

**AIRD BERLIS**

John Mascarin  
Direct: 416.865.7721  
E-mail: [jmascarin@airdberlis.com](mailto:jmascarin@airdberlis.com)

Daria (Dasha) Peregoudova  
Direct: 416.865.3417  
E-mail: [dperegoudova@airdberlis.com](mailto:dperegoudova@airdberlis.com)

**CODE OF CONDUCT COMPLAINTS  
INTEGRITY COMMISSIONER REPORT  
2021-02 – 2021-09**

**THE CORPORATION OF THE CITY OF THOROLD**

**John Mascarin and Daria (Dasha) Peregoudova  
Aird & Berlis LLP**

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## INTEGRITY COMMISSIONER REPORT CODE OF CONDUCT COMPLAINTS 2021-02 – 2021-09

### I. SUMMARY

Eight (8) formal complaints were filed with the Integrity Commissioner on September 16, 2021 against Councillor Jim Handley (the “**Councillor**”) of The Corporation of the City of Thorold (the “**City**”) (collectively, the “**Complaints**”). As will be detailed below, the Complaints each allege fourteen (14) unique violations, each of which are alleged to contravene a number of provisions of the City’s [Code of Conduct for Members of Council and Local Boards](#) (the “**Code**”), the Council/Staff Relations Policy No. 100-33<sup>1</sup> (“**Council/Staff Policy**”), the Council - Staff Communications Policy No. 100-32<sup>2</sup> (“**Communications Policy**”), the Use of Social Media by Members of Council Policy No. 100-35<sup>3</sup> (the “**Social Media Use Policy**”), the Workplace Violence & Harassment Policy – Policy No. 3<sup>4</sup> (“**Workplace Policy**”), the Councillor’s Declaration of Office, and the *Municipal Act, 2001*.

### II. APPOINTMENT & AUTHORITY

Aird & Berlis LLP was appointed as Integrity Commissioner for the City pursuant to subsection 223.3(1) of the *Municipal Act, 2001*<sup>5</sup> by Council by By-law No. 28-2019 on February 20, 2019.

Council adopted the Code and its Complaint Protocol (the “**Complaint Protocol**”) on October 1, 2019 by By-law No. 126-2019.

As Integrity Commissioner, we are appointed to act in an independent manner on the application of the Code, and other rules and procedures governing the ethical behaviour of members of Council. We are required to preserve secrecy in all matters that come to our knowledge as Integrity Commissioner in the course of our duties. At the same time, the City is required to ensure that reports received from the Integrity Commissioner are made available to the public.

The Complaints were all properly filed pursuant to Part B, Section 1(1) of the Complaint Protocol and subsection 223.4(1) of the *Municipal Act, 2001* and fall within the scope of the Code.<sup>6</sup>

The allegations raised in the Complaints were identical, and as such, we exercised our authority pursuant to Part B, Section 3(2)(b) of the Complaint Protocol to coordinate our investigation regarding the Complaints.

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<sup>1</sup> <https://calendar.thorold.ca/meetings/Download/1cfb69b7-7977-4a03-9072-ac9200c2c492> at page 165 (page 171 of PDF).

<sup>2</sup> <https://calendar.thorold.ca/meetings/Download/1cfb69b7-7977-4a03-9072-ac9200c2c492> at page 157 (page 163 of PDF).

<sup>3</sup> <https://calendar.thorold.ca/meetings/Download/1cfb69b7-7977-4a03-9072-ac9200c2c492> at page 171 (page 177 of PDF).

<sup>4</sup> <https://calendar.thorold.ca/meetings/Download/5ebb534f-0e2d-45cb-a7e8-aa7900e9f263> at page 70 (page 71 of PDF).

<sup>5</sup> *Municipal Act, 2001*, S.O. 2001, c. 25.

<sup>6</sup> The Complaints alleged contraventions of Sections 2.1 and 2.2 of the Code. Sections 2.1 and 2.2 constitute a statement of principles in the Code and are not capable of independent enforcement. However, the principles are important in providing guidance as to the interpretation and application of the Code.

This is a report on the investigation of the Complaints made in accordance with Part B, Section 11 of the Complaint Protocol and subsection 223.6(2) of the *Municipal Act, 2001* (the “**Report**”). The Report contains recommendations that Council for the City is requested to consider.

The principles of procedural fairness require us to provide reasons for our conclusions and recommendations, which we have done in this Report. Our investigation was conducted in accordance with the Complaint Protocol and with a process that was fair to all parties. We have assessed the evidence in an independent and neutral manner. We have provided an opportunity to the Councillor to respond to all of the allegations set forth in the Complaints, including an additional request for clarification, and to review and provide comments on our preliminary findings and conclusions. A copy of the final draft of our report was provided to the Councillor for comment on November 25, 2021. He provided us with comments which have been considered in the finalization of this Report.

### III. CODE OF CONDUCT AND POLICY PROVISIONS AT ISSUE

The Complaints allege that the Councillor contravened the following provisions of the Code:

- Sections 2.1, 2.2, 4.1(a)-(i), 5.4, 5.5(a)-(c), 6, 8.1, 8.4, 9.1(a)-(g), 9.2, 9.3, 9.4, 9.5, 9.6, 10.1, 10.2, 10.3, and 13.1.

In addition, the Complaints also allege the Councillor breached various provisions of the following:

- Declaration of Office by virtue of section 232 of the *Municipal Act, 2001*;
- Social Media Use Policy (unspecific portions);
- Communications Policy (unspecific portions);
- Workplace Policy (unspecified sections); and
- Council/Staff Policy (unspecified sections).

The provisions of the Social Media Use Policy, Council/Staff Policy, Communications Policy and Workplace Policy (collectively, the “**Policies**”) all properly form part of the Complaints as constituting “procedures, rules and policies of the municipality and local board governing the ethical behavior of members of council and of local boards.”<sup>7</sup>

The Policies are brought within the scope of the Code by virtue of Section 13.1:

#### 13.0 Council Policies and Procedures

- 13.1 A Member shall observe and adhere to the policies, procedures and rules established from time to time by Council.

In the interest of keeping our report at a manageable length, we have not reproduced the aforementioned provisions of the Code or the Policies and have instead included links to the Code and Policies above.

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<sup>7</sup> Paragraph 223.3(1) 2 of the *Municipal Act, 2001*.

#### **IV. REVIEW OF MATERIALS AND INTERVIEWS**

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

- Complaints 2021-02 through 2021-09 and all attachments thereto (totaling 173 pages of material, three (3) videos and one (1) audio recording);
- The Councillor's responses to Complaints 2021-02 – 2021-09 dated October 26, 2021 and November 16, 2021 (collectively, the "**Responses**");
- Further information provided by the Complainants on November 16, 2021;
- Further information provided by the Councillor on November 18, 2021 following a Request for Clarification (the "**Clarification Response**");
- Minutes of the May 18, 2021 Meeting of Council;
- Minutes of the July 7, 2020 Meeting of Council;
- Minutes of the October 20, 2020 Meeting of Council; and
- Minutes of the November 3, 2020 Meeting of Council.

We also reviewed such further materials that we considered appropriate to understand the context of the ethical framework and matters related to the Complaints.

#### **V. BACKGROUND AND FACTUAL CIRCUMSTANCES**

The Complaints contain a great deal of allegations and supporting evidence. For the sake of preparing our Report, during our detailed review of the Complaints and evidence provided in support of the Complaints, we were able to identify six (6) primary subject areas of concern:

##### **(a) Misuse of Social Media**

The Complaints broadly allege that the Councillor regularly and inappropriately misuses social media platforms available to him. Our review of the Complaints identified three (3) main categories of social media activity which is brought forward in support of the Complaints:

##### **i. Comments regarding communism and conspiracy theories, resulting in complaints by residents (Allegation #2 and #13)**

The Complaints provide the following examples in support of the allegation that the Councillor violated the Declaration of Office to "be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second":

- The Councillor's Facebook comment in response to a COVID-19 restriction elimination post dated June 18, 2021 where he states, "In Canada. Communism Rules."

- The Councillor's sharing of a video and comment from an anonymous user that says "TRUDEAU SIGNS PFIZER DEAL TO MURDER EVERY SINGLE CANADIAN WITH POISONED SHOTS – TREASON".

Both posts resulted in formal complaints being filed with the City by residents, who expressed shock and concern that the Councillor's behavior undermined the faith and well-being of Canadians and the Government of Canada.

The Complaints also allege that the Councillor breached Sections 2.2, and 4.1(a), (d), (e) and (f) when on August 12, 2021, he posted on Facebook indicating that Prime Minister Justin Trudeau was going to "dissolve Parliament on Friday the 13<sup>th</sup>", and that "we go to the polls on Sep 20<sup>th</sup>. U heard it here 1<sup>st</sup>". When criticized on the inappropriateness of his post by another Facebook user, he responded, "Just like all the other physics on Facebook. Lol" (the "**Physics Comment**"). We believe, given the context, that the Councillor was attempting to use the term "psychics", and not "physics". For consistency, we will refer to the comment with the Councillor's original spelling. The Physics Comment ultimately prompted a somewhat confrontational exchange between the Councillor and the other individual, who indicated that they expected more from the Councillor given his role, instead of such a condescending comment.

**ii. Criticism and eroding of trust in staff and City as a whole (Allegations # 1, #5 and #12)**

The Complaints allege that the Councillor violated the Declaration of Office and his corresponding oath to "truly, faithfully and impartially exercise [his] office to the best of [his] knowledge and ability" by making various comments on social media that attack and criticize staff, who, given the policies on social media use for staff, are unable to defend themselves or engage in public discussion to offer their views or perspective. The Complaints further allege that the Councillor's comments unnecessarily cast the City and its staff in a negative light for the Councillor's own vested interest, and erode trust in staff and create unnecessary conflict and confusion for the public.

Among many examples of provided in support of this allegation, the Complaints point to the following:

- A Facebook post by the Councillor of an unspecified date responding to a resident's concern regarding an unkept property on Anne Street, saying "What can I say. But I'm embarrassed as a councillor... This should not be happening. What is out city coming to...." (the "**Anne Street Property Comments**").
- Facebook posts by the Councillor regarding the Canada Summer Games Park Consortium Agreement and Legacy Lease Agreement (collectively, the "**Agreements**") dated May 19, 2021 where the Councillor states that "as a councillor I have yet to see the actual agreement. They won't give me a copy", that "all parties agree to keep all info out of public hands" and implores his followers to make freedom of information requests and "swamp city hall with request[s]". Lastly, on May 20, 2021, the Councillor posted that the Canada Summer Games agreement would be made public following "public pressure" and a "letter drafted by Councillor Anthony Longo to the Regional Councillors" (collectively, the "**May Facebook Posts**").

- The Complaints state that the May Facebook Posts were made despite the Councillor's knowledge that on May 18, 2021, Council voted on By-Law No. 62-2021 to "Execute a Consortium Agreement and Legacy Lease Agreement for Canada Summer Games Park" ("**By-Law 62-2021**"), including the following resolution:

That upon execution of the documents by all Consortium partners and consent to disclose, included as Confidential Appendix A and Appendix B to this by-law, the "Consortium and Co-Tenancy Agreement" and "Legacy Lease Agreement," be released to the public on the municipal website (the "**Public Release Resolution**").

The Complaints state that the Councillor was aware that in both open and closed session in the meeting of Council on May 18, 2021, the City's legal counsel had advised that partner approval should be sought prior to making the Agreements public, and that approval was sought shortly following the approval of By-Law 62-2021, which all Council members were informed and kept abreast of, including via email on May 19, 2021 and June 7, 2021 (as will be detailed below).

- The Complaints state that in clearly misunderstanding By-Law 62-2021, the Councillor emailed staff on May 20 and 24, 2021, indicating that By-Law 62-2021 stated that the "documents would remain confidential..." and asking whether during the May 21, 2021 meeting of Council, any amendments had been made. The Complaints state that the Councillor's misunderstanding resulted and continues to result in him distributing inaccurate and false information, causing confusion.
- The Complaints state that the above-noted examples are not one-offs, but consistent with the Councillor's past actions, including various Facebook posts where the Councillor characterized the Mayor's actions as "Dictatorship, not Democracy" (including Facebook posts on October 22, 2020 and November 4, 2020) (the "**Dictatorship Comments**") and where the Councillor has criticized the Mayor and Council for not following proper procedure in reconsidering a motion that the Councillor had put forward on July 7, 2020 regarding public disclosure and a viewing period for the Agreements (the "**Reconsideration Criticism**").

On the whole, the Complainants state that the Councillor has created a public perception that the staff have done something wrong, and that, in general, his false, uninformed and self-serving statements have eroded the democratic process at the City.

The Complaints allege that the Councillor violated the Use of Social Media Policy, and specifically, the "Respecting Staff" section by virtue of the Anne Street Comments, and the May Facebook Comments.

In addition, the Complaints allege that the Councillor breached Sections 2.1, 2.2, 4.1, 5.4, 5.5, 10.1, 10.2, 10.3, 13.1 of the Code by virtue of recording and posting videos to Facebook on August 12, 2021 that feature him at a public park (allegedly, close to his residence), appearing to be under the influence of alcohol, stating that staff were "following" and tracking him on social media, and that the lights at the park would suspiciously be turned off shortly after he appeared at the park (the "**Lights Conspiracy**"). The Complaints allege that these baseless accusations undermined the legitimacy of Council-staff relations, were embarrassing for both the Councillor and staff, exposed staff to risk of reputational and professional harm, and served to diminish staff's reputation in the City. In support of their allegations, the Complainants provide a detailed

complaint that was filed by a resident, expressing their concern over the Councillor's "shameful" conduct in the videos, and the potential reputational harm to the City. Notably, the Complainants express concern that the resident became upset with staff for not being able to control or avert the Councillor's behaviour or actions.

**iii. Dissemination of false or misleading information (Allegations #4 and #8)**

The Complaints allege that the Councillor breached the Use of Social Media Policy, and specifically, the "Principles" section by virtue of the as well as the Anne Street Comments, the Dictatorship Comments and the Reconsideration Criticism, including a Facebook comment in May 2021 where the Councillor indicates that the Mayor "does not have the executive power to overrule decision by council" and that a 2/3 motion was required for Canada Summer Games documents to be released to the public.

The Complaints further state that the Councillor violated the Use of Social Media Policy by virtue of a Facebook post on September 13, 2021, where the Councillor wrote to his followers that "providing a vaccine passport is not a law", but a "mandate, which are not enforceable by law", that "no police force in Ontario will enforce as per their oath of office", that individuals should "refuse as it is your right to do so!", that "any business that does request one, can and may be liable for discrimination" and lastly, that individuals should "Be a True Canadian and exercise your constitutional rights as per The Charter of Rights and Freedoms 1982", "Don't Do the Governments Dirty Work. Let Them Do It Themselves!" (the "**Vaccine Passport Comments**"). The Complainants indicate that while they understand that individuals have their own rights, the Councillor's posts problematically erodes trust in government while staff are trying to do their best to protect everyone during the pandemic.

The Complaints further allege that by virtue of posting false and incorrect information, including the Vaccine Comments and the Reconsideration Criticism, the Councillor is in breach of Section 2.2 of the Code. The Complaints present instances of Facebook removing posts by the Councillor as being "False Information" by virtue of Facebook's independent fact-checking process.

The Complainants indicate that staff are unable to address the Councillor's behaviors as they are bound by the Code and related policies, leaving no choice but to engage in a complaint process that involves the Integrity Commissioner.

**(b) Release of Confidential Closed Session Information (Allegation #3)**

The Complaints allege that the Councillor breached Sections 9.1(a), (b), (c), (d), (e), (f), (g), 9.2, 9.3, 9.4, 9.5 and 9.6 when he gave an interview on CKTB in May 2021 and while doing so, disclosed confidential information from a closed session of Council, including a motion that was put forward with respect to three (3) criteria to be met (which the Councillor stated were not met), and, that the information disclosed was confidential solicitor-client privileged information.

The Complaints further indicate that during the interview, the Councillor alluded to corruption on many fronts, including the City, Brock University and Niagara Region, which contributed to tarnishing the reputation of all parties, as well as City staff.

The Complaints also point to the Councillor's statements that the City is "pushing through the agreements because of certain promises and that the only two members of Council who were aware of the final agreements were Councillor Kenny and the Mayor, as the rest of Council only had three days to review the agreements."

In his Responses, the Councillor indicated that the interview took place in May 2019, and not May 2021. Upon investigation and a request for clarification from the Complainants, it was confirmed that the interview took place in May 2019 and that the 2021 date was incorrect. The Complainants indicated that their allegation of the release of confidential information remained accurate.

**(c) Receiving a gift or benefit in the form of legal defence by Rebel News (Allegation #6)**

The Complaints state that the Councillor has breached the Declaration of Office regarding the receipt of payment or reward, or promise thereof, for the exercise of the office in a biased, corrupt or in any other improper manner, as well as Sections 6, 8.1(b), and 8.4 of the Code by publicly stating on April 29, 2021 (via a Facebook post) that he would be receiving legal defence from Rebel News. The post stated as follows:

“Great News. Rebel News has Contacted me And will be defending me for the fines I received at the No More...”. (the “**Rebel News Post**”)

**(d) Property Standards on Anne Street (Allegation #7 – Improperly numbered in Complaints as another Allegation #6)**

The Complaints provide evidence that on June 8, 2021, the Councillor sent an email to the City’s Director of Planning and Development Services, raising the complaint regarding the Anne Street property, where, among other things, the Councillor says: that he is “embarrassed as a councillor. To say the least”; that “To me NO excuses” on why the issue has not been addressed and that COVID-19 can’t be used as an excuse; that councillors have to face the brunt of public complaints if staff do not do what is expected of them; that “it’s due time the city steps up to the plate. And deal with this”; and, that it seems sometimes that “If staff doesn’t do what we expect of them. Seems sometimes. No one gives a damn. And are concerns are just ignored” [sic]. The Councillor asks staff to “nip this in the butt. Once and for all.” [sic] (the “**Anne Street Complaints**”).

The Complaints allege that by virtue of the Facebook comments pertaining to Anne Street and the Anne Street Complaints to City staff, the Councillor breached Section 2.1 of the Code.

The Complaints elaborate that the Councillor’s tone is condescending, inappropriate, demeaning and disrespectful towards staff in particular, despite requests to be cordial and non-confrontational, and despite the Councillor’s prior sensitivity training by virtue of recommendations in the last Code of Conduct Complaint Report in Complaints 2020-01-08 (the “**Prior IC Report**”). The Complaints indicate that the public comments erode confidence in staff and contribute to a sense of urgency and uproar in the community so that the Councillor can feel better about himself as a “representative” of the community, because someone has to “keep [staff] honest”.

**(e) Anti-Mask and COVID-19 Related Issues and Behaviours (Allegation #9)**

In addition to the Vaccine Passport Comments, the Complaints allege that the Councillor violated Sections 2.2 and 4.1(a)-(i) by virtue of his public posts on Facebook and his attendance at an anti-mask and anti-lockdown rally in Niagara Region. In support of the allegations, the Complainants include six (6) written complaints made to the City between April 11, 2021 and April 15, 2021 (which are indicated to be in addition to numerous calls made) regarding the Councillor’s attendance at the rally. The complaints from residents express outrage at the Councillor’s actions, including endangering public health.

The Complaints state that while everyone has the right to freedom of expression, the Councillor's promotion of anti-mask sentiments, or COVID-19 related conspiracy theories are detrimental to the City's community given his position as an elected official.

In particular, the Complaints point to the Councillor's attendance at an anti-lockdown rally on April 10, 2021 during a provincial stay-at-home order that is alleged to reflect poorly on the City.

The Complaints include a post made by the Councillor on what we now know was July 26, 2021 where he shares a "No More Lockdown: Niagara back up" group page.

**(f) Canada Summer Games Matter and Comments (Allegation #10)**

The Complaints allege that by virtue of the Councillor's actions and statements pertaining to the Canada Summer Games matter, he breached Sections 2.1 and 4.1 of the Code.

The Canada Summer Games matter has been a complicated and long-standing issue at the City. The matter has been contentious, to say the least, and has resulted in multiple inquiries and complaints to the Integrity Commissioner. As such, a more detailed, albeit, far-from-complete background is set out in chronological order below, which includes evidence submitted in support of the Complaints.

On May 21, 2019, during a General Committee Meeting, Council approved, with a recorded vote, a commitment in principle to the Canada Summer Games Host Society and other prospective capital/operating partners to pursue the establishment of the Canada Games Facility, including a committed expenditure of \$5 million to the new facility and an additional \$2 million towards required servicing infrastructure for its share the project capital costs subject to the following three (3) pre-conditions:

- That funding commitments were confirmed, by upper levels of government and other partners, to fully fund the capital cost of the Games;
- That partnership commitments were confirmed from the City of St. Catharines, Niagara Region, Brock University and Canada Summer Games Host Society; and
- That an Operating Model and Partnership Agreement for the new facility were prepared for the consideration and approval by City Council, and that a Councillor sit on the negotiating committee to prepare the partnership agreement.

Shortly thereafter at its meeting on May 21, 2019, Council conducted a vote and elected Councillor John Kenny to sit as the councillor representative on the negotiating committee.

On July 7, 2020, during a meeting of Council, the Councillor moved, and Council approved, a motion that, given how much time had passed since Council's approval of its commitment to the Canada Summer Games in principle, the Mayor, members of Council and the public would have at least thirty (30) days to review the final Agreements prior to any vote on the Agreements, including at least ten (10) days to question members of staff and the City's legal counsel involved in the negotiations.<sup>8</sup>

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<sup>8</sup> [https://calendar.thorold.ca/meetings/\\_Download/aee1ce26-e8b8-4719-ac61-ac5c00b9f4c0](https://calendar.thorold.ca/meetings/_Download/aee1ce26-e8b8-4719-ac61-ac5c00b9f4c0)

On October 20, 2020, during a meeting of Council, the Councillor made an inquiry as follows:

Whether the clock was ticking on the 30 days to view contractual documents. He advised that the clock should not be ticking as he put a motion forward on July 7 which was voted on and carried, therefore his motion is not serving with what is occurring now with the 30-day progress. He read his July 7 motion and stated that it still stands unless there is a reconsideration.<sup>9</sup>

The Minutes of the October 20, 2020 thereafter state as follows:

The CAO advised that the Memo received from our Solicitor as forwarded to Council on September 22 which outlines the reason the contractual documents should not be shared with the public at this time, but after being finalized, they can be shared with the public. The CAO advised that Councillor Handley's July 7 motion was forwarded to the Solicitor and the CAO would now forward Councillor Handley's [new] concern to the Solicitor to respond. [*clarification added*]

The Complainants submitted as evidence a Facebook post made by the Councillor on October 22, 2020, where the Councillor states, *inter alia*:

"I can not believe my motion, which was passed 7-1 on July 7<sup>th</sup> is not being followed through with. The Mayor statements speak of Dictatorship not Democracy. To publicly state that my motion as passed, And as by-law, should be. But he states, will not be adhered too. And I believe, legally as I stated on social media. The only way to overturn my motion, would be a reconsideration vote by council. That I believe would need 75% majority. Below is the time frame for Tuesdays meeting, And the comments made. PLEASE VIEW AND SHARE. \*GET THE WORD OUT\*."

During the November 3, 2020 meeting of Council, the Minutes of the meeting<sup>10</sup> state that that Councillor again expressed concerns about his July 7, 2020 motion and the 30-day timeframe to review documents, and questioned where his motion stands. According to the Minutes, Councillor Ken Sentence stated he was fine with the public seeing the related documents, but after receiving legal advice from the City's lawyers who represent Council's interest, he believed a reconsideration vote should be done regarding the public portion of the motion to avoid putting the City in a serious negative legal position.

A motion to this effect, namely that Council, in accordance with Section 11.2 of the procedural by-law, allow a motion regarding reconsideration of the July 7, 2020 motion pertaining to the Canada Games Park lease agreement was put forward by Councillor Sentence, seconded by Councillor Kenny, and carried with two thirds (2/3) of Council voting in favour of the motion.

It was then moved by Councillor Sentence and seconded by Councillor Kenny as follows:

Whereas on July 7, 2020 a motion was passed to allow the public the opportunity to review the Canada Games Park Lease agreements; and Whereas due to confidential advice provided to Council protected by Solicitor-Client privilege; and Whereas a motion to reconsider, if passed, will allow the opportunity to introduce

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<sup>9</sup> <https://calendar.thorold.ca/meetings/Download/fdc9af9e-122e-47ea-ab47-acb600cb6974>

<sup>10</sup> <https://calendar.thorold.ca/meetings/Download/3c6b1042-0b29-419e-a779-acb600cc445a>

an amending motion to remove the requirement that the public have access to draft documents currently being negotiated.

Now Therefore Be It Resolved

That Council reconsider the motion passed July 7, 2020 regarding Canada Games Park Lease agreement.

The motion was similarly carried by a successful two-thirds (2/3) vote of Council.

With the passing of the motion to reconsider, the Councillor's July 7, 2020 motion then returned to the floor, as moved by Councillor Sentence and seconded by Councillor Kenny, to amend the July 7 motion by removing in the first Whereas clause the words "public and" and in the second Whereas clause the words "and public" and in the resolving clause the words "and the public".

The motion was carried by a successful two-thirds (2/3) vote of the Councillors present.

With the passing of the amending motion, the main motion was put as amended as follows:

Whereas prior to a vote by Council on the Canada Games Park lease agreement, that Council be given ample time to review documents; and Whereas a time limit of 30 days prior to a vote, two Council meetings be scheduled for Council to view, research and pose questions; and Whereas prior to a vote by Council, they be given ample time for legal questions with the Solicitor present 10 days prior to an information session or a decision by Council; and Whereas seeing the time allotted so far to present such lease has been 14 months since May 21, 2019 and 7 months since December 3, 2019; and Whereas, seeing the time needed to come to terms of the agreement so far has been between 7 and 14 months in negotiations to present the lease to Council; and Whereas today a time frame of 14 months since May 21st, 2019 and 7 months since December 3rd, 2019 meetings, it is apparent that this decision cannot be made with only 4 days' notice to view documents as per the December 3, 2019 Council meeting.

Therefore, now it be resolved that:

The Council of the City of Thorold is asked for support in this motion to allow Council 30 days to view documents prior to the decision by Council on a 40 year long-term lease agreement with our partners Brock University, City of St. Catharines and the Region of Niagara.

The motion was similarly carried by a successful two-thirds (2/3) vote of the Councillors present.

On November 4, 2020, the Councillor posted on Facebook at follows:

"Last night council voted to overturn my motion for transparency and instead voted to let the public know nothing. And with hold all information until the deal is signed. To me that is Dictatorship. NOT DEMOCRACY. I WILL BE MAKING A LIVE PUBLIC ANNOUNCEMENT TOMORROW AT 9PM. PLEASE SHARE".

On November 10, 2020, during a Closed Session of Council (the "**Closed Meeting**"), Council had an opportunity to discuss the Agreements with its external legal counsel, and to address any legal and negotiation-related questions in anticipation of a motion to approve the execution of the Agreements.

During the Closed Meeting, Council ultimately approved that:

- City staff could agree to the Consortium and Co-Tenancy Agreement and the Legacy Lease as presented that day, subject to amendments by City staff;
- That the City Clerk would bring forward a by-law to execute the agreements at a future meeting of Council;
- That upon passage of the by-law, that the Mayor and Clerk would have the authority to execute the agreements and lease; and
- That once partners had executed the agreements and lease, copies of the documents would be made available to the public upon request.<sup>11</sup>

On May 18, 2021, Council passed By-Law 62-2021 with respect to the Agreements, including the Public Release Resolution.<sup>12</sup>

Consistent with the Complaints, the Minutes of the meeting of Council in May reflect that the Councillor left the meeting following the recorded vote, which enacted By-Law 62-2021 (which the Councillor voted against).<sup>13</sup>

On May 19, 2021, Mayor Terry Ugulini (the “**Mayor**”) sent a letter to all members of Council to address the tense meeting of the prior day, and advising all members to accurately communicate the decisions of Council and respect the final outcomes, as decided within Council Chambers, regardless of their position on the matter.

Notwithstanding the Mayor’s advisement, over the following several days, the Councillor posted the May Facebook Posts. Although summarized above, for clarity, these were:

- A May 19, 2021, 6:37am post, where the Councillor posts on Facebook, stating that “all Parties agree to keep all info out of Public Hands. I ask all to submit Freedom of Information Requests ASAP. Citizens Need THE TRUTH”.
- A May 19, 2021, 9:21pm post, where the Councillor comments and states, “As a Councillor, I have yet to see the actual agreement. They won’t give me a copy. And I’ve been elected by you the People. How Can You Actually Vote On Something You Haven’t Seen?”
- In a comment on the May 19, 2021, 9:21pm post, the Councillor also states, in response to a comment, to “swamp” Council and City Hall with freedom of information requests “today”.

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<sup>11</sup> See Code of Conduct Complaint 2020-13 - Integrity Commissioner Report dated May 31, 2021 at page 4.

<sup>12</sup> <https://pub-thorold.escribemeetings.com/filestream.ashx?DocumentId=400>.

<sup>13</sup> <https://pub-thorold.escribemeetings.com/Meeting.aspx?Id=891a443a-3fc2-4f53-a3b4-67486a493cef&Agenda=PostMinutes&lang=English>

- A May 20, 2021 post, where the Councillor states that following “public pressure” and a letter drafted by Councillor Longo and forwarded to all Regional Councillors, that the agreements would be made public in its entirety, “guaranteed”.

On May 21, 2021, City staff provided an update to all Councillors, advising of the upcoming intent to release the Agreements upon consent from the partners, consistent with By-Law 62-2021 and the Public Release Resolution.

As previously summarized, on May 24, 2021, the Councillor responded to the staff’s update, questioning the intended release of the Agreements. Specifically, in the Councillor’s email, he stated that in passing By-Law 62-2021, “in no way, was there any reference with that by-law to ask for such (release of documents)” and later, that the by-law “clearly stated the document would remain confidential. When during Tuesday’s meeting May 18, 2021 were any amendments made to change such?”. In asking these questions, the Councillor appears to have misunderstood the Public Release Resolution as part of By-Law 62-2021.

A detailed explanation consistent with By-Law 62-2021 was provided to the Councillor on May 25, 2021. The response cited the Public Release Resolution, and explained that staff were simply carrying out Council’s direction in accordance with By-Law 62-2021, and normal procedure.

Based on the evidence submitted in support of the Complaints, shortly thereafter, the Councillor posted again on Facebook, stating that By-Law 62-2021, as passed, required a reconsideration motion, that the Mayor was offside his executive power, that everyone was now doing a “100% turn” and that previously, everyone had voted to keep the documents confidential, while now they were not.

On June 7, 2021, the Mayor wrote again to Council, advising that consistent with staff updates, and consistent with By-Law 62- 2021, the Agreements were now “live” on the City’s website for public review. The Agreements remain on the website for review to date, on the City’s dedicated website page for the Canada Summer Games.<sup>14</sup>

The Complainants state that in his actions, the Councillor has continued to “harass, intimidate and demean staff and councillors who are not in agreement with his position”, despite the fact that staff have been, and continue to work diligently with the consortium partners and legal counsel, as directed by Council. The Complaints allege that the Councillor’s distribution of false information has caused unnecessary and unwarranted questions and doubt, and has specifically gone against the advice of Council.

#### **(g) Repeated Behaviours (Allegation #14)**

The Complaints state that the Councillor has not corrected his actions since the Prior IC Report and corresponding sanctions imposed against him by Council on the recommendation of the Integrity Commissioner. The Complaints state that the Code and related policies make the expectations of the Councillor very clear, and yet, he continues the same pattern of behaviour he previously was castigated for and which creates a risk of harming the professional and ethical reputation of the City and its staff. The Complaints indicate that the complaints received from members of the public about the Councillor’s behaviour are evidence of the ongoing issue, which has not improved.

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<sup>14</sup> <https://www.thorold.ca/en/recreation-and-culture/other-reports-and-documents.aspx>.

We do not regard this portion of the Complaints as a standalone allegation, but rather as further evidence in support of the other allegations, which is informative with respect to penalties, if any, to be recommended as a result of this investigation.

## **VI. PRELIMINARY MATTERS**

### **(a) Statement of Principles in the Code**

We note that the Complaints refer to several alleged contraventions of Sections 2.1 and 2.2 of the Code, which form part of the Code's key statements of principles, the purposes of which are to establish a foundation for an understanding of the Code and to assist in the interpretation and application of the Code. Statements of principles are not capable of independent enforcement.

Although our findings below take guidance from Sections 2.1 and 2.2 to aid our interpretation and application of the Code, we have not made specific determinations as to any contraventions pertaining to Sections 2.1 and 2.2.

### **(b) Declaration of Office**

The Complaints also make multiple references to alleged violations by the Councillor of the Declaration of Office.

The obligation for a member of municipal council to take a Declaration of Office arises from subsection 232(1) of the *Municipal Act, 2001*, which provides as follows:

#### **Declaration of office**

**232 (1)** A person shall not take a seat on the council of a municipality, including a person appointed to fill a temporary vacancy on an upper-tier council under section 267 but not including a person appointed to act in place of a head of council under section 242, until the person takes the declaration of office in the English or French version of the form established by the Minister for that purpose.

Section 232(1) falls under a subcategory of the Act concerned with obligations and responsibilities at a first meeting of a newly elected council. The Declaration of Office represents an elected official's "ongoing commitment to abide by its principles throughout the council term", and while "not an all-encompassing recitation of an elected official's duties, it covers the basic notion that an elected official is to act for and in the public interest."<sup>15</sup>

While the Declaration of Office is a required formality for a member to take office, and it is certainly not something to be merely ignored, there is no obvious recourse for a violation of the oath itself. That is not to say that the oath is meaningless – it implicitly refers to other mechanisms which have serious possible consequences under the *Municipal Act, 2001* and in some cases, the *Criminal Code* of Canada (for example, breach of trust provisions and bribery or fraud, respectively). However, there are no reported judicial decisions that have considered the Declaration of Office or the implications of a contravention of the declaration itself.

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<sup>15</sup> "What Every Council Member Needs to Know", Municipal Law Webinar presented by Aird & Berlis LLP, [online](#). See also "Duties of a Municipal Councillor", Leo F. Longo, IMLA Conference Paper, September 19, 2006.

Furthermore, the Declaration of Office cannot be considered a rule, policy or procedure established by Council that would bring it under our jurisdiction as Integrity Commissioner, which is to act in an independent manner on the application of the Code, and other rules and procedures governing the ethical behaviour of members of Council. As the Declaration of Office is not a policy, rule or procedure “established by Council”, it is not within the jurisdiction of the Integrity Commissioner under Section 13.1 of the Code.

Like the Statement of Principles in the Code, we take guidance from the Declaration of Office as it pertains to the Councillor’s duties and responsibilities, but we have not made specific determinations as to any contraventions pertaining to its breach.

### **(c) Policies and Exhibits**

Prior to setting out concrete allegations against the Councillor and their supporting evidence, the Complaints set out what can best be described as a preamble, setting the tone for the allegations and the general nature of the grievances, so to speak, with the Councillor’s actions and behaviour. In this preamble, the Complainants indicate that the Councillor’s false narrative in the community, his public display of ridicule of City staff and his portrayal of the decisions of Council in a false and biased manner, despite many reminders to maintain a proper and respectful communication, as well as prior Integrity Commissioner-recommended sanctions to no avail, are all actions that have force parties to bring forward further complaints and seek assistance from the Integrity Commissioner’s office on the Councillor’s breach of the Code and the Policies.

The Complaints go on to say that the specific allegations demonstrate that adhering to the Code and Policies continues to be a challenge for the Councillor. However, we note that the specific allegations, apart from several references to alleged contraventions of the Use of Social Media Policy, do not point to specific portions of the other Policies alleged to have been breached.

In reviewing the Policies, we appreciate that unlike the Code, they are not, in all instances, broken down by section number, but instead contain categories of expected practices and general behavioral philosophies. We have interpreted them as such and have referred to the remaining Policies in our findings only where the contraventions are apparent and blatant. We have not applied each Policy to each allegation simply by virtue of the Policies’ inclusion in the preamble.

## **VII. FINDINGS**

This Part of our Report sets out our findings regarding the allegations in the Complaints.

Consistent with the Background section of our Report, our findings are grouped by subject matter of complaint rather than by the Code or Policy section in question.

In Part VIII – Conclusions, we have set out the contraventions under each of the Code and the Policies.

### **(a) Misuse of Social Media**

In many ways, the Councillor’s use or, more properly, misuse of social media is at the core of the Complaints. A very significant portion of the evidence submitted in support of the Complaints pertains to posts and comments made on social media that, on their face, violate the Use of Social Media Policy and the Code. We address the subcategories above in turn.

**i. Comments regarding dictatorship, communism and conspiracy theories, resulting in complaints by residents (Allegations #2 and #13)**

In his Responses, the Councillor excused his “In Canada, Communism Rules” comment of June 18, 2021 as follows:

I did state in Canada Communism rules. I can't state that? Was the freedom of speech taken out of the Canadian Charter of Rights? If you have been keeping up with what's been happening in our country. I'm not the only one that feels this way. Freedom of Speech. As guaranteed under then Charter of Rights. The charter rules.

The Councillor's Response with respect to the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) is somewhat misguided as the Councillor can be onside his *Charter* rights, but still be in violation of the Code and other Council policies. For example, the Use of Social Media Policy requires that the Councillor maintain decorum and promote public confidence. The Code requires that the Councillor avoid making false statements. Despite the Councillor's personal sentiments, it is inflammatory to state that communism “rules” in Canada, and it does not promote public confidence in decision-making at any level of government, or of which the Councillor is part.

The Councillor flatly denied having shared the video by an anonymous user that says, ““TRUDEAU SIGNS PFIZER DEAL TO MURDER EVERY SINGLE CANADIAN WITH POISONED SHOTS – TREASON”, despite a clear screenshot of the Councillor's Facebook page with the post shared being provided in support of the Complaints. The Councillor, in fact, states that “no way would I make such a post” as he was working out of town on that date.

We were easily able to find the exact post in question on the Councillor's personal Facebook page. A screenshot of the post also appears on the Thorold Community Group Facebook page as posted by a disgruntled group member on July 22, 2021. The group member asks:

How much garbage does a city councillor have to share before council talks to him about his actions? It was bad enough he got fined for attending a pro-covid rally, but stating Canada is handing out death shots despite himself being vaccinated is very concerning. Is there some type of psychological evaluation councillors need in order to fulfill their duties?

The comment ultimately sparks a heated debate in the comment section, including with references to the Councillor's spreading of misinformation, and possible complaints being made against him.

The Councillor's posts are clear violations of the Use of Social Media Policy, which requires the Councillor's social media to be consistent with the Code and other policies. We also have no choice but to make an additional adverse inference against the Councillor for being, at best, inaccurate, and at worst, untruthful with respect to the “poisoned shots” post. Moreover, on review of the evidence, including the Responses, we believe that the Councillor's Physics Comment was with respect to himself, after being criticized for making a prediction that Prime Minister Trudeau would dissolve Parliament. While it treads a fine line with being offside the Use of Social Media Policy and the decorum and truthfulness it requires of the Councillor, we do not find a breach of the Code in this comment, as alleged. We suggest that in the future, if the Councillor communicates in a similar way, he makes it clear in his initial post or content that he is merely speculating, and does so in a respectful way, including with those that disagree with him.

**ii. Criticism and eroding of trust in staff and City as a whole (Allegations #1, #5 and #12)**

Consistent with the Prior IC Report, a central and recurring theme of this Report is the Councillor's misuse of social media as it pertains to his criticism of City staff. Based on the evidence, staff are left exceptionally frustrated and with a negative and toxic environment for them to do their work, with public confidence in their abilities routinely undermined by one of their elected representatives.

The Councillor was educated<sup>16</sup> and warned explicitly in the Prior IC Report that he needed to better understand and appreciate the importance of a respectful and productive relationship between Council members and staff, so that all parties can serve the public in an effective and efficient matter.

The Use of Social Media Policy clearly states that the Code requires members to be respectful of the role of staff to provide professional and politically neutral advice. Members should not use social media to engage in criticism of City staff. The public nature of social media can increase the risk of harming the professional and ethical reputation of City staff. We find that the Anne Street Property Comments and the May Facebook Posts (and in particular, the Councillor's post of May 20, 2019 imploring his followers to "swamp" City Hall with requests) clearly contravene the Use of Social Media Policy and the Council/Staff Policy (and especially, the requirement to act in a way that enhances public confidence in local government, and to refrain from making public comments that harm or disparage the reputation of the Corporation or Council, or any Member of Council).

The Lights Conspiracy is perhaps the most troubling evidence presented in support of the Complaints, which has clearly, on the evidence, prompted concern and embarrassment among staff and residents alike. What is additionally unfortunate is that the Councillor's actions shed a doubly negative light on staff – first, in suggesting they are following and tracking the Councillor, and second, when residents critique staff for not being able to control or stop the Councillor's actions.

In his Responses, the Councillor wrote:

Yes I made video. Was actual a rare day for me to be home. For working out of town. But I was home to get some medical results. Yes and had a few drinks. For it was a very stressful day. A when I received a call about lights. I made video. Which was a mistake no doubt about it.

Nothing in the Councillor's comments mitigates his clear breach of Sections 4.1 (a), (c), (d), (f), (g), 5.4, 5.5(a) and 13.1 of the Code. With respect to Sections 10.1 and 10.3 of the Code, we note that a series of actions or a pattern of conduct can amount to harassment in certain circumstances. While the Lights Conspiracy in itself may not rise to the level of harassment, given the Councillor's ongoing and well-documented actions towards staff, we find that the Councillor has engaged in behaviour that qualifies as harassment, both for the purposes of the Code, and the Workplace Policy.

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<sup>16</sup> For example, we included in the Prior IC Report [The Ontario Municipal Councillor's Guide 2018](#) from the Ministry of Municipal Affairs and Housing, and directed the Councillor to Commissioner Frank N. Marrocco's judicial inquiry report emanating from the Town of Collingwood (Collingwood: Town of Collingwood, 2020) (Associate Chief Justice Frank N. Marrocco).

We have not found evidence in support of the Complaints to support an allegation of discrimination under Section 10.2 of the Code.

We also find that Lights Conspiracy constitutes a clear breach of the Communications Policy, the Council/Staff Policy and the Use of Social Media Policy by clearly exposing staff to risk of reputational and professional harm and diminishing staff's reputation in the City.

The examples pertaining to staff are consistent with the Councillor's routine comments about Council and the City as a whole. For example, the Dictatorship Comments and Reconsideration Criticism clearly constitute breaches of Sections 4.1(h) of (i) of the Code, both as they pertain to Council as a whole, but specifically, the Mayor.

When asked for his response, the Councillor focused entirely on repeating, over and over, that his comments were truthful, that he truly believed that proper procedure was not followed, and that he believed that a reconsideration of Councillor Sentence's November 3, 2019 motion was required in order for Council to pass By-Law 62-2021. He implored us to contact Councillor Longo to question him about the discussions that took place *in camera* on the topic of confidentiality of the Agreements.

Once again, the Councillor appears to miss the main point of the Complaints. To the best of our knowledge, no one has suggested that the Councillor is unable to ask questions, make reasonable inquiries, or satisfy himself that proper process or protocol was followed. As usual, it is his tone and chosen language of doing so, with the most blatant being accusing the Mayor of dictatorship, and Council for not being democratic. The Councillor's undermining, derogatory, and disrespectful statements cast doubt on the integrity of the Mayor, the City and Council, in breach of the Code and the Use of Social Media Policy.

### **iii. Dissemination of false or misleading information (Allegations #4 and #8)**

While the allegations that point to the Councillor's dissemination of false or misleading information are largely dealt with in other sections of our findings, we note that the Councillor seems to have modelled a style that, in the name of "truth telling", regards it as acceptable to advance versions of events or theories that are unsupported by facts (and in some cases, are directly contrary to well-documented facts).

With respect to the evidence submitted in support of the Complaints that Facebook's independent fact-checkers have removed the Councillor's content on several occasions, the Councillor responded that the post that was removed concerned re-using tinfoil and saving bacon grease. In fact, the Councillor responded quite aggressively, "are you taking Facebooks word or fact checkers as gospel? The absolute truth. Without knowing what it actually was they determined false?" and that he "truly hope[s], [that we] realize fact checkers is actually a censoring tool for Facebook."

The Councillor did not provide a response with respect to the other post that was removed by Facebook in the same manner, which was originally an article from rumble.com entitled "Freedom Fighter Court VICTORY! Ends Masking, Shots, Quarantine in Alberta! WE CAN WIN!..." concerning an alleged victory by an individual who claimed to have proven that COVID was a hoax. This individual's claim was later shown to be false, and his unsuccessful case was further shown to be unrelated to the timing of any changes to Alberta's COVID-19 related restrictions.

To answer the Councillor's question, no, we are not taking Facebook's "word" as gospel. We are objectively looking at the evidence before us, which suggests that the Councillor needs to be more diligent, conscientious and deliberate about the information he promotes on social media and otherwise as an elected official.

Notably, the Councillor occasionally contradicts (either in practice or theory) his own prior actions or statements. For example, following the June 25, 2021 sharing of the "poisoned shots" video regarding vaccines, on July 3, 2021, the Councillor posted on Facebook that he and his spouse are vaccinated (and stated that now that he's done his part, "now to see if the Government will do its part as promised!").

Another perplexing example is the Councillor's reaction to the motions that ultimately led to the public disclosure of the Canada Summer Games Agreements. The Councillor went over and above to post critical comments about this development, despite vocally advocating for this exact result for quite some time.

It seems that the Councillor leans towards a certain brand of chaos and upheaval which, while perhaps pleasing some segments of his constituency and supporters, does real and undue harm to the reputation of the City and its staff. Helpfully, due to the existence of the Code and the Policies, we do not need to wade into any kind of subjective interpretation of what may cause the Councillor to act this way. Objectively, this type of behaviour is contrary to the Code and the Policies and unbecoming of the Councillor, who is a longstanding elected official who has been given ample warning and tools to remedy his actions.

**(b) Release of Confidential Closed Session Information (Allegation #3)**

The Complaints allege that the Councillor breached Sections 9.1(a), (b), (c), (d), (e), (f), (g), 9.2, 9.3, 9.4, 9.5 and 9.6 when he gave an interview on CKTB in May 2021 (the "Interview").

In his Responses, the Councillor took significant issue with what he argued was a malicious attempt to alter evidence, given that the Complaints stated that the Interview occurred in May 2021, and not in May 2019. We assured the Councillor that there was no evidence to suggest that the Complainants were trying to fabricate evidence in this respect. With respect to the Councillor, it appeared that he was over-dramatizing the alleged fabrication of evidence, calling this allegation a "conspiracy" and "defamatory", rather than focusing on providing a substantive response to the allegation that he disclosed confidential information.

The Councillor states this the interview took place with Matt Holmes on CKTB *prior* to the May 19, 2020 Meeting of Council. We believe the Councillor meant to state May 19, 2019 based on the balance of his Responses.

In fact, our investigation revealed that on a balance of probabilities, the interview likely took place on November 9, 2019, based on the publication of the interview by Newstalk 610 online on November 9, 2019,<sup>17</sup> and the fact that the Minutes of the meeting of Council on November 5, 2019 are consistent with the Councillor's description during the interview. Namely, the Councillor stated during the interview that Councilor Kenny made a motion on "Tuesday the 5<sup>th</sup> to bring to Council on the 19<sup>th</sup>".<sup>18</sup>

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<sup>17</sup> <https://omny.fm/shows/newstalk-610/jim-handley-thorold-city-councillor#description>.

<sup>18</sup> <https://calendar.thorold.ca/meetings/Download/1ab17ab8-e019-4338-b623-ab0b00b98cf5> (See Item 11).

We have reviewed the information provided by the Councillor during the interview, and have not found unequivocal evidence of disclosure of confidential information. Specifically:

- The Councillor's reference to the upcoming release of a report regarding the Agreements on the 14<sup>th</sup> to be considered by Council on November 19, 2019 is documents in the Minutes of the November 5, 2019 meeting of Council;<sup>19</sup>
- The three (3) pre-conditions that the Councillor refers to that need to be met prior to the City's commitment to the Canada Summer Games being actualized are documented in the Minutes of the May 21, 2019 General Committee Meeting;<sup>20</sup>
- The Councillor's reference that Councillor Kenny and the Mayor know the most about the Agreements is consistent with the May 21, 2019 General Committee Meeting and Council's approval of Councillor Kenny as the representative on the negotiating committee,<sup>21</sup> and the Mayor's involvement in negotiations as Head of Council;
- The Councillor's referral to the termination of Paul Smeltzer as a result of matters concerning the Burgoyne Bridge and his involvement with Brock University is public knowledge;<sup>22</sup> and
- The Councillor's reference to Aquicon being awarded a tender with respect to the Canada Summer Games appears to be speculation based on his own "investigative" work, rather than what was disclosed to him at Council.

The only portion of the Interview that we were not able to verify is with respect to the Mayor's alleged indication that he knew that the Regional Councillors were not aware that they were going to be responsible for up to 25% of operating costs. However, this fact alone does not align with the allegation in the Complaints that the Councillor disclosed solicitor-client privileged information, or alluded to corruption.

That is not to say that the Councillor's communication during the Interview was ideal. It was the opposite. During a short interview, the Councillor managed to effectively disparage several organizations, individuals and the City itself. However, the Councillor's chosen terminology and statements that the City was "pushing through the agreements", and that "people have tunnel vision and they want to leave a legacy for themselves" is, while being consistent with the Councillor's usual cavalier and offside characterization of the intentions of the City, staff and fellow Council members, does not amount to a breach of Sections 9.1(a), (b), (c), (d), (e), (f), (g), 9.2, 9.3, 9.4, 9.5 and 9.6. The Councillor's style and tone is extensively discussed in other portions of our Report.

As such, this portion of the Complaints is dismissed.

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<sup>19</sup> *Ibid.*

<sup>20</sup> [https://calendar.thorold.ca/meetings/\\_Download/aa36eb8f-1f10-433c-87d3-aa6300afbcc1](https://calendar.thorold.ca/meetings/_Download/aa36eb8f-1f10-433c-87d3-aa6300afbcc1) (See Item 7e)

<sup>21</sup> *Ibid.*

<sup>22</sup> <https://www.iheartradio.ca/610cktb/news/niagara-region-terminates-two-senior-directors-1.2401555>

**(c) Receiving a gift or benefit in the form of legal defence by Rebel News (Allegation #6)**

The Complaints assert that the Rebel News Post made by the Councillor on April 29, 2021 constitutes a breach of Sections 6, 8.1 and 8.4 of the Code.

The Complaints also briefly reference section (b), seemingly referring to Section 8.2(b) which provides a list of exceptions to the general prohibition regarding the receipt of gifts or benefits when a member receives a political contribution reportable by law when running for office. We believe this subsection was included inadvertently, as it is not relevant to the allegation.

In his response, the Councillor indicated that he has not received a gift or benefit from Rebel News, in the form of cash payment or legal defence. He indicated that in his post, he had meant that Rebel News was defending the Councillor's beliefs for believing in the *Charter*, what he stands for, and belief in equal and fair treatment of all. The Councillor indicates that he filed his own documents with the courts, and has received no services from Rebel News.

This response was somewhat contrary, or at the very least, confusing considering the Councillor's other comment in his Response, as follows:

Assure yourself no payments for service were not or have not been made to Rebel News. As I'm not obligated to provide such, if that may or may not be the case. For that is client/lawyer confidentiality as I'm sure your aware of.

If the Councillor truly did not receive any service from Rebel News, we are unsure why the Councillor would allude to a possible provision of such services. Furthermore, the Councillor seems to suggest that receipt of such services would be covered by solicitor-client privilege, which we see as inaccurate given that Rebel News, to the best of our knowledge, does not provide legal services but is instead a political and social media website.

In any event, the Councillor's response appears to miss the nuance that a "gift" or "benefit" can be both paid and unpaid, and take many forms. He also appears to miss the point that the Code makes it quite clear that the intent of prohibiting gifts or benefits is not solely to avoid improper influence, but further, to avoid the risk of *appearance* of improper influence.

There is no explicit evidence to support that the Councillor did, in fact, receive monetary or legal support from Rebel News. However, in his Clarification Response, the Councillor admits that Rebel News was defending his beliefs, which, in context, are the Councillor's beliefs in his ability to attend anti-lockdown protests, despite orders prohibiting such public gatherings. This support can reasonably be perceived as a personal benefit that is at the very least, *indirectly* tied to the Councillor's performance of his duties (and arguably directly so, given the Councillor's vocal advocacy on point which he continuously justifies as being on behalf of constituents). As such, the Councillor's receipt of this "defence" constitutes a limited breach of Section 8.1 of the Code.

We do not find, on the evidence, that the Councillor's actions constitute a breach of Section 6 of the Code, which pertains to acting as a paid or unpaid agent before Council by acting as a third-party referrer. Nor do we find there to be a breach of Section 8.4 of the Code, which pertains to the seeking of personal privilege or advantage with respect to municipal services.

It should be noted that while we have only found a limited breach of Section 8.1 of the Code, this is, nevertheless, a serious finding as it pertains to a violation of the Councillor's key duties of avoiding the use of influence and not acting in self-interest, as enumerated in both the Code's Statement of Principles and the Declaration of Office.

**(d) Property Standards on Anne Street (Allegation #7 – improperly numbered in the Complaints as also being #6)**

As we have addressed the Anne Street Comments in an earlier section of our Findings, this portion of the Findings deals with the Anne Street Complaints in the Councillor's internal communication to staff on this matter on June 8, 2021.

In his Responses, the Councillor indicated that he was just stating his true feelings that he was embarrassed year after year that the same issue needed to be addressed, as evidenced by the resident's comments. The Councillor indicates that he is speaking and communicating how the "taxpayers feel".

While we appreciate that the Councillor's stated desire is to advocate for his constituents, the manner that he approaches his communication with staff continues to be demeaning, despite requests to be cordial and non-confrontational.

For example, in his lengthy response to the Councillor dated June 9, 2021, the Chief Building and By-law Official welcomes the Councillor's concerns, but asks him to be respectful in his communication, suggesting that stating that "no one gives a damn" and that the by-law enforcement staff need to "step up to the plate" is not considerate in light of significant efforts on the part of such staff, who are often subject to abuse. The Chief Building and By-law Official goes on to encourage the Councillor to help the municipality to manage expectations of residents, encourage residents to submit complaints directly to the municipality to get a timely response from staff, and, to share concerns in a professional and respectful manner.

Rather than providing a thoughtful response, the Councillor simply responds on June 10, 2021, stating that "he knows personally" that the resident has complained more than once, and that "no need to get into a debate here". The Councillor then indicates that he will clarify with residents how many complaints they have filed.

We find that the Councillor's comments in his June 8, 2021 email to staff, constitute breaches of the Communications Policy and Council/Staff Policy. In particular, we note the Councillor's comments stating:

"Yr after yr complaints. And yr after yr after complaining. Takes forever for the city to act. Why? One has to ask. Every yr for numerous yrs."

"I'm embarrassed as a councillor. To say the least. To me NO excuses. This issue was around. Long before COVID. So can't to me, use that as an excuse."

"It's due time the city steps up to the plate. And deal with this."

"If staff doesn't do what we expect of them. Seems sometimes. No one gives a damn. And are concerns are just ignored." [sic]

**(e) Anti-Mask and COVID-19 Related Issues and Behaviours (Allegation #9)**

The Councillor does not dispute having attended the anti-lockdown protest on April 10, 2021. In his Response, the Councillor claims that under the *Charter*, he had “every right to attend demonstrations” and that he “was exercising [his] right as guaranteed under the charter. No Laws were broken. For they are mandated not laws.”

In support of his position, the Councillor referred us to an “order that applied” and more specifically, to “Section 7.0.2”. The Councillor was clearly referring to Section 7.0.2 of the *Emergency Management and Civil Protection Act* (the “**EMCA**”)<sup>23</sup>, which states as follows:

**Emergency powers and orders**

**Purpose**

**7.0.2** (1) The purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies in a manner that is subject to the *Canadian Charter of Rights and Freedoms*.

**Criteria for emergency orders**

(2) During a declared emergency, the Lieutenant Governor in Council may make orders that the Lieutenant Governor in Council believes are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property, if in the opinion of the Lieutenant Governor in Council it is reasonable to believe that,

- (a) the harm or damage will be alleviated by an order; and
- (b) making an order is a reasonable alternative to other measures that might be taken to address the emergency.

**Limitations on emergency order**

(3) Orders made under this section are subject to the following limitations:

1. The actions authorized by an order shall be exercised in a manner which, consistent with the objectives of the order, limits their intrusiveness.
2. An order shall only apply to the areas of the Province where it is necessary.
3. Subject to section 7.0.8, an order shall be effective only for as long as is necessary.

The Councillor’s position is consistent with his Response with respect to the Vaccine Passport Comments, which he says were true, because they are “mandates and not laws”. He further states that he is protected by the *Charter* and his freedom of opinion and speech with respect to his comments.

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<sup>23</sup> <https://www.ontario.ca/laws/regulation/r21007>.

In Response to the evidence of complaints by residents made against the Councillor, his sole response to all complaints was that “No laws [were] broken”.

It is not our role to weigh in on whether the Councillor’s beliefs regarding COVID-19 have merit. Similarly, it is not our role to assess or provide an assessment of the Councillor’s legal analysis, both with respect to his ability to attend an anti-lockdown gathering without legal consequence, or his opinion and “reminders” to his followers regarding the legal implications surrounding vaccine passports.

Even if the Councillor’s position, opinion and public “advice” are legally or factually accurate (which, for greater clarity, we are not commenting on), his actions can nevertheless constitute a breach of the Code or related Policies.

The relevant portions of Sections 4.1 of the Code require the Councillor to:

- make every effort to act with good faith and care (4.1(a));
- seek to advance the public interest with honesty (4.1(c));
- seek to serve their constituents in a conscientious and diligent manner (4.1(d));
- refrain from making statements known to be false or with the intent to mislead Council or the public (4.1(f)); and
- recognize that they are representatives of the City and that they owe a duty of loyalty to the residents of the City at all times (4.1(g)).

Furthermore, the Use of Social Media Policy states that the Councillor, as an elected representative, shall perform duties and arrange private affairs in a manner that promotes public confidence and that will always bear close public scrutiny.

On April 8, 2021, a second state of emergency had been declared pursuant to subsection 7.0.1(1) of the EMCA, and a stay-at-home order was in place pursuant to O. Reg 265/21 under the EMCA,<sup>24</sup> which did not expire until June 2, 2021<sup>25</sup> (the “**Stay-at-Home Order**”).

Subsection 1(1) of the Stay-at-Home Order stated that “every individual shall remain in their place of residence at all times unless leaving their place of residence is necessary for the listed purposes.”

The state of emergency and associated restrictions was widely publicized and reported on. A significant amount of resources was dedicated by all levels of government to assist the public in navigating the ongoing COVID-19 pandemic. Daily coverage of the pandemic and applicable health orders was covered by the mainstream media.

The Councillor may have genuinely *believed* that his attendance at the anti-lockdown protest on April 10, 2021 was lawful, and that the information he posted in respect of defying requests for vaccine passports was accurate. However, the Councillor’s actions, including his online

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<sup>24</sup> <https://www.ontario.ca/laws/regulation/210265>.

<sup>25</sup> <https://www.ontario.ca/laws/regulation/r21024>.

statements, did not demonstrate good faith, care and integrity, or meet the standard of care required of him as an elected official. Whether he agreed with them or not, the Councillor's actions promoted and signaled that dispensing with applicable laws and protocols in place was fully permissible.

As we wrote in a different investigative report, if adopted on a large scale, this approach would no doubt cause chaos and confusion at many levels. This would also create unnecessary risk of harm to those that choose to follow the Councillor's lead in foregoing stay-at-home orders and patron proof of vaccination requirements as recommended by health authorities and to the majority of the public who comply with such laws or mandates. Notably, the Councillor appears to have appreciated this at one point, when in an earlier post of an unspecified date, he stated that going to a march creates risk to oneself and others.

When given an opportunity to review our findings and conclusions, the Councillor indicated, "I was a spectator at the anti-lockdown rally. You have no evidence for someone to make a claim that I attended anti-mask rallies as accused. That is a false and inaccurate statement." We believe that the Councillor's statement misses the point of the allegation and our related findings. It is his attendance at the rally (whether in support of ending masking, or lockdowns) that is problematic. We accept the Councillor's submission that the rally was in support of ending lockdowns, and not anti-masking in particular.

We also see it as reckless for the Councillor to offer what is effectively legal advice in the Vaccine Passport Comments, and incentivize defiance in light that the laws (or mandates, if the Councillor prefers) are not enforceable – a statement that the Councillor has absolutely no qualification or required expertise to make, especially without any reference to credible or proper sources. Furthermore, the Councillor's undermining of the scope of police officer duties, who are, after all, civil servants goes against the Councillor's duty of loyalty.

As set out by the Integrity Commissioner for the Town of Midland in its investigative report dated September 24, 2020:

It is not necessary to find that a member of council broke the law in order to find that he has failed to encourage public respect for the law. A member of council who told constituents they could ignore the posted speed limit would, in our view, be in breach of the Code of Conduct, whether or not he personally was speeding when he drove.<sup>26</sup>

Even in taking certain actions that the Councillor may have believed considered the well-being and interests of the municipality, the Councillor could still have observed the laws and rules in place to promote an appropriate, and not to mention lawful approach to such advocacy. His failure to do is contrary to Sections 4.1(a), (d), and (g) of the Code, and contrary to the Use of Social Media Policy.

We make these findings despite the fact that we accept the Councillor's submission that it is not obvious that he directly appears in the post and photograph submitted in support of Allegation #9

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<sup>26</sup> Recommendation Report – Complaint against Councillor Oschefski – Town of Midland – September 24, 2020:

<https://midland.civicweb.net/document/17511/Final%20Recommendation%20Report%20Midland%20Oschefski.pdf?handle=318E3963403644FAA439B9A8D5214B41>

regarding the Councillor “sharing” a private member group called “No More Lockdown: Niagara back up”. It is not the Councillor’s appearance in the photograph, but rather, his sharing (and thereby, promoting) of the group on Facebook that the Complaints point to in support of their allegations.

There is insufficient evidence for us to conclude that the Councillor was intentionally dishonest or sought to mislead the public in contravention of the remaining portions of the Code. Although we are not validating the truth or accuracy of the Councillor’s statements, we cannot objectively say that he knew them to be false.

**(f) Canada Summer Games Matter and Comments (Allegation #10)**

Anyone having dealings with the Councillor is well aware that he has continued to be a vocal opponent of the direction that Council and the City have taken in support of the Canada Summer Games project.

As with prior investigations conducted by our office,<sup>27</sup> it is beyond the scope of our jurisdiction to fully investigate and opine on the extent of the Canada Summer Games negotiations, and the associated reports and documents dating back three and a half (3.5) years. However, given the extensive investigation that was required in light of the volume of the Complaints, it is important to note that in reviewing the procedural history, we did not see an obvious contravention of the procedural by-law with respect to the passing of By-Law 62-2021. To the best of our understanding, on November 3, 2020, Council reconsidered the Councillor’s motion from July 7, 2020 that would have required the City to post *public* drafts of the Agreements for the public’s review at least thirty (30) days prior to a Council decision on point. From our review, we do not see how the November 3, 2020 reconsideration in any way precluded Council from passing By-Law 62-2021, including the Public Release Resolution, which simply allowed the City to disclose the Agreements once consent was obtained from the City’s Consortium partners to do so. It appears that the Councillor either did not understand, or did understand, but did not have regard for, the advice given that *partner* approval should be sought prior to making the Agreements public, on which basis the Public Release Resolution appears to have been structured.

The main purpose of our investigation and Report is to determine whether by virtue of his comments and actions, the Councillor breached the Code or Policies as alleged by the Complaints. For the reasons below, we find that the Councillor did breach the Code, the Communications Policy and the Council/Staff Policy (in addition to the prior findings of a breach of the Social Media Use Policy).

When asked about his various comments, both internal and public, concerning the Canada Summer Games, the Councillor’s response primarily centers around the truth of accuracy of his statements. Usually, it seems that the Councillor finds a way to justify a statement that, to a reasonable person, would appear as being far more inflammatory. For example, when asked about his May 19, 2021 post where he says that “as a councillor, I have yet to see the actual agreement”, he responded that he has never had a hard copy in hand, and that the only way to see the agreement was at City Hall. The Councillor says, “As I stated. How could I vote on something I could not see in my hand?”

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<sup>27</sup> See Minutes of December 2, 2020 Meeting of Council when we presented on the Integrity Commissioner Report for Complaints 2020-02-08:

[https://calendar.thorold.ca/meetings/\\_Download/697488c8-a3a6-499d-9fba-acb600ccab04](https://calendar.thorold.ca/meetings/_Download/697488c8-a3a6-499d-9fba-acb600ccab04).

To us, this responding statement differs subtly, but importantly. The Councillor does not take care to make it clear that he did not elect to go to City Hall to view the Agreements. Instead, his chosen words suggest that he has never even been given the opportunity to review the Agreements. As an isolated incident, this type of minor mischaracterization may not be significant. However, as a snowball effect of criticism after criticism, the comments amount to a very dramatic and negative view of the City, Council and staff, and fails to enhance public confidence in local government, casting aspersions on professional competence and credibility.

The Councillor has had ample time to ask his questions of the City's solicitors and City staff, as evidenced by an email dated April 28, 2021 where the Deputy City Clerk emailed all Councillors and asked them to let her know some convenient times to view closed session information and items in person, as is the usual practice. It appears that when the Councillor could not keep up, or could not get the answers he wanted, he defaulted to pointing fingers and accusing others of their shortcomings, rather than educating and preparing himself to effect change in a constructive manner.

While we are sympathetic to the Councillor's issues dating back to July 2020 in needing more time to review the Agreements, or not wanting to physically attend at City Hall to review them. However, as an elected official, and one that is as vocal and demanding as the Councillor with respect to this issue, we would expect the Councillor to have sacrificed some convenience and have done his due diligence with respect to the Agreements, even if that included a personal attendance at City Hall.

In fact, the Councillor's admission that he did not attend at City Hall to review the Agreements, despite his fervent opposition to the Agreements, is, very arguably, a breach of his duty to act in a diligent and consciousness manner. Considering the amount of verbal criticism (which at times, borders on abusiveness) that he has put his fellow Council members and staff through over the last three (3) years on this topic, we would have thought that the Councillor would at least take all steps necessary to review the Agreements, even if that required an inconvenient attendance at City Hall. His failure to do so, considering the context, is embarrassing.

We find that the Councillor's internal correspondence directed at staff on May 24, 2021, where he questions staff's right to request consent for disclosure and seek legal counsel constitutes a breach of the Council/Staff Policy in failing to be respectful of the professional capacities of staff, and the Communications Policy in failing to uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions. Furthermore, based on the evidence, the Councillor's statements, both in private correspondence and in public, constitute breaches of the Communications Policy in failing to refrain from publicly criticizing members of Council or City staff, and failing to act in a way that enhances public confidence in local government.

We also find that the May Facebook Posts and the post on November 4, 2020 where the Councillor states that "council voted to overturn my motion for transparency and instead voted to let the public know nothing. And with hold all information until the deal is signed", in addition to being breaches of the Use of Social Media Policy and the Council/Staff Policy as outlined above, these constitute independent breaches of Sections 4.1 (a), (c), (d), (g), (h) and (i) of the Code. The Councillor's belief in the truth of what he was posting does not excuse the Councillor's tone, which is harsh, demeaning and disparaging.

We are mindful that the Councillor elected to leave the meeting immediately following the approval of By-Law 62-2021. Rather than address the questions or issues he had at the Council meeting,

including with respect to any issue that he believed existed in terms of proper procedure for reconsideration, he simply chose to take leave of the meeting after the vote. Later, he posted his comments on Facebook (despite the Mayor's request of all Council members, asking them to accurately communicate the final outcomes of By-Law 62-2021, and prior to making any requests for clarification from City staff, which he did not do until May 24, 2021).

We have not gone so far as to determine that the Councillor breached Section 4.1(f) of the Code in making statements known to be false and with the intent to mislead. We have provided the Councillor a small remaining benefit of the doubt that he may truly believe in what he has said or what has occurred. However, ignorance will not excuse the Councillor from being found in contravention of the Code, as well as the Policies, as that is simply not the standard of care that is required of an experienced municipal councillor.

Notably, when responding to our preliminary Findings and Conclusions, the Councillor asked whether we were aware that there is an ongoing investigation by the Ontario Ombudsman into "staff involvement in Canada Summer Games Negotiations and any wrong doings", and that it "may be premature to punish [him] for something that [he] could be cleared of." To respond directly to the Councillor's question, we are aware that an investigation has been requested, which has been publicized,<sup>28</sup> although we understand this has in fact been requested by staff and is not an investigation into their "involvement". In any event, the process afforded to us by the Complaint Protocol and the *Municipal Act, 2001* does not require that we hold our investigation and Report in abeyance pending the outcome of the Ombudsman's investigation.

## VIII. CONCLUSIONS

Based on the foregoing and the entirety of the evidence before us, we conclude that the Councillor has breached the Code, the Use of Social Media Policy, the Council/Staff Policy, the Communications Policy and the Workplace Policy as outlined below. We note that some instances of breach are interrelated in that they amount to a contravention of more than one policy.

### The Code

The Councillor breached the following provisions of the Code:

- Sections 4.1(a), (c), (d), (f), (g), (h) and (i), Section 5.4, Section 5.5(a) and Section 13.1 in regard to the Councillor's continued misuse of social media to spread false information and blatantly criticize staff and Council. As discussed above, the Councillor's misuse of social media includes the Dictatorship Comments of October 22, 2020 and November 4, 2020, the Reconsideration Criticism in or around July 7, 2020, comments about communism in Canada dated June 18, 2021, and sharing vaccination conspiracy theories in or around July 22, 2021.
  - Specifically:
    - Breach of Section 4.1(a) in regard to the Councillor's failure to act in good faith and with due care in his posts with respect to communism in Canada, and allegedly poisoned Pfizer vaccination shots provided by the Canadian government;

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<sup>28</sup> <https://www.thoroldtoday.ca/local-news/ombudsman-launches-investigation-after-thorold-staff-complaint-over-canada-summer-games-process-4768103>.

- Breach of Section 4.1(c) in regard to the Councillor's failure to promote public interest with honesty in his posts about communism in Canada and allegedly poisoned Pfizer vaccination shots provided by the Canadian government;
  - Breach of Section 4.1(d) due to the Councillor's advancement of objectively false vaccination information on social media, and in so doing, failing to serve constituents in a conscientious and diligent manner.
  - Breach of Section 4.1(f) due to the Councillor's failure to refrain from making statements known to be false or with the intent to mislead Council or the public, regarding communism in Canada and poisoned vaccine shots allegedly provided by the Canadian government;
  - Breach of Section 4.1(g) in regard to the Councillor's failure to recognize that he is a representative of the City and that he owes a duty of loyalty to the residents of the City at all times. The Councillor has acted in accordance with his personal interests and beliefs on social media and without regard to his role as a representative;
  - Breach of Section 4.1(h) in regard to the Councillor's consistent negative public commentary about Council and its decision-making process. The Dictatorship Comments and Reconsideration Criticism pertain to the Council as a whole and, specifically, the Mayor;
  - Breach of Section 4.1(i) in regard to the Councillor's continued disparaging remarks and unfounded accusations about the motives of Council members or Council on social media;
  - Breach of Section 5.4 in regard to the Councillor's continued public criticisms of staff including the Anne Street Property Comments and the May Facebook Posts, including the Councillor imploring his followers to "swamp" City Hall with requests on May 20, 2019;
  - Breach of Section 5.5(a) in regard to the Lights Conspiracy in which the Councillor displayed a lack of respect for the role of staff and exposed staff to the risk of reputational and professional harm; and
  - Breach of Section 13.1 in regard to the Councillor's failure to adhere to policies, procedures and rules established by Council in his use of social media.
- Section 4.1(a), (d) and (g) in the Councillor's attendance at the April 10, 2021 Anti-Lockdown Protest and online statements which fail to demonstrate good faith, care, integrity or meet the standard of care required of him as an elected official. The Councillor's actions promoted and signaled a dispensing with applicable laws and protocols.
    - Specifically:
      - Breach of Section 4.1(a) in regard to the Councillor's failure to act in good faith and care when he attended at the Anti-Lockdown Protest and posting quasi-legal advice to constituents regarding defiance of rules related to proof of vaccination;

- Breach of Section 4.1(d) in regard to the Councillor's failure to serve his constituents in a conscientious or diligent manner when he promoted defiance of applicable laws or mandates and posted false quasi-legal advice to constituents regarding defiance of vaccine passports;
  - Breach of Section 4.1(g) in regard to the Councillor's attendance at the Anti-Lockdown Protest in his personal capacity, having disregard for his role as representative and obligation to act in accordance with the well-being and interests of the City. In addition, the Councillor undermining of the scope of police officer duties is contrary to the Councillor's duty of loyalty.
- Sections 4.1 (a), (c), (d), (g), (h) and (i) in regard to the Facebook Posts and November 2, 2020 post pertaining to the Canada Summer Games and an alleged contravention of By-Law 62-2021. In these posts, the Councillor implies that Council is maliciously withholding information from the public. The Councillor's tone is harsh, demeaning and disparaging.
    - Specifically:
      - Breach of Section 4.1(a) when the Councillor failed to act in good faith and due care by implying Council maliciously withheld the Agreements from the public;
      - Breach of Section 4.1(c) when the Councillor failed to act honestly by implying that the Agreements were being hidden by Council from the public;
      - Breach of Section 4.1(g) in regard to the Councillor's failure to recognize that he is a representative of the City and that he owes a duty of loyalty to the residents of the City at all times.
      - Breach of Section 4.1(h) in regard to the Councillor's failure to accurately communicate truthful information to the public in regard to the City's decision-making processes pertaining to the Canada Summer Games. The Councillor failed to attend at City Hall to review the Agreements, mischaracterized events to the public to portray that he was not being provided with an opportunity to review the Agreements, and stated that his motion for "transparency" was overturned in order to keep the Agreements out of the hands of the public;
      - Breach of Section 4.1(i) in regard to the Councillor's implications that Council was hiding information from the public in regard to the Canada Summer Games and voting "to let the public know nothing."
  - Section 8.1 in the Councillor's receipt of a non-monetary benefit from Rebel News in the form of defence and promotion of the Councillor's values and beliefs.
  - Sections 10.1 and 10.3 due to the Councillor's behavior towards staff regarding the Lights Conspiracy.
    - Specifically:
      - Breach of Section 10.1 in regard to his allegations that staff were surveilling him by following and tracking him on social media and monitoring his whereabouts, which, coupled with the Councillor's other actions, constitutes harassment;
      - Breach of Section 10.3 for failing to comply with the Workplace Policy.

### **Workplace Policy**

The Councillor breached the Workplace Policy:

- In his behavior towards staff regarding the Lights Conspiracy, namely, his assertion that staff were following and tracking him on social media, which, in light of the Councillor's ongoing and well-documented behavior toward staff, constitutes a continuing pattern of harassment.

### **Use of Social Media Policy**

The Councillor breached the Use of Social Media Policy:

- Through his failure to use social media in a way that was consistent with the Code and other policies, namely, in his use of social media to critique City staff;
- Through his inflammatory, inaccurate and/or untruthful social media messages, including Facebook posts about communism in Canada and alleged poisoned vaccine shots;
- By using social media to post inflammatory comments in regard to the Anne Street Property and requesting that residents "swamp" City Hall with requests, failing to act in a way that enhances public confidence in local government and to refrain from making public comments that harm or disparage the reputation of the Corporation or Council, or any Member of Council;
- By his use of social media for the Lights Conspiracy which led to concern and embarrassment amongst staff and residents and exposed staff to the risk of reputational and professional harm;
- Through his use of social media to disseminate pseudo-legal advice in regard to proof of vaccination and to promote defiance to applicable health and safety laws, orders or mandates.

### **Communications Policy**

The Councillor breached the Council/Staff Communications Policy:

- By his actions in the Lights Conspiracy which exposed staff to the risk of reputational and professional harm;
- In his June 8, 2021 email to staff regarding Anne Street, where he made demeaning and inconsiderate statements;
- In his internal and public statements regarding the Canada Summer Games. The Councillor publicly criticized members of Council or City Staff and failed to act in a way that enhances public confidence in local government.

## **Council/Staff Policy**

The Councillor breached the Council/Staff Policy:

- In his correspondence to staff on May 24, 2021, where he questioned staff's right to request consent for disclosure and seek legal counsel. The Councillor failed to adhere to the professional capabilities of staff, failed to uphold the decisions of Council and failed to commit to the implementation of those decisions.
- In his June 8, 2021 email to staff regarding Anne Street, where he questioned staff competence and was not collaborative with staff.

The remaining portions of the Complaints are not substantiated and are therefore dismissed.

We hold out a (albeit faint) hope that the Councillor will not approach the findings and recommendations in this report as yet another opportunity to play the part of victim, and urge his followers to see this as another piece of the puzzle of how he just cannot catch a break, so to speak, and that this is part of a conspiracy against him as the only one able to bring light to certain matters. Let us be very clear: the findings against the Councillor have nothing to do with him advocating on issues, asking questions about Council business, or representing his constituents. The findings very much relate to *how* he goes about doing those things.

## **IX. RECOMMENDATIONS**

### **(a) Penalties**

In determining appropriate recommendations to Council with respect to our findings that the Councillor contravened the Code, the Use of Social Media Policy, the Council/Staff Policy, the Communications Policy and Workplace Policy multiple times, we have taken into account the ongoing and repetitive contraventions of the Code and the Policies by the Councillor. The vast majority of the alleged contraventions have been substantiated by the evidence and our findings.

We have taken into account the number, magnitude and severity of the contraventions committed by the Councillor and the fact that the Councillor is not a first-time elected representative. Specifically, seven (7) complaints were filed with our office, relating to a multitude of instances over a period of time, mostly the last year since the Councillor was last penalized and reprimanded by Council for similar inappropriate actions.

In accordance with Section 12.(1)(b)(i) of the Complaint Protocol, if the Integrity Commissioner determines that a contravention of the Code or any other applicable policy has occurred, but that it was committed through inadvertence, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*, including, but not limited to, a recommendation of no penalty.

The Councillor has been found to have committed multiple contraventions which were not trivial or committed through inadvertence. Based on his Responses, while the Councillor appears to have trouble appreciating exactly what is wrong with his statements and actions, it cannot be said, given the extensive guidance provided to the Councillor in the past, that these contraventions somehow were occasioned in good faith. On the contrary, these contraventions continue a deliberate (or, in the alternative, negligent or willfully blind) pattern of conduct.

In the Prior IC Report, we strongly cautioned the Councillor that any further contraventions of the Code and Policies on similar grounds may very well result in additional complaints with the possible consequence of escalated penalties being recommended and imposed. It is clear that the Councillor did not take this warning seriously (and in fact, we are aware that the Councillor has undermined the reasons behind the findings against him on social media).

Since the Prior IC Report, we have also exercised our discretion to inform the Councillor that as recently as January 18, 2021, a formal complaint was filed against him with respect to a lack of decorum and chosen words in a specific public post on Facebook. We advised the Councillor:

Such language, especially on a public platform, could easily be perceived as unbecoming of an elected official. As such, it is incumbent on you to consider decorum and note that your public sentiments have an impact on members of the public, and have the potential to cast a negative light on the City as a whole...

We urged the Councillor to consider these comments, especially in light of the other recent complaints and findings made against him, but in large part, this has been to no avail.

The *Municipal Act, 2001* and the Code authorize the Integrity Commissioner to recommend and Council to impose the following penalties on a member who has contravened the Code of Conduct or other policies:

1. a reprimand; and
2. a suspension of remuneration paid to the member for a period up to ninety (90) days.

In this case, there are eight (8) separate complaints. Council has the authority to impose multiple penalties, including reprimands and suspensions of remuneration, each to a maximum of ninety (90) days.

Taking all the foregoing into account, we recommend that the imposition of the following penalties:

- (a) that Council, once again, reprimand the Councillor and denounce his actions;
- (b) that Council, in particular, reprimand and take note of the contravention by the Councillor related to receiving a gift or benefit from Rebel News (Allegation #6);
- (c) that the Councillor's remuneration be suspended, as follows:
  - (i) ninety (90) days for contraventions related to the Misuse of Social Media, broken down as follows:
    - ten (10) days for Comments regarding communism and conspiracy theories, resulting in complaints by residents (Allegation #2 and #13); and
    - eighty (80) days for criticism and eroding of trust in staff and City as a whole (Allegations # 1, #5 and #12).
  - (ii) twenty (20) days for contraventions related to comments regarding property standards on Anne Street (Allegation #7);

- (iii) sixty (60) days for contraventions related to Anti-Lockdown and COVID-19 Related Issues and Behaviours (Allegation #9); and
- (iv) sixty (60) days for contraventions related to the Canada Summer Games Matter and Comments (Allegation #10).

**(b) Remedial Measures and Corrective Actions**

As noted in the Prior IC Report, the courts have recognized that the imposition of remedial measures or corrective actions to allow codes of conduct to operate effectively and to address problems arising from violations of a municipality's ethical standards.

Section 16 of the Code expressly provides that Council may, on the basis of a recommendation from the Integrity Commissioner, take corrective actions or impose remedial measures. The purpose of a remedial measure or corrective action is to seek to rectify the harm or injury caused by the contravention.

It is our view that Council should be concerned with respect to the conduct and behavior of the Councillor and take steps to minimize the risk of it occurring again and of further harm, including reputational damage being inflicted upon the City and its staff.

We are of the view that the imposition of remedial measures or corrective actions is appropriate in the circumstances. It is our recommendation that the Councillor:

- (a) review all meeting minutes of Council meetings from May 2019 to the present, and advise the Integrity Commissioner when he has done so;
- (b) remove the November 4, 2020 Facebook Post, the May Facebook Posts and the "poisoned shots" post from his Facebook account (whether current or former);
- (c) not be appointed as chair of any committee of Council (or be removed from any current post) for the remainder of his current term on Council; and
- (d) be precluded from having any direct contact with City staff and, should any communication be absolutely necessary for the Councillor to fulfill his obligations as a member of Council, that he submit any requests for information or advice only to the Mayor who will communicate with staff on behalf of the Councillor.

In the Prior IC Report, we had recommended that the Councillor make a formal public apology to Council and to City staff. The Councillor did so, but his subsequent actions indicate that his words were hollow and likely insincere. A true apology manifests an intention to repair and reforms. The Councillor's actions have demonstrated that he either has no ability, or has no intention to do either. Accordingly, we are not recommending any further apologies from the Councillor.

In accordance with Section 7(4) of the Protocol, an advance copy of this Report (without Recommendations) was provided to the Councillor in draft so that he was aware of our findings and conclusions.

The Councillor was also given five (5) days to provide any comments on the draft Report so that we could take them into consideration prior to finalizing the Report. The Councillor provided a response, which has been considered and where appropriate, incorporated into our Report. Accordingly, the investigation phase is complete and is now closed.

The complainants were each provided with a draft copy of this Report (without Recommendations) and provided five (5) days to correct any factual or other inaccuracies. We have taken into consideration the responses provided by the complainants in completing this Report.

This Report has been prepared for and is forwarded to Council for its consideration of the Recommendations set out herein. Subsection 223.6(2) of the *Municipal Act, 2001* provides that this Report be made public.

AIRD & BERLIS LLP

A handwritten signature in blue ink that reads "John Mascarini". The signature is stylized with a large loop at the beginning.

John Mascarini

A handwritten signature in blue ink that reads "D.P.". The signature is stylized and appears to be initials.

Daria (Dasha) Peregoudova

Integrity Commissioner for the City of Thorold

Dated this 2<sup>nd</sup> day of December, 2021.