

Appendix "A"



ADR
C H A M B E R S

Integrity Commissioner Office
for the City of Brantford

Integrity Commissioner, Marvin J. Huberman, LL.B., LL.M. (ADR), FCIARB
Email: integrity@adr.ca

Investigator, Jeffrey Shapiro, J.D., LL.M.

November 25, 2024

Sent by email to:

The Complainant, Councillor Rosanna Sicoli

The Respondent, Councillor Richard Carpenter

Re: Code of Conduct Complaint – File No. IC-33522-0824

Dear Councillor Sicoli and Councillor Carpenter:

1.0 – Introduction

On August 6, 2024, Councillor Rosanna Sicoli, a member of Brantford City Council (the “Complainant”), filed a complaint about whether Ward 4 Councillor Richard Carpenter, also a member of Brantford City Council (the “Respondent”), contravened the applicable [Chapter 16 Code of Conduct For Members of the Council of the Corporation of the City of Brantford and of its Local Boards \(Rev. June 20, 2020\)](#) (the “Code of Conduct”).

The Complainant states that she has reasonable grounds to believe that the Respondent contravened Code of Conduct section 16.5.1 (Confidential Information – Disclosure Prohibited) and section 16.5.2 (Confidential Information – defined) during a June 25, 2024 City Council meeting when the Respondent disclosed private and confidential information which had been discussed during In Camera Council meetings on April 18, 2023 and November 14, 2023, which discussion pertained to the dispositions of lands. The Complainant cites to the publicly available video recording of the June 25, 2024 meeting, which records the Respondent referencing discussions and voting occurring during the prior In Camera meetings, including identifying the votes of a few particular councillors.

2.0 – Investigative Powers

I, Jeffrey Shapiro, an Investigator in the ADR Chambers Office of the Integrity Commissioner, pursuant to an April 12, 2024 written delegation of powers from Marvin J. Huberman, the Integrity Commissioner for the City of Brantford, have exercised the powers and performed the duties of, and with the direction of, the Integrity Commissioner to inquire into, investigate, and prepare a report, subject to the Integrity Commissioner's approval, with respect to the Complaint described herein, pursuant to section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

3.0 - Investigative Process

Having exercised the powers and performed the duties of the Integrity Commissioner for the City of Brantford pursuant to section 223.3 of the Municipal Act, 2001, as part of my investigation of this formal complaint, I reviewed:

- The Complainant's Code of Conduct - Formal Complaint Form and Affidavit, received on August 8, 2024;
- The Respondent's Response to the Complaint, received on August 14, 2024¹;
- The Complainant's Reply to the Response of the Respondent, received on September 30, 2024; and
- Two emails, discussed below, received from the Respondent on October 10, 2024.

I interviewed, via teleconference, the Complainant on October 2, 2024, the Respondent on October 10, 2024, and one witness, i.e. Mayor Kevin Davis, on October 15, 2024.

I received full cooperation with my investigation from the parties and witness, all of whom provided me with the documentation and information I requested.

4.1 – The Complaint

The Affidavit of Complainant, sworn/affirmed by the Complainant on August 6, 2024, sets out the following particulars relied on by the Complainant in support of her Complaint.

“On April 18, 2023 & November 14, 2023, the City of Brantford Council held in-camera meetings to discuss a Private and Confidential matter pertaining to the Dispositions of Lands.

¹ The Response was a brief email. He was invited to provide a further response, but did not do so.

On June 25, 2024, at a City Council meeting, Ward 4 Councillor Richard Carpenter [i.e. the Respondent] disclosed private and confidential information about the discussions that were held in-camera.

The moment can be seen on Youtube (Starting at 1:52)
<https://www.youtube.com/watch?v=LajiKonHelo>²

This is in direct violation of Chapter 16 of The City of Brantford's By-law."

The Complaint identified the starting point on the recording as at 1:52, but did not provide an ending point or a transcription of the relevant sections. Nevertheless, as the Complaint refers to the relevant portion as "The moment can be seen...starting 1:52", I understand the key portion to be the Respondent's statements from about 1:51:45 to 1:53: 22, as follows:

1:51:45, Councillor Richard Carpenter (Councillor Ward 4): Can I speak to my amendment? [Mayor: Absolutely] I want to speak to residents directly and to the media that's here as well, and so we're going to take people that are in affordable housing units now, [1:52] that's affordable because they've been there so long that their rents aren't \$2,500 a month, or maybe \$1,200, and so we were going to evict those by the sale [of] those houses and someone else will evict them instead of us doing it, of course, and then they'll be looking at homes at \$2,500. And so we're saying that we'll move you out of affordable living for yourself so we can provide affordable living.

Let me tell you where this started. This started June 24, 2022, two years ago, it came to Council two years ago around this time. At that time, and I believe it was Councillor Caputo, said "I'm not going to evict people without some kind of compassionate way to make sure they are moved on to some other kind of living, to other opportunities" and Councillor Day turned it down. It was denied. It came back again, with another report on November 14, 2023, I'm sorry April 2023, at that time, the recommendation was this, that we would sell these houses eventually, but there was a part in there that market rent homes would be placed on the market only once a unit becomes vacant. So it was compassionate, it had some commonsense in there, so you were not being evicted, we're not going to make you homeless. But of course that whole resolution was taken out. I believe that was Councillor Sicoli. And then the resolution that was put in place was to take that piece out. And ...

1:53:22, Mayor Kevin Davis: Councillor Carpenter, Councillor Carpenter, be careful...

² I was not able to open the provided link, but easily found public access to the video recording of the June 25, 2024 meeting on Brantford's website: <https://www.youtube.com/watch?v=LajiKonHelo&t=7651s>. The transcriptions provided below are not "official" transcriptions, by my own.

1:53:30, Councillor Carpenter: *Then tell me who moved the resolution.*

1:53:33, Councillor Rosa Sicoli: *First and for most, should we be discussing things that happened in camera quite publicly like this? Is that...*

1:53:37, Councillor Carpenter: *It's an open session. It's no longer in camera by the way.*

1:53:41, Councillor Sicoli: *Ok, I'll remember that. Go ahead. Go ahead.*

1:53:43, Councillor Carpenter: *The point that I'm making here is that we couldn't speak to this issue until now. You can file cards if you want. Yeah, fine. We were not able to speak to this...*

1:53:53, Mayor Davis: *Councillor Carpenter I'm going to ask you... certainly its out here, its open for debate, but I think its inappropriate that you talk about who moved what, what happened in camera...*

1:54:08, Councillor Carpenter: *I'm just talking about what happened in camera, except to say that I voted against it every step of the way.*

1:54:11, Councillor Sicoli: *Yeah, I don't think he did.*

1:54:13, Councillor Carpenter: *Yes, I did and the point I'm trying to make here is that there was another opportunity to do something differently. But it didn't happen in November 14, 2023, because gosh 'how would that look in the media coming out right before Christmas that were going to put, sell your homes'. At the same time, we just dealt with getting rid of a large park in our community for affordable housing which was very controversial in our community. So here we are again. Now the second point here is that there is an opportunity to put that back in that market rent homes will only be placed on the market when they are vacant. That's the most sensible way for us to slowly move out of owning these homes. We could easily do that...*

For context, as part of my investigation, I have reviewed the roughly hour long discussion the agenda item, which is recorded from about 1:06 to 2:09:29, and have quoted or paraphrased additional portions of the meeting below.

4.2 - The Response

When provided the Complaint for his formal response, the Respondent replied with a brief email as follows:

"I immediately apologized for my comments to both Councillor Caputo and Councillor Sicoli at the very meeting being described. The meeting was a

heated debate about constituents housing. You will see this when you review the meeting.”

This office subsequently provided the Respondent an opportunity to provide further submissions, but he did not provide a further response or citation to relevant portions of the recording. Nevertheless, I understand his apology occurred at 2:09 of the recording, which is when the discussion of the agenda item had concluded and Council was transitioning to the next item, as follows:

2:09:20, Councillor Carpenter: Mr. Mayor, can I rise on a Point of Order? [Mayor: Yes, go ahead] I'd like to rise on a Point of Order. I raised two members of Council's names during my heated debate, Councillors Caputo and Sicoli, and I apologize to them. [2:09:29]

4.3 - The Reply of the Complainant

The Complainant's Reply to the Response was as follows:

1./ An apology would indicate that there was some personal offence taken. My complaint is not regarding a point of privilege, but rather an intended violation of our code of conduct, and a disregard of The City of Brantford's confidentiality oath.

2./ Councillor Carpenter's comments were premeditated as he had very specific dates of meetings that he referenced while sharing intimate details about what happened at an in camera meeting.

3./ A seasoned Councillor, such as C. Carpenter would have and ought to have known better. He has demonstrated in the past an extensive knowledge of governance and all relevant procedures and policies.

4./ At the time of this meeting, our current Mayor had announced his intention to resign. Councillor Carpenter also already announced his intent to run for mayor in a by-election.

It was suspected that several current City Council members would also be running for the Mayoral seat in an upcoming by-election.

Thus, we witnessed a premeditated attack on some Councillors in order to gain votes and defame others.

5.0 - Interviews

5.1 - Interview with the Complainant

The Complainant described the incident consistent with the Complaint and video recording, as above, and provided additional background.

Years ago, Brantford purchased approximately 23 homes to build a highway, but subsequently discontinued the project. Since that time, the City has been renting those houses as private residences. Recently, the City decided to sell the homes and Council discussed how to best do so during a series of in camera meetings. The sale is known as the "Disposition of South Brantford Homes Property".

The Complainant believes that, in general, it is often important to discuss disposition strategies in a confidential "in camera" setting for a number of reasons including allowing for an open discussion and also for more practical market related issues, such as preventing the loss of sale revenue by ensuring that the City's disposition strategies are not disclosed.

In this case, Council received a confidential staff report regarding the disposition of the properties, and it was appropriate to discuss that report in-camera. Many different strategies were discussed over a series of meetings, until Council settled on the one that was brought to open Council for a public vote.

Against that background, she believes the Respondent breached confidentiality when he disclosed disposition strategies discussed in camera and by disclosing names and votes. She believes the Respondent acted in a "premediated" way to gain votes, i.e. for political gain. She noted the Mayor announced his intention to resign effective in July or August, and the Respondent had indicated his intention to run. She also believes that there was speculation that she would also run.

Accordingly, she believes it was not a mistake that confidentiality was breached, and that her name was mentioned in a public setting on a hot-topic issue. She also believes that this is not the first time the Respondent has done something similar and that he is a seasoned Councillor so it would not be a mistake.

She notes that the Respondent would be permitted to state that he is against the proposal, provided that he did not disclose details of confidential discussions and who said what. In other words, he could discuss the merits of the proposal being voted on, but not disclose details of the in camera report.

Finally, the Councillor notes that an apology does not take back what the Respondent said. Also, at the next meeting, Council ultimately reversed course on the project and will not be selling houses until vacant.

5.2 - Interview with the Respondent

The Respondent described the incident and background consistent with the video recording. He also provided additional information:

- The properties were acquired 50 years ago to build a highway, which was never built.
- Some of the residences are in his Ward. Because the report coming out of the October 2023 in camera meeting which was to then be discussed at the next Council meeting was still confidential, he was restricted from talking about it to his constituents. Yet staff was speaking with the residents about it since June, which created a difficult situation for him. Thus, this Council meeting was the first time he was able to publicly talk about the disposition plans, despite that it was already a hot-topic by the time of the meeting.
- The underlying debate on this disposition strategy was whether (1) to wait for the properties to voluntarily vacate, such as by natural vacancies and/or working with the tenants to speed that process, and then to sell them once vacated, or (2) sell the properties along with the current leases, and whoever would buy the property would, presumably, evict.
- He wanted the public to know that he was not for the decision to dispose of the properties before they were vacant, and also to know that such approach was not a staff recommendation. In fact, staff recommended the opposite, and it was Council that changed it. He also wanted the public to know that there were other options. That was particularly important as there were people in tears at the meeting who might lose their residences because of the then current disposition strategy.
- He moved to defer the vote on the disposition for one cycle, i.e. to the next meeting, so that the disposition options could be discussed with the public and those most directly affected. The motion to defer was carried, and in fact, at the next meeting, i.e. August 27, 2024, the strategy was reversed.
- The Respondent agrees that he erred and that he should not have mentioned names. He also agreed with the Complainant that it is often necessary to discuss the disposition of land in camera because openly discussing strategies could affect the market price of land.
- At the break, the Complainant was upset. After the break, he publicly apologized.
- He denied being motivated by a mayoral bid as the Mayor only announced his intention to step down via a July 9, 2024 email to Council - two weeks after the June 25, 2024 meeting. On July 10, 2024, a local newspaper carried the story. The resignation was to be effective in August, but on July 25, 2024, the Mayor rescinded his announcement. The Respondent provided copies of such emails following the interview.
- He agreed that he could have stated words to the effect that, 'I am not for the current strategy', explained why, and given some alternatives.

5.3 – Interview with the Witness, Mayor Kevin Davis

The Mayor also described the incident and background consistent with the video recording. He also provided additional information:

- The Mayor agreed that the background of this incident – i.e. the disposition of the South Brantford properties – was a hot-topic issue, which had “a fairly major impact” on the numerous individuals residing in the properties, and which also impacted the interests of the City as a whole.
- He provided his understanding of in camera meetings, particularly as related to the disposition of real property. Discussions are held in camera for several reasons, such as in this case, where the City would not want a person that is considering buying or selling a property to know the City’s negotiating position, which could reduce revenues to the City.
- Discussions during in camera meetings are to be kept confidential until Council comes to decision at which point that decision is brought to an open Council session for a final vote, because property cannot be sold without a public meeting.
- It is well accepted that when an in camera decision comes to an open council meeting for public discussion and a vote, members are free to discuss and debate the proposal then on the table. For instance, they could disagree with it, and propose or argue for a different disposition or result. However, when doing so, they may not bring up the discussions that occurred during in camera sessions and certainly not name Councillors. For instance, a Councillor could say, “I think there’s a better way to do this” and offer an amendment, even if the proposed amendment happens to correspond to something discussed in camera.
- In this case, he believes that the Respondent’s intention in naming names and positions taken during the in camera sessions was not to educate the public, but appears to cause political harm. He notes that although the resolution brought forward to the open meeting was approved by a majority of Council in-camera, the Respondent only named two Councillors. Moreover, the Councillor could easily have made his points on the merits of the proposal without naming any specific Councillors.
- The Mayor doubts that the Respondent’s disclosure was motivated by the Mayoral race, as he had not yet publicly announced his plans to resign, although it is possible that the Respondent may have known through other sources. Still, he explained that certain Councillors often vote on the same side of certain issues or on opposite sides of other issues. The Councillors named by the Respondent are often on different sides of the issues.
- I asked about section 16.5.1’s language that Members will refrain from disclosing or distributing Confidential Information “...until Council ... discusses the Confidential Information at a meeting that is open to the public...” He understood that language as consistent with the course of

- practice during his seven years as Mayor, which is that the “confidential information” being “discussed” is the decision that came out of the in camera session for discussion before Council. Thus, when the decision comes for public discussion, it is not a release of *all* confidential discussions, but rather that resolution. Furthermore, as part of the democratic process is not necessary positions of individual Councillors taken during in camera sessions be known, because ultimately the in camera sessions only lead to a vote during an open session at which point the Councillors’ positions and votes are transparent before the public.
- While he believes his interpretation of section 16.5.1 is correct, and also consistent with longstanding practice, in response to my inquiry, he noted it’s possible – although he believes incorrect – to read the language “until Council discusses the Confidential Information” as removing the veil of confidentiality on *all* discussions.

5.4 – General Observation on all Interviews

While they used different words, the parties and witness all agreed that the disposition of the South Brantford Properties was a ‘hot-topic’ issue as it would have a major impact on the individuals in the properties and also had importance to the interests of the City as a whole. They all agreed that it is important to keep dispositions strategies confidential to ensure properties receive maximum value, at least until Council comes to a decision to be brought to an open session. While they disagreed on some points regarding the precise incident, they expressed professionalism and generally expressed professional respect for each other.

6.0 – Relevant Provisions of the Code of Conduct

The Complaint reproduced the portions of sections 16.5.1 and 16.5.2 of the Code of Conduct that she alleges to be violated. The two sections constitute the Code’s “Article 5”, which is entitled “Confidential Information”. For context, I have reproduced those two sections below, highlighted with **bold** to indicate the portions reproduced in the Complaint, and underline to indicate other relevant portions that will be discussed below:

16.5.1 Confidential Information – Disclosure Prohibited

Through the course of their official duties, Members may have access to Confidential Information. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties that is of a corporate, financial, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

Members will keep Confidential Information confidential. This is a continuing obligation even after the Member ceases to be a Member.

Members will refrain from disclosing or distributing Confidential Information whether such Confidential Information is received at in camera meetings, through confidential reports, or through other means, except where authorized by Council or until Council or committee discusses the Confidential Information at a meeting that is open to the public or otherwise releases the Confidential Information to the public. Council may not authorize the disclosure of Confidential Information which the City is prohibited from disclosing under MFIPPA.

Members shall not:

- a) ...;
- b) misuse Confidential Information such that it may cause detriment to the City, Council or Local Board.**
- c) use Confidential Information acquired by virtue of their office for personal or private gain, or for the gain of any other person, corporation, or organization including, without limitation, to gain a benefit in any procurement or other sale process involving City property or assets. ...**

16.5.2 Confidential Information – defined

For this [sic] purposes of this Article, “Confidential Information” includes information in the custody and control of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under MFIPPA or any other legislation and specifically includes:

- a) ...;
- e) information that was discussed during an in camera meeting of Council or of the Local Board or provided to the Member in preparation for such a meeting;**
- f) information that infringes on the rights of others (i.e. sources of complaints where the identity of a complainant is given in confidence); ...**

but does not include information received or generated by Members communicating with their constituents in their capacity as elected representatives, or a Member’s personal records, generated or received by them as private citizens.

Additional Code of Conduct sections will be referred to below.

6.0 – Analysis, Findings, Conclusions and Recommendations

Did the Complainant establish that the Respondent breached section 16.5.2 of the Code of Conduct?

No. As a threshold point, although the Complaint lists both sections 16.5.1 and 16.5.2 sections as being breached, the actual prohibition on disclosing confidential information is found in 16.5.1. Section of 16.5.2 is limited to providing the definition of confidential information used in section 16.5.1. In other words, section 16.5.2 is not “breachable” as it only provides definitions. Thus, the real issue is whether the Respondent breached section 16.5.1, when read together with the definitions provided in 16.5.2. I will address that question below.

Did the Complainant establish that the Respondent breached section 16.5.1 of the Code of Conduct?

Yes, for the reasons that follow.

a. Findings – The Incident

Having thoroughly reviewed and carefully considered the documentation and information obtained in the course of my investigation such as the interviews (collectively, the “evidence”), I find, and the parties are in general agreement that, the incident occurred as follows:

Years ago, Brantford purchased approximately 23 homes to build a highway, but subsequently discontinued the project. Since that time, the City has been renting those houses as private residences. Because rental increases did not keep up with market rates, overtime, many of the tenants in those properties were paying significantly below market rates.

Recently, the City decided to sell the properties with the view to using the sale proceeds to fund affordable living properties. The disposition is known as the “Disposition of South Brantford Homes Properties”.

Starting in 2022, the Council held a series of confidential in camera meetings to discuss how to best dispose of the properties, including considering the effects of the various strategies on current tenants. As mentioned in the Complaint, two of the in camera meetings were held on April 18, 2023 and November 14, 2023. The main disposition strategies considered were whether (1) to wait for the properties to voluntarily vacate, such as by natural vacancies and/or working with the tenants to speed that process, and then to sell them once vacated and thus one property at a time, or (2) sell the properties along with the current leases,

and whoever would buy the property would, presumably, evict the current tenants.

Council voted, in camera, to use the second method, which was to sell the properties subject to the lease, which would likely result in tenants being evicted by the purchaser. The in camera resolution was brought to an open session of Council on June 25, 2024.

The recording shows discussion on the topic lasted for approximately an hour. The meeting included several members of the public delegating to Council and a vigorous debate by Council, with questions of staff. The press and members of the public were present. This was a difficult, emotional, and hot-topic issue that directly affected the tenants of the properties, as there were concerns as to how, or if, they could find alternate housing arrangements. The disposition was made more difficult because during the period between the last in camera meeting and the open session when the Councillors could discuss the proposal, the City's staff had begun talking to the tenants about the disposition of the property.

Although not mentioned in the Complaint, towards the beginning of the meeting (between 1:09:23 – 1:11:54 on the recording), in an exchange with a tenant that was delegating at the meeting, the Respondent explained that Council was not able to communicate with the public due to decisions being made in camera and the duty of secrecy. He proceeded to describe the history of the proposed disposition strategies and the Council's reversals that occurred during those meetings.

Towards the end of the meeting (starting at 1:52 on the recording), the Respondent spoke, specifically addressing the media and the tenants. He proceeded to disclose the initial staff report and history of the amendments that occurred in the in camera meetings. He specifically disclosed how the Complainant and another Councillor voted, which effectively tied them to voting for the proposal which effectively would result in evicting the tenants. He moved to defer the entire disposition topic for one cycle, which motion was carried.

It appears that the Respondent was fully within his rights to disagree with the proposal and to seek to defer it. However, it appears that he could have done so without reference to the in camera meeting and without naming any Councillors and their votes. Following the vote to defer and prior to starting the next topic, the Respondent, on his own initiative, publicly apologized for naming the Councillors.

At the next meeting, the disposition strategy was reversed from the proposal that came out of the in camera meeting.

It appears that custom among Council has been not to disclose the discussions that occurred in camera meetings and not to disclose voting records in the way the Respondent did.

b. Statutory and Legal Context of the Incident

First, when reviewing the Code of Conduct in light of this incident, I have followed the Supreme Court of Canada's direction to use the modern principle of statutory interpretation³, which requires interpreting a provision by considering it in its entire context and by both (1) looking at its ordinary and grammatical meaning, in line with the plain meaning rule; and (2) ensuring that the interpretation is in harmony with, the scheme of the statute as a whole, the object of the Act, and the intention of the legislature. This approach takes a more "holistic view" of statutory interpretation, encouraging courts to look at context.⁴ Such a contextual approach is engaged in several aspects of this matter.

Second, it is useful to consider the relevant Code of Conduct provisions in the statutory context. As a starting point, section 224 (a) and (e) of the *Municipal Act* provides that Council's role includes "represent[ing] the public and to consider the well-being and interests of the municipality" and "to maintain the financial integrity of the municipality". Section 239(1) in turn provides that council meetings be open to the public, but subject to various exceptions. One such exception relevant here is section 239 (2)(c) that provides meetings may be closed to the public - i.e. in camera - if the subject matter being considered is "a proposed or pending acquisition or disposition of land by the municipality...".

The Ombudsman Ontario explains⁵ the reasoning behind that exception is that "holding discussions about the land transaction in an open session could affect the municipality's bargaining position or negotiation strategy". Thus, the exception "protect[s] the municipality's bargaining position by permitting discussions to be held in closed session" Accordingly, even "if a municipality publicly discloses or discusses a pending land transaction in open session, depending on the circumstances, it may still be able to hold subsequent discussions about the land transaction in closed session under the exception for acquisition or disposition of land."

Third, although not binding, another useful contextual backdrop is how other Integrity Commissioners ("ICs") in Ontario have considered confidential issues related to in camera meetings. A review of such cases show the decisions to be fact specific. I mention a few:

³ *Rizzo & Rizzo Shoes Ltd., Re*, 1998 CarswellOnt 1 (S.C.C.) at para. 21.

⁴ *Rooney v. ArcelorMittal S.A.*, 2016 CarswellOnt 13026 (Ont. C.A.) at para. 13.

⁵ [https://www.ombudsman.on.ca/digest/keywords/primary/239\(2\)\(c\)-acquisition-or-disposition-of-land](https://www.ombudsman.on.ca/digest/keywords/primary/239(2)(c)-acquisition-or-disposition-of-land)

In *Di Muccio (Re)*, [2013 ONMIC 1 \(CanLII\)](#), a Councillor was held to have violated the Code by disclosing confidential information to the media that was discussed during an in camera session in relation to a park naming matter. The Code provided that information is confidential "...until the matter ceases to be confidential, as determined by Council."

The IC noted that "While it is laudable that the Respondent acts on behalf of the public and views her obligation as a Councillor to be first and foremost to the public, this view is not mutually exclusive to upholding the confidentiality rules...Rather, ... in order to conscientiously act on behalf of the public and uphold the oath of office, a councillor is necessarily required to obey the rules contained in all of the governing legislation of the municipality." The IC noted that councillors cannot justify releasing confidential information on their own belief that their colleagues have erred in going in camera, which is "taking the law into their own hands". If a Council Member finds fault in the decision of Council, whether that be a decision to go into closed session or some other procedural matter, there are appropriate and lawful remedies available to the Member. The IC noted, however, there is a distinction between disclosing the "subject" of in camera deliberations and the "substance" of the deliberations.

In *Toronto (Council Members) (Re)*, [2012 ONMIC 8 \(CanLII\)](#), the IC found that although circumstances created the concern that a Councillor's questions of a deputant were based on confidential information obtained from an in camera session, the questions were actually based on information provided by a citizen.

In *Council Complaint re: Councillor David Kircher (Re)*, [2024 ONMIC 8 \(CanLII\)](#), the Councillor was held to have violated confidentiality when forwarding confidential documents to Councillors at their non-council email address, as it created the appearance that the Councillor could later violate confidentiality. As there was no disclosure to third parties, a reprimand was appropriate. The IC noted that confidentiality over closed sessions is "of utmost importance".

Fourth, the contextual approach is engaged with a possible exception to disclosure found in this Code of Conduct, which is discussed below.

c. Is the Incident a breach of the Code of Conduct?

Yes. First, the various strategies and voting history during in camera sessions – and particularly voting history of specific councillors – is defined as "confidential information" under section 16.5.2 (Confidential Information – defined):

For this purposes of this Article, “Confidential Information” includes ... and specifically includes... e) information that was discussed during an in camera meeting of Council ...⁶

Second, there is little doubt that the disclosure runs afoul of section 16.5.1 (Confidential Information – Disclosure Prohibited). As noted above, it provides:

Members will keep Confidential Information confidential....

Members will refrain from disclosing or distributing Confidential Information whether such Confidential Information is received at in camera meetings, through confidential reports, or through other means,...

Members shall not: ...

b) misuse Confidential Information such that it may cause detriment to the City, Council or Local Board.

c) use Confidential Information acquired by virtue of their office for personal or private gain, ...

Clearly, the Respondent breached the first paragraph’s general prohibition against disclosing confidential information, by making the disclosure in the open session.

More importantly, the Respondent breached the more specific prohibition found in the second paragraph, which prohibits disclosing confidential information from in camera sessions, as was done here.

Additionally, I do find that the Respondent breached the third paragraph, and the two subparts, although the analysis is less clear. For instance, under subsection “c”, the Respondent used the confidential information to curry favor with his constituents and harm other Councillors, however, he also used such information for what he believed would be to the betterment of the City by changing the proposal. Similarly, under subsection “b”, it can be argued that he ultimately helped the City by causing Council to reverse course, but also seemingly caused detriment to the Council by causing mistrust and the appearance they that were off-base. Thus, the most important clause is the second paragraph.

d. Does the Disclosure fall within an exception under the Code of Conduct?

As discussed in the previous section, the second paragraph in section 16.5.1. specifically prohibits Councillors “from disclosing or distributing Confidential

⁶ Although cited by the Complainant, I do not find subsection f) “information that infringes on the rights of others (i.e. sources of complaints where the identity of a complainant is given in confidence)” is applicable here. That language relates to personal information of individuals.

Information whether such Confidential Information is received at in camera meetings, through confidential reports, or through other means,...

However, that same section provides an exemption, "... except where authorized by Council or until Council ... discusses the Confidential Information at a meeting that is open to the public or otherwise releases the Confidential Information to the public."

That language provides three situations: (1) where Council "authorized disclosure", (2) "Council discusses" the Confidential Information at an open meeting, or (3) otherwise releases the information. In this case, Council did not authorize disclosure or otherwise release the information, so those clauses are not applicable. The focus is on the discussion/open meeting exemption.

Clearly, Council discussed portions of the previously confidential information. The issue then, is what is the "Confidential Information" contemplated in that paragraph? It appears there are two ways to read that paragraph.

First, "confidential information...discussed" could be understood as the proposed resolution that came out of the in camera meeting for a vote during the open meeting. If so, then the other proposals discussed and certainly the voting records that occurred in camera would remain confidential, and may not be disclosed. Under that reading, the Respondent's disclosure was not exempted.

Second, the "confidential information" could be understood as relating to the entirety of the discussions that occurred in camera. In other words, once a proposal is brought forward from an in camera meeting, the entire veil of confidentiality of the in camera meetings is removed.

From my perspective, the first reading is correct for several reasons. The Respondent himself essentially acknowledged that it is the correct understanding by virtue of his apology. Similarly, the Mayor described that such approach has been the long standing practice of Council. As he noted, a Councillor can disagree with a proposal in an open session and suggest alternatives, but not explicitly tie such alternatives to in camera discussions or identify voting records. Additionally, the second approach can lead to an absurd result in that any item brought forward waives the entire confidentiality. In fact, that result appears to run afoul of the Ontario Ombudsman's comments that even "if a municipality publicly discloses or discusses a pending land transaction in open session, depending on the circumstances, it may still be able to hold subsequent discussions about the land transaction in closed session under the exception for acquisition or disposition of land." From another angle, Council was "discussing" the strategy; Council was not "discussing" individual voting records.

Additionally, I find some contextual support in other provision of the Code of Conduct, that are not directly dealing with this situation. For example, section

16.10.1 requires Members to “d) not impugn or malign a debate or decision or otherwise erode the authority of Council or the Local Board” and “f) refrain from making disparaging comments about another Member...”; section 16.10.2 “Members shall endeavour to conduct and convey Council business in an open and transparent manner (other than for those decisions which by virtue of legislation are authorized to be dealt with in a confidential manner, in camera)”; and 16.10.3 (Media Communications) provides that “A Member may state that he/she did not support a decision, or voted against the decision; however, in doing so, a Member shall refrain from making disparaging comments about other Members... the processes and decisions”.

To underscore the point, the Code of Conduct clearly permits a member to “express disagreement with Council’s decisions”. The issue here is that it was done in the way of disclosing in camera discussions and votes.

Based on the above, I do not find the “until discussed...” exemption waived confidentially as to the general discussions in camera, and certainly not as to voting records of individual Councillors.

7.0 Conclusions

Based on the above, I conclude that the Respondent breached section 16.5.1 (Confidential Information – Disclosure Prohibited) of the Code of Conduct when disclosing discussions during the in camera session and when naming specific councillors and their votes.

I note that section 16.12.7 (Code of Conduct Complaint – conclusion of inquiry) of the Code of Conduct provides that in situations where I determined that no breach had occurred and thus the entire inquiry would remain confidential, if I also “determine that the report contains useful guidance or interpretation about the meaning of the Code of Conduct for Members, or for any other similar reason”, then I may refer this Report to the Clerk for distribution to Council, and for posting on the City’s website.

Given my above discussion about the exemption, I believe that even if I am ultimately incorrect in my interpretation of the exemption, the report contains useful guidance or interpretation about the meaning of the Code of Conduct for Members.

8.0 Recommendation

Section 16.12.11 (Final report – recommendation) provides that in reporting to Council, the Integrity Commissioner may include recommendations as to an appropriate penalty or remedial action. That section lists, consistent with the *Municipal Act, 2001*, the penalties that Council is authorized to impose:

- a) a reprimand; or
- b) suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period of up to ninety (90) days.

Conversely, the Integrity Commissioner may recommend no penalty be imposed if “the Respondent took all reasonable measures to prevent it” or the contravention was “trivial or committed through inadvertence or an error of judgment made in good faith.”

Given that this disclosure appeared purposeful – the Respondent began his remarks by addressing the media and provided specific dates of the prior in camera meetings, yet the Respondent immediately apologized, a modest penalty is appropriate. Thus, I recommend that the Brantford Council:

- i) issue a formal Reprimand to the Respondent, Councillor Carpenter, in relation to his violation of the confidentiality provisions of the Code of Conduct during the June 25, 2024 Council Meeting; and
- ii) consider providing further guidance, including adopting rules or amendments to the Code of Conduct, to provide greater clarity to members as to their obligations of confidentiality and permissible disclosures following in camera sessions, including once Council discusses a matter coming out of an in camera session.

9.0 Addendum Regarding the Parties’ Response to the Draft Report

The Parties were provided a draft version of this Report and an opportunity to respond within 10 business days. Councillor Sicoli’s response was limited to advising as to a minor copy edit, but without any substantive comments. Councillor Carpenter did not provide any response. Accordingly, this Report will be deemed final and reported to the Parties and City Clerk as required by the Code of Conduct.

Respectfully submitted this 25th day of November, 2024,



Jeffrey Shapiro
Investigator, Office of the Integrity Commissioner

Endorsement and Issuance of Report

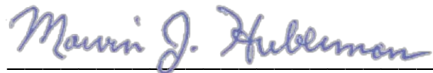
I, Marvin J. Huberman, Integrity Commissioner for the City of Brantford, have reviewed the evidence, process, and results of my delegate, Mr. Shapiro’s,

Investigation. I agree with and endorse this Report, which we have jointly prepared, in respect of this Complaint, and hereby issue it to the Complainant and Respondent in conclusion of this matter.

Concluding Remarks

I trust this Investigation Report provides clarity to the Parties regarding the matters at issue raised in this Complaint. Mr. Shapiro and I thank the Parties for their assistance and cooperation.

This matter is now concluded.



Marvin J. Huberman, LL.B., LL.M.(ADR), FCI Arb
Integrity Commissioner, City of Brantford
c/o ADR Chambers Inc., Office of the Integrity Commissioner