

**City of Richmond Hill
Formal Code of Conduct Complaint #01191023 Investigation Report of
Committee of Adjustment Member John Li**

I. Summary

This report presents the findings of my investigation under City of Richmond Hill Council Code of Conduct for Local Boards (the “Code”) relating to the conduct of Committee of Adjustment Member John Li (the “Respondent”) in connection with two complaints received on October 19, 2023 and October 20, 2023 respectively, which I consolidated into one complaint due to the overlapping subject matter (the “Complaint”). Both complaints relate to the behaviour of the Respondent at COA meetings of the Committee of Adjustment (the “COA”).

The Complaint relates to conduct of the Respondent alleged to be contrary to his obligations to treat others with respect, in particular towards staff of the COA, including sending emails to Mayor and Members of Council that called into disrepute the professionalism of the COA Secretary-Treasurer, the Assistant Secretary-Treasurer, and other City staff. The Complaint alleges that the Respondent often submitted PowerPoint presentations at the COA meetings, omitting to share copies with other COA Members prior to the meetings and on at least one occasion the Respondent accused COA staff (and thus the Secretary-Treasurer) of “leaking” his drawing that he sent to her to others that would be at the meeting, prior to the meeting.

Following my investigation of the Complaint, I have determined that it raised three issues:

1. an allegation that the Respondent engaged in workplace harassment of the COA Secretary-Treasurer and the Assistant Secretary-Treasurer contrary to Rules 10.1, 10.2, 10.3 of the Code (Respect in the Workplace);
2. an allegation that the Respondent undertook actions that had the effect of intimidating, undermining and disrespecting staff through public criticism and casting aspersions on their professional competence and credibility contrary to Rules 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 7.7 of the Code (Council, Staff and Public Relations). During the course of my review, I considered whether the conduct met the definitions of Code-based Harassment, Workplace Harassment, and Poisoned Work Environment.
3. an allegation that the Respondent did not adhere to the procedures and policies of the COA contrary to Rules 9.1, 9.2 and 9.3 of the Code (Adherence to Richmond Hill By-laws, Policies and Procedures).

The Complaint alleged additional Rule violations. During my initial classification of the Complaint, I determined that the general rules at Rules 4.2(a), (b), 4.3(a) and (b) of the Code need not be considered where there are more specific, applicable substantive rules for which the Integrity Commissioner will conduct a review. In addition, Rule 11 of the Code sets out provisions with respect to Code compliance and reprisals. I have determined that Rules 7.7 (Member Use of Social Media) and 11 have not been engaged by the allegations in the Complaint.

Conclusions

With regard to Issue #1, I find that the actions of the Respondent constitute workplace harassment contrary to Rule 10.2 of the Code, which prohibits such harassment. The Respondent's conduct in distributing emails in which he criticizes staff to the Mayor and Members of Council, his aggressive behaviour and comments towards the COA Secretary-Treasurer and other staff, constituted engaging in a course of vexatious comment against a worker in the workplace that was known or ought reasonably to be known to be unwelcome. This vexatious comment and conduct created and contributed to an intimidating work environment for the COA Secretary-Treasurer and Assistant Secretary-Treasurer and other employees. This was contrary to the Respondent's obligations under the Code and under the City's RWP.

On Issue #2, I find that the Respondent's conduct interfered with the COA staff's professional role in a manner that breached Rules 7.1, 7.4, 7.5, and 7.6 of the Code. The Respondent knew and should have known that his conduct was unwelcome to the COA Secretary-Treasurer and Assistant Secretary-Treasurer. It was an attempt to undermine the professional authority of the staff and improperly insert himself into the performance of staffs' duties. The Respondent's comments to and about the Secretary-Treasurer and Assistant Secretary-Treasurer were not respectful and did not respect the administrative structure regarding directing performance related concerns through appropriate supervisory staff channels.

On Issue #3, I find that the Respondent did not conduct himself with decorum at the COA meetings in accordance with the provisions of the Procedure By-law, in contravention of Rules 9.1 and 9.2 of the Code.

In the balance of the report, I discuss my investigative process, my assessment of whether there has been a contravention of the Code by the Respondent, my findings on the allegations in the complaint, my reasons for those findings, and my recommendations with respect to the appropriate sanction.

II. The Allegations in the Complaint

On October 19, 2023 and October 20, 2023, I received two complaints against Committee of Adjustment Member John Li (the "Respondent"). Each complaint was submitted on the City's Complaint Form/Affidavit, which was properly sworn and witnessed.

Complaint #1 dated October 19, 2023 stated that the Respondent "has shown...a level of inappropriate, unprofessional and aggressive behaviour. It alleged a pattern of disrespect by Mr. Li since the beginning of in-person meetings of the Committee of Adjustment in January 17, 2023.

The complaint alleged that the Respondent contravened several enumerated Rules. In addition, in submitting that the Respondent continued the harassment after the Code complaint had been filed, the Member is alleged to have acted in reprisal against the complainant or other witnesses. The Richmond Hill Council and Local Board Member Code of Conduct Complaint Protocol (the "Complaint Protocol") states that "...the Integrity Commissioner shall not have any obligation to disclose, the identity of the complainant...". The details provided to the Respondent in the Notice of Complaint were sufficient for the Respondent to know that certain staff had cooperated/spoken with the Integrity Commissioner and thus his actions following the receipt of

the Complaint did trigger the reprisal provision of the Code.

Complaint #2 was filed by one Member of the Committee of Adjustment, on behalf of all Members of the Committee (except the Respondent). The complaint stated “[t]he catalyst for this letter occurred at our most recent Committee of Adjustment meeting on September 28, 2023. Where the present members of the committee [named Members] felt it prudent to bring to your attention the conduct of colleague Member John Li. Throughout the COA meeting, Mr. Li’s conduct toward our COA Secretary-Treasurer and Assistant Secretary-Treasurer as well as City staff was in our opinion inappropriate, unprofessional and aggressive.”

I conducted an initial classification to determine if the matters set out in the complaints were, on their face, complaints with respect to non-compliance with the Code. I determined that there were on their face and that the Complaint triggered investigation of Rules 7.1-7.6, 9.1-9.3, and 10.1-10.3 of the Code. In addition, I determined that the allegations in Complaint #2 were contained within Complaint #1, although Complaint #1 set out additional allegations. Thus, I consolidated Complaint #1 and #2 into one investigation and treated them as a single Complaint.

I subsequently spoke with the Complainants on December 7th and 14, 2023, respectively and provided them with an opportunity to explain the content of the Complaint Affidavit and the supporting documentation. I received transcripts and audio recordings of COA meetings, emails, PowerPoint presentations and other documents from the Complainants.

After sending notice of the complaint to the Respondent, I interviewed the Complainants and several witnesses with knowledge of the underlying behaviour alleged in the complaint, by virtual meetings. In the course of my investigation, the Complainants and some witnesses provided written documents which they said evidenced a course of vexatious comment at COA meetings and in emails dating back to January 17, 2023. I relied on this supporting documentation in assessing credibility.

Preliminary Matters

I considered whether the complaint was frivolous or vexatious. In the Respondent’s Response to the Complaint, he states that the Complaint is an unfounded attempt to suppress my dissent, undermining democratic values and public interest. In my view, the complaint is neither frivolous, vexatious nor an act of reprisal. The issues raised in the complaint are important and significant: they are not a waste of my time. The Complaint in my view, has some factual and legal basis. Moreover, it was not clear that the aim of the complaint is to silence the Respondent. I determined that Complaint required further investigation.

I find that it was not unreasonable for the Complainants to raise the issues that the Respondent’s conduct was intimidating, disrespectful and undermining staff, in particular, towards the Secretary-Treasurer and the Assistant Secretary-Treasurer. The Respondent was highly critical of the COA decisions and the staff’s minute-keeping. He believed that the City Planners and other staff who received and approved information from Applicants, should have been questioning height and set back allowances more aggressively than they did. The Respondent believed that the Secretary-Treasurer should be reflecting the tone of the Applicant’s response to his questions. The Respondent’s PowerPoint presentations that he presented without previously circulating to his fellow COA Members, clearly set out his disagreement with Planning staff. His aggressive questioning of Applicants verged on badgering to the point that at the September 7th meeting, for example, after answering all of the

Respondent's questions and confirming that she had complied with all of the requests of City Planners, the Applicant's representative asked why the Respondent was "giving her a hard time".

Six-Month Period

The Code provides that conduct must be complained about within a six-month timeframe after the alleged misconduct occurs. In this case, the alleged pattern of behaviour began in January 2023, more than six months before the filing of the Complaint in October 2023. In Ontario human rights jurisprudence, a pattern consists of incidents of a similar nature or character.¹ I adopt that description and apply it here. It is not uncommon for complaints alleging a pattern of harassment to be made more than six months after the initial events of harassment. Since the last incidents in the alleged pattern are timely, I have considered all of the events in determining whether there was a pattern of harassment. In this case, I have not engaged in a review of the January 2023 conduct against each provision of the Code, instead focusing on the conduct that occurred within six-months of the complaints, primarily in September and October 2023.

Background on the COA

Every 4 years, a new Committee of Adjustment is appointed. The COA is composed of five members, appointed by the Council of the City of Richmond Hill. The COA is authorized by the *Ontario Planning Act* to grant minor variances from the provisions of the Zoning By-law, to permit extensions, enlargements or variations of existing legal non-conforming uses and give consent to an owner of land who wishes to sell, convey or transfer an interest "part" of their land (i.e. creation of a new lot, lot addition, easement).

The COA Secretary-Treasurer is responsible for providing training to the COA Members. COA Secretary-Treasurers, who are accredited Members of the Ontario Association of Committees of Adjustment and Consent Authorities ("OACA"), conduct training for COA Members who are locally appointed residents, who have the responsibility to provide fair and sensitive adjudication on applications for relief from municipal Zoning By-laws or applications for various types of consents.

The COA Secretary-Treasurer delivered training on the COA rules on January 11, 2023. Members were advised that they do not meet with staff but rather they approve, deny or defer the application before Committee.

Content of the January 11, 2023 Orientation

In the January 11, 2023 PowerPoint presentation delivered as part of the orientation for COA Members, the following was included:

- The principles of Natural Justice apply to quasi-judicial bodies, and include:
 - People have a right to be heard. They must have a fair opportunity to present their case whenever their interests might be adversely affected by a decision;
 - The ruling must be made by someone free of bias;
 - The judgment must be based on evidence, not on speculation or suspicion, and

¹ *Visic v. Ontario Human Rights Commission*, 2008 CanLII 20993 (Ont. Div. Ct.), at para. 45, citing *Manitoba v. Manitoba (Human Rights Commission)*, 1983 CanLII 2967 (Man. C.A.), at para. 19.

-The decision must be communicated in a way that makes clear what evidence was used in making the decision.

- Meetings take place in the Council Chambers, 1st floor, 225 East Beaver Creek Road.

In order for a meeting to take place, a quorum must exist. Section 44(5) of the Planning Act states that when a Committee is composed of three members, two members is quorum and a Committee of more than three members, three is a quorum.

If quorum is not present after 30 minutes the meeting will dissolve.

- When an applicant applies for a minor variance or consent, through the application form, they grant permission to the members of the Committee, City staff and their agents to enter upon the subject lands for inspection purposes.
- During the inspection, Members are to avoid any discussion with the owners, neighbours or other members of the public. If approached, advise them that you cannot discuss the application prior to the public meeting and encourage them to make a presentation to the Committee at the meeting. Alternatively they can contact the Secretary-Treasurer to submit written correspondence.

Discussing an application outside of the public forum may create a bias, either actual or perceived.

In terms of process, the City addresses drainage and grading at the building permit stage and through the site plan approval process. Applicants will have to provide grading plans prepared by a professional engineer which must be reviewed and approved by the City prior to the issuance of a building permit. Members of the public should discuss these concerns with City staff where appropriate.

Anyone who contravenes any provision of the Tree Preservation By-law is guilty of an offence and subject to penalties.

As part of the application review process, a tree inventory, if required, is submitted by the applicant. Parks Planning staff will provide comments to the Committee regarding tree protection.

Staff Reports

Prior to the meeting, the Committee will be provided with a staff report which contains an overview of the application and a summary of all comments and recommendations received from City staff and outside agencies (i.e. TRCA).

It is important to review these reports prior to the meeting as they form part of the "evidence". If any questions arise, Committee members may contact the Secretary-Treasurer to provide clarification or request additional information.

Staff Reports are emailed electronically on the Friday prior to the Committee of Adjustment meeting.

Under ss. 45(8) and (8.1) of the *Planning Act*, the majority of COA members present at a hearing must sign a decision, including written reasons for a decision, on each application. In

the City of Richmond Hill, if a member of the COA does not agree with the majority decision, staff stamp "Oppose" on the decision above the printed name of the dissenting member. There was no legislation, policy, rules, or other evidence provided to me to establish that the COA must publish a dissenting opinion.

In hearing a matter, the COA relies on documents filed by the applicant, reports from staff and written and oral submissions at the hearing by the applicant and every other person who desires to be heard in favour of or against the application. In accordance with s. 45(10) of the *Planning Act*, minutes and records of an application are to be kept on file with the secretary-treasurer. The COA must comply with the *Act* and with any rules of procedure prescribed. The COA of the City of Richmond Hill has not prescribed any rules of procedure.

In a 2021² decision, the Commissioner explained that an Integrity Commissioner does not have jurisdiction over the correctness of a COA decision or the staff reports submitted to the COA on the matters subject of the application. The Commissioner wrote:

I do not have jurisdiction to consider whether the staff report presented to the Committee of Adjustment contained inaccuracies. In fact, as Integrity Commissioner, I do not have any jurisdiction over the staff or staff reports.

An Integrity Commissioner cannot determine whether the Committee of Adjustment followed the wrong process or made the wrong decision. An Integrity Commissioner cannot determine whether a variance was actually minor. An Integrity Commissioner cannot determine whether the committee's minutes are inaccurate or incomplete. An Integrity Commissioner cannot determine whether someone's questions about a neighbouring property were satisfactorily addressed.

While it is not the Integrity Commissioner's role to determine whether minutes are complete or whether the COA followed the correct process, it is necessary for her to set out the relevant facts in this case, which do relate to the Respondent's statements that, for example, the minutes are incomplete.

III. Rules and Policies Engaged by the Complaint

Issue #1 - Allegations of Workplace Harassment under the Code

Relevant Code Rules:

10.1 Without limiting the generality of Section 7 and Section 9 of the Code, Members shall be governed by Richmond Hill's Respect in the Workplace Policy, and any similar policy or procedure, made pursuant to the Occupational Health and Safety Act and the Human Rights Code.

10.2 Members have a duty to treat members of the public, one another and Staff appropriately and without engaging in workplace harassment, workplace sexual harassment, abusive conduct, discrimination or workplace violence as further set out in the Richmond Hill's Respect in the Workplace Policy.

² Stewart v. Meadows, 2021 ONMIC 17

10.3 Members have a further responsibility to support a workplace within Richmond Hill that is free of workplace harassment, workplace sexual harassment, abusive conduct, discrimination and workplace violence.

Code-based Harassment is defined under the Human Rights Code, as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome based on one or more of the prohibited grounds set out in the Code.

The City of Richmond Hill's Respect in the Workplace Policy ("RWP") applies to Members of Council, appointees, and Members of Local Boards. Workplace Harassment is defined as "(i) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or (ii) workplace sexual harassment".³

Adherence to the Respectful Workplace Policy:

- all parties have a mutual responsibility to ensure that the workplace remains free from harassment and violence and/or threats of violence from all possible sources (including customers, clients, employers, supervisors, workers, strangers and domestic/intimate partners)
- It is the expectation that any public citizens, customers, clients, suppliers, consultants and other visitors to the Township will treat Township employees with respect and dignity and that they do not exercise abusive or aggressive behaviour towards Township employees. Any prohibited behaviour must be reported to their supervisor immediately. Supervisors will take all reasonable steps to stop the unwelcome behavior, which may include issuing trespass notices and/or contacting police.

A Poisoned Work Environment "means a work environment where one or a series of comments or instances of conduct have an adverse impact, including, but not limited to, reduced job satisfaction, impaired job performance, employees leaving their jobs, employees being unable to progress within the Corporation or physical/psychological suffering, on an individual or group of individuals, whether or not the comments or conduct are directed at the individual or group of individuals that are adversely impacted".

Constructive feedback regarding performance or operational directives provided to employees by their supervisors, managers or directors is not considered harassment.

I have determined that the allegations raised in Issue #1 allege a continuing pattern of workplace harassment as defined by the Code.

Usually, harassment is offensive behaviour that is repeated after the respondent knows it is unwelcome. However, harassment may also occur from a serious, single remark or action and need not be directed at a particular individual. A "poisoned work environment" can result from degrading or humiliating comments, behavior or displays of material not directed to a specific individual that create an uncomfortable atmosphere.

³ The Code uses similar phrasing except "worker" replaces "Staff".

Issue #2 – Conduct in contravention of the Respect for the Professionalism and Independence

Rules 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6 of the Code are in place to ensure the respect and independence of municipal staff.

7.1 Members shall accurately communicate the decisions of Committee even if they disagree with the majority decision of Committee, and by doing so affirm the respect and integrity in the decision-making processes of Committee.

7.2 Members shall respect that Staff have an obligation to act impartially, and in accordance with all Richmond Hill policies including the Employee Code of Conduct.

7.3 It is acknowledged that Staff have an obligation to recognize that Members have been duly appointed to Local Boards to serve the residents of Richmond Hill and respect the role of the Local Board.

7.4 Members shall:

(a) acknowledge and respect the fact that Staff work for Richmond Hill as a body corporate and are charge with making recommendations that reflect their professional expertise and corporate objectives;

(b) acknowledge and respect the fact that Staff carry out directions of Committee as a whole and administer the policies of Richmond Hill, and are required to do so without any undue influence from any individual Member or group; and

(c) respect the administrative structure and direct any Staff performance concerns through appropriate supervisory Staff.

7.5 No Member shall:

(a) publicly criticize individual Staff in a way that casts aspersions on their professional competence and credibility;

(b) compel Staff to engage in partisan political activities, or subject Staff to threat(s) or discrimination for refusing to engage in such activities; or

(c) use their authority or influence to threaten, intimidate, or coerce Staff or improperly interfere in the lawful exercise of the duties of Staff.

7.6 The content of any Member's communications, regardless of method of communication, shall be accurate, honest and respectful of other persons, including other Members, Staff and the public.

Adherence to Richmond Hill By-laws, Policies and Procedures

The relevant Rules of the Code that are engaged the allegations in the Complaint are:

9.1 Members shall conduct themselves with decorum at all meetings.

9.2 Members are required to adhere to all other by-laws, policies, procedures and rules (collectively “policies”) that govern the behaviour of Members, including, but not limited to, those policies set out in Appendix A.

9.3 Members are required to endeavour to make themselves aware of any by-laws, policies, and procedures applying to them.

COA Members are required to adhere to the by-laws, policies and procedures of the City of Richmond Hill. Under the *Planning Act*, the policies are either approved by council or approved by someone who has delegated authority from council.

Every municipality has by-laws that govern how planning, construction, and development will be carried out. The purpose of the COA is to review a request for a variance from the standard rules and to seek permission to do something different from the standard set back, for example. It is not standard practice to provide further information to COA Members following the staff reports and studies of subject matter experts.

IV. The Process Leading Up to this Report

A. The Complaint Process

I set out below a summary of the complaint process.

- On October 19th and 20th, 2023, I received the complaints. The Complaint consisted of the complaint form and other documents submitted as supporting documentation.
- After conducting a preliminary classification and review of the documents, on December 1st, I contacted the Complainants acknowledging receipt of the Code complaint and that I had conducted an initial classification review of the complaint and the supporting documentation and that I had decided to open a complaint investigation file.
- On December 7th and 14th, I conducted initial interviews with the Complainants, respectively.
- On December 15, 2023, I provided the Respondent with an outline of the complaint with sufficient detail to allow the Member to understand the complaint against him. In accordance with section 6.16(a) of the Code Complaint Protocol, the Integrity Commissioner shall have no obligation to disclose the identity of the complainant or the identity of any witnesses set out in the complaint or persons that are questioned/interviewed by the Integrity Commissioner.
- On January 8, 2024 I wrote to the Respondent advising that I was given the email address [-----@gmail.com] as his contact information. After not hearing back from him, I sought out whether there was another email address. Being provided an alternate email address, I forwarded the December 15th email to the alternate email of the Respondent. I advised that since he may not have received the previous email, I advised that today's email will be the date of Notice of Complaint and that I require his written reply to the Complaint on or before January 19, 2024. I also sent the Notice of Complaint to the Respondent's home address by UPS.

- On January 19, 2024, I received email correspondence from the Respondent from [-----@gmail.com] advising:

Thank you for the extension granted for responding to the Complaint by January 31st, 2024.

I would like to address the email sent to [-----@gmail.com] on December 15th. Throughout my extensive experience in interacting with various government entities, the consistent use of official government email accounts for formal communications has been a standard and necessary protocol to ensure security and accurate record-keeping. Therefore, the receipt of an official email from a personal Gmail account was not only unexpected but also, in light of the prevalent issue of fraudulent emails, led to it being mistakenly identified as spam and deleted without hesitation.

I remain perplexed about the use of a personal Gmail account for official municipal matters, a practice that significantly deviates from the established norms I've observed in my interactions with government offices.

- On January 31, 2024, I received the Respondent's written reply to the Complaint.
- I interviewed 9 individuals including the 2 Complainants. The Respondent had sufficient opportunity to address the Complaint in writing. I determined that it was not necessary to conduct an interview of him. I did not exercise my summons powers under the *Public Inquiries Act* and all information that I received during interviews and requests for documents were provided voluntarily pursuant to my exercise of the Code Protocol investigation powers. Section 6.16 (c) of the Code Protocol states:

If necessary, after reviewing the submitted materials, the Integrity Commissioner may request further information from the complainant or the Member, speak to anyone, access and examine any other documents or electronic materials and may enter any Richmond Hill work location relevant to the complaint for the purpose of investigation and potential resolution.

In the course of my investigation, I also reviewed public and confidential City documents, the City's Respect in the Workplace policy and other policies, emails, and video and audio recordings.

The Code of Conduct complaint investigation process for the City is prescribed in the Complaint Protocol. In addition, while I am required to maintain secrecy with respect to all matters that come to my knowledge in the course of my duties under Part V.1 of the *Municipal Act*, which deals specifically with accountability and transparency of municipalities, the complaint investigation process and report to Council is a public process, and the Respondent has the right to address the report at Council in open session.

B. The Documentary and Oral Evidence

According to the Complaint, the Respondent sent out an email to the Secretary-Treasurer and all COA Members, with copy to then Director, Development Planning and all Members of Council. The Complainant alleges that it amounted to a vexatious comment against the

Secretary-Treasurer that ought reasonably to be known to be unwelcome. The Complainant alleged that this is part of a pattern of harassment dating back to January 2023.

Early in the term as a new COA, the Respondent wrote to the Secretary-Treasurer requesting that she include publication of his dissenting opinions. [The Secretary-Treasurer] responded on January 26, 2023 stating that [COA staff] had considered his request and would not be publishing his dissenting opinions in the Notice of Decision.

Despite this clear answer, the Respondent continued to correspond in a manner perceived by staff and other Committee members as aggressive and demeaning of staff.

At the end of the in-person meeting with the Secretary-Treasurer and the Respondent on March 23, 2023, the Respondent disagreed with the content of the minutes, challenging the accuracy of them. The Secretary-Treasurer advised the Respondent that the minutes followed a particular format to ensure consistency and a factual description of what was discussed at the COA meeting without commentary or personal opinion and that this had been the established practice for several years. The Respondent insisted on his dissenting opinion being appended to the Notice of Decisions and threatened that if this was not done, he would send a copy of his dissenting views to City Council, the public and the media. The Respondent was the only Member who challenged the way the minutes were drafted and the content.

While the witnesses commented on an ongoing pattern of behaviour, the focus of the complaints and the testimony was the Respondent's conduct during the month of September 2023.

An email dated September 18, 2023 to the Secretary-Treasurer and all Members of the COA, with copy to all Members of Council, having the Subject line – dissenting Opinion for Applications #....., stated:

I am writing to express my disagreement with the proposed decisions in application nos.[...]. I hereby request that my Dissenting Opinion, detailed below and also attached separately, be included in the published decisions per section 45(8.2) of the Planning Act. It is my legal right to provide a formal dissent with my reasons, which may differ from those of the majority.

The Planning Act section 45(10) requires the decision to be released within ten days. With the hearing on Sept. 7, 2023, the decision is due today. Since my dissent complies with section 45(8.1), it must be published. It is concerning to note that my past dissenting opinions have consistently been disregarded.

I hereby assert my legal right to have my dissenting opinion included in the published decisions. Kindly confirm within the next three days that my dissent has been incorporated. Should there be another declination, I respectfully request that you provide an explanation of the grounds of the refusal. **If this matter remains unaddressed, I am prepared to share my dissent with the residents of Richmond Hill and the wider public, emphasizing the need to rectify certain operational concerns within the COA.**

The Respondent sent an email dated September 28, 2023, to the Secretary-Treasurer, Mayor, Gus Galanis, and some Members of Council, with Subject line – Request for Revision and Classification on COA Minutes, stated:

I kindly request a revision to the sections of the COA meeting minutes dated September 7, 2023, pertaining to Items C, D, and E of the Minor Variance Application for 30 Scott Drive. This revision aims to more accurately reflect the discussions that took place during the meeting. It seems the current version of the minutes may be unduly favorable to the applicant. Enclosed, please find corrections and additions, marked in blue text, to the minutes for 30 Scott Drive. If there are disagreements regarding the comment, I suggest we upload the meeting's audio recording to a public drive for transparent public assessment.

I received evidence that the Respondent's conduct of repeatedly posing the same questions to the Secretary-Treasurer in an aggressive way and suggesting and calling into disrepute how she fulfilled her professional duties had taken a significant toll on the Secretary-Treasurer, Assistant Secretary-Treasurer and some City staff that attend COA meetings. The Respondent's conduct and continued aggressive comments put the COA staff in a position of having to defend themselves against what they believed to be, unfounded accusations. Witness statements set out that the Respondent accused the Secretary-Treasurer of "leaking" his PowerPoint presentations to the parties to the application in a way that suggested the Secretary-Treasurer should not have given copies to anyone ahead of the hearing. The Complainant submits that the Respondent acted in an aggressive and demeaning manner towards the Secretary-Treasurer, admonishing her during the COA meeting, for "leaking" his PowerPoint submissions. In particular, the Complaint sets out that "on eight different occasions the Respondent has demanded that his dissenting opinion be included in the Committee of Adjustment's Notice of Decisions, even though there was no decision by the COA to direct that this be done.

Witnesses testified that the Secretary-Treasurer left several COA meetings, in particular the September 7th and 28th meetings, and expressed "feeling bullied, publicly humiliated and belittled" by the Respondent, who "rendered [her] to tears at the September 28th COA meeting in front of committee members, as well as members of the community who were in attendance. The Complaint alleged that the Respondent engaged in a pattern of conduct from January 2023, culminating in his conduct on September 28th, which impugned the professional reputation of the Secretary-Treasurer before the other COA Members, staff and members of the community in attendance at meetings.

The Complainant gives as one of the many examples of the significant and harmful effects of the Respondent's behaviour, the fact that at the September 7, 2023 COA meeting, the Respondent posed questions to the applicant's representative inquiring about what measures they had taken to protect trees on the lot. The Applicant's representative confirmed that they had obtained a tree report and had complied with all the tree regulations and pointed out that this information was all set out in the City's Planning staff report. The Respondent insisted that he did not see any special measures being taken to protect the trees, even though the staff report and staff advised that all the requisite reports were requested from the Applicant and were submitted, reviewed and approved. The Respondent had delivered a PowerPoint Presentation in which he referred to the need to protect the trees, despite the issue having been addressed both by the Applicant and City staff. The Applicant's representative responded that they had hired an arborist who had prepared a professional report and that this was submitted

to the City's Parks department to their satisfaction. When discussing the September 7th minutes at the September 28th COA meeting, the Respondent aggressively questioned why the Secretary-Treasurer did not include the "tone" of the applicant's voice in the minutes. When the Secretary-Treasurer responded to the Respondent's question by advising that the COA may "want to be careful about writing exactly informing the tone of what people are saying" and that the COA "should keep it factual, and not to say that somebody was giving you a hard time as the City needs to remain diplomatic and just factual", the Respondent continued in an aggressive tone in insisting that he wanted the minutes changed to reflect details about tone and the applicant's representative asking why he was giving them a hard time.

Another example referred to in evidence is the Respondent's conduct at the September 28th, 2023 evening meeting. During "Other Business", the Chair introduced the item of the approval of the minutes of the September 7th meeting. When no comments came from Members, a motion was moved to approve the minutes of the previous meeting. The Respondent stated that he had submitted a correction to the meeting minutes in the afternoon. The Committee Members agreed that the Secretary-Treasurer had forwarded the Respondent's correction to all Members. The Respondent continued to insist that the Applicant's representative had not explained their relationship to the applicant, even though the minutes reflected that she had. The Acting Chairman explained to the Respondent that the minutes had always contained a section entitled "representation". The Acting Chairman explained to the Respondent that if he wanted to change the format of the section entitled representation, he would require an internal approval. The Secretary-Treasurer explained that her minute-taking was carried out with a view to ensuring consistency "because if we have twenty applications on the agenda, we do not want to be going in with a wide range of verbiage in how they explain the applicant – it is very general and then we continue into more detail".

The Respondent then said:

Why do we need this sentence? Why do we not delete it? What is the value? No value at all. You just need an agent's name. No means to keep this one. I understand you want to make your job easy, but I want to reflect facts.

After the conversation continued, the Respondent continued in an accusatory tone and said:

We have a lot of room for improvement, I think since I became a member with field time, for example, the information we give the stakeholders, especially neighbours, are only three pages and no drawing they do not know what is happening at all. I want to know why we try to block the information so those people will be directly affected by those developments. They do not even know where the windows are and it is three storeys. That is the way we treat our Richmond Hill residents. Basically, we have lots of information to give our residents and stakeholders, but we do not. If you have an objection, go to the Town of Markham website, and take a look how their Committee of Adjustment operates, how their documents are documented.

The Acting Chairman then interjected and said "If I can interject for just a minute [Respondent's name], we do need to continue. We do need to take down the aggression level. I look at it this way I am here to adjudicate consent and minor variance applications. I am not here to start processing how the city procedurally and operationally handles this. That is not the role for me, I am looking over files and asking questions and I am voting."

The Respondent went on to say the Applicant's representative at the last COA meeting "gave him a hard time" and that he wanted that reflected in the minutes and wanted to know why the Secretary-Treasurer had not included the Applicant's tone in the minutes.

The Secretary-Treasurer said:

I think we may in my opinion want to be careful about writing exactly informing the tone of what people are saying and we should keep it factual, and not to say that somebody was giving you a hard time, as the city needs to remain diplomatic and just factual...I don't think it is our place to judge how they address the Committee. It is a public member, and it is up to them.

After further comments, the Respondent says "[the Secretary-Treasurer] didn't insert any of my comments, I want only what I said" in an aggressive tone.

At which point the Acting Chairman stated:

[Secretary-Treasurer and Assistant Secretary-Treasurer] are there avenues for [the Respondent] to express his concerns because it should not be here. They have a line of reporting and people that they can reference. It should not be done here we are not going to solve it here, is there a method for him to express his concerns about this?

The Secretary-Treasurer responded:

It is done by [the Assistant Secretary-Treasurer] and me, it would basically be myself as the Secretary Treasurer that oversees the committee and you as members that sit on the committee. So, yes, it is approved by myself how [the Assistant Secretary-Treasurer] and I do these minutes. It has nothing to do with the planning act and it has nothing to do with the commissioner or the director.

The discussion ratcheted up with the Respondent continuing to insist that he wants the minutes changed. In an effort to move the discussion along, the Acting Chairman said "Who is your superior that [the Respondent] can speak to if he needs to, he wants to make some structural changes administratively".

The Secretary-Treasurer offered "We have already discussed this, and [the Director of Development Planning] does not feel our minutes need to be changed".

The Respondent interrupts "Acting Chairman Di Rezze asked who he was". The Secretary-Treasurer gives the name of her supervisor and adds "We have already discussed; [the Respondent] has already copied [the Supervisor-Director] on all his emails to council".

The Secretary-Treasurer felt that she was publicly humiliated at the meeting at which other applicants and staff were also in attendance. The Respondent asked if there was quorum even though the Secretary-Treasurer had confirmed that there was. The Respondent had received training on the role of the COA and Members on January 11th and his questions were not received as seeking clarification but rather criticizing staff with a view to undermining their professional subject-matter expertise. Despite the Respondent having been told that COA Members may conduct site visits to view the property subject of an application but not to speak to the neighbours of the applicant property, the Respondent spoke with neighbours about the applications before the COA and admitted to having done so. The effect of Respondent's

conduct was to undermine the professional abilities of staff, in particular the Secretary-Treasurer, to provide subject-matter expertise on COA meeting procedure and minute-taking.

The Secretary-Treasurer explained to the Respondent that minutes have a standard format to ensure consistency and that the format has not changed in the past seven years. There is a process enshrined in the COAs meetings established practice to give the COA the opportunity to correct errors in the minutes of previous meetings. It has been made clear by the Secretary-Treasurer to COA Members, that approval of previous meeting minutes is not an opportunity to introduce new information or add commentary to the matters discussed at the previous meeting. The Respondent's continued to second-guess the Secretary-Treasurer, Assistant Secretary-Treasurer and Planning staff in respect of specific planning files and recommendation for approval of minor variances, in particular with respect to the consideration and approval of 4ft setbacks. The Respondent's interest appeared to focus on in-fill applications and new development with larger builds in existing development. The Respondent was vehemently opposed to infill applications and believed there should be no flexibility in allowing a 4ft setback instead of a 5 ft setback. It was not what the Respondent was object to but rather the aggressive and intimidating way he did so.

During COA meetings and one-on-one discussions with Planning staff, the Respondent stated that the Secretary-Treasurer and Assistant Secretary-Treasurer do not know what they are doing insofar as they are allowing setbacks not prescribed under the Planning Act, allowing infill applications of larger new houses in existing development and not drafting minutes that include details about applicant's representatives giving the Respondent a "hard time".

C. The Respondent's Reply

In his reply, the Respondent stated that:

This complaint, in my view, is a retaliatory act due to my vocal criticisms and objections to the current practices of the Committee of Adjustment (COA).

I consider this complaint an unfounded attempt to suppress my dissent, undermining democratic values and public interest. In response, I am compelled to outline my course of action:

1. **Public Disclosure:** I will forego confidentiality in these proceedings, committing to publicize every detail for transparency and accountability.
2. **Confronting the Accuser:** I demand the right to face my accuser. Should any planning staff of Richmond Hill be involved, I will lodge a formal complaint with the Ontario Professional Planners Institute (OPPI), citing breaches of their Professional Code of Practice. This complaint is an infringement on a planner's obligation to ensure public accessibility to clear and accurate planning information and represents a deviation from professional and public interest standards.
3. **Request for Records:** I assert my right to access specific audio recordings and documents from COA meetings, previously denied. This includes essential materials such as architectural drawings related to specific applications, crucial for a complete understanding of the issues at hand. A detailed list of these documents is provided herein.

4. **Urgent Ruling Request:** I urge a prompt ruling, by February 9, 2024, on my request for dismissal of this complaint, based on its foundation in bad faith and contravention of OPPI's Professional Code of Practice, specifically regarding Independent Professional Judgment and Disclosure in the Public Interest.

I trust you will treat these matters with the seriousness they warrant and anticipate a timely and just resolution.

Respectfully,

John Li
Member, Richmond Hill Committee of Adjustment

D. The Respondent's Supplementary Reply

In accordance with section 6.24 of the Complaint Protocol, upon completion of an investigation and prior to issuing a report finding a violation of the Code on the part of a Member, the Integrity Commissioner shall provide the draft investigation findings to the Member and the Complainant and provide the Member with an opportunity to comment on any preliminary or proposed findings.

On February 21, 2024, I provided a copy of the draft investigation findings to the Respondent advising that he may provide comments regarding errors or omissions of fact but that this was not an opportunity to raise new issues. I advised the Respondent that he was not required to provide any comments, however, if he chose to provide comments regarding errors or omissions of fact, I would take these comments into consideration in the drafting of my final report.

On February 21st the Respondent provided comments to the preliminary findings in three (3) separate emails. The Respondent copied all Members of Council on his emails. I attach the emails as confidential attachments at the end of this report, as some of the contents disparage Members of the Committee of Adjustment, and I do not wish to disclose them publicly. I have considered the Respondent's comments in this report.

Notwithstanding that I had advised the Respondent in my January 19th correspondence that correspondence to and from the Integrity Commissioner with respect to Code of Conduct matters, shall not be disclosed to third parties (save and except his legal representative, in the Respondent's three (3) supplementary replies of February 21st, he copies all Members of City of Richmond Hill Council. This disclosure is contrary to the instructions of the Integrity Commissioner and rule 6.0 of the Code. In particular, rule 6.4(b) of the Code states that no Member shall:

(b) disclose, release or publish by any means, including social media, any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so.

In the current circumstances, I have decided to add a supplementary finding of breach of confidentiality with respect to this circumstance in my Findings Report. A breach of the confidential Code complaint investigation undermines the integrity of the investigation process.

V. Findings of the Integrity Commissioner

When conducting themselves, Members of Local Boards are required to comply with the Code. These rules provide them with a reference guide and a supplement to the legislative parameters within which they must operate. When evaluating the integrity and ethical conduct of a Member, my role is to apply the rules of the Code to the facts gathered throughout the investigation and make a determination as to whether there has been a breach of the Code. I set out below my findings of fact regarding the Complaint.

The COA meetings were recorded. I find that the exchanges set out in the evidence section above occurred. I further accept that the emails were sent to the recipients listed on the email chains.

I find that the Respondent often submitted PowerPoint presentations at the COA meetings, omitting to share copies with other COA Members prior to the meetings. I find that it is highly unusual for the Respondent, a member of a quasi-judicial body, to be making any submissions in respect of the application before the COA. If he did so to assist him in asking questions of the applicant, it seems appropriate to share that PowerPoint in advance of the meeting along with all other public documents. While the Respondent's desire to keep the PowerPoint presentations secret until the meeting likely impacts the efficiency of COA meetings, it is not misconduct under the Code. However, on at least one occasion, the Respondent accused COA staff of "leaking" his drawing that he sent to the Secretary-Treasurer when she forwarded them to others that would be in attendance at the meeting, prior to the meeting. The Secretary-Treasurer confirmed that the Respondent had sent his PowerPoint presentation and drawings by email and that she provided the same as part of the materials that would be reviewed at the meeting. The Respondent acted in a disrespectful manner in suggesting that the Secretary-Treasurer was "leaking" or otherwise acting badly. She was fulfilling her role in distributing materials submitted in relation to an application to be considered at a public meeting.

Regarding the September 7th COA meeting, the Respondent emailed the Mayor, Members of Council, the Director of Planning, in addition to the Assistant Secretary-Treasurer and the Secretary-Treasurer about the conduct of the meeting. The Respondent explained that he forwarded information about the September 7th COA meeting to the Mayor and Member of Council because he must voice community concerns and maintain a public record of those concerns. However, during the January 2023 orientation training and on several occasions thereafter, the Respondent was told that COA Members should not discuss applications with anyone ahead of the hearing and that Members of Council should not be weighing in on matters before the COA. In addition, with reference to the witness accounts that the Respondent had directly approached a property owner asking them about the application relating to the property located directly next door to them and that was being heard on September 7, 2023, I find that the Respondent did speak with directly with a neighbour of a property subject of an application being heard at the September COA meeting, contrary to the best practices that govern conduct of COA Members communicated at the January 11, 2023 Orientation session, that Members may conduct site visits but refrain from discussing the application with owners, neighbours or other members of the public.

The COA is a quasi-judicial body. After a hearing, the COA deliberates in a closed meeting without members of the public or parties before it. According to witness accounts and my review of correspondence, it appears that the Respondent shared information from the private deliberations publicly by sending an email to the Mayor, Members of Council, the Director of

Planning, the Assistant Secretary-Treasurer and the Secretary-Treasurer. In addition, witness accounts set out that a named resident living in proximity to lands that were subject of a Consent application advised COA staff that the Respondent had approached his wife at their home asking if they had any objections to the applications relating to the property located directly next door to them and that was being heard on September 7, 2023. COA Members are appointed to give fair consideration to applications in accordance with the *Planning Act* and, any rules and procedures. Witness accounts confirm that at least at two COA meetings, the Chair of the committee had attempted to steer discussion back toward the substance of the application before the committee after the Respondent had raised what he believed to be the Applicant's "notable lack of commitment to preserving trees" and "questionable intent". With reference to the September 7, 2023 COA Meeting, the Respondent included in his "Dissenting Opinion" his position suggesting that the application before the COA was not a bona fides application. In fact, the Respondent stated in his correspondence that was sent to Mayor and Members of Council "Is this truly an infill application, or does it lean towards opportunistic land speculation?". The COA Chair had the authority to cut off discussions that went off topic or otherwise breached order and decorum. I will not second guess the Chair's exercise of this procedural authority.

I find that the scope of the Respondent's PowerPoint presentations to the Committee appeared to stray beyond the limited role of a Committee of Adjustment under the *Planning Act*. The Respondent repeatedly raised drainage and flooding issues that appeared to be outside the committee's purview. The determination of what was appropriately before the COA is the responsibility of the Chair, not the Integrity Commissioner; however, the manner of communication and conduct of the Respondent is reviewable under the Code. With respect to both the September 7 and 28 COA meetings, witness accounts set out that the Secretary-Treasurer had advised the Respondent of the reasons why his requested revisions of the minutes were not appropriate as they contained commentary and opinion. Notwithstanding the Secretary-Treasurer's explanations and the Acting Chair requesting the Respondent "take down the aggression level", the Respondent defied the Secretary-Treasurer's recommendations. This conduct formed part of a pattern of disrespectful conduct by the Respondent. He repeatedly failed to respect the subject matter expertise of Staff and calling to order of the Chair.

The Respondent asked questions about the subject property, such as about lot coverage, and about the approval and setback. He demanded that there be no consideration by the Committee of any side yard "of more than 60% of the width of the lot upon which it stands. No side yard shall be less than 2 m [6.5 ft]". His language was disrespectful of staff. He refused to listen to staff who answered his questions. For example, the Secretary/Treasurer repeatedly attempted to provide answers to the Respondent's questions regarding the role of COA Members and he continued to repeat the same questions. The Respondent's unrelenting questioning of staff's actions, in particular the minute-taking of the Secretary-Treasurer, had the effect of humiliating the staff person and bringing her to tears by the Respondent's aggressive questions.

I have determined that the Respondent's questions to staff took the form of criticism rather than seeking clarification. I find that the Respondent used his PowerPoint presentations and questions to blame the COA and City staff for "blocking information" from Richmond Hill residents and to criticizing staff reports.

I find that on eight occasions, the Respondent had demanded of COA staff, that his dissenting opinion be included in the COA Notice of Decisions, the last written correspondence making these demands being September 18, 2023. Upon review of the written correspondence to the COA staff, I find that the Respondent's correspondence was threatening and aggressive and clearly attempting to insert himself into the operational subject matter expertise of the COA

Secretary-Treasurer. Notwithstanding the fact that the Secretary-Treasurer advised the Respondent on January 26, 2023 that it is not the practice of the Committee to include dissenting opinions of one Member in the Notice of Decisions, the Respondent continued to send aggressive correspondence to the Secretary-Treasurer demanding that his dissenting opinion be included as an attachment to the Notice of Decision.

I find that the Chair (and the Acting Chair at the September 28th COA meeting), as well as the Secretary/Treasurer attempted to redirect the focus of the Respondent's comments back to COA matters. I find that, at the September 28th meeting when the Secretary-Treasurer attempted to respond to the Respondent's allegations that the minutes were not factual, the Respondent was aggressive, hostile and disrespectful toward the Secretary-Treasurer. Based on the witnesses' evidence and the audio recording, I find that at the September 28th meeting, the Respondent spoke in a raised voice, becoming increasingly louder and that he spoke with an accusatory and aggressive tone. I find as a fact that the exchange between the Respondent and the Secretary-Treasurer at the September 28th meeting was tense, and that at the end of her participation the Secretary-Treasurer was in tears.

On September 28th, the Acting Chairman advised the Respondent to "take down the aggression level" and if the Respondent has concerns with the performance of the Secretary-Treasurer or the Assistant Secretary-Treasurer, "it should not be here. [the Secretary-Treasurer and Assistant Secretary-Treasurer] have a line of reporting and people that they can reference. It should not be done here we are not going to solve it here..."

I find that the Respondent attempted to coerce the Secretary-Treasurer to comply with his demands to update the minutes by applying inappropriate pressure to her. Specifically, the Respondent told the Secretary-Treasurer that if she did not include his revisions to the minutes, he would copy Council, the public and the media on his proposed revisions to the minutes.

I accept the evidence from other members of the committee that they were upset by the Respondent's aggressive tone directed towards the Secretary-Treasurer and the Assistant Secretary-Treasurer and his repeated allegations that the minutes she drafted on September 28th were "not factual". I accept evidence of the other COA Members that they valued the explanations of staff who had subject-matter expertise. The Respondent's outbursts suggest he does not. Statements made by the Respondent such as "basically we have lots of information to give our residents but we do not" and "who provides the information for our website, all the drawings have been removed" are patiently responded to by the Secretary-Treasurer. In response, the Secretary-Treasurer stated that "the drawings have not been removed there is a note on the website that the maps are not AODA compliant so we do not put them on the website. There is a note on the website that says for additional information to contact [the Assistant Secretary-Treasurer and myself. It is not that we are not being transparent we are telling people that the drawings are included and if you would like them, you can contact us". I find that the other COA members were very concerned that the Respondent brought the Secretary-Treasurer to tears at the September 28th meeting.

At the September 28th COA meeting, the Acting Chairman, in the exercise of authority as COA Chair, did communicate that the Respondent's comments about the Secretary-Treasurer's performance was not appropriate topic to discuss at the COA meeting and that he should "take down the aggression level". The Acting Chairman set out on behalf of the other Members, the requirement to take seriously and in accordance with past practice, their obligation to assess applications on their merits and in accordance with advice of staff with subject-matter

expertise. The submissions of the Respondent clearly set out that he does not agree with the minutes as presented by the Secretary-Treasurer.

All material findings of fact herein are based on the evidence of witnesses and primary source documentary evidence (emails sent and received, transcripts of COA meetings). The Respondent copied Members of Council on his concerns with the Secretary-Treasurer's performance. He disclosed information about applications (for which he had a differing opinion from that of the rest of the COA) to Council prior to the matter being properly before Council for deliberation and approval. Despite having received training on January 11, 2023 about not speaking with neighbours of applicant properties, he chose to derogate from the standards and best practices for COA Members. COA Members do not always agree, however, the Respondent's focus on a particular type of application, delivering his PowerPoint presentations criticizing City Planning staff and applicants, was not simply disagreement or having a different position or perspective – the Respondent disparaged his fellow COA Members, COA professional staff, Planning staff and members of the public.

The recording of the September 28th COA meeting, set out that the Chair had to steer discussion away from topics that were outside the scope of the committee's mandate, such as the template used by the Secretary-Treasurer to draft the minutes of COA meeting:

If I can interject for just a minute Mr. Li, we do need to continue we do need to take down the aggression level. I look at it this way I am here to adjudicate consent and minor variance applications. I am not here to start processing how the city procedurally and operationally handles this That is not the role for me, I am looking over files and asking questions and I am voting.

Issue #1 – Allegations of harassment under the Code- Sections 10.1, 10.2, 10.3

Members of the COA must refrain from making comments against a staff person that is known or ought reasonably to be known to be unwelcome which amount to a course of workplace harassment. Once appointed, the Respondent may have opinions, but should bring to his role as a COA Member, an open mind, objectivity and an absence of prejudgement. Members are held to a higher standard of behavior and conduct than an ordinary private citizen, even in the presence of doubts about the veracity of submissions from a staff person. A Member is required to follow the approved process of the City if they believe that a staff person is acting contrary to their professional obligations. Conducting individual inquiries to evidence what a Member may believe to be staff's poor performance or inaccuracies in minute-taking is not within the authority of an individual COA Member. The Respondent was warned by the Chair not to engaging in his aggressive questioning of staff. He persisted.

Elected and appointed individuals can engage in constructive debates and may ask questions of clarification. However, the COA is a quasi-judicial tribunal and cannot demonstrate bias and the Respondent, exercised his role to engage in a course of conduct that was directed at the Secretary-Treasurer and the Assistant Secretary-Treasurer personally, which was known to be unwelcome. One of the staff persons left two meetings in tears. The Respondent did not trust any information that the Secretary-Treasurer and Assistant Secretary-Treasurer provided to the COA. The Respondent aggressively questioned them, refused to consider their answers, and repeated himself in an effort to change their minds. He threatened to go to council and to the media. The Respondent knew or ought reasonably to have known that this was not an

appropriate way to address his apparent concern which was the functioning of the COA and the way its decisions were recorded. When, in an effort to reduce tension, the Chair suggested that the Respondent speak to the supervisor of the Secretary-Treasurer, it was confirmed that the Respondent had already done so. The Respondent knew that the staff person was acting in accordance with the direction of her supervisor, as he had copied the supervisor on his emails to her. The Respondent engaged in repeated hostility towards staff repeatedly in public meetings.

After careful consideration of the information received and reviewed during this investigation, the very high level of pressure to defend oneself against accusations of withholding information in the minutes and “leaking” information to the parties to the application by the Respondent, the Secretary-Treasurer and the Assistant Secretary-Treasurer, it was clear that all Members of the COA, that the Respondent’s conduct and statements were unwelcome by the Secretary Treasurer and the Assistant Secretary-Treasurer, in particular at the September 28th meeting, at which the Secretary-Treasurer was reduced to tears. It was also clear that numerous attempts to reason with the Respondent with a view to a harmonious working environment, were rebuffed.

Each COA Member forms part of the decision-making body recognized by the *Planning Act* as to collectively consider the planning rules with respect to minor variances in the best interests of the municipality and the public. COA Members have a right and an obligation to ask for clarification from staff. Asking questions of professional staff is not harassment. However, when the preponderance of questions come from the Respondent and are probing into the performance of particular staff, who has acted in a way that the Respondent does not agree with, and when the questions turn to seeking to confirm premises of the Respondent that only he and no other COA Member holds about staff performance, which targets staff and the public who disagree with this position, I deem these cumulative actions to be a pattern of conduct that the Respondent ought reasonable to be known to be disrespectful, intimidated and improperly interfering in the lawful exercise of the duties of staff.

I find on a balance of probabilities standard that this behaviour constituted harassment as defined by the Code contrary to Rule 10.2.

In coming to this conclusion, I have considered the additional evidence provided to me by witnesses and the Respondent’s own words that I reviewed in transcripts and audio recordings. In particular, I spent considerable time carefully reviewing the audio recording of the September 7th and 28th COA meetings. Despite the Respondent’s belief that he did nothing to contravene the Code, and that the Code Complaint itself was an act of reprisal against the him for criticizing COA decisions, the fact that the Respondent aggressively badgered the Secretary-Treasurer, suggesting her minute-taking was inaccurate and unduly favoured the Applicant, undermined her professionally and created a poisoned worked environment.

Further, the Respondent’s position that the COA and the City should not derogate from the setback rule for infill developments, is a political position and his threats to “take his concerns to the broader public and to his lawyer” are comments that evidence his lack of understanding of the role of a COA Member. I find that the Respondent’s conduct rose to the level of engaging in a course of vexatious comment or conduct against staff in a workplace that is known or ought reasonably to be known to be unwelcome in contravention of Rule 10.2 of the Code.

Issue #2 – Allegations of Non-Adherence to Respect for staff Rules – Rules 7.1, 7.2, 7.3, 7.4, 7.5, 7.6

I find on a balance of probabilities that the Respondent's conduct breached rules 7.1, 7.4, 7.5 and 7.6 of the Code.

Rule 7.1 states that Members shall accurately communicate the decisions of Committee even if they disagree with the majority decision of Committee, and by doing so affirm the respect and integrity in the decision-making processes of Committee.

In the course of two meetings, the Respondent was critical of the decision-making process of the COA and failed to affirm the integrity of that process. The Respondent disagreed with the factors considered and the ultimate decision on a number of applications that came before the COA. At subsequent meetings, the Respondent stated that the minutes and decision unduly favoured the applicant and encouraged land speculation. He was critical of the decisions even once they were made and signed by the majority of COA members. He failed to accurately communicate the decisions of the COA and undermined the integrity of the COA decision making process.

I find that the Respondent did not breach r. 7.2 and 7.3 of the Code. Section 7.2 requires that members respect that staff must act impartially. Section 7.3 contains an obligation of staff to recognize and respect the role of the COA. I did not receive evidence that the Respondent failed to respect that staff must be impartial, or neutral without extending a preference to any individual or group.

I find that the Respondent breached Rule 7.4(c), 7.5(a) and 7.5(c) of the Code by publicly and repeatedly criticizing the Secretary-Treasurer in COA meetings and in emails sent to third parties, including Council. Rule 7.4(c) requires members to follow appropriate channels to raise concerns about staff performance (or more aptly, established processes). Rules 7.5(a) and (c) prohibit members from publicly criticizing staff in a way that casts aspersions on their professional competence and credibility and prohibits members from using their authority to threaten, intimidate, or coerce staff.

The Secretary-Treasurer's supervisor at the time of the events subject of this Complaint, Mr. Gus Galanis, was apprised of the Secretary-Treasurer's concerns. After all Committee Members were appointed, the Secretary-Treasurer delivered a training session for all Members on January 11, 2023. After the training session, on January 17th and two days before the first scheduled COA application hearing, the Respondent sent an email to the Secretary-Treasurer and the Assistant Secretary-Treasurer raising his concerns with the application process and demanding to meet with City of Richmond Hill staff planners. The Secretary-Treasurer wrote back to the Respondent advising that it is not the process of the COA for Members to meeting with staff planners and that COA Members review all relevant information on the application and may approve, deny or defer the application. Notwithstanding the fact that the Secretary-Treasurer had provided the Respondent with videos, staff reports and other information to assist him in having as much information as possible to be in a position to carry out his function as a COA Member, the Respondent responded in an email that the Secretary-Treasurer's process was not effective.

Witness accounts evidenced that the Respondent often submitted PowerPoint presentations at the COA meetings, omitting to share copies with other COA Members prior to the meetings. Further, on at least one occasion, the Respondent accused COA staff (including the Secretary-

Treasurer) of “leaking” his drawing that he sent to her to others that would be at the meeting, prior to the meeting. The Secretary-Treasurer confirmed that the Respondent had emailed her his PowerPoint presentation and drawings and that she provided the same as part of the materials that would be reviewed at the meeting.

The Respondent either failed to appreciate or did not attend to the fact that his public criticism of staff was inappropriate. The City is a workplace. Recognizing the authority of Members of Council or of Local Boards and the power discrepancy between those individuals and staff persons, Council included in the Code of Conduct a provision requiring and reminding members to use appropriate channels to address concerns about staff. The Respondent ignored, and breached, those rules.

I find that the Respondent reasonably ought to have known that his barrage of questions and use of language suggesting wrongdoing, incompetence and/or dishonest behaviour on the part of the Secretary-Treasurer and the Assistant Secretary-Treasurer, publicly criticizing them in a way that cast aspersions on their professional competence and credibility, was unwelcome, intimidating and disrespectful to both staff persons. Even after being told to “take down the aggression” and being asked by an Applicant on September 7th, “why are you giving me a hard time” the Respondent did not cease his conduct. The Director of Development and Planning had to attend a COA meeting upon request of his staff because they felt disrespected and undermined. The Secretary-Treasurer’s direct report was made aware of her discomfort at being publicly criticized, and there was no disciplinary action that was warranted regarding any performance issues with his staff. If the Respondent believed that the COA staffs’ actions were tantamount to negligence, wrongdoing or any other heading that would be subject to disciplinary action of a staff person, after the matter was raised with the Secretary-Treasurer’s supervisor, the Respondent should have been satisfied with the expertise of senior City staff rather than continuing a targeted campaign to attack the professional integrity of the staff.

In respect of the Code, Members, comments, criticism of a staff recommendation or minute-keeping, does not form part of the political decision-making and is not permitted under the Code. Members are prohibited from conduct that has the effect of conducting a performance review of the staff person, even when their intent in the questioning was to seek better of a process. COA Members are not tasked with reviewing the rules of the Planning Act, determine measure an Applicant will take regarding trees on a property if the City has already received and approved an arborist report. A COA Member cannot re-open questions to the Applicant on matters that staff have already reviewed and on which they have provided their approval. Further, the Respondent attempted to influence the actions of staff’s obligations can be found in his email to COA Members containing his “Dissenting Opinion” with reference to a minor variance application that was heard at the September 7, 2023 COA meeting. The Respondent insisted that the Secretary-Treasurer include his “Dissenting Opinion” with the decision of the COA and faced with her explanation that this was not part of the process, sending an email to all Members of Council insisting nonetheless in opposition to the Secretary-Treasurer’s comments, had the effect of undermining the subject matter expertise of the Secretary-Treasurer. When she refused to do so, the Respondent threatened to go to Council and to the media. That threat violated Rule 7.5(c) of the Code as it was made to coerce staff to do as he requested. Indeed, in his response to this Complaint, he again threatened to ignore the confidentiality required in these proceedings and “publicize every detail” and he did.

The Complaint materials include the minutes of the September 28th COA in which the Respondent’s comments were captured as have said:

...[Secretary-Treasurer] may I comment, you have much more information than us. We have a lot of room for improvement, I think since I became a member with field time for example the information we give the stakeholders especially neighbors are only three pages ...I want to know why we try to block the information so those people will be directly affect by those developments...

The Respondent reply to the Complaint suggests that his behaviour was not only wholly appropriate but necessary to ensure oversight over the proper function of the COA. Individual COA Members do not have the authority to independently receive information from the public, form their opinion of its veracity in respect to a Planning staffs' review of technical reports submitted by Applicants, bombard staff with person with contemptuous emails copying Council suggesting the staff person's incompetence, dishonesty and improper actions in minute taking and determining quorum. The Secretary-Treasurer and the Assistant Secretary-Treasurer received numerous accolades from other COA Members and are widely respected by staff at the City who work with the COA.

I find that the Respondent breached Rule 7.6 of the Code which requires that any Member's communications be accurate, honest, and respectful of other persons, including other Members, staff and the public. As a result of his aggressive questioning, the Chair requested that the Respondent cease his behaviour. The Respondent's attempts to embarrass and coerce staff by broadly raising issues in public and not in a private manner was disrespectful. While the Respondent may have believed his communications, they were, at times, inaccurate. For example, the Respondent asserted to staff that he had a right under the *Planning Act* to have his dissenting opinion published when no such right existed. If there was only one such error made by the Respondent, I may not have concluded that he had breached Rule 7.6. However, in light of the volume of disrespectful and at times, inaccurate, communication, I have made this finding.

There is no evidence that the Secretary-Treasurer, Assistant Secretary Treasurer or Planning staff, acting individually or collectively, acted improperly, unethically, or in breach of their professional obligations. I find as a fact that the COA staff performed their duties to high standards, and the record should reflect this.

I find that the Respondent breached Rules 7.1, 7.4, 7.5 and 7.6 of the Code.

Issue #3- Sections 9.1, 9.2, 9.3

I find that the Respondent breached Rules 9.1 and 9.2 of the Code.

1. For the same reasons contained in the analysis of the Rule 7 violations, I find that the Respondent breached his obligation to act with decorum.
2. For the same reasons contained in the analysis of the Rule 10 violations, I find that the Respondent breached his obligations to comply with the Respect in the Workplace policy.

Conclusion:

The Respondent made requests for information outside of the statutory jurisdiction of the COA, made comments that disparaged staff, insisted on delivering PowerPoint presentations at COA meetings that criticized staff, and conducted himself with a lack of decorum during COA meetings by using an aggressive tone towards staff and applicants. While submitting PowerPoint presentations is not prohibited and is not in and of itself concerning, submitting presentations to the Secretary-Treasurer to distribute to all parties only at the beginning of meeting and being angered that these are distributed to the applicants and COA Members prior to the meeting, accusing CAO staff of “leaking” information, using these presentations as a platform to undermine and unfairly criticize COA and Planning Department staff, is behaviour that was and ought to have been known to be unwelcome and disrespectful to staff. Nothing in the Code prevents the Respondent or any COA Member from stating an opposing opinion, voicing disagreement or seeking clarification from staff or the applicant. However, based on the information that I have received and reviewed during this investigation, it is the Respondent’s methods, aggressive and dismissive tone, personal attacks and undermining of staff, in particular the Secretary-Treasurer, that constitute conduct that runs afoul of the Code. I received witness accounts that even after the Respondent had been advised that COA Members are not supposed to speak to neighbours of the applicant property prior to the hearing at which the variance is heard, the Respondent continued to attend adjacent properties and speak with neighbours contrary to the guidance of the Secretary-Treasurer and best practices for COAs. Committees of Adjustment are quasi-judicial bodies that must be impartial and treat all parties equally. Planning staff and CAO staff are professional and follow the rules of their professional regulatory bodies. There is never a justification for aggression towards staff even when one may disagree with their recommendations.

Witness information evidenced that COA Members of Committee met and spoke with the Respondent since January 2023, providing multiple warnings and these advances towards informal resolution were met with no behavioural change on the part of the Respondent. This is relevant to my recommendations on sanctions and other measures. Witness accounts confirmed that when the Respondent opposed anything in a staff report, he would be belligerent and aggressive. Initially, fellow CAO Members and CAO staff afforded the Respondent the benefit of the doubt as he was new to the role. However, multiple warnings by the Chair and attempts to reason by CAO Members did not result in behavioural change by the Respondent as witness statements evidenced that the Respondent’s behaviour would move swiftly from calm to aggressive and personally attacking and accusing staff of favouring the applicant. This is why I believe the sanction and measures that I have recommended are reasonable. The Respondent’s conduct set out throughout this investigation report has been ongoing at every meeting of the COA from January 2023 to the date of this Complaint and he has not demonstrated any intention to change to comply with the Code rules.

COA Members are Council appointees. In exercise of their function under the *Planning Act*, they have a right and an obligation to ask questions of clarification, with respect to minor variance applications and matters within the jurisdiction of the COA. However, when the preponderance of questions are personal criticisms and delivered in an aggressive way, probing into staff decisions that are squarely within staff’s area of subject-matter expertise and when the questions target staff and focus on their performance which is outside the authority of the COA, I find that the cumulative actions of the Respondent constitute workplace harassment,

disrespect for the impartiality of staff and conduct that demonstrates non-compliance with City procedure.

Additional Confidentiality Breach:

Throughout this Code Complaint investigation, I advised the parties of the requirement of confidentiality.

In the Respondent's reply, he stated:

Public Disclosure: I will forego confidentiality in these proceedings, committing to publicize every detail for transparency and accountability.

The *Municipal Act* confidentiality provision sets out that:

223.5 Duty of Confidentiality

223.5(1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

The discretion about what is "necessary" to disclose and what is not is conferred on the Integrity Commissioner, not the Respondent or other parties to the Complaint. Every integrity commissioner's report is going to make some reference to the evidence uncovered in an investigation and every integrity commissioner will adhere to the secrecy provisions set out in the *Municipal Act*. However, a party to the Complaint is not conferred the authority to decide what should be disclosed or made public. The Legislature turned its mind to the requirements of the procedure under Part V.1 Accountability and Transparency and determined that in order to maintain the integrity and of the Integrity Commissioner process, confidentiality during the investigation must be maintained. The fact that the Respondent is provided an opportunity to reply to the Complaint, the fact that section 223.6(3) requires that the municipality shall ensure that the report received from the Integrity Commissioner must be made public and the fact that the Respondent may make comment at the Council meeting at which the Integrity Commissioner investigation report is considered, all function to ensure transparency in the process.

In the Respondent's reply to the Complaint, he advised that he:

- Would "forego confidentiality in these proceedings";
- Demanded "to face my accuser" and threatened that if any staff was involved in the Integrity Commissioner's investigation of the Complaint, he would "lodge a formal complaint with the Ontario Professional Planners Institute (OPPI), citing breaches of their Professional Code of Practice";
- Demanded "access to specific audio recordings and documents from COA meetings, previously denied. This includes essential materials such as architectural drawings related to specific applications, crucial for a complete understanding of the issues at hand. A detailed list of these documents is provided herein."

As set out in a 2016 Divisional Court Decision, the fairness of a municipal integrity commissioner's decision will be evaluated against an analysis of the "*Baker Factors*"⁴, that is if the Integrity Commissioner exercised her discretion in a manner that properly balanced the Respondent's right to meaningfully respond to allegations in the complaint and the need to protect City Staff and other witnesses who had cooperated in the Integrity Commissioner's investigation.

Generally, the Integrity Commissioner investigates complaints that Councillors and Members of Local Boards violated the Code of Conduct and reports the results of her investigations to the City of Richmond Hill Council. The report contains factual conclusions and recommendations concerning penalty. The Integrity Commissioner's Report has no binding effect upon the Member. The City of Richmond Hill Council considers the Report of the Integrity Commissioner along with the response to the complaint by the person concerned, and then accepts or rejects the Report. The City of Richmond Hill Council imposes the penalty.

The Complaint Protocol, which is a City bylaw and therefore also part of the statutory Scheme of the Integrity Commissioner, does not contemplate participation by the applicant after responding to the Complaint, except insofar as the Integrity Commissioner is required to provide a draft investigation findings to the Member and the Complaint and provide the Member with an opportunity to comment on the proposed findings.

Section 223.5 of the *Municipal Act*, which is also part of the statutory scheme, provides that the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of her duties. The statutory scheme provides the Integrity Commissioner with significant autonomy regarding the disclosure of her investigation. Specifically, section 223.6(2) of the *Municipal Act* provides that:

223.6 (2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report. 2006, c. 32, Sched. A, s. 98.

As clearly stated by the Court in the 2016 decision, 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

⁴ Michael Di Biase v. City of Vaughan; Integrity Commissioner of the City of Vaughan, 2016 ONSC 5620

give the substance only.⁵

The Integrity Commissioner followed the process set out in the Richmond Hill Council and Local Board Member Code of Conduct Complaint Protocol, providing the Respondent with the Complaint in sufficient detail to respond, providing the audio and transcripts from the COA meetings cited in the Complaint and providing a copy of the draft investigation findings prior to issuing a final report. Notwithstanding, the rules of the Complaint Protocol set out, the Respondent clearly stated in his reply to this Complaint that he would “forgo confidentiality”, thereby making the conscious decision to take it upon himself to decide what rules he would follow despite direction from the Integrity Commissioner. Further, the Respondent subsequently copied all Members of Council, 12 other email addresses and the Village Core Resident’s Association with information about the Code complaint investigation. I find that the Respondent has contravened section 6.1 of the Code, which prohibits a Member from releasing, or publishing any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so.

Recommendations

In accordance with section 12.8 of the Code, after completion of an investigation, if the Integrity Commissioner finds that a Member has contravened the Code, the Integrity Commissioner may recommend and Council may impose one of the following penalties on that Member:

A reprimand; or

The suspension of the remuneration paid to that Member (if any) for a period of up to 90 days.

The Integrity Commissioner may also recommend that Council impose other remedial actions that directly respond to the action or behaviour of the Member that is found by the Integrity Commissioner to have contravened the Code.

Members are subject to removal from the Local Board or removal as Chair of the Local Board by Council.

Where an integrity commissioner reports to a municipality that a member of council or local board has contravened the code of conduct, s. 223.4(5) of the *Municipal Act* provides that the municipality may impose one of two penalties:

1. A reprimand, or
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.

In addition to these penalties, a municipal council may require remedial actions in addition to these penalties, to respond to the conduct underlying the complaint and provide redress for a complaint: see *Dhillon v. The Corporation of the City of Brampton*, 2021 ONSC 4165 at para. 67; *Magder v. Ford*, 2013 ONSC 263 (Div. Ct) at para. 52.⁶

⁵ *Ibid*, footnote 4

⁶ 2022 ONSC 6551 (CanLII)

COA Members are appointed by Council to carry out an important role of the municipality. Section 12.10 sets out that Members of Local Boards who have been appointed by Council are subject to removal from the Local Board or removal as Chair of the Local Board by Council.

Each Member of the COA is required to operate in compliance with all applicable laws and City of Toronto policies including, but not limited to the Municipal Act, 2006, the Planning Act, the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, and the Code of Conduct for Members of Local Boards. I have concluded that the Respondent's aggressive, intimidating and harassing conduct towards staff and applicants and their representatives, has become a disruptive influence for the City of Richmond Hill's Committee of Adjustment, creating an atmosphere of dysfunction and intimidation, distracting from the purpose of the COA and creating an intimidating and harassing workplace for staff.

I respectfully recommend the following to Council.

1. In accordance with section 12.8 of the Code, that Council impose with respect to the conduct and actions of the Respondent set out in this report,

A Reprimand;

2. In accordance with section 12.10, Council,

Remove Member Li from the City of Richmond Hill Committee of Adjustment

Beyond penalties and other measures specifically prescribed by the Code, I recommend the development of a Procedure and Rules Policy for the Committee of Adjustment. The investigation identified areas where detailed policies and procedures would establish better understanding of for example, the format of minutes as an official records and rule for engaging in COA activities outside of hearings and other official functions of the Committee of Adjustment.

Respectfully submitted,

March 4, 2024



Suzanne Craig
Integrity Commissioner

