

*For the **Regular Meeting** of City Council  
To be held on **Tuesday, November 7, 2023 At 6:00 P.M.**  
In the **Council Chamber or Via Electronic Participation**  
Tom Davies Square*

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## **Addendum**

*(Two-thirds Majority Required to Deal with the Addendum)*

## **Declarations of Pecuniary Interest and the General Nature Thereof**

### **ADD- 1 Managers' Report**

#### **Code of Conduct Complaint – November 2023**

The City's Integrity Commissioner has provided a report containing his conclusions regarding complaints received by him alleging a breach of the Code of Conduct by Councillors Leduc, Montpellier and Vagnini.

## Code of Conduct Complaint Report – November 2023

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| Presented To:   | City Council                             |
| Meeting Date:   | November 7, 2023                         |
| Type:           | Managers' Reports                        |
| Prepared by:    | Eric Labelle<br>Clerk's Services         |
| Recommended by: | General Manager of<br>Corporate Services |

### Report Summary

The City's Integrity Commissioner has provided a report containing his conclusions regarding complaints received by him alleging a breach of the Code of Conduct by Councillors Leduc, Montpellier and Vagnini.

### Resolution

#### Resolution 1:

THAT the Council for the City of Greater Sudbury approves the sanction recommended by the City's Integrity Commissioner that Councillor Leduc's remuneration be suspended for a duration of 30 days in accordance with the report from the Integrity Commissioner presented at the Council meeting of November 7, 2023.

#### Resolution 2:

THAT the Council for the City of Greater Sudbury approves the sanction recommended by the City's Integrity Commissioner that Councillor Montpellier's remuneration be suspended for a duration of 10 days in accordance with the report from the Integrity Commissioner presented at the Council meeting of November 7, 2023.

### Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)

This report refers to operational matters and has no direct connection to the Community Energy and Emissions Plan.

### Financial Implications

If approved, the suspensions of remuneration will form part of the organization's 2023 year-end position.

# **CITY OF GREATER SUDBURY INTEGRITY COMMISSIONER, DAVID G. BOGHOSIAN**

**Citation:** Leduc, Montpellier and Vagnini (Re)

**Date:** October 30, 2023

## **REPORT ON COMPLAINT**

### **Introduction**

This report addresses a complaint made by the CAO of the City of Greater Sudbury, Ed Archer alleging breaches of the City of Greater Sudbury's Code of Conduct (“COC”) by Councillors Bill Leduc, Gerry Montpellier and Michael Vagnini in relation to statements made about City staff at a public information meeting held at the Northbury Hotel and Conference Centre in the City on September 7, 2023 (“the Complaint”).

### **The Complaint**

On September 11, 2023, the City’s CAO, Ed Archer, filed a complaint with me regarding statements made about City staff at a September 7, 2023 public meeting attended by Councillors Leduc, Montpellier and Vagnini. I subsequently confirmed with him that he filed the Complaint in his personal capacity and not on behalf of the municipal corporation.

The complaint alleges that during the course of the meeting, “the featured speaker made a variety of misogynistic, defamatory, and provably false statements directed toward, and about, municipal employees.”

The Complaint goes on to allege the following:

“The video recording of the meeting show these councilors participated in the discussion and took no action to stop or refute the speaker's comments about municipal employees. From the questions they asked during the meeting, I assert they knew in advance what the speaker's message would be.

Each of the three councilors made a choice to attend and engage in a public discussion that defames staff. They took no steps to stop the defamation or correct the erroneous assertions made during the discussion...”

In support of the Complaint, the Complainant provided a link to a video recording of the meeting and links to three newspaper articles, one published by the Sudbury Star, one by CTV News and the third by Sudbury.com.

The specific provision of the COC alleged to have been violated by all three Councillors is:

14(3) No member shall maliciously, falsely, negligently, recklessly or otherwise improperly, injure the professional or ethical reputation, or the prospects or practice, of any one or more city employees

The Complaint further alleges that Councillor Leduc violated the following additional sections of the COC:

6(1) No member shall, contrary to any applicable privacy law, disclose, release by any means or in any way divulge to any person or to the public, any Confidential Information, including without limitation any personal information as that term is used in the Municipal Freedom of Information and Protection of Privacy Act, acquired by virtue of their office, except when required to do so by law or authorized by City Council or the local Board to do so;

15(2) Every Member shall act in compliance with the Ontario Human Rights Code and the Occupational Health and Safety Act, and where applicable, the City's Workplace Violence, Harassment and Discrimination Prevention Policy and Program.

### **The Councillors' Responses**

Councillor Leduc provided the following Response to the Complaint:

While I cannot speak for the other Councilors, there is absolutely no evidence that I knew in advance what the speaker's message would be. I did choose to attend the presentation in order to hear what was being said, as is my responsibility as a Councilor. As for the accusation that I took no steps to stop the "defamation or correct the erroneous assertions made during the discussion", there is no evidence that I had full knowledge of any defamation or erroneous assertions. I did not stop any of those alleged comments because I do not have the facts that would have supported any such action. There is no violation of the Code of Conduct.

I provided personal information about [named City employee redacted] and his common-law wife to stop the misinformation that was being discussed at the meeting. All sorts of allegations of nepotism and inappropriate relationships were being tossed around, so I felt it was necessary to stop any rumors before they could get started. There was no violation of the Code of Conduct on my part.

Councillor Montpellier provided the following Response to the Complaint:

Hopefully to provide some clarity to the abundance of opinions being presented regarding the September 7, 2023, Town Hall meeting hosted by OTOCI, this News Letter deals solely with that issue.

For the record, there were NO councillors involved in the preparations for, or the subject matter of that meeting.

OURTOWNS-OURCITY News Release. OurTowns-OurCity Institute is a grass roots organization established to inform and engage the Citizens of the City of Greater Sudbury.

OTOCI hosted a Town Hall meeting September 7, 2023, to accommodate a contractor presenting their side of a situation where almost no information was available to taxpayers.

I spoke to Mr. Price about the Archer complaint that I failed to jump up after he re - called his meeting to order and as suggested by complainant Archer that I demand and commandeer his meeting. Mr. Price has offered himself and as many witnesses you require to verify, he did call the meeting to order after city employees names were mentioned. The meeting resumed in a technical subject fashion. It is well witnessed of the three times I spoke, I asked three questions:

First / Tell us where in Ontario you have worked with this system. {A long list was given}

Second / Tell us where in Ontario you have failed with this system. {One municipality name was given}

Third Question / (Final time I spoke)

You mention these names of individuals I do not recognize or know any of the others mentioned. However, Mr. [name of employee redacted] from the city I do know. Are all those others that you mentioned part of the crew that built Maley Drive on private property?

Councillor Vagnini provided the following Response to the Complaint:

I was puzzled to find out that Mr. Archer had filed this complaint for a couple of reasons.

I believe misogynistic means prejudiced against women and while a relationship with a senior employee was referred to, I believe that is nepotism the individuals related to potential conflict-of-interest, unrelated to misogyny, only defamatory if untrue and meant to harm the individual and I have no means at my disposal to determine if any of the claims made in the meeting are true or false.

Beyond that, if further discussion took place that were as the CAO described, I was not aware of those as I was no longer in the hall, having left for an interview with a media reporter then leaving to return home.

For the CAO to make such unwarranted claims regarding my actions, surely must be a violation of his conduct code and certainly represents insubordination as well as lack of respect for public representatives.

There are numerous witnesses to the event and can I safely assume that you will be interviewing a number of them as well?

Councillor Vagnini helpfully provided a transcript of the video of the meeting, including identification of each speaker where identifiable. For unknown reasons, he did not respond to our request for the identity of the person(s) who prepared the transcript; however, our office reviewed it against the video and found it to be substantially accurate.

## **Integrity Commissioner Investigation**

### Background

The public meeting held on September 7<sup>th</sup> at the Northbury Hotel was organized by Sudbury resident Tom Price on behalf of an organization called Our Towns Our City Institute (“OTOCI”). Mr. Price moderated the meeting.

OTOCI invited representatives of a company called Road Surface Recycling (“RSR”) to speak to City residents regarding the contract RSR had won with the City to undertake hot-in-place asphalt recycling (“HIR”) on The Kingsway from at or about Falconbridge Road eastward to the Highway 17 bypass. This was deemed to be a “pilot project” within the City where HIR was to be attempted and evaluated. In appropriate conditions and implemented properly, HIR has the potential to deliver a road surface with the same longevity as conventional new pavement at significantly less cost.

City staff overseeing the RSR contract had determined that there were a number of instances of non-compliance with the contract between RSR and the City, including the fact that the minimum depth of pavement required to be removed and recycled under the contract was not being achieved. RSR disputed the City’s perception that some aspects of the contract were not being complied with. In response, the City retained WSP, a reputable, international engineering consulting firm, to conduct an independent review.

Following inspections and investigations, WSP determined that RSR was not in fact meeting the terms of its contract with the City in a number of material respects, including the following:

- the temperature of hot in-place recycling mix ranged outside of required specifications;
- equipment failing to maintain steady heating;
- the contractor failing to maintain a clean surface free of loose debris resulting in poor bonding;
- thickness and compaction values were sub-standard compared to contract requirements;

- multiple instances of transverse cracking, fat spots and segregation (separation of the coarse aggregate particles in the mix from the rest of the mass) were observed.

As a result of the WSP report, the City issued a Stop Work Order and suspended the HIR project. The City's Auditor General has since (after the September 7<sup>th</sup> meeting) upheld the City's decision to suspend the contract based on the numerous breaches of the requirements of the contract between RSR and the City, and found no wrongdoing on the part of any City staff.

#### RSR's Presentation at the September 7<sup>th</sup> Meeting

Representatives of RSR made the following claims of relevance at the meeting:

- The Project Manager for the City was incompetent and repeatedly asked RSR to comply with minor aspects of its contract which it had never been asked to comply with in other jurisdictions (eg. requiring a sweeper to follow the asphalt-recycling machine);
- When RSR advised the City that it was providing a 3-year warranty for its work, the Project Manager said the City was only contractually entitled to a 2-year warranty;
- The City's Director of Engineering never inspected RSR's work or spoke with RSR representatives regarding its work;
- City staff were favouring local pavement contractors who did not utilize HIR technology and would lose business if HIR technology took hold;
- There was "nepotism" at work at the City because the Project Manager was "related to the top guy";
- The consultant (WSP) was not independent and basically told the City what it wanted to hear.

#### The Involvement of the Councillors at the Meeting

##### *Video Evidence and Transcript*

The video and transcript make it clear that over the course of the first portion of the meeting, an RSR representative repeatedly and viciously criticized the competence of the Project Manager assigned to oversee RSR's asphalt project on the Kingsway, referenced a familial relationship between the Project Manager and an unidentified senior City executive and suggested that the only reason the Project Manager had her job was due to nepotism ie. "because she is related to the top guy", without directly stating the nature of the relationship or naming the "top guy." What followed directly after these comments, beginning at approximately the 1 hour, 46 minute mark of the recording, were a series of questions and comments by the Councillors, as follows.

Councillor Montpellier states in his Response that he asked the following question of the RSR representatives, which I note followed immediately upon the “incompetence” and “nepotism” comments of the RSR representative described above:

You mention these names of individuals I do not recognize or know any of the others mentioned. However, [name of City employee redacted] from the city I do know. Are all those others that you mentioned part of the crew that built Maley Drive on private property?

Based on my review of the video, which is verified by the transcript provided by Councillor Vagnini, Councillor Montpellier’s question was actually this:

I have one question. I'm never in trouble. So anyways, you keep referring to what's his name, [name of City employee redacted]. I'm not allowed to call them by their names and all that because I'll end up in jail again. He couldn't have been alone. So that this crew. That gang. Is that the same people that built Maley [Drive] on [inaudible] private property?

This comment was followed by the RSR representative responding “Yes. I would guess so.”

After the RSR representative provided a further example of what he deemed to be incompetence on the part of the Project Manager (actually one he had already raised at least twice previously in his presentation), even going so far as to say “I am dealing with a child” in reference to her, Councillor Leduc made the following statement:

Just so everybody understands this, is that [name of City employee redacted] is [name of second City employee redacted]’s common-law wife. Just so that everyone understands the relationship.

Gasps and “awws” are heard from some members of the audience immediately following this comment by Councillor Leduc.

Then at approximately the 2 hour, 6 minute mark of the recording, the following exchange took place:

RSR Representative — Now here's the coring report from WSP. Who owns Woods Engineering who's supposed to be a third party?

Councillor Vagnini- No

RSR representative - How can they be a third party if they own the companies that did the testing?

Councillor Vagnini – Frank, I have no idea.



### *Newspaper Articles*

As previously indicated, the Complainant provided links to three media articles reporting on the September 7<sup>th</sup> meeting. All three were reviewed. The CTV News and Sudbury Star articles, while providing detailed and accurate accounts of the meeting, did not focus on the role of the councillors in attendance at the meeting.

In the Sudbury.com article regarding the September 7<sup>th</sup> meeting published on September 11, 2023, its author, Tyler Clarke, reports the following of relevance to my investigation:

*In the questions they asked, statements they made **and in their demeanour**, the trio of city council members seemed to be in support of at least some of Crupi's allegations against the city. [emphasis added]*

At one point as Crupi alleged certain city staff are incompetent, Montpellier named a city staff member (which Sudbury.com will not do) before adding, "I'm not allowed to call them by their names and all that because I'll end up in jail again, but he couldn't have been alone, so this crew — that gang," he said with some derision, "is that the same people that built Maley on private property?"

"I would guess so," Crupi answered.

"OK, just to clarify," Montpellier added with a smirk, which was answered by chuckling from those around him.

(Montpellier's comments reference a lawsuit claiming the city built Maley Drive on land it didn't expropriate prior to construction. His reference to "jail" likely has to do with his running afoul of the city's code of conduct for members of council for his comments regarding city staff in the past.)

During the Sept. 7 meeting, Crupi repeatedly insulted city staff, dismissing their work as "total incompetence," and insinuated they were being bribed by [local] contractors with "brown envelopes."

"There is a fix here," he alleged. "What's in it for them?"

Crupi also said one staff member has "no credentials," and only got their job because they're in a relationship with another city staff member. He also alleged a city staff member involved in the project is in a conflict of interest because they have a family member who is employed by a contractor that bids on municipal projects.

Leduc stood up to reveal additional personal information about the relationship between two city staff members in question, "just so everyone understands the relationship between the two of them." This revelation spurred further unchallenged criticism from Crupi.

During his presentation, Crupi alleged that WSP, the company contracted to perform the third-party testing on RSR's work, was not truly independent.

"How can they be a third-party if they own the company that did the testing?" Crupi asked.

"Frank, I have no idea," Vagnini responded from his seat in the front row.

I decided not to question the author of the Sudbury.com article, Mr. Clarke, so as not to undermine his integrity as a journalist by turning a reporter of the news into part of the story itself. Although the article is technically hearsay, I am not bound by formal rules of evidence and have decided to give some weight to his observations reported in the article, particularly in the first paragraph thereof.<sup>1</sup>

### Interviews with the Councillors

I interviewed two of the three Councillors, Montpellier and Leduc, to further understand their positions on the Complaint on October 23, 2023. I did not interview Councillor Vagnini for reasons I will explain below.

#### *Councillor Leduc*

Councillor Leduc stated that he became aware of the September 7<sup>th</sup> meeting via an email that he said was sent not only to all City Councillors but also to all relevant City staff.

He stated that he initially did not plan on going to the meeting because he thought it would be a "farce" but this changed after Sudbury.com published the findings of the WSP report a few days before the meeting. After reading about it, he spoke to unnamed friends in the engineering field, who said they did not see how the report set out sufficient grounds to terminate RSR's contract so he decided to attend the meeting. He also claimed that he spoke to lawyer friends who told him that WSP was not a true third-party consultant because it owned Wood, the material testing company.

He was disappointed, upon attending the meeting, that no-one from RSR's own engineering consultant, PNJ, was there to explain the technical aspects of the project from an objective standpoint.

I put to him the statement of most concern to me where he identified by name the two Sudbury employees involved in the project and then stated they were common law spouses, which followed shortly after an RSR representative had claimed that the female staff member involved in the project only had her job because she was "related to the top guy." He claimed that he did this to *defend* these employees' reputations, not to denigrate them, as, before he spoke, the "crowd

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<sup>1</sup> With respect to the reliability of Mr. Clarke's observations, I note that that Sudbury.com's parent organization, Village Media, is a member of the National NewsMedia Council, a self-regulating body overseeing media outlets across Canada and can be subject to censure for lapses of journalistic integrity, including reporting false or misleading facts.

thought the two were having an affair.” I asked him why he thought that and he responded “from the expressions on their faces.” He could sense they thought “something was going on under the covers” with the two hitherto unnamed employees. He claimed that a journalist present (who he named but who I will not) expressed to him that he thought there must be an affair going on between these two, until Councillor Leduc clarified that they were common law spouses. He volunteered that he thought it took courage for him to get up and clear the air about that but later stated that it was a “call made in the heat of the moment” and that he now questions making the statement he did given how it is now being negatively interpreted.

He stated that many Sudbury residents are critical of staff and that he is trying to make improvements to the City.

He finally stated that CAO Archer has purportedly banned him from talking to any staff in the Growth and Infrastructure Commission of the City, which includes Planning and Engineering, such that, in his view, he has already been punished enough.

### *Councillor Montpellier*

Councillor Montpellier learned about the meeting either from Tom Price or on the internet. He attended to get the contractor’s perspective on why the HIR pilot project had been suspended. He knew nothing about what the RSR representatives were going to say before he attended the meeting.

He had not been aware that the two City staff most discussed at the meeting were in a personal relationship until he heard about it at the meeting.

I asked him about the reference in a question he asked at the meeting to “built Maley on private property.” He explained that the City built about 2 kilometres of Maley Drive on lands privately owned by a land developer in the City. This was a big news story in the local media such that almost everyone in town would have known what his reference was to and certainly all of the attendees at the September 7<sup>th</sup> meeting would have known about it. He went on to claim that as a result of this “incompetence” by City staff, the City entered into a settlement with the developer in respect of the portion of Maley Drive built on its property. I will not elaborate upon the particulars of the purported settlement he described as I have independently determined that what he told me was false (there was no settlement) but even if it had been true, it would have been information he received at a closed meeting of Council, meaning that he would have been required to keep any such information confidential.

He agreed that he was aware at the time of the meeting that the RSR representatives were from the Greater Toronto Area, not Greater Sudbury, and that their company had not worked on the Maley Drive project, such that they would likely not have known what the Maley Drive reference was to. He then said his question wasn’t really for the RSR representatives, who were in the middle of their presentation when he asked the question, but for the audience generally (ie. “does anyone know if this is the same crew who built Maley on private property?”). He agreed that the RSR rep who responded to that question must have thought it was directed at him.

He concluded by stating that he does not feel he needs to apologize for anything he did or did not say or do at the meeting.

*Councillor Vagnini*

I requested interviews with all three Councillors by email to their City email addresses on October 17<sup>th</sup>. I heard back from Councillors Montpellier and Leduc and arranged interviews with them the same day. Having not heard from Councillor Vagnini, I emailed him again on October 20<sup>th</sup> requesting a meeting. Once again, there was no response. I emailed him yet again about an interview on October 23<sup>rd</sup>. Councillor Vagnini did finally leave me a voicemail message and then sent me an email on October 27<sup>th</sup> and 28<sup>th</sup>, respectively. I note that his last two communications to me came only after Councillor Montpellier publicized my s. 21(9), Code Notice to him on Facebook, which may have suggested to Councillor Vagnini that he was not going to be found in violation of the COC as he had not received one.

I did not to take any action within my powers under the *Municipal Act, 2001* to compel Councillor Vagnini to speak to me as I had already decided, as explained below, that his conduct at the September 7<sup>th</sup> meeting did not violate the Code of Conduct; however, given the absence of a reasonable explanation from him for his failure to respond to my requests for a telephone interview in a timely fashion, I regard his lack of cooperation as a breach of the spirit of the Code.

Contacts with Other Persons Present at the September 7<sup>th</sup> Meeting

*Tom Price*

I asked the organizer and moderator of the September 7<sup>th</sup> meeting, Tom Price, to provide me with a list of persons who attended the meeting and their contact information if known. He told me he did not have such a list but could easily produce one as he knew most of the attendees. At first, Mr. Price was cooperative and indicated he would get me the requested list within 72 hours. Toward the end of that 72-hour period, I received an email from Mr. Price raising a number of what I consider to be baseless concerns,<sup>2</sup> which I systematically addressed in a responding email to him. A few days later, I received another email from Mr. Price adding to his list of concerns that it would violate the “privacy expectations” of the attendees if their identities were revealed. I responded pointing out that none of the attendees could have had any reasonable expectation of privacy given it was a public meeting to which the press were invited (and in fact attended) and the meeting was videotaped, including recordings of all members of the audience at various points. I thus wrote him giving him 48 hours to provide me with the list failing which I would be exercising my powers of summons to compel production of that information pursuant to s. 223.4(2) of the *Municipal Act, 2001* and s. 33(3) of the *Public Inquiries Act*. Mr. Price persisted in his refusal to provide me with a list. Ultimately, I decided not to go to the time and expense of summoning him

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<sup>2</sup> One such concern he raised was why I needed to speak with other attendees when I could just speak to him. I pointed out that, apart from my desire to ensure a broad and comprehensive consensus about what went on at the meeting, he was and remains a self-proclaimed “advisor” to one of the councillors being investigated such that his credibility and objectivity about at least that councillor’s conduct at the meeting might be called into question.

and examining him under oath as I had already identified some other attendees through other means and had no faith by that point that I would receive a complete or accurate list.

I am disappointed with Mr. Price's lack of cooperation with my investigation.

*Unidentified Female Attendee*

She was interviewed on October 18, 2023. I decided to grant this individual anonymity at her request due to the fact she operates a business in the City and is concerned about repercussions if her identity is published in my Report.

This attendee believes she learned about the meeting through Facebook. She has resided in the area that was within the former City of Sudbury for the past 10-12 years and did not previously live in the Sudbury area. She does not have any personal or business relationship with any of the Councillors being investigated.

She said she attended the meeting out of interest in municipal politics and a desire to "hear the other side" (meaning the contractor's side, as she claimed the media had only been publishing the City's position but not the contractor's). She felt that some aspects of the presentation by the RSR representatives were "disturbing from "a feminist perspective." When asked to elaborate, she indicated that she felt the female City staff member who was the subject of much discussion at the meeting was given all the blame rather than male staff who were also responsible. She also felt the discussion "crossed the line" when jokes were made about two staff members discussing City business in their bedroom. She also felt that Councillor Leduc's outing of the two staff members by naming them was completely improper. This individual admitted that she had a poor impression of several senior City staff and how the City is operated.

*Unidentified Male Attendee*

He was interviewed on October 18, 2023. I decided to grant this individual anonymity at his request due to his fear of repercussions and his name appearing in the media, and the fact he is elderly and in somewhat frail health.

This attendee has resided in the City for the past 21-22 years. He has no personal relationship with any of the Councillors being investigated.

He believes he learned about the meeting in the newspaper. He attended due to his interest in community politics. His general comments about the meeting were that it was very unstructured, repetitive and inefficient. His biggest concern with the meeting was that at one point, Councillor Leduc "ran up to the front,"<sup>3</sup> grabbed the mike [sic] away from Tom Price and announced that the two staff in question, who he named, were in a romantic relationship." He characterized it as the "most deplorable thing" he has ever heard at a public meeting. When I asked him why he thought

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<sup>3</sup> The camera, which was focused on a table with two RSR reps behind it and a screen showing a powerpoint presentation behind them, shows Councillor Leduc getting out of his chair and *walking* toward the front of the room then left before disappearing out of camera range and is then heard speaking through the microphone a few seconds later.

that, he said there is “no room” at a public meeting to discuss someone’s personal life. He also thought that comments about City staff by the RSR delegates went overboard and were “unprofessional.”

He did not hear anything said by either Councillor Vagnini or Montpellier of any concern. He noted that he is hard of hearing and there was also a lot of background noise during the meeting such that unless someone was using the microphone, he could not hear them.

### Section 21(9), COC Notices

I provided notices via email to Councillors Leduc and Montpellier of my intended findings against them and the penalties I was considering recommending as required by s. 21(9) of the Code of Conduct. I gave them 72 hours to provide any further responses they wished to make in light of my provisional findings and recommendations either in writing, via telephone or both.

I received six further emails from, and had two further telephone conversations with, Councillor Montpellier during that time frame. He submitted that the Complaint was only directed at the “mentioning and revealing of the personal lives and relationships of city employees.” I respectfully disagree. As I read the Complaint, it is more broadly directed at the involvement of councillors in maligning staff generally at the September 7<sup>th</sup> meeting. He also disputed that an RSR representative responded to his comment about Maley Drive, claiming it was an attendee. Once again, based on my review of the video and the transcript, which I further reviewed after he raised this concern, I find that it was an RSR representative that responded to his question. In any event, the identity of whoever responded to his remark is irrelevant to whether he violated the Code. Unfortunately, these further submissions did not alter my proposed findings and recommendations related to him.

I did not receive any response from Councillor Leduc to my s. 21(9) notice to him.

### **The Code of Conduct**

Greater Sudbury's COC outlines the expected behavior and ethical standards for members of Council. The following sections of the Code are potentially relevant to the conduct of the Councillors subject to this Complaint:

6(1) No member shall, contrary to any applicable privacy law, disclose, release by any means or in any way divulge to any person or to the public, any Confidential Information, including without limitation any personal information as that term is used in the Municipal Freedom of Information and Protection of Privacy Act, acquired by virtue of their office, except when required to do so by law or authorized by City Council or the local Board to do so;

14(3) No member shall maliciously, falsely, negligently, recklessly or otherwise improperly, injure the professional or ethical reputation, or the prospects or practice, of any one or more city employees;

15(1) Every Member shall:

(a) treat other Members, City officers and employees, and members of the public, appropriately, and without abuse, intimidation, harassment or violence;

15(2) Every Member shall act in compliance with the Ontario Human Rights Code and the Occupational Health and Safety Act, and where applicable, the City's Workplace Violence, Harassment and Discrimination Prevention Policy and Program.

21(3) The Integrity Commissioner shall undertake an initial review of a Complaint or an Application and shall determine whether the matter relates to non-compliance with the Code of Conduct or other corporate policy applying to Members or compliance with the MCIA. The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with the Complaint or Application, if it is not alleging such a contravention, or if the Complaint relates to the following matters:

...

(b) Municipal Freedom of Information and Protection of Privacy Act ["MFIPPA"]  
- if the Complaint relates to a matter under the Municipal Freedom of Information and Protection of Privacy Act, the Complainant shall be referred to the Clerk;

## **Findings**

### General Observations

Councillors are frequently invited to attend, and do attend, public meetings like the one held on September 7<sup>th</sup> - it is a fundamental part of their role as representatives of the community. Their mere presence at such meetings where negative views about the City and its staff are aired, even if they know in advance that such views are likely to be aired, does not constitute a Code of Conduct offence. In my view, councillors cannot be expected to leap to the defence of staff who might be impugned in the course of such meetings unless, perhaps, they know that what is being said is defamatory and false. It is another matter, however, for councillors to jump on the "staff-bashing bandwagon" by means of direct or indirect comments and actions that a reasonable person would interpret as supporting defamatory statements regarding identified staff made by third parties. That is the issue to be addressed below.

### Complaint Against Councillor Leduc

Councillor Leduc made the following statement at the meeting:

Just so everybody understands this, is that [name of City employee redacted] is [name of second City employee redacted]'s common-law wife. Just so that everyone understands the relationship.

This comment was made on the heels of comments by the RSR representatives alleging "nepotism" as the reason why an identified City staff member was employed at all given her alleged incompetence. Although the RSR representatives had suggested that this staff member was

“related to the top guy,” it had not been stated prior to this point that this staff member was in a personal relationship with anyone or who the other person was. As is clear from the discussion that followed, Councillor Leduc’s statement set out above served to further fuel the “nepotism” rhetoric of the RSR representatives as well as the audience.

Pursuant to s. 21(3)(b) of the COC, I am not permitted to investigate a Complaint that “relates to a matter under MFIPPA.” I so advised the Complainant about this at the outset of my investigation. I make no findings here about whether the information disseminated about the personal relationship between the two City employees mentioned by Councillor Leduc constitute “Personal Information” under MFIPPA or whether the Councillor breached MFIPPA in the public disclosure of that information. My narrow focus is on whether, in the context of a meeting involving considerable, if not extreme, maligning of City staff members, including one in particular, the Councillor’s comments constituted a breach of the Code of Conduct. I am satisfied that I have jurisdiction to investigate and report on this.

I find that Councillor Leduc’s calculated interjection (in that he purposefully walked to the front of the room to use the microphone to make it, not simply stating it from his seat in the audience) breached the COC. In particular, he breached s. 14(3), insofar as his statement maliciously, reckless or negligently injured the professional reputations of the two City employees he “outed”, and s. 15(1), insofar as the disclosure of the personal, private relationship of two staff members was abusive and harassing. It is my view in all the circumstances, that his statement can only have been made with the intention of heaping further derision, ridicule and embarrassment on the City employees he outed, especially the female one.

I reject Councillor Leduc’s explanation that he was trying to defend the staff members from the worse allegation that they were having an affair. In my view, this claim lacks an air of reality. I say this because, prior to him walking up to the podium, taking the microphone and announcing the nature of the relationship between the two staff members who he named, the only reference to the relationship between the two staff members was that the female one was “related to the top guy,” not implying any romantic relationship at all, whether open or illicit. In addition, even if that was his intention, there was still no need to specifically name the two employees, who had not been linked together as a couple prior to that point. Finally, if Councillor Leduc’s concern was for the reputations of the two staff members, one would have expected him to stand up and object much earlier in the meeting when the employees were being repeatedly and viciously defamed. Even if I were to accept Councillor Leduc’s explanation, it still demonstrates a serious lack of judgment in that it ought to have been apparent to him that specifically naming the City staff members and indicating their relationship would make things worse rather than better for these two employees. His statement at the meeting was at the very least negligent.

#### Complaint Against Councillor Montpellier

I have confirmed that, following repeated statements by RSR representatives alleging that certain City staff were incompetent, Councillor Montpellier named a city staff member and then added, “I’m not allowed to call them by their names and all that because I’ll end up in jail again, but he couldn’t have been alone, so this crew — that gang, is that the same people that built Maley on private property?” After the RSR representative stated “I would guess so,” Councilor Montpellier added “OK, just to clarify,” reportedly with a smirk on his face.



The RSR representatives in attendance to whom Councillor Montpellier's "question" was posed are not from the Greater Sudbury area. Their company was not involved in the Maley Drive project. He admitted to knowing both of these facts. Councillor Montpellier could not have possibly believed the persons to whom his question was obviously directed (the RSR representatives) would be able to answer it. In my opinion, it was a rhetorical question, designed to indirectly express his negative views about named City Roads/Engineering staff and to raise an issue from the past where he obviously believed City staff had acted incompetently. It is clear to me that he did so in order to "pile on" the criticism already being leveled against City staff at the meeting with his own reminder of what he regarded as past incompetence. He directly impugned the competence and integrity of staff by his comment, albeit nominally framed as a "question."

I find that in asking this rhetorical question for the purpose of maligning members of the City's staff, Councillor Montpellier breached s. 14(3) of the Code.

#### Complaint Against Councillor Vagnini

I find that the following exchange took place during the meeting in relation to Councillor Vagnini:

During his presentation, Crupi alleged that WSP, the company contracted to perform the third-party testing on RSR's work, was not truly independent.

"How can they be a third-party if they own the company that did the testing?" Crupi asked.

"Frank, I have no idea," Vagnini responded from his seat in the front row.

I did not come across any additional evidence of Councillor Vagnini's involvement in the meeting of relevance to the Complaint I am investigating.

I do not find that Councillor Vagnini's comments impugned staff or otherwise breached the Code of Conduct. While he appeared to endorse a comment by the RSR representative that was clearly erroneous,<sup>4</sup> the comment did not directly or, in my view, indirectly, impugn any staff of the City. There is no suggestion in his comment that City staff were aware of the relationship between WSP and the testing company even if that affected the independence of either firm.

I find that Councillor Vagnini did not breach any provision of the Code of Conduct of relevance to this Complaint.

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<sup>4</sup> "Third party" consultant means one that is not affiliated with the City. The fact that the testing company is owned in whole or in part by the engineering consultant does not mean the consultant is not an independent third party *vis a vis* the City, which is the only relationship that matters in terms of the integrity of the consultant's opinion.

### **Conclusions Regarding the Complaint and Appropriate Remedy**

I have found that statements made at the September 7<sup>th</sup> meeting by Councillors Leduc and Montpellier violated the Code of Conduct but that nothing said or done by Councillor Vagnini breached the Code.

Turning to the matter of an appropriate sanction for these breaches, I find that Councillor Leduc's statement, including the manner in which he made it, was more egregious compared to Councillor Montpellier's and deserves to be sternly rebuked. In addition, this is the second COC Complaint against Councillor Leduc that I have upheld in my relatively short tenure as the City's Integrity Commissioner.

In the circumstances, I believe that a 30-day suspension of Councillor Leduc's remuneration is an appropriate remedy, and I so recommend that Council impose that sanction.

While less offensive, Councillor Montpellier did "pile on" the abuse already being hurled at the City's Roads/Engineering staff by the RSR delegates in publicly pointing out another perceived, unrelated error on their part. I also note that this Councillor was found to be in breach of the COC by the City's previous Integrity Commissioner for maligning staff.

I believe that a 10-day suspension of Councillor Montpellier's remuneration is an appropriate remedy, and I so recommend that Council impose that sanction.

Respectfully Submitted,



David G. Boghosian,  
Integrity Commissioner