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**INTEGRITY COMMISSIONER REPORT ON  
CODE OF CONDUCT COMPLAINTS AGAINST  
COUNCILLOR DAVE CUYLER**

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

**Aird & Berlis LLP**

**John Mascarin and Meghan Cowan**

June 28, 2022

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	APPOINTMENT & AUTHORITY .....	1
III.	CODE OF CONDUCT PROVISIONS AT ISSUE .....	1
IV.	THE ALLEGATIONS.....	2
V.	PUBLIC STATEMENT OF THE COUNCILLOR.....	2
VI.	THE MAYOR’S STATEMENT .....	3
VII.	NOTICE OF COMPLAINTS .....	3
VIII.	REVIEW OF MATERIALS.....	4
IX.	ALLEGED CONTRAVENTIONS .....	5
X.	RECORDING OF THE MEETING .....	5
XI.	JURISDICTION AND PRELIMINARY MATTERS .....	6
XII.	INITIAL DETERMINATIONS .....	7
XIII.	FINDINGS .....	8
XIV.	CONCLUSIONS .....	10
XV.	NOTICE TO COUNCILLOR AND ADDITIONAL SUBMISSIONS .....	10
XVI.	RECOMMENDATIONS .....	12

## **INTEGRITY COMMISSIONER REPORT – CODE OF CONDUCT COMPLAINTS AGAINST COUNCILLOR DAVE CUYLER**

### **I. INTRODUCTION**

1. Five (5) formal complaints were filed with the Municipality of Kincardine (the “Municipality”) and its Integrity Commissioner (collectively, the “Complaints”) against Councillor Dave Cuyler (the “Councillor”) of the Council of the Municipality.
2. The Complaints allege that a comment made by the Councillor at the meeting of Council on April 4, 2022 (the “Meeting”) contravened the Code of Conduct - Council and Members of Local Boards, Policy GG.6.15 as approved by Resolution No. 02/20/19-12 (the “Code”).

### **II. APPOINTMENT & AUTHORITY**

3. The Municipality’s appointed Integrity Commissioner, Harold Elston, delegated his authority in writing to Aird & Berlis LLP on April 14, 2022 pursuant to subsection 223.3(3) of the *Municipal Act, 2001* to, *inter alia*, review and investigate the Complaints.
4. As such, we have reviewed the Complaints in accordance with our authority as delegated Integrity Commissioner pursuant to the Code and in accordance with our delegated authority under Part V.1 of the *Municipal Act, 2001*.
5. Our initial assessment determined that the Complaints were validly filed and that, upon preliminary review, they warranted investigation.

### **III. CODE OF CONDUCT PROVISIONS AT ISSUE**

6. The Complaints collectively allege that the Councillor contravened Sections 4.0(e), (f), (g) and (h), Section 5.0, Section 6.0, Section 7.0 and Section 13.0 of the Code by virtue of a comment made by him at the Meeting.
7. In addition, Section 5.0 of the Code requires that members of Council comply with the Municipality’s Procedure No. 2013-161 (the “Procedure By-law”). For the purposes of the Complaints, Section A20.8 of the Procedure By-law is applicable.
8. Given the length of the Code sections we have excerpted all of the relevant provisions of the Code at issue in Appendix “A” to this report. We have also included therein the full text of Section A20.8 of the Procedure By-law.

#### IV. THE ALLEGATIONS

9. All five (5) Complaints detail the Councillor's conduct at the Meeting and allege that the Councillor contravened a number of provisions of the Code by virtue of a statement uttered by him during the Meeting. The Complaints all allege that the Councillor stated words to the effect of "you're a fucking cunt" (the "Comment") and some of the Complaints assert that the Comment was directed toward Councillor Laura Haight.

10. The Complaints allege that the Comment was made by the Councillor and was picked up by his microphone during a portion of the Meeting where the Councillor and Councillor Haight had been engaged in a heated discussion concerning her proposed motion for a promenade in the downtown area (the "Promenade"). This occurred shortly after a statement by the Mayor asking that the members of Council observe appropriate decorum and comply with the Code during the Meeting. The Mayor pleaded for "appropriate discussion" and for members to not make it "personal".

11. One of the Complaints also alleged that when approached about the Comment, the Councillor denied using the word he stated and insisted that he had instead uttered the word "can't".

#### V. PUBLIC STATEMENT OF THE COUNCILLOR

12. A letter to the editor of *The Kincardine Record* from the Councillor was published on April 6, 2022 (the "Councillor's Statement"). The letter to the editor provided as follows:

To the Editor:

This statement is in reference to the allegations stemming from the Municipality of Kincardine council meeting, April 4.

I sincerely apologize to the entire community and to all impacted by my actions. It was not my intention to offend or discriminate. I was frustrated with myself for personal reasons when I openly commented to myself. This comment was not directed to anyone other than myself.

Please know while I may at times be emotionally vulnerable, I, in no manner or capacity would willingly participate or directly disrespect this community and its citizens.

My dedication is unwavering to this community which includes my council colleagues, and the Municipality of Kincardine staff and citizens. I will continue to ensure that Kincardine is the best place to live, work and play. I ask for your understanding and acceptance in this regard.

Thank you,

Dave Cuyler

Councillor-at-large  
Municipality of Kincardine

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## **VI. THE MAYOR'S STATEMENT**

13. The Mayor also issued a statement on April 6, 2022 (the "Mayor's Statement"), which provided as follows:

Municipal Councillors are expected to uphold respectful behaviour in our interactions and adhere to a high standard of ethics, given the principles of integrity and accountability that underlie our elected positions.

On February 7, all Councillors of the Municipality of Kincardine Council re-committed to honouring our Code of Conduct which states that all Councillors of council have a duty to treat one another with respect and 'without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment'.

On April 4, there were unacceptable comments made at the Municipality of Kincardine Council meeting.

I have filed a formal complaint with the Integrity Commissioner who will determine if a Councillor of council has breached Code of Conduct.

The Integrity Commissioner has informed us that the ruling on this matter will be expedited. The results of this review will be shared at an upcoming special public Council meeting.

I ask the public for patience while the matter is before the Integrity Commissioner.

## **VII. NOTICE OF COMPLAINTS**

14. Notice of each of the Complaints was provided to the Councillor on April 28, 2022. Our notice disclosed the nature of the Complaints and detailed the allegations regarding the Councillor's conduct at the Meeting with respect to the alleged Comment.

15. In particular, we asked that the Councillor respond to the allegations that: (a) he made the Comment; and (b) he directed the Comment towards Councillor Haight. We also asked that the Councillor respond to the allegation that he stated he used the "can't" instead of the derogatory term for female genitalia in light of the Councillor's Statement which apologizes "to the entire community and to all impacted by my actions."

16. We provided the Councillor with an opportunity to submit a response to the allegations set out in the Complaints. We asked that the Councillor provide written submissions by no later than May 13, 2022.

17. The Councillor did not provide a written response to the Complaints. Instead, he asked to meet with us to discuss the Complaints and to answer our questions. Although our preference to have a written exchange and record, such a request is not unusual and is one that we have acceded to in a number of other investigations. We agreed to convene an interview over Zoom with the Councillor on May 11, 2022 (the "Interview").

18. During the Interview, the Councillor communicated the following information to us:

- When asked if he made the Comment, the Councillor initially raised concerns about the recording of the Meeting and repeated that no one had heard the Comment.
- When we advised the Councillor that we had viewed recordings of the Meeting and had heard the Comment, the Councillor confirmed that he had made the Comment, but noted that he did not do so in the manner suggested. The Councillor advised he was speaking to himself and did not realize the Comment was picked up by the microphone; that the Comment was a mumble, and that it was not directed at Councillor Haight.
- When asked about the Comment being made temporally proximate to the exchange with Councillor Haight, the Councillor provided further detail and advised he was reading “something” on his smart phone and that he mumbled to himself. When asked about the subject matter that he was reading, the Councillor refused to disclose any details and reiterated that the Comment did not relate to Councillor Haight.
- Given the Councillor’s Statement that the Comment had been directed toward himself, and his initial statement to us that he had made the Comment to himself, we inquired why the Councillor would choose the words that were uttered, given that the Comment contained a derogatory term referencing a part of the female body. The Councillor then responded that it was really not directed toward himself, but it was levelled to what he had been reading on his smart phone. He maintained his refusal to provide any further detail regarding the content he asserted he had been reading, other than that it dealt with a municipal matter and that it was unrelated to Councillor Haight.

## **VIII. REVIEW OF MATERIALS**

19. In order to prepare this Report, we have considered and reviewed the following:

- the Complaints;
- the Municipality’s Recording of the Meeting, provided to our office by the Municipality’s Clerk, in which the Comment can be clearly heard;
- a YouTube video recording of the Meeting, in which the Comment has been removed, which we were advised by the Clerk had been edited by Rogers due to the profane nature of the Comment;
- the Councillor’s Statement and the Mayor’s Statement, both issued on April 6, 2022;
- our Interview with the Councillor of May 11, 2022;
- our interview with the Mayor, conducted on May 13, 2022;
- our interview with the Clerk of the Municipality, conducted on May 13, 2022; and
- our interview with Councillor Haight, conducted on May 17, 2022.

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## **IX. ALLEGED CONTRAVENTIONS**

20. As noted, the Complaints take issue with the Councillor's Comment made during the Meeting. Each of the Complaints allege matters that, on their face, are complaints with respect to non-compliance with the Code.

21. In particular, the Complaints alleged that the Comment was audibly uttered by the Councillor during a portion of the Meeting where the Councillor and Councillor Haight were engaged in or had just concluded a rather animated discussion concerning the matter of the Promenade.

22. The Comment was also made shortly after the Mayor had implored members of Council to observe appropriate decorum and the Code during the Meeting. The Mayor pleaded for "appropriate discussion" and for members to not make it "personal".

## **X. RECORDING OF THE MEETING**

23. Due to the global COVID-19 pandemic, meetings of Council were conducted remotely for a period of time. We understand from the Clerk that the Municipality resumed holding in-person meetings again in the Spring 2022, with members still able to attend remotely via Zoom if they preferred (i.e., hybrid meetings).

24. The current hybrid meetings of Council are conducted in the following manner:

- Partition glass has been installed between each seat in Council Chambers as a COVID-19 safety protocol. We understand from our interviews with the administrative staff that the glass partitions can make it harder for persons in the Council Chamber to hear one another;
- Each member of Council is provided with a microphone and the microphones are connected to an audio system so that the members' verbal comments are transmitted in Council and via the online recording system so that the members of Council who are attending remotely can hear their colleagues in the meeting; and
- Rogers arranges for a technician to log into the Zoom meeting and "share" their screen on live television with the public. Accordingly, any member of the public can watch the meetings of Council either online via Zoom or on public television.

25. The Meeting was held in a hybrid manner, with some members of Council choosing to attend personally and others remotely. The configuration of the Meeting was such that five (5) members of Council and the Mayor attended in-person in Council Chambers, while three (3) members attended remotely via Zoom.

26. We understand that the Deputy Clerk arranged to record the Meeting via the Zoom recording feature. The Zoom recording was also broadcasted live on public television by Rogers.

27. During our interviews with the Councillor, the Mayor and the Clerk, we were advised that there were a number of technical and sound related issues at the Meeting. In particular:

- Members of Council attending the Meeting in person raised concerns about not being able to hear each other through the audio speaker system. Staff attempted to troubleshoot these audio issues, but ultimately could not resolve the issues. The Meeting therefore proceeded without the audio being played in Council Chambers. The audio, however, was clearly heard over the Zoom recording so that members of Council attending remotely could hear and participate in the debate and discussion.
- Because of the audio issues, the Mayor, the Clerk and the Acting Chief Administrative Officer (the “Acting CAO”) did not hear the Comment when it was made during the Meeting. The Mayor and senior staff were only alerted to the Comment when members of the public and other staff members messaged them about the Comment.
- Upon learning about the Comment, the Mayor conferred with the Clerk and Acting CAO. The Mayor convened a brief recess so that he could review an audiovisual recording of the Comment. However, because of the nature of Rogers’ live broadcast of the Zoom meeting, a recording was not immediately available to confirm whether the Comment had been made or not.
- The Mayor conveyed advised us that had he heard the Comment at the Meeting, he would immediately have stopped the Meeting to address the Comment.
- During a recess later during the Meeting, the Mayor approached the Councillor about the Comment. The Councillor indicated that he could not recall making the Comment. Therefore, in light of the Councillor’s inability to recollect having said anything and the inability to immediately access and review an audiovisual recording of the Comment, the Meeting proceeded without the Comment being formally addressed.

## **XI. JURISDICTION AND PRELIMINARY MATTERS**

28. It is a general principle that the conduct and management of a meeting of Council must be afforded deference, so that the chair may operate with a degree of autonomy to oversee and preserve order, decorum and proper process. The behaviour of Councillors at a meeting of Council is generally under the purview and responsibility of the head of Council or the presiding officer as the chair. This is codified in a municipality’s procedure by-law. The authority of the Integrity Commissioner to review such matters is typically reserved only for extenuating or extraordinary circumstances. To intervene otherwise would be to interfere with the independence and self-sufficiency of Council and of the head of Council in chairing its meetings.

29. Some Integrity Commissioners have refused to accept jurisdiction with respect to complaints respecting the conduct of members at or during formal meeting of council, local boards or committees of either of them. This is not a position that our office has previously taken. We have determined that the jurisdiction of the Integrity Commissioner may, in certain instances, warrant the review of the conduct of one or more members at a meeting. We have, however, been mindful that the code of conduct should envisage such review and that the alleged misconduct of a member at a meeting must rise to a certain level for us to consider the matter.

30. We considered the question of jurisdiction in these Complaints and have determined that our review is warranted for the following reasons:

- (a) Section 5.0 of the Code expressly requires that members of Council comply with the Municipality's Procedure By-law which provides, amongst other things, in Section A20.8 as follows:

No member shall speak disrespectfully, or use abusive or unparliamentarily words or expressions in Council.

The inclusion of Section 5.0 manifests a clear intention that the Code is to apply to members of Council vis-à-vis their conduct at meetings. Council intended that abusive or unparliamentary words or expressions not be used in the Council Chambers by the inclusion of Section A2.8 of the Procedure By-law.

- (b) With respect to the Complaints, we made a determination that, in view of the multiple formal complaints that were actually filed, and the public attention focused on the matter, the allegations leveled against the Councillor at least merited our review and inquiry.
- (c) In our interviews with the Clerk and Mayor, it became apparent that due to the configuration of the meeting setting and issues with the audio system, many members and staff present at the Meeting did not hear the Comment "live" and were only alerted to the Comment when other staff members or members of the public watching remotely or by broadcast advised that they had heard the Comment that had been picked up via the microphone system.
- (d) In particular, and as set out above, both the Mayor and Clerk advised us that they did not hear the Comment in the moment it was uttered. Both were only alerted to the Comment after some time had elapsed. Moreover, when the Mayor took steps to ascertain whether the Comment had indeed been made, he was informed that the recording was "live" and that he was not able to replay or review the Comment.

31. Given the issues highlighted above with the audio system and the fact that the Mayor did not hear the Comment when it was spoken during the Meeting (and he could, therefore, not take any actions to address it in the moment), we determined to proceed to conduct an investigation into the Complaints.

## **XII. INITIAL DETERMINATIONS**

32. In undertaking our initial intake analysis, we determined that the Complaints, in our view, did not disclose sufficient grounds with respect to the alleged violations of Section 7.0 or Section 13.0 of the Code on their face to merit a full investigation.

33. Section 7.0 of the Code pertains to conduct respecting staff. This provision does not appear applicable to the Complaints, given the allegations relate to: (i) whether the Comment was spoken, and (ii) whether it was directed toward Councillor Haight. None of the Complaints raised any concerns with respect to staff members or the allegation that the Comment was directed toward staff.

34. Section 13.0 of the Code provides a guiding tenet on the conduct expected of Councillors and outlines the sanctions permitted under the *Municipal Act, 2001*. This is not a prohibitive provision requiring members to comply to a standard of behaviour – it merely sets out the potential ramifications of a breach of the Code.

35. As such, our investigation did not inquire into contraventions with respect to Section 7.0 or Section 13.0 of the Code. We informed the Councillor of this determination in our Notice and that, accordingly, our investigation would be inquiring into the alleged contraventions of Sections 4(e), (f), (g) and (h), Section 5.0 and Section 6 of the Code.

### **XIII. FINDINGS**

36. Our conclusion, based on a consideration of the totality of the evidence and on a balance of probabilities, is that the Councillor made the Comment at the Meeting as alleged and that the Comment was directed at Councillor Haight.

37. While the Councillor ultimately admitted to making the Comment, he denied that it was directed toward Councillor Haight. Given this denial, we carefully considered the Councillor's Interview on May 11, 2022, the Councillor's Statement and the audiovisual recording of the Meeting provided to us by the Clerk. We considered well-established principles pertaining to the assessment of the credibility of interested witnesses, in that an investigator must undertake an examination of the explanation in harmony with the preponderance of the probabilities which a practical and informed person would recognize as reasonable in the particular situation.

38. With respect to the Complaints, we took the following factors into consideration:

- (a) The Councillor and Councillor Haight had been engaging in a choleric exchange pertaining to Councillor Haight's proposal respecting the Promenade, during which the Mayor had to intervene several times:
  - (i) After Councillor Haight explained her proposal, the Councillor explained that he had conducted a survey. Councillor Haight interjected and asked if the Councillor had conducted it on Facebook. The Councillor took offence to the comment and said something to the effect of "...is that what you and Jennifer have been whispering about ..." after which the Mayor called a Point of Order;
  - (ii) The Councillor continued "you are scared to speak up" after which point the Mayor again called for a Point of Order. The Councillor apologized, however Councillor Haight demanded that she hear the apology directed at her and the Councillor refused and said "no I won't because you never apologize to me...". Councillor Haight responded "for what" and the Councillor repeated "for what?" after which the Mayor interjected again with another Point of Order; and
  - (iii) At this point in the Meeting, the screen immediately shifted to a member of Council attending remotely and the Councillor is heard at that time uttering the Comment.
- (b) The Councillor's Statement admitted to making the Comment wherein he explained, "I was frustrated with myself for personal reasons when I openly commented to myself. This comment was not directed to anyone other than myself."

- (c) Despite the foregoing, during the Interview, when asked to explain the context of the Comment, the Councillor's account shifted and he stated that the Comment was made in relation to something that he was reading on his smart phone. The Councillor also indicated that he had no recollection of stating that he had used the word "can't" not the word that is credibly audible in the recording.

39. Given the inconsistencies between the Councillor's Statement and comments made in his Interview with us, and when viewed in the context of the heated discussion between himself and Councillor Haight, we find that on a balance of probabilities, the Comment was directed toward Councillor Haight. The sequence of the debate, followed immediately by the utterance of the Comment, lends itself to a reasonable and logical conclusion that the Comment was directed toward Councillor Haight. While the Comment may have been mumbled, and therefore likely not intended to be heard, it nevertheless was "picked up" by the microphone in the Council Chambers and was audible to persons viewing the Meeting.

40. Set out below is a summary of our analysis with respect to each alleged violation of the Code:

- **Section 4.0(e):** The Code specifically prescribes that members of Council shall conduct their dealings with each other in a way that maintains public confidence. We note that the conduct of Councillors Haight and Cuyler, in entering into the exchange over the Promenade, required the Mayor's intervention several times before the Comment was even uttered. The Councillor's subsequent Comment was profane and degrading – there is no way it could be said to maintain public confidence, as evidenced by the amount of attention the Comment has garnered in the community (and beyond).
- **Section 4.0(f):** The Code specifically provides that members of Council shall avoid aggressive, offensive or abusive conduct. The Comment was offensive, and moreover, it contained a highly derogatory remark that was directed specifically toward Councillor Haight, a female member of Council.
- **Section 4.0(g):** The Code specifically provides that members of Council shall refrain from making disparaging remarks. The Comment contained two profanities. While we have taken into account the situation with the microphones and the fact that it may be unclear whether the Councillor intended his utterance to be heard by anyone or not, we are of the view that the Councillor's choice of language constituted a disparaging remark.
- **Section 4.0(h):** The Code specifically prescribes that members of Council shall avoid conflicts of interest. We do not find that the allegations relating to the Comment engage this provision at all.
- **Section 5.0:** The Procedure By-law expressly provides that no member shall speak disrespectfully, or use abusive or unparliamentarily words or expressions in a meeting. On its face, the Comment violates Section A20.8 of the Procedure By-law given its lewd and crass language. The Councillor uttered the profane words – whether he intended it to be recorded or broadcast is immaterial to the fact that he made the Comment during a formal open meeting of Council. To be clear, it would have been entirely inappropriate to use such language even if not specifically directed at any one person.

- **Section 6.0:** The Code provides that all members of Council have a duty to treat members of the public, one another, and staff with respect and without abuse. There is no doubt that the Comment was made by the Councillor and, whatever the circumstances, it is not a respectful comment to be made in an open meeting of Council. It is our view, whether or not the comment was directed at Councillor Haight (which we have determined it was), it is abusive and disrespectful language towards any member of Council, staff or the public.

#### **XIV. CONCLUSIONS**

41. In summary, it is our conclusion that the Councillor breached Sections 4.0(e), (f) and (g), Section 5.0 and Section 6.0 of the Code by his actions at the Meeting. The Councillor, in our view, failed to live up to the expectations and to comply with the requirements set out for members of Council in those above-referenced provisions of the Code and Section A20.8 of the Procedure By-law.

42. In particular, we note that the Councillor's Statement, while attempting to explain and mitigate the impact of the Comment, did not acknowledge the context in which the Comment was made. As noted, the Comment was uttered immediately after a heated exchange with Councillor Haight, in which the Mayor had called for points of order multiple times.

43. Given the nature of the exchange with Councillor Haight immediately preceding the Comment and subsequent public reaction assuming the Comment was directed toward Councillor Haight, the Councillor's Statement could have done more to acknowledge that perception and to offer a sincere apology to Councillor Haight.

44. Instead, in his interview with us, the Councillor seemed to disavow his prior explanation of mumbling the Comment toward himself when pressed as to why he would use a derogatory word describing female anatomy and instead explained that the Comment was made in reaction to something that he had been reading. Such an explanation stretches credulity when viewed in the full context of what had occurred at the Meeting.

45. In particular, the timing of the Comment, which followed no more than 2 to 3 seconds after his last words during the debate with Councillor Haight, would make it highly improbable that the Councillor would have accessed his smart phone and reviewed something (on a different subject matter) that would have so instantaneously inflamed him to such a degree that it caused him to utter the profanities comprising the Comment.

46. Having taken all of these factors into consideration, on a balance of probabilities, it is our finding that the Councillor made the Comment and that it was more likely than not directed toward Councillor Haight.

#### **XV. NOTICE TO COUNCILLOR AND ADDITIONAL SUBMISSIONS**

47. In accordance with our standard protocol, a draft of this Report was provided to the Councillor on June 17, 2022 to allow him to review and comment on the factual accuracy of the Report and to provide any comment by no later than June 17, 2022 in order to permit for the inclusion of the Report on the agenda of the meeting of Council on July 4, 2022.

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48. As a matter of procedural fairness, and although not required to do so pursuant to the Code, we provided the Councillor with an opportunity to make final submissions on our findings as contained in the draft Report in order for us to assess same and conclude our investigation into the Complaints.

49. The Councillor wrote to us on June 16, 2022 and requested an extension to provide submissions in response to our draft Report. We provided the Councillor with additional time to June 23, 2022. On that date, we received the Councillor's submissions with respect to the findings in our draft Report (the "Councillor's Submissions"):

- The Councillor asserted that he did not utter the Comment into the microphone, but made the Comment as his head was tilted downward while seated and engaging in his smartphone.
- The Councillor took issue with our characterization of the debate over the Promenade between himself and Councillor Haight as being "heated".
- The Councillor disagreed with our characterization of the public attention on the Comment as being "extensive". He asserted that the matter received attention due to the fact that certain individuals had contacted local news media.
- The Councillor argued that our characterization of the Comment as derogatory, vulgar and/or disrespectful is "entirely dependent on the perspective of an Individual...if one examines the etymology of the term, we find historically it is one of empowerment of female sexuality...".
  - Nevertheless, the Councillor went on to state that he recognized the Comment was inappropriate and that he had acknowledged this by way of his statement of April 6, 2022.
- The Councillor disagreed with our assessment of the Comment, stating that it is subjective and open to interpretation.

50. In fact, and we consider this important to note, the Councillor's Submissions noted no less than three times that our findings and determinations were "subjective". We strongly disagree with the Councillor's attempt to deflect the characterization of our assessment and conclusions as subjective. They have been made based on a completely neutral, impartial and objective review of the entirety of the evidentiary record related to the Complaints.

51. We have reviewed and considered the Councillor's Submissions. We find that the Councillor's Submissions do not disclose any factual inaccuracies in our Report, but simply seek to argue that his conduct and the Comment are open to interpretation. While acknowledging that the Comment was made by him and was inappropriate, the Councillor's Submissions attempt to refute any personal responsibility on his part and to displace blame by referencing what he termed "bias of mindset".

52. Having taken the Councillor's Submissions into consideration, our finding remains that the Councillor clearly made the Comment, that it was profane and offensive and that any reasonable person would conclude that it was more likely than not directed toward Councillor Haight.

## **XVI. RECOMMENDATIONS**

53. The Councillor's actions in making the Comment during the Meeting contravened Sections 4.0(e), (f) and (g), Section 5.0 and Section 6.0 of the Code.

54. The Councillor has previously been found by the Integrity Commissioner to have twice contravened his obligations under the Code during this term of Council.

55. The Integrity Commissioner's Report dated January 22, 2020 concluded that the Councillor had committed multiple breaches of the Code. The Municipality's Integrity Commissioner recommended to Council that the Councillor be reprimanded and prohibited from entering staff workspaces and from having any direct dealings with municipal staff, except through the Chief Administrative Officer, or her delegate.

56. The Integrity Commissioner's Report dated January 27, 2021 concluded that the Councillor had committed multiple further breaches of the Code. Notably, the subject matter of the Integrity Commissioner's second Report also related to the Promenade and the Councillor's interactions, in part, with Councillor Haight.

57. Subsection 223.4(5) of the *Municipal Act, 2001* provides that where a Councillor is found to have contravened a code of conduct, the Integrity Commissioner may recommend and Council may impose the following two penalties:

- (i) a reprimand,
- (ii) a suspension of remuneration of up to ninety (90) days.

58. The findings in this Report mark the third transgression of the Code by the Councillor during this term of Council.

59. While the *Municipal Act, 2001* sets out no criteria for the imposition of penalties, numerous professional and regulatory bodies typically rely on a generally accepted list of purposes for penalties which include: (i) specific deterrence; (ii) general deterrence; (iii) rehabilitation; and (iv) maintenance of public confidence in the framework.

60. Based on the foregoing, it is important for the purposes of specific deterrence and to maintain public confidence for a progressive penalty to be recommended. It is our recommendation that Council not demonstrate any tolerance for the Councillor's actions, including his attempts to refute his actions. The Councillor should be held to the high standard his elected office demands.

61. We therefore recommend that Council reprimand the Councillor for his breach of the Code and formally denounce his actions. We also recommend that Council impose a suspension of the Councillor's remuneration for a period of ninety (90) days, the maximum permitted under the *Municipal Act, 2001* and the Code, in recognition of his multiple violations of the Code.

62. We considered whether to recommend that the Councillor undergo training with respect to the Code and the Municipality's harassment and discrimination policy, given his repeated breaches of conduct, however, we are sensitive to the cost of requiring same and also the timing of the upcoming election.

63. We have elected not make any recommendations as to the imposition of remedial measures or corrective actions.

Respectfully submitted,

AIRD & BERLIS LLP

Handwritten signature of John Mascarini in black ink, featuring a large, stylized 'J' and 'M'.

John Mascarini

Handwritten signature of Meghan A. Cowan in black ink, written in a cursive style.

Meghan A. Cowan

Delegated Integrity Commissioner for the Municipality of Kincardine

Dated this June 28<sup>th</sup>, 2022

## **APPENDIX “A”**

### **CODE OF CONDUCT – COUNCIL AND MEMBERS OF LOCAL BOARDS**

#### **4.0 General Integrity**

...

- e) Members will conduct their dealings with each other in ways that maintain public confidence in the position to which they have been elected or appointed.
- f) Members will be open and honest, focus on issues rather than personalities, and avoid aggressive, offensive or abusive conduct.
- g) Members shall refrain from making disparaging remarks about other members of Council, staff, members of the public, or Council's decisions.
- h) Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.

...

#### **5.0 Conduct at Council and Local Board Meetings**

Members shall conduct themselves with decorum at all Municipal Council and Local Board meetings in accordance with the provisions of the Municipality of Kincardine's Procedure By-law.

#### **6.0 Discrimination and Harassment**

All members have a duty to treat members of the public, one another, and staff with respect and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. The Ontario Human Rights Code applied and, where applicable, the Municipality's Workplace Harassment Policy.

#### **7.0 Conduct Respecting Staff**

- a) Members shall acknowledge the fact that staff work for the Municipality as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate objectives. Municipal Council has the authority to approve budget, policy, governance, and other such matters. Under the direction of the Chief Administrative Officer, Municipal staff serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council as recorded in the minutes and resolution
- b) Members shall acknowledge and respect the fact that staff carry out directions of Council as a whole and administer the policies of the Municipality, and are required to do so without any undue influence from any individual member or group of members.

- c) Members shall refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility. The role of staff is to provide advice and services based on political neutrality, objectivity and professional judgement which may not necessarily reflect the opinion or position of a single member of Council.
- d) Members of Council have no individual capacity to direct staff to perform specific functions. Inquiries of staff from members of Council should be directed to the Chief Administrative Officer or the appropriate Senior Manager.
- e) The *Municipal Act, 2001* sets out the roles of members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer and the Integrity Commissioner.
- f) Members of Council are expected to:
  - i. Represent the public and to consider the well-being and interests of the Municipality;
  - ii. Develop and evaluate policies and programs of the Municipality;
  - iii. Determine which services the Municipality provides;
  - iv. Ensure the administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of Council;
  - v. Ensure the accountability and transparency of the operations of the Municipality, including the activities of the senior management of the Municipality;
  - vi. Maintain the financial integrity of the Municipality; and,
  - vii. Carry out the duties of Council under the *Municipal Act, 2001* or any other Act.
- g) Municipal staff is expected to:
  - i. Implement Council's decisions and establish administrative practices and procedures to carry out Council's decisions;
  - ii. Undertake research and provide advice to Council on the policies and programs of the Municipality; and
  - iii. Carry out other duties required under the *Municipal Act, 2001* or any Act and other duties assigned by the Municipality.
- h) Members shall be respectful of the role of staff to provide advice based on political neutrality, professional judgement and objectivity.

- i) Members should not:
  - i. Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
  - ii. Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
  - iii. Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties.

...

### **13.0 Compliance with the Code of Conduct**

- a) Members are expected to adhere to the provisions of the Code of Conduct.
- b) Where Council has received a report by its Integrity Commissioner that in his or opinion there has been a violation of the Code of Conduct, the *Municipal Act, 2001* provides Council with the authority to impose the following sanctions:
  - i. A reprimand; and,
  - ii. Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.

### **PROCEDURE BY-LAW NO. 2013-161**

- A20.8 No member shall speak disrespectfully, or use abusive or unparliamentarily words or expressions in Council.