



**The Corporation of the City of St. Catharines
CITY COUNCIL AGENDA
Regular, Monday, January 18, 2021
Electronic Participation, 6:00 PM**

As part of the City's commitment to safety during the COVID-19 pandemic, this meeting of Council will be held electronically.

This Meeting may be viewed online at www.stcatharines.ca/youtube

Public Comments: The public may submit comments regarding agenda matters to the Office of the City Clerk by contacting clerks@stcatharines.ca by Monday, January 18, 2021 before Noon. Comments submitted will be considered as public information and entered into public record.

Electronic Delegations: Those wishing to speak to an item on the agenda must complete the [City's Electronic Delegation Form](#) by Sunday, January 17, 2021 before 11:59 p.m. and attend a test session with City staff on Monday, January 18, 2021 at 10 a.m.

His Worship Mayor Walter Sendzik takes the Chair and opens the meeting

- 1. Mayor's Report**
- 2. Adoption of the Agendas**
- 3. Declarations of Interest**
- 4. Adoption of the Minutes (Council and General Committee)**
 - 4.1 Regular Council, Minutes of [December 14, 2020](#)
 - 4.2 General Committee, Minutes of [December 14, 2020](#)
 - 4.3 Special Meeting of Council, Minutes of [December 22, 2020](#)
- 5. Resolve into General Committee**

Council will proceed to General Committee Agenda Item 1 - Motion to Move Reports on Consent
- 6. Public Meetings Pursuant to Planning Act and Public Notice By-Law**

7. Special Presentations

- 7.1 John Mascarin, Partner, Aird & Berlis LLP
Integrity Commissioner for the City of St. Catharines

8. Resolve into General Committee

Council will proceed to General Committee Agenda Item 3 - Discussion Reports

9. Motion Arising from In-Camera Session

10. Motion to Ratify Forthwith Recommendations

11. Motions

- 11.1 Removing Councillors for Egregious Offences
Councillor Miller will present the following motion:

WHEREAS the City of Ottawa's Integrity Commissioner found that a Member of Ottawa City Council engaged in "incomprehensible incidents of harassment" involving job candidates and staff; and

WHEREAS there is not currently ways and means to have a Member of Council's seat vacated for serious misconduct; and

WHEREAS as Members of Council we are subject to a Code of Conduct and have previously committed to hold ourselves to a higher standard;

THEREFORE IT BE RESOLVED that Council direct the Mayor in consultation with the City Clerk and the City Solicitor to write to the Honourable Steve Clark, Minister of Municipal Affairs and Housing, seeking revisions to the Municipal Act, 2001 that would provide for the vacating of the seat of a member of council who has been found on clear and convincing evidence to have committed serious misconduct, including any definitions necessary for the implementation of such a provision.

12. Call for Notices of Motion

13. Report Requests

- 13.1 **Loitering By-laws**
Councillor Miller will request the following report:
That staff repeal / review and update the City's loitering by-laws and report back to Council.

13.2 **Discarded Shopping Carts**

Councillor Townsend will request the following report:

That staff be directed to prepare a report, to be returned in the Second Quarter of 2021, providing alternative solutions for holding retailers financially responsible for shopping carts discarded throughout city neighbourhoods and roads.

14. By-laws

14.1 Reading of By-Laws

15. Agencies, Boards, Committee Reports

15.1 Minutes to Receive:

- Arts and Culture Advisory Committee, meeting of [November 25, 2020](#)
- Public Art Advisory Committee, meeting of [March 10, 2020](#); [July 14, 2020](#); [October 13, 2020](#); [November 10, 2020](#); and [December 08, 2020](#) (Draft)
- Recreation Master Plan Advisory Committee, meeting of [December 3, 2020](#) (Draft)
- Rodman Hall Task Force, meeting of [February 19, 2020](#) (Draft)
- Surplus Lands Development Task Force, meeting of [December 16, 2020](#) (Draft)
- Transportation Advisory Committee, meetings of [November 12, 2020](#); [December 7, 2020](#); and [December 10, 2020](#) (Draft)

15.2 Motion arising from Minutes of Surplus Lands Development Task Force Meeting of December 10, 2020

That Council direct the Surplus Lands Development Task Force to review the Queen Elizabeth Centre (2 Facer St.) and the Robertson School (85 Church St.) properties; and

That staff be directed to prepare information regarding the use of these properties, age of the buildings, and any partnerships or users in those buildings.

15.3 Report Request Arising from Minutes of Social Sustainability Pillar Meeting of November 24, 2020

That Council request a report from staff on the current protections in place to deal with harassment directed at Mayor and members of Council and the resources it would require to provide further support to Mayor and members of Council who are subject to harassment, intimidation and threats.

15.4 Report Request Arising from Minutes of Social Sustainability Pillar Meeting of November 24, 2020

That Council direct staff to produce a report on amending Facility and Design Standards (FADS) in the following sections:

- Section 4.2.7 Universal Washrooms
 - That a lift and lift ceiling track be provided in all universal washrooms, that takes the user from the change table to the toilet within that universal washroom, where possible.
 - That at least one universal washroom be provided in all public buildings and assembly buildings, in addition to any accessible public use or common use toilets regardless of the number of common or public use washroom facilities containing toilets.
- Section 4.5.2 Outdoor Recreational Facilities – Playgrounds
 - That a paved pathway (made of hard, smooth materials that do not separate under pressure) connect playgrounds to the main sidewalk and/or parking lot and/or main access area for that play space, thereby creating an accessible route.
 - An accessible swing be provided.
 - A minimum of three 'at grade' play components be provided as a standard.
 - That partially ramped portions of playground structures be incorporated in the design of the play space to foster and encourage inclusion in play in city wide parks, and where possible in neighbourhood parks.

15.5 Board Updates from Council Representatives

16. Adjournment



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INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT COMPLAINT – 2020-03 COUNCILLOR MAT SISCOE

SUMMARY

A formal complaint was filed with the Office of the Clerk of The Corporation of the City of St. Catharines (the “**City**”) on September 18, 2020 (the “**Complaint**”). The Complaint alleges that Councillor Mat Siscoe (the “**Councillor**”), a member of Council for the City (the “**Council**”), contravened Section 10.0 of the City’s Code of Conduct for Members of Council, Local Boards and Advisory Committees (the “**Code**”).

The Complaint alleges that the Councillor became involved in a City enforcement decision regarding certain landscaping boulders placed into the municipal boulevard adjacent to a residential property on account of a personal relationship with a City resident, and that his actions constitute an improper use of influence in contravention of Section 10.0 of the Code.

APPOINTMENT & AUTHORITY

Aird & Berlis LLP was appointed as Integrity Commissioner for the City and its local boards pursuant to subsection 223.3(1) of the *Municipal Act, 2001*¹ on January 28, 2019 by By-law No. 2019-13.

The Complaint was validly filed. As such, we have reviewed the Complaint in accordance with our authority as Integrity Commissioner pursuant to the Code and with the process for hearing complaints as set out in the City’s Complaint Protocol..

CODE PROVISIONS AT ISSUE

The Complaint alleges that the Councillor has contravened Section 10.0 of the Code:

10.0 Improper Use of Influence

- 10.1 A Member shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.
- 10.2 A Member shall not use the status of their position to influence the decisions of another person to the private advantage or non-pecuniary interest of themselves, their parent, children or grandchildren, spouse, or friends or associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves.

¹ S.O. 2001, c. 25.

REVIEW OF MATERIALS & INVESTIGATION

In order to prepare this Report, we have undertaken the following steps:

- Review of the Complaint and all attachments and materials referred to therein;
- Review of the Councillor's response, dated October 22, 2020, and all attachments and materials referred to therein;
- Review of the Complainant's reply, dated November 4, 2020;
- A telephone interview with one key witness who had direct involvement in the matters dealt with in the Complaint; and
- Review of relevant City by-laws and policies.

This is a report following the investigation of the Complaint and is being provided to Council in accordance with subsection 223.6(2) of the *Municipal Act, 2001*.

BACKGROUND

(a) Introduction

After completing our standard intake process and preliminary review of the Complaint, we wrote to the Complainant on September 30, 2020 to seek additional information in support of the allegations contained in the Complaint. Upon receiving such information from the Complainant, we determined that the Complaint was validly filed in accordance with the Code and that the Complaint dealt with a matter within our jurisdiction as Integrity Commissioner.

On the basis of the above, we determined that the Complaint fell within our jurisdiction and accordingly exercised our authority under Section 1(2) of the of the Formal Complaint Protocol to commence an investigation.

Notice of the Complaint was provided to the Councillor on October 15, 2020. We disclosed the nature of the Complaint therein and provided the Councillor with our preliminary findings with respect to the Complaint.

In accordance with Section 7(1)(b) of the Formal Complaint Protocol, we provided the Councillor with an opportunity to respond in writing to the allegations in the Complaint. The Councillor responded in writing by a letter dated October 22, 2020. The Councillor's response was forwarded to the Complainant on October 29, 2020 in accordance with Section 7(1)(c) of the Formal Complaint Protocol. The Complainant submitted a written reply on November 4, 2020.

In accordance with our authority under Section 7(3) of the Formal Complaint Protocol, we provided a draft version of our report of findings to the Complainant and the Councillor on December 30, 2020. We did not receive comments from either party.

(b) Councillor

The Councillor is the duly-elected member of Council representing Ward 4 – St. Patrick's Ward. The Councillor is a three-term member of Council, having been first elected in 2010, and re-



elected for the 2014-2018 and 2018-2022 terms of Council. In addition to his duties as a member of Council, the Councillor is also employed full-time as a secondary school teacher at Saint Paul Catholic High School in the City of Niagara Falls.

(c) Role of Relevant City Departments

As set out above, the background of the Complaint deals with an enforcement decision of the City regarding certain landscaping boulders placed into the municipal boulevard without permission. Given this context, we find it necessary to provide a brief overview of the City's relevant department and enforcement processes.

The City's Municipal Works Department ("**Municipal Works**") oversees the maintenance and operations of all City property, except arenas. This includes municipal facilities, parks, and infrastructure such as roads and water systems. Municipal Works is led by the Director of Municipal Works, who reports directly to the City's Chief Administrative Officer.

Municipal Works houses one of two branches of by-law enforcement for the City. By-law Enforcement, Municipal Works deals with matters relating to municipal property, facilities and roads. By-law Enforcement, Municipal Works reports directly to and is instructed by the Director of Municipal Works.

(d) Enforcement of Encroachments on Municipal Property

Much of the conflict underlying the Complaint stems from a misunderstanding of the relevant enforcement protocols. Given the role that this misunderstanding may have played in exacerbating conflict identified in the Complaint, it is necessary to explain the enforcement policy framework.

Although common in other municipalities, the City does not maintain a particular by-law dealing with encroachments onto municipal property. Instead, the City enforces against encroachments in trespass as a matter of its rights as a property owner under common law.

The City does maintain a policy in respect of encroachments on municipal road allowances. The City adopted a policy for exercising its right to remove obstructions from the municipal road allowance (the "**Encroachment Enforcement Policy**").²

The Encroachment Enforcement Policy permits certain landscaping within a municipal road allowance, provided that it does not pose any hazard to public safety and also that it does not pose a hazard to municipal infrastructure.

The Enforcement Encroachment Policy also authorizes City staff to take enforcement action against certain encroachments. However, witnesses interviewed in this investigation characterized the Encroachment Enforcement Policy as being "not very strong" due to its relative age, lack of specificity, and ambiguous language.

As is the case with many municipalities in Ontario, enforcement of the City's by-laws is complaint-driven. This is also true of the Encroachment Enforcement Policy. The City only takes action to

² By resolution dated April 9, 1984.

investigate and enforce the Encroachment Enforcement Policy based on credible sources or complaints; the City does not proactively conduct inspections.

This leads to situations in which City staff has to make highly discretionary decisions about what types of enforcement situations it will prioritize. To make efficient use of its scarce resources, City staff will generally only take enforcement action against an encroachment into the municipal boulevard where it poses a hazard to public safety, or where it poses a hazard to municipal infrastructure. This determination is made by the Director of Municipal Works in conjunction with by-law enforcement staff. Encroachments without these elements of hazard are not prioritized for enforcement, though the City does have the technical right to enforce.

During the course of our investigation, it became apparent that there was some misunderstanding about the City's decision to enforce in this particular instance. For example, the Complaint in several instances notes that some Ward Councillors described the landscaping boulders in ambiguous terms such as being "okay" or that they would be allowed to remain in place. This was ostensibly due in part to a misunderstanding of the relevance of whether the landscaping boulders constituted a "hazard."

To be clear, considerations of whether the landscaping boulders constituted a hazard were only relevant insofar as the City's enforcement priorities; this matter is not determinative of whether there is an encroachment. The evidence is clear that at all relevant times, the landscaping boulders were placed into the municipal boulevard without the City's permission.

(e) Sequence of Events Leading to Enforcement

The allegations in the Complaint revolve around the City's enforcement decision with respect to a residential property in the City's Grantham neighbourhood (the "**Property**"). The Property is located in Ward 5 – Grantham Ward. At all material times, the representatives of Ward 5 – Grantham Ward were Councillors Dawn Dodge and Bill Phillips.

In or around May 2016, the owner of the Property undertook a landscaping project to improve the front yard of the Property. This entailed, among other things, the placement of certain large landscaping boulders along the east portion of the front yard of the Property, ostensibly as an erosion control measure. Through inadvertence or otherwise, several landscaping boulders were placed into the municipal boulevard abutting the front lot line of the Property. These lands form part of a public highway which is owned by the City. At all material times, the landscaping boulders were placed onto the municipal boulevard without the City's permission.

(i) Neighbour's Complaint to City and Subsequent Investigation

In or around the summer of 2018, the neighbouring owner to the east of the Property (the "**Neighbour**") made a formal complaint to the City about the landscaping boulders. On or about October 26, 2018, two members of City staff, a By-law Enforcement Officer, Municipal Works, and Roads Supervisor, attended the Property to conduct a site inspection based on the complaint.

After attending the Property, City staff made two determinations. First, City staff determined that the landscaping boulders—being in the municipal boulevard—had in fact been placed on City property. Second, City staff also determined the placement of the landscaping boulders did not pose a hazard to public safety or the safety of municipal infrastructure. Accordingly, City staff took no further actions at this time as enforcement was not a priority.

After the Neighbour felt that their complaint had not been adequately addressed by City staff, they reached out to the Councillor for his assistance. The Neighbour reached out to the Councillor, and not the Grantham Ward Councillors, because they had some level of familiarity with the Councillor. Our investigation revealed that the Neighbour is a colleague of the Councillor at his place of full-time employment. However, there was no evidence to suggest any close, personal relationship other than the fact of their shared place of employment.

By way of email to the City's Chief Administrative Officer dated October 31, 2018, copying one Grantham Ward Councillor, Councillor Phillips, the Councillor brought the issue of the landscaping boulders to City staff's attention. This was the first instance in which the Councillor had raised the issue with City staff.

(ii) June 10, 2019 Meeting

No further enforcement actions were taken until June 2019. A meeting was called on June 10, 2019 by the Mayor's Office to discuss the matter. Attendees at the meeting were the Councillor, the Mayor, the Chief Administrative Officer, Deputy Chief Administrative Officer, and the Director of Municipal Works. Councillor Phillips was invited to attend, but was not present.

The topic of discussion at the meeting was the lack of enforcement of the Encroachment Enforcement Policy. Although the placement of the landscaping boulders in the municipal boulevard was an encroachment, City staff had not taken any enforcement steps to date.

When asked why City staff had not taken any enforcement action, the Director of Municipal Works maintained the position that enforcement was not a priority in this instance because the landscaping boulders did not pose a hazard to either public safety or municipal infrastructure. That is not to say that there was not an encroachment; the Director of Municipal Works readily conceded that the landscaping boulders were placed into the municipal boulevard. However, the Director of Municipal Works expressed that it was his opinion that if the City's enforcement actions were challenged in court, or if the City brought an application for an injunction to restrain the encroachment, the City would not be successful. This was due at least in part to the lack of clarity and strength of the Encroachment Enforcement Policy. The Director of Municipal Works informed those at the meeting that this was why no enforcement action had been taken.

The Director of Municipal Works likened the situation to the thousands of other instances of landscaping in a municipal boulevard that the City did not enforce. From a traffic safety perspective, there was no difference between the landscaping boulders and a flower bed in the municipal boulevard.

The Director of Municipal Works was asked at the meeting whether he would change his mind that the situation constituted a hazard. The Director of Municipal Works maintained his position that as a professional engineer, he would not be able to change his professional opinion absent additional facts. Despite this, the Director of Municipal Works conceded that there was an encroachment onto City property, and that he did have the technical right to enforce. At the conclusion of the meeting, the Director decided that a compliance order would be sent to the owner of the Property directing that the landscaping boulders be removed from the municipal boulevard.

(iii) Enforcement Actions Following June 10, 2019 Meeting

Following the meeting on June 10, 2019, the City sent a letter to the owner of the Property requiring that the landscaping boulders be removed from the municipal boulevard. The City required that this work be undertaken by July 15, 2019.

Further to a meeting between the owner of the Property and the Director of Municipal Works on July 23, 2019, the City granted an extension through November 2019 to allow time to complete this work. By November 2019, however, it was clear that no work had been undertaken to remove the landscaping boulders.

On November 12, 2019, the Councillor emailed the Chief Administrative Officer to follow up on the status of the compliance order. The Councillor's email noted that the landscaping boulders had not been removed five months following the issuance of the June 11, 2019 order. By reply email dated November 13, 2019, the Chief Administrative Officer's office indicated that the owner of the Property had been granted an extension, that the landscaping boulders had not been removed, and that City staff again served the compliance order and denied a further request for an extension.

Enforcement lay dormant until May 2020. We take notice that at this time, the City and City staff were dealing with considerable stress in the midst of a global pandemic.

On May 12, 2020, the City's Manager of Operations sent an email to the owner of the Property indicating that the City was aware that the landscaping boulders had not been removed, and requiring that removal be completed by May 19, 2020.

The landscaping boulders were not removed by May 19, 2020. On May 20, 2020, the Neighbour emailed Grantham Ward Councillors Phillips and Dodge inquiring as to why the landscaping boulders had not been removed despite the City's orders, and requesting that the situation be rectified.

On May 22, 2020, the Neighbour emailed the Mayor directly, expressing frustration that the landscaping boulders had not been removed nearly a year after the City ordered the owner of the Property to do so.

On May 23, 2020, the Mayor emailed the Chief Administrative Officer, copying the Director of Municipal Works, forwarding the Neighbour's email indicating that the landscaping boulders had not been removed. The Mayor requested that the Mayor and Chief Administrative Officer connect to resolve the issue, or otherwise he would call a virtual meeting with the Chief Administrative Officer, Director of Municipal Works, the Neighbour and all councillors involved, including the Councillor, so that City staff could explain why the owner of the Property had not been forced to follow the City's direction to remove the landscaping boulders.

In response to this email from the Mayor, the Director of Municipal Works decided at this time that he would direct City forces to attend the Property to remove the landscaping boulders. Before this email, the Director of Municipal Works contemplated this action, but had not yet given City staff final direction to do so.

By reply email on May 23, 2020, the Director of Municipal Works indicated that removal was to take place the following week. This reply email was satisfactory to the parties involved, and no further meetings or actions were taken in respect of this issue.



On May 25, 2020, the Director of Municipal Works directed City staff to undertake removal of the landscaping boulders. On May 27, 2020, at approximately 7:00 AM, a City work crew attended the Property and removed the landscaping boulders from the municipal boulevard.

Based on the record of our investigation, there is no evidence to suggest that the Councillor in any way directed or intimidated City staff to make a decision, or acted as the primary driver to have City staff enforce the Encroachment Enforcement Policy. Other than his participation in the June 10, 2019 meeting and email correspondence to City staff through the office of the Chief Administrative Officer, there is no evidence that the Councillor engaged in any direct communication with individual members of City staff responsible for enforcement.

THE POSITION OF THE PARTIES

(a) Complainant

The Complaint takes issue with the Councillor's involvement in the City's enforcement decision. The Complainant submits that the Councillor acted improperly "by virtue of having a personal relationship [and becoming] invested in an issue that was not in his ward."

The Complainant further submits that the Councillor's actions were improper as he was not requested to become involved by either of the Grantham Ward Councillors. The Complainant contends the Councillor's and Neighbour's shared place of employment is evidence of an improper motivation.

The Complainant also infers that the City's enforcement actions resulted from the Councillor's "undue pressure on City Staff to achieve the outcome he was looking for."

In summary, the Complainant asks us to infer that the fact that the Councillor was a colleague of the Neighbour constituted conclusive proof that the Councillor had acted improperly.

The Complainant submits that when approached by the Neighbour, the Councillor should have completely recused himself from any participation in the matter and should have referred the issue to the Grantham Ward Councillors to deal with the matter.

(b) Councillor

The Councillor submits that at all times, he "acted both in the public interest as well as within the confines of [his] official duties..." as a City councillor. He submits that it is his role as a councillor to bring to City's staff's attention allegations of by-law violations and ensure that these situations are investigated and remedied. To this end, the Councillor cites Section 2.0 of the Code, which directs that "Members shall uphold the spirit and the letter of...the laws...adopted by Council."

Responding to the submission that his involvement in a matter outside his ward constitutes "improper influence", the Councillor submits that it is his experience that where a resident has an issue related to a municipal matter, they will reach out to someone they know or have previously met. This is precisely why the Neighbour reached out to him for assistance dealing with City staff rather than the members of Council who directly represent Grantham Ward.



Furthermore, the Councillor submits that although councillors are elected to represent a particular ward, there is no formal responsibility to deal only with matters in those wards. In any event, the Councillor did notify the appropriate councillors of the Neighbour's complaint, and his further involvement was only as a result of him bringing the matter to the attention of City staff. Evidence of engagement of other Councillors, City staff, and the Mayor further indicate that the Councillor did not "act alone" in the City's decision to enforce the Encroachment Enforcement Policy.

Lastly, the Councillor did concede in his response submissions that the Neighbour is a colleague of his at their mutual place of full-time employment. The Councillor submits however that this relationship "carries no more significance than the that [sic] of the hundreds of others across our community that I have come to know through public life, volunteer work or through involvement in community activities." Other than a bald assertion that "this description is otherwise untruthful" in reply submissions, the Complainant has not raised any additional grounds or evidence to suggest otherwise.

FINDINGS

For the reasons detailed below, on a preponderance of the evidence and on a balance of probabilities we find that the Councillor has not contravened Section 10.0 of the Code.

(a) Role of Council Members and Staff in By-law Enforcement Matters

The role of an individual member of municipal council comprises a number of different functions.

The Ministry of Municipal Affairs and Housing in its publication *The Ontario Municipal Councillor's Guide 2018* outlines three main roles of a municipal councillor: as a representative of the views and wishes of constituents, as a policy-maker in providing direction for municipal operations, and as a steward of the municipality's financial and administrative resources.³

In contrast, it is the role of municipal staff to implement the decisions of council and carry out other statutory duties assigned to them.⁴ For some members of staff, this includes the enforcement of municipal by-laws and policies.

While municipal staff have a duty to enforce municipal by-laws and policies, this job often involves a considerable degree of discretion. In order to perform this role properly, staff must be able to exercise this discretion with independence. This is a principle that underpins the rule of law.⁵ Law enforcement officers cannot be subject to political direction in deciding whether or not to lay a charge or what enforcement measures are appropriate in the circumstances. A councillor's representative role must respect the independence of this function.⁶

³ The Ministry of Municipal Affairs and Housing, *The Municipal Councillor's Guide 2018*, "1. Role of council, councillor and staff" <https://www.ontario.ca/document/ontario-municipal-councillors-guide-2018>. However, a member of council has no executive or ministerial duties and no authority to direct staff except in conjunction with other members of council constituting a quorum: Ian MacF. Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed, (Toronto: Thomson Reuters: 2019) (loose-leaf update 2020-10) (online) at ch V, § 32.1

⁴ Section 227 of the *Municipal Act*, 2001.

⁵ See e.g. *Roncarelli v. Duplessis*, [1959] S.C.R. 121, 16 D.L.R. (2d) 689 (S.C.C.).

⁶ See e.g. *R. v. Campbell*, [1999] 1 S.C.R. 565, at para. 33.

The fact that a member of Council communicates with municipal staff about a by-law enforcement matter does not necessarily mean that the councillor has overstepped their role. An essential role of a councillor is to liaise between residents of the municipality and the edifice of municipal government. This could include seeking clarification on why or why not the City was taking enforcement measures in any particular case. In the circumstances of the Complaint, the answer lies in whether the Councillor impermissibly interfered with the City's enforcement decision, or whether his communications were directed through the proper channels.

Much was made of the fact that the Councillor was not one of the Grantham Ward Councillors. It may be that the expectation that those two ward councillors may have taken the lead in the matter given that the Property was located within their ward (and this is not to be read in any way as a criticism of those two Council members). However, there is no formal restriction against a member of council involving themselves in matters outside of their own ward.⁷ Irrespective of whether they are elected based on a ward system or elected at-large, a member of an elected municipal council is representative of the electors of the *entire municipality* and not just those persons in their particular ward (or those that cast ballots for them).

(b) Councillor's Actions were Not Improper

Based on the record of our investigation, there was no evidence to suggest that the Councillor engaged in any improper course of action in dealing with the City's enforcement decision. There is no evidence that the Councillor engaged directly with individual members of City staff responsible for the decision, nor did he make attempts to exert any pressure to change their position. When the Councillor did communicate with City staff, he did so at all times through the proper channel of the office of the Chief Administrative Officer. This is recognized in the City's "Staff-Council Relations Policy", which provides that Members of Council must "respect the administrative and managerial chain of command by...directing any questions or concerns in relation to the general administration and management of the City to the Mayor or the CAO for their consideration."⁸

The fact of the Councillor's attendance at the June 10, 2019 meeting does not itself constitute "improper influence." It was the evidence of our investigation that the Councillor "did not say much" and was not the driving force behind the meeting. There was no evidence to suggest that the Councillor pressured, intimidated, or purported to direct City staff to take enforcement actions. To the extent the Councillor brought the Neighbour's issues to the attention of City staff, he did so for the purpose of seeking clarification as to why no enforcement action had been taken despite a clear encroachment into the municipal boulevard.

Although the matter was outside his own ward, the Councillor was invited to attend the meeting as he was the councillor who initially raised the Neighbour's complaint to City staff. His continued involvement and receipt of updates from City staff is also explained as such. The Councillor was included in subsequent correspondence as a courtesy and to keep him informed about the progress of the matter. There is no evidence that he directed City staff to carry out enforcement measures or to do so in any particular manner.

⁷ See e.g. City of Toronto, Integrity Commissioner David Mullan, *Report on Involvement of Members in Matters Arising in Other Members' Wards*, (September 12, 2005):

There are clearly occasions on which it is perfectly appropriate for a Councillor to respond to a request for assistance from a constituent of another ward.

⁸ City of St. Catharines, Policy # LCS2019-01, *Staff-Council Relations Policy* (February 11, 2019).

(c) Councillor's Connection to the Neighbour Not Caught by Code

The connection between the Councillor and the Neighbour is not one that falls within the scope of Section 10.2 of the Code. It is evident and was conceded that the Councillor and Neighbour share a common workplace, and that this was why the Neighbour reached out to the Councillor for assistance in the first place. However, we are of the view that the Complaint does not establish that this connection is of sufficiently close proximity for Section 10.2 of the Code to apply.

Section 10.2 of the Code applies to specific relationships: "parents, children or grandchildren, spouse, or friends or associates..." The reference to "friends or associates" must be interpreted in the context of the other relationships listed in that section. It would be inappropriate to construe "friend" or "associate" to include the scope of relationships suggested by the Complainant. In our view, this would lead to an overly broad application of the Code. If this were so, there could be potentially thousands of individuals the interests of whom this Code provision would prevent any councillor from representing or advancing. Despite this, it is not our interpretation that colleagues can never have a relationship captured by these provisions. In the present circumstances, there simply is insufficient evidence to draw this conclusion.

In any event, there was nothing to establish that the Neighbour and the Councillor have a "close personal relationship" that would fall within the ambit of these Code provisions. Despite a bald assertion of a personal friendship, the Complaint does not provide any cogent or demonstrable evidence or make any submission as to why the fact that the Councillor and Neighbour work at the same place has any special significance in this context. While it is one thing to have some personal connection to an elected member of Council, it is another to suggest that the fact of this connection ought to place special obligations on that member of Council.

CONCLUSION

For the reasons set out above, we have concluded that the Councillor did not contravene Section 10.0 of the Code.

The Complaint is hereby dismissed.

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for the City of St. Catharines

Dated this 7th day of January, 2021

42291536.3

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INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT COMPLAINT – 2020-02 COUNCILLOR KARRIE PORTER

SUMMARY

A formal complaint was filed with the Office of the Integrity Commissioner on September 15, 2020 (the “**Complaint**”). The Complaint alleges that Karrie Porter (the “**Councillor**”), a member of the Council of The Corporation of the City of St. Catharines (“**Council**” and the “**City**” respectively), violated the City’s Code of Conduct for Members of Council, Local Boards and Advisory Committees (the “**Code**”) on account of telephone calls that the Councillor made to the Complainant and the Complainant’s friends/colleagues, and remarks that the Councillor made on Facebook, on Twitter, and in a local newspaper article.

APPOINTMENT & AUTHORITY

Aird & Berlis LLP was appointed as Integrity Commissioner for the City pursuant to subsection 223.3(1) of the *Municipal Act, 2001*¹ on January 28, 2019 by By-law No. 2019-13.

The Complaint was validly filed. We have reviewed the Complaint in accordance with our authority as Integrity Commissioner pursuant to the Code and with the process for hearing complaints as set out in the City’s Complaint Protocol (the “**Complaint Protocol**”).

CODE OF CONDUCT PROVISIONS AT ISSUE

The Complaint alleges that the Councillor contravened the following sections of the Code:

- General Obligations (Sections 4.1(a), (d), (e) and (f)); and
- Discrimination and Harassment (Sections 9.1 and 9.2).

REVIEW OF MATERIALS & INVESTIGATION

In order to prepare this Report, we have undertaken the following steps:

- Review of the Complaint, dated September 15, 2020, and all attachments and materials referred to therein, including discussions with the Complainant in order to provide information regarding the investigative process;
- Review of the Councillor’s response to the Complaint, dated October 21, 2020, and all attachments and materials referred to therein, including a discussion with, and additional correspondence from, counsel to the Councillor in order to receive clarification on certain matters; and

¹ S.O. 2001, c. 25.

- Review of the Complainant's reply submissions, dated October 27, 2020.

The Councillor retained legal counsel to file responding submissions. The Councillor and the Complainant were fully cooperative during the course of our investigation.

A draft copy of this Report, without recommendations, was provided to the Councillor and to the Complainant on December 29, 2020. The Councillor was given an opportunity to respond to the findings set out in the draft Report in writing in accordance with Subsection 7(4) of Part B of the Complaint Protocol.

The Councillor's written response to the draft report has been taken into consideration in the preparation of this Report. The Complainant also provided comments which were also taken into consideration in the finalization of this Report.

This is a report following the investigation of the Complaint made pursuant to Section 10(2) of Part B of the Complaint Protocol and subsection 223.6(2) of the *Municipal Act, 2001*.

BACKGROUND

The Complaint was filed in its original form with the office of the Clerk of the City on August 20, 2020. Following our initial review of the Complaint, we determined it was deficient as it relied on an outdated version of the Code. As such, by way of letter dated September 14, 2020, we provided the Complainant with an opportunity to re-file the Complaint directly with our office. We received the revised and properly filed version of the Complaint on September 15, 2020.

The subject matter of the Complaint relates to telephone calls that the Councilor made to the Complainant and to the Complainant's friends/colleagues, as well as to content posted by the Councillor on Facebook and on Twitter, and an interview that the Councillor gave for a local newspaper article. These matters are detailed below.

Beginning in May 2020, an unknown individual using the alias "Don Bayley" was harassing the Councillor online. The Councillor believed that the Complainant was the person behind this alias and that the Complainant was also stalking her. The Councillor believed this for various reasons, including the fact that there were apparent similarities between the writing style of the Complainant and the person behind the alias.²

² The other reasons relate mainly to assumptions that the Councillor made on the basis of the community activities and associations of the Complainant. Full details of these reasons will not be disclosed or considered in this Report as they are not relevant to our ultimate determinations on whether the Councillor's conduct was in breach of the applicable Code provisions and because the disclosure of this information could unnecessarily jeopardize the confidentiality of the Complainant's identity as well as the identity of others that are tangentially involved in this matter. That being said, these details have informed our understanding of the issues from a contextual standpoint.

For the purposes of this Report, suffice to say that the Councillor asserted that the community group with which the Complainant works participated in or supported the improper online conduct of "Don Bayley". The Complainant disagreed with these assertions and we have made no findings on this issue for the aforementioned reasons. However, we do accept that the Councillor honestly believed that she was being antagonized by this group in relation to the actions of "Don Bayley", and that it was against this perspective that the Councillor came to believe the Complainant was "Don Bayley".



On August 17, 2020 the Councillor telephoned the Complainant and stated that she believed the Complainant was “Don Bayley”, and that she considered the Complainant to be the person harassing her online and stalking her in real life. The Complainant denied these allegations.

The Councillor also telephoned, leaving voicemails for some and speaking directly with others, the Complainant’s friends/colleagues with whom the Complainant worked in a community group,³ to have a similar discussion with them, and also to direct these individuals to investigate the matter to determine whether the Councillor’s belief was correct.

On August 17, 2020, at 11:44 p.m., the Councillor posted about this matter on Facebook (the “**Facebook Post**”), detailed below. While the Facebook Post does not name the Complainant, it does provide various pieces of identifying information about the Complainant, such as the Complainant’s gender, the area in which they live, that they have a dog, the route they take to walk their dog, and otherwise. The Facebook Post also clearly alleges that the Complainant has been harassing the Councillor online and stalking her in person.

The Councillor also posted on Twitter about this matter (the “**Twitter Post**”), detailed below. The Twitter Post does not name the Complainant but also provides identifying information about them.

On August 27, 2020, an article was published online by a local newspaper outlet that included comments about this matter by the Councillor (the “**Article**”), detailed below. The comments in the Article do not name the Complainant but they also contains identifying information about the Complainant.

The record demonstrates that the Councillor did not have any tangible evidence to prove that the Complainant was “Don Bayley”. In fact, the record shows that, from August 18 to September 22, 2020 the Councillor became aware of various pieces of information in support of the contention that the Complainant was *not* “Don Bayley”, and that “Don Bayley” was another individual. The record also shows that the Councillor accepted the Complainant’s attestations that he was not “Don Bayley” during a telephone call that occurred between the Councillor and the Complainant very shortly after the Facebook Post was posted.

The Councillor removed the Facebook Post a day or so after posting it, following her conversation with the Complainant. The Twitter post was also removed. The Article remains publicly available.

Figure 1

Figure 1 is a screenshot of the Facebook Post. The Facebook Post states:

... this alias “Don Bayley” has been trolling me for quite some time. Some of you have messaged me, quite concerned about the comments you have seen all over social media. He goes through my social media photos and reposts them with

³ Much was made by both sides regarding the role, or lack thereof, of the community group in relation to this matter. The Code does not govern the conduct of members of Council in relation to corporations, organizations or otherwise; rather, it governs the conduct of members in relation to members of the public, staff and other members of Council. As noted above, other than to inform our understanding of the issues from a contextual standpoint, the background information and details regarding this particular aspect of this matter are irrelevant to our determinations regarding whether the Councillor contravened the Code on account of the conduct that is set out in this Report. As such, this aspect of the matter will not be detailed or discussed further.

terrible and outrageous comments, including wild allegations and comments about my appearance. He calls me a [***] moron...

Nobody knows any person by this name in real life, yet in his trolling comments, "Don Bayley" often insists that he knows me, has spoken with me, has emailed me.

I passed him off as a complete liar, until a comment he left that claimed he had spoken with me on May 5 about needles in parks. This had me wondering.

I did a search of my email, and lo and behold, there was an email on May 5 from someone I know who lives around the corner and up the street. He did come over to my house to talk to me then, and part of our conversation definitely included needles. It was memorable because I barely left the house at that point and did not talk to anyone outside of work or my immediate family.

This man recently got involved in a group with some other men, working on an issue in my Ward. I read through all of his previous comments and emails to me under his real name. The writing, grammar quirks (right down to the spacing before and after commas), matched the troll. The troll leaves comments all over this group's Facebook page, and seems clearly involved with it, and has even joined James Kaspersetz, former disgraced NPCA board member in trolling me.

I have given this man lots of my time in real life (2 hour meeting at a coffee shop, phone calls, a one hour meeting in front of my house in May). As I have been working from home, I notice that he often walks by my house and stares at it intently.

I called him to confront him about all of this and he denied it. I am not surprised. How do you admit to this? I called the other men in the group, leaving messages for some and talking to others, asking them about taking some responsibility for allowing this behaviour...⁴

The screenshot of the Facebook Post demonstrates that the Facebook Post received 153 "reactions" (i.e. "likes" or otherwise), 110 comments, and was shared 23 times.

Figure 2

Figure 2 is a screenshot of the Tweets. The Tweets state:

Female politicians, what would you do if you discovered a vicious online troll is someone that you know [in real life], lives around the corner from you, walks by staring at your house all the time, and is involved in a citizen's group that you expect should work with you in good faith?

Am I supposed to pretend that I don't know? Do I send a letter to the group? Do I confront him? Do I try and work with the group?

⁴ The Facebook Post includes screenshots of posts by the Alias. These can be seen in the copy of the Facebook Post, appended to this Report; however these screenshots are not discussed as the actions of the person(s) behind the Alias are not before us and are irrelevant to our determinations regarding whether the Councillor's conduct violated the Code.

Figure 3

Figure 3 is an excerpt of the Article. The Article provides, in part:

“We’ve all had different experiences in our lives with men and situations. Honestly, I haven’t experienced misogyny like this before until I got into politics,” said Porter. “I’ve worked for politicians. I’ve been political. I worked in construction. This is something else, and I honestly wasn’t expecting it. I thought I had experienced everything at this point in my life, until now. I’m just kind of stunned by it.”

The three women met recently to speak about their experiences in politics after a week of online discourse. It all started with a social media post by Porter outlining months-long harassment she has been facing from an online troll. The person behind the online account harassing her, she said, is a man who lives in her neighbourhood with whom she has interacted in the past, in person.

The Article is publicly available online.

FINDINGS

For the reasons detailed below, we find that the Councillor has contravened Section 4.1(a), Section 9.1 and part of Section 9.2 of the Code. We have determined that the Councillor has not contravened Sections 4.1(d), (e) and (f) or part of Section 9.2.

It is well-recognized that social media, such as Facebook and Twitter, is an important and growing part of citizen engagement and a method by which elected officials communicate with the public. The Code does not distinguish between different forms of media and does not cease to bind members just because they might be conducting themselves over social media rather than in person. The Statement of Principles set out in Section 2.2 of the Code provides in part:

- Members shall be cognizant that they are at all times representatives of the City and of Council, recognize the importance of their duties and responsibilities, take into account the public character of their function, and maintain and promote public trust in the City;
- Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny;

These sections of the Code recognize that a member of Council acts in a representative capacity for the well-being and interests of all members of the public and, as an elected official, is held to a higher standard of conduct than members of the public.

As an elected official, the Councillor represents the City at all times. As such, she is expected to operate from a base of integrity, justice and courtesy regardless of whether she is before Council or sitting in front of a computer screen. In other words, the standards of conduct set out in the Code transfer and apply directly to the Councillor’s use of social media. As with any other activity, the Councillor is expected to ensure that her use of social media is mindful of and consistent with the Code.

The Councillor’s Facebook page is semi-public and some of the content can be viewed by anyone with a Facebook account. It is not possible to see publicly how many “friends” or “followers” the

Councillor has on Facebook. However, as demonstrated above, the Facebook Post received a considerable amount of attention from over 100 other Facebook users.

The Councillor's Twitter page is public and can be viewed by anyone with a Twitter account. The page also provides, in part, as follows, in the "description" section: "Building a better #StCatharines. Councillor, Ward 4. Mom, community-builder & housing advocate."

At the time of the investigation, the Councillor was being "followed" by 1,451 other Twitter users.

The Councillor's legal counsel submitted that the Councillor's comments are protected by the *Canadian Charter of Rights and Freedoms*.⁵ We disagree for the following reasons.

Section 2(b) of the *Charter* provides:

2. Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

The Canadian courts have recognized that the guarantee of freedom of expression is not absolute.⁶ Freedom of expression is subject to reasonable limitations which may be circumscribed by municipal codes of conduct.

This particular fact was expressly noted in *Buck v. Morris*:

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials.

...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.⁷

Subsection 223.2(1) of the *Municipal Act, 2001* requires municipalities to establish codes of conduct for members of council (and members of local boards). The Legislature's recognition that the comportment of elected officials may be constrained by provisions contained in a code of conduct establishes an explicit limitation on a council member's freedom to say whatever they want and however they want, including communication by the use of social media such as Facebook.

⁵ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 [the "**Charter**"].

⁶ In fact, there is an inherent limitation within the *Charter* itself in section 1 provides:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

⁷ *Buck v. Morris*, 2015 ONSC 5632, 44 M.P.L.R. (5th) 175 at paras. 191 & 193 (Ont. S.C.J.).

(a) General Obligations

The Complaint alleges that Councillor Porter's conduct violates Sections 4.1(a), (d), (e) and (f) of the Code, entitled General Obligations.

These provisions of the Code provide as follows:

- 4.1 In all respects, a Member shall:
- (a) make every effort to act with good faith and care;
 - ...
 - (d) seek to service their constituents in a conscientious and diligent manner;
 - (e) respect the individual rights, values, beliefs and personality traits of any other person, recognizing that all persons are entitled to be treated equally with dignity and respect for their personal status regarding gender, sexual orientation, race, creed, religion, ability and spirituality;
 - (f) refrain from making statements known to be false or with the intent to mislead Council or the public;

We have considered each of these sections, in turn, below.

(i) Section 4.1(a)

The Councillor did not make every effort to act with good faith and care in this matter. She has acted in contravention of Section 4.1(a) of the Code.

*Black's Law Dictionary*⁸ defines "acting in good faith" as follows:

Behaving honestly and frankly, without any intent to defraud or to seek an unconscionable advantage.

We accept that the Councillor held an honest, although mistaken, belief that the Complainant was "Don Bayley" at the time when the Councillor made the telephone calls in question, posted on Facebook and Twitter, and provided the media interview. We also find that the Councillor exercised some measure of caution by deciding not to name the Complainant online and to the media.⁹ However, we do not find that these actions rise to the level of "*making every effort*" to act with good faith and care in the circumstances which is the standard imposed by the Code.

In terms of "making every effort to act with good faith", because the Councillor had publicly made serious allegations against a specific member of the public (i.e. the Complainant), albeit, not by name, the Councillor should have sought to correct the record once the Councillor learned and accepted that this specific member of the public was, in fact, not to blame for the reprehensible conduct in question. The Councillor did not do this. To take such actions, in our view, would have been to "make every effort" to act in good faith in this matter.

⁸ Brian A. Garner (ed.), 11th ed. (2019) (online).

⁹ This may also, however, be an indication that the Councillor herself remained uncertain as to the identity of "Don Bayley".



In addition, we find that the Councillor did not act with the requisite amount of care. For example, the Councillor could have discussed “Don Bayley” and the unacceptable online harassment that she had been subjected to without also making reference to a specific member of the community that she believed to be the perpetrator. This is especially so given that the Councillor did not have tangible proof that her suspicions were correct – and, indeed, they seemingly were not – and given the serious nature of the allegations in question (i.e. harassment and stalking).

The fact that the Councillor did not name the Complainant is not exculpatory. The Councillor disclosed significant identifying information about the Complainant – such as the Complainant’s gender, the area in which they live, the fact that they had recently become involved with a community group that was active within the Councillor’s Ward, and otherwise – that could allow others to discern their identity.

In addition, the Councillor directly confronted the Complainant’s friends/colleagues about this matter, so those individuals would have immediately known that the Councillor was accusing the Complainant of harassment and stalking.

On the basis of the foregoing, we find that the Councillor breached Section 4.1(a) of the Code.

(ii) Section 4.1(d)

Section 4.1(d) is related to the manner in which a member of Council is expected to serve their constituents and indicates that such service is expected to occur in a “conscientious and diligent manner”. This provision would apply, for example, in a situation where a member of the public had sought some type of service from a member of Council, such as a meeting, or information regarding municipal business.

We find that Section 4.1(d) does not apply in these circumstances. The Complainant neither sought, nor did the Councillor provide, any service with respect to a municipal matter in this case. Therefore, we do not find that Section 4.1(d) was contravened.

(iii) Section 4.1(e)

Section 4.1(e) of the Code is aimed at preventing members of Council from treating others without respect or dignity, or in an unequal manner, on the basis of a person’s beliefs or attributes, such as their religion, personal status regarding gender, sexual orientation or otherwise.

We also find that Section 4.1(e) does not apply to this matter. The record clearly shows that the Councillor acted as she did based on her apparently mistaken belief that the Complainant was harassing and stalking her, and not on the basis of any of the Complainant’s personal beliefs or attributes. Therefore, we have not determined that Section 4.1(e) has been breached.

(iv) Section 4.1(f)

In order to find that a contravention of Section 4.1(f) of the Code has occurred, there must be an element of knowledge. The Councillor must have known, when she made the statements in question, that what she was saying was false.

As noted above, we accept that the Councillor had an honestly held, albeit seemingly mistaken, belief that the Complainant was “Don Bayley”. Therefore, the Councillor did not make a statement

that she knew to be false (although, as noted above, she ought to have exercised a greater degree of caution). There was also no evidence that the Councillor's "intention" in making the applicable statements was to "mislead" anyone.

Therefore, we do not find that the Councillor contravened Section 4.1(f).

That being said, and as noted above, it is our view that the right thing to do in the circumstances, given the spirit and intent of this particular provision and of the Code in general, would have been for the Councillor to correct the record and to post a retraction or apology once the Councillor learned that her statements about the Complainant were apparently false.

(b) Discrimination and Harassment

The Complaint alleges that the Councillor's conduct violates Sections 9.1 and 9.2 of the Code – Discrimination and Harassment.

These provisions of the Code provide as follows:

- 9.1 A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.
- 9.2 A Member shall not use indecent, abusive or insulting words, phrases or expressions toward any member of the public, another Member or staff. A Member shall not make comments or conduct themselves in any manner that is discriminatory to any individual based on the individual's race, colour, ancestry, citizenship, ethnic origin, place of origin, creed or religion, gender, sexual orientation, marital status, family status, disability, age or record of offences for which a pardon has not been granted.

We have considered each of these sections, in turn, below.

(i) Section 9.1

We find that the Councillor's conduct in this matter constitutes bullying and that the Councillor has contravened Section 9.1 of the Code on this basis.

The Supreme Court of Canada has accepted the following definition of "bullying":

... behaviour that is intended to cause, or should be known to cause, fear, intimidation, humiliation, distress or other forms of harm to another person's body, feelings, self-esteem, reputation or property. Bullying can be direct or indirect, and can take place by written, verbal, physical or electronic means, or any other form of expression.¹⁰

It is our view that the Councillor's behaviour should have been known to cause humiliation, distress and other forms of harm to the Complainant's feelings, self-esteem and reputation.

¹⁰ *A.B. (Litigation Guardian of) v. Bragg Communications Inc.*, 2012 S.C.C. 46 at para. 21.

The Councillor made allegations of harassment and stalking about the Complainant directly to the Complainant as well as to their friends and colleagues. The Councillor also made these allegations online and to the media. While the Councillor did not directly identify the Complainant, as noted above, the Councillor provided various identifying information that could allow any one of the hundreds of people who interfaced with the social media posts, or anyone who read the Article, to discern the Complainant's identity.

In addition, the allegations that the Councillor made against the Complainant were very serious in nature. Allegations of this nature, regardless of whether they are true or false, can have devastating impacts on a person's feelings, life, relationships and reputation. A reasonable person who found themselves in the position of the Complainant would no doubt feel humiliated, distressed, and that their feelings, self-esteem and reputation had or could be been harmed by the events. Therefore, we find the Councillor's conduct to constitute bullying.

In view of the finding that the Councillor's conduct constituted bullying, we will not consider whether her behaviour was disrespectful or constituted abuse or intimidation. It is not necessary for the conduct to be disrespectful, abusive, and to constitute bullying and intimidation in order to ground a finding that a violation has occurred under Section 9.1.

(ii) Section 9.2

Section 9.2 has two parts. First, that a member "shall not use indecent, abusive or insulting words, phrases or expressions toward any member of the public, another Member or staff." Second, that a member "shall not make comments or conduct themselves in any manner that is discriminatory to any individual based on the individual's race, colour, ancestry, citizenship, ethnic origin, place of origin, creed or religion, gender, sexual orientation, marital status, family status, disability, age or record of offences for which a pardon has not been granted."

We have determined that the Councillor has contravened the first part of Section 9.2 but not the second part for the following reasons.

The Councillor effectively called the Complainant a stalker and a misogynist, and accused them of harassment. While these allegations may not rise to the level of being indecent or abusive, they certainly are insulting in light of the fact that they were not warranted in the circumstances.

No reasonable person would want to be accused of being a stalker, a misogynist, or engaging in harassment. These labels and the corresponding behaviours are considered by society to be repugnant. Therefore, labelling someone as such or accusing them of engaging in these behaviours is indeed insulting, especially if there is no basis for the labels or accusations, as was the case in this instance.

We accordingly determine that the first part of Section 9.1 has been contravened.

The second part of Section 9.2 is directed at discrimination akin to what is dealt with under the *Human Rights Code*.¹¹ The Supreme Court of Canada has adopted the following definition and explanation of discrimination:

Discrimination is: A distinction based on the personal characteristics of an individual that results in some disadvantage to that individual.

¹¹ *Human Rights Code*, R.S.O. 1990, c. H.19.

In *Andrews*, [the] Court wrote:

Discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.¹²

In these circumstances, the record does not evidence that the Councillor acted in a discriminatory manner toward the Complainant on account of any of the above enumerated characteristics. As noted above, the Councillor's treatment of the Complainant was clearly on the basis that the Councillor believed the Complainant to be "Don Bayley". There is no evidence that the Councillor treated the Complainant as she did on account of the Complainant's race, colour, ancestry, or any one of the other factors enumerated in the second part of Section 9.2 of the Code.

Furthermore, there is no evidence to suggest that the Councillor's actions had the effect of imposing burdens, obligations, or disadvantages on the Complainant not imposed upon others, or that the Councillor's actions withheld or limited access to an opportunity or benefit or advantage available to other members of society. While the Councillor's actions were no doubt hurtful and could possibly have been harmful, there is no evidence to suggest they had the effect required to find a contravention of the second part of Section 9.2 of the Code.

Accordingly, the second part of Section 9.2 of the Code was not contravened.

CONCLUSIONS

In summary, for the reasons set out above, we have determined on a balance of probabilities that the Councillor has contravened Section 4.1(a), Section 9.1 and part of Section 9.2 of the Code. We have concluded that the Councillor has not contravened Sections 4.1(d), (e) and (f) or part of Section 9.2.

The Councillor asserted serious allegations about a member of the public in various public forums in a manner that could allow others to identify this individual and without first determining whether the allegations were true. While we recognize and appreciate that the actions of "Don Bayley" against the Councillor were reprehensible and undoubtedly caused the Councillor much distress, this is not a justification for the Councillor's conduct in relation to the Complainant. A more measured response was warranted. This is especially so given that the Councillor did not publicly retract her statements.

We conclude that the Councillor's actions in this matter did not rise to the ethical standard required by the Code and what is expected of a public office holder.

¹² *Kanthasamy v. Canada (Minister of Citizenship and Immigration)*, 2015 S.C.C. 61 at para. 55.

RECOMMENDATIONS

In view of the findings that the above-noted provisions of the Code have been contravened by the Councillor, it is recommended that the Councillor be formally reprimanded by Council at a public meeting.

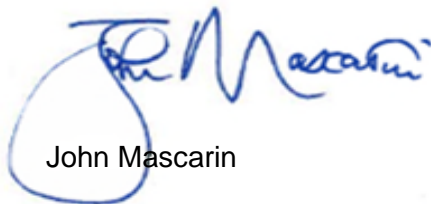
We recommend that Council pass a resolution to formally censure the Councillor, a penalty that is statutorily authorized by paragraph 223.4(5) 1 of the *Municipal Act, 2001* and Section 15.1(a) of the Code. A suspension of the Councillor's remuneration is not being recommended in this Report and is not warranted in the circumstances.

As a remedial measure, we also recommend that the Councillor be asked to issue a sincere public apology to the Complainant for her conduct in breaching the Code – we recommend that this be done at the next public meeting of Council. This remedial measure would serve to remediate or repair some of the harm that was or may have been done to the Complainant by the Councillor's actions.

We note that the Councillor has taken some responsibility with respect to her conduct in this matter. We understand that the Councillor did offer to apologize privately to the Complainant following the Councillor's receipt of the Complaint. The Councillor was also receptive to the findings in the draft copy of this Report.

We expressly remain seized of this matter and will be available to the Councillor should she request us to review her apology prior to issuing same so that there is no confusion as to its sufficiency. We also reserve the right to issue a supplemental report to Council should our recommendations be adopted and imposed, but then are subsequently not complied with.

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for the City of St. Catharines

Dated this 7th day of January, 2021

42602030.5

AIRD BERLIS



Karrie Porter

August 17 at 11:44 PM · 🌐

...

I face lots of backlash and criticism in politics. It comes with the territory.

But this alias "Don Bayley" has been trolling me for quite some time. Some of you have messaged me, quite concerned about the comments you have seen all over social media. He goes through my social media photos and reposts them with terrible and outrageous comments, including wild allegations and comments about my appearance. He calls me a ^+}+€#%} moron. I ignore and block, but many of you take screenshots to let me know what is happening. I end up unblocking out of morbid curiosity.

Nobody knows any person by this name in real life, yet in his trolling comments, "Don Bayley" often insists that he knows me, has spoken with me, and has emailed me.

I passed him off as a complete liar, until a comment he left that claimed he had spoken with me on May 5 about needles in parks. This had me wondering.

I did a search of my email, and lo and behold, there was an email on May 5 from someone I know who lives around the corner and up the street. He did come over to my house to talk to me then, and part of our conversation definitely included needles. It was memorable because I barely left the house at that point and did not talk to anyone outside of work or my immediate family.

This man recently got involved in a group with some other men, working on an issue in my Ward. I read through all of his previous comments and emails to me under his real name. The writing, grammar quirks (right down to the spacing before and after commas), matched the troll. The troll leaves comments all over this group's Facebook page, and seems clearly involved with it, and has even joined [REDACTED], former disgraced NPCA board member in trolling me.

I have given this man lots of my time in real life (2 hour meeting at a coffee shop, phone calls, a one hour meeting in front of my house in May). As I have been working from home, I notice that he often walks by my house and stares at it intently.

I called him to confront him about all of this and he denied it. I am not surprised. How do you admit to this? I called the other men in the group, leaving messages for some and talking to others, asking them about taking some responsibility for allowing this behaviour. There are so many other issues. Not only do they not remove some of the trolling comments about me. they also like them.

My ask is simple. I want an end to trolling, gaslighting, Trump-style behaviour, and for people to act with good intentions, even when they disagree.

 Search Facebook

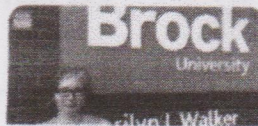
Replies to Don's comment on Newstalk 610 CKTB's post

The best part of last night's council meeting was when the City Clerk called out "Councillor Porter



2m Like Reply

boundary or waste water treatment site etc. clean the effected areas to an acceptable level. This is not a complicated issue **JUST DO IT!**



Write a comment...

3w Like Reply

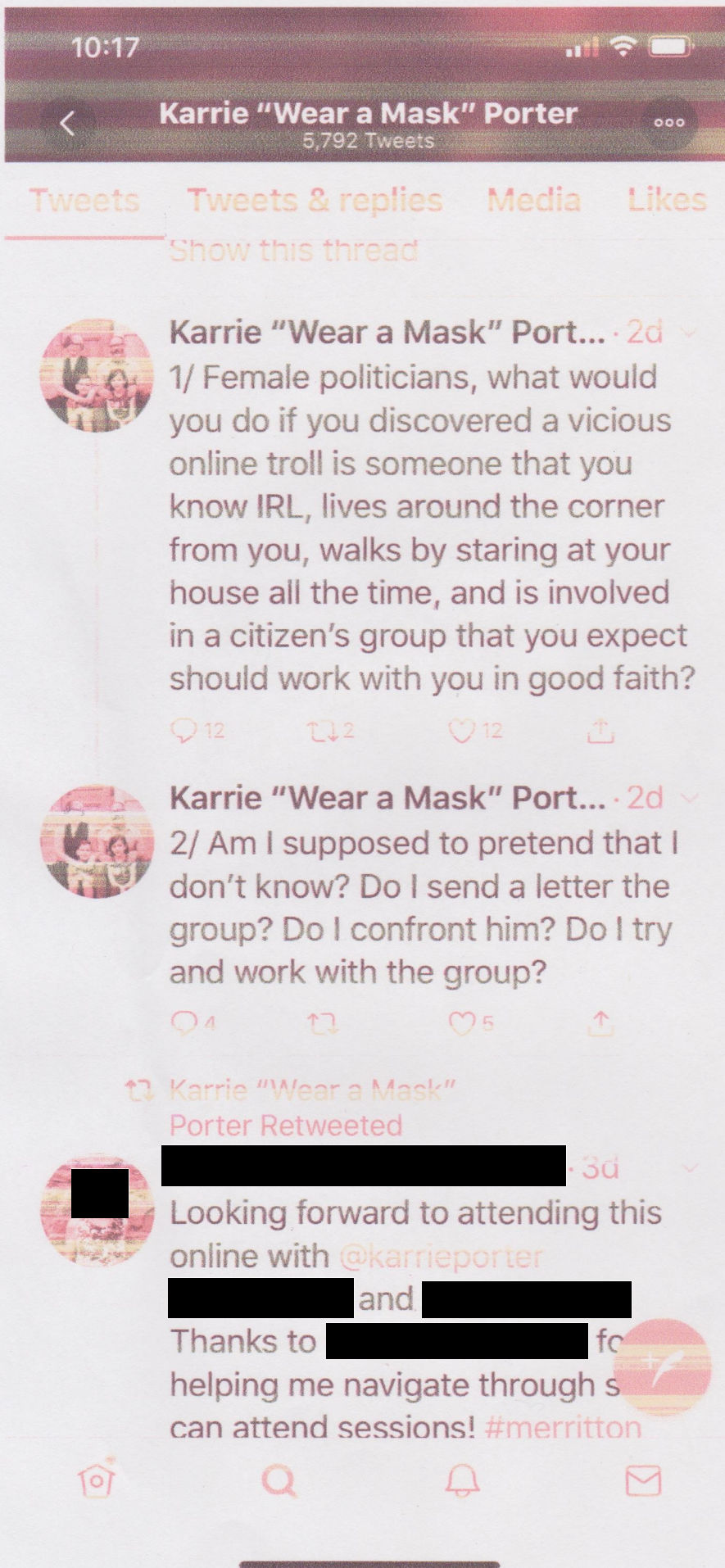
3w Like Reply

159

110 Comments 23 Shares

Like

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NIAGARA REGION

Niagara women talk about experiences in public office where misogyny has reared its ugly head



By **Melinda Cheevers** Niagara This Week
Thu., Aug. 27, 2020 | 9 min. read

“We’ve all had different experiences in our lives with men and situations. Honestly, I haven’t experienced misogyny like this before until I got into politics,” said Porter. “I’ve worked for politicians. I’ve been political. I worked in construction. This is something else, and I honestly wasn’t expecting it. I thought I had experienced everything at this point in my life, until now. I’m just kind of stunned by it.”

The three women met recently to speak about their experiences in politics after a week of online discourse. It all started with a social media post by Porter outlining months-long harassment she has been facing from an online troll. The person behind the online account harassing her, she said, is a man who lives in her neighbourhood with whom she has interacted in the past, in person.



By-laws to be considered Monday, January 18, 2021

- (a) A By-law to amend By-law No. 89-2000 entitled "A By-law regulating traffic and parking on City Roads." (One reading - with respect to stop sign on Chopin Road. Delegation of Powers and Duties By-law No. 2020-156.)
- (b) A By-law to amend By-law No. 89-2000 entitled "A By-law regulating traffic and parking on City Roads." (One reading - with respect to stop sign on The Pinery. Delegation of Powers and Duties By-law No. 2020-156.)
- (c) A By-law to amend By-law No. 89-2000 entitled "A By-law regulating traffic and parking on City Roads." (One reading - with respect to parking prohibitions on North Street. Delegation of Powers and Duties By-law No. 2020-156.)
- (d) A By-law to authorize delegation of certain matters to staff. (One reading - with respect to the COVID-19 property tax pre-authorized payment program. General Committee, December 14, 2020, Item No. 2.1.)
- (e) A By-law to amend By-law No. 2020-77 entitled "A By-law to appoint City of St. Catharines (the "City") employees and agents for the enforcement of emergency orders made pursuant to the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 (the "EMCPA"), and Parks By-law No. 70-57, as amended." (One reading - with respect to change in personnel. Delegation of Emergency Powers By-law No. 2020-38.)
- (f) A By-law to temporarily waive certain late fees, penalties, fees and charges of The Corporation of the City of St. Catharines (the "City"). (One reading - with respect to declaration of emergency by the Province of Ontario due to COVID-19 pandemic. To be considered by General Committee, January 18, 2021.)
- (g) A By-law to confirm the proceedings of council at its meeting held on the 18th day of January 2021. (One reading - with respect to confirming the proceedings of the meeting held on January 18, 2021.)