

# Principles *Integrity*

## City of Thunder Bay Integrity Commissioner's Complaint against Councillor Rajni Agarwal Recommendation Report

October 27, 2023

### Introductory Comments

- [1] Principles *Integrity* is privileged to serve as Integrity Commissioner for the City of Thunder Bay and for a number of other Ontario municipalities and locally elected or appointed bodies. The operating philosophy which guides us in our work and which appears in every formal communication with our clients to reinforce its importance to us, is this:

*The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.*

- [2] Our efforts in concert with our clients are therefore to help establish an ethical framework through which the public perception of Council is deservedly enhanced.
- [3] The City of Thunder Bay has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [4] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with

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the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

- [5] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [6] Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [7] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [8] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the Respondent to respond to the allegations, and to review and provide comment on the preliminary Findings Report.

### The Complaint

- [9] On June 14, 2023 we received a complaint against Councillor Agarwal alleging that she had engaged in conduct contrary to the Council Code of Conduct.
- [10] The particulars of the complaint are that on June 13, 2023, the Councillor repeatedly harassed, and gave 'the finger', to property owners who were carrying out exterior grading work at their condominium property with the knowledge and approval of their property management, purported to direct how they should carry out the work, and invoked her authority as City Councillor to threaten the owners with police and by-law enforcement action.
- [11] The complaint alleges that the Councillor's conduct constitutes a breach of the Code of Conduct.

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## Process Followed for this Investigation

[12] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.

[13] This fair and balanced process includes the following elements:

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent of the complaint against her, and providing adequate disclosure of the information we possessed so that she could prepare her response
- Reviewing the Code of Conduct and relevant documentation, including a video recording of the event
- Conducting interviews as necessary of persons with relevant information
- Providing the Respondent with the additional opportunity to review and provide responses to the Integrity Commissioner's draft Findings Report.
- Taking into consideration the Respondent's response and documentation totaling 159 pages prior to finalizing and issuing our Recommendation Report. Much of the response and documentation related was irrelevant to our findings or related to technical issues – legal ownership of the development and units referenced in the report, for example – the Respondent entirely admitting to the facts which constitute the contraventions.

## Background and Context

[14] The complainant resides in a townhome at 103 Oasis Lane<sup>1</sup>.

[15] Councillor Agarwal's professional occupation is as a Real Estate Agent and Developer<sup>2</sup>, and she formerly provided property management services for this townhouse complex which she developed.

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<sup>1</sup> The complainant, a post-graduate student at Lakehead, and her husband reside in the unit which is owned by her father.

<sup>2</sup> The Councillor's mother owns 50% of the development company.

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- [16] In November 2021, Synergy Property Management was contracted to manage the properties. Property management reports to the condominium Board.
- [17] Councillor Agarwal continues to operate her Real Estate business out of a small temporary structure adjacent to the townhome complex on a small remnant piece of land she still owns.<sup>3</sup>
- [18] The Councillor also owns three units within the complex, which are rented out<sup>4</sup>.
- [19] Between June 11 and 13, 2023 the owners of a townhouse unit in the complex were undertaking remedial yard work to adjust the grade of their rear yard, to address flooding and drainage issues that occur as a result of improper grading.<sup>5</sup>
- [20] The owners' unit backs directly onto Beverly Street but there is a rear yard fence. The owners arranged to move soil over the top of the rear yard fence between their rear yard and the Beverly Street side using a contrivance which resembled a conveyer of sorts. The alternative would have been to transport the soil through the rear yards of several neighbouring townhomes.
- [21] A trailer transporting the soil parked temporarily on the sidewalk of Beverly Street, while the soil was being conveyed over the fence. The owners secured padding across the top of the fence to protect it from damage during the work. They also ensured that someone was available (near or in the vehicle) at all times, to move it, if necessary.
- [22] Before this work was ever undertaken, the owners sought and obtained the approval of the condominium board in conjunction with property management. No building or other City permit was required for the work involved.
- [23] While the owners were carrying out this work, the Councillor came over to the area outside the fence and demanded that the owners stop the work. From the sidewalk, she yelled over the fence at the owners for undertaking the work, claimed to be representing the City, claimed they were breaking laws, and threatened to call the police.
- [24] The owners informed the Councillor that they had obtained condominium board and management approval to do the work, and that, on the advice of property management, were recording her conduct. They asked that she stop harassing them.

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<sup>3</sup> This was apparently initially used as a temporary sales office under a permit issued in 2011 however it continues to be operated as the Councillor's Real Estate office, even though the development is fully completed.

<sup>4</sup> Technically, the units are owned by the development corporation, which is co-owned by Rajni Agarwal's mother, and Rajni Agarwal is the contact for the landlord.

<sup>5</sup> There is some dispute as to whether the developer may be liable for the failure to address any grading deficiencies.

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- [25] They proceeded to capture almost 2 minutes of the Councillor's conduct in a digital recording. What is observed is the Councillor yelling at the owner, threatening the owner with the police, and making a rude gesture (the middle finger). A digital image captured in the recording is embedded below.



- [26] The Councillor was recorded yelling statements such as:

“Get off here”

“Get this off of the sidewalk”

“Get it off now”

“I am representing the City”

“Get off of the road. Get off it now”

“I’m not leaving you alone”

“I’m asking you to remove this immediately”

“You have broken the law. Get it off”

- [27] At the Councillor's request, the Police attended on two occasions: the first time, they just performed a 'drive-by' to ascertain whether there was any cause for concern; the second time, at the Councillor's insistence, they re-attended and spoke to the owners, reminding them to be available to move their vehicle, if and when needed.

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## The Council Code of Conduct and the Applicable Law:

[28] The provisions of the Thunder Bay Council Code of Conduct which are most applicable to the complaint are outlined below:

### C. Guiding Principles:

3. Members of Council shall perform their duties in office and arrange their private affairs in a manner that promoted public confidence and will bear close public scrutiny.

### Rule 9: Member Conduct

4. 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 behaviour should be exemplary.

## Analysis:

[29] A Councillor does not act in a management capacity for the City. A Councillor is not authorized to personally direct the activities of either the City's police or of municipal law enforcement.

[30] Although Councillor Agarwal claimed that she was "representing the City", a Councillor does not in any way 'represent the City' when they show up at a property and purport to tell the property owner what to do.

[31] Where a Councillor believes, whether rightly or wrongly, that an offence is occurring, she has no greater power than any other member of the public to 'action' the matter.

[32] In this instance, the Councillor contacted municipal staff, however because at the time, weekend enforcement was not yet been implemented, the complaint was duly noted and followed up on during the next week. No contravention of any by-law was determined to exist.

[33] Similarly, a Councillor has no greater authority to direct the activities of the City's police than any member of the public. In demanding that the police re-attend, the Councillor was acting beyond her authority, attempting to exert undue influence and abusing her authority.

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- [34] The owners, having sought and obtained the permission of the condominium board and property management, were properly carrying out the work in the manner contemplated. As noted, no City or building permits were required to undertake the work.
- [35] Property management inspected the proposed work before it was started, during the time it was being undertaken, and following completion of the soil transfer, in order to ascertain that all work was diligently undertaken to avoid any damage to the sidewalk, the boulevard, the fence or the curb.
- [36] In short, the work was, at all times, properly carried out and no damage was done by the property owners.
- [37] When the owners were confronted with an irate, strident and overbearing Councillor Agarwal, yelling and gesticulating obscenities, they were not surprised.
- [38] We understand that the Councillor is well-known to them, and to property management, who in January 2023 implemented a Harassment Policy for the condominium as a means of dealing with Councillor Agarwal's pattern of behaviour.
- [39] On June 14, 2023 property management sent a Notice to Councillor Agarwal cautioning that she was in breach of the Harassment Policy and admonishing her to cease and desist harassing the complainants. That Notice reads, in part:

Rajni,

We are aware of the work being completed by 103. They have obtained all the appropriate approvals for the work they are completing..... They have been in constant communication with us in terms of the work they are completing. They are aware that any damage or cleanup required is their responsibility. The parking issues and concerns have already been addressed.

Your actions and behavior towards these owners, however, is completely unacceptable and in violation of the Corporation's Harassment Policy. As a private citizen, you are not permitted to order nor dictate to another owner what they can and cannot do. If you have a concern, you are not to interact with the owners directly. You may bring your concern to Management's attention, where we will then address the issue appropriately. By circling their residence, videotaping them, blocking their vehicle, ushering (*sic*) threats and verbally harassing them, this constitutes as completely inappropriate and not acceptable. If you persist or continue to interact inappropriately with these owners, or any other owner or personnel associated with the Corporation, further action will be taken to hold you accountable for your negative impact on others.

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- [40] The Councillor, in her defence, claims that the owners were in breach of the condominium rules and that they were endangering the public. She claims that property management is uninformed, and that neighbouring townhome owners were concerned.
- [41] She claimed that the police ordered them to stop the conveyor they had rigged up, but that the owners ignored the police officers' order. She says the police told her that they had advised the owners to 'stop the unsafe practice'.<sup>6</sup>
- [42] Regarding the 'middle finger' gesture, she claims not to recall doing that but conceded she might have, but it would have been "*well after the abusive manner that the owners were speaking and mocking*" her, saying that she had no authority to tell them what they could or couldn't do, and telling her to stop videoing them. Or it could have been unintentional, occurring while "*waving my hands at them while I was telling them to stop and follow the direction the police had given the first time*".
- [43] The Councillor states that she was not videoing them as she does not know how to use the video on her phone.
- [44] She did take several photos which she forwarded to the City Manager and the Manager of By-law Enforcement.
- [45] She claims that, while the sidewalk was blocked with the trailer, a woman in a walker had to navigate around the obstruction, by moving down to the side of Beverly Street. In the Councillor's view, the owners were in complete violation of the By-laws and were impeding the safety of all pedestrians on a busy sidewalk.
- [46] The Manager of By-law Enforcement dispatched an officer the following day, and determined that, although a parking infraction might have existed temporarily, there appeared to be no observable sidewalk or curb damage (aside from historic curb damage likely caused by a snow plow).
- [47] The Councillor's email to staff purports to direct staff to charge the owners:
- "I think he should be charged for the damage as he knew after my first warning that he was is in the wrong and he did it anyway." ... "We cannot let people just do whatever they want to do when they want to do it".*
- [48] Photos of the area show a wide grassy boulevard between the sidewalk and the travelled portion of Beverly Street, with ample room to walk on the wide grassy boulevard around

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<sup>6</sup> The Councillor has advised that she is obtaining the police report(s) which, if relevant, she will be able to raise at Council when our Report is being considered.



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the trailer. While navigating with a walker would be smoother by moving over to the paved surface, it does not appear that the trailer created a serious impediment to the flow of pedestrian passers-by. At all times, the owner remained available to move the trailer, if necessary, at a moment's notice.

- [49] The Councillor claims that *"this owner has been a problem in the condominium development since they moved in"*, a statement which is flatly contradicted by property management. On the contrary, property management had nothing but the highest praise for the cooperation and responsible conduct of the owners who are the complainants.
- [50] Rather, Councillor Agarwal, based on the interviews in the course of our investigation, has demonstrated behaviour towards property management, and others, which is abrasive, confrontational and harassing.<sup>7</sup>
- [51] Instead of acknowledging that her conduct and behaviour may be out of line with what is expected, Councillor Agarwal has dug in, justifying her behaviour as warranted, as a representative of the City, in the interest of public safety.

### Findings:

- [52] A Code of Conduct provides general and specific guidance to aid members in understanding and achieving the high standard of behaviour expected by the public.
- [53] Codes should be perceived as guides to proper ethical behaviour, and not simply as traps for elected officials. While a toenail over an ethical line would not draw the attention of an integrity commissioner, significant non-compliant behaviour cannot be excused.
- [54] Guidance exists in the provisions of the Code which speak to communication generally, conveying information on matters in an open and transparent manner, allowing the public to view the rationale for decisions, and to treating members of the public with respect and without abuse.
- [55] We find that the Councillor's conduct, in yelling at and harassing the owners and in claiming to be representing the City, was contrary to the Guiding Principles of the Code.
- [56] Councillor Agarwal's behaviour was far from exemplary. It was, in fact, an example of inappropriate interference by an elected official: overbearing, harassing, invoking her status claiming to 'represent the City' in order to threaten and intimidate, and unduly influencing the attendance of law enforcement.

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<sup>7</sup> We will not include details here which are currently the subject of litigation between property management and Councillor Agarwal.

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- [57] As noted, a councillor has no greater authority than any other member of the public, even where she believes she is observing a by-law infraction. The most she could have properly done would be to politely ask of the owners whether they had the appropriate approvals to undertake the work.
- [58] Rather, over their assertions that both property management and the condominium board had both approved the work, she escalated her tirade, yelling, giving them the finger, and repeatedly calling out the police.
- [59] Her attempt to invoke her status, or threat of public humiliation, to cause the police to pursue some action against the owners constitutes an egregious abuse of authority.
- [60] We find that her conduct in gesturing with her middle finger to be a shocking breach of decorum. As the Commentary to Rule 9 specifies:

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

- [61] We find that her behaviour and lack of contrition warrants the imposition of a meaningful monetary sanction.

### **Concluding Remarks:**

- [62] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. Our role is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.
- [63] One of the most important functions of an Integrity Commissioner is to provide training, advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. The Integrity Commissioner's role is as much about education as it is about adjudication, so that municipal government can function better, and that members of the public are able to confidently conclude that members of their municipal council are acting with integrity.
- [64] Sometimes we are able to resolve complaints on the basis of course correction by the Member. Where the Member acknowledges inappropriate conduct and commits to meaningful change, a public report may not be necessary. In such cases, only the complainant and Respondent are made aware of the disposition of the matter.
- [65] However, where a breach is substantiated, and it is important to daylight the concern, the Integrity Commissioner, following procedural fairness, submits a public report.

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- [66] In appropriate circumstances, it may be that a Member of Council is able to correct their behaviour. In those circumstances, it is fair to give the Member the benefit of the doubt.
- [67] The Councillor's response to our preliminary findings report makes it clear that the Councillor defends her conduct as justified and warranted.
- [68] She demonstrated a complete lack of acknowledgement that the conduct raised legitimate concerns. She has demonstrated no contrition.
- [69] As such, we believe that a meaningful sanction is warranted.
- [70] The purpose of a sanction is to reinforce Council's ethical framework when education, or acknowledgement, is insufficient. In other words, the Code of Conduct must ultimately have 'teeth'.
- [71] Under the Municipal Act, Council may impose the penalty of a reprimand or a suspension of pay of up to 90 days.
- [72] A suspension of pay does not affect the Councillor's ability to attend meetings and fulfill their duties, but it does take away a portion of their salary, as a penalty for violation of the Code.

### **Recommendation:**

- [73] We therefore recommend that Council pass the following resolution:

That having been found in breach of the Code of Conduct, the remuneration for Councillor Agarwal be suspended for a period of 30 days (2 pay periods) commencing with the next pay period.

- [74] We will be pleased to be in attendance when this report is considered by Council.