

## **CITY OF VAUGHAN**

### **EXTRACT FROM COUNCIL MEETING MINUTES OF OCTOBER 29, 2024**

Item 15, Report No. 35, of the Committee of the Whole, which was adopted, as amended, by the Council of the City of Vaughan via recorded vote on October 29, 2024, as follows:

***By receiving the comments from the Integrity Commissioner; and***

***By receiving the following Communications:***

***C5. Regional Councillor Mario Racco; and***

***C7. Erica Fini, Miller Thomson LLP, New Park Place, Vaughan, on behalf of Regional Councillor Mario Racco, dated October 26, 2024.***

#### **15. FORMAL CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT #071624(1), 071624(2)**

**The Committee of the Whole recommends:**

- 1. That the recommendations contained in the following report of the Integrity Commissioner and Lobbyist Registrar, dated October 22, 2024, be approved; and**
- 2. That the following communication be received:**
  - C3. Memorandum from the Integrity Commissioner and Lobbyist Registrar, dated October 22, 2024.**

#### **Recommendations**

- 1. That Council issue a formal Reprimand to Local and Regional Councillor Mario G. Racco in relation to his actions in contravention of the Code set out in the findings in the Complaint Investigation Report; and**
- 2. That Council suspend the remuneration paid to Local and Regional Councillor Mario G. Racco for a period of 10 days.**

## Committee of the Whole (2) Report

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**DATE:** Tuesday, October 22, 2024

**WARD(S):** ALL

**TITLE:** FORMAL CODE OF CONDUCT COMPLAINT INVESTIGATION  
REPORT #071624(1), 071624(2)

**FROM:**

Suzanne Craig, Integrity Commissioner and Lobbyist Registrar, Office of the Integrity Commissioner and Lobbyist Registrar

**ACTION:** DECISION

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**Purpose**

Under Part B of the Complaint Protocol for the Vaughan Council Code of Ethical Conduct (the “Code”), following the investigation of a formal Code complaint, the Integrity Commissioner shall report her findings to Council.

**Report Highlights**

- This Report sets out the findings of 2 Complaints. The first Complaint that alleged that the Respondent’s conduct contravened Rules 10, 13, 15 of the Code of Conduct for Members of Council and Local Boards by:
  - making derogatory comments about a matter that was subject of litigation before the OLT knowing that the Respondent would be unable to respond;
  - commenting himself on the matter before the OLT, denigrating Council’s decision-making; and
  - making disparaging comments about a majority of Members of Council.
- The second Complaint alleged that the Respondent did not conduct himself with appropriate decorum in contravention of Rule 15 of the Code, when he:
  - removed the Complainant Member of Council from an email thread initiated by a resident, and making disparaging comments about the Complainant (and Council) without her knowledge and to ascribe a negative motive to the Complainant’s lack of action.

### **Report Highlights continued**

While I did not consolidate the Complaints, I determined that due to the overlap between them, as well as the information contained in the Respondent's responses, I have set out my findings in a single report.

I find that the allegations of the Complaints have been sustained.

### **Recommendations**

1. That Council issue a formal Reprimand to Local and Regional Councillor Mario G. Racco in relation to his actions in contravention of the Code set out in the findings in the Complaint Investigation Report; and
2. That Council suspend the remuneration paid to Local and Regional Councillor Mario G. Racco for a period of 10 days.

### **Background**

The Complaints relate to a contentious development project at Langstaff Road and Highway 400. A developer made a planning application concerning 661 and 681 Chrislea Road to Vaughan Council. The matter was considered at a Council meeting on December 12, 2023.

The Complaint alleged that the Respondent made offensive statements in emails dated June 26 and July 5, including those which denigrated a Council decision.

The Complainant alleged in Complaint 2 that the Respondent removed her from an email thread inappropriately. She alleged that he did so to damage her reputation with the residents as she would continue to appear silent (i.e., not "for the people").

### **Previous Reports/Authority**

N/A

### **Analysis and Options**

As set out in the *Commentary* to Rule No. 13, a "Member must not denigrate a City by-law in responding to a citizen, as this undermines confidence in the City and the rule of law."<sup>1</sup> Municipal officials are free to vigorously debate and discuss matters of public interest, however, they must act reasonably and respectfully and satisfy themselves as to the truth of any allegations.

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<sup>1</sup> Hogg & Wright at para 38:13. See also Conseil scolaire francophone de la Colombie-Britannique v British Columbia, 2020 SCC 13 at para 153.

The Respondent went beyond stating his position that he disagreed with a decision of Council. He referred to their “childish actions”. The Respondent’s “childish actions” comment is an allegation that Vaughan Council responded in a *childish* way to the Minister’s actions, through the council decision they made. This was not about the right of a Member of Council to dissent. Referring to Council’s actions as “childish” can only be reasonably viewed as disparaging of members and denigrating of Council’s decision.

The intentional removal of the Complainant from the email thread is inappropriate and does not evidence the Respondent behaving in an exemplary manner. By removing the Complainant from the thread and criticizing the lack of response from others on council (which includes the Complainant), the Respondent ensured that the Complainant could not respond.

Removing a fellow Council Member from an email thread is not an act of efficacy as suggested by the Respondent. A Member of Council may decide to remove staff or individuals or organizations external to the City of Vaughan. The Code does not preclude a Member from limiting to whom they will include in a response. However, when the email “to” line, includes 2 Members of Vaughan Council and when one Member (the Respondent in this case) removes the email address of the other from the email thread, and includes all others on the original email, this action is deliberate and not a function of email management efficacy and had the result of causing, the Councillor to not view the ongoing comments and questions of a resident of Vaughan and not provide her comments whether through email response or inviting the resident to a meeting or a discussion by phone.

Rule 15 of the Code requires that Members act with appropriate decorum. The Respondent failed to do so; his conduct was not exemplary. He manufactured a situation to prove his point – that other members of council are not helping the resident – when the resident had reached out to two members of council, including the Complainant. There is no adequate explanation for this conduct.

### **Financial Impact**

N/A

### **Operational Impact**

N/A

### **Broader Regional Impacts/Considerations**

N/A

## **Conclusion**

In deciding on a recommendation, I considered the purpose of an accountability regime and having Code of Conduct rules.

I determined that the actions of the Respondent warrant more than a reprimand but that the length of any suspension of pay should not be overly punitive but that a meaningful sanction was necessary to prevent repetition of the offence by the Respondent or others.

## **The Role of Council when receiving Integrity Commissioner Code of Conduct Reports**

When the Integrity Commissioner submits to Council a Code of Conduct Complaint Investigation Report, Council:

- receives the Report which contains the Integrity Commissioner's findings and recommendations;
- may accept, vary or reject the Integrity Commissioner recommendation on sanctions, if any;
- may ask the Integrity Commissioner questions of clarification on her process. Questions seeking clarification go to the Integrity Commissioner. The Member subject of the Complaint is not investigated at Council;
- may not ask questions of the Member who has been investigated. The Integrity Commissioner is the third-party investigator and fact finder and the only person who may question the Member in the course of the investigation process. Once the Integrity Commissioner's Report is before Council, the investigation is complete and Members may not re-open the Integrity Commissioner's Investigation or attempt to fetter the fulfilment of her statutory role.

Section 223.6(2) of the *Municipal Act* sets out that:

### **Report about conduct**

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

The Integrity Commissioner is the finder of fact and has statutory authority to manage Code complaints pursuant to provisions of the Complaint Protocol. The Code of Conduct regime set out in Part V.1 of the *Municipal Act* does not contemplate questioning of the Respondent by Council or further consideration of the underlying facts of the complaint after the Integrity Commissioner has made a report. Neither may the Respondent raise new issues or request a reconsideration by the Integrity Commissioner or Council or any matters relating to the investigation.

## Exception to disqualifying pecuniary interest, consideration of penalty

Section 5 (2.1) of the *Municipal Conflict of Interest Act* (the “MCIA”) states that if a matter is under consideration at a meeting or a part of a meeting of Council to consider whether to suspend the remuneration paid to the member under [subsection 223.4 \(5\)](#) or [\(6\)](#) of the [Municipal Act, 2001](#):

1. Despite clauses (1) (b) and (c), ***the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.*** (emphasis added)
2. Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration. [2017, c. 10](#), Sched. 3, s. 3.

The Respondent may attend and speak at the meeting (or submit a written statement). The Respondent is not permitted to vote on the matter.

**For more information**, please contact: Suzanne Craig, Integrity Commissioner and Lobbyist Registrar 905-832-2281 x8301.

## **Attachments**

1. Formal Code of Conduct Complaint Investigation Report #071624(1), 071624(2)

## **Prepared by**

Suzanne Craig, Integrity Commissioner and Lobbyist Registrar 905-832-2281 x8301

## Formal Code of Conduct Complaint Investigation Report #071624 (1 and 2)

### *Summary*

This report presents the findings of my investigation under the City of Vaughan Code of Ethical Conduct (the “Code”) relating to the conduct of Regional Councillor Mario G. Racco (the “Respondent”) in connection with 2 complaints (“Complaint #1, Complaint #2, together the “Complaints”). While I did not consolidate the Complaints, I determined that due to the overlap between them, as well as the information contained in the Respondent’s responses, I have set out my findings in a single report.

Complaint #1 alleges that the Respondent did not conduct himself with appropriate decorum in contravention of Rule 15 of the Code, when he responded by email on June 26 and July 5 to resident emails about a development project that was the subject of litigation before the Ontario Land Tribunal (“OLT”). The Respondent copied executives from ratepayer associations throughout the city, elected officials from all levels of government, and various media outlets. The Complainant alleged that in the email, the Respondent:

1. made derogatory comments about a matter that was subject of litigation before the OLT knowing that [Councillor Martow] would be unable to respond;
2. commented himself on the matter before the OLT, denigrating Council’s decision-making; and
3. made disparaging comments about a majority of Members of Council.

The Complainant alleged that the Respondent’s actions left her “with two unpalatable options regarding the email thread”):

- a. “Option 1: Follow the advice<sup>1</sup> by staying silent and not defend [her]position”;
- b. “Option 2: Go against the advice and request of our esteemed leadership team by responding to both the email chain and the insulting accusations in [the Respondent’s] public response.”

I find that the alleged conduct raised in Issues #1, #2 and #3 were borne out and constituted a violation of Rules 10, 13 and 15.

Complaint #2 alleged that the Respondent did not conduct himself with appropriate

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<sup>1</sup> The Complainant received advice from staff that she should not comment on matters before the OLT.

decorum in contravention of Rule 15 of the Code, when he removed the Complainant Member of Council from an email thread initiated by a resident's association, in an attempt to post disparaging comments about the Complainant (and Council) without her knowledge and to ascribe a negative motive to the Complainant's lack of action.

I find that the allegation raised in Complaint 2 was borne out, and it constituted a violation of Rule 15.

### ***The Process***

On July 16, 2024, the Office received the formal complaints.

On July 19, 2024, I notified the Respondent of the receipt of the Complaints and that I had decided to begin a formal investigation. In accordance with section 7(i)(a) of the Complaint Protocol, I required the Respondent to provide a written reply to each Complaint within 10 days. On July 30, 2024 the Respondent submitted his written reply to the Complaint.

On July 30, 2024, in accordance with section 7(i)(b) of the Complaint Protocol, I provided the Complainant with a copy of the Respondent's reply to each Complaint with an invitation to submit her comments, if any, in 10 days.

On August 2, 2024, the Complainant provided her reply.

Section 8 of the Complaint Protocol sets out that following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution. However, having reviewed the responses to the Complaints and the supporting documents, and having spoken with the Complainant and Respondent, I determined that there was no opportunity for an informal resolution. I made the decision to proceed to a formal investigation resolution.

I determined that the Complaints were not frivolous. Many Ontario statutes contain provisions that allow an administrative decision-maker to refuse to investigate, or to dismiss a complaint where the complaint is frivolous, vexatious or not made in good faith. In general, in the administrative law context, a complaint is frivolous or vexatious when it is a waste of time or when it aims to harass the subject of the complaint.<sup>2</sup> As Integrity Commissioner for the City of Vaughan, I take allegations of complaint very seriously. At the same time, I recognize that the member is entitled to have allegations investigated given the potential impact on the reputation of a duly elected official and the potential sanctions as set out in the *Municipal Act*. If a complaint is properly addressed to matters within the Code, I will accept the complaint for investigation.

During my investigation, I reviewed relevant public City documents and emails from the Complaint. I spoke with staff at the City in order to receive clarification on City

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<sup>2</sup> *Modi v. Paradise Fine Foods Ltd.*, 2007 HRTO 30 at para. 18



processes and protocols. I also sought clarification from the Complainant about certain aspects of the Complaint. This Complaint involves emails. The documentary evidence is before me. I determined that it was not necessary to interview witnesses external to the City during my investigation.

In his response, the Respondent stated that the Complaints had insufficient or no grounds to investigate and was made in bad faith. I disagree. A complaint that addresses alleged misconduct caught by the Code will generally not be in bad faith, in the absence of a design to mislead or deceive, or a dishonest purpose. I received no evidence of that here.

On September 8 and 9, 2024 , I provided a copy of my draft findings to the Complainant and Respondent and provided them with an opportunity to provide comments on errors or omissions of fact and that I would take these into consideration in drafting a final report.

On September 13, 2024, the Respondent wrote to me advising:

“I have finished my reply, but I wish to review for potential errors. Until what time do I have to reply to you”

In my response I said:

In my communication on September 10<sup>th</sup>, I requested that you provide your comments if any to my draft find with respect to errors or omissions of fact, by Friday September 13<sup>th</sup>. While generally, end of business day would be preferred, I will accept at any time today.

Please be reminded that I will take into consideration your comments regarding errors or omissions of fact, in the drafting of my final report. Please also be reminded that this is not an opportunity to make supplementary submissions, introduce new evidence or dispute my findings. Should you disagree with my findings, you are permitted to speak to the item when received by Council.

On September 19<sup>th</sup>, I received the Respondent's comments to my draft findings. At the conclusion of his comments, the Respondent wrote:

I did not think I needed a lawyer to address the complaint since I felt that there was no ground on the accusation, but after your draft report email to me on the evening of the 10 September 2024, I did not have the time to get professional help.

On September 19<sup>th</sup> I wrote to the Respondent and my communication included the following:

On July 19, 2024 I provided you with Notice of Receipt of a Formal Code of Conduct Complaint in which you were named as Respondent. In that correspondence, I set out that in accordance with section 6 of the Code of Conduct Complaint Protocol, I am required to conduct an initial classification to

determine if the matter is, on its face a complaint with respect to non-compliance with the Code of Conduct, and not covered by other legislation, or other Council policy as described in subsection 3 of the Complaint Protocol. I further stated that I had completed my preliminary review and I decided to proceed with an investigation of the matter as I determined that the Complaint appeared *prima facie*, to be a complaint within the jurisdiction of the Integrity Commissioner and that it appeared not to be frivolous, vexatious or made in bad faith. I concluded my correspondence to you by stating that in accordance with section 7(i)(a) of the Complaint Protocol, I required you to provide me with a written response to the allegations in the Complaint within ten days on or before July 29<sup>th</sup>, 2024.

After receiving your response, I prepared my draft findings and provided them to you. In your September 13, 2024 email, you state at the end of your comments that:

I did not think I needed a lawyer to address the complaint...I did not have the time to get professional help”

[...] you considered but elected not to obtain legal advice... I take it that you now wish to have the opportunity to do so. While I would typically determine that you are bound by your earlier decision not to seek advice, I have decided to exercise my discretion to grant you additional time to obtain legal advice. This is outside my normal process, and I do not intend to provide opportunities to belatedly seek legal advice to members in the future. The Complaint Protocol does not provide for the Respondent to submit additional comments after the Integrity Commissioner has concluded her investigation. Ordinarily I would not provide this option to a Respondent, however, in the unique circumstances of this Complaint being filed during the summer hiatus during which time there are no regularly scheduled Committee of the Whole or Council meetings, and given that I am within the time limitations for submitting my final report, I will grant you until September 29<sup>th</sup>, to obtain legal advice and provide additional comments, should you decide to do so.

On September 25<sup>th</sup>, I received correspondence from the Respondent's lawyer with his additional comments in response to my draft findings. In these comments from the Respondent's lawyer, they stated that “only one complaint has been listed”. The Respondent's submissions went on to state that “I will now address the complaints not formally listed in the Complainant's Affidavit dated July 15<sup>th</sup>, even though I stand by the position that it was an error to consider these complaints in the first place.” The Respondent is incorrect. He was provided with a copy of the two Complaints and supporting documentation emails on July 19. On July 23<sup>rd</sup>, the Respondent provided his comments which included the following:

I am in receipt of 4 emails making reference to two formal complaints. From what I have read it seems that there is nothing unreasonable that I said/wrote nor that

a reasonable taxpayer would object to. We are elected to public office to make good decisions for our constituents and disagreements occur daily, communicating with our constituents and letting out constituents know our position on the issues important to them in something that taxpayers expect.

On October 3<sup>rd</sup>, I provided the Complainant and Respondent with my final report. I subsequently followed the City's process and submitted a copy of the final report to the City Clerk's Office to be included in the agenda of the next Council meeting.

### ***Background***

Complaint 1 referenced advice provided to the Complainant. While I did not provide any Integrity Commissioner advice with respect to this particular matter, I sent a January 2023 Memorandum to Members of Council which stated, in relevant part:

"...Member of Council must avoid comments that denigrate the decisions of the City or that cast aspersions on the integrity of Members of Council or City staff. Healthy and respectful debate and disagreement is part of the democratic foundation of a municipal Council. However, it is a violation of the Code of Conduct to make comments that do not enhance respect for City decisions or to make utterance that impugn the reputation of staff and suggest illegal activity of staff. In a 2018 Code of Conduct Investigation Report of the former Integrity Commissioner of the City of Toronto<sup>1</sup>, the following observations were made:

When questioning staff reports or actions, members of Council should ensure that their comments are in the nature of "fair comment" and related to the substance of the report and not the authors or their suggested motivations. This means that members of Council can raise concerns about whether information is correct, or whether staff considered certain information, such as local concerns. The Toronto public service is prepared (and expect) to respond to these kinds of questions from City Council. City Council discharges its duties when it is robustly and fairly scrutinizing the information and advice that staff provide.

[...]

I reminded all Members of Council that it is not a Code contravention to have an opinion, even a strong one and a dissenting perspective that differs from the perspective of your colleagues on Council. However, the Code requires Members must avoid making statements that may injure the professional reputation of City staff and integrity of Council.

A Member does not have limitless free speech. A Member's utterances at meetings are limited by the rules of the Code of Conduct, in particular statements that would discredit or compromise the integrity of Council, City Staff and the municipality during meetings, made in bad faith or that suggest wrongdoing or illegal activity. When expressing individual views, Members must adhere to the rules of the Code. Failure to follow the agreed upon rules contained in the Code

may result in the Member being named in a Code complaint and the matter being formally investigated by the Integrity Commissioner.

### ***The Allegations of the Complaints***

The Complaints relate to a contentious development project at Langstaff Road and Highway 400. A developer made a planning application concerning 661 and 681 Chrislea Road to Vaughan council. The matter was considered at a Council meeting on December 12, 2023. The application was approved and confirmed by By-law 222-2023.<sup>3</sup>

Despite the approval, certain residents continued to raise objections to the development project.

#### **Complaint #1: Alleged Derogatory and Inappropriate Comments by the Respondent**

The Complaint alleged that the Respondent made offensive statements in emails dated June 26 and July 5, including those which denigrated a Council decision.

Included in the supporting documentation to the Complaint are two email exchanges: (i) between residents and the Deputy City Manager, Planning and Growth Management (“DCM”) and (ii) between Council and the DCM.

On June 22, residents wrote to City Council stating that “...the public was promised that after the public meeting, all issues identified would be addressed in a comprehensive report to be scheduled at a future Committee of the Whole... [w]e are shocked that the City made the application lapse as there were so many issues addressed at the Public hearing that required answers...” The DCM responded and stated that “... [s]taff will be reporting to Council in the fall and before hearing to seek a Council direction and form a position on this application”.

On June 24, the DCM wrote to Council advising that once the matter (subject of the discussions from the resident) was under appeal, “regardless of whom launched the appeal, the approval authority of this application moves from Council to Ontario Land Tribunal (OLT). The developer, the City, and the residents would all become “parties” at the hearing (if the OLT grants a “party” status to the residents).”

Certain residents continued to send communications to Council. In response, the Respondent wrote emails dated June 26 and July 5, which included the following statements:

**June 26** “I have been doing more than my job in trying to stop the massive development taking place because we do not have the infrastructure in place (Traffic, etc.). Unfortunately, the present Members of Council & the Provincial Government are not helping. You should know that. Have you got any

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<sup>3</sup> [By-Law 222-2023](#)

attention/response from the other elected officials: Local Councillors (2); MPP; MP that I saw you copied in past communication?"

**July 5** "I think that the present council has taken the position that they are in charge and do not care about the People's position. It will be up to the People to stand up and request Fairness and Good Planning. Council tried to have the Province make the decision so that the Province will be blamed by the People, but Minister Tibollo intervened and Council is mad/confused and have taken childish actions."

**July 5** "I appreciate that your area elected 6 of the 10 members of council and expect us 10 to do our job and represent the wishes of the people we were elected to represent. But clearly in this case we have not since only 2 of us supported the People and 8 did not. So if you will wait for the 10 of us to do what the people want, in this case, it will not happen unfortunately. I am with you. The majority is not."

The Respondent's June 26<sup>th</sup> and July 5<sup>th</sup> emails copied several elected officials at various levels of government.

#### Complaint #2: Alleged Removal from Email Thread to Hide the Derogatory Comments

Based on my preliminary classification, I had determined that Rule 15 of the Code had been triggered by Complaint 2. I also considered the application of Rules 10 and 13 of the Code.

The Complainant alleged in Complaint 2 that the Respondent removed her from an email thread inappropriately. She alleged that he did so to damage her reputation with the residents as she would continue to appear silent (i.e., not "for the people"). The details of the exchanges are set out here.

In a June 25<sup>th</sup> email, a resident wrote to a City of Toronto Member of Council, his office staff, a City staff person and others. A City of Vaughan resident (the "Vaughan resident") was also copied on the email which advised that the applicant of a proposed development had proposed "814 units to 866 units to now proposing 960 units". In his email, the resident went on to say:

We must have a strategy to stop his massive overdevelopment at the corner of Steeles and Dufferin.

2,148 new units = approx..4200 new residents at the corner of Steeles and Dufferin.

THE DEVELOPERS OWN TRAFFIC CONSULTANTS STATED THAT THIS INTERSECTION HAS ALWAYS BEEN PROBLEMATIC

James you are our city councillor and you are our only person who can stop what is happening.

[A named City of Toronto staff person] as our city planner you are the person who must not allow such unbridled development.

On June 25<sup>th</sup>, the York Centre Councillor responded to the email stating:  
We do not support this proposal. Period

On June 25<sup>th</sup>, a Vaughan resident wrote to two City of Vaughan Councillors – the Complainant and the Respondent - copied to the author of the original email, the Complainant's EA, the Respondent's EA, Glen Shields Ratepayers and others. The email stated:

Councillors,

It is time to coordinate the unreasonable density underway with no regard for the consequences. A collaborative approach is overdue.

What is your position on 1875 and 1881 Steeles?

Also on the hyper development from Dufferin to Yonge along the 4.2km stretch on both sides of Steeles? This would permit the equivalent population of Thunder Bay, the 25<sup>th</sup> largest city in Ontario.

On June 25<sup>th</sup>, the Respondent replied,

To make a reasonable decision, I need & I am required to see a staff technical report. Based on discussions I have had for years & knowing the area, seems that the proposal can't be supported.

I am not aware of anyone supporting the proposal, except the proponents.

My position is clear [a named Vaughan resident]. I leave to others the boiler plate responses.

On June 25<sup>th</sup>, the named Vaughan resident wrote:

As this particular property is on the Toronto side of Steeles I'm not sure when or what reports you have access to.

A goal would be to review with [the City of Toronto Councillor] in order to coordinate.

On June 26, 2024, the Respondent wrote to the author of the original email, with copy to the Vaughan resident, Glen Shields Ratepayers, other individuals and the Complainant's executive assistant. The Complainant's email address had been removed from the email. He wrote:

Hi [a named Toronto resident]

Members of Council have a duty to represent everyone fairly within their jurisdiction. To take a position before having read a technical staff report, in my case, from the City of Vaughan and/or the Region of York, in my opinion is unwise & unprofessional, that is why I wrote what I did.

Based on what I know, I can't support it, but I do not have the technical report to provide me the information that I should have before making my position known.

I have tried to get City of Vaughan staff to attend the meeting & speak at the meeting, but staff agreed only to potentially send a planner to hear the concerns potentially raised by the residents of Vaughan. It seems to be a jurisdiction issue.

I am very familiar with what has been approved & proposed in the general area that you referred to. I thought you knew it already, after all we have exchanged emails & have spoken about the issue a number of times. I have been doing more than my job in trying to stop the massive development taking place because we do not have the infrastructure in place (Traffic, etc.). ***Unfortunately, the present Members of Council & the Provincial Government are not helping. You should know that.***

***Have you got any attention/response from the other elected officials: Local Councillors (2); MPP; MP that I saw you copied in past communication?***

Please let me know if you have a question.

On June 28<sup>th</sup>, the Complainant's EA wrote to the Vaughan Resident saying:

Hi [a named Vaughan Resident]

There's been a lot of back and forth in a flurry of emails regarding your concerns for the Dufferin/Steeles area. It's been confusing for our office because Councillor Martow was included on the thread initially and was suddenly removed and was not aware that emails were continuing on the matter.

[...]

Was there a reason that Councillor Martow was removed the email chain?

On June 28<sup>th</sup>, the Vaughan Resident replied:

Perhaps if she acknowledged or offered comment it would have indicated she could help or was not too busy.

Let me know the rough time Gila seems to have been dropped or the last time she was included/received an email on the topic.

I'll try to send her cc you what I have.

Then on the same day, the Vaughan Resident wrote,

I looked quickly through some emails and noticed Mario dropped you and Gila on some. I added you both back in when I noticed. If you can provide a time frame as requested I'll go through the emails.

### ***The Respondent's Position***

In reviewing the Respondent's reply to Complaint 2, it appears that he may have confused the allegations in the two complaints.

With respect to the allegations of the Complaint 1, the Respondent set out in his reply that:

Complaint #071624a is a complaint regarding the removal of Councillor Gila Martow from an email thread. The submitted email correspondence as evidence deals with two planning files: 1) 10,20,24 Wigwoss and 661 Chrislea Rd (vicinity of Langstaff and highway four hundred). Both respective planning files are in Ward 2 and 3. None of these planning files concern Ward 5 residents, which Councillor Martow is the local Councillor for.

The notion that Councillor Martow was removed from the email thread is wrong. Copied on both email threads is the council@vaughan.ca email address, which was sent to every member of Council in Vaughan. On each planning file, Council@vaughan.ca was included in the copy line.

In the complaint it was mentioned that I made disparaging comments about Councillor Martow. In the correspondence you provided there is no evidence to make such a claim. On the [...] file, I asked Deputy City Manager Xu to reply to the resident, which he did. That was the end of my engagement on that thread. With respect to the Langstaff and highway four hundred email thread, no comment was made about Councillor Martow specifically. I only mentioned the recorded vote of that specific planning application which was 8-2. This is a matter of public record. Per rule ten of the code of conduct, I am within my rights to disagree with a decision, so long as I do it in a respectful way, which I did.

With respect to the notion of Deputy City Manager Xu saying, "Please do not comment," none of the correspondences you provided demonstrate this to be the case. While Deputy City Manager Xu said he and his planning team cannot comment because the [...] file is in front of the OLT, this is not instructions to Members of Council. Moreover, the Deputy City Manager is not a solicitor and cannot provide legal advice, moreover, he has no authority over what a Councillor can and cannot say. As Deputy City Manager Xu has said countless times in Council since the beginning of the term, the role of staff is to provide a recommendation to council, not decide.

Again, in both planning files there is zero reference to Councillor Martow. She does not represent any of the residents on either planning files. With the evidence you have provided me with, there is no evidence whereby Rule No. 15. was violated. If we look at the commentary in the Code of Conduct, there was no abuse, bullying or intimidation. I have disproven every allegation made in the complaint, as the allegations were false.

In response to the allegations of Complaint #2, the Respondent stated that:

The Code of Conduct does not prohibit managing email threads in a way that ensures efficiency and effectiveness. It is important to note that the email thread



was initiated by a City of Toronto resident, [named resident], which is not Councillor Martow' resident. As a Local and Regional Councillor, I represent directly all the residents that she represents, including those in Ward 5, and the rest of the Wards in the City of Vaughan. We are all responsible for addressing concerns from our residents within our area. Inclusion in the initial email thread does not mandate perpetual involvement, especially if I did not see any reply from Councillor Martow, because the residents' main concern was traffic on regional roads (Steeles, Dufferin). Furthermore, I have complied with City of Vaughan corporate policy CL-006, which states correspondences of regional responsibility be responded by the appropriate Local and Regional Councillor.

As you know, local councillors have no authority when it comes to regional responsibilities. This is a planning application taking place in the City of Toronto; therefore, the local Councillor of Ward 6- York Centre has taken responsibility for the file and has reassured all the ratepayers interested that he is not supportive of the application. I spoke with the Toronto Councillor and trusted that he was doing his job, as expected by the taxpayers and he did because the City of Toronto Council have refused the application. I cannot recall of any communication on any application around the Dufferin/Steeles area from Councillor Martow ever. I do not believe that she has shown interest in the past, but if she did, she has not copied me on the email thread.

Finally, the correspondence you provided to me displays no evidence of denigrating remarks about Councillor Martow. In any of the responses, she was not mentioned by name once, making it impossible to "damage (her) personal and professional reputation." Any comments written by me follow the Code of Conduct, which are fair and reasonable comments that I have made countless times in the past both in Council and in the community.

### ***The Complainant's Supplementary Comments***

The Complainant made the following comments in reply:

You will be aware that Mr. Racco has confused and conflated my two separate complaints. I made two complaints:

071624a. Mr. Racco made derogatory comments about a matter that was the subject of litigation before the Ontario Land Tribunal, knowing that I would be unable to respond. He himself commented on the matter before the OLT.

071624b. Mr. Racco attempted to remove me from an email so that I would not see his derogatory comments.

The two complaints are related. They both arise from derogatory email comments that Mr. Racco made about previous Council decision making and about other Councillors.

[...]

Clearly, he did breach Rule 10. The Code of Conduct states: "A Member may state that he or she did not support a decision or voted against the decision. A Member should refrain from making disparaging comments about other Members, and the processes and decisions of Council or the local board, as the case may be."

Mr. Racco did much more than state his lack of support. He attacked the decision and he attacked everyone on the other side of the issue. He wrote that we, "do not care about the People's position," "have taken childish actions," and "are not helping." He said that we are not doing "our job and represent[ing] the wishes of the people we were elected to represent."

He is entitled to disagree, but he is not entitled to attack us personally or to disparage the majority's decision.

[...]

Mr. Racco also contravened Rule 13, which says, "A Member must not denigrate a City by-law in responding to a citizen, as this undermines confidence in the City and the rule of law."

By his own admission in the Response, his comments about eight members not representing the people referred to the application concerning 661 and 681 Chrislea Road in the vicinity of Langstaff Road and Highway 400. The decision he denigrated was made on December 12, 2023: see [minutes](#). As you are aware, at the end of every Council meeting, we adopt a by-law to confirm all our decisions. By responding to a citizen in a manner that bad-mouthed our decision concerning 661 and 681 Chrislea Road, Mr. Racco denigrated By-law Number 222-2023, being a by-law to confirm the proceedings of Council at its meeting on December 12, 2023.

Mr. Racco claims that he did not disparage me personally and did not mention me by name. That is not a defence. He very clearly made disparaging comments about most of his Council colleagues. Disparaging other Councillors individually or collectively is a breach of the Code.

[...]

Mr. Racco claims his comments were fair and reasonable. They were not.

[...]

Further, the Complainant explained that she had called the Vaughan Resident soon after the initiation of the email thread and reminded him that she had spoken numerous times to the City of Toronto Councillor in whose ward the development was proposed and always expressed her concerns. The Complainant also reminded the Vaughan Resident that there were restrictions on what meetings she attended and in what capacity. The Complainant explained to me that:

“unfortunately, [the Vaughan Resident] did not share this information on the thread; he was well aware that I was not ignoring him [...] and he seemed surprised to discover that I had been removed from the thread and able to ascertain that my colleague was responsible for my removal. The [Vaughan Resident] appeared apologetic, and offered to forward the missing emails. I find it upsetting when residents and volunteers are left to feel responsible for challenges which should be the responsibility of staff or elected officials”.

### **Commenting on Matter Before the OLT**

Mr. Racco admits that he made comments about the Wigwoss matter which is before the OLT. His position is that Deputy City Manager Xu cannot tell a Councillor what to do. This is not a defence. Commenting on current case before the OLT is a contravention of the Code of Conduct.

[...]

A lot of Mr. Racco's response – in fact, most of it – is devoted to long explanations about ward boundaries (whether the applications affect my ward) and about how dropping people from emails promotes “efficiency.”

I don't agree with him on these points. I had a ward interest in the communications and some of the people who received Mr. Racco's emails were my constituents. Also, he did try to drop me from the email.

However, I will not dwell on these points because Mr. Racco is trying to distract from the central issues:

- He emailed to residents several disparaging comments about a majority of Councillors.
- He denigrated Council's decision-making.

The Complainant provided several Integrity Commissioner reports that in her view supported her position that the Respondent's comments constitute a violation of the Code.

## **Code Rules**

The potentially relevant Code rules are set out below, together with the Code commentary.

### **Rule No. 10**

#### **Media Communications**

- 1. Members will accurately communicate the decisions of Vaughan's Council and local boards, even if they disagree with the decision, so that there is respect for and integrity in the decision-making processes of Council and local boards.**

#### *Commentary*

A Member may state that he or she did not support a decision or voted against the decision. A Member should refrain from making disparaging comments about other Members, and the processes and decisions of Council or the local board, as the case may be.

### **Rule No. 13**

#### **Encouragement of Respect for the City and Its By-Laws**

- 1. Members shall encourage public respect for the City and its by-laws.**

#### *Commentary*

A Member must not denigrate a City by-law in responding to a citizen, as this undermines confidence in the City and the rule of law.

### **Rule No. 15**

#### **Discreditable Conduct**

- 1. Members shall conduct themselves with appropriate decorum at all times.**

#### *Commentary*

As leaders in the community, Members are held to a higher standard of behaviour and conduct, and accordingly their behavior should be exemplary.

All Members of Council and local boards have a duty to treat members of the public, one another, and Staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment.

## **Analysis**

The Code provisions contained in Rules 10, 13 and 15 are in place with a view to ensuring that municipal elected officials do not act in a manner that would undermine decisions of Council or act in manner which is inappropriate and constitutes abuse, bullying, or intimidation. These rules prohibit members from making disparaging comments about other Members and about the processes and decisions of Council when communicating the decisions of Council. Doing so repeatedly or in an egregious

way, could rise to the level of abuse, bullying, or intimidation.

The rules of the Code do not require a Member of Council to express public support for a Council decision with which the Member disagrees. In this way, the Code does not interfere with the member's right of dissent. However, a member is prohibited from making disparaging comments in stating that they did not support the decision or voted against it.

Rule 15 sets out the Members' obligation to conduct themselves with appropriate decorum. It is in place to inform the application of decorum and captures speech or conduct which fails to meet the requirement. The commentary interprets this language as (i) conduct which falls below the higher standard of behaviour required of councillors (i.e. their behaviour is not appropriate); or (ii) conduct which fails to treat other members appropriately and without abuse, bullying or intimidation or which fails to ensure that their workplace is free from discrimination and harassment. I interpret this definition of "appropriate decorum" to relate both to the manner and content of comments or conduct of a member of council.

This rule requires that Members conduct themselves with appropriate decorum as a stand alone imperative. The commentary then provides guidance that this rule also sets a duty for Members to conduct themselves with appropriate decorum and they have a duty to refrain from "abuse, bullying, or intimidation" or discrimination or harassment.

The Respondent made comment on my draft findings. He wrote:

It is an error to refer to my comments in the emails sent on June 26<sup>th</sup> and July 5<sup>th</sup> as denigrating. The term "Denigrating" involves unfairly belittling or maliciously attacking someone's character or reputation. A statement cannot be considered denigrating if it is based on fact and made in response to inappropriate actions. Observations grounded in truth and aimed at addressing misconduct or improper behavior are not intended to unfairly harm or belittle, but rather to highlight issues that require attention. My comments were based on the fact that the public has expressed clear opposition and concern regarding the proposed developments at Hwy 400 and Langstaff Road, a sentiment the Council has not adequately addressed. Not only have members of Council failed to adequately address the public's concerns regarding these proposed developments, they have also dealt with opposition to the proposed developments in an unfair and inappropriate manner. When Minister Tibollo and I shared this information at a ratepayer's meeting, the Mayor responded by revoking Minister Tibollo's invitation to the Mayor's Gala Dinner and removed me from the Vaughan Metropolitan Centre Committee and replaced me with the Complainant, who notably voted in favour of the development.

As a reminder, Rule 9 of the Code of Ethical Conduct requires transparency and openness in decision-making, as well as in members' duties, so that stakeholders can view the process and rationale used to reach decisions, and understand the

reasons for taking certain actions. In making the comments I did, I was upholding my duty to the public by informing them about how Council made its decisions regarding the developments. My intent was to ensure that the community was fully aware of the processes and reasoning behind decisions that directly impact them, as is required by the principles of transparency and openness. In removing me from the committee due to my opposition to the development, those responsible have neither acted with transparency and openness nor in good faith.

[...]By removing me from the committee and replace me with the Complainant, followed by the Complainant subsequently launching attacks on me and my character, it suggests that the Complainant may have been motivated by personal or political interests rather than a genuine concern for proper conduct, further casting doubt on the fairness of the process.

Furthermore, my comments were not personal nor denigrating attacks on individual Councillors. Instead, they were focused on addressing the broader issue of ensuring progress in blocking developments that the public has openly opposed and expressed concern about. My intention was to advocate for the public's interests, not to disparage anyone personally. I firmly believe that the proposition advanced by the Complainant that a Councillor who disagrees with a Council decision should be limited to simply noting their dissent is entirely incorrect. If freedom of speech and democracy mean anything, we must have the ability to engage in public discussion on the merits of Council decisions and on the performance of Council. Even strong language in support of sincerely held beliefs must be protected.

[...]

These comments were not personal or denigrating attacks on individual Councillors but rather an effort to address the lack of action on an issue of importance to the community.

There is nothing wrong in expressing a view that Council as a whole has erred and that it has failed to meet the expectations that the electorate should have of it. Not only was it an error to consider the complaints not listed in the Complainant's July 15th Affidavit, it was also an error and an omission not to consider the possibility of bad faith, especially given the circumstances surrounding my removal from the Vaughan Metropolitan Centre Committee.

I have considered these comments in my final report. I address some clarification around the interpretation of the provisions with reference to past communications with the member or all of Council. I have also added clarification in the analysis section below.

In a 2023 Memorandum to Council, I set out that with reference to Rule 16 – Conduct Respecting Staff, that the *Commentary* to this rule underscores that City staff provide a high quality of advice and work to the City based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power or their personal opinions.

These rules, read together, highlight the requirement that each Member of Council must avoid comments that denigrate the decisions of the City or that cast aspersions on the integrity of Members of Council or City staff. Healthy and respectful debate and disagreement is part of the democratic foundation of a municipal Council. However, it is a violation of the Code of Conduct to make comments that do not enhance respect for City decisions or to make utterance that impugn the reputation of staff and suggest illegal activity of staff.

In a March 2023 Council Education session, I advised Council that as Members of Council, the Code requires that Members avoid making statements that cast aspersions on the professional reputation or injure the professional reputation of staff. In addition, I advised that Members must avoid making statements that will discredit the integrity of Council colleagues, or undermine public trust in the fair decision-making of Council and the municipality in general.

I further stated that Members are entitled to comment fairly on matters of public interest. Such comments are protected by a qualified privilege if they are found to be comments, and are made honestly, and in good faith, about facts which are true on a matter of public interest. In order to be fair, it must be shown that the facts upon which the comment is an honest expression of opinion relating to those facts. The protection of fair comment (or qualified privilege at Council) may be lost if it is shown that the comment was made maliciously, in the sense that it originated from some improper or indirect motive, or if there was no reasonable relationship between the comment that was made and the public interest that it was designed to serve.

The Respondent's reply suggests that the Complaints were vexatious (i.e. brought forward the Complaints as political motivation) or were advanced as a form of reprisal for having a different opinion with respect to this development proposal. I do not accept this.

First, the Respondent does not bring any evidence to support his claim of bad faith on the part of the Complainant except to say that the Complainant was appointed to the reconstituted Vaughan Metropolitan Centre ("VMC") Sub-Committee, and he was not. The Respondent notes that this was a decision of the Mayor, not the Complainant. The Mayor exercised his strong mayor powers on June 25, 2024 to dissolve the existing VMC Sub-Committee and reconstitute it. The Complainant had no influence over that decision.

Accordingly, I find no basis to conclude that the complaint was ill-motivated.

Second, Code Rule 19, states:

No Member shall threaten or undertake any act of reprisal against a person initiating an inquiry or complaint under the Code of Ethical Conduct or who provides information to the Integrity Commissioner in any investigation.

Based on the Respondent's theory, he suffered a reprisal by being removed from the VMC Sub-Committee for having a different opinion on the redevelopment project. This Complaint is separate from the composition of the committee. The Complainant had already been added to the new VMC Sub-Committee. She had no reason to reprise against the Respondent by initiating a complaint.

I conducted a preliminary review at the outset of this investigation and determined that there were grounds to proceed and that the Complaint was made in good faith. I further conclude that it was not a reprisal.

### **Complaint 1**

I was tasked with determining whether the Respondent made derogatory or disparaging comments in his emails regarding a matter that would be subject of litigation before the OLT, contrary to Rules 10, 13, and/or 15 of the Code.

For the reasons that follow, I determined that the Respondent breached Rules No. 10 and 13, through his statements in the June 26<sup>th</sup> email, copying several elected officials at different levels of government. In this email, the Respondent criticized the decision made by council and made disparaging comments about the members. The comments taken together, rose to the level of disrespect for and denigrating a decision of Council, when he stated:

[...] Unfortunately, the present Members of Council & Provincial Government are not helping...

And in the July 5<sup>th</sup> email:

I think that ***the present council has taken the position*** that they are in charge and ***do not care about the People's position***.

[...]

Council tried to have the Province make the decision so that the Province will be blamed by the People, but Minister Tibollo intervened and ***Council*** is mad/confused ***and have taken childish actions***.

[...]

I appreciate that your area elected 6 of the 10 members of council and expect us 10 to do our job and represent the wishes of the people we were elected to represent. But ***clearly in this case we have not since only 2 of us supported the People and 8 did not***. So if you will wait for



the 10 of us to do what the people want, in this case, it will not happen unfortunately. I am with you. ***The majority is not.***”

*Did the Respondent state only his “dissent” in accordance with the Code?*

The Respondent stated in his reply that “[p]er rule ten of the code of conduct, I am within my rights to disagree with a decision, so long as I do it in a respectful way, which I did.” The Respondent’s comments to my draft findings take the position that if a Member of Council holds a position and the rest of Council does not support this position, the Member is free to do or say whatever they want. This interpretation of the Rule 10 would render the provision meaningless.

The principle of a municipal councillor’s right to dissent has been explained in several municipal Integrity Commissioners’ reports. Aptly summed up in one report, the Brampton Integrity Commissioner stated in *Miles v. Fortini*<sup>4</sup>:

Brampton is a democracy. The minority always has the right to dissent from majority decisions. Rule No. 10(1) cannot be interpreted as removing the right to dissent. What Rule No. 10(1) requires is that the majority decision be accurately communicated. This does not prevent criticism of a decision. It merely requires that the criticism depict the decision accurately. [...]

A Council Member is always entitled to explain why he or she voted a particular way. This is not a privilege conferred by the Code; it is a basic democratic right. [...]

The commentary to Rule No. 10(1) states that, “A member should refrain from making disparaging comments about Members of Council and Council’s processes and decisions.” This commentary must be interpreted in light of the right to dissent and the right to explain one’s vote.

The Code requires Members of Council to accurately describe the decisions of Council, it does not require that Members endorse positions with which they disagree and does not prevent Council Members from explaining their reasons for disagreement. There is a difference between expressing one’s disagreement with the position of colleagues on Council in a respectful way and making statements that demean and disparage individual Member of Council and/or Council decisions. Comments directed about Members of Council, such as the Respondent’s statement “***Council*** is mad/confused ***and have taken childish actions***” do not express disagreement with a position of a Member of Council or the decision of Council, but rather disparage Council as a whole, suggesting that Members are not competent because they have acted in a childish manner in matters of grave importance.

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<sup>4</sup> [2018 ONMIC 22](#) at paragraphs [72 to 75](#).

The Complainant states in her supplementary reply that,

“Mr. Racco did much more than state his lack of support. He attacked the decision and he attacked everyone on the other side of the issue. He wrote that we, “do not care about the People’s position,” “have taken childish actions,” and “are not helping.” He said that we are not doing “our job and represent[ing] the wishes of the people we were elected to represent.”

In making his comments in the June 26 and July 5 emails, the Respondent directed toward Members of Council, an inaction such that they were “not helping” and that the “vote [of Council] that took place on this issue” was ineffective and not made in the interests of the *People* of the City of Vaughan. This is the Respondent’s opinion. However, the absence of doing what residents may want Council to do does not translate into “not helping”. There is an inference that the views of a group of residents represents all of “the People” and “they” all believe what the Respondent believes.

A reasonable person would believe that Members of Council who are “not helping” would entail a deliberate refusal to act and turning a deaf ear to cries of residents for actions that support their vision for development in their wards and the City overall. The Complainant advises that she prides herself on responding to residents and assisting them in navigating where in the City and to which department, residents could obtain clarification on their queries.

The Respondent went beyond stating his dissent.

I conclude that the Respondent’s email statements were problematic in that they were disparaging of other Members of council.

The Respondent’s comments were not simply expressions of his *respectful* disagreement with his fellow Council Member colleagues’ vote and the resulting Council decisions, but rather were disparaging of the Members themselves by referring to their actions as “childish” and not for the citizens of Vaughan. One definition of “childish” is “marked by or suggestive of immaturity and lack of poise”<sup>5</sup>. Calling a group of elected adults “childish” can only be and be intended to be disparaging. The Respondent’s comments referring to Council as having “taken childish actions” suggests that Council is unprofessional and shows a lack of judgement.

The parameters against which a Member’s “free speech” and voicing an opinion, are curtailed are the bookends of the Code of Conduct. As long as statements are true (and the Member has made a reasonable effort to determine the veracity of the statements) AND the statements do not disparage staff, the public, or another Member of Council, and do not denigrate decisions of Council or contravene other imperatives of the Code, the statement may not violate the Code. In my Code of Conduct orientation, as well as in my January 2023 Memorandum to Members of Council, I advised Members that they should not publicly state or imply that a particular public servant, or

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<sup>5</sup> [Childish Definition & Meaning - Merriam-Webster](#)

group of public servants, acted for political or private motivations or in a way that is negligent or that failed to meet professional standards. This also applies to comments about fellow Members of Council. The Code does not prohibit a Member from stating that they did not support a decision or voted against a decision of Council or they believe a past decision needs to be revisited. However, Members must accurately communicate the decisions of Vaughan Council and local boards, even if they disagree with the decision, so that there is respect for and integrity in the decision-making processes of Council and local boards. The Code sets out limits on the language that a member may use. Pursuant to the Rule 10 commentary, a Member should refrain from making disparaging comments about other Members.

As set out in the *Commentary* to Rule No. 13, a “Member must not denigrate a City by-law in responding to a citizen, as this undermines confidence in the City and the rule of law.”<sup>6</sup> Municipal officials are free to vigorously debate and discuss matters of public interest, however, they must act reasonably and respectfully and satisfy themselves as to the truth of any allegations.<sup>7</sup>

The Respondent’s comments also appeared to set out his view of the role of Members of Council.

To assist in reviewing what the role of a Member of Council may be, in the Ontario Municipal Councillor’s Guide, Members are given some guidance on their role.

There is no single, correct approach to the representative role. On many issues you may find that you fall somewhere between two, sometimes opposing viewpoints. You will quickly develop a caseload of citizen inquiries that will need to be further investigated and, if possible, resolved. You may get these inquiries because of your background and interests or because of the issues in your particular ward, if your municipality operates with a ward structure.

Understandably, you will want to try to help your constituents. However, be sure to familiarize yourself with any policies or protocols that your municipality may have for handling public complaints and inquiries, and remember to consult municipal staff.

There may also be circumstances where decisions are made by designated staff who operate at arm’s length from the council, and where it could be inappropriate for elected officials to interfere or be seen to be interfering. Examples of this include decisions made by statutory officers such as the clerk, treasurer, fire chief, chief building official or medical officer of health. These individuals may

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<sup>6</sup> Hogg & Wright at para 38:13. See also *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at para 153.

<sup>7</sup> *Prud’homme v Prud’homme*, 2002 SCC 85 at para 43 [Prud’homme], *CITING Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC) at para 108.

also be acting in accordance with accountability provisions under other pieces of legislation, which may impact their advice to council.

In his final reply, the Respondent states that he did not name the Complainant. Instead, he referred to all Members of Council. Whether he referred to each of the other members by name or as a collective, the Respondent has disparaged those falling within the group of eight who allegedly are not “for the people”. The Respondent holds himself out as the only Member serving the public and “for the people”. Necessarily, this supports the position that the other Members of Council do not serve or care about the residents of Vaughan. Given that the position that is purported to be not serving the public, is a decision of Council which took into consideration the professional advice of staff, the Respondent’s statements are not simply statements of opinion but rather casting aspersions on the decision of Council and those Council Members that voted in favour of the decision.

The Respondent went beyond stating his position that he disagreed with a decision of council. He referred to their “childish actions”. The Respondent’s “childish actions” comment is an allegation that Vaughan Council responded in a *childish* way to the Minister’s actions, through the council decision they made. This was not about the right of a Member of Council to dissent. In my view, referring to Council’s actions as “childish” can only be reasonably viewed as disparaging of members and denigrating of Council’s decision.

Other Members of Vaughan Council had their perspectives on the planning matters and reasonably believed that their decision not to comment and respond to the emails from the Vaughan and Toronto Resident, may be viewed in a negative light. However, they did not comment. I find that the entire email, taken in context, inclusive of responding with comments that undermine the decision of Council, was an attempt to draw attention to the Respondent as a champion of the people as contrasted to the *non-action, non-supportive, childish* actions of Council. The entirety of the Respondent’s email comments, taken in context of the planning application and the need for individual Members of Council to refrain from making statements on ongoing matters before the OLT denigrated the decisions of Council.

The Respondent’s email statement sheds a negative light on Members of Vaughan City Council, depicting Council and its Members as inert, disengaged and deliberately silent. His statements contravene Rule 10 and 13. As set out in the *Commentary* to Rule No. 13, a “Member must not denigrate a City by-law in responding to a citizen, as this undermines confidence in the City and the rule of law.”

Members of Council have a Charter right to free expression that is limited by the rules of the Code of Conduct which requires them to refrain from certain kinds of speech because being elected to office has changed their public status. The Code is not in place to regulate frivolous comments or political banter. This went beyond frivolous comments or political commentary.

The impugned speech is expressive activity which engages the Respondent's Charter rights under s. 2(b). There are statutory objectives behind the various rules of the Code. Rules 10 and 13 of the Code are intended to ensure that decisions of the majority of council are respected by Council member and not undermined by individual members who disagree with them. Rule 15 emphasizes the importance of modelling behaviour for the community that is exemplary, treats others appropriately and with respect and can also mean without abuse, bullying or intimidation. However, the commentary does not mean that in order for there to be a breach of rule 15, all elements of the commentary must be present. The benefits that flow from this statutory objective are obvious: it will promote public benefit of having respectful discussion on key issues and it will ensure respect for final decisions.

Here, the rules limit the Respondent's Charter right. But a finding of misconduct in relation to inappropriate and rude emails sent by the Respondent that does not engage the core values underpinning the right of freedom of expression. The language which denigrates decisions and disparages other members of council is not limiting discussion about matters of policy substance.

The Code does not eliminate a member's right to state that he disagrees or dissent. However, the Code curbs a members' absolute right to speak freely about a bylaw or decision, to ensure that decisions are respected. This principle undergirds the roles of the Council Member as one part of the decision maker Council, that has the best interests of the public in mind during its deliberations.<sup>8</sup> This is a proportionate infringement on the member's right to speak given that council operates as a collective body and that denigrating its decisions is harmful to the public perception of council and its members. Members of Council are required to comply with the Code to allow for finality on issues, particularly contentious ones. The confidence of the public in the planning decisions requires that its decision-making process come to an end with a decision respected by all members of council, even if one disagrees.

### *Rule 15*

With reference to Rule No.15 of the Code, the comments in the emails of June 26<sup>th</sup> and July 5<sup>th</sup> violate the standard of "appropriate decorum". Decorum refers to propriety of behaviour and conducting oneself with dignity – or exemplary behaviour. Referring to the conduct of other councillors as "childish" and criticizing their failure to "help the People" falls below this standard. These types of petty and insulting comments about council and other members have no place in communications with residents (or anyone else). These instances may not amount to abuse, bullying or intimidation, but do amount to inappropriate decorum.

I find that the Respondent has failed to act with appropriate decorum in his communications with residents in the emails of June 26 and July 5.

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<sup>8</sup> Ibid., 29 at para. 140

## Complaint 2

I was tasked with determining whether (i) the Respondent removed the Complainant Member of Council from an email thread initiated by a resident's association and (ii) whether that violates the Code.

I find that the Respondent did remove the Complainant from the email thread. In the particular circumstances of this issue, I find that this conduct constitutes a violation of Rule 15.

A resident sent an email to the Complainant and the Respondent, copying a number of third parties. While it was likely unknown to the Respondent at the time of the exchanges, the Complainant had spoken with this resident. She did not immediately respond. The Respondent did respond to the email thread – *except to the Complainant* – to state that no members of council were “helping” and asking “Have you got any attention/response from the other elected officials: Local Councillors (2), MPP; MP that I saw you copied in past communication?”. The Respondent actively removed the Complainant from an email thread and proceeded to criticize her (and all of council) for not helping to stop the massive development taking place. He implied that various politicians at all levels of government have ignored the resident while the Respondent was the only one helping.

The June 28 email from the resident confirms that the Respondent removed the Complainant from several emails and that her EA was also removed. The Respondent asserted at first that the email was copied to all of council; it was not. The Respondent asserted that he left the Complainant's EA on the thread; that also appears incorrect. In fact, in a June 28<sup>th</sup> email to the Complainant's EA, the Vaughan resident states that “I looked quickly through some emails and noticed that Mario dropped you and [the Complainant] on some. I added you both back in when I noticed.”

The intentional removal of the Complainant from the email thread is inappropriate and does not evidence the Respondent behaving in an exemplary manner. While the resident who started the email thread knew that he had spoken to the Complainant, it was unlikely that was known by the others on the thread. By removing the Complainant from the thread and criticizing the lack of response from others on council (which includes the Complainant), the Respondent ensured that the Complainant could not respond. The Respondent has not provided an adequate explanation for this conduct. He stated that the removal was a function of his managing emails.

In his reply to the Complaint, the Respondent stated that:

The Code of Conduct does not prohibit managing email threads in a way that ensures efficiency and effectiveness. It is important to note that the email thread was initiated by a City of Toronto resident, [a named Toronto Resident] which is not Councillor Martow's resident. As a Local and Regional Councillor, I represent directly all the residents that she represents, including those in Ward 5, and the

rest of the Wards in the City of Vaughan. We are all responsible for addressing concerns from our any reply from Councillor Martow, because the residents' main concern was traffic on regional roads (Steeles, Dufferin). Furthermore, I have complied with City of Vaughan corporate policy CL-006, which states correspondences of regional responsibility be responded by the appropriate Local and Regional Councillor. residents within our area. Inclusion in the initial email thread does not mandate perpetual involvement, especially if I did not see.

The Code does not prohibit a Member managing their emails to ensure efficiency and effectiveness. However, removing one of the two City of Vaughan councillors to whom the email was written, does not appear to be an act to ensure effectiveness and efficiency. Indeed, the resident appeared to be complaining about the lack of action by councillors. Removing the Complainant from the thread had the inevitable effect of ensuring that she could not weigh in on the Respondent's criticism of her and other council members.

The Complainant's office wrote to the Vaughan Resident to confirm that she had been removed from the thread. In response, the resident wrote:

Perhaps if she acknowledged or offered comment it would have indicated she could help or was not too busy.

The Complainant could have responded to the initial email sent June 25; however, having spoken to the resident, she determined it was not immediately necessary to do so.

The Complainant advised that she receives inquiries and questions from her Ward constituents, from neighbouring Wards and from throughout the City. The area around Steeles and Dufferin is a hub that borders on the cities of Toronto and Vaughan. The Complainant advised that she had spoken at length with the Vaughan Resident, thus her lack of comment to his June 25<sup>th</sup> email, appeared to be deliberate and indicative of her inaction. The lack of interest in a very important matter to a Vaughan resident was made even more plausible to the Vaughan Resident, by the Respondent's comment in the email, in which he had removed the Complainant's email address. The Respondent suggested that while he had removed the Complainant, the email was copied to all Members of Council. This was not the case.

Whether the Respondent was referring to the Local City of Toronto Councillors or Local City of Vaughan Councillors, removing the Complainant from the email thread left the residents only to conclude that the Complainant's lack of response, whether within her jurisdiction or not, was intentional inaction – and fed into the Respondent's narrative that she was not helping. The Complainant was not included in this email response. The email from the Vaughan resident on June 25<sup>th</sup> was to the two Vaughan Members of Council: the Respondent and the Complainant.

Having spoken at length in the past with the Vaughan Resident who authored the initial June 25<sup>th</sup> email, after the Respondent removed her email address for the email thread, the Complainant was “out of the loop” on the email conversation, until her EA discovered that the Complainant’s name had been removed from the email thread. This shows why the Complaint 2 conduct was particularly harmful as the Respondent was criticizing members of council for not being “for the People and for not helping – while at the same time making it impossible for the councillor to do so. Only once she was informed by her EA , did the Complainant recognize that emails from the thread had continued without her input. Moreover, removing her email address from the email thread, and making the statement that “the present Members of Council [...] are not helping...” led the Vaughan Resident to reasonably believe that the Complainant (and other Members of Council) had chosen to not help and intentionally did not respond.

Removing a fellow Council Member from an email thread is not an act of efficacy as suggested by the Respondent. Often residents will write to a Member or Members of Council and copy dozens of others. In an effort to reduce the distribution of their response to those to whom the Member(s) believes are more involved in the matter and with a view to limiting the number of individuals that may weigh in on the matter, a Member of Council may decide to remove staff or individuals or organizations external to the City of Vaughan. The Code does not preclude a Member from limiting to whom they will include in a response. However, when the email “to” line, includes 2 Members of Vaughan Council and when one Member (the Respondent in this case) removes the email address of the other from the email thread (Councillor Martow in this case), and includes all others on the original email, this action is deliberate and not a function of email management efficacy and had the result of causing, in this case, Councillor Martow to not view the ongoing comments and questions of a resident of Vaughan and not provide her comments whether through email response or inviting the resident to a meeting or a discussion by phone.

I do not believe that it would have been inappropriate for the Respondent to, for example, call the resident or to respond directly to him alone. However, by including all of the individuals on the thread except the Complainant, the Respondent was intentionally excluding her in an effort to ensure that she could not respond to his criticisms – and in effect, prove his point.

Rule 15 requires that members act with appropriate decorum. The Respondent failed to do so; his conduct was not exemplary. He manufactured a situation to prove his point – that other members of council are not helping the resident – when the resident had reached out to two members of council, including the Complainant. There is no adequate explanation for this conduct.

### ***Conclusion and Recommendation***

In deciding on a recommendation, I considered the purpose of an accountability regime and having Code of Conduct rules. In so doing, my considerations included:



- a) the likelihood of a repetition of the offence (specific deterrence);
- b) the nature of the action committed;
- c) any extenuating circumstances surrounding the commission of the contravention;
- d) the detriment to the municipality occasioned by the contravention; and,
- e) the need to deter others from committing a similar actions (general deterrence).

The Commentary to the Preamble of the Code sets out that:

A written Code of Ethical Conduct protects the public interest and helps to ensure that the Members of Council and Members of local boards share a common basis for acceptable conduct. The standards are designed to provide a reference guide and supplement to the legislative parameters within which the Members must operate.

Members of Council and local boards are therefore expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny. In turn, adherence to the standards set out in this Code will protect and enhance the City of Vaughan's reputation and integrity.

In recommending the appropriate sanction, I took into consideration that the Respondent cooperated in the investigation and that this is the first time that I have found a violation under the Code against the Respondent. I considered the nature of the offence which was to undermine a decision of Council in relation to a matter before the OLT (a statutory tribunal) and to disparage other members. The civility of members is extremely important especially in relation to final decisions of Council. I also considered that I had provided advice to Council and to the member about the Code-prohibitions on this type of conduct before he committed these acts. I determined that these actions warrant more than a reprimand but that the length of any suspension of pay should not be overly punitive but that a meaningful sanction was necessary to prevent repetition of the offence by the Respondent or others.

I recommend that the City of Vaughan Council:

- i) Issue a formal Reprimand to Regional Councillor Mario G. Racco in relation to his actions in contravention of the Code set out in the findings above; and
- ii) Suspend the remuneration paid to Regional Councillor Mario G. Racco for a period of 10 days.

Respectfully submitted,

October 2, 2024

Suzanne Craig  
Integrity Commissioner and Lobbyist Registrar