

Town of Orangeville Integrity Commissioner File 2017-03**REPORT ON COMPLAINT****The Complaint**

Ms Susan Greatrix, Clerk and Director of By-law Enforcement, alleged that Mayor Jeremy Williams breached sections 3.1, 3.2, 4.1, 6.1, 13.1, 13.2, 13.3, 13.4, 13.5, 14.2, 14.3, 15.1 and 15.2 of the *Code of Conduct for Council, Local Boards and Committees* in his dealings with staff of the Town's By-law Enforcement Division.

For reasons explained later in this report,¹ I declined to investigate the allegations under sections 3.2, 13.1 and 13.2 of the Code. I continued to consider the remaining allegations, namely those related to the following sections: 3.1, 4.1, 6.1, 13.3, 13.4, 13.5, 14.2, 14.3, 15.1 and 15.2.

March Incident – Accessible Parking

The Mayor's first interaction with the By-law Enforcement Division occurred Thursday, March 2, 2017.² At the Council meeting four days later, the Mayor described the interaction as follows:³

So I have an item of new business and it's just one of those things that if I don't tell Council about it I'm going to feel uncomfortable. It's kind of two things. One is – and I don't know if it got in our info, it was a letter from I think his name was; he's an individual who's always been championing handicapped parking, and I think Councillor Campbell you probably know who I'm referring to; see if we can find the letter – where a by-law officer went out. It was kind of a handicapped parking infraction but it wasn't because we didn't have the sign there. And I know we've had some issues enforcing our handicapped [parking] by-law.

And I was recently, [I] saw somebody who parked in a handicapped parking spot, and called our By-law [Enforcement], and I must say they responded really, really fast. They're like, 15 minutes they were there. I was very impressed with the response. It's my understanding though that a ticket wasn't written. And so I really have concerns with: what are we doing with handicapped parking? This individual, every single time I run into him, he nails me, he puts me against the wall and asks: what are we doing to better enforce handicapped parking?

So I know that we're missing a few things with enforcement of handicapped parking. I don't know if it's an issue of the by-law, if we should be having just Orangeville Police enforce it. I don't know, but, as I say, I would feel uncomfortable not raising that.

¹ See discussion at page 17 under the heading "First Preliminary Issue."

² As discussed at page 17, under the heading "Second Preliminary Issue," I do not consider to be relevant any interaction that the Respondent might have had, in his personal capacity, with the By-law Enforcement Division.

³ Town Council Meeting, March 6, 2017.

(The second issue raised by the Mayor related to enforcement of the restrictions against smoking on Town property.)

Following comments by Councillor Campbell, the Clerk addressed the incident that the Mayor had mentioned:

Clerk: If I could speak to the handicapped parking ticket that was not issued. I believe the Mayor's referring to one incident that was last Thursday?

Mayor: Correct.

Clerk: By-law did respond immediately. It was a work vehicle parked in front of the County building. It had a cone in front of the vehicle, a cone in the rear of the vehicle. As the officer was investigating, beginning to write a ticket, a gentleman came out of the County building, obviously a workman, spoke to the by-law officer, moved his vehicle immediately, and informed the by-law officer that he had the permission of County staff to park there. We have since clarified with County staff that that's not permissible and in fact the by-law officer spoke today with the supervisor and he'll make sure that it doesn't happen again.

According to the by-law officer, a pickup truck was parked in an accessible parking spot outside 53 Zina Street (County Roads Department) and did not display a permit. The officer took photos and was in the process of writing a ticket when an individual holding a trowel (with what the officer described as "drywall mud" on it) came out the front door and explained that two named individuals (one of whom the by-law officer recognized as a County official) had told him that it was permissible to park there. The officer told the driver that regardless of permission he could not park in the accessible space without a proper permit and asked him to move the truck, which the driver immediately did.

After the by-law officer watched the driver move the pickup truck to an appropriate space, another vehicle, driving eastbound on Zena Street, approached the officer's car. This other vehicle stopped beside the by-law officer's car, allowing the officer to see that the Mayor was driving it. The Mayor rolled down his window and said, "I guess you did not give him a ticket." The by-law officer explained that there had been a miscommunication with the County staff and that the officer would follow up the next day. The Mayor replied that he receives complaints about the By-law Enforcement Division not enforcing the by-laws and that the incident confirmed this. He then drove away.

According to the by-law officer, the Mayor appeared to be "angry" and "was very short with me in his tone of voice." The officer concluded that the Mayor must have been watching the officer's interaction with the truck driver from a distance. This concerned the officer who also felt that the Mayor was reprimanding the officer for exercising discretion.

The Mayor denied⁴ being very angry and called the allegation "absurd." He explained

⁴ The Mayor's position on what happened during his interaction with the by-law officer is recorded in a March 3 email exchange between him and the Clerk. Given that the Code complaint was not filed until several months later, I view the Mayor's explanation shortly after the incident occurred as the most

that he was leaving the County building and happened to pass the by-law officer. According to him:

I rolled down my window to thank [the officer] for coming out and asked if he [the truck driver] tried to talk his way out of it. A car pulled up behind me, so our conversation was extremely brief. There was nothing angry about it from [the officer] or I. I'm shocked [the officer] would say that ...

The Complainant alleged that the Respondent's comments to the by-law enforcement officer contravened sections 13.3, 13.4, 13.5 and 14.2 of the Code.⁵

June/July Events – The Piano

The bulk of the complaint relates to the piano placed on the sidewalk outside 218 Broadway. While the Complainant only makes allegations about the Mayor's actions during July, to provide context it is necessary to outline some of the events in June.

The Altered Native, a head shop and tattoo/piercing studio which describes itself as "Ontario's Premier Counter-Culture Boutique," received the donation of a piano and in mid-June placed it outside on the sidewalk for the use of the community.

On June 22, a by-law enforcement officer hand-delivered to The Altered Native a letter, titled "Notice for Compliance," reading as follows:

The Town of Orangeville has received a complaint regarding a discarded piano located adjacent to 218 Broadway.

An inspection conducted on Thursday, June 22, 2017, revealed that a piano has been affixed to the municipal water fountain, adjacent to the aforementioned property.

The Town of Orangeville Littering By-law 56-99, regulates the dumping and disposal of debris and refuse onto municipal and private property within the Town of Orangeville. The following section shall apply to the piano:

By-law 56-99

1. *"No person shall throw, place or deposit any refuse or debris on private property or on the property of the municipality or any local board thereof without authority from the owner or occupant of such property"*

At this time, the Town of Orangeville requires you to remove the piano from municipal property. Failure to obtain compliance with Bylaw 56-99 may result in charges being issued, which carries [sic] a maximum fine of \$5,000.00, and or the Town removing the object at the expense of the owner. A re-inspection will occur on Friday, June 23, 2017.

immediate statement of his recollection. He subsequently stated that he stands by what he wrote in that email exchange.

⁵ The Complainant also alleged a contravention of section 13.2, but I declined to consider that section. See discussion at page 17 under the heading "First Preliminary Issue."

The fountain to which the piano was fastened was unused, as evidenced by a photograph taken by the by-law officer. The photo shows that the basin of the fountain had been converted into a planter and a flower was growing there.

At 10:52 p.m. the same day, the Mayor posted the following on Facebook, along with a photo showing him beside the piano and an image of the letter:

So... this is the kind of thing that made me want to get into politics to begin with. To make a difference when things just don't make sense.

Shayne MacDonald thought he'd do an amazing thing. He'd set up a piano outside his store for people to play. It's not a new idea. It's been done in other cities, and it has been warmly received.

He got a piano, modified it so it could be locked up, chained it to an unused fountain to make it safe and covered it at night with a strong tarp to protect it.

Sounds great! Right? But... our bylaw department saw it and they did what they are paid to do. They applied the bylaws of our town. They did this to protect our citizens and to act on a complaint received. They treated it as an item of garbage and wrote a letter (below) asking that it be removed or face a \$5,000 fine.

As right as our bylaw department staff are for doing this, it makes no sense.

I will be asking our bylaw staff to hold off on laying charges (none have been filed yet by the way, the letter gives an opportunity to first solve the issue.) as I will bring this to council next week to ask that we give this idea a chance.

Ultimately it will be up to council, but I do hope they will see the positive aspect of this!

A few moments earlier, at 10:48 p.m., the Mayor had tweeted, "Local business sets up public piano, is asked to pay \$5000 fine - hoping Orangeville Council will allow!"

The next day, the Mayor telephoned his executive assistant and asked that a message be passed to the Clerk and Director of By-law Enforcement because he (the Mayor) was running short on time. The message was that the Mayor had told the owner of the piano that he would be bringing the issue to Council on June 26 under "New Business" and that he would ask Council for an exemption to the by-law and some leniency.

Also on June 23, an emailed response from the Clerk to a local news reporter set out the By-law Enforcement Division's position on the issue:

We became aware of the piano as the result of a complaint. By-law officers do not have discretion to decide whether something is good for the community or not, and whether they should enforce a by-law. They are tasked to enforce a by-law as it stands.

Because of the complaint, by-law delivered a letter to the store yesterday, requesting that the piano be removed pursuant to By-Law 99-56. The store owner was not available to speak to the officer, so the letter was left with store staff. To my knowledge, by-law has not been contacted by the store owner or the piano owner.

There are liability issues associated with the piano that can probably be resolved, however, no one has contacted the Town. We don't know who owns the piano, who

is responsible for its maintenance, whether it's insured, whether the Town is covered by insurance, etc.

Only Council has the authority to amend or exempt something from the provisions of the by-law.

We would be happy to talk or meet with the owner to discuss the matters and present a recommendation to Council as to the best way to proceed.

Prior to the June 26 Council meeting, the Clerk worked directly with the owner of The Altered Native to address several of the above-noted concerns, including ownership of the piano and insurance coverage. The Clerk also worked with the staff to develop the following proposed Council resolution:

That Council direct staff to report to Council at the July 17, 2017 meeting of Council to confirm that arrangements have been made with the property and piano owner(s) for:

- appropriate insurance naming the Town of Orangeville as an additional insured; and
- an agreement indemnifying the Town of Orangeville against any claims arising as a result of a piano on Town property

And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway pending a final Council decision.

At the Council meeting that night, on motion of Deputy Mayor Maycock, seconded by Mayor Williams, the following resolution was passed on a 4-2 vote:⁶

That Council direct staff to report to Council at the July 17, 2017 meeting of Council to confirm that arrangements have been made with the property and piano owner(s) for:

- appropriate insurance naming the Town of Orangeville as an additional insured; and
- an agreement indemnifying the Town of Orangeville against any claims arising as a result of a piano on Town property

And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway, pending a final Council decision.

At the end of the evening, Council enacted By-Law Number 056-2017 which confirmed the proceedings of the June 26 meeting.

Between the June 26 and July 17 Council meetings, communications between the Town and The Altered Native continued. By the time of the July 17 meeting, the Town staff was satisfied that the insurance requirement was met, but the owner still had not signed an indemnity agreement. (The signed indemnity agreement was sent back to the Town a week following the July 17 meeting.)

⁶ The Mayor, Deputy Mayor, Councillor Bradley and Councillor Campbell voted "yes." Councillor Kidd and Councillor Wilson voted "no." Councillor Garisto was absent.

The Clerk submitted a written report, indicating that the Town had been named as an additional insured on a \$2-million insurance policy but that, at the time of writing, the Town had received no response to its proposed indemnity agreement.

Nonetheless, the Clerk's report recommended, "That staff take no further action with respect to the piano located in front of 218 Broadway, as long as it poses no hazard to the community."

There is no disagreement about what happened or, more precisely, what did not happen, at the July 17 meeting: Council adopted no resolution whatsoever concerning the piano. Discussion occurred, but neither of two clear motions was voted on or adopted. The Mayor, seconded by Councillor Campbell, moved adoption of the staff recommendation (to take no further action with respect to the piano as long as it posed no hazard to the community); Councillor Campbell subsequently withdrew her second. Councillor Kidd then moved that the piano be removed as quickly as possible; there was no seconder. In the absence of a seconder, neither motion came to a vote.

The July 17 minutes simply recorded:

Piano on Broadway (CL-2017-17)
[No action taken by Council]

While there was no disagreement about the fact that no action was taken, there was significant disagreement about the meaning and the effect of the failure to decide anything on July 17:

- The Clerk believed that as Council had made no decision countermanding the June 22 notice to remove the piano, the By-law Enforcement Division should proceed with removal of the piano.
- The Mayor believed that as Council had made no decision on July 17, its June 26 decision remained in effect: "that Council direct staff to take no action to remove the piano from its temporary location ... pending a final Council decision."

The Town subsequently sought legal advice about which interpretation was correct – advice that was received the afternoon of July 25. I note that most (but not all) of the Complainant's allegations relate to the Respondent's activities prior to receipt of the legal opinion.

In the meantime, following the July 17 meeting, the By-law Enforcement Division, led by the Clerk in her role as Director of By-law Enforcement, prepared to move forward on removal of the piano. As has been noted, the Clerk believed that pursuing removal was consistent with Council's non-decision of July 17. The morning after the Council meeting, the Clerk sent the By-law Enforcement staff an email reading in part as follows:

At last night's Council meeting, Council did not reach any decision on the piano. Two motions were moved and neither was even seconded to get to a vote.

The result is that there is an outstanding order to remove the piano. Can you please draft a second letter to the owner of the piano, informing them they have until (what date?) to remove the piano, or Public Works will remove it and dispose of it.

The letter can say that Council did not pass a resolution to allow the piano to remain on Town property.

The following letter was finalized and delivered to The Altered Native, July 21:

NOTICE FOR COMPLIANCE – REMOVAL OF PIANO

Please be advised that at its meeting on July 17, 2017, Council did not grant approval for the piano to remain on the municipal right of way (sidewalk) adjacent to 218 Broadway.

Please remove the piano from the municipal right of way on or before Friday, July 28, 2017. If you fail to do so, the Town will remove the piano and store it for a period of 30 days at the Public Works Operation Centre, 500 C Line.

After 30 days, if you have not claimed and moved the piano at your own expense, the Town will consider it abandoned and dispose of it.

It must be stressed that while this letter was signed by a by-law officer, the individual officer was not responsible for the final wording or for the decision to issue the notice. The by-law officer was merely acting on instructions. Both the decision to send the letter and its text were confirmed at the highest levels of the Town's administration. Everyone involved, however, felt that this course of action complied with the direction from Council.

Later that same day, the *Orangeville Banner* posted (at Orangeville.com) an online news story beneath the headline, "Town demands Orangeville business remove community piano ... again."

The sub-headline noted, "The community piano placed out front of The Altered Native on Broadway is not as safe at [*sic*] the owner of the tattoo and piercing shop first thought."

The story posted at www.orangeville.com generated only a handful of comments, but a link posted on the *Banner's* Facebook page at 4:23 p.m. was the subject of extensive activity, including 33 comments (not including 17 replies to those comments) within the first hour alone. By the time the Mayor first replied (at 7:10 p.m.), the story had been the subject of 66 Facebook comments, 65 of them critical of the Town's action and/or supportive of the piano. Several of the Facebook comments and replies tagged the Mayor.

The Mayor's first post was very brief:

Facebook user: What happened here Jeremy D Williams ?we thought this was approved to stay

Jeremy D Williams: Me too!

Soon afterward the Mayor posted a longer comment on the *Banner's* Facebook page:

If the events in The Orangeville Banner article are true, I believe our bylaw department have not followed council's direction.

Here is the motion that was passed by council on June 26th and affirmed by way of 056-2017 passed that same day:

"That Council direct staff to report to Council at the July 17, 2017 meeting of Council to confirm that arrangements have been made with the property and piano owner(s) for:

- appropriate insurance naming the Town of Orangeville as an additional insured; and
- an agreement indemnifying the Town of Orangeville against any claims arising as a result of a piano on Town property

And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway, pending a final Council decision."

At the next council meeting (July 17), council did not pass any motions that would conflict with, or change the June 26th direction.

I will be formally asking that bylaw back off on this matter until council chooses to give direction to the contrary.

Four minutes later, at 7:27 p.m., July 21, the Mayor posted a virtually identical message on his own Facebook page, along with a link to the *Orangeville Banner* news story. At 7:36 p.m., he posted almost the same message on the Orangeville and Area Q&A and Community Info Page on Facebook.

July 24, shortly after midnight, the Mayor sent an email to the Clerk and Director of By-law Enforcement. He copied his executive assistant, two by-law enforcement officers, and two local residents, one of whom had started an online petition in support of the piano.⁷ The email read as follows:

Subject: Piano on Broadway, council direction.

Ms. Greatrix,

I was very disappointed to hear from a recent Orangeville Banner article that bylaw has issued a letter asking that the piano in front of the Altered Native store be removed.

If this is the case, I believe our bylaw department have not followed council's direction.

Here is the motion that was passed in open council on June 26th. and affirmed by way of 056-2017 passed that same day:

"That Council direct staff to report to Council at the July 17, 2017 meeting of Council to confirm that arrangements have been made with the property and piano owner(s) for:

⁷ In total, 1210 names were added to the digital petition to, "Allow the piano to stay outside of The Altered Native store on Broadway Orangeville."

- *appropriate insurance naming the Town of Orangeville as an additional insured; and*
- *an agreement indemnifying the Town of Orangeville against any claims arising as a result of a piano on Town property*

And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway, pending a final Council decision."

At the following council meeting (July 17), council did not pass any motions that would conflict with, or change the June 26th. direction.

Once again to quote the last paragraph of the motion moved June 26th, "***And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway, pending a final Council decision.***"

As head of council I am asking that bylaw back off on this matter and that staff respect council's direction already given unless and until council chooses to give direction to the contrary.

With respect,

Jeremy D Williams
Mayor of Orangeville

At 8:03 a.m., the Clerk forwarded the Mayor's email to all Council Members, and stated, "I will seek legal advice on the issue before taking any further steps."

The legal opinion, by Mr. John R. Hart of Ritchie Ketcheson Hart & Biggart LLP, was received late July 25. Mr. Hart agreed with the Clerk's interpretation of the June 26 Council decision and its July 17 failure to decide. In particular, Mr. Hart agreed that because the piano owner did not provide an indemnity prior to the July 17 meeting, the staff had been acting in accordance with Council's direction when afterward it sought the piano's removal.

Mr. Hart also noted that because, one day earlier, The Altered Native had provided the requested indemnity and the Town has accepted the indemnity, it was no longer necessary to pursue removal of the piano. The Clerk agreed, and halted efforts to remove the piano until after Council could give clear direction at its August 21 meeting.

After receiving a copy of the legal opinion, the Mayor wrote to the Clerk, disagreeing with Mr. Hart's interpretation of Council's decision, but agreeing with the position that no further action should be taken unless and until Council decided otherwise. On July 26, the Mayor explained in a Facebook post what had occurred:

<piano saga continues, update>

After senior staff consulted with the town's solicitors, By-law [Enforcement Division] will not be pursuing pressing charges in regards to the piano. I stand firmly by my assertion that the motion I seconded and that council approved allowed the piano to stay. Staff felt differently about that and did what they thought was appropriate. Although there may be two different views of the motion, we have arrived at the same place. The Altered Native, who supplied the public piano, have provided the

town with insurance and a letter of indemnity absolving the town of any liability. Which means no further action until and unless Council wishes to pass a different motion. Council will have an opportunity to weigh in on this at their next meeting, and it will be an item on the next meeting agenda. I will continue to support the intent of the motion I seconded in June and I hope council will continue to see the value in supporting the public piano for all to enjoy.

Meanwhile, the Town staff issued a news release to explain the situation:

Town of Orangeville receives indemnity agreement and insurance for piano on Broadway

Seeking permission to occupy or place items on public property is commonplace.

Such has been the case with the placement of a piano on the municipal boulevard outside the Altered Native at 218 Broadway. The piano was donated to the business and displays a sign "play me" to encourage anyone to strike a tune.

Initially placed without any official permission, the piano contravened municipal by-laws. Orangeville Council voted at its June 26 meeting to allow the piano to remain on the boulevard on Broadway if the owner signed an indemnity agreement and provided insurance coverage.

At its July 17 meeting, Council was informed that the insurance information had been provided but no indemnity agreement was provided. As a result, no further motion was passed at that meeting.

The Town's solicitor has confirmed that since the required documents were not provided to Council, the piano was not permitted to remain. By-law enforcement officers acted as directed by Council, the Chief Administrative Officer, and the Clerk/Director of By-law and requested that the piano be removed from the public right-of-way.

The indemnity agreement was belatedly provided to the Town on July 24. Now that the appropriate documents have been provided, Council will be asked to consider the matter at its next meeting.

In addition to approving the news release, the Clerk also made clear to the news media that the decision to pursue removal was a corporate decision, and not the doing of an individual by-law enforcement officer. In an email to the Orangeville Banner, she stated as follows:

The other important fact is that the by-law officer was acting on the direction of Council, Clerk/Director of By-Law Enforcement (me) and the CAO, as confirmed by our town solicitor.

This was not a unilateral decision by one staff member.

The perceived need to stress that the by-law officer was just following instruction arose from social media reaction that blamed the By-Law Enforcement Division generally and in some cases a named by-law officer specifically. As mentioned, the second compliance notice sent to The Altered Native had generated extensive social media commentary. Almost all of the social media reaction was supportive of the piano and/or critical of the attempt to remove it. Some of the criticism was directed toward Council but, especially after the Mayor's comments, more of the criticism was directed toward

the By-law Enforcement Division. Sometimes the by-law officer who signed the letter was the target of personal criticism.

Some examples:⁸

Why can't you understand - IT'S NOT THE TOWN COUNCIL WHICH IS THE PROBLEM PEOPLE! It's the bureaucratic little brainless civil servants who work in the bylaw department who are being [deleted] about the piano. And it would appear they are not doing as they are told.

...

Orangeville [By-law Enforcement Division] approves the construction of an eye-sore display on the middle of Broadway that slows traffic and blocks emergency vehicles, but a piano....now there's hazard.

...

Now this is poor, poor work done by [By-law Enforcement Division] as and from my read of the by-law there could be other interpretations.

...

Wow! I'm not sure [By-law Enforcement Division] is looking out for what is best for the Town at all. I say disband the whole lot and privatize the unit.

...

Because Town Council has affirmed keeping the piano then it appears that By-law Dept has taken this on their own to have it removed.

...

Perhaps it should be the By-law [Enforcement] office that gets a new overhaul and not just council!

...

Council directed [By-law Enforcement Division] to hold off until council makes a final decision. Seems pretty straightforward to me.

...

OMG- seriously people (aka – the By-law folks) have you NOTHING BETTER TO DO WITH YOUR TIME ???? Don't you think if as much attention was paid to real issues this town/county/province/country & even world would be a much better place? This just leaves one shaking their head in utter disbelief !!!!!

...

Orangeville By-law [Enforcement Division] approves the construction of an eye-sore display on the middle of Broadway that slows traffic and blocks emergency vehicles, but a piano....now there's a hazard.

...

Sounds like we could use some house cleaning with Town staff.

⁸ In quoting from documents, my practice in an investigation report is to correct obvious spelling errors without drawing attention to the correction unless the correction is material. This report also makes some edits to punctuation and capitalization for consistency.

...

OK, By-law [Enforcement Division] is so quick to act on this but what about the ones that like to park in the areas that are no parking beside Pizza Pizza. Where is By-law on that? Nowhere to be found. Or all the other things that are going on in Town that are against the bylaws, where are to be found for those? Nowhere but in their little dank office in the basement of Town Hall hiding till they get a complaint about something

...

It's clear that Town Council and staff can't work together. Maybe it's time for an election or time start firing staff !!! ??

...

Even when someone does complain they only look into what they want. Cutting curbs and nothing done about it, the By-law workers are useless unless on their own terms.

...

The best thing for Orangeville and By-law [Enforcement Division] can't get it. I am not surprised at all. A place for people to play for the public .

Some online comments were specific to an individual by-law enforcement officer. For example:

Town Council votes and [employee name] decides to do what [he or she] wants anyways? Sounds to me like [employee name] needs to be shown the door

...

This Town continues to be a literal joke and an embarrassment. Get a life [employee name].

The weeds that are growing 3 feet in the park, on the blvd's, throughout the town that are breaking by-law rules deserve your attention more than a piece of art that brings joy to residents and tourists alike. They bring rats, much like the one complaining about this piece of attention.

Council, I cannot WAIT for this town to vote your self-entitled, bored pieces of work out of office and inject some new blood where it belongs. This Town is progressing beyond your capabilities.

#voteforchangein2018

...

Who would complain about this? Sounds like our by-law officer has nothing better to do.

...

[Employee name], check your ego at the door and go away.

...

Put some orange cones around it lol

The first three comments were posted before the Mayor had made any social media comments concerning the July 21 development.

The last comment did not name any Town official, but the reference to orange cones seemed clearly related to the March 2 incident involving the contractor's pickup truck and the accessible parking space.

The online criticism of the individual employee did not appear to take account of the fact (nor was it necessarily public knowledge at the time) that in signing the letter to The Altered Native the by-law officer was merely following instructions. None of the online criticism appeared to mention other surrounding context, such as the fact that (at the time the letter was issued) an indemnity agreement had not been signed.

When the Mayor and the Clerk met briefly, the morning of July 24, they discussed online criticism of the Town's By-law Enforcement officers. As a result of that discussion, the Mayor posted the following update on his Facebook page:

<UPDATE>

I met with our head of Bylaw, Susan Greatrix, this morning. Ms. Greatrix asked that any enquiries related to this be referred to her directly and that staff are seeking a legal opinion on the matter. Ms. Greatrix also wanted me to remind people that bylaw are trying to do what they think is appropriate and that commenters shouldn't make personal attacks on individual bylaw officers as "they are doing their job".

The Town's July 26 news release, reproduced above, at page 10, was in part an attempt to remind the public that the by-law officers were merely doing their jobs. It stated, "By-law enforcement officers acted as directed by Council, the Chief Administrative Officer, and the Clerk/Director of By-law and requested that the piano be removed from the public right-of-way."

At its August 21 meeting (after the present Complaint had been filed), the Town Council adopted the following resolution:

That staff take no further action with respect to the piano located in front of 218 Broadway, as long as it poses no hazard to the community;

That the correspondence dated August 8, 2017 from the Orangeville Business Improvement Area Board of Management (OBIA), be received;

And that the OBIA's request for a policy regarding "public pianos, managed privately" be completed along with the review currently being undertaken by the OBIA and the Economic Development Division related to busking and musical performances in the downtown area;

And that the review include:

- consideration for impact to foot traffic and access to businesses along Broadway in light of existing by-laws (boulevard café and mobile food)
- potential locations for pianos, including any accessibility impacts
- requirement to identify the owners of the pianos

- the obligations and responsibilities of the piano owners to maintain and protect the pianos
- the obligation of the piano owners to move or remove any pianos at the request of the Town
- the period of time (e. g. June to September) during which the pianos are permitted to remain on Town property
- input from the Town's legal and insurance representatives with respect to a requirement that each owner sign an Indemnification Agreement and provide a Certificate of Insurance for each piano, naming the Town as an additional insured
- input from the Arts and Culture Committee, Orangeville BIA, and relevant
- Town departments

And that staff report back to Council with recommendations resulting from a review of the addition of pianos in the downtown at a future date.

Complaint Details

Against this background, the Complainant alleged numerous contraventions of the Code. For ease of analysis, I have attempted to organize the allegations by section of the Code and by topic.

- A. Allegation that the Respondent contravened section 4.1 (only Council as a whole has the authority to direct staff) by:
- 1) Posting on social media (July 21) his belief that the By-law Enforcement Division had not followed Council's direction.
 - 2) Emailing (July 24) employees to ask that the By-law Enforcement Division "back off on this matter and that staff respect Council's direction already given."
- B. Allegation that the Respondent contravened section 6.1 (accurately and adequately communicate the decisions of Council) in his social media posts and in the July 24 email that he copied to two members of the public.
- C. Allegation that the Respondent contravened section 15.1 (encourage public respect for the Town and its by-laws) in his social media posts and in the July 24 email that he copied to two members of the public.
- D. Allegation that the Respondent contravened section 13.3 (refrain from conduct which may deter, interfere with or unduly influence staff in the performance of duties) in his social media posts and in the July 24 email that was sent to the Clerk but not to the CAO or Council.
- E. Allegation that the Respondent's social media posts and July 24 email contravened section 13.4 (No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the Town.)

- F. Allegation that the Respondent's July 24 email contravened section 13.5 (refrain from making requests or statements which may be construed as an attempt to influence the independent administration of justice).
- G. Allegation that the Respondent's July 24 email attempted to bully and intimidate employees, contrary to section 14.3 (no abuse, bullying or intimidation).
- H. Allegation that the Respondent's July 26 Facebook post contravened section 3.1 (misleading statement) by implying the Town solicitor agreed with the Mayor's position.
- I. Allegation that the Respondent contravened sections 13.3, 13.4 and 14.2 (treat every person with dignity, understanding and respect) by:
 - 1) Failing to clarify the legal opinion or to defend the staff in the face of disrespectful and derogatory online comments by other individuals.
 - 2) Intensifying the social media storm and exposing Town employees to ridicule and abuse.
 - 3) Failing to remove from his Facebook page other individuals' derogatory comments.
- J. Allegation that the Respondent's social media posts encouraged and made him a participant in cyber-bullying of the staff, contrary to section 14.3
- K. Allegation that the Respondent contravened section 15.2 (observe all policies and procedures) by:
 - 1) Failing to address performance concerns with the Clerk as head of the relevant division.
 - 2) Ignoring policies and procedures related to staff performance and discipline.
 - 3) Failing to call a special meeting of Council to address his view that the staff was not complying with Council's direction.
- L. Allegation that during the March 2 incident involving accessible parking the Respondent contravened sections 13.3, 13.4, 13.5 and 14.2.

Summary of Findings

After carefully considering the evidence obtained during the course of my investigation and the submissions of the parties, I find that the Respondent did not contravene sections 3.1, 13.4, 13.5, 14.2, 14.3, 15.1 and 15.2 of the Code.

I find that the Respondent did not contravene section 4.1 of the Code, but his words should have been more carefully chosen and his July 24 email should not have been copied to the two-by-law enforcement officers.

I find that the Respondent did not contravene section 6.1 of the Code, but it was unnecessary to copy his July 24 email to two members of the public.

I find that the Respondent did not contravene section 13.3 of the Code but his July 24 email should have included the CAO.

In relation to the March 2 incident related to accessible parking, the two participants to the discussion have very different recollections and I am unable to determine what actually was said. I therefore can make no finding on whether the Respondent contravened the Code on March 2, 2017.

Process Followed

In operating under the Code, I follow a process that ensures fairness to both the individual bringing a complaint (Complainant) and the Council Member responding to the complaint (Respondent).

This fair and balanced process is governed by the Code's Complaint Protocol. It includes the following elements:

- The Respondent receives notice of the Complaint and is given an opportunity to respond.
- The Complainant receives the Respondent's Response and is given an opportunity to reply.
- More generally, the process is transparent in that the Respondent and Complainant get to see each other's communications with me.⁹
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a Response or Reply.
- Where appropriate I will, however, invite a Complainant to clarify a Complaint. When a Complaint has been clarified the Respondent is provided with the original document and all communications between the Complainant and me related to clarification.
- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

⁹ Occasionally, in my discretion, I may decline to share a communication where the communication is irrelevant to the investigation, I will not consider the communication, and/or the other party is not prejudiced by the lack of sharing.

The chronology of this Complaint is set out in the interim report.

I have taken into consideration all of the parties' communications with me.

As provided in the Complaint Protocol, a draft of this report was provided to the Respondent, April 16, and he was given the opportunity to comment within seven business days. I received no comments.

First Preliminary Issue

I declined to investigate (and told the Respondent that there was no need to address) the Complainant's allegations under sections 3.2, 13.1 and 13.2 of the Code.

Because the Complaint does not pertain to the way in which the Respondent dealt with another Council Member, section 3.2 does not apply.

Sections 13.1 and 13.2, meanwhile, are merely introductory statements of principle that provide the context for the rules in sections 13.3 through 13.6. It is not possible to contravene section 13.1 or 13.2.

Second Preliminary Issue

I declined to consider any interaction that the Respondent might have had, in his personal capacity, with the By-law Enforcement Division. I did not consider any such interaction relevant to the matters before me in this investigation.

Third Preliminary Issue

As I previously reported, the Respondent challenged the validity of my re-appointment.

My original appointment, by By-law Number 081-2016, was for a term ending July 31, 2017, "or until his successor is appointed."

Because no successor was appointed, I continued to serve as Integrity Commissioner after July 31.

On August 21, the Town Council voted unanimously to renew my appointment until July 31, 2021. It passed a resolution providing:

that the appointment of Guy Giorno, Fasken Martineau, as Integrity Commissioner for the Town of Orangeville be renewed for a four-year term to July 31, 2021 as per the agreement effective August 1, 2016.

The decision to renew my term was then confirmed by By-law Number 069-2017. This by-law provides that all decisions made on August 21 are "hereby adopted, ratified and confirmed as if all such proceedings were expressly embodied in this or a separate by-law."

A confirming by-law, such as By-law Number 069-2017, is all that is needed to give legal effect to decisions taken at a council meeting: *Metropolitan Toronto (Municipality) v. Atkinson* (1976), 12 O.R. (2d) 401 (C.A.) at 409; *Jackson v. Vaughan (City)*, 2009 CanLII 10991 (Ont. SC) at para. 191.

The Respondent seemed to feel that By-law Number 069-2017 is invalid because not all of Council was present on August 21. Actually, as long as a quorum is present, absences do not affect the validity of Council decisions. By-law Number 069-2017 remains law until it is amended or repealed.

For reasons unknown to me, despite the August 21 renewal confirmed by By-law Number 069-2017, a second by-law on renewal of my appointment was considered at the September 25 Council Meeting. It failed on a 3-3 tie vote.

The fact that this second (and redundant and unnecessary) renewal by-law did not pass had no effect on By-law Number 069-2017, which is the operative by-law confirming renewal of my appointment.

The Respondent nonetheless argued that I should not proceed until the implications of the September 25 vote are determined. He also advised me to suspend the investigation.

I disagreed with the Respondent. In my view, the vote on September 25 had no impact on By-law Number 069-2017. The vote on September 25 also had no effect on By-law Number 081-2016, which provides that I continue to serve until my successor is appointed. By-law Number 081-2016 and By-law Number 069-2017 remain binding on me unless and until both are amended or repealed.

To address this issue, the Town sought and obtained a legal opinion from Mr. John R. Hart of the law firm Ritchie Ketcheson Hart & Biggart LLP. Council subsequently voted to waive solicitor-client privilege and to release the legal opinion to the public. According to the legal opinion:

In this matter, the Town has passed a Resolution adopting the recommendations contained in Report No. GA-2017-07. The Resolution so passed was "adopted, ratified and confirmed" by Town Council in By-law 069-2017. Thus, the reappointment of the Integrity Commissioner was effectively made by By-law on August 21, 2017.

The By-Law placed before Town Council on September 25, 2017 represented a "stand alone" record of the decision of Town Council, and, as indicated, was solely before Town Council as a "housekeeping" matter that was not open for any consideration. Had it been the wish of Town Council to give this matter further consideration, then procedures were in place to allow for such further consideration. Those procedures were not taken.

Procedure By-law 064-2017 provides, among other things, that a motion to reconsider "must be moved by a member who voted on the prevailing side." On August 21, 2017, the Resolution, and subsequently, the confirming By-law were both passed unanimously, with Mayor Williams and Councillors Campbell and Garisto

noted as absent. As such, any reconsideration of the reappointment of the Integrity Commissioner could only be initiated by any member of Council. As indicated, we are advised that no motion to reconsider was made at the meeting on September 25, 2017.

Had it been the intention of Town Council to rescind the appointment on September 25, 2017 after approval on August 21, 2017, a "two-thirds" majority vote would have been required. If one assumes that the vote taken on the By-Law was a vote to rescind, then such vote resulted in a tie vote (3-3), which is not a two-thirds majority vote, the motion to rescind would fail and the appointment would stand.

Opinion

Based on our review of this matter, for the reasons set out herein, we are of the opinion that the Integrity Commissioner was properly reappointed for a further 4-year term on August 21, 2017 by way of By-Law 069-2017.

At its October 17 meeting, Town Council voted 5-2 to release this legal opinion and to direct the Chief Administrative Officer to send a letter to me confirming that I was still the Town's Integrity Commissioner. (The Respondent and one other Council Member voted against the motion.)

I received the Chief Administrative Officer's letter October 19.

Questions Raised in the Investigation

My investigation considered the following questions:

- A. Did the Respondent contravene section 4.1 (only Council as a whole has the authority to direct staff) by:
 - 1) Posting on social media (July 21) his belief that the By-law Enforcement Division had not followed Council's direction?
 - 2) Emailing (July 24) employees to ask that the By-law Enforcement Division "back off on this matter and that staff respect Council's direction already given"?
- B. Did the Respondent contravene section 6.1 (accurately and adequately communicate the decisions of Council) in his social media posts and in the July 24 email that he copied to two members of the public?
- C. Did the Respondent contravene section 15.1 (encourage public respect for the Town and its by-laws) in his social media posts and in the July 24 email that he copied to two members of the public?
- D. Did the Respondent contravene section 13.3 (refrain from conduct which may deter, interfere with or unduly influence staff in the performance of duties) in his social media posts and in the July 24 email that was sent to the Clerk but not to the CAO or Council?

- E. Did the Respondent's social media posts and July 24 email contravene section 13.4 (No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the Town)?
- F. Did the Respondent's July 24 email contravene section 13.5 (refrain from making requests or statements which may be construed as an attempt to influence the independent administration of justice)?
- G. Did the Respondent's July 24 email attempt to bully and intimidate employees, contrary to section 14.3 (no abuse, bullying or intimidation)?
- H. Did the Respondent's July 26 Facebook post contravene section 3.1 (misleading) by implying the Town solicitor agreed with the Mayor's position?
- I. Did the Respondent contravene sections 13.3, 13.4 and 14.2 (treat every person with dignity, understanding and respect) by:
 - 1) Failing to clarify the legal opinion or to defend the staff in the face of disrespectful and derogatory online comments by other individuals?
 - 2) Intensifying the social media storm and exposing Town employees to ridicule and abuse?
 - 3) Failing to remove from his Facebook page other individuals' derogatory comments?
- J. Did the Respondent's social media posts encourage and make him a participant in cyber-bullying of the staff, contrary to section 14.3?
- K. Did the Respondent contravene section 15.2 (observe all policies and procedures) by:
 - 1) Failing to address performance concerns with the Clerk as head of the relevant division?
 - 2) Ignoring policies and procedures related to staff performance and discipline?
 - 3) Failing to call a special meeting of Council to address his view that the staff was not complying with Council's direction?
- L. During the March 2 incident involving accessible parking did the Respondent contravene sections 13.3, 13.4, 13.5 and 14.2?

The Evidence

The evidence is detailed above, under the heading, "The Complaint."

Submissions

Complainant

The Complainant states that she reflected for a considerable period of time before filing the Complaint. In her view, the Mayor's conduct, in addition to contravening several sections of the Code, had a negative impact on staff members that should not be ignored.

An important aspect of the Complainant's position is that Council's July 17 failure to decide meant that the original notice (telling the owner to remove the piano) remained valid. To support her position, the Complainant referred to a previous Council discussion about a billboard sign on Town property. The By-law Enforcement Division had issued an order to the sign owner requiring its removal, and the sign owner asked Council for permission to leave the sign in place. After several defeated motions, Council did not reach a decision on whether to permit the sign to remain or require it to be removed. The Mayor asked the Clerk during the public Council meeting what would happen as a result of the failure to decide, and the Clerk stated that the By-law Enforcement Division order would stand and the sign would be removed. The Clerk therefore feels that the Mayor knew or should have known the result of Council's July 17 inaction on the piano and that he should have clarified the next steps or encouraged Council to provide specific direction to the staff.

The Complainant takes particular exception to the Respondent's July 21 online posts stating, "I believe our By-law department have not followed council's direction," and the July 24 email stating:

As head of council I am asking that bylaw back off on this matter and that staff respect council's direction already given unless and until council chooses to give direction to the contrary.

The Complainant says that pursuant to section 4.1 of the Code, the Mayor has no individual authority to direct staff. If the Mayor believes that staff members are not following direction from Council then he has the authority to call a special meeting of Council to deal with the issue.

According to the Complainant, instead of calling a special meeting of Council to deal with the issue, the Mayor chose to post his concerns on social media and then to email the Clerk and two members of staff asking them to "back off." She notes that the Respondent copied two members of the public on that email but excluded the CAO and Council. She argued that the Respondent's conduct violated section 6.1, requiring Council Members accurately and adequately to communicate the decisions of Council so that respect for the decision and decision-making process is fostered, and section 15.1 which requires Council Members to encourage public respect for the Town and its by-laws.

She also feels the pursuit of the matter through social media rather than appropriate Town channels caused an unnecessary and significant amount of work for the staff and

interfered with the efficient and effective operation of Town services. She argues that the Respondent usurped the authority of Council and the CAO through his social media comments emails to staff without the knowledge or consent of Council or the CAO, and deliberately attempted to interfere with staff in the performance of their duties.

Further, she states that the Respondent contravened section 13.4 by publicly questioning the actions of the By-law Enforcement Division and one particular by-law officer, thereby challenging their professionalism and ethics, and demonstrating a marked lack of respect for their professional capacities.

The Complainant notes that while the Respondent's Facebook page is personal, it includes a picture of his Council nameplate and the Respondent often posts about events related to his duties as Mayor. Further, the Town Website includes a link to the Respondent's Facebook page.

According to the Complainant, the Respondent allows other people's derogatory and abusive comments about the Town staff to remain on his Facebook page. She argues that this means the Respondent is participating in maliciously or falsely injuring the professional or ethical reputation of staff members, contrary to section 13.4.

After the Respondent and the Complainant spoke on July 24, the Respondent updated his Facebook post with the following content:

<UPDATE>

I met with our head of Bylaw, Susan Greatrix, this morning. Ms. Greatrix asked that any enquiries related to this be referred to her directly and that staff are seeking a legal opinion on the matter. Ms. Greatrix also wanted me to remind people that bylaw are trying to do what they think is appropriate and that commenters shouldn't make personal attacks on individual bylaw officers as "they are doing their job".

The Complainant takes issue with the use of quotation marks around the words, "they are doing their job." She feels that the quotation marks were inserted to mock the by-law officers' responsibilities and authority, contrary to section 13.4.

Further, the Complainant states that section 13.5 was contravened by the following passage of the Respondent's July 24 email:

As head of council I am asking that bylaw back off on this matter and that staff respect council's direction already given unless and until council chooses to give direction to the contrary.

With respect to the legal opinion, the Complainant draws particular attention to the finding that, "In our view, the position taken by Town staff was in accordance with the direction of Town Council." She states that the Respondent's July 26 Facebook post was misleading because it implied that the Town solicitor concurred with the Mayor's position that the By-law Enforcement Division had not followed Council's direction.

The Complainant draws attention to several social media posts (by individual residents) castigating Town employee's for taking matters into their own hands and not following

the Council's direction. She says that the Respondent made no effort to clarify the legal opinion or to defend the staff and allowed the disrespectful, derogatory comments to continue, contrary to sections 13.3, 13.4 and 14.2. Further, the Complainant alleges that the Respondent's comments intensified the social media storm and exposed the staff, including individual employees, to ridicule and abusive and derogatory comments, some of which remained on the Respondent's Facebook page.

The Complainant says that when she received the Respondent's July 24 email, she believed that he was trying to use his position as head of Council to bully and to intimidate staff members. In her view, if the Respondent believed that the staff were not following a direction of Council or were not doing their jobs properly, then the situation would have been appropriately addressed through the Clerk/Director of By-law Enforcement, escalating if necessary to the CAO and then the Council.

She states that the Respondent's actions and comments on social media inappropriately placed in the public forum his concerns about staff performance. She argues that by such deliberate action the Respondent thereby encouraged and participated in the resulting cyber-bullying of employees and Council in contravention of section 14.3.

The Complainant also alleges that the Respondent repeatedly violated section 15.2 of the Code and ignored established policies and procedures related to Council and the staff, including the Procedure By-Law and human resources policies and procedures for resolving issues related to staff performance.

As for the March 2 incident related to enforcement of the accessible parking space, the Complainant alleges that the Respondent demonstrated a lack of respect for the staff in general and the by-law staff in particular by approaching a by-law enforcement officer during the course of the officer's duties and making inappropriate comments.

The Mayor's Response

The Respondent expressed concern about the cost of the proceeding, both the squandering (his word) of time and staff resources, and the cost of an integrity commissioner investigation. He stated that an integrity commissioner investigation is intended to be a last resort not a first resort, and that it was wasteful for the Complainant to file a Code of Conduct complaint before attempting another avenue of redress. (While I am obliged to discharge my responsibilities pursuant to by-law and the *Municipal Act*, I do take economy and efficiency into account in conducting each investigation. I also paused the proceeding to give the parties an ample opportunity to explore the prospect of a negotiated resolution. Only when I was satisfied that this would not be possible did the process resume.)

The Respondent states that the Complainant has never tried to discuss with him the concerns that gave rise to the complaint. Similarly, in respect of the March 2 incident related to accessible parking, the Respondent states that if the by-law officer had any

concerns then the officer should have made them directly.

The Respondent's primary position is that he felt the Town employees were not following Council's instructions, and that his concern was valid. He disagrees that another Council meeting was needed, as Council had already given direction (on June 26). According to the Respondent, if the staff had done as directed then much work would have been saved and the Town's image wouldn't have been tarnished by staff's actions.

He stands by his social media posts and their accuracy. He feels that his actions helped the staff and the image of the Town, at a time when the actions of the By-law Enforcement Division were making the Town seem woefully out of touch with residents and Council's direction.

The Respondent recalls that people were upset about what he characterizes as over-zealous actions of by-law officers. He says sought to reassure people that the piano could stay as that is what Council directed.

As Mayor, the Respondent is the Town's chief spokesperson and also the one who is most frequently approached by residents. He states that it would have been improper for him not to respond to residents' concerns and to voice Council's direction on the matter.

The Respondent feels that it is in keeping with his role as head of Council, on occasions when the staff is not following Council's direction, to make the staff aware. He states that he does not order the staff, or tell the staff what to do, but will request that the staff follow Council's direction. He believes that this is his duty to residents and that he would not be upholding his office if the staff disobeyed Council's direction and he did nothing.

The Respondent argues that his personal social media accounts are personal and he regularly states that the posts are personal. His social media presence extends beyond the municipality and pre-dates his service on Council. His accounts have no municipal markings on them. He says any links from the Town's Web page to his social media accounts are the doing of the Town staff and the staff has made clear that the Respondent does not decide what gets posted on the Town's page.

The Respondent uses his social media accounts to communicate with Orangeville residents but also to communicate with audiences in the surrounding region and even beyond Dufferin County. The vast majority of information that he shares through social media does not originate with the Town or the Town's staff.

While he maintains that the staff was not following Council's wishes, he says he did defend Town employees and explain that they were doing what they thought appropriate and following the rules as they understood them. The Respondent states that he never singled out a staff member or criticized the staff's motives in social media. Further, he added additional information to a social media post shortly after the July 24 discussion with the Clerk.

He also notes that the Town has its own social media accounts and the ability to post additional information whenever the staff wishes.

As to the social media comments of other individuals, the Respondent says that anyone with a basic knowledge of social media would know that some people's posts are not always the nicest. He cannot police all comments made by others on social media. In fact, letting people vent is wiser than deleting every comment with which one disagrees. Any really bad comments that the Respondent sees and can delete are deleted. However, they cannot be deleted until they are posted.

Further, in the case of many comments – those in other groups or on media that he does not control – the Respondent has no ability to delete. Deletion is technically not possible on pages and Websites that are not his. At least two of the pages referenced by the Complainant do not belong to the Respondent. One is run by a news media company and the other belongs to a community group and is run by private administrators.

The Respondent notes that he is tagged in more than 160 groups on sites that are not his. He posts dozens of posts daily. He has thousands of social media interactions daily with a combined social media following of more than 38,000 across all platforms. It is just not possible to maintain the level of control on comments that the Complainant might want. Nor, according to the Respondent, would it be wise. Comments that are deleted in one place will spring up tenfold someplace else where one has no control.

The omission of other Council Members from his July 24 email, the Respondent explains, arose from the legal requirement that municipal councillors are not permitted to deal with municipal business through email. An email meeting (which by definition is not public) would contravene the requirement that council and committee meetings must be open and public. The Respondent stated that, in accordance with the law, he would never seek to persuade other Council Members of council through a group email.

Finally, the Respondent took issue with the March 2 notes of the by-law enforcement officer, calling them "second-hand information." He states that his email concerning the incident was proper and he stands by what he wrote. He also states that if the by-law officer had any concerns about the March 2 encounter then the officer should make them directly. The Respondent states that he has had friendly conversations with the officer before and after March 2.

Complainant's Reply

The Complainant makes the following submissions in reply:

- She prepared the Complaint on her own time using her personal computer.
- She was "appalled" by negative social media comments about an individual by-law enforcement officer and told the Respondent it was disappointing that he did

not support the staff of the By-law Enforcement Division. The Respondent denied not supporting the staff and said he would post an update on social media.

- The update stated, in part:

Ms. Greatrix also wanted me to remind people that bylaw are trying to do what they think is appropriate and that commenters shouldn't make personal attacks on individual bylaw officers as "they are doing their job".
- The Complainant interpreted the Respondent's use of quotation marks as mocking the by-law officers, not defending or supporting them.
- On seeing the Respondent's July 24 Facebook update, the Complainant felt that nothing more would be accomplished by attempting to raise and to resolve the issue directly with the Respondent. It was at this point that she decided to proceed with a complaint under the Code.
- The Complainant does not feel that the Respondent should have discussed official business by email, but that he should have called a special Council meeting to deal with what he perceived as the staff's failure to follow Council's direction. Instead, she feels, the Respondent used social media.
- The Respondent was the only Council Member to object to the By-law Enforcement Division's actions following the July 17 meeting. In fact, three or four other Council Members told the Complainant that they expected the piano to be removed after July 17.
- The Town solicitor concluded that, "the position taken by Town staff was in accordance with the direction of Town Council." This opinion was shared with Council Members on July 25; only the Respondent expressed disagreement with the opinion that the staff was following the direction of Council.
- The official Town social media accounts are not used to defend or discuss staff actions, but are generally used to provide information about Town activities and actions. Senior Management has had numerous discussions when Council Members and/or staff members have been the target of adverse comments on social media, and consistently decided not to rebut such comments since it would only invite and incite further abuse.
- At the relevant time, the Respondent's Facebook page displayed a photograph of Council Chambers with his name plate. The Respondent is a Member of Council. Using the photograph implied that he was communicating as a Member of Council.
- No individual member of Council has authority to direct staff. As noted above, the Respondent was the only member of Council to express concern that the staff was not following the direction given by Council as a whole.

- The role of head of Council is clearly defined in the *Municipal Act* and does not include directing staff and does not include posting negative opinions about staff performance on social media.

225. It is the role of the head of council,

- (a) to act as chief executive officer of the municipality;
 - (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
 - (c) to provide leadership to the council;
 - (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
 - (d) to represent the municipality at official functions; and
 - (e) to carry out the duties of the head of council under this or any other Act.
- The Respondent's July 26 comments on social media implied that the Town solicitor concurred with the Respondent's interpretation of Council's decision: "After senior staff consulted with the town's solicitors, bylaw will not be pursuing pressing charges in regards to the piano. I stand firmly by my assertion that the motion I seconded and that Council approved allowed the piano to stay." Those comments were posted after the Respondent received the legal opinion.
 - The complaint is not about other individuals' social media comments but about the Respondent publicly stating that he did not believe the staff was following Council direction. His statements on social media accounts incited further disparaging, offensive comments directed at the staff.
 - A number of posts on the Respondent's personal Facebook page contained derogatory and abusive comments about staff. Allowing those comments to remain was within the control of the Respondent.
 - Finally, in relation to the March 2 incident related to the accessible parking space: Staff members report to management, not to Council directly, and they have been advised and are expected to approach their immediate supervisor, manager or director if they have concerns with or about Members of Council. Approaching a Member of Council directly could be considered a breach of process and protocol, and could lead to discipline of the staff member

Analysis and Findings

Before turning to the specific allegations in the Complaint, I wish to address several of the general objections and rebuttals put forward by the Respondent. I also wish to set out findings related to the respective roles of the staff and Council Members, and related to the reasonableness of the Respondent's interpretation of Council's decision.

Respondent's Objections

While I have found in favour of the Respondent on the specific allegations, I do not agree with his general objections to the Complaint.

First, while I agree that it might be desirable for an individual to pursue alternative options before complaining under the Code, I do not agree that the Code is only a last resort. That is, I do not agree that the Code is off limits and unavailable until other approaches have failed.

The *Municipal Act*, clause 223.4(1)(a), expressly contemplates that a member of the public may ask, "whether a member of council or of a local board has contravened the code of conduct applicable to the member." There is no requirement that the member of the public first exhaust other avenues.

Orangeville's Complaint Protocol, which was adopted by Council, is even more specific that attempting to resolve an issue informally is desirable but not mandatory. The Protocol states in part:

B. Informal Complaint Procedure

3. Individuals are encouraged to pursue the informal complaint procedure as the first means of remedying behaviour or an activity believed to violate the Code.
4. ... However, the informal process is not a precondition to pursuing the formal complaint procedure outlined in Part C. [emphasis added]

This leads to the Respondent's second basic objection, which is that a Town employee who is concerned about the Mayor's conduct should first approach the Mayor directly. This is an unreasonable expectation. Even supposing that some employees feel comfortable confronting a Council Member, even the Head of Council, directly, it would be inappropriate to adopt a blanket rule that an employee must always confront a Council Member. For one thing, the power imbalance cannot be ignored. This is particularly true in the case of a relatively junior Town employee such as a by-law enforcement officer. It is impossible to accept the Respondent's suggestion that if there were any basis to a concern then an employee would have spoken to him directly.

Further, the Legislature has determined that it is important to create a means to determine in an independent manner¹⁰ issues concerning Council Members' conduct. Forcing an employee to complain directly to the personally affected Council Member deprives them both of an independent process.

Third, I do not accept the Respondent's argument that "friendly conversations" with an employee (before and after an incident) prove the absence of untoward conduct by the Respondent. (The employee in question characterizes the exchanges as cordial and polite, as opposed to friendly.) Polite, even friendly, conversation at other times and in

¹⁰ *Municipal Act*, subsection 223.3(1).

other places is not evidence of what may or may not have been communicated when two individuals were alone.

No matter how approachable a Council Member may be (or perceives himself to be), and no matter how neighbourly the Town is, a Town employee should not be, and is not, expected to confront a Council Member directly with concerns about conduct, nor should the employee's subsequent polite dealings be interpreted as evidence that nothing occurred. These conclusions should be obvious for several reasons, including but not limited to the power imbalance between the individuals. Here, in relation to two separate matters¹¹ the employee raised concerns with the employee's supervisor (the Clerk) who then raised them with the Respondent. The employee followed a proper process. I do not accept the Respondent's premise that the process followed by the employee calls into question either the accuracy of the employee's claims or the gravity of the employee's concerns.

Fourth, while the Respondent states that his social media accounts are personal, ownership of the accounts is not what determines whether the Code was applicable. The Respondent is the Mayor of the Town, and he was making public statements about Town business. Obviously the Code applied.

Fifth, the Respondent's objections about cost are not a reason to decline to uphold the Code. The Code of Conduct is a law.¹² The *Municipal Act*, which establishes the position and powers of the integrity commissioner, is a law. The rule of law is one of the constitutional principles on which Canada was founded. It is implicit in the rule of law that the state (in this case, the Town) will provide resources to uphold the law. While enforcement costs and efficiency in administering the law are always valid topics of public policy debate, I am aware of no authority that says cost considerations can be raised as a defence to an allegation of non-compliance.

While I was obliged by the by-law and the *Municipal Act* to proceed, I did so in a manner that was mindful of economy. Specifically, I paused the proceeding for an extended period – at no cost to the Town – to give the parties an ample opportunity to explore the prospect of a negotiated resolution. (My practice is always to give the parties necessary time to resolve matters without the issuance of an investigation report, if they are willing and this is feasible.) I determined that this would not be possible and the process resumed.

The Roles of Council Members and the Staff, in the Context of By-law Enforcement

Orangeville is a democracy. Council Members are elected to office. The democratic nature of the office means that Council Members have political and representational roles in addition to their legislative (law-making) role. The Courts have confirmed that

¹¹ The two matters are the March 2 incident related to the accessible parking space and the July social media postings.

¹² By-law Number 44-2016.

municipal councillors have hybrid political and legislative functions,¹³ that they are representatives of the communities that elect them,¹⁴ and that members of the public have the right to address their municipal representatives on issues of concern.¹⁵ The *Municipal Act* confirms that a role of the Council is “to represent the public.”¹⁶

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.¹⁷ Some of those views may involve a change in law or a change in direction. Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.¹⁸

Orangeville’s by-law enforcement officers are appointed under subsection 15(1) of the *Police Services Act*. They are peace officers for the purpose of enforcing municipal by-law¹⁹ and while in the discharge of their duties they are provincial offences officers.²⁰

By-law officers do not make the laws that they enforce. Council enacts the by-laws. Criticism of the substance of a by-law should not be directed to the Town employees responsible for enforcement as, in this sense, the employees are only doing their jobs.

At the same time, those jobs involve discretion. While law enforcement officers have a duty to enforce the law, they also have a duty to exercise their discretion, including the discretion to write or not to write a ticket, or to pursue or not to continue an investigation.²¹ This discretion is not absolute; for example, the Supreme Court of Canada has stated that a decision based on favouritism, or on cultural, social or racial stereotypes, is not a proper exercise of discretion.²² Nonetheless, police discretion (or,

¹³ *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170 at 1196.

¹⁴ *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193.

¹⁵ *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

¹⁶ *Municipal Act*, clause 224(a).

¹⁷ *Re Cadillac Development Corp. Ltd. and City of Toronto*, note 14.

¹⁸ *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

¹⁹ *Police Services Act*, subs. 15(2).

²⁰ *Provincial Offences Act*, subs. 1(1), definition “provincial offences officers,” clause (d).

²¹ *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190 at para. 37.

²² *Ibid.*, at para. 38

in this case, the discretion of by-law officers) is an essential element of the justice system.²³

Another essential principle is the independence of law enforcement officers.²⁴ This principle underpins the rule of law.²⁵ Independence means that a law enforcement officer cannot be subject to political direction in deciding whether to lay a charge or whom to charge with an offence.²⁶

The principle of the independence of law enforcement officers in exercising their discretion is reflected in section 13.5 of the Code:

Certain employees are employed within the administration of justice. Members shall refrain from making requests or statements or taking actions which may be construed as an attempt to influence the independent administration of justice.

While politicians must respect the independence of law enforcement officers, there are many aspects of law enforcement on which they can and do engage. Accountability, for example, is not incompatible with independence.²⁷ Accountability of law enforcement covers a range of topics (including policy, efficiency, finances, administration, use of authority and ethics)²⁸ all of which elected officials may properly address. In addition, it goes without saying that political officials may debate, propose and make the laws that ultimately get enforced.

While (at a “micro” level) a Council Member must not try to influence the disposition of a specific by-law enforcement case, a Council Member (at the “macro” level) is entitled to engage on policy, on accountability, and, of course, on the legislative process of making the by-laws that actually get enforced.

Thus, the fact that a Council Member is communicating about a by-law enforcement matter does not necessarily mean that the Council Member has overstepped his or her role. The answer depends on whether the Council Member is impermissibly interfering on a specific case or is properly engaged on general concerns.

It is instructive that there was no complaint about what happened in June, when the issue first arose. In June, no individual Council Member tried to instruct by-law officers

²³ *Ibid.*, at paras. 51, 86.

²⁴ *R. v. Campbell*, [1999] 1 S.C.R. 565.

²⁵ *Ibid.*, at para. 29.

²⁶ *Ibid.*, at para. 33

²⁷ Darren Caul, “Municipal Police Governance in Canada: An Examination of the Relationship Between Board Structure and Police Independence” (2009) at 30.

²⁸ Herman Goldstein, *Policing a Free Society*, Univ. of Wisconsin Legal Studies Research Paper No. 1349 (Cambridge, Mass: Ballinger Pub. Co., 1977) at 131, online: <http://ssrn.com/abstract=2596883>

in how to enforce the law. Instead, Council as a whole considered the matter and decided to alter (at least temporarily) the applicable law.²⁹

Effect of the June 26 Council Resolution and the July 17 Council Meeting

My authority as Integrity Commissioner extends only to the conduct of Council Members and members of local boards. I have no authority to determine whether Town employees acted appropriately.

After July 17, the Respondent felt that staff members were not following Council's instructions. Specifically, he felt that the employees should have let the piano remain.

The basis for the Mayor's belief was Council's June 26 decision:

That Council direct staff to report to Council at the July 17, 2017 meeting of Council to confirm that arrangements have been made with the property and piano owner(s) for:

- appropriate insurance naming the Town of Orangeville as an additional insured; and
- an agreement indemnifying the Town of Orangeville against any claims arising as a result of a piano on Town property

And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway, pending a final Council decision.

coupled with the July 17 absence of a decision, recorded in the minutes as follows:

Piano on Broadway (CL-2017-17)
[No action taken by Council]

In this context, my role is to determine whether the Mayor's belief and his reaction to the staff's action were contrary to the Code. In part this requires an assessment of whether the Mayor acted reasonably in basing his actions on a belief that, because Council did not make a decision on July 17, the piano was entitled to remain.

In my view, the Mayor's interpretation of the combined effect of the June 26 resolution and the July 17 absence of decision was not unreasonable. In fact, I find that the Mayor's interpretation was quite reasonable. The June 26 resolution, "direct[ed] staff to take no action to remove the piano ... pending a final Council decision." As of the end of the July 17 meeting, there was no final Council decision; no decision of any kind was made that day. Further, there was no decision, on either June 26 or July 17, stating what would occur if insurance and an indemnification agreement were not in place.³⁰ It

²⁹ Council exercises its powers by by-law: *Municipal Act*, subs. 5(3). The June 26 decision to let the piano remain temporarily was confirmed by By-Law Number 056-2017. Effectively, Town Council used its legislative authority to change the law that the staff would otherwise have enforced.

³⁰ The first part of the June 26 resolution merely directed the staff to report back with confirmation of two items (insurance and an indemnification agreement). The resolution said nothing about what would occur if either item were missing. I find that it was reasonable for the Mayor to focus on the second

was reasonable for the Mayor to interpret the words “no action to remove the piano ... pending a final Council decision” to mean just that. I therefore find that it was reasonable for the Mayor to have taken the position that the piano should not (yet) be removed.

My finding must be understood in light of my role and its limits. It is not my place to determine whether the staff was right or wrong. It is not my place to determine how the June 26 decision should actually be interpreted. I expressly refrain from commenting on the rightness or wrongness of the staff’s action. It is also not my place to comment on the Town solicitor’s opinion that in seeking the piano’s removal the staff had been acting in accordance with Council’s direction. I take no position on that legal opinion.

I am only making a finding of whether – in the context of compliance with the Code – the Respondent had a reasonable basis for interpreting the situation as he did. I find that obviously his belief was reasonable. To repeat, the June 26 resolution stated that the piano should not be removed pending a final Council decision and on July 17 there was no decision. Regardless of whether the Mayor’s interpretation was *actually* correct (again, I make no finding on that), it is plainly obvious that a reasonable person could come to the same interpretation, and therefore the Mayor’s belief was reasonable.

The Complainant notes that other Council Members did not share the same interpretation as the Respondent. The interpretations of others do not, however, affect the conclusion that the Respondent was reasonable in believing as he did.

Again, in finding that the Mayor’s interpretation was reasonable I am not saying that the staff’s interpretation was unreasonable and I am not stating whose position was correct. These latter questions are beyond my authority. My jurisdiction allows me to focus only on the Mayor’s belief and conduct.

The next question – indeed, a central issue in the July portion of the Complaint – is how the Respondent should have acted on his belief that the combined effect of the June 26 resolution and July 17 non-decision was that the piano should not yet be removed. The Complainant states that the Mayor should have brought the issue to another Council meeting and, indeed, convened a special meeting for that purpose. The Mayor disagrees that another Council meeting was needed, as Council had already given direction (on June 26). On this issue, as before, my role is not to comment on the reasonableness or correctness of the Complainant’s position. My only focus is the Mayor’s belief and conduct. Once again, I find that the Mayor’s position was reasonable. It was reasonable for the Mayor to take the position that it was not necessary for the Council to meet again to give direction that he believed had already been given.

I stress that I am making a finding only concerning the Mayor’s belief and conduct. He reasonably believed that the text of the June 26 resolution, “take no action to remove the piano ... pending a final Council decision,” meant exactly that. He reasonably

part of the June 26 resolution, as this was the only portion of the resolution that addressed whether the piano should remain or be removed.

believed no further decision was taken on July 17. He reasonably believed that the Council direction was not being followed. In these circumstances, he was also reasonable in believing that implementation of Council's direction could be achieved without a further meeting.

To avoid any misunderstanding, I repeat, for a final time, that I am not saying that the staff failed to follow Council's direction or that the staff's interpretation was incorrect. My finding is merely that the Mayor's belief was reasonable.

My findings on the specific allegations are as follows:

A1. Did the Respondent contravene section 4.1 (only Council as a whole has the authority to direct staff) by posting on social media (July 21) his belief that the By-law Enforcement Division had not followed Council's direction?

No.

As explained above, I find that the Respondent's belief was reasonable. Further, I find that posting on social media does not amount to directing the staff.

A2. Did the Respondent contravene section 4.1 (only Council as a whole has the authority to direct staff) by emailing (July 24) employees to ask that the By-law Enforcement Division "back off on this matter and that staff respect Council's direction already given"?

No, though the Respondent's words should have been more carefully chosen and the email should not have been copied to the two by-law enforcement officers.

I agree with the Respondent that there is a difference between directing the staff and pointing out that Council has already given direction. In my view, this is a reasonable interpretation of section 4.1 of the Code.

Section 4.1 provides that, "Only Council as a whole has the authority to direct staff, approve budget, policy or processes ..." This provision confirms that only the Council may give direction. The provision cannot reasonably mean that once the Council has given direction an individual Council Member is prohibited from mentioning the resolution that contains the direction from Council. Is a Council Member prevented from emailing a resolution to the Clerk to draw attention to what happened at a previous meeting? I find that this is not what section 4.1 means.

Specifically, I find that there is a difference between (i) directing or attempting to direct the staff and (ii) drawing attention to the direction of Council already given. A Council Member must not do the former, but is entitled to do the latter.

I find that the Respondent's July 24 email was an attempt at (ii) drawing attention to the direction of Council already given and not (i) directing or attempting to direct the staff. To explain this finding I need to set out the email in its entirety:

Subject: Piano on Broadway, council direction.

Ms. Greatrix,

I was very disappointed to hear from a recent Orangeville Banner article that bylaw has issued a letter asking that the piano in front of the Altered Native store be removed.

If this is the case, I believe our bylaw department have not followed council's direction.

Here is the motion that was passed in open council on June 26th. and affirmed by way of 056-2017 passed that same day:

"That Council direct staff to report to Council at the July 17, 2017 meeting of Council to confirm that arrangements have been made with the property and piano owner(s) for:

- *appropriate insurance naming the Town of Orangeville as an additional insured; and*
- *an agreement indemnifying the Town of Orangeville against any claims arising as a result of a piano on Town property*

And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway, pending a final Council decision."

At the following council meeting (July 17), council did not pass any motions that would conflict with, or change the June 26th. direction.

Once again to quote the last paragraph of the motion moved June 26th, "***And that Council direct staff to take no action to remove the piano from its temporary location on Town property in front of 218 Broadway, pending a final Council decision.***"

As head of council I am asking that bylaw back off on this matter and that staff respect council's direction already given unless and until council chooses to give direction to the contrary.

With respect,

Jeremy D Williams
Mayor of Orangeville

I find that the entire email, taken in context, was an attempt to draw attention to the direction of Council already given. The entire email, taken in context, was not a direction to the staff.

It is important to remember that Council Members, when they send emails, use the language of ordinary people and not of legal drafters or judges. It would be inappropriate, therefore, to pick apart the wording of a Council Member's email as if it were a legal contract or a judicial decision.

Taken out of context, the words "I am asking that bylaw back off on this matter" may seem like a direction to the staff. However, in applying the Code, I must examine the Respondent's email in its proper and full context. In that context, I find that the email

was an attempt to draw attention to direction of Council already given, not an attempt to give direction.

In hindsight, the Respondent's words (including "back off") should have been more carefully chosen. This would have avoided any confusion about whether he was attempting to give direction.

Further, the email should not have been sent to the by-law enforcement officers but only to the Clerk in her capacity as Director of By-law Enforcement, or (as I will explain under heading D, below) to the CAO and Clerk. Including the by-law enforcement officers on the email was unnecessary to the objective of drawing attention to the direction of Council already given. Including the by-law enforcement officers on the email contributed to the confusion about whether the Respondent was trying to give direction.

B. *Did the Respondent contravene section 6.1 (accurately and adequately communicate the decisions of Council) in his social media posts and in the July 24 email that he copied to two members of the public?*

No, but it was unnecessary to copy the July 24 email to two members of the public.

According to section 6.1, "Members shall accurately and adequately communicate the decisions of Council ..." This section cannot mean that Council Members must interpret Council decisions with the accuracy of a lawyer or a judge. Section 6.1 is satisfied if a Council Member reasonably believes that he or she is accurately and adequately communicating the decisions of Council.

As I have previously explained, the Respondent had a reasonable belief in his version of what Council had directed. I therefore find that when he referred to Council's decision in social media and in the July 24 email, the Respondent complied with section 6.1.

The Respondent included two members of the public on his July 24 email to the Clerk. This step was not necessary and, in my view, gave rise to some of the staff concerns that precipitated this Complaint. At the same time, I see nothing in the Code that expressly prohibits the degree of transparency exercised by the Respondent.

C. *Did the Respondent contravene section 15.1 (encourage public respect for the Town and its by-laws) in his social media posts and in the July 24 email that he copied to two members of the public?*

No.

Section 15.1 of the Code states that, "Members shall encourage public respect for the Town and its by-laws."

First, decisions of the Council are always effected by by-law. Therefore, the reference to by-laws in section 15.1 includes all decisions of Council.

Second, it is a legitimate role of municipal councillors to propose, to advocate and to seek to effect changes to by-laws. Consequently, section 15.1 does not prevent a Council Member from explaining or defending the view that a by-law ought to be changed.

Third, section 15.1 must obviously be applied in the context of a Council Member's reasonable belief. A Council Member who reasonably believes that a by-law means thus-and-so does not contravene section 15.1 merely by promoting the meaning that he or she reasonably believes.

There was a difference of opinion between the Complainant and the Respondent over what Council's decision or non-decision meant. As I have stated, it is not my role to decide who was right and who was wrong. It is sufficient for me to find that the Respondent reasonably believed his interpretation of Council's direction. Consequently, the Respondent did not contravene section 15.1.

D. Did the Respondent contravene section 13.3 (refrain from conduct which may deter, interfere with or unduly influence staff in the performance of duties) in his social media posts and in the July 24 email that was sent to the Clerk but not to the CAO or Council?

No, but the July 24 email should have included the CAO.

The second sentence of section 13.3 provides that:

Any individual member or faction of Council shall refrain from any conduct which may deter, interfere or unduly influence staff in the performance of such duties and obligations.

I find that section 13.3 must be interpreted in the context of my earlier findings concerning the role of Council Members. A Council Member is entitled to communicate with members of the public, both by initiating communications and by responding to communications initiated by others. A Council Member is not restricted to explaining and defending what is already happening, but is entitled to promote, to advocate, to defend and to seek to implement change.

The social media postings were communications with the public about matters of public interest. I find that employees would be aware of those postings; they are members of the public, too. At the same time, I find that social media postings (though the staff was aware of them) were not directed to the staff in the performance of their duties and obligations.

I have explained the political and representational role of municipal councillors in our democracy. The role entitles them to articulate and to defend positions that – subject to Council decision – the Town staff might eventually be required to implement. The mere proposing and defending of such positions are not directed to the staff. I find that section 13.3 of the Code is not intended to affect social media communications and

other public communications by Council Members as elected representatives merely because Town employees might become aware of those communications.

The July 24 email to the Clerk must be analysed separately because, unlike the social media postings, it was a communication addressed directly to her. Was the email to the Clerk conduct that might have deterred, interfered with, or unduly influenced the Clerk in the performance of duties? I find that it was not. The email did not deter or influence the Clerk, and I do not think that it could reasonable be seen to have had the potential to deter, interfere or unduly influence.

At the same time, I note that the July 24 email, which was sent to the Clerk in her capacity as Director of By-law Enforcement, should have included the CAO. The CAO is responsible for the Director of By-law Enforcement and is the individual accountable for this responsibility. I note that the CAO had been on vacation, but should have been copied.

E. Did the Respondent's social media posts and July 24 email contravene section 13.4 (No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the Town)?

No.

I find that none of the Respondent's comments were in any way directed to the professional or ethical reputation, the prospects or practice, or the professional capacities of any Town employees. There was at most a difference of opinion over what Council had directed.

It seems that the Complaint is influenced not just by what the Respondent said but what some others in the community said. Some members of the public did make harsh, unfair and/or inappropriate comments about some Town employees, but I do not find that the Respondent was responsible for those comments. The Respondent is responsible only for his own conduct. It is the nature of public discussion that some members of the public (usually, and in this specific case, a small number) may make extremely improper or offensive contributions to the debate. It is not reasonable to blame elected representatives for the comments of member of the public. Further, elected representatives are not required to refrain from public communication on issues, including controversial issues, because of what a small number of individuals might say.

The Complainant also feels that one of the Respondent's social media posts (the July 24 update) mocked the staff because the words "they are doing their job" appear in quotation marks. The post in its entirety read as follows:

<UPDATE>

I met with our head of Bylaw, Susan Greatrix, this morning. Ms. Greatrix asked that any enquiries related to this be referred to her directly and that staff are seeking a legal opinion on the matter. Ms. Greatrix also wanted me to remind people that bylaw

are trying to do what they think is appropriate and that commenters shouldn't make personal attacks on individual bylaw officers as "they are doing their job".

I find that the entire update consists not of the Respondent's position but of the Complainant's position. It consists of indirect and direct quotations of what the Complainant told him. I am not prepared to find that the presence of a direct quotation in the last line involves mockery or sarcasm. Given that the entire update is based on what the Complainant said I do not think it is fair to draw precise distinctions between a direct and an indirect quotation or to draw conclusions about the motives behind one or the other.

F. Did the Respondent's July 24 email contravene section 13.5 (refrain from making requests or statements which may be construed as an attempt to influence the independent administration of justice)?

No. For the reasons previously explained, I find that the Respondent was attempting to draw attention to a direction of Council that he reasonably believed had already been given. I find that the Respondent's words (including "back off") should have been more carefully chosen but that his email in its entirety attempted not to give direction but to draw attention to direction already given by Council.

G. Did the Respondent's July 24 email attempt to bully and intimidate employees, contrary to section 14.3 (no abuse, bullying or intimidation)?

No.

As I have stated, it was unnecessary for the Respondent to include on the email two members of the public, he ought not to have included the two by-law enforcement officers, and he should have included the CAO. Nonetheless, I find that the email did not constitute bullying, abuse or intimidation.

H. Did the Respondent's July 26 Facebook post contravene section 3.1 (misleading statement) by implying that the Town solicitor agreed with the Mayor's position?

No.

This portion of the Complaint relates to the first passage of the Respondent's July 26 Facebook post:

<piano saga continues, update>

After senior staff consulted with the town's solicitors, By-law [Enforcement Division] will not be pursuing pressing charges in regards to the piano. I stand firmly by my assertion that the motion I seconded and that council approved allowed the piano to stay. Staff felt differently about that and did what they thought was appropriate. Although there may be two different views of the motion, we have arrived at the same place. The Altered Native, who supplied the public piano, have provided the town with insurance and a letter of indemnity absolving

the town of any liability. Which means no further action until and unless Council wishes to pass a different motion. Council will have an opportunity to weigh in on this at their next meeting, and it will be an item on the next meeting agenda. I will continue to support the intent of the motion I seconded in June and I hope council will continue to see the value in supporting the public piano for all to enjoy.

As noted, the Town solicitor had concluded that, “the position taken by Town staff was in accordance with the direction of Town Council.”

By the time of the Town solicitor’s opinion, the piano’s owner had also sent back the signed indemnification agreement required by the Town, and the Town had accepted it. On this basis – and not on the basis that the Mayor’s interpretation was correct – the Town solicitor concluded that it was no longer necessary to pursue removal of the piano.

This is the context in which I am asked to determine whether the Respondent’s statement (“After senior staff consulted with the town’s solicitors, By-law will not be pursuing pressing charges in regards to the piano”) was made with the intent to mislead members of the public.

The Respondent’s description of what transpired might seem incomplete, because he did not explain the different issues considered by the Town solicitor or the basis for the solicitor’s conclusions. At the same time, there are ample reasons why a Council Member should not be disclosing the details of a legal opinion³¹ and it should be noted that the Respondent did not attribute to the solicitor any position or conclusion.

Further, as I have previously explained, a communication must be evaluated in full context and not by examining isolated passages. About halfway down, the Mayor’s July 26 Facebook post accurately conveyed the actual reason that the piano would remain:

The Altered Native, who supplied the public piano, have provided the town with insurance and a letter of indemnity absolving the town of any liability. Which means no further action until and unless Council wishes to pass a different motion.

I cannot find that the Mayor’s July 26 post was false or made with the intent to mislead members of the public.

11. Did the Respondent contravene sections 13.3, 13.4 and 14.2 (treat every person with dignity, understanding and respect) by failing to clarify the legal opinion or to defend the staff in the face of disrespectful and derogatory online comments by other individuals?

No.

³¹ It seems that, by discussing the legal opinion in a news release and a news media interview, the Town waived any privilege that attached to the opinion, but I am not required to make a finding on this point.

I have already explained that I do not find the Respondent to be responsible for the comments of others.

I also find that the piano issue was a matter of public interest and public controversy. I find that the controversy and public interest predated and were independent of the Mayor's social media activity.

I disagree with any suggestion that controversy and high public interest are reasons for a Council Member to limit his or her communication on a topic. Given the political and representational roles of a municipal councillor, controversial and/or highly visible topics are ones on which a Council Member would be expected to communicate and on which a Council Member is entitled to communicate. (Of course this does not mean that a Council Member *must* communicate on such a topic, merely that a Council Member is entitled to communicate and the public would expect such communication.)

It also goes without saying that in all communications a Council Member must comply with the law and the Code. The Code sets various rules (most of which are considered in his report) for communications. Significantly, nowhere does the Code require that a Council Member actively correct, contradict or engage in debate with a member of the public.

It is a fact of public, political discussion that an elected representative will hear, read or receive numerous comments that might benefit from correction, clarification, additional information or contradiction or, sometimes, that deserve condemnation. It is no exaggeration that an elected representative could spend all day addressing inaccurate, uninformed or offensive comments and have no time left for anything else. It is a matter of political judgement whether, when and how often an elected representative should address a comment from a member of the public, just as it is a matter of political judgement whether, when and how often an elected representative should decide to ignore a comment. As I stated on a previous occasion (Report 2017-02), it is not my place to evaluate the political judgements made by Council Members.

I find that the Code must be interpreted and applied in this context. Specifically, I find that the Code does not require a Council Member to contradict or to correct comments by members of the public. I find that the Code does not require a Council Member either to address or to ignore any particular comment by a member of the public. It would be unworkable to interpret the Code in any other way.

12. Did the Respondent contravene sections 13.3, 13.4 and 14.2 (treat every person with dignity, understanding and respect) by intensifying the social media storm and exposing Town employees to ridicule and abuse?

No, for the reasons already explained. I find that the controversy and high degree of public interest predated and were not caused by the Respondent. I find that it is reasonable and appropriate for a Council Member to communicate to the public about a matter that is controversial and/or of public interest.

I have considered the following specific social media replies, by the Respondent, to comments by members of the public:

Individual #1: So does this mean that the bylaw department is going to make a decision about this matter based on a sound and non biased judgement? Which no matter what the decision would be, would be based on logic as to why it was made *without bias*. Because isn't that their job as employees of the town?

Respondent: pretty much.

...

Individual #2: Why is everyone so hard on a town employee doing her job? Why is Jeremy not supporting her as well?

Respondent: [Individual #2], please see my post on this for why.

...

Individual #3: Jeremy there has to be something you can do. You're the mayor. Your council is being pathetic. It's a piano. My niece was playing with it briefly yesterday and it made her so happy. Please reign in your wild animals... I mean Council and put some wholesome, small town values into them. Some of those Councillors I know and honestly, shame on them for this.

Respondent: I believe Council gave direction to leave the piano alone. Staff are asking for a legal opinion that will hopefully confirm this.

...

Individual #4: I have to ask, who is running this town?

Respondent: [Individual #4], Council sets direction for staff, however staff are responsible for the day-to-day operations.

Individual #4: Jeremy D Williams I guess I don't understand Government operations. Coming from the corporate world this is my understanding, please correct me if I'm wrong.

The town of Orangeville is a corporation, like all corporations it has shareholders (AKA the tax payer) the shareholders have employees (AKA town employees) then the shareholders of a corporation elect a chairman of the board (AKA Mayor) and a board of directors (AKA Council) it is up to the board of directors led by the Chairman of the board to set policy of the corporation. If the board of directors sets a policy for the employees to follow then it should be followed. If an employee or senior manager feels that the board's direction is in conflict of the corporates best interest then, I can see that stakeholder doing their due diligence to check that the board has overlooked a liability. But to blatantly oppose the directive of the board well I think you would be on a list my understanding of this matter, council (the board of directors) told the staff (employees of the shareholders) to leave the piano as is. But then the staff without consulting the council decided to take action that was opposite to the direction that was given.

Sorry for the long winded post.

Respondent: [Individual #4] - hard to argue with your analogy.

...

Individual #5: Jeremy D Williams should it not be the CAO who give direction to town staff? After all he/she is who all town staff must answer to??

Respondent: Individual #5, Council gives direction to staff. Staff are to follow that direction. CAO is highest ranking member of staff, however our Clerk is taking over for him while he is off."

...

Individual #6: Sorry - bylaw is seeking a legal opinion of council's direction, or if they can leave it there as directed by council?

Respondent: It was staff who chose to seek a legal opinion, not Council. Council voted and gave direction on this. I'm not sure if staff are seeking a legal opinion on the validity of my assertion or if they can pursue this issue without council's blessing. I'll post when I know more.

As I have previously stated, a Council Member's comments need to be considered in their proper, full context. I find that the Respondent's replies, above, fairly reflected the decision-making record as he reasonably believed it to be. I further find that the Respondent's responses were reasonable and did not increase the level of controversy that already existed independent of his involvement.

I3. *Did the Respondent contravene sections 13.3, 13.4 and 14.2 (treat every person with dignity, understanding and respect) by failing to remove from his Facebook page other individuals' derogatory comments?*

No, for the reasons already explained. Further, I do not find evidence that the Respondent was other than diligent in removing offensive posts as he noticed them and when it was in his control to remove them.

J. *Did the Respondent's social media posts encourage and make him a participant in cyber-bullying of the staff, contrary to section 14.3?*

No, for the reasons already explained.

K1. *Did the Respondent contravene section 15.2 (observe all policies and procedures) by failing to address performance concerns with the Clerk as head of the relevant division?*

No.

I have found that there was a difference of opinion about the direction that had been given by Council and that the Respondent's belief (about what the direction was) was not unreasonable.

I do not find that the Respondent was raising concerns about staff performance. The Respondent's communications related to the content and effect of Council's decision, not to performance.

K2. Did the Respondent contravene section 15.2 (observe all policies and procedures) by ignoring policies and procedures related to staff performance and discipline?

No, for the reasons outlined above.

K3. Did the Respondent contravene section 15.2 (observe all policies and procedures) by failing to call a special meeting of Council to address his view that the staff was not complying with Council's direction?

No. As explained above, I believe it was reasonable for the Respondent to believe that Council's direction arising from a meeting could be implemented without Council needing to meet again to direct that direction already given by followed.

L. During the March 2 incident involving accessible parking did the Respondent contravene sections 13.3, 13.4, 13.5 and 14.2?

I am unable to make any finding. There were no witnesses to the communication between the Respondent and the by-law enforcement officer. Their recollections differ.

It would clearly breach the Code for a Council Member to communicate with a by-law enforcement officer about whether a ticket should or should not be issued, or should or should not have been issued, in a specific case. The facts as recalled by by-law enforcement officer would indicate that there was a breach. The facts as recalled by the Respondent would indicate that no breach occurred. Under the circumstances, I am unable to make a finding.

Recommendation

I recommend that this report be received.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
Town of Orangeville

April 27, 2018

APPENDIX: RELEVANT PROVISIONS OF CODE OF CONDUCT

3. General Standards of Conduct

- 3.1 Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.
- 3.2 Members will conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected or appointed, are open and honest, focus on issues rather than personalities, and avoid aggressive, offensive or abusive conduct.

4. Responsibilities of Council and Members of Council

- 4.1 Only Council as a whole has the authority to direct staff, approve budget, policy or processes, including the structures and procedures for committees and other such matters. Authority to act on behalf of Council, including through a committee, can only be delegated by Council or through law.

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6. Respect for Decision Making Process

- 6.1 Members shall accurately and adequately communicate the decisions of Council and local boards so that respect for the decision and decision-making process is fostered.

...

13. Conduct Respecting Staff

- 13.1 Members are elected legislators for the Town. Staff are responsible for implementing the decisions of Council and ensuring the efficient and effective operation of Town services. Mutual respect and cooperation are required to achieve the Town's corporate goals and implement the Council's strategic priorities.
- 13.2 Council directs staff through its decisions as recorded in the minutes and resolutions of Council. Staff, under the direction of the Chief Administrative Officer, are responsible for implementing those decisions and ensuring the efficient and effective operation of Town services.
- 13.3 Members shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making impartial recommendations that reflect their professional expertise and corporate perspective. Any individual member or

faction of Council shall refrain from any conduct which may deter, interfere or unduly influence staff in the performance of such duties and obligations.

- 13.4 No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the Town.
- 13.5 Certain employees are employed within the administration of justice. Members shall refrain from making requests or statements or taking actions which may be construed as an attempt to influence the independent administration of justice.

...

14. Respect for Others

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- 14.2 Members shall treat every person, including other members, the public, staff and volunteers, with dignity, understanding and respect.
- 14.3 All members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation. All members shall ensure that their work environment is free from discrimination and personal and sexual harassment.

15. Town By-laws, Policies and Procedures

- 15.1 Members shall encourage public respect for the Town and its by-laws.
- 15.2 Members shall observe the terms of all policies and procedures established by Town Council, however, this provision does not prevent a member from requesting that Council grant an exemption from a policy.