
**Municipal Code of Conduct Inquiry for the Corporation of the Town of
Fort Frances**

Recommendation Report

DATE

September 13, 2021

Code of Conduct Complaint relating to Sections 1.2 (a), 1.2 (d), 7.1, 7.2 and 7.3 of the
Fort Frances Code of Conduct (Schedule A to By- law 04/19)
against Councillor Judson (Respondent)

Complaint filed by – member of the Public (Requestor)

Inquiry conducted by:
Darrell Matson
Thunder Bay, Ontario

Delegated Integrity Commissioner (IC) as per section of 223.3(3) Delegation - Municipal
Act and Section 3.3 - Integrity Commissioner Inquiry

BACKGROUND

In 2016 the Ontario government introduced Bill 68 - Modernizing Ontario's Municipal Legislation Act. Bill 68 contained a number of amendments to the *Municipal Act, 2001*, [S.O. 2001, c. 25 (referred to in this report as the "MA")], the *Municipal Conflict of Interest Act*, (R.S.O. 1990, c. M.50), the *Municipal Elections Act, 1996* (S.O. 1996, c. 32), and various other Acts. These changes imposed new and important obligations on municipalities. The Bill received Royal Assent on May 30th, 2017. It is important to note that the changes to the Acts came into force over a period of time. Some of the changes included:

- Requiring municipalities to establish codes of conduct for members of municipal council and certain local boards, which could include rules that guide the ethical conduct of those members;
- Requiring municipalities to give the public and municipal councillors access to an integrity commissioner, with broadened powers to investigate conflict of interest complaints and provide advice to councillors;
- Providing for a wider range of penalties for contraventions of the *Municipal Conflict of Interest Act*;
- Updating the definition of "meeting" in the MA;
- Requiring municipalities to maintain a register recording all declarations of interest submitted by members of their councils; and
- Setting out how municipalities may allow for electronic participation by council, local board and committee members at meetings that are open to the public. Participants would not be counted towards quorum and members would not be able to participate electronically in meetings that are closed to the public. (Note this was later amended to first allow full participation during the COVID 19 provincial emergency, and again, later, to allow municipalities to choose whether or not to continue to allow full electronic participation.)

The mandated code of conduct for members of council must set out behaviors that members of council are expected to abide by and follow in support of the good governance of the municipality, and more particularly the confidence of the public in their local government.

The Fort Frances Council Code of Conduct, adopted by By-law 04-19 (the "Code") is intended to demonstrate a commitment to the public that Members of Council ("Members") will act with integrity, fairness, consistency, respect and within the law, without prejudice or bias.

MANDATE

As a result of an application filed by a member of the public on December 17, 2020, the Fort Frances Integrity Commissioner (“Fort Frances IC”) was engaged to conduct an inquiry (“Inquiry”) into the alleged contravention of the Code. The following sections were alleged to have been contravened by a Member: Sections 1.2 (a), 1.2 (d), 7.1, 7.2 and 7.3.

On January 5, 2021, I was contacted by the Fort Frances IC in regard to the complaint as he considered it necessary to recuse himself from the Inquiry. The Fort Frances IC requested that the Inquiry be delegated in accordance with the provisions in Section 223.3(3) of the MA, and Section 3.3 of the Fort Frances Integrity Commissioner Inquiry Protocol.

On January 13, 2021 I received notification from the Town of Fort Frances to proceed with the Inquiry.

Prior to commencing the Inquiry, a review of the Integrity Commissioner Request for Inquiry document (Application) was conducted in accordance with Sections 5.2 and 5.4 of the Fort Frances Integrity Commissioner Inquiry Protocol. It was concluded that the document was complete and within the jurisdiction of the Fort Frances IC.

The Inquiry was conducted in accordance with the Fort Frances Integrity Commissioner Inquiry Protocol.

Fort Frances Town Council was advised on February 3, 2021 that an Inquiry was underway.

This Report responds to a complaint and request for Inquiry received against Councillor Judson arising from social media posts relating to the renaming of Colonization Road, an issue that was, at the time, before the Town of Fort Frances Council. It was Councillor Judson who had originally introduced the motion to change the name of the municipal road.

ALLEGATIONS

The Requestor filed an Integrity Commissioner Request for Inquiry (Application) document on December 17, 2020, alleging that the Respondent’s social media posts contravened Sections 1.2 (a), 1.2 (d), 7.1, 7.2 and 7.3 of the Code. The Application states the following:

- that on December 12, 2020 and December 16, 2020 Councillor's Judson's posts on social media platforms Facebook and Twitter amounted to "cyberbullying citizens" and making "discriminatory, insulting statements based on the victims age and ethnic origin"; and
- that the postings were publicly viewable to all Twitter and Facebook users.

Screen captures of the postings were provided as part of the document submissions.

The Identity of the Requester is not disclosed in this Report as the Requestor asked for confidentiality in this regard, and I have previously determined that no public interest purpose would be served by such disclosure.

PURPOSE OF THE INQUIRY

The purpose of this inquiry is to determine if the Respondent, Councillor Judson, violated sections 1.2(a), 1.2(d), 7.1, 7.2 and 7.3 of the Code.

The relevant portions of these sections of Code read as follows:

1.2 Key statements of principle that underline this Code of Conduct are as follows:

- a) Council, and its Members are the leaders of the Municipality both inside and outside its geographic boundaries. Especially in an age of social media and electronic messaging, strong positive management of the reputation of the Municipality is needed. The statements and behavior of Council affect the Municipality's reputation as a place to live and do business. Conflict and inappropriate conduct among Members, staff, officers and members of the public, adversely affects the Municipality's reputation and is to be avoided. Put differently, Council has a strong role to protect and promote the Municipality and its reputation as an excellent place to live, work and do business;
- d) Members are expected to conduct themselves and perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny;

7. Conduct Respecting Others

- 7.1 Every Member has the duty and responsibility to treat members of the public ... appropriately and without abuse, bullying or intimidation...

- 7.2 A Member shall not use indecent, abusive or insulting words, tone or expressions toward any ... member of the public.
- 7.3 A Member shall not speak in a manner that is discriminatory to any individual, based on any protected grounds. Protected grounds include: citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed, sex/pregnancy, family status, marital status, sexual orientation, gender identity, and gender expression (emphasis added).

The Code does not contain definitions for some of the key words in these sections, particularly “abuse”, “bullying”, “intimidation”, “indecent”, “abusive”, or “discriminatory”. As such, the IC needs to rely on the commonly understood meanings of these terms in the English language. Appendix “A” to this report lists “definitions” of these words as the IC understands them to be commonly used. The definitions were compiled with research in a variety of English language dictionaries, as well as Internet definitions (i.e., Wikipedia).

INVESTIGATION APPROACH

It is important to note at the beginning of this section that the Respondent’s political position and reasons for proposing the renaming of Colonization Road, and their desire to address issues in the community and improve the quality of life for all residents, are not part of this Inquiry. The scope of this Inquiry is limited to the Respondent’s specific social media posts in November and December of 2020.

The investigation was conducted in accordance with Fort Frances Integrity Commissioner Inquiry Protocol (Schedule B to By-law 04-19).

Section 7 of the Inquiry Protocol provides guidance in regard to the conduct of the Inquiry. In conducting this Inquiry, the principles of procedural fairness were applied and include the following elements:

1. Provide the complaint to the Member whose conduct is in question, with a request that a written response to the allegation(s) be provided. The IC may review and discuss with the Respondent any information provided in the response to determine the relevance to the matter. A time period for responding will be specified with the request. A request for an extension to the time period specified will be considered.
2. Provide a copy of the response, and any accompanying documents and materials provided by the Respondent, to the Requestor with a request for a

written reply. The IC may review and discuss any information provided in the response to determine the relevance to the matter. A time period for responding will be specified with the request. A request for an extension to the time period specified will be considered.

3. Review the responses provided by the Respondent and the Requestor and, if necessary, undertake interviews with witnesses to clarify the information received. The IC may also request access to all books, accounts, financial records, electronic data, records, reports files and all other papers, things or property belonging to or used by the municipality that the IC believes to be necessary for an inquiry.
4. Follow up interviews with the Respondent, Requestor or witnesses if required.
5. Once the report of the IC has been drafted, if the findings are in support of the allegations of the Code of Conduct, the Respondent will receive notice of the findings, the basis of the findings, the sanctions/remedial actions and be provided an opportunity to comment.
6. Finalize the report, and advise both the Respondent and the Requestor of the outcome.
7. Submit the report in accordance with Section 10 of the Protocol.

General note: at any time during the Inquiry process, the IC may intervene to determine if there is a resolve to the Requestor's allegations.

PROCEDURAL ISSUES

While conducting the Inquiry some procedural issues were identified by the Respondent that required research and legal advice. The following summarizes the outcome of the IC's findings.

Release of Identify of the Requester (by way of unredacted Application)

As outlined in the **INVESTIGATION APPROACH** section above, the Inquiry Protocol provides guidance in regard to the conduct of the Inquiry but it does not provide an overview of the steps associated with conducting an Inquiry in accordance with the principles of procedural fairness. This is left up to the IC. Prior to starting the Inquiry process, The Respondent and the Requester were provided with an overview of the procedural fairness steps that would be followed by the IC. In this Inquiry, a request was

made by the Respondents lawyer to provide an unredacted copy of the Application which contained the name of the Requester.

Two decisions from the Divisional Court that assist to determine the content of the procedural fairness during an IC inquiry are the DiBiase v. Vaughan (City) (2016) and Dhillon v. The Corporation of the City of Brampton (2021) The Divisional Court has held that the duty of fairness entails the right of the councillor to know the substance of the case against them, and the right to meaningfully respond to the allegations.

With this standard in mind, the crux of the request by the Respondent is to provide a copy of an unredacted copy of the application (which contains the name of the requester) is whether or not disclosure of the identity of the Requestor is necessary to give the Councillor sufficient particulars to enable them to respond to the allegations.

First, nowhere in the Complaint or the Report is it stated that the Requestor is the person against whom the Respondent's social media posts were directed. The identity of the Requestor is not an essential element of making out a contravention of Section 7.3 of the Code. The identity of a complainant may be relevant where – unlike here – the allegations are that a member of council committed acts against the requester. In order to make a full and fair response to such a complaint, the member would need to understand against whom they are alleged to have acted improperly.

Based upon the information and facts relating to this inquiry, the allegations in the Complaint are not that the Respondent contravened the Code against the person who filed the complaint, nor that there was a particular or immediate “victim” of the Councillor's social media posts. Rather, the social media posts were made against an anonymous contributor to the Fort Frances Times and, more broadly, were made in a manner discriminatory to “white senior citizen”. As such, the identity of the Requestor is not at all germane to the specific allegations in the Complaint.

The Respondent has also submitted that the identity of the Requestor is relevant to advancing the “defense” that the Complaint has been made in bad faith. I disagree with such an assessment and interpretation of the Inquiry Protocol. Section 11 of the Inquiry Protocol provides that where the IC (not a member of Council) determines a complaint has been made in “bad faith,” they are entitled to disclose all relevant information to the Town so that the Town may have proper recourse.

The Inquiry Protocol does not state that such a determination automatically terminates an investigation, although the IC possesses a broad discretion generally as to whether to commence or terminate an investigation. As such, this cannot be said to be a

“defense” to the allegations. Second, the identity of the Requestor is not necessary to assess credibility or relevance of any evidence obtained throughout the inquiry. As is made clear in the Report, the Complaint sets out the basis on which the Councillor’s social media posts are alleged to have contravened the Code; it does not otherwise set out evidence that exists independently of the social media post screenshots submitted in the Complaint, nor does it set out any material facts which are in dispute. The Respondent’s submissions in response to the Complaint concede that they made the social media posts in question. The Requestor’s identity may be relevant in assessing the credibility and reliability of first-person testimony or eye-witness evidence, or for the Councillor to advance contrary evidence. That is not the case here, however, as the evidence relied on by the IC is largely, if not entirely, uncontroverted.

One additional consideration in the circumstances is the procedural expectations on the opposite side of the Inquiry. The Requestor is also entitled to some degree of procedural fairness, although an arguably much lower standard than afforded to the Respondent. At the very least, the Requestor would have a reasonable and legitimate expectation that the IC’s investigation would follow the applicable procedural steps of the Inquiry Protocol and representations as to the procedure. In this instance, although there is no express provision in the Inquiry Protocol, the Requestor’s complaint form indicated that they did not agree to release their identity. While this expectation may not be absolute in all instances, this too should be balanced with the need to make full disclosure.

In summary, it was not necessary to disclose the identity of the Requestor (by way of providing an unredacted copy of the application) in order to permit the Councillor to make a full and fair response to the allegations

Inquiry Delays

Concerns were raised with the length of time it has taken to complete the inquiry. The Councillor asserts that a period of seven (7) months is not a reasonable period of time, and that this is an independent ground to quash the validity of any eventual report of findings.

An inquiry having a length of seven months is neither unprecedented nor at all uncommon in the context of an IC inquiry. The Fort Frances Code of Inquiry Protocol does not establish a timeline for the completion of an Inquiry nor does the MA mandate the IC to complete an inquiry within a specified period of time.

This is an inquiry that much of the “delay” can be attributed to the initial delegation of the authority to deal with the Complaint, several procedural objections by the Councillor, and the detailed and intricate submissions necessitating independent legal advice.

In summary, although the investigation may have taken longer than anticipated, it is the opinion of the IC that the length of time taken to conduct the inquiry does not cause any final report to be invalid on the basis of delay or create any prejudice to the Respondent.

FREEDOM OF EXPRESSION, POLITICAL COMMENTARY, AND THE ROLE OF THE IC

Freedom of expression (also known as “freedom of speech”) is an important component of democratic societies. In Canada, it is guaranteed by the Canadian Charter of Rights and Freedoms, which is embedded in the Constitution Act. This is a set of laws containing the basic rules about how our country operates. For example, it outlines the powers of the federal, and provincial and territorial governments in Canada.

The Constitution is the supreme law of Canada; all other laws must be consistent with the rules set out in it. If they are not, they can be challenged as not being lawful or valid. Since the Charter is part of the Constitution, it is the most important law we have in Canada.

However, the rights and freedoms in the Charter are not absolute. They can be limited to protect other rights or important national values. For example, freedom of expression may be limited by prohibitions against hate propaganda or child pornography. Section 1 of the Charter says that Charter rights can be limited by law so long as those limits can be shown to be reasonable in a free and democratic society.

Likewise, the ability for politicians to comment on matters that their assemblies are considering is an important component of democratic societies.

In Investigation Report No. BIC-33-1112:17, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron (Brampton), citing case law, expanded on this principle. He stated:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure. As expressed by Jackson J., in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), at p. 642, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein”.

...

Hence the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy.

This quotation comes from paragraph 84 of the decision in *Miles v. Fortini*, a 2018 Integrity Commissioner report from Brampton, Ontario (2018 ONMIC 22 (CanLii)). In that case, the IC (Mr. Giorno) had been engaged to review complaints about social media posts by a member of Brampton’s Council. In addition to quoting the case above, the IC provides the following relevant commentary:

“Expressions of opinion are not statements that an integrity commissioner can determine to be true or false. They are the Councillor’s opinions. That is all.” (Paragraph 46)

“Expressions of opinion lie outside an integrity commissioner’s purview” (paragraph 49)

“Political commentary must comply with the Code, but otherwise, an integrity commissioner has no jurisdiction over it”. (Paragraph 83; emphasis added)

The IC must take special care where their decisions engage the rights and freedoms protected by the Charter. The Charter value must be appropriately balanced with the statutory objectives in order to be reasonable. All municipal by-laws, resolutions and enactments are presumed to be valid unless judicially quashed, and the IC must take the legislation as written. The IC is required to interpret the Code according to Charter values.

In the analysis of this Inquiry, the purpose of the Code, the ordinary meaning of the words as contained in Appendix A, and the proportionate balancing of free expression with professional conduct was the foundation to which conclusions were drawn in determining if a violation of 7.1, 7.2 and 7.3 occurred.

What needs to be considered in this case is whether the Respondent's own comments (not comments replicated from newspaper publications or others' social media posts) "crossed the line" between political commentary and/or opinion and violation of the Code of Conduct

BACKGROUND FACTS AND CONTEXT

The Respondent was elected to the Town of Fort Frances Council in 2018.

The Respondent is a lawyer with a practise in the Town of Fort Frances.

The Respondent was represented throughout this Inquiry by legal counsel. All communications with the Respondent were conducted through his legal representative with the Respondent being copied on all correspondence.

In November of 2020, the Respondent requested that a resolution be added to the council agenda for the renaming of Colonization Road, in the Town of Fort Frances.

The Resolution prepared by the Respondent was included in the November 23, 2020 agenda, was seconded and introduced to Town Council for debate.

The Respondent's motivation to rename Colonization Road was based upon concerns from Fort Frances constituents, and efforts in other municipalities (i.e., Kenora, Dryden and elsewhere) to remove the name "colonization" from local roads, together with the Respondent's own belief that the use of the term "colonization" was an inappropriate and insulting memorial that celebrated the intergenerational harms caused by the former Indian residential school that operated just outside of Fort Frances.

Prior to introducing the motion, the Respondent had researched the issues and the relevant law, including communicating with the Ontario Human Rights Commission ("OHRC") and reviewing the findings of the Truth and Reconciliation Commission of Canada ("TRC").

The Respondent produced a media release with background information on the public process to rename Colonization Road. The media release specifically referred to the guidance of the OHRC and the TRC and the process before Town Council that would, if adopted, create an ad-hoc committee of council to design and implement a process to solicit public suggestions for a new name that is consistent with the themes of reconciliation.

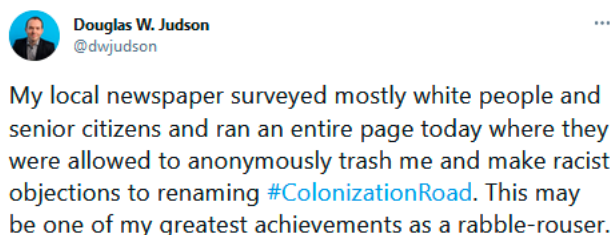
In November of 2020, the resolution initiated by the Respondent was referred to the Planning and Development Executive Committee (a committee of the Fort Frances Council).

In November and December of 2020, the local newspaper in Fort Frances published numerous articles and letters to the editor on the renaming of Colonization Road, including the publication of a “Word on the Street” section that published comments about and/or reaction to the Colonization Road name change debate. The local newspaper also solicited feedback from the Colonization Road residents by distributing flyers to the residents on Colonization Road. Communication received in response and/or unsolicited communication, were printed and published in the paper, sometimes without including the names of the authors.

Some of the published letters to the editor questioned the motive of the Respondent, criticized them, and/or were inflammatory in nature.

In November and December, the Respondent published comments and photographs on social media (Facebook and Twitter) which quoted some of the comments that the newspaper had previously published.

On November 25, 2020 Councillor tweeted the following on his twitter account:



On December 12, 2020 Councillor Judson posted the following to his Facebook account:



Douglas Judson

I am thinking of launching an online store for Councillor Judson fan merch, the proceeds of which would support local queer, trans, and Indigenous youth and inclusion initiatives. What do you think of these product concepts? ☕

Mobile Uploads · 12 Dec at 16:56 · 🌐

[View full size](#) · [More options](#)

On December 16, 2020 Councillor Judson posted the following to his twitter account:

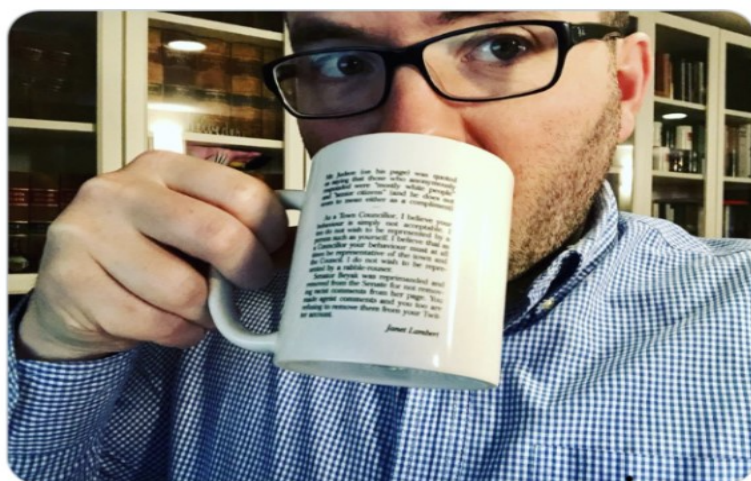
←
Tweet



Douglas W. Judson
 @dwjudson

...

Letters to the editor got me all like



10:12 PM · Dec 16, 2020 · Twitter for iPhone

8 Likes



Ryan Forbes @Q10forbes · 10h
 Replying to @dwjudson

...

On December 16, 2020 Councillor Judson also posted the following to his twitter account:



It is important to note that the commentary as reproduced on each coffee mug was replicated from the letters to the editor published by the Fort Frances Times. Councillor Judson's personal comments are in the social media texts, but (with two exceptions) not on the photographed coffee mugs.

The mugs were a fictional product concept and were never manufactured.

“The Colonization Tea Shoppe” was also a fictional concept and is not a place of business in Fort Frances or elsewhere.

The December 12, 2020 FB post depicts pictures of 4 mugs with replicated wording from letters to the editor published by the Fort Frances Times. All of the comments are critical of Councillor Judson. Councillor Judson, in his social media comments, refers to the individuals named or otherwise as his “fans” (which they clearly are not) and contemplates launching an online store for “Councillor Judson Fan merch”. Councillor Judson also requests feedback on the product concepts. No such online store has, to date, been established.

One of the mugs depicted in the December 12, 2020 Facebook post (top right corner) has the comments attributed to a “White Senior Citizen”, when in fact, the letter to the editor that was published in the November 25th, 2020 edition of the Fort Frances Times was attributed to a “Flinders Place Resident”. Flinders Place administration has confirmed that “Flinders Place” is a multi-residential apartment complex located on Colonization Road and occupancy is limited to senior citizens.

A second mug depicted in the December 12, 2020 Facebook post (bottom left corner) has the comments attributed to the “Fort Frances Times”, when in fact, the letter to the editor that was published in the December 9th, 2020 edition of the Fort Frances Times was attributed to a “Couchiching resident”.

In February of 2021, Town Council approved the Street Naming and Renaming Policy as prepared and recommended by the Planning & Development Executive Committee.

PRELIMINARY FINDING

I concur with the submissions of the Respondent’s legal counsel that Section 1.2 of the Code is not a basis for a complaint.

As submitted, “while section 1.2 expresses an overarching policy statement and can perhaps be used as an interpretive aid, it does not impose a separate duty upon a Member. It is not an independently “justiciable” provision”.

Accordingly, the Inquiry was conducted on the basis of allegations relating to Sections 7.1, 7.2 and 7.3 of the Code.

The mug depicted in the December 12, 2020 Facebook post (bottom right mug) is not part of this Inquiry as after an internet search, the quotation and the author could not be verified or confirmed.

ESSENCE OF THE RESPONDENT'S OWN COMMENTS

Distilled from their copying of published comments, the following are Councillor Judson's own words, as published on social media:

November 25, 2020:

My local newspaper surveyed mostly white people and senior citizens and ran an entire page today where they were allowed to anonymously trash me and make racist objections to renaming #Colonization Road. This may be one of my greatest achievements as a rabble-rouser.

December 12, 2020:

I am thinking of launching an on-line store for Councillor Judson fan merch, the proceeds of which would support local queer, trans, and Indigenous youth and inclusion initiatives. What do you think of these product concepts?

There follows four pictures of coffee mugs, three of them sporting a quotation from one of the letters published in the paper.

One of the quotations on one of the depicted coffee mugs (top right mug) is attributed to "White Senior Citizen" rather than "Flinders Place Resident", as had been published by the newspaper.

Another quotation on one of the depicted coffee mugs (bottom left) is attributed to the Fort Frances Times rather than "Couchiching resident", as had been published by the newspaper.

December 16, 2020 (1):

Letters to the editor got me all like. (Followed by a photograph of the Respondent drinking from one of the coffee mugs pictured on December 12; not the one with the quotation attributed to "White Senior Citizen".)

December 16, 2020 (2):

The Colonization Tea Shoppe is expanding every day. We call this one "the Debbie". Snuggle up with your very own steaming hot cup of white tears on a cold winter day. Caution it's very fragile. (Followed by a photograph depicting a mug with a social media comment attributed to "Debbie Plumridge Armstrong".)

ANALYSIS OF THE RESPONDENT'S WORDS IN LIGHT OF THE CODE

Each of the four posts is the subject of the Requestor's complaint. Each must be analyzed in light of the constitutional recognition of freedom of expression, and the common law recognition of freedoms related to political commentary, balanced against the requirements set out in the Code.

Any conclusion(s) by the IC, articulated through a final report, must be justifiable and defensible in light of the legal and factual constraints of the inquiry.

The Supreme Court of Canada has provided clear direction to administrative decision-makers that they should interpret legislative enactments in the same manner as the courts. In other words, administrative decision-makers must interpret the text of the provision in light of its relevant context and purpose. The Code, as a delegated legislative instrument (not merely a policy), should be interpreted in accordance with the modern approach to statutory interpretation which in the publication, *The construction of Statutes, 2nd edition* by Elmer A Driedger states the following;

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

The words associated with Section 7 of the Code – Conduct Respecting Others, are not defined by the Code. As such, the meaning of the word's "abuse", "bullying", "intimidation", "indecent", "abusive", "insulting" and "discriminatory" should be an exercise in statutory interpretation. Where words are not defined, they can be interpreted in accordance with their grammatical and ordinary meaning and in the context in which they are used.

The purpose of the Code, as expressed in Section 1 on "Principles", and the intent of the "Accountability and Transparency" portion of the Municipal Act, 2001 is to set out expectations and standards for respectful conduct of municipal politicians, with a view to upholding trust and accountability in municipal government. Any interpretation of the provisions of the Code must take this into account.

The definitions in Appendix "A" to this Report are crucial in the following analyses.

Councillor Judson's post on November 25, 2020

In my considered opinion, nothing in this social media post contains “abuse”, “bullying” or “intimidation” as prohibited by Section 7.1 of the Code. Neither is it “indecent”, “abusive” or “insulting” as prohibited by Section 7.2 of the Code. Finally, it is not “discriminatory” to any individual as prohibited by Section 7.3 of the Code. This post represents political commentary and opinion. As such, it is outside the jurisdiction of the IC to comment upon it.

Councillor Judson’s post on December 12, 2020

Again, in my considered opinion, Councillor Judson’s commentary in this social media post is not commentary that contains “abuse”, “bullying” or “intimidation” as prohibited by Section 7.1 of the Code. Neither is it “indecent”, “abusive” or “insulting” as prohibited by Section 7.2 of the Code. Finally, *for the most part*, it is not “discriminatory” to any individual as prohibited by Section 7.3 of the Code. The essence of the commentary in this post represents political commentary and opinion.

That having been said, there is concern with changing the purported author of a statement published in the newspaper from “Flinders Place Resident” to “White Senior Citizen”.

The provision of the section 7.3 of the Code obligates a member of Council not to speak in a manner that is discriminatory to any individual, based on any protected grounds, Protected grounds include: citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed, sex/pregnancy, family status, marital status, sexual orientation, gender identity, and gender expression.

In general, Councillors will engage with the public using a variety of media. In the context of the code, “speak” should be interpreted as including social media. Limiting or regulating one form of communications (i.e., “verbal”) while ignoring the multitude of others would be inconsistent with the intent of the Code and the legislation.

The word “discriminatory” is not defined in the Code. As previously mentioned, giving section 7.3 meaning is an exercise in statutory interpretation. Where the words are not defined, they can be interpreted in accordance with their grammatical and ordinary meaning and in the context in which they are used.

The purpose of the Code as expressed in Section 1 on “Principles”, and the intent of the “Accountability and Transparency” portion of the Municipal Act, 2001 is to set out expectations and standards for respectful conduct of municipal politicians, with a view to upholding trust and accountability in municipal government. With this in mind, the interpretation of the provisions of the Code must take this into account.

The definition of the term “discriminatory” - making or showing unfair prejudice between different categories of person was used in this analysis. This definition applies context to the purpose of the Code and operationalizes Section 7.3.

What needs to be considered in this case is whether the Respondent’s changing the purported author of a statement published in the newspaper from “Flinders Place Resident” to “White Senior Citizen” crossed the line between political commentary and/or opinion and violation of the Code of Conduct.

When a person signs his or her name to a letter which is submitted for publication in a newspaper, he or she cannot complain when the information is reproduced. Once published, it is a matter of public record.

In reproducing the comments, care must be taken not to take things out of context or to mis-state either the content of the comments or the source of the comments. Of particular note to members of Council, care must be taken not to “speak in a manner that is discriminatory to any individual based on protected grounds”, in order to comply with Section 7.3 of the Code.

In this instance the Respondent changed the purported author of a statement published in the newspaper from “Flinders Place Resident” to “White Senior Citizen” and crossed the line, between political commentary and the rules in the Code.

Although the origin of the statement remained anonymous (“Flinders Place Resident”), that person is still an “individual”, as set out in Section 7.3 of the Code, and deserving of appropriate respect and the right not to be spoken to in a manner that is discriminatory.

Discrimination against “Race”, “colour”, “ancestry” and “age” are all protected grounds, and the unsupported attribution of the quotation to a “white senior citizen” is discrimination on each of these 4 areas. Accordingly, it is a violation of Section 7.3 of the Code.

Regardless of Councillor Judson’s intentions, this can be construed as insulting, disrespectful and disparaging to the member of the public whose comments were printed on one of the concept mugs. Changing the source of the quotation to a “White Senior Citizen”, when in fact, the letter to the editor was attributed to a “Flinders Place Resident” is unacceptable. Understood in the context of the Respondents string of social media posts on the subject, it amounts to an attempt to assert that the demographic opposed to the renaming of Colonization Road are white senior citizens, with no factual context. This social media post also implies that all white senior citizens are opposed to efforts at reconciliation. The fact that Councillor Judson attempts to associate an opposing view with one ethnicity (race and colour) as well as a segment of population described by age, amounts to discrimination towards this particular demographic, and, as such, contravenes Section 7.3 of the Code.

As stated by IC Giorno in Campbell v. Schummer (2020 ONMIC 8 CanLii):

this particular situation offers an opportunity for all Council Members to reflect on the possible impacts, including unintended impacts, of what they post on social media and say about other individuals. Language may be hurtful or insensitive without rising to a level that contravenes the Code.

Our “day and age” involves social media as a part of the fabric of society. That does not detract from Members’ obligations to adhere to the Codes of Conduct adopted by their councils. Elected officials need to “rise above” the criticisms they are exposed to, however unearned or unrealistic, and give “sober second thought” to anything posted on line.

Also in this post, Councillor Judson changed the purported author of a statement published in the newspaper from “Couchiching resident” to “Fort Frances Times”. In this case, the author of the comments is anonymous. The “Couchiching resident” was not an individual identified by name. Councillor Judson to avoid the appearance of besmirching an entire First Nation attributed the comments to the paper in which they were published and not an “individual” as set out in 7.3 of the Code.

Councillor Judson’s First post on December 16, 2020:

Once again, in my considered opinion, nothing in this social media post contains “abuse”, “bullying” or “intimidation” as prohibited by Section 7.1 of the Code. Neither is it “indecent”, “abusive” or “insulting” as prohibited by Section 7.2 of the Code. Finally, it is not “discriminatory” to any individual as prohibited by Section 7.3 of the Code. This post represents political commentary and opinion. Reproduction of published comments, including the published source of the comments, is not a violation of the Code.

Councillor Judson’s Second post on December 16, 2020:

This post is, for the most part, a re-publication of a published (on social media) statement by a member of the public. When someone “broadcasts” on social media something controversial, and ascribes his or her name to it, he or she cannot complain (nor can someone else complain on his/her behalf) when it is re-produced, provided it is not reproduced in a manner out of context or otherwise falsely depicted.

Councillor Judson’s characterization of the coffee mug with Ms. Plumridge Armstrong’s quotation on it as “the Debbie” cannot, in the circumstances, be considered “abuse”, “bullying”, or “intimidation”. Nor is it representative of “indecent”, “abusive” or “insulting” words by Councillor Judson – if those words meet any of those adjectives, they are attributable to the words of the original speaker – not the words of Councillor Judson in reproducing them. While some might interpret the characterization of the mug as “the

Debbie” as being insulting to the original speaker, the fact that Ms. Plumridge Armstrong allowed her name to be published with her words gives an implicit permission to political opinion and commentary about those words, attributable to her. Characterization of the mug as “the Debbie” is, in the circumstances, political commentary.

The phrase used by Councillor Judson in referring to the quotation on the depicted mug as suitable for consuming “a steaming cup of white tears” – is another matter for consideration.

Legal counsel for Councillor Judson submitted that:

...this term is not discriminatory. Rather, it refers to individuals who enjoy white privilege exhibiting disproportionate outrage in response to and perceived loss affront to their privilege. On its face, Councillor Judson’s comment does not discriminate. It does not impugn “white people” as an ethnicity or deny them a benefit. The comment accurately calls attention to the fact that those opposing the renaming of the road were not the victims of this historically discriminatory policy, and in fact are the beneficiaries of privilege.

According to npr.org, “white tears” is a phrase that has been used to “gently tease white people who get upset at things they think threaten their white privilege. It’s been used to poke fun at white people who think that talking about race makes you a racist”.

Using the term “white tears” is controversial, to say the least.

That having been said – are those words “abusive”, “bullying”, “intimidating”, “indecent”, “insulting” or “discriminatory”? These are the things that the Code prohibits. Or are they “political commentary or opinion” which is allowed by our democratic principles and our Charter of Rights and Freedoms?

It is my considered opinion that Councillor Judson’s use of the term “white tears”, while it may be considered by some to be offensive, in the context of this very politically charged debate on the potential re-naming of “Colonization Road” equates to the use of “hyperbole”. Hyperbole is an exaggeration of statements or claims that are not meant to be taken literally.

As Councillor Judson’s legal counsel pointed out, “Councillor Judson’s purpose was to redress historical discrimination. This often requires calling attention to historical privilege. The “white tears” comment cannot reasonably be interpreted as denigrating or pejorative. It merely calls attention to the fact that certain people are blind to their own privilege and do not appear concerned with the harm that a name like “Colonization” has on the Indigenous population.”

While I do not condone the use of counsel's terminology "certain people" as attributing intention to any one or more members of the community, the reality of the historical discriminatory treatment (by a generalized "Canadian society as a whole") of the indigenous population is well documented (vis a vis the TRC report) and is accepted.

In all of the context and circumstances, I cannot conclude that the "white tears" comment violated Sections 7.1, 7.2 or 7.3 of the Code.

DECISION

The Proportionate Balancing of Free Expression with Professional Conduct is also considered in the conclusions associated with this Inquiry.

While it is possible to argue that the interpretation of the Code through the Report constitutes an infringement of free expression, there is a compelling justification for the relatively minor infringement in maintaining accountability and ethical behavior of municipal politicians.

In reviewing a disciplinary decision of the law society, the Supreme Court took note of the importance of professional discipline in maintaining civility, while also acknowledging the role of lawyers in keeping the judicial system accountable. The court went on to note that the proper respect for expressive activity may involve professional disciplinary bodies tolerating some level of criticism of the judiciary, although this did not provide an unlimited right to free expression. Furthermore, the court noted that disciplinary bodies must demonstrate they have given due regard to the importance of the expressive rights, in light of the individual's right to free expression and the public's interest in open discussion and debate. The court ultimately held that the law society's exercise of discretion was reasonable in the circumstances. The infringement on the lawyer's freedom of expression was reasonable, and reflected a proportionate balancing of the law society's statutory mandate to ensure that lawyers' conduct was marked with objectivity, moderation and dignity and the lawyer's conflicting right to express himself.

Similarly, just as lawyers are constrained by professional regulation and standards of ethical conduct, so too are locally-elected representatives.

Municipal politicians are expected to act ethically and with integrity, and in accordance with the purpose of the Code, as expressed in Section 1 on "Principles", and the intent of the "Accountability and Transparency" portion of the Municipal Act, 2001 is to set out expectations and standards for respectful conduct of municipal politicians, with a view to upholding trust and accountability in municipal government.

Based upon the analysis as documented in this report, the only social media post that this report “censures” is the re-attribution of a quote to a “white senior citizen”. All other aspects of the Councillor’s political commentary were not found to contravene the Code. The extent of the restriction of speech is therefore minimal, considering there is a multitude of ways to express the same core political message without making discriminatory remarks.

Members of municipal councils need to understand that they are elected officials, with both the privileges and the responsibilities that the position requires. This includes strict adherence to adopted codes of conduct in their respective communities.

Social media, as a form of communicating with the public, is very powerful. It can reach many people in a short time frame – but it can also be mis-construed. Posts to social media need to be carefully considered to avoid actual or perceived violations of codes of conduct.

As an Integrity Commissioner, it is not my role to limit or muzzle political speech. It has been my experience working for a municipality that lively debate with members of Council and interaction with the public greatly assists in the decision-making process.

With one exception, I have found that the Requestor’s complaints against Councillor Judson are unsubstantiated. The sole exception involves the Councillor’s re-attribution of a public statement by a “Flinders Place Resident” to a “White Senior Citizen”.

RECOMMENDATIONS

As outlined in section 5.7 of the Integrity Commissioner Inquiry Protocol, Council may impose one of the following penalties on a Member if the IC reports that the Member has contravened the Code:

1. A reprimand;
2. Suspension of remuneration paid to the member for up to 90 days;
3. Removal from a membership of a Committee of Local Board;
4. Removal as chair of a Committee of Local board;
5. Requirement repayment of reimbursement of moneys received;
6. Return of Property or reimbursement of its value;
7. Request for apology to council, the Requestor or other relevant party;

8. Revocation of travel or other budget;
9. Request for resignation;
10. Trespass Order restricting access except for Council meetings.

Councillor Judson is a relatively newly elected official (2018), and this is the first complaint received (to the author's knowledge) in regard to their conduct relating to the Code. For the most part, his conduct has not contravened the Code. The one exception is his re-attribution of a comment from "a Flinders Place Resident" to a "White Senior Citizen".

Accordingly, in regard to Councillor Judson it is recommended that the following be considered by Council:

- That this report be received for information purposes;
- That Councillor Judson publicly acknowledge his lapse of judgement in re-attributing the comment of a "Flinders Place Resident" to a "White Senior Citizen" and issue a public apology;
- That this report be made available to the public.

An IC may not impose any sanctions, rather the IC makes recommendations to the Council as to whether or not the Council should impose sanctions.

The recommendations above are not "fixed" by the IC. If Town Council so desires, it can impose its own sanctions, within the legal framework.

Should Fort Frances Town Council put forward a resolution that is in support of a suspension of remuneration (in lieu of or in addition to the suggested apology), the Respondent is statutorily permitted to make submissions and to attempt to influence Town Councils' decision, however they are not permitted to vote and are required to declare a conflict of interest in accordance with 5(1)(a) of Municipal Conflict of Interest Act (MCIA).

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. Disclosure of all the content of this report is, in my opinion, necessary.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Darrell Matson". The signature is written in a cursive, flowing style.

Darrell Matson-Delegated Integrity Commission for the Corporation of the Town of Fort
Frances

APPENDIX “A” – “Definitions” Relied upon in the Report

“Abuse” – Used as a noun, this word means the cruel and violent treatment of a person. Examples of abuse are cited using some of the other terms defined in this appendix, including “intimidation”. Other examples include: coercion, ridiculing, harassment, and treating an adult like a child. (Section 7.1 of the Code)

“Abusive” – Used as an adjective, this word means extremely offensive and insulting. (Section 7.2 of the Code)

“Bullying” – Used as a noun, this word means the use of force, coercion, hurtful teasing or threat to abuse, aggressively dominate or intimidate. It involves an imbalance of social or physical power, and typically has the following three characteristics:

- a) A hostile intent (to hurt physically, emotionally or mentally);
- b) An imbalance of power; and
- c) Repetition over a period of time.

(Section 7.1 of the Code)

It is noted that, while the Code did not define “bullying”, it is defined in the Town’s “Workplace Harassment” policy. This policy does not apply, however, the definition of “bullying” represents the Township’s statement in this regard, outside of the generally understood “definition” above. The definition in the policy is:

Bullying includes unwelcome behaviours such as malicious actions and/or omissions toward one or more individuals, which a reasonable person would perceive as unwelcome. These can negatively impact our emotional wellbeing and may cause an individual to feel hurt, embarrassed, incompetent, disrespected, and/or devalued. This can lead to damaging consequences for the victim, the observers, our clients, and the organization. Unwelcome behaviours may include subtle and/or overt acts of hostility or aggression and may include instances of both omission and/or commission. This may include:

- Gossiping or spreading rumours
- Talking down to others
- Verbally berating others
- Using a harsh tone of voice
- Acting in a way that seems “out to get” others
- Blaming others for things out of their control
- Making or implying threats regarding one’s job security
- Excessive shouting
- Repeated emotional outbursts
- Using overt or subtle intimidation tactics

- Using degrading remarks or tone of voice
- Criticizing or talking down to others in front of a group
- Using condescending and/or demeaning body language
- Social exclusion or ostracism
- Ignoring others or giving “silent treatment”
- Intentionally excluding others from conversations and/or work activities
- Differential treatment (treating some less favorably than others)
- Undermining another’s work by assigning impossible deadlines or workloads
- Excessive monitoring of work or unnecessary micromanagement
- Withholding pertinent work-related information
- Undermining the work of a co-worker or subordinate in an undue manner
- Not providing sufficient information to discharge one’s duties effectively.

“Discriminatory” – Used as an adjective, this word means making or showing unfair prejudice between different categories of persons. (Section 7.3 of the Code)

“Indecent” – Used as an adjective, this word means not conforming with generally accepted standards of behaviour or propriety. (Section 7.2 of the Code)

“Intimidation” – Used as a noun, this word means the action of intimidating someone or the state of being intimidated. “Intimidating someone” means to make that person timid or fearful, especially with the view to making them do what the intimidator wants them to do. (Section 7.1 of the Code)

“Insulting” – Used as an adjective, this word means disrespectful or scornfully abusive. (Section 7.2 of the Code)