

**INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT
COMPLAINT 2021-05**

THE CORPORATION OF THE CITY OF ST. CATHARINES

John Mascarin

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INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT COMPLAINT 2021-05 COUNCILLOR KARRIE PORTER

SUMMARY

A formal complaint pursuant to the *Code of Conduct for Members of Council and Local Boards* (the “**Code**”) of The Corporation of the City of Catharines (the “**City**”) was filed directly with our office in October 2021.

A revised version of that complaint was re-submitted to our office on November 17, 2021 (the “**Complaint**”).

The Complaint alleges that Councillor Karrie Porter (the “**Councillor**”), a member of City Council (the “**Council**”), contravened several sections of the Code.

The Complaint alleges that the Councillor contravened the Code through her actions related to two separate social media posts relating to the 2021 Federal Election and, in particular, against an individual who was the candidate representing Green Party of Canada for the St. Catharines electoral riding (the “**Candidate**”).

APPOINTMENT & AUTHORITY

Aird & Berlis LLP was appointed as Integrity Commissioner for the Municipality pursuant to subsection 223.3(1) of the *Municipal Act, 2001*¹ on January 28, 2019 by By-law No. 2019-13. As the City’s Integrity Commissioner, we have jurisdiction to review, investigate and report on complaints made against members of Council pursuant to the Code or any other rule, procedure or policy governing their ethical conduct.

The Complaint, as initially filed, contained several deficiencies in relation to the Formal Complaint Protocol, forming Appendix “B” to the Code. Upon conducting our standard intake and review procedure in accordance with our authority, we exercised our discretion to request further particulars from the Complainant, and also exercised our discretion to decline to investigate certain allegations.

The Complaint was subsequently revised to address these deficiencies and subsequently re-submitted to our office.

¹ S.O. 2001, c. 25.

CODE PROVISIONS AT ISSUE

The Complaint alleges that the Councillor contravened Sections 4.1(a), (c), (d), (e) and (f), Section 8.1 and Section 10.1 of the Code. Those sections of the Code provide as follows:

4.0 General Obligations

4.1 In all respects, a Member shall:

- (a) make every effort to act with good faith and care;
- ...
- (c) seek to advance the public interest with honesty;
- (d) seek to serve their constituents in a conscientious and diligent manner;
- (e) respect the individual rights, values, beliefs and personality traits of any other person recognizing that all persons are entitled to be treated equally with dignity and respect for their personal status regarding gender, sexual orientation, race, creed, religion, ability and spirituality;
- (f) refrain from making statements known to be false or with the intent to mislead Council, staff or the public;

8.0 Confidential Information

8.1 Members receive confidential information from a number of sources as part of their work as elected officials. This includes information received in confidence by the City that falls under the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and other applicable privacy laws and information received during closed meetings of Council. Examples of types of information that a Member must keep confidential, unless expressly authorized by Council or as required by law, include, but are not limited to:

- (a) matters related to ongoing litigation or negotiation, or that is the subject of solicitor-client privilege;
- (b) information provided in confidence, for example the identity of a complainant where a complaint is made in confidence;
- (c) price schedules in contract tender or Request for Proposal submissions if so specified;
- (d) personnel matters about an identifiable individual;
- (e) "personal information" as defined in the *Municipal Freedom of Information and Protection of Privacy Act*; and
- (f) any census or assessment data that is deemed confidential;
- (g) a proposed or pending acquisition or disposition of land by the municipality or local board;

- (h) labour relations or employee negotiations;
- (i) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (j) price schedules in contract tender or request for proposal submissions if so specified; and
- (k) a matter in respect of which a closed meeting may be held under the *Municipal Act, 2001* or another Act

...

8.4 A Member shall not misuse confidential information in any way or manner such that it may cause detriment to the City, Council or any other person, or for financial or other gain for themselves or others.

...

10.0 Improper Use of Influence

10.1 A Member shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.

REVIEW OF MATERIALS & INQUIRY

In order to undertake our inquiry into the Complaint and make a determination on the alleged contraventions of the Code, we have undertaken the following steps:

- Review of the Complaint and all materials referred to therein, including addenda thereto;
- Further email correspondence and telephone conversations with the individual who filed the Complaint (the “**Complainant**”) regarding the requirements for filing a complete complaint;
- Correspondence to the Complainant advising of deficiencies in the Complaint, requesting further particulars, and summarily dismissing some aspects of the Complaint;
- Review of the Councillor’s response, dated December 17, 2021, and all materials referred to therein;
- Review of reply submissions of the Complainant, dated January 6, 2022; and
- Review of relevant social media posts, threads, and comments.

We have also reviewed, considered and had recourse to such applicable case law and secondary source material, including other integrity commissioner reports that we believed to be pertinent to the issues at hand.

A draft of this Report was provided to the Councillor and the Complainant on February 18, 2022 to allow them to review and comment on the factual accuracy of the Report. The Councillor indicated that she had no comments on the substance of our Report. No response was received from the Complainant.

BACKGROUND

(a) Introduction

The Councillor was first elected to Council in the 2018 Municipal Election to represent Ward 4, St. Patrick's Ward.

At all relevant times, the Candidate was the individual nominated as the local candidate for the Green Party of Canada in the St. Catharines electoral riding for the 2021 Federal Election. The Candidate is also a resident of the City, residing within Ward 4.

The Complaint arises from two separate incidents related to the Councillor's use of social media during the 2021 Federal Election campaign. In the first incident, the Councillor is alleged to have obtained and misused "personal information" about the Candidate's vaccination status in an attempt to harm their reputation. In the second instance, the Councillor is alleged to have made certain inflammatory, racially-charged social media posts which the Councillor allegedly ought to have known would result in "further hate crimes" against the Candidate.

(b) Social Media Posts Regarding the Candidate's Vaccination Status

The Candidate was unable to receive a COVID-19 Vaccine prior to 2021 due to unavailability in their local area and a pending medical procedure. The Candidate received their first dose of the vaccine shortly after undergoing a medical procedure. Shortly after receiving their first dose of the vaccine, the Candidate experienced a "strong negative reaction." Informed by their own experience and what they perceived as a growing animus against those who were unvaccinated, the Candidate made several statements on social media urging Canadians not to target individuals who could not be fully-vaccinated for medical reasons, as well as other public statements on the topic of vaccination and government policies regarding vaccination.

On August 25, 2021, a digital news article about the Candidate was published by *The St. Catharines Standard*, in its "Meet the Candidates" series during the 2021 Federal Election. In response to a question about vaccination, the article quotes the Candidate as saying "I will be fully vaccinated by Election Day."

Shortly before voting day for the 2021 Federal Election, the Councillor wanted to share a social media post encouraging people to get vaccinated, that vaccines were safe and effective, and that the local candidates from all major political parties were supportive of vaccines.

On or around mid-September 2021, the Councillor began gathering information to make this social media posts. Two candidates had previously made social media posts regarding their vaccination status. The Councillor also messaged a third candidate inquiring about their vaccination status, and a response was received immediately.

As mentioned above, the Candidate had previously been quoted that they only had one dose of the vaccine, but expected to be fully-vaccinated by the 2021 Federal Election. On or about September 16, 2021, the Councillor sent the Candidate a private message on social media inquiring about their vaccination status and to confirm they were fully-vaccinated. The Councillor's inquiry was initially met with resistance by the Candidate. The Councillor explained the purpose of her inquiry, advising that she intended to make a social media post advising that the candidates for all major political parties in the City were vaccinated.

The Candidate responded by reiterating their personal and party's position on such matters as attacks on political candidates, "vaccine passports", and public health restrictions. The Candidate also specifically stated that whether they had received the vaccine was irrelevant to this position, and that the Councillor did not have the Candidate's permission to attach their name to a social media post encouraging vaccine passports.

The Councillor responded by clarifying that they had said nothing about vaccine passports, and that, in any event, if the Candidate was not comfortable sharing their vaccination status, the Councillor would respect the Candidate's privacy.

At no point during this exchange did the Candidate ever disclose their vaccination status, one way or another, to the Councillor.

On September 18, 2021, the Councillor made a social media post, a full excerpt of which is attached as **Appendix "A"** to this Report (the "**Post**"). The Post contained the images of the candidates from the Liberal Party of Canada, Conservative Party of Canada, and the New Democratic Party, identified by name and respective political party.

The text of the Post stated as follows:

These three double-vaccinated candidates may have different opinions and ideas but they all agree that vaccines provide safe and effective protection against COVID-19. I want to thank them for their leadership. Please remember to go out and vote this Monday! #E1xn44

The Post did not include or contain any reference to the Candidate, or any other candidate from another federal political party.

(c) Social Media Posts Regarding Alleged Statements Against the Candidate

We take notice that during the 2021 Federal Election, there were several instances of vandalism against political candidates. This aspect of the Complaint deals with the fallout from one such incident.

On the morning of September 12, 2021, the candidate for the Liberal Party of Canada (the "**Liberal Candidate**") awoke to find that his vehicle has been vandalized. Their vehicle was spray-painted with the words "F U LIBERALS," a reference to their political affiliation. We understand that a police investigation was commenced, but no charges have since been announced. We also note that within a few days, Mayor Walter Sendzik also experienced vandalism of his house and vehicles, also spray-painted with vulgar language.²

The event received significant coverage by local and regional media. In addition, several public figures took to social media platforms to denounce instances of politically-related vandalism, which included support for the Liberal Candidate.

² We also note that during the course of our investigation, the Councillor's residence was vandalized on two separate occasions, occurring within a period of about one month. These incidents may have been politically motivated. In our view, these actions are reprehensible, and are entirely antithetical to the purpose and function of the local democratic process.

The Liberal Candidate issued a statement on social media, attaching a photo of his vehicle. In response, local candidates for both the Progressive Conservative Party and the New Democratic Party each made a social media post denouncing the incident of vandalism against the Liberal Candidate.

In response to the Liberal Candidate's post, the Candidate responded with the following:

In St Catharines, most residents have had their homes robbed or vandalized. It's a main complaint from business owners. I had "[expletive]" spray painted on my house. It's a community safety issue that needs addressing.

In response to the Candidate's response, the Councillor responded with the following:

[Candidate], is this really your take on what happened here?

Shortly thereafter, the Councillor sent the Candidate a private message on social media asking if they were aware of what happened to the Liberal Candidate's car. The Candidate responded that they were aware given his social media posts and media coverage, and suggested that there was an issue with violence and vandalism in the community, citing instances of break-ins, thefts and vandalism against the Candidate's property.

The Councillor responded with a message suggesting that the Candidate lacked critical analysis of the issue. The Councillor and the Candidate then engaged in an exchange of private messages regarding whether the Candidate would issue a public statement similar to other candidates. During this exchange, the Candidate disclosed to the Councillor that they had endured racially-motivated attacks, and asking that the Councillor "do some work" to ensure similar acts of racially-motivated attacks in the community were publicly denounced. The Councillor then shared several media articles on instances where the Councillor had publicly denounced such actions.

There was no evidence in our investigation to suggest that the content of the private exchange between the Candidate and the Councillor was shared publicly, or repeated publicly by the Councillor.

THE POSITION OF THE PARTIES

(i) Position of the Complainant

As it relates to the social media post about the Candidate's vaccination status, the Complainant alleges that this conduct contravened Sections 4.1 (a), (c), (d), (e) and (f) of the Code in that the Councillor was "clearly not acting in good faith, advancing the public interest with honesty," and that she "acted with extreme disrespect [regarding Section 4.1 (e)] by outright stating that people do not deserve to be treated equally if they weren't able to be vaccinated within [the Councillor's] timeframe." The Complainant also takes the position that the Post misrepresented the Candidate's vaccination status.

Furthermore, the Complaint alleges that the Councillor's course of conduct contravened Section 8.0 of the Code by obtaining and improperly using personal information about the Candidate's vaccination status in the Post. The Complainant alleges that the Candidate's vaccination status was not widely-known, and that the only way for the Councillor to have received knowledge of this was in her position as City Councillor for the Candidate's ward.

The Complaint also alleges that the Post contravened Section 10.1 of the Code, being that she improperly used the influence of her office, insofar that the Post was made in her capacity as a member of Council, and therefore “on behalf of the City and not of herself.”

As it relates to the social media post about political vandalism, the Complainant takes the position that the Councillor contravened Sections 4.1 (a), (c), (d), (e) and (f) of the Code in that the Councillor’s statements were “knowingly false and meant to mislead the public,” and further that the Councillor was aware her statements were “inflammatory, racially charged,” and “would tend to incite violence against” the Candidate.

The Complainant also alleges that the Councillor publicly stated that the Candidate was being insensitive, and “ordered” the Candidate to “sympathize with the [Liberal Candidate], rather than speaking out against hate crimes.”

(ii) Position of the Councillor

The Councillor denies that her actions, whether viewed individually or cumulatively, constitute a contravention of the Code. The Councillor also disputes several factual aspects of the allegations in the Complaint.

As it relates to the social media post about the Candidate’s vaccination status, the Councillor disagrees that she ever improperly shared or misrepresented the Candidate’s vaccination status, which the Councillor asserts was already reported publicly before the Post. The Councillor takes the position that based on her private exchange with the Candidate, it was clear that the Candidate did not want to be included in the Post. The Councillor respected this by not sharing any details about the Candidate’s vaccination status or views on vaccines.

The Councillor disagrees that she was acting in bad faith and takes the position that the Post was motivated by a desire to promote and encourage vaccines, which was an especially important topic during the 2021 Federal Election. The Councillor submits that this would be a normal question any candidate would have received, including the Candidate, and further that the Candidate had already been asked to and had in fact shared a their vaccination status.

As it relates to the social media post about political vandalism, the Councillor takes the position that she did nothing wrong in privately messaging a political candidate to ask if they were aware of a political attack on an opponent during a campaign, asking to clarify their critical analysis of the situation, and asking that they denounce it.

The Councillor denies that she ever made a public statement that the Candidate was being “insensitive,” or that she “ordered” the Candidate to sympathize with the Liberal Candidate instead of speaking out against hate crimes.

The Councillor also denies that she ever made any public statement that was “knowingly and willfully false and meant to mislead the public” regarding the Candidate, nor would she have made any public statement which would tend to incite racialized violence against the Candidate.

The Councillor admits that she was not aware of previous instances of hate crimes against the Candidate, only learning of this after speaking with the Candidate, but that had she been aware of any specific act or targeted incident that happened to the Candidate, she would have spoken out publicly to denounce it and supported the Candidate.

FINDINGS

We have carefully and fully considered the submissions of each of the parties and the evidentiary record from our investigation. For the reasons set out below, on a preponderance of the evidence and on a balance of probabilities, we find that the Councillor has not contravened the Code.

(a) Councillor's Post about Vaccination Status

We find that the Post and the Councillor's course of conduct did not contravene Sections 4.1(a), (c), (d), (e) and (f), Section 8.0, or Section 10.1 of the Code.

(i) Section 4.0 - General Obligations

Much of the Complaint has been brought under Section 4.0 of the Code, which sets out the general obligations of members of Council. These provisions set out the duties of members of Council in general terms, and as positive obligations rather than prohibitions. However, these Sections must be interpreted and applied reasonably and within the context of the entire Code. These general obligations cannot be elasticized to such a degree to apply to any action (or inaction) that may appear to be transgressive of the Code.

Section 4.1(a) provides that a member of Council shall make every effort to act with good faith and care. This section entails action by members of Council that is sincere, fair, open and with honesty. On the converse, this section prohibits conduct done in bad faith, with malice or ill intention.

Section 4.1(c) requires that a member of Council advance the public interest with honesty. Honesty entails action and speech which is sincere, and free of deceit or deception.

Section 4.1(d) requires that a member of Council serve their constituents in a conscientious and diligent manner.

Section 4.1 (e) requires that a member of Council respect the individual rights, values, beliefs and personality traits of other persons, recognizing that all persons are entitled to be treated with dignity and respect for their personal status regarding gender, sexual orientation, race, creed, religion, ability and spirituality. This provision works in conjunction with other sections of the Code to prevent discrimination against individuals on prohibited grounds.

Lastly, Section 4.1(f) prohibits a member of Council from making statements that are known to be false, or with the intent to mislead the public. The purpose of this section is not to strictly regulate factually incorrect statements. Rather, this provision requires a member of Council to refrain from deliberately or intentionally making statements they know are not true, or for the purpose of misleading others. Both prescriptions have an element of intent or motivation.

On the basis of the evidence before us, we find that the Councillor did not contravene any of the general obligations under Section 4.0. There was no evidence in our investigation that demonstrates the Councillor acted in bad faith, or with ill-intent, in creating the Post. There is no evidence to suggest that the Councillor was motivated by any animus, dislike, or ill will against the Candidate. We accept the Councillor's explanation that the Post was motivated by her personal view that candidates' positions on the efficacy of vaccines was and remains an important election issues, and also by a desire to advise voters that all candidates agreed on this basic point and had in fact received vaccines.

Furthermore, we find that the Councillor acted diligently and conscientiously in gathering information supporting the Post, and directly making inquiries of the Candidate. While those inquiries may have been unwanted, the Councillor respected the Candidate's request for privacy and that their name not be included in the Post.

We also find that the Post did not contain any information or statements which would tend to support an allegation that it was discriminatory. Again, the Post only spoke to the vaccination status of those candidates who agreed to be in the Post, and said nothing which was deliberately discouraging, demeaning, or harmful to anyone who was not included. Section 4.1(e) of the Code cannot be interpreted in a way to prohibit differences of opinion or disagreements. The Complaint fails to demonstrate that the Post discriminated against any identifiable group under the Code.

Lastly, we find that at no time did the Councillor make "knowingly false" statements, or statements which were intended to mislead the public. Nothing about the Post disclosed the Candidate's vaccination status, nor did it suggest that the Candidate was not "fully-vaccinated," or was "anti-vaxx." At no time did the Councillor obtain, use, or disclose the Candidate's vaccination status. We find, as a fact, that by at least August 25, 2021, the Candidate had made a public statement which implied that they had not yet received both doses of a vaccine.

We also wish to address the potential argument that the Councillor made a misleading statement by omission by excluding the Candidate from the Post, which would lend to the inference that the Candidate was not vaccinated and/or did not support vaccines.

We disagree with this interpretation of the facts and the Post. The Post did not use any exclusionary language whatsoever suggesting that only those candidates included in the Post had been vaccinated. Simply put, it did not include any information about the Candidate or their vaccination status. In addition, the evidence in our investigation demonstrates that in response to the Post, other social media users referenced the earlier news article in *The St. Catharines Standard* referencing the Candidate's vaccination status.

(ii) Section 8.0 - Confidential Information

Section 8.0 of the Code imposes strict obligations on members of Council regarding confidential and/or sensitive information. At its core, Section 8.0 seeks to protect confidential City information from misuse by members of Council. As it related to the factual matrix of the Complaint, Section 8.0 would prohibit a member of Council from disclosing or misusing confidential information obtained in the course of their duties as a member of Council.

On the basis of the evidence before us, we find that the Councillor did not contravene any of her confidentiality obligations under Section 8.0. We make the following factual findings in support.

First, and dispositive of this issue, there was no evidence that the Councillor at any time disclosed any "confidential information" or "personal information" about the Candidate's vaccination status. The Post did not contain this information, either expressly or implicitly, nor did the Councillor ever make any of the statements alleged in the Complaint, which the Complainant imputes to the Councillor.

Second, there was no evidence that at any time before making the Post the Councillor had actual knowledge or confirmation of the Candidate's then-current vaccination status. This was the impetus for the Councillor's message to the Candidate. During their exchange of private messages however, the Candidate did not confirm or deny whether they had received a second

dose, and asked not to be included in the Post. As such, the Councillor cannot be said to have “obtained” this information.

Lastly, notwithstanding that Councillor never actually disclosed any information about the Candidate, by the time the Post was made, the Candidate already had made public statements on that topic. Based on article in *The St. Catharines Standard*, dated August 25, 2021, the Candidate’s quote indicated that they had not received both doses of the vaccine at that date, but intended to do so by voting day.

In summary, the Councillor did not contravene Section 8.0 of the Code as she never disclosed anything about the Candidate.

(iii) Section 10.1 - Improper Use of Influence

Section 10.1 of the Code prohibits a member of Council from using the power or clout associated with their office for any purpose other than for the exercise of their duties as a member of Council. In this regard, the Complaint alleges the Councillor to have obtained information on the Candidate’s vaccination status and made the Post in her capacity as a member of Council, and was therefore acting on behalf of the City and not herself.

We find that the Councillor did not contravene Section 10.1 of the Code. First, there was no evidence that the Councillor used the “influence of her office” to obtain any information on the vaccination status of the Candidate. That allegation is simply not borne out on the evidence of our investigation.

Moreover, while the Councillor may have a social media presence, her social media posts are not to be taken as formal statements issued by the City. No single member of Council has authority to bind or direct the City, except through a decision of Council as a whole. While the Councillor may always be seen as a *representative* of the City, she alone does not speak *on behalf of* it. The Councillor is entitled to continue using her social media platform in a responsible and conscientious manner to express her views, so long as that expression accords with the Code.

(b) Councillor’s Post about Political Vandalism

It is our finding, based on a totality of the evidentiary record, that the Councillor’s course of conduct regarding political vandalism against the Liberal Candidate did not contravene Sections 4.1(a), (c), (d), (e) and (f) of the Code.

There was no evidence to suggest that the Councillor ever made any public statement accusing the Candidate of being insensitive, “ordering” that they sympathize with the Liberal Candidate, or inciting further instances of racialized violence against the Candidate. These allegations have been taken very seriously and have been reviewed as closely and in as much detail as possible. Despite this, our investigation found no evidence to support these allegations.

The extent of the Councillor’s public statements in response to the incident was one single social media post: “...is this really your take on what happened here?”

We find as fact that the Councillor made no other public statement about the Candidate or their interpretation of the incident.

We have reviewed in great detail the private correspondence between the Councillor and Candidate, which was provided to our office as evidence in our investigation. There was no dispute about the content or completeness of this exchange. We understand that the tone of the exchange can be characterized as a disagreement, or even as confrontational. However, nothing about that conversation or the Councillor's social media posts can reasonably sustain any of the allegations made in the Complaint. The Code cannot be used as a tool to regulate disagreement or differences of opinion, or to force another to capitulate their point of view.

In summary, we find that the Councillor's course of conduct did not contravene the Code.

CONCLUSION

For all of the reasons set out in detail above, the Councillor has not contravened any of the provisions of the Code in the manner asserted in the Complaint. It is our conclusion that the Councillor acted in accordance with her obligations under the Code.

The Complaint is hereby dismissed.

Since there has been no finding of a contravention, this Report is provided to Council solely for information as there is no authority for Council to make any decision.

AIRD & BERLIS LLP



John Mascarin
Integrity Commissioner for the City of St. Catharines

Dated this 30th day of March, 2022

APPENDIX "A"



Karrie Porter
@karrieporter



These three double-vaccinated candidates may have different opinions and ideas but they all agree that vaccines provide safe and effective protection against COVID-19. I want to thank them for their leadership. Please remember to go out and vote this Monday!
[#Elxn44](#)



 Trecia McLennon (she/her) and 2 others

3:45 pm · 18 Sep 2021 · Twitter for iPhone