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INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT COMPLAINTS 2021-01 & 2021-02 COUNCILLOR VICKI MINK

SUMMARY

Two formal complaints pursuant to the *Code of Conduct for Members of Council and Local Boards* (the “**Code**”) of The Corporation of the Municipality of Port Hope’s (the “**Municipality**”) were filed directly with our office on April 22, 2021 and April 27, 2021 (the “**Complaints**”).

The Complaints allege that Councillor Vicki Mink (the “**Councillor**”), a member of the Municipality’s Council (the “**Council**”), contravened several sections of the Code.

The Complaints allege that the Councillor contravened the Code through her actions related to a social media post on a public social media forum, being the Facebook group “Rural Port Hope” (the “**Facebook Group**”), in response to a post by a resident of the Municipality and then-member of the Facebook Group (the “**Resident**”), as detailed below.

APPOINTMENT & AUTHORITY

Aird & Berlis LLP was appointed as Integrity Commissioner for the Municipality pursuant to subsection 223.3(1) of the *Municipal Act, 2001*¹ on June 4, 2019 by By-law No. 43/2019. As Integrity Commissioner for the Municipality, we have jurisdiction to review complaints made against members of Council.

The Complaints were validly filed and complete with respect to the information required by the Formal Complaint Protocol, being Appendix “B” to the Code. On that basis, we have reviewed the Complaints in accordance with our authority as Integrity Commissioner pursuant to the Code, the Formal Complaint Protocol, and the provisions of the *Municipal Act, 2001*.

CODE PROVISIONS AT ISSUE

The Complaints allege that the Councillor contravened Sections 4.1(a), (c), (d), (e), (f) and (g) of the Code. Those sections of the Code provide as follows:

4.0 General Obligations

4.1 In all respects, a Member shall:

- (a) make every effort to act with good faith and care;

...

¹ S.O. 2001, c. 25.

- (c) seek to advance the public interest with honesty;
- (d) seek to serve 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, staff or the public;
- (g) recognize that they are representatives of the Municipality and that they owe a duty of loyalty to the residents of the Municipality at all times.

REVIEW OF MATERIALS & INQUIRY

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

- Review of the Complaints and all materials referred to therein, including addenda thereto;
- Further email correspondence and telephone conversations with the individuals who filed the Complaints (the “**Complainants**”) regarding the requirements for filing a complete complaint;
- Correspondence to the Complainants, dated May 7, 2021, formally acknowledging receipt and completeness of the Complaints;
- Review of the Councillor’s response, dated May 25, 2021, and all materials referred to therein;
- Review of reply submissions of the Complainants, both dated June 16, 2021;
- Review of relevant social media posts, threads, and comments;
- Interviews with individuals (i.e. witnesses) with knowledge of the subject matter underlying the Complaints.

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.

A draft of this Report was provided to the Councillor and the Complainants on August 10, 2021 to allow them to review and comment on the factual accuracy of the Report. Both Complainants provided general comments on the outcome of our investigation but did not otherwise take issue with any of our factual determinations.

Despite already being given an opportunity to state any procedural objections at the outset of our investigation, one Complainant asserted that our firm is in a position of a conflict of interest which arises from the fact of our retainer by the Municipality (and payment through taxpayer funds) to investigate complaints against members of its Council. We understand the Resident's concern to relate to a perceived lack of independence of our office.

In our view, there is no merit to this assertion. The Legislature has required, by law, that all municipalities in Ontario to adopt a code of conduct and to appoint an integrity commissioner. There are many different individuals, law firms, and corporations retained to provide integrity commissioner services. Many, if not all, integrity commissioners are paid some fee for the services provided to the municipality. This fact alone cannot be said to compromise the independence and impartiality of the process by which all complaints are handled.

BACKGROUND

(a) Introduction

The Councillor was first elected to Council in the 2018 Municipal Election to represent Ward 2. The Municipality has a two-ward system: one ward for the “urban area” of Ward 1, and one ward for the “rural area” of Ward 2.

In addition to her role as a member of Council, the Councillor also works in the building safety design industry.

(b) The Facebook Group

As with many small communities in Ontario, the Municipality has several community-run social media groups. These forums are hosted on a social media platform where individuals with an account may interact with one another. A group may be open to the public, meaning that internal posts, comments and media are visible to the general public, or may be private, meaning membership is limited to invitation or request and approval only, and the majority of the content of the group is not visible to the general public.

Social media groups have individuals designated as an “Admin” (i.e. administrators), with technological permissions to control group membership and content, among other things.

The Complaints refer to one such group, the Facebook Group, being “Rural Port Hope.”² The Facebook Group describes itself as follows:

This FB page was created to connect "rural" residents and businesses in Port Hope. It can be used to discuss rural related issues, rural living, heritage, events, tourism, farming, business networking, buy / sell, help needed or wanted and social announcements ... just be civil :)

The Facebook Group is “Public,” meaning that anyone can see the membership and content of the group, and is “Visible,” meaning that anyone can search for and find the group. As at the time of writing this Report, the Facebook Group has approximately 900 members.

The Facebook Group is entirely community-run and has no formal association with the Municipality.

The Facebook Groups also has the following “Group Rules from the Admins”:

1. Be kind and courteous

We're all in this together to create a welcoming environment. Let's treat everyone with respect. Healthy debates are natural, but kindness is required.

2. No hate speech or bullying

Make sure that everyone feels safe. Bullying of any kind isn't allowed, and degrading comments about things such as race, religion, culture, sexual orientation, gender or identity will not be tolerated.

² See <https://www.facebook.com/groups/1645205669096696/>

3. No promotions or spam

Give more to this group than you take. Self-promotion, spam and irrelevant links aren't allowed.

4. Respect everyone's privacy

Being part of this group requires mutual trust. Authentic, expressive discussions make groups great, but may also be sensitive and private. What's shared in the group should stay in the group.

At the timeframe relevant to the Complaints, the Councillor was one of two Admins of the Facebook Group. The Councillor was asked to become an Admin by an existing Admin. Although she was hesitant to accept this role on account of having the power to moderate political debate, the existing Admin assured the Councillor that the Facebook Group would not be political. The Councillor accepted responsibility as Admin on the condition that she would resign from this role in the event the group became political.

(c) Background and Context of the Social Media Posts

Context is everything. This is especially true of written communication, and even more true of social media posts.

We are aware that some residents have expressed concerns about the management of the Municipality's financial affairs. Some years ago, residents brought a protracted lawsuit against the Municipality on account of how it handled certain funds.³ Some residents have continued this sentiment in social media forums, where there are questions about municipal property tax rates and municipal finances more broadly.

The background to the social media posts described in this Report is a public revelation of a modification to the municipal budget to account for adjustments in anticipated property tax revenues. Municipalities in Ontario are entitled to collect taxes on the real property within their geographic boundaries. The amount of property tax owing is determined by a number of factors, most important of which is the assessed value of the real property. This figure is not determined by individual municipalities. Rather, it is determined by a provincial government agency known as the Municipal Property Assessment Corporation ("MPAC") following assessment cycles in accordance with provincial legislation. Where property owners disagree with the assessed value returned by MPAC, they are entitled to make a request for reconsideration or, in some instances, appeal the assessment. Property owners may also be entitled to property tax rebates under certain circumstances in accordance with provincial legislation.

On March 16, 2021, the Municipality's Tax and Revenue Manager presented a report to the Municipality's Committee of the Whole to provide an update on property tax write-offs, refunds and adjustments for the tax year 2020. The report provided a summary of the processes by which the assessed value of real property could be changed from what was initially budgeted, a process which the Municipality does not directly control. After reviewing the various adjustments for the tax year 2020, the report indicated that the net property tax adjustments resulted in an "unfavourable" budget variance of \$99,670.

³ See *Angus v. Port Hope (Municipality)*, 2017 ONCA 566. This lawsuit dealt with the Municipality's handling of a payment under an agreement with the Federal Government as a matter of trust law. The application was dismissed on appeal in favour of the Municipality. The specific details of the lawsuit are unrelated to the Complaints.

It is our understanding that the “unfavourable” budget variance received public scrutiny and inquiries as to how this occurred, including from the Resident. We understand that the Resident made inquiries with the Municipality in respect of the property tax adjustments.

Based on the evidence in our investigation, the Resident is the founder of a community group focused on fair taxes within the Municipality, with a presence on social media. The group’s Facebook page describes its mandate generally as holding the Municipality accountable for the use of taxpayer dollars. In particular, the group’s “About” page contains, in part, the following statements:

“There is micro evidence of money and revenue been misspent for purposes not related to the need of the residents...Tax exemption for empty commercial building which benefit at least one of the elected official.” (*sic*)

Upon becoming aware of the staff report, the Resident placed a telephone call with municipal staff to request that the Municipality’s finance department disclose the municipal addresses and contact information of owners of properties that benefitted from a write-off, rebate, or adjustment to the assessed value of their property. Municipal staff responded by email to the Resident to clarify how the property tax adjustments came about, that the information the Resident sought could not be provided as the Municipality could not share personal information, and that the assessment roll was only available for viewing by appointment at the municipal offices.

Excerpts of the correspondence between the Resident and Municipality staff were posted on another Facebook group, “Port Hope Politics,” and were the subject of discussion in that group.

(d) The Facebook Posts

On or about March 18, 2021, the Resident made a post in the Facebook Group about her concerns and communications with municipal staff about a shortfall in municipal property tax revenue on account of write-offs, refunds, and adjustments. The Resident’s post was also shared on other social media forums administered by residents of the Municipality.

On March 23, 2021, the Resident made a similar post in the Facebook Group in follow up to the March 18, 2021. We would note that this post was removed from the Facebook Group and, as such, we have not been presented with a copy nor have we been made aware of the precise contents of the post. It is the evidence of our investigation that the post on March 23, 2021 discussed the 2020 Property Tax Adjustment report and was alleged to contain false and/or misleading information. The post was brought to the Councillor’s attention by several members of the Facebook Group and also flagged for removal by a member of the Facebook Group. On or about March 23, 2021, the Councillor, as Admin of the Facebook Group, removed this post.

On March 23, 2021, the Councillor made a post in the Facebook Group to explain her actions. That content of the post is reproduced below:

“This post is to notify the members, that as an administrator, I chose to remove a recent post. The post was a political post about an adjustment that was made to the tax base.

There are plenty of Facebook groups available to debate political issues and this is not one of them. Education and information is always welcome. I hope everyone can enjoy this page and appreciate it as a safe place to share our rural culture. I

am more than happy to answer questions about any political or community issue, but I am not here to defend myself, council or staff. I consider myself to be a member of this community and not an opponent. If these posts become the norm, I will need to remove myself from the group.

I will clarify this one issue since it had already been posted and read. The residents who applied for a rebate or adjustment to their property taxes went through an established process outside the control of the municipality. The decisions are reported to the municipality and the municipality must comply. The process is available to all property owners and there was nothing malicious or deceitful, nor were the decisions advantageous to the municipality or council. Please contact me directly if you have an questions. I am happy to assist. Thank you.” (sic)

On March 26, 2021, three days after the first post was removed, the Resident made a further post in the Facebook Group in follow-up to the posts made on March 18, 2021 and March 23, 2021. The content of the post is reproduced below:

“There is a lot of support for me taking a stance to write to the finance department about property tax write-offs and refunds.

However there are some non-residents annoyed with me, on another site that my letter was shared; that I had the nerve to write and ask questions. The loudest of these non residents lives in Windsor Ontario and feel he holds the scrolls to this town because he was born here. His writing would make any reader feel that he is the neighbourhood next door and I spart of our experiences. There seem to be a common thread that affects the interest of our town.

On the other hand many of our the town’s management chose to live in Cobourg. Is there a direct interest in the affairs of our town?

Maybe our taxes, garbage tags cost too much and our beach area is rundown for them.

I am not saying that people can’t chose where to live. I am saying that we chose Port Hope and we need to know what, why and where our tax dollars are spent.

How could they understand that the services, taxes and representation of Ward 1 and Ward 2 is in dire need. The old tactic of dividing the residents of Ward one and Ward two is a distraction; which allows Council to run our affairs like a secret order.

To me it seems that the day the emergency act was implemented, the carpet at the municipal office was rolled up and the door was locked.

How many of us know the Councillor for your area?

During the pandemic, did you feel that the Mayor and Council provided information that kept you informed about the vaccination, covid-19 infection counts and transportation for assistance for seniors.

Port Hope, is our home and we must organize to hold our elected officials accountable.

I will continue to ask questions for the voiceless.

Thank you for your support.” (sic)

In response to the Resident's post, the Councillor posted a "comment" replying to the post in which is reproduced below:

"I respectfully ask that you not imply that I am corrupt or ran for Port Hope Council for any personal gain. I am here 100% to represent the people in my community to the best of my ability. I am entirely transparent. The Budget meetings are open to the public and only one person attended last year. You are welcome to offer your feedback on any budget items that you don't feel is required. As an administrator of this page, I will ask you now to keep aggressive political attacks to your own page. This page is meant to enjoy our rural culture. While it is encouraged to discuss some community and political topics, this is not one of them. All property owners are entitled to a reassessment from MPAC. Council has no say in the matter. What this means, is now staff and Council have to figure out how to deliver the same services with 100K less money." (sic)

In response to the Councillor's comment, the Resident posted a reply comment in which she stated:

"...please show me where, when and to whom I made such remarks that you are corrupt. Is you are intending to silence me that is your privilege. However saying that I slander you is not right. I asked a question and shouldn't be accused." (sic)

In response to the Resident's reply, the Councillor posted a reply comment, attaching screenshot of the Resident's original post circling a portion that read as follows:

"How could they understand that the services, taxes and representation of Ward 1 and Ward 2 is in dire need. The old tactic of dividing the resident of Ward one and Ward two is a distraction; which allows Council to run our affairs like a secret order." (sic)

In response to the Councillor's reply, the Resident posted a reply comment in which she stated:

"...your interpretation! I Still can't see your name, the words "Corrupt of for 100% personal again"." (sic)

In response to the Resident's reply, the Councillor posted a reply comment in which she stated:

"...please tell me what line items in the Annual Budget you disagree with. I will be happy to talk to out about those expenses." (sic)

In response to the Councillor's reply, the Resident posted a reply comment in which she stated:

"...with all due respect I am cautious to discuss with you anything after your false accusations against my character. You should have asked for a discussion first." (sic)

We understand there were further comments exchanged between the Resident and other members of the Facebook Group. We have been presented with copies of those posts as evidence.

Some time after the exchange between the Councillor and the Resident, the other Admin of the Facebook Group removed the post.

(e) The Councillor's Resignation from the Group

After the exchange between the Councillor and the Resident, the Councillor made a new post in the Facebook Group announcing her resignation from the Facebook Group and as Admin. The content of the post is reproduced below:

"Hi Everyone. I just wanted to let everyone know that I will be leaving this group. It was fun. I enjoyed connecting with many of you through this forum. I hope someone will continue with the Weekly Photo Theme because people seemed to enjoy it more than I expected. I am available by phone, email, Instagram or through my Facebook Page or personal account. Of course, I am always available when out in about in public too. I will never dismiss any issue or concern. I am available to everyone and it is at my core to give everyone the respect they deserve I hope everyone can understand this position can be stressful. In order to maintain my own health and wellness, I need to keep my surroundings positive, healthy and productive so that I can help others.

I wish you all the best and I hope to stay in touch." (*sic*)

Shortly after the above post, the Councillor relinquished her responsibilities as Admin.

The Councillor's resignation post received many comments from members of the Facebook Group, all of which were positive and directed toward the Councillor herself. We were not presented any comments that made reference to the Resident.

(f) Further Correspondence between the Resident and the Councillor

After the exchange between the Councillor and the Resident, on March 26, 2021, the Resident sent two emails to the Councillor regarding the incident. The first email had the subject line "Slander". In it, the Resident asked the Councillor to retract her statements on or before April 1, 2021, failing which the Resident would seek a "legal remedy" and "bring media attention" to the situation. The Councillor did not immediately respond to this email.

Four hours after the first email, the Resident sent a further email to the Councillor, styled as an open letter, in which the Resident alleged that the Councillor's posts were a lie and an act of unprofessional conduct. Moreover, the Resident alleged that the fact of the Councillor's resignation as an Admin of the Facebook Group would be construed as evidence of her guilt.

The email further alleged that the Councillor was "supported by an openly racist individual" and used her false statements as a "dog whistle to have him verbally attack" the Resident.

Following the emails from the Resident, and on March 26, 2021, the Councillor received email correspondence from another individual who took issue with the situation and alleged the Resident had been mistreated by the Councillor.

The Councillor did not immediately reply to these emails. Rather, she exercised caution by allowing time to consider an appropriate response and de-escalate the situation. The Councillor sought professional advice from municipal staff, a communications professional, and politician

mentors as to how best to respond to the developing situation. Upon receiving advice and suggestions as to how to respond, the Councillor drafted an email to both the Resident and the other individual.

On April 9, 2021, the Councillor replied to both individuals to explain the situation, express regret that the Councillor did not meet the Resident's expectations, and respond to their requests for information from the Municipality's Finance Department.

In response, the Resident replied with two emails renewing the request for a public apology, providing a deadline for the apology, and stating that if no apology was received, that the Resident would pursue a formal complaint with our office.

(g) Fallout from Facebook Posts

The Complaints allege that as a result of the exchange between the Resident and the Councillor and the Councillor's subsequent resignation as the Admin of the Facebook Group, other members of the Facebook Group "turned against" the Resident. This is alleged to have included racists and misogynistic comments, comments about the Resident's character, and generally negative comments. The Complaints also allege that the Councillor directed or incited individuals to take these actions against the Resident.

In accordance with the Formal Complaint Protocol, the Complainants have been directed to put forward all evidence in support of their claims, and we consider the materials filed to date to be a complete record of the evidence in support of the allegations.

Based on our review of the materials put forward to date and our further inquiries into the matter, we make the following findings. We are aware that an individual, with whom the Resident has previously interacted with on social media, posted certain comments in response to the Resident's post on March 26, 2021 in the Facebook Group, which include the following:

- "You have way too much time on your hands. Am I am a non resident but lived here for 50 years. And still have property in port hope. And I think you are trying to make people feel sorry for you. You are trying to seek private information you are not entitled to."
 - "[@individual] I may be trying to make people feel sorry for me but they already feel sorry for you. Stop trolling and harassing me."
 - "[@Resident] how am I trolling you you posted on a public form you call me a troll because I don't agree with the bs."
- In response to a post "Can we get back to the fun stuff in this group?", the individual commented "[@author] can we get RID of [the Resident] you have my vote"
- In response to a post "These taxation issue posts that were started by [the Resident] are more appropriate for the Politics in Port Hope Facebook group and not this one.", the individual comment "[@author] ya her friend tried it will no result just like a school girl trying to get her story out so people can say AHHHH you poor thing.."
- In response to a comment by the Resident, "[@the Resident] my position is solid .. yours is not. it did not work in another forum and it did not fly in this forum ..."

The Resident and the remaining Admin of the Facebook Group corresponded by direct Facebook message. Through this correspondence, the Admin made the following statements:

- "...[the Councillor] has all the right in the world to be upset and speak out against your post. You then lashed out at her. You will be removed and blocked from the group effective immediately. I will consider your return if you apologize to her."
- "Your post will be deleted as it contained a highly charged political post that was not real clear with your concerns and quite a few allegations directed at local government.:"
- "...Your posting was deleted and you have been blocked by me. The post you objected to by [the Councillor] has been removed by her. Her Admin status was removed by me. That is the way it sits and will remain until more level heads prevail."

Lastly, the Resident was removed as a member of the Facebook Group. We understand that this was not done on account of the exchange between the Resident and the Councillor, but rather, that she is not a rural resident (and not a Ward 2 constituent), and had repeatedly made political posts in the Facebook Group after being asked not to.

We have not been presented with any other evidence or information of other comments, remarks, conversations, or altercations, whether in-person or by electronic means.

THE POSITION OF THE PARTIES

The Complainants take the position that the Councillor contravened the Code by knowingly misrepresenting and falsely accusing the Resident of making certain allegations against her, that the Councillor attacked the Resident's character, and that the Councillor allowed or incited her political supporters to direct negative comments toward the Resident, including misogynistic and racist comments, which caused her personal harm.

The Councillor denies that her actions, whether viewed individually or cumulatively, constitute a contravention of the Code, and disputes several aspects of the factual allegations in the Complaints.

The submissions of the parties appear in the below section of our Report, beneath the applicable section of the Code at issue.

(a) Section 4.1(a)

(i) *The Complainants*

The Complainants allege that the Councillor failed to act with integrity and good faith by presenting herself as the victim, removing evidence that would be used to prove that she made false accusations in the Facebook Group, misrepresented the situation through her resignation post, removed or authorized the removal of the Resident from the Facebook Group and blocked her from making further comments, and refused attempts at resolution of the matter.

(ii) The Councillor

The Councillor contends that she did not contravene Section 4.1(a) of the Code. Her response is that as a Councillor, it is her obligation to give the public confidence in Municipality staff, Council and the municipal process generally. Her response to the Resident's post was a response to false statements that were directed at Council and municipal staff. It was the Councillor's intent to correct the record. Moreover, as was in line with her role of Admin in the Facebook Group, her statement was made in response to a post that did not fit within the guidelines of the Facebook Group.

The Councillor also states that she did not remove any "evidence." Any posts removed from the Facebook Group were done so on account of enforcement of that platform's community guidelines and before any investigation was underway. After removing one offending post made by the Resident, the Councillor posted a reminder of the community guidelines of the Facebook Group. The Resident did not heed this caution, instead posting the second post which led to the exchange described herein.

Further, the Councillor states that her resignation from the Facebook Group was not intended to misrepresent the situation in order to gain favour or self-victimize. Rather, several days prior, the Councillor had publicly announced an intention to resign should political posts continue.

The Councillor also submits that she made further attempts at resolution with the Resident, including making offers in her initial posts in the Facebook group to discuss the budget or property tax adjustments with the Resident.

(b) Section 4.1(c)

(i) The Complainants

The Complainants allege that the Councillor failed to advance the public interest with honesty by promoting her own image through self-victimization, inciting threats and racist and misogynistic verbal attacks on the Resident by the Councillor's male supporters, slandering the Resident's personal and professional character, and condoning the behaviour of the Councillor's allies, family and friends.

(ii) The Councillor

The Councillor takes the position that she did not contravene Section 4.1(c) of the Code. Her statements in response to the Resident's post were not an act of self-victimization, which she defines as "fabrication or exaggeration of victimhood for a variety of reasons such as to justify the abuse of others, to manipulate others, a copying strategy, attention seeking or diffusion of responsibility." In the Councillor's view, the Resident had made a series of false and defamatory statements for over a year, and the Councillor took the opportunity to respond in a way that would encourage the Resident stop her allegations. At no time did the Councillor attempt to manipulate the optics of the situation to make it appear as though she was being attacked.

The Council submits that she did not incite or allow any threats or any racist or misogynistic verbal attacks on the Resident. She points out that the Resident and the individual with whom the Resident is alleged to have had further interactions with have a history of previous altercations, some of which include allegedly racist and misogynistic comments. The Councillor has no personal knowledge of or relation to this individual, nor does she control what other people say.

The Councillor also points out that there were no other inappropriate comments made in response to the Resident's post.

(c) Section 4.1(d)

(i) *The Complainants*

The Complainants allege that the Councillor failed to recognize the Resident as a constituent in a conscientious and diligent manner by "attacking" the Resident "without provocation."

(ii) *The Councillor*

The Councillor takes the position that she did not contravene Section 4.1 (d) of the Code. The Councillor submits that at no time did she "attack" the Resident "without provocation", as is alleged. The Councillor concedes that although the tone of her post could be construed as defensive, it was not an outward attack, and was not "unprovoked" as the Councillor did so only to clarify incorrect information in the Resident's posts.

(d) Section 4.1(e)

(i) *The Complainants*

The Complainants allege that the Councillor failed to afford the Resident equal rights and treat her with dignity and respect as a constituent to be heard and to voice an opinion.

(ii) *The Councillor*

The Councillor takes the position that she did not contravene Section 4.1(e) of the Code. The Councillor submits that, in her view, she treated the Resident with respect and dignity. The Resident failed to comply with the community guidelines set out in the Facebook Group. The Resident received a truthful answer to her inquiry from the Municipality, and the members of the Facebook Group could not add more to the answer provided to the Resident. Moreover, the Councillor three times offered to answer any remaining questions and provide the Resident further assistance, such offers not being taken up. Further, the Councillor has done nothing to discourage the Resident from directing further inquiries to Municipal staff.

(e) Section 4.1(f)

(i) *The Complainants*

The Complainants allege that the Councillor boldly and with false intent made false statements about the Residents character in order to "cast a stereotypical race concept."

(ii) *The Councillor*

The Councillor takes the position that she did not contravene Section 4.1 (f) of the Code. The Councillor submits that at no time did she have any "false intent" in making the post in the Facebook Group, nor is there any evidence that her posts were marked with any stereotypes or racial undertones.

(f) Section 4.1(g)

(i) *The Complainants*

The Complainants allege that the Councillor, in her actions in relation to the Facebook Group, failed to recognize that she is always a representative of the Municipality and owed a duty of loyalty to all residents.

(ii) *The Councillor*

The Councillor takes the position that she did not contravene Section 4.1(g) of the Code. In the Councillor's view, her actions in making the post on the Facebook Group to address what were patently false statements were in keeping with her obligation to act in the best interests of the community. The Councillor further states that members of the community have an expectation that their personal information will remain private and that the Municipality cannot disclose certain information. As such, when confronted with false information, the Councillor was acting in the best interests of the Municipality in dispelling misinformation.

FINDINGS

We have carefully and fully considered the submissions of the parties and the evidentiary record from our investigation. For the reasons set out below, on a preponderance of the evidence and on a balance of probabilities, we find that the Councillor has not contravened the Code.

The Complaints have been brought under Section 4.0 of the Code, which sets out the general obligations of all members of Council. These provisions are set out in general terms and as positive obligations. However, they must be interpreted and applied reasonably and within the context of the entire Code. These general provision cannot be elasticized to such a degree as to apply to any action or inaction that may appear to be transgressive of the Code.

Our findings on the specific portions of the Code appear below.

(a) Section 4.1(a)

Section 4.1(a) provides that a Member shall make every effort to act with good faith and care. This section entails action by members of Council that is sincere, fair, open and with honest. On the converse, this section prohibits conduct done in bad faith, with malice or ill intention.

On the basis of the evidence before us, we find that the Councillor did not fail to act with good faith and care. Nor is it open to us to conclude that the Councillor acted in bad faith or with improper intentions. In this regard, it is important to understand that the Councillor's social media posts did not occur in a vacuum. Rather, there was a broader context that informed the Councillor's action. Our findings outlined in this portion of our Report apply to our findings on all sections of the Code, where such matters are also relevant.

(i) *The Councillor's Response to the Resident's Post*

First, the evidence from our investigation demonstrates that in the days prior to the March 26, 2021 posts at issue, the Resident had had interactions with representatives of the Municipality in respect of her concerns with the 2020 Property Tax Adjustment report. These inquiries were directed to appropriate channels – asking questions of municipal staff is something all citizens

have an ability to do. In this case, the Resident received a response from the Municipality that was not to her liking because the Municipality would not provide the Resident with the personal information of property owners who had received property tax adjustments. In the face of the Municipality's response, the Resident did not elevate the concern to senior staff, or seek the assistance of a member of Council in interfacing with municipal administration. Instead, posts were made on several Facebook Groups regarding the Municipality's response.

Second, the Resident, through a separate Facebook page she administers, has, on at least one occasion, alleged that property tax exemptions have been granted to the benefit of one elected individual and that there is "micro evidence" of municipal revenue being misspent. While the Resident's interest in the financial affairs of the Municipality is admirable in that it could sustain the health of municipal democracy, her statements imply that property tax exemptions may have been improperly granted to individuals who hold elected office, which are serious assertions.

Lastly, the Resident made several posts on social media over the course of several days in response to the 2020 Property Tax Adjustment report. It is important to note that on March 23, 2021, the Resident made a post in the Facebook Group about the subject that did not fit within the Facebook Group's community guidelines. This post was flagged for removal by members of the community, and indeed removed. Shortly after the post was removed, the Councillor made a specific post in response to the incident, providing clarity not only to the Facebook Group's community guidelines, but also further information on the topic of property tax adjustments, offering to assist anyone with questions. We also note that in this post, the Councillor expressed her intention to resign as Admin and leave the Facebook Group should political posts continue.

In spite of the removal of her post on March 23, 2021, the Resident again posted about the same topic on March 26, 2020. In her post, she expressly stated as follows:

"...the old tactic of dividing the residents of Ward one and Ward two is a distraction; which allows Council to run our affairs like a secret order."

Her post did not use the words "corrupt" or "personal gain." However, in light of the specific context of the Resident's expressed suspicions about these property tax adjustments and request for the personal information of those benefitting from property tax adjustment, it would be open to a reasonably-informed reader to construe this statement as implying impropriety on the part of the Municipality.

When the Councillor responded to the post – which was the second post on the same topic within the same week – she did so to reply to what she perceived as a false and potentially harmful statement to the reputation of the Municipality, Council and municipal staff. Further, nothing in her response – be it the express language, tone, or context – implied that she was attacking the Resident or making comments about the Resident's character. Rather, the Councillor's posts were responsive, at best, or defensive in nature, at worst.

It is also important to recognize that the Councillor's response was not a curt or vulgar rejection of what had been stated by the Resident. The Councillor took care in responding to the post. She included information to dispel the perceived misstatements about the property tax adjustment process and the implications of the budget adjustment. In her further responses to the Resident, the Councillor also offered to discuss the Municipality's budget (although rejected by the Resident).

In conclusion, the Councillor did not fail to act with good faith and care in responding to the posts.

(ii) *The Councillor's Resignation Post*

The Complaints also allege that the Councillor's actions in immediately resigning from the Facebook Group, "playing the victim" and misrepresenting the situation is also a contravention of Section 4.1(a) of the Code. On review of the entire matter and the background context, we are unable to conclude that the Councillor failed to act with good faith and care in this regard.

The uncontroverted evidence from our investigation is that the Councillor had a stated intention to leave the Facebook Group, both in her capacity as an Admin and as a group member, if the subject matter of the group became political. In accepting the role and responsibilities as Admin, the Councillor was cognizant that doing so may put her in a position where her duties conflicted. The compromise was that the Councillor would resign from the Facebook Group if the content became "too political," or related too closely to the affairs of the Municipality such that the Councillor could not act as an independent moderator of discussion and without a personal bias.

In addition, on March 23, 2021, in response to the removal of another post in the Facebook Group made by the Resident, the Councillor publicly stated her intent to remove herself from the Facebook Group if political posts continued contrary to the group's community guidelines.

In her post on March 26, 2021 announcing her resignation from the Facebook Group, the Councillor did not specifically reference her exchange with the Resident. Her post made no reference to the situation, let alone a misrepresentation of it. However, as this post was made shortly after the exchange, a reasonable reader would infer that it somehow contributed to the Councillor's resignation. With an appreciation of the entire context, the Councillor had already formed and stated her intention to leave the Facebook Group should political posts continue.

We have not been presented any evidence to support a finding that the Councillor resigned from the Facebook Group or made this post with the intention to gain personal favour, self-victimize, or cause any harm to the Resident.

In conclusion, the Councillor did not fail to act with good faith and care in announcing her resignation from the Facebook Group.

(iii) *The Councillor's Response to Demands for Apology*

The Complaints allege that the Councillor failed to act with good faith and care by refusing attempts at resolution of the matter. Specially, this aspect of the Complaints refer to the Councillor's handling of the Resident's and another individual's emails after the exchange, that the Councillor did not publicly rescind her response to the Resident's post, and further, that the Councillor did not follow through with a demand that she post a public apology on the Facebook Group.

On the basis of the evidence, the Councillor did not fail to act with good faith and care in this regard. The Councillor's response was not insincere, was not made with ill intent, and was not a rejection of the situation.

The circumstances of this email exchange were as follows. The first email from the Resident to the Councillor used the subject line "Slander", a specific legal wrongdoing which is actionable in court for monetary damages. Moreover, the body of the email stated that if the Councillor did not rescind her comments by a particular date, the Resident would "seek legal remedy." When confronted with the email, it was reasonable for the Councillor to seek professional advice before responding.

The Councillor refers to her email response as a form of apology, although it does not expressly use the word “apologize.” We also acknowledge that the Councillor did not follow through on the Resident’s demand that she make a public apology by posting in the Facebook Group. However, there is no evidence to find that the Councillor’s email response was insincere or made in bad faith; to the contrary, the Councillor again sought to provide the Resident assistance in seeking information about the property tax adjustments. The Resident did receive a response from the Councillor, however, it was not the response specifically requested of her. In all respects, the Councillor did not fail to act with good faith and care in this regard.

(b) Section 4.1(c)

Section 4.1(c) of the Code requires that a member of Council seek to advance the public interest with honesty. Honesty entails action and speech that is sincere and free of deceit or deception. The Complaints primarily allege that the Councillor contravened this section on account of her “self-victimization” through her resignation post.

Based on our review of the evidence, the Councillor did not fail to act in the public interest with honesty. As discussed above, the evidence demonstrates that the Councillor had manifested and publicly-stated her intention to leave the Facebook Group if there were continued posts of a political nature. There is no evidence to suggest that she used her exchange with the Resident to enhance her personal appearance when resigning from the Facebook Group. Nor is there any evidence she attempted to diffuse responsibility for her actions by resigning. The exchange between the Councillor and the Resident may have been the reason why the Councillor ultimately decided to leave the Facebook Group. However, her decision to do so was not an attempt to manipulate the optics of the situation. Rather, it was a recognition that it was no longer appropriate for her, as a member of Council, to be seen to be moderating political discussion.

The Complaints also allege that the Councillor’s actions incited threats, racist and misogynistic verbal attacks on the Resident by the Councillor’s male supporters and that she condoned this behaviour. These allegations of racism and misogyny have been taken very seriously and have been reviewed as closely and in as much detail as possible.

As set out earlier in this Report, we were presented some evidence of individuals posting in response to the Resident’s post in the Facebook Group. We have not been presented with evidence of any other interactions between individuals and the Resident, be it online or in person, and, specifically, where racist or misogynistic comments were made. We have not been presented any evidence whereby it would be open to make a reasonable finding that the Councillor somehow incited, caused, or encouraged any racist or misogynistic against the Resident.

In summary, the Councillor did not fail to act in the public interest with honesty.

(c) Section 4.1(d)

Section 4.1(d) requires that members of Council seek to serve their constituents in a conscientious and diligent manner. The Code does not define the word “constituent.” In common use, it can be construed as meaning a member of a body of voters in a specific area (e.g., a “ward”), or more broadly as all voters within the Municipality. There is a question as to whether or not the Resident is a voter in Ward 2, being the ward the Councillor was elected to represent. However, on either definition, we find that the Councillor did not fail to serve the Resident in a conscientious and diligent manner.

The Complaints allege that the Councillor attacked the Resident without provocation. As set out in our Report, the Councillor's response to the Resident's comments cannot be reasonably construed as a form of "attack." Although the Councillor's response took a defensive tone, nothing in her public comments constituted an aggressive or harmful action against the Resident. Further, the purpose behind the Councillor's post – the evidence of which is uncontroverted – was to clarify information that she perceived to be harmful to the Municipality.

To the contrary, the Councillor repeatedly offered to assist the Resident in seeking answers from the Municipality's staff as to the various property tax adjustment issues raised in her posts. The Councillor did so in response to the Resident's post in the Facebook Group, and also did so in the face of ambiguous threats from the Resident that she would seek a "legal remedy." The Resident may not have agreed with the response from the Municipality, but the Councillor's efforts to seek resolution of the matter demonstrate her diligence. As such, the Councillor did not fail to serve the Resident, whether a constituent or not, conscientiously and diligently.

(d) Section 4.1(e)

Section 4.1(e) requires that members of Council respect the individual rights, values, beliefs and personality traits of other persons, recognizing that all persons are entitled to be treated with dignity and respect for their personal status regarding gender, sexual orientation, race, creed, religion, ability and spirituality. This provision works in conjunction with other sections of the Code to prevent discrimination against individuals. As it relates to this section, the Complaints specifically allege that the Councillor failed to afford the Resident equal rights, treat her with dignity and respect as a constituent to be heard and voice an opinion. In this regard, the Complaints essentially take issue with the Councillor's removal of the Resident's post from the Facebook Group.

On the basis of the totality of the evidence, the Councillor has not contravened Section 4.1(e) of the Code. The Complaints read an obligation to provide residents an unconstrained platform to voice opinions into this section of the Code. This is not a tenable or reasonable interpretation of the Code. Despite this, the evidence is that the Councillor removed or caused to be removed the Resident's several posts from the Facebook Group on account of its violation of that group's community guidelines. As had been explained to the Resident, the purpose of the Facebook Group – a private, non-municipal platform – was not for discussing municipal politics. In spite of this warning, the Resident made another post in the Facebook Group that did not accord with the group's purpose and stated community guidelines. It was removed on this basis.

The evidence also demonstrates that the Resident had many alternative platforms on which to share her posts and that she, in fact, did share similar statement on other social media groups. There is no evidence to suggest that the Councillor somehow prevented the Resident from voicing this opinion.

There is no evidence that the Councillor contravened Section 4.1(e).

(e) Section 4.1(f)

Section 4.1(f) prohibits members of Council from making statements that are known to be false, or with the intent to mislead the public. The purpose of this section is not to strictly regulate factually incorrect statements. Rather, this provision requires that members of Council refrain from deliberately or intentionally making statements they know are not true, or for the purpose of misleading others. Both prescriptions have an element of intent or motivation.

The Complaints allege that the Councillor “boldly and with false intent” made false statements about the Resident’s character in order to “cast a stereotypical race concept” of her. However, we are unable to draw such a conclusion on the basis of the actual evidence. The Complaints have failed to indicate what portion of the Councillor’s statements in her response to the Resident’s post contain false statements about the Resident’s character. No evidence has been put forward in this regard.

The Councillor’s response used the words “I respectfully ask that you not imply that I am corrupt or...for any personal gain.” [emphasis added] As set out earlier in this Report, the context in which the Resident’s post entitled a reasonably-informed reader to infer the Resident’s posts implied impropriety by the Municipality. The Councillor’s statements obviously use different words than the Resident’s post, however, these statements in no way refer to the Resident’s character.

Further, no evidence was proffered in support of the allegation that the Councillor made statements that tended to cast any racial stereotypes against the Resident. No other social media posts, comments, or other materials have been presented to support this assertion during the investigation.

Accordingly, the Councillor has not contravened Section 4.1(f) of the Code.

(f) Section 4.1(g)

Section 4.1(g) requires that members of Council recognize that they are representatives of the Municipality and that they owe a duty of loyalty to the residents of the Municipality at all times. There are two aspects to this provision. First, the provision requires that members of Council conduct themselves in their personal lives in such a manner that recognizes there is never a clear distinction between their personal capacity and their capacity as an elected representative of the Municipality. Secondly, this provision requires that members of Council always act in a manner consistent with their duty of loyalty owed to all residents of the Municipality. What this means is that members of Council must put the interests of residents vis-à-vis the Municipality before their own personal interests.

The Complaints allege that the Councillor, in her actions in relation to the Facebook Group, failed to recognize that she is always a representative of the Municipality and owed a duty of loyalty to all residents. The Complaints do not articulate the reasons why the Councillor is alleged to have failed in her obligations under this section. This aspect of the Complaints can be dismissed on this basis alone.

Notwithstanding this, the Councillor’s actions demonstrate that at all times, she was cognizant that one cannot easily distinguish between her personal capacity and her capacity as an elected representative of the Municipality. In fact, her motivating reason behind resigning from her role as Admin of the Facebook Group was that she should not be seen to be moderating political discussion that is potentially critical of or adverse to the Municipality. In this regard, the Councillor was well aware of the optics of the situation in fulfilment of her ethical obligations.

As such, the Councillor has not contravened Section 4.1(g) of the Code.

CONCLUSION

For all of the reasons set out in detail above, the Councillor has not contravened any of the provisions of the Code asserted in the Complaints. In all respects, the Councillor acted responsibly with respect to her actions related to the Facebook Group and associated social media posts. It is our conclusion that that Councillor acted in accordance with her obligations under the Code.

The Complaints are hereby dismissed.

AIRD & BERLIS LLP



John Mascarini

Integrity Commissioner for the Municipality of Port Hope

Dated this 30th day of August, 2021