



ADR
C H A M B E R S

Integrity Commissioner Office
for the Town of Richmond Hill

ADR CHAMBERS INTEGRITY COMMISSIONER OFFICE FOR THE TOWN OF RICHMOND HILL

MICHAEL L. MAYNARD
E-mail: mmaynard@adr.ca

November 13, 2018

SENT BY EMAIL AND COURIER TO:
Stephen M.A. Huycke
Director of Legislative Services/Town Clerk
Town of Richmond Hill
225 East Beaver Creek Road
Richmond Hill, ON L4B 3P4
stephen.huycke@richmondhill.ca

Re: Complaint Reference Number IC-27-0718 Councillor Karen Cilevitz

Dear Mr. Huycke:

Delegation of Investigative Powers

Pursuant to a delegation of powers, Deborah Anshell, in her capacity as Integrity Commissioner for the Town of Richmond Hill, delegated to the undersigned pursuant to section 223.3(3) of the *Municipal Act, 2001*, certain of her powers and duties as Integrity Commissioner to inquire into, investigate, and prepare a report (subject to her review and approval) with respect to the complaint described herein.

The Complaint

This complaint (the "complaint") is brought against Richmond Hill Town Councillor Karen Cilevitz ("Councillor Cilevitz") by Richmond Hill resident Steffi Goodfield (the "Complainant").

In her complaint submission, dated May 30, 2018, the Complainant claims that through "...a series of emails, phone calls and a voice-mail, I have been harassed, intimidated, bullied and threatened by Councillor Karen Cilevitz." The Complainant believes these communications by Councillor Cilevitz to be in contravention of Section 7 of the Town of Richmond Hill Council Code of

Conduct (the "Code") and has requested the matter be investigated by the Integrity Commissioner for the Town of Richmond Hill.

The relevant part of Section 7 of the Code states:

All members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment.

Facts and Evidence

Media Attention and Public Knowledge of the Complaint

Unlike many matters that come before the Integrity Commissioner, this complaint is unusual in that a portion of the complaint was subject to widespread media reporting in and around the time the Complaint was being filed. The matter had been raised at Council by a citizen in Open Forum, who objected to the initial complaint being summarily dismissed without investigation by the previous Integrity Commissioner. Public statements had been made by the parties through the press. The matter had been covered extensively in print, on radio, on television and through online video. The matter was also being discussed on social media.

Investigation

The following information was provided to me by email, as saved files on a memory stick, by hard copy printouts, and through separate personal interviews I conducted with the Complainant and with Councillor Cilevitz and her legal counsel on August 2, 2018. Additionally, several available media reports were read, listened to, or viewed.

The Principal Parties

The Complainant is a Richmond Hill resident who operates a small side-business that produces and promotes open mic music events at various venues (e.g. bars and pubs) around Richmond Hill and York Region. She was a personal friend of Councillor Cilevitz for a number of years.

Councillor Cilevitz represents Ward 5 on Council. She met the Complainant through the local music scene and states they have been friends for at least 8 years. Councillor Cilevitz co-organized and donated to a cancer benefit for the Complainant.

Chronology

On December 14, 2018, Councillor Cilevitz began sending text messages to the Complainant regarding an interpersonal conflict¹ involving the Complainant, Councillor Cilevitz's romantic partner ("DC"), and several other third-party friends of the Complainant, particularly Matt Bergman² ("Mr. Bergman"). Concurrently, DC began to send messages³ to the Complainant via Messenger regarding the same issue, which was instigated by a message from Mr. Bergman to DC accusing DC of "bullying" the Complainant.

The messages from Councillor Cilevitz demanded information about the alleged conflict between Mr. Bergman and DC (e.g. "Who heard what and why?" and "Again I ask you, what did you hear and from whom? And what is it all about"). On several occasions throughout the exchange, Councillor Cilevitz expressed affection and concern for the Complainant (e.g. "You are loved by me. And I hope you know that") and stated: "I don't want to upset you". At one point in the exchange, the Complainant stated:

"I feel like I'm in high school, people like to tell you when they hear nasty comments...I really don't need that. I'm already nauseas enough without that lol but can't control other people."

Councillor Cilevitz replied:

"I agree, but that doesn't answer my question. Who heard what and why? And if you're hearing something 3rd person, do you question it? So what was told to you and by whom?"

On January 2, 2018, the messages from Councillor Cilevitz to the Complainant regarding the above noted interpersonal conflict resumed, this time focused on some defamatory comments a friend and business associate of the Complainant ("GS") allegedly made about DC approximately a year prior. There were concurrent messages to the Complainant from DC regarding same. In the exchange, Councillor Cilevitz pressed the Complainant for information about discussions related to the interpersonal conflict, but also stated "I am trying to settle this mess for others." Ultimately, Councillor Cilevitz resolved to have the matter dealt with directly between GS and DC, but again requested the Complainant intervene to help resolve the matter if she could.

On January 22, 2018, Councillor Cilevitz sent a text message to the Complainant

¹ Much of the subject matter of the interpersonal conflict referenced herein is not considered relevant to the complaint. Only information that is considered essential will be detailed.

² Matt Bergman (a.k.a. Matt Groopie) is a friend of the Complainant. Ordinarily, third parties are anonymized, but in this instance, Mr. Bergman was also the subject and/or intended co-recipient, via the Complainant, of some of the communications to which this complaint refers. His name has been published in media accounts of some of the events covered by this report. He has also given media interviews. His connection to this matter is known in the public domain. For those reasons, Mr. Bergman has been named in this report where relevant.

³ DC's messages and conduct are not a part of this complaint; they are only referenced for historical context.

as follows:

"Steffi, please let me know when I can call you. We have a situation with [Mr.] Bergman and I will not stand idly by while he spews crap about me or [DC]. This Sunday night's events at Archibald's carries your OM logo. It is your sponsored event. You have a responsibility in what those who are running your sponsored event are saying in the public realm. [Mr. Bergman] said to [third party] last night, amongst his disgusting tirade and false accusations against her, the following and I quote from [third party's] e-mail to DC and I: "...how I should be careful of who my so called Friends are.. and that "Fat [DC]" and Karen better be careful and should know better than to take advantage of people with cancer... And that they are gonna be sorry when the legal shit goes down. End quote. This is not a joke, Steffi, I am an elected official running for re-election. How dare he. And he says this at Archie's, in a Ward 5 location, and say to [third party] "This is the real Ward 5 open mic". Who does he think he is? WHERE have I EVER "taken advantage" of you, the person with cancer?"

In another message, she continued:

"How absolutely disgusting. I sponsored the S4S event all on my own, took in ALL expenses so that all \$ received would go directly to you. YOU. Where have I EVER taken "advantage" of you or your disease?? Or [DC]? WHEN?? [Mr.] Bergman is skating on very very thin ice. What "legal shit" is "going down", Steffi?? What exactly? I am so done with this utter rubbish from a nobody who is making statements in public about me, and [DC] (he also told [third party] the LIE [certain allegations from interpersonal conflict] - how or why would he also be saying that? What is going on here?? What have I ever done to you other than be your friend, be gracious to you and help you?? I demand answers, apologies and a retraction. I am furious and will not stand for any of this. [Mr.] Bergman has crossed a line. The last person who libeled me in 2014 had to pay a legal bill of \$60K. And is permanently never allowed near me. I will not tolerate this. And it WILL be addressed and fixed."

The Complainant replied:

"Not really fair to send me this...Why are you sending this to me? I wasn't even there.....I don't speak for [Mr. Bergman] nor do I tell him what to say. You should be going to him not me...."

Councillor Cilevitz replied:

"Really Steffi? He is saying things, LYING, about me directly connected to you. the Sunday night event is held under YOUR logo. Your YROM brand. Who the hell does he think he is. He blocked/banned me from FB when I called him out a few weeks ago. Me speak to him? HOW?? What "legal shit" Steffi? Why did he repeat the same lie told to me about [DC] by [GS] to [third party]?? What the hell is going on here. I am furious. And have every right to be. I have ALWAYS been

your friend. Always. WTF is all this? When did I EVER take advantage of you?????"

She continued:

"After everything I did for you out of love and friendship. I get THIS from [Mr.] Bergman? WHY?? What the hell have I ever done to you or [Mr.] Bergman for that matter?"

The complainant replied, "I never said you did...I'm not [Mr. Bergman]", then continued: "I really don't know what happened between him and [third party]".

Councillor Cilevitz replied:

"Well Steffi, [Mr. Bergman], your friend and Sunday night OM host said that to [third party]. I am done here. What the hell is going on??? I love you and our friendship. I am sickened by this and have every right. [DC] dedicated a song to you on Saturday night for God's sake which had everyone including him in tears. We embraced you at Wintersong. What the hell is this???"

Several messages followed from Councillor Cilevitz shortly thereafter:

"He is running an OM in a Ward 5 establishment lying about me. This is where this ends. Who the hell does he think he is?? When have I EVER taken "advantage" of you? NEVER. How absolutely shameful. What "legal shit", Steffi?? [Mr.] Bergman owes me, and [DC], an immediate apology and retraction. How dare he. And sorry, but this does fall at your feet. It's your sponsored OM with your logo on the poster."

She continued:

"I am beyond upset and absolutely furious. And I have every right."; and: "I, and [DC], BTW will meet [Mr.] Bergman anywhere anytime. Bring it. NO-ONE lies about me."

The Complainant responded later that evening with several messages: "I know how much you did for me...I will be forever grateful..."; "I have not said anything but that". She concluded: "I cant reach him."

A short while later, Councillor Cilevitz sent several messages:

"Thank you. I needed to hear that. He's the one who needs to make amends. I will not tolerate any of this absolute BS. And most definitely not from the likes of [Mr.] Bergman."

The Ward 5 Issue ("Ward 5 issue")

On January 25, 2018, Councillor Cilevitz sent a text message to the Complainant stating: "Steffi, I need to speak with you immediately. Please call me ASAP. Thank you."

Councillor Cilevitz also left this message on the Complainant's voice-mail (the "voice-mail"), which I copy from the electronic transcript provided:

"Hello Steffi, this is Karen. I've left you a text message and I've left a message for [Mr.] Bergman as well to call me back. I've just been informed that he's going to be naming your Sunday night um, ah, music event at Archibald's the Ward 5 music jam or music fest or whatever he is going to be calling it. Please be advised: that nobody but Richmond Hill councillors use the term ward in any event unless you are a councillor. If [Mr.] Bergman and you, because you are York Region Open Mic, and this is under your name...If you in any way name your event, which does not have my sponsorship or my authority, as the Ward 5 Music Jam at Archibald's on Sunday night, I will take legal action against both of you and your company. This is not a joke. I'm away for the weekend, um, in Collingwood with [DC]. I don't need this kind of aggravation. I don't need it from the likes of Matt Groopie [i.e. Mr. Bergman], and I certainly don't need it from the likes of you. I don't know what it is I've ever done to you, or ever done to Matt Groopie [Mr. Bergman]. So you can let him listen to this if he doesn't have the balls to call me back. But be advised Steffi, that if you in any way, or [Mr.] Bergman in any way calls your Sunday night jam at Archibald's The Ward 5 event, there is going to be serious problems that you are both going to have to deal with legally. Nobody does this. It is just not done. Only councillors who are elected to wards use that terminology. I would appreciate it if you call me back, or sent me a text and you assure me that this has been taken care of by you, as this is your event. Thank you. Bye Bye."

Councillor Cilevitz followed up on the voice-mail by email and text. An email sent on January 27, 2018 to the Complainant, Mr. Bergman, and others appeared as follows:

"Matt and Steffi:

Please REMOVE the reference to Ward 5 in your "About" section describing "Open Jam at Archibald's" on Facebook and anywhere else IMMEDIATELY – Copied below from your Facebook page.

Again – Please be duly advised herein that you do NOT have my authority as the Ward 5 Councillor nor the authority of the Town of Richmond Hill to use that identification in ANY of your promotional and/or informational material/e-material – YOUR EVENT IS NOT SPONSORED, SUPPORTED NOR OFFICIALLY IDENTIFIED WITH/BY RICHMOND HILL WARD 5 COUNCILLOR KAREN CILEVITZ IN ANY FORM WHATSOEVER RELATIVE TO OFFICIAL AND/OR OFFICIALLY RECOGNIZED WARD 5, KAREN CILECITZ, RICHMOND HILL, EVENTS. MY NAME AND/OR THE WARD I LEGALLY REPRESENT AND/OR

IT'S AFFILITATION TO THE DULY ELECTED WARD 5 COUNCILLOR IN RICHMOND HILL WILL NOT BE AND IS NOT ASSOCIATED IN ANY FORM WITH THIS OR ANY OTHER MATT GROOPIE RELATED EVENT(S). KINDLY REMOVE THE REFERENCE TO WARD 5 AS COPIED BELOW IMMEDIATELY.

Your immediate attention to this matter is greatly appreciated."

The above email attached information pulled from social media about the event referenced in the voice-mail and email, which read as follows:

"Calling all musicians and singers!

Come to Richmond Hills oldest pub ARCHIBALDS in Ward 5 every sunday in January for a night of music, drinks, friends and jamming!
Open Jam At Archibalds"

A Facebook post/event entitled "Ward 5 Richmond Hill Open Jam" ("Archibald's Jam") also appeared online.

Councillor Cilevitz then sent two text messages to the Complainant, as follows:

"Steffi, I have sent you and [Mr. Bergman] an email - Kindly attend to it IMMEDIATELY, thank you. REMOVE the reference to Ward 5 in the "ABOUT" section on Facebook relative to the Sunday Night Archibald's event or I will take legal action. Thank you."

She then sent another message:

"It deserves mention that I am shocked, dismayed and incredibly upset that you have not had the grace nor decency to respond to any of this. I considered you a dear and treasured friend. I have done nothing to you and [Mr.] Bergman except shown my friendship and generosity. I am shaking my head, Stef."

A third text was sent a short while later:

"This is disgusting. I've been your friend. I helped raise over \$30K for you, I paid nearly \$1K out of my Constituency Account to support the event so all \$ would go to you, and donated \$500 all of my own personal money towards the Go Fund Me account for you. Where is this coming from??? [Mr.] Bergman's deliberate reference to "Ward 5" is to needle me. For what Steffi?? For what? It is an illegitimate use of a description related to my official position as the Ward 5 Councillor. I am NOT associated with this. What the hell is going on here, and why? I never expected any of this to be associated with you. Your life YROM brand is associated with this crap, Steffi. Enough. Tell [Mr.] Bergman to remove it. This is a disgrace."

A further email exchange occurred, in which Mr. Bergman replied to the email

asking that Councillor Cilevitz never contact him or the Complainant again, with Councillor Cilevitz replying: "Regarding you [Mr. Bergman], gladly, but I think Steffi can and should speak for herself where I am concerned." Councillor Cilevitz then again demanded all Ward 5 references be removed from any material related to the Archibald's Jam events and noted she had discussed same with the proprietor of Archibald's, who informed Councillor Cilevitz that she had also directed Mr. Bergman to remove the Ward 5 references.

Soon thereafter, references to "Ward 5" were removed from the Archibald's Jam event social media pages, and a disclaimer that the Town and Councillors were not affiliated with the event was posted. Councillor Cilevitz considered the matter closed. Communications between the parties ceased for a time.

Communications Resume

On February 28, 2018, a third-party (whom Councillor Cilevitz identifies as an acquaintance of Mr. Bergman) (the "Ward 5 resident") emailed Councillor Cilevitz, inquiring as to why she no longer supported the bands that play in Ward 5. Councillor Cilevitz copied the Complainant, Mr. Bergman, and Archibald's on her response to the Ward 5 resident, in which she explained, among other things, her position regarding the use of the term Ward 5 in the Archibald's Jam events. There was a further email exchange between the Ward 5 resident and Councillor Cilevitz, which served to clarify Councillor Cilevitz's objection to the use of "Ward 5" in the promotion of the Archibald's Jam events. Again, Councillor Cilevitz copied the Complainant, Mr. Bergman, and Archibald's. The final email from Councillor Cilevitz in this exchange was dated March 3, 2018.

There was no further direct contact between the Councillor Cilevitz and the Complainant.

Additional Activity Reported by Councillor Cilevitz

Over the next several months, Councillor Cilevitz reports learning, through a third party she identifies as an "informant", of a political plot against her by Mr. Bergman and others (including local politicians) by way of a planned "media blitz". The plan against her by Mr. Bergman was purportedly explained to the informant. She reports that the use of the "Ward 5" terminology was picked up again by Mr. Bergman for the Archibald's Jam events, but also that Mr. Bergman used the term extensively in connection with his band and its musical performances. She claims that another Councillor, with whom she has a political rivalry (Councillor Muench), was seen repeatedly with Mr. Bergman and the Complainant at a variety of events, socializing with them, and in at least one instance, he sported a pin for the Complainant's open mic business. She also claims that a variety of social media posts that were negative towards her and supportive of the referenced political rival were posted by Mr. Bergman and others. She claims that these actions were intended to taunt her in support of the political plot by Mr. Bergman and others.

Sometime during this period, it is understood that a complaint regarding the current subject matter was submitted by a third party who was made aware of the circumstances surrounding this complaint by Mr. Bergman. That complaint was referred to the previous Integrity Commissioner for Richmond Hill. No investigation of this complaint was conducted by the previous Integrity Commissioner, who reported to Richmond Hill Council ("Council") on May 18, 2018, as follows:

"Since we last reported to the Council, we have received a number of complaints regarding elected officials pursuant to the code of conduct.

Five of those complaints were found either to have no basis or they were not valid complaints pursuant to the requirements of the code. It would be inappropriate to name the councillors about whom the complaints were filed. We believe it is sufficient just to report that the complaints were in regard to public comments made by the councillors and it would appear that personal political differences were at the heart of each of these complaints rather than breaches of the code of conduct."

In her written submissions, Councillor Cilevitz stated that she was advised by the then-Integrity Commissioner a few days prior to the submission of the above report that a complaint against her had been dismissed:

"On May 15, 2018...the IC [Integrity Commissioner] informed me of a complaint laid against me regarding the Steffi [Goodfield] voice mail and a couple of emails, and he informed me he would be "dismissing" the complaint as, in his opinion, it "had no merit"."

On May 17, Councillor Cilevitz was contacted by a reporter for "Rebel Media", and initially agreed to an interview, but later cancelled. The same reporter then appeared at a public event being held by Councillor Cilevitz and began questioning her in what she describes as an "ambush".

On May 27, 2018, Councillor Cilevitz reached out to GS by email, which she marked as confidential and "[n]ot to be shared with anyone", in an attempt to solicit his assistance to shut down the perceived negativity towards her from Mr. Bergman. She noted in her email that she believed the Complainant was being swept into the negativity and that it could be of harm to her. She pleaded that she intended no harm to the Complainant herself, but noted she attempted to solicit the Complainant's help and received none. She also noted several ways she had helped the Complainant in the past with respect to the cancer benefit, noting she "once considered [the Complainant] a friend." This email was forwarded by GS to Mr. Bergman with a new subject line: "Your ace in the hole...".

On May 28, 2018, at Town Open Forum, Mr. Bergman's romantic partner ("Open Forum Speaker") took to the microphone to speak to Council about the voice-

mail. The same "Rebel Media" reporter was present to record proceedings. During her statements, she claimed that Councillor Cilevitz was bullying the Complainant, noting that she has "stage 4 cancer". Her presentation was shut down by the Mayor, who advised that a formal complaint would be more appropriate. The Open Forum Speaker left Council Chambers shouting that the media would be contacted.

It is evident from what unfolded over the next several days that the media was indeed contacted regarding the Ward 5 issue and the voice-mail. As already noted, the Ward 5 issue, and particularly the voice-mail, received extensive media coverage from several media entities over a variety of platforms. Both the Complainant and Councillor Cilevitz were interviewed.

On May 31, Councillor Cilevitz issued a public statement on social media and her website in which she attempted to explain her own thinking around the Ward 5 issue, noted that there had been repeated attacks against her character, relayed briefly her history of friendship and contributions to the Complainant following the Complainant's cancer diagnosis, noted her attempt to apologize on camera while being interviewed by CBC, and then apologized to the Complainant in writing, stating in part:

"Further, I wish to take this opportunity to publicly apologize to [the Complainant] if my words or actions have in any way harmed or hurt her. That was never my intention, and I believe those who know me would know that without question. My voice was raised and my words were strident as I was frustrated by her not having gotten back to me. My intention in contacting [the Complainant] directly was because I did not want any direct contact with [Mr.] Bergman, and this event was being held under her YROM banner. My intention was, legitimately, to ensure that I, my reputation and the community which I serve, was not going to be erroneously associated with something or someone which I realized could prove harmful to myself."

On June 5, 2018, Councillor Muench attempted to add the Ward 5 issue to the agenda of the Committee of the Whole but was procedurally barred from doing so.

On June 12, 2018, at Town Open Forum, the previous Open Forum Speaker, Mr. Bergman and the "Rebel Media" reporter attended the meeting of Council. They raised the Ward 5 issue again, demanding an investigation and arguing with members of Council. The meeting became so dysfunctional that York Regional Police reportedly removed the Open Forum Speaker, Mr. Bergman and the "Rebel Media" reporter from the Council Chambers.

Council Motion and Bylaw

By July 2018, the appointment of the current Integrity Commissioner had taken effect. On July 3, 2018, the following motion was heard at the Committee of the

Whole, with confirmatory Bylaw 95-18 passed by Council on July 9, 2018:

"13.3.26 Member Motion - Councillor Muench - Code of Conduct / Respect in the Workplace discussion and independent review of Ward 5 Councillor Karen Cilevitz actions - (CW Item 12.1)

Moved by: Councillor Muench

Seconded by: Regional and Local Councillor Spatafora

Whereas members of the public have raised concerns about the conduct and harassment of Ward 5 Councillor Karen Cilevitz;

Whereas it has been brought to members of Council attention that the integrity commissioner refused to hear a complaint that appears to be aggressive in tone;

Whereas the threatening audio from Ward 5 Councillor Karen Cilevitz has been brought to members of Council and the public attention;

Whereas a voice mail audio of Ward 5 Councillor Cilevitz directed at a member of the public has been played on 640AM, CFRB TALK 1010, CBC news as well as a documentary by rebel media;

Whereas members of the public on at least two occasions have engaged with members of Council to ask for action to be taken about the actions of Ward 5 Councillor Karen Cilevitz;

Whereas residents have been so passionately concerned that we had to have police come to Council;

It is therefore recommended that:

- a) Council engages immediately to address gaps in our Code of Conduct and Respect in the Workplace policies;
- b) That the complaint in respect to Councillor Cilevitz actions in regards to Steffi Goodfield and Open Mic that was filed with the Office of the Clerk prior to May 31, 2018 be referred by the Clerk to the Town's new Integrity Commissioner for a report and recommendation.

Carried"

It should also be noted that both co-counsel for Councillor Cilevitz and the Complainant spoke at the July 3, 2018 Committee of the Whole meeting. Councillor Cilevitz's lawyer raised a procedural defence regarding the above motion. The Complainant spoke in favour of the motion. She additionally spoke about Councillor Cilevitz's repeated references in communications to helping with

the cancer benefitand returned the \$500.00 donation Councillor Cilevitz had made to that benefit.

Positions of the Parties

Preliminary Issue: Time Limitation

In her statements to the Integrity Commissioner's office, Councillor Cilevitz raised a preliminary issue on the basis of the limitation period for the filing and investigation of complaints.

According to the Section 9 of the Code:

"Complaints must be submitted within six weeks of the matter becoming known to the individual and no more than six months after the alleged violation occurring. No action will be taken on a complaint received beyond these deadlines." [emphasis added]

Councillor Cilevitz claims that because the events that form the basis of this complaint were fully known to the Complainant more than six weeks prior to the filing of the complaint, the matter ought to be dismissed.

Councillor Cilevitz argues that the provision in Section 9 of the Code is similar to section 9 of the *Municipal Conflict of Interest Act* ("MCIA") which states:

"9 (1) Subject to subsection (3), an elector may, within six weeks after the fact comes to his or her knowledge that a member may have contravened subsection 5 (1), (2) or (3), apply to the judge for a determination of the question of whether the member has contravened subsection 5 (1), (2) or (3).

Time for bringing application limited

(3) No application shall be brought under subsection (1) after the expiration of six years from the time at which the contravention is alleged to have occurred."

Councillor Cilevitz cites the decision in *Methiku v. Barrow*, a 2014 application involving the current Mayor of Richmond Hill. Councillor Cilevitz submits that in *Methiku*, Justice Edwards held that 9(1) of the MCIA was a limitation period and observed:

"The Limitation Period

19 Dealing first of all with the issue of whether or not this application is barred by the limitation period set forth in section 9(1) of the MCIA, this court is required to engage in an examination of whether or not the application was brought within six weeks after the fact comes to an elector's knowledge that a member may have contravened section 5 of the MCIA. As to when the limitation period begins

to run, Gilmore J. in *Hervey v. Morris* [2013 CarswellOnt 2774 (Ont. S.C.J.)] 2013 CanLII 13654, held that the onus of demonstrating a contravention of the limitation set forth in section 9 was on the respondent to demonstrate on a balance of probabilities, that the applicant had some knowledge which would lead someone like the applicant to believe that a breach of the MCIA had occurred."

Councillor Cilevitz noted in her response:

"It is clear that the purpose of section 9 of the MCIA is, as Gilmore J. indicated in *Hervey*, to impose a strict time limit so as to protect elected officials and ensure that applications like the one before the court is brought on a timely basis."

She argues that the limitation period set out in Section 9 of the Code operates in the same way as 9(1) of the MCIA, and thus the current complaint ought to be dismissed as it was filed outside of the limitation period.

Complainant's Position Re: Preliminary Issue, Timing of Complaint

The Complainant noted through the investigation interview that she had initially chosen to ignore the situation beyond the text messages and emails of January 27, 2018. As a person undergoing treatment for a stage 4 cancer diagnosis, she claimed that she wanted to avoid the negativity of the situation at hand and move on with her life. She also noted that friends and others had been taking up the matter on her behalf, albeit of their own accord. She no longer wished to engage in it personally.

However, as time progressed, the Complainant noted a rift in the music community. She reported that several musical acts that had formerly worked with her open mic business were now avoiding her events. She claimed that some musicians spoke of being approached by DC and talked into taking sides against her over the Ward 5 issue.

The Complainant noted that in February and early March, Councillor Cilevitz chose to copy her (the Complainant) on the reply emails to the Ward 5 resident. Then again, on May 27, Councillor Cilevitz reopened the matter when she emailed the Complainant's business partner and friend GS regarding the Ward 5 issue. The Complainant was made aware of the email by GS and felt by that point the matter would not go away as she had hoped, and that Councillor Cilevitz would continue discussing and interfering in her affairs.

The Complainant was particularly aggrieved by Councillor Cilevitz's repeated references in texts and emails, including the May 27 email to GS, to her own efforts in regard to the aforementioned cancer benefit. The Complainant stated her feeling that Councillor Cilevitz had "weaponized" her involvement in the cancer benefit and was using it as leverage to achieve her own ends in the ongoing dispute. For that reason, the Complainant included the email to GS as

part of her initial complaint filings. It was, to use the colloquial term, *the last straw* in what the Complainant views as a continuous chain of troubling communications from Councillor Cilevitz dating back to at least December 2017.

Preliminary Issue: Lack of Confidentiality

Councillor Cilevitz submitted that:

"Pursuant to the provisions of the Code, and the Municipal Act, 2001, section 223.5, all complaints before the Integrity Commissioner are supposed to be strictly confidential. The way in which this complaint has come forward has breached my statutory rights."

Councillor Cilevitz claims that the motion specifically named her in a manner that broke the confidentiality of the Integrity Commissioner process, and therefore the Complaint should be dismissed.

An additional confidentiality concern was raised by Councillor Cilevitz following several Facebook posts by Mr. Bergman made during the course of this investigation, in which he threatened to release emails in his possession. Councillor Cilevitz questioned the timing of these posts in relation to the investigation and the dates of the in-person interviews scheduled by the Integrity Commissioner's office with the Complainant and Councillor Cilevitz.

Complainant's Position re: Preliminary Issue, Confidentiality

The Complainant made no specific comment regarding confidentiality and the July 3, 2018 Committee of the Whole motion, but it is noted that she spoke in favour of the motion when it was debated. As for what is in the public domain, the Complainant stated that she did not contact media, but she did give interviews when contacted by them. The Complainant acknowledged the confidentiality of the Integrity Commissioner investigative process.

Preliminary Issue: Complaint not Made in Good Faith

Councillor Cilevitz argues the complaint should be dismissed because it is vexatious and/or not made in good faith. She noted the following reasons:

"(i) Councillor Muench [who introduced the motion] instigated the filing of the Complaint as a retaliation and reprisal for my successful Code complaint against him;"

"(ii) The purpose of the Complaint is electoral expediency or gain. It was crafted, politicized and communicated and may be, and seen to be, wholly political;"

"(iii) The complaint was not filed within six weeks of the events in accordance with 9.0 of the Code and is now being filed on the eve of an election to smear or

damage my reputation, which has already occurred even if the complaint is rejected;"

"(iv) The Code should protect Members from the unscrupulous special interest groups and political rivals looking to get at them."

Complainant's Position re: Preliminary Issue, Complaint not Made in Good Faith

The Complainant expressly rejected the notion that her complaint is politically motivated. She denied that she was being pushed into making the complaint by others, and she denied working with any political rival of Councillor Cilevitz to use her complaint for political purposes. The Complainant admitted to speaking with the political rival named by Councillor Cilevitz but noted that she operates music events and contributes to the arts and culture community in Richmond Hill, and so should have good relations with all members of Council, and likewise, them with her. For her part, the Complainant explained that she submitted the complaint because the matter would not go away. It was being brought to her attention by people in the music community, and Councillor Cilevitz continued to raise it in communications.

Councillor Cilevitz's Response: Not Business, but Personal

Councillor Cilevitz put forth the argument that her communications with the Complainant were conducted as a friend, not as a Councillor, or under what the Code would consider "public relations". She pointed to her long-standing friendship with the Complainant as evidence of why she would approach communications personally rather than as an official business matter.

Complainant's Position re: Not Business, but Personal

The Complainant noted that Councillor Cilevitz used her official Council-issued email to communicate with her regarding the Ward 5 issue. She also noted that Councillor Cilevitz's position regarding the Ward 5 issue is regarding her position on Council, and so those communications cannot be personal in nature.

Councillor Cilevitz's Response: Politically Motivated Smear Campaign

Councillor Cilevitz pointed to a variety of social media posts, information received from an "informant", the engagement of traditional and alternative media, the apparent involvement of political rivals, the forwarding of her email to GS to Mr. Bergman with the subject "Your ace in the hole...", and the timing of the Complaint vis-à-vis these events and in the overall context of the 2018 municipal election as evidence of this complaint being a politically motivated smear campaign.

Complainant's Position re: Politically Motivated Smear Campaign

The Complainant's position regarding the nature of her complaint has already been noted in this report. She denies any political motivation and stands by her complaint as being a legitimate expression of how she personally feels following the communications to and about her from Councillor Cilevitz.

Councillor Cilevitz's Response re: Apology

Councillor Cilevitz pointed out that she offered an apology to the Complainant on social media, and also published it on her Councillor website. She also noted in her response regarding her Ward 5 issue communications (texts, email and voice-mail): "Unquestionably, upon reflection, these communications were aggressive and an error in judgment." She states she has offered to meet with the Complainant to resolve the issue, and that she takes responsibility for the error in judgment regarding the Ward 5 issue communications. She advised that she did not attempt to contact the Complainant directly with an apology because she did not want to be accused any further of "bullying and/or intimidating a person with stage 4 cancer".

Complainant's Position re: Apology

The Complainant acknowledged that Councillor Cilevitz made a public statement approximating an apology, but it was not actually made to her, and not in a way she felt was genuine. She stated that she was blocked from the Facebook page where the apology was published.

Additional Confidentiality Issue

On September 11, 2018, Councillor Cilevitz's counsel wrote an email to advise that a third party had disclosed in an affidavit related to a court process outside of this investigation that a copy of this complaint had been provided to him. Counsel for Councillor Cilevitz submitted that: "This is a serious breach, and it supports my client's response regarding the intent of the complaint."

Analysis of Party Positions

Preliminary Issue: Time Limitation

Councillor Cilevitz, as noted, has raised the issue of the time limitation provisions in the Code, stating that the complaint is not compliant with those provisions. For several reasons, I disagree with her position.

First, Council has authority over its own Code. In this instance, Council voted to waive certain provisions of its Code in order for this matter to be investigated and reported upon by the Integrity Commissioner. It is Council's right to do so. That right has not been challenged or overturned in court.

Second, the Complainant listed the email to GS of May 27, 2018 on her

Complaint form, and during the investigation interview, she explained her position that the email, though sent to her friend and business partner and not to her directly, continued to press the Ward 5 issue, and concerned her and her affairs. This email does not exist in a vacuum. I find the Complainant's position that the email to GS perpetuated the chain of troubling communications dating back to at least January 2018 to be persuasive.

Alternatively, as noted above, even if I did not find the May 27, 2018 email to have a direct link to the previous Ward 5 communications, effectively reopening them as part a broader history of negative interactions, Council Bylaw 95-18 authorizes and indeed directs this office to investigate the Complaint as initiated.

Preliminary Issue: Lack of Confidentiality

This matter has been well publicized in the media and through social media. That Councillor Cilevitz was named in the motion and confirmatory bylaw is a direct result of the wide publicity the matter had already attracted. Bylaw 95-18 itself confirms that the media and public attention was a reason the matter ought to be investigated. I do not see a realistic alternative for how Council could address this matter of public interest other than to reference the subject of the complaint, Councillor Cilevitz.

Preliminary Issue: Complaint not Made in Good Faith

Councillor Cilevitz put forward the position that the complaint was not made in good faith, or that it is vexatious.

She noted that Councillor Muench, who introduced the motion that became Bylaw 95-18, is a political rival against whom Councillor Cilevitz had a recent successful *Code* complaint. Be that as it may, it was Council that debated the motion and passed the confirmatory Bylaw. Councillor Cilevitz has not put forward the argument that all of Council has a vendetta against her. Councillor Muench may well have sought revenge, but Council passed the Bylaw, not Councillor Muench on his own. For that reason, I do not find Councillor Cilevitz's argument persuasive.

Councillor Cilevitz is of the position that the purpose of the complaint is "political expediency". I agree that the issue may be politically damaging, particularly in an election year. That may even have been the intent of the complaint, in whole or in part, though it is noted that the Complainant denies having political motives and has put forward a persuasive argument as to her rationale for filing the complaint. In my view, this complaint should be therefore judged on its substance and merits.

Councillor Cilevitz argued that the Code should offer protection to Councillors from "...unscrupulous special interest groups and political rivals looking to get at them". Again, I note that Council - which is neither a "political rival" nor a "special

interest group" - approved and passed Bylaw 95-18. I further note, again, that this complaint should stand or fall on its substance and merits.

Not Business, but Personal

Councillor Cilevitz claimed that her communications with the Complainant were in the context of their personal relationship, and not her position as a Councillor. I do not agree. Though the parties were certainly friends at one time, and Councillor Cilevitz offered ample evidence that she had genuine affection for the Complainant, which I accept, I cannot accept that the Ward 5 communications were personal in nature. First, the issue was not personal, but based on Councillor Cilevitz's belief that she alone had a right to use the term "Ward 5" as the Ward 5 Councillor. To that end, she spoke of protecting her constituents and her position relative to her oath of office. Councillor Cilevitz emailed the Complainant from her Town-issued email address. She gave a warning and threatened legal action over the use of the term Ward 5. This is clearly a case of a Councillor using her position of authority in respect of a matter that is political, not personal.

Politically Motivated Smear Campaign

I have already dealt with this issue. As noted, I find the complaint should stand or fall on its own merits.

Apology

I acknowledge that Councillor Cilevitz has offered an apology, which the Complainant has rejected. Councillor Cilevitz claimed that she did not offer the apology directly, but made it openly in a public manner, in writing, as she did not want to send any further direct communications to the Complainant. For her part, the Complainant views the apology as inadequate. I take no position on this, and it has no bearing on my findings.

Additional Confidentiality Issue

I am disturbed by reports of the complaint being shared with a friend of the Complainant contrary to the rules of the Integrity Commissioner process. The confidentiality provisions exist to protect the identities of all parties involved while an investigation unfolds, which helps to ensure a fair process for all sides. This violation has been reviewed, and the Office of the Integrity Commissioner does not conclude that this breach is fatal to the complaint. It is a fact that this matter is already well known in the public domain. Its disclosure in this instance has not prejudiced Councillor Cilevitz or her defence relative to this Complaint. Nevertheless, breaching confidentiality contrary to instructions from the Office of the Integrity Commissioner is a serious matter, and the Complainant is admonished for doing so.

Additional Issue: Hacking of Councillor Cilevitz

I note that it was brought to my attention by her lawyer that Councillor Cilevitz has been the subject of criticism and “vicious personal attacks” in the online world, including by parties connected to this issue, as evidenced by some social media posts shared with our Office. More concerning, however, was the claim and evidence presented that Councillor Cilevitz’s email and social media had been hacked, and her Facebook photographs replaced with a photo bearing the word “BULLY”. A threatening message was also left as a post by Councillor Cilevitz on her own Facebook page, but was apparently written by the hacker who seemingly gained access to her account. That individuals connected to this issue, and in the world at large, may have strong opinions on this matter, given its media exposure, is not surprising. The online world can be unsavory at times. I am not without empathy for Councillor Cilevitz’s concerns in this regard. However, neither the online insults nor the hacking incident have any bearing upon my findings.

Response to Preliminary Report

In response to a draft of this report provided to both parties for comment in advance of its finalization and submission to Council pursuant to the *Code*, each of the parties provided feedback for consideration. The feedback received, and our response thereto, follows below:

Length of Friendship

The Complainant stated that Councillor Cilevitz seemed to have exaggerated the length of time they had been friends, and stated it was closer to five years, not eight. This is not material to the complaint, but it is noted.

Time Limitation Revisited

Councillor Cilevitz again raised the issue of the time limitation, arguing, "The by-law referring the complaint did not purport to waive any Code provision, expressly, or by implication, such that the timing limitation was alive and well." She noted that the Complainant had "chosen to do nothing" immediately following the initial Ward 5 emails and voice-mail, that there "was no direct contact after March 3" (as found in this report), and as such, argued that "[t]he matter could not be reopened on May 27, 2018 unless the Councillor contacted the complainant and repeated the offensive conduct which did not happen given [this report's] finding", further stating that "A strictly confidential May 27, 2018 email to a third party (which was released to another third party in breach of the express confidence attached to it), was not a repetition of the earlier direct communications between the Councillor and the complainant and could not, under any circumstances constitute 'abuse, bullying or intimidation' of the complainant."

For several reasons, already noted in this report, I disagree. I will discuss those reasons again for greater clarity.

The instructions received from Council pursuant to Bylaw 95-18 were for the complaint against Councillor Cilevitz to be referred to this office "for a report and recommendation". In the recitals to the Bylaw, specific activities, which predate the ordinary six-week period prior to the filing of the complaint, were referenced as part of the rationale for opening the investigation. It is the position of this Office that, in order to make a report and recommendation(s), the matter, implicitly, could not be dismissed summarily for reasons of a time limitation. An investigation was required.

Additionally, or in the alternative, though it is acknowledged that the May 27, 2018 "strictly confidential" email to GS was brought to the attention of the Complainant against the wishes of Councillor Cilevitz, it must be noted that GS is a friend and business partner of the Complainant, and as such, is a material person in her life, both within and outside of the context of this complaint. The content of the May 27 email (a) made reference to the joint business affairs of the Complainant and the recipient ("...under the flag of YROM..."); (b) suggested that the Complainant may be being manipulated by third-party friends and business associates or others ("...has [the Complainant] been swept up into something she does not fully understand or is she someone, and I find this very hard to believe, who would gladly see me and my life thrown under an ugly bus..."); and (c) implied that she lacked certain moral character and/or was being ungrateful towards Councillor Cilevitz ("I attempted to solicit her help and I got none," and "...the same woman who has done nothing to help me after I paid for the event to help raise over \$30K for her, a woman I once considered a friend. And this is what I get? For what?").

Business partners and/or associates cannot be expected to conceal information from one another simply because an outside party requests (or demands) secrecy in unsolicited correspondence. The content of this email brought the earlier actions of Councillor Cilevitz back to the fore in the mind of the Complainant. The May 27 email is thus intrinsically connected to the previous Ward 5 correspondence and voice-mail, thereby reopening them as matters at issue in this investigation.

Confidentiality Revisited

Councillor Cilevitz again raised the issue of confidentiality, specifically the findings in this report that the Complainant shared the complaint with a third party, arguing, "If the statutory and Code confidentiality provisions are to be meaningful and respected, then significant sanctions must flow from such egregious behavior which are consistent with the seriousness of the breach. On this ground alone, as a deterrent to future breaches, the complaint should be dismissed or, alternatively, there should be no sanction."

As already noted, the breach in this instance was not found to have prejudiced Councillor Cilevitz in any notable way. The matter was in the public domain and the intimate details already known among at least several people within the Complainant's circle of friends and business associates. Moreover, this matter is before the Integrity Commissioner because Richmond Hill Council ordered the investigation by the passing of Bylaw 95-18 following public delegations regarding same.

These are unusual circumstances. In different (i.e. more typical) circumstances, a respondent may well suffer prejudice or injury by such a breach of confidentiality. This could potentially give rise to consideration of "significant sanctions", but not so in this case given its unique features.

Dismissal of Previous Complaint Revisited

Councillor Cilevitz referenced an earlier complaint which was dismissed without investigation by the Town's prior Integrity Commissioner, arguing: "The first complaint was dismissed on the ground that it had no basis or was invalid. An explanation is needed as res judicata and issue estoppel should apply to all complaints such that a Councillor should never have to deal with any complaint twice."

It is noted that the prior complaint referenced herein was not raised by the Complainant at all, but by a third-party Richmond Hill resident, who was acquainted with the Complainant through mutual friends and the local music community, and who, becoming aware of the Ward 5 communications of Councillor Cilevitz, chose to act, not at the direction of the Complainant, but of his own accord. Additionally, and as previously noted, this matter was referred to the Integrity Commissioner for a report and recommendation(s) by Council, which passed Bylaw 95-18 in full knowledge of a previous complaint having been lodged and summarily dismissed.

Motives Behind the Complaint Revisited

Councillor Cilevitz argued that Councillor Muench was the "driver and champion of [this] complaint," in an act of vengeance for a prior successful Integrity Commissioner complaint made against him by Councillor Cilevitz.

It is noted that Councillor Muench brought forward the motion which resulted in Bylaw 95-18. It is further noted that he has been seen in public at various social functions in the company of the Complainant and her friends, and that the Complainant herself has acknowledged being in his company, though she notes, she is also in the company of other politicians and community leaders from time to time given the nature of her business.

Councillor Cilevitz additionally pointed out that Councillor Muench donated a substantial sum to Mr. Bergman's legal fund through a "GoFundMe" account. Mr.

Bergman is being sued by Councillor Cilevitz regarding other circumstances related to the Ward 5 issue.

An ancient proverb states: "The enemy of my enemy is my friend."

I do not have difficulty conceiving of the notion that Councillor Muench has chosen to involve himself in this matter with the Complainant and/or her friends because he has a personal or political conflict with Councillor Cilevitz. He may have even encouraged the Complainant to bring forth the complaint, though the Complainant denies this. Even if true, this does not elevate him to the status of "driver and champion" of the complaint, nor does it reduce the Complainant to either the role of unwitting pawn or willing conspirator in service of Councillor Muench's private agenda. The Complainant is not without agency and her complaint is not without merit. For her part, she explained adequately the rationale for bringing this Complaint when she did; namely, that she learned the previous third-party complaint had been dismissed, and further felt the May 27 email to her colleague GS was a continuation of previous behaviour she felt was abusive towards her. With the support and encouragement of her friends, she brought forward the Complaint that is now is before us.

Police Complaint

Councillor Cilevitz noted that "the complainant and others attempted to have [her] charged with criminal harassment just days after filing the second complaint" which the Councillor views as "completely unwarranted and defamatory". She argues this is reason for the complaint to be dismissed.

It is true that a complaint was brought to police and dismissed. I note, however, that it was not brought by the Complainant but by a third-party friend of the Complainant who is himself embroiled in this dispute. The police complaint may well have been unwarranted and defamatory as alleged by Councillor Cilevitz. I make no finding in this regard as I do not find a police complaint by a third party to have any bearing on the legitimacy of this complaint.

Conclusion

Section 7 of the Code states "All members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation..."

It is clear that Councillor Cilevitz engaged in communications with the Complainant that were ill-advised and inappropriate. The initial barrage of text messages regarding Mr. Bergman's comments, laying responsibility at the feet of the Complainant and continuing to press her for information even after the Complainant protested the unfairness of these messages – even interspersed as they were with tokens of friendship and affection – takes on the flavor of bullying.

There is also no question that the Ward 5 email and voice-mail were, as Councillor Cilevitz acknowledges, "aggressive" and an "error in judgment". I would add that I find them to be bullying in tone and intended to intimidate. Councillor Cilevitz then, inappropriately in my view, continued to involve the Complainant in communications, directly and indirectly, regarding the Ward 5 issue up until May 27, 2018. Therefore, not only was Councillor Cilevitz incorrect on the facts when she claimed exclusive domain over the use of the term "Ward 5", she also communicated her inaccurate stance inappropriately with a member of the public and threatened legal action over same from a position of authority as a public figure. Later, she unnecessarily added the Complainant in reply-emails to a third party. Finally, in an apparent attempt at self-preservation, she wrote an email to the Complainant's friend and business associate, casting aspersions about the Complainant therein, reopening the wounds from their earlier interactions.

Based on the foregoing, I find Councillor Karen Cilevitz to be in violation of Section 7 of the Code. I therefore recommend that Council issue a reprimand to Councillor Cilevitz pursuant to Section 9.7 of the Code.

I thank the parties for the time and attention they gave to this investigation. I appreciate their cooperation and feedback on this report.

All of which is respectfully submitted.

Yours truly,
ADR CHAMBERS INC.

A handwritten signature in black ink, appearing to read "Michael L. Maynard". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael L. Maynard
Office of the Integrity Commissioner