

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 23, 2017

Item 1, Report No. 20, of the Special Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on May 23, 2017.

**1 INTEGRITY COMMISSIONER CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT
#011717(F) IN RESPECT OF DEPUTY MAYOR MICHAEL DI BIASE**

The Special Committee of the Whole recommends:

- 1) That the following be approved:
 1. That the Final Investigation Report of the Integrity Commissioner in respect of the Code of Conduct Complaint #011717(f) in respect of former Regional Councillor and Deputy Mayor Michael Di Biase, be received;
 2. That while the resignation of the former Regional Councillor and Deputy Mayor Michael Di Biase, effective May 19, 2017, has precluded the imposition of the recommended penalties under section 223.4(5) of the Municipal Act, Vaughan Council fully supports the Report of the Integrity Commissioner and finds that former Regional Councillor and Deputy Mayor Michael Di Biase contravened Rule 14 of the Council Code of Conduct and the City's Respectful Workplace Policy; and
 3. That Vaughan Council condemns/denounces any and all actions or behaviours that constitute sexual harassment and is committed to its continued support of the City's Respectful Workplace Policy;
- 2) That the confidential recommendation of the Special Committee of the Whole (Closed Session) meeting of May 23, 2017, be approved; and
- 3) That the following Communications be received:
 - C1 Mr. Richard Lorello, dated May 19, 2017; and
 - C2 Mr. Furio Liberatore, dated May 23, 2017.

Recommendation

The Integrity Commissioner recommends that:

1. The Code of Conduct Complaint #011717(f) Final Investigation Report in Respect of Regional Councillor / Deputy Mayor Michael Di Biase, be received and;
2. That the recommendations set out by the Integrity Commissioner be adopted by Council.

Contribution to Sustainability

Not applicable.

Economic Impact

Not applicable.

Communications Plan

This report has been placed on the public agenda of the Committee of the Whole meeting scheduled for May 23, 2017 and this report has been posted on the City of Vaughan's public website.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 23, 2017

Item 1, SPCW Report No. 20 – Page 2

Purpose

Section 12 of the Code Protocol explains that where the complaint is sustained, the Integrity Commissioner is required to “outline the findings, the terms of any settlement, or recommended corrective action”:

Recommendation Report:

12. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint.

(2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.

Background - Analysis and Options

This report presents the findings of my investigation under the City of Vaughan Code of Ethical Conduct (the “Code”) relating to the conduct of Regional Councillor and Deputy Mayor Michael Di Biase (the “Respondent”) in connection with a complaint raising three issues:

1. the allegation of sexual assault of an employee of the City of Vaughan (the “Complainant”) by the Respondent;
2. the allegation that the Respondent sexually harassed the Complainant; and
3. the allegation that the Respondent undertook an act of reprisal against the Complainant after the Complainant initiated a Code complaint against him. The reprisal was alleged to be the engagement of an individual to conduct surveillance on the Complainant.

I find that Issue #1 involves allegations which on their face are of a criminal nature under the *Criminal Code*. Section 6(3)(a) of the Complaint Protocol for Council Code of Conduct (the “Code Protocol”) provides that where an allegation of criminal conduct is made, I must advise the complainant to pursue the allegations with the Police Service. As a result, I did not investigate the issue and make no findings in that regard.

On Issue #2, I find that the actions of the Respondent constitute sexual harassment and a breach of Rule 14 of the Code, which prohibits such harassment. The Respondent’s conduct created and contributed to an intimidating and offensive work environment for the Complainant, contrary to his obligations under the Code and under the City’s Respectful Workplace Policy, Policy No.05.5.23 (the “Respectful Workplace Policy”). Such actions seriously undermine the trust placed in elected officials and the principles underlying their Oath of Office.

On Issue #3, I note that the Respondent has previously undertaken acts of reprisals against employees of the City of Vaughan who had initiated or participated in complaints under the Code. In this case, however, I did not receive conclusive evidence linking the individual who conducted surveillance on the Complainant to the Respondent. I therefore find that there is insufficient evidence to determine that the Respondent has breached Rule 19(1) and (2) with regard to reprisals and obstruction.

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Item 1, SPCW Report No. 20 – Page 3

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the following priority set forth in the Term of Council Service Excellence Strategy Map (2014-2018)

Continue to advance a culture of excellence in governance

Regional Implications

Not applicable.

Conclusion

In this report, I discuss my investigative process, my decisions on jurisdiction, my findings on the allegations in the complaint, my reasons for those findings, and my recommendations with respect to the appropriate sanction.

Attachments

1. City of Vaughan Complaint Investigation Report #011717(f)
2. Statement of the Complainant, dated May 16, 2017

Report prepared by:

Suzanne Craig
Integrity Commissioner

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

**INTEGRITY COMMISSIONER CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT
#011717(F) IN RESPECT OF DEPUTY MAYOR MICHAEL DI BIASE**

Recommendation

The Integrity Commissioner recommends that:

1. The Code of Conduct Complaint #011717(f) Final Investigation Report in Respect of Regional Councillor / Deputy Mayor Michael Di Biase, be received and;
2. That the recommendations set out by the Integrity Commissioner be adopted by Council.

Contribution to Sustainability

Not applicable.

Economic Impact

Not applicable.

Communications Plan

This report has been placed on the public agenda of the Committee of the Whole meeting scheduled for May 23, 2017 and this report has been posted on the City of Vaughan's public website.

Purpose

Section 12 of the Code Protocol explains that where the complaint is sustained, the Integrity Commissioner is required to "outline the findings, the terms of any settlement, or recommended corrective action":

Recommendation Report:

12. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint.

(2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.

Background - Analysis and Options

This report presents the findings of my investigation under the City of Vaughan Code of Ethical Conduct (the "Code") relating to the conduct of Regional Councillor and Deputy Mayor Michael Di Biase (the "Respondent") in connection with a complaint raising three issues:

1. the allegation of sexual assault of an employee of the City of Vaughan (the "Complainant") by the Respondent;
2. the allegation that the Respondent sexually harassed the Complainant; and
3. the allegation that the Respondent undertook an act of reprisal against the Complainant after the Complainant initiated a Code complaint against him. The reprisal was alleged to be the engagement of an individual to conduct surveillance on the Complainant.

I find that Issue #1 involves allegations which on their face are of a criminal nature under the *Criminal Code*. Section 6(3)(a) of the Complaint Protocol for Council Code of Conduct (the "Code Protocol") provides that where an allegation of criminal conduct is made, I must advise the complainant to pursue the allegations with the Police Service. As a result, I did not investigate the issue and make no findings in that regard.

On Issue #2, I find that the actions of the Respondent constitute sexual harassment and a breach of Rule 14 of the Code, which prohibits such harassment. The Respondent's conduct created and contributed to an intimidating and offensive work environment for the Complainant, contrary to his obligations under the Code and under the City's Respectful Workplace Policy, Policy No.05.5.23 (the "Respectful Workplace Policy"). Such actions seriously undermine the trust placed in elected officials and the principles underlying their Oath of Office.

On Issue #3, I note that the Respondent has previously undertaken acts of reprisals against employees of the City of Vaughan who had initiated or participated in complaints under the Code. In this case, however, I did not receive conclusive evidence linking the individual who conducted surveillance on the Complainant to the Respondent. I therefore find that there is insufficient evidence to determine that the Respondent has breached Rule 19(1) and (2) with regard to reprisals and obstruction.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the following priority set forth in the Term of Council Service Excellence Strategy Map (2014-2018)

Continue to advance a culture of excellence in governance

Regional Implications

Not applicable.

Conclusion

In this report, I discuss my investigative process, my decisions on jurisdiction, my findings on the allegations in the complaint, my reasons for those findings, and my recommendations with respect to the appropriate sanction.

Attachments

1. City of Vaughan Complaint Investigation Report #011717(f)
2. Statement of the Complainant, dated May 16, 2017

Report prepared by:

Suzanne Craig
Integrity Commissioner

Respectfully submitted,

Suzanne Craig
Integrity Commissioner

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I. Summary

This report presents the findings of my investigation under the City of Vaughan Code of Ethical Conduct (the “Code”) relating to the conduct of Regional Councillor and Deputy Mayor Michael Di Biase (the “Respondent”) in connection with a complaint raising three issues:

1. the allegation of sexual assault of an employee of the City of Vaughan (the “Complainant”) by the Respondent;
2. the allegation that the Respondent sexually harassed the Complainant; and
3. the allegation that the Respondent undertook an act of reprisal against the Complainant after the Complainant initiated a Code complaint against him. The reprisal was alleged to be the engagement of an individual to conduct surveillance on the Complainant.

I find that Issue #1 involves allegations which on their face are of a criminal nature under the *Criminal Code*. Section 6(3)(a) of the Complaint Protocol for Council Code of Conduct (the “Code Protocol”) provides that where an allegation of criminal conduct is made, I must advise the complainant to pursue the allegations with the Police Service. As a result, I did not investigate the issue and make no findings in that regard.

On Issue #2, I find that the actions of the Respondent constitute sexual harassment and a breach of Rule 14 of the Code, which prohibits such harassment. The Respondent’s conduct created and contributed to an intimidating and offensive work environment for the Complainant, contrary to his obligations under the Code and under the City’s Respectful Workplace Policy, Policy No.05.5.23 (the “Respectful Workplace Policy”). Such actions seriously undermine the trust placed in elected officials and the principles underlying their Oath of Office.

Even after the Respondent was told by the Complainant that his sexual advances were unwelcome and unwanted, the Respondent did not cease his unwelcome conduct. When the Complainant confronted the Respondent during a telephone call that she recorded, the Respondent admitted to having made unwelcome sexual advances. He made light of his actions by making further unwelcome advances.

On Issue #3, I note that the Respondent has previously undertaken acts of reprisals against employees of the City of Vaughan who had initiated or participated in complaints under the Code. In this case, however, I did not receive conclusive evidence linking the individual who conducted surveillance on the Complainant to the Respondent. I therefore find that there is insufficient evidence to determine that the Respondent has breached Rule 19(1) and (2) with regard to reprisals and obstruction.

In this report, I discuss my investigative process, my decisions on jurisdiction, my findings on the allegations in the complaint, my reasons for those findings, and my recommendations with respect to the appropriate sanction.

II. The allegations in the complaint

On January 17, 2017, I received a complaint under the Code. The complaint was submitted on the City's Complaint Form/Affidavit, to which the Complainant added several pages of additional information. The Complaint Form/Affidavit was eight pages and was properly sworn and witnessed as required by the Code Protocol.

The Complainant wrote that she has reasonable grounds to believe that the Respondent had contravened Rule No. 14 and Rule No. 19(2) of the Code. In her 8-page Affidavit, the Complainant provided detailed particulars of these allegations

The full particulars of these allegations were provided to the Respondent. In this report, however, I have exercised my discretion to disclose only those particulars that I have determined are necessary for the purposes of the report.

In doing so, I have considered the need for City Council and the public to understand the factual basis for my findings and my recommendations. I note that the Complainant has confirmed that she understands and accepts that the events alleged in her complaint would be made public in any report that I would deliver.

However, I have also considered the countervailing privacy interest of the Complainant, particularly because these allegations involve events that are highly personal to the Complainant. As well, I have recognized the broader interest in publicly disclosing such personal information in reports involving sexual harassment only to the extent that it is necessary to do so, in order to encourage victims of sexual harassment to come forward with their complaints.

A. Issue #1 – Allegations of sexual assault

The Complainant raised a number of allegations of sexual assault by the Respondent, beginning in March 2016, which allegedly took place at the City of Vaughan civic centre on the fourth floor. For the reasons given above, I will not describe the details of each of these allegations.

I reproduce below the Complainant's description of one illustrative instance of these sexual assault allegations relating to the Respondent's alleged conduct in or around July 2016. I have replaced all names of persons involved with general descriptions, as I do throughout this report, in the interests of confidentiality:

The Respondent again groped me, kissed me, touched my breasts and pushed himself against me. In response, I again pushed the Respondent away, stating 'what would [*a named individual, A*] say if she know you were doing this to me?'...

The Respondent responded 'A? How would A know? This is our secret'.

I replied, "No!", that it was not our secret and told the Respondent 'Do not ever let this happen again!'

Based on these and other events, the Complainant alleged that the Respondent sexually assaulted

her by touching her and pushing himself against her in such a way that violated her sexual integrity. The complaint notes that this is considered a violation under Rule No. 14 Code.

B. Issue #2 – Allegations of sexual harassment

The complaint also alleged that the Respondent had sexually harassed the Complainant for a period of approximately five months, from March 2016 to July 2016. As a result of the alleged conduct, the Complainant left her workplace, returning only for a few weeks in October 2016.

The complaint provides a detailed account of five particular instances of unwanted sexual advances. Again, I will not recount the full details of these incidents, certain particulars of which are outlined below. In each case, the Respondent is alleged to have kissed the mouth of the Complainant, without her consent and despite her objections. In four cases, the Respondent also touched her breasts.

In addition to these five incidents, the Complainant alleges that this pattern of conduct was repeated a further five or six times and occurred in the same period. To show the general substance of these allegations, I have reproduced this last allegation below:

Between April and July 2016, the Respondent grabbed my breasts, thrust himself against me, attempted to kiss me and put his tongue in my mouth on about five or six more occasions. Each time, I would tell the Respondent to stop, that his conduct was unwelcome and made me uncomfortable. I also advised the Respondent that I could not continue working for him if he continued to sexually assault and sexually harass me.

The complaint also discloses that the Complainant called the Respondent on her mobile phone on July 20, 2016 and discussed one such alleged incident that occurred on July 19, 2016. The Complainant recorded the telephone call without the Respondent's knowledge. The contents of this recording, which were transcribed, are discussed in my report below.

C. Issue #3 – Allegations of reprisal

The complaint alleges that since filing her complaint letter to City and since her suggestion to the Respondent that she was going to file a Code complaint with the Integrity Commissioner, the Complainant and [a named family member] have been followed and have been subject to surveillance by an unknown man. In discussions with the Complainant, she clarified that this allegation was supported by "the way the Respondent deals with people who go against him". Upon seeing "a black SUV, license plate [redacted]" that was parked outside her house and then proceeded to follow her, the Complainant believed that the same "things that happened to others" would happen to her.

III. Relevant provisions of the Code

A. *Harassment allegations under Rule 14*

Rule 14 of the Code requires Members of Council (“Members”) to comply with the Respectful Workplace Policy. The Commentary for Rule 14 indicates that the purpose of this rule is to ensure a safe and respectful workplace that is free from harassment:

It is the policy of the City of Vaughan that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. The City of Vaughan’s Respectful Workplace Policy (Harassment and Discrimination) ensures a safe and respectful workplace environment and appropriate management of any occurrences of harassment and discrimination as defined by the policy.

Rule 14 of the Code of Conduct does not define harassment. The definition of harassment is instead contained in the Respectful Workplace Policy.

By requiring Members to comply with the Respectful Workplace Policy, I conclude that Rule 14 incorporates by reference the obligations found in that policy. The Respectful Workplace Policy expressly applies to all elected representatives, including Members, and extends to any harassment that may occur at any worksite where the business of the municipality is being conducted.

The Respectful Workplace Policy defines sexual harassment as “comments or conduct of a... sexual nature, that is known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, hostile or inappropriate” (p. 3):

Sexual Harassment:

One or a series of comments or conduct of a gender-related or sexual nature, that is known or ought reasonably to be known to be unwelcome/unwanted, offensive, intimidating, hostile or inappropriate. Sexual harassment includes unwelcome sexual advances and requests for sexual favours where:

- Submitting to or rejecting this conduct is used as the basis for decisions which affect the individual’s employment
- Such conduct has the purpose or effect of interfering with an individual’s job performance
- Such conduct creates an intimidating or offensive environment

The Respectful Workplace Policy provides that everyone associated with the City has a responsibility to prevent harassment, but a manager or supervisor who has the authority to prevent or discourage harassment have a particular duty to act (p. 5).

The complaint alleges that on several occasions, the Complainant had been the unwilling

recipient of unwelcome, unwanted, offensive, intimidating and inappropriate conduct by the Respondent. If proven, these allegations would amount to a breach of Rule 14.

B. Specific process for harassment complaints under Rule 14

The Code prescribes a specific process for complaints alleging harassment under Rule 14, which has been considered in only one past report of the Integrity Commissioner. I accordingly review the nature of that process below.

Under Rule 14(3), if the Integrity Commissioner receives a harassment complaint, he or she must forward the information to Human Resources, who in turn refers it to an independent investigator:

14(3). Upon receipt of a complaint that relates to Rule No. 14, the Integrity Commissioner shall forward the information subject of the complaint to Human Resources who will refer it to an independent investigator.

The Commentary to Rule 14 provides that the independent investigator is to be guided by the provisions of the Workplace Policy. The findings of the independent investigator are then provided to the Integrity Commissioner, who “shall utilize the investigator’s findings” to make a determination on the application of the Code of Conduct and the merits of any complaint investigation:

The City of Vaughan Policy applies to Members of Council and will provide guidance to the independent investigator. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall utilize the investigator’s findings to make a determination on the application of the Code of Ethical Conduct and the merits to an investigation on the ethical conduct of the Member of Council subject of the complaint.

I note that the City has enacted a procedure for implementing the Workplace Policy, which is contained in Policy No. HR-017 (Respectful Workplace Policy (Harassment and Discrimination)) and ordinarily governs the receipt and resolution of harassment complaints.

However, the Workplace Policy and Policy No. HR-017 both provide that complaints about a Member are to be addressed through the process defined under Rule 14:

Elected representatives are also governed by the Council Code of Ethical Conduct and any complaints about an elected representative are addressed under this Policy, but through a process defined by Rule 14 of the Council Code of Ethical Conduct.

I accordingly find that after receiving the findings of the independent investigator, I am required to follow the process set out in the Code and the Code Protocol, rather than the procedure described in Policy No. HR-017.

A complaint or a portion of a complaint that does not allege a breach of Rule 14 does not fall within this specific process and is to be addressed under the general procedure set out in the Code and the Code Protocol. I accordingly dealt with the Complainant's allegations of reprisal under Rule 19 in that manner, as described below.

C. *Reprisal allegations under Rule 19*

Issue #3 relates to the complaint's allegation of reprisals, which are contrary to Rule 19 of the Code entitled "Reprisals and Obstruction". The second part of this rule states that:

19(2). No Members shall threaten or undertake any act of reprisal against a person initiating an inquiry or complaint under the Code of Conduct or who provides information to the integrity Commissioner in any investigation.

Rule 19 is in place to ensure that individuals who witness or become aware of behavior by an elected official that potentially contravenes the Code are not intimidated or threatened such that they do not cooperate with or provide information to the Integrity Commissioner in the course of a Code investigation.

IV. Preliminary issues

A. *Absence of jurisdiction over the sexual assaults alleged under Issue #1*

With regard to Issue #1, the complaint alleges that the Complainant experienced what are described as "sexual assaults" by the Respondent, beginning in March 2016.

Section 6(3)(a) of the Code Protocol provides that the Integrity Commissioner shall not investigate complaints that on their face raise criminal allegations, at least until any criminal proceedings have been pursued and resolved:

If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant should be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

I have reviewed the provisions of the *Criminal Code* relating to sexual assault, including sections 265 (assault) and 271 (sexual assault). I find that the allegations that the Respondent touched the Complainant in a sexual manner without her consent are, on their face, allegations of a criminal nature.

I have written to the Complainant in accordance with section 6(3)(a) of the Code Protocol, indicating that the Complainant must pursue Issue #1 with the Police Service, since on its face the allegation is of a criminal nature.

Until it is confirmed that such a process has been completed, I do not have jurisdiction to investigate those allegations. As a result, I do not address Issue #1 in this report.

B. Whether the limitation period applies to the complaint

Section 2 of the Code Protocol states that complaints must be addressed in accordance with the rules within six (6) months of the alleged violation:

2. After September 30, 2008, all complaints must be addressed in accordance with the below captioned procedure within six (6) months of the alleged violation or no action will be taken on the complaint.

This rule appears to be similar to the limitation periods that apply to civil actions commenced in courts. In that context, once a limitation period has expired, the right of action is “statute-barred”. If an action is commenced outside this period, the action will generally likely be struck as there are few exceptions to limitation period rules.

In this case, the complaint was received by the Commissioner’s Office on January 17, 2017. If section 2 were to be applied strictly, no action could be taken with respect to any improper conduct occurring prior to July 17, 2016.

The complaint references conduct that is first alleged to have commenced in March 2016. The Complainant alleges that the sexual harassment continued for several months. The last alleged instance of unwanted sexual advance is alleged to have occurred on July 19, 2016. This last instance clearly falls within the limitation period defined by section 2, as do the alleged instances of reprisals that came afterwards.

Moreover, the Code Protocol provides for an administrative process aimed at providing an accessible process for ensuring ethical conduct in public affairs. It is not properly interpreted to apply the strict parameters reserved for the judicial processes of civil litigation.

Even in civil litigation, courts have taken a flexible approach to limitation periods. For example, the general rule is that a limitation period will not commence unless the cause of action is discoverable by a claimant, even if no such rule is found in the statute itself (*Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147).

Similarly, where a cause of action involves a continuous course of conduct, the cause of action accrues and the limitation period begins upon the final act and not the first. This rule dates back to English court decisions from over a century ago, but equally applies today (*Hole v. Chard Union*, [1884] 1 Ch. 293; *Sunset Inns Inc. v. Sioux Lookout (Municipality)*, 2012 ONSC 437). This rule applies where a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought.

In this case, the unwanted sexual advance that is alleged to have occurred on July 19, 2016 is part of an alleged pattern of similar conduct that began in March 2016. The consequences complained of by the Complainant, that she was deprived of a safe and respectful work environment, extended well beyond July 19, 2016. I determine that the allegations raised in Issue #2 allege a continuing pattern of sexual harassment that falls within the limitation period. I note that a similar conclusion was reached in respect of a discrimination complaint heard by the Manitoba Human Rights Commission in *Manitoba v. Manitoba (Human Rights Commission)* (1983) 25 Man. R. (2d) 117 (Man. C.A.), which was affirmed on appeal.

As well, the Complainant alleges that she was deeply distressed by the events and was advised by her medical clinicians that she exhibited signs of shock, serious psychological injury and post-traumatic stress. This is a further reason why it is appropriate to apply a flexible approach to the limitation period set out in section 2.

For the above reasons, I have determined that it is appropriate to take action in respect of the allegations of sexual harassment, covering the alleged conduct of the Respondent between March and July 2016, raised in Issue #2.

V. The process leading up to this Report

A. *The Complaint Process*

I set out below a summary of the complaint process, the full details of which are described in **Appendix “1”** to this report:

- On January 17, 2017, I received the complaint at the Office of the Integrity Commissioner (the “Commissioner’s Office”) from the Complainant’s legal counsel.
- On January 18, 2017, I wrote to the Complainant’s counsel acknowledging receipt of the Code complaint. I advised that I had conducted an initial classification review of the complaint and the supporting documentation and that I had decided to open a complaint investigation file.
- On January 19, 2017, I wrote to the Chief Human Resources Officer of the City (“CHRO”) and advised that I had received a formal complaint in which a Member had been named as a Respondent and that the complaint alleged that the Member had contravened Rule 14 of the Code.

I stated that Rule 14 requires that I forward the information subject of the complaint to the Human Resources department, who will refer the investigation of the allegation of wrongdoing to an independent investigator, a process that I describe below.

I further advised the CHRO that I would be commencing the investigation of the complaint as it relates to any allegations that did not fall under Rule 14 of the Code. Upon receipt of the findings of the independent investigator, taking into consideration the same in relation to the application of the Respectful Workplace Policy, I would then make a final determination with respect to the alleged actions of the Respondent relating to Rule 14 of the Code of Conduct.

- On January 20, 2017, I wrote to the Respondent providing a Notice of a Complaint Investigation and a copy of the complaint and requesting that the Respondent provide my office with a written response to the complaint on or before January 30, 2017.
- On January 25, 2017, I was advised by the City that the independent investigator had been assigned and had commenced his investigation. However, due to a previously scheduled commitment, the independent investigator was to begin at the end of February.

- On February 15, 2017, I received a copy of the Respondent's written response to the complaint, which I forwarded to the Complainant pursuant to section 10 of the Code Protocol.
- I granted the Respondent the option of answering questions in an interview or questions in writing. The Respondent chose the latter option. On March 15, 2017, I forwarded written questions to the Respondent's counsel, together with a copy of certain supplementary comments received from the Complainant on March 8, 2017.
- On April 24, 2017, I received from the CHRO a copy of the completed independent investigator's report (the "Investigation Report").
- On May 2, 2017, I provided to the Complainant and the Respondent a copy of a Preliminary Report containing my preliminary findings of the investigation.

I advised the parties that they were being provided a copy of my preliminary findings in advance of the issuance of my Final Report pursuant to section 12(1) of the Code Protocol. I invited the parties to provide comments on any errors or omissions of fact. They were also invited to furnish a statement that I would take into consideration in drafting my Final Report to Council with any recommended sanctions. I advised the parties that this request for comments was not to be viewed as an opportunity to provide any additional evidence or responses to allegations contained in the complaint.

B. The Respondent's Response to the Complaint

The Respondent's legal counsel provided a written response to the complaint on the Respondents behalf. The response mentioned the Respondent's history as a career politician spanning over 30 years since 1985 when he was first elected as a local councillor. It stated:

The Respondent takes these matters extremely seriously and, while he is known to be a warm and loving person, the Respondent does not take advantage of vulnerable individuals. He takes great exception to the allegations put forward by the Complainant.

The Respondent went on to state that he believed that:

... he has been the victim of entrapment. The Complainant made advances toward the Respondent with the intention of winning his allegiance and loyalty in office skirmishes that she was having within the office and other staff and Councillor(s) outside the office.

1. Issue #2 – Allegations of sexual harassment

The Respondent's response states that he "categorically denies sexually assaulting or sexually harassing the Complainant and that he often expressed non-sexual expressions of affection

toward the Complainant.”

By way of explanation and background, the Respondent explained that although he hired the Complainant, he was not her direct supervisor as the City Clerk was for responsible for the Complainant’s work. The Respondent states that it is his custom, as it is with many Italians, to hug and kiss friends and colleagues on each cheek both as a greeting and when you depart. He describes the Complainant’s demeanor as “flirtatious” and “overtly affectionate”, noting that she called him “*tesoro*” (Italian for “treasure”, “honey”, or “darling”) or “*bello*” (Italian for “handsome” or “beautiful”).

The Respondent went on to provide a response to each paragraph of the complaint, including each individual instance of alleged conduct. I understand the substance of his response to be the following: the Respondent acknowledges that they kissed on the lips on several occasions, but that these acts were either initiated by the Complainant or that it was consensual. The Respondent otherwise denies touching the Complainant’s breasts or otherwise touching her inappropriately.

The Respondent and the Complainant accordingly have inconsistent accounts of the sexual advances that were made, and whether they were consensual. For reasons discussed below, I contrast below their accounts of the following incident that the Complainant alleges to have occurred on July 19, 2016:

I returned to work following my vacation on July 19, 2016. The Respondent arrived at work in the afternoon that day and called me into his office for a meeting.

In the meeting, the Respondent stated that another councillor made negative comments about my performance at a developer's house outside of work hours. I was extremely concerned that my performance and position were being discussed outside of the workplace by another councillor...

I was also extremely concerned that my job was at risk. The Respondent told me to “settle down” and “don’t worry, let it go.” **As I stood up to leave, the Respondent again put his hands around my waist, pulled me against his body and touched my breasts while trying to kiss me and push his tongue in my mouth.**

I pushed him away and yelled, “What are you doing again? I've told you many times to stop it! You try to sit me down and tell me I might be in trouble and then you stand up and put your hands all over me!”

In response, the Respondent again told me that I needed to “settle down” and “relax”. I was extremely rattled and walked out of the Respondent’s office...
(emphasis added)

In his response, the Respondent describes his account of certain performance issues that are referred to by the Complainant in her complaint and then provides the following version of

events:

When confronted with these allegations, the Complainant became extremely agitated and demanded to speak to [*a co-worker, C*] immediately. In fact, she called C's cell phone during the meeting. The Complainant denied all allegations against her and blamed [*another person, D*] for these issues.

As the Complainant appeared to be extremely upset the Respondent attempted to calm her down and did tell her to “relax”. He wanted to reassure her that things would be worked out but she was inconsolable.

When she left he went to hug her and kiss her as they had become accustomed. He did not touch or squeeze her breasts. (emphasis added)

The Respondent also included 3 witness statements from other City employees as enclosures to his response. He also attached eight (8) enlarged photographs in which the Complainant is smiling. The photographs were all taken at events at which the Respondent was in attendance.

Without reviewing the details of each statement, the witnesses refer to the Complainant as “flirtatious with the Respondent”. They state that the Complainant would tell everyone that the Complainant loved working for the Respondent. Finally, the witnesses also allege certain unprofessional conduct by the Complainant. To illustrate the general character of these statements, I have reproduced a portion of one statement below:

The Complainant had noted in her complaint that the first assault took place in March 2016. However, based on my observations, there was no change in her demeanor, her disposition, her behavior, her attitude towards the Respondent and generally – nothing. She did not display any fear, any feelings of intimidation, or any fear of losing her job. Her body language was normal. When the Respondent was in the office with her, there was no change in his demeanor, he never acted like he did anything wrong, and there was no tension between them. The Complainant continued to tell everyone that she loved working for the Respondent, that he was a gentleman, and that he was so knowledgeable. The Complainant also never told me that anything had happened between her and the Respondent, or that he had done anything to her.

The Respondent concludes his written statement as follows:

In conclusion, the Respondent categorically denies any wrongdoing. To the best of his knowledge and belief, any and all physical interaction between himself and the Complainant was consensual and not unwelcome or unwanted. If he was mistaken in that belief, it was a reasonable belief that he had based upon her conduct and demeanor as attested both by the Respondent and the witnesses whose statements appear attached hereto...

1. Issue #3 – Allegations of reprisal

In response to the reprisal allegations contained in the complaint, the Respondent simply states

that he vigorously denies any knowledge of the allegations.

C. *The Investigation Process*

I set out below the investigation process that I carried out in respect of each of the issues identified in the complaint. As stated above, I determined that I did not have any jurisdiction to investigate Issue #1, and accordingly did not do so.

Upon receiving the complaint, I determined that Issue #2 related to an alleged breach of Rule 14. I accordingly followed the specific process applicable to Rule 14 complaints described above in dealing with that issue.

While I was awaiting the results of the independent investigation related to Issue #2, I carried out an investigation of Issue #3 concerning the alleged reprisal. I therefore address these issues in reverse order.

1. Issue #3 – Allegations of reprisal

I conducted interviews with 8 individuals in respect of my investigation of the reprisal allegations. I did not exercise my summons powers under the *Public Inquiries Act* and all information that I received during interviews and requests for documents were provided voluntarily pursuant to my exercise of the Code Protocol investigation powers. Section 10 of the Code Protocol states:

(2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

In the course of my investigation, I also reviewed public and confidential City documents, the City's Respectful Workplace Policy, emails, and certain other materials.

2. Issue #2 – Allegations of sexual harassment

As described above, an independent investigator had been engaged on December 19, 2016 in connection with a harassment complaint that had been filed by the Complainant under the Respectful Workplace Policy. The independent investigator commenced his investigation on January 25, 2017, which was completed on April 7, 2017.

I received his Final Report dated April 24, 2017 (the "Investigation Report").

The Investigation Report provides a comprehensive account of the investigation that was carried out. The investigator reviewed the complaint and the response, and interviewed both the Complainant and the Respondent.

The Investigation Report also describes the evidence of 12 witnesses who were interviewed. Five of these witnesses were put forward by the Complainant, and seven of them were put forward by

the Respondent. The independent investigator noted that none of the witnesses observed the alleged incidents.

Finally, the independent investigator reviewed the audio recording of the telephone call that took place between the Complainant and the Respondent. A transcription of the recording was appended to the Investigation Report.

The Investigation Report concluded that the Respondent knew or ought reasonably to have known that his conduct was unwelcome and/or unwanted, and found on a balance of probabilities that the Respondent had breached the Respectful Workplace Policy. I reproduce the relevant portions of the findings in their entirety below:

My task is to investigate allegations made by the Complainant that the Respondent acted towards her in a manner which breached the City of Vaughan's Respectful Workplace Policy... There are no direct witnesses to these events, requiring me to rely on testimony from the parties, collateral sources of information and the audio tape supplied by the Complainant.

...

I find on a balance of probabilities that the Respondent has breached the Respectful Workplace Policy by creating/contributing to an intimidating or offensive environment. It is my opinion, based on the evidence before me, that the Respondent knew or ought reasonably to have known that his conduct was unwelcome and/or unwanted.

There are several factors that lead me to this conclusion:

1. Balance of Power:

There is a substantial power imbalance between the Complainant and the Respondent which must be considered. Courts and tribunals now recognize that a substantial power imbalance can erode, if not impede, a Complainant's belief that they can refuse unwanted advances. The victim fears unforeseen consequences which could be either personal or work-related. In these cases, it is not uncommon for victims of harassment to tolerate unwanted behaviour longer than expected. The Ontario Human Rights Commission notes that a person does not have to object to the harassment at the time it happens for there to be a violation, or for the person to claim their rights under the Code. Even though a person being harassed may take part in sexual activity or other related behaviour, this does not mean they consent.

In this case, we have a Respondent who is both the Complainant's functional manager, and a prominent city politician. The Complainant tolerated the Respondent's behaviour with the misguided belief that her frequent protestations would remedy the situation...

2. Persistence of Unwanted Behaviour:

I take note of the Respondent's persistent conduct over a period of months. The Respondent admits that he tried to "French Kiss" the Complainant after he was rebuffed. The Ontario Human Rights Code clearly defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome". The Ontario Human Rights Commission applies a subjective and objective test for harassment. They state, "The subjective part is the harasser's own knowledge of how his or her behaviour is being received."

In this case, the Respondent recognized that his behaviour was unwanted as evidenced by his apologies and attempts to rationalize his actions. I do not accept the explanation from the Respondent that he did not know why he behaved in this manner or alternatively was under the Complainant's control.

3. Admission of Conduct:

The Respondent, in his testimony and on the audio tape, acknowledges that his conduct was unwelcome. He is heard to apologize for his actions claiming they were the result of temptation or enticement on the part of the Complainant. The Complainant repeatedly says that the Respondent's behaviour is unacceptable and demands that it stop. For our purposes, a single request to stop is sufficient. Once the Respondent crosses that threshold, he is doing so knowingly. In response to the Respondent's claim that the Complainant did not voice her opposition; silence or the lack of "no" is not consent.

In the course of the complaint process, I interviewed the Complainant and heard her evidence in respect of the harassment allegations in the complaint. As set out above, I gave the option to the Respondent to answer questions in an interview and he chose to answer questions in writing, which I reviewed.

In light of the information provided to me by the parties and the information contained in the Independent Report, I was satisfied that no further investigation of the underlying facts was necessary in order to make a determination in respect of this complaint. If I had concluded otherwise, I would have carried out a further investigation.

VI. Findings of the Integrity Commissioner

When making decisions on acceptable conduct, Members of Council are required to comply with the Code. These rules provide them with a reference guide and a supplement to the legislative parameters within which they must operate.

When evaluating the integrity and ethical conduct of a Member of Council, my role is to apply the rules of the Code to the facts gathered throughout the investigation and make a determination as to whether there has been a breach of the Code.

A. Issue #2 – Allegations of sexual harassment

Given the specific prescribed by the Code for harassment complaints under Rule 14, I have the benefit of the information contained in the Investigation Report. I also considered the findings

and reasons of the independent investigator who has considerable experience in investigating, among other things, workplace harassment complaints.

In addition to the Investigation Report, I have carried out my own review of the evidence and submissions of the parties, including the witness statements, documents and the audio recording dated July 20, 2016.

In light of this evidence, I agree with the findings made in the Investigation Report and I find ample evidence to show on a balance of probabilities that the Respondent engaged in conduct that constituted sexual harassment and breached Rule 14.

Like the independent investigator, I find the audio recording evidence compelling, particularly the response of the Respondent when he was confronted by the Complainant about his sexual advances. I reproduce two portions of recording below:

Respondent ("R"): OK, what are you upset at me for?

Complainant ("C"): Well, last night after you told me everything you still tried to kiss me, you still touched my breast. I told you before, I am not comfortable with that.

R: OK.

C: That makes me very, very uncomfortable.

R: OK.

C: Why did you do that... because I was in a weak moment?

R: No... No... just... I honestly love you. I think you are wonderful... you're beautiful.

C: [*noise of a car door*] Sorry. Go ahead.

R: I apologize, it won't happen again... sorry.

C: But that's crossing the line and you know that.

R: OK, well that's fine. I am sorry I did it... temptation... whatever you want to call it.

C: But I told you no before.

R: OK... alright, we'll make a deal. I will not do this anymore. But if you want to touch my breast, you can touch my breast. I give you my permission. How's that? [*laughter*].

C: No, but it's not funny. It makes me feel very uncomfortable.

...

The audio tape then continues:

R: I am there for you.

C: Then why would you touch my breasts and kiss me and put your tongue in my mouth right after that, when I am so visibly upset.

R: I didn't put my tongue in your mouth... I tried... but you said no.

C: But you did.

R: I didn't...

C: And you touched my breast.

R: OK, I am sorry.

C: [sigh]

R: OK. [laughter]. I said I am sorry, what do you want me to do?

I agree with and adopt the independent investigator's findings as they relate to this evidence:

In his testimony, the Respondent concedes that an intimate and/or affectionate relationship did exist between he and the Complainant; one which included hugging and kissing. I find the audio evidence quite compelling. I take note of the Respondent's acknowledgement of the events, a lack of emphatic denial and the cavalier way he responded to the Complainant's accusations, saying, "*If you want to touch my breasts you can...I give you permission how is that?*" This is not the response I would expect from someone who is innocent of these allegations. Further, I find comments such as this to be patronizing and dismissive.

I also note that in his response, the Respondent denied that he touched the Complainant's breasts on July 19, 2016. I find that the Respondent's evidence on the audio recording directly contradicts this evidence.

Based on all the evidence before me, I find that the Respondent has breached Rule 14 of the Code. The purpose of Rule 14 – ensuring a safe and respectful workplace environment – has been seriously undermined by the actions of the Respondent.

I note that I would have made this finding solely based on the events of July 19, 2016, which are described in the audio recording. Even if I am wrong in respect the limitation period issue described above, I would have accordingly come to the same conclusion and found that the Respondent has committed a serious breach of Rule 14.

B. Issue #3 – Allegations of reprisal

The Complainant set out in the complaint several instances of surveillance that she believes were orchestrated by the Respondent. In her view, these actions constitute a reprisal against her for filing the complaint.

I have no reason to doubt that the instances of surveillance did indeed take place. If the Complainant's allegations are true that the surveillance was carried out at the behest of the Respondent, these allegations would likely contravene Rule 19.

The Complainant's belief that the Respondent arranged for the surveillance is based on part on what she observed having worked with the Respondent. Her evidence is that she personally witnessed actions of the Respondent that were directed at staff of the City who had brought forward a Code complaint or participated in a Code process brought against the Respondent. In her view, the Respondent knew that "he could get rid of" the Complainant and stated to me: "He had done it to others. I saw him do it".

The Complainant brought forward documents to corroborate her allegations with respect to the Respondent's past conduct. For example, she provided to me a copy of an online LinkedIn profile that she had retrieved of a staff person who had worked at the Commissioner's Office at the time when the Respondent was pursuing a judicial review proceeding challenging my report to Council dated April 17, 2015 in respect of Complaint #0114 (in which I found that the Respondent had committed several breaches of the Code). The Complainant confirmed that the Respondent had directed her to retrieve information about this staff person. This staff person was dismissed shortly thereafter, despite her impeccable employment performance.

In addition, the Complainant provided me with a copy of a City of Vaughan Information Retrieval Request form, which I had completed in the course of my investigation of Complaint #0114. This form, which was a confidential document of the City's OCIO Security Department, was forwarded on direction from the Respondent, to his personal email and copy to a private citizen who was a former employee of the City.

The Complainant was also aware of the fact that during the course of a previous investigation by my Office, the Respondent had made inquiries about individuals who had cooperated with my office in providing information as part of the investigation. The Complainant advised that similar actions had been initiated in respect of the former Commissioner of Strategic and Corporate Services and the former City Solicitor, both of whom no longer work with the City.

As a result of her observations, the Complainant was fearful of bringing forward a Code complaint naming the Respondent. Once the complaint had been filed, she believed that, particularly in light of these observations, the Respondent was the only person who had reason to have her followed in an attempt to intimidate her and make her feel vulnerable.

In the course of my investigation of the alleged Rule 19 breaches, the Commissioner's Office ascertained the identity of the owner of the car that the Complainant alleges followed her. The owner of the car was requested to confirm or deny having acted on direction of the Respondent. However, the owner refused to provide any response.

Considering the evidence before me, I accept that the Complainant had a reasonable basis to believe that the surveillance was arranged at the direction of the Respondent. However, I do not have sufficient evidence to conclude on a balance of probabilities that the Respondent did so. As a result, I cannot find that the Respondent has breached Rule 19(2) of the Code.

I note that the Complainant chose to come forward with this complaint, notwithstanding her fear of reprisal and the unwelcome scrutiny that might be levelled against her if she did so. She advised me that it is her belief that nobody should be subject to working in an environment in which one is fearful that they will be subject to continuous sexual harassment. She told me that she “knew what people would think”. However, she was convinced that nothing in her private life, her financial situation, or her choices gave the Respondent, her employer, the right to touch her breasts and kiss her.

Complainants who have suffered sexual harassment must be able to come forward with complaints, as the Complainant did here. To encourage such bravery, the City must ensure that the Respectfully Workplace Policy is rigorously enforced, including vigilance against reprisals and other conduct that stifles complaints. As noted by the Honourable Marie Deschamps in her external report on sexual harassment in the Canadian armed forces, numerous organizations are struggling to address the prevalence of inappropriate sexual conduct.¹ The time is right for the issue of sexual harassment to be tackled because it not only harms victims, but the integrity and professionalism of the City as a whole.

Finally, although I have not made a finding that the Respondent breached Rule 19 in this case, I am greatly troubled by the Complainant’s observations that the Respondent has made inquiries in the past about City staff who had cooperated with my previous investigations and acted against them. If proven, this would amount to a pervasive course of conduct to obstruct investigations by the Commissioner’s Office and constitute a serious breach of Rule 19.

I have considered whether to take action on my own initiative in respect of these allegations as a separate breach of Rule 19. For the reasons that follow, I have exercised my discretion not to pursue these allegations at this time.

First, the complaint filed by the Complainant does not allege a breach of the Code specifically in reference to these allegations. Although it is within my discretion to investigate potential

¹ The Honourable Marie Deschamps, *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces* (March 27, 2015), accessible at: [http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/caf-community-support-services-harassment/era-final-report-\(april-20-2015\)-eng.pdf](http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/caf-community-support-services-harassment/era-final-report-(april-20-2015)-eng.pdf).

See also Royal Canadian Mounted Police, *Report on Allegations of Harassment and Sexual Misconduct at the RCMP’s Canadian Police College Explosives Training Unit* (July 14, 2016), accessible at: <http://www.rcmp-grc.gc.ca/en/report-allegations-harassment-and-sexual-misconduct-the-rcmps-canadian-police-college-explosives>.

breaches of the Code that come to light during the course of an investigation, proper notice must be given to the Respondent of the new allegations. I am concerned that pursuing this issue would unduly delay the resolution of the complaint as the Complainant chose to file it.

Second, I am mindful that these past events occurred more than six months prior to them being reported to my office. I do not rule out that in appropriate circumstances a complaint could be properly considered that predates beyond the six-month limitation period, particularly if the delay arises because a complainant is fearful of the consequences of coming forward. Given that to date no complainants have done so, however, I choose not to take further action in respect of these allegations at this time.

VII. Comments of the Parties on the Preliminary Findings

On May 2, 2017, I provided to the Complainant and the Respondent a copy of my Preliminary Report containing my preliminary findings of the investigation.

I advised the parties that they were being provided a copy of my preliminary findings in advance of the issuance of my Final Report pursuant to section 12(1) of the Code Protocol. I invited the parties to provide comments on any errors or omissions of fact. They were also invited to furnish a statement that I would take into consideration in drafting my Final Report to Council with any recommended sanctions. I advised the parties that this request for comments was not to be viewed as an opportunity to provide any additional evidence or responses to allegations contained in the complaint. Both parties were given a return date of May 12, 2017 by which time I required their comments.

After granting an extension for receipt of comments from the parties, I received comments from the Respondent's and Complainant's counsel on May 16, 2017, which are addressed below.

The Complainant's counsel advised that she was satisfied with the preliminary findings and made submissions about the appropriate sanction, which I address below. The Complainant also provided me with a statement from the Complainant (the "Complainant's Statement") with a request I append the Complainant's Statement to my Final Report submission to Council.

The Complainant's Statement includes comments about how the Respondent's conduct has affected her and submissions to Council on the appropriate sanction, both which are relevant to my own recommendations and which I have considered. I have accordingly appended the Complainant's Statement to my report. I note that the Complainant's Statement also includes certain comments directed towards the Respondent and to others, which I have determined are not relevant for the purposes of my report and which I have therefore not considered.

In the Respondent's comments on the Preliminary Findings, he states that "based upon the fact that the report under the Respectful Workplace Policy is supposed to be confidential for both the Complainant and the Respondent, we do not think it appropriate or necessary for you to quote directly from the report as you have... Specifically, at minimum, the references to the content of the transcript of the phone conversation between the parties and [the independent investigator's]

findings... do not need to be included... The rationale for the confidentiality rule under the Respectful Workplace Policy applies as much to your report”.

The Respondent further stated that “specific details of an intimate nature should be omitted from the report. In particular, while you are entitled to accept the findings of [the independent investigator] and use them to render a decision of misconduct under Rule #14... it is not necessary to include direct quotations from his report nor transcribe the audio recording as you have chosen to do.”

Section 223.3(1) of the *Municipal Act, 2001* (the “Act”) empowers the Integrity Commissioner to report to Council, which are in turn made public. Section 223.6(2) of the Act confirms that the Integrity Commissioner has the discretion to disclose in the report “such matters as in the Commissioner’s opinion are necessary for the purposes of the report”:

Report to council

223.6.

...

Report about conduct

(2) If the Commissioner reports to the municipality... his or her opinion about whether a member of council... has contravened the applicable code of conduct, the Commissioner may disclose in the report **such matters as in the Commissioner’s opinion are necessary for the purposes of the report.**

In addition, section 12 of the Code Protocol explains that where a complaint is sustained, as it has been here, the Integrity Commissioner is required to “outline the findings, the terms of any settlement, or recommended corrective action”. It is apparent from these provisions that my findings and the evidence on which they are based must be disclosed in a public report, including the evidence reported in the Investigation Report.

As well, my reported findings must include sufficient information to permit Council to make an informed decision on whether or not to accept my recommendations on sanctions and corrective action. In my opinion, the particulars of the Respondent’s conduct must be disclosed so that Council can properly determine whether the recommended sanctions and corrective action are proportionate to the circumstances and gravity of the conduct. It is also part of the Integrity Commissioner’s function to make public any findings that a Member has breached the Code of Conduct, in order to ensure the transparency of municipal government and to denounce and deter misconduct by public officials.

The Respondent’s comments on the preliminary findings go on to indicate that “[w]ith respect to the allegation of reprisal...we respectfully take issue with the inclusion of irrelevant information regarding other investigations of which you are aware and that are wholly unproven. This information is irrelevant to a determination of the issue before you. While we acknowledge that you have determined that there was no evidence of reprisal, we think it is unnecessary and unfair to reference other allegations in your report.”

As I stated above on page 18 of this Report, I received and accepted the Complainant's statements of her "fear and concern for the continuation of her employment". The Complainant provided sufficient documentation to demonstrate that surveillance was being carried out on her.

The fact that the Complainant, while working with the Respondent, had observed and personally witnessed actions of the Respondent that were directed at staff of the City who had brought forward a Code complaint or participated in a Code process brought against the Respondent, substantiated her fear that if she brought forward a Code complaint against him, the Respondent "...could get rid of" the Complainant because, in her words: "He had done it to others. I saw him do it". In that regard, the Complainant confirmed that she was directed by the Respondent to retrieve a copy of a staff person's LinkedIn profile and she provided me with a copy of a City of Vaughan confidential Information Retrieval Request form, which I had completed in the course of a previous Code investigation, which was forwarded on direction from the Respondent to his personal email and to a private citizen who was a former employee of the City.

In my view, this evidence is not irrelevant, but rather germane to the Complainant's belief and allegation that she was being threatened because she had initiated a complaint against the Respondent under the Code of Conduct. Although I have found that her evidence was ultimately not sufficient to make a finding that the Respondent carried out a reprisal, it is appropriate to report this evidence to Council.

VIII. Recommendations

Based on the cumulative evidence of the witnesses, my review of the documents and all other information received during the course of this investigation, I have found that the Respondent has contravened Rule 14 of the Code of Conduct. I tender this report of my complaint investigation to the Council of the City of Vaughan for its consideration and acceptance of the recommendations set out below.

Rule 20 of the Code of Conduct sets out the sanctions that Council may impose under the Act upon a recommendation by the Integrity Commissioner. It also provides that the Integrity Commissioner may recommend that Council take additional corrective actions identified below:

Rule No. 20

Compliance with the Code of Ethical Conduct:

1. Upon receipt of the Integrity Commissioner's recommendations, Council may impose either of the following two penalties where the Integrity Commissioner reports that in her or his opinion, there has been a violation of the Code of Conduct:

1. **A reprimand;** or

2. **Suspension of the remuneration** paid to the member in respect of his or her services as a member of council or the local board, as the case may be, **for a period of up to 90 days.**

2. The Integrity Commissioner may also recommend that Council take the following actions:

- i) **Removal from membership of a Committee.**
- ii) **Removal as Chair of a Committee.**
- iii) Repayment or reimbursement of moneys received.
- iv) Return of property or reimbursement of its value.
- v) **A written and/or verbal request for an apology to Council, the complainant, or both. (emphasis added)**

In determining the appropriate sanctions and corrective actions, I have considered the gravity of the conduct and the responsibility of the Respondent for that conduct, as well as the submissions of the parties.

In his submissions, the Respondent acknowledges that a reprimand and an apology are appropriate in the circumstances. He submits that no further penalty is necessary, in light of the Investigation Report's finding that his conduct was not predatory but rather due to a lack of judgment.

The Complainant submits that the appropriate recommendation is a forceful reprimand and a suspension of the Respondents' remuneration for 90 days. In terms of corrective action, she asks that all Members attend human rights training for sexual harassment, that the glass between the offices of Members and staff be "un-frosted", and that Council move to strip the Respondent of his title as Deputy Mayor.

I have considered the submissions of the parties and the facts as I have found them. The conduct was egregious in this case and seriously undermined the safe and respectful workplace environment that the City is expected to provide to its staff. Such conduct tarnishes the reputation of Council and undermines the integrity of municipal government. I have also considered the Complainant's evidence that the Respondent's conduct has had a significant negative impact on her life.

The Office of the Integrity Commissioner respectfully recommends:

1. that Council impose the following sanctions:
 - (a) a Reprimand of the Respondent; and
 - (b) a suspension of remuneration paid to the Respondent in respect of his services as a member of council for a period of 90 days.
2. that Council enact the following corrective actions:
 - (a) request the Respondent to issue an apology to:

- (i) the Complainant;
- (ii) the Council of the City of Vaughan;
- (b) impose a suspension of any or all of the following procedural powers of the Respondent:
 - (i) the designation of Deputy Mayor;
 - (ii) the authority over office staff;
- (c) removal any or all of the following procedural powers of the Respondent:
 - (i) the right to chair meetings of Council; and
 - (ii) the right to sit on standing committees.

Although it is outside of my mandate (as set out in Rule 20) to recommend some of the additional corrective actions proposed by the Complainant, I am confident that the City will take into account my report and consider what other actions may be appropriate to minimize the likelihood of sexual harassment by Members in the future.

Respectfully submitted by:



Suzanne Craig
Integrity Commissioner

Appendix “1” – Full Complaint Process

This appendix sets out the full complaint process that is summarily described in my report above.

On January 17, 2017, I received the complaint at the Commissioner’s Office from the Complainant’s legal counsel. I conducted an initial classification to determine if the matter was, on its face, a complaint with respect to non-compliance with the Code.

On January 18, 2017, I wrote to the Complainant’s counsel acknowledging receipt of the Code complaint. I advised that I had conducted an initial classification review of the complaint and the supporting documentation and that I had decided to open a complaint investigation file.

I further advised the Complainant’s counsel that I would be forwarding a copy of the complaint to the Respondent, advising him of the investigation process, and requesting him to provide me with a preliminary written response. I concluded by advising the Complainant’s counsel that upon receipt of the Respondent’s written response, the Commissioner’s Office would forward him a copy of the same.

On January 19, 2017, I wrote to the Chief Human Resources Officer of the City (“CHRO”) and advised that I had received a formal complaint in which a Member of Council (“Member”) had been named as a Respondent and that the complaint alleged that the Member had contravened Rule 14 of the Code.

I stated that Rule 14 requires that I forward the information subject of the complaint to the Human Resources department, who will refer the investigation of the allegation of wrongdoing to an independent investigator, a process that I describe below.

I further advised the CHRO that I would be commencing the investigation of the complaint as it relates to any allegations that did not fall under Rule 14 of the Code. Upon receipt of the findings of the independent investigator, taking into consideration the same in relation to the application of the Respectful Workplace Policy, I would then make a final determination with respect to the alleged actions of the Respondent relating to Rule 14 of the Code of Conduct.

On January 20, 2017, at 11:30 a.m., I wrote to the Respondent providing a Notice of a Complaint Investigation and a copy of the complaint and requesting that the Respondent provide my office with a written response to the complaint on or before January 30, 2017.

On January 20, 2017, at 3:50 p.m., I received correspondence from the Respondent that stated:

I have received your letter with the complaint from [the Complainant]. I am disappointed that you have sent this highly sensitive document to me by way of email rather than a more confidential manner. My staff have access to my emails to assist me in my work and they may have come across this email today. This is a very sensitive issue and I ask that any future communications be handled in a more confidential way.

I will be deleting your email and this response from my computer to prevent any further potential disclosure.”

On January 25, 2017, I received correspondence from a law firm advising that it had been retained by the Respondent to represent him in responding to the complaint. The Respondent’s counsel requested a 2-week extension to allow for a reasonable opportunity to prepare an appropriate response.

On January 25, 2017, I was advised by the City that the independent investigator had been assigned and had commenced his investigation. However, due to a previously scheduled commitment, the independent investigator was to begin at the end of February.

On January 26, 2017, I forward correspondence to the Respondent’s counsel granting a 2-week extension until February 13, 2017.

On February 2, 2017, I spoke with the Respondent’s counsel by telephone. During this telephone conversation, I clarified the Code investigation process. I stated that the intake and initial classification, as well as the Code of Conduct investigation would be conducted by the Commissioner’s Office and the Rule 14 investigation into the harassment allegations of under the Respectful Workplace Harassment Policy would be conducted by an independent investigator engaged by the Human Resources department.

On February 15, 2017, I received through interoffice City of Vaughan mail, a copy of the Respondent’s written response to the complaint.

On February 17, 2017, I forwarded the Respondent’s written response to the Complainant pursuant to section 10 of the Code Protocol.

Between February 7, 2017 and February 24, 2017, I met with individuals with respect to the complaint allegations relating to reprisals under Rule 19.

On March 1, 2017, I forwarded correspondence to the Respondent’s counsel, in which I stated:

The Commissioner would like to meet with [the Respondent] to obtain clarification on a few matters raised in the complaint... [The Respondent] may choose to have the Commissioner send questions (via email) requiring clarification rather than meeting in person to discuss.

Should [the Respondent] prefer to receive questions via email rather than meet in person, this decision will be considered by the Office of the Integrity Commissioner, without prejudice in the final outcome.

...

Kindly advise of which option [the Respondent] prefers.

On March 8, 2017, I received correspondence from the Complainant’s counsel providing

supplementary comments with respect to the Respondent's written response.

On March 7, 2017, the Respondent's counsel provided a response that any questions should be sent in writing to his attention.

On March 15, 2017, I forwarded written questions to the Respondent's counsel, together with a copy of the Complainant's supplementary comments received on March 8, 2017.

On March 22, 2017, I received correspondence from the Respondent's counsel. The gist of this correspondence expressed the concern of Respondent's counsel expressed below:

I would be remiss if I did not state that I am surprised that [the independent investigator] is not also conducting the investigation into the complaint under the Code of Conduct as was originally believed and discussed by us.

I provided a written response on March 27, 2017, in which I stated that:

As I recall, on or around February 2, 2017, you and I spoke briefly on the telephone about the process that would be followed during the Code of Conduct investigation... I believe it was communicated to you that I had received a Code of Conduct complain and that in relation to the allegation of a contravention of Rule 14 – Harassment. I advised that the Code prescribed a 2-step process.

To be clear, the process followed by my Office when Rule 14 of the Code of Conduct is engaged is as follows:

I conduct an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct.

If the complaint or a portion of the complaint [is in] relation to Rule 14, I forward the information to Human Resources of the City who will refer it to an independent investigator. The independent investigator will conduct an investigation in respect to the City of Vaughan's Respectful Workplace Policy (Harassment and Discrimination).

I conduct an investigation on the allegations of contravention of Code rules set out in the complaint.

Upon completion of her/his investigation, the independent investigator will forward a copy of her/his report to me, the findings of which I will take into consideration as they may relate to the application of Rule 14 of the Code of Conduct.

I will complete my draft findings in respect to all Rules engaged by the Code complaint and forward to the Complainant and the Respondent so that they may have an opportunity to comment, prior to my drafting of Final Complaint Investigation Report.

With respect to the Code complaint #011717(f), it is my understanding that [the Complainant] had already made a complaint to the City before her decision to file a Formal Code of Conduct complaint with my Office. As a result, in the matter before us, an independent investigator had already been retained to investigate allegations under the City of Vaughan's Respectful Workplace Policy.

It is my further understanding that [the Complainant's] lawyer informed the independent investigator that a Code complaint had been filed, after the Respectful Workplace Policy investigation had begun. While the two complaints are similar, the "Code" complaint includes allegations beyond that of a contravention of Rule 14 [i.e., the reprisal allegations under Rule 19].

On April 24, 2017, I received from the CHRO a copy of the completed independent investigator's report (the "Investigation Report").

On May 2, 2017, I provided to the Complainant and the Respondent a copy of a Preliminary Report containing my preliminary findings of the investigation.

I advised the parties that they were being provided a copy of my preliminary findings in advance of the issuance of my Final Report pursuant to section 12(1) of the Code Protocol. I invited the parties to provide comments on any errors or omissions of fact. They were also invited to furnish a statement that I would take into consideration in drafting my Final Report to Council with any recommended sanctions. I advised the parties that this request for comments was not to be viewed as an opportunity to provide any additional evidence or responses to allegations contained in the complaint. Both parties were given a return date of May 12, 2017 by which time I required their comments.

On May 9, 2017 I received a telephone call from the Respondent's counsel and following a subsequent telephone conversation on May 10, 2017, I granted the Respondent's counsel until May 15th to provide comments to the Preliminary Report.

On May 12, 2017, I received correspondence from the Respondent's counsel advising that due to scheduling conflicts and work commitments, he was requesting until May 17, 2017 to provide comments to the Preliminary Report.

I replied to the Respondent's counsel on May 12, 2017, advising that I would grant him until May 16, 2017 end of day, to provide me with any comments and/or a statement with respect to my Preliminary Report. I also advised the Complainant's counsel that I would grant until May 16, 2017 for receipt of any comments to the Preliminary Report.

On May 16, 2017 I received comments from the Respondent's and Complainant's counsel. The Complainant's counsel also provided me with a Statement from the Complainant with a request I append the Statement to my Final Report submission to Council.

STATEMENT FROM THE COMPLAINANT
Code of Conduct Complaint #011717(f) against
Regional Councillor / Deputy Mayor Michael Di Biase

May 16, 2017

As you consider the appropriate sanctions and remedies in light of the Integrity Commissioner's findings, I hope that you will remember that the impacts of Councillor Di Biase's sexual harassment on me have been profound and far-reaching. They have impacted every facet of my life and every part of my identity.

- Councillor Di Biase's sexual harassment has gravely affected my health and wellbeing. For months, I have been unable to sleep. I have been up all night trying desperately to make sense of everything and to understand why he just didn't understand or respect that "no" meant "no."
- Councillor Di Biase's sexual harassment has stolen my sense of safety and community. Since filing my complaint against Councillor Di Biase, I have been followed and surveilled. My daughter has been followed and surveyed. Strange cars driven by strange men have been parked outside our house and have followed us around town. I have been threatened, intimidated, and told to withdraw my complaint. My daughters are no longer allowed to walk the dog or stay home alone. Our curtains are always closed.
- Because of Councillor Di Biase, I have also lost my social life. Before the sexual harassment, I was proud to be an active member of this community. I was an engaged citizen of Vaughan working to make the City a better place through volunteer and political work. Now, so much of my life revolves around negotiating the impacts of my sexual harassment that I have been forced to decline every invitation to community and charity events. I must constantly consider whether my harasser will be in attendance and, because my harasser is the Deputy Mayor of Vaughan, social isolation for both me and my daughters most often seems like the safest option.
- Councillor Di Biase's sexual harassment has robbed me of my personal savings. I had to use this money to pay lawyers and health professionals, without whom I would have never had the courage or knowledge to navigate this complaints process.
- Coming forward about Councillor Di Biase's sexual harassment has also affected my reputation. Councillor Di Biase continues to reach out to my former colleagues and friends to spread misinformation and disparage me. Instead of exhibiting sincere remorse for his behaviour, he continues to tell mutual friends and acquaintances that I consented to his kisses and groping and that I somehow "entrapped" him. Without any regard for my privacy, Councillor Di Biase has actively recruited individuals to act as "witnesses" in his campaign to assassinate my character and undermine my credibility.

In addition to all of the above, Councillor Di Biase took away my worth, my dignity, my autonomy, my privacy, my energy, my time, my confidence, and my self-respect. He took away my voice. As a result of this, I became closed off, angry, tired, irritable, and empty. While Councillor Di Biase worries about his reputation or reelection, I have been worrying about getting through each day.

STATEMENT FROM THE COMPLAINANT
Code of Conduct Complaint #011717(f) against
Regional Councillor / Deputy Mayor Michael Di Biase

To Council: I hope that the Integrity Commissioner recommends the maximum sanction of a suspension of remuneration paid to Deputy Mayor Di Biase in respect of his services as a member of council for a period of 90 days as well as a forceful reprimand, and I ask that you accept her recommendation.

I also hope that you understand that the maximum sanction recommendable by the Integrity Commissioner is far from satisfactory. Councillor Di Biase's sexual harassment has cost me profoundly. It is not acceptable that the maximum cost to him for his unethical and abusive behaviour is a 90 day suspension of a *portion* of his income. As such, I ask that you please:

- (a) have all Councillors attend an in-person human rights training presented by an external expert on the prevention of sexual harassment;
- (b) un-frost the glass between Councillors' and their staff's offices; and
- (c) most importantly, bring a motion to strip Councillor Di Biase of his title as Deputy Mayor.

To Councillor Di Biase: I challenge you to make a new name for yourself, to do something good in support of women like supporting Vaughan's only women's shelter ETA Vaughan. Use your position to empower women. Let your actions show us that you finally understand the severity and consequences of your behaviour. I ask you also for a personally written apology acknowledging your wrongdoing. The impacts of your sexual harassment will never fully go away, but knowing that you are sincerely remorseful will assist in my continued healing.

To those who have collaborated with Councillor Di Biase throughout these investigations: Please know that when you blame the victim, you are colluding with and supporting abuse. Sexual harassment is not about whether a victim "enticed" a powerful man. Sexual harassment is not about temptation. Sexual harassment is about the abuse of power and about powerful men's feelings of entitlement to do whatever they want, whenever they want. If you have daughters, please hug them tightly tonight and pray they never have to go through what I went through.

To conclude, I want to say thank you to the Integrity Commissioner and to the City's independent investigator who listened, who acknowledged the courage it takes to come forward, who rejected myths about the conduct of victims of sexual harassment, and who have made my voice heard.

Thank you to my legal team - Andrew, Morgan, and Niiti - who listened to me endlessly and who fought tirelessly on my behalf. Thank you to my incredibly strong girlfriends who stood unwaveringly beside me. Thank you to Dr. J who taught me to find courage in vulnerability and who taught me how to turn pain into strength. To have felt the protection and love of these people is something I will never forget.

Most importantly, thank you to my daughters. My strongest message is to you: When people doubt you or dismiss you, stay strong and persevere. Believe in yourself. I hope that now, having watched your mom speak up for truth and justice in the face of fear and intimidation, you know that you should never be shamed into silence. Girls, you are to be valued and respected every minute of every day. You are powerful and nobody should ever take that away from you.

To my girls and to girls everywhere: Always remember that your voice counts - NO means NO.