



ADR
CHAMBERS

Integrity Commissioner Office
for Niagara Region

EDWARD T. MCDERMOTT
Integrity Commissioner
Region of Niagara
integrity@adr.ca

January 11, 2021

Ann-Marie Norio
Regional Clerk - Region of Niagara
Ann-marie.norio@niagararegion.ca

Re: Code of Conduct Complaint (IC- 221-0720) Councillor Dave Bylsma

Dear Ms. Norio:

I wish to advise that I and my delegated associate (Michael Maynard) have now completed our investigation with respect to the subject of the above referenced Complaint and I am enclosing a copy of our final report, determination and recommendation with respect to the Complaint.

I would advise that, in accordance with section 223.6(2) of the *Municipal Act, 2001*, of Ontario, I have determined that all matters disclosed in the Report are necessary for the Report itself.

I am providing this Report to you for presentation to Council in open session in accordance with the provisions of the Municipal Act and the Region's Code of Conduct and investigation protocol. Would you please advise when this has been completed.

Subject to Council's receipt of this Report and its determination with respect to our recommendation as to penalty, this matter is accordingly now concluded.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'E. McDermott', with a stylized flourish at the end.

Edward T. McDermott
Integrity Commissioner - Region of Niagara

C.C. Mr. Ed Smith and Regional Councillor Dave Bylsma (and his counsel Mr. Asher Honickman)



ADR
CHAMBERS

Integrity Commissioner Office
for Niagara Region

EDWARD. T. MCDERMOTT

Integrity Commissioner

Niagara Region

E-mail: emcdermott@adr.ca

AND:

MICHAEL L. MAYNARD

Investigator

Office of the Integrity Commissioner

E-mail: mmaynard@adr.ca

January 11, 2020

SENT BY EMAIL TO:

Mr. Ed Smith

And to:

Mayor / Regional Councillor Dave Bylsma;

Mr. Asher Honickman, Legal Counsel to Mr. Bylsma

Re: Investigation Report – IC-221-0720

Regional Councillor Bylsma

Dear Messrs. Smith and Bylsma:

1.0 Delegation of Investigative Powers

1.1 Delegation

Pursuant to a written delegation of powers dated September 1, 2020, Edward T. McDermott ("Mr. McDermott", or the "Integrity Commissioner"), in his capacity

as Integrity Commissioner for the Regional Municipality of Niagara ("Niagara Region" or the "Region"), delegated to Michael L. Maynard ("Mr. Maynard" or the "Investigator") pursuant to section 223.3(3) of the *Municipal Act, 2001*, certain of his powers and duties as Integrity Commissioner to inquire into, investigate, and prepare a report (subject to his review and approval) (the "Report") with respect to certain aspects of the complaint (the "Complaint") described herein.

2.0 The Complaint

The Complaint was submitted by the Complainant, Mr. Ed Smith (the "Complainant" or "Mr. Smith") to the Integrity Commissioner on July 27, 2020.

A Consent and Confidentiality Agreement was signed by the Complainant on July 31, 2020 and submitted to the Integrity Commissioner on the same date. The Complaint was accordingly deemed to have been received for processing as of July 31, 2020.

2.1 Summary of the Complaint

The Complaint alleges that the Respondent, Regional Councillor Dave Bylsma (the "Respondent", "Councillor" or "Councillor Bylsma"), who sits on Regional Council as a result of his election as Mayor of the Township of West Lincoln, breached several provisions of the *Code of Conduct* through statements he made during a radio interview (the "Radio Interview") on AM 610 CKTB ("AM 610") on or around June 10, 2020.

The Respondent's statements (made in the Radio Interview) alleged in the Complaint as being contrary to the *Code* span several topics, including, in particular:

- i. The Black Lives Matter ("Black Lives Matter") movement;
- ii. The raising of the Pride Flag at the West Lincoln Town Hall;
- iii. Indigenous rights and, specifically, certain circumstances relative to territory of the Six Nations of the Grand River ("Reserve No. 40"), which is in the geographical area of Caledonia / Brant.

Regarding the above noted topics discussed by the Respondent Councillor, the Complainant alleged that:

"In the course of that interview Mr. Bylsma made a long series of comments that are extremely offensive, bigoted and racist. He has offered no public apology, to the contrary he has defended his right to make the comments and has stated, "I guess at the next election we'll figure it out, but I feel I'm representing a significant portion of my constituents,["]: [and] "I don't know if it's a majority, but minorities get a say in the public square, too. That's all part of democracy."

2.2 Code of Conduct

The Complainant has alleged a violation of the following sections of the *Code*, citing:

Scope of the Code

"[...] These standards should serve to enhance public confidence that Regional Municipality of Niagara's elected representatives operate from a base of integrity, justice and courtesy."

And:

Conduct

"As representatives of the Region, every member of Council has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, any member of staff or any member of the public. A member shall not speak in a manner that is discriminatory to any individual based on the person's race,

ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability. [...]"

3.0 The Investigation Process

3.1 – Chronology and Process

A copy of the Complaint was forwarded to the Respondent Councillor on August 5, 2020, together with a letter from the Integrity Commissioner requesting the Councillor's formal Response within ten (10) days, that is by August 15, 2020.

The Respondent's written Response was received on August 11, 2020. It was then forwarded to the Complainant under cover of letter from the Integrity Commissioner on August 18, 2020, with a request for a Reply within ten (10) days, that is by August 28, 2020.

Such Reply from the Complainant came to the Integrity Commissioner by way of an emailed letter on August 24, 2020.

The Complainant's Reply was then provided to the Respondent Councillor on September 3, 2020, which led to the Respondent Councillor making further submissions (by way of a letter dated September 11, 2020) directed to the contents of the Complainant's Reply.

The Integrity Commissioner also proceeded to make several efforts to establish an informal settlement process with a view to attempting to resolve the Complaint and thereby avoid the time and expense of proceeding with a full investigation and Report on the subject matter of the Complaint.

After several exchanges with the Parties, it was determined by the Integrity Commissioner that an informal resolution to the Complaint would not be achievable. Accordingly, the Integrity Commissioner determined to conduct an investigation of the matters at issue raised in the Complaint, which was communicated to the Parties by the Integrity Commissioner by way of correspondence dated October 8, 2020. It was on this date the formal investigation was commenced and Michael Maynard was delegated the authority to investigate and prepare a report (subject to the review and approval of the Integrity Commissioner) on the subject matter of the Complaint.

Mr. Maynard contacted the Complainant and Respondent by way of email on October 14, 2020 to set up respective interviews.

That same day, Mr. Smith provided his availability for an interview by reply email, and a date was scheduled on the following day, being October 15, 2020, for an interview to take place on October 21, 2020.

Mr. Maynard's interview with Mr. Smith took place as scheduled.

On October 20, 2020, the Respondent advised Mr. Maynard by reply email that he had retained legal counsel. By way of several emails over the following days, it was determined that an interview would be conducted on October 29, 2020, with Councillor Bylsma and his Legal Counsel, Mr. Asher Honickman of Matthews Abogado LLP.

Mr. Maynard's interview with Councillor Bylsma and Mr. Honickman took place as scheduled.

No further interviews were required or conducted.

4.0 Statements and Evidence

The following section contains the statements and evidence of the Parties, laid out in the order in which such evidence was received through the various exchanges of correspondence described above, as well through the interviews conducted by Mr. Maynard.

4.1 Issues Raised in the Complaint

In his initial written Complaint, the Complainant advised that the Respondent Councillor had taken part in the Radio Interview of June 10, 2020, during which he (according to the Complainant):

“[...] made a long series of comments that are extremely offensive, bigoted and racist,”

The Complainant asserted that the Respondent Councillor's comments were contrary to several sections of the Code, stating as follows:

"Not only were his words and subsequent comments in violation of the overall intent of the Code to: "serve to enhance public confidence that Regional Municipality of Niagara's elected representatives operate from a base of integrity, justice and courtesy" but he is specifically in violation of the Conduct section of the Code which states:

'As representatives of the Region, every member of Council has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, any member of staff or any member of the public. A member shall not speak in a manner that is discriminatory to any individual based on the person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.'"

The Complainant continued:

"Mr Bylsma has consistently defended his comments and as recently as the Regional Council meeting of July 23rd Mr Bylsma decried his treatment, made himself out to be the victim in this situation and again made no efforts to apologize.

While he may argue that his statements were made in his role as the Mayor of West Lincoln and therefore are not a subject of interest for Regional Council, I would counter that by making those types of statements publicly he has alienated and intimidated a wide swath of the population of the Niagara Region. Therefore he can not separate his comments from his role as a member of the Regional Council. No person in Niagara should be forced to interact

with an unrepentant bigot and racist who serves the Region through a series of Board and Committee appointments.

He is entitled to his seat on the Regional Council by virtue of being elected Mayor of West Lincoln, his discretionary appointments at the Region should be removed.”

4.1.1 – The Radio Interview Comments

The Complainant provided links to several news reports which either referred to or quoted the Respondent’s Radio Interview comments. Among the provided links was an article entitled “...WHAT ARE THEY STILL FIGHTING FOR?” appearing on the Radio Station’s news website¹ which provided an abbreviated transcript of substantially accurate quotations by the Respondent from the Radio Interview, as follows²:

Re: Black Lives Matter

“[...] And if you look at race relations and Black Lives Matter and that response that All Lives Matter that kind of, for many people, strikes at the core of identity politics.”

“We haven't been able to rectify any of the challenges of the past, any of the grievances of the past, it seems like all we do is make them real. For example, there were grievances in the past, no one is denying that. But today in Minneapolis there are more grievances - they have been set on fire. And there are people who are very upset and they are upset indiscriminately. They are upset at society. There's no shortage of people being violated by the very -- there were black store owners who were being vandalized and victimized by Black Lives Matter banner waving -- there's no shortage of that inconsistency. Why did that happen? Now there's a new grievance, so who do they peg that blame on? Well, I blame identity politics.”

¹ ['...what are they still fighting for?' \(iheartradio.ca\)](https://www.102.7fm.com/news/...what-are-they-still-fighting-for/)

² For the purposes of this Report, the quotations have been separated into categories covering the three identified topics: Black Lives Matter; the Pride Flag; and Six Nations Reserve #40 / Indigenous Rights.

"In the Black Lives Matter, I would be holding the sign that says 'All Lives Matter.'"

Re: Pride Flag

"There's a lot of flags that could be flown [...] [a]nd I guess fundamentally we're in a culture, and I mean in a larger North America context, where identity politics has been running rampant for decades. I don't know when you would say that identity politics kind of emerged, but it hasn't really been solving things."

"We just want to make sure that we have a policy that doesn't single out any one category of people as a subset over other ones because I think that we could divide Canada all different ways: French vs. English or Indigenous vs. the rest and what we end up having is this kind of controversy, this...it's very combative. And it seems that anybody who's asking for the whole, the unity -- I've received a lot of chatter and emails just saying, 'What's wrong with just the one flag?' It's always the perennial question. What's wrong with just a Canadian flag flying over a municipal office? Does identity politics even belong on a municipal flagpole? And I guess that's part of the discussion ongoing, to develop a policy. So we're going to do through the democratic process."

"30 years of identity politics, singling out a particular right or a particular grievance from one community against the next, what has that accomplished?"

"After 30 years we're more violent, we're yelling at each other louder and we're becoming more polarized."

Re: Six Nations Reserve #40 / Indigenous Rights

"Recently I drove past the reservation in Brant. And every entrance to the reservation, there are two armed guards. They have their guns out, they're Indigenous people, and

they're protecting their reservation from any outsiders. And I think to myself, 'That's fire.' That's what securing and acknowledging Indigenous rights has produced. This military style opposition when they feel that they have been wronged, they take up arms. The Pride community, those who have been grieved in many ways, they aren't taking up arms like that. I'm saying identity politics has had its run. It's had a fair trial in our societies, it's done good, but it's not the final analysis either. And we can see all the tensions and we can draw a thousand lines through our society and none of that's helpful unless we start uniting under the Canadian flag."

Re: Other comments on Social Justice / "Identity Politics" (inclusive of both the Black Lives Matter and Pride Flag issues raised in the Radio Interview)

"There are always going to be injustices, correct. But in terms of rights what are they, what are anyone who's flying a flag whether that's Black Lives Matter in America or the Pride Flag, what are they still fighting for? Is it necessary? Or have they won?...I'm saying identity politics is not working. We have 30 years of identity politics that shows this is not the solution."

4.2 Initial Response of the Respondent, Councillor Bylsma

The Respondent Councillor responded by questioning whether this matter was properly before the Integrity Commissioner for the Region of Niagara as the Radio Interview was:

"[...] related to a discussion being held at the local area municipality [i.e. West Lincoln]. So a complaint brought to the region when there is a mechanism in place to deal with this at the local level is not necessary. This complaint could be dropped for this reason alone."

Notwithstanding the above noted point, the Councillor continued to provide a substantive response to the allegations, as follows:

"It is Mr Smith's opinion that my interview was offensive bigoted and racist. I'm sorry, but that is no basis for a complaint. He has not cited one instance or fact to back this opinion. As he noted, the interview was long and public. Yet he has essentially asked the Integrity Commissioner to do the heavy lifting in finding the fault. He quotes the code and I agree with the code. He cites media coverage which has no merit in this complaint, more opinions in the public debate. Let me restate he has not cited one instance or fact to back his opinion.

In fact his suggestion that I am an "unrepentant bigoted racist" is far more offensive than anything mentioned in the interview. He has judged me before the IC has.

Freedom to speak includes the freedom to offend, and although my intent was never to offend but rather to explain particular concerns and perspectives, this interpretation of my words as an attack on individuals or an identifiable group is wholly without merit.

Similarly to other councillors who have expressed their perspectives about issues of the province and nation as a whole, I did so from a desire to explain my position of an idea/concept (that being identity politics) to the people of the region. While there may be those who take offence to this position, this is no different from the many controversial issues that come before those who are in elected office. If the bar set for penalizing an elected official's right to free speech is the offence taken by any person or group, I worry about the chilling effect this will have on those who run for public office.

That said, in every action I take as mayor and as regional councillor, I strive to serve all residents honourably, without discrimination or prejudice, to ensure they receive the representation and attention they deserve, no matter who they are, where they are from, or what they believe. Regardless of background or belief, identity or age, I work

for the good of all people in West Lincoln, and the whole Niagara Region. In that, I have done no wrong.”

4.3 The Complainant's Reply

In Reply to the Respondent's (above noted) Response, the Complainant offered the following comments, first in response to the question of jurisdiction:

“Mr. Bylsma is wrong to assert that the complaint could be dropped for the singular reason that the “issue at hand related to a discussion being held at the local area municipality”. Mr. Bylsma has expressed racist and bigoted views, he has refused to apologize and has shown no understanding or concern for the consequences of his words. The content of his words and the fact that he is unrepentant makes this an area of concern for the Regional Council. Regional Council represents all segments of our society and it must do so with a demonstrable sense of integrity and inclusiveness. If any member of Council expresses opinions that alienate, marginalize, insult or offend citizens of Niagara based on the colour of their skin or who they choose to love, it is a serious breach of the code. Staff and citizens who work or volunteer at the Region can be forced to work for or with Mr. Bylsma in his role as Councillor, his comments have created an environment that would make many citizens very uncomfortable and it is not inconceivable that some would refuse or request not to work with him.”

The Complainant continued on the substantive matters, as follows:

“Mr. Bylsma is wrong and shows a lack of understanding of the code to say that my opinion that his interview was offensive, bigoted and racist, is “no basis for a complaint”.

When statements are made that question the legitimacy of the fight for equality in the LGBTQ+, Indigenous and Black communities it feeds a narrative among a certain sector of society that enough has been achieved and can serve to

reinforce hostilities and resentments against marginalized communities of people. Language like that fans the flames. Mr. Bylsma seems to assume that Canada has reached a post-racial, post-homophobic era and that marginalized [sic] people have nothing left to fight for in the way of equality, this view is nonsensical and we should not have to endure it from our elected officials. Furthermore, when he states that he does not support the slogan “Black Lives Matter”, but instead prefers “All Lives Matter” he joins the thinly veiled race baiting, dog-whistle politics that insults and serves to reinforce stigmatization of black people. Mr. Bylsma either does not understand this, or does not care. Either way his comments are in breach of the code.

Mr. Bylsma is also wrong to state media coverage has no merit. Media coverage is an indicator of public sentiment and a barometer as to how his words were perceived, and I find it shocking for an elected public official to state otherwise. Mr. Bylsma ran for a PUBLIC office, as such he is a public servant and that is precisely why he is subject to a code of conduct and that is why public opinion does matter.

Mr. Bylsma is correct to state that I have judged him before the IC has, I am not in need of anybody to define racism and bigotry for me. I am a 58 year old black Canadian who has heard it my entire life and am fully qualified to judge it when I hear it. I have black children, black grandchildren and black nieces and nephews, and I am determined to do my part to ensure they do not have to tolerate racism to the extent my generation had to. Any elected official in Canada making statements like Mr. Bylsma used should expect to be called to account for it.

Mr. Bylsma states that “Freedom to speak includes the freedom to offend”, that’s a ridiculous assertion from an elected official who agreed to uphold a code of conduct, but it does serve to highlight his unrepentant nature.”

4.4 The Respondent's Further Response

In his further Response (on September 11, 2020) to the Complainant's reply, Councillor Bylsma stated as follows:

"[...]

Mr Smith made this a personal complaint in many regards when he identified himself as a black man. I think it may be important for you to know that Mr Smith and I have known each other for about 8 years. During that time we have had a cordial relationship. He is a well known local activist and we have crossed paths not a few times, sometimes on a similar side and sometimes on opposite sides. We have never had a confrontation or heated discussion, and as a matter of fact in my last email correspondence to him shortly after the lockdown of COVID 19 I expressed my concern that he was stranded over seas and wish him safe return. He replied with a thank you. All that to say I have no personal malice towards anyone this matter.

More importantly, though I finally have something to work with. The crux of the complaint raised by Mr Smith is the phrase "All lives matter" It is the only real tangible expression that he has raised as a quote from the interview that he has deemed unacceptable. He asserts that it is a dog whistle and is therefore an forbidden statement. This is ludicrous. The dog whistle concept is a legal term and it is quite clearly spelled out in jurisprudence. Simply however an implied reference cannot be the same as the explicit denotative meaning. "All lives matter" mean just that, it doesn't mean anything more or less-anywhere.

So to conclude, Mr Smith is suggesting that my use of "all lives matter" is bigoted and racist. I do not see how he can justify his assertion. I will remain "unrepentant" I suppose [...]. I would rather have you rule on the jurisdictional issue and on Mr Smith's claim that "all lives matter" is somehow

forbidden for a Canadian citizen (elected or otherwise) to use.

I am convinced that fundamental freedom of expression and speech are easily applied to this complaint and it should be dismissed.”

4.5 Interview with the Complainant

During his interview, the Complainant provided greater detail around the points raised in his Complaint.

The Complainant identified that one of the things that bothered him about the Respondent Councillor’s Radio Interview remarks was that they were said from a position of leadership in Niagara Region. The Complainant explained his belief that the Respondent has a greater responsibility to be more inclusive because of his position of leadership, and particularly because that position of leadership ties him to a *Code of Conduct*.

The Complainant argued that the Respondent Councillor’s comments were made in “highly public forum” and delivered “as an [elected] official”. He argued that the Respondent Councillor’s comments were directed to or about a “wide swath” of people in the Region, such as when he referenced supporters of the Black Lives Matter and Pride movements and asked: “What are they still fighting for...or have they won?”.

The Complainant asserted his view that the Respondent Councillor:

“Used his official position to get on the radio and then used that platform to spread that language. That is an insult to all of them.” [i.e. racialized or other equity-seeking groups]”

Re: Black Lives Matter

The Complainant characterized the Respondent’s comments with respect to Black Lives Matter and his “All Lives Matter” retort to same, as well as the Respondent’s comments with respect to the Six Nations Reserve #40 as “thinly veiled racism,” and stated:

"Voices of leadership arise that people rally around. The more support they get the bolder they [i.e. the people who hold racist views] become. Leadership should know better. Leadership should not be espousing those views."

The Complainant asserted his view that the Councillor's comments were a "dog whistle" to racist elements of society. He noted that the Respondent had defended himself in part by stating he had received support for his comments, which the Complainant found to be "disturbing".

The Complainant stated:

"All Lives Matter is a code; a means to undermine the Black Live's Matter movement or what it symbolizes to black people. No one is denying that All Lives Matter, but at this point in history, Black Lives need recognition; saying '*we are here, we deserve equality*'. To undercut that with cutesy statements that no one can argue with is a way of subtly reinforcing racism."

Re: Pride Flag:

The Complainant asserted his view that the Respondent Councillor's position against flying flags for causes was disingenuous. He pointed out that the Respondent's home municipality of West Lincoln has flown flags to celebrate various causes, such as, for example, a flag in recognition of disabled athletes. The Complainant called into question why it was an issue with the Pride Flag in particular that brought about the Councillor's negative remarks about flag raisings and led to his further Radio Interview comments about social justice initiatives (which the Respondent referred to repeatedly as "identity politics").

Regarding the Councillor's remarks about flag raisings and social justice initiatives in general, the Complainant stated:

"We have not achieved social justice for all of us, and if we want to get there, we have to allow all of these movements." (e.g. Pride, Black Lives Matter)

Re: Six Nations Reserve #40 / Indigenous Rights

The Complainant stated that the Respondent's Radio Interview remarks about the Six Nations Reserve #40 in Brant "reinforce negative stereotypes" about indigenous people.

He further asserted his view that these types of comments stir the emotions of people who are motivated by racism, neo-Nazism, and other extremist philosophies.

Concluding Comments

The Complainant stated that the Respondent Councillor's comments spoke to him "on the level of [being] a military veteran". The Complainant explained that he had a 25-year career in the Royal Canadian Air Force and has been on peace keeping missions in places where government leaders are not held accountable for what they do or say.

He explained in this context that, while he has no expectation of changing the Respondent Councillor's mind, he is pursuing this Complaint to stand up to the idea that a leader can get people to rally around the notion that certain groups (e.g. black people, indigenous people, members of the LGBTQ+ community, etc.) "are getting too much" special recognition and/or treatment.

4.6 Interview with the Respondent

The Respondent was joined by his legal counsel, Mr. Honickman, who presented the follow legal analysis and argument for consideration:

Legal Analysis and Argument from Mr. Honickman on Behalf of the Respondent

The Respondent's counsel, Mr. Honickman, pointed out that the Respondent's views and those of the Complainant are two reasonable sides of a public debate going on in society in regard to collective "identitarian" beliefs versus "individualism".

Mr. Honickman put forward the argument that it is not appropriate "for the arm of the law to suppress free speech or make an opinion of what is off limits" in terms of points for public discussion. He asserted that: "if [the term] 'All Lives

Matter' is off limits, then one cannot express an individualist view of equality; it only permits an identitarian view".

Mr. Honickman explained that in the Respondent's opinion, he was only expressing a political view, not attacking any individual or group. He drew a parallel with someone expressing a view against "affirmative action", stating: "It is a political debate. People who hold either side of these views are from across various spectra [of society]," and pointed out that some black people hold strong views against the Black Lives Matter movement.

Mr. Honickman urged in the discharge of his regulatory duty that the Integrity Commissioner should look at this matter "through the lens of freedom of speech". He stated that it was obvious that the Complainant was offended by the Respondent Councillor's Radio Interview remarks but asserted:

"That is why we have a ballot box and free press. We have Twitter. People can debate these things. What we should not do is consider this discrimination."

Mr. Honickman continued, pointing out that by contrast, had the Respondent stated he would not hire a minority on his staff (or in fact refused to do so), that would be a case of discrimination. This is not such a case. He asserted, rather, that this is a situation of public debate, where significant populations have views similar to both Parties. For this reason, the issue is one of "politics, not civics".

Mr. Honickman asserted the view that the Integrity Commissioner's role is to regulate civics, not police free political debate.

He also put forward for consideration that a decision of an Integrity Commissioner should be remedial in nature, not punitive. He noted that the Integrity Commissioner for West Lincoln had already considered many of the issues raised in this present matter, and had recommended sensitivity training for the Respondent Councillor, which the Councillor was already undertaking. Accordingly, such a recommendation would not be necessary or appropriate were the Integrity Commissioner in this present matter to consider making same.

Comments of the Respondent Re: General Philosophy / Approach to Social Order

In his interview, the Respondent offered the following positions and perspectives in his defence:

The Respondent (together with his legal counsel, Mr. Honickman) explained that he holds a “classical liberal” or “individualist” approach to social order.

The Respondent made direct reference to and rephrased the famous quote from Dr. Martin Luther King Jr., indicating his view aligns with the idea that all people should be judged, “by the content of their character, not the colour of their skin,”.

In other words, the Respondent explained, he does not ascribe to the view that membership in a certain class or group of people is how rights should be defined or how society should be ordered or regarded. He advised that he is of the view that every individual has equal worth as a person and should be seen and judged on an individual basis, not based on group membership (be it race, sexual orientation, etc.).

The Respondent also stated that he has been involved in politics for 30 years, and that his views have never been a secret. He also asserted that many in society hold similar views to his own.

For example, the Respondent pointed out that he has done “pro-life work”. Because of his “pro-life” beliefs, he takes a very broad view of the words “all lives matter”, asserting that it is an inclusive statement that extends to all people of all races (including the unborn).

Re: Black Lives Matter

The Respondent explained that he “100% endorses the concept that “black lives matter” (in the general sense), but has an issue with the way in which the Black Lives Matter movement has adopted a view of equality with “group membership as the guiding principle”. He continually refers to this as “identity politics”.

The Respondent acknowledged that the Black community has grievances, citing examples of carding and lower employment rates. However, in his view, Black people today are not the only community facing injustices. He advised that he believes, for example, that the greatest injustice is not “the plight of certain races

[...] it is the plight of the unborn.” Conversely, however, the Respondent also acknowledged that it would “come across as dismissive to say all lives matter” to Jewish people seeking reparations or claiming injustice in relation to the Holocaust.

To amplify his client’s point, the Respondent’s counsel made direct reference to a video of Hollywood Actor Morgan Freeman being interviewed by late American Journalist Mike Wallace on the news magazine program “60 Minutes”. During the interview, Mr. Freeman (who is an African American) provided his personal view that, in order to eliminate racism, people should simply stop talking about it.

A review of the interview referenced by the Respondent and his counsel shows the following was said:

WALLACE: Black History Month, you find ...

FREEMAN: Ridiculous.

WALLACE: Why?

FREEMAN: You’re going to relegate my history to a month?

WALLACE: Come on.

FREEMAN: What do you do with yours? Which month is White History Month? Come on, tell me.

WALLACE: I’m Jewish.

FREEMAN: OK. Which month is Jewish History Month?

WALLACE: There isn’t one.

FREEMAN: Why not? Do you want one?

WALLACE: No, no.

FREEMAN: I don’t either. I don’t want a Black History Month. Black history is American history.

WALLACE: How are we going to get rid of racism until ...?

FREEMAN: Stop talking about it. I’m going to stop calling you a white man. And I’m going to ask you to stop calling me a black man. I know you as Mike Wallace. You know me as Morgan Freeman. You’re not going to say, “I know this white guy named Mike Wallace.” Hear what I’m saying?

According to the Respondent and Mr. Honickman, the view expressed by Morgan Freeman in the above quoted interview aligns with the Respondent's beliefs about individualism versus what he refers to as "identity politics".

Re: Pride Flag

The Respondent asserted his view that the Canadian Flag should be sufficient to represent all people in Canada, because it is the flag of an inclusive nation, and accordingly the Canadian flag itself is representative of equal rights.

The Respondent's preference would be to eliminate all flag raisings, and to only fly the flags of Canada, Ontario, and the respective municipality at municipal buildings (e.g., Town Hall).

The Respondent noted that his local municipality of West Lincoln does not have the ability to declare days of recognition (i.e., a day to recognize or commemorate some individual or group), as such proclamations were often, according to the Respondent, a source of stress and the cause of offence. He believes the same is true of flag raising.

While acknowledging that the Pride Flag itself is an inclusive flag, the Respondent took the position that raising it could set a precedent for less inclusive or more divisive flags to demand space too.

He reiterated that legal rights and equality for everyone are entrenched in Canada's constitution, and accordingly the Canadian flag is the most inclusive flag which represents everyone.

When asked, the Respondent acknowledged that he had not previously made his views on flag raisings public, but it came about because of the circumstances of the Pride Flag issue at West Lincoln and was accordingly the primary topic of the Radio Interview.

When asked about flag raisings for Autism and for disabled athletes (which had taken place at West Lincoln), the Respondent stated that those things transcend race, and they could potentially be an exception (in his view) to the divisiveness of flag raisings, but ultimately, he would be against raising any flags outside of the Canada, Ontario, and municipal flags.

The Respondent also pointed out that he is not against charitable and social causes, and has done charity work, including overseas charity work, throughout his life. He reiterated that he is simply against flag raisings and other actions which could be seen as divisive or inviting to less inclusive causes to stake a claim for equal space.

Mr. Honickman raised the hypothetical consideration of a politician campaigning on the issue of flag raising (i.e., taking a public position against it during an election campaign) and subsequently winning the election. He asked how it would be possible to subject that politician to discipline via the *Code of Conduct* on the basis of an issue that formed a platform plank of a winning election campaign. He made the overall point that such issues are political in nature and belong in the realm of public debate, not to be scrutinized by an Integrity Commissioner.

Re: Six Nations Reserve #40 / Indigenous Rights

The Respondent put forward the argument that “identity politics” in its extreme form can result in the type of scenario he described in his comments.

He stated there is a violent undercurrent in society, and he is concerned that “identity politics” feeds into the potential for, or exercise of violence. In his view, “any movement that ends with taking up arms or violence is found wanting”. He pointed to recent violent events in the United States of America and stated that the seeds of that violence are being seen in Canada.

He then pointed to “Caledonia” (i.e., Six Nations Reserve #40, the territory of the Six Nations of the Grand River) as an example where “there is violence happening”, yet in his view, “identity politics” is not solving the issue.

The Respondent stated that he has (and continues to) argue(d) for the repeal of the Indian Act because it is “paternalistic” and “has not advanced things for Indigenous people”.

Again, the Respondent pointed to “identity politics” as being a source of societal woe.

5.0 Analysis and Decision

The Complainant raised three discernible categories of comments (i.e., three separate topics of discussion which he viewed as problematic, with each giving rise to a *Code* contravention).

He related the three categories of comments to two sections of the *Code* which he believes were breached by the Complainant in making those comments.

The categories (topics) of comments made by the Respondent Councillor in the Radio Interview are:

1. Black Lives Matter
2. The Pride Flag
3. Six Nations Reserve #40 / Indigenous Rights

The *Code* sections cited by the Complainant as being contravened by the Respondent are the “Scope of the Code” and “Conduct” sections (*supra*).

5.1 Issues

Accordingly, the issues to be addressed in this investigation and Report are:

1. Did any of the Respondent Councillor’s Radio Interview comments in regard to **Black Lives Matter** result in a contravention of either the “Scope” or “Conduct” section(s) of the *Code*?
2. Did any of the Respondent Councillor’s Radio Interview comments in regard to the **Pride Flag** result in a contravention of either the “Scope” or “Conduct” section(s) of the *Code*?
3. Did any of the Respondent Councillor’s comments in regard to **Six Nations Reserve #40 / Indigenous Rights** result in a contravention of either the “Scope” or “Conduct” section(s) of the *Code*?

The Respondent Councillor raised a preliminary issue regarding the jurisdiction of the Integrity Commissioner to hear this Complaint as, according to him, the Radio Interview was set up to discuss a matter related to the local municipality

of West Lincoln (where he serves as Mayor) and not in respect of a matter at the Regional Council level.

The Respondent's counsel raised questions about the role of the Integrity Commissioner, and in particular whether it is within the proper scope of an Integrity Commissioner to make a determination on freedom of speech (i.e. the Charter Right to Freedom of Expression).

By necessity, the preliminary questions (jurisdiction / scope) will be dealt with first.

5.2 Preliminary Issue (Jurisdiction)

In his written Response to the Complaint, the Respondent stated that:

“[The Radio Interview was] related to a discussion being held at the local area municipality [i.e. West Lincoln]. So a complaint brought to the region when there is a mechanism in place to deal with this at the local level is not necessary. This complaint could be dropped for this reason alone.”

After giving careful consideration to this submission, it is our determination that the Respondent's argument in this regard is not accepted, and it is accordingly found that this matter is within the jurisdiction of the Integrity Commissioner for the Regional Municipality of Niagara.

The reasoning for such finding is as follows:

First, it is clear from the contents of the Radio Interview itself that the subject matter of the discussion (irrespective of the topic which prompted it) was much broader than the mere issue of not raising the Pride Flag at West Lincoln's municipal headquarters. It was the Respondent himself who broadened the discussion to include his views on a variety of socio-political topics, notably those which form the substance of the Complainant in this matter (i.e. Black Lives Matter, Six Nations Reserve #40, “identity politics”, etc.).

Secondly, in his August 11, 2020 written Response to this Complaint (*supra* at page 10), the Respondent himself acknowledged his own intent in providing a broad social commentary to a wider (Regional) audience, stating:

“Similarly to other councillors who have expressed their perspectives about issues of the province and nation as a whole, I did so from a desire to explain my position of an idea/concept (that being identity politics) to the people of the region.”

Given the Respondent’s role as an elected lower-tier municipal Mayor, by virtue of which he also sits and presents to the public as a Regional Councillor for Niagara Region; the fact that his comments were neither limited to a discrete, self-contained lower-tier municipal topic nor were they intended to be; and furthermore that the Respondent clearly wanted his broader views be to be shared (via the Radio Interview) with “the people of the region” it is clear that this Complaint falls within the jurisdiction of the Integrity Commissioner of Niagara Region, as it deals with matters which are in no way limited to the lower-tier municipality of West Lincoln (which is also part of the Region), and which clearly touch on topics which are contemplated by the Region’s *Code of Conduct*.

The Complaint is therefore processed accordingly.

5.3 – The Role of the Integrity Commissioner

As noted, the Respondent’s counsel put forward the argument that the Integrity Commissioner should not police free speech or determine that certain words or phrases are out of bounds. He argued that it is beyond the scope of the Integrity Commissioner to rule on a matter of free speech or to delve into the political arena in order to cast a judgment against one side or another in the free marketplace of ideas. He cautioned against diminishing the right to freedom of expression by determining phrases, such as “All Lives Matter” to be off limits, as such phrases are one of a number of perspectives being openly debated in contemporary society.

An Integrity Commissioner derives his/her authority to interpret and apply the *Code of Conduct* from section 223.3 of the *Municipal Act* and the terms of appointment by a Municipal Council in accordance with the *Municipal Act*. Among an Integrity Commissioner’s primary functions is the enforcement of a Municipality’s *Code of Conduct*.

The *Code of Conduct* for the Regional Municipality of Niagara states, under a section entitled “Conduct”:

“A member shall not use indecent, abusive, or insulting words or expressions toward any other member, any member of staff or any member of the public. A member shall not speak in a manner that is discriminatory to any individual based on the person’s race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.

Accordingly, the intended work of the Integrity Commissioner in the Region of Niagara is precisely to enforce certain obligations with respect to speech / expression which are placed on Members of Council pursuant to the terms of Council’s *Code of Conduct* for such Members (i.e., the expectation that Members do not employ certain language which is “indecent, abusive, or insulting...” or which is “discriminatory to any individual” on the basis of various prohibited grounds).

As such, it is our view that the Integrity Commissioner is empowered to look into and determine certain issues related to freedom of expression due to the inclusion of certain obligations placed on Members of Council by virtue of the provisions of the Region’s *Code of Conduct*.

We accordingly view this matter as being within the scope of the responsibilities of the Integrity Commissioner under the Municipal Act and the Region’s *Code of Conduct*.

5.4 Decision

After a comprehensive investigation of this matter, including a review and analysis of written statements, documentary evidence, media coverage of the issues related herein, the decision of the Integrity Commissioner for West Lincoln, and the oral statements of the Parties given during their respective interviews, we find as follows:

1. That the Respondent Councillor did not contravene the section of the *Code of Conduct* entitled: “Scope of the Code”;

2. That the Respondent Councillor did contravene the section of the *Code of Conduct* entitled: “Conduct”.

The reasons for arriving at these conclusions and decision are as follows:

5.4.1 *Scope of the Code*

In his Complaint about the various impugned statements of the Respondent in his Radio Interview, the Complainant referenced part of the “Scope of the Code” section of the *Code* which reads as follows:

“[...] These standards should serve to enhance public confidence that Regional Municipality of Niagara’s elected representatives operate from a base of integrity, justice and courtesy.”

He asserted that the section was breached by the Complainant. However, in our view there does not appear to be any definable obligation created by the “Scope of the Code”, as referenced by the Complainant, which is capable of being breached.

While certain Codes may employ language in *General Principles* or *Scope*-type sections which do create definable, positive obligations, we find this is not the case with that part of the “Scope of the Code” for Niagara Region which was cited by the Complainant.

In a previous published decision in a matter at the City of Niagara Falls (IC-182-0220, the Complaint of Linda Babb against Mayor Jim Diodati), the Integrity Commissioner, citing *Durham Region (Council Member) (Re)*, 2018 ONMIC 3³ found that the *Purpose and Principals* section of the Niagara Falls *Code of Conduct* (in a manner akin to other similar *Codes*), was not an enforceable section, writing:

“A general underpinning principle has been found in other Integrity matters to not place a positive obligation on a Member of Council to do or refrain from doing any specific act; rather, a statement of principle provides a basic rationale and underpinning for any substantive rules in the

³ [2018 ONMIC 3 \(CanLII\) | Durham Region \(Council Member\) \(Re\) | CanLII](#)

Code that do place such positive obligations on Council Members.”⁴

Similarly, there does not appear to be any specific or definable obligation here. The cited statement from the Scope of the Code in this matter is a broad and general statement which appears to serve as an underpinning for the various specific and definable obligations which follow.

It is accordingly found that the Respondent Councillor did not breach the “Scope of the Code” provision of the *Code* as asserted by the Complainant, because such cited section does not on its own create any definable Rule which is capable of being breached.

5.4.2 “Black Lives Matter vs. “All Lives Matter”

The Complainant has put forward an assertion that the employment of the statement “All Lives Matter”, as a counterpoint to the Black Lives Matter movement, is bigoted and offensive. He pointed out that the Respondent is “unrepentant” (which characterization the Councillor has himself adopted) about his use of such language. He asserted that the Respondent Councillor’s use of the phrase “All Lives Matter” in this context is accordingly contrary to the *Code of Conduct*.

The Respondent has stated that his position is a philosophical one. He argued that the statement “All Lives Matter” is a personal belief, which he extends to every living being, including, in his view, the unborn. He has stated that he believes all lives are of equal value. His position is that every person should be measured according to their individual character, not by their membership in a certain class or group of people. He stands squarely against the idea that groups or classes of people should receive extra attention because of their group affiliation.

We agree with the Respondent that all lives do matter and commend him for his stated commitment to equality and treating all individuals with dignity.

We disagree, however, with the Respondent’s use of the phrase “All Lives Matter” in the manner and context in which he employed it.

⁴ [City of Niagara Falls - Document Center \(civieweb.net\)](http://civieweb.net)

The assumption that all lives matter is imbedded in, and indeed appears to be the philosophical underpinning of the Black Lives Matter movement. To put it succinctly, the essence of the Black Lives Matter message is that “All lives cannot matter *until* Black lives matter”. The movement asserts (with statistical and anecdotal evidence) that the Black community continues to be systemically oppressed, and Black lives have not mattered as much as other lives as a result. Accordingly, to counter one message with the other – that is, to argue that one need not say that “Black Lives Matter” *because* “All Lives Matter” is simply wrong and misleading. They are correlated.

There is no question that the phrase “All Lives Matter” has arisen as a challenge to the Black Lives Matter movement (and accordingly what it represents). When employed in this manner, it is considered in many quarters as racially insensitive and/or dismissive⁵, if not directly racist.^{6 7 8}

In the case of the Respondent Councillor’s use of the phrase, he plainly intended it not as an offering of his basic life philosophy, but as a slogan which directly challenges the core Black Lives Matter movement. This is evident from how the Respondent used the phrase,

“In the Black Lives Matter, I would be holding the sign that says: ‘All Lives Matter.’” [emphasis added].

In making the above statement, the Respondent couched his view that “All Lives Matter” in the language of direct opposition to the whole Black Lives Matter movement, even going so far as to employ imagery of him engaging in a counter-protest to the objectives of that movement (i.e., by “holding the sign”).

The Complainant may well have criticisms of the Black Lives Matter organization and/or movement, and we agree with him (and his counsel) that he ought to be free to express his opinions in this regard. This is the nature of political debate, and it should not be casually fettered.

However, debating the merits or demerits of the Black Lives Matter organization or movement is quite different from employing the slogan “All Lives Matter” in

⁵ [Saying ‘All Lives Matter’ doesn’t make you racist, just extremely ignorant - cleveland.com](#)

⁶ [‘I don’t care whether All Lives Matter is said in ignorance—it’s just another example of racism’ - Macleans.ca](#)

⁷ [Home Hardware in Toronto comes under fire for All Lives Matter sign \(blogto.com\)](#)

⁸ [\(1\) Saskatchewan Party MLA declares ‘all lives matter’ in legislature | Globalnews.ca](#)

direct opposition thereto. As noted, that particular phrase has taken on a very specific meaning within broader society, being commonly understood as racially insensitive - if not actually racist - to those within and/or supportive of the broader aims of the Black Lives Matter movement (i.e., the elimination of anti-Black racism generally, and violence against the Black community in particular).

The Respondent either knew or ought to have known this. The evidence of how he employed the phrase – couched in the language of counter-protest – indicates that he is (or should be) well aware that his words were not merely words, but a slogan which carries with it such specific meaning.

It was also telling that the Respondent offered his view (during the Investigation Interview) that the use of the phrase “All Lives Matter” towards a Jewish Holocaust survivor would be “dismissive”, yet he freely used it in a retort to a movement built by the Black community, and then defended his use of it.

Furthermore, it is noted that while he was, to his credit, able to point to certain valid grievances of the Black community, the Respondent then proceeded to diminish those grievances by comparing them to (in his view, the more significant) plight of the unborn. These statements are problematic because they are dismissive of the harm caused by racism, particularly, in this case, anti-Black racism. They are seen by many as disrespectful to those who have faced - and continue to face – forms of racial oppression.

It is also noted that the use of such language by the Respondent was considered by the Integrity Commissioner for West Lincoln, who concluded (in a decision published on October 20, 2020):

“We are of the view that specifically, the Mayor’s statement that he would be holding an ‘All Lives Matter’ sign [...] was discriminatory. The Mayor knows, or ought to know that this statement is in direct opposition to those advocating for recognition and inclusion of the importance of Black and Indigenous lives, and that the statement ‘All Lives Matter’ is commonly accepted as offensive to those individuals; it cannot simply be swept aside as expression that is intended to mean all human beings are deserving of equality and respect. [...] ‘All Lives Matter’ carries very precise meaning and deliberate implication.”

We agree with and endorse this conclusion by the West Lincoln Integrity Commissioner.

Having found the use of the phrase “All Lives Matter” to have been at least racially insensitive (if not actually racist), it must now be considered whether the Respondent’s remarks are a breach of his obligations under the *Code*.

With respect to the “Conduct” section of the *Code*, it is noted that the Respondent advanced the assertion that the “Freedom to speak includes the freedom to offend.”

We do not agree with such a proposition where the statements contravene the Region’s *Code of Conduct* which imposes a specific duty on a Member of Council to not make certain types of comments (e.g., discriminatory comments) which are certain to offend.

As has been found above, the Respondent expressed a philosophical viewpoint with the clear intent of opposing, in its entirety, the anti-racist Black Lives Matter movement. He did so by using a slogan with a specific and widely recognized meaning and implication. He offered his views freely, without prompting. His views on this topic extended beyond the scope of the intended Radio Interview discussion, which the Respondent himself identified as being (at least initially) limited to the raising (or not) of the Pride Flag in West Lincoln. Furthermore, the Respondent was clear in his Response to this Complaint that he intended his Radio Interview comments (including those about Black Lives Matter) to be broadcast to all the people of the Region.

As the Integrity Commissioner for West Lincoln found in respect of these comments:

“The Mayor’s comments failed to respect the individual rights, values and beliefs of other persons, particularly historically oppressed and marginalized people who are still fighting for equal treatment and recognition.”

We accordingly also find that the Respondent Councillor’s comment that, “In the Black Lives Matter, I would be holding the sign that says ‘All Lives Matter’” is, in the circumstances of this Complaint, discriminatory and is in contravention of the “Conduct” section of the *Code*.

5.4.3 Pride Flag

In respect of the Respondent's comments on the Pride Flag, there is no finding of a contravention of the *Scope of the Code* for the reasons articulated above.

The Respondent made a number of comments specifically about the raising of the Pride Flag (among others). We do not find the comments related specifically to Flag Raisings generally (whether it be for Pride or any other movement or cause) to be outside of the bounds of the *Code*. We agree with the Respondent and his counsel that this is a political discussion / decision. In our view, an elected politician ought to be free to propose and debate such policies (so long as they are not specifically discriminatory or otherwise contrary to law). If the Respondent believes that no flags of recognition should be raised, he is entitled to that view and has the right to express it.

Where the Respondent's remarks departed from the realm of acceptable conduct vis-à-vis the *Code* is when he began to question whether movements such as Pride (and Black Lives Matter) continue to serve a purpose, thereby undermining the significant efforts of those movements to seek freedom from discrimination.

Specifically, by stating, "[...] what are they [Pride or Black Lives Matter] still fighting for? Is it necessary? Or have they won?", the Respondent was again needlessly, recklessly, and deliberately dismissive of the systemic challenges faced by these communities.

Unlike the "All Lives Matter" slogan used in retort to the Black Lives Matter movement, which we have found carries a specific and widely recognized racially offensive implication, the above statement by the Respondent Councillor ("what are they still fighting for" etc.) is simply a case of the Respondent disregarding and dismissing the historic and ongoing reality of discrimination faced by many people.

By refusing to recognize that discrimination is a real and prevalent issue, and in particular by dismissing it as essentially a non-issue while at the same time suggesting that those seeking freedom from discrimination have "won", the Respondent has failed, in our view, to uphold the duties to which he is subject under the "Conduct" section of the *Code*.

This is reflected in a number of responses from Niagara Region residents and several of the Respondent's Council colleagues who were offended by his Radio Interview remarks.

Examples of such reactions included Pride Niagara Chair Enzo DeDivitiis who stated⁹:

"As a gay man, the kind of ideas of Mayor Bylsma is something I have to be ready to encounter every day [...] The fact that he can say what he said is the exact reason why people are still fighting."

Another article¹⁰ noted DeDivitiis as saying he:

"[...] felt so 'guttled' that someone who lives so close to him has these views and is in a position of power."

A number of elected officials in the Niagara peninsula also expressed criticism of the Respondent's statements from the Radio Interview, including one (former) Council colleague on West Lincoln Council who resigned his seat, citing the Respondent's comments as one of the reasons for doing so, and telling one news outlet that:

"[The comments] made him feel like West Lincoln was not the loving and inclusive home he thought it was" ¹¹.

It is clear from these reactions, in addition to the assertions of the Complainant in this Complaint, that the Respondent's Radio Interview comments were viewed by a significant number of people as contrary to the work of anti-discrimination groups (such as Pride Niagara); dismissive of the historic, ongoing, and systemic struggles of the LGBTQ+ community; offensive to at least some fellow Council members and unrepresentative of the Region.

⁹ [Bylsma's on-air comments panned by LGBTQ , Indigenous leaders | StCatharinesStandard.ca](#)

¹⁰ [West Lincoln Mayors' comments described as 'jaw dropping' by Pride Niagara. Bylsma called a 'bigot' \(iheartradio.ca\)](#)

¹¹ [West Lincoln Councillor who resigned this week says Pride flag debate was a factor \(iheartradio.ca\)](#)

In our view these comments were inappropriate toward members of the public and are accordingly contrary to the Respondent's duties under the "*Conduct*" section of the *Code*.

5.4.4 Six Nations Reserve #40 / Indigenous Rights

In respect of the Respondent's comments on the Six Nations Reserve #40 / Indigenous Rights, there is no finding of a contravention of the *Scope of the Code* for the reasons articulated above.

The Complainant has asserted that the Respondent's Radio Interview comments with respect to this issue were racist in that they "reinforce[d] negative stereotypes" about indigenous people.

The Respondent Councillor did not directly address the comments but explained that he is an advocate for indigenous rights and wants to see the *Indian Act* repealed because it is "paternalistic".

None of the explanations offered by the Respondent justify his Radio Interview suggestion that the people of the Six Nations of the Grand River have become violent as a result of "securing and acknowledging indigenous rights,". His comments in this regard are racially charged, unfounded, and unambiguously offensive.

In one news article¹², a local indigenous journalist named Sean Vanderklis made the following comments in response to the Respondent Councillor's Radio Interview remarks:

"Yes, if you go to Six Nations right now you will find border guards. Just like Canada has border guarders. They are doing that in response to the pandemic. If there was a COVID-19 outbreak on the reserves, it would be absolutely devastating. That Mr. Bylsma doesn't know this shows that he isn't trying to understand what is happening."

Whatever the Respondent Councillor's views on "identity politics" in general, his comments about the indigenous people of Six Nations went beyond a broad-spectrum argument into specific detail, wherein the Respondent offered not only

¹² [Bylsma's on-air comments panned by LGBTQ , Indigenous leaders | StCatharinesStandard.ca](https://www.stcatharinesstandard.ca/news/local-news/bylsma-s-on-air-comments-panned-by-lgbtq-indigenous-leaders/)

his view that he believed Six Nations Reserve #40 residents to be violent, but that their violence was induced by “securing indigenous rights”, and moreover, that they are set apart in their violent approach from other “grieved” groups (such as the Pride community) who are, according to the Respondent “not taking up arms like that.”

There is simply no excuse for the utilization of these types of comments by a Member of Regional Council. Not only were the comments unsolicited and tangential to the primary topic of the interview, they are also discriminatory toward indigenous people.

We agree with the Complainant that these comments serve to “reinforce negative stereotypes” about Indigenous people, and that they are discriminatory on the basis of race. Accordingly, we find these comments to be contrary to the “Conduct” section of the *Code*.

6.0 Conclusion and Recommendation(s)

6.1 Conclusion

We have found several of the Radio Interview comments made by the Respondent, Councillor Bylsma, to be contrary to the *Code of Conduct*.

Specifically, we have found the Respondent Councillor’s employment of the retort “All Lives Matter” in opposition to the Black Lives Matter movement; his dismissiveness of the challenges of equity-seeking people (“What are they still fighting for? [...] Or have they won?”); and his comments about the Six Nations of the Grand River community at Six Nations Reserve #40 (“That’s what securing and acknowledging Indigenous rights has produced. This military style opposition when they feel that they have been wronged, they take up arms...”) are discriminatory in nature.

These comments, jointly and severally, are, in our view, contrary to the “Conduct” section of the *Code*.

Accordingly, we find that the Respondent, Regional Councillor / Mayor Dave Bylsma, has contravened the *Code of Conduct for Members of Council*.

6.2 Recommendation(s)

It has been noted that the Integrity Commissioner for West Lincoln made a number of recommendations to West Lincoln Council. We believe that several of them exceed the mandate and jurisdiction of the Integrity Commissioner for Niagara Region¹³, including, among others, a recommendation that the Respondent engage in a course of “sensitivity training”. It is however noted that the Respondent Councillor has already undertaken to do so and, to our understanding, had begun this process prior to the West Lincoln Integrity Commissioner’s recommendation being made at West Lincoln Council.

While we cannot (and do not) make any such recommendation, we commend the Respondent for undertaking such training, and wish him well in doing so, with the hope that this training will enable him to learn from this experience.

In accordance with the mandate afforded to the Integrity Commissioner of Niagara Region, it is recommended that the Regional Council **issue a reprimand to Councillor Bylsma**, condemning his Radio Interview remarks as referred to in this Report.

7.0 Endorsement and Issuance of Report by the Integrity Commissioner

7.1 Consideration of Comments by the Parties

On December 31, 2020, the Parties were provided with a draft of this Investigation Report for their consideration and comments prior to it being delivered to the Regional Clerk for presentation to Council on the open agenda, with a deadline of January 8, 2021 for any comments to be received by the Integrity Commissioner. As of January 8, 2021, the Parties had offered no comments on the draft Investigation Report.

7.2 Endorsement and Adoption of Report by the Integrity Commissioner

As the Integrity Commissioner for Niagara Region, I confirm that I have fully reviewed the process of the investigation conducted by my delegated investigator, Mr. Maynard, as detailed in this Report. He and I have jointly prepared this Report, including its findings and conclusions, with which we both agree.

¹³ <https://pub-niagararegion.escrimetings.com/filestream.ashx?DocumentId=12856>

Accordingly, I adopt this Report and, as the Integrity Commissioner for Niagara Region, I hereby issue it to the Parties and to Regional Council in conclusion of this matter.

Yours truly,



Edward T. McDermott
Integrity Commissioner,
Niagara Region



Michael L. Maynard
Investigator