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INTEGRITY COMMISSIONER REPORT CODE OF CONDUCT INVESTIGATION 2024-02

THE CORPORATION OF THE CITY OF KINGSTON

Laura Dean

Aird and Berlis LLP

November 26, 2024



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INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT INVESTIGATION RE COUNCILLOR JEFF MCLAREN

I. INTRODUCTION

1. A formal complaint was filed with the Integrity Commissioner by the Council for the City of Kingston (the “**City**”) on February 29, 2023 (the “**Complaint**”). The Complaint requested an investigation as to whether Councillor Jeff McLaren (the “**Member**”) contravened the City’s Member Code of Conduct (the “**Code**”) by virtue of his conduct in relation to the [REDACTED]

2. As discussed in detail in this report, one of the Complaint’s allegations is that the Member disclosed confidential closed meeting information. The public version of this report will be redacted as necessary to maintain the confidentiality of this information.

II. APPOINTMENT & AUTHORITY

3. Aird & Berlis LLP was appointed Integrity Commissioner for the City by By-Law 2022-4.

4. As Integrity Commissioner, we are appointed to act in an independent manner on the application of the Code and other rules and procedures governing the ethical behaviour of members of Council.

5. This is a report on the investigation of the Complaint made in accordance with the Code, the Code’s Complaint Protocol (the “**Complaint Protocol**”) and subsection 223.6(2) of the *Municipal Act, 2001* (the “**Report**”).

6. The principles of procedural fairness require us to provide reasons for our conclusions and recommendations, which we have done in this Report. Our investigation was conducted according to a process that was fair to all parties. We have assessed the evidence in an independent and neutral manner.

7. When evaluating the ethical conduct of a member, the Integrity Commissioner must apply the rules of a code of conduct to the facts gathered throughout the investigation and make a determination, based on the civil standard of a balance of probabilities, as to whether there has been a breach of that code of conduct.

8. Prior to finalizing this Report, we shared a draft with the Member and requested comments, as is our standard practice and as required by the City’s complaint process.

9. In response, the Member submitted a 36-page document outlining his concerns regarding both the conduct of our investigation as well as our findings and recommendations. The Member challenged almost every aspect of our investigation, findings and conclusions:

10. The Member’s additional submissions state:

I am fearful because it appears to me that your office has so far not maintained professionalism, has not followed best practices, has not identified all the issues, has not looked at all the facts, has not considered how these new facts necessitate changes in previous assumptions, has not displayed fairness, neutrality, impartiality, and objectivity, and has not honored your commitment to holding me innocent until proven guilty.

11. We dispute the Member's claims regarding deficiencies in our investigation and reject his allegations of unfairness, bias and lack of professionalism.

12. We have thoroughly reviewed the Member's additional submissions, being his last opportunity to have input into the investigation, and we have made certain modifications to this final Report in consideration of the Member's additional submissions.

III. THE COMPLAINT

13. Subsection 1(c) of Part B of the Complaint Protocol permits Council to file a complaint against any of its members by passing a resolution requesting the Integrity Commissioner to undertake an inquiry.

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. The Complaint contained the above resolution and in support of the allegations contained therein, attached copies of two emails [REDACTED], collectively, the "Emails") from the Member to an undisclosed number of community members regarding [REDACTED]

16. We considered the Complaint in accordance with our standard intake and review procedure and notified the Member of the Complaint on March 13, 2024.

17. Based on our review of the resolution, we determined the Complaint alleged contraventions of Sections 2.0, 4.1, 4.2, 5.1(d), 9.1 and 9.2 of the Code which are reproduced below.

IV. CODE OF CONDUCT PROVISIONS AT ISSUE

18. The Complaint engages the following sections of the Code:

2.0 Statement of Principles

2.1 This Code of Conduct is intended to set a high standard of conduct for Members of Council, in order to provide good governance and a high level of public confidence in the administration for the City.

2.2 The following key statements of principle are intended to guide Members and assist with the interpretation of the Code of Conduct:

- Members shall serve the public in a conscientious and diligent manner; Members shall act with integrity and avoid the improper use of the influence of their office;
- Members shall always act and are expected to perform their functions with integrity, accountability and transparency, and shall avoid the improper use of influence of their office and conflicts of interest, both apparent and real;
- Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and will bear public scrutiny;
- Members will uphold the letter and spirit of the laws of Canada, Ontario and the laws and policies adopted by Council.

19. Section 2 of the Code sets out principles that are intended to aid in the interpretation and application of the Code. As such, they are guiding tenets and they do not constitute free-standing independent obligations which can be separately and independently enforced.

4.0 Responsibilities of Council

4.1 Council is responsible for and dedicated to providing good and effective government for the public in the City in an open, accountable and transparent manner.

4.2 A fiduciary relationship exists between the Council and residents of the City.

5.0 General Obligations

5.1 In carrying out their duties, Members are expected to:

...

(d) refrain from making statements known to be false or with the intent to mislead Council or the public.

9.0 Confidentiality

9.1 Members receive confidential information from a number of sources as part of their work. This includes information received in confidence by the City that falls under the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and other applicable privacy laws and information received during closed meetings of Council or Committees.

9.2 No Member shall disclose the content of any such matter, or the substance of deliberations, of a closed meeting and the Member has a duty to hold information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. Members must not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.

20. Section 9.1 of the Code is not an enforceable provision but serves to explain the meaning of “confidential information” for the purpose of the Code. For the purposes of this Report, the term is defined by an express inclusion of “information received during closed meetings of Council”.

V. INVESTIGATION

21. On March 13, 2024, pursuant to Sections 7(1)(a) & (b) of the Code’s Complaint Protocol, we notified the Member of the Complaint and requested that he provide us with a written response to the allegations. On the same day, we had a telephone meeting with the Member to discuss the Complaint and his obligations with respect to the investigation. Later that day, the Member sent us an email containing additional questions concerning the scope of the investigation. We responded to the Member by email on March 14, 2024.

22. On March 17, 2024, the Member sent us an additional email requesting that our office provide further specificity regarding the allegations contained in the Complaint. We responded by email on March 18, 2024, advising that our March 13, 2024 notice set out the basis for the Complaint and investigation.

23. On March 25, 2024, we received the Member’s 12-page written response (the “**Member’s Response**”) to the Complaint. The Member’s Response included hyperlinks to staff reports, Council minutes and meetings as well as news reports. The Member’s Response also included two emails from constituents and one email from a media outlet regarding [REDACTED]

24. The Member’s additional submissions on the draft Report assert that our notice to him of the Complaint failed to contain sufficient details, particularity regarding the allegations against him. The Member asserts that it was only upon receipt of the draft of this Report that he received an outline of the Complaint with enough particularity to allow him to respond in a complete and meaningful way.

25. Pursuant to Section 7(1)(c) of the Complaint Protocol, on May 23, 2024, we sent members of Council, via the City Clerk, a request for a written reply to the Member's Response. In accordance with Section 10(1) of the Complaint Protocol, our May 23, 2024 correspondence also provided notice that our investigation would take more than 90 days.

26. The Member's additional submissions on the draft Report cite a recording he made of our initial telephone meeting in which the investigator stated that she did not intend on sharing his future response with other members of Council. Section 7(1)(c) of the Complaint Protocol in fact requires the Integrity Commissioner to provide a copy of a member's response to the complainant. In this case, the complainant is all of Council and therefore the Complaint Protocol obligates the Integrity Commissioner to provide a copy of the Member's response to all Council members. We regret the initial comment that was made to the Member during the call which did not accurately reflect the requirements of the Complaint Protocol. The comment was made in error and not with any intention to mislead.

27. We received three (3) replies to the Member's Response from members of Council. We are not obligated to share the replies with the Member and have declined the Member's request for their disclosure. For the purpose of this Report we will disclose that one member supported the Member's position [REDACTED]

[REDACTED] The other two replies maintained that the Member had disclosed confidential *in camera* information.

28. We considered the Member's Response and submissions on the draft Report as well as the Council members' replies in reaching the determinations contained in this Report. The basis for our determinations is explained in this Report and we do not rely on any undisclosed information in making these determinations.

29. We also spoke to two Council members over the telephone/computer where we required clarification regarding the context of the Complaint, [REDACTED]

VI. REVIEW OF MATERIALS

30. In order to undertake our investigation and prepare this Report, we reviewed and considered the following materials:

- The Complaint and Emails;
- Council Meeting Minutes and Agendas including Closed Session Minutes and Agendas;
- The City's Procedural By-law No. 2021-41;
- Staff reports, including closed session staff reports;
- The Member's Response including all hyperlinks and attachments;
- Council members' replies to the Member's Response; and
- The Member's submissions on the preliminary draft of this Report.

31. We also took guidance from case law and code of conduct investigation reports of other Integrity Commissioners and have cited these sources in the footnotes of this Report.

VII. BACKGROUND

32. [REDACTED]

33. [REDACTED]

34. [REDACTED]

35. [REDACTED]

36. The Member sent the Emails to an undisclosed number of residents. The content of the Emails is set out below.

37. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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P.S. Please contact me for any concerns you have with the City of Kingston - I look forward to helping you with them.

P.P.S I also make myself available for drop in consultations sessions every Sunday from 3 to 4 pm at the Kingston Coffee House in the Kingston Centre please join me some time.

38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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VIII. MEMBER'S RESPONSE & SUBMISSIONS ON DRAFT REPORT

39. The Member's Response denies that he contravened the Code. The denial relies on two principal assertions.

40. First, the Member's Response alleges that all of the information in the Emails was based on information which the City had already made public. In support of this claim, the Member's Response points to the following:

- | [REDACTED]
 - | [REDACTED]
- | [REDACTED]
 - | [REDACTED]
- | [REDACTED]
 - | [REDACTED]

| [REDACTED]

| [REDACTED]

[REDACTED]

| [REDACTED]

| [REDACTED]

| [REDACTED]

| [REDACTED]

41. Second, the Member's Response alleges that the information in the Emails had been broadcast by local news media and he had an obligation to respond to concerned residents. In support of this assertion, the Member's Response points to the following:

| [REDACTED]

| [REDACTED]

| [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. With respect to the allegation that he disclosed confidential information, the Member's Response provides:

As you can see nothing in the two emails discloses any confidential information. Everything I wrote concerning [REDACTED] had already been publicly disclosed before [REDACTED]

43. The Member's Response also denies violating the Code's statement of principles. The Member's Response states that the Member discharged his duties with utmost responsibility and in good faith, in an accountable and transparent manner. The Member's Response also denies making any statement known to be false or with intent to mislead Council or the public. The Member's Response did not address the allegation that he violated Section 4.2 of the Code which provides that a fiduciary relationship exists between Council and the residents of the City.

44. In his submissions on the draft Report, the Member explains that he did not respond to the allegation that he violated Section 4.2 of the Code because he considers this to be a "secondary charge" which he need not "defend against" before "primary charges" (i.e. the allegation that he disclosed *in camera* information) are established, as doing so would be an admission of guilt to the "primary charges".²

45. Section 7(1)(b) of the Complaint Protocol requires the Integrity Commissioner to request that the member provide a written response to the allegations contained in a Code complaint. Our request for the Member's Response to the allegation that he contravened Section 4.2 of the Code was in no way a predetermination by the Integrity Commissioner of any findings with respect to that or any of the other allegations contained in the Complaint.

IX. DETERMINATIONS

46. As set out in detail below, we find the Member disclosed confidential closed session information contrary to Section 9.2 of the Code. We also find the Member's disclosure contravened Sections 4.1, and 4.2 of the Code.

(i) Section 9.2 of the Code Contravened

47. Municipalities are required to establish codes of conduct for members of council pursuant to subsection 223.2(1) of the *Municipal Act, 2001*. Section 1 of O. Reg. 55/18 sets out four prescribed subject matters that a municipality is mandated to include in a code of conduct. "Confidential information" is one of the four listed subject matters.

48. The City has established a Code which expressly regulates the prescribed subject matter relating to "confidential information" in Section 9.2.

49. Section 9.2 of the Code is clear that no member shall disclose the content or substance of deliberations from a closed meeting and that each member has a duty to hold information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. Members must not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.

50. The closed meeting confidentiality provisions in Section 9.2 of the Code are also expressly supported by Section 11.14 of the City's Procedural By-law which provides as follows:

² Pursuant to s. 223.2(3) of the *Municipal Act, 2001*, a code of conduct cannot create an offence for its contravention, so there are no "charges" *per se*.

Closed Session Confidentiality

11.14 Every Member shall comply with the confidentiality provisions of the “Member Code of Conduct”, as amended or replaced from time to time, with respect to the content of any matter, or the substance of deliberations, of a Closed Session.

51. We understand that members of Council were provided with orientation training on the Procedural By-law upon the commencement of their new term of office.

52. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. [REDACTED]

54. [REDACTED]

55. [REDACTED]

56. Based on the above, we find the Member contravened Section 9.2 by disclosing [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. [REDACTED]

58. We have considered the Member's claim that the information conveyed in the Emails had already been broadcast by local news media and he had an obligation to address resident concerns. However, the Code is clear regarding a member's obligation to maintain closed meeting information in confidence. There are no exemptions to this obligation. A particular Council member may feel an obligation as a local representative to disclose matters of particular concern to their constituents. However, they owe a higher obligation to the City as a whole, to ensure confidential closed meeting matters are not disclosed at the whim of any one member. Conjecture from local media and questions from the public are not grounds to disclose confidential information. The only entity with authority to waive confidentiality (or to delegate this authority) is Council.

59. The Member's submissions on the draft Report assert that we are adhering to an unreasonable standard which requires closed meeting information to be publicly confirmed by Council before it may be released. The Member claims that this standard, "... is too high because (1) it discounts inquiry into separated documents and nullifies research that puts 2 and 2 together...". To this point, the Member notes, "...your proposed standard of confirmation is not in the public interest because it would prevent public information from being collected, compiled and analyzed meaningfully." The Member also claims that "(2) ...it is a prohibitively expensive and an onerous burden on the City to continually confirm every piece of public data that it has produced and then brought *in camera* and then released, it is not reasonable to hold me and the City to impossible standards of confirmation for information that was already public and which is demonstrably not the way things are done by municipal administrators."

60. In response to the Member's submissions, we maintain that the ability of the public or media to make reasonable inferences on the basis of public information is simply not the test for whether closed meeting information can be disclosed by an individual member.

61. Requiring Council's approval prior to releasing confidential closed session prevents confidential information from being released prematurely. Confidentiality is especially important where circumstances are likely to change. [REDACTED]

62. It is precisely because of the "ever changing nature and the fluidity" of matters considered in closed meetings that Members are not to disclose such matters without Council's authorization. It is within Council's discretion to create a policy relating to closed meeting information and to revise its Code of Conduct if it prefers to change rules for the protection of the City's closed meeting confidential information.

(ii) Section 4.1 of the Code Not Contravened

63. Section 4.1 of the Code provides that Council is responsible for and dedicated to providing good and effective government for the public in an open, accountable and transparent manner.

64. In our opinion, good and effective government requires members to maintain the confidentiality of closed meeting information. While the Emails may have been sent in the spirit of openness, accountability and transparency, we find the disclosure [REDACTED] did not uphold Council's obligation to provide good and effective government. A member's duty to maintain the confidentiality of closed meeting information must prevail over any perceived obligation to inform constituents of that information even where it may have particularly local implications. [REDACTED]

65. In our opinion, good and effective government also requires that members respect Council's decisions. We have therefore considered whether the Member contravened Section 4.1 by discussing, in the Emails, potential options for [REDACTED]. The Member's comments on the draft Report explain that the content of the Emails "...is [the Member's] opinion or a compilation of opinions received from others on how to answer the basic question: what can be done?" The Member further submits that he was under a duty to provide specialized knowledge to residents so they could try to affect policy if they felt redress was needed.

66. [REDACTED]

67. [REDACTED]

68. Based on the above, we find the Member did not contravene Section 4.1 of the Code by setting out, in the Emails, options [REDACTED]

(iii) Section 4.2 of the Code Contravened

69. Section 4.2 of the Code recognizes the fiduciary relationship between Council and City residents.³ The Supreme Court of Canada describes a fiduciary relationship as follows: “Where by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another and that obligation carries with it a discretionary power, the party thus empowered becomes a fiduciary.”⁴

70. In the specific context of local government, the Court of Appeal has written: “The fiduciary obligation of municipal councillors is a duty of loyalty towards the electorate that includes the avoidance of conflicts of duty and interest, and the duty not to profit at the expense of the beneficiary.”⁵ The duty of loyalty includes the duty to maintain the confidentiality of confidential information, including information from closed meetings of a council.

71. A recent Integrity Commissioner report regarding an investigation into a breach of confidential closed meeting information noted the following, which is relevant to this investigation:

It is of vital importance for the municipality to have each Member of Council respect the majority decision of the Town Council as to whether a matter should be considered confidentially. Once Town Council as a whole decides to consider the matter confidentially in a Closed Session meeting, then, unless that decision is reversed, each member of Council must abide by that decision. Depending on the nature of the issue, ignoring the closed meeting decision could expose the municipality to significant liability claims. In addition, the integrity of the Town Corporation, the Council, and Town Staff involved in the particular matters, could be undermined.⁶

³ Ian MacFee Rogers, *The Law of Canadian Municipal Corporations, 2nd ed.* (Toronto, Thompson Reuters Canada: 2020) (loose-leaf release no. 10, October 2024) (online), ch. 5, § 5:1: “While serving on the council, members are under a duty to act in the best interests of the corporation and the citizens they represent.”

⁴ *Guerin v. The Queen*, [1984] 2 SCR 335 at 337.

⁵ *The Toronto Party v. Toronto (City)*, 2013 ONCA 327 at para. 50.

⁶ Town of Gravenhurst Code of Conduct Complaint Investigation Report #100724 (October 10, 2024), online: [Town of Gravenhurst Code of Conduct complaint 100.pdf \(civicweb.net\)](https://www.civicweb.net/Town_of_Gravenhurst_Code_of_Conduct_complaint_100.pdf)

72. Whether to observe the obligations of confidentiality should not generally be a matter of an individual council member's choice.⁷

73. We find the Member contravened Section 4.2 of the Code and Council's fiduciary relationship with residents by disclosing confidential closed meeting information. [REDACTED]

(iv) Section 5.1(d) of the Code Not Contravened

74. Section 5.1(d) of the Code provides that in carrying out their duties, members are expected to refrain from making statements known to be false or with the intent to mislead Council or the public. [REDACTED]

[REDACTED]

75. [REDACTED]

76. Upon review of the Member's comments on the draft Report, we have determined that the Emails did not contain statements known to be false or made with the intent to mislead the public. [REDACTED]

77. We find the Member did not contravene Section 5.1(d) of the Code by making the statements contained in the Emails.

X. RECOMMENDATIONS

78. The *Municipal Act, 2001* recognizes that in some circumstances, council, as the decision-making body of the municipality, requires a sphere of privacy to deal with sensitive information that is necessary to make effective decisions, to encourage the discussion of matters frankly and with due candor, and to safeguard the municipality's interests vis-à-vis third parties.

79. Related to the need to preserve confidentiality in council's decision-making is the protection for information emanating from closed meetings. Information imparted to members in a closed meeting must stay in the closed meeting. There is no doubt that such information may be of real value and importance to constituents, however, information is not to be shared with them unless council concurs or consents to disclosure of the information (as for example, in a rise and report of the matter).

⁷ City of Toronto, "Report on a Complaint that a Councillor Violated the Code of Conduct by Revealing Confidential Information to the Press" (April 12, 2006), online at pages 250-254: <https://www.toronto.ca/legdocs/2006/minutes/council/cc060523.pdf>



80. This specific issue was addressed in an Integrity Commissioner report regarding the disclosure of confidential deliberations from an *in camera* meeting in the Town of Newmarket:

While it is laudable that the Respondent acts on behalf of the public and views her obligation as a councillor to be first and foremost to the public, this view is not mutually exclusive to upholding the confidentiality rules contained in the Town's Procedure By-Law, the rules of the *Municipal Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. Rather, as a Member of Council, in order to conscientiously act on behalf of the public and uphold the oath of office, a councillor is necessarily required to obey the rules contained in all of the governing legislation of the municipality.⁸

81. Closed meeting confidential information belongs to the City and not to any individual member of Council or to any member of the public, however important the information may be to them. The protection for closed meeting discussions extends not only to meeting materials, such as staff reports, agendas and meeting minutes, but also to information that imparts the details of what was discussed during a closed session.

82. The disclosure of confidential closed meeting information was considered by the Ontario Divisional Court in *Fallis v. Orillia (City)*.⁹ As noted therein, the Integrity Commissioner in that case observed that one of the “cardinal rules” a member of council must adhere to is the rule against the disclosure of confidential *in camera* information as such disclosure could significantly prejudice the interests of the municipality.¹⁰ The Integrity Commissioner’s report noted as follows:

Maintaining confidentiality around closed session documents and information is a cardinal rule for all members of Council, and is one that is regularly referenced during orientation and training of newly-elected councillors, and reiterated repeatedly during the term. It is reinforced through careful handling of documentation, including labelling, stamping and watermarking documents as CONFIDENTIAL when distributing to members of Council.

83. The importance of not disclosing confidential information, particularly closed meeting information, was imparted to the Council during orientation training provided by the Integrity Commissioner on November 16, 2022.

84. A member’s obligation to protect the confidentiality of closed meeting information has many sources, chief among which is a municipality’s code of conduct for members of council adopted pursuant to subsection 223.2 of the *Municipal Act, 2001*.

85. At the City, the duty of confidentially respecting closed meeting information is doubly reinforced by Section 11.14 of the Procedural By-law.

⁸ [Di Muccio \(Re\)](#), 2013 ONMIC at para. 61.

⁹ [Fallis v. City of Orillia](#), 2022 ONSC 5737 (Ont. Div. Ct.).

¹⁰ City of Orillia, Code of Conduct Recommendation Report (September 22, 2021) at para. 134, at online: <https://orillia.civicweb.net/document/266723/>

86. As noted, the obligation to maintain the confidentiality of closed meeting information is not discretionary. Accordingly, the Member's conduct in disclosing confidential closed meeting information warrants a meaningful penalty.

87. Subsection 223.4(5) of the *Municipal Act, 2001* and Section 16.1 of the Code authorize the Integrity Commissioner to recommend, and Council to impose, the following penalties on a member who has been found to have contravened the Code:

- (a) a reprimand; and
- (b) a suspension of remuneration paid to the member for up to ninety (90) days.

88. There is no specified criteria set out in the *Municipal Act, 2001* or the Code for the imposition of penalties. A number of professional and regulatory bodies have customarily relied upon an established list of purposes for penalties imposed for breaches of ethical codes which Integrity Commissioners have often adopted to assess appropriate penalties, including:

- (i) specific deterrence;
- (ii) general deterrence;
- (iii) rehabilitation; and
- (iv) maintaining public confidence.

89. As Integrity Commissioner, our role includes providing advice to members of Council with respect to their obligations under the Code. The *Municipal Act, 2001* prescribes the circumstances in which the Integrity Commissioner may disclose advice to a member. Subsection 223.6(2) is a broad provision which authorizes the Integrity Commissioner to disclose in a Code of Conduct investigation report to Council, such matters as in the Commissioner's opinion are necessary for the purposes of the report.

90. In our opinion, it is relevant to this Report to disclose the advice we provided to the Member which directly relates to the subject-matter of this Report pursuant to the authority of subsection 223.6(2) of the *Municipal Act, 2001*.

91. In July 2023, the Member contacted our office seeking written advice in our capacity as Integrity Commissioner with respect to whether [REDACTED]

92. Our advice urged the Member not to disclose *any* closed meeting information that was confidential and that Council had chosen not to release to the public.

93. The Member's disclosure of confidential information [REDACTED] demonstrates that the Member ignored our written advice.

94. In none of his submissions does the Member claim that disclosure of the confidential closed meeting information was inadvertent, unintentional or the result of an error in judgment.

95. In our opinion, the Member's failure to follow our advice is an aggravating factor to be considered in imposing a penalty.¹¹

96. An aggravating factor is one which tends to increase an otherwise appropriate sanction.¹²

97. The potential consequences of the Member's breach are also relevant to the determination of an appropriate penalty. [REDACTED]

98. The Integrity Commissioner report arising from the Town of Orillia code of conduct complaint investigation (cited above) noted:

Disclosure of confidential information is the kind of transgression that attracts a significant monetary sanction because the act fundamentally undermines the trust required for Councils to function properly and for the public to maintain respect for Council's adherence to ethical standards.¹³

99. We agree with the foregoing comments. In light of the contraventions we have found and the aggravating factor, we recommend that Council formally reprimand the Member and suspend the remuneration paid to the Member for a period of 30 days.

100. In arriving at this penalty, we have expressly considered the importance of a member's obligation to maintain closed meeting confidential information, that is outlined not only in the Code of Conduct but also the City's Procedural By-law, as such transgressions are significant in terms of a council member's obligations. We have also considered the principle of proportionality with respect to the imposition of sanctions permitted by the *Municipal Act, 2001* and the nature of the underlying misconduct.

¹¹ See *Councillor Josh Matlow*, [2023 ONMIC 1](#) at paras. 238-239:

After being put on notice that his conduct towards staff was a violation of the Code of Conduct through my March 1, 2023 Statement, he continued the behaviour and did so deliberately as a reprisal against the staff who had complained to my Office.

For these reasons, if Council accepts my findings, I recommend it is proportionate and appropriate to impose both a reprimand and a suspension of remuneration for [the Councillor] As Council's earlier reprimand has failed to deter [the Councillor] from engaging in such misconduct in social media, and he engaged in a reprisal against City staff, I recommend that in addition to a reprimand that Council impose a 10 day suspension of remuneration.

¹² See *The Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner) v. Budarick*, [2021 ONSC 7635](#) at paras. 86 and 88:

An aggravating factor is one which tends to increase an otherwise appropriate sanction.

...

I find that the following aggravating factors are present:

...

- d. The Respondent failed to seek timely advice from the Integrity Commissioner, the only person who is authorized to provide advice under the *MCA*.

¹³ *Supra* 10 at para. 138.

101. The penalty we have recommended would act to both denounce the Member's conduct and provide specific deterrence to him and other members from engaging in similar conduct in the future.¹⁴

102. It also takes into account that the Member requested the written advice of the Integrity Commissioner and then elected not to follow the advice that was provided. It would also, in our view, maintain the public and Council's confidence in the Code.

XI. CONCLUSION

103. For all of the reasons set out above, it is our opinion based on the totality of the evidentiary record and on a balance of probabilities, that the Member contravened Sections 4.1, 4.2, and 9.2 of the Code.

104. This Report has been prepared for and is forwarded to Council for its consideration of the recommendations set out herein.

105. Council can accept our recommendations, modify our recommendations or reject them entirely. Council cannot, however, question the findings in our Report:

... Council is bound by the Integrity Commissioner's findings as to misconduct. Therefore, in exercising its jurisdiction as to penalty it cannot do so in such a way that would seek to set aside the Integrity Commissioner's findings on the question as to whether misconduct had occurred.¹⁵

and

If the Integrity Commissioner concludes that a council member has contravened the Code of Conduct, the municipality has no power to contest or question that conclusion. Its only power is to determine whether a penalty should be imposed and, if so, to issue a reprimand or suspend the member's remuneration for up to 90 days under s. 223.4(5).¹⁶

¹⁴ In *Town of Gravenhurst Code of Conduct Complaint Investigation Report #100724*, *supra* note 6, the Integrity Commissioner recommended a monetary penalty for the disclosure of closed meeting information despite the finding that the council member's disclosure was inadvertent, writing:

... I accept that the disclosure of confidential information was not intentional, however for section 7 to have any meaning with respect to a Member's obligation to maintain the confidentiality of closed session minutes, I have determined that inadvertence cannot entirely eliminate the need for a sanction.

It is insufficient for a Member of Council to claim to be unaware of what matters are confidential and should not be disclosed publicly, when the Town has clear processes that govern how Members shall be advised that information is part of a Closed Session agenda and how the information discussed at that meeting and the subsequent minutes are not to be disclosed or shared in whole or in part publicly until the information is made public by the Town. All Members of Council, including the Respondent received an email about the June 18th Closed Session Council meeting stating that the materials were confidential and should not be shared.

¹⁵ *Jonker v. West Lincoln (Township)*, [2024 ONSC1167](#) (Div. Ct.) at para. 32.

¹⁶ *Assaly v. Hawkesbury (Town)*, 2021 ONSC 1690 (Div. Ct.) at para. 11.

106. Subsection 223.6(2) of the *Municipal Act, 2001* provides that this Report be made public. As set out above, given that information set out herein is confidential and has not been publicly disclosed, we will be providing a full, unredacted version of this Report to Council and the Member in closed session, and a scoped version of the Report, removing confidential information, will be presented publicly.

Respectfully submitted,

AIRD & BERLIS LLP



Laura Dean

Integrity Commissioner for the City of Kingston

Dated this 26th day of November, 2024