

## Re: Municipality of Whitchurch Stouffville Formal Code Complaint 063025

### I. SUMMARY

This report presents the findings of my investigation under the Town of Whitchurch-Stouffville Code of Conduct for Members of Council (the “Code”) relating to the conduct of Councillor Rick Upton (the “Respondent”) in connection with a complaint raising three issues:

the allegation of sexual harassment of an employee of Whitchurch-Stouffville [...] (the “Witness 1”) by the Respondent. This related to alleged sexualized comments and touching the arm of the employee after making a sexualized comment. The conduct included but was not limited to;

“[the Respondent] approached [Witness 1] and put his hands on her shoulders and told her she looked good. He then said it's a good thing I didn't grab your boob”

“no, I'd rather like to sit in your lap” and then he said, “you know you're looking really good lately and if I stand here I can look down your shirt”..and the allegation that the Respondent made sexually explicit inappropriate comments about other female staff. The comments included but were not limited to:

“has anyone told her that the top she is wearing is inappropriate?”.[A senior staff person] responded with “how so?”. [The Respondent] then said “how do you expect me to concentrate during the Council meeting if I'm staring at her”.

the allegation sexual harassment of employee of the Town of Whitchurch-Stouffville (the “Witness 2”) by the Respondent. This allegation related to conduct from 2022-2025 related to sexualized comments and caressing the arm of the employee after making a sexualized comment.; The conduct included but was not limited to:

“[The Respondent] told me I looked lovely and caressed my arm in a way that made me feel uncomfortable”

On Issue #1 and Issue #2, I find that the actions of the Respondent constitute sexual harassment and a breach of Rule 14 of the Code, which prohibits such harassment. The Respondent’s conduct created and contributed to an intimidating and offensive work environment for Witness 1 and Witness 2, contrary to his

obligations under the Code and under the Town's Harassment and Discrimination Free Workplace Policy. Such actions seriously undermine the trust placed in elected officials and the principles underlying their Oath of Office.

With respect to Issue 2, even after the Respondent was told by Witness 2 that his comments "I love you" were unwelcome and unwanted, the Respondent did not cease his unwelcome conduct. When Witness 2 confronted the Respondent and demanded he cease making the comments, the Respondent replied, "But what if you forget?". He made light of his actions by making further unwelcome advances.

The Respondent made the comment one further time. Witness 2 again told the Respondent to stop, and then this specific conduct ceased. However, he made further comments and touched Witness 2 in a sexualized manner which made her uncomfortable.

With respect to one of the alleged incidents, I did not receive conclusive evidence linking the individual who was alleged to have made a lewd comment about Witness 2 to the Respondent or his alleged actions. I therefore find that there is insufficient evidence to support that allegation.

I recognize that the Investigator's regime is different from the Code of Conduct regime. The Code of Conduct complaint investigation does not affect the Respondent's right to continue in his profession or employment, as a Member of Council. Despite the Investigator's investigation being a confidential process, the substance of any adverse findings are made public as part of a Code of Conduct complaint findings report to Council. Thus, while I have the utmost respect for the integrity of the Investigator's investigation and conclusions, as an independent statutory officer, I am required to assess the findings of the investigator against the findings of my own investigation.

On Issue #3, I find that the Respondent made comments about three Town employees. With respect to two of them, I find that his comments violated Rule 15 of the Code, which requires Members of Council to conduct themselves with appropriate decorum at all times. I concluded that those comments did not rise to the level of sexual harassment under the Harassment and Discrimination Free Workplace Policy.

I have found, based on the information that I received during this investigation, on a balance of probabilities, that the Respondent engaged in repeated, unwelcome, and inappropriate verbal and physical conduct toward Witness 1 and

Witness 2. This conduct included repeated comments of a personal and sexualized nature, unwanted touching, sexual innuendo, inappropriate remarks in Council Chambers, and behaviour that created a hostile and uncomfortable work environment.

The Code sets out a bifurcated process under Rule 14 when the Respondent to a Sexual Harassment complaint is a Member of Council. Rule 14.4 states:

14.4 Upon receipt of a complaint that relates to Rule No. 14, the Integrity Commissioner shall forward the information subject to the complaint to Human Resources who will refer it to an independent investigator.

I set out the process that was followed in this investigation in the report below. I received and reviewed the independent investigator's factual findings which, with one exception, are incorporated in this report. I accepted her conclusion that some of the Respondent's conduct amounted to workplace sexual harassment under the Town's Harassment and Discrimination Free Workplace Policy. As that policy is incorporated into the Code of Conduct under Rule 14, I concluded that certain of the Respondent's conduct violated Rule 14 as described below. I further find that the Respondent's conduct violated Rule 15.

In this report, I discuss my investigative process, my decisions on jurisdiction, my findings on the allegations in the complaint, my reasons for those findings, and my recommendations with respect to the appropriate sanction.

## **II. THE INTEGRITY COMMISSIONER'S MANDATE, JURISDICTION, AND APPLICABLE CODE RULES**

Under s. 223.3 of the Municipal Act, the Integrity Commissioner is responsible for applying the rules of the Code, conducting inquiries into alleged breaches, and reporting findings to Council. Rule 14 of the Code incorporates the Town's Harassment and Discrimination Free Workplace Policy and requires allegations of harassment involving Members of Council to be investigated by an independent investigator appointed under that Policy. The investigator's factual findings are then referred to the Integrity Commissioner for analysis under the Code.

In this Complaint, the Respondent is a sitting Member of Council. The conduct occurred in the workplace, including Council Chambers but not as part of active deliberation of a matter by Council. The conduct engaged Rule 14, Harassment and Rule 15, Discreditable Conduct.

The standard of proof is the balance of probabilities. Where necessary, I have made credibility and reliability findings.

**A. Harassment allegations under Rule 14**

Rule 14 of the Code requires Members of Council (“Members”) to comply with the Harassment and Discrimination Free Workplace Policy. The Commentary for Rule 14 indicates that the purpose of this rule is to ensure a safe and respectful workplace that is free from harassment:

It is the policy of the Town of Whitchurch-Stouffville that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. The Town’s Harassment and Discrimination Free Workplace and Violence Free Workplace Policies ensures a safe and respectful workplace environment and appropriate management of any occurrences of harassment and discrimination as defined by the policies.

The Town’s policies apply to Member of Council and will provide guidance to the independent investigator. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall utilize the investigator’s findings to make a determination on the application of the Code of Conduct and the merits to an investigation on the ethical conduct of the Member subject to the complaint.

The Harassment and Discrimination Free Workplace Policy expressly applies to all elected representatives, including Members, and extends to any harassment that may occur at any worksite where the business of the municipality is being conducted. Failing to comply with the Harassment and Discrimination Free Workplace Policy constitutes a violation of Rule 14.

The Harassment and Discrimination Free Workplace Policy defines workplace sexual harassment as follows (p.4):

**Workplace Sexual Harassment:**

Workplace sexual harassment is defined as engaging in a course of vexatious comment(s) or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or making a sexual solicitation or advance where the person making the solicitation or advance is able to confer, grant or deny a benefit or advancement to

the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

The above definition includes, but are not limited to:

- Persistent leering (suggestive staring) or other obscene/offensive gestures
- Unwanted, unnecessary or inappropriate physical contact such as touching, kissing, patting, pinching, brushing up against a person
- Unwelcome sexually oriented remarks, invitations, requests, jokes, gestures
- Inquiries or comments about a person's sex life
- Making gender-related comments about someone's physical characteristics, mannerisms, or conduct

The Harassment and Discrimination Free Workplace Policy provides that everyone associated with the City has a responsibility to prevent harassment, but a manager or supervisor who has the authority to prevent or discourage harassment have a particular duty to act (p. 5).

The complaint alleges that on several occasions, the Witnesses had been the unwilling recipient of unwelcome, unwanted, offensive, intimidating and inappropriate conduct by the Respondent. If proven, these allegations would amount to a breach of the Harassment and Discrimination Free Workplace Policy, and a breach of Rule 14.

#### ***B. Specific process for harassment complaints under Rule 14***

The Code prescribes a specific process for complaints alleging harassment under Rule 14.

I note that the Town has a procedure for implementing the Harassment and Discrimination Free Workplace Policy, which is contained in Harassment and Discrimination Free Workplace Administrative Policy and Procedure No. 42 ("Policy and Procedure No. 42") and ordinarily governs the receipt and resolution of harassment complaints.

The Harassment and Discrimination Free Workplace Policy provides that complaints about a Member are to be addressed through the process defined under Rule 14:

Section 2.1 Scope of the Harassment and Discrimination Free Workplace Policy:

The Mayor and Members of Council are governed by the Council Code of Conduct that references this policy. The Code outlines procedures and measures to be taken for complaint protocol pertaining to the Mayor and Members of Council

Rule 14 of the Code of Conduct:

14.4 Upon receipt of a complaint that relates to Rule No. 14, the Integrity Commissioner shall forward the information subject to the complaint to Human Resources who will refer it to an independent investigator.

*Commentary*

*The Town's policies apply to Members of Council and will provide guidance to the independent investigator. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall utilize the investigator's findings to make a determination on the application of the Code of Conduct and the merits to an investigation on the ethical conduct of the Member of Council subject to the complaint.* Therefore, after receiving the findings of the independent investigator, I am required to follow the process set out in the Code and the Code Protocol.

A complaint or a portion of a complaint that does not allege a breach of Rule 14 does not fall within this specific process and is addressed under the general procedure set out in the Code and the Code Protocol. I accordingly dealt with the Complaint allegations of Discreditable Conduct under Rule 15, as described below.

***C. Whether the limitation period applies to the complaint***

Section 2 of the Town of Whitchurch-Stouffville Complaint Protocol For Council Code of Conduct (the "Complaint Protocol") states that complaints must be addressed in accordance with the rules within six (6) months of the alleged violation:

2. All complaints must be addressed in accordance with the below captioned procedure within six (6) months of the alleged violation or no action will be taken on the complaint.

This rule appears to be similar to the limitation periods that apply to civil actions commenced in courts. In that context, once a limitation period has expired, the right of action is "statute-barred".

In this case, the complaint was received by the Commissioner's Office on June 30, 2025. If section 2 were to be applied strictly, no action could be taken with respect to any improper conduct occurring prior to December 30, 2024.

The complaint references conduct that is alleged to have occurred in February/March 2024, December 13, 2023, August 11, 2022, an undated allegation referencing behaviour that spans over "the past 5 years". The Complainant alleges that the sexual harassment continued for several months. The instances of unwanted sexual advances alleged to have occurred in March, May and June 2025 clearly fall within the time frame set out in section 2.

However, where a cause of action involves a continuous course of conduct, the time to commence a claim may begin upon the final act and not the first. This rule dates back to English court decisions from over a century ago but equally applies today<sup>1</sup>. This rule applies where a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought.

In the Complaint before me, the unwanted sexualized remarks or advances are part of an alleged pattern of conduct that is alleged to have begun in 2022. Witness 2 described the consequences: she was deprived of a safe and respectful work environment from 2022 to June 2025. I determined that the allegations raised in Issue #2 allege a continuing pattern of sexual harassment that falls within the limitation period. I note that a similar conclusion was reached in respect of a discrimination complaint heard by the Manitoba Human Rights Commission<sup>2</sup>, which was affirmed on appeal.

For the above reasons, I have determined that it is appropriate to investigate each allegation of sexual harassment, covering the alleged conduct of the Respondent between August 11, 2022 and June 2025, raised in Issue #2.

### **III. The Process Leading up to this Report**

#### ***The Complaint Process***

I set out below a summary of the complaint process:

- On June 30, 2025, I received the complaint at the Office of the Integrity Commissioner (the "Commissioner's Office") from the Complainant who attested that they had reasonable and probable grounds to believe the allegations set out in the Complaint. The Complainant is not one of the

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<sup>1</sup> *Hole v. Chard Union*, [1884] 1 Ch. 293; *Sunset Inns Inc. v. Sioux Lookout (Municipality)*, 2012 ONSC 437.

<sup>2</sup> *Manitoba v. Manitoba (Human Rights Commission)* (1983) 25 Man. R. (2d) 117 (Man. C.A.).

Witnesses.

- On July 4, 2025, I wrote to the Complainant acknowledging receipt of the Code complaint. I advised that I had conducted an initial classification review of the complaint and the supporting documentation and that I had decided to open a complaint investigation file.
- On July 4, 2025, I wrote to the Respondent giving Notice of Formal Complaint, with a request to provide a written reply to the Complaint by July 14, 2025. The Respondent replied advising that he required an extension as he was on vacation until July 21.
- On July 8, 2025, I responded to the Respondent acknowledging his email and request. I granted the request to respond to the complaint, until July 28, 2025.
- On July 28, 2025, I received the Respondent's reply to the Complaint.
- On August 26, 2025, I provided the Respondent's reply to the Complainant. On August 27<sup>th</sup>, the Complainant provided their comments.
- On September 12, 2025, I wrote to the Director of Human Resources and advised that I had received a formal complaint in which a Member had been named as a Respondent and that the complaint alleged that the Member had contravened Rule 14 of the Code.

I stated that Rule 14 requires that I forward the information subject of the complaint to the Human Resources department, who will refer the investigation of the alleged wrongdoing to an independent investigator.

I further advised the Director of Human Resources that I would be commencing the investigation of the complaint as it relates to allegations that did not fall under Rule 14 of the Code. I advised that upon receipt of the findings of the independent investigator, taking into consideration the same in relation to the application of the Harassment and Discrimination Free Workplace Policy, I would then make a final determination with respect to the alleged actions of the Respondent relating to Rule 14 of the Code of Conduct.

- On September 16, 2025 the Respondent wrote to me and stated:

“It is going to be well over 3 months from the time the Town had the complaint to the time you receive the investigators report.” I replied to the Respondent and advised that under the Code Protocol section 12(1), the Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days. I advised that if it takes more than 90 days, the IC will provide an interim report to the parties and advise of the date the report will be available.

- On October 24, 2025, I wrote to the Complainant and the Respondent, giving Notice of Delay with respect to the Formal Code of Conduct Complaint under the Code of Conduct. I explained that there is a bifurcated process through which an independent investigator will conduct the part of the investigation related to Respect in the Workplace allegations and that the Code Complaint investigation has been held in abeyance awaiting the completion of investigation of the Independent Workplace Investigator. I provided Notice that I intended to complete my investigation in November.
- On November 4, 2025 I received a copy of the completed independent investigator’s report (the “Investigation Report”).
- On November 25 2025, I provided the Respondent a copy of the Draft Code of Conduct Complaint Investigation Report containing my findings of the investigation.

I advised the Respondent that they were being provided a copy of my preliminary findings in advance of the issuance of my Final Report.

- On November 26, 2025, I received verbal comments from the Respondent with respect to the Draft Code of Conduct Complaint Investigation Report.

The full particulars of the allegations to the Complaint were provided to the Respondent. In this report, however, I have exercised my discretion to disclose only those particulars that I have determined are necessary for the purposes of the report.

In doing so, I have considered the need for Town Council and the public to understand the factual basis for my findings and my recommendations. I note that the Witnesses have confirmed that they understand and accept that the events alleged in the Complaint would be made public in any report that I would deliver and while I would endeavour to hold their identities confidential under the secrecy provisions of the *Municipal Act*, there may be information in the report

that may give an idea of their identities. I have also considered the countervailing privacy interest of the Witnesses, particularly because the allegations raised in the Complaint involve events that are highly personal to the Witnesses. As well, I have recognized the broader interest in publicly disclosing such personal information in reports involving sexual harassment only to the extent that it is necessary to do so, so as not to deter victims of sexual harassment from coming forward with their complaints.

As Integrity Commissioner, I am bound by the confidentiality provisions of the *Municipal Act* and in particular subsection 223.5(1):

The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this part”

This duty to preserve secrecy and confidentiality is subject to certain statutory exceptions. Notably, subsection 223.5(2) contains an exception to the general rule of secrecy. It states that “information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part.” Subsection 223.6(2) of the Act also provides the Integrity Commissioner with the discretion to disclose or to maintain the confidentiality of the information received when she reports to the municipality concerning whether there has been a code of conduct contravention. This provision states that if the Integrity Commissioner reports her opinion about whether there has been a contravention of the code of conduct, “the Commissioner *may disclose* in the report such matters as n the Commissioner’s opinion are necessary for the purposes of the report” [emphasis added].

As Integrity Commissioner, the Act affords me the discretion to decide how much detail to report to Council and the appropriate amount of reported detail will require a context-specific weighing of several factors.

#### **IV. OVERVIEW OF COMPLAINT PROCESS , EVIDENCE AND INVESTIGATOR’S CONCLUSIONS**

The Town retained an independent investigator to examine allegations of workplace harassment made by Witness 1 and Witness 2, both senior staff at the time of the incidents. The investigator interviewed Witness 1, Witness 2, the Respondent, and other witnesses.

Witness 1 reported repeated inappropriate remarks about her appearance, unwanted touching, and multiple sexualized comments inside Council Chambers.

Witness 2 alleged unwelcome touching, repeated declarations of “I love you,” sexualized comments, and the Respondent’s laughter at a sexually explicit remark directed at her by a third party.

The investigator found the allegations with respect to Witness 1 and Witness 2 as substantiated. This report assesses whether the conduct amounts to breaches of the Code.

### **The Respondent’s Response to the Complaint (July 28 response)**

Several of the comments alleged to violate the Code were comments the Respondent agreed to have made in his written response. There was no dispute that the Respondent those comments.

With respect to the allegations regarding Witness 1, the Respondent written response stated:

May I start by saying I deeply regret the offensive remarks I made and recognize that they were entirely unacceptable. I offer no justification for my words and accept full responsibility for the harm they caused. My conduct fell far short of the respectful standards expected of me. I sincerely apologize for my actions.

In the minutes leading up to the Council meeting, I went to talk to a resident and, upon passing [Witness 1], made an inappropriate and humiliating comment: “You are looking good; it’s a good thing I don’t grab your boob” Why would I do that you are not my wife” When I returned to the dais and found [Witness 1] seated in my chair, I could not and did not view down her attire, yet my remark remained offensive and disrespectful. I understand and regret the severity of my lapse in judgment.

I wanted to express my sincere regret for my remarks, so I went to [Witness 1’s work location] to request a meeting with [Witness 1] I was concerned she may refuse to meet or meet in [Witness 1’s work location]. I was pleased she invited me into her office, and I immediately apologized for what had happened, stressing how much I respect her and that there was no excuse for my words. I made very it clear I never intended to disrespect her in any way. During our conversation, I felt she accepted my sincere and heart felt apology and thanked me several times. I grew emotional, as the last thing I would ever want is to insult or disrespect her.

I am troubled that [Witness 1] did not feel comfortable coming to me directly after we had addressed the situation face to face. Not only because of our long-term relationship, but also because of her senior position. I mention this because I can understand why a clerk might feel intimidated, but [Witness 1] certainly wouldn't. Throughout our many gatherings, meetings, luncheons, and conversations, this stands alone as a one-off in our on-going relationship. Moving forward, I commit to maintaining the highest level of professionalism and courtesy, ensuring that nothing like this ever happens again. I'm uncertain about her desired end result? I'd like to know what she needs so I can accommodate it if I'm able.

These comments are not a true reflection of who I am. I'm fortunate to have two sisters, two daughters, two granddaughters, and a dear wife, and I would be profoundly disturbed if anyone treated them disrespectfully. My mother taught me the ultimate respect for women from childhood. I always look for opportunities to praise family and colleagues, as we all need it. My adult daughter calls me her "greatest cheerleader," and I embrace that role wherever I go. As a Councillor, I never consider myself above anyone—so I sign emails simply as "Rick," whether I'm writing to the CAO or a clerk. When the CAO suggested I sign "Councillor Upton," I joked that I've been a Councillor for ten years but Rick for seventy-five. My nature is to be humours and have that reputation of being a funny guy. My wife has mentioned that my humor in 2025 maybe less excepted [sic] than in the past.

This is a good example where she is right, so I have talked to several companies with **HR Proactive Inc** the best. I will be undertaking sensitivity and conduct training to ensure this behavior or comments are never repeated.

Again, I extend my most sincere apologies and pledge to uphold the dignity and respect owed to every individual in the future.

With respect to the allegations regarding Witness 2, the Respondent stated in his written response:

For the record: I believe that [Witness 2] is one of, if not the most capable Town employee. [...]

[Witness 2] is the go-to person. When she doesn't know the answer, she'll track it down.

I tell [Witness 2] on a regular basis that she 'is the best' 'outstanding' and she has always been receptive and appreciated for the acknowledgement. Everyone enjoys being acknowledged and [Witness 2's] work performance desires praise.

I have written this reply as I am perplexed by [Witness 2's] complaint. Nevertheless I want to be crystal clear, I except [sic] full responsibility and apologize for any discomfort my actions or words may have caused.

With respect to the comments about "size matters", the Respondent stated:

This was my attempt at humor which is shown by the 'Lol' and emoji laughing face. If I felt it was wrong, I would not say it, leave alone put it is writing. I truly apologize if it upset her and will be more aware of inappropriate remarks.

With respect to the allegation of Thursday August 11, 2022, the Respondent stated:

Sorry, I do not remember the incident [Witness 2] is referring to. In August 2022, I would have thought I would be out on campaign, not at the Town office.

Regardless, I can assure you if someone were to make a cruel remark as that about a member of my personal or work family, I would undoubtedly let them know it's unacceptable and then end the conversation... It's possible that [Witness 2] simply misheard him.

With respect to the allegations of Wednesday February/March 2024, regarding the Respondent saying "I love you" every time he saw [Witness 2], the Respondent replied that:

As mentioned earlier [Witness 2's] work performance has been nothing short of outstanding. When I asked her to help with a challenging task, she delivered in flying colours. In my excitement, I told her "you are the best" "I love you"—not in a romantic sense, but to express how much I admire her talent. In hindsight, "You're the best" would have conveyed the same sentiment more clearly. Each time I said it, (not nearly every time I saw her), she smiled and said, "aww stop "or "stop it" with a smile. Her warm reaction showed, I was under the impression she understood it was a compliment, and I was showing appreciation for her outstanding work ability. Once she asked me in a stern manner to stop, I immediately

apologized and understood she was misunderstanding I was complimenting her on her performance, possible because I was not expressing it properly. I was saddened to find out she was upset.

In his response to the Complaint, the Respondent provided “text-message excerpts that mirror the warm, appreciative responses that I witnessed in person, exchanges that do not align with the version she has stated. I trust this clarifies my intent and how I understood her reactions at the time.” I have not included the text messages in this report as they identify the Witness.

With respect to the allegations of conduct at the Thursday June 5, 2025, Greater Stouffville Chamber's Annual Spring Dinner, at which [Witness 2] alleged that the Respondent said “ you look lovely and then “caressed my arm in a way that made me feel uncomfortable.”. The Respondent response to the allegations set out:

I see [Witness 2] weekly for years at the office in business attire. On June 5<sup>th</sup> my wife and I (+120 other people) were at the Greater Stouffville Chamber's Annual Spring Dinner. When I went to the bar I walk by [Witness 2] and was the first time I had seen her in the evening. She was dressed formally, hair done up etc.... she did look lovely. As I walked by her, I told her so, but I absolutely did not caress her arm. My intent in complimenting [Witness 2] was purely courteous. In my view, acknowledging someone's effort to dress up is a polite gesture and a way to make them feel appreciated.

I am a very friendly, warm person that enjoy interaction with people. I have interacted with [Witness 2] probably 3+ days a week and in some cases several times in the day. Over the 5+ years that is hundreds of interactions.

I do not recall the comments or actions [Witness 2] is referring to over the 5+ years. If these are real and possibly are, I genuinely apologize for any uncomfortable feeling they caused, I can assure you that was obviously not my intention and will not be repeated.

Not excusing any inappropriate comments, I am confused by the difference with [Witness 2's] reaction over the years and her above statements.[Witness 2's] interaction with me over the years was respectful, friendly and professional never indicating her being

*'uncomfortable, very alert and tense and seeking out others. Below are some examples of what I mean.'*

I meant no personal implication, and I regret and sincerely apologize that my words caused any discomfort.

With respect to the allegation that the Respondent “hugged and kissed [a named individual] while talking to her in close proximity [...] It was very awkward to observe and several staff commented on the inappropriateness of it afterwards”.

The Respondent response stated:

Whose right is it to weigh in on this photo or expect a response.

Let's set the record straight: I did not kiss [a named individual]. She clearly leans in; I'm not pressing my face against hers. We were having a brief, confidential conversation, nothing more.

[...]

[...]

In his response, the Respondent submitted several text message excerpts showing what he described as:

“[Witness 2's] friendly tone, which contrasts with how she described our interaction. These messages mirror her behavior in the office. This isn't intended to excuse any actions that made her feel uncomfortable.”

[...]

The Respondent provided further copies of texts between himself and Witness 2, as examples of ‘texts that I would classify as from a ‘friend’.

“The one is a respond to me after I asked her if she could get me tickets to [an author's] sold-out book signing event. This is not a business request, it is a personal favor.

There are 400+ employees at the town office and [Witness 2] is the only staff member that contacted me offering help. “

With respect to an incident that occurred in February 2025, the Respondent set out in his response that Witness 2 had taken responsibility for the matter.

Following the incident regarding an administrative error, the Respondent stated that:

“When I went to the office that week, [Witness 2] came running up to me crying. She hugged me saying she was so sorry, and it was all her fault and asked not to blame [a Member of Council].

She hugged me for more than ten seconds, crying and clearly upset. I reassured her that it was no problem and that everything was alright. Several staff members were coming and going during the exchange, and I felt extremely uncomfortable with her actions. I’ve since learned she reacted the same way with other councillors”

It was clear from the Respondent’s response that he believed that either Witness 1 or Witness 2 or both, had filed the Code Complaint with my Office. While I am bound by confidentiality, I can confirm that neither of the Witnesses is the Complainant.

With respect to the comment in the Respondent’s response that “I’ve since learned she reacted the same way with other councillors”. I have not received evidence to support this claim.

### **Reply to the Response (August 27, 2025)**

On August 27, 2025 the Complainant provided the following comments with respect to the Respondent’s Response:

With respect to Response [Witness 1]: While it appears there is some contrition, It appears that [the Respondent] is missing the point. His conduct in my opinion didn’t fall short of respectful standards, it was sexual harassment full stop. I don’t think he understands this.

*“During our conversation, I felt she accepted my sincere and heart felt apology and thanked me several times. I grew emotional, as the last thing I would ever want is to insult or disrespect her.”*

I am unclear how sexual comments about a female staff’s breasts are anything but insulting, disrespectful and unwanted.

*“I am troubled that [Witness 1] did not feel comfortable coming to me directly after we had addressed the situation face to face. Not only*

*because of our long-term relationship, but also because of her senior position as[...]....”*

This demonstrates to me [the Respondent] doesn't understand the power imbalance that exists between Council and staff. [Witness 1's] position or tenure have zero to do with the inappropriateness of this behaviour. And why would she go to him to address her feelings about the encounter?

The last page of his comments is irrelevant in my opinion. Family references, being a cheerleader and being just [the Respondent] do not preclude his behaviour.

I would also say, if this was a staff-to-staff complaint, [the Respondent] would have been fired immediately. We have let go others for similar actions.

Response [Witness 2]:

Again, [ the Respondent] doesn't seem to understand the power imbalance that exists between Council and staff. Of course, [Witness 2] will be friendly and accommodating to members of council. But she is not our friend. She is an employee of the town. She is professional in everything she does. I also do not believe for one second when [the incident of the administrative error occurred] [the Respondent's] recollection is accurate or that he felt at all uncomfortable. She was very upset that is true but the need for a hug, especially from [the Respondent], is very out of character for her. [...]

#### A. WITNESS EVIDENCE REGARDING ALLEGATIONS IN THE CODE COMPLAINT

The Complaint provides a detailed account of particular instances of unwanted sexual advances and remarks. I will not recount the full details of these incidents, except for certain particulars of which are outlined below in the report.

In addition to my review of the Investigator's Report, I have carried out my own review of the evidence and submissions of the parties, including the witness statements and supporting documents.

## Witness 1

Witness 1 came into the Complainant's office with the CAO to tell them about an incident involving [the Respondent] where she alleges she was the victim of sexual harassment. [The Complainant] has also been made aware of other instances where [the Respondent] has touched other women in our office in a sexual way. Also attached is a complaint from [another staff person] regarding interactions with the Respondent that have occurred in town hall and most recently at a Chamber of Commerce dinner. In the document, the Complainant was made aware of two occurrences: 1. [The Respondent] approached Witness 1 and put his hands on her shoulders and told her she looked good. He then said it's a good thing "I didn't grab your boob". [...]. 2. On the same day, Witness 1 needed to speak with [a Councillor] and approached him at the Dias before the Council meeting commenced. She sat in [the Respondent's] assigned seat. [the Respondent] came back and Witness 1 offered to get up and vacate the seat. [The Respondent] then insisted she remain seated as it allowed him to look down her top. The Complainant is confident that [a Councillor] witnessed and heard the statement and Witness 1 expressed to [the Complainant] her disappointment that he did not interject.

The Respondent told Witness 1 in a restaurant that "It's been a long time since we had sex". The Investigator concluded that it was not an attempt to make an inappropriate joke or innuendo as those present believe he intended to say "since we had lunch", which they did regularly. The investigator concluded that it was inadvertent but nonetheless sexualized and impactful. Witness 1 reported and the Investigator accepted that the Respondent repeatedly commented on Witness 1's appearance ("looking sexy," weight-loss remarks, or "that dress is too distracting").

On March 19, 2025 in Council Chambers, the Respondent grabbed Witness 1's shoulder and said "Good thing I didn't grab your boob," then later stated "I'd rather sit in your lap," and "If I stand here, I can look down your shirt." These comments were found to be sexualized, unwelcome, and inappropriate by the Independent Investigator.

## Witness 2

Witness 2 reported several incidents, which are set out here chronologically:

August 11, 2022 This allegation related to a comment made in 2022 by another individual in a parking lot and an allegation that the Respondent laughed at the inappropriate comment. I found it credible that the Respondent did not recall that

alleged event. Due to the physical distance between Witness 2 and the Respondent, I could not find, on a balance of probabilities, that Witness 2 had established that the Respondent reacted to the comment as alleged in the complaint. With this allegation, I did not receive conclusive evidence linking the individual who was alleged to have made a lewd comment about Witness 2 to the Respondent or his alleged actions. I therefore find that there is insufficient evidence to support that allegation.

December 13, 2022 [the Respondent] made an inappropriate "size matters" joke via text message

February/March, 2024 [the Respondent] started pointing at me saying, "I love you!" every time he saw me. I found it odd and unnecessary. This mostly happened when he would walk by my office door while I was seated at my desk. But then he started doing it in front of other people. I know it happened at least once in front of [another Councillor]. One time, he shouted it at me from the other end of the hallway where I was walking. This made me very uncomfortable as there were other staff members in the hallway. The next time he did it, I asked him to stop. He replied, "But what if you forget?" A few days later, it happened again, and again I asked him to stop. I confided in [a second staff person] about this behaviour. On March 6, 2024, I sent [another staff person] a message on Teams and wrote that if it happened again, I would tell him to stop in a more forceful manner. [...] Coincidentally, [a second staff person's] response mentions inappropriate behaviour she was told about by her colleagues in [...]. A few days later, [the Respondent] walked past my office and said, "I love you!" I was seated at my desk and immediately got up and said, "I was not joking when I asked you to stop. It's enough. Stop!" [The Respondent's] behaviour stopped after this interaction.

June 5, 2025 At the Greater Stouffville Chamber's Annual Spring Dinner, [the Respondent] told me I looked lovely and then caressed my arm in a way that made me feel uncomfortable. As you know, this is not the first time he has made me feel uncomfortable. Going forward, I would like to limit my interactions with him as much as possible.

[...] I'm providing my recollection of an event that took place [...]. Prior to the May 21st Council meeting commencing, [the Respondent] walked up to [a staff person] and I sitting at the bench in Council Chambers. He then proceeded to ask who a staff member was sitting in the audience. [The staff person] responded that her name was [a named employee] and she is a summer student working in [...]. [The Respondent] then asked "has anyone told her that the top she is

wearing is inappropriate?". [Witness 2] responded with "how so?". [The Respondent] then said "how do you expect me to concentrate during the Council meeting if I'm staring at her". [The Respondent] responded with "No I did not sir." And [the Respondent] proceeded to walk away reading that my body language was not impressed with his line of questioning. Coincidentally, [a named employee] put a shawl/sweater on within the next few minutes. For the record, her attire was not inappropriate whatsoever.

The Investigator found that the Respondent caressed (the Respondent disputed that he "caressed" and stated he "touched" the Witness 2's bare arm on June 5, 2025 and told her she "looked lovely." He repeatedly said "I love you" to her in workplace hallways, even after being asked to stop. In December 2022, he said "size matters" in response to a work-related question, which the investigator found was sexual innuendo.

#### Incidents regarding Other Staff

Witnesses confirmed a pattern of boundary-testing behaviour by the Respondent, which led to concerns raised by other female staff. The investigator found that power imbalances affected reporting, and both Witness 1 and 2 provided credible explanations for delayed reporting. The evidence showed a consistent pattern of inappropriate and sexualized behaviour toward multiple female staff.

#### **Review of the Investigator's Report and Conduct of the Respondent in the Complaint Process**

While I accept the Investigator's thorough Workplace Harassment investigation, I am a statutory accountability officer and my mandate is to conduct an investigation to gather facts about the allegations, and, on a balance of probabilities, make findings with respect to what occurred and whether the conduct contravened the Code rules.

There was one main area of difference with respect to the Investigator's report and my investigation process. The Investigator reported that the Respondent was dismissive and argumentative in the interview process. I did not find the Respondent dismissive or argumentative in interviews with me. On the contrary, he was very forthcoming and willing to provide any information that I requested. I have carefully reviewed the Investigator's Findings to ensure that I agreed with them, noting this difference. Despite this difference, with one exception, I accepted the Investigator's Findings.

I note that there was some confusion with respect to the investigation process. The Investigator was engaged by the Town to conduct a Workplace Harassment

Investigation. As Integrity Commissioner, I was investigating a Code complaint. The Complaint Protocol required appointment of an investigator because of the allegations of harassment. At times, these two separate but overlapping procedures caused confusion for the parties. In discussions with the Town's Human Resources Director, I have committed to working together to streamline the processes to work in concert under both the Code and municipality's HR regime.

## **V. CREDIBILITY ASSESSMENT AND STANDARD OF PROOF**

### **A. Applicable Standard of Proof**

The Integrity Commissioner applies the civil standard of proof, the balance of probabilities, in determining whether a breach of the Code has occurred. This is the same standard applied by the Independent Investigator. A finding is established on a balance of probabilities where the evidence shows that it is more likely than not that the conduct occurred as alleged. I conduct my own Code Complaint investigation, with the benefit of the Independent Investigator to assist in my fact finding and assessment of the conduct against the Harassment and Discrimination Free Workplace Policy. The Investigator made credibility findings as person who interviewed several witnesses. In reaching my credibility assessments, I considered the Investigator's assessment and my own interviews.

### **B. Consideration of Power Imbalance in Credibility Analysis**

Human rights jurisprudence recognizes that the existence of a power imbalance influences how complainants experience inappropriate behaviour, the likelihood of immediate objecting to the improper conduct, a complainant's willingness to report, and the interpretation of passivity or professionalism. In the Complaint before me, the Respondent is a long-serving Member of Council; both Witness 1 and Witness 2 held senior staff roles but viewed themselves as subject to the Respondent's political authority and influence;; and Witness 1 and Witness 2 interacted regularly with elected officials, including the Respondent. These dynamics are relevant to the assessment of the Witness' responses to inappropriate conduct and their credibility.

### **C. Credibility of Witness 1**

The Investigator found Witness 1 to be credible, citing internally consistent recollections; partial corroboration from other witnesses; reasonable explanations for delayed reporting; and alignment with evidence of the Respondent's broader pattern of comments toward female staff.

#### D. Credibility of Witness 2

The Investigator found Witness 2 to be credible based on clear, detailed, and consistent recollections across multiple interviews; careful distinction between events she vividly remembered and those where her memory was more limited; absence of motive to fabricate allegations; plausible explanations for delayed reporting; and consistency with contextual evidence including workplace structure. The Investigator found that Witness 2's professionalism should not be misinterpreted as acceptance of the Respondent's conduct. I accept these findings.

#### E. Credibility of Other Witnesses

Some of the conduct was witnessed by other individuals who were interviewed by the Investigator. None of those witnesses had any motivation to lie. I accepted her credibility determinations with respect to those witnesses who were typically called on to remember one or two incidents that stood out in their memories.

#### F. Credibility of the Respondent

The Investigator identified several concerns affecting the Respondent's credibility. The Investigator's report set out that the Respondent attributed allegations to the wrong complainant/witness and failed to provide materials he referenced during interviews. The Investigator's report also stated that the Respondent provided implausible explanations and denied the sexual nature of the "size matters" remark. The Respondent was found by the Investigator to have changing recollections about alleged interactions with witnesses and to have demonstrated an argumentative or dismissive demeanor in interviews. On the basis of the above, the Investigator's report gave diminished weight to the Respondent's explanations.

I reached a different conclusion, based on my own interactions with the Respondent.

Both in his written reply to the Complaint, as well as his interviews with me, the Respondent expressed his profound regret for the "offensive remarks I made and recognize that they were entirely unacceptable". He said "I don't know what happened or why I said those things" but clarified that this statement was in no way a justification for his conduct. The Respondent stated to me that he accepted full responsibility for the harm his words caused Witness 1 and Witness 2. In the first of two meetings with the Respondent, he became visibly emotional and moved to tears saying that "I know my conduct fell far short of the respectful standards expected of me. I sincerely apologize for my actions, I just don't know

how to explain this.” I found that the Respondent was forthright and credible. He admitted when he had no recollection or limited recollection of events. These different credibility determinations stemmed from the fact that despite previously objecting to it before the Investigator, the Respondent accepted that certain conduct had occurred and that it was received by Witness 1 and Witness 2 in a manner that was different than he had intended.

## **VI. ANALYSIS AND FINDINGS**

The Independent Investigator’s findings were supported by witness accounts confirming a pattern of inappropriate comments, corroborated incidents such as the restaurant comment, contextual workplace evidence, and partial admissions by the Respondent. These factors demonstrated to the Investigator a consistent pattern of conduct supporting the complainants’ accounts. I concur with these findings.

I have applied the balance of probabilities standard to the evidence that I received during the course of my investigation. I considered the consistency and likelihood of the Witnesses accounts being more likely than not to have occurred, the reasons given in the Investigator’s report for her findings that the Respondent gave implausible explanations and a review of the Investigator’s credibility assessment. I find that the factual conclusions reached by the Independent Investigator with respect to issues 1 and 2 of this Code complaint are reliable and should be adopted for the purposes of assessing Code compliance.

### **A. Overview of the Established Pattern**

During the course of this investigation, the information that I have received and reviewed demonstrates that the Respondent engaged in repeated, gender-based, sexualized, and unwelcome conduct toward two senior staff members over several years. The pattern includes sexualized remarks, unwanted physical contact, inappropriate comments about clothing and body shape, public comments with sexual content, behaviour occurring in Council Chambers and continuing behaviour after being asked to stop. These elements reflect a course of conduct, not isolated lapses.

Both Witness 1 and Witness 2 experienced similar categories of conduct. Additional female staff had expressed concerns that were received and reviewed by the Investigator, however, these matters were outside of the Code Complaint. The Investigator found that the Respondent confused allegations across complainants, indicating a lack of clarity about boundaries. I did not make this same finding. However, conduct involving multiple women reinforces that the

behaviour reflects a pattern rather than misunderstanding and creates an environment where female staff reasonably feel unsafe or belittled.

## B. Impact on the Workplace Environment

The Respondent's conduct created discomfort, embarrassment, and distress by causing Witness 1 and Witness 2 to modify professional behaviour to avoid encounters with him. This contributed to a climate where inappropriate comments could occur without challenge and required Witness 1 and Witness 2 to manage or de-escalate inappropriate interactions. Such impacts are critical in evaluating harassment and Code breaches. Elected officials hold authority and public trust and any conduct that creates a hostile environment undermines institutional integrity.

## VII. CONDUCT RELATED TO WITNESS 1

This section evaluates whether the Respondent's conduct toward Witness 1 constitutes a breach of the Council Code of Conduct. The analysis focuses on Rule 14 (Harassment) and Rule 15 (Discreditable Conduct). The conduct directed at Witness 1 occurred over multiple years and includes sexualized comments, inappropriate remarks about physical appearance, unwanted physical contact, and behaviour occurring directly within Council Chambers.

### A. Applicable Framework Under Rule 14 – Harassment

Rule 14 requires Members of Council to comply with the Town's Harassment and Discrimination Free Workplace Policy, which defines:

Workplace harassment as a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

Sexual harassment as conduct or comments because of sex, including sexualized remarks, innuendo, or unwanted touching;

A single incident may constitute harassment if sufficiently serious;

Professionalism on the part of the complainant does not negate whether conduct was unwelcome.

The Harassment and Discrimination Free Workplace Policy sets out that:

**Workplace Sexual Harassment:** Workplace sexual harassment is defined as engaging in a course of vexatious comment(s) or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression where the course of comment or

conduct is known or ought reasonably to be known to be unwelcome; or making a sexual solicitation or advance where the person making the solicitation or advance is able to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

The above definition includes, but are not limited to:

Persistent leering (suggestive staring) or other obscene/offensive gestures

Unwanted, unnecessary or inappropriate physical contact such as touching, kissing, patting, pinching, brushing up against a person

Unwelcome sexually oriented remarks, invitations, requests, jokes, gestures

Inquiries or comments about a person's sex life

Making gender-related comments about someone's physical characteristics, mannerisms, or conduct

#### B. Summer 2024 Restaurant Incident and Repeated Appearance-Based and Sexualized Comments (2024-2025)

These allegations were reviewed by the Investigator but not set out in the Code Complaint. I therefore make no findings on these matters. However, during the course of my interview with Witness 1, she did disclose to me the 2024 Restaurant Incident and repeated remarks in 2024-2025 made of the Respondent. I therefore have considered this information as evidence for the purposes of determining a pattern of conduct that demonstrates the Respondent's inappropriate remarks concerning Witness 1's appearance, including that she "looked sexy," looked good after weight loss, and that she should not wear a dress because it was "too distracting." I found that the Respondent made those comments as alleged.

#### C. March 19, 2025 Incidents in Council Chambers

On March 19, 2025, prior to a Council meeting, the Respondent made several inappropriate comments to Witness 1. The evidence set out in the Investigator's report mirrored the information that I received during my investigation. The Investigator wrote:

The Respondent was walking behind Witness 1 and as she turned to say hello to him, he grabbed her on her shoulder, and said, "good thing I didn't grab your boob." Witness 1 said that the Respondent's comment was shocking.

Afterwards, as Witness 1 was speaking with another Member of Council, she sat down in the Respondent's Council chair. When the Respondent returned to his chair, Witness 1 offered to get out of the seat and he said "no I'd rather like to sit in your lap" and then he said, "you know you're looking really good lately and if I stand here I can look down your shirt." Witness 1 told the Respondent "you can't say things like that." Another Councillor overheard portions of the interaction. However, he did not become involved, and got up and left, shaking his head saying "Rick".

Before me, the Respondent stated that he did not "grab" Witness 1, but that he did "put his hand on her shoulder". Findings:

The Respondent admitted that he made the comments as alleged. I find that the alleged remarks were made by the Respondent. The comments were explicitly sexual, followed one after another and occurred in a formal workplace environment, creating a hostile and humiliating environment for Witness 1. The comments also started in response to the Respondent touching the shoulder of Witness 1.

Conclusion: These incidents constitute serious incidents of sexual harassment under Rule 14.

#### D. Pattern of Conduct Analysis for Rule 14

When viewed together, the Respondent made repeated sexualized comments, unwanted touching, and inappropriate remarks about Witness 1's appearance and body. This represents conduct the Respondent knew or ought reasonably to have known was unwelcome.

Conclusion: The Respondent breached Rule 14 – Harassment with respect to Witness 1

#### E Application of Rule 15 – Discreditable Conduct

The Respondent's conduct toward a senior staff member undermined public trust, breached professional boundaries, and reflected serious governance concerns.

Conclusion: The Respondent breached Rule 15 – Discreditable Conduct.

#### F. Findings Witness 1

I find that the Respondent contravened:

- Rule 14, Harassment, with repeated sexualized and appearance-based comments, unwanted touching, and explicit remarks about her body, thereby creating a hostile work environment).

- Rule 15, Discreditable Conduct, by undermining the dignity of office and staff relationship.

### **VIII. CONDUCT RELATED TO WITNESS 2**

This section considers whether the Respondent's conduct toward Witness 2 constitutes a contravention of Rule 14 and 15 of the Council Code of Conduct.

#### **B. June 5, 2025 – Unwelcome Physical Contact and Comment on Appearance**

The Investigator found that the Respondent: caressed Witness 2's bare arm at a public event; and stated she "looked lovely."

#### **Findings:**

The Respondent touched Witness 2 as she described. It was physical, uninvited, and unwelcome. The Respondent stated clearly that the touching occurred at an event and Witness 2 was wearing evening attire. He said that "she did look lovely" and "I wasn't used to seeing her dressed up that way because I usually see her at the Town offices and she looked very nice". He added "I have a very good working relationship with [Witness 2]" and, "I was happy to see her. It wasn't sexual at all".

The Investigator found that the public setting and Witness 2's need to maintain professionalism explained her restrained reaction and that this did not diminish the unwelcome nature of the contact. The Investigator goes on to state in her report that "[a] reasonable person would know that caressing a staff member's bare arm in a public workplace context is inappropriate and likely unwelcome. Taken together with the comment about her appearance, the Respondent's conduct had a clear sexualized element."

#### **Conclusion:**

The Respondent and Witness 2 had inconsistent accounts of the advances that were made, and whether they were "sexual" or simply "friendly". Based on a strict interpretation of the Harassment and Discrimination Free Workplace Policy, the intent of the person engaging in the alleged harassment is not relevant to a finding that the conduct was sexual harassment. There is a substantial power imbalance between the Respondent and each of Witness 1 and Witness 2. Courts and tribunals recognize that a power imbalance can erode, if not impede, a victim's

belief that they can refuse unwanted advances. The victim fears unforeseen consequences which could be either personal or work-related. In these cases, it is not uncommon for victims of harassment to tolerate unwanted behaviour longer than it may seem reasonable after the fact. The Ontario Human Rights Commission notes that a person does not have to object to the harassment at the time it happens for there to be a violation, or for the person to claim a violation of their rights under the Human Rights Code. In a leading case, the Supreme Court emphasized that the intention of the harasser is not the focus of the assessment of whether sexual harassment occurred. Physical acts such as hugging, touching, or other gestures may constitute sexual harassment if they are unwanted and create a hostile or offensive work environment. The harasser's belief that the conduct was innocent or friendly does not absolve them if the conduct was unwelcome and had a negative impact on the victim.<sup>3</sup>

Witness 2 told me that she was in front of the attendees and felt uncomfortable rejecting the Respondent's advance to touch her in front of so many people. While I have considered the Respondent's account of the incident, in terms of the jurisprudence, this incident alone, on a balance of probabilities, constitutes workplace sexual harassment under Rule 14.

### C. Repeated "I Love You" Comments (Early 2024)

The evidence establishes that the Respondent frequently said "I love you" to Witness 2, including loudly calling it down the hallway. Witness 2 asked the Respondent multiple times to stop; the Respondent repeated the behaviour even after she asked him to stop.

The Respondent advised that "I love you" is what he says to people to mean "you are doing a good job", to provide positive reinforcement. The Respondent earnestly believed that Witness 2 had asked him to stop saying "I love you" because she was very professional and was uncomfortable with having her work highlighted, not because her discomfort was because she received the comments as sexual.

### Findings:

The conduct was repeated and persistent. He said "I love you" to Witness 2 on several occasions and she did not receive these as complements about her professionalism. Witness 2 clearly advised the Respondent that his calling out "I

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<sup>3</sup> [Janzen v. Platy Enterprises Ltd., 1989 CarswellMan 328; 1989 CarswellMan 158; \[1989\] 1 S.C.R. ...\)](#)

love you” was unwelcome, yet he made light of her protests. The Respondent continued despite the explicit request to stop.

The Respondent’s assertion that the phrase was intended as a compliment demonstrates a lack of insight and does not negate its unwelcome nature. A reasonable person would know that repeated declarations of affection to a subordinate staff member are inappropriate.

Conclusion:

The repeated “I love you” comments constitute ongoing, vexatious conduct and amount to harassment under Rule 14.

#### D. “Size Matters” Sexual Innuendo (December 13, 2022)

The Respondent’s remark “size matters,” made in response to a work-related discussion, was found by the Investigator to be sexual innuendo, and the Respondent’s denial that it was sexual was deemed “entirely incredible.” As this conduct dates back to 2022, I have decided not to consider this as an independent breach of the Code due to the limitation period. I did not include this conduct in consideration of whether the Respondent contravened Rule 14.

#### E. Pattern of Conduct and Cumulative Impact

Workplace harassment may be established through a course of conduct, even if each incident in isolation is relatively minor. With respect to the Respondent’s conduct toward Witness 2, the conduct inappropriate touching; repeated unwelcome declarations of affection and a continuation of behaviour despite direct requests by Witness 2 to stop.

The Investigator found, and I accept, that at the time of the incidents, the Respondent demonstrated limited insight and frequently did not appreciate how his conduct negatively affected Witness 2. However, I believe that the Respondent has now recognized that what he viewed as “friendly” conduct was not perceived that way by staff. It was perceived as and was inappropriate, sexualized conduct not appropriate for a workplace.

#### F. Application of Rule 15 – Discreditable Conduct

Rule 15 requires Members to conduct themselves with appropriate decorum at all times.

With respect to Witness 2, the Respondent’s behaviour fell significantly below the standard expected of a Member of Council. In addition, his conduct demonstrated disregard for expected boundaries in the workplace with staff.

Given the power imbalance between the Member of Council and staff, the Respondent's conduct reflects poor judgement and undermined in the Council Member -Staff relationship.

Conclusion:

The Respondent's conduct toward Witness 2 constitutes Discreditable Conduct contrary to Rule 15.

#### G. Findings – Witness 2

On the basis of the factual findings made during my investigation, I find that the Respondent contravened:

Rule 14, Harassment, through unwelcome physical contact and repeated unwelcome declarations of affection, which amounted to a cumulative pattern of gender-based, unwelcome conduct.

Rule 15, Discreditable Conduct, by engaging in behaviour incompatible with the obligations of a Member of Council to treat staff with respect and dignity.

### **IX. ANALYSIS OF DISCREDITABLE CONDUCT**

The third Issue alleged in the Complaint involved other incidents of alleged misconduct against other Town staff (i.e. individuals other than Witness 1 and Witness 2). I did not find that those incidents constituted a pattern of conduct as necessary to find there has been harassment. However, the Code also imposes obligations of decorum, respect, and professionalism that apply to all interactions with staff. The Respondent's behaviour with respect to comments that he made about a summer student also violated Rule 15.

#### Respondent's Insight and Accountability

The Investigator's report sets out that during interviews, the Respondent was argumentative, dismissive, and minimizing, describing sexualized comments as "compliments" and offering inconsistent or implausible explanations. In short, the Investigator found that the Respondent confused allegations between complainants and failed to appreciate power imbalance. At the conclusion of my investigation, I did not find that the Respondent minimized the conduct, though I concur with the Investigator on one issue, that is, his describing saying "I love you" as "compliments". I find that the Respondent's understanding of the cumulating effect of his conduct show a limited insight into the inappropriateness of his behaviour and risk of recurrence absent corrective of expectations

measures. His conduct reviewed during my investigation fell short for an elected official.

#### Application of Rule 15 – Discreditable Conduct

Rule 15 requires Members to conduct themselves with appropriate decorum and uphold the integrity of the office. Cumulatively, the Respondent's conduct undermined staff dignity, was an abuse of power failing to recognize the power imbalance between an elected official and staff. His conduct impaired staff trust and demonstrated a pattern inconsistent with obligations of office. While individual breaches of Rule 14 independently engage Rule 15, the cumulative pattern significantly aggravates seriousness.

#### Conclusion:

I therefore find that the Respondent's conduct, considered cumulatively, constitutes a serious and sustained breach of Rule 15 Discreditable Conduct.

#### Overall Pattern of Conduct Findings

I find that the Respondent:

1. engaged in a persistent pattern of inappropriate, unwelcome, and sexualized conduct toward Witness 1 and Witness 2, who are senior female employees, as well as comments about a summer student.
2. demonstrated a pattern of conduct that extended over multiple years and settings, including public venues, municipal offices, and in Council Chambers.
3. knew or ought reasonably to have known that the conduct was unwelcome.
4. through his conduct, undermined his duties to treat staff with dignity and respect.
5. demonstrated conduct that represents a significant integrity breach inconsistent with standards expected of elected officials.

#### **X. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriate recommendations to Council under s. 223.4(5) of the Municipal Act, it is necessary for me to assess the presence of aggravating and mitigating factors. This analysis informs the proportionality of sanctions and

is consistent with the approach taken across the Integrity Commissioner jurisprudence in Ontario.

#### A. Factors Considered on Recommending a Sanction

##### 1. Repeated Conduct Involving Multiple Staff Members

The Respondent's conduct toward Witness 1 and Witness 2 occurred over a sustained period and involved repeated acts of sexualized comments, appearance-based remarks, unwelcome physical contact, and inappropriate statements made in public and formal settings. The comments were also made about a young female summer student. There were many violations of the Code.

##### 2. Power Imbalance Between the Respondent and Witnesses

The Respondent is a long-serving Member of Council, with influence over municipal governance, participation in hiring processes, and regular interactions with both Witness 1 and Witness 2. This power imbalance resulted in delayed reporting and is a serious aggravating factor.

##### 3. Concentration of Incidents in Workplace and Public Settings

Inappropriate conduct occurred in the municipal workplace, in public settings, and inside Council Chambers. Conduct within Council Chambers, including remarks such as "I'd rather sit in your lap" and "I can look down your shirt," constitutes a particularly serious aggravating circumstance.

##### 4. Emotional and Professional Impact on Witnesses

Both Witness 1 and Witness 2 experienced distress, discomfort, fear of reputational harm, and hesitation in reporting. The impact on their ability to perform their duties aggravates the misconduct.

##### 5. Respondent's Limited Insight and Accountability

The Respondent offered sincere regret to the point of being moved to tears. However, even while doing so, the Respondent minimized the seriousness of his actions. In particular, he insisted that comments were "compliments" when in fact, they were deeply troubling and offensive to Witness 2. The comments were not a momentary lapse in judgment. The Respondent's reflection on his actions demonstrated a limited appreciation of the impact his conduct had on Witness 1 and Witness 2 and those with whom these women confided about their ongoing trauma and harassment. Typically, where a Respondent has limited insight regarding the impact of their actions, in particular in harassment cases, there is a risk of recurrence.

## B. Mitigating Factors

### 1. Cooperation with the Investigation (Partial)

The Investigator sets out in her report that the Respondent participated in interviews but was argumentative, spoke over the Investigator, and failed to provide referenced documents. Conversely, during my interviews and discussions with the Respondent, he was respectful, cooperative and forthcoming.

### 2. No Prior Findings of Code Violations

The Respondent has not had a previous finding of having violated the Code.

### 3. Voluntary Registration for Courses

The Respondent had advised that he would voluntarily register for HR training. He did look into different HR companies that offered training; however, the Respondent has not yet registered.

## **XI. Recommendations to Council**

Under s. 223.4(5) of the Municipal Act, 2001, when the Integrity Commissioner finds that a Member has contravened the Council Code of Conduct, the Commissioner may recommend a reprimand and/or a suspension of remuneration for up to 90 days. Remedial measures may also be recommended where appropriate, provided they do not constitute penalties.

In assessing an appropriate recommendation, I have considered principles recognized in Integrity Commissioner practice across Ontario, including proportionality, deterrence, workplace protection, restoration of public trust, and the Member's insight into his actions.

The Respondent advised that he now recognizes that he should not have said "I love you" but rather "I love your work" or "You do amazing work". He added that he said these things and though he didn't mean them in a sexualized way, "that's my fault", I should not have said these things. In one of my interviews with the Respondent, he said that he would voluntarily take HR training to make sure that he understands what he should and should not say and what is appropriate in the workplace. Finally, the Respondent asked me how he should interact with Witness 1 and Witness 2 going forward. I advised that one of my recommendations to Council would be that he attend training and out of that training, Town HR staff may provide him with guidance on how he can interact with Witness 1 and Witness 2 to balance the Respondent's need to fulfil his role

as an elected Member of Council and the Witnesses' right to a safe and healthy workplace.

Based on the above, I respectfully recommend that Council impose the following sanctions and remedial measures:

1. Formal Reprimand.

That Council pass a resolution to formally reprimand Councillor Rick Upton for contraventions of the Code of Conduct, as documented in this report. A reprimand serves as an official expression of disapproval for their conduct.

2. Suspension of Remuneration – In addition to a reprimand, I recommend that Council suspend the remuneration paid to the Respondent for a period of 60 days.

This reflects that the Respondent committed multiple breaches against two senior staff that seriously eroded the trust that is at the foundation of the Harassment and Discrimination Free Workplace Policy, to ensure staff are able to work in a safe environment. The pay suspension length reflects that the contraventions were serious but that he has no prior findings of a Code breach during his time as a Member.

3. Remedial Training/Guidance – That the Respondent be required to attend training on the Harassment and Discrimination Free Workplace Policy. . Specifically, I recommend a facilitated session (to be arranged by the CAO or HR department) where the roles of Council and staff are reviewed, and the expectations for respectful communication are reinforced. The goal is to prevent future incidents by ensuring that the Respondent fully understands the boundaries and best practices when engaging with staff.

4. Apology to Staff – I encourage the Respondent to consider privately delivering a sincere written apology to the staff members who were affected, with delivery to the Witnesses coordinated with the assistance of the HR staff. In addition, the Respondent shall deliver an apology to Council in an open Council meeting following Council's deliberation on this report. An apology can be an important step in healing the working relationship. I note that Respondent has already indicated willingness to apologize for his conduct.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Suzanne Craig', written over a light blue horizontal line.

Suzanne Craig  
Integrity Commissioner