
CITY OF NORTH BAY INTEGRITY COMMISSIONER, GUY GIORNO

Citation: Burton v. Inch, 2023 ONMIC 6

Date: December 31, 2023

INQUIRY REPORT

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THE COMPLAINT

1. Mr. George Burton (Complainant), on his own behalf and on behalf of Canadore College of Applied Arts and Technology, alleges that Councillor Sara Inch (Respondent), in social media posts on September 6 and September 10, contravened the Code of Conduct for Members of Council of the Corporation of the City of North Bay and Certain Local Boards, Schedule A to By-Law No. 2019-16.

SUMMARY

2. The Respondent's claim of workplace toxicity at the College was based on allegations in old news media reports. There was no basis to claim, in September 2023, that the situation was "ongoing."

3. I do not accept that the posts were entirely personal. One post appeared on a Facebook page that clearly identified the Respondent as a City Councillor. The other post, by its very nature, affected the City's interests. The Code of Conduct applied to both posts.

4. I fail to accept that the Respondent's "some institutions" post was not about Canadore College. It was primarily about Canadore and Nipissing University.

5. The Respondent's "fire someone" post was reasonably interpreted as referring to the College's CEO or to another senior executive of the College. It was reasonable for the College's Board of Governors to be concerned about the post. The post was not helpful to the relationship between the City and the College.

6. Provided they comply with the Code, Council Members are able to express opinions about significant issues affecting the community – even issues related to a provincial government agency. The Respondent was commenting contemporaneously on the live issue of international student accommodation. The topic was significant to the community, and it was reasonable for the Councillor to show interest in it.

7. While concern about non-factual opinion might be understandable, a Code of Conduct inquiry is not suited to addressing it. For the reasons set out in this report, Integrity Commissioners are not in a position to police the truth of political opinion.

8. The issue under the Code of Conduct is whether the Respondent used insulting language or treated a member of the public inappropriately. The posts did not contain insulting language and they did not involve inappropriate treatment. Consequently, they were not contrary to the Code.

9. The finding that the Code was not breached is not an endorsement of the posts. Individual Council Members are free to disagree or agree with their content, and it is open to City Council disavow the communications should it wish to do so.

PRELIMINARY ISSUE

10. Before commencing this inquiry, I disclosed two sets of information to the parties.

11. First, I disclosed that the Respondent's oldest brother was a friend of mine during the late 1980s. During this time, I may have briefly met the Respondent on one occasion, though I do not precisely recall. Any discussion we had (if it occurred) would have been brief and inconsequential. Soon after graduation from university, the brother relocated to the United States, and we eventually lost touch. The last time I saw the brother (or communicated at all, as far as I recall) was in 2012, when I was in the United States on business and had breakfast with him.

12. Second, with the consent of the former client, I disclosed that my law firm (Fasken) had a relationship with a particular client until September 2020 and that, briefly in September-October 2017, I had provided advice to that client. I possess no information derived from my 2017 work for the former client that is relevant to this Code of Conduct complaint.

13. On two previous occasions, I exercised my discretion under subsection 223.3 (3) of the *Municipal Act* to delegate inquiries to Acting Integrity Commissioners. In June 2020, I received a complaint against the then-Mayor involving certain matters related to Invest North Bay Development Corporation. Some of the allegations against the Mayor mentioned the present Complainant (Mr. Burton). I delegated that matter to former Justice George Vallin, who conducted the inquiry as Acting Integrity Commissioner, and issued an inquiry report in December 2020. In March 2023, I received a complaint against Councillor Inch. The complaint materials mentioned, indirectly, the Councillor's siblings (including, though he was not specifically identified, the eldest brother). While the mention of her family members was peripheral, and it ended up not figuring in the inquiry, I exercised my discretion to delegate to lawyer (and Fasken partner) Nicole Singh.

14. I determined that, in my view, the two sets of historic facts described in paragraphs 11 and 12, above, do not affect my ability to conduct this inquiry in a fair, objective, and neutral manner, and could not reasonably be perceived to affect my objectivity. My friendship with the Respondent's brother occurred in distant past, and I never had dealings with the Respondent personally. Significant time has passed since I acted for the former client, my involvement was minor, and my law firm has no current relationship with it.

15. I informed the Complainant and the Respondent that it was not my intention to delegate the complaint and invited each to inform me, by October 5, of any objection. I received no objection from either party. The Complainant made no objection. The Respondent stated that she had “no issue with [me] acting on this complaint.”

BACKGROUND

16. In 2019, a former contract employee of Canadore College alleged discrimination and filed a human rights complaint. According to tribunal records, as of August, the case was still before the Ontario Human Rights Tribunal.¹

17. That same year, the individual’s lawyer wrote to the College’s Board of Governors, suggesting that several other individuals might also have suffered discrimination. The lawyer’s letter provided no names, and the lawyer explained, “To be clear, I cannot say whether any of the allegations are true.”² Soon afterward, Canadore College engaged an independent, third-party investigator to review the allegations.³ Both the lawyer’s letter and the appointment of an investigator were widely covered by the local news media.

18. A year later, in February 2020, the third-party investigation was in the news again. The Ontario Public Service Employees Union (which represents most Canadore employees) and the College Employer Council (which represents all community colleges, including Canadore) hotly debated whether the report should be released to OPSEU.^{4 5 6}

19. The College itself explained that many of the experiences identified were historical in nature, and those previously brought to the College’s attention had been investigated and mostly resolved. While an intimate relationship between two employees was raised as a concern by some, it was entirely consensual and (by 2020) the two individuals had been married for many years. Further, the investigator advised against releasing the report for the following reasons: the purpose of the report was to gain an understanding of employees’ perceptions, and the third party did not investigate the issues or in any way

¹ 2023 HRTO 1199 (CanLII).

² Jeff Turl, “[Canadore College notified of serious allegations of sex discrimination](#),” *Bay Today* (February 25, 2019).

³ CBC News, “[Human rights complaint filed in connection with Canadore College staff member in North Bay](#)” (February 27, 2019).

⁴ Ontario Public Service Employees Union, News Release, “[OPSEU demands complete copy of investigator’s report on Canadore’s ‘poisonous’ workplace culture](#)” (February 12, 2020); Ontario Public Service Employees Union, News Release, “[Statement from OPSEU President Warren \(Smokey\) Thomas on the harassment and discrimination allegations at Canadore College](#)” (February 19, 2020).

⁵ Graham Lloyd, College Employer Council, Letter, “[College Employer Council sets record straight on Canadore investigation](#),” *North Bay Nugget* (February 25, 2020).

⁶ Ontario Public Service Employees Union, News Release, “[Statement by OPSEU President Warren \(Smokey\) Thomas on the College Employer Council’s involvement in Canadore College](#)” (March 3, 2020).

validate the information that was shared; the privacy of participants, most of whom chose to remain anonymous, must be respected; the due process rights of complainants and other parties must also be respected; and potential remedial steps must not be deterred or inhibited.

20. While the one complaint before the HRTO remained outstanding as of August 2023, the systemic allegations considered by the third-party report do not appear to have been raised again after 2020.

21. Meanwhile, in an unrelated development, in late August 2023, local news media reports and letters to the editor drew attention to allegations that several international students enrolled at Canadore College and Nipissing University were struggling to find accommodation.⁷

22. The controversy culminated in a September 5-6 “*morcha*” (demonstration), at the College, organized by a group calling itself Montreal Youth Student Organization⁸ and attended by approximately 30 international students.⁹ The protest, which was widely covered by local news media, at one point included two tents, and several journalists reported that students were living in them.¹⁰ According to the College, the tents were merely a “publicity stunt” to attract attention,¹¹ an allegation denied by the Montreal-based organizers.¹²

23. On September 7, the Montreal Youth Student Organization declared victory and claimed the College had met the protestors’ demands.^{13 14} The College, on the other hand, stated that it had been communicating with students since January, that emergency accommodation was still available, that the College would have every student in

⁷ Jennifer Hamilton-McCharles, “[Canadore and Nipissing students living in cars and hotels while they try to find a place to live](#),” *North Bay Nugget* (August 26, 2023).

⁸ @m.y.s.o_ on Instagram

⁹ Eric Taschner, “[International students struggle to find housing in North Bay](#),” CTVNorthernOntario.ca (September 5, 2023).

¹⁰ Jeff Turl, Stu Campaigne, Chris Dawson, “[Canadore throws stranded students off its property. Left without shelter](#),” *Bay Today* (September 6, 2023); Jennifer Hamilton-McCharles, “[International students living in tent on side of road in North Bay](#),” *Postmedia News* (September 7, 2023).

¹¹ George Burton, “[Canadore President sends open letter to community regarding housing](#),” *North Bay Nugget* (September 27, 2023).

¹² Dan Bertrand, “[Student organization responds to claims North Bay protests were a ‘publicity stunt’](#),” CTVNorthernOntario.ca (October 1, 2023).

¹³ Harinder Singh (@harinderlifestyle_coach) and Manpreet Kaur (@manpreet_longowal13), Instagram (September 7, 2023), online, <https://www.instagram.com/p/Cw4fWMzuXr7>

¹⁴ Jennifer Hamilton-McCharles, “[International students in Canada living on the side of a road come to a solution with local college](#),” *Postmedia News* (September 7, 2023).

permanent housing as soon as possible, and that some students had refused the housing options presented to them.¹⁵

24. On September 6, the second day of the protest, on her Facebook page (as opposed to her Facebook profile), Councillor Inch posted the following statement (emojis deleted):

Let's take a moment to celebrate the incredible resilience and determination of our international student community!

These remarkable individuals have embarked on journeys of thousands of kilometers, leaving behind their families and familiar surroundings to pursue their dreams right here in our community.

Many of them work tirelessly in minimum wage jobs in fast food and retail to make ends meet, all because of the substantial financial burden they carry. On average, they pay a staggering 4 times the tuition fees of Canadian citizens. For instance, while a course might cost a citizen \$2000, an international student pays a whopping \$8000 for the same education.

But the challenges don't end there. Our housing shortage has placed international students in tough positions, where they can only afford between \$450-500 per month in rent. Yet, they are often asked to pay \$700 or even higher. This is why you see them banding together, sharing two-bedroom apartments with 4-6 people just to make it work.

We must recognize that how we treat them matters greatly. Shockingly, some institutions aren't even returning deposits for residence. Some international students have lost \$300, while others have been out \$3000. They are told they didn't give proper notice, even when it was the institution that asked them to leave.

These students don't want to cause trouble, so they suffer in silence. It's time for us to stand up for them, show empathy, and make sure their experiences are fair and just.

Let's work together to create an inclusive and supportive community where everyone can thrive! #InternationalStudents #CommunitySupport

25. On September 10, using her @sarainthenorth account, the Councillor posted the following on Instagram:

There's a pattern here in town around some boards. Can you spot the common denominator? 😞

I'm hearing about the ongoing toxic workplace at Canadore, and how some staff have been treated bc they dared speak out. Given how they treat their own staff, their treatment of international students makes sense.

¹⁵ Canadore College, "[Statement re: Housing Demonstration at Commerce Court](#)" (September 6, 2023). See also George Burton, letter, note 11: "Canadore had access to accommodation for all students who wished to be housed – no student was required to sleep in a car, tent, bus shelter, bus depot, or air terminal unless they chose to do so. To suggest anything different is misguided."

What's gone on is/was shameful. People deserve better from their leadership. The students deserve better. Our community is full of folks who know better, the people I personally know on this board are better than this.

Can you imagine a doctor who decided to ignore his patient's tumors? Or Police officers who didn't respond to calls bc of personal relationships?

Asking the board members to show some courage here and fire someone. It is your LEGAL RESPONSIBILITY to ACT. If that doesn't compel you, do it for your own integrity. Find a way folks.

26. Someone else (not Councillor Inch) attached to the Instagram post an image of a list of the members of Canadore College's 2022-2023 Board of Governors, in alphabetical order, appearing beneath Canadore's logo and wordmark. The Complainant's name was second on the list. The Mayor's name appeared fifth on the list. (Peter Chirico was appointed to the Board of Governors by the Government of Ontario prior to his election as Mayor, and his appointment is unrelated to his municipal office.¹⁶)

27. The September 10 Instagram post was subsequently removed.

28. The September 6 Facebook post was edited once, to remove an attachment. It currently remains on the Respondent's Facebook page,¹⁷ which identifies her as a City Councillor,¹⁸ as well as on the VISION 2025 page.¹⁹ The VISION 2025 Facebook group has approximately 2.5 K members.

PROCESS FOLLOWED

29. In operating under the Code, I follow a process that ensures fairness to both the individual bringing a Complaint (the Complainant) and the Council Member responding to the Complaint (the Respondent). This fair and balanced process begins with me issuing a Notice of Inquiry that sets out the issues in the inquiry. The Complaint, including any complaint materials, is attached to the Notice. The Respondent is given the opportunity to respond, and then the Complainant receives the opportunity to reply to the Response. The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as personal phone numbers and email addresses. I may accept supplementary communications and submissions from the parties, generally on

¹⁶ Mr. Chirico was first appointed to Canadore's Board of Governors on March 25, 2020: Order in Council 542/2020. Effective September 1, 2022, he was reappointed to a second term ending not later than August 31, 2025: Order in Council 1151/2022.

¹⁷ www.facebook.com/votesarainch

¹⁸ The Intro section of the page reads: "Sara Inch City Councillor. I listen and I care, je suis ici pour vous." In contrast, the Intro to her personal profile states, "my opinions and posts are personal, and made by me, as a member of the public."

¹⁹ www.facebook.com/groups/2070024479964383/

the condition that each party gets to see the other's communications with me. I do this in the interest of transparency and fairness.

30. I received a complaint form on September 11. I requested clarification from the Complainant on September 19 and received the clarification on September 21. The original complaint mentioned the September 10 Instagram post; the clarification alleged that the September 6 Facebook post was also part of the contravention. I treated the original complaint form and the clarification, combined, as a Complaint under the Code. The date of the clarification, September 21, is the official receipt date.

31. The Complaint alleges that the Respondent's September 6 and September 10 social media posts contravened Article VIII, paragraphs (a) and (c), of the Code.

32. I issued a Notice of Pending Inquiry on September 27. The Notice identified the Complaint and the issues it raised. The Notice also disclosed the information appearing at paragraphs 11 and 12 of this report, and gave the parties until October 5 to state any objection to me handling the inquiry without delegating to someone else.

33. On October 13, I issued a Notice of Inquiry. It informed the parties that I would conduct the inquiry personally and, once again, it set out the allegation that would be the subject of the inquiry.

34. Based on my review of the Complaint, I exercised my *Municipal Act* discretion to conduct an inquiry into the allegation, under Article VIII of the Code, that Councillor Inch's posts contained insulting language and/or did not treat a member of the public appropriately.

35. I received Councillor's Inch's Response on October 20. I offered Mr. Burton the period until November 3 to make further submissions in reply but, as explained below, he felt it unnecessary to do so.

36. During November, I interviewed Mr. Burton and Councillor Inch separately. I also interviewed three witnesses: Mayor Chirico (who is also a member of the Board of Governors of the College), Mr. John Severino, Chief Administrative Officer, and Mr. Gord Young, the City's Communications Officer.

37. Other potential witnesses were suggested to me, but I declined to seek interviews with them. In particular, I decided not to interview any of the international students, the *morcha* organizers, or the journalists who were covering the protest. It is not my place to make findings about student accommodation or the College's handling of the situation. The issue in this inquiry is whether Councillor Inch, through social media, contravened the Code. The accommodation controversy and student demonstration merely provide

context for the posts. In addition, it is not my practice to request witness interviews from members of the news media.²⁰

38. Both parties had full and fair opportunities to provide evidence and to state their positions on the issues in this inquiry. While this report summarizes the evidence and the argument, and does not mention everything I considered, the report is based on all the information, all the interviews, and all the submissions of the parties.

Brief Pause to Explore Resolution

39. The process was paused briefly to allow the parties to explore the prospect of settlement.

40. It is always open to the parties to resolve a Code of Conduct complaint, between themselves, before the inquiry ends. If a matter is resolved and the complaint is withdrawn, then the inquiry is terminated and there is no report to Council, except for a subsequent report of an administrative nature, not naming the parties, indicating that the inquiry in file number such-and-such was terminated because the matter settled.

41. Any resolution must be a voluntary decision of both parties. Even entering into a dialogue that might resolve the matter must be a voluntary action. A party cannot be forced to discuss a resolution.

42. If the parties have agreed to discuss a matter with a view to possibly resolving it, then my practice is to pause the inquiry to allow the dialogue to proceed. An inquiry will be paused only if both parties agree. Should either party no longer wish to participate in dialogue, then the pause will end, and the inquiry will resume.

43. If both parties agree that the Integrity Commissioner may act as a go-between, speaking to each party in turn to help see whether a resolution is achievable, then I am willing to fill that role. I play this role only if both parties agree that it would be useful, and only if both parties agree that, if the matter did not get resolved, I would complete the inquiry and issue a report.

44. Settlement attempts occur “without prejudice.” If the matter does not get resolved, then nothing that occurred in relation to settlement – for example, neither a settlement offer that is made nor the position of a party that makes settlement unachievable – can be relied upon in the inquiry or be mentioned in the report.

45. In this case, the Complaint was not settled, and the inquiry resumed. Nothing that occurred in relation to settlement has been taken into consideration or is included in this report.

²⁰ *Re Brampton (Council Member) (No. 1)*, 2018 ONMIC 13 (CanLII) at para. 17; *Anderson, D. v. Pinto (No. 2)*, 2021 ONMIC 34 (CanLII), at para. 46

Allegations not Considered

46. As I have noted, I only inquired into the allegation that Councillor Inch's posts contained insulting language and/or did not treat a member of the public appropriately. The Notice of Inquiry explained to the parties why the inquiry would not consider the other provisions of Article VIII of the Code.

47. The Complaint alleges that the written comments of the Respondent were malicious, non-factual, bullying, irresponsible, and reprehensible, and that they are responsible for a public backlash that is detrimental to the reputation of the Complainant and of Canadore College. The inquiry has not been based on the adjectives used in the Complaint. Instead, the inquiry has been based on the language of Article VIII of the Code.

48. Article VIII states generally that a Member must treat members of the public appropriately and without abuse, bullying or intimidation. [emphasis added] In my view, the posts did not, on their face, show "abuse, bullying or intimidation." The Notice stated that, unless additional context were provided (none was), it would not be reasonable to include this issue within the scope of the inquiry.

49. Paragraph (a) of Article VIII provides specifically that a Member must not:

use indecent, abusive or insulting words or expressions toward ... any member of the public. [emphasis added]

50. I carefully reviewed the two posts in light of the above language. In my view, they did not contain "indecent [or] abusive" language and it was not reasonable to include this issue within the scope of the inquiry.

51. Paragraph (c) of Article VIII provides that a Member must not engage in harassment. The Code defines harassment to include:

any comment, conduct, action or gesture that is unwelcome or that ought reasonably be known to be unwelcome that could affect a person's dignity or a person's psychological or physical health

52. While the Code's definition does not state so explicitly, the law in Ontario is that harassment generally involves a course of conduct. While a single incident – especially one that is particularly serious – can constitute harassment, typically harassment entails a pattern of conduct or, in other words, several incidents or events. The posts that accompany the Complaint do not rise to the level of severity that constitutes harassment, and no course of conduct has been alleged.

53. In my view, it would not have been reasonable for the inquiry's scope to include whether paragraph (c) was contravened.

POSITIONS OF THE PARTIES

Complainant's Position

54. Mr. Burton submits that Councillor Inch's September 10 Instagram post was malicious, non-factual and bullying, that it was irresponsible, and that it perpetuated a public backlash detrimental to his reputation and that of Canadore College. He submits that the September 6 Facebook post was inaccurate and damaging, and part of the same contravention.

55. He submits that the Councillor represents the City of North Bay.

56. Mr. Burton states that the posts were upsetting to him and to Board members and damaging to the College and its employees. He says that he filed the Complaint primarily to defend the College's interests.

57. His position is that the Councillor's comments about international student housing (the Facebook post) and about the College workplace and international students (the Instagram post) were inaccurate and irresponsible.

58. He notes that once an allegation is posted on the Internet and enters the public domain, it becomes part of the permanent record.

59. Mr. Burton points out that he is the only College employee reporting directly to the Board of Governors and that, consequently, Councillor Inch's appeal to the Board to "show some courage here and fire someone" was a call to fire him.

60. He acknowledges that, as a public institution, the College is subject to scrutiny and is not beyond criticism. However, he feels that Councillor Inch crossed the line by publicly advocating a firing. He sees the posts as intended to make an issue of the College's leadership and its Board's governance.

61. Mr. Burton notes that, since its founding, the College has maintained a good relationship with the City of North Bay. As long as he has been President and CEO, he has maintained positive relations with elected officials.

Respondent's Position

62. The entirety of Councillor Inch's written response to the Complaint was as follows:

My reply to the Complaint is simple. I wasn't referring to Mr. Burton.

63. During my interview of her, and in writing afterward, Councillor Inch elaborated. Her posts do not name Mr. Burton, and when she posted was unaware that the only individual whom the Board of Governors can hire and fire is the President. She believes

that the public is, probably, similarly unaware, so readers of her September 10 “fire someone” post would not necessarily have interpreted it as a reference to Mr. Burton.

64. She also notes that, in any event, Mr. Burton is a public figure (meaning he is subject to criticism).

65. Councillor Inch explains that her September 6 Facebook post referenced an earlier post on a public group called VISION 2025. She states that the post to which she referred was about multiple Northern Ontario colleges, not just Canadore.

66. Councillor Inch states that she, “posted personally and on my personal Facebook and Instagram accounts,” created long before she ran for municipal office. The topic of her posts (post-secondary educational institutions) does not fall under the *Municipal Act* and is not related to her role as a City Councillor. She posted as a concerned member of the public, based on information derived from news articles and discussions in the community. In support of her observation that the issues mentioned by her posts had previously been reported in the news media, Councillor Inch sent me links to five news stories, two concerning international students’ accommodation,²¹ and three concerning the allegations about harassment in the Canadore College workplace.²²

67. She observes that the posts make no mention of the City or her office as a Council Member.

68. Councillor Inch states that the posts contain no words that are insulting. (She also notes that the Code does not define “insulting words.”) The posts did not involve name-calling and did not use any word defined as a derogatory or insulting adjective.

69. She acknowledges that in the Instagram post she,

took a strong tone; however, given the context and my knowledge of the situation, this seemed appropriate. Board members are public figures, and in taking on the role, individuals are taking a position that is open to criticism. The necessary transparency involved in the role exposes them to honest and sometimes direct criticism. Myself, acting as a member of the public and a Canadian citizen, I have the right to express my opinions, as long as I am not engaging in hate speech. The Board of Canadore College is not a marginalized group or protected group; there was no hate speech used. In fact, board members are privileged in comparison to international students, who we invited here, who live precariously, at the mercy of the institutions they attend.

²¹ Casey Stranges, “[College in Timmins revokes more than 500 acceptance letters to international students](#),” *Elliot Lake Today* (August 11, 2023); Kaitlyn Smith, Vrunda Bhatt, “[International students running out of housing options in Ontario’s North Bay](#),” *New Canadian Media* (September 8, 2023).

²² Jeff Turl, “[Union demands complete copy of investigator’s report on Canadore’s ‘poisonous’ workplace culture](#),” *Bay Today* (February 12, 2020); Jeff Turl, “[George Burton: ‘Investigator’s report won’t be made public’](#),” *Bay Today* (February 19, 2020); CBC News, “[Union asking province to take over Canadore investigation into allegations of sexual harassment and bullying](#)” (February 20, 2020).

70. The Councillor observes that someone else posted the names of members of the Board of Governors, and also shared the Instagram post to the Facebook group VISION 2025. She says this occurred without her consent or knowledge.

71. Councillor Inch states that the next morning (September 11), she edited the Instagram post to remove the call to fire someone, and later deleted the post entirely.

72. The Councillor recalls that her posts had limited engagement; to her recollection, three people commented on the Instagram post before it was removed. She states that, at the time, her followers were mostly, “close friends and long-term acquaintances who are used to my sarcastic and direct style.” The number of followers has increased, she explains, following the release of another Integrity Commissioner report involving her.²³

73. In short, the Councillor submits that her posts had limited impact. They were not widely read and generated few comments. She has very few followers and does not influence media.

Complainant’s Reply

74. Mr. Burton was given an opportunity to provide a reply to Councillor Inch’s laconic written response, but decided that a reply was unnecessary.

75. He had previously noted that the Councillor does use social media to comment on municipal issues, including matters before City Council, and that she is known to be a City Councillor. He observes that when a Council Member comments on issues, it is impossible to separate the comment from the office of the Member.

FINDINGS OF FACT

76. Findings of fact are made based on the standard of the balance of probabilities.

77. I find that the Respondent’s Facebook page is associated with her office as a Council Member. It introduces her as “Sara Inch City Councillor” and it frequently contains posts related to City business. Examples include posts on the Sam Jacks Recreation Complex (December 30), purchasing three hybrid buses (December 11), digital modernization at City Hall (November 7), and, around the same time as the Facebook post on international students’ housing, posts on recent accidents on Algonquin Avenue (September 7), a communication from the Ministry of Transportation to City Council about the walkway over the Highway 11/17 bypass (August 30), and municipal removal of wasps’ nest (August 27). These are not isolated examples; they fairly reflect the page’s content.

²³ *Horsfield v. Inch*, 2023 ONMIC 2 (CanLII).

78. Consequently, I find that a reader of Councillor Inch's September 6 Facebook post would have associated it with her office as a City Councillor.

79. On the other hand, I find that the Respondent's Instagram account is primarily personal. Since her election to City Council, very few posts have related to City business, and then only tangentially. For example, on January 14, 2023, she posted about spending the weekend reading old municipal budgets; this cannot reasonably be characterized as a post about City business. (For completeness, I note that her Instagram account was heavily focused on municipal politics and City issues during the 2022 municipal election campaign, but this focus ended once she took office.)

80. While the content of Councillor Inch's Instagram account is largely personal, I note that her account is public, not private. An Instagram user may choose whether an account is public or private and may update this setting at any time. Photos and videos on the profile or in the feed of a public account may be seen by anyone on Instagram and, unless settings are changed to disallow sharing, may be shared by anyone on Instagram.²⁴

81. I find that the September 6 Facebook post was primarily about the two post-secondary institutions in North Bay – not a multitude of colleges and universities across Northern Ontario. The post coincided with the *morcha* at Canadore College, and it followed several days of news coverage focused on Canadore College and Nipissing University. If, as Councillor Inch says, she was responding to a post on the VISION 2025 page, then this was in all likelihood either the August 30 post specifically about Canadore, or the August 27 post about Nipissing University and the College but (in the words of the author) “more so Canadore.”

82. The September 6 post related to an issue involving a provincial government agency located in North Bay, at a time when the issue was a matter of both local and national news coverage. I find that Councillor Inch was commenting contemporaneously on a topic that was significant to the community, and in which it was reasonable for the Councillor to show interest.

83. The September 10 Instagram post was unquestionably about Canadore. I accept that Councillor Inch might not have known that Mr. Burton was the only employee whom the Board of Governors could directly fire, but I also believe it was reasonable for readers to conclude that he, or another senior official, was the target of the post. I note the post's reference to the College's “leadership,” the implication that “personal relationships” might impede a response, and the suggestion that the Board would need “courage” to act.

84. From Councillor Inch's own explanation and the information she provided, I find that the references to an alleged “toxic workplace” at Canadore were based on old news reports (February 2020) and nothing current. While it is true that the third-party report was

²⁴ Instagram, “[Differences between public and private accounts on Instagram.](#)”

never released, that does not mean the situation is “ongoing.” There is no evidence of a toxicity issue at Canadore.

85. According to the evidence of witnesses, Councillor Inch’s “fire someone” post was concerning to members of the College’s Board of Governors, some of whom raised it with City officials. To that extent, the post was unhelpful to relations between the College and the City. At the same time, no one associated with the College believed that Councillor Inch’s view represented the City’s position.

86. I find that it was reasonable for Board members, including Mr. Burton, to be concerned about the effect of the Instagram post on their reputations and that of the College. Ultimately, neither of Councillor Inch’s posts had an impact. Despite heavy news media interest in the student accommodation issue, no journalist asked the City about the Councillor’s online comments.

87. Engagement with both posts was low. The Instagram post has been removed and this inquiry has been unable to locate any online trace of it. While the Facebook post remains, it received only eight “likes” on Councillor Inch’s page and three “likes” on the VISION 2025 page. It has been shared only twice. Nobody has commented on it.

ISSUES AND ANALYSIS

88. I have considered the following issues:

- A. Did Councillor Inch’s September 6 Facebook post contain insulting language and/or not treat a member of the public appropriately, contrary to Article VIII of the Code?
- B. Did Councillor Inch’s September 10 Instagram post contain insulting language and/or not treat a member of the public appropriately, contrary to Article VIII?

89. Before addressing each issue, I will make a few general comments about how the Code of Conduct applies to political speech generally and social media use in particular.

90. An Integrity Commissioner must tread cautiously in matters related to the expression of political opinion. As the Honourable Donald Cameron, a former Superior Court judge, wrote when he was the Integrity Commissioner of Brampton: “I cannot and will not be a referee of free speech in a political arena provided it stays within the bounds ... of the Code.”²⁵

²⁵ City of Brampton, Report No. BIC-030-192 (December 4, 2012), Integrity Commissioner Donald Cameron, at p. 3.

91. As has been noted in other municipalities, the expression of political opinion lies outside an Integrity Commissioner's purview.²⁶ It is not for an Integrity Commissioner to pronounce an opinion true or false. Instead, a statement of opinion is subject to being tested through political debate.²⁷

92. Sometimes it is alleged that a comment is factually untrue; a falsehood, it might be argued, is not an opinion and is not protected. While concern about non-factual opinion might be understandable,²⁸ a Code of Conduct inquiry is not suited to addressing it. An Integrity Commissioner is not well-placed to police the truth of political speech.²⁹

93. Identifying falsehood is not a simple exercise. As the Supreme Court of Canada (in a decision written by Justice Beverley McLachlin, later Chief Justice McLachlin) has observed, it is difficult to determine total falsity conclusively,³⁰ "a statement that is true on one level for one person may be false on another level for a different person,"³¹ the distinction between fact and opinion is "slippery,"³² the prohibition of false speech may be used to punish deviation from "currently accepted 'truths'" that later turn out to be wrong,³³ historically, restrictions on so-called false speech have been used to suppress the speech of minority and disadvantaged groups,³⁴ and false statements may sometimes have value.³⁵

94. My role as Integrity Commissioner is to interpret and apply the Code of Conduct. My role is not to tell Council Members how to exercise their political judgment, or to opine on what I would have posted on social media, were I in their shoes. As I reported to another municipal council:³⁶

I might or might not have used different words to express the same sentiments, and I might or might not have held those sentiments in the first place, but what I would have done is irrelevant. I am not the Mayor of Orangeville and it is not my role to tell the Mayor how to improve the wording of his communications to the community. My role is to report on whether the Code of Conduct was contravened. It was not.

²⁶ *Montforts v. Brown*, 2021 ONMIC 10 (CanLII), at para. 132.

²⁷ *Miles v. Fortini*, 2018 ONMIC 22 (CanLII), at para. 49.

²⁸ Political speech, by its nature, consists primarily of opinion, with fact cited to justify the opinion. Sometimes the line between fact and opinion is unclear. *Montforts v. Brown*, 2021 ONMIC 10 (CanLII), at para. 135.

²⁹ *Re Maika*, 2018 ONMIC 11 (CanLII), at para. 139.

³⁰ *R. v. Zundel*, [1992] 2 S.C.R. 731, at 757-758.

³¹ *Ibid.*, at 756.

³² *Ibid.*, at 768.

³³ *Ibid.*, at 769.

³⁴ *Ibid.*, at 766, 772.

³⁵ *Ibid.*, at 754-755, 758.

³⁶ *Montforts v. Brown*, 2021 ONMIC 10 (CanLII), at para. 154.

A. SEPTEMBER 6 FACEBOOK POST

95. I have found that posts on the Councillor's Facebook page (as opposed to her personal profile) are associated with her office as a Council Member.

96. In my view, the Code of Conduct applies to her posts on this page – especially posts about issues related to things happening in North Bay.

97. Whether or not I agree with the post is irrelevant. The issue is whether it contravened the Code, particularly, whether it contained insulting language and/or did not treat a member of the public appropriately.

98. In my view, the Facebook post did not use insulting language, and it did not treat anyone inappropriately.

99. I have examined the entire post, including the fifth paragraph which was mentioned in the clarified Complaint:

We must recognize that how we treat them matters greatly. Shockingly, some institutions aren't even returning deposits for residence. Some international students have lost \$300, while others have been out \$3000. They are told they didn't give proper notice, even when it was the institution that asked them to leave.

100. As previously mentioned, my finding is that the post, including the above paragraph, refers to Canadore College. I am aware that Mr. Burton and the College contest the accuracy of the paragraph. Indeed, Mr. Burton and the College have been very clear, including through media statements and open letters, about the facts of the situation. They have every right to correct the record. Correcting the record, providing context, and defending conduct are customary ways in which public institutions respond to misstatements about them.³⁷

101. It is one thing for a community college to respond to criticism, which this college has done (and which it has every right to do). It is quite another to find that criticism of a college, by a municipal councillor, is unlawful. I have referred to the College as a public institution. Ontario's colleges of applied arts and technology are Crown agencies.³⁸ The Supreme Court of Canada has pointed out that subjecting public institutions to scrutiny and criticism is a vital part of democracy.³⁹

102. I have found that the September 6 post related to an issue involving a provincial public institution located in North Bay, at a time when the issue was a matter of both local

³⁷ *Linton v. Kitras*, 2020 ONMIC 1 (CanLII), at paras. 86-87.

³⁸ *Ontario Colleges of Applied Arts and Technology Act, 2002*, subs. 2(4).

³⁹ *Reference re Alberta Statutes*, 1938 CanLII 1 (SCC), [1938] S.C.R. 100, at 133, per Duff C.J., cited by *Ref re Remuneration of Judges of the Prov. Court of P.E.I.*, 1997 CanLII 317 (SCC), [1997] 3 S.C.R. 3, at para. 102, per Lamer C.J.C.

and national news coverage, and that Councillor Inch was commenting on a topic significant to the community, in which it was reasonable for the Councillor to show interest. These considerations factor into my conclusion that Councillor Inch's post did not treat anyone inappropriately.

103. As the Facebook post did not use insulting words or treat anyone inappropriately, it did not contravene Article VIII of the Code.

B. SEPTEMBER 10 INSTAGRAM POST

104. I have found that the Instagram post was unquestionably about Canadore and that it was reasonable for readers to conclude that Mr. Burton, or another senior official, was the target of the post. The post was not helpful to relations between the College and the City. Contrary to its claim, there was no "ongoing toxic workplace" – just allegations in old news reports.

105. On the other hand, the post related to a student accommodation issue that was current, newsworthy, and a matter of community interest. The Respondent posted on a personal Instagram account not used for City business. While the post was not helpful to relations between the City and the College, nobody interpreted Councillor Inch's position as anything but her own.

106. As I explained during the November 30, 2022, Council training session, the Code does not apply to aspects of a Council Member's private life but does apply when conduct involves a Council Member's office or functions, relates to City business, or directly engages the interests of the City.

107. In my view, the Code probably did apply to the September 10 Instagram post. Even when communicated in a personal capacity, to a small, largely unengaged online audience, albeit on a public profile from which sharing of posts was not restricted, a Councillor's call to fire the head (or another senior leader) of a provincial government agency located inside the City can reasonably be said to engage the City's interests.

108. The Code applied to the Instagram post, but did the post contravene Article VIII, either by using insulting language or by not treating a member of the public appropriately?

109. It seems clear that the post did not use insulting language. It articulated a strong position but did not descend to insult.

110. A more complex question is whether the post failed to treat a member of the public appropriately.

111. While I agree that Mr. Burton (or any executive of the College) is a provincial public official, I also conclude that he is a member of the public under Article VIII. The full context

(“treat members of the public, each other Member and Staff appropriately”) confirms that Article VIII was intended to cover the treatment of everyone, whether or not a public official.

112. At the same time, after careful reflection, I am unable to conclude that the Instagram post failed to satisfy the obligation to treat people “appropriately.”

113. First, the entire context of Article VIII suggests that the word “appropriately” means something significant and weighty. Identified examples of inappropriate treatment are “abuse,” “bullying” and “intimidation.” While the Code is broad enough to cover other instances of inappropriate treatment that may arise, their gravity should be similar to (or greater than) that of abuse, bullying and intimidation.⁴⁰ I cannot conclude that the words “fire someone” – directed rhetorically to a body over which the Respondent has no influence or authority, about an unnamed person in relation to whom the Respondent has no responsibility or role – soon edited, and then deleted entirely, rose to that level.

114. Second, I have considered the principles in Article II of the Code as possibly relevant to the interpretation of Article VIII, and I find nothing in them that suggests this particular situation should be captured.⁴¹

115. Third, contravention of the Code carries with it the possibility of financial penalty. In Canada, we accept as a matter of fairness that a penalty should not be imposed unless a clear, unambiguous, written rule as been contravened.⁴² Council Members must be able to understand clearly and with certainty the conduct that is required.⁴³

116. While I do not agree that being busy is relevant to interpretation of a Code of Conduct, I otherwise accept and adopt the following statement of Integrity Commissioner Robert Swayze about the need for clarity, certainty and lack of ambiguity in the rules:⁴⁴

In my experience members of councils in Ontario are busy people serving their community and want certainty in the interpretation of the many rules that apply to them. A code, by definition, is a set of rules of behaviour and should not be interpreted by each councillor according to subjective values. The rules need to be clear and where possible, capable of only one meaning. [emphasis added]

⁴⁰ This interpretive principle is known as *noscitur a sociis* (“recognized by its associates”). “The meaning of a term is revealed by its association with other terms: it is known by its associates”: 2747-3174 *Québec Inc. v. Quebec (Régie des permis d’alcool)*, 1996 CanLII 153 (SCC), [1996] 3 S.C.R. 919, at para. 195.

⁴¹ Statements of principle are not provisions that can be breached, but they may be relevant to the interpretation and application of the substantive rules in the Code: *Ayotte v. Therrien*, 2022 ONMIC 10 (CanLII), at para. 35; *Newman v. Brown*, 2021 ONMIC 11 (CanLII), at paras. 55-59; *Re Kett (No. 2)*, 2017 ONMIC 14 (CanLII), at paras. 150-157; *Re Ford*, 2013 ONMIC 12 (CanLII).

⁴² *Baker v. Ryan et al.*, 2019 ONMIC 4 (CanLII), at para. 53.

⁴³ *Newman v. Brown*, 2021 ONMIC 11 (CanLII), at para. 57.

⁴⁴ *Hayes v. Miles*, City of Brampton Report L05 IN (May 12, 2015), at 4.

117. In my view, the words “treat members of the public ... appropriately” are sufficiently unclear that it would be unfair to the Respondent to apply them to this situation weeks after the fact.

CONCLUSION AND RECOMMENDATION

118. While I have found no contravention of the Code, this is not an endorsement of the posts. City Councillors individually are free to disagree or agree with the posts, and to communicate their views according to their judgement. City Council collectively may wish to take steps arising from the circumstances that underlie this report.

119. I repeat that the claim of workplace toxicity at the College was based on allegations in old news media reports. There was no basis to claim, in September 2023, that the situation was “ongoing.”

120. Further, the finding that the Code was not contravened is not an endorsement of a public call for the firing of the CEO (or any senior leader) of a provincial government agency located within the City. It remains open to City Council, if it desires, formally to distance itself from that communication. I express no opinion on whether Council should do so, and I make no recommendation on the subject. I simply note that this is an available option, should Council wish to pursue it.

121. I do make a recommendation about training for Council Members. The inquiry has led me to conclude that there may exist confusion about the use of social media platforms. For example, in this specific case, the distinction between Facebook profiles (which are only personal, except in professional mode) and Facebook pages (which businesses, celebrities, public officials and others may use professionally to connect with people) may not have been entirely clear.⁴⁵ Inadvertently posting content on a platform that is believed to be personal, but actually states a connection to the City, is a matter of interest to the City.

122. The Instagram post and the Facebook post at issue in the inquiry were shared (by someone other than the Councillor) to a public group of approximately 2.5 K members. In my view, Council Members might benefit from a clear understanding of the settings available on different platforms, such as privacy options and options to restrict sharing.

123. I recommend that Council request collective training in social media, with particular emphasis on relevant City policies and on the Code of Conduct. Based on the experience of this inquiry, I recommend that the training be integrated with a discussion of how various social media platforms work, so that Council Members can apply the rules (the Code and applicable policy) to their actual social media usage. (The Integrity

⁴⁵ Facebook, “[Differences between profiles, Pages and groups on Facebook.](#)”

Commissioner might be asked to participate in the Code of Conduct portion of the training.)

CONTENT

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

Respectfully submitted,



Guy Giorno
Integrity Commissioner
City of North Bay

December 31, 2023