expression of municipal councillors is limited by the rules that the council has imposed upon councillors in the Code.

For example, a municipal councillor is bound to keep confidential the information learned during an *ex parte* council meeting. A councillor cannot rely on freedom of expression provisions of the *Charter* to skirt his confidentiality obligations.

In this regard, elected municipal councillors are no different than their elected provincial and federal counterparts. At each level of government, the elected officials are subject to rules governing their members' conduct. A breach of the conduct rules can lead to disciplinary measures.

In a 2015 decision of the Ontario Superior Court of Justice,[4] the court set out the position of a highly respect Ontario municipal lawyer [5] who testified that [a municipal councillor] has every right to her freedom of speech, but that this right was not absolute, and it was limited by reasonable constraints imposed by law[…] [i]n that regard,[…the Code of Conduct] might be viewed as a reasonable limitation on a Town councillor's right to criticize…in a public forum" In this decision, the court found that Town Council had formally adopted a Code of Conduct for members of Council that codified the parameters of reasonable limitations to free speech. The Court stated:

> There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.
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> A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious…statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.
>
> The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. [The Town…] like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials.
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> The plaintiff clearly has a perception that she has an unfettered right to freedom of expressions and freedom of speech. That freedom, however, is circumscribed by the Code.[6]

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[3] Beyak Report – Office of the Senate Ethics Officer, *Inquiry Report*, under the Ethics and Conflict of Interest Code for Senators concerning Senator Lynn Beyak, March 19, 2019.
[4] Buck v. Morris et al., 2015 ONSC 5632, p.12.
[5] Mr. John Mascarin, Partner, Aird Berlis LLP
[6] Buck v. Morris, ibid, p,36.

Some expression by councillors is protected by qualified privilege

Council Meetings

The law recognizes some occasions in which it is necessary to ensure that individuals may speak without fear of criminal, civil, or other sanction, including actions for the tort of defamation. A privileged occasion is described by the Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*:

> ...a privileged occasion is ... an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.[7]

These circumstances include testimony in a court proceeding and discussions in federal parliament. Privileged occasions may involve "absolute privilege" which bars any action for defamation or "qualified privilege" which bars actions for defamation unless the plaintiff can establish that the statements were made with malicious intent on the part of the defendant.

Politicians in council meetings, parliament or the legislature must be free to engage in vigorous debate. At the federal and provincial levels of government, statutes set out the absolute privilege granted to elected officials during their debates.

However, statements made at municipal council meetings are not subject to the same type of privilege. In a recent court decision, the Ontario Court of Appeal[8] considered whether statements made at municipal council meetings are protected by absolute or qualified privilege. This decision provides helpful advice to municipal councillors when considering acceptable commentary at Council. The Court confirmed that municipal councillors do not enjoy absolute privilege for statements they make during municipal council meetings.

The Court accepted that the present state of law only gives a ***qualified*** privilege to municipal councillors for their remarks in council. The Court explained that, "municipal councillors are not liable in defamation for statements they make ***during council meetings***, ***unless*** the [Councillor who makes the complaint] is able to demonstrate that the statements were made with ***malicious intent*** on the part of the councillor".

The Court noted that in contrast to the statutory absolute privilege extended to members of the federal and provincial legislatures, no such statutory protection was extended to members of municipal council. The parties in this case were all elected Members of Council of the County of Frontenac. At a May 2013 Council meeting, the defendant Councillor Jones made a motion, alleging that the plaintiff, Councillor Gutowski, had engaged in a form of corruption and the "peddling of political favors", and had lost the trust of council. It was also alleged that Councillor Jones asked rhetorically, "What other tricks has she [Councillor Gutowski] been up to? "Councillor Gutowski sued for defamation. The defendants argued that there is an overriding value that Canadian

[7] [1995] 2 S.C.R. 1130 (S.C.C.) at para 143

[8] Gutowski v. Clayton, 2014 ONSC 2908, 2014 ONCA 921

society places on the right to freedom of expression and speech in public disclosure, and municipal councillors need to be able to exercise that right in order to perform their role properly and effectively and needed to enjoy absolute privilege.

The Court disagreed. Without any evidence to justify the need for a change in the law, the Court refused to extend absolute privilege to such statements made at a municipal council. In denying that absolute privilege applied to municipal councillors, the Court of Appeal relied heavily on the Supreme Court of Canada decision in *Prud'homme v. Prud'homme*. The Supreme Court stated:

> The English and Canadian courts…, have held that words spoken at a meeting of a municipal council are protected by qualified privilege …. Accordingly, the fact that words spoken at a meeting are defamatory does not, in itself, mean that a municipal councillor will be liable therefore. In order to succeed in his or her action, the plaintiff must prove malicious intent or intent to harm on the part of the councillor.[9]
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> …freedom of expression takes on singular importance, because of the intimate connection between the role of that official and the preservation of municipal democracy. Elected municipal officials are, in a way, conduits for the voices of their constituents: they convey their grievances municipal government …**That freedom of speech is not absolute**. **It is limited by… the requirements imposed by other people's right to the protection of their reputation…, reputation is an attribute of personality that any democratic society concerned about respect for the individual must protect[.]**
> Although it is not specifically mentioned in the Canadian Charter, the good reputation of the individual represents and reflects the innate dignity of the individual, a concept which underlies all the Canadian Charter rights. (**emphasis added**)

The Supreme Court held that:

> Accordingly, while elected municipal officials may be quite free to discuss matters of public interest, they must act as would the reasonable person. **The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations**. These are guidelines for exercising their right to comment, which has been repeatedly reaffirmed by the courts.[10] (**emphasis added**)

The absolute privilege granted to federal and provincial politicians stems from the need for Parliament and the legislatures to have complete control over their own proceedings and their own members**.** This does not mean that they have unfettered right to make whatever offensive comments that they wish to make. Rather, control over legislative proceedings and members is accomplished through a complex framework of regulations and rules governing their members' conduct and supervised by the Speaker. A breach

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[9] 2002 SCC 85 (CanLII), [2002] 4, S.C.R. 663, paragraph 49
[10] Gutowski v. Clayton, 2014 ONCA 921

of the conduct rules can lead to disciplinary measures, from requiring an apology to naming members and ejecting them until they retract their comments.[11] It is clear that the existence of these rules of conduct at the federal and provincial level, function as an effective deterrent to misspeaking in those bodies.

Sections 223.2 and 223.3 of the *Municipal Act*, 2001, S.O. 2001, c. 25, enable municipalities to institute codes of conduct and appoint integrity commissioners, although the sanctions available for breach of those rules are well short of ejection from council. Ontario municipal councils are creatures of the Ontario Provincial Legislature. If the Legislature had felt it important to extend absolute privilege to the speech of municipal councillors, it would have done so. This has not happened and as a result, statements from municipal councillors may be covered by qualified privilege only

Members of Council are encouraged to engage in vigorous debate on issues before Council and to have their voices heard through established channels as set out in the Procedural By-law and meeting rules.

Other Public Comment

In a recent Senate Ethics Officer Report[12] (the "Senate Report") the complaint investigation focused on the posting by the Respondent Senator of letters that breach section of the Senate Code of Ethics. In the Senate Report, the Ethics Officer gave considerable time to the discussion of whether the privileges and immunities which the Senator enjoys as a parliamentarian protect her from posting letters on her website notwithstanding that they may contain racist and/or hateful content. The Ethics Officer concluded that the Ontario senator posted letters on her Senate website that contained racist content and therefore breached two sections of a code of conduct for senators.

The qualified privilege enjoyed at municipal council meetings does not extend to all public comments, particularly those that do not engage municipal issues. The question to be answered is does the posting of Facebook comments by a municipal councillor enjoy qualified privilege?

In 2006, the Canadian Human Rights Tribunal held that it had jurisdiction to consider a complaint from nine citizens who alleged that in October 2003, a member of Parliament distributed a householder containing discriminatory comments about Aboriginal peoples in contravention of s. 5, 12 and 14 of the *Canadian Human Rights Act,* R.S.C., 1985, c. H-6], (CHRA).[13] The Federal Court upheld the Tribunal's decision. It found that absolute, Parliamentary privilege held by a Member of Parliament did not extend to the distributed mass mailings to constituents. It relied heavily on the leading case on Parliamentary

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[11] House of Commons, Annotated Standing Orders of The House of Commons (Second Edition), (2005), s. 11; Ontario, Legislative Assembly, Standing Orders of the Legislative Assembly of Ontario, (2009), s. 12-23

[12] Beyak Report, Office of the Senate Ethics Officer, *Inquiry Report* concerning Senator Lynn Beyak, March 19, 2019, p.13

[13] Pankiw v. Canada (Human Rights Commission), [2007] 4 FCR 578, 2006 FC 1544 at para 3

privilege, the Supreme Court of Canada's decision in *Canada (House of Commons) v. Vaid*, which stated:

> "…parliamentary privilege is defined "by the degree of autonomy necessary to perform Parliament's constitutional function" [emphasis added] quoting Sir Erskine May [Ersjine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, 23rd ed. by William McKay, ed. London: LexisNexis U.K., 2004, page 75] and referring to Maingot [Parliamentary Privilege in Canada, 2nd ed. Montréal: McGill-Queen's University Press, 1997, at page 12] who defines privilege in terms of necessary immunity to members of Parliament or the provincial legislators in order for "these legislators to do their legislative work" [underlined by Binnie J.]. Further, in response to the question "necessary in relation to what question?" [underlining added], he writes, "the answer is necessary to protect legislators in the discharge of their legislative and deliberative functions, and the legislative assembly's work in holding the government to account for the conduct of the country's business.
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> […]
>
> All of these sources point in the direction of a similar conclusion. In order to sustain a claim of parliamentary privilege, the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency."[14]

As set out by the Ontario Court of Appeal, municipal councillors enjoy a qualified privilege for statements made during council meetings. The Supreme Court of Canada held that, at council meetings, "the reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations."[15] While qualified privilege may extend beyond council meetings where the statements are made in circumstances essential to the performance of municipal work, that is not the case here. Blogging, Opinion Editorials, emails and comments in media and social media – in particular about matters unrelated to issues before municipal council – do not enjoy any privilege.

Use of Social Media by Councillors

In his Supplementary Response to the complaint, the Respondent admitted that the Code rules apply to his Facebook comments. As a result, I am not required to make a

[14] 2005 SCC 30 , [2005] 1 S.C.R. 667 at para 41 and 46

[15] Gutowski v. Clayton, 2014 ONCA 921

determination , however I will briefly review the foundation of social media in respect of obligations of a municipal councillor.

The Alberta Urban Municipalities Association's Social Media Guide[16] sets out that:

> Media offers the opportunity to amplify your voice. It can extend your reach, put you in touch with larger and more diverse audiences, and give you a greater level of exposure. Our media began as broadcast media – a means for one person, group, company or organization to share its message with the masses.
>
> With the creation of discussion forums (1994) and blogs (1997), conversation became possible and visible on the internet. Instead of engaging in 1:1 conversations (email) or 1:many conversations (broadcast media), the internet allowed people to, in the presence of many, engage with one another in conversation. In essence, people were able to socialize in the online environment. As part of this, online profiles became instrumental to creating an identity to aid interactions and more and more tools were created to help people to connect and share information around common interests (Six Degrees, 1997; Friendster, 2002; MySpace 2003; Hi5, 2003; Facebook, 2004; Twitter, 2006)

Given the immediacy and permanence of online comments, the courts have increasingly recognized the potentially damaging effects of social media comment.[17] 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, for example, tags, titles, and thumbnail images for YouTube videos.[18]

Social media provides members of Council with a valuable and convenient tool to communicate, inform and engage residents about City Council work and members' activities to represent and advocate for ward interests. When used in accordance with the Code of Conduct, social media enables members to showcase their diligent and conscientious service to their constituents and can help to improve trust and confidence in City Council and the City of Barrie.

Use of a member's title in a social media profile provides legitimacy – from the perspective of social media providers and the public – and authority and influence similar to the use of letterhead or other incidents of office. A member's title can only be used for City purposes and not for campaign purposes or to support private for profit enterprise.

In her Report on Use of Social Media, Commissioner Jepson, Integrity Commissioner of the City of Toronto stated that:

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[16] AUMA/AAMDC Social Media Guide at p. 1. As this is a new area of accountability for which many Ontario municipalities have not developed guidelines or policies, many municipal Integrity Commissioners in Ontario have turned to the Alberta Urban Municipalities Association and the Alberta Association of Municipal District and Counties Social Media Resource Guide, for best practices in respect of councillors' use of social media.

[17] 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.))

[18] https://www.youtube.com/yt/policyandsafety/en-GB/communityguidelines.html

> Guidance for elected officials in other jurisdictions (when it exists) draws heavily on the obligation to comply with codes of conduct and city policies and to use caution not to speak, or be seen to speak, for council or the city. There is a recognition that it may be difficult to distinguish between a member's personal use, official use, and private use, but there are usually bright lines drawn for election periods to ensure that members comply with legal obligations not to use city resources for campaign purposes. When guidance is provided, it is recognized that while social media may pose new challenges, existing rules, practice, and good judgment are a good guide. For example, 2015 guidance for Guelph's members of council contains the following sensible statement of approach, "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." [19]

The Respondent's Facebook page carries the weight of his office

The Respondent initially claimed that the Facebook comments subject of this complaint were made on his personal Facebook page, suggesting that he believed that the Code did not apply. However, in his supplementary response, the Respondent acknowledged that the Code did apply to his Facebook posting.

His office created the audience with which he communicated on Facebook. It is clear from the comments on the post that the Respondent's post was not directed to only personal family and friends. Rather, residents of Barrie who do not know him responded (some positively, some negatively) to his posting.

The Respondent maintains a single profile on Facebook. It is a public profile accessible to all – even those without a Facebook account. On his profile, the Respondent posts about City business and expresses his views about City issues. The Respondent has a "Pinned Post" dated October 23, 2018 in which he states that he is "so honoured and humbled to have been elected Barrie city councillor for Ward 2."

The Respondent's Facebook page is also accessible by link from his website https://www.keenan.ca which is listed directly below his City email address and phone number. Further blurring the lines between personal and official, the Respondent's Facebook page contains a link to his website. Presently, his Facebook profile contains the following disclaimer on the About page "All views on this page are personal and do not reflect the views of the City of Barrie"; however, it is not visible without navigating to the additional information portion of the profile page.

From a review of the Facebook page, the handle is @KeenanAylwin. On its face, it appears that the personal Facebook page, which the Respondent used during his 2018 municipal election campaign is the same account that he continues to use as both a personal and Councillor social media site.

In fact, many of the posts on the Facebook page are highlighting the Respondent's Councillor activities. For example - Barrie Councillors sit down to speak with residents,

[19] Integrity Commissioner Report Regarding Use of Social Media, City of Toronto, p.15

Barrie Public Library. This seems to suggest that the Facebook page is now also being used as the Councillor page, even though it is entitled @KennanAylwin and not @CouncillorAylwin or @Ward2BarrieCouncillor.

On November 27, 2018, I delivered a Council Information Session at which I provided an overview of the Code of Conduct provisions to all Members of Council. Following the orientation session, I met individually with all Members of Council to go over what was presented on November 27th and to answer to Members' questions. At the November 27th session, I advised Members of Council that after one is elected, an official should adopt the best practice of maintaining separate election/personal account and official Councillor account. Members should establish separate and distinct social media accounts for re-election purposes that are clearly labelled as election accounts and that are not "identified as a member's account". Members who establish separate and distinct social media accounts for re-election purposes may continue to use those accounts throughout the "election campaign period" as defined in s. 88.24 of the *Municipal Elections Act, 1996*.

The Facebook posts are not subject to any privilege

The reciprocity of interest or duty between the Respondent and public is a relevant consideration in assessing whether qualified privilege applied in his quotes in his Facebook posts.

The Respondent had no duty or obligation to the public to share his views on the subject which he spoke. It is not a matter of municipal politics (which is why he, at first, claimed that it was his own opinion not subject to review under the Code).

No privilege applies in the circumstances.

Content of the Facebook Posts

The Respondent's post was intended to reach the following general conclusion: racist rhetoric used for political gain and a failure to denounce such rhetoric have created a climate of acceptance of racist comments and have caused real-life racist violence in Quebec City and New Zealand.

In his post, the Respondent spoke with passionate conviction addressing a serious issue facing many cities throughout the world. He made the post after the violent attacks and mass murders at a mosque in New Zealand. In the first four paragraphs of his post, the Respondent made general comments about the use of racist and white supremacist rhetoric for political gain globally and in Canada and the apparent connection to violence that is perpetrated against Muslims abroad. Had he then flipped to the final three paragraphs of his post, there would be no issues with respect to the Code. A general statement of the Respondent's opinion on the harms caused by racist rhetoric and a failure to denounce it, along with a call to action would be unlikely to violate the Code.

However, the Respondent inserted another three paragraphs which recklessly disregard the truth and appear to be highly partisan. Specifically, the Respondent noted that the two Conservative MPs in Barrie were silent on the fact that their leader, The Honourable

Andrew Scheer, had shared a stage with neo-Nazi sympathizer [a named individual]; however, this did not, in fact, occur as was clarified by the Complainant. Their party leader and the named individual appeared on different stages and at different times, and there did not appear to be evidence of any direct connection between them.

The Respondent then stated that "they [the MPs] are playing footsies with white supremacists who have inspired violence through Yellow Vest Canada social media channels and elsewhere". The Respondent points to no facts to support the allegation that the MP for Barrie-Innisfil has any connection to white supremacists. There is no assertion that the Complainant attended the United We Roll protest. At best, the Respondent relies on the incorrect example that the MP's party leader (not the MP) shared a stage with a white supremacist. This is an extraordinary leap in logic.

The Respondent then connects the second MP to the named individual (the alleged neo-Nazi sympathizer) by noting that they are Facebook friends. There is no similar connection to the Complainant.

The Respondent goes on to state that "[t]he people of Barrie need to hear [the MPs] clearly denounce [the named individual], anti-immigrant groups and all white supremacist and hateful rhetoric. "We need a clear apology from both of them for the harm that they have caused by not doing so." The Respondent provides no facts to support the statement that the MP has caused harm by not denouncing his list of subjects. Rather, he concludes that the MP's failure to denounce leads to the real-life violence because the attackers in Christchurch and Quebec City stated that they were inspired by this type of hateful rhetoric. In essence, the Respondent is connecting these particular MPs silence to real-life violence. There is absolutely no evidence to support this assertion.

The final three paragraphs are the Respondents "call to action". Given the proceeding paragraphs, the final paragraph suggests that he is either (i) calling out these politicians for using racism and white supremacy for political gain or (ii) calling on these politicians to call out other politicians for using racism and white supremacy for political gain. The comments on the post suggest that members of the public reading it understood that the Respondent was calling the Complainant and the second MP both a racist and a white supremacist.

Notably, the Respondent does not refer to the public statement made by the Complainant days before this Facebook post, where the Complainant spoke about the attacks in New Zealand. It stated:

> "…I woke up this morning to the horrific news from Christchurch, New Zealand. I would like to express my sincere condolences to the families of those killed and injured, and to all New Zealanders.
>
> It is abhorrent that this tragedy happened in a place of worship, where people practicing their faith should be safe.

> Hatred and violence in any form must be condemned and I do so in the strongest terms.
>
> I have spoken with Imam Mateem of the Barrie Mosque, to personally express condolences on behalf of myself, my family and the people I represent in Barrie-Innisfil."

Importantly, the statements made by the Respondent were not made in the heat of debate because he made the statements intentionally on a broadly distributed social media platform and received comments from the public. Rational connection must be applied. The Respondent is inviting those who read his Facebook page to direct their outrage and anger about the "white supremacist terrorist attacks … in Christchurch, New Zealand", at the Complainant, who he has inaccurately depicts as a "white supremacist" supporter.

In a recent editorial about integrity and accountability of elected officials, the writer posed the question, "[i]s it time politically for leaders throughout the world to have a discussion about their responsibilities as elected officials and seek guidance on political ethics that frame their Twitter tweets and Facebook posts that may incite racism?"[20] This is a valid question of ethics, ripe for political debate that goes far beyond my mandate. However, given the complaint before me and the findings that I present herein to Council, it is certainly a question that I respectfully submit Council consider. As Integrity Commissioner, it is my role to ensure that councillors comply with the Code and that heartfelt sentiment and outrage is not manipulated and used to exonerate Code contraventions. Hate speech is vile, and denigration of humanity is offensive. The real issue in the matter before me is not about curtailing free speech or whether a call to decry senseless actions of hate is "the right thing to do". Rather I was required to determine if the means chosen by the Respondent to tie his outrage in respect of the hateful horrific events in New Zealand and elsewhere in the world to two Barrie MPs, is circumscribed by the Code provisions that, among other things, prohibit making statements that do not advance the public interest with honesty and treat members of the public with dignity, understanding and respect, as well as, those that transmit communications that are inappropriate, offensive, insulting or derogatory. As Integrity Commissioner, I am not required to (nor do I have jurisdiction) to determine whether the Facebook post is protected speech under the *Charter.* I am required to apply the rules of the Code in an investigation and in so doing, peel back the statements of justified outrage made by the Respondent and ***focus solely*** on whether the threshold created by sections 5.12 and 20.6 of the Code were made out by the facts reviewed during the investigation.

Findings under the Code

There has been a trend in recent years towards a polarization of political positions in respect to immigration, diversity and what is to be deemed "acceptable commentary". This type of referencing of behavior often forms part of the swipes made by politicians at one another. While it is unwise for the Integrity Commissioner to intervene to referee political debate through a Code complaint investigation, in the circumstance of this

[20] Maclean's, *A scarcity of ethics,* Editorial, April 2019 p.4

complaint, the Respondent Councillor did denigrate and call into question the actions of a Member of Parliament for Barrie-Innisfil in his statements in the March 21st Facebook post.

The fact that the comments were made in the public platform of Facebook of a sitting City Councillor did mean that the communication was made to the community at large, given the opportunity for members of the public to access the Respondent Councillor's page which he uses to publish matters relating to City Councillor business and activities. In addition, the posts on Facebook may be viewed in perpetuity reposted or screen captured by others. As a result, it was extremely important that the Respondent ensure that his statements were accurate.

As evidenced by the letter of support from the Imam Barrie Mosque Noor Ul Islam and the publicly released statement, the Complainant had visited and supported the members of the Mosque and its attendant community for several years and had immediately denounced hatred and racism following the horrific events in New Zealand. The Respondent did not exercise due diligence to verify what events were held on Parliament Hill in respect to his comments that 2 Conservative Members of Parliament in Barrie are "playing footsies with white supremacists who have inspired violence through Yellow Vest Canada social media channels and elsewhere" and request an apology for "the harm that [he has] caused". To link the violence in New Zealand and Quebec City and racism and white supremacy to the Complainant and his association with the Conservative Party of Canada is inaccurate and offensive to the Complainant and his office as the MP for Barrie-Innisfil. This is particularly so in light of the support that the Complainant has repeatedly shown for the Muslim community in Barrie.

The Respondent states in his reply to the Complaint that "[he] made the post to express [his] opinion exercising [his] right to free speech in accordance with Section 2(b) of the *Charter of Rights and Freedoms*." As Integrity Commissioner, I have no jurisdiction to determine a Constitutional question. However, as is clear from the case law cited above, the right to free speech is circumscribed by the Code.

The Respondent suggests that "[I]n making the post, [he] asked local MPs to speak up and to engage in dialogue regarding an issue that is at the forefront of much political discussion currently". With respect, he went much further than this, as reviewed above.

Section 5.12 (f)

The language of the Code of Conduct is very precise and intentional and states in sections 5.12(e) and (f) that a Member of Barrie City Council:

> (e) Must seek to advance the public interest with honesty and treat members of the public with dignity, understanding and respect;
>
> (f) May not make statements ***known to be false or make a statement with the intent to mislead Council or the public***

Also, section 20.6(b) states that, Members shall not:

(b) Display materials or transmit communications that are inappropriate, offensive, insulting or derogatory;

With reference to the Member's obligation contained in section 5.12(f), to not make statements known to be false or make a statement with the intent to mislead Council or the public, considering the evidence before me, the Respondent ought to have known that the MP had not been silent on the issues of hatred and violence. The Respondent made no mention of the MP's public statement which clearly condemned hatred and violence in the context of the racist attacks in New Zealand and provided no evidence that before positing, he endeavoured to seek out the MP's public statement of condemnation of hatred and violence, in other words, doing research to determine what the Complainant had done.

It is the Respondent's right to be outraged about the occurrence of horrific hateful events with the devastating outcomes of harm to human life and dignity that strikes at the essence of humanity. It is also his right to "say what we were all thinking but were afraid to say" as one individual posted on his Facebook page in response to his original post. However, as stated above, The Supreme Court held that:

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

While a Councillor may rely on reputable news media, it is important to analyze the articles and ensure that it is the journalist or a respected academic providing commentary and not to rely on a quote from a lay person who is giving their opinion as a statement of fact. It is appropriate and reasonable to rely on news articles, but this reliance must be on the ***facts*** as set out in the article. The Respondent draws on general concepts as expressed in opinions quoted in reputable news articles and asks the readers of his Facebook post to draw the same conclusion as the opinions expressed in the articles. While I believe that the Respondent could and should have further checked on the Complainant's position of condemning hatred and violence in the context of the racist attacks in New Zealand, I do not have sufficient evidence to find that the Respondent made the statements in his post with the intent to mislead Council or the public.

A Member of Council is within her or his right to denounce atrocities, and any actions that do not afford all members of the society the full exercise of rights as human beings, free from discrimination and hatred. However, there is an enormous chasm between denouncing racism and inaccurately depicting an elected official as a "white supremacist" sympathizer or supporter who has caused harm (read in context as "real-life violence"). The Respondent's comments in his Facebook post, with respect to the Complainant "playing footsies with white supremacists who have inspired violence through Yellow Vest

Canada social media channels and elsewhere" was untrue, offensive and insulting to the Complainant and with a reasonable modicum of fact-checking, would be known to be false. However, the Respondent has stated that these comments were only his opinion and an opinion "shared by many" and cited in many articles from national media outlets. It is for this reason, that the threshold has not been met for a contravention of section 5.12(f).

Section 5.12(e) and 20.6(b)

There is no doubt that being called a racist/white supremacist sympathizer or supporter is derogatory and insulting to the Complainant. In creating a post which either expressly or impliedly did so, without any factual basis, the Respondent violated s. 20.6(b) of the Code. As the Supreme Court has held that dignity includes reputation, it is also clear that the Respondent has failed to treat members of the public (and specifically the Complainant) with dignity. The Respondent violated s. 5.12(e) of the Code.

As a general statement of principle, the Code sets out that "[a] written Code of Conduct helps to ensure that the members of Council share a common basis of acceptable conduct. These standards are designed to supplement the legislative parameters within which the members must operate. These standards are intended to enhance public confidence that the City of Barrie's elected, and appointed officials operate from a basis of integrity, justice and courtesy." There has been a general trend at the municipal level of government in Ontario, to develop rules around ethical conduct for elected officials so that they may carry out their duties recognizing that as leaders of the community, they are held to a higher standard of behavior and conduct. It is for this reason that changes resulting from Bill 68 the *Modernizing Ontario's Municipal Legislation Act, 2017* to the *Municipal Act, 2001* were passed into law and came into force on March 1, 2019, requiring all municipalities in Ontario to have a Code of Conduct for municipal councillors and an appointed integrity commissioner to apply the ethics rules.

The inclusion of a principle statement means that when a Member of Council is elected to public office of the City of Barrie, they have and recognize their obligation to not only obey the law, but to go beyond the minimum standards of behavior and the threshold for ethical behavior is no longer that of an ordinary individual but rather to act in a manner that is of the highest ethical ideals so that their conduct will bear the closest public scrutiny.

The Respondent's general proposition is one with which most agree; that the community stands in solidarity with the Muslim community always and in particular, after the New Zealand attack, in denouncing racist and hate rhetoric. Generally, the Respondent's comments in his post that make a connection between anti-immigrant rhetoric and violence against Muslim people are reasonable commentary . However, it is inappropriate to tie in statements of opinion made by individuals quoted in articles and rely on these statements as facts. Further it is unreasonable and inappropriate under the Code to say that because the Complainant did not denounce what the Conservative leader is purported to have done according to opinion statements, this makes him a white supremacist sympathizer. Even if I had evidence from the Respondent sufficient

to make out that the Complainant's actions made him a white supremacist sympathizer, which I do not as none was submitted in his reply, I do not see how these factors, as set out in his Facebook post, would help establish *prima facie* that the Respondent was the connection between rhetoric and violence that is perpetrated against Muslims and other vulnerable communities here in Canada and abroad". It was an example of a potentially damaging assertion, apparently to create an impression in the mind of the reader of the Facebook post, that the silence on their leader's appearance on the "same stage" as a neo-Nazi sympathizer, translated into the Complainant ***causing* or *contributing*** to the events in New Zealand, Canada and other parts of the world. The Respondent claims that "playing footsies" is a figure of speech and that a reasonable person reading the Facebook post would not convert apparently innocuous words into offensive or derogatory words. However, the Facebook post is sufficiently laced with innuendo to, as stated in *Puddister v Wells*[21] "become an open door, to make comment on [the Complainant's] character and integrity by attributing actions and causation by the Complainant based on his alleged omission.

Accordingly, I find that the Respondent did contravene section 5.12(e) of the Code, General Standards of Conduct that requires Members to advance the public interest with honesty and treat members of the public with dignity, understanding and respect and section 20.6 (b) of the Code.

According to the Supreme Court of Canada, for a municipal councillor to suggest that his conduct was reasonable, he/she has an obligation to satisfy themselves as to the truth of their allegations.[22] The Respondent impugned the Complainant's dignity and character by alluding to his failure to denounce a particular individual as tantamount to "playing footsies with white supremacists". A person's character and integrity are cherished and valuable assets. Although the Respondent stated in his supplementary response that his Facebook post did not suggest that the Complainant was "using white supremacist rhetoric", a reasonable reader of the post would have linked the comments of the [named neo-Nazi sympathizer] who "shared a stage" with the Conservative leader, with the Complainant's soft stand on anti-immigrant rhetoric (as many of the commenters did).

In his reply to the complaint, the Respondent states that he "made the Facebook Post, on a personal Facebook page" and that he "made the post to express [his] opinion exercising [his] right to free speech in accordance with Section 2(b) of the Charter of Rights and Freedoms". In his reply, the Respondent stated that though his Facebook statements were

> "…strongly worded, [they]were not discourteous, offensive or aggressive [and] are my honest understanding based on information known to me, and I invited [the Respondent] to enter into a public dialogue about the issue. I believe that my actions were not in breach of my obligations under the Council Code of Conduct"

The allegation that the Complainant's silence was "unacceptable" and "dangerous" and that his actions are "allowing these forces to gain mainstream acceptance creating an

[21] *Puddister v. Wells*, 2004, NLSCTD 188 (CanLII), para 26.
[22] Ibid, *Puddister*

environment where violence can thrive" was completely without foundation or merit. To be clear, while the Respondent clarified in his Supplementary Response to the complaint that this was not a sentence specifically directed at the MP, the general comments contained in the Facebook post linking the Complainant to the rise of racist sentiment and "white supremacists" was nonetheless reckless and conduct that is wholly inappropriate and discreditable for a Member of Council. The Respondent ought reasonably to have known that it would be offensive, insulting or derogatory to the Complainant to be associated with white supremacists.

I am in no way suggesting that the Respondent was not permitted to express his opinions denouncing white supremacy hate rhetoric and anti-immigrant groups. However, this Facebook post crossed the line of responsible conduct for a municipal councillor when the Respondent baselessly suggested that the Complainant has caused harm and is associating with white supremacists (and suggesting that he is therefore a white supremacists sympathizer himself unless he explicitly denounces an individual or individuals who spoke at a United We Roll Rally and specifically denounces the Conservative leader for what he is purported to have done).

The Facebook post remains online. As a result, there is a continuing breach of the Code which may require further review.

Recommendations

I strongly recommend that the Respondent take every opportunity to review and thoughtfully consider my comments and recommendations made in this Code Complaint Investigation Report.

The Integrity Commissioner recommends:

1. that Council impose the penalty of a reprimand on the Respondent in respect of his comments made on March 21, 2019 on Facebook which violated sections 5.12(e) and 20.6 (b) of the Code.

In addition to the recommended penalty, the Integrity Commissioner recommends that Council consider the development of a City-wide Social Media policy that will include clear rules to guide Members of Council and Local Boards in the appropriate use of social media in their role as elected officials.

Respectfully submitted May 22, 2019

Suzanne Craig
Integrity Commissioner