

CITATION: Dhillon v. The Corporation of the City of Brampton, 2021 ONSC 4165
DIVISIONAL COURT FILE NO.: 553/20
DATE: 20210611

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

R.S.J. MacLeod, Kristjanson and Favreau JJ.

B E T W E E N:

GURPREET S. DHILLON

Applicant

- and -

THE CORPORATION OF THE CITY OF
BRAMPTON and THE INTEGRITY
COMMISSIONER OF THE CITY OF
BRAMPTON

Respondents

)
)
) *Nader R. Hasan, Frederick Schumann and*
) *Zachary Al-Khatib* for the Applicant
)
)
)
)
) *Gavin MacKenzie and Brooke MacKenzie* for
) the Respondent, the Corporation of the City of
) Brampton
)
) *Julia Wilkes, Jordan Goldblatt and Victoria*
) *Wicks* for the Respondent, the Integrity
) Commissioner of the City of Brampton
)
)
)
) **HEARD at Toronto by videoconference:**
) December 16, 2020

REASONS FOR DECISION

Kristjanson J.

[1] The Integrity Commissioner for the City of Brampton investigated a complaint that Councillor Dhillon, while representing the City as a member of an international trade mission in Turkey, sexually assaulted a Brampton business owner who was also a member of the trade delegation. The Integrity Commissioner concluded that Councillor Dhillon's actions violated several Rules in the City's Code of Conduct for Members of Council ("Code of Conduct"), including those regarding harassment, discreditable conduct, failure to adhere to Council's policies and procedures, and obstruction of her investigation. The Integrity Commissioner provided her

Final Report to City Council, recommending that Council take several actions including suspending Councillor Dhillon for 90 day and a formal reprimand. Council accepted the Integrity Commissioner's recommendations during its meeting on August 5, 2020, and passed resolutions under the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "*Municipal Act*") implementing the recommended actions and other remedial actions.

[2] Councillor Dhillon brings a judicial review application seeking to set aside the actions of the Integrity Commissioner and City Council. Councillor Dhillon seeks an order quashing the Final Report or the Integrity Commissioner's findings that Councillor Dhillon contravened the Code of Conduct. Councillor Dhillon also seeks an order quashing some of the resolutions passed by Council on August 5, 2020.

Factual Background

Statutory Scheme

[3] Pursuant to Part V.1 of the *Municipal Act*, municipal councils must establish codes of conduct for their members and may appoint integrity commissioners to investigate code of conduct breaches by council members. Under s. 223.4(1)(a) an integrity commissioner may commence an inquiry into a code of conduct breach based on a request from council, members of council, or members of the public. If an integrity commissioner reports a code of conduct breach, the municipality can either issue a reprimand or a suspension of pay for up to 90 days under s. 223.4(5).

[4] The City has established an Office of the Integrity Commissioner and a Code of Conduct. The Code of Conduct recognizes that there must be high ethical standards for elected officials to ensure public trust. Council has also established a Code of Conduct Complaint Protocol ("Complaint Protocol"), which together with the *Municipal Act*, establishes procedures for how the Integrity Commissioner investigates and reports on a council member's alleged misconduct.

[5] Section 5 of the Complaint Protocol sets out a process for the investigation:

5 (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:

(a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten days...

(2) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act*, and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.

(3) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had reasonable

notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment to the Integrity Commissioner on the proposed finding and any recommended sanction.

[6] If the complaint is sustained, under the Complaint Protocol, the Integrity Commissioner is required to report to Council. The Integrity Commissioner may recommend penalties set out in the *Municipal Act*, which are a reprimand or a 90-day suspension of pay, and may also recommend that Council take “corrective action” such as the removal from membership of a committee, repayment or reimbursement of money, or an apology.

[7] Thus, the Integrity Commissioner investigates and reports to Council with recommendations. Only Council can impose penalties or corrective actions in response to a report by the Integrity Commissioner.

The Sexual Misconduct Alleged

[8] Councillor Dhillon is the Regional Councillor for Wards 9 and 10 of the City of Brampton. In November 2019, Councillor Dhillon was invited to attend a Brampton Trade Mission in Ankara, Turkey, as a part of his role as Chair of the Economic Development Committee of City Council. The confidential complainant, who is a small business owner, was also invited on the Trade Mission. The complainant arrived in Turkey in November 2019 and met Councillor Dhillon at night. The complainant alleged that Councillor Dhillon came to her hotel room and attempted to force himself upon her. The complainant changed her flight to return to Canada early.

The Complaint and the Investigation

[9] On November 20, 2019, the complainant met with Mayor Brown and a staff member, told them about the incident, and played an audio recording made by her during the incident. On November 26, 2019, Mayor Brown's staff member wrote an email to the Integrity Commissioner with some details about the allegations.

[10] After additional email communications, on November 27, 2019, Mayor Brown called the Integrity Commissioner and reported the complainant's allegations that Councillor Dhillon had sexually assaulted her. Mayor Brown advised that he had also reported the matter to the police. By email later that day, the Integrity Commissioner informed Mayor Brown that she was treating his request as a formal complaint under the Complaint Protocol that required an investigation. Mayor Brown did not object. The Integrity Commissioner stayed her investigation when she learned the matter was being investigated by the Peel Regional Police.

[11] On December 19, 2019, once the Integrity Commissioner learned that the Peel Regional Police were no longer investigating, the Integrity Commissioner informed the Mayor and Councillor Dhillon that she would be continuing her investigation. By the end of January 2020, the Integrity Commissioner had interviewed the complainant, Mayor Brown, and other individuals.

[12] Between January and March 2020, the Integrity Commissioner sought to interview Councillor Dhillon. The Councillor did not meet with the Integrity Commissioner for an interview.

[13] In a letter dated March 18, 2020, Councillor Dhillon's legal counsel questioned whether the Integrity Commissioner could commence an investigation without a completed Complaint Form, arguing that the Integrity Commissioner did not have discretion to treat the Mayor's phone call as a formal complaint. The Integrity Commissioner spoke with the complainant and her counsel on March 19, 2020. The next day the complainant filed a Complaint Form stating that she had been sexually assaulted by Councillor Dhillon in Turkey and alleging violations of Rules 14 (Harassment) and 15 (Discreditable Conduct) of the Code of Conduct.

[14] The Integrity Commissioner informed Councillor Dhillon, through his counsel, that she had accepted Mayor Brown's request as a formal complaint. She referred to section 223.4(1) of the *Municipal Act*, which empowers her to receive requests from members of Council to investigate alleged violations of the Code and does not contemplate a formal complaint. She also provided the complainant's Complaint Form.

[15] Councillor Dhillon was provided with some disclosure, but not all that he had requested. While the Integrity Commissioner sought to meet with Councillor Dhillon, and provided him with the Interim Report, other than a blanket denial, Councillor Dhillon did not respond to the Integrity Commissioner's inquiries.

Interim Report

[16] On July 14, 2020, the Integrity Commissioner provided Councillor Dhillon with her Interim Report, which was 260-pages in length (including appendices) and set out the proposed findings and proposed recommendations for action by Council. As discussed below, the Integrity Commissioner requested that Councillor Dhillon provide his comments in response to the Interim Report.

[17] In response, the Councillor's lawyers raised procedural and jurisdictional issues, and maintained the Councillor's denial of the allegations.

The Final Report

[18] On July 22, 2020, the Integrity Commissioner released her Final Report. She found that Councillor Dhillon sexually harassed the complainant, and that his conduct towards the complainant was "grossly discreditable and was unbecoming of his role as City Councillor for Brampton."

[19] The Report made the following findings of fact:

Based on my overall assessment of all the documentation before me, most crucially, the audio recording that was produced to me by the Complainant, I find that Councillor Dhillon tried to force himself onto the Complainant in her hotel room at Movenpick Hotel in Ankara, Turkey, between the late hours of November 14, 2019 and the early hours of November 15, 2019. The timing and date of the incident is confirmed through the hotel check-in receipt, the email that the Complainant sent to Mr. Ward following the incident, as well as the phone calls the Complainant made to Ahmet directly after the incident.

I find that the Complainant made it clear that she did not want to engage in any sexual contact or sexual activity with Councillor Dhillon while he was in her hotel room that night. This is exhibited through the transcript of the audio recording, which I have attached to the Report. The audio recording makes it very clear how vigorously the Complainant was refusing Councillor Dhillon while he was trying to force himself onto her.

The Complainant said "no" a total of 74 times. During the audio recording, I could hear the Complainant's voice becoming distant from the recording device as she continually pleaded with Councillor Dhillon to put her down. It is further clear that Councillor Dhillon forcefully lifted up the Complainant's skirt while he had her in his grip and while she was off of the ground. The audio recording also makes it evident how traumatized and panicked the Complainant was after Councillor Dhillon exited the room. In the audio recording, I could hear the Complainant approach the recording device, while she began panting uncontrollably.

In reviewing the evidence from the various individuals that I interviewed, it is clear to me that they were of the view (generally) that the Complainant seemed unwell, disturbed, and traumatized by the sexual misconduct she experienced at the hands of Councillor Dhillon.

It is also clear to me, through my investigative interviews, that Councillor Dhillon attended the Trade Mission for the purpose of work for the City of Brampton. Not only was the trip paid for by the City of Brampton, Councillor Dhillon made it evident to the Complainant that he was the "Councillor for Brampton", a fact that the Complainant repeats to Councillor Dhillon in the audio recording.

[20] The Integrity Commissioner found that Councillor Dhillon breached Rule 14 (Harassment) of the Code of Conduct by sexually harassing the complainant. She also found that he failed to comply with the City's Respectful Workplace Policy, which is referred to in Rule 14 of the Code of Conduct. She held that councillors have a positive obligation to abide by all policies and procedures established by Council and the City generally, and must "lead by example to ensure that they take every step to follow those policies and procedures." She found that failure by councillors to comply with City policies and procedures "erodes the sense of responsibility that other City employees have in relation to those same policies and procedures." The Integrity Commissioner found that Mr. Dhillon had breached Code of Conduct Rule 15 (Discreditable Conduct) and Rule 18 (Failure to Adhere to Council Policies and Procedures). The Integrity Commissioner found that Councillor Dhillon, by refusing to participate in an investigative interview, obstructed her investigation contrary to Rule 19 (Reprisals and Obstruction).

[21] Due to these breaches of the Code of Conduct, the Integrity Commissioner recommended that Council take several actions.

Council's Decision

[22] On July 28, 2020, Councillor Dhillon served an application for judicial review on the City. His lawyer requested that Council defer consideration of the Final Report pending the outcome of his judicial review application.

[23] On August 4, 2020, Councillor Dhillon, through his lawyer, again requested that the matter be deferred until after the judicial review application was heard. The lawyer's letter conveyed that the Councillor "adamantly denied" the sexual assault allegations, and summarized the Councillor's position on procedural, evidentiary and jurisdictional flaws in the Integrity Commissioner's process as set out in the application for judicial review. This letter was provided to Council as additional correspondence prior to the Council Meeting on August 5, 2020.

[24] On August 5, 2020, Council considered the Final Report, passed several resolutions to adopt all the Integrity Commissioner's recommendations, and adopted resolutions setting out additional corrective actions.

[25] Resolution 302-2020 accepted the recommendations made by the Integrity Commissioner:

1. That Councillor Dhillon's pay be suspended (in accordance with the *Municipal Act, 2001*) for 90-days (the maximum length of suspension under the Act).
2. That Council issue a formal reprimand for Councillor Dhillon's misconduct as set out in the Report of the Integrity Commissioner.
3. That Councillor Dhillon issue a formal apology to the complainant and to the public generally for his gross misconduct.
4. That remedial action, as deemed appropriate by Council under its statutory authority, be directed to include the following:
 - a. Removal from membership and Chair (where applicable) of a committee.
 - b. Removal of Councillor Dhillon's ability to travel outside Ontario on any City business.
 - c. Apart from during Council Meetings, communicate with members of the public solely via email using his City email address - for further clarity - no other form of communication shall be permitted.
 - d. Prevent Councillor Dhillon from access to municipal offices except to retrieve Council mail/packages, make bill payments, or to attend for Council meetings.

[26] Council also passed Resolution 303-2020, which elaborated on and clarified item 4(a), the removal from membership from Council Committees or appointments. Resolution 303-2020 provides that, in accordance with the City's authority under sections 8, 9, and 11 of the *Municipal*

Act and section 13.2 of *Procedure By-law* 160-2004 (which permits Council to reconsider a decision made earlier in the current term), Council revoked its earlier decisions to appoint Councillor Dhillon:

1. as Chair of the Economic Development & Culture Section,
2. as the City representative on the Federation of Canadian Municipalities ("FCM"), and
3. as a member of the Community Safety Advisory Committee ("due to the serious nature of the allegations and the sensitive nature of the committee", which works to tackle discrimination and other social factors that contribute to crime and victimization).

[27] Council passed three other resolutions:

1. Resolution C305-2020: a non-binding motion requesting that Councillor Dhillon resign and "recognize that his conduct as a leader in our community has been contrary to the Council Code of Conduct", given councillors' duties to "arrange their public affairs in a manner that promotes public confidence and respect and will bear close public scrutiny" as well as Council's "duty as elected officials to lead by example" and "responsibility to stand behind victims that have come forward and shared the details of the harassment they experienced".
2. Resolution C204-2020: directing that the Report be provided to the Integrity Commissioner of the Region of Peel (since Councillor Dhillon also sat as a Regional Councillor).
3. Resolution C306-2020: resolving that "full support be offered to the victim, along the lines of what is available to City staff".

[28] The resolutions were formally enacted through Confirming By-law 158-2020, passed at the end of the Council Meeting on August 5, 2020 which adopted, ratified, and confirmed the actions of the Brampton City Council at that meeting.

Jurisdiction

[29] The Divisional Court has jurisdiction to hear this application under section 2(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 ("JRPA").

Issues:

[30] Councillor Dhillon raises three issues against the Integrity Commissioner:

- (1) Did the Integrity Commissioner properly commence the investigation of Councillor Dhillon?

(2) Did the Integrity Commissioner deny Councillor Dhillon procedural fairness in her investigation?

(3) Were the Integrity Commissioner's findings in her Final Report reasonable?

[31] Councillor Dhillon raises a fourth issue against the City and the Integrity Commissioner:

(4) Were the penalties recommended by the Integrity Commissioner, and imposed by Council, authorized by the *Municipal Act*?

Standard of Review

[32] The parties agree that reasonableness is the standard of review on substantive issues: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 37. There is no standard of review for questions of procedural fairness; rather, the court determines whether the administrative decision-maker afforded the appropriate level of procedural fairness.

Issue #1: Did the Integrity Commissioner properly commence the investigation of Councillor Dhillon?

[33] The Councillor submits that the Integrity Commissioner had no jurisdiction to investigate the allegations because she did not receive a written Complaint Form as required by the Complaint Protocol until March, 2020, and she commenced the investigation on the basis of the allegations raised in a phone call from Mayor Brown.

[34] Rather than a question of jurisdiction, this is question of law or exercise of discretion to which the reasonableness standard applies. A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). When conducting a reasonableness review, the court must begin its inquiry by examining the reasons of the administrative decision-maker with “respectful attention”, seeking to understand the reasoning process followed by the decision-maker (*Vavilov*, at para. 84). The reasons should be read holistically and contextually (*Vavilov*, at para. 97). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para. 99).

[35] In her Final Report, the Integrity Commissioner states that she commenced an investigation based on the telephone call from Mayor Brown. She specifically referred to section 223.4(1)(a) of the *Municipal Act*, which provides that an Integrity Commissioner may conduct an inquiry “in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member.” The Integrity Commissioner reasonably relied on the telephone conversation with Mayor Brown as a request by a member of Council which is a triggering event under the *Municipal Act*.

[36] The Complaint Protocol states that requests for an investigation shall be sent in writing to the Integrity Commissioner in a Complaint Form. This is a procedural document which standardizes written requests for inquiries under s. 223.4(1) of the *Municipal Act*. The Complaint Form provides that the complainant must: (a) identify themselves and provide contact information; (b) identify the Council member who they alleged contravened the Code of Conduct; (c) describe the contravention and the rule(s) allegedly contravened; and (d) provide witness contact information, if any. These requirements aim to deter vexatious allegations and provide written notice of the allegations against the Council member.

[37] Given this substantive compliance with the information required on the Complaint Form, the Integrity Commissioner advised Mayor Brown, in writing, that she was treating the allegations as a formal complaint under the Complaint Protocol. Mayor Brown did not object. Mayor Brown's report of the complainant's allegations triggered the Integrity Commissioner's jurisdiction to investigate, and it was reasonable for her to commence the investigation on that basis.

[38] In her Final Report, the Integrity Commissioner explained that she exercised her discretion to conduct a preliminary investigation on the basis of the phone call with Mayor Brown in part due to the nature of the allegations:

While Mayor Brown did not file an official formal complaint... I exercised my own discretion to treat it as a complaint that required at least a preliminary investigation so that I could better understand what happened in Turkey. I chose to exercise my discretion in doing this, as the allegations were extremely concerning in nature. I was and still am of the view that allegations of this nature (sexual misconduct) are to be investigated immediately and without delay.

[39] The Commissioner also stated that she commenced the investigation after the Mayor's phone call to assess the merits of the complaint to see if it had an "air of reality", consistent with her screening function under section 3(2) of the Complaint Protocol.

[40] The reasons given are appropriate to the regulatory context, the purpose of the Integrity Commissioner's role in investigating complaints, and the importance of the particular incident giving rise to the alleged violations of the Code of Conduct. I find that the decision to commence the investigation bears the hallmarks of reasonableness—justification, transparency and intelligibility—and was justified in relation to the relevant factual and legal constraints that bear on the decision.

[41] In any case, the complainant filed a signed Complaint Form on March 20, 2020. Her Complaint Form confirms the Integrity Commissioner's jurisdiction to investigate the misconduct. The Councillor argues that the formal complaint filed by the complainant in March 2020 should be disregarded because it was engineered by the Integrity Commissioner. He submits that the Integrity Commissioner spoke with the complainant after his counsel informed the Integrity Commissioner of his concern that she did not have a formal complaint. Councillor Dhillon asserts that the Integrity Commissioner's actions raise the inescapable inference that she induced a complaint from the complainant to render the objections of his counsel moot.

[42] First, as confirmed by this Court in *Di Biase v City of Vaughan*, 2016 ONSC 5620, to the extent a Complaint Form does not contain the required information, it is open to the Integrity Commissioner to contact a complainant and supplement the information provided. There is nothing that restrains an Integrity Commissioner from doing so. The decision to file the complaint was that of the complainant, who was represented by counsel.

[43] Second, as stated in *Di Biase* at para. 37:

This Court will always be reluctant to permit judicial review of a decision by the Integrity Commissioner to commence an investigation. The decision to commence an investigation does not decide or prescribe the legal rights, powers, privileges, immunities, duties or liabilities of the Councillor who will be investigated. The decision to investigate does not decide whether the Councillor is eligible to receive or to continue to receive a benefit. Permitting judicial review of this class of decisions will inevitably result in two hearings instead of one. Finally, there is no basis for reviewing this Integrity Commissioner's decision to commence this investigation.

[44] Alternatively, if a signed Complaint Form was necessary prior to March 19, 2020, in these circumstances, I would apply s. 3 of the JRPA which states:

On an application for judicial review in relation to a statutory power of decision, where the sole ground for relief established is a defect in form or a technical irregularity, if the court finds that no substantial wrong or miscarriage of justice has occurred, the court may refuse relief and, where the decision has already been made, may make an order validating the decision, despite such defect, to have effect from such time and on such terms as the court considers proper.

[45] Councillor Dhillon has not established any prejudice - let alone a substantial wrong or miscarriage of justice - arising from the lack of a signed Complaint Form prior to March 20, 2020. Granting Councillor Dhillon's requested relief regarding the absence of a Complaint Form prior to March 20, 2020, would privilege form over substance, at the expense of ensuring accountability and transparency of elected officials, and I decline to do so.

[46] The Integrity Commissioner's decision to open an investigation as she did was reasonable.

Issue #2: Did the Integrity Commissioner deny Councillor Dhillon procedural fairness?

[47] Councillor Dhillon submits that he was denied procedural fairness in two ways: disclosure was inadequate, and he was denied the right to be heard in response to the Interim Report. Councillor Dhillon submits that there is a high degree of procedural fairness required, and the Integrity Commissioner failed to meet her duties.

[48] Procedural fairness governs participatory rights, to ensure that administrative decisions are made using a fair procedure, appropriate to the decision being made and its statutory, institutional, and social context: *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699

(SCC), [1999] 2 SCR 817 at para. 22. The procedural protections and participatory rights required to meet the duty of fairness are assessed contextually.

[49] In *Di Biase v. City of Vaughan*, 2016 ONSC 5620 (Div. Ct), this court considered the duty of procedural fairness in the context of an Integrity Commissioner's investigation and report under the *Municipal Act*. *Di Biase* determined that integrity commissioners have relatively low obligations of procedural fairness. The statutory scheme prioritizes confidentiality; the integrity commissioner's process is investigatory and she may only make recommendations; the maximum penalty if Council accepts recommendations is 90 days suspension of pay; and no councillor may lose his elected position or suffer civil or criminal liability on the basis of an integrity commissioner's report.

Disclosure

[50] Councillor Dhillon, through his lawyer, requested that the Integrity Commissioner disclose all evidence against Councillor Dhillon, and submits that a failure to provide the disclosure is a breach of the duty of fairness. The disclosure Councillor Dhillon requested included:

- (a) The audio recording provided by the complainant.
- (b) All relevant documents, including notes of interviews, correspondence and e-mails.
- (c) The information being relied upon in deciding to pursue the investigation including information from any witness who was interviewed.
- (d) The particulars of the allegations against Mr. Dhillon, including which sections of the Code of Conduct had allegedly been breached.
- (e) A summary of the evidence gathered from other witnesses.

[51] Citing the lack of disclosure provided by the Integrity Commissioner, and the breach of procedural fairness, Councillor Dhillon submits that the only meaningful participation he could offer was a letter denying the allegations. I do not agree.

[52] The regulatory context is essential in evaluating the procedural fairness required to be afforded in the circumstances. As a part of the complaint process, s. 5(1)(a) of the Complaint Protocol states that the Integrity Commissioner will “serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten days.” Additionally, s. 5(3) states that the Integrity Commissioner “shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had reasonable notice of the basis for the proposed finding ... and an opportunity either in person or in writing to comment ... on the proposed finding.”

[53] On April 20, 2020, the Integrity Commissioner disclosed the summary of her phone call with the Mayor, her email exchange with the Mayor consisting of notes from the Mayor's interview

with the complainant, and a transcript of the audio recording. She had previously disclosed the written Complaint Form.

[54] The Integrity Commissioner stated that she did not disclose the other information requested by Councillor Dhillon's lawyer due to her statutory duty of confidentiality under 223.5(1) of the *Municipal Act*. Section 10(2) of the Complaint Protocol reiterates this duty by stating that secrecy must be preserved for "all matters that come to [the Integrity Commissioner's] knowledge in the course of any investigation except as required by law in a criminal proceeding." Section 10(5) states that in reporting to Council, the Integrity Commissioner "shall only disclose such matters as are necessary for the purposes of the report."

[55] On July 14, 2020, the Integrity Commissioner provided Councillor Dhillon with her Interim Report, 260-pages in length (including appendices) which set out the findings of her investigation and proposed recommendations to Council, including penalties and corrective actions.

[56] I find that there was sufficient disclosure in the circumstances. There is nothing in the *Municipal Act* or the Complaint Protocol that suggests the level of disclosure sought by Councillor Dhillon. The Court in *Di Biase v. City of Vaughan*, 2016 ONSC 5620 determined that integrity commissioners have relatively low obligations of disclosure, stating at para. 146:

An administrative body that investigates and makes recommendations must disclose the substance of the allegations. The Supreme Court of Canada in two cases affirmed the following statement by Lord Denning in *Selvarajan v. Race Relations Board*, [1976] 1 All E.R. 12 (C.A.), p. 19:

The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only.

Syndicat des Employés de Production de Québec et l'Acadie v. Canada (Canadian Human Rights Commission), 1989 CanLII 44 (SCC), [1989] 2 S.C.R. 879, at para. 27.

Irvine v. Canada (Restrictive Trade Practices Commission), 1987 CanLII 81 (SCC), [1987] 1 S.C.R. 181, at para. 71, citing *Jenkins v. McKeithen*, 395 U.S. 411 (1969), Harlan J. (dissenting), pp. 442-443.

[57] The Councillor was given the substance of the case and provided with sufficient particulars to enable him to respond to the allegations of the incident. He knew who was making the complaint, what the allegations were, the circumstances regarding date, time, and location, a transcript of the audio recording, and an opportunity to play the audio recording. Accordingly, by April 20, Councillor Dhillon had far more than the “broad grounds” of the case against him at the investigation stage.

[58] He was subsequently provided with the Interim Report which set out the entirety of the investigation and the Integrity Commissioner’s proposed findings. He received adequate disclosure which met the requirements of procedural fairness in the circumstances.

Right to be Heard

[59] The Councillor asserts that he was denied the opportunity to respond to findings in the Interim Report. I find that the Integrity Commissioner provided several opportunities for Councillor Dhillon to be heard, both before and after providing him with the Interim Report, thus satisfying her duty of procedural fairness. Councillor Dhillon decided not to respond to the case against him, simply repeating his bare denial of the allegations.

[60] The Integrity Commissioner invited the Councillor on several occasions to meet with her to provide his side of the story. He declined to do so.

[61] In compliance with 5(3) of the Complaint Protocol, the Integrity Commissioner provided her Interim Report and invited Councillor Dhillon’s comments on her proposed findings and recommended sanctions.

[62] Pursuant to s. 5(1)(a) of the Complaint Protocol the Integrity Commissioner requested that Councillor Dhillon provide a response.

[63] In her email to counsel of July 17, the Integrity Commissioner set a one-week deadline for Councillor Dhillon’s response, and stated:

With respect to the deadline, it is my view that your client's unwillingness to cooperate in my investigation would mean that he is not in a position to comment on the evidence that I rely on in my report, or my assessment of that evidence (the bulk of the Report and almost all of the Appendices).

He is in a position of course to comment on:

1. Any inaccuracies that I have reported with respect to my back and forth with your client (through you); and
2. Your client's view of the penalty that I have recommended to Council.

.....

With that being said, if of course there are other areas of the report you would like to comment on (notwithstanding the fact that your client did not participate in my

investigation), I am happy to hear from you. At this time, I am not certain however, that I can take into consideration any of those comments.

[64] On July 21, counsel for Councillor Dhillon wrote to the Integrity Commissioner:

Moreover, you indicated that you would not allow Mr. Dhillon to comment on the evidence on which you have relied (which he is seeing for the first time), your analysis of that evidence or your legal interpretations in the draft Report. Rather, you indicated that Mr. Dhillon was allowed only to provide comments on two matters: whether there were any inaccuracies in your description of our correspondence with you regarding this matter, as well as in respect of your penalty recommendations.

[65] That is not what the Integrity Commissioner said.

[66] The Integrity Commissioner expressed her view to legal counsel that the time for Councillor Dhillon to provide his side of the story had passed; she nonetheless invited Councillor Dhillon to provide his comments.

[67] Counsel wrote that Councillor Dhillon categorically denied the allegations. He did not take the opportunity to provide any substantive comments, nor to put forward his side of the story. He was offered the opportunity to do so and chose not to. There was no denial of procedural fairness.

Issue #3: Were the Integrity Commissioner's findings in her Final Report reasonable?

[68] The Councillor submits that the Integrity Commissioner made three errors in her Final Report which render the conclusions unreasonable.

Findings Regarding Obstruction

[69] Councillor Dhillon submits that it was unreasonable for the Integrity Commissioner to find that he "obstructed" her investigation and so breached Rule 19 of the Code of Conduct. Rule 19 provides in part that: "No Member shall obstruct the Integrity Commissioner in the carrying out of her or his responsibilities."

[70] The commentary to Rule No. 19 states that:

Members of Council should respect the intent of the Code of Conduct and investigations conducted under it. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications or refusing to respond in writing to a formal complaint lodged pursuant to the Complaint Protocol passed by Council.

[71] The Integrity Commissioner in her Final Report found that Councillor Dhillon had breached the City's Respectful Workplace Policy by sexually harassing the complainant. That Policy requires elected City officials to cooperate with investigations of harassment or discrimination to resolve issues. The Integrity Commissioner held that:

Councillors have a positive obligation to abide by the terms of all policies and procedures established by Council and the City generally. They must, as the most senior City representatives and elected officials, lead by example to ensure that they take every step to follow those policies and procedures. Their failure to do so erodes the sense of responsibility that other City employees have in relation to those same policies and procedures. This, of course, is unacceptable.

[72] This context is essential in understanding the Integrity Commissioner's reasons on obstruction. In her reasons, the Integrity Commissioner noted that between the months of February 2020 and April 2020, she repeatedly asked Councillor Dhillon to participate in an investigative interview and he repeatedly refused, citing "procedural irregularities" in the investigation. She pointed to the extensive correspondence with his counsel, attached as appendices to the Final Report, in which she attempted to address his concerns in a thorough and detailed manner. When Councillor Dhillon sought a copy of the audio recording, the Integrity Commissioner explained that she had given an undertaking to the complainant's counsel that prevented her from disclosing a copy of the audio recording to anyone, including Councillor Dhillon. She also noted that she had taken the following steps to provide Councillor Dhillon with an opportunity to respond to the audio recording:

- 1) She advised counsel for Councillor Dhillon, that he could respond to the audio recording during the interview, where his lawyer could be present, and could provide her with a supplementary response following the interview, which would include anything he may have missed. She confirmed that she would consider that supplementary response following the investigation meeting; and

- 2) She obtained permission from the complainant's counsel to have the audio recording transcribed and the Integrity Commissioner provided a copy of the transcribed version to Councillor Dhillon.

[73] None of these options were acceptable to Councillor Dhillon, and he refused to meet with the Integrity Commissioner. She concluded that in refusing to meet, the Councillor acted as obstructionist in her investigation, rather than cooperative.

[74] The Councillor submits that he was under no statutory obligation to attend an interview with the Integrity Commissioner, and that declining to sit for an interview does not amount to obstruction under Rule 19 of the Code of Conduct.

[75] While Rule 19 offers examples of what could constitute obstruction, it does not define obstruction. The Code specifically states that "examples used in this Code of Conduct are meant to be illustrative and not exhaustive." The *Municipal Act* does not contain a definition of obstruction. The commentary to Rule 19 states that Council members "should respect the intent of the Code of Conduct and investigations conducted under it." The Code aims to hold Council members to elevated ethical standards and to ensure transparency. Council members are expected not only to follow the letter, but also the spirit, of the Code of Conduct. Council members must act in a manner that "promotes public confidence and respect and will bear close public scrutiny."

[76] Considering this context, it was reasonable for the Integrity Commissioner to interpret Rule 19 as she did. Even in the absence of specific language in the Code, it was open to the Integrity Commissioner to conclude that a failure to cooperate with an investigation constituted an attempt to obstruct her mandate. Councillor Dhillon did not cooperate in the investigation in that he (i) refused to attend an interview; and (ii) put forward no actual response to the serious, substantiated allegations that had been made. The Integrity Commissioner's decision that this response constituted obstruction "falls with a range of possible, acceptable outcomes which are defensible in respect of the facts and law," given the statutory context, the wording and purpose of the Code of the Conduct, and the ethical standards expected of Council members.

Prior Consistent Statements

[77] Councillor Dhillon argues that the Integrity Commissioner erred by relying on prior consistent statements to corroborate the complainant's allegations of sexual misconduct. He asserts that the Integrity Commissioner cannot conclude that the complainant was credible or telling the truth based on what the complainant told third parties.

[78] The Integrity Commissioner's use of third-party evidence must be read in context. She stated that these individuals "did not have firsthand knowledge of the allegations against Councillor Dhillon." She recognized their evidence about the complainant's account of the sexual misconduct was hearsay. She did not use the complainant's prior consistent statements to third parties to confirm the truth of the complainant's allegations about what happened in the hotel room.

[79] In the Final Report, under the section titled "Findings of Fact", the Integrity Commissioner stated:

Based on my overall assessment of all the documentation before me, most crucially, the audio recording that was produced to me by the Complainant, I find that Councillor Dhillon tried to force himself onto the Complainant... I find that the Complainant made it clear that she did not want to engage in any sexual contact or sexual activity with Councillor Dhillon... This is exhibited through the transcript of the audio recording...

[80] These statements show the Integrity Commissioner relied on the audio recording - not prior consistent statements made to third parties - in her factual findings regarding the complainant's allegations of Councillor Dhillon's conduct. The audio transcript reflects Councillor Dhillon pleading with the complainant to "do [him] a favour" and "give [him] a little bit", and then he will leave. The complainant states that she is a married woman and that Councillor Dhillon is a married man. The complainant tells him to stop. She says "no" 74 times. She begs him to put her down, and to put her skirt down. This evidence supports the complainant's account of the assault, and the Integrity Commissioner's reliance on it was reasonable.

[81] In her remarks to Council upon receipt of the Final Report, the Integrity Commissioner explained that her purpose in speaking with witnesses was to "confirm timing" (for instance, of text messages sent after the incident) and to determine whether there were any prior inconsistent statements. She stated: "I did not use hearsay, to confirm that the incident between the complainant and Councillor Dhillon actually took place - you cannot do that, and I did not do that." She went

on to state that hearsay cannot be used to bolster a complainant's credibility, or to feed myths of how complainants are supposed to act following assault or harassment.

[82] Her findings were reasonable and supported by the evidence before her.

Failure to Reconcile Contradictory Accounts

[83] Councillor Dhillon argues that the Integrity Commissioner erred by failing to address the complainant's contradictory accounts. The Councillor submits that this was a fundamental flaw in the Integrity Commissioner's reasoning. Councillor Dhillon submits that the Integrity Commissioner failed to consider the inconsistencies between the story told by the complainant to the Integrity Commissioner and her earlier reports to others. He highlights three alleged inconsistencies which were not addressed by the Integrity Commissioner in her report: (a) whether Councillor Dhillon was invited into the complainant's room or she to his room; (b) whether tea was ordered to the complainant's room or Councillor Dhillon's room; and (c) the order of certain events during the misconduct. These alleged inconsistencies arise from third party recounting of what the complainant allegedly told the third parties.

[84] The Applicant bears the burden of demonstrating unreasonableness, including that any shortcomings or flaws "are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100). These alleged inconsistencies are peripheral to the Integrity Commissioner's ultimate findings of misconduct. The Integrity Commissioner is not required to review and resolve every inconsistency in the evidence.

[85] The core of the complainant's allegations was unaffected by the alleged inconsistencies. To the extent there were any inconsistencies in the complainant's prior statements to third parties, their impact on the complainant's credibility was clearly outweighed by the corroboratory audio recording. The Integrity Commissioner's finding of Councillor Dhillon's sexual misconduct - made on a balance of probabilities, and in absence of any explanation or substantive comments whatsoever from Councillor Dhillon - was reasonable.

Issue #4: Were the penalties recommended by the Integrity Commissioner, and imposed by Council, authorized by the *Municipal Act*?

[86] Section 223.4(5) of the *Municipal Act* provides, under the marginal heading "Penalties":

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

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council ...for a period of up to 90 days

[87] In addition to the *Municipal Act* penalties, sections 6(2) and 6(4) of the Complaint Protocol provide that the Integrity Commissioner may report to Council on the disposition of an

investigation, including on recommended “corrective action”, so long as the recommended corrective action is permitted in law and is designed to ensure that the inappropriate behaviour or activity does not continue.

[88] Section 9(4) of the Complaint Protocol specifies that an Integrity Commissioner may recommend that Council do any of the following: (a) remove a member from membership of a committee; (b) remove a member as chair of a committee; (c) order the repayment or reimbursement of monies received; (d) order the return of property or reimbursement of its value; (e) order a written and/or verbal request for an apology.

[89] In introducing her report at Council, the Integrity Commissioner explained her basis and rationale for recommending the penalties and other remedial action suggested in the Report. She noted that she had considered the statutory limits on available penalties under the Act, as well as this court’s decision in *Magder v. Ford*, 2013 ONSC 263 (Div Ct) and section 9(4) of the City’s Code of Conduct (both of which provide that Council may take other action in addition to imposing the prescribed penalties). The Integrity Commissioner stated her view that the actions she recommended in her Report in addition to the prescribed penalties were remedial in nature because they “are linked to the specific misconduct that we were dealing with, as set out in my report.” She expressly encouraged Council to seek legal advice from the City Solicitor before choosing to implement the recommendations.

[90] In response to questions from councillors, the Integrity Commissioner stated:

And the other aspects of the remedial action, so they're not penalties, they're not sanctions - I want to be very clear on that: They're not penalties, and they're not sanctions. It's a different category of remedial action that, in my view, is - correlates directly with the misconduct in nature.... I looked at what I - the nature of the allegations; I considered the fact that it took place outside of the City, outside of the province, outside of the country. I looked at the fact that it was, you know, while on City business. And I carefully considered those additional remedial actions, not penalties, based on all of that. So that's the assessment that I looked at.... But I think the question for me is, well, why is it that you essentially came up with these other remedial actions? So the question - the answer in two parts is, first, because I thought it was directly related to the type of misconduct that took place; and (2), I do not believe that it undermines the spirit of section 9(4) of the Code of Conduct... I can imagine this is something that you will address with your city solicitor...

[91] The Councillor submits that under s. 223.4(5) of the *Municipal Act*, the only penalties that a city council may impose based on a report by an integrity commissioner are a reprimand and a suspension of remuneration for up to 90 days. While the City may impose other “remedial measures” to cure or undo a consequence, they may not impose a penalty to punish and deter. The Councillor submits the following measures imposed by Council are penalties, not remedial measures: (a) removing his ability to travel outside Ontario on any City business, (b) limiting him to only communicate to the public via his City email address, and (c) preventing him from accessing municipal offices except for retrieving Council mail, making bill payments, or attending Council meetings.

[92] The City relies both on its broad remedial powers under the *Municipal Act* and the responsive nature of the remedial measures adopted. Municipalities have broad scope and powers to govern their affairs they see fit, as set out in sections 8, 9, 11, and 15 of the *Municipal Act*.

[93] The broad grant of authority in subsections 8(1) and (2) of the *Municipal Act* provides:

8 (1) The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

(2) In the event of ambiguity in whether or not a municipality has the authority under this or any other Act to pass a by-law or to take any other action, the ambiguity shall be resolved so as to include, rather than exclude, powers the municipality had on the day before this Act came into force.

[94] The City's actions must be evaluated on a reasonableness standard. In *Magder v Ford*, 2013 ONSC 263 (Div Ct), this court recognized a municipality's ability and jurisdiction to take "other actions" in response to a breach of a code of conduct beyond the penalties and sanctions expressly provided by statute, so long as those other actions are remedial in nature and are not being used for a punitive purpose. The City argues that the resolutions passed in response to the Report enacted appropriate remedial measures that were directly responsive to Councillor Dhillon's misconduct, and would permit the City to protect its employees and residents considering the factual circumstances.

[95] I agree that with one exception, these measures were reasonable and within the City's jurisdiction. They were responsive to the misconduct in question, have remedial rather than punitive characteristics, strive to redress the harm caused by Councillor Dhillon's misconduct, and seek provide a way to prevent a recurrence of Councillor Dhillon's conduct.

[96] I find, however, that one aspect of Resolution 302-2020, section 4(c), is unreasonable. This provides that apart from during Council meetings, Councillor Dhillon may only communicate with members of the public by email using his City email address, and that for further clarity, no other form of communication shall be permitted.

[97] This aspect of the Resolution is overly broad. It interferes with the Councillor's ability to represent his constituents and discharge his duties as Councillor. While the remainder of the actions are remedial and designed to create an environment safe from sexual harassment for staff and members of the public, or to limit the Councillor's representation of the City given his breaches of the Code of Conduct, Councillor Dhillon must be free to serve his constituents. Not all constituents have email. Some may prefer to engage by telephone or letter. The Councillor may wish to post updates on his activities and concerns as an elected representative on Twitter, Facebook, or through mailings. The Councillor may wish to speak with constituents at community meetings outside of Council offices, or by Zoom. The prohibition is so broad as to prevent the Councillor from even acknowledging a greeting in a grocery store or speaking to Brampton residents in a park.

[98] The record does not show that Council attempted to balance the breadth of a councillor's duties and the needs of his constituents with a response tailored to the breaches of the Code of Conduct. Council did not consider more reasonable limits that would allow the Councillor to communicate with members of the public, particularly his constituents, about City business by methods other than e-mail. There is no justification for this overbreadth, and the outcome is unreasonable.

[99] I find it appropriate to quash that aspect of the Resolution and remit the matter to City Council for consideration in light of these reasons should Council wish to proceed with a more tailored resolution.

CONCLUSION

[100] The application for judicial review is allowed in part, in that City of Brampton Resolution 302-2020, paragraph 4(c) is quashed, and that issue alone is remitted to the City for further consideration.

[101] Councillor Dhillon claimed costs on a partial indemnity basis of \$55,000.00 (reduced from partial indemnity costs incurred of \$73,426.05). The Integrity Commissioner sought costs of \$31,530.73, and the City of \$37,820.54, both on a partial indemnity basis.

[102] Section 131 of the Courts of Justice Act provides the court with discretion to determine the amount of costs. The exercise of this discretion is guided by the factors set out in Rule 57.01 of the Rules of Civil Procedure, the principle of proportionality in Rule 1.04(1.1), and a determination of what is fair, just and reasonable: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 2004 CanLII 14579 (ON CA), 71 O.R. (3d) 291 (C.A.).

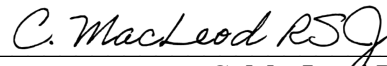
[103] In terms of the issues, the focus of the material and oral argument, the City and the Integrity Commissioner were almost entirely successful, except for one minor aspect of the City's Resolution to which little time was devoted either in the written materials or in oral argument.

[104] I exercise my discretion to order the Councillor to pay costs to the City in the amount of \$20,000.00, inclusive and costs to the Integrity Commissioner of \$20,000.00, inclusive.



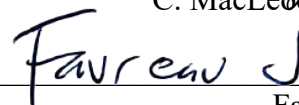
Kristjanson J.

I agree



C. MacLeod R.S. J.

I agree



Favreau J.

CITATION: Dhillon v. The Corporation of the
City of Brampton, 2021 ONSC 4165
DIVISIONAL COURT FILE NO.: 553/20
DATE: 20210611

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

MacLeod, R.S.J., Kristjanson and Favreau JJ.

BETWEEN:

GURPREET DHILLON

Applicant

-and-

THE CORPORATION OF THE CITY OF
BRAMPTON and the INTEGRITY
COMMISSIONER OF THE CITY
OF BRAMPTON

Respondents

REASONS FOR DECISION

Kristjanson J.

Date of Release: June 11, 2021