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**DELEGATED INTEGRITY COMMISSIONER REPORT ON
CODE OF CONDUCT COMPLAINT AGAINST
COUNCILLOR ROXANE VILLENEUVE**

THE CORPORATION OF THE TOWNSHIP OF NORTH STORMONT

Aird & Berlis LLP

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June 27, 2022

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**DELEGATED INTEGRITY COMMISSIONER REPORT ON
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COUNCILLOR ROXANE VILLENEUVE**

I. INTRODUCTION

1. A formal complaint pursuant to the *Code of Conduct for Members of Council* (the “**Code**”)¹ of The Corporation of the Township of North Stormont (the “**Township**”), dated August 17, 2021, was provided to our office in October 2021 (the “**Complaint**”).

2. The Complaint alleges that Councillor Roxane Villeneuve (the “**Councillor**”), a member of Township Council (the “**Council**”), contravened the Code on account of the her conduct at a meeting of Council, held August 10, 2021 (the “**Meeting**”), and a social media post made shortly thereafter, on or about August 11, 2021 (the “**Post**”), by making statements regarding an investigation and report by the Township’s Appointed Integrity Commissioner.

II. AUTHORITY & DELEGATION

3. Aird & Berlis LLP is the delegated Integrity Commissioner in respect to this matter. On October 18, 2021, Aird & Berlis LLP was delegated authority in writing to investigate and report on this matter pursuant to subsection 223.3(3) of the *Municipal Act, 2001*² by the Township’s Appointed Integrity Commissioner, Mr. Tony Fleming of the law firm Cunningham Swan Carty Little & Bonham LLP (the “**Appointed Integrity Commissioner**”).

4. Our initial review of the Complaint determined that it was not frivolous or vexatious and that it merited our investigation.

III. CODE PROVISIONS AT ISSUE

5. The Complaint alleges that the Councillor contravened the following provisions of the Code:

CONDUCT TO BE OBSERVED

1. Release of Confidential Information

Members of Council have a duty to hold in strict confidence all information concerning matters dealt with at closed meeting, information that is marked as “confidential”, information obtained by the Member by virtue of their position as Councillor that is not in the public domain, or information that is otherwise determined to be confidential by the Chief Administrative Officer, Clerk or as specifically declared by Council.

...

¹ Schedule A to By-law 15-2019.

² *Municipal Act, 2001*, S.O. 2001, c. 25.

2. Foster Respect for Decision-making Process

All Members of Council shall accurately and adequately communicate the attitudes and decisions of the Council, even if they disagree with Council's decision, such that respect for the decision-making processes of Council is fostered. If Council has taken a position in a Local Planning Appeals Tribunal, or other tribunal or court, and instructed the Municipal Solicitor to appear at a hearing, no Member of Council who disagrees with such position shall give evidence at such hearing or otherwise work against the will of Council expressed in its direction to the Municipal Solicitor in such matter.

...

5. Reputation Management

A Member of Council shall not initiate or participate in any action of falsehood, slander or defamation of character nor the spreading of any rumour about an elected official, an appointed official and any member of staff of the Township.

...

INTERPERSONAL BEHAVIOUR

4. Relationship with Staff

Members of Council shall be respectful of the fact that staff work for the Township and make recommendations based on their professional and technical expertise as well as from a corporate perspective. Staff serve Council as a whole and no Member of Council may direct staff absent of a resolution of Council. Council approves policy and the Chief Administrative Officer directs staff to ensure the direction of Council is achieved.

Members of Council shall respect the role of staff to provide advice based on political neutrality and objectivity and shall not impose any undue influence on staff.

Many staff members are bound through professional associations to a code of ethics in the delivery of their services, and Council Members shall respect that staff provide their reports, observations and recommendations objectively and in the best interests of the Township.

Members of Council shall not:

- i) Maliciously or falsely injure the professional or ethical reputation of staff;
- ii) Compel staff to engage in partisan political activities or be subjected to threats of discrimination for refusing to engage in such activities; and
- iii) Use their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with staff duties.

Operational inquiries and complaints received from the public will be addressed by Members of Council as follows:

- i) Members of Council who are approached by the public with inquiries / complaints regarding operational matters should encourage the party to contact the appropriate department for review / resolution.
- ii) Where the member of the public is reluctant to contact the department directly, the Member of Council should take the person's name, phone number and details of the inquiry / complaint and advise them that the matter will be referred to the Chief Administrative Officer for review / resolution.
- iii) Members of the public are encouraged to provide their issue / matters of concern in writing to the appropriate department.
- iv) Where the inquiry / complaint is not resolved to the satisfaction of the member of the public then the issue may be brought forward to the Mayor and then Council for resolution.

IV. REVIEW OF MATERIALS & INQUIRY

6. In order to undertake our inquiry into the Complaint and make a determination on the alleged contraventions of the Code, we have undertaken the following steps:

- Review of the Complaint and all materials referred to therein;
- Review of a video recording of the Meeting;
- Review of the Post;
- Correspondence with legal counsel for the Councillor regarding the Complaint, and timeline for response;
- Review of the Councillor's submissions in response to the Complaint, dated December 10, 2021;
- Correspondence with the Complainant;
- Review of the Complainant's reply submissions, dated December 21, 2021.

7. We have also reviewed, considered and had recourse to such applicable case law and secondary source material, including other integrity commissioner reports that we believed to be pertinent to the issues at hand.

8. A draft of this Report was provided to the Councillor and the Complainant on May 26, 2022 to allow them to review and comment on same. On May 31, 2022, the Councillor, through her legal counsel, requested a two-week extension to provide her comments on the draft Report. This extension was granted.

9. On June 20, 2022, the Councillor, through her legal counsel, provided us with her comments in writing. The only submissions that came out of the extension were a reiteration of the Councillor's position on two procedural issues which she had raised earlier (and which are dealt with herein). Her comments were nevertheless considered in the finalization of our Report.

V. BACKGROUND

(a) Introduction

10. The Councillor is a Member of Council for the Township. The Councillor was first elected to Council during the 2018 Municipal Election. Outside of her position on Council, the Councillor is employed by the Senate of Canada.

(b) Appointed Integrity Commissioner's Investigation and Report

11. In late 2020 and early 2021, the Councillor's conduct was investigated by the Appointed Integrity Commissioner via a complaint made pursuant to section 223.4 of the *Municipal Act, 2001* and the Code. The complaint, filed in November 2020, alleged that the Councillor breached the Code by engaging in a pattern of recurring disrespectful behaviour against the Township's Chief Administrative Officer ("**CAO**"), releasing confidential information about the CAO's salary, and voting in a conflict of interest.

12. The Appointed Integrity Commissioner conducted an investigation into that complaint pursuant to the *Municipal Act, 2001* and the Complaint Process, forming part of the Code.

13. In a Report of Findings dated July 8, 2021 (the "**July Report**"), the Appointed Integrity Commissioner determined that the Councillor contravened the provisions of the Code regarding Interpersonal Behaviour on account of her interactions with the CAO, which including publicly berating the CAO for a perceived failure to inform members of Council of the resignation of a member of Township staff, and using language and a tone that were abusive and harassing. The Appointed Integrity Commissioner found that other aspects of the complaint relating to disclosure of confidential information and voting when having a conflict of interest could not be sustained.

14. The Appointed Integrity Commissioner determined that the conduct observed in the July Report was very similar to Code-transgressive conduct observed in an earlier report in January 2020. In the previous case, the Appointed Integrity Commissioner recommended, and Council imposed, a penalty of a suspension of the Councillor's remuneration for a period of 30 days, in addition to other remedial measures, including a six-month communication "blackout" with members of Township staff. The Appointed Integrity Commissioner commented that the previous penalty and remedial measures failed to remedy the serious concern with the manner in which the Councillor communicated with the CAO.

15. As such, the Appointed Integrity Commissioner recommended that Council impose an increased penalty of a suspension of the Councillor's remuneration for a period of 45 days. The Appointed Integrity Commissioner also recommended an additional remedial measure to prohibit the Councillor from sending email correspondence directly to the CAO for a period of nine months.

(c) The Meeting

16. The July Report was forwarded to Council for consideration at the regular meeting of Council held on August 10, 2021 (i.e., the Meeting). The Appointed Integrity Commissioner attended the Meeting and provided Council a presentation on his findings, as described in the July Report.

17. Following the Appointed Integrity Commissioner's presentation, members of Council asked questions related to the recommendations in the July Report.

18. The Councillor was then provided an opportunity to speak to the matter. The Councillor indicated that she had prepared a statement in response to the July Report, and requested that the statement be recorded in the minutes of the Meeting.

19. The Councillor's statement indicated that despite her respect for the role of the Appointed Integrity Commissioner, she was entitled to her own position and opinion. The Councillor proceeded to read her prepared statement, which included comments about the Appointed Integrity Commissioner's jurisdiction, a statement on the Councillor's opinion on whether municipal employees were protected from harassment by members of Council pursuant to the Code, and at various points, named the identity of the complainant whose complaint led to the July Report.

20. A Point of Order was raised by a member of Council, asking the Appointed Integrity Commissioner to advise on the scope of the submissions the Councillor was permitted to make. The Appointed Integrity Commissioner advised that the *Municipal Conflict of Interest Act*³ provided for a specific exemption to allow the Councillor to speak to the recommendations in the July Report. He further stated that the Councillor was permitted to make submissions on the recommended penalty and remedial measures, but not the factual findings and determinations in the July Report.

21. Despite this Point of Order, the Councillor continued to read her prepared statement. The Mayor interjected to inform the Councillor that, as advised by the Appointed Integrity Commissioner, her comments were to be limited to the recommendations in the July Report. The Councillor indicated she was "getting there."

22. The Councillor then proceeded to make comments about an incident in which the Councillor alleged the CAO failed to deliver quarterly financial statements, and as well as comments about scrutinizing a cost overrun which the Councillor alleged to be contrary to Township policies.

23. Another Point of Order was raised by a member of Council, stating that the Councillor's statement was straying into impermissible subject matters.

24. The Councillor then made comments on the recommendations in the July Report. She took the position that the recommended remedial measure of a communication "blackout" were not authorized by the *Municipal Act, 2001*, stating that her statutory duties trumped any recommendation of the Appointed Integrity Commissioner and decision of Council. The Councillor ostensibly took the position that because the recommended remedial measure was not specifically listed in subsection 223.4(5) of the *Municipal Act, 2001*, Council could not impose it. The Councillor also publicly stated that such remedial measures were "illegal."

25. The Mayor interjected to notify the Councillor that her statement was straying from the subject she was permitted to speak to, asking the Councillor to "wrap things up as quickly as possible."

26. The Councillor indicated that if Council made a decision to adopt the recommended remedial measures, that she would commence a judicial review proceeding against the Township and the Appointed Integrity Commissioner.

³ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.

27. Following the Councillor's statement, the Appointed Integrity Commissioner was afforded an additional opportunity to speak and advise Council on the matter and correct the statements made by the Councillor.

28. Following further discussion, Council voted to accept the recommendations of the Appointed Integrity Commissioner, as amended:

RES-232-2021 Moved by Councillor Densham, Seconded by Deputy Mayor Landry

Be it resolved that the Integrity Commissioner report dated July 8, 2021, be made public by posting on the Township website.
Be it further resolved that the following sanctions be imposed:

- 1) That a communications blackout be imposed against Councillor Villeneuve by prohibiting any email and telephone correspondence to the CAO for a period of nine months.
- 2) All communications to the CAO from Councillor Villeneuve shall be ONLY through the Mayor.
- 3) At Council meetings, any verbal communications to the CAO and staff shall be polite and respectful.
- 4) That Councillor Villeneuve's remuneration be suspended for a period of 45 days.

CARRIED AS AMENDED

(d) The Post

29. Following the Meeting, on August 11, 2021, the Councillor made a public post on her social media page (i.e., the Post), which is purportedly the full statement she intended to make at the Meeting. We understand that the Councillor made the Post because, in her view, she was "denied procedural fairness" at the Meeting due to the interjections by members of Council.⁴

30. The full content of the Post is replicated below:

Greetings to everyone & particularly those who were in attendance during last night's public council meeting or those who have interest in the municipal business as transacted.

Further to the agenda item in respect of a report from the Integrity Commissioner, I have prepared my statement in reply to that report of which I am entitled to do.

I am entitled to have my opinion.

⁴ We do observe, however, that despite several interjections, the Councillor appears to have read her statement (i.e., the Post) in its entirety at the Meeting.

Sadly, I was not permitted to read the entire statement during last evening's Public Council Meeting. In any event, I am posting my entire statement for those of you who heard it and have asked me to do so, and especially so that you may have the opportunity to hear my position in its entirety.

After reading this, if you have any questions, I am happy to talk.

My statement is in response to Mr. Fleming's final report as presented by him here tonight at this open Public Meeting of Council on this date of Tuesday, August 10th, 2021.

Mr. Fleming has presented his final report with the conclusion that I have breached one section of the Code of Conduct for Members of Council.

Although Mr. Fleming has presented such findings and I respect the role of the Integrity Commissioner as mandated by the Township's Code of Conduct, I am likewise entitled to my position and opinions.

I will explain those reasons with you as follows:

The Integrity Commissioner upheld one part of Mr. Calder's complaint: that I was apparently disrespectful in my private communications relating to aspects of his job performance.

In my view, the Integrity Commissioner had no jurisdiction to make this finding.

The Integrity Commissioner's jurisdiction is limited by the statute, namely, the Municipal Act. For this complaint, he is limited to the Code of Conduct. The Code of Conduct only deals with harassment and negative workplace conduct if it offends the Human Rights Code, which is not the allegation here.

The purpose of the Integrity Commissioner's office is not to serve as an arbitrator of workplace complaints. Employees who have concerns about their working conditions have recourse elsewhere, such as under the Township's Workplace Harassment and Violence Policy. This is why I suggest that municipal employees are not listed as potential complainants to the Integrity Commissioner under the Municipal Act.

The Integrity Commissioner had no jurisdiction to make this finding, and as such, it follows this Council has no jurisdiction to impose a sanction.

Mr. Calder appears to believe that negative assessment of his performance is prohibited under the Code of Conduct. The truth is, that neither the Code of Conduct nor legislative prohibitions on harassment insulate employees like the CAO from negative judgments about their job performance.

Fire Prevention Officer

As for Mr. Calder's complaint relating to my comments about the pending resignation of the former Fire Prevention Officer. The facts on this issue are clear.

The holder of an important post, the Fire Prevention Officer, had discussions with the CAO as resigning in June 2020. This information was not communicated to Council at the time, but only 3 months later did Mr. Calder confirm the information after I made inquiries. When confronted with this information, I was alarmed and embarrassed when I learned about the pending resignation months later from a member of the public.

The Fire Prevention Officer is a vital position for the safety of us all residing in North Stormont.

When asked for an explanation about this resignation by a resident, I was caught flatfooted, making both me and, from my perspective, Council generally look unprepared, and like we did not have a good knowledge of Township affairs nor the explanation that resignations can be rescinded was not one that made sense nor one I accepted.

Our Township's business is all about dealing with events that may happen in the future. We need to plan and prepare for them, notwithstanding that conditions may change and they may not come to pass, or may unfold differently. I did not accept this explanation, and I was under no obligation to do so.

As a Councillor, I am entitled to have an opinion on appropriate communication and on what matters should be elevated to Council by staff. The CAO must be prepared to deal with that opinion.

As for the subsequent meeting on September 22, 2020, it was a closed session. I aired my opinion on the matter. The Code of Conduct does not insulate the CAO from having a councillor advise him that he has made an error of judgment, or that his conduct left me looking uninformed and unprepared when asked about the matter by a member of the public.

I was not requesting a public announcement (though clearly the public had some knowledge already). I just wanted to have information available to me that was necessary to me performing my duties as a Councillor.

Mr. Calder also complained about my comments made at the June 9, 2020 Meeting.

At our June 9, 2020 Public Council Meeting, I expressed strong dissatisfaction with the CAO's failure to ensure that quarterly financial statements were delivered as promised. It is impossible for me to do my job as a Councillor if I do not have the information required to do my job.

I also scrutinized a cost overrun which had been incurred, in my view, contrary to standard Township policies.

Financial management is at the heart of our duties as Councillors – and at the heart of the CAO's job.

Council meetings are the appropriate venue for these kinds of issues to be dealt with. And dealing with issues like this is at the heart of my job serving the Township of North Stormont.

PENALTY

Turning to the recommendations of the Integrity Commissioner there are important issues with his recommendations.

Firstly, the report provides for the Council to consider passing a resolution to limit my correspondence to the CAO. This recommendation is conflicting with my duties under the Municipal Act and the Oath of Office I took.

There is no exception under the Act of the Oath which would permit an Integrity Commissioner to limit or alter these statutory obligations.

Simply put, the Integrity Commissioner has no power to recommend such a sanction, nor can Council impose a penalty which prevents me from doing my job.

My statutory obligations trump any recommendation by the Integrity Commissioner and the passing of any resolution by Council to implement such recommendations.

Secondly, the Municipal Act (sections 223.4 (5)) provides for penalties that a municipality may impose on a member of council upon a Commissioner finding a contravention of the code of conduct to be:

1. A reprimand;
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of 90 days.

There is no discretion to impose the sanction of no communication nor a provision permitting the recommendation limiting my communications with the CAO.

Recently, this Integrity Commissioner made a similar recommendation of limiting communication with staff in a matter involving a councillor in the City of Cornwall. Council in that instance did not accept the recommendation of limiting communication as being not appropriate, and I submit the same applies in this situation.

Further on the agenda is a motion recommending two additional sanctions, the same applies there is no authority under the Act to impose such penalties. As such, to do so is improper and illegal.

Once before I was of the view that the sanctions as applied were improper. I sought legal advice on this point and was validated that such cannot be done because the Act prescribes the penalty and provides for no discretion to be exercised beyond the listed sanctions.

In the past, I did not pursue my legal alternatives to have the decision reviewed by the courts. However, this time if any penalty is imposed that does not conform with the provisions of the Act, I will pursue my legal remedies by appealing an improper decision.

Further of note, is what in my view is a double standard and totally unfair situation when another member of Council, Councillor Randy Douglas, was found to have

committed harassment towards the then Fire Chief, to which he received no public disclosure and no sanctions. Yet, when such a finding is made in respect of myself totally the opposite occurs. This type of unfairness is why I maintain accountability and transparency must prevail and in pushing this forward, I am definitely met with opposition.

Accordingly, I would ask my fellow councilmen to apply their same rational to me as they did when determining not to sanction Mr. Douglas for the finding of harassment against him.

When I signed my Oath of Office my commitment to you then, which remains today and going forward, is to represent you with transparency, accountability, integrity, and honesty. I have done that and will continue to do so in spite of the resistance and push back I may get when transparency and accountability is being called into question.

As stated, my attempts to address accountability have been met with resistance and circumvention in what I believe to be completely improper and unacceptable.

I have and will continue to diligently fulfill my legislated mandate of accountability and transparency to ensure and maintain the public trust.

For those wishing for a copy of this statement, I am happy to provide you with one.

Yours Truly,

Roxane Villeneuve

Councillor - Township of North Stormont

31. Members of the public subsequently engaged in a series of comments on the Post, which generally supported the Councillor's statements.

(e) Subsequent Events

32. Following the Meeting and Post, the Township's Director of Finance sent an email to all members of Council regarding misleading and inaccurate information contained in the statement by the Councillor.

33. The email verified when quarterly financial reports had actually been delivered to Council, contrary to the Councillor's statement, and clarifying that it was not the Township's policy that Council was required to approve all any and all costs that exceeded a particular budget.

34. The email also requested that the Councillor revise or provide clarification on the Post so that residents were not misled into believing that the Township's financial management was incompetent.

35. The Post was never revised or amended, as requested by the Director of Finance.

36. We are also aware that the Councillor has commenced an application for judicial review against the Appointed Integrity Commissioner in respect of the July Report. As of writing this Report, no decision has been pronounced by a court to quash the July Report.

VI. THE POSITION OF THE PARTIES

A. Position of the Complainant

37. The Complainant alleges that the Councillor's conduct and statements made at the Meeting and in the Post contravene several sections of the Code, detailed below:

i. Allegation 1: Section 2 – Foster Respect for Decision-making Process

38. The Complainant alleges that the Councillor contravened Section 2 by issuing the Post without any accompanying discussion of Council's ultimate decision, and despite being advised by the Appointed Integrity Commissioner of the inaccuracies in her statement. The Complainant alleges that this conduct not only failed to foster respect for the decision-making process, but actually maligned it through misinformation. The Councillor's conduct is further exacerbated by her "liking" comments which openly supported her defiance.

39. The Councillor is alleged to have contravened Section 2 of the Code by repeating her assertion, based on an allegedly mistaken interpretation of the Code, that the Appointed Integrity Commissioner had no jurisdiction to consider and assess the complaint which was the basis of the July Report.

40. The Complainant also alleges that the Councillor's statement was misleading in that it stated she had the right to assess the CAO's performance, when the true issue was the manner in which she expressed her dissatisfaction with the CAO's performance.

41. Lastly, the Complainant alleges the Councillor's statement that the remedial measures recommended in the July Report were "illegal", despite the advice of the Integrity Commissioner, were also misleading.

ii. Allegation 2: Section 1 – Release of Confidential Information; Complaint Process, Section 8

42. The Complainant alleges that the Councillor contravened her obligations with respect to confidential information by publicly stating, during the Meeting and in the Post, the identity of the complainant who initiated the investigation underlying the July Report.

iii. Allegation 3: Section 5 – Reputational Management; Interpersonal Behaviour, Section 4 – Relationship with Staff

43. The Complainant alleges that the Councillor's statement at the Meeting and in the Post contained false information that had the potential to harm the reputation of the CAO and the office of the Appointed Integrity Commissioner.

44. The Complainant takes particular issue with the Councillor's assertion that quarterly financial statements were not provided to Council in the correct time, and that excess costs were not presented to Council for approval. Despite an email from the Township's Director of Finance correcting these inaccuracies and requesting that the Councillor revise the Post, the Councillor neglected to correct the record.

45. The Complainant also takes the position that the Councillor's statement during the Meeting and the Post expressed an opinion that the CAO required "discipline" without any detail, and without consulting Council about making a public statement about the assessment of the CAO's performance. The Complainant alleges that these statements misrepresent Council's assessment of the CAO's performance, and are potentially harmful to his professional reputation. The Complainant also advises that Council has subsequently provided the CAO with a "very positive annual review."

46. The Complainant also takes the position that, despite the Councillor's application for judicial review in respect of the July Report, our inquiry should proceed on the basis of a presumption of regularity in both the July Report and Council's decision on the matter.⁵

B. Position of the Councillor

47. The Councillor, through legal counsel, takes the position that she did not contravene the Code, as alleged in the Complaint.

i. Preliminary Matter

48. As a preliminary matter, the Councillor takes the position that the main thrust of the Complaint is to impede the Councillor's ability to exercise "her most fundamental and essential right as an elected member of Council to speak freely and make any statements she sees fit." In the Councillor's submission, the Complaint is an attempt to "muzzle" the Councillor and "thereby limit her ability to exercise such an essential right," with the effect of preventing her from fulfilling her role as an elected official.

49. The Councillor notes (as we have observed in this Report) that her submissions to Council were interrupted several times by members of Council and also the Appointed Integrity Commissioner on account of what the Councillor asserts is an incorrect legal conclusion.

50. The Councillor asserts that the Appointed Integrity Commissioner's opinion that the Councillor was only entitled to make submissions on the recommended penalty (as opposed to the findings of fact in the July Report) were wrong at law. The Councillor refers to the Divisional Court's decision in *Magder v. Ford*,⁶ quoting a passage from the judgment dealing with whether the obligations of a member of council under the *Municipal Conflict of Interest Act* are engaged where council considers a report from an integrity commissioner. That passage stands for the proposition that a member does not have a pecuniary interest unless there is some real likelihood that a financial penalty is contemplated. We observe that this case was decided prior to amendments to the *Municipal Conflict of Interest Act* which expressly permit a member to speak to a proposed monetary penalty without otherwise violating the statute.⁷

51. The Councillor submits that the Divisional Court's reasons in *Magder v. Ford*, coupled with subsection 5(2.1) of the *Municipal Conflict of Interest Act*, give "a clear right to a member of Council found to be in breach of the *Code of Conduct* by an Integrity Commissioner to respond

⁵ Municipal decisions attract a strong presumption of validity: *Friends of Lansdowne Inc. v. Ottawa (City)* (2012), 98 M.P.L.R. (4th) 1 (Ont. C.A.) at para. 14; *114957 Canada Ltée (Spray-Tech, Société d'arrosage) v. Hudson (Ville)*, (2001), 19 M.P.L.R. (3d) 1 (S.C.C.) at paras. 21 and 26.

⁶ *Magder v. Ford* (2013), 7 M.P.L.R. (5th) 1, at para. 42 (Ont. Div. Ct.).

⁷ See s. 5(2.1) 1 of the *Municipal Conflict of Interest Act*.

before Council to the Integrity Commissioner's report," which, the Councillor's circumstances, "obviously included addressing the jurisdiction of the Integrity Commissioner, their findings of a breach and the recommended penalties."

52. The Councillor also raises the various interruptions made during her statement to Council, which she alleges denied her of her right to be heard and treated in a procedurally fair manner. This, in turn, prompted her to publish the Post.

53. The Councillor submits that while she is bound by the Code and the complaint procedure, the process must not be used to "muzzle" councillors, impede their duties as elected officials, or their right to be heard before Council when it considers a report from the integrity commissioner.

ii. Allegation 1: Section 2 – Foster Respect for Decision-making Process

54. The Councillor denies that she contravened the Code by making the Post without any accompanying discussion supporting the decision of Council. The Councillor submits that she had no obligation of fair representation, and gave more than sufficient context in the Post.

55. The Councillor further submits that she clearly prefaced the Post by stating that this was her own opinion and point of view, which includes an entitlement to disagree with the Appointed Integrity Commissioner on points of law and his findings of fact. The Councillor submits that this is precisely what her statement and the Post contained, and that elected officials need to have an unfettered ability to communicate with constituents on relevant issues.

iii. Allegation 2: Section 1 – Release of Confidential Information; Complaint Process, Section 8

56. The Councillor submits that she did not breach her confidentiality obligations under the Code and the Complaint Process. The Councillor submits that by the time she made her statement at the Meeting, which, by her own submission, she prepared in advance, and the Post, the identity of the complainant underlying the July Report had already been publicly released. Furthermore, the Councillor submits that confidentiality had already been waived during the Meeting by another member of Council, who stated: "I also want to thank the complainant for issuing a complaint. Being subjected to abusive communication and having to report that, having to defend yourself and lastly to have that aired in a public forum, it takes courage." The Councillor asserts that the statement by the member of Council effectively revealed the identity of the complainant, and that this information was no longer "confidential."

57. The Councillor also submits that the Complainant's position that she should not have publicly released a confidential exchange between her and the Appointed Integrity Commissioner is an unduly restrictive interpretation of the Code which would not allow her to fully respond to a report from the Appointed Integrity Commissioner nor to fully and effectively represent her constituents.

iv. Allegation 3: Section 5 – Reputational Management; Interpersonal Behaviour, Section 4 – Relationship with Staff

58. Lastly, the Councillor submits that she did not contravene her obligations under the Code with respect of her relationship with Township staff.

59. The Councillor asserts that she is entitled to disagree with the Appointed Integrity Commissioner and to explain her reasoning for doing so. The Councillor also takes the position that simply because the Appointed Integrity Commissioner states his opinion on the law does not necessarily mean that it is correct. The state of the law is open for debate and discussion in the context of this process.

60. The Councillor submits that at no time did she intend to harm the reputation of the CAO or the Appointed Integrity Commissioner, but rather, she only sought to defend herself.

61. Lastly, with respect to the email from the Director of Finance, the Councillor submits that at no point during her statement at the Meeting or in the Post did she mention the Township's Finance Department, nor did she state, implicitly or explicitly, that the Township's financial management is incompetent. Instead, the Councillor takes the position that she was explaining her reasoning why she questioned the CAO about financial matters, and had no obligation to "alter" her statement upon receipt of the Director of Finance's email.

62. The Councillor also takes the position that any allegations of defamation are baseless. In any event, the Councillor claims that her statements, being made during a quasi-judicial process, are protected by the defence of privilege.

VII. PRELIMINARY ISSUE

63. As a preliminary issue, the Councillor objected to the non-disclosure of the identity of the Complainant through our investigation process.

64. In correspondence dated November 12, 2021, the Councillor, through her legal counsel, requested that she be provided with the identity of the Complainant. In her view, this information would enable her to raise any issues of "standing, credibility, good faith and conflict of interest of the complainant."

65. In correspondence, dated November 18, 2021, we wrote to counsel for the Councillor advising that the identity of the complainant would not be disclosed to her. We relied on our statutory duty of confidentiality pursuant to subsection 223.5(1) of the *Municipal Act, 2001*, and indicated that the identity of the Complainant was not germane to any of the allegations in the Complaint, which dealt with the conduct of the Councillor during an open meeting of Council and a public social media post. As such, we advised that the fact of the identity of the Complainant was not required in order for the Councillor to respond to the substance of the Complaint.

66. In her Response, through her counsel, the Councillor again asserted that she was entitled to obtain the identity of the Complainant. The Councillor referred to two cases which set the standard of procedural fairness for a member who is the subject of an integrity commissioner's investigation: *Dhillon v. The Corporation of the City of Brampton*,⁸ and *DiBiase v. Vaughan (City)*.⁹ Those cases stand for the proposition that, as a matter of procedural fairness, a member is entitled to disclosure of the substance of the complaint made against them with sufficient particulars to make a meaningful response to the allegations, and a fair opportunity to respond to the substance of the complaint. We do not disagree that this is the standard of fairness that applies to this matter.

⁸ *Dhillon v. The Corporation of the City of Brampton* (2021), 19 M.P.L.R. (6th) 104 (Ont. Div. Ct.).

⁹ *DiBiase v. Vaughan (City)* (2016), 55 M.P.L.R. (5th) 173 (Ont. Div. Ct.).

67. The Councillor cites the following passage of the Divisional Court’s reasons (at para. 57) in *Dhillon v. The Corporation of the City of Brampton*:

The Councillor was given the substance of the case and provided with sufficient particulars to enable him to respond to the allegations of the incident. He knew who was making the complaint, what the allegations were, the circumstances regarding date, time, and location, a transcript of the audio recording, and an opportunity to play the audio recording. [emphasis added]

68. The Councillor presents this case for the proposition that she is entitled to know who made the Complaint.

69. In addition, the Councillor states that the Complainant’s identity is crucial in determining whether they had standing to make the Complaint pursuant to subsection 223.4(1) of the *Municipal Act, 2001*, and also to potentially challenge their “credibility and good faith.”

70. We have reviewed the Councillor’s submissions on her entitlement to disclosure of the identity of the Complainant. We considered the matter and the authorities provided by legal counsel in detail.

71. For the reasons set out below, we disagree that the Councillor is entitled to this information as a matter of procedural fairness in the context of this complaint and investigation.

72. Subsection 223.5(1) of the *Municipal Act, 2001* imposes an overarching duty of confidentiality on an integrity commissioner “with respect to all matters that come to his or her knowledge in the course of” an investigation, except as otherwise permitted by Part V.1 of the *Municipal Act, 2001*.

73. An integrity commissioner may disclose information in a report of findings if, in his or her sole discretion, it is necessary for the purpose of that report.¹⁰ The courts have held that the determination as to what information is “necessary” to disclose is conferred upon the integrity commissioner alone.¹¹ This provision enables an integrity commissioner to take into account specific local concerns associated with disclosure that may require confidentiality or the protection of informants’ identities when deciding how much information must be disclosed.¹²

74. In *DiBiase v. Vaughan (City)*, the Divisional Court considered the duty of procedural fairness in the context of an integrity commissioner’s investigation into a municipal councillor’s attempt to influence a procurement process. Again, we do not disagree with the Councillor’s submission as to the relevant standard of procedural fairness described in this case.

75. In finding that the integrity commissioner had afforded the member of council a procedurally fair investigation, the Divisional Court referred to an oft-cited statement by Lord Denning on the duty of fairness on investigative bodies:

¹⁰ *Municipal Act, 2001*, ss. 223.6(2) and 223.5(2.3)(c).

¹¹ See *Watson v. The Corporation of the Municipality of Stirling-Rawdon* (2021), 14 M.P.L.R. (6th) 92, at para. 14 (Ont. Div. Ct.).

¹² *Ibid.*, at para. 19.

An administrative body that investigates and makes recommendations must disclose the substance of the allegations. The Supreme Court of Canada in two cases affirmed the following statement by Lord Denning in *Selvarajan v. Race Relations Board* [citation omitted]:

The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only. [citations omitted]

...

The Integrity Commissioner was not, in the words of Lord Denning in *Selvarajan*, required to provide the applicant with "every detail of the case against" him. The Integrity Commissioner was not required to "name [her] informants". It was sufficient "if the broad grounds [were] given". [emphasis added]¹³

76. The Councillor did not refer us to this passage of the Divisional Court's decision in *DiBiase v. Vaughan (City)*. Instead, she places reliance on how the Divisional Court (differently constituted) applied the standard of fairness in *Dhillon v. The Corporation of the City of Brampton*. That case has a very different context than the Complaint before us.

77. In *Dhillon v. The Corporation of the City of Brampton*, the subject matter of the complaint dealt with allegations of sexual assault and interpersonal violence that occurred in a private setting during a city-endorsed trade mission to Turkey. In her investigation, Brampton's integrity commissioner disclosed the identity of the complainant to the councillor. However, the allegations in that case dealt with sexual assault against that person in a hotel room (i.e., an interpersonal altercation in a private setting). As such, the identity of the person making the allegations was entirely relevant in order for the councillor to respond to facts of the alleged altercation.

78. In the present case, the Complaint concerns conduct that took place entirely in a public setting (i.e., an open meeting of Council that was livestreamed to the public), and a public post on social media. There was no immediate "victim" in the sense that some interpersonal altercation was alleged. Everyone who watched the live stream of the Meeting or who read the Post could have observed the Councillor's conduct. What does it matter who initiated the complaint process? The identity of the Complainant is not germane to whether these facts actually occurred, or how they are to be understood in light of the Councillor's ethical obligations under the Code. Nor is it relevant whether the complainant is a member of Council insofar that they may have a supposed "conflict of interest" when the matter comes before Council. Those facts are not necessary to enable a member subject to an investigation to make a meaningful response to the allegations.

79. We also do not accept the Councillor's submission that disclosure of the identity of the Complainant is necessary to advance a "defence" that they lacked standing to make the Complaint, or to challenge their "credibility and good faith." In our view, there is no reason whatsoever to believe that the person who filed the Complaint lacked standing to do so. The

¹³ *DiBiase v. Vaughan (City)*, *supra* note 9, at paras. 146 and 149.

complaint mechanism under the *Municipal Act, 2001* is not restricted to any class of persons. This is unlike, for instance, subsection 223.4.1 of the *Municipal Act, 2001*, which requires a person alleging a contravention of the *Municipal Conflict of Interest Act* to be an “elector...or person demonstrably acting in the public interest.”¹⁴

80. In addition, the Complaint Process provides that where the Integrity Commissioner (not a member of Council) determines a complaint is without merit or frivolous and vexatious, the Integrity Commissioner has independent discretion as to whether to terminate the inquiry into the complaint. Such a determination does not automatically terminate an investigation, nor does it serve any exculpatory purpose under the Code. This cannot be said to be a “defence” at all.

81. Lastly, the identity of the Complainant is not necessary to assess credibility or relevance of any evidence obtained throughout our investigation process. Again, the conduct complained of in this case occurred during an open meeting of Council, and through a public social media post. Other than initiating an independent investigation process, the Complainant has not provided any specific evidence that exists independently of the video recording of the Meeting and the Post. “Credibility” is not something that needed to be tested in these circumstances.

82. In conclusion, we have determined that the Councillor was not and is not entitled to disclose the identity of the Complainant through our investigation process. This is not a requirement of law nor is it necessary to afford the Councillor a procedurally fair process.

VIII. FINDINGS

83. We have carefully and fully considered the submissions of the parties and the evidentiary record from our investigation. For the reasons set out below, based on a preponderance of the evidence and on a balance of probabilities, we find that the Councillor has contravened the Code in the manner alleged in Allegations 2 and 3. We also find that the Councillor did not contravene the Code in the manner alleged in Allegation 1.

1. Allegation 1: Section 2 – Foster Respect for Decision-making Process

84. The Councillor did not contravene Section 2 of the Code as alleged in the Complaint.

85. Section 2 of the Code requires that all members of Council “accurately and adequately communicate the attitudes and decisions of the Council, even if they disagree with Council’s decision, such that respect for the decision-making processes of Council is fostered.”

86. The purpose of this section of the Code is not to strictly regulate factually (or legally) incorrect statements made by a member of Council. Rather, this provision requires that members of Council not misrepresent or malign a decision which has been made by Council.

87. In our review and consideration, the content of the Councillor’s statement at the Meeting and the Post did not contravene this standard. While the content of her message can be generally characterized as a difference of opinion or disagreement with the findings of fact of the Appointed Integrity Commissioner, they are no way an inaccurate or inadequate recounting of any decision made by Council.

¹⁴ *Municipal Act, 2001*, s. 223.4.1(2).

88. We do not agree with the Complainant's assertion that the Councillor contravened Section 2 by making the Post without any accompanying information on the decision made by Council on the July Report. On a close review of the Post, there is nothing that would leave a reasonable reader to conclude or infer that Council made some decision which was somehow opposite to the one it did. In fact, much of the Post speaks to the Councillor's disagreement with what happened, being her second suspension of remuneration.

89. In addition, while the content of her message is largely characterized as disagreement with the Appointed Integrity Commissioner and his findings in the July Report, the pertinent portion of the Section is not aimed at his report and determinations. That provision pertains to the decisions of Council, which, in our review of the statement at the Meeting and the Post, were not inaccurately or inadequately reported on.

90. In our view, Allegation 1 of the Complaint is not sustained.

2. Allegation 2: Section 1 – Release of Confidential Information; Complaint Process, Section 8

91. The Councillor contravened Section 1 of the Code as alleged in the Complaint.

92. Section 1 of the Code deals with a member's obligations in respect of confidential information. All codes of conduct are required to include obligations on confidential information.¹⁵

93. At its crux, Section 1 of the Code requires that a member not misuse "confidential information," which includes unauthorized disclosure to third parties (i.e., the public).

94. Section 8 of the Complaint Process deals with the confidentiality of the integrity commissioner's investigation process. It states that all persons involved in the investigation shall treat all matters discussed as confidential, and that only the integrity commissioner has authority to determine what information should be released. Unlike some codes of conduct, the Code does not specifically state whether Section 8 of the Complaint Process is intended to be an independently enforceable obligation of a member.

95. The Councillor does not deny that she publicly stated the identity of the complainant behind the July Report in her statement during the Meeting and in the Post. Instead, she claims some level of justification, given that another member of Council had made a statement which implied who was the complainant.

96. As discussed earlier in our Report, the identity of a person filing a complaint is protected by section 223.5 of the *Municipal Act, 2001*. Section 8 of the Complaint Process also protects the confidentiality of "all matters" discussed during the course of an investigation. This includes the identity of the person making the complaint. The substance of the Councillor's submissions on Allegation 2 also implicitly concede that this information was indeed confidential.

97. We do not accept the Councillor's submission that the information somehow lost its confidentiality because another member of Council spoke to the matter. Discussion by one member of Council of confidential information cannot constitute a "waiver" of confidentiality. Ordinarily, Council as a whole is the only entity that can make a decision to expressly waive

¹⁵ See O. Reg. 55/18: *Codes of Conduct – Prescribed Subject Matters*; passed pursuant to s. 223.2(4) of the *Municipal Act, 2001*.

confidentiality, and only by a majority vote at a duly-constituted meeting. That did not occur here. Obligations of confidentiality do not end simply because one person unilaterally discloses information which should otherwise be protected. If that were the case, the confidentiality obligations of a member of Council would be meaningless and easily defeated by a single instance of unauthorized disclosure.

98. In addition, in this specific context, the only person who could have possibly “waived” the confidentiality in this information was the Appointed Integrity Commissioner. Pursuant to subsection 223.6(2) of the *Municipal Act, 2001* and Section 8 of the Complaint Process, the Appointed Integrity Commissioner has authority to disclose such information as is necessary for the purpose of a report. The July Report, however, did not expressly disclose the identity of the person who made the complaint in that matter.

99. The Councillor released confidential information that she was not permitted or authorized to disclose. Her disclosure of the identity of the CAO as the complainant seems to be an example of a continuation of the open animosity she has demonstrated against Township staff.

2. Allegation 3: Section 5 – Reputational Management; Interpersonal Behaviour, Section 4 – Relationship with Staff

100. The Councillor contravened Section 5 “Reputational Management” and Section 4 “Relationship with Staff” as alleged in the Complaint.

101. Section 5 “Reputational Management” prohibits a member of Council from taking “any action” of falsehood, slander or defamation of character (i.e., not the civil law action of defamation), against a member of Township staff.

102. Furthermore, Section 4 “Relationship with Staff” seeks to preserve a collegial, professional and functional relationship between individual members of Council, Council as a whole, and members of Township staff. Members have a general duty to respect the role of Township staff. In addition, the Code expressly prohibits the following conduct:

- maliciously or falsely injuring the professional or ethical reputation of Township staff;
- compelling Township staff to engage in partisan political activities, and making reprisals for staff refusals of same; and
- using authority or influence to intimidate, threaten, coerce, commence or influence staff with the intent of interfering with staff duties.

103. Through her statement at the Meeting and in the Post, the Councillor attempted to “explain her side of the story” underlying the July Report, citing some entitlement to make submissions on the factual findings of the Appointed Integrity Commissioner. Whether based on some misunderstanding or not, the Councillor was wrong that she was entitled to challenge the findings of fact of the Appointed Integrity Commissioner at the Meeting.

104. The framework of the *Municipal Act, 2001* clearly sets out the different roles and responsibilities of an integrity commissioner and of council. The integrity commissioner, on a complaint, investigates the alleged conduct, makes findings of fact and law, and reports to council

the conclusions of its investigation.¹⁶ The limited role of council is also made explicit in the *Municipal Act, 2001*: council considers the report, and makes a decision about an appropriate penalty¹⁷ and any remedial measures or corrective actions.

105. The Divisional Court in *Chiarelli v. Ottawa (City)* commented on the role of council as follows:

In his written submissions, counsel for the Councillor argued that Council performs an adjudicative function in determining whether a fellow Councillor breached the *Code of Conduct* and then, if necessary, imposing a penalty. This is incorrect. Under the statutory scheme, it is the Commissioner who, following an investigation, determines if the complaint is sustained. Where the complaint is sustained, in whole or in part, the Commissioner is required to report to Council with his findings and any recommended corrective action. Council's duty is to "consider and respond to the report." In this case, City Council voted to receive the Report and to impose the sanctions recommended by the Commissioner.¹⁸

106. Council is given no authority other than to receive the Appointed Integrity Commissioner's report and make a decision to impose or not impose a penalty; the Councillor's entitlement to make submissions must be understood as being limited in this context to making submissions about a proposed penalty. Her opportunity to make submissions on the proposed findings of fact was afforded during the Appointed Integrity Commissioner's investigation – not at the time of Council's consideration of the July Report.

107. The Councillor's statements during the Meeting and in the Post must be understood in this setting, and in the context of the repeated cautions from the Appointed Integrity Commissioner and the Mayor, as Chair of the Meeting. Despite these warnings, the Councillor proceeded undeterred to read a prepared statement which included the following:

- comments alleging that the Councillor was entitled to her positions and opinions, notwithstanding that the Appointed Integrity Commissioner had previously found those to be transgressive of the Code;
- a comment that the CAO was required to accept negative feedback on his performance directly from the Councillor in a manner that was abusive, disrespectful and harassing;
- a comment that the CAO had failed to present quarterly financial statements, which somehow impeded the Councillor's ability to "do her job";
- a statement that, in the Councillor's view, a cost overrun had been incurred contrary to Township practices;
- comments which would tend to give the impression that the CAO had not performed financial management responsibilities in accordance with the accepted standard of practice.

¹⁶ See *Municipal Act, 2001*, s. 223.4, 223.6(2).

¹⁷ *Municipal Act, 2001*, s. 223.4(5).

¹⁸ *Chiarelli v. Ottawa (City of)*, 2021 ONSC 8256 at para. 148 (Div. Ct.).

108. Furthermore, in spite of an email from the Director of Finance pointing out that the Councillor's statements were plainly false and baseless, the Councillor did nothing to correct or revise such statements.

109. Considered in their totality, the Councillor's actions contravene Section 5 - "Reputational Management" and Section 4 - "Relationship with Staff". The crux of the Councillor's comments was an attempt to publicly criticize the CAO for what the Councillor viewed as perceived performance issues. Whether a *bona fide* performance issue or not, the Code makes clear that members of Council are not to engage in any action which would injure the professional reputation of Township staff, or engage in action of falsehood or defamation of character of Township staff, in recognition of the power imbalance between the executive and administrative arms.

110. It is not the role of a member of Council to publicly "name and shame" municipal staff for perceived performance issues in order to act in the best interests of constituents and pursue accountability. In fact, the opposite is true. By publicly airing grievances in a disrespectful and unprofessional manner, the public loses trust in the institution of municipal government, which is hard-earned.

111. If the Councillor had genuine concerns with the performance of the CAO, there would be several alternative options at the Township's avail which would have enabled the Councillor to raise these issues in a non-transgressive manner. Council could convene a closed meeting to discuss the matter, or could engage in a confidential performance review process. In this way, the application of the Code in this instance does not unduly restrict or impede the Councillor's ability to express her concerns; it only requires that she do so in a professional, non-public and non-derogatory manner.

112. The content of the Councillor's statement can only be understood as a continuation of her pattern of Code-offensive comments respecting the performance of Township staff. She has already been the subject of two separate reports of findings from the Appointed Integrity Commissioner. She has twice been sanctioned for same type of conduct, and yet it continues.

IX. CONCLUSIONS

113. For all of the reasons set out above, it is our determination that the Councillor has contravened the Code in the manner alleged in Allegations 2 and 3. We conclude that the Councillor did not contravene the Code as alleged in Allegation 1.

X. RECOMMENDATIONS

114. In view of our finding that the Councillor has contravened the Code, we recommend that Council impose the penalty of a reprimand on the Councillor and a suspension of remuneration of sixty (60) days for her conduct pursuant to subsection 223.4(5) of the *Municipal Act, 2001*.

115. The Councillor has twice been determined to have contravened the Code for her action respecting Township staff. She has twice been sanctioned, with an escalating response in each instance. In these circumstances, a continuation of the Councillor's behaviour, engages the principle of progressive discipline. As such, we recommend that a penalty of a suspension of remuneration for a period of sixty (60) days is appropriate for purposes of specific deterrence and to maintain public confidence in the Township's accountability and ethical framework.

116. Based on our investigation, it is also clear that the Councillor fundamentally misunderstands how the Code is administered and enforced. It is our view that the Councillor miscomprehends the role of Council in considering a report from the integrity commissioner, including the permitted scope of submissions that may be made. Whether based on a misunderstanding or a deliberate alternative interpretation, the Councillor has also challenged the legality of Council's ability to impose "remedial measures", (i.e., measures taken in addition to the statutory penalties of the *Municipal Act, 2001*), despite such measures being acceptable and entirely within Council's broad statutory authority to deal with accountability and transparency.

117. In our view, this matter was conclusively addressed by the Divisional Court in *Magder v. Ford*¹⁹ when it held that a municipality is not precluded from imposing remedial measures or corrective actions to carry out the objectives of its code of conduct. The Ontario Superior Court in *Altmann v. Whitchurch-Stouffville (Town)*,²⁰ indicated that the imposition of remedial measures or corrective actions are valid provided that they not be implemented for punitive purposes. These principles were recently affirmed by the Divisional Court in *Dhillon v. The Corporation of the City of Brampton*,²¹ which upheld remedial measures imposed by the council in that case. To say that remedial measures are somehow "illegal," or to suggest that the jurisprudence on this specific topic is unsettled is plainly wrong.

118. The Councillor is strongly urged to self-educate herself on these matters in order that she may better understand the relationship between Council and the Appointed Integrity Commissioner, and to foster a more cooperative and effective relationship among members of Council and with the Appointed Integrity Commissioner.

119. Pursuant to the *Municipal Conflict of Interest Act*, the Councillor is entitled to make submissions on the Recommendations in this Report to Council and she can participate in any discussion pertaining to the Recommendation but she is not entitled to vote on any questions in respect of the matter.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarini



John George Pappas

Delegated Integrity Commissioner for the Township of North Stormont

Dated this 27th day of June, 2022

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¹⁹ *Magder v. Ford*, *supra* note 6, at para. 67.

²⁰ *Altmann v. The Corporation of the Town of Whitchurch-Stouffville* (2018), 81 M.P.L.R. (5th) 1 at paras. 39 and 49 (Ont. S.C.J.).

²¹ See *Dhillon v. The Corporation of the City of Brampton*, *supra* note 8, paras. 86-99.