



**Cunningham Swan**

LAWYERS

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**CONFIDENTIAL**

July 26, 2024

**SENT BY EMAIL TO: [martinac@dourodummer.on.ca](mailto:martinac@dourodummer.on.ca)**

Mayor and Council  
c/o Martina Chait-Hartwig, Acting CAO/Clerk  
Township of Douro-Dummer  
894 South Street  
Warsaw, ON K0L 3A0

Dear Ms. Chait-Hartwig:

**RE: Code of Conduct Complaint – Report  
Our File No. 35050-6**

This public report of our investigation is being provided to Council in accordance with Section 223.6 of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

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The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

### **Timeline of Investigation**

The key dates and events for this investigation are as follows:

- Complaints Received – November 6, 2023
- Preliminary Review Conducted
- Complaint Package sent to Member – March 28, 2024
- Response received from Member – April 14, 2024
- Response received from Complainant – April 17, 2024
- Interviews Conducted – April - May 2024

### **Complaint Overview**

A complaint (the “Complaint”) was received against Councillor Ray Johnston (the “Member”) who is a Member of Council.

The Complaint alleged that the Member made discriminatory comments during a Diversity, Equity and Inclusion training session on September 20, 2023.

### **Relevant Policy Provisions**

#### **The Code of Conduct**

The Complaint engaged the following provisions of the Code of Conduct:

12. No Member shall harass any other member, any staff, or any member of the public.

“Harassment” or “harass” involves engaging in a course of behavior, comment or conduct ,whether it occurs inside or outside the work environment, that is or ought reasonably to be known to be unwelcome. It includes but is not limited to any

behavior, conduct or comment by a Member that is directed at or is offensive to another person:

- i. On the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
- ii. Which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.

### **Factual Findings**

Findings of fact were required as part of this investigation. Specifically, we were required to determine what comments the Member made during the training session.

This investigation uses the standard of proof known as the “balance of probabilities” which applies to Integrity Commissioners in Ontario.<sup>1</sup> The standard requires the trier of fact to “scrutinize the relevant evidence with care to determine whether it is more likely than not that the alleged event occurred.”<sup>2</sup>

The Complaint alleged the following:

Mr. Johnston was very vocal during the session and made several discriminatory comments related to immigrants and immigration.

Mr. Johnston commented on Canada’s secondary school system and stated that immigrants and international students are coming over and taking university and college education away from our kids by filling the schools. Mr. Johnston commented that “these people” are taking “our” positions in schools, jobs and sports.

Our investigation found that, on a balance of probabilities, the comments in the second paragraph of the above-noted excerpt from the Complaint were made by the Member. This finding was supported by the evidence received from attendees at the training session as well as the Member himself. The Member did not deny making the above-noted statement.

We note, however, that our investigation did not receive evidence of any other comments made by the Member with respect to immigrants or immigration. The evidence received suggested that the Member’s comments on the matter were limited to those noted in the second paragraph of the above-noted excerpt.

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<sup>1</sup> *Chiarelli (re)*, 2020 ONMIC 20 at para 84.

<sup>2</sup> *F.H. v McDougall*, 2008 SCC 53 at para 49.

## Code of Conduct Findings

### **Section 11: *No Member shall harass any other member, any staff, or any member of the public.***

This section of the Code of Conduct is relevant as the comments were directed at the instructor who is a member of the County of Peterborough staff.

We find that the commentary by the Member made at the training session on September 20, 2023 did not fall within the definition of “harassment” in the Code of Conduct.

We find that the comments made by the Member, taken as a whole, did not rise to a level to be considered to be “harassment” within the meaning of the Code. A finding of harassment is a very serious breach of the Code of Conduct that has a very high bar and requires comments that meet the definition outlined herein.

We find that while the commentary made by the Member was not appropriate in the context, it did not rise to the level required to meet the definition of harassment. Harassment requires that the commentary or conduct be “directed at or offensive to another person.” Our investigation received limited evidence that the comments made by the Member were directed at any specific person or that any person found them to be and, as such, we cannot support a finding that the comments constituted “harassment” within the meaning of the Code of Conduct.

As a result of the foregoing findings, the Complaint against the Member is dismissed and our investigation is hereby complete.

Sincerely,

**Cunningham, Swan, Carty, Little & Bonham LLP**



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