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Integrity Commissioner Office
for the City of Brantford

Integrity Commissioner, Marvin J. Huberman, LL.B., LL.M. (ADR), FCIARB
Email: mhuberman@adr.ca

September 15, 2020

Sent by email to:

The Complainant, Ms. Michelle Buckley

The Respondent, Councillor Dan McCreary

Re: Code of Conduct Complaint - IC - 213 - 0620 (Buckley/McCreary)

Dear Ms. Buckley and Councillor McCreary:

Investigative Powers

I, Marvin J. Huberman, have exercised the powers and performed the duties of the Integrity Commissioner for the City of Brantford to inquire into, investigate, and prepare a report with respect to the Complaint described herein, pursuant to section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

Introduction

On June 16, 2020, Michelle Buckley, a Brantford resident and a member of the public (the “Complainant”), filed a complaint about whether Ward 3 Councillor Dan McCreary (the “Respondent”), a member of Brantford City Council, has contravened the Code of Conduct applicable to the member, being Chapter 16 of the Code of Conduct for Members of the Council of the Corporation of the City of Brantford and of its Local Boards (the “Code of Conduct”).

The Complainant states that she has reasonable grounds to believe that the Respondent contravened Section 16.2.2 (Respectful Conduct) and Section 16.2.3 (Respect for Human Rights) of the Code of Conduct arising from the Respondent “liking” or “retweeting” comments posted on the social media platform Twitter (“tweets”) authored not by him but by other people on January 23, February 19, February 29, March 16, April 24, April 26, and May 31, 2020 (the “impugned social media posts”).

Investigative Process

Having exercised the powers and performed the duties of the Integrity Commissioner for the City of Brantford pursuant to section 223.3 of the *Municipal Act, 2001*, as part of my investigation of this formal complaint, I reviewed:

- The Complainant’s Code of Conduct - Formal Complaint Form and Affidavit, received on June 17, 2020;
- The response of the Respondent to the Complaint, received on July 7, 2020;
- The Complainant’s reply to the response of the Respondent, received on July 13, 2020; and
- The screenshots of the impugned social media posts from the Complainant, received on July 3, 2020.

I interviewed the Complainant via teleconference on August 6, 2020, and I interviewed the Respondent via teleconference on August 10, 2020.

I received full cooperation with my investigation from the Complainant and Respondent both of whom provided me with the documentation and information I requested.

The Complaint

Schedule A attached to the Affidavit of Complainant, sworn/affirmed by the Complainant on June 16, 2020, sets out the following particulars relied on by the Complainant in support of her complaint.

“Dan McCreary's likes and retweets on Twitter highlights his racism, transphobia and xenophobia. The fact that a member of the Brantford City Council is able to share these thoughts with members of the public without consequence is not just disgusting, but in violation of the Brantford Code of Conduct. The tweets I am referring to are as followed (I have photo evidence saved and can be made available through a different forum):

- On May 31, 2020, Dan McCreary retweeted a tweet by Tanya Granic Allen stating, "Trump just announced that the USA will designate ANTIFA as a terrorist organization. Good! Will Canada do the same?". It seems odd to me for someone in the Brantford City Council to be against anti-facism.
- Suggesting Barack Obama is the reason behind/in some way responsible for Covid-19 by liking a tweet posted by Warren Kinsella on April 26, 2020.
- On April 24, 2020, Mr. McCreary retweeted a tweet by 222 Minutes which critiques Rachel Notley for wishing people a happy Ramadan but not a happy Passover, calling it interesting.
- Liking a transphobic tweet by Tanya Granic Allen on March 16, 2020 that states, "I noticed the press is saying how many males and females are getting the virus. It's amazing how all the other 57 genders aren't getting it".
- On February 29, 2020, McCreary liked a racist tweet by Scott William Burrows that states, "let's cut the crap!! EVERY SINGLE POLITICIAN in Ottawa knows why so many Natives live with bad water, poor housing and no hope. OUR MONEY NEVER MAKES IT PAST THE CHIEF AND COUNCIL!! Read this thread to understand why Harper wanted a full accounting from FN chiefs. #Cdnpoli"
- On February 19, Mr. McCreary liked a tweet showing peaceful anti-pipeline protesters blocking a roadway with the words, "the only ones breaking the law here are the ones waving flags" as the video shows a construction truck breaking through the protest line.
- On January 23, 2020, McCreary liked a tweet that, among other things, was transphobic and stated, "if you believe 15 is a child soldier but 16 is a climate expert and 5 is gender aware ... if you believe climate change is science but gender is fluid ... then you are a fucking moron and should not procreate”.

These views are not the views of a leader nor of someone who should be making decisions that affect the citizens of Brantford. We are a town directly beside the largest Indigenous reservation in Canada and these anti-Indigenous views cannot be allowed, along with Dan McCreary's racist and transphobic opinions. Whether Dan McCreary is aware of it or not, these opinions influence the decisions he makes on council.

I request Dan McCreary be released from city council as these views do not and should not represent the actions our city council wants to set forth in a progressive society. This cannot be tolerated. I hope you realize the urgency of this situation.”

The Response

The Respondent takes the position that he did not contravene the Code of Conduct because:

“In general, I find the complaint to be frivolous and vexatious. The complainant mistakes sarcasm and humour for something else, perhaps not understanding.

Specifically, I will address the contents as follows.

May 31 2020 Tweet: A legitimate question posed in a legitimate manner. Why should Canada and America not have a common terror organization list.

April 26 2020 Tweet: The photo shows a protester holding a placard which seems to draw a relationship between the number of letters in the full name of the former American president and Covid 19. It contains a math error. Mr. Kinsella captions the picture with “It all makes sense now” It is a sarcastic comment, clever and amusing – hardly an endorsement.”

April 24 2020 Tweet: 222 Minutes is a satirical account. The tweet does not criticize Ms. Notley, it makes a play on words – specifically using Passover as a verb. It is clever and amusing.

March 16 2020 Tweet: This post features Kermit the Frog. It was created to be satirical. Recognizing that not all readers would agree and could take offense, I have since removed it.

February 29 2020 Tweet: This post criticizes the actions of many band councils and chiefs, blaming them for the sorry state of many first nations communities. Band councils and chiefs are not a race, but rather elected positions. Further, the assertion in many cases is quite true.

February 19 2020 Tweet: The comment made by the poster is entirely accurate. Blocking highways and rail lines is criminal.

January 23 2020 Tweet: The poster expresses a point of view which is quite valid and does not demean transsexuals. It does use the word 'fucking 'however. Recognizing that many readers may well and justly take offense, I have since removed it".

The Reply

In her reply to the response of the Respondent, the Complainant states:

"I. Accusation of "vexatious and frivolous" complaints

I will begin by addressing Mr. McCreary's comments which state the complaint is vexatious and frivolous. This is a baseless accusation. I do not know Dan McCreary other than through his social media and the way he has chosen to present himself as a public servant on those platforms. My formal complaint does not come from a personal vendetta or want to slander his reputation. Mr. McCreary believes that there is no legitimate basis for submitting my formal complaint; however I believe that as an elected official, he should focus on creating positive change for his constituents and bringing his community together. His actions on social media indicate this is not his goal. His Twitter account is filled with divisive, racist, and

transphobic content which actively harms many of the people he serves. By singling out specific communities, religious groups, and nationalities without providing context or indicating that it is meant to be taken as sarcasm, these posts effectively segregate our community. Subtle discrimination or discrimination under the guise of satire is still harmful. This tactic also allows any complaint against these activities to seem baseless, or as Mr. McCreary considers it, frivolous and vexatious. Further, even if these tweets are not his own, I consider Mr. McCreary's retweeting or liking of the posts in question an endorsement of his own thoughts. By sharing these ideas, he publicly states to members of his community that he agrees with what is being stated.

I will now provide a response regarding each individual Twitter activity reported and Mr. McCreary's defense.

II. Examples of inappropriate social media conduct

A tweet from January 23, 2020 liked by Mr. McCreary states, "Sorry, if you believe 15 is a child soldier but 16 is a climate expert and 5 is gender aware... if you believe climate change is science but gender is fluid... then you are a fucking moron and should not procreate". Without acknowledging every other offensive part of this tweet, Mr. McCreary responded by saying that the point of view is valid and does not demean "transsexuals". Mr. McCreary is not a member of the Trans+ community and does not have authority on what Trans+ people do and do not find offensive or hurtful. "Transsexual" is a term that is very outdated and many Trans+ people find it offensive. A cisgender person should not be using that term to describe that community. Furthermore, Mr. McCreary should not dismiss the fact that transgender children know who they are and should be supported and affirmed when expressing their identity. This

tweet only serves to further perpetuate harm towards the transgender community. This is unprofessional and should not be the view of an elected leader in Brantford.

A tweet from February 19, 2020 shows a video of a transport truck driving through a group of Wet'suwet'en anti-pipeline protesters who are blocking a road along with a statement stating "the only ones breaking the law are the ones waving the flag" (referring to the protesters). I will not argue the law in this formal complaint or discuss the right to peaceful protest; however using this as his only response is willfully blind to the true purpose of my complaint. I am concerned about the apparent lack of regard for human life and endorsement of violence by Dan McCreary. By liking this tweet, he publicly promotes violence against peaceful protesters. This view should not be permitted on the Brantford city council, especially considering Brantford's large Indigenous population, which he also serves in his position.

A tweet from February 29, 2020 criticizes Band Councils and Chiefs as the reason for the state of many First Nations reservations and communities. Mr. McCreary stands by the statement. This anti-Indigenous view completely dismisses the ways in which Canada has left Canada's First Peoples behind for generations. The effects of colonization and residential schools have had a far greater impact on First Nations communities than the possibility of Chiefs and Band Councils "hoarding government money", as the tweet suggests. Mr. McCreary says in his response that this is "quite true", which is baseless. What evidence does he point to? This narrative promotes false and harmful stereotypes and generalizations of First Nations communities. Band Councils are a colonial creation. The Canadian government imposed the band/elected chief and council systems on Indigenous communities which are now being criticized by white elected officials like Mr. McCreary for the way they operate. Once again, Mr. McCreary's public endorsement of discriminatory anti-Indigenous views have the potential to further divide the community.

When a city councilor shares these unprofessional views, it sends a message that discrimination is valid and acceptable. These views also could impact his decisions as a councilor which can directly impact the Indigenous community in Brantford. How can he effectively represent people he does not respect? Brantford should be focusing on repairing relationships between communities rather than driving a further wedge between them.

The tweet from March 16, 2020 liked by Mr. McCreary further highlights his own transphobia. By liking a satirical meme, he makes a mockery of real issues Trans+ people face daily. Without any context, his public liking of the tweet comes off as an endorsement of a harmful narrative against the Trans+ community. Sarcasm does not translate well, and the councilor should be more responsible. By dismissing the harm that tweet causes as a joke, suggesting I don't understand sarcasm and humor, he attempts to evade the reality of his harmful beliefs by suggesting I am over-reacting. Trans+ lives are not a joke. This tweet and unprofessional endorsement by Dan McCreary should not be taken lightly. It is not funny; it is problematic and offensive. Trans and gender non-conforming people constantly face harassment, bullying, discrimination and being misgendered leading them to have higher rates of mental health issues than the cisgender population. Their pain is not laughable. His actions highlight a blatant disregard for an entire community's struggle for equality. No matter the intent, the impact Mr. McCreary's online actions have on the LGBTQ+ community is damaging and he must be held accountable.

Regarding the April 24, 2020 tweet that criticizes Rachel Notley for wishing people a happy Ramadan, Dan McCreary contradicts himself in his two separate responses to my complaint. In his first response that I received on July 3, 2020, which also asked for the screenshots of the tweets in question, he stated, "it IS interesting that the leader of a Canadian political party would not recognize all religious days equally". In his follow up response, once screenshots

were shared with Mr. McCreary, he then states that the tweet is not criticizing Rachel Notley, that it was satirical and was simply a play on words. I believe that Mr. McCreary's original response represents his true thoughts and the second response to be an attempt to dismiss my complaint; once again arguing that it was satirical and I simply misunderstood. It appears that Mr. McCreary believes that acknowledging any holiday he does not celebrate is not appropriate. Retweeting this is a form of dog-whistle politics which fuels the fire for those who believe Christian values are being pushed out of Canada, which is simply not true. Giving attention to one does not take away from the other. I believe having an issue with a political leader wishing a minority population in Canada a happy holiday further perpetuates racism, white supremacy, and xenophobic unwillingness to accept newcomers from all different backgrounds. This situation is especially concerning as Brantford has a large Muslim population and there have been incidents of xenophobia in the city including vandalism to the Brantford Mosque in 2018.

The tweet from April 26, 2020 that suggests Barack Obama played a role in Covid-19 is simply unprofessional and baseless. Besides that, it just does not serve any purpose in the middle of a pandemic and only further spreads pointless and racist conspiracy theories about the first Black American President, someone who has been the target of numerous conspiracy theories since before his time in office. I believe a city councilor should be more professional in his public online activities as he is a representative of the city.

Lastly, Mr. McCreary retweeted a Maxime Bernier post from May 31, 2020 which discussed Donald Trump designating ANTIFA as a terrorist organization and urged Canada to do the same. As is widely known, ANTIFA stands for anti-fascism. I am confused as to why Mr. McCreary is so outspoken against a mindset that opposes fascism, Nazism, racism and white supremacy. Praising Donald Trump, who arguably has traits of a fascist himself by actively dismissing democratic processes, inciting violence against those who oppose

him and disregarding his own constitution, should not be something a respectable Brantford city councilor openly does.

III. Suggestions for possible sanctions

To say the above tweets were satirical or humorous is not an excuse that Mr. McCreary should be able to hide behind. The impact it can have and has had on marginalized communities is what matters. He has caused harm by publicly validating divisive commentary on several social issues. This upholds systems of oppression upon certain groups when there should be a focus on bringing people together during this time. I question Mr. McCreary's priorities because, as a community leader in a position of power, he should aim to bring positive change to the community. Instead, it seems he has chosen to share opinions that further inflame the divisiveness that exists today. These tweets do not represent someone who is supposed to support their entire community. Dan McCreary is unprofessional, insensitive, divisive and uneducated on social issues.

My wishes for how I would like this to proceed are as follows: I request Dan McCreary be removed from his position. For the reasons stated above, I do not believe he should be representing the city of Brantford. He is self-admittedly unaware of why these posts could be offensive. I do not see how he can effectively represent people of different races, sexual orientations, gender identities and religions. General awareness of the concepts of racism, homophobia, etc. is not an onerous expectation of an elected official. If his actions go unargued, it will seem the Corporation of the City of Brantford is complicit in his oppressive views. I do not believe that simply requiring him to undergo empathy and sensitivity training is enough. This practice alone is not effective as deeply rooted beliefs such as racism are not ended after one training session. I leave the final decision to the review board. Please take this complaint seriously and

do not allow this kind of behaviour to continue. Thank you for your time.”

Relevant Provisions of the Code of Conduct

Section 16.2.2 of the Code of Conduct provides:

“16.2.2 Respectful Conduct

In all of their interactions with one another, Municipal Staff, Local Board Staff, Officers, and members of the public, in connection with their duties as a member of Council or of a Local Board, as the case may be, members of Council and Local Boards shall interact with and treat every person with dignity, respect and equality. Without limiting the generality of the foregoing, members of Council and Local Boards shall not:

- (a) engage in a course of conduct consisting of patronizing or condescending comments or behaviour;
- (b) make written or verbal abuse or threats;
- (c) make or publish statements about other members of Council or of a Local Board, Municipal Staff, Local Board Staff or members of the public which would, whether or not they might have a defence of absolute or qualified privilege, constitute libel or slander; or
- (d) engage in Workplace Harassment or Workplace Violence.”

Section 16.2.3 of the Code of Conduct provides:

“16.2.3 Respect for Human Rights

In all of their interactions with one another, Municipal Staff, Local Board Staff, Officers and members of the public, in connection with their duties as a member of Council or a Local Board, as the case may be, all members of Council and Local Boards shall refrain from Harassing or Discriminating against any person or otherwise contravening the requirements of the *Ontario Human Rights Code*. Without limiting the generality of the foregoing, a member of Council or a Local Board shall not:

- (a) make racial, homophobic, sexist or ethnic slurs;
- (b) display pornographic, homophobic, sexist or racist material; or
- (c) make Leering or offensive gestures that would constitute an infringement of the *Ontario Human Rights Code*.”

Analysis, Findings, Conclusions and Recommendations

Is the Complaint frivolous and vexatious?

The Respondent contends that the Complaint is frivolous and vexatious. I reject this argument because it is not supported by the applicable law or sufficiently clear, convincing and cogent evidence to which I accord weight.

The Code of Conduct does not define the words “frivolous or vexatious”.

In respect of civil actions and rules of civil procedure, the test for establishing that an action is “frivolous and vexatious” entails a high standard. It has been defined to include an action which, on its face, is so unreal that no reasonable or sensible person could bring it; and one which is “hopeless factually”, and which it is “plain and obvious...cannot succeed”; or more simply that the action is “devoid of merit”; or that includes unfounded and inflammatory attacks on the integrity of a party, and speculative, unsupported allegations of defamation.¹

In my view, the Complaint is worthy of serious consideration. It is not, on its face, without merit or substance, or trivial, or so unreal that no reasonable or sensible person could bring it; nor is it plain and obvious that it could not succeed. I therefore find that the Complaint is not frivolous.

I am not persuaded, and therefore I am unable to find, as contended by the Respondent, that the Complaint is vexatious, because the evidence does not support the conclusion that the Complainant pursued the Complaint in a manner that is malicious or intended to embarrass or harass the

¹ 876502 *Ontario Inc. v. I.F. Propco Holdings (Ontario)*10, 1997 CanLII 12196 (ON SC); *Seabrook et al v. Morison et al*, 2019 ONSC 4232 (CanLII).

Respondent or others. This argument is based on the Respondent's own belief, speculation and conjecture, which is based on unfounded and unconvincing evidence to which I give no weight.

I accept the evidence of the Complainant, and find, that she filed the Complaint in good faith, sincerely believing that her allegations were reasonably based and could support a finding that the Respondent contravened the Code of Conduct in the circumstances of this case.

Did the Respondent contravene Sections 16.2.2 and 16.2.3 of the Code of Conduct by “liking” or “retweeting” comments posted on the social media platform Twitter (“tweets”) authored not by him but by other people on January 23, February 19, February 29, March 16, April 24, April 26, and May 31, 2020 (the “impugned social media posts”)?

This issue raises a matter of statutory interpretation given that the Code of Conduct was enacted by by-law pursuant to the *Municipal Act, 2001* (the “Act”).

Principles of Statutory Interpretation

In *Rizzo & Rizzo Shoes Ltd.*², the Supreme Court of Canada adopted the modern principle of statutory interpretation, which requires courts today to interpret a provision by considering it in its entire context and by both:

1. Looking at its ordinary and grammatical meaning, in line with the plain meaning rule; and
2. Ensuring that the interpretation is in harmony with:
 - a. The scheme of the statute as a whole;
 - b. The object of the Act; and
 - c. The intention of the legislature.

² *Rizzo & Rizzo Shoes Ltd.*, Re, 1998 CarswellOnt 1 (S.C.C.) at para. 21.

This approach takes a more “holistic view” of statutory interpretation, encouraging courts to look at context.³

Application of Principles

As a matter of statutory interpretation, the Complainant contends that the Respondent by liking or retweeting the impugned social media posts: (a) failed to interact with and treat every person with dignity, respect and equality; (b) engaged in a course of conduct consisting of patronizing or condescending comments or behaviour; (c) made written or verbal abuse or threats; (d) engaged in Harassing or Discriminating against any person or otherwise contravened the requirements of the *Ontario Human Rights Code*; (e) made racial, sexist or ethnic slurs; and (f) displayed sexist or racist material, in contravention of Sections 16.2.2 and 16.2.3 of the Code of Conduct.

I do not agree with the Complainant’s argument.

In my view, on their proper construction, the relevant words in Sections 16.2.2 and 16.2.3 of the Code of Conduct, are not to be defined as contended by the Complainant. Her construction is not based on the ordinary and grammatical meaning of those words, nor does it take into account the context. Rather, her approach to the interpretive exercise is as Doherty J.A. described in *Glimmer Resources Inc. v. Exall Resources Ltd.*⁴ – it gives meaning to the relevant words in the Code of Conduct by impermissibly looking at them under an “interpretive microscope in isolation.”

The Context

Context is paramount.

Pursuant to section 224 (a) of the *Municipal Act, 2001*, “It is the role of Council...to represent the public and to consider the well-being and interests of the municipality.”

³ *Rooney v. ArcelorMittal S.A.*, 2016 CarswellOnt 13026 (Ont. C.A.) at para. 13.

⁴ *Glimmer Resources Inc. v. Exall Resources Ltd.* (1999) 119 O.A.C. 78 (C.A.) at para. 17

As explained in The Ontario Municipal Councillors Guide 2018,⁵ the representative role of Council involves representing the views of constituents when dealing with issues that come before Council. It also involves having a broader understanding of the issues impacting the municipality as a whole; and considering conflicting interests and making decisions that will not be popular with everyone, by taking into account all available information when making evidence-based decisions. While disagreements are common among council members, it is important to remember that councillors are working toward a common goal, and that there is no single, correct approach to the representative role.

Indeed, elected Members of Council are entitled to take different approaches and positions on issues and to disagree with others, even with the majority on an issue. As the Supreme Court of Canada stated: “In a democracy, public officers must retain the authority to make decisions that, where appropriate, are adverse to the interests of certain citizens...A public officer may in good faith make a decision that he or she knows to be adverse to interests of certain members of the public...”⁶

Members of Council, under the democratic process, are entitled to form views, hold views, express views, change views, and give effect to views, as to matters of public policy affecting the municipality.⁷

It is not the role of an Integrity Commissioner to restrain or prevent Members of Council from exercising their fundamental freedom to express themselves and manifest their thoughts, beliefs, and opinions, including freedom of the press and other media of communications as to matters of public policy affecting the well-being and interests of the municipality.

As Integrity Commissioner Donald Cameron stated in his 2012 Report:⁸

“I cannot and will not be a referee of free speech in a political arena provided it stays within the bounds of s. 2.1 [now Rules Nos. 14 and 15] of the Code”.

⁵ www.ontario.ca/document/ontario-municipal-councillors-guide-2018, at p. 4 of 111

⁶ *Odhavji v. Woodhouse*, 2003 SCC 69 (CanLII) at para. 28

⁷ *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1973 CanLII 818 (ONSC), 1 O.R. (2d) 20 at para. 43, cited in *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC).

⁸ City of Brampton, Report No. BIC 030-192, December 4, 2012.

Investigator, Randy Pepper, the delegate of Integrity Commissioner Cameron, subsequently expanded on this principle as follows:⁹

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in *Committee for the Commonwealth of Canada v. Canada*, 1991 CanLII 119 (SCC), [1991] 1 SCR 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure. As expressed by Jackson J., in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), at p. 642, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein”. Robert J. Sharpe explains the futility of basing this axiom merely upon some yearning for ultimate truth, in “Commercial Expression and the Charter” (1987), 37U.T.L.J. 229, at p. 236:

The essence of the market-place of ideas argument is that control and regulation of expression is intolerable because we can trust no government to know the truth. Those who purport to legislate the truth invariably turn out to be tyrants. The market-place of ideas argument prescribes an open process precisely because we cannot agree on what is the truth. Hence the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy.

⁹ City of Brampton, Report No. BIC-32-1112, December 18, 2012, Randy Pepper, Delegate of the Integrity Commissioner.

In a defamation context, the Supreme Court noted more recently in *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 (CanLII), [2008] 2 SCR 420 at para. 2,

An individual's reputation is not to be treated as regrettable but unavoidable road kill on the highway of public controversy, but nor should an overly solicitous regard for personal reputation be permitted to "chill" freewheeling debate on matters of public interest.

In view of the above law, I find that the Integrity Commissioner has a very limited role in relation to the "freewheeling debate on matters of public interest" which is not engaged by Councillor Palleschi's reported comments. I have therefore concluded that the allegations of the BSO/Mr. Todd against Councillor Palleschi do not require further investigation and the complaint should be dismissed."

I agree with the above statements and analysis of Integrity Commissioner Cameron and Investigator Pepper concerning the role of the Integrity Commissioner as a speech referee in the political arena, and I adopt them for purposes of the present Complaint.

In my view, the relevant words in Sections 16.2.2 and 16.2.3 of the Code of Conduct must be interpreted in light of and in harmony with this context and consistent with the Respondent's representative roles and democratic rights; his fundamental freedom to express himself and manifest his thoughts, beliefs, and opinions, including freedom of the press and other media of communications as to matters of public policy affecting the well-being and interests of the municipality.

Findings

Having thoroughly reviewed and carefully considered the documentation and information obtained in the course of my investigation (collectively, the "evidence"), I find that the impugned social media posts involve matters of public policy affecting the well-being and interests of the municipality, namely, child soldiers, climate experts, gender awareness, peaceful anti-

pipeline protesters blocking a roadway, a construction truck breaking through the protest line, poor living conditions of many members of the Indigenous community and why certain people want a full financial accounting from FN chiefs, how many males and females are getting the virus, and how the other 57 genders aren't getting it, a critique of Rachel Notley for wishing people a happy Ramadan but not a happy Passover, a suggestion that Barack Obama is the reason behind/in some way responsible for Covid-19, Trump announcing that the USA will designate ANTIFA as a terrorist organization, and questioning whether Canada will do the same (collectively, the "content of the impugned social media posts").

I find that by liking and retweeting the impugned social media posts, the Respondent exercised his fundamental freedom to express himself as to the content of the impugned social media posts. While this right is not absolute, it enjoys robust legal protection even if the expression is unpopular, distasteful, disturbing, or offensive to some members of the public. The tests for restricting freedom of expression are therefore demanding.

I consider it significant, and find, that the Respondent did not author any of the impugned social media posts. Other people authored them. Of the 7 social media posts, the Respondent liked 5 of them; he retweeted one post without a comment; and retweeted another, referring simply to that post as "Interesting".

To be sure, by liking and retweeting the impugned social media posts, the Respondent shared its content with his personal audience and put his name behind it as content he shared.

However, in my view, by merely liking and retweeting the impugned social media posts, the Respondent did not necessarily endorse its content. As the Environmental Review Tribunal stated:¹⁰

"Posting a link on Twitter is not necessarily an endorsement of the item posted or the views expressed therein."

¹⁰ John Hirsh v. Director, Ministry of the Environment and Climate Change, 2016 CanLII 1702 (ON ERT) at para. 141

I agree with the Complainant that “Mr. McCreary’s retweeting or liking of the posts in question is an endorsement of his own thoughts”. But I disagree with her contention that “By sharing these ideas, he publicly states to members of his community that he agrees with what is being stated.”

The reality is that people use social media platforms in many ways and for purposes that include venting (usually feelings or rage), humour, sarcasm or provocation.

I accept the Respondent’s evidence, and find, that he liked and retweeted the impugned social media posts not because he was endorsing its content, but because he found its content to contain points of view and comments that are valid, accurate, critical of the actions of many elected band chiefs and councils, created to be satirical, making plays on words that are clever, sarcastic, and amusing, and raise legitimate questions in a legitimate manner.

I also consider it significant, and find, that the Respondent recognized that many readers may well and justly take offence or not agree with two of the impugned social media posts, and he has since removed them.

I disagree with the Complainant’s contention that “Dan McCreary’s likes and retweets on Twitter highlights his racism, transphobia and xenophobia”, and that they demonstrate that Councillor McCreary is against anti-fascism, is transphobic, racist, holds and publicly endorses discriminatory anti-Indigenous views, and publicly promotes violence against peaceful protesters, and that they send a message that discrimination is valid and acceptable.

In my view, the fact that the Respondent liked and retweeted the impugned social media posts, in and of itself, does not support the conclusions asserted by the Complainant.

I find that the thoughts of the Respondent that his likes and retweets of the impugned social media posts express or convey are variables and depend on purpose, context and surrounding circumstances.

Words do not convey, in every situation, one specific idea. More often, words are used not in a literal sense but in a figurative sense, and their

meaning is derived from a primary sense by analogy, association or similarity (e.g., metaphor and simile).

Looking at the Respondent's likes and retweets of the impugned social media posts objectively and reasonably, having regard to the content of the impugned social media posts and the context in which the Respondent's expression was made, I find on the evidence that the Respondent - by liking and retweeting the impugned social media posts - did not (a) fail to interact with and treat every person with dignity, respect and equality; (b) engage in a course of conduct consisting of patronizing or condescending comments or behaviour; (c) make written or verbal abuse or threats; (d) engage in Harassing or Discriminating against any person or otherwise contravene the requirements of the *Ontario Human Rights Code*; (e) make racial, sexist or ethnic slurs; or (f) display sexist or racist material, in contravention of Sections 16.2.2 and 16.2.3 of the Code of Conduct.

Conclusions

For the reasons stated above, I conclude that the Respondent did not contravene Sections 16.2.2 and 16.2.3 of the Code of Conduct by "liking" or "retweeting" comments posted on the social media platform Twitter ("tweets") authored not by him but by other people on January 23, February 19, February 29, March 16, April 24, April 26, and May 31, 2020 (the "impugned social media posts").

Recommendation

Although I have determined that the Respondent has not contravened the Code of Conduct, the circumstances and analysis of this Complaint may be of interest and importance to Council and the public.

I recommend that Council receive this report which finds no contravention of Sections 16.2.2 and 16.2.3 of the Code of Conduct.

Respectfully submitted this 15th day of September, 2020,

A handwritten signature in black ink, appearing to read "MJ Huberman". The signature is written in a cursive, slightly slanted style.

Marvin J. Huberman, LL.B., LL.M.(ADR), FCI Arb
Integrity Commissioner, City of Brantford
c/o ADR Chambers Inc., Office of the Integrity Commissioner