
CITY OF OSHAWA INTEGRITY COMMISSIONER, GUY GIORNO

Citation: Sinnott et al. v. McConkey, 2021 ONMIC 4

Date: May 15, 2021

REPORT ON COMPLAINT

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COMPLAINT AND INQUIRY

1. Twelve employees in the Finance Services Department of the City of Oshawa (Complainants) alleged that Councillor Rosemary McConkey (Respondent) contravened sections 10 through 13 of the Code of Conduct for Members of the Council of The Corporation of the City of Oshawa and for the Board of Management of the Oshawa Central Business District Improvement Area, By-law 51-2015, as amended (the Code).
2. The names of all Complainants appear in Appendix 1.
3. The inquiry was restricted to the allegations under sections 12 and 13 of the Code. As explained below, I declined to include sections 10 and 11 in the inquiry, as these provisions do not apply to the circumstances.

SUMMARY

4. There is no suggestion that the Complainants, acting individual or collectively, acted improperly, unethically, or in breach of their professional obligations. There is also no evidence to that effect. I find as a fact that the Complainants performed their duties to high standards, and the record should reflect this.
5. I find that the management and staff of the Finance Services Department at the relevant time, including Stephanie Sinnott, Jessamyn Adams, Tina Barker, Adrienne Barron, Michelle Bretherick, Lorraine Fuller, Susyn Korbak, Dave Lyon, Jay Martin, Pat Morrison, Gary Nobile, and Kim Villeneuve, exhibited, upheld and maintained the following principles and standards:
 - Professional behaviour
 - Integrity and due care
 - Objectivity
 - Professional competence
 - Confidentiality
6. I will not make a finding on conduct that occurred at a committee meeting when the chair of the committee immediately intervened and reprimanded the conduct in accordance with the Procedure By-law.
7. I will not find that moving of a motion constitutes a contravention of the Code, especially when the motion was not ruled out of order by the presiding officer.
8. I do not find a contravention of section 12 or section 13 of the Code.

BACKGROUND

9. At the relevant time, the Complainants were employed in the City's Finance Services Department. They included the Commissioner, the four Managers, and seven other individuals.

10. At the relevant time, six of the Complainants were members in good standing of the Chartered Professional Accountants of Ontario,¹ two were students in good standing with the Chartered Professional Accountants of Ontario,² one was designated as a Certified Professional Public Buyer,³ and one was a Certified Supply Chain Management Professional.⁴

11. The mission of the Finance Services Department is to provide "collaborative and progressive support services that respect equity, compliance and fiscal responsibility."⁵

12. Its responsibilities included: strategic financial plans; annual operating budget and multi-year capital forecast; all financial transactions, record keeping and financial reporting; financial systems development; asset management; internal audit; tax billing and collection; printing and mail services, and procurement.⁶

13. The Department had 35 employees at the relevant time. Appendix 2 is an organization chart of the Department.⁷

14. The Finance Services Department consisted of four divisions. *Financial Planning and Reporting* was "responsible for the preparation and administration of the City's corporate operating budget and multi-year capital plan, providing financial and accounting advice, preparation of financial statements and the strategic financial plan." *Financial Services and Financial Systems Development* handled "payroll, accounts payable, banking, cash management, investments, risk management and insurance ... [and also] a lead role in the development and implementation of corporate financial systems." The responsibility of *Revenue and Tax Services* was "preparation and distribution of property tax notices and certificates, and the collection and accounting of all tax revenue ... [as

¹ Stephanie Sinnott, Michelle Bretherick, Jay Martin, Lorraine Fuller, Susyn Korbak, Adrienne Barron

² Gary Nobile, Jessamyn Adam

³ Dave Lyon

⁴ Tina Barker

⁵ "Finance Services Department" (December 4, 2018), presentation, p. 2:
http://app.oshawa.ca/agendas/city_council/2018/12-04/presentation_finance_services.pdf

⁶ *Ibid.*, p. 4.

⁷ *Ibid.*, p. 3.

well as] accounts receivable.” *Purchasing Services* provided “centralized procurement services for all City of Oshawa departments and designated boards.”⁸

15. The Department was led by the Commissioner, Finance Services. Each division was headed by a manager.

16. The Respondent sat on the Finance Committee of Council. The other members were Councillor John Gray (Chair), Councillor Brian Nicholson (Vice-Chair), Councillor Bob Chapman, Councillor Tito-Dante Marimpietri, and Mayor Dan Carter.

17. By-law 4204, as amended by By-law 149-72, states that the Treasurer “shall be guided in the payments and disbursements of his office by the by-laws, rules and regulations of the Corporation with regard to the passing and verification of accounts by the various committees, or by statutory or other authority, and by the appropriations made for their liquidation, advising with the Finance and Assessment Committee [now Finance Committee] when such appropriations are exhausted.”

18. For decades, pursuant to By-law 4204 as amended, the City’s staff had produced a Corporate Payments report for Council (via Finance Committee) on a monthly basis.

19. On December 11, 2014, at its first meeting of the 2014-2018 Council term, Finance Committee considered the Corporate Payments reports for the months of August, September and October 2014.^{9 10 11} The lengths of these reports were 43, 38, and 50 pages, respectively.

20. The Corporate Payments report for October 2014 included a recommendation, “That the reports outlining monthly organizational payroll and vendor payments be discontinued and provided only on an as requested basis.”¹²

21. Finance Committee did not adopt this recommendation. Instead, it went into closed session to question the Acting City Treasurer (who had submitted the report) and the City Solicitor about the recommendation. It then resolved, “That Part 1 of Report FIN-14-86 be referred to staff for review and comment on a revised process that would ensure full disclosure where appropriate while complying with the protections afforded under the *Municipal Freedom and Protection of Privacy Act* as well as the potential for litigation.”¹³

⁸ City of Oshawa, “Finance Services,” <https://web.archive.org/web/20171213032132/http://www.oshawa.ca/city-hall/Finance-Services.asp> and <https://web.archive.org/web/20200805170415/https://www.oshawa.ca/city-hall/Finance-Services.asp>

⁹ Report FIN-14-84, “Corporate Payments for the Month of August 2014” (September 10, 2014).

¹⁰ Report FIN-14-85, “Corporate Payments for the Month of September 2014” (October 10, 2014).

¹¹ Report FIN-14-86, “Corporate Payments for the Month of October 2014” (November 13, 2014), online: <http://app.oshawa.ca/agendas/finance/2014/12-11/FIN-14-86%20Final.pdf>

¹² *Ibid.*

¹³ Finance Committee Minutes (December 11, 2014), p 13.

22. The staff reported back in March 2015, and recommended that, “The corporate payment report be prepared for Finance Committee outlining monthly expenditures but exclude the cheque listing as an attachment to the public report. The monthly Accounts Payable cheque listing will be made available on the City’s shared drive for all Councillors and the Mayor to review.”¹⁴

23. The Respondent, at the time a private resident, appeared before Finance Committee on March 26, 2015, to oppose the recommendation.

24. By this time, the former Acting City Treasurer, who had authored the report considered in December 2014, was no longer with the City. The March 2015 report was presented by the Interim Executive Director, Finance Services, who is now the Commissioner, Finance Services, and one of the Complainants.

25. The Respondent’s written submission to Finance Committee read, in part, as follows:

1) A one line staff recommendation was made in a December 2014 report, which was a standard format report listing the City’s October 2014 corporate payments. Questions arise how such a significant change to a decades long practice of publishing the payee list was recommended and inserted with no explanation into a report containing 50 pages of corporate payments to city suppliers, contractors and various city employees, other individuals and businesses, at the first Finance Committee meeting of this term of Council. It is questionable how it even belonged in that report.

2) At the December 11, 2014 committee meeting Chair Diamond spoke against the recommendation, explaining it was there because the Treasurer (who was hired ‘interim’ for four months, October to January) deemed some of the payee list might be considered confidential.

3) Now apparently we are being told the justification for stopping the publication has to do with legal implications. How did the implication of litigation risks come to the forefront in this way? Not only does the perceived risk being put forward seem vague, but the staff position seems heavy handed. ...¹⁵

26. In her oral presentation, the Respondent said the title of Report FIN-15-24 (Continued Practice of Producing Corporate Payment Reports) was “newspeak” because, in her view, it was actually about discontinuing the practice of publishing Corporate Payments reports.¹⁶

27. The Respondent argued that, “all things, I believe, that are involving public money should be public. It’s in the public interest.”¹⁷

¹⁴ Report FIN-15-24, “Continued Practice of Producing Corporate Payment Reports” (March 16, 2015).

¹⁵ In quoting from documents, my practice is to correct obvious typographical errors without drawing attention to the correction unless the correction is material. This report also edits punctuation and capitalization for consistency.

¹⁶ The Respondent’s entire oral presentation can be found online, between time marks 1:55 and 11:05: https://video.isilive.ca/play/oshawa/legacy_archives/audio/FIN/2015/2015-03-26-FIN-Open-Meeting.MP3

¹⁷ *Ibid.*

28. Finance Committee decided not to accept the staff recommendation, and to replace it with a recommendation that, “based on Report FIN-15-24 staff be directed to develop revised reporting protocols and procedures that will ensure the full disclosure of payments where appropriate to do so while complying with the protections afforded under the *Municipal Freedom and Protection of Privacy Act*, as well as any restrictions appropriately required under legal agreements or issues of potential litigation.”¹⁸

29. Even though Finance Committee did not accept the staff recommendation, the Respondent (again, in her capacity as a private resident) felt the Finance Committee recommendation was too restrictive. She spoke against it before Council, April 7, 2015, calling it, “your attempt to roll back the cheque roll.”¹⁹

30. According to the Respondent, the practice of publishing Corporate Payments had been ongoing for more than two decades. “I think it’s wonderful that the City has been publicizing where public money is being spent,” she said. “Now here we are 20 years later, with the Internet ... now information flows freely, and it should, when you’re making decisions that have to do with public money.”²⁰

31. City Council adopted the recommendation of Finance Committee without debate.²¹

32. The staff returned to Finance Committee, September 17, 2015, with a further report, reading, in part, as follows:²²

3.0 Executive Summary

The City has produced the corporate payment report on a monthly basis for decades and will continue to in accordance with By-law 4204, as amended by By-law 149-72. In compliance with the City’s full disclosure and legal obligations, and the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* all personal and confidential information must be segregated from the corporate payment report and should not be disclosed publicly.

...

5.2 Personal and Confidential Information

Under the definition of personal and confidential information, the City of Oshawa will consider this definition to mean:

“Personal information” to mean recorded information about an identifiable individual.

“Confidential information” to mean any information that has the necessary quality of confidence about it and has been communicated in circumstances imparting an obligation of confidence. This means that the information must not already be in the public domain such that the subject matter of the confidence must have sufficient originality to be private and not widely known.

¹⁸ Finance Committee Minutes (March 26, 2015), pp. 4, 6.

¹⁹ The audio recording of the Respondent’s presentation to Council is online, between time marks 31:35 and 36:55: https://video.isilive.ca/play/oshawa/legacy_archives/audio/CNCL/2015/AUDIO_2015-04-07_CNCL.mp3

²⁰ *Ibid.*

²¹ City Council Minutes (April 7, 2015), pp. 122, 127.

²² Report FIN-15-82, “UPDATE - Practice of Producing Corporate Payment Report” (August 7, 2015).

Information that is partly, or even wholly, public may still ground a breach of confidence finding if the recipient is able to gain an advantage that they would not have had if they had to check only public sources.

“Any payment that may disclose, directly or indirectly, personal, privileged and/or confidential information regarding any person, including City employees.” Under this definition and in the broader sense this could mean payments made but not limited to bank/trust companies, insurance companies or settlement funds paid to individuals other than City employees or directly to employees that are of a personal nature. This would exclude payments made to an employee for reimbursement of expenses that would have normally been incurred under the normal operations of the business. All personal and business expenses must be paid separately.

5.3 City Internal Controls

Finance Services has an internal control system that provides mechanisms to safeguard the organizations assets and personal and confidential information. This will include a four tiered control system to identify and isolate personal and confidential information. The four tiers of review would include:

- Review at the source department to ensure the source document is marked confidential,
- Review at the Accounts Payable entry with the “voucher style” indicating confidential at invoice entry,
- Weekly review of Accounts Payable payment reports by the Manager, Financial Services & Financial Systems Development,
- Monthly review by Treasurer or delegate prior to issuance of reports to Finance Committee.

5.4 Confidential Payment Reporting – Recommended Practice

In addition to the public version of the Corporate Payment Report payment listing, a confidential payment report will be prepared for the Finance Committee outlining monthly expenditures considered confidential and such report will be available on the City’s secured shared drive for all Councillors and the Mayor to review. The confidential report will require minimal monthly staffing efforts and will replicate the existing format of the public report. This new practice provides full disclosure of the personal and confidential cheque details to Council and by not producing this information publicly, mitigates potential risks.

33. Finance Committee adopted both recommendations in this report:²³

That the Finance Committee recommend to City Council:

1. That the definitions of personal and confidential information outlined in Report FIN-15-82 dated August 7, 2015 be adopted for application to the disclosure of the City’s payment information; and,
2. That the recommended practice for confidential payment reporting detailed in Report FIN-15-82 dated August 7, 2015 be adopted and implemented effective for the October reporting period.

34. At its next meeting, City Council adopted Finance Committee’s recommendations.²⁴ The Respondent, as a private resident, was present at the meeting,

²³ Finance Committee Minutes (September 17, 2015), pp. 3, 5.

²⁴ City Council Minutes (September 28, 2015), pp. 325, 339.

and addressed Council concerning an unrelated Finance Committee recommendation. She did not speak on the payment reporting issue.²⁵

35. Corporate Payments reports continued to appear on the Finance Committee agenda until March 1, 2018, when the Committee received the report for January 2018. Subsequent Corporate Payments reports were placed in the Information Packages produced and posted pursuant to section 6.4 of the Procedure By-law, By-law 111-2017, which came into effect February 1, 2018.

36. Paragraph 6.4 b) of the Procedure By-law allows any Council Member to ask the Clerk to place any Information Package item on the appropriate committee agenda.

37. The Information Package posted October 8, 2019, included the Corporate Payments report for June 2019.²⁶

38. The Respondent, who had been elected to City Council for the 2018-2022 term, and was a Finance Committee member, wanted the June 2019 Corporate Payments report placed on the next Finance Committee agenda. She sent the following email:

From: Rosemary McConkey <RMcConkey@oshawa.ca>
Sent: Thursday, October 17, 2019 1:06 PM
To: clerks <clerks@oshawa.ca>; Laura Davis <LDavis@oshawa.ca>
Subject: Oct 8 Info Package

I request Info-19-262 June Corporate Payments and Info-19-279 Financial results as of June 2019 be added to the Oct 28 Finance Committee Agenda.

Thanks,
 Rosemary

39. Shortly afterward, at 1:20 p.m., the Respondent received a reply from the Interim City Clerk that read as follows:

Good afternoon Councillor McConkey,

In accordance with Council's Procedure By-law, your request must include the intended disposition for these two reports. Please provide me with this information as it will be included on the agenda.

Additionally, in order for the Clerk's office to operate efficiently, I would appreciate if you all emails related to Committee and Council business are sent either to clerks@oshawa.ca or to my self.

Thank you.

40. Approximately 95 minutes later, the Respondent sent the following email:

²⁵ *Ibid.*, p. 320.

²⁶ Item INFO-19-262, "Corporate Payments for the Month of June, 2019" (October 7, 2019), online: http://app.oshawa.ca/agendas/info_package/2019/10-08/info-19-262%20corporate%20payments%20for%20the%20month%20of%20june%202019%20final.pdf .

From: Rosemary McConkey <RMcConkey@oshawa.ca>
Sent: Thursday, October 17, 2019 2:55 PM
To: Mary Medeiros <MMedeiros@oshawa.ca>; Laura Davis <LDavis@oshawa.ca>; John Gray <JGray@oshawa.ca>; Brian Nicholson <BNicholson@oshawa.ca>; Stephanie Sinnott <SSinnott@oshawa.ca>; Paul Ralph <PRalph@oshawa.ca>; Bob Chapman <BChapman@oshawa.ca>; Tito-Dante Marimpietri <TDMarimpietri@Oshawa.ca>
Subject: RE: Oct 8 Info Package

Hi Mary

In accordance with Council's Procedural By-law, please be advised the disposition is for Clerks Department and Financial Services to include the Corporate Payments reports and financial reports placement, not simply in the Info Packages, but to have them placed directly on the Finance Committee meeting Agendas with content and format improvements for greater transparency and accountability.

Mary, I am taking the liberty of copying the Finance Commissioner, and Finance Standing Committee Chair, Vice Chair, and other members, as well as the City Manager, to give them a head's up.

Also, please consider these pulls from the Info Package an attempt, in keeping with the role of members of Council, to implement Financial Oversight improvements

Regards,

Rosemary

City of Oshawa

41. The Interim City Clerk sent the following response:

From: Mary Medeiros MMedeiros@oshawa.ca
Sent: Friday, October 18, 2019 5:26 PM
To: Rosemary McConkey <RMcConkey@oshawa.ca>
Cc: Stephanie Sinnott <SSinnott@oshawa.ca>; Paul Ralph <PRalph@oshawa.ca>; Tracy Adams <TAdams@oshawa.ca>
Subject: RE: Oct 8 Info package

Hi Councillor McConkey,

Your proposed disposition must relate directly to the information contained in Reports INFO-19-262 and INFO-19-279. In order to place INFO-19-262 June Corporate Payments and INFO-19-279 Financial Results as of June 2019 on the next Finance Committee agenda, please provide me with your proposed disposition for each report no later than 4:30 pm Tuesday, October 29, 2019.

If your intent is to change the process, this would need to be done under "Items Introduced By Councillors" and the reports would not be placed on the agenda. Alternatively, you can provide me with a written Notice of Motion to be placed on a Council Meeting agenda which will be referred to the Finance Committee.

In addition, please be advised that copying five of the six members of the Finance Committee in an email regarding the business of the Finance Committee could be construed as an illegal meeting.

For this reason, I am not copying the members of the Finance Committee included in your previous email.

42. The last portion of the Interim City Clerk's email was a reference to the definition of "meeting" in the *Municipal Act*, s. 238, as one "where, (a) a quorum of members is present, and (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council ..." For purposes of this inquiry, it is not necessary for me to determine whether the Respondent's suggestion, that Corporate Payments reports should be classified as FIN (Finance Committee agenda items) and not INFO (Information Package items), materially advanced the business or decision making of City Council.

43. The Respondent subsequently confirmed that her proposed disposition was for Report INFO-19-262 to be received for information. Pulling an information item onto an agenda with a "receive for information" motion is a common and appropriate approach taken when a Council Member simply wishes to speak to the item.

44. The agenda for the October 28, 2019, Finance Committee meeting included the June Corporate Payments report that the Respondent had asked to have added. It appeared on the agenda as item FIN-19-92.

45. Both parties sent me their own versions of transcripts of the Finance Committee meeting. I have relied on neither side's transcript. Instead, I have relied on the recording available online at http://video.isilive.ca/oshawa/FIN_2019-10-28.mp4.html. I have also prepared my own transcript of the relevant discussion.

46. The following discussion occurred between time marks 2:52:45 and 3:13:32:

Chair: Councillor McConkey, you have the floor.

Respondent: Thank you. If I could ask the Commissioner a few questions. On [FIN-]19-92, first of all, the Corporate Payments, you've already answered one, about that four thousand, and maybe, that's what some of these others, because, first, if I could ask, if I want to find, dig a little deeper on what these are for, is there something on the City's intranet that can give me more details?

Commissioner: I'm sorry, what are you looking for? The details regarding all the payments?

Respondent: Yes, that's correct. There's so many that you just sometimes have a question, "Where did that come from? What department is that from?"

Commissioner: Through you, Chair Gray, no, there is no additional information online that you can dig back with the payments, but any time in the past where Councillors have had concerns or want a little bit of additional information, they will forward their questions directly to staff for a response.

Respondent: Thank you. Well, I have some questions about, the number on here, and this is from June, that we've got Destiny & Dominion Word Ministries, Freeway Church of God Bethel [sic],²⁷ Freedom Victory Christian Centre, would they all be similar to the Catholic Family Services where it's a rebate? Because some of them aren't even in Oshawa. I mean, I googled, I didn't know what they were. Do you have any idea, Destiny and Dominion Word Ministries,

²⁷ In the report to which the Respondent was referring, The Freeway Church, and Redeem Christian Church of God Bethel Assembly, were separate entities.

5166 dollars. Freedom Victory Christian Centre, 3938 dollars. I mean, just, we're looking at what our City taxes are being spent on and if I could ask, Commissioner, would we have oversight of what's spent, right, so asking these questions to you is fair, is it not?

Commissioner: Through you, Chair Gray, I would suggest they are fair, but on the floor of Council referring to payments that were made three or four months ago is difficult for someone to answer, so, in the past, we have received information via a Councillor maybe by email and then that affords us the opportunity to refer to the details, the audit trail, and provide an accurate answer.

Respondent: OK, but it would be a lot easier, rather than having this back-and-forth in emails to you from various members of Council about where the money's going if, maybe, is it possible not to have another, I mean, there's a lot of blank space on these pages, and refer to a department?

Commissioner: Through you, Chair Gray, I am not sure that we have that ability; it depends on how the fields are structured in a report. It also creates another level of administration to be able to enter all of that information into a report and, in some cases, it's not clearly related to one department or another.

Respondent: If I can point back in time to items that were on an agenda related, or, on a, sorry, outgoing amounts, that were basically to pay for some MBAs back in 2009 or 10 that became a problem because people don't realize where things are going if they're not highlighted in some way, and there's one particular one here: it was 11,000 dollars for Internal Controls.²⁸ My question to you: is that for education or a program that you have? Do you know what I'm talking about? When you describe the item paid to Internal Controls?

Commissioner: Again, without having the opportunity to investigate, I won't be able to provide you with an accurate answer on the floor.

Respondent: OK, well, then the question is do you have some type of quantitative assessment of the effectiveness of your corporate system of internal controls? Do you do this as a regular practice to look at?

Commissioner: We would not be paying an organization called "internal controls" to do any oversight of our assessment. I have a team of qualified accountants who are who are all very highly trained in internal controls. We also have another oversight with KPMG audits, as well as Deloitte does an examination of the City's internal controls every year with the annual audit and they report all those results back to Council.

Respondent: Right, but about these Corporate Payments that we don't have much information other than who they're paid to and the amounts and no reference to the department they're coming out of, are you reporting to Council you, your department, your qualified accountants, on what internal control measures you're taking?

Commissioner: We do provide Deloitte with annual information for which they assess our effectiveness of our internal controls and that information is reported directly to Council.

Respondent: At the end of the budget. But prior to the budget, I mean we're going into a period now where I'm trying to figure out how we're comparing to last year, my first year on Council, when we do the 2020 budget, and I'm not seeing, I mean, the time that we spent here this afternoon going over these grants, and not seeing a comparison to individual applications, how they compare to, if they had actually been awarded money last year and the year before, that sort of thing.

²⁸ The Respondent may have been referring to a line item showing a \$13,673 payment to "The Control Institute." See paragraph 52.

Commissioner: Through you, Chair Gray, the information about the grants that were provided to individual organizations last year is actually is actually contained in Appendix 1 and Appendix 2 to FIN 19-83.

Respondent: Right, but it's a matter of, you know, going on the City's index and trying to pull up some that weren't on last year and that are asking this year. It's a cumbersome way. I'm just looking for, I'm sorry, a little bit –

Chair: Councillor McConkey has the floor.

Respondent: – a little bit easier tracking method, and I was really hoping to see this type of accounting in this report, [FIN-]19-92, giving another column that says what department these are ascribed to.

Chair: I think the Commissioner rightly asked the question: “Why?” If you want any information on any payment, you as a Councillor can request it from staff, but if you don't tell people what you want to know, and then you ask it on the committee floor, or Council floor, you don't, you obviously didn't want an answer. So you've got to do your homework ahead of time.

Respondent: Oh my goodness, I'm sorry.

Chair: That's what has to happen. That's what has to happen because, and I thought you were going to ask some, some logical questions and hopefully you'd fed them to staff. I was wrong, but you've got to start to do that because, when we have this exchange of information, if staff can give you a nice, crisp response, you're better served; we're all well-served. But when you ask about a payment, as the Commissioner rightly pointed out, four months ago, chances are she's not going to have it at the top of her head, and so that's why these reports are information and

Respondent: Well, that's where the problem lies –

Chair: No, it's not a problem.

Respondent: Excuse me, I had the floor.

Chair: I've been through this before –

Respondent: Right.

Chair: – where everybody's checking through every cheque, and staff, you have to understand, they have integrity too. They're not going to vouch for something that's not legitimate, and so we have to understand there's that fair exchange, and the audit process, it's firmly in place and you as a Councillor can request that specific information –

Respondent: Mayor –

Chair: But just respect it, just request it ahead of time.

Respondent: OK

Chair: Don't turn it into a grandstanding matter.

Respondent: This is not grandstanding

Chair: This is. This is.

Respondent: And talk about ascribing –

Chair: This is about trying to make yourself look good.

Respondent: Talk about using the wrong words.

Chair: And you've got to start to play the game with us. We all, we all have questions at various times, but we do it logically, and if you can't play that, it's a simple request. Ask staff ahead of time –

Respondent: This is not –

Chair: – and you'll get your answers.

Respondent: – playing, and this is not grandstanding.

Chair: This is.

Respondent: This, I'm sorry –

Chair: I can, you're standing right now and you're grandstanding.

Respondent: No. You, you're the one who

Chair: You are. You are. You are, and you, just work with us.

Respondent: Excuse me.

Chair: That's all we ask. No. We're all going to have differences of opinions, but if you can't have the decency to ask staff what your question's going to be ahead of time so they can give you an answer, I don't know what else to call it but grandstanding.

Respondent: Well, excuse me –

Chair: Please proceed.

Respondent: – I find your remarks extremely offensive, and I have done my homework, and the one, I actually had a conversation with you about this: Why are we, why were we paying MTAG? We had a closed session meeting about MTAG and that's the one I was going to refer to, until I was accused of grandstanding here, and not doing my homework.

Chair: It can be avoided in the future. Just ask staff ahead of time.

Respondent: You're the one who said earlier in the meeting to use the right words, and excuse me, extremely offensive of you. Extremely. And I had asked the Commissioner in the past about these Corporate Payments and, again, not got very far, and so I believe that they could be itemized by department. And I don't think asking –

Chair: What you're asking for is extra bureaucracy –

Respondent: Not at all.

Chair: – they'll get up at [inaudible]

Respondent: I'm asking for oversight of this Committee and we are the Finance –

Chair: You have the –

Respondent: – Committee of this City –

Chair: – We are Finance so we do the oversight –

Respondent: – Absolutely and you can't tell me that –

Chair: – and if you asked the questions ahead of time you would get answers.

Respondent: Excuse me, I ask questions. I ask more questions than anyone else on this Council, and it's not about grandstanding, and I can't believe that I would get this upset because, excuse me –

Coun. Nicholson: [inaudible]

Chair: Sure. Motion to recess for five minutes. Those in support? Carried.

[recess from approx. 3:03:06 to 3:07:35]

Chair: – to order. Councillor McConkey, you have the floor.

Respondent: Thank you. Thank you, Councillor Nicholson, for allowing me take a break. Back to the Corporate Payments for the month of June, my question has to do with those MTAG payments, and the reason why we're still paying MTAG because, when we last had a report, and actually at budget last year, you indicated that they had done their job. Are they still under contract with the City? I know we have a report coming next month, which I'd asked for, about the monies paid by [sic] MTAG and the contract, but I see in June they were paid, and I'm wondering why.

Chair: Commissioner?

Commissioner: Through you, Chair Gray, we have a vacancy in our assessment review office, and we required the services of MTAG to navigate some complex appeals as well as some outstanding appeals that were voluminous that needed to be addressed in a timely manner. MTAG was engaged under the Purchasing By-law, under the rules of the Purchasing By-law and, as Councillor McConkey indicated, that there is a report coming forward to the next Finance Committee meeting, which will outline the activities undertaken to date.

Respondent: Thank you. Those are my questions with the Corporate Payments, FIN-19-92. If I could, I think I pulled both FIN-19-92 –

Chair: Yeah, so, I'll take a vote first on 19-92. So those in support of 19-92? Carried. OK. Councillor McConkey, you have the floor.

Respondent: Thank you. With FIN-19-93, the, this comes twice a year to committee?

Commissioner: Through you, Chair Gray, it comes, three times a year with the fourth quarter actually being reported through the City's annual financial statements.

Respondent: Because the subject was, "Financial Results for the Six Months Ending June 30," so it comes three times a year?

Commissioner: This is the report for the second quarter. It is reported back to Council on the first, second, and third quarters, and, again, with the fourth quarter being reported through the financial statements.

Respondent: Thank you. So in here you have in the "Purpose" of the report that it "provides information for operating revenue and expenses and capital" expenses [sic],²⁹ but I see nothing in here about capital expenses.

Commissioner: If you refer to item 3.3 of the report, it does speak to capital. It is not a full accounting of capital. Again, there is another report that is pending that will be coming back to committee that will report on capital projects, what their budget was, and the expenditures to date with comments on their current status.

Respondent: So yeah, and 3.3, it's just saying that there's an ongoing review, so that when you send this to us, it's really, it's just operating, and in it, it's basically talking about the variances, and I'm looking for the page, I think I've separated it in my binder here. There was a portion in here that talked about following the policy by-law and I'm wondering, is there a specific policy by-law? I'm sorry, I'm at a bit of a disadvantage because I lost my notes, and I think my questions had to do with the other report where you had the gapping and the variances, and now I'm, I'm looking at the wrong report. Sorry. If you could give me another second because I have, after Corporate Payments – Well, the report talks about the gaps in the staffing, and then in the Public Consent [Agenda] we have some hires that we're talking about, and I just, I found the fact that on the one we're talking about having saved this money and we're ahead of things, and then we've got, so I'm just wondering if this report could be referred, to the discussion of FIN-19-88,

²⁹ The passage from which the Respondent was quoting reads: "The purpose of this report is to provide Council with an update on the City's overall budget variances for the six months ending June 30, 2019. The report provides information for operating revenue and expenses and capital expenditures."

just referred later in the meeting while I have the opportunity to look at it, because there were certain questions on it, that I had about overtime, and the “other,” there’s a big category of “other,” which – sorry, don’t know what’s happened to my report – and if that’s possible to refer it to the discussion of FIN-19-88.

Chair: Just to help you out, Councillor. We don’t need to refer it to the other, but you can bring up all those matters at that time.

Respondent: Thank you.

Chair: OK. Was that it?

Respondent: That’s it.

Chair: Thank you.

47. The exchange between the Respondent and the Committee Chair (Councillor Gray), immediately prior to the recess, was significant. This was not merely a disagreement between two Council Members. When he intervened, Councillor Gray was functioning as the presiding officer, exercising powers under the *Municipal Act* and the Procedure By-law. Councillor Gray confirms that he intended, as Chair, to call the Respondent to order for breach of the rules of debate, and it is clear that he did so.

48. There was no appeal from the Chair’s ruling. No resolution was adopted to report the Respondent’s questioning and comments to the full Council. The incident was handled entirely within Committee.

49. Toward the end of the same Finance Committee meeting, Councillor McConkey moved this motion: “That all Financial Memos and Reports from the Commissioner, Finance Services not be placed on the Information Package but be placed on the Finance Committee meeting agendas.” The Chair allowed the motion and put the question. The motion was defeated on a 2-2 vote.³⁰

50. The following is the transcript of the moving of, and debate and voting on, the motion, from time mark 5:04:57 to 5:14:33:

Chair: Is there any other items to be introduced? Councillor McConkey.

Respondent: I have a motion, sorry, “that all financial memos and reports from the Finance Commissioner not be placed on the Information Package, but be placed on the Finance Committee meeting’s agenda.” The finance, the Information Package came about at the Region. The Region has eight municipalities. Regional Municipality’s getting a lot of correspondence from, a lot more than the City of Oshawa. I understand that it makes things easy and compact, but when it gets, and I’m not grandstanding, when it gets to the finances of this City, we have to be vigilant, and these reports should be appearing on our agendas. That’s my motion.

Chair: OK. We have a motion. Can we get that to the clerks, please?

Respondent: That comma should be an “of.” O. F.

Chair: Sorry which –

³⁰ Finance Committee Minutes (October 28, 2019), p. 17.

Respondent: I mean, if that's the way the title, I thought I wrote it "of" – "Commissioner of" – but if you want it just "Commissioner, Finance Services" I've no problem with that.

Chair: That's fine. Did you wish to speak to it?

Respondent: Yes, I do. The problems that arose this afternoon had to do with, my problems, with you, Chair Gray, had to do with emotion, sorry, a report that appeared, sorry, from June, coming to, here it is the first week of November this week, and I'm not, and, and, you know, these things, if they were done in a more timely fashion, on the, the earlier agenda, for the, but these Information Packages are making it, it's, a veil of some of the details that we should be having in front of us, right in front of our noses, and to think that, yes, I respect everyone that works for this City, but the job I have been hired for, which I take very seriously, is to make sure that we are spending the funds that come in from the taxpayer wisely, and nothing gets amiss. In the career I've had, in my past, I have had clients, and in my own personal life, people actually take things that they shouldn't, and I'm not accusing anyone at the staff, but the more eyes on these things, the better, and that's probably said more than I needed to. I apologize for how emotional I can get, but I truly believe, I obviously pushed a wrong button. I did not mean to bring up the past, by talking about something that happened earlier in the history, but that's how we learn. We learn from mistakes, and there are times when we definitely need to have more, I think, questions asked. Sorry.

Chair: Thank you. Is there any, Councillor Nicholson.

Coun. Nicholson: Councillor Chapman and I, we deal with the Regional departments and they have a, I think they have a very good policy, where the items are put on the information item and any member of Council, all it takes is one member of Council, to say, "I want to flag it," and it immediately is added to the committee agenda. I think our staff should look at that, look at that particular policy, to see whether or not we should be in tandem with them. That way it's not a matter of somebody, you know, arguing with the Clerk or arguing with somebody about, you know, why should this be on an agenda, why it shouldn't be on an agenda. The Regional policy is if one member of Council wants it on the committee agenda, it's on the committee agenda. And if no members of Council, in the case of 28 members of Council of the Region, decide they don't want the report on an agenda, they believe the information item is sufficient, then it just sits as an information item. I think it works well. I think our policy here at the City is 90 per cent of the way there. We might be just off a little bit, on interpretation, and it just might be useful for Commissioner of Finance or Commissioner of Corporate Services, it shouldn't just do with Finance either, it should be with every information report written by a staff member that is put on an information sheet. Any member of Council has the right to pull it and have it put on the agenda for the Regional committee. I think this is a good first step. We should pass it, but I would hope Mr. Ralph and Ms Adams would take a long hard look at the policy and maybe bring it forward at the next meeting for a change moving forward.

City Manager: Thank you, Chair Gray, for that. Through you to Councillor Nicholson: that is our policy, and, in this particular case, Councillor McConkey pulled it from the Information Package. That's why it's on the Finance Committee, so our actual policy is in tandem and in step with the Region's policy. We follow theirs.

Coun. Nicholson: Appreciate that, but I was there when she was trying to get it pulled and met with resistance, so I just, you know, I just want to be clear that any Member of Council, individually, any one of the eleven of us, want to pull a report, it's on a committee agenda.

City Manager: Through you, Chair Gray, in this particular instance, when it's pulled from the Information Package, a Member of Council has to provide some direction of what they're looking for in terms of what the recommendation is, so in this particular case, it was an understanding from Councillor McConkey that she wanted it on the agenda, but with a receive for information but to have a discussion, so, but in terms of pulling it, you're absolutely right. A Member of

Council can pull it and with the recommendation of what she, he or she, would like to see dealt with at the committee level.

Chair: Thank you. Councillor Chapman.

Coun. Chapman: I have a question for the Commissioner of Finance. So, if this was to appear on the Finance Committee meeting, would it have appeared, it wouldn't have appeared in June, because it's the end of June results. Is that correct?

Commissioner: That's correct.

Coun. Chapman: So chances are it would have been on this committee meeting, by the time you put all the stuff together?

Commissioner: It would have been in –

Coun. Chapman: Or –

Commissioner: – fall, yes.

Coun. Chapman: – maybe the last one because it came out on the Information Package.

Commissioner: Yes, that's correct.

Coun. Chapman: So it wouldn't have gotten really to us any earlier?

Commissioner: That's correct.

Coun. Chapman: Not much earlier, anyway, OK, thank you, and I agree with Councillor Nicholson. I think that the process at the Region and the one we've been following here at the City is the excellent one to do it. That's all.

Chair: Nine times out of 10, that report, because it used to appear all the time, wouldn't get discussed, and I can assure everyone: nobody wants to hide anything; nobody wants any wrongdoing. It's just how we approach some items. That's all it is, and you can print this, and have you noticed how much paper was put into the agenda? All these payments? So that's the reason why they moved it that way, and I think it's a very sound thing, but I also support any Member, and I indicated to Councillor McConkey, I supported her getting it onto the agenda. It's going to be a simple request. That's all it's going to take, and then you can ask your questions. I would prefer if you gave them ahead of time, just so that staff come in prepared to answer your questions. That's all. OK? So, we have a motion in front of us. It's up on your screens.

Respondent: Recorded vote please.

Council-Committee Coordinator: Councillor McConkey.

Respondent: Yes.

Council-Committee Coordinator: Councillor Nicholson.

Coun. Nicholson: Yes.

Council-Committee Coordinator: Mayor Carter is absent. Councillor Chapman.

Coun, Chapman: No.

Council-Committee Coordinator: Councillor Marimpietri is absent. Councillor Gray.

Chair: No. So that loses on a 2-2 vote.

51. The above transcripts present just the words that were spoken. The recording at http://video.isilive.ca/oshawa/FIN_2019-10-28.mp4.html reveals much more, including tone, emotion, and pauses. The transcribed words alone do not provide a complete picture of what occurred at Finance Committee that afternoon, and it would be

irresponsible to make findings based on the transcripts alone. I have taken into account everything that occurred.

52. On November 1, 2019, the Respondent emailed the Commissioner, Finance Services, as follows:

From: Rosemary McConkey
Sent: Friday, November 1, 2019 5:20 PM
To: Stephanie Sinnott
Cc: John Gray; Paul Ralph
Subject: INFO-19-262

Good afternoon Commissioner Sinnott,

As recommended by Finance Committee Chair Gray, during our exchange at the Monday, Oct 28 Finance Committee meeting, I am writing to ask questions re the Corporate payments records in Information Memo INFO-19-262:

Thank you for answering my one question at that meeting about the MTAG payment.

As the cheque and EFT roll contains no department reference column or detail line for any of the payments, could you please indicate what the following items relate to:

Cheque No. 156228 Issued June 7, 2019 Paid to The Control Institute in the amount of \$13,673.00

Cheque No. 156170 Issued June 7, 2019 Paid to Freedom Victory Christian Centre in the amount of \$3,938.40

Cheque No. 156154 Issued June 7, 2019 Paid to Destiny & Dominion Word Ministries in the amount of \$5,166.56

I understand the concern, from a conversation we had earlier this year and from what you and Chair Gray said at Monday's meeting, about it creating extra work for staff to have a re: line or department line for payments.

Although I do not wish to create unnecessary work for anyone, I would like to learn what measures might be available to make the monthly cheque and EFT rolls more informative and transparent for Council's oversight function.

Regards,

Rosemary

53. The Respondent's point, which she had made previously, was that it was unhelpful to provide Council Members with lists showing only payees, amounts, and dates. In her opinion, and this was only an opinion, the lists would have been more useful if they included another column of either "re. line" information or responsible departments. The Commissioner, Finance Services, responded the next day that, "the report cannot be modified as you have requested."

54. Upon being told by the Commissioner that the report could not be modified to add an additional column, the Respondent spent the weekend using Excel to add the extra column, to demonstrate how it could be done. On Monday, she emailed her mock-up to the Commissioner, the City Manager, and the Finance Committee Chair. She also spoke about her project on the Council floor.

55. The following is the email from the Commissioner, Finance Services:

From: Stephanie Sinnott
Sent: Saturday, November 2, 2019 1 1:45 AM
To: Rosemary McConkey
Cc: John Gray; Paul Ralph
Subject: RE: INFO-19-262

Councillor McConkey,

The particulars regarding the cheque inquiries are shown below in red font.

As far as the staff function for payments is concerned there are numerous controls in place. To outline a few:

- Purchase orders are issued in accordance with the Purchasing By-law (which is approved by Council)
- Packing slips, if appropriate, are matched to Purchase Orders and invoices (this is known as 3 way matching)
- Invoices are matched to Purchase Orders
- Invoices are authorized by the appropriate level of management in accordance with the signing authority policy (which is approved by Council)
- Expenditures are made in accordance with the annual budget (which is approved by Council)
- Potential expenditures which were not approved in the annual budget are reported to Council for approval
- Invoice batches are matched to control totals before they are released in the system for the payment generation
- Once payments are generated they are matched back to the invoices for validation
- Payment listings are sent to appropriate staff to ensure we are not issuing payment to parties who owe money to the City for Account Receivable invoices or Taxes or Fines before the payments are released to the bank
- Expenditures are reported to Council through the Financial Results reporting and the annual Financial Statements (which are approved by Council)
- For the annual audit performed by Deloitte we pull a data file of all payments for them to make their sample selection for audit testing, the annual audit results are reported to Council
- There are numerous other controls built into the AP process design which is overseen by a group of Chartered Professional Accountants

As you can see from the above, there is significant Council oversight over the payments issued by the City.

As additional information, the report cannot be modified as you have requested

Stephanie

56. The following is the Respondent's email that accompanied her mock-up. It also quoted from a publication of the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO):

From: Rosemary McConkey <RMcConkey@oshawa.ca>
Sent: Monday, November 4, 2019 5:16 PM
To: Stephanie Sinnott <SSinnott@oshawa.ca>
Cc: Paul Ralph <PRalph@oshawa.ca>; John Gray <JGray@oshawa.ca>
Subject: Info 19-262

Thanks for your reply on the weekend to the questions I sent Friday re the Corporate Cheque EFT roll

Attached is a mock up of INfO Report 19-262 with the extra reference column. It is 15 pages because all items under \$1,000 are removed.

It would be helpful to have such a monthly cheque/EFT reference imo to assist Council members in fulfilling their oversight function.

I would appreciate if you considering it and the following quote from material published by the AMMCTO [*sic*]

Association of Municipal Managers, Clerks and Treasurers of Ontario

"An underlying factor of central importance to the financial integrity of the municipality, which is the prevailing organizational culture.

It is what largely determines how people interpret and act upon information provided through the financial controls process.

When presented with information that shows underperformance, for example, how do municipal staff respond? Are they likely to forward the information up the line immediately, wait for the next report cycle, bury the information, or even manipulate the information slightly to make it more palatable?

To the extent that the latter forms of inappropriate behaviour are exhibited, it is almost certainly because of the prevailing organizational culture. That culture, for example, might include the unspoken rule that you don't question your boss, or a "shoot the messenger" response to the bearer of bad news, or a "hear no evil" response that ignores any bad news that is forwarded. In any of these circumstances, it is unlikely that the information generated by the internal control system will be used as effectively as it could be."

Regards

Rosemary McConkey

57. Soon afterward, the Commissioner, Finance Services, emailed the City Manager, as follows: "How would you interpret the clause from the AMTCO? She is extremely disrespectful, I already have complaints from staff based the comments made last Monday. Is she trying to make allegations?"

58. Later that evening, at the November 4, 2019, Council Meeting, Councillor McConkey pulled the June 2019 Corporate Payments item, item FIN-19-82, from the Public Consent Agenda so she could speak to it. Her remarks appear between time marks 1:47:32 and 1:52:25 of the recording posted here: http://video.isilive.ca/oshawa/CNCL_2019-11-04.mp4.html Again, I have not relied on the parties' versions of events. I have watched and listened to the recording and prepared my own transcript:

Mayor: So we're moving on FIN-19-92, Corporate Payments for the Month of June 2019, INFO-19-262. Councillor McConkey.

Respondent: Thank you. If I could draw your attention to the report, how thick it is, how many items are on it, and if I could ask the Commissioner, is she aware that there are basically over 800 items on this list of Corporate Payments?

Mayor: Commissioner.

Commissioner: Through you, Mayor Carter, I have not counted them, but the number would not surprise me.

Mayor: Thank you. Councillor.

Respondent: The report is over 40 pages, and when you post them, you don't post them all in one day, in a month, if you had 800, which you had in June, they wouldn't all happen in one week even, would they? They come up, in clumps and bunches. You're processing them over a period of a month.

Mayor: Commissioner.

Commissioner: Through you, Mayor Carter, payments are posted and processed at various times through the year. I would like to point out that the City issues approximately 25,000 payments per year.

Mayor: Thank you. Commiss – Councillor.

Respondent: Thank you, and part of the role of Council's function is to have some financial oversight, and I'm finding, and I've made this, I thought, clear at Committee, that the list is incomprehensive. You know, it means calling you like I did last spring, and asking at committee, which I tried to do, about certain things, and thank you for sending me some information on the weekend. I appreciate that, because it gave me some guidance, because what I did was I whittled that report down and I've given you a copy of it. It's now 15 pages. It could be less if we summarize the Oshawa PUC and the Bell into one payment each month, but what I'm trying to do is, and I did, and I'm not that much of an expert in Excel, but I managed, actually, not, it didn't take me that long, to put in another column. I'm seeing you shake your head at the Mayor. Is there some problem going on here?

Mayor: No, no, no, please, you've got the floor.

Respondent: Thank you. So I believe, not just for me and the rest of Council, but in future, because this has been going on for years now, where you have these long rolls of numbers, of only the payee and the amount, and not indicating what it's for, whether it's a department or an item, but it's, it's actually, I think, crucial to our role, and if I could read to you from the Association of Municipal Managers, Clerks and Treasurers of Ontario, do you mind?

Mayor: Councillor.

Respondent: I'll go ahead then, thank you. "... an underlying factor of central importance" in "the financial integrity of the municipality ... is the prevailing organizational culture." It is what "largely determines how people interpret and act upon information provided through the" financial "controls process. When presented with information that shows underperformance, for example, how do municipal staff respond? Are they likely to forward the information up the line immediately, wait for the next report cycle, bury the information, or even manipulate the information slightly to make it more palatable?"

Not indicating any of those wrongdoings are going on, but we're here to monitor, and it says: "To the extent that the latter forms of inappropriate behaviour are exhibited" – it almost certainly because of the prevailing – "it is almost certainly because of the prevailing organizational culture. That culture, for example, might include the unspoken rule that you don't question your boss, or ... 'shoot the messenger' response to the bearer of bad news, or ... 'hear no evil' response that ignores" every "bad news that is forwarded. In any of these circumstances, it is unlikely that the information generated by the internal control system will be used as effectively as it could be."

I want to be effective in this role of financial oversight, and I'll be asking and continue to ask, and if I have to do the Excel every month, to get this and send it to you, to fill in – I mean, it was great that you told me, a lot of these are charity rebates. I had no idea that taxes coming in are actually having that rebate on so many properties, 40 per cent, and it, it's a learning process still

for me, so please bear with me on this. I'm not meaning to antagonize anyone. I'm not trying to grandstand on. I'm trying to get information in a, a way that we can digest it. Thank you very much.

Mayor: Thank you. Any other questions? Seeing none, all those in favour? Opposed? That's carried.

59. The Respondent was quoting from pages 117 and 118 of the 230-page educational materials of the AMCTO Municipal Accounting and Finance Program, Unit 1, Introduction to Municipal Accounting and Financial Reporting.³¹

60. Meanwhile, earlier that year, the Province of Ontario had established an Audit and Accountability Fund, the purpose of which was to provide financial support so municipalities could undertake independent, third-party, expert operational reviews, with a goal of finding administrative efficiencies. With support from this provincial program, Oshawa engaged MNP, a leading national accounting, tax and business consulting firm, to conduct a budget review.³²

61. MNP's independent report lauded the City's financial controls: "The City of Oshawa undertakes a number of best practice approaches when it comes to financial control and continuous improvement including investing in lean training, use of an internal audit department and having a strong financial framework."³³

62. MNP also found that:

The City of Oshawa undertakes several best-practice approaches to cost management, for example the organization has hired KPMG as a third-party internal audit department. Further investigation by MNP revealed that many areas were subject to previous audits by KPMG which demonstrates a thorough continuous improvement approach was taken by the municipality. In addition to the third-party audits, the organization has invested in Lean training for all regular employees (Yellow Belt LSS, some receiving the Green Belt and Black Belt) which not only drives sustainability but also instills a culture focused on continuous improvement. An example of this culture are the service reviews that the city undertakes.

The efforts put forth by the City of Oshawa to maintain cost controls is evident by the limited number of opportunities identified by MNP that would have substantial impact on their bottom line.³⁴

63. The parties provided a large volume of materials in support of their submissions. Many are referred to above. I will briefly summarize two additional incidents disclosed in the materials.

³¹ <https://www.amcto.com/Education-Course-Materials/MAFP-Unit-1-Materials-Fall-2018/MAFP-Unit-1-Textbook>

³² Report FIN-19-97, Audit & Accountability - Budget Review Results (November 20, 2019).

³³ MNP, City of Oshawa Budget Review (November 18, 2019), p. 2, online: http://app.oshawa.ca/agendas/finance/2019/11-25/REPORT_FIN-19-97.pdf

³⁴ *Ibid.*

64. After her election, but before she was sworn in, the Respondent emailed the then-City Clerk to suggest that consideration be given to e-voting at City Council meetings. She copied the newly-elected Council Members, and several staff members, including the City Manager and some Commissioners. The Respondent stated, “I am hoping that the new Council might consider moving forward with digital voting at Council meetings rather than a time consuming verbal roll call. For this reason I am copying Council-elect and senior staff to facilitate discussion regarding this matter.”

65. While the Respondent did not advocate the adoption of any specific digital voting platform, she listed several digital solutions, including webstreaming and Web pages, already provided to the City by various suppliers. She mentioned that City’s current webstream supplier and the City’s current webpage supplier were partnering in other municipalities to deliver digital voting.

66. One of the recipients, a staff member and a Complainant in this inquiry, forwarded the email to another staff member (also a Complainant in this inquiry) and wrote: “Can you please let me know how these actions of a Councillor, could be problematic in terms of the Purchasing process and by-law. ... Although she is still technically a member of the public, I suspect this may continue after being sworn in.”

67. The second staff member provided a 384-word analysis that pronounced the Respondent’s conduct as, “Totally inappropriate.” (The analysis covered a range of situations, only some of which were relevant to what had occurred.) The first staff member sent the analysis to the then-City Clerk, the current City Clerk, and two others, with the explanation, “Please see below for the significant Purchasing concerns related to the e-mail from Councillor-elect McConkey.”

68. No part of the email exchange even mentioned the gist of the Respondent’s suggestion, namely, that the City discuss e-voting at Council meetings.

69. A few weeks after this Complaint was filed, the Respondent was seeking information, from one of the Complainants, about RFP C2018-076. According to the RFP, “The Study is to be completed within six (6) months of being awarded.”³⁵ Since the contract had been awarded 13 months ago,³⁶ and the Study was still not completed, the Respondent understandably was interested in an explanation.

70. The staff member declined to provide the explanation, citing a provision of the Purchasing By-law then in effect:

³⁵ Request for Proposal, Contract No. C2018-076, Part C, page 6 of 12, paragraph 3.0, online, <file:///C:/Users/giornog/Downloads/C2018-076%20Parking%20Study%20Master.pdf>

³⁶ The contract was awarded November 22, 2018: <https://oshawa.bidsandtenders.ca/Module/Tenders/en/Tender/Detail/247c70bc-7fa0-433b-aa61-afe068a6bfa9>

2.13 Council Participation: Members of Council and Boards shall not be involved in any way in the proposal of candidates or in the selection of stakeholders for working groups or direction for members of the City's evaluation team including examining any documentation submitted by persons as a result of any Request for Tenders, Proposals, or Quotations unless otherwise indicated in the Bid Solicitation as provided to prospective Bidders.

71. The staff member copied this response to the staff member's supervisor, also one of the Complainants.

72. The Respondent made clear that she was trying to find out why the winner of a contract was not meeting the time frame specified in the RFP: "I am not asking for involvement in the proposal, selection or direction for members. I simply am interested in understanding the process and progress of this Study and find it challenging that the Terms of Reference stated the study was to be completed within six months of being awarded and you indicated [supplier] was awarded the contract Nov 2018."

POSITIONS OF THE PARTIES

Complainants

73. The Complainants' submissions can be divided into two parts. One part of their submissions consists of individual letters and statements about how the Respondent's comments affected them and their professional reputations. They supplemented the letters during individual in-person interviews. The other part of the submissions examines specific elements of the Respondent's comments and makes the case that the Code was contravened.

74. Each Complainant feels strongly and genuinely that the Respondent's comments were personally and professionally insulting and disparaging. All the Complainants made a point of confirming that they were not recruited and that every single one asked to be included in the Complaint.

75. One writes, "As a member of Finance who contributes to the reports that go to Council and Finance Committee, I took these words as a direct attack on my professional work and its integrity. Integrity is a pillar of the CPA Professional Code of Conduct ... I worry that the citizens of Oshawa may take these statements made by the Councillor at face value. I believe the statements made, if left unchecked, could have a lasting effect on the reputation of the City, the Finance department and my professional work."

76. Another writes, "I am very disappointed that a Council member would quote the AMCTO with respect to staff burying and/or manipulating information and that the organizational culture could create inappropriate behavior by staff. ... To think that Finance staff with professional designations would ignore inappropriate handling of City

money is very disrespect to all Finance staff and those of us that have worked hard to earn professional designations and uphold our respective codes of conduct.”

77. Still another states, “McConkey’s allegations that financial staff would engage in inappropriate behavior due to prevailing organization culture does not give respect to professionals. As a CPA I must comply with the CPA code of professional conduct and other by laws and regulations or be subject to a disciplinary process.”

78. According to another letter that I received: “It’s unfortunate that comments such as this made by a City Councillor are what the public hear and, in most cases, staff are unable to respond to or refute the comments. Repeated reference to potential wrongdoing is most certainly bringing the competency of Finance into question. Staff have dedicated years of hard work and personal time to obtaining their designations and I find it offensive that a Councillor would imply that we are not acting with the highest degree of care and integrity.”

79. One more writes: “I feel the comments made by Councillor McConkey at the October 28, 2019 Finance Committee meeting implied that Finance Services’ staff lack internal controls and could bury information leading to potential for wrong doings. Members of the general public, hearing such statements from a Councillor, could construe them as fact, rather than just a way of asking questions to the Commissioner of Finance.”

80. In the words of another Complainant: “I attended the Finance Committee meeting on October 28, 2019 ... I was offended by the statements made and feel that they imply that there are poor internal controls in place at the City. As a senior accountant with more than 18 years’ experience with the City and as a professional CPA, an integral function of my job is oversight of internal controls in Finance Services. I am one of the key finance team members Involved in coordinating the external audit process at the City for over 10 years and I’m quite familiar with the City’s financial internal controls that are in place and how they meet the industry standard.”

81. Still another Complainant writes: “As I live streamed the City of Oshawa Finance Committee Meeting on October 28, 2019, I was disturbed and offended by the comments made by Councillor McConkey related to ‘the job I have been hired for’ as well as ‘people who actually take things that they shouldn’t and I’m not accusing anyone of the staff, but, the more eyes on these things the better on this.’ ... Statements such as the ones made by Councillor McConkey in a public meeting, no less are unprofessional, disrespectful and unwarranted. Statements such as these erroneously bring into question staff’s capabilities. Finance Services staff participate in ongoing professional development to ensure we are current in our fields of expertise as well as actively participating in our professional associations.”

82. One letter states that: “As a former Internal Auditor, I have closed the gaps on controls, policies and procedures so I am taking Councillor McConkey’s words as a direct

insult and disrespect of my profession, my work and the efforts of my team. . The words alone without context bring the entire Finance department's work and integrity into question in and outside the organization. The Finance Services department is a group of hardworking, talented and educated individuals that are now being questioned by a non-financial individual. I am hoping that Councillor McConkey's lack of contextual statements that are made publicly do not hinder the reputation of the City's Finance Services staff and myself when trying to move their own careers forward into the future."

83. The next Complainant writes: "I found Councillor McConkey's remarks to be defamatory and call into question the professional reputation of Oshawa's finance department. Councillors are to be held to a higher standard as their remarks carry a greater weight; for her in a public form to accuse staff of inappropriate behaviour and suggest that information is being manipulated to seem more palatable is inappropriate. ... Councillor McConkey's remarks may possibly have a negative impact on my co-workers and I, if her statements sway the general public to believe the Oshawa finance department has weak internal controls."

84. According to another: "As a seasoned finance professional of nearly 30 years, experienced in both the private and public sectors, I take great offence to the remarks of Councillor McConkey with respect to the public comments made on October 28, 2019 and November 4, 2019 ... Over my career, I have held numerous Finance positions, which in all instances, have included the design, implementation, maintenance, improvement and oversight of financial controls, all of which have stood up to scrutiny of other professionals, as well as internal and external audits. ... Should my reputation be called into question by comments like those made by Councillor McConkey, then that could impair my current and future employment opportunities, cause public embarrassment to both myself and the City and/or cause my professional association to investigate."

85. Another Complainant feels, "fortunate to be led by some great leaders in this complex field. All of these leaders have shared their insight and experiences above and beyond their delegated role with their respective municipalities. Some have gone over and above their assigned roles to ensure the success of their team. To insinuate anything contradictory to that is unjust. The City of Oshawa Finance Services Department is led by a strong team player that demonstrates leadership in all her decisions. The Councillor's comments need to be addressed and a formal apology presented."

86. The Complainants collectively and individually allege that the Respondent's words contravened section 12 and section 13 of the Code. (They also alleged contraventions of section 10 and section 11 but, for the reasons explained later in this report, my inquiry did not include those provisions.) Section 12 of the Code prohibits a Member from maliciously or falsely injuring or impugning the professional or ethical reputation of any staff member.

Section 13 obliges each Member to show respect for the members of the staff, and for their professional capacities and responsibilities.

Comments at Finance Committee

87. The Complainants allege that the Respondent spoke falsely when she said, “And I had asked the Commissioner in the past about these Corporate Payments and, again, not got very far, and so I believe that they could be itemized by department.” They call the Respondent’s statement, “a complete untruth; Councillor McConkey has never approached the Commissioner about payments, the payment report or any other matters pertaining to accounts payable.”

88. Further, they believe that the Respondent suggested that City employees might be taking things that do not belong to them. They point to her comments at Finance Committee, which I have transcribed as follows:

In the career I’ve had, in my past, I have had clients, and in my own personal life, people actually take things that they shouldn’t, and I’m not accusing anyone at the staff, but the more eyes on these things, the better, and that’s probably said more than I needed to. I apologize for how emotional I can get, but I truly believe, I obviously pushed a wrong button. I did not mean to bring up the past, by talking about something that happened earlier in the history, but that’s how we learn. We learn from mistakes, and there are times when we definitely need to have more, I think, questions asked. Sorry.

89. The Complainants believe that these words imply that the employees lack integrity and are untrustworthy, as they could be taking things that they shouldn’t. They say the Respondent made “allegations [that] are slanderous, and maliciously and falsely injure or impugn the professional or ethical reputations of staff.”

90. The Complainants also take issue with the words spoken by the Respondent immediately prior those that I have quoted:

The problems that arose this afternoon had to do with, my problems, with you, Chair Gray, had to do with emotion, sorry, a report that appeared, sorry, from June, coming to, here it is the first week of November this week, and I’m not, and, and, you know, these things, if they were done in a more timely fashion, on the, the earlier agenda, for the, but these Information Packages are making it, it’s, a veil of some of the details that we should be having in front of us, right in front of our noses, and to think that, yes, I respect everyone that works for this City, but the job I have been hired for, which I take very seriously, is to make sure that we are spending the funds that come in from the taxpayer wisely, and nothing gets amiss.

91. First, they allege that the Respondent was blaming the staff for delay, when she remarked that the Corporate Payments report for June was before committee, “here it is the first week of November this week.” (In fact, it was October 28.) The Complainants point out that the June report was produced over the summer when Council was in recess.

92. Second, they allege that the words, “but these Information Packages are making it, it’s, a veil of some of the details that we should be having in front of us, right in front of our noses,” imply that the staff is hiding information.

93. Third, they object to the Respondent’s claim that, “the job I have been hired for, which I take very seriously, is to make sure that we are spending the funds that come in from the taxpayer wisely, and nothing gets amiss.” According to them, the Respondent should not have used the words “hired” and “job.” Their position is that “Councillor McConkey fundamentally does not understand her role as a City Councillor,” and “the Respondent has strayed from the proper role of a Council Member,” and “A comment such as this suggests that the Councillor may not have a clear understanding of her role.”

94. The Complainants further argue that, “Council’s role is governance and not day-to-day operations – that is the administration’s function.” Also: “The role of Council is that of a governance committee as oversight of City operations for the taxpayers of Oshawa. Their role is not to ‘get into the weeds’ at an operational level that affect the work of the employees.”

95. On this point, the Complainants rely on another section of the AMCTO materials (that is, the materials from which the Respondent would later quote to City Council). The Complainants directed my attention to the following passage:

Council has ultimate responsibility for all expenses and revenues, but it should not be involved in the day-to-day administration of the municipality; thus it should not require detailed management information. Instead, it should monitor expenses within the summary guidelines set in the current budget. In smaller municipalities, council will be more involved in the day-to-day activities and will require more detailed reports. But, even here, care should be taken that councillors don’t get bogged down in specifics to the neglect of the “big picture” which should be their primary focus.³⁷

96. The Complainants seem to feel that a Council Member who “gets into the weeds” or “gets bogged down in specifics” thereby contravenes the Code of Conduct.

97. Another allegation made by the Complainants is that the Respondent implied by her comments that they lack the qualifications to perform their jobs.

98. Finally, the Complainants allege that the Respondent’s conduct at Finance Committee was an attempt to “ambush” the Commissioner, Finance Services. According to them, “The stated purpose of pulling the [Corporate Payments] report was to obtain specific information about a number of payments issued approximately 4 months prior, without any information requested from staff in advance of the meeting.”

³⁷ AMCTO Municipal Accounting and Finance Program, Unit 1, Introduction to Municipal Accounting and Financial Reporting, note 31, at p. 128.

99. The Complainants claim that by asking questions at meetings (presumably instead of asking privately before the meetings), the Respondent is “not trying to work with staff but rather trying to ambush us, leaving her questions and issues for the floor of Council which only impedes the progress of meetings and municipal issues.”

100. The Complainants cited two additional examples, not occurring during a meeting, that they claimed were ambushes.

Comments at Council

101. The Council meeting allegations relate to the passage that the Respondent read aloud from the AMCTO learning materials.

102. Because the Respondent occasionally misquoted or missed words from the passage, and also because the Respondent omitted the prior and subsequent sentences, it is important for me to reproduce the heading and the full three paragraphs from which she took the excerpt:

The Missing Piece in the Controls Jigsaw Puzzle

In addition, it is important to recognize that control processes, no matter how well designed, will not prevent financial abuses. Indeed, a preoccupation with controls may overlook an underlying factor of central importance to the financial integrity of the municipality. The missing piece in the controls jigsaw puzzle is the prevailing organizational culture, which largely determines how people interpret and act upon information provided through the controls process.

When presented with information that shows underperformance, for example, how do municipal staff respond? Are they likely to forward the information up the line immediately, wait for the next report cycle, bury the information, or even manipulate the information slightly to make it more palatable? To the extent that the latter forms of inappropriate behaviour are exhibited, it is almost certainly because of the prevailing organizational culture. That culture, for example, might include the unspoken rule that you don't question your boss, or a “shoot the messenger” response to the bearer of bad news, or a “hear no evil” response that ignores any bad news that is forwarded. In any of these circumstances, it is unlikely that the information generated by the internal control system will be used as effectively as it could be.

Have municipalities given much thought, for example, to the way their organizational culture is being affected by the current emphasis on performance reporting? Performance targets are central to business operations and seem quite appropriate for promoting increased productivity that fattens the bottom line. But these targets, when coupled with performance bonuses, have in many cases encouraged a very short term perspective and have influenced decisions that benefit individuals now but that do not serve the best long term interests of the organization.³⁸

103. I have underlined the words that the Respondent read aloud.

104. According to the Complainants, the passage was read out of context, in a manner “disconnected from the educational materials.” They allege that, by reading the AMCTO passage, the Respondent was suggesting that suggested employees might be hiding or

³⁸ *Ibid.*, at pp. 117-118.

burying information, manipulating information, ignoring or failing to report wrongdoing, and misleading Council.

Respondent's Position

105. The Respondent acknowledges the professional work and accreditation of the Complainants. The Respondent acknowledges the laudatory conclusions of the MNP report.

106. The Respondent disagrees that she ever made malicious statements or falsely injured or impugned the professional or ethical reputation of any staff member, or made statements or acted in a manner that did not show respect for staff members and for their professional capacities and responsibilities.

107. The Respondent states that her words (including the quotation from the AMCTO materials) were not intended to be disrespectful of, or insulting to, the staff, and that anyone who feels otherwise is misinterpreting the words.

108. The Respondent stands by her conduct: "Politics is not about going along to get along. I am not sorry for asking the questions I ask at Committee and Council. I mean no disrespect to staff or my colleagues on Council, and on controversial issues naturally exchanges can become tense, but once a decision is rendered, votes cast and motions passed, the page needs to be turned."

109. Contrary to the Complainants' allegation, the Respondent maintains that she had previously discussed Corporate Payments with the Commissioner, Finance Services. She has produced an email, following up on a discussion, that asked about a specific payment to a vehicle rental company, and invites me to find that the email must have been preceded by a discussion about Corporate Payments.

110. The Respondent denies implying that employees lack integrity, trustworthiness, or the qualifications for their jobs. She says her words were taken "out of context. My words were about the process, finding a way to improve the transparency and accountability of the monthly corporate payment records. ... I hoped to have another column added to the payment records explaining what each payment relates to and have them put back on the Finance Committee Agenda ... returning to the previous decades long practice of placing the monthly Corporate Payment records on the Standing Committee Agenda where they are more visible and Council members receive printed copies, instead of on the Information Package they have been placed since April 2018 where, in my opinion, they are not so transparent, and may tend to 'fall through the cracks.'"

111. The Respondent consequently disagrees that her purpose in bringing the June 2019 Corporate Payments report to the floor of committee was to obtain specific information about four-month old payments. She points to an email trail that shows her

stated intention, all along, was to have the Corporate Payments reports (and financial statements) no longer placed in the Information Packages, and instead to have them place on the Finance Committee agendas.

112. The Respondent points to her long-standing interest in the Corporate Payments reports, dating back to 2015 when, as a private resident, she appeared before Finance Committee in an effort to prevent the reports from being discontinued.

113. The Respondent explains that she was making no allegations about the current employees. She points out that she specifically mentioned a 2010 incident when it was revealed that City funds had been used to pay for two employees' MBA programs. I understand her point to be that, because she had highlighted this specific example from the past, it is a misinterpretation to think she was referring to people's present-day conduct.

114. The Respondent cites a 2015 staff report (authored by the current Commissioner, Finance Services) that said additional information (specifically, information on confidential Corporate Payments) would "be available on the City's secured shared drive for all Councillors and the Mayor to review."³⁹ The Respondent explains that when she asked the Commissioner, "first, if I could ask, if I want to find, dig a little deeper on what these are for, is there something on the City's intranet that can give me more details?" she was thinking about the 2015 reference to information "available on the City's secured shared drive for all Councillors and the Mayor to review."

115. On the issue of the passage from the AMCTO materials, the Respondent states that she was reading it for the benefit of other Council Members, and not to direct the words to the staff. According to her:

My reason for quoting from the AMCTO "Introduction to Municipal Accounting and Financial Reporting" was not to imply any wrongdoing on the part of City Finance staff. I thought it a good quote and appropriate to my pulling the Corporate Payments report FIN-19-92 (INFO-19-262) at the Nov 4, 2019 Council meeting. I drew strength from it since I had been told by Councillor Gray at our last Committee meeting together that I needed to come around and play their game. I was attempting to convince the rest of Council that the place for the City's financial reports such as the monthly Corporate Payments Report was the Finance Committee Agenda. I had hoped the words of the quote might resonate with my colleagues on Council, as it was about not being complacent, and the importance of speaking up and not taking the easy path of avoidance.

116. To support the explanation that she was not making personal comments about the Complainants, the Respondent states that she had little or no contact with most of them.

117. The Respondent notes that none of the staff approached her to express concern about the Finance Committee or City Council comments, and the City Manager did not either, so she was surprised to receive the Complaint.

³⁹ Report FIN-15-82, note 22.

118. The Respondent feels that there ought to be an intermediate procedure to resolve complaints about staff-council relations rather than escalating to an Integrity Commissioner inquiry.

119. The Respondent's concluding comments include: "It is unfortunate some staff presume to attach motives to my questions and statements that I want to offend staff. ... asking questions is at the heart of who I am, desiring to learn and share information and work with others. Even more importantly, I believe asking questions of staff is one of the most important functions of being a Councillor."

Complainants' Reply

120. In reply to the Respondent's claim that she had little or no contact with most of the Complainants, the Complainants supplied meeting minutes showing that many of them had attended many of the same meetings as the Respondent. They pointed out that staff members present are introduced at the start of each meeting. The Complainants also noted that staff members not present for meetings often watch on the Web, and so would have heard the offending remarks.

121. The Complainants harshly criticize the Respondent's lack of financial qualifications and allege that she lacks financial understanding. Negative comments about her financial abilities include the following:

She is implying that Finance staff need oversight from elected officials, despite the fact she admitted her limited finance knowledge.

...

Councillor McConkey on several occasions in her response to the complaint admittedly stated that she is not financially astute. As a direct result of her lack of financial education and knowledge she clearly did not have an understanding of the impact of the AMCTO statement, thus did not understand fully the implications. She failed to gain an understanding prior to publicly broadcasting the statement and as such lacked in professional judgment ...

...

She has been on Council for a year and can't distinguish between basic financial processes, reports, budgets or financial reporting. Although all Councillors were provided information about Finance at their onboarding and orientation sessions. Councillor McConkey has not made a concerted effort to obtain an understanding through staff but rather attempts to ambush staff on the floor of Council.

...

It is interesting to note [in the Respondent's submissions] that someone with limited finance experience can provide better oversight of the City's finances than seasoned, qualified professionals with decades of experience.

122. The Complainants dismiss comments such as, "I'm not accusing anyone at the staff," as meaningless and not genuine.

Respondent's Sur-reply

123. The Respondent repeats that, both at Finance Committee and at City Council, what she was talking about was a recommended change to current practice and policy:

At both meetings, as stated earlier, I was attempting to move a motion for a policy which would modernize the presentation of the monthly Corporate Payments records. I sought to make them more user friendly, transparent and accountable by adding a new column to identify what the payments related to, and for them to be transferred from the Information Packages and returned to the Finance Committee Agendas where they had been for many years until the spring of 2018.

124. The Respondent says that she spoke “with respect and without malice.” She pointed to several comments that were complimentary of cooperation she had received from the staff.

125. She notes that in the middle of reading the AMCTO materials she paused and inserted the following comment (my transcription): “Not indicating any of those wrongdoings are going on, but we’re here to monitor, and it says: [continued to read from the materials].”

126. She draws attention to her closing comments at City Council, which I have transcribed as follows: “... and it, it’s a learning process still for me, so please bear with me on this. I’m not meaning to antagonize anyone. I’m not trying to grandstand on. I’m trying to get information in a, a way that we can digest it. Thank you very much.”

127. The Respondent repeats that she never made specific allegations about the Finance staff, and points to various specific alleged statements that she did not make. She notes that what *did* say included (my transcription): “yes, I respect everyone that works for this City” and “I’m not accusing anyone at the staff, but the more eyes on these things, the better ...”

128. The Respondent states that she has privately asked many questions of the Commissioner, Financial Services, but that is it appropriate to ask questions in meetings, in open session: “I find asking questions in public worthwhile as we learn from each other. ... Often, I have watched how others on Council then follow with questions that generate good ideas or motions. It is part of a process that allows for a learning dynamic, that questions in private do not.”

129. In relation to the harm suffered by the Complainants, the Respondent states that there was no media coverage of her comments and no mention in the “many social media accounts” from which she receives alerts, and that no one approached her about the statements. She says, “I am not aware of any Oshawa resident raising it with any Council member or City staff.”

130. I observe that, during their interviews, several Complainants said they had heard about the Respondent’s comments from co-workers, family members, and friends who

followed the webstreamed meetings, and that they were concerned about impact of the comments on their professional reputations and continued careers. They also said that several individual Council Members had approached them privately to apologize for the Respondent's remarks.

131. Much of the sur-reply addresses the fundamentally different understandings of the Complainant and the Respondent concerning oversight and the role of Council.

132. In her words, "As a City of Oshawa Councillor, the role I take most seriously is oversight to ensure transparency and accountability. Regardless of my 'limited finance experience' as opposed to Finance staff's 'seasoned, qualified professionals with decades of experience', ultimately as a Member of Council, I am accountable for what staff do."

133. The Respondent cites clause 286(1)(e) of the *Municipal Act*, which provides that the Treasurer's responsibilities include, "providing the council with such information with respect to the financial affairs of the municipality as it requires or requests." The Respondent correctly observes that the Act does not limit what information Council may require or request, and does not tell Council not to "get into the weeds." I note, however, that clause 286(1)(e) is referring to the Council collectively, and not to the requests or requirements of individual Council Members.

134. The Respondent summarizes the parties' different conceptions of oversight as follows:

There is a substantial difference of opinion between the Complainants and myself as to my function as an elected Councillor. ...

[nine excerpts from Complainants' letters omitted]

It is clear that the Complainants believe that an elected Councillor should not ask questions or make suggestions related to oversight of the activities of "seasoned, qualified professionals with decades of experience", and that to question "staff with professional designations ... is disrespect (sic)" and "doesn't give respect to professionals" [citations omitted]

Although [three specific Complainants] in particular each take umbrage at being questioned by a non-financial individual [citations omitted] [one specific Complainant] puts the conflicting views of my role as a City Councillor most succinctly: **"She is implying that Finance Staff need oversight from elected officials, despite the fact that she admitted her limited finance knowledge."**

Yes, I do believe that elected officials must provide oversight over Finance Staff, even when the elected officials don't possess some professional accounting designation. I find the fact that senior finance staff believe otherwise very troubling.

It seems the Complainants believe that unless Councillors possess some professional accounting designation, they should not question staff in public on financial issues. I disagree with this view.

The Complainants also seem to believe that questions or attempts to bring forward policy changes regarding the presentation of financial reports, when made in public, on the floor of Council, by a Councillor "who does not possess professional accreditation" constitutes a

“defamatory” “attack” on their integrity [citations omitted] and impugns their reputation. I disagree with this view.

[bolding in Respondent’s original]

PROCESS FOLLOWED

135. This inquiry was delayed by the COVID-19 pandemic and by settlement efforts.

136. In operating under the Code, I follow a process that ensures fairness to both the individual(s) bringing a Complaint and the Council Member responding to the Complaint. This process is based on the Complaint Procedure that was adopted by Council and is appended to the Code as Schedule A.

137. I am mindful of the fact that the financial impact of code of conduct complaints and Integrity Commissioner investigations falls entirely on the municipal tax base. Integrity Commissioners and codes of conduct have been mandated by the Province without any corresponding provincial funding.

138. In this context, I conduct a full and fair process that at the same time is efficient and reasonable taking into account the circumstances of each case.

139. I believed that this case might have settled. In my view, if it is possible for the parties to a complaint to resolve their differences without a formal report to Council, then they should always be given the opportunity.

140. I will always pause an inquiry, when appropriate, to let the parties explore possible settlement.

141. I note that a pause has no financial impact on the City. When an inquiry is paused, it generates no costs.

142. Not to settle is the parties’ right. A party has the right to seek a settlement, and a party has a right to choose not to settle. Any settlement must be voluntary and accepted by all parties. In this case, settlement did not occur.

143. I will not disclose any position taken by a party during settlement discussions. Settlement discussions are “without prejudice.” This means any concession made by a party is as if it were never made. Anything that might have occurred during settlement discussions is completely disregarded, and it has not in any way influenced the findings in this report.

144. The complaint, comprising 617 pages of materials (not counting links to videos of meetings), was received in hard copy December 12, 2019.

145. Based on a review of the complaint and materials, a decision was made to commence an inquiry under sections 12 and 13 of the Code, but not sections 10 and 11. Both parties received notice.

146. The Respondent's 37-page, 60-paragraph response was submitted January 17. She submitted a brief supplement, January 18.

147. Eleven of the twelve Complainants signed individual letters and statements, dated, with one exception, between January 23 and January 28.⁴⁰ In addition, the Complainants submitted a collective reply, dated January 28.

148. The Respondent sent a 21-page, 59-paragraph sur-reply on February 11.

149. On March 2, at Oshawa City Hall, I interviewed the Complainants individually, and the Respondent.

150. The Complainants addressed the sur-reply on Friday, March 13.

151. On Tuesday, March 17, Ontario declared a state of emergency. During the state of emergency, having regard to the impact of COVID-19 on both residents and municipal governments, I originally suspended processing of Code of Conduct complaints.

152. Upon further review, I determined that Ontario Regulation 73/20, which conferred discretion to suspend certain proceedings during the COVID-19 emergency, did not apply to code of conduct inquiries by municipal Integrity Commissioners. (During consultations on Ontario Regulation 73/20, the Government was asked to include Integrity Commissioners conducting code of conduct inquiries, but decided not to do so.)

153. However, because Ontario was still dealing with the pandemic, I proceeded slowly and gave first priority to certain inquiries on the basis of urgency and next priority to inquiries that were appropriately dealt with sooner. These included *Foster v. Chapman*, 2020 ONMIC 17 (CanLII), *Gobin v. Giberson*, 2020 ONMIC 14 (CanLII), *Gobin v. Nicholson*, 2020 ONMIC 13 (CanLII), and *Gregory v. Kerr*, 2021 ONMIC 2 (CanLII). The inquiry in *Davis v. Carter*, 2020 ONMIC 5 (CanLII), was also completed while this inquiry was ongoing, but prior to the first state of emergency. I should add that three of these inquiries were conducted under the *Municipal Conflict of Interest Act*, so their gravity was obvious.

154. An Integrity Commissioner's *Municipal Act* discretion to conduct inquiries includes the discretion to order the sequencing of multiple inquiries. An Integrity Commissioner needs this flexibility, not only because the discretion and operational independence conferred by the *Municipal Act* require it, but also so that the Integrity Commissioner can handle inquiries in a reasonable, fair, efficient, and financially responsible manner.

⁴⁰ The letter of one Complainant was dated November 19, 2019, but submitted January 28, with the rest.

155. When I took up the inquiry again, I gave the parties a fair and reasonable opportunity to settle the matter, if they chose. A settlement was not reached. The inquiry therefore proceeded to conclusion, with the issuance of this report. Nothing communicated in relation to a potential settlement has any bearing on this report.

156. The inquiry process was evenly balanced and procedurally fair. The parties provided multiple written submissions and supplemented them during oral interviews.

157. This Report does not refer to every letter, email, and document, but I have reviewed and taken into account all the documentary evidence. I have also carefully considered all the submissions of the parties.

158. In addition, approximately 20 times, I watched and listened to the recordings of the Finance Committee meeting and the City Council meeting from which the complaint arose. I have taken into account not just what was said but how it was said, and the context of the meetings. As mentioned, I have relied on the recordings and my own observations and transcription of them, not on the transcripts created by the parties.

159. Because the meetings were recorded, I did not gather witness recollections of what happened at the meetings. Further, while the parties have had full opportunities to make submissions on what took place, I deliberately declined to seek anyone else's opinion or interpretation of what was said. This report is based on the audio-visual record of what was actually said, how it was said, and in what circumstances.

160. This is essential as a matter of fairness. The determination of whether the Code of Conduct was contravened must be based on what actually took place, not on people's characterizations and opinions of what took place.

FINDINGS OF FACT

161. Findings of fact are based on the civil standard of the balance of probabilities.

162. Most of the relevant findings of fact are set out in the Background section, above. The remainder appear below.

163. There is no suggestion that the Complainants, acting individual or collectively, acted improperly, unethically, or in breach of their professional obligations. There is also no evidence to that effect. I find as a fact that the Complainants performed their duties to high standards, and the record should reflect this.

164. I find that the management and staff of the Finance Services Department at the relevant time, including Stephanie Sinnott, Jessamyn Adams, Tina Barker, Adrienne Barron, Michelle Bretherick, Lorraine Fuller, Susyn Korbak, Dave Lyon,

Jay Martin, Pat Morrison, Gary Nobile, and Kim Villeneuve, exhibited, upheld and maintained the following principles and standards:

- Professional behaviour
- Integrity and due care
- Objectivity
- Professional competence
- Confidentiality

165. I find as a fact that when Councillor Gray interrupted the Respondent's comments and questions during the Finance Committee meeting, he was acting in the capacity of Chair and presiding officer under the Procedure By-law. I find that he was enforcing rules and decorum, and warning the Respondent and calling her to order, as provided by the Procedure By-law. There was no challenge to the Chair. Finance Committee did not report the Respondent's comments and conduct to City Council.

166. I find that when she spoke the words giving rising to the complaint,⁴¹ the Respondent's volume was moderate and reasonable. For the most part, her tone was pleasant or neutral. It was always polite.

167. At Finance Committee, during the intervention of the Committee Chair and, again, the recess, the recording shows that the Respondent spoke haltingly, with some emotion, and in some apparent distress. I find as a fact that the Respondent was shaken by the exchange with the Committee Chair. I find as a fact that at these emotional points the Respondent's tone was aptly described by the phrase, "more in sorrow than in anger." At no time⁴² at either meeting was the Respondent's tone angry, mean, confrontational, rude, hostile, or condescending.

168. Having carefully considered her communications before and during the meetings, I find that the Respondent did not accuse the present staff of taking things that did not belong to them, did not accuse the staff of hiding or manipulating information, did not accuse the staff of responsibility for the timing of the June 2019 Corporate Payments report, and did not accuse the Complainants of lacking the qualifications for their jobs. While the Respondent, by her own admission, does not use words as clearly as she might intend, I find that she meant to refer, and was referring, to actual happenings a very long

⁴¹ The Complainants do not allege that the Code was contravened by the words spoken, at Finance Committee, by the Respondent to the Committee Chair. At times when she made these comments, the Respondent's volume was elevated and her voice showed emotion.

⁴² I refer only to the portions of the meetings that give rise to the complaint. The exchange between the Respondent and the Committee Chair is not covered by this description, but most of the adjectives in the sentence do not apply to that exchange either.

time ago (e.g., the MBAs from 2010) and theoretical happenings, and was not referring to present people and situations.

169. Finally, email evidence suggests, and I find on a balance of probabilities, that, months prior to the Finance Committee meeting, the Respondent and the Commissioner, Finance Services, had at least one discussion about Corporate Payments reports. While I am unable to confirm exactly what was discussed between them, the Commissioner's position was that the reports could not be itemized by department, and the Respondent's position was the opposite. The Respondent's statement that she had "not got very far" with the Commissioner seems to reflect their difference of opinion on this point.

170. I also find (as is obvious to anyone who reviews the recording) that the moment when the Respondent uttered the sentence, "And I had asked the Commissioner in the past about these Corporate Payments and, again, not got very far, and so I believe that they could be itemized by department," was one of the most emotional points of the meeting, when the Respondent clearly appeared to be shaken, and was speaking haltingly and in apparent distress. If there was an error in this sentence, I cannot find that it was deliberate.

ISSUES AND ANALYSIS

171. I have considered the following issues:

- A. Do sections 10 and 11 of the Code apply here?
- B. What is the Integrity Commissioner's role after the presiding officer has dealt with a matter at a meeting?
- C. Did the Respondent breach sections 12 and 13 of the Code?

172. Before setting out my analysis and findings, I wish to clarify the limits of my role as Integrity Commissioner and the limits of my inquiry.

173. My jurisdiction does not extend beyond Council Members' (and local board members') compliance with the Code of Conduct and the *Municipal Conflict of Interest Act*. (The MCI Act is not relevant to this proceeding.) My role does not extend to the staff of the City.

174. Further, it is not my business to comment on policy decisions and operational decisions, such as how the Corporate Payments reports should be prepared, what they should contain, and how they should be placed before Council. When I discuss the Corporate Payments reports, I do so only in the context of whether the Code of Conduct was contravened.

175. Similarly, when I discuss the role of Council in the oversight of the staff, it is only in the context of whether the Code of Conduct was contravened. Except where the Code (or the MCIA) is engaged, it is not the place of an Integrity Commissioner to tell Council how to do its job. Nor is it the place of an Integrity Commissioner to tell presiding officers how to chair meetings. For example, in this inquiry, the parties debated whether the Respondent was “getting into the weeds.” They also offered submissions on whether the Respondent’s questions make meetings run too long. These are not ethical issues. These are not topics on which the Integrity Commissioner should pronounce. In this report, I refrain from expressing my opinion on operational and procedural questions. I focus only on whether the Code of Conduct has been contravened.

176. When I conclude that conduct does not contravene the Code of Conduct, this must not be interpreted as a conclusion that the conduct is desirable or undesirable. It is simply a finding that the Code is not contravened.

A. Do sections 10 and 11 of the Code apply here?

177. At the outset of the proceeding, I declined to consider sections 10 and 11 of the Code because they are not applicable. I informed the parties that I was exercising my discretion not to include sections 10 and 11 in the inquiry.

178. Section 10 (Conduct Respecting Others) does not apply because the allegations in the complaint, even if proved, do not amount to harassment as that term is understood under Ontario law and as defined in the Code. Further, the complaint does not identify words or expressions that are indecent, abusive, or insulting.

179. Section 11 (Conduct Respecting Staff) does not apply because the allegations in the complaint do not relate to the staff’s political neutrality and objectivity in giving advice or to attempts to unduly influence the giving of advice.

B. What is the Integrity Commissioner’s role after the presiding officer has dealt with a matter at a meeting?

180. In my view, once the presiding officer of a meeting has dealt with an issue of order or decorum, including an issue related to a Member’s questions and comments, the Integrity Commissioner should not duplicate that work by making parallel findings under the Code of Conduct.

181. I have found as a fact that Councillor Gray, as Committee Chair and presiding officer, dealt with concerns about the Respondent’s questions and comments during the Finance Committee meeting. I have found as a fact that he did so in the exercise of his functions under the Procedure By-law.

182. The presiding officer obviously, clearly, and unambiguously intervened to stop comments and questions that he felt were out of order. It is not my place to evaluate how the situation was handled. What matters is that the Respondent's comments and questions were interrupted, addressed, and corrected, on the spot, weeks before the complaint was filed.

183. In inquiries under other municipalities' codes of conduct, I found that I should exercise my discretion not to deal with a complaint whose subject matter falls squarely within the boundaries of the rules and enforcement mechanisms of the relevant procedure by-law: *Dhillon v. Moore*, 2018 ONMIC 15 (CanLII), at para. 82; *Moore v. Maika*, 2018 ONMIC 7 (CanLII), at para. 72.

184. In the City of Toronto, Integrity Commissioners have consistently taken the position that they do not have jurisdiction over the behaviour of Council Members during Council and committee meetings. Professor David Mullan, the first municipal Integrity Commissioner ever appointed in Canada, noted that the *Municipal Act* requires that each municipality pass a procedure by-law⁴³ and that the procedure by-law provides a clear mechanism for enforcing decorum and orderly conduct during meetings. Integrity Commissioner Mullan concluded:

In general, the Integrity Commissioner does not have authority under the Code of Conduct to review complaints about the behaviour of Councillors at Council and Committee meetings. The behaviour of Councillors at Council, while regulated by the Code of Conduct, is the responsibility of Council (acting primarily through the Mayor or his deputy). Absent a resolution of Council requesting the Integrity Commissioner to become involved, this self-policing is part of the statutory rights and privileges of Council.⁴⁴

185. Subsequently, Toronto's Interim Integrity Commissioner Lorne Sossin,⁴⁵ Integrity Commissioner Janet Leiper,⁴⁶ and Integrity Commissioner Valerie Jepson,⁴⁷ all declined to exercise jurisdiction over comments made during meetings. As Integrity Commissioner Jepson explained:

The strong policy principle behind this approach is that the Integrity Commissioner ought not to interfere with the conduct and management of any particular meeting. This makes good sense. The Speaker, or any Chair of a meeting, requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with the procedural bylaw and as specifically stated therein, to oversee order and behaviour of members (s. 27-43(C)). So, if a councillor uses an insulting term against another councillor, in an effort to ensure decorum, the speaker might rule the question out of order and seek some remedial measure such as an apology or – in a serious

⁴³ *Municipal Act, 2001*, subsection 238(2).

⁴⁴ City of Toronto, Report on Complaint (April 6, 2005), Integrity Commissioner David Mullan, at 4.

⁴⁵ City of Toronto, Integrity Commissioner Annual Report-2009 (July 29, 2009), Interim Integrity Commissioner Lorne Sossin, at 12.

⁴⁶ City of Toronto, Integrity Commissioner Annual Report-2010 (June 28, 2010), Integrity Commissioner Janet Leiper, at 4.

⁴⁷ City of Toronto, Report from the Integrity Commissioner on Violation of Code of Conduct: then-Mayor Rob Ford (September 22, 2015), Integrity Commissioner Valerie Jepson, at 10.

case – an ejection from the meeting. In most cases, these issues are resolved and the meeting proceeds. There would be little gained by a subsequent referral to the Integrity Commissioner to review the actions.⁴⁸

186. I also note, as Toronto's Integrity Commissioners have observed, that federal and provincial integrity commissioners/ethics commissioners do not exercise jurisdiction over comments made in the House or in committee. In Parliament, the Legislature, and committees, responsibility for enforcing order rests with the Speakers and the committee chairs.

187. Oshawa's Procedure By-law, By-law 111-2017, sets clear rules of decorum and gives the presiding officer all the tools necessary to enforce order.

188. Section 7.5 provides that the roles of Members include: refraining from using indecent or offensive language or behavior; refraining from engaging in debate with persons appearing before Council or Committee; being respectful of each other's roles and responsibilities; and respecting and following the decisions of Council and Committees. (Interestingly, section 7.5 also expressly recognizes the role of Members to seek information and advice from staff prior to and during a meeting.)

189. Section 7.2 provides that it is the role of the Chair of a meeting to enforce rules and decorum, and to ensure that meetings are conducted in an orderly fashion.

190. In addition to subsection 241(1) of the *Municipal Act*, which provides for expulsion, section 7.7 of the Procedure By-law empowers the Chair to enforce decorum and order through measures that include a formal verbal warning, calling a Member to order, ordering a Member to leave (and requesting the assistance of the security staff), and allowing a Member to apologize.

191. Councillor Gray, the Chair, was exercising these powers when he interrupted the Respondent's comments and questioning, and very publicly corrected her. In my view, nothing would be gained by having me review meeting conduct that was already reprimanded by the Committee Chair.

192. While the preceding observation would apply in the abstract, it is particularly compelling in this particular case. The online recording of the Finance Committee meeting shows that the Chair's intervention with the Respondent was direct, firm, reprimanding, and not brief. The online recording shows that the Respondent was shaken by the public admonition, that a recess was voted, and that afterward the Respondent appeared to be somewhat still affected by the reprimand.

193. To be clear, this is not a comment on the Chair's handling of the situation. The Chair was exercising his authority under the Procedure By-law. My point is that, after such

⁴⁸ *Ibid.* Note that in Toronto a Speaker, and not the Mayor, chairs meetings of Council.

an occurrence, it seems completely unreasonable, not to mention unnecessary, for an Integrity Commissioner to come in and review the conduct that was already rebuked by the Chair.

194. Most of the Complainants were present during the Finance Committee meeting or they watched the webstream. They witnessed the Chair's reprimand. They witnessed how the reprimand was very noticeably felt by the Respondent, and how shaken she was. Anyone can witness the same, at http://video.isilive.ca/oshawa/FIN_2019-10-28.mp4.html. Clearly, the Complainants consider those results to be insufficient, and they want the Integrity Commissioner to pile a Code of Conduct finding on top of the Chair's reprimand. Having carefully considered the recording of the meeting, I believe that it would be unwarranted for me to duplicate or to supplement the Chair's exercise of his authority.

195. Apart from the comments and questions that were interrupted, stopped and reprimanded, the Respondent's other statements and questions were permitted by the presiding officers. After the recess, the Finance Committee Chair did not warn the Respondent again. Subsequently the Committee Chair put her motion to a vote; clearly, it was in order. During the Respondent's remarks to City Council, the Mayor did not interrupt her, warn her, or call her to order. In fact, twice the Respondent paused, and each time Mayor permitted her to proceed. I believe that it is not the place of an Integrity Commissioner to second guess the judgement of the presiding officers by reviewing language that they did not interrupt, correct, or call to order.

196. Despite these observations, I will nonetheless consider whether section 12 and section 13 of the Code were contravened.

C. Did the Respondent breach sections 12 and 13 of the Code?

197. I conclude that she did not.

198. Section 12 states that, "No Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff."

199. Section 13 requires that, "Each Member shall show respect for staff, and for their professional capacities and responsibilities."

200. I begin with the observation that, when a complaint is based on what a Council Member has said, it is important to be reasonable and fair in considering the gist of the whole statement, without placing undue emphasis on a particular word. As was noted in *Greatrix v. Williams*, 2018 ONMIC 6 (CanLII), at paragraph 164:

It is important to remember that Council Members, when they send emails, use the language of ordinary people and not of legal drafters or judges. It would be inappropriate, therefore, to pick apart the wording of a Council Member's email as if it were a legal contract or a judicial decision.

201. The observation in *Greatrix v. Williams* referred to an email, but the same principle applies to oral statements.

202. The Respondent mentions that, prior to the complaint, she was unaware of the Complainants voicing any concern about her Finance Committee remarks or her City Council remarks. While someone *may* raise concerns informally before filing a complaint, this is not a requirement. It is not relevant that the Complainants proceeded directly to a formal complaint.

203. The Respondent also comments on whether the joint complaint was organized by a single individual. I am satisfied that each Complainant is knowingly, voluntarily, and willingly participating in the complaint. That is what matters. How they came together to submit one complaint is irrelevant, and I did not explore that background.

204. The Respondent claims to have not known most of the Complainants. I accept the Complainants' evidence that many of them had been present, and introduced, at meetings attended by the Respondent. In any event, it is possible to contravene sections 12 and 13 in relation to staff members that one has never met.

205. The Respondent also asserts that the Commissioner, Finance Services, by silence, acquiesced in the reading of the excerpt from the AMCTO materials at the City Council meeting. I cannot accept this argument. The Commissioner is not a Council Member. In any event, all remarks are to be addressed to the presiding officer (in this case, the Mayor). The silence of somebody who is not a Member of Council and to whom the Respondent's remarks were not (supposed to be) addressed has absolutely no bearing on the Respondent's responsibility to comply with the Code.

206. I am very much aware that the twelve Complainants feel the Respondent's comments were directed to them and other staff members. I understand, from their perspective, why they view the situation that way. However, having reviewed the background to the meetings, having observed (numerous times) the Respondent's remarks during the meetings, and having noted the consistency in her communications, I have found that the Respondent was advocating two simple things: 1. To have the monthly Corporate Payments reports restored to the Finance Committee agenda (where they were before being placed in the Information Package starting in 2018). 2. To have further detail, perhaps in an additional column, included in the Corporate Payments reports, to identify the relevant department or the purpose to which the payments relate.

207. While the Respondent did ask specific questions about specific payments, she did so in the context of the advocacy described above. In particular, I understand her questions to relate to the case she was trying to make for adding a column of more detail to the Corporate Payments reports. There is ample documentary evidence that this, and not "ambush," was the Respondent's objective.

208. It is not for me to assess whether the Respondent's suggestions were reasonable or unreasonable, and practical or impractical. The Commissioner, Finance Services, wrote, "the report cannot be modified as you [the Respondent] have requested." The Respondent then prepared a mock-up that purported to demonstrate that modification was, in fact, possible. My role is not to insert myself between the two positions. For the purposes of this inquiry, it does not matter who had the better position on formatting Corporate Payments reports.

209. What is relevant to this inquiry, and what I do conclude, is that a Council Member does not contravene the Code of Conduct by advocating a new method of Corporate Payments reporting or advocating that these reports be placed back on the Finance Committee agenda.

210. Even where a staff member says a method of reporting is not possible, and a Council Member prepares a mock-up report that purports to show otherwise, the Council Member does not contravene the Code. Disagreement with the staff does not equate to disrespect for with staff. Disagreement with the staff does not equate to disrespect for the staff's professional capacities and responsibilities.

211. The Complainants are critical of the Respondent's lack of financial knowledge and expertise. I am understanding of the context in which the criticisms were levelled. The Complainants *believed* that the Respondent had insulted their professionalism, and they responded, in part, by pointing to her lack of financial credentials.

212. Nonetheless, it is not a contravention of the Code for a Council Member to question, or even to disagree with, the recommendation or analysis of a staff member who possesses greater expertise.

213. In fact, our system of government assumes that non-experts will have oversight of experts. Politicians may be experts in certain matters, but expertise is not a requirement for election to office. It is the nature of our democracy that non-expert, elected officials oversee the operations of subject-matter experts who work in municipal, provincial, and federal governments. It may or may not be wise, but it is not unethical, for the non-expert to disagree with the expert. The Code of Conduct requires that elected officials show respect for the staff; it does not compel deferring to the staff's advice in all cases.

214. As mentioned at paragraph 168, I have found that the Respondent did not accuse the present staff of taking things that did not belong to them, did not accuse the staff of hiding or manipulating information, did not accuse the staff of responsibility for the timing of the June 2019 Corporate Payments report, and did not accuse the Complainants of lacking the qualifications for their jobs. Consequently, there was no contravention of sections 12 and 13 on these bases.

215. On the allegation that the Respondent falsely told Finance Committee, “And I had asked the Commissioner in the past about these Corporate Payments and, again, not got very far, and so I believe that they could be itemized by department,” I have found that a discussion likely did occur, and that if report formatting came up in the discussion then the Respondent and the Commissioner would have been on different sides of the issue.

216. I have also found that the Respondent spoke these words at a moment when she was clearly, audibly, shaken and in apparent distress. I do not know why the Complainants include in their complaint an allegation that words spoken in such conditions were not completely accurate. Even if I am wrong about the accuracy of the statement, I cannot find that the inaccuracy was deliberate.

217. Next, while election to office as a City Councillor is not technically the same as being hired for a job, a Council Member does not breach the Code of Conduct by saying she was “hired” for a “job.” Nothing in the Code allows me, as Integrity Commissioner, to pick apart someone’s words so particularly.

218. On the issue of how much oversight of the staff is appropriate, I start with the observation that the oversight function belongs to the Council, not to individual Members. (Strictly speaking, oversight is not the Respondent’s function; it is the function of the 11-person body to which she belongs.) A corollary is that it is for the Council, not the staff, and not the Integrity Commissioner, to determine how to exercise this function. If the Council wishes to ask more questions, or fewer, that is its prerogative. Whether a Council chooses to get bogged down in the details or to oversee from a high level, that is not an ethical question for the Integrity Commissioner to address.

219. The Complainants believe that if Council Members “get into the weeds” at an operational level, this affects the work of employees and becomes a Code of Conduct issue. With great respect to their position, this is not the case. An Integrity Commissioner is in no position to judge how detailed or how relaxed Council’s oversight should be and, in either case, a Code contravention is not involved.

220. I have carefully considered the Respondent’s reading of the excerpt from the AMCTO educational materials. I have considered the words, and how they were spoken, including the tone, the demeanour, and the context. I have found that the Respondent was attempting to make the case, to Council, for her twin objectives of having the Corporate Payments reports returned to the Finance Committee agenda and of having another column, with more detail, added to the reports.

221. The passage from which the Respondent read is not intrinsically wrong. Indeed, nobody in this proceeding has disagreed with the content. The Complainants’ argument is that the passage was read out of context, and that the Respondent did not understand what she was reading. If the second point is correct, then there was no contravention of the Code. As to the first point, context, I find that the parties are talking about different

contexts. The Complainants feel that the Respondent was referring to them. The Respondent maintains she was speaking to Council and trying to convince Council of the Respondent's position on reporting. Essentially, the Respondent is suggesting that the Complainants did not appreciate the context in which the excerpt was read aloud and therefore assumed, wrongly, that the passage was quoted in reference to them.

222. I conclude that reading from the AMCTO materials did not contravene the Code.

223. The Respondent was consistent in communicating that she wanted (in her opinion) to improve the flow of this information. Her closing remarks to City Council were, "I'm not meaning to antagonize anyone. I'm not trying to grandstand on. I'm trying to get information in a, a way that we can digest it. Thank you very much."

224. The Complainants might disagree with the Respondent's position on "get[ting] information in a ... way that we can digest it." Council might disagree with the Respondent's position. (Indeed, Finance Committee defeated her motion on a 2-2 vote.) I express no view on the merits of the Respondent's position on getting the information. What I do conclude is that the Respondent did not contravene the Code when she expressed dissatisfaction with how the Corporate Payments information was being presented, and she did not contravene the Code when she advocated a different method of presentation.

225. I accept the Respondent's characterization of the complaint, namely, as allegations that questions or attempts to propose changes to the presentation of financial reports, when made in public in Council or committee, by a Member without financial qualifications, are an attack on the staff's integrity and impugn the staff's reputation. Based on all the evidence, I cannot uphold the allegations.

ADDITIONAL OBSERVATION

226. This particular case highlights a delicate aspect of the position of municipal Integrity Commissioners in Ontario.

227. In most municipalities, Integrity Commissioners are selected by RFP or similar formal procurements. In most cases, the selection of Integrity Commissioners is handled entirely at the staff level, and the only role of Councils is to approve staff recommendations.

228. For example, in the case of me as Oshawa's Integrity Commissioner, the procurement was conducted by the Regional Municipality of Durham, not by the City, but otherwise the process was as I have described.

229. The independence of Integrity Commissioners is confirmed by the *Municipal Act*.

230. In a case such as this, where the fundamental dispute is about how to discharge the function of oversight of the staff, about how “hands on” Council should be, and about how, and how many, questions should be asked of the staff, independence is particularly important.

231. In my view, how Council chooses to exercise oversight of the staff – such as whether to “get into the weeds” or to oversee from a high level – is a policy decision not covered by the Code of Conduct and on which the Integrity Commissioner should express no opinion.

232. An additional consideration is that Integrity Commissioners who are typically selected by municipal staffs (and ratified by municipal councils) must maintain independence when asked to consider staff complaints about council oversight.

RECOMMENDATIONS

233. In the circumstances, I believe it is important to confirm that the employees in the Finance Services Department have performed their duties to high standards, and, in particular, have exhibited, upheld, and maintained professional behaviour, integrity and due care, objectivity, professional competence, and confidentiality. I recommend that Council adopt this finding.

234. Otherwise, I recommend that this report, including the conclusion that Councillor McConkey did not contravene the Code of Conduct, be received for information.

CONTENT

235. Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
City of Oshawa

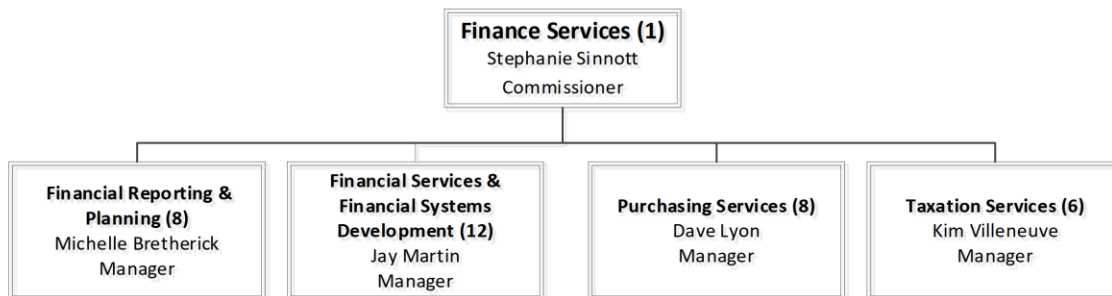
May 15, 2021

APPENDIX 1 - COMPLAINANTS

The following are the names of the Complainants, in the order they were listed in the Complaint, and their professional qualifications as of the time of filing:

Stephanie Sinnott, CPA, CGA (designated in 1995)
 Michelle Bretherick, CPA CGA (designated in 2014)
 Jay Martin, CPA, CGA (designated in 2000)
 Lorraine Fuller, CPA, CMA (designated in 1995)
 Susyn Korbak, CPA, CGA (designated in 2011)
 Adrienne Barron, CPA, CGA (designated in 2015)
 Gary Nobile, CPA Student
 Jessamyn Adams, CPA Student
 Dave Lyon, CPPB (designated in 2005)
 Tina Barker, CSCMP (2001), CPM (2002), CPSM (2011)
 Kim Villeneuve
 Pat Morrison

APPENDIX 2 – FINANCE SERVICES DEPARTMENT



FTE:35