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**OFFICE OF THE INTEGRITY
COMMISSIONER**

**RE: TOWN OF OAKVILLE CODE OF CONDUCT COMPLAINT REPORT #051724
Under the Town of Oakville Council Code of Conduct Policy Concerning Mayor
Burton**

Summary:

This report presents my reason for terminating the investigation of the complaints received under the Town of Oakville Council Code of Conduct Policy (the “Code”) relating to the conduct of the Mayor Burton at the May 6th, 2024 Council meeting. I consolidated two complaints, received on May 17, 2024 and June 21, 2024 respectively, into one complaint due to the overlapping subject matter (the “Complaint”). The Complaint alleges that the Respondent made inaccurate statements at the May 6th, 2024 Town of Oakville Council meeting. In particular, the Complaint alleges that the Respondent stated that the Federal Government required him/the Town to sign a Non-Disclosure Agreement (“NDA”) as part of the Housing Accelerator Fund approval process, and he/the Town had signed an NDA.

In this report, I discuss some key background, my process, my assessment of the allegations in the Complaint and application of the Council Code of Conduct (the “Code”), my reasons for my decision to terminate the investigation and my recommendations with respect to updating the Code.

Background:

The following facts led to the May 6th statements subject of the Complaint:

- On July 10, 2023, the Planning and Development Council (“PDC”) authorized the completion of the Housing Accelerator Fund (“HAF”) Agreement with the Federal Government of Canada and the Canadian Mortgage and Housing Corporation (“CMHC”) with a view to increasing the supply of housing in the Town.
- On January 22, 2024, by formal resolution, Council directed staff to bring forward appropriate zoning by-law amendments regarding certain housing initiatives.
- On February 21, 2024, the Town’s Chief Administrative Officer (“CAO”) updated Council on various matters including by confirming that the Town’s HAF application had been approved by the Federal Government.

- On February 23, 2024, the HAF Agreement was signed by the Mayor, on the advice of staff.

I set out my reasons for my conclusion in the report below.

The Complaint and Process:

1. The allegations in the complaint

First Complaint:

On May 17, 2024, I received a Formal Complaint under the Code, naming Mayor Burton as Respondent. The Complaint alleges that:

At it's [sic] Council Meeting of May 6th at the Town Oakville, it was requested by [councillor] if the Town of Oakville had entered into any agreements with the federal government with regards to the Federal Housing Accelerator Fund. The Mayor stated openly that he could not disclose. When asked to move into close session, the Mayor stated he could not disclose to members of Council as he had signed a Non-Disclosure Agreement and as such could not inform Council.

On May 16th, [councillors] received correspondence from Federal Minister Sean Fraser stating at no point was a non-disclosure agreement signed by the Mayor with regards to the Housing Accelerator Fund.

This is a violation of the principles of the Code of Conduct that are premised on honesty, fairness and transparency. I have attached the correspondence from the Minister from May 16th.

The Complaint relates to the Respondent's comments at the May 6th Council meeting. The Complaint provides the following excerpt from the Council meeting transcript:

Councillor O'Meara & Mayor Burton **Time Stamp: 3:13:08 to 3:15:20**

Councillor O'Meara

Sorry, I just want some clarity because I'm reading through the bylaw here and I just want to be sure we've got the right ones that are separated because it looks to me like 12.3 and 12.4 say the exact same thing. They both say to permit three additional dwelling units affecting various zones, so I just want to be sure I'm correct on what I'm voting for here.

Councillor Marc Grant

And our mayor will make it clear for you.

Mayor Rob Burton

Councillor O'Meara, the Livable Oakville Plan applies to much of Oakville, most of it, but there is also a separate official plan called the North Oakville East Secondary Plan.

Councillor O'Meara

That's all I needed your worship. I'm aware of that. Yeah. Okay. So it's for both of them.

Mayor Rob Burton

So the result is there are three pairs of bylaws. The first two are the official plan amendments to those two plans, bringing us into conformity with the province's legislation, which we must do. The second and third pair deal with the 'four as of right' and the four storeys.

Councillor O'Meara

Okay, perfect. And then just one last question to staff. Have we signed any agreement with the federal government right now about this?

Mayor Rob Burton

Councillor, under the federal government's rules, we can't tell you that.

Councillor O'Meara

Do we need to go in camera then, because I'd be happy to do that?

Mayor Rob Burton

No, I still can't tell you. Look, when the federal government has you sign an NDA [non-disclosure agreement], you've signed an NDA. So...

Councillor O'Meara

So we've signed an NDA?

Mayor Rob Burton

I had to sign an NDA in order to negotiate with... Look, Councillor, I don't think that this line of inquiry helps in any way to move a decision one way or the other.

Councillor O'Meara

Well, I guess I wouldn't know. So.

Councillor Marc Grant

Shall we continue forward? Alright, sorry. We're good? Everybody is done?

Mayor Rob Burton

I think we have to go ahead.

The Complaint makes the following allegation:

The Respondent misrepresented the facts by making the statement that the Federal Government required the Town of Oakville to sign a Non-Disclosure Agreement (“NDA”).

I conducted a preliminary classification to determine if the matter was a complaint under the Code and not covered by another process.

On May 22, 2024 I wrote to Complainant #1 and advised that pursuant to section 5 of the Integrity Commissioner Inquiries/Advice Procedure (the “Complaint Procedure”), I had conducted my preliminary classification of the Complaint and that I had made the decision to investigate the matter.

I commenced a formal investigation, pursuant to section 3 of the Complaint Procedure of the Code and gave notice to both the Complainant and the Respondent. On May 23rd, I wrote to the Respondent and requested that the Respondent provide me with a written response to the allegations contained in the Complaint on or before June 7, 2024. The Respondent provided his written response on June 7th.

On June 21, 2024, I wrote to Oakville staff with knowledge of the issues subject of the Complaint. I advised that the Respondent’s reply to the Code Complaint states that he understood that there was an NDA in place with the Federal Government, and this was based on advice that he received from staff.

I asked staff the following questions:

- a) Did staff advise the Mayor that the HAF Agreement had been signed and executed; and
- b) Did staff advise the Mayor that the Town had signed an NDA with respect to the signed and executed HAF Agreement.

In response, staff replied **that** with respect to an NDA:

Disclosure provisions were included in the HAF agreement. There was not a separate non-disclosure agreement. However, [correspondence between staff and CMHC and to Council], set out that:

Mayor and Members of Council,

Prior to this evening [May 6th] I wanted to remind you of the standard process used in announcing funding from other levels of government. These agreements have strict rules on when funding agreements can be announced, both internally

and externally. As such, any funding decisions related to the Housing Accelerator Fund (HAF) cannot be shared until the federal government provides its approval.

Second Complaint:

On June 21, 2024, I received a second complaint. It set out that at the May 6, 2024 Planning and Development Council meeting:

...Mayor Burton stated, “When the Federal Government has you sign an NDA you have signed an NDA...I had to sign an NDA in order to negotiate with...”

In his own words, Mayor Burton stated that he signed an NDA with the Federal Government, but the attached letter from the Canada Mortgage and Housing Corporation dated June 14, 2024, confirms that no record exists pursuant to [a named individual’s] ATIP Request, which was as follows:

“Please accept this as a formal request for access to a copy of the Non-Disclosure Agreement (NDA) that was executed by the Mayor of Oakville, Ontario being Rob Burton. The NDA would have been signed by Mayor Burton to allow him to negotiate with the Federal Government as it pertains to the Housing Accelerator Fund (HAF) program launched in spring 2023 by the Canada CMHC)”

We submit that Mayor Burton did not tell the truth when he responded to Councillor O’Meara’s question about signing an NDA based on the fact that CMHC has confirmed that one does not exist.

We submit that Mayor Burton breached section 6 [Conduct at Committee and Council] of the Oakville Council Code of Conduct [...]

We also submit that Mayor Burton breached section 225 (c) of the Municipal Act, 2001 SO 2001, c.25 inserted below as his actions at the May 6, 2024, meeting did not show leadership to council[...]

Finally, we submit that Mayor Burton also breached section 13.1 (h) of the Procedure By-Law 2020-011...

Because I was already investigating these issues, I accepted the second complaint and consolidated both matters into a single Complaint investigation process.

The Respondent’s reply to the Complaints:

In his June 7th reply to the Complaint, the Respondent explained that his statements and conduct at the May 6th Town Council Meeting was,

“founded upon the advice that I (or Town Staff) received from the Chief Administrative Officer [...], the Canada Mortgage and Housing Corporation (“CMHC”), and the Town Solicitor. I reject, in the strongest possible terms, any allegation that my conduct during the Council Meeting contravened values of honesty, fairness and transparency – values which I value and inform every interaction I have with Town Staff, Councillors, and the public. Moreover, with respect, the assertion in the Minister’s letter relating to non-disclosure is inaccurate. The Housing Accelerator Fund (“HAF”) Contribution Agreement (the “HAF Agreement”) precluded the Town from announcing that the Town had reached agreement to obtain funding from the Federal Housing Accelerator Fund. This was confirmed to staff by the Town’s legal department. Staff directly asked CMHC to waive that non-disclosure provision so the Town would be free to speak about the funding agreement, but CMHC refused to do so.

As a result, in the lead up to the May 6th meeting all of Council, including Councillor O’Meara, was advised that the Town was subject to restrictions on what could be made public under the agreement.

In light of the position CMHC had left the Town in, on May 6, prior to the Council meeting, the CAO sent an e-mail to Council:

“Prior to this evening, I wanted to remind you of the standard process used in announcing funding from other levels of government. These agreements have strict rules on when funding agreements can be announced, both internally and externally. As such, any funding decisions relating to the Housing Accelerator Fund (HAF) cannot be shared until the federal government provides its approval.

Please give me a call if you have any questions.”

Councillor O’Meara had thus been informed on several occasions of both the (i) the status of the HAF Application, and (ii) the CAO’s advice to the Mayor and Members of Council to refrain from any public announcement of the HAF Agreement, until the federal government had given its approval. The Councillor did not call the CAO before the public meeting, again, indicating he understood the status of the HAF agreement.

The public meeting on May 6 was well attended, with many residents making deputations both for and against the initiatives that were being considered. It was a long meeting. [...] As Council was nearing the vote, and despite the clear advice from the CAO about the Town’s inability to disclose the HAF agreement, Councillor O’Meara (at about 3:43:10 in the video-recording of the meeting) asked: “and just one question to staff. Have we signed any agreement with the

federal government about this?” Commissioner Neil Garbe started to rise to try to respond to that question. I was taken aback by the question. I was mindful of the awkward position all of us were in, and I did not think it was appropriate to leave the burden on Commissioner Garbe to try to navigate this issue. As a result, I intervened (about 3:43:24 on of the video) and said: “Councillor under the federal government’s rules, we can’t tell you that.” Councillor O’Meara responded, “Do we need to go in camera then because I would be happy to do that. I responded (about 3:43:36 on the video), “Ah no, still can’t tell you. Look when the federal government has you sign an NDA, you’ve signed an NDA so...” Councillor O’Meara asked: “So we’ve signed an NDA?” I responded, “I had to sign an NDA in order to negotiate with -. Look, Councillor, I don’t think that this line of inquiry helps in any way to move to a decision one way or the other.” Councillor O’Meara responded: “Well I guess I wouldn’t know...”

No member of Council moved a resolution to move into a closed session and the matter came to a vote. [...] In my view, in light of all the circumstances noted above, this is not an accurate representation of the situation the Town and I were confronting. [...] Council knew full well the effect its vote would have on that funding – the HAF Funding (even without having the precise wording of the agreement in hand) was always clearly conditional on the Town (as with all municipalities) implementing the various initiatives identified under the HAF program. My remarks at the May 6 meeting expressly contemplated that the Town would lose the HAF funding if it voted down the initiatives, but I urged Council to do so despite that. All of Council agreed with me, except Councillor O’Meara (which is entirely his right)

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

I believe the plain meaning of “has been approved” is signed and countersigned by both sides. The Councillor [O’Meara] had no further questions for Commissioner Sully. I believe he therefore fully understood the agreement status.

The Respondent’s Supplementary Reply:

I met virtually and interviewed the Respondent on July 5, 2024.

On July 5, 2024, during a virtual meeting, the Respondent advised that:

I understood that Council knew that the HAF Application had been approved and knew that I had signed it. I knew there was a confidentiality clause. I became confounded when Councillor O’Meara asked about the HAF Agreement.

The following is how the Respondent described what occurred at the May 6th Council meeting. I quote from the Respondent's reply which sets out his position:

In light of the position CMHC had left the Town in on April 19th, CMHC responded to correspondence from the Town stating "I understand there are some concerns about disclosing the HAF agreement to [the] public during the next council meeting while the said agreement is not announced publicly. It should be noted that when councilors respond to questions from the public or fellow council members during a council meeting, it is not typically considered an official announcement. However, such interactions can indeed attract the attention of the media and reporters leading to extended coverage, especially when the topic at hand is controversial such as the 4unts AOR bylaw tabled for approval", on May 6, prior to the Council meeting, the CAO sent an e-mail to Council, "[...] any funding decisions relating to the Housing Accelerator Fund (HAF) cannot be shared until the federal government provides its approval".

Councillor O'Meara had thus been informed on several occasions of both the (i) the status of the HAF Application, and (ii) the CAO's advice to the Mayor and Members of Council to refrain from any public announcement of the HAF Agreement, until the federal government had given its approval.[...]

Integrity Commissioner's Preliminary Review and Investigation:

There are two statements made by the Mayor that appear to be related to these allegations: (i) that the Mayor signed an NDA which precluded further comment and (ii) that the NDA precluded the Mayor from sharing information with other members of council.

While the complaint received on May 17th does not set out a specific alleged contravention of the Code, I have considered each of the provisions, including Code Rule 3 regarding confidentiality. In the course of investigation, I have concluded that the purpose of and language of Code Rule 3 is to ensure that confidential information is protected from distribution to the public. It would not capture a statement where a member asserts confidentiality over a document that is not confidential to the public or to Members. The second Complaint alleged that the Respondent's conduct breached Rule 6 of the Code. I did not find that this Code Rule applies in this circumstance. I do not interpret Rule 6 which requires that members adhere to "decorum" in a meeting to capture a member's statement that something is confidential in relation to other members of council, particularly when this statement, while made in error, was known to be erroneous.

Insofar as the second complaint cited section 225(c) of the *Municipal Act*¹ and section 13.1 (h) of the Town's Procedure By-Law,² I am not tasked with the application of the *Municipal Act* generally nor the Procedure By-Law which is typically applied by the chair of a meeting. Unless a matter rises to a Code breach, I do not consider independent, alleged violations of the Procedure By-law.

Having reviewed the Respondent's reply to the Complaint, I concluded that he had:

- i. received assistance from professional and legal staff in this matter.
- ii. relied on legal advice in making his statements about confidentiality and,
- iii. in the circumstance of this case, this advice formed the basis of the Respondent's understanding of the legal obligations in relation to the HAF agreement; that advice was strictly adhered to by the Respondent.

The Respondent was correct that there was a confidentiality clause that prohibited discussion of the HAF agreement in public. His misuse of the phrase NDA was not intended to mislead. However, the Respondent's language gave the incorrect impression that the NDA also prohibited him from sharing information with council members. That statement was made when he was attempting to shield non-public information from disclosure in a public meeting. It was known to be inaccurate as members of council had been advised that there was an HAF agreement to which confidentiality provisions applied.

As a result of the information in the Respondent's reply, I made the decision to terminate my investigation.

During my July 5th interview with the Respondent he stated that after Councillor O'Meara posed his question, "...in grappling to decide what to say that would not compromise the position of the Town, I said 'I signed an NDA' instead of saying what I meant to say – 'I signed an Agreement that was covered by confidentiality'. In a moment like that 1000 things go through one's mind. I didn't want to embarrass anyone [Member of Council] or compromise the Town's position in the matter.". Even so, it is possible that confirmation that an agreement had been signed would have been seen by the

¹ **Role of head of council**

225 It is the role of the head of council,

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;

² Procedure By-Law 2020-011, section 13.1- (h) Uphold on all occasions the rules and the observance of order and decorum amongst the members, and the conduct of members and attendees, in accordance with this by-law, Council policies and procedures, or any other applicable legislation.

federal government as disclosure of the agreement. Accordingly, it was likely best for the Mayor to say nothing in public about signing any HAF agreement.

I find that the Respondent had an honest belief that the confidentiality obligations in the Agreement precluded him from speaking about the agreement publicly, and that he relied on legal advice in forming his belief. Even if I had not received this information, I may have determined that, notwithstanding that codes of conduct, expressly or impliedly, require Members to be truthful, the allegations of this Complaint do not fall under section 6 – Conduct at Committee and Council as the Member did not intend to mislead and was acting on advice of staff. . In my view, the decorum provision does not capture this situation.

Reasons for Dismissal:

There are three relevant sections in the Integrity Commissioner Inquiries/Advice Procedure (the “Code Procedure”).

Section 2(b) states that:

If the complaint, on its face, is not a complaint with respect to non-compliance with the Code or another Council policy governing ethical behaviour or the Municipal Conflict of Interest Act, or if the complaint is covered by other legislation, the Integrity Commissioner shall advise the complaint in writing...

Section 3(b) of the Code Procedure states that:

If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, or that the pursuit of an investigation would not, in the opinion of the Integrity Commissioner be in the public interest, the Integrity Commissioner shall not conduct an investigation, or where that becomes apparent in the course of an investigation, terminate the investigation.

Section 6(c) of the Code Procedure states that:

Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other period report.

Under section 3 of the Complaint Procedure, where the Integrity Commissioner rejects or terminates an investigation pursuant to this section, reasons shall be provided to the parties. Typically, I would not publicly report when I terminate a complaint investigation;

however, I exercised my discretion to do so in the circumstances of this Complaint. The factors that I consider when determining whether to exercise my discretion include whether this is a matter of public interest and one in which my comments may provide useful guidance with respect to a novel question about the ethics of a member's activities or their decisions.³ Here, it was clear that confusion and misunderstanding played into the Respondent's comments at Council on May 6th. I received multiple complaints, which further suggested that the public has an interest in my consideration of this matter. For these reasons, I have decided to explain my termination in a public report.

In the course of my investigation, I concluded that the Respondent was acting on advice and an interpretation of the terms of the Agreement received by staff. I concluded that the Respondent did not intentionally mislead. He understood that Members of Council were aware that the HAF Agreement was signed as all Members had received an email from the CAO. The Respondent was relying on the advice of professional staff in speaking about the confidentiality obligations. While he misspoke in saying "NDA" instead of "confidentiality", that does not rise to the level of breach of decorum obligations.

Is there an applicable Code provision?

The Respondent's reply to the Complaint concludes as follows:

It is my submission that the complaint is without merit and fails to provide the basic information required by the Town's Code of Conduct for Council for a complaint:

(c) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code. The complaint should include the name of the member, the provision of the Code allegedly contravened, facts constituting the alleged contravention...

[...] the complaint fails to specify any actual provision of the Code allegedly contravened [...]

I considered whether any provision of the Code applied to the allegations. Here, the Respondent asserted that there was confidentiality that precluded him from sharing information with another Councillor (in addition to the public). The Complaint alleges that the Respondent misled the public and councillors about what information could be shared with whom.

³ *Di Ciano (Re)*, 2020 ONMIC 18 (CanLII), wherein IC Batty considered whether to continue an investigation against a former member.

The Town Code is quite narrow. Other municipalities have elected to draft much more detailed Code provisions that expressly prescribe an obligation to make honest statements and not to mislead council or members of the public. Others include interpretative principles which guide member behaviour and the interpretation of the Code. While accountability and integrity may necessarily infer truth telling as an obligation on members, not all codes of conduct expressly capture the failure to tell the truth as a Code breach. Here, the provision which most closely fits is Rule 6 which requires “decorum” at meetings. Neither the Code nor the Procedural Bylaw define decorum. The Purpose section at the beginning of the Code includes in the statement that the “Town of Oakville’s exemplary reputation has relied upon the good judgement of individual Members of Council...[formalized standards] enhance public confidence that the town’s elected representatives operate from a base of integrity, justice, and courtesy.” Generally “truthfulness” is understood to form the basis of acting with integrity. For example, the Canadian Medical Association Code of Ethics and Professionalism for its members states under *Integrity* that:

A physician who acts with integrity demonstrates consistency in their intentions and actions and acts in a truthful manner in accordance with professional expectations, even in the face of adversity.

The British Columbia Medical Association Code of Ethics sets out that for Effectiveness in Decision-Making, Directors shall deal with each other openly, honestly, truthfully and in good faith and shall observe proper decorum at all meetings. Directors' interactions in meetings shall be courteous, respectful and free of animosity. Directors shall share with each other all information that may be relevant to the business and affairs of the Association and the particular matters under discussion by the Board.

The Oakville Council Code of Conduct sets out in section 6 that:

During Committee and Council Meetings, Members shall conduct themselves with decorum ... courteous and not distract from the business of the Committee or Council meeting...

While there is no definition of “decorum” in the Code, it should be understood that there is an obligation to be truthful when acting with decorum. Some municipal Codes of Conduct have included express obligations of truthfulness and honesty. For example, the City of Barrie’s Council Code of Conduct sets out that:

Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.

Other municipal Codes of Conduct include guiding principles to assist Members of Council, the public, and the Integrity Commissioner in interpreting the Code rules, and to assist Members of Council in understanding their obligations under the Code. The Code of Conduct is not in place to “stump” Members. A clear written Code protects the

public interest and helps to ensure that Members of Council and Local Boards share a common basis and understanding of acceptable conduct. Decorum is a word that may be applied differently in different municipalities (for example, some Codes may regulate the members' manner of conduct while others may regulate the manner and content of speech). The Oakville Code states that "Members shall conduct themselves with decorum by demonstrating respect....Members shall be courteous..." Whereas other Codes of Conduct intend the word decorum to refer to the words that are used by a Member of Council. Still other Codes refer to decorum as propriety of behaviour and conducting oneself with dignity. Once I determined that the Respondent had relied on staff's advice and intended to describe an existing confidentiality obligation when he used the phrase NDA, I determined that the behaviour is not captured by the decorum rule.

Additionally, in my view, integrity commissioners must be cautious in their approach to considering alleged misstatements made in the course of political debate in a council or committee meeting. While intentional deceit is likely contrary to all Codes, we must remember that politicians may, from time to time, misspeak or choose words that are not themselves disrespectful but which, with the benefit of hindsight, could have been better selected. This comment should not be seen as a free-pass for council members to speak in meetings without careful consideration and selection of their words; however, in circumstances where an issue is subject to an express confidentiality agreement with another level of government and where all members have been warned about not disclosing confidential information, using the phrase NDA instead of confidentiality and stating the limits as more restrictive than they may be (i.e. confidential even as against members of council), while possibly an error, was conduct based on reliance on receiving staff advice..

The Complainant raised concerns about the lack of reference to the Strong Mayor's powers in the subject of this Complaint and how the enhanced powers may impact the independence between staff and the Mayor. The Complainant's supplementary comments raised concerns that the Respondent's reliance on all comments of the CAO may be "a conflict" when their responsibility and employment is at the sole discretion of the Mayor. However, in this circumstance, the Respondent did not invoke the use of Strong Mayor Powers, and there was no evidence that staff felt compelled to provide the advice that they did due to their employment at the Town being at the discretion of the Mayor. The Complainants' position is that there should be public accountability regarding what the Mayor did not share with Council. However, based on the information that I received both from the Respondent's reply to the Complaint and copies of emails received from staff, all Members of Council were given notice that the Town's HAF Application had been approved and that communications to the public going forward in the process would be managed by CMHC. I can understand the

Complainant's position that Councillor O'Meara comments at the May 6th meeting suggested that he (and other Members of Council) did not have confirmation that the HAF Agreement had been signed. Nonetheless, councillors ought to have understood that it would place the Mayor in a position to disclose confidential information if he answered a question posed at a public meeting about whether the HAF agreement had been signed. It is troubling that such a question would be asked in public after councillors received advice (that day) from the CAO and Solicitor that the federal government has "strict rules on when funding agreements can be announced, both internally and externally [and] any funding decisions relating to the Housing Accelerator Fund (HAF) cannot be shared until the federal government provides its approval". Any Member of Council could have sought to move into closed session to discuss the matter. It was extremely important in this situation to follow the advice of professional staff who had reviewed the HAF agreement and understood the consequences of breaching the federal government rules on confidentiality.

With respect to the Respondent's position set out in his reply to the Complaint that "[it] is without merit and fails to provide the basic information required by the Town's Code of Conduct for Council for a complaint", the Complaint Procedure contains provisions (section 3(b)) that allows the Integrity Commissioner to dismiss an investigation where the complaint is frivolous or vexatious and to terminate an investigation where it becomes apparent that there are insufficient grounds to continue the investigation.

Upon my preliminary review of the Complaint, discussions with the Complainant, and review of the Respondent's reply, I determined that the Complaint was not made in bad 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. For example, in the context of the *Ontario Human Rights Code*, the Human Rights Tribunal has determined⁴:

...[F]or the complaint to be trivial or frivolous, the issues must be unimportant, petty, silly, or insignificant enough to be a waste of the tribunal's time. In addition, a complaint completely without factual or legal basis might be considered trivial or frivolous. A vexatious complaint is one that aims to harass, annoy or drain the resources of the person complained against. A complaint made in bad faith is one pursued for improper reasons – a vexatious complaint is an example of one made in bad faith.

So long as a complaint is properly addressed to matters within the Code of Conduct, merely having a collateral purpose for making a complaint, such as political motivations, does not mean the complaint is made in 'bad faith'. Ethics and integrity are at the heart

⁴ *Modi v. Paradise Fine Foods Ltd.*, 2007 HRTO 30 at para. 18

of public confidence in government and in the political process. A valid complaint that addresses conduct caught by the Code will generally not be in bad faith, in the absence of actual design to mislead or deceive or a dishonest purpose.

I have decided to dismiss this Complaint, based on it becoming clear that the Respondent's statements were made on reliance on professional advice. I have also noted that there is a need to update the Council Code of Conduct to bring the accountability rules in force at the Town of Oakville, in line with best practices at the municipal level of government in Ontario.

As part of my appointment, I have been asked to review the current Code of Conduct to make recommendations on the inclusion of best practices of accountability rules at the municipal level. I will turn my mind to the inclusion of the fundamental principles of honesty and truth in my future submissions to Council.

Respectfully submitted,

July 24, 2024



Suzanne Craig
Integrity Commissioner