



**Cunningham Swan**

LAWYERS

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**CONFIDENTIAL**

July 31, 2024

**SENT BY EMAIL TO: [blarmer@cobourg.ca](mailto:blarmer@cobourg.ca)**

Mayor and Council  
c/o Brent Larmer, Clerk  
The Corporation of the Town of Cobourg  
55 King Street West  
Cobourg, ON K9A 2M2

Dear Mayor and Council:

**RE: Code of Conduct Complaint – Report  
Our File Nos. 38612-1**

This public report of our investigation is being provided to Council in accordance with Section 223.6 of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

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The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

### **Timeline of Investigation**

The key dates and events for this investigation are as follows:

- Complaint Received – November 15, 2023
- Preliminary review completed
- Complaint sent to Member – December 27, 2023
- Member's response received – February 9, 2023
- Complainants' response received – March 29, 2024
- Interviews conducted – April 2024

### **Complaint Overview**

A Complaint (the "Complaint") was received that alleged that Mayor Cleveland accosted the Complainant on the street on November 6, 2023 and made several comments that were a breach of the Code of Conduct. The Complaint also alleged that the Member then continued to message the Complainant on Facebook after the interaction in breach of the Code of Conduct.

### **Relevant Code of Conduct Provisions**

The Complaint engaged the following Code of Conduct provisions:

#### **8.0 Confidential Information**

8.1 ...Examples of types of information that a Member must keep confidential, unless expressly authorized by Council or as required by law, include, but are not limited to:

- (a) Matters related to ongoing litigation or negotiation, or that is the subject of solicitor-client privilege.

## 9.0 Discrimination and Harassment

9.1 A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.

### **Factual Findings**

This investigation required findings of fact regarding what was said during the exchange on November 6, 2023 between the Member and the Complainant. Specifically, we were required to determine (1) the nature of the exchange between the Complainant and the Member; and (2) what comments were made by the Member regarding legal proceedings.

This investigation uses the standard of proof known as the “balance of probabilities” which applies to Integrity Commissioners in Ontario.<sup>1</sup> The standard requires the trier of fact to “scrutinize the relevant evidence with care to determine whether it is more likely than not that the alleged event occurred.”<sup>2</sup>

#### **1. The exchange between the Complainant and the Member**

The Complainant’s evidence was that the Member said hello on the street to the Complainant and then began yelling about another resident and saying he was being harassed and telling the Complainant that anyone who associates with this resident or doesn’t speak out against the resident could be taken to Court. The Complainant stated she then told the Member to, “[REDACTED] off” and asked the Member to stop threatening her and walked away. Following the exchange, the Complainant stated that the Member began messaging her on Facebook.

The Member’s evidence was that he was not yelling during the exchange but that he stated to the Complainant “do you know what [name] is doing?” and asked the Complainant why she was supporting the individual and stated that he couldn’t work with someone who supports his conduct. At this point, the Member stated that the Complainant began yelling at him.

There is a dispute between the two accounts with respect to whether or not the Member was angry and yelling during the exchange. It is our finding that the Member’s account of the exchange is more credible that he was speaking to the Complainant but was not angry and yelling. This finding was supported by the Facebook messages reviewed in which the Member apologizes if his comments or behavior were interpreted as being threatening. These messages were sent immediately after the exchange and are not consistent with the Complainant’s evidence that the Member was agitated and yelling during the exchange.

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<sup>1</sup> *Chiarelli (re)*, 2020 ONMIC 20 at para 84.

<sup>2</sup> *F.H. v McDougall*, 2008 SCC 53 at para 49.

In all other respects the Complainant's and the Member's evidence do not differ significantly. Both accounts indicate that the Member stated to the Complainant that another individual was harassing him and that if the Complainant was supporting that individual the Member could not work with the Complainant.

## **2. Information regarding legal proceedings**

The Complainant alleged that the Member provided information to her about pending legal proceedings by the Town.

The Member denied making any mention of legal proceedings by the Town.

Our review of the evidence concluded that the Member did not state any information about pending legal proceedings by the Town or provide information belonging to the Town that was subject to solicitor-client privilege.

## **Code of Conduct Findings**

### **8.0 Confidential Information**

**8.1 ...Examples of types of information that a Member must keep confidential, unless expressly authorized by Council or as required by law, include, but are not limited to:**

- (a) Matters related to ongoing litigation or negotiation, or that is the subject of solicitor-client privilege.**

As noted above, we found that the Member did not give information to the Complainant regarding pending legal proceedings by the Town within the meaning of Section 8.1(a).

As a result, we find that the Member did not breach Section 8.0 of the Code of Conduct.

### **9.0 Discrimination and Harassment**

**9.1 A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.**

As noted above, we found that the Member did ask the Complainant why she was supporting a specific individual and stated that he couldn't work with someone who supports his conduct.

We do not find that this was a breach of Section 9.1 of the Code of Conduct.

A finding that a member was abusive, bullying or intimidating towards a member of the public is a very high bar and requires conduct of a very serious nature. The Member stating to the

Complainant that he did not want to work with someone who supports an individual the Member alleged was harassing him does not rise to the level required to ground a finding of a breach of this section of the Code of Conduct. This statement was not abusive in any manner and cannot be considered to be bullying behaviour. Further, while the Complainant may have interpreted the statement as an attempt by the Member to intimidate, we find that this statement, which was immediately followed by a message to the Complainant apologizing for any misinterpretation and stating he did not intend to be threatening, does not constitute the type of behavior that is required to find that a Member breached this section of the Code.

As a result of the foregoing, we find no breach of Section 9.0 of the Code of Conduct.

### **Recommendation**

Sincerely,

**Cunningham, Swan, Carty, Little & Bonham LLP**



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