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Integrity Commissioner Office
for Niagara Region

MICHAEL L. MAYNARD

Interim Integrity Commissioner

Niagara Region

E-mail: mmaynard@adr.ca

October 8, 2021

SENT BY EMAIL TO:

Ann-Marie Norio, Clerk

**Re: Investigation Report
Complaint No. IC-13778-0521**

Dear Ms. Norio:

I wish to advise you that I have now completed my investigation into this Complaint and have determined that the Respondent Councillor contravened the *Code of Conduct*. My reasons for making this determination are contained in my detailed Investigation Report attached hereto, which was jointly prepared by my delegated associate Mr. Benjamin Drory and myself following my investigation.

A copy of the attached Report has been provided to the Complainant and Respondent.

I would also report that the Respondent was provided with an advance copy of the draft Report on October 4, 2021 and was permitted to provide any submissions he wished to make regarding its contents until October 8, 2021. No such submissions were forthcoming. However, it appears that the draft Report was improperly disclosed to uninvolved third-parties, and accordingly I am now also issuing an Addendum to my Report, which you will also find attached hereto.

In accordance with the usual practice of Niagara Region, I am requesting that you place this Report and Addendum on the open agenda for the next available meeting of

Regional Council, and I would ask that you kindly advise me when this has been completed.

This matter is accordingly now concluded.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'M. Maynard', followed by a long, sweeping horizontal flourish.

Michael L. Maynard
Interim Integrity Commissioner
Niagara Region



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MICHAEL L. MAYNARD

Interim Integrity Commissioner

Niagara Region

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BENJAMIN DRORY

Investigator

Office of the Integrity Commissioner

E-mail: bdrory@adr.ca

October 8, 2021

SENT BY EMAIL TO:

Regional Councillor Laura Ip

And To:

Regional Councillor Dave Bylsma

cc: Ann-Marie Norio, Regional Clerk

Re: Investigation Report – IC-13778-0521

Dear Councillors:

This is a report respecting an application brought by Councillor Laura Ip ("Councillor Ip") against Councillor Dave Bylsma ("Councillor Bylsma") under the *Code of Conduct for of Niagara Region Council* (the "*Code of Conduct*"), pursuant to an Affidavit dated May 19, 2021.

Mr. Edward T. McDermott, then the Integrity Commissioner for the Region of Niagara (the "Region"), delegated his full investigative powers and duties to Mr. Michael L. Maynard ("Mr. Maynard") on May 28, 2021, to determine if there should be an inquiry into this complaint, and if so determined, to investigate into and prepare a report thereon. Mr. Maynard was appointed as Interim Integrity Commissioner for the Region on June 24, 2021, and determined that this matter

was within his mandate and appropriate for inquiry, investigation, and potential report to Council. Mr. Maynard conducted the bulk of this investigation, and subsequently delegated certain of his powers and duties to Mr. Benjamin Drory on September 14, 2021, to assist in the preparation of the report herein.

As part of the investigation, we reviewed:

- Councillor Ip's Request for Investigation Form/Affidavit, dated May 19, 2021, and supporting information;
- Councillor Bylsma's formal response, dated June 7, 2021; and
- Councillor Ip's reply, dated June 18, 2021.

Mr. Maynard also interviewed both councillors separately by telephone.

The Parties' Positions

Complaint

Councillor Ip wrote that on the morning of May 18, 2021, she became aware of a private Facebook message that Councillor Bylsma sent one of her constituents, Ms. Emily Spanton. She provided a screenshot of the message, which read:

Good day Emily. I haven't seen your posts for awhile so I have assumed that we've been unfriended. Fair enough if true. Not my concern right now.

I do think you'll give me an honest answer. You posted that you received the vaccine a while back correct? Not a usual question to ask an acquaintance but did you notice any changes in your period? Again it's also none of my business I respect your person and privacy.

Councillor Ip wrote as follows:

Based on his conduct in sending this message, Councillor Bylsma violated, at minimum, the following sections of the Code of Conduct for Members of Council:

General Principles

- *All members of Council shall observe the highest standard of ethical conduct.*
- *They are expected to be mindful of the importance of their duties and responsibilities, to take into account the public character of their function and to conduct themselves in a way that maintains and promotes the public's trust in the Regional Municipality of Niagara.*

- *No member shall use the influence of their office for any purpose other than the exercise of his or her official duties.*

In my view, the sending of a message to ask an “acquaintance” (or anyone) about their menstrual cycle is so far beyond appropriate conduct for an elected official that I don’t know where to begin.

There is no realm in which I can imagine how it is ethical for an elected official to enquire about such deeply personal details about an individual’s body.

With respect to promoting public trust, Councillor Bylsma has been very public about his position on the pandemic and the COVID vaccines. It is clear that he is asking this question to peddle disinformation about the pandemic and, specifically, vaccines. It’s more deeply troubling, given all of the studies that have been done about how women have been disproportionately impacted by the pandemic and that peddling this kind of disinformation may lead more women to not get vaccinated.

It is also clear, again given his very public position on the pandemic and vaccines, that he is inappropriately using the influence of his office. As a Regional Councillor, he is undermining the necessity of public health measures and the delivery of vaccines by our Public Health staff by attempting to gather information to fuel his conspiracy theory about vaccines.

Pursuit of Excellence

- 1. Members of Council shall act in the best interest of the community, in a responsible manner, and be held accountable for their actions.*
- 2. Members of Council shall strive to achieve the highest standards of competence.*
- 3. Members of Council shall be cognizant of their Region and the trust and influence that can be afforded these positions by clients and community agencies. Employees shall ensure that they are operating in a manner that does not violate trust relationships or abuse the power of the position.*

I would be hard-pressed to find any way in which sending a message like this is responsible or achieves the highest standards of competence. I’ve said it already, but he is seeking information (and most certainly should not be) to further his views of the pandemic and vaccinations as some sort of conspiracy.

In his message, Councillor Bylsma states outright that it’s none of his business and he respects Emily’s privacy. I would suggest that simply by sending this message,

he has demonstrated that he doesn't respect Emily's privacy. He certainly doesn't respect her privacy enough to not ask the question in the first place.

The only people who are not the closest of family members or friends who I can think of that could reasonably ask such questions are physicians. And those physicians would have to be actively caring for the person of whom they are asking such questions.

Councillor Bylsma is, of course, not a physician, never mind that he's not providing direct care to Emily.

Again, there is a ridiculous theory going around on the internet that being vaccinated causes irregular periods. Councillor Bylsma is attempting to further this theory whilst also demonstrating his lack of knowledge about human biology.

Certainly, as someone who is in a position of authority, Councillor Bylsma should not be abusing his position to try to gather this kind of information and certainly not from someone who is neither family, friend, nor even his constituent.

Response

Councillor Bylsma wrote the following as his full Response:

Good day

I wish to enter the following as defense of this complaint.

Firstly, this was a private messenger communication. The messenger app by definition and use is personal and no copies or blind copies were made of the communication to Ms. Spanton. The fact that it was publicly shared lies solely in actions taken by Ms. Spanton to make it so.

Secondly, it was a question. Not a statement or imperative. In the brief note I announced it as a question, I stated it as a question by using the proper punctuation and I gave her the respect of not replying. I stated very clearly this option of disregarding out of deference to her privacy and personage.

I apologized privately and publicly quickly, within 2 days and at the next available opportunity and before this complaint was received.

Finally, much of what is written in this complaint is speculative or political. With

all due respect to this process, I feel that the office of the Integrity Commissioner is being used to suppress honest debate and information gathering. This is very troubling to me on behalf of the democratic process.

Reply

Councillor Ip wrote in her Reply:

Councillor Bylsma did send the message through private messenger application on Facebook. There is no expectation, nor should there be any expectation, of privacy on social media. This is clearly laid out in the Terms & Conditions of all social media platforms. Furthermore, it is inappropriate, as Councillor Bylsma has done in his response, to place blame on Ms. Spanton for sharing a message that she found problematic and upsetting.

It was a question, and it was a question that was deeply personally invasive in nature.

Councillor Bylsma did apologize and he did so after this Complaint was filed with the Regional Clerk. ...

Given that Councillor Bylsma felt the need to apologize to Regional Council, it would seem that he understands that his behaviour was inappropriate. If by challenging this Complaint, he is suggesting that is not the case, it would call into question the sincerity of his apology. Further, his apology would suggest that his claim that this Complaint is intended "to suppress honest debate and information gathering" is false (and it is). There are, in fact, no circumstances under which it is appropriate for a Regional Councillor to ask a woman he barely knows and with whom he's only communicated on a professional basis about her menstrual cycle, regardless of one's political opinions or leanings.

...

With respect to his apology, it began with what could be heard as excuses for why he thought it appropriate to send such a message to Ms. Spanton. The notion that having had previous discussions with her made it any manner acceptable to ask her a question this deeply personal is nonsense.

With respect to Councillor Bylsma's suggestion that my Complaint is speculative in terms of why he asked the question, here are several media articles that lay out what his thoughts are on the pandemic, lockdowns, masking, and the vaccination,

including an interview he did with News now after he messaged Ms. Spanton and before he wrote his response to this Complaint:

Specific to this incident:

*Toronto Star*¹ – May 18, 2021

*CBC*² – May 19, 2021

*CHCH*³ – May 19, 2021

*St. Catharines Standard*⁴ – May 19, 2021

*St. Catharines Standard*⁵ – May 21, 2021

*NewsNow Podcast Episode 7: A conversation with Mayor Dave Bylsma*⁶ – May 27, 2021

More generally:

*St. Catharines Standard*⁷ – July 23, 2020

*St. Catharines Standard*⁸ – September 25, 2020

*St. Catharines Standard*⁹ – November 23, 2020

*St. Catharines Standard*¹⁰ – February 8, 2021

*St. Catharines Standard*¹¹ – April 11, 2021

*St. Catharines Standard*¹² – April 12, 2021

¹ <https://www.thestar.com/news/investigations/2021/05/18/this-ontario-mayor-known-for-covid-19-disinformation-asked-a-woman-online-if-her-vaccine-changed-her-menstruation.html>

² <https://www.cbc.ca/news/canada/hamilton/bylsma-west-lincoln-vaccination-menstrual-cycle-comments-1.6032483>

³ <https://www.chch.com/niagara-chair-speaks-out-against-inappropriate-comments-by-west-lincoln-mayor/>

⁴ <https://www.stcatharinesstandard.ca/news/council/2021/05/19/apology-demanded-of-bylsma-for-menstruation-remark-to-st-catharines-woman.html>

⁵ <https://www.stcatharinesstandard.ca/news/council/2021/05/21/bylsma-offers-public-apology-for-menstruation-query.html>

⁶ <https://www.youtube.com/watch?v=e0DMoRBphBU>

⁷ <https://www.stcatharinesstandard.ca/news/niagara-region/2020/07/23/niagara-regional-passes-mandatory-mask-bylaw.html>

⁸ <https://www.stcatharinesstandard.ca/news/niagara-region/2020/09/25/bylsma-praises-anti-mask-activists.html>

⁹ <https://www.stcatharinesstandard.ca/news/niagara-region/2020/11/23/bylsma-cites-ineffective-mom-advice-to-fight-covid-19.html>

¹⁰ <https://www.stcatharinesstandard.ca/news/niagara-region/2021/02/08/bylsma-town-councillor-join-hilliers-anti-lockdown-caucus-under-banner-of-christian-political-group.html>

¹¹ <https://www.stcatharinesstandard.ca/news/niagara-region/2021/04/10/defying-provincial-stay-at-home-orders-anti-lockdown-protesters-march-through-st-catharines.html>

¹² <https://www.stcatharinesstandard.ca/news/niagara-region/2021/04/12/bylsma-broke-the-law-by-taking-part-in-anti-lockdown-rally-says-bradley.html>

*St. Catharines Standard*¹³ – April 12, 2021

*St. Catharines Standard*¹⁴ – April 12, 2021

*St. Catharines Standard*¹⁵ – April 13, 2021

*St. Catharines Standard*¹⁶ – April 15, 2021

*St. Catharines Standard*¹⁷ – April 17, 2021

Interviews with Parties

Mr. Maynard interviewed both councillors by telephone, separately.

Councillor Ip stated Ms. Spanton sent her the screenshot of Councillor Bylsma’s message. She said the Region needs to do something (from a public health perspective) about vaccine messaging, because there is messaging around vaccines and the menstrual cycle that needs to be corrected. Councillor Ip said there was no way to ask what Councillor Bylsma asked while respecting someone’s privacy.

However, Councillor Ip acknowledged that she could not think of how the situation was a clear violation of the *Code of Conduct* (i.e., that it was difficult to say how Councillor Bylsma’s actions precisely fit the description of any particular section of the *Code* because of how bizarre the situation is). She said she was prepared to drop the matter at first because Councillor Bylsma apologized, but then felt his response to the complaint called the sincerity of his apology into question. She added that Councillor Bylsma referred to himself in a podcast¹⁸ as an activist Mayor and said he “would do it again”. She felt there were two main aspects to the matter – Councillor Bylsma’s question was inappropriate, and in the context of Councillor Bylsma’s history of going against public health advice, his conduct perpetuated a public health concern (especially regarding women), and it was not in the community’s best interests to be perpetuating this kind of thinking.

Councillor Ip said she didn’t know if some men in political positions understand that even if you say, “you don’t have to answer”, they are a person in a position of

¹³ <https://www.stcatharinesstandard.ca/news/niagara-region/2021/04/12/hirji-fears-protest-will-worsen-niagaras-already-surging-covid-19-caseload.html>

¹⁴ <https://www.stcatharinesstandard.ca/news/niagara-region/analysis/2021/04/12/conspiracies-the-devil-and-vitamins-fact-checking-the-lockdown-protesters.html>

¹⁵ <https://www.stcatharinesstandard.ca/news/council/2021/04/13/bylsma-at-risk-of-ejection-from-public-health-board.html>

¹⁶ <https://www.stcatharinesstandard.ca/news/niagara-region/2021/04/15/two-niagara-politicians-business-owners-and-anti-lockdown-activists-charged-for-st-catharines-rally.html>

¹⁷ <https://www.niagarafallsreview.ca/news/niagara-region/2021/04/17/bylsma-downplays-seriousness-of-pandemic-illness.html>

¹⁸ Note 6, *supra*

power, so a recipient may feel compelled to answer.

Councillor Ip referred to one of the articles she referenced,¹⁹ which stated:

Bylsma said he knew the question to Spanton was risky, but he “gave her the option of not divulging anything she did not want to.”

“I did ask the question privately to someone I genuinely thought would give me a fair response based on a professional dialogue that has spanned any topics that have arisen during this pandemic,” he told CBC News in a text message.

“I’ve had constituents raise serious concerns about experiencing the worst menstrual symptoms following the vaccine. I’m merely trying to ask a difficult question about an uncomfortable topic.”

Councillor Bylsma, during his interview, said Ms. Spanton did not answer his question, following which she went to the media and tried to embarrass him through that forum. He said he had wished for his message to her to be private. Councillor Bylsma said he chose not to respond when the media asked him if he was asking other people that question.

Councillor Bylsma thought his message to Ms. Spanton had been pretty self-explanatory – he was trying to do a little investigation of his own, to validate a concern that had generally come across his desk – i.e., by asking someone he thought might be able to shed some light on the issue. When asked what he meant by “coming across his desk”, Councillor Bylsma eventually confirmed that he had received and seen information on social media, stating “I think I received some concerns raised by people on social media, on Facebook,” then added “I think I was having a conversation with somebody who was a nurse who raised the issue, and I had seen it on Facebook as well.” He said it was only ever just a question, and it was private, and he gave Ms. Spanton an out, so if she volunteered something in response it would be helpful.

Councillor Bylsma said he had mentioned the issue generally in a Council meeting (i.e., the vaccine impacting women’s menstrual cycles and fertility), and City News did a segment on it – which he felt validated that this was a real concern. He said he is a politician that likes to ask questions and get to the bottom of things, but he was being “shut down” and “cancelled”, and that “there is no longer any fairness or open debate”. He said he apologized personally to Ms. Spanton the next day,

¹⁹ Note 2, *supra*

and publicly a day later; he said he hadn't meant to create offence, and was embarrassed himself, but he thought he had generated enough respect and confidentiality with Ms. Spanton to have a frank conversation.

Analysis

This is among the more straight-forward cases this Office has received. On its face, Councillor Bylsma's question to Ms. Spanton was alarmingly invasive and arguably insulting. Given how objectively inappropriate it was, there was little need to interview Ms. Spanton personally in this matter, especially given that she did not initiate the complaint.

Councillor Bylsma appeared to understand shortly afterward that he erred and issued apologies both personally to Ms. Spanton and publicly in the immediately-following days. While Councillor Bylsma's defences to this complaint seemed somewhat at odds with his previous apologies, we prefer to interpret them as explanations for what he did, rather than a rejection of responsibility for them.

The specific question in this case is whether Councillor Bylsma's conduct contravened the *Code of Conduct*. A notable limitation is that municipal Integrity Commissioners in Ontario have commonly concluded that the 'General/Guiding Principles' or 'Preamble' to a Code of Conduct do not constitute stand-alone provisions that can be contravened in themselves – that is to say, the guiding principles to a Code of Conduct are intended as interpretive, for the purpose of illuminating what the remaining provisions in the Code of Conduct mean or intend. Accordingly, while the General Principles in the Region's *Code of Conduct* set out big-picture objectives for its Members of Council (e.g., to "observe the highest standard of ethical conduct", and to "conduct themselves in a way that maintains the public's trust in the Region"), they are too general to contravene specifically.

But the same cannot be said of the other provisions Councillor Ip relied on – even if written in similarly aspirational language, the rest of the *Code of Conduct* cannot be interpreted like 'General Principles'. That is, they constitute stand-alone provisions capable of contravention – which happened here.

The "Pursuit of Excellence" provision mandates that Members of Council must act "... in a responsible manner, and be held accountable for their actions". It also mandates that Members "... shall ensure that they are operating in a manner that does not violate trust relationships or abuse the power of the position." We take the position that Councillor Bylsma's conduct, in asking his question to Ms.

Spanton, was simply irresponsible. No significant analysis is required on this point. We find it difficult to believe that almost any woman²⁰ (except, perhaps, Councillor Bylsma's closest family members) would not have been offended by the Councillor's question – and even as men, it staggers us. While Councillor Bylsma has acknowledged some personal embarrassment for his actions, owing to how they were reflected in the media, in order for him to be held formally accountable for them, it is appropriate for our Office to formally confirm for the record that his conduct indeed violated the *Code of Conduct*.

We were also concerned about why Councillor Bylsma seemed to ask Ms. Spanton the question specifically (as opposed to anybody else). Councillor Bylsma stated he “thought he had generated enough respect and confidentiality with Ms. Spanton to have a frank conversation” with her – which appeared to reference conversations they had between themselves previously. On this point, we note that Councillor Bylsma is an elected representative at the Region, and Ms. Spanton is a long-standing politically engaged citizen, who was in the midst of being appointed to one of the Region's Advisory Committees when this incident occurred (and on which she sits currently). Councillor Bylsma himself seemed to interpret their relationship as one involving some trust and personal knowledge – a relationship built on his elected position, and her status as a politically-engaged citizen, who is now also formally involved in Regional governance. In that context, his question towards Ms. Spanton appeared targeted, and effectively violated a trust relationship. It also contravened a specifically enumerated provision in the “Pursuit of Excellence” section of the *Code of Conduct*.

We disagree with Councillor Bylsma's assertion that he is “being shut down and cancelled”, or that “there is no longer any fairness or open debate”. Nobody has stopped Councillor Bylsma from doing or saying anything, whether privately or publicly – as evidenced by the fact he often uses his platform to express his views, sometimes at odds with the majority of Council. It is not this Office's role to involve itself in substantive debates about the merits of political issues (such as Councillor Bylsma's views on vaccines broadly-speaking, whatever they may be). But Councillor Bylsma's public role grants him the privilege of an amplified voice – far more so than most people in society. Nobody has stopped him from saying anything or expressing his opinions. Rather, what Reports like this emphasize is that when a Member of Council does or says something with detrimental effects –

²⁰ This is not to suggest how any woman *should* feel about it; rather, it is simply an acknowledgement that we find it likely that most women would not have appreciated such a direct personal question – more importantly in this instance, the Complainant and Ms. Spanton appear not to have appreciated it. [Note: this footnote was added for further clarity following an earlier draft version of the Report circulated to Councillor Bylsma.]

and specifically when they breach the *Code of Conduct* in doing so – then there are appropriately consequences for those actions and statements. The *Code of Conduct* specifically asserts that Members shall be accountable for their actions, which all should agree is a noble goal.

Where a contravention of the *Code of Conduct* is established, as it has been in this case, s. 223.4(5) of the *Municipal Act* allows for only two potential penalties – (i) a reprimand, or (ii) a suspension of the remuneration paid to the Member for up to 90 days. That decision is also left to Council as a whole; the Integrity Commissioner can only recommend an appropriate penalty. We recognize this is an imperfect system, but all stakeholders are subject to it by virtue of provincial legislation, and our Office has no power to change it. The *Municipal Act* provision reads as follows:

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

- 1. A reprimand*
- 2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.*

We note that Councillor Bylsma publicly apologized for the matter in Council on May 20, 2021,²¹ and has acknowledged some degree of personal embarrassment. It is our view that a reprimand against Councillor Bylsma would have accordingly been appropriate if this was his first *Code* contravention. However, that is not the case – in fact, Councillor Bylsma was already found to have contravened the *Code of Conduct* earlier this year by former Integrity Commissioner Edward McDermott, in matter IC-221-0720,²² for making several discriminatory remarks while being interviewed on radio, and for which Regional Council has already reprimanded him. These repeated violations of the *Code* are an indication that a more substantial penalty may be appropriate. Therefore, we believe a modest economic penalty would be a suitably progressive and meaningful consequence. We accordingly recommend that Council suspend Councillor Bylsma's remuneration as a Member of Council for a period of up to seven (7) days (i.e., one week).

²¹ See <https://www.youtube.com/watch?v=wSjD8CuSRVc> (18:30 to 21:24)

²² <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=14107>

Decision and Publication

It has been determined that Councillor Bylsma contravened two provisions of the "Pursuit of Excellence" section in the *Code of Conduct*. His actions were irresponsible, and also appeared to violate a trust relationship with Ms. Spanton.

The Integrity Commissioner recommends that Regional Council impose a suspension of Councillor Bylsma's remuneration as a Member of Council for a period of up to seven (7) days.

We thank the parties for their cooperation throughout the investigation process.

Dated at Toronto, this 8th day of October, 2021.

Respectfully submitted by,



Michael L. Maynard
Interim Integrity Commissioner
Niagara Region



Benjamin Drory
Investigator
Office of the Integrity Commissioner

Cc: Anne-Marie Norio, Regional Clerk



ADR
CHAMBERS

Integrity Commissioner Office
for Niagara Region

MICHAEL L. MAYNARD
Interim Integrity Commissioner
Niagara Region
E-mail: mmaynard@adr.ca

October 8, 2021

ADDENDUM TO REPORT RE: IC-13778-0521

Dear Members of Regional Council:

On October 4, 2021, a draft of our Investigation Report concerning this matter was sent to Councillor Bylsma along with the following email:

"Dear Mayor/Councillor Bylsma,

Attached, please [find] a copy of our Draft Investigation Report regarding the above noted matter.

This draft Report is being provided to you for your review and comment prior to its finalization and submission to the Regional Clerk for publication on the Regional Council agenda.

Please provide us with any submissions you wish to make on this Report by no later than October 8, 2021.

Please note that this matter, including the attached Report, are to remain confidential at this time."

The Report was provided to Councillor Bylsma in accordance with established and best practices for Integrity Commissioner ("IC") proceedings, which include providing an advance draft copy of an Investigation Report to a Member of Council where a finding of a contravention has been made and where a penalty has been recommended.

It is also an established and best practice to instruct Members to keep such draft reports confidential (as with the rest of the IC Investigation process) as matters are not concluded with the IC's office until: (i) the IC has an opportunity to consider (and perhaps act on) any feedback received from the Member; (ii) the IC issues a final Investigation Report to the parties and the Clerk of the municipality; and (iii), the matter is placed on the open Council Agenda for Council's consideration.

Leak of Draft Report / Information

On October 7, 2021, my office received two emails from private citizens which could be characterized as broadly outlining their support for Councillor Bylsma, commenting on the investigation and report, and questioning / criticizing Councillor Ip (the Complainant) and Ms. Emily Spanton (the individual to whom the Respondent Councillor sent the impugned Facebook message which was the subject matter of this Complaint). To my knowledge, the Clerk of the Region, Ms. Norio, was also copied on these emails. The content of at least one of these emails was shared on social media by its author and commented on by several others.

By way of example, one of the emails stated:

"I have been a lifelong resident of St. Catharine's and I'm very disappointed in the display of counsellor Laura Ip and Emily Spanton's behaviour, in reaction to a question from Lincoln Mayor, Dave Bylsma, and thus the outcome of the integrity Commissioners report." [emphasis added]

A draft version of the Report was provided only to Councillor Bylsma and to no one else outside of the Integrity Commissioner's office in accordance with our established practice. There is no reason that, as of October 7, 2021, any member of the public should be aware of the "outcome" of our investigation, as the investigation process had not yet been concluded. In my view, it is clear that Councillor Bylsma must have shared the draft Report, or at least some information about its findings, with members of the community, contrary to our instructions respecting confidentiality (which, as noted, is an established and best practice for IC matters – a practice which ought already to be known to Councillor Bylsma given his history of involvement with IC proceedings).

It has long been understood that confidentiality is an essential element of the IC process and it has been established as such to avoid any detrimental activity that

may undermine an ongoing investigation (e.g., interference with potential witnesses or the collection of evidence; improper contact with or influence on Members of Council prior to Council's consideration of a finalized IC Report; or unwanted attention directed toward a Complainant, Respondent, or witness prior to a matter being determined).

To that end, I note that the *Municipal Act*¹ states as follows:

Duty of confidentiality

223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98. [emphasis added]

To assist in maintaining confidentiality, Complainants are required to enter into a *Consent and Confidentiality Agreement* when commencing a Complaint application with the Integrity Commissioner.²

I further note that the Region's *Complaint Process* states: "The Regional Clerk and other necessary individuals will maintain confidentiality."³

The *Code of Conduct*⁴ itself deals with Confidential Information, in part, in these terms:

"Members of Council shall not misuse confidential information (information that they may have knowledge of by virtue of their position as Councillor that is not in the public domain, including e-mails and correspondence from other Members of Council or third parties) such that it may cause detriment to the Corporation, Council or others, or benefit or detriment to themselves or others."

It has become apparent that Councillor Bylsma does not respect the Office of the Integrity Commissioner. He indicated during his interview regarding this matter

¹ [Municipal Act, 2001, S.O. 2001, c. 25 \(ontario.ca\)](#) at s. 223.5 (1)

² [Submitting a Complaint to the Office of the Integrity Commissioner - Niagara Region, Ontario](#)

³ *Ibid*

⁴ [Code of Conduct \(niagararegion.ca\)](#)

that he was upset about the previous investigation (IC-221-0720)⁵ and, in particular, the findings made against him, arguing that such findings were “wrong”. He further suggested that I, as (Interim) Integrity Commissioner, might “take the liberal view” and use media reports against him, and accordingly indicated his belief that he would not “get a fair shake”.

Such comments were largely excluded from consideration in our Investigation Report as they were not relevant to the matters at issue. However, Councillor Bylsma’s apparent conduct in leaking the Report (or information about it) contrary to instructions from our office (in accordance with our usual practices with which the Councillor is no doubt familiar) has now made them relevant.

These new matters of concern do not alter the findings contained within our Report. However, we believe Council should be made aware of what transpired following the release of the draft Report to Councillor Bylsma, not least because it resulted in the above-mentioned correspondence being sent jointly to the Regional Clerk and to our Office (as well as being posted online in at least one case), and because that correspondence contained specific questions and criticisms respecting another Member of Council and a member of the community.

It is also my view that the leaking of a draft Report by a Member of Council prior to that Report being finalized and placed on the Council Agenda is disrespectful to the role of Council itself. As Members will no doubt be aware, it is not the Integrity Commissioner that makes decisions regarding penalties relative to *Code of Conduct* violations – it is Council that makes such decisions. Accordingly, Councillors should have an opportunity to review an Integrity Commissioner’s Report and consider its findings and recommendations prior to (or least in tandem with, but not after) such Report becoming a matter of public record. It may become a problem for Council if unsolicited opinions about the findings of the Integrity Commissioner reach the ears and inboxes of Council Members before the Report containing such findings has even been finalized let alone provided to them.

Members of Council who are facing potential sanction pursuant to an Integrity Commissioner’s findings and recommendations have a right to speak to any potential penalty they may face when the matter is up for consideration at a meeting of Council. The *Municipal Conflict of Interest Act*⁶ even provides a specific

⁵ [filestream.ashx\(escrimemeetings.com\)](https://filestream.ashx(escrimemeetings.com))

⁶ [Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 \(ontario.ca\)](https://www.ontario.ca/laws/statutes/99/m50) at s. 5 (2.1)

exception allowing for Members to speak to possible economic penalties (even if not allowing them to vote on such penalties). Council chambers is accordingly the appropriate and lawfully established forum for a Member of Council to make representations to Council about the findings of the Integrity Commissioner. Leaking a draft Report to community members who then petition the Integrity Commissioner and the Regional Clerk in regard to same is not appropriate.

This improper disclosure of the draft Report is, in my view, an aggravating factor that Council may wish to consider in determining any penalty for Councillor Bylsma's *Code* contraventions.

Accordingly, all of the above is submitted for Council's information.

Yours very truly,



Michael L. Maynard
Interim Integrity Commissioner
Niagara Region

Cc: Ann-Marie Norio, Clerk
Regional Councillor Laura Ip
Regional Councillor Dave Bylsma