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TOWNSHIP OF MELANCTHON INTEGRITY COMMISSIONER,  
GUY GIORNO

**Citation:** Mercer v. White, 2020 ONMIC 15

**Date:** November 15, 2020

## REPORT ON INVESTIGATION

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## **THE COMPLAINT**

1. Councillor Margaret Mercer (the Complainant) alleges that, by his treatment of her, Mayor Darren White (the Respondent) breached sections 1.14, 1.15, and 1.16 of By-law 11-2019, A By-law to Adopt a Code of Conduct for Members of Council & Members of Local Boards.
2. Specifically, Councillor Mercer alleges that the Mayor failed to treat her with courtesy and respect, and attempted to belittle and humiliate her.

## **SUMMARY**

3. After investigation, I am dismissing the Complaint. The allegations are unfounded.
4. Councillor Mercer makes claims that are unsupported by the evidence.
5. In respect of the Niagara Escarpment Commissioner matter, I find that Mayor White did not prevent Councillor Mercer from doing her job. I also note that communicating with the NEC in an attempt to influence the exercise of its law enforcement functions in a particular case is not part of an elected official's job.
6. In respect of her motion at the July 16 meeting, I find that Councillor Mercer acted provocatively and disrespectfully, and Mayor White did not.
7. The Complaint caused an unnecessary expenditure of taxpayers' money. To limit further cost to Township, I am keeping this report as short as possible, while meeting the obligation to set out the reasons for my conclusions.

## **BACKGROUND**

8. Councillor Mercer's Complaint revolves around two different matters: her communications with the Niagara Escarpment Commission (in which she claims the Mayor interfered) and the July 16 Council meeting, where she claims to have been belittled and subject to verbal abuse.
9. While these matters occurred in June and July, Councillor Mercer says they are connected to a separate, earlier issue of membership on the Nottawasaga Valley Conservation Authority (NVCA). I will summarise the NVCA background before describing the matters immediately giving rise to the Complaint.

**Nottawasaga Valley Conservation Authority**

10. Councillor Mercer was first elected in 2018. At the inaugural Council Meeting of the 2018-2022 term, Council appointed various Members and various other residents to various offices. Councillor Mercer was appointed to one-year terms as Melancthon's representative to the Shelburne Public Library, and as one of two Melancthon representatives to the Shelburne and District Fire Department Board of Management. The compensation for each position is \$60 per meeting.

11. Councillor Mercer was further appointed, with one other Council Member, to serve a one year-term on the Board of Management for the Horning's Mills Community Park. Compensation for attending meetings of the park board is \$60 per meeting (or \$100 per meeting that lasts more than five hours). She was also one of three Council Members designated to constitute the "head" of the municipality under subsection 3(1) of the *Municipal Freedom of Information and Protection of Privacy Act*.

12. Among other appointments that day, Mayor White was appointed to the Nottawasaga Valley Conservation Authority<sup>1</sup> for the 2019-2022 term.

13. At the very next meeting, December 20, 2018, Councillor Mercer expressed concern that she had not been appointed to the NVCA. She said it was her number one priority. After discussion, Mayor White offered to step aside so that Councillor Mercer could be appointed for one year, at which point Council would revisit the appointment of its NVCA representative. The staff was directed to draft a by-law to rescind the Mayor's appointment.

14. On January 17, 2019, the appointment of Mayor White to the NVCA was rescinded, and Councillor Mercer was appointed until December 31, 2019.<sup>2</sup>

15. On December 12, 2019, Councillor Mercer was appointed to the NVCA for the 2020 year. Mayor White seconded the appointment motion.

16. In the Complaint, Councillor Mercer alleges that:

Darrin [sic] White<sup>3</sup> has tried to push me off the NVCA board even though I have learned that it is a council term on the NVCA not a yearly term. This is a continuation of my experience on council with him.

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<sup>1</sup> Technically, there is no "board" of a conservation authority. Municipal representatives as appointed as members of the authority itself. It is common, however to refer to members of the authority as members of its "board" or "board of directors." Both the correspondence from the NVCA inviting Melancthon to appoint its new member, and the Council resolution appointing Mayor White, spoke of the NVCA "Board of Directors."

<sup>2</sup> The rescission was effective January 31, 2019, and Councillor Mercer was appointed effective February 1.

<sup>3</sup> In quoting from documents, my practice is to correct obvious errors in grammar and spelling and to make punctuation consistent, where the correction does not substantially alter a passage. In this case,

17. The record simply does not support this claim. In fact, the record shows that Mayor White was appointed to the NVCA, and then agreed to step aside after Councillor Mercer protested. Councillor Mercer was then appointed to two consecutive terms, of 11 months and 12 months respectively.

18. Subsection 14(4.1) of the *Conservation Authorities Act* makes explicitly clear that the term of a municipal appointee is, “as may be determined by the council that appoints the member.” In this case, the “council that appoints the member” is the Council of the Township of Melancthon. Township Council has determined that Councillor Mercer was to be appointed for the last 11 months of calendar year 2019, and all 12 months of calendar year 2020.

### **Niagara Escarpment Commission**

19. Councillor Mercer decided to help some residents in Horning’s Mills resolve an issue involving the Niagara Escarpment Commission. At some point in June, the NEC refused to deal with her. The NEC replied that it would only communicate with Melancthon’s CAO

20. On June 30, Councillor Mercer wrote Ms Debbie Ramsay, Manager, Niagara Escarpment Commission, asking, “Can I get an update please on [specific municipal address]?”

21. That afternoon, the NEC manager replied, “The NEC has been requested by the township to direct all inquiries for updates through Denise Holmes, CAO. The NEC is providing periodic updates to her.”

22. My understanding is that Councillor Mercer was not communicating on behalf of the Township, but instead was communicating individually as a Council Member or on behalf of a constituent or constituents.

23. The NEC adopted what I call a one-window approach (meaning that it would only communicate with one representative of the Township, the CAO) at the request of Mayor White.

24. I should add that the issue with the NEC involved the NEC’s inspection, investigative, and enforcement functions under the *Niagara Escarpment Planning and Development Act*, *Niagara Escarpment Plan*, and associated regulations. That this is a law enforcement matter is clear from the Complaint, which states:

the said [location] property is owned by a resident who over the years has committed various violations against the NEC permitted use for the land such

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having regard to the manner and tone with which Councillor Mercer describes the Mayor, I cannot be sure that fixing her misspelling of his first name would be an insignificant correction. I have, therefore, left her spelling intact.

as having an illegal grow op. The OPP had also become involved at various times based on resident complaints. Although the NEC visited the property numerous times over the years, nothing formally had been done to rectify the situation.

25. The Complaint also claims that the property owner was charged, which again indicates that this is a law enforcement matter.

26. In June, Councillor Mercer emailed the NEC enforcement officer, who replied by copying Mayor White. It was after this that Mayor White invited the NEC to communicate directly only with Melancthon's CAO, and not directly with any other Township officials, including the Mayor.

27. Councillor Mercer believes that by asking the NEC to adopt a one-window approach, Mayor White was "controlling the situation" and that, "White sees himself as the grand poobah of it all with authority over everyone and everything."

28. Councillor Mercer alleges that the one-window approach is nothing but an attempt by the Mayor to prevent the Councillor from doing her job and from being successful.

29. I am quoting at length from Councillor Mercer's Complaint, because I believe it is revealing of her approach to these matters. Keep in mind that the issue about which she writes is a communication from the Mayor to the Niagara Escarpment Commission, asking the NEC to communicate with Melancthon through the CAO.

**The Mayor doesn't want me to be successful or do my job successfully. He is attempting to harm me, to keep me from doing the job of a Councillor. This is apparent in his hostile attitude to me from year 1, that others have witnessed firsthand.**

**There is no other reason. The Mayor doesn't represent or speak on behalf of the NEC. The Mayor is not my boss. I don't report to the Mayor, nor is he my supervisor.**

Mayor Darrin [sic] White has turned what could have been a wonderful Council experience, into an ongoing nightmare, tantamount to a street fight that happens at every meeting. As I do my job, meetings degenerate into fights, and ultimately almost always have him shutting me down and keeping me quiet. I am, however, not the first person to experience this from Darrin [sic] White.

Darrin [sic] White has tried to push me off the NVCA board even though I have learned that it is a council term on the NVCA not a yearly term. This is a continuation of my experience on council with him.

This is the same power and control that I have written about in a past integrity complaint. ...

This is not a mayor who EVER works with me, talks to me politely, seeks me out for opinion, etc. My conclusion is that he's not capable of these respectful behaviours because he's threatened by autonomous thinking.

Clearly, he has done absolutely nothing to demonstrate leadership towards me, to respect me, to value my input, or to make my time on council anything but unpleasant. On the contrary, he has demonstrated extreme hostility from the start and I have emails to prove this, and individuals who will speak up for me. It is continued harassment, and continued attempts to keep me from doing my job as a councillor. What he considers acceptable and normal treatment, is unacceptable by any standards.

Let him prove otherwise.

[emphasis in original]

30. While Councillor Mercer makes allegations against Mayor White and then states, “let him prove otherwise,” that is not how the process works. The legal principle is that the one who asserts something must prove it.

31. As the above excerpt shows, Councillor Mercer has taken a single issue (whether the Mayor contravened the Code by asking the NEC to adopt a one-window approach) and expanded it to a broad, free-wheeling, *ad hominem* attack on the Mayor’s conduct and character. In my view, the municipal integrity commissioner process is not intended to be used in this matter.

32. It is fair to ask Mayor White to respond to the specific issue of his communication with the NEC. It is unfair to expect him to address a litany of general claims and criticisms of character that only tangentially relate to the NEC issue.

### **July 16 meeting**

33. The second matter is unrelated. On June 18, Councillor Mercer had given notice of the following motion:

That the current Horning’s Mills Hall Board (of this current term of council), resume their responsibilities as soon as possible, with a newly-constituted Member of Council (as per Township of Melancthon protocols), further to the reopening of facilities post pandemic, and based on the exemplary work of the existing volunteer board members to not only successfully manage, but also bring the hall to profitability.

34. On July 16, the motion was moved, seconded, debated, and defeated.

35. According to Councillor Mercer, “I don’t have much experience making motions and have only brought possibly two motions to council so far.” In fact, this was the sixth substantive motion, considered by Council, that Councillor Mercer had drafted and given as notice.<sup>4</sup>

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<sup>4</sup> Councillor Mercer gave notice of substantive motions which Council considered on the following dates: June 6, 2019; August 15, 2019; November 21, 2019; December 12, 2019 (same motion considered again February 6, 2020); May 7, 2020; July 16, 2020. Following additional notices, two more motions of Councillor Mercer were considered September 17, 2020, and one more on October 15, 2020.

36. Councillor Mercer was, and still is, the most prolific issuer of notices of motion during this Council term.<sup>5</sup>

37. Nonetheless, the following is how Councillor Mercer described what occurred:

I made a motion at the July 16 meeting. I don't have much experience making motions and have only brought possibly two motions to Council so far. However, I never expected that in doing so most recently, the Mayor, of all people, would demonstrate extreme hostility and rancor in an attempt to belittle me. (Admittedly I shouldn't be surprised, but I am often gob-smacked at his rude and insecure behaviour.) A number of community members had sent in emails to support the motion prior to the meeting.

When the item came up on the agenda, the Mayor asked me to speak to my motion and I spoke for about 1 minute. The Mayor then jumped in and started to dominate the conversation – he criticized my motion, the wording, how the wording had changed from the notice of motion made in June, and how he had showed it to different people and how bad it was, etc.

If he didn't like the motion, he could have with civility as per the Code of Conduct, offered to make an amendment. But instead, he took advantage of his position as chair of the meeting to engage in his usual verbal warfare to intimidate me and make me look bad in front of the many members of the public participating online.

(Please look at the tape of the Council meeting for verification.)

I attempted to intervene and talk to my motion and give rebuttals because it is my motion after all!, but he took advantage of his position to talk *ad nauseum*, and cut me off as he always does. He and his "buddy" on Council, yelled at me: point of order. This is what always happens during meetings.

Meanwhile, his "buddy" on Council (and I use the term "buddy" loosely because I know this is a politically-expedient relationship), talks constantly without acknowledging the Mayor, never puts his hand up, and acts as if he runs each meeting.

Next, the Mayor stated that he gives me free reign more than anyone on Council to talk. This is absolute rubbish; an untruth and the usual smoke and mirrors falsehoods that he spouts continuously as Head of Council. I urge that the video of this and all Council meetings be watched as evidence.

I have timed another Councillor talking for 20 minutes straight on a motion to which the Mayor said nothing and did not intervene. Please watch the tapes. The Mayor is unfair in his treatment of Councillors and "punishes" anyone who disagrees with him. Even though it is my right, I hardly talk during Council except to ask questions, or make a small brief point.

He's his own worst enemy because in silencing a Councillor, he forces that individual to work behind the scenes.

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<sup>5</sup> Up to and including October 15, 2020, Councillor Mercer has given nine notices of motion, Mayor White three, Deputy Mayor Besley one, and the others none. As of July 16, 2020, the figures were six, three, one, and none.



(I stay quiet because the Mayor over reacts to most everything that I say and turns even the most oblique issues into contention. His motto should be: let's beat a dead gnat with a sledgehammer.)

On a motion that I have brought to Council, I do expect to talk, and provide supplementary. It is my motion and I have a right to explain and advocate for its acceptance. A good Mayor would encourage discussion, and co-operation.

I have never once heard him shut down another Council Member, nor have I heard him say: point of order to anyone but me. I must be a huge threat – this only woman, first-time Councillor, because he continues to silence me.

For my entire time on Council, the Mayor has shown me contempt, and tried to control me, shut me down, and keep me from doing my job. This is the second year now that I've endured this and I don't intend to sit and curry favour with him to avoid his contempt like the others feel compelled to.

I will be doing what I am tasked to do as a duly-elected municipal representative (yes – even acclaimed Councillors are duly elected) in speaking out on issues to represent the community.

38. I have quoted from the Complaint at length because it is revealing of the situation. Councillor Mercer claims that Mayor White does not treat her with civility and respect. At the same time, she accuses the Mayor of, "insecure behaviour" and of taking "advantage of his position to talk *ad naseum*." She describes one of his comments as, "absolute rubbish, an untruth and the usual smoke and mirrors falsehoods that he spouts continuously as head of council ..." She implies that he is not "a good Mayor."

39. She repeatedly refers to another Council Member as the Mayor's "buddy."

40. Elsewhere in the Complaint she states, "White sees himself as the grand poobah of it all with authority over everyone and everything." (She bases this claim on the fact that Mayor White was elected by his peers to serve as Warden of Dufferin County and as Vice-Chair of the Western Ontario Wardens' Caucus.)

41. As is evident, Councillor Mercer alleges incivility and disrespect, but the wording of her Complaint displays a lack of civility and respect for the Mayor and another Council Member.

42. Councillor Mercer also uses the July 16 meeting as a springboard for a series of broad, vague criticisms on the Mayor, unmoored to time or place: "I shouldn't be surprised ... at his rude and insecure behaviour ... engage in his usual verbal warfare ... unfair in his treatment of councillors and 'punishes' anyone who disagrees with him ... turns even the most oblique issues into contention."

43. It is fair to ask Mayor White to respond to the specific issue of what occurred July 16. It is unfair to expect him to respond to an unspecific list of vague and general attacks.

44. The investigation did not sustain Councillor Mercer's allegations, either her allegations about July 16 meeting or her general aspersions against the Mayor.

45. Contrary to Councillor Mercer's claims, I find that she was permitted to speak to her motion, and did, without interruption.

46. While several Council Members including the Mayor opposed the motion (it was, in the end, defeated), the investigation found that they, including the Mayor, exhibited no hostility toward Councillor Mercer.

47. According to the approved minutes of the July 16 discussion:

Mayor White called for discussion on the motion. Councillor Mercer spoke to her motion and the reasoning behind it. Each Member of Council was given a chance to have their say on the motion. Mayor White then called for the vote and the motion was lost.

48. Councillor Mercer was present on August 13 when Council voted to approve the July 16 minutes as circulated. If she felt that the July 16 draft minutes did not accurately describe the consideration of her motion, then this was her opportunity to object and to seek correction. Councillor Mercer raised no concern.

49. An interruption did occur while the July 16 motion was debated, and Councillor Mercer caused it. As Councillor Thwaites was speaking to her motion, Councillor Mercer was making faces and laughing. Councillor Thwaites raised a point of order, arguing that Councillor Mercer's conduct contravened the procedural by-law. Councillor Mercer did not have the floor at the time but, even if she was speaking, a point of order would have taken precedence. Councillor Mercer acknowledged that she was laughing at Councillor Thwaites.

50. As part of the investigation, I reviewed all meetings during the current Council term. The records indicate that Councillor Mercer has not been sidelined or prevented from participating.

51. Far from being marginalized, Councillor Mercer is responsible for more than two-thirds of the Council business not arising from staff reports or correspondence.<sup>6</sup>

52. The minutes document numerous occasions when Councillor Mercer: introduced topics for discussion; identified priorities; questioned the Mayor and staff; placed her views on the record; and had agenda items added at her request.

53. She was absent from the January 16, 2020, Council meeting, but her views on two agenda items were received by the CAO and then shared with Council and taken into account. That is not the experience of someone being marginalized.

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<sup>6</sup> As measured by substantive motions of which notice is given. See note 5.

54. The record also does not support Councillor Mercer's claims that, "This is not a mayor who EVER works with me ... he has done absolutely nothing to demonstrate leadership towards me, to respect me, to value my input, or to make my time on council anything but unpleasant. On the contrary, he has demonstrated extreme hostility from the start ..."

55. While the Mayor did not support all of Councillor Mercer's motions – for example, Mayor White voted against Councillor Mercer's October 15 motion to increase Councillors' pay by \$4000<sup>7</sup> – he has supported several of them. For example, on May 7, he seconded and voted for Councillor Mercer's motion to transfer funds from the Municipal Modernization Fund to the Horning's Mills Community Hall account to assist the hall board with operational costs.

56. At one meeting (March 7, 2019), early in the Council term, the Mayor permitted Councillor Mercer to deliver a slide presentation to him and the other three Council Members on the Melancthon strategic plan. This occurrence does not correspond to Councillor Mercer's claim that the Mayor is almost always shutting her down and keeping her quiet.

57. Since the events covered in this report, Mr. Thwaites has resigned from Council. His resignation, and the circumstances leading to it, have no bearing on my findings.

## **PROCESS**

58. In operating under the Code, I follow a process that ensures fairness to both the individual bringing a complaint (Complainant) and the Council Member responding to the complaint (Respondent). The fair and balanced process I normally use is consistent with the Complaint Protocol under the Council & Local Board Members Code of Conduct. The process includes the following elements:

- The Respondent receives notice of the Complaint and is given an opportunity to respond.
- The Respondent is made aware of the Complainant's name.
- The Complainant receives the Respondent's Response and is given an opportunity to reply.

59. I invite the parties to focus on specific allegations related to particular provisions of the Code. I do not consider vague and general claims that are unattached to a

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<sup>7</sup> The motion was to increase Councillors' pay and the Deputy Mayor's pay by \$2000 in 2021 and \$2000 in 2022 (a \$4000 total increase), and to increase the Mayor's pay by \$600 each year (a \$1200 total increase). The motion was carried on a 3-2 vote.

particular time, occurrence, or section of the Code, and I do not ask a Respondent to address them.

60. Also, section 5.8 of the Complaint Protocol states that no complaint may be made more than three months after the facts giving rise to the complaint occurred or first came to the Complainant's attention.

61. On July 28, I received a Complaint from Councillor Mercer under the Code of Conduct. The Complaint was written on the wrong form. The correct form was submitted August 4. That date is considered to be the official Complaint date.

62. Councillor Mercer claimed contraventions of sections 1.14, 1.15, and 1.16 of the Code. In relation to the Niagara Escarpment Commission allegation, I determined that I would only consider section 1.16 because the facts alleged did not justify an investigation under the other two sections. In relation to the July 16 meeting allegation, I determined that I would only consider sections 1.14 and 1.16, because the facts alleged did not justify an investigation under section 1.15.

63. I have not considered section 1.15 (harassment) because under Ontario law harassment usually, though not always, involves a pattern of conduct, not a single incident. In order to advance an allegation under section 1.15, a complaint would need to describe specific incidents that amount to a pattern.

64. On August 12, I issued a Notice of Investigation to both parties. The Notice included the Complaint and identified the sections of the Code being considered.

65. After receiving the parties' submissions, I issued a delegation under subsection 223.3(3) of the *Municipal Act* to another lawyer in my office, authorizing him to conduct witness interviews.

66. I reviewed relevant records of the Township, including records of all Council meetings during the current term.

67. I received several additional communications from Councillor Mercer.

68. I have taken into account all of the evidence and all of the parties' communications with me.

69. I have made findings of fact according to the civil standard of the balance of probabilities.

70. Councillor Mercer makes a series of vague and general allegations against Mayor White, with no reference to time, place, or section of the Code, and then states, "let him prove otherwise." As I have explained, that is not how the process works, and I decline to alter the process in the manner Councillor Mercer suggests.

71. It is fair to ask, and I have asked, Mayor White to address specifically the NEC allegation (in the context of section 1.16) and the July 16 allegation (in the context of section 1.14 and section 1.16). I have not asked Mayor White to respond to the generalized, unspecific criticisms. That would be unfair. I certainly have not adopted Councillor Mercer's proposed standard of "let him prove otherwise." Our legal system does not operate on that basis.

72. Section 11.7 of the Complaint Protocol starts that a draft of the investigation report is to be given to the Respondent for comment. This provision was only intended to apply when a Respondent is found to have contravened the Code. Since my conclusion is that Mayor White did not contravene the Code, I did not invite him to comment on a draft of this report.

73. The Complaint Protocol authorizes me to extend time frames, in my discretion. In the context of the COVID-19 pandemic I have exercised my discretion to do so.

## **POSITIONS OF THE PARTIES**

### **Councillor Mercer (Complainant)**

74. Councillor Mercer's position is set out in great detail in the Background section, above.

75. She alleges that Mayor White attempted to interfere with her communication with the Niagara Escarpment Commission, allegedly in order "to harm me, to keep me from doing the job of a Councillor."

76. She cites Code sections 1.14, 1.15, and 1.16, but I have considered only section 1.16 under this allegation because the facts alleged did not justify an investigation under the other two sections.

77. Section 1.16 includes but is not limited to: "behaviour that harms, intimidates, threatens, victimizes, undermines, offends, degrades or humiliates another Staff [/] Members ... Undermining or deliberately impeding a person's work. Withdrawing necessary information or purposefully giving the wrong information ... Freezing out, ignoring or excluding."

78. Councillor Mercer further alleges that, at the July 16 meeting, Mayor White "demonstrate[d] extreme hostility and rancor in an attempt to belittle me. ... engage[d] in his usual verbal warfare to intimidate me and make me look bad in front of the many members of the public participating online."

79. She cites Code sections 1.14, 1.15, and 1.16, but I have considered only sections 1.14 and 1.16 under this allegation because the facts alleged do not justify an investigation under section 1.15.

80. Section 1.14 requires that Members show respect for fellow Members, show courtesy when other Members have the floor, and avoid any conduct towards a Member which is known or ought reasonably to be known to be unwelcome, which offends, embarrasses or intimidates, or which reflects intolerance towards any group or individual.

81. Section 1.16 has already been mentioned. It also covers “Attempts to humiliate Staff in front of others ... Abusive, offensive or insulting language. Behaviours that frighten, humiliate, belittle or degrade. Belittling a person’s opinions.”

**Mayor White (Respondent)**

82. As a preliminary matter, Mayor White objects to the insults and name calling in Councillor Mercer’s Complaint.

83. In response to the NEC allegation, Mayor White disagrees that Councillor Mercer was ever told she is not allowed to do her job.

84. He explains that a number of people were seeking updates from the NEC on the issue regarding [specific location], so he asked Council Members, if they required an update on the status of enforcement, to seek that information through the CAO. He asked all Members including himself to follow the same procedure. He states that the NEC was thankful for this approach as it had been dealing with multiple requests for information on the same issue.

85. Mayor White characterizes the one-window approach as “not a decree from the mayor, ... [but] a decision of council based on my request.” He says Councillor Mercer was present at the meeting where this was discussed.

86. The Mayor rejects the suggestion that he ever told Councillor Mercer that she cannot speak to the NEC or the local MPP. “She can feel free to contact them as a private citizen should she wish,” he observes. “They also have the right to tell her that they have no comment.”

87. In relation to the July 16 motion, the Mayor agrees that he felt the motion was flawed, but states that he did not rule it out of order and instead allowed it to proceed to a debate and vote.

88. Flaws identified by the Mayor included, in his opinion, the following: The motion was contrary to action that Council had already agreed to take. The motion impugned the reputation of a specific Council Member. (I understand the Mayor to be referring to

the motion's indirect attempt to remove and replace Councillor Thwaites as a member of the Horning's Mills Hall Board, and its pointed reference to the "exemplary work of the existing volunteer board members" – that is, everyone except Councillor Thwaites.) The motion was internally contradictory and asserted as facts things that were false.

89. Mayor White states that when Council reached that part of the agenda, he offered the floor to Councillor Mercer to speak to her motion, and she spoke for about a minute. He says he asked Councillor Mercer if she wanted to say anything else and she said no. The motion was seconded and the Mayor then allowed other Members to speak to the motion. When he spoke, the Mayor gave reasons for being able to rule the motion out of order, but then said that he let the motion go to the floor anyway because Councillor Mercer regularly suggests that she is not treated fairly and he did not want to be seen as in anyway trying to shut her down.

90. At one point the Mayor says he asked Councillor Mercer if she would like to withdraw her motion and make changes and she declined.

91. According to the Mayor, when Councillor Thwaites<sup>8</sup> was speaking to the motion, "[Councillor] Mercer was visibly mocking him during the Zoom meeting, rolling her eyes, throwing her hands up and laughing when he made statements."

92. Councillor Thwaites raised a point of order. According to the Mayor, the following happened next:

(When a Member of Council calls a point of order, discussion comes to a halt and the Mayor or Chair gives the person who called the point of order an opportunity to explain how they feel their reputation has been harmed or maligned. ). I attempted to do this and while that Member of Council was speaking, Councillor Mercer was yelling over the top of him. A number of times I had to tell her to stop talking, which she refused to do, and kept on and on and on about how she is so poorly treated, how we are all so mean to her, how I constantly shut her down, etc., etc., etc. Keep in mind this is during the time when another Member is supposed to be explaining his point of order.

93. The Mayor suggests that this was consistent with Councillor Mercer's behaviour at other meetings.

94. Mayor White states that at meetings he is respectful toward everyone. He also says that he allows any Member who wishes to speak to a matter to speak for as long as the Member wishes, whether "three minutes or 30 minutes." He states that Councillor Mercer has often spoken at great length on an issue.

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<sup>8</sup> Neither the Mayor nor Councillor Mercer named this Council Member, but the investigation confirmed it was Councillor Thwaites.

95. He rejects the claim that Councillor Mercer hardly talks during Council meetings and usually stays quiet. Mayor White states that Councillor Mercer speaks more often than anybody else. “Councillor Mercer regularly gets the floor five or six times on an issue, way more than anybody else on Council even asks to.”

96. The Mayor concludes his Response as follows:

Councillor Mercer is free to do her job however she likes to do it. I have never tried to shut her down or stop her from doing it in any way. The only thing I ask, and it would be the same thing that any Mayor anywhere would ask any Member of Council is that when Council decides on a course of action, that’s the course of action that will be taken. A Councillor that doesn’t agree is free to say their piece, but once the course is determined they need to get on board and not go out in the public and try and undermine Council Members, staff, or other people, which is something Margaret Mercer does on a regular basis. Margaret Mercer has no problem going out and publicly sowing the seeds of discord telling people how horrible I am, or other Members of Council are, talking about staff behind their backs, etc. it’s just ridiculous and it needs to stop.

### **Complainant’s Reply**

97. In a brief reply, Councillor Mercer criticizes the Mayor for not apologizing and not admitting wrongdoing.

98. She says that the Mayor cannot justify giving direction to the NEC: “It is not his job to do so. It was a power tactic. He did this to harm me. ... White is attempting to keep me, and me specifically, from helping residents.”

99. In relation to the point of order, Councillor Mercer states, “I was told point of order for saying very little ...” [emphasis added]

## **FINDINGS OF FACT**

100. Findings of fact are set out in the Background section, above, and in this section.

101. The findings are based on interviews, the evidence of the parties, and documentary evidence.

102. I find as a fact that Councillor Mercer participates actively in Council Meetings and has not been marginalized, sidelined, or silenced.

103. I find as a fact that Councillor Mercer often instigates or provokes arguments on Council and then complains that she is the one unfairly treated.

104. I find as a fact that Councillor Mercer was not treated with hostility during the July 16 meeting.



105. I find as a fact that Councillor Mercer's July 16 motion was a direct criticism of Councillor Thwaites, calling for him to be removed from the Horning's Mills Hall Board, and praising the "exemplary work" of all the hall board members except Councillor Thwaites. I find that the motion was intended as a criticism of him, and was understood by Council to be a criticism.

106. I find as a fact that Councillor Mercer was permitted to speak to her motion and that she was not cut off, except when she tried to talk over Councillor Thwaites while he had the floor and was addressing his point of order.

107. I find as a fact that Councillor Mercer made mocking gestures while Councillor Thwaites was speaking, she laughed at him, and then she said, "Yes, I am laughing at you."

108. I find as a fact that Councillor Mercer became angry when her motion was defeated.

109. Where the evidence of the Mayor and Councillor Mercer differ, I accept the evidence of the Mayor, for the following reasons: First, the evidence of the Mayor is more consistent with the results of the investigation. Second, Councillor Mercer makes several claims that are contradicted by the facts.

110. Councillor Mercer claims, "I don't have much experience making motions and have only brought possibly two motions to council so far." In fact, at the time of making this claim, she had already brought six motions to the floor, more than the Mayor and all the other Council Members combined. (As of October 15, she was up to nine motions.)

111. Councillor Mercer claims that Mayor White tried to push her off the NVCA, when in fact he offered to give up his seat to her, and he supported her appointment for eleven months of 2019 and all of 2020.

112. Councillor Mercer claims that NVCA appointments are for four years, when in fact each Council appointment of her was for a term expiring December 31. Further, the *Conservation Authorities Act* contradicts her claim.

113. Councillor Mercer, claims "an ongoing nightmare, tantamount to a street fight that happens at every meeting. As I do my job, meetings degenerate into fights." In fact, as I have found, the evidence suggests that she instigates or provokes many disagreements.

114. Councillor Mercer claims that she hardly ever talks during Council meetings, "except to ask questions, or make a small brief point." Nearly two years' worth of Council minutes contradict this claim. As I have noted, on numerous occasions she has introduced topics for discussion, identified priorities, questioned the Mayor and staff,

placed her views on the record, and had agenda items added at her request. She has even been allowed to make her case on one topic in the form of a slide presentation to Council. I have already observed that Councillor Mercer has been responsible for more than two-thirds of the Council business not arising from staff reports or correspondence.

115. Councillor Mercer claims that she was cut off while trying to speak to her motion. In fact, she was trying to speak over Councillor Thwaites, who had the floor and was explaining his point of order.

116. Referring to his positions as Township Mayor, County Warden, and Vice-Chair of the Western Ontario Wardens' Caucus, Councillor Mercer claims that Mr. White seeks "various 'power' roles for himself ... [and] sees himself as the grand poobah of it all with authority over everyone and everything." This claim is wholly unsubstantiated and, frankly, trivial. There is nothing unusual or untoward about a Head of Council serving as a County Warden. Most Wardens are Heads of Council.

117. At other times in this proceeding, Councillor Mercer has carefully chosen words that might be technically correct but leave an impression inconsistent with the facts. For example, she claims, "I was told point of order for saying very little ..." [emphasis added]. Technically correct: she was *saying* very little. In fact, the point of order was raised because she was making hand gestures, rolling her eyes, and laughing. Her statement does not address that.

118. For example, Councillor Mercer has claimed to me, in the course of this proceeding, that the NEC issue was not a law enforcement matter in July [emphasis added]. Presumably, she mentions July because she has acknowledged emailing an NEC enforcement officer in June. In fact, the NEC issue is very clearly a law enforcement matter and continued to be such in July. I cannot not accept Councillor Mercer's claim to the contrary.

119. In all of the circumstances, I find Councillor Mercer's account of what occurred to be unreliable. Where her account differs from that of Mayor White, I find, based on the standard of balance of probabilities, that the Mayor's account is more plausible.

120. I accept as a fact Mayor White's statement that Councillor Mercer is prone to making insults when she does not get her way. As I have noted, her written Complaint calls the Mayor names, insults him and another Council Member, and makes *ad hominem* attacks. Since this is how she expresses herself in writing, it is very plausible that her spoken communication is at times similar.

121. I have learned, directly, in the course of this proceeding, that Councillor Mercer has the ability to react uncivilly when she does not get her way.

122. In response to the dismissal of her complaint, she emailed to tell me, “You have capitulated and I’m disappointed in your service. You have not responded to the needs of our council. ... You have missed the point.”

123. This occurred after I had reached my conclusion, and it did not affect my conclusion. Nonetheless, it is consistent with the investigation findings and provides further support for my conclusions, on a balance of probabilities, about what happened.

## **ISSUES RAISED IN THE INVESTIGATION**

124. I have considered the following issues:

- (A) *Did Mayor White contravene the Code by asking the Niagara Escarpment Commission to pursue a one-window approach?*
- (B) *Did Mayor White contravene the Code of Conduct at the July 16 meeting?*

## **ANALYSIS AND FINDINGS**

### **(A) Did Mayor White contravene the Code by asking the Niagara Escarpment Commission to pursue a one-window approach?**

125. No.

126. Councillor Mercer makes several valid points, but these tell only part of the story.

127. I agree with Councillor Mercer that the Mayor is not her boss. I agree that a Mayor must not prevent a Councillor from doing her job. I agree that, on a matter unrelated to Township business,<sup>9</sup> where Councillor Mercer does not hold herself out as speaking for the Township, nobody has the authority to tell Councillor Mercer that she must not, or must, communicate with the NEC or any other particular entity.

128. I do not agree that the Mayor obstructed or prevented Councillor Mercer from communicating with whomever she wished. Also, I doubt that attempting to influence the NEC in the exercise of its law enforcement function in a particular law enforcement case is part of a Councillor’s job.

129. Councillor Mercer addressed, at some length, questions such as whether Mayor White discussed the one-window approach with Council, whether Council agreed to the approach, whether Council made a decision on the approach, whether a Council

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<sup>9</sup> The parties disagree on whether the NEC matter relates to Township business. Mayor White believes it does. Councillor Mercer believes it does not. Their disagreement on this point is not material to my conclusion.

decision appears in the minutes, and whether such a decision was properly made during closed session. In my view, none of these questions is relevant. Even if Mayor White acted unilaterally (which he does not agree), he did not contravene the Code. The NEC was free to accept or reject his suggestion of a one-window approach. More importantly, Councillor Mercer was free to accept or reject the one-window approach, as demonstrated by the fact that she did reject it, and continued to communicate with the NEC.

130. In any event, I doubt that communicating with law enforcement officials, about a particular law enforcement matter, qualifies as doing a Councillor's job.

131. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>10</sup> At the same time, a Council Member's right to express views must respect the independence of law enforcement. This includes the independence of NEC employees when they are discharging inspection, investigation, and enforcement functions.

132. The jobs of law enforcement officers involve discretion. While law enforcement officers have a duty to enforce the law, they also have a duty to exercise their discretion, including the discretion to write or not to write a ticket, or to pursue or not to continue an investigation.<sup>11</sup> This discretion is not absolute.<sup>12</sup> Nonetheless, police discretion (or, in this case, the discretion of NEC employees engaged in law enforcement) is an essential element of the justice system.<sup>13</sup>

133. Another essential principle is the independence of law enforcement officers.<sup>14</sup> This principle underpins the rule of law.<sup>15</sup> Independence means that a law enforcement officer cannot be subject to political direction in deciding whether to lay a charge or whom to charge with an offence.<sup>16</sup>

134. Politicians must respect the independence of law enforcement officers. A Council Member must not try to influence the disposition of a specific law enforcement case.

135. The fact that a Council Member is communicating about a law enforcement matter does not necessarily mean that the Council Member has overstepped the

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<sup>10</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, at 1193.

<sup>11</sup> *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190, at para. 37.

<sup>12</sup> *Ibid.*, at para. 38

<sup>13</sup> *Ibid.*, at paras. 51, 86.

<sup>14</sup> *R. v. Campbell*, [1999] 1 S.C.R. 565.

<sup>15</sup> *Ibid.*, at para. 29.

<sup>16</sup> *Ibid.*, at para. 33

Member's role. The answer depends on whether the Council Member is impermissibly interfering on the case or is properly communicating.

136. It is appropriate for a Council Member to hold an opinion on whether a law has been contravened, especially if it relates to property within an area she represents. A Council Member may hold an opinion. What she must not do is to interfere with the independence of those responsible for law enforcement.

137. An elected official is supposed to exercise restraint in communicating about law enforcement matters, and to respect the principle that law enforcement must be independent of political direction and political interference. I do not accept the premise that communication with the NEC about a law enforcement matter in an individual case is subject to no restrictions, or is necessarily part of a Councillor's job.

**(B) Did Mayor White contravene the Code of Conduct at the July 16 meeting?**

138. No.

139. I find the reality to be the opposite of what Councillor Mercer claims.

140. She intentionally moved a provocative motion aimed at Councillor Thwaites. Her motion effectively called for his removal from the Horning's Mills Hall Board, and it praised the "exemplary work" of everyone on the Hall Board but Councillor Thwaites.

141. While Councillor Thwaites was speaking to her motion about him, Councillor Mercer was laughing, rolling her eyes, and making mocking gestures. She said, "Yes, I am laughing at you."

142. Councillor Mercer moved a motion that was critical of Councillor Thwaites, and then failed to listen respectfully while he responded to it.

143. When Councillor Thwaites raised a point of order, Councillor Mercer attempted to talk over him.

144. I reject the suggestion that Councillor Mercer was a victim in this situation.

145. I find no support for the allegation that Mayor White contravened the Code.

146. On the contrary, it appears that Councillor Mercer, angry at the defeat of her motion, filed what is commonly known as a "spite complaint." There is no basis for it.

## **CONCLUSION**

147. I find that Mayor White did not contravene the Code of Conduct.

148. The Province has mandated municipal integrity commissioners and codes of conduct, but provided no additional funding to support these functions.

149. The costs fall entirely on municipal ratepayers. The burden can be particularly heavy on municipalities with small tax bases. The impact is even more pronounced, now that many communities are struggling to cope with the COVID-19 pandemic and its effects.

150. This Complaint caused an unnecessary expenditure of taxpayers' money because, in my view, it was unfounded and it should not have been brought.

151. I also note that a significant portion of the Complaint consisted of general, *ad hominem* attacks on the Mayor that did not specifically relate to the two particular incidents in issue. This excess caused further waste.

## CONTENT

152. Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

Respectfully submitted,



Guy Giorno  
Integrity Commissioner  
Township of Melancthon

November 15, 2020