

Principles *Integrity*

Integrity Commissioner's Recommendation Report Regarding Complaints against Councillor Lisa Robinson October 13, 2023

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the City of Pickering on November 15, 2022. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

- [2] The City has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [3] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

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- [4] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [5] Our role differs from other ‘adjudicators’ whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [6] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond to the allegations, and because findings were made, to review and provide comment on the preliminary findings.

The Complaints

- [8] This Report responds to complaints we received from Councillors Brenner, Cook, and Nagy, and Durham District School Board Trustee Cunningham, as well as other members of the community, between May 19-23, 2023 against Councillor Robinson in regard to her conduct on May 15, 2023 on the steps of the Durham District School Board office.
- [9] The particulars of the complaints can be summarized as follows:

Monday, May 15, 2023 Councillor Lisa Robinson attended a Durham District School Board meeting and, using a bullhorn microphone, addressed the crowd gathered outside to protest, and announced and read aloud the text of several motions (technically ‘Notices of Motions’) she intended to bring to Pickering Council the following week which would have the effect of:

- restricting and removing the City’s support for drag queen story time, flying of Pride and Trans flags at City premises, and any related LGBTQ+ related events and activities; and

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- removing the universal washrooms and changes rooms from City facilities, specifically the Chestnut Hills Recreation Centre;
- [10] Despite knowing that her motions were perceived by Council colleagues as homophobic and that there was no seconder, she read her motions aloud, then invited the crowd, which included non-residents of Pickering, to attend the City of Pickering Council meeting.
- [11] The complainants assert that the Councillor's conduct and behaviour deliberately and intentionally invited a protest at Pickering Council chambers and promoted homophobia and transphobia in pursuit of an agenda which is contrary to the Canadian Human Rights Code, the Ontario Human Rights Code, and in contravention of Pickering Council's Code of Conduct.
- [12] During the course of our investigation, it was alleged that Councillor Robinson engaged in reprisals against Pickering Councillors who had complained against her. She also filed a series of counter-complaints. The counter-complaints were recently dismissed by us with reasons for so doing provided to the Councillor, and the respondents.

Allegation of Bias

- [13] In the course of investigating this complaint, it had been suggested by Councillor Robinson that Principles Integrity, or one or other of its principals, are biased in regard to her, and therefore cannot impartially and independently conduct an investigation into the complaints against her.
- [14] The Councillor claims that this bias was exhibited during our interactions and communication with her both in person and online (virtually, by Zoom) and that we displayed a predisposition towards the complainant(s) and disregarded her version of events.
- [15] Although we do not record our Zoom meetings, we take notes. We have no recollection, nor do our notes disclose, any issue raised by the Councillor at that time. An investigator is entitled to ask probing questions, and it may be in that respect that the Councillor believes she perceived some predisposition on our part.
- [16] On the basis of that allegation and given her attempt to remove us as Integrity Commissioner, it is important as a question of procedural fairness that we address the issue of whether we were prevented from conducting this inquiry on the basis of bias.
- [17] The independence and impartiality of an administrative fact-finding agency or tribunal is fundamental to the proper application of procedural fairness in an investigation. The question becomes whether there is a reasonable apprehension

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of bias. Though an integrity commissioner has broader functions than an agency or tribunal, the principle does apply to our work.

[18] The test, which is an objective one, is whether a reasonable person informed of the facts, viewing the matter realistically and practically and having thought the matter through, would conclude that the ‘tribunal members’ were not institutionally independent and impartial or that they were institutionally or individually biased in the conduct of the matter.

[19] In this case, we, the persons conducting the investigation, would be considered the ‘tribunal members’

[20] In one of the leading cases on bias of administrative tribunals and agencies, the panel of the Federal Court of Appeal¹ stated at paragraph 37:

[37] It is now recognized that the constitutional or common law rules of independence and impartiality applicable to the courts do not apply with the same stringency to administrative tribunals....[quoting from a Supreme Court of Canada decision] “an informed person’s assessment will always depend on the circumstances. The nature of the dispute to be decided, the other duties of the administrative agency and the operational context as a whole will of course affect the assessment. In a criminal trial, the smallest detail capable of casting doubt on the judge’s impartiality will be cause for alarm, whereas greater flexibility must be shown toward administrative tribunals.”

[21] In that matter, the three members of the panel who had been appointed by the Canadian Human Rights Commission to inquire into a complaint had not been appointed to a newly established tribunal. Their appointments were therefore not being extended. The continuation of the hearing before them would result in their remuneration on a per diem basis for the duration of the matter.

[22] The complainant alleged that the tribunal members were not independent or impartial, given that their appointments had not been extended and their per diem remuneration was to be impacted by the continuation of the hearing.

[23] In finding no reasonable apprehension of bias, the Court stated:

[38] The appellant, in my view, in what I can only term either a desperate move or a wasted effort (un coup d’épée dans l’eau), argues that there is a reasonable apprehension of bias resulting from the fact that the three members, being paid on a per diem basis, might protract and prolong the hearing of the complaint in order to extract more money from the government.

... Again, a reasonable person well informed of all the facts surrounding these proceedings and the allegations made by the appellant could not and would not

¹ *Northwest Territories v Public Service Alliance of Canada* 2001 FCA 162 (CanLII)

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conclude that the members would be, for that reason, institutionally or individually biased in the conduct of their hearing.

... More than fanciful speculation is required to create in the mind of a well-informed and reasonable person a reasonable apprehension of bias. As Cory J. said in *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484, at paragraph 112, the threshold for a finding of real or perceived bias is high and mere suspicion is not enough: a real likelihood of probability of bias must be demonstrated.

[24] In a similar allegation of bias raised by a respondent against the investigating Integrity Commissioner, in the City of Ottawa case involving Councillor Chiarelli², the Court stated:

[73] ... The structure for establishing a position of “Integrity Commissioner” has been designed by the Province to create that office as independent. The Legislature has designed the structure, and no inference can be drawn that, due to that structure, the independence and neutrality of the Commissioner is “tainted” because the Mayor or members of Council may have indicated their views.

(a) The Legal Test for Bias and Reasonable Apprehension of Bias

[74] The Commissioner’s role is investigative, not adjudicative. ...

[75] The test to show bias or a reasonable apprehension of bias on the part of an adjudicator is a high one:

“Bias” refers to anything that may reasonably lead the adjudicator to decide the case on some basis other than the evidence before the tribunal and the law. “Apprehended bias” refers to anything that may lead the informed and reasonable observer to form a reasonable apprehension that the adjudicator might decide the case on some basis other than the evidence and the law.³

There is a “strong presumption” of impartiality; “the threshold for a successful allegation of apprehended bias is high”.

[76] The test for showing bias or a reasonable apprehension of bias on the part of someone performing an investigative or administrative function is even higher than it is for someone performing an adjudicative function:

The standard of conduct which is applicable to those performing an adjudicative function is different from those performing a purely administrative or investigative function. In the case of an administrative or investigative function, the standard is not whether there is a reasonable apprehension of bias on the part of

² Chiarelli v. Ottawa (City of), 2021 ONSC 8256, para.75

³ *Kivisto v. Law Society of Ontario*, 2021 ONSC 6394 (Div. Ct.), para. 5, citing *R. v. Musselman* (2004), 25 (CR) (6th) 295 (Ont. SCJ), para. 20.

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the investigator, but rather whether the investigator maintained an open mind, that is whether the investigator has not predetermined the issue.

[118] ...we find that the Commissioner showed professionalism, courtesy, patience and restraint in his dealings with Councillor Chiarelli and his counsel.

[119] ...We see no basis, whatsoever, for the allegation that the Commissioner proceeded with a closed mind, that his investigation was predetermined, or that the Commissioner discharged his duties in a manner that could give rise to a reasonable apprehension of bias.

- [25] In our view, based on the jurisprudence, we are confident in our ability to maintain an independent and impartial perspective in the investigation of the complaints against Councillor Robinson.
- [26] To conclude otherwise would be, in effect, to enable respondents to choose who can investigate them merely by criticizing the investigator, or in this case seeking to remove them from office.
- [27] Quite simply the test is whether an Integrity Commissioner is able to review the matter without bias. We have taken the Councillor's concerns into account, and have given them due consideration. Neither our perspective nor judgment has been clouded by the Councillor's assertions and actions.

Process Followed for this Investigation

- [28] As such, we have proceeded to conduct this investigation with rigour and all due diligence, applying the tenets of procedural fairness, guided by the complaint process set out under the Code of Conduct. In that respect our process consisted of:
- Reviewing the complaints to determine whether they were within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaints should be restated or narrowed, where this better reflects the public interest
 - Notifying the Respondent, and providing her with the opportunity to respond in full to the allegations
 - In addition to receiving her written submissions, meeting with the Respondent in person to hear and discuss her detailed explanations and views;

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- Reviewing the Code of Conduct and other relevant documentation and interviewing relevant witnesses as necessary

- Providing the Respondent with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report, and taking those comments into consideration prior to finalizing and submitting this Recommendation Report.

Background and Context:

- [29] On May 15, 2023, the Councillor attended a meeting at the Durham District School Board (the DDSB) at which a large crowd was in attendance, due to questions anticipated to be raised by the public during question period relating to raising the Pride flag.
- [30] The Councillor's son, although registered to start high school within the DDSB in the coming fall, was at the time attending Catholic school, and not a student in the DDSB.
- [31] At the meeting, the Councillor was handing out a business card to others in attendance.
- [32] There was a large and occasionally unruly crowd at that board meeting, and the Chair found it necessary to recess the meeting more than once, ultimately resorting to clearing the gallery in order to enable the board meeting to continue without interruption. It is the first time in memory that the DDSB has had to recess a meeting and clear the gallery.
- [33] When the gallery was cleared, a large crowd gathered outside of the board offices.
- [34] Councillor Robinson took the opportunity to address the crowd using a bullhorn microphone, introducing herself as a City of Pickering Councillor, and announcing that she would introduce motions at the upcoming City Council meeting which she proceeded to read aloud.
- [35] She announced that, without a seconder, she would be unable to introduce the motions, and urged the crowd to lobby their member of Council to support her motions.
- [36] The DDSB office is located within the Town of Whitby.
- [37] At one point, she was asked whether it needed to be someone from Pickering to second the motions, so the Councillor clarified that, yes, it needed to be a Member of Pickering Council.

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[38] She encouraged the crowd to lobby politicians at all levels and especially Pickering Councillors, and to attend *en masse* at the upcoming Pickering City Council.

[39] The Notices of Motions, which are attached as Appendices to this Report, can be paraphrased as follows:

Drag Shows and Pride Parades

Drag shows and Pride Parades are properly considered 'adult live performances', from which children must be protected, so the City should ban drag shows and pride parades anywhere children could be present.

Non-Government Flag Raising

Non-government flags – which are often raised in support of community organizations or marginalized groups – favour one group over another, breaching a 'duty of neutrality', so the City should restrict flags raised in public spaces to federal, provincial and municipal flags, however the Poppy flag and the Veterans flag should be allowed.

Chestnut Hill Recreation Complex universal changeroom Policy

The Chestnut Hill universal changerooms leave unaccompanied children vulnerable to predators, and only members are entitled to use the gender-specific (male-only and female-only) changerooms. So the City should change the policy to allow non-members to use the gender-specific changerooms.

Relevant Policies:

[40] Some of the relevant provisions of the Council Code of Conduct are set out below:

Policy Objective:

2. Attaining an elected position within one's community is a privilege which carries significant responsibilities and obligations. Members of Council are held to a high standard as leaders of the community and are expected to become well informed on all aspects of municipal governance, administration, planning and operations. They are also expected to carry out their duties in a fair, impartial, transparent, professional, and respectful manner.

3. All Members of the Council of the City of Pickering are committed to protecting and promoting the well-being and best interests of the citizens of the City with the highest standards of integrity and ethical conduct. This Code is an affirmation of this commitment.

It recognizes and is based on the following key statements of principle:

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- a) Members are committed to performing their duties of office, and arranging private affairs, in a manner that promotes public confidence in the integrity of Member and respect for Council as a whole.
- b) Members are committed to acting and being seen to act with integrity and impartiality that will bear the closest scrutiny.
- c) Members are committed to serving their constituents in a conscientious and diligent manner.
- d) Members are committed to working with City officials and staff in a conscientious and respectful manner.

...

02.02 This Code of Conduct operates along with, and as a supplement to, the existing statutes governing the conduct of Members. The following Acts of Provincial legislation govern the conduct of Members of Council:

- a) *The Municipal Act, 2001*;
- b) *The Municipal Conflict of Interest Act, 1990*;
- c) *The Municipal Elections Act, 1996*;
- d) *The Municipal Freedom of Information and Protection of Privacy Act, 1990*;
- e) *The Occupational Health and Safety Act, 1990*; and
- f) *The Human Rights Code, 1990*.

05 Interaction with the Public, Other Members, and Council/Staff Relations

05.01 Members have a duty to treat members of the public, one another, and staff, with respect and dignity and without abuse, bullying, or intimidation.

17 Reprisals

17.01 No Member shall seek any reprisal or threaten any reprisal, against a complainant or any other person for providing relevant information to the Integrity Commissioner in the course of an inquiry pursuant to a complaint.

[41] Relevant provisions of the *Ontario Human Rights Code* are set out below:

Services

1 Every person has a right to equal treatment with respect to **services, goods and facilities**, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, **sex, sexual orientation, gender identity, gender expression**, age, marital status, family status or disability. [emphasis added]

Employment

5 (1) Every person has a right to equal treatment with respect to **employment** without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender

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expression, age, record of offences, marital status, family status or disability.
[emphasis added]

Infringement prohibited

9 No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

Definitions re: Parts I and II

10 (1) In Part I and in this Part,

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

Constructive discrimination

11 (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that **results in the exclusion, restriction** or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

Analysis and Findings:

[42] The Councillor denies that her conduct in speaking to the crowd of protesters at the DDSB offices on May 15, 2023 was trying to motivate the crowd to attend Council Chambers in protest.

[43] She also denies that her motions, or her manner of presenting them, were homophobic or transphobic.

Flag Raising

[44] Municipalities, along with many other local government bodies, have supported flag raising in support of community organizations and to draw public attention or special recognition to overlooked or marginalized groups in the community.

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- [45] The existing City of Pickering Flag Raising procedure, which has been in place since 2005, establishes eligibility for requests that the City will consider.
- [46] Typical examples of such flags include “Let’s Talk” (mental health awareness), Dig Safe, Downs Syndrome, MS, BGC (Boys and Girls Club of Canada), and Pride.
- [47] For almost three decades Pride Flags have been a regular feature on municipal flag poles in Ontario during June, which is Pride Month.
- [48] Raising the Pride Flag has become emblematic of acceptance of sexual/identity diversity in the community and a symbol that those citizens who have often experienced marginalization should enjoy the fullest inclusion within their community, in every aspect of their lives.
- [49] The concept of equity, embodied in policies which support diversity, equity and inclusion, recognizes that treating everybody exactly the same does not support equity.
- [50] Ignoring the challenges confronted by marginalized groups does not advance the pursuit of equity.
- [51] Failing to ensure equity to those recognized under the Ontario Human Rights Code as members of a protected class can reflect discrimination.
- [52] It has been observed that, for the privileged, equity may feel like losing ground, whereas to the marginalized, it simply provides a modicum of recognition.
- [53] Councillor Robinson has reasoned that the concept of ‘duty of state neutrality’ is the foundation for her motion to expunge flag raisings generally.
- [54] The Supreme Court has determined that the ‘duty of state neutrality’ prevents a municipal council from favouring one religion over another; in a leading case in 2015, a council which opened its meetings with a recitation of the Lord’s Prayer was found to be in breach of the Charter.⁴
- [55] While ‘duty of state neutrality’ is offered as an explanation, the concept is in fact irrelevant to a municipality’s decision to offer flag raising opportunities to community organizations and other groups. Provided no such group, which might otherwise meet the criteria established by Council, is refused a flag raising on the basis of a prohibited grounds, the ‘duty’ would not be compromised.

⁴ *Mouvement laïque québécois v Saguenay (Saguenay)* 2015 SCC 16, 382 DLR (4th) 385. In considering the state’s duty of neutrality, the Supreme Court ruled that the duty of neutrality requires the state to abstain from favouring one religious view over another. In this case, the Saguenay municipal council breached its duty of neutrality because the mayor was reciting a religious prayer at the beginning of meetings that favoured one faith over another.

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- [56] It would be fair to expect that the Councillor, who professes an understanding of legal principles on the basis of her occupation as a professional paralegal, to understand this nuance.
- [57] Her position that allowing flag raisings ‘creates a hierarchy’ where some might believe that the group whose flag is raised is receiving preferential treatment to others rings hollow.
- [58] Her explanation is a disingenuous attempt to cloak the elimination of the Pride Flag raising in a legal-sounding argument.
- [59] The timing of her motion, which would have eliminated the Pride Flag raising in the days leading up to Pride month, cannot be considered mere coincidence.
- [60] Targeting a change in City policy to take away from the LGBTQ+ community the opportunity to call attention to their lived experience as a marginalized group through a municipal flag raising contravenes the spirit of the Ontario Human Rights Code.
- [61] If one considers a municipal flag raising opportunity as a ‘service’ then removal of that service in a manner which appears to target the LGBTQ+ community, a protected class under s.1 of the Ontario Human Rights Code, would breach that Code.

Drag Queen Storytime

- [62] In her motion, the Councillor recites *her* definition of a ‘*drag show*’ as a ‘*form of adult entertainment...*’ and from that, put forward the proposition that ‘*both drag shows and pride parades are adult live performances*’, and that no such event should be permitted anywhere that a child under the age of 19 years is present.
- [63] Effectively, the motion would outlaw drag queen story time at libraries, and ban pride parades from occurring.
- [64] It is interesting that the Councillor frames the issue in terms of ‘drag shows’ as adult entertainment, never once using the term ‘drag queen’ in the motion, but referring (while on the steps of the DDSB offices) to the motion as the ‘drag queen’ motion.
- [65] Contrary to the Councillor’s assertions, drag queen story time events are not ‘drag shows’, nor are they ‘adult entertainment’ as generally understood.
- [66] Drag queen story time consists of a person, dressed up as a woman (often with very fancy clothing and overdone makeup), reading to children at a library. It is qualitatively not any different from other entertainers who dress up for the

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entertainment of children – clowns, fairy princesses and animation characters in costume.

- [67] The significant difference being, perhaps, that drag queens are generally men dressed as women. It should be noted that entertainers have often included men dressed for parts as women – Shakespeare, Kabuki Theatre, Mrs. Doubtfire, and Tootsie being but a handful of examples.
- [68] The Councillor insisted to us that drag queen story time always includes a lot of gyrating and shaking, which she was at pains to demonstrate to us during our in-person interview with her. However, when we asked whether she had ever attended a drag queen story time herself or witnessed this behaviour at such an event, she confirmed she had not.
- [69] She conceded that she had never been to see a drag queen story time, but drew on her experience having attended *drag shows* in the past.
- [70] We have no doubt there is plenty of gyrating and shaking at a *drag show* in an adult entertainment venue or bar.
- [71] The *drag shows* which the Councillor has attended might have been considered adult entertainment. Drag queen story time is not.
- [72] Drag queen story time typically features readings from children’s books which focus on inclusivity and diversity. The goal is to create a space that welcomes and celebrates children for who they are.⁵
- [73] No gyrating or other physical action occurs, beyond turning the pages of the book. Occasionally children, along with their parents and caregivers may be encouraged to dance and sing along with the reading. Such is the nature of children’s reading events.
- [74] Those who take exception to a drag queen reading stories to children at the library are free not to attend with their children, and are at liberty to take their children and leave.
- [75] The Councillor’s motion, targeting as it did a change in City policy which would prevent drag queens from reading stories to children at the library, appears aimed at ‘protecting’ children from engaging with drag queens.

⁵ “Regardless of who walks through those doors, the goal is to create a space that welcomes and celebrates (children) for who they are, whatever expression that is. The families that bring their children to these events – they are sometimes queer families, sometimes not, Sometimes the children already identify as queer or trans. What’s most important is fostering a sense of safety for children...There is not one single recorded incident of a drag queen going into a library or a public school and performing indecently. Not one.” Toronto Star June 11, 2023: *Raising hope in a time of hatred*.

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- [76] This ‘protection’ is, in our view, unwarranted and appears to promote a view that children need protection from drag queens. It supports the narrative, currently circulating in some quarters, that drag queens story time events are ‘grooming’ young people.
- [77] The ‘grooming’ narrative is particularly harmful as it is unfounded, yet attempts to isolate trans and non-trans individuals from an otherwise benign activity.
- [78] Whereas drag queen story time attempts to build understanding, tolerance and acceptance, the motion is designed to construct barriers and create distance and separation between the community and some of its most marginalized groups of citizens.
- [79] Moreover, a motion targeting the prohibition of drag queens from engaging in library story time events, for which engagement they are paid, would appear to infringe the provisions of s.5 and 11 of the Ontario Human Rights Code:

5. Every person has a right to equal treatment with respect to **employment** without discrimination because of ... sex, sexual orientation, gender identity, gender expression ...

11. A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that **results in the exclusion, restriction** or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member...

- [80] We also observe that the timing of the Councillor’s Notices of Motions, in light of the proximity to the drag queen story time event scheduled at the Pickering Public Library on June 3, 2023, and in light of planned Pride events (flag raising and the parade), cannot be considered merely coincidental.
- [81] In our view, neither of the motions would be defensible in the face of challenges to the Ontario Human Rights Commission.

Inciting Homophobia and Transphobia

- [82] The Councillor’s attendance at the DDSB meeting on May 15, 2023 – even though her son had not yet entered the system – might be understandable given that she had registered him to start in the public school system this fall.
- [83] However, the Councillor had already attended two board meetings in the previous months at which issues touching on gender identity issues had been raised by members of the public during question period.

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- [84] At these meetings, some speakers made derogatory comments, supported by hecklers in the gallery calling staff pedophiles and 'groomers'.
- [85] At times, the board Chair had to caution speakers and the gallery to allow the meeting to proceed without interruption.
- [86] At the meeting of May 15, 2023, Councillor Robinson sat with individuals who had been outspoken and disruptive at the previous meetings, and whose views reflected intolerance towards the board's inclusive approach supporting diverse gender identity.
- [87] It cannot be a coincidence that she just happened to have the Notices of Motions at hand when she took the bullhorn microphone in hand to address the crowd on the Board office steps.
- [88] As well, she was observed within the building handing out her business card. Whether it was her real estate business card, her paralegal business card or her City Councillor card, handing out business cards at a school board meeting suggests she was exploiting the meeting as an opportunity to garner support.
- [89] It is apparent that her attendance was focused on capitalizing on the fact that the crowd had gathered at the DDSB meeting to oppose the school board's attempts to respond to the need for greater diversity, equity and inclusion. Her purpose was principally to recruit their support in applying political pressure on her Council colleagues, when she knew none would second her motions.
- [90] It is also apparent to us, reviewing the video recording of her speech on the board office steps, that she was inviting the Whitby crowd to attend Pickering Council Chambers the following week.
- [91] It is fair to interpret her statements, and mischaracterization of drag queen story time as adult entertainment, as intentionally fueling negative reaction, intolerance and fear directed at those within the marginalized LGBTQ+ community.
- [92] Homophobia can be defined as a range of negative attitudes and feelings, including contempt, prejudice, aversion, hatred, or antipathy towards homosexuality or people who identify as LGBTQ+, and may be based on irrational fear.
- [93] The Preamble to the Drag Show and Pride Parades motion reads as follows:
- WHEREAS: a drag show is a form of adult entertainment performed by drag artists impersonating men or women, typically in a bar or nightclub reserved for patrons aged 19 years of age and older

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And Whereas, pride parades (also known as pride march, pride event, or pride festival) is an outdoor event celebrating lesbian, gay, bisexual, transgender, and queer (LGBTQ)

And Whereas, both drag shows and pride parades are adult live performances

And Whereas, children of all ages are being exposed to these adult live performances

And Whereas, to protect children and their childhood innocence from live adult performances ...

- [94] As noted earlier, the Councillor frames the issue in terms of 'drag shows' even though the motion clearly targets drag queen story time along with pride parades, and mis-characterizes them as 'adult entertainment'.
- [95] In our view, the Councillors Drag Show and Parade Parades motion, particularly its preamble which conjures up images of story time and parades as sexualized events, fuels unfounded fears, misunderstandings and intolerance towards the LGBTQ+ community. This reflects and promotes attitudes which are both homophobic and transphobic.

Universal Changerooms at Chestnut Hills Recreation Complex

- [96] The practical effect of the Universal Changeroom Notice of Motion would be to permit non-members' children to utilize the members-only male and female changerooms.
- [97] The gendered members change areas provide access to additional members-only amenities such as the sauna, steam room and whirlpool.
- [98] The recently-expanded universal changeroom includes:
- A fully-accessible, barrier-free, universal space with 23 individual change cubicles, equipped with high partitions, zero sightlines and 4 oversized change rooms for families and those who require an accessible space. 3 of the 8 washrooms are fully accessible and enclosed spaces, one of which is equipped with a shower and electric lift change table.
- [99] As noted by the Director of Community Services, a very careful balance was struck in the design and implementation of the universal changeroom expansion which re-opened in the spring of 2022, between privacy and security.

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- [100] The preamble to the Councillor's universal Changeroom motion raises the spectre that the issue is *predators preying on unaccompanied children*.
- [101] The Councillor states that there have been issues of unaccompanied minors being followed into the universal changerroom by an apparent adult male.
- [102] It is reasonable to bring such matters promptly to the attention of appropriate staff.
- [103] We understand that no issue involving an unaccompanied minor being followed into the universal changerroom or being made to feel uncomfortable has ever been brought to the attention of staff.
- [104] Councillor Robinson brought her concerns forward for the first time at a public meeting on May 1, 2023, having never previously brought any concerns to the attention of staff.
- [105] As a result of the comments made by her on May 1, 2023, a memo was provided to Council on May 17, 2023 explaining and informing Council about the changes to the expanded universal changerroom at Chestnut Hill and the zero tolerance policy in place regarding monitoring and enforcement to promote safety, security and privacy at the facility.
- [106] It is important to recognize that Members of Council hold a privileged position. They have direct and unfettered access to department heads and the City Manager.
- [107] If they are aware of a concern and cannot find a resolution, they can, with Council support, direct staff to report back. Such reports provide Council with information and options to move forward, where change is needed.
- [108] Announcing her motion by suggesting that change is necessary because of predatory adults preying on children in the recreation complex was inappropriate. It sidestepped appropriate channels – addressing concerns first with the relevant department head – and it publicly raised unfounded alarms.
- [109] Announcing the motion as one of the trilogy of changes which the Councillor was spearheading, appeared to target all three motions, by association, at the LGBTQ+ community.
- [110] Announcing what can be fairly described as discriminatory Notices of Motions in the manner that she did – on the steps of a public education institution - was inappropriate for a public official holding office.
- [111] Announced in this way the Councillor's conduct fueled fear, reflecting and promoting attitudes which are both homophobic and transphobic.

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Findings:

- [112] For the above reasons, we find that the Councillor has promoted attitudes which are homophobic and transphobic, failed to recognize the diversity of the community, failed to protect the dignity of individuals, and attempted to bring forward motions which would not, in our view, withstand scrutiny under Ontario's Human Rights Code.
- [113] Whether it is the targeted removal of the flag raising opportunity from the LGBTQ+ community, the targeted prohibition of pride parades, banning drag queens from engaging in story-reading to children at the library, or implying that gender-neutral changerooms are in any way putting children at risk, we find the Councillor's conduct in promoting the motions on the steps of the DDSB office to constitute homophobic and transphobic behaviour.
- [114] The Councillor's view is that 'every person's right to be heard and have issues debated...should not be silenced, attacked or reported because it does not fit other Members of Council's narrative'. This is a 'freedom of expression' argument.
- [115] It is well-recognized that freedom of expression is not an absolute, unfettered right; it is limited by reasonable restrictions, including by requirements to protect the rights and freedoms of other persons.
- [116] Elected municipal officials are leading players in local democracy. They are democratically chosen to look after the community's interests. They take on a variety of responsibilities, some of which are provided by law and others of which are inherent in the nature of their position.
- [117] A Councillor's freedom of expression is a crucial instrument for achieving effective participation and good municipal government.
- [118] Elected municipal officials are conduits for the voices of their constituents: they interpret and convey their grievances respecting municipal government.
- [119] That said, the Councillor defaults to her position she is merely reflecting the views of her constituents. This cannot justify positions publicly stated which must be seen as contrary to Human Rights protected positions. It would be recognized as completely unacceptable for a Councillor to publicly make statements in support of spousal abuse, antisemitism or slavery, regardless of whether these were the ardently-held views of one's constituents.

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- [120] What we observe in the conduct of Councillor Robinson must be viewed as reflecting and promoting intolerance, homophobia and transphobia. The motions, and her comments, done in an extremely public way, on the steps of a public educational institution, represent a rising form of populism where political support is sought by speaking to those in the community who hold extreme and intolerant views.
- [121] We have observed this kind of activity in recent years, with politicians rallying support and fomenting protest (sometimes inspiring protests that can lead to unfortunate outcomes).
- [122] The Councillor, on May 15, 2023, with a megaphone in hand and on the steps of a public institution of learning, engaged in conduct that was inappropriate for a public official holding office.
- [123] Speaking only to a particular perspective, fueling unfounded fears and seeking to affect the rights of minority and marginalized groups – in this case, LGBTQ+, particularly trans persons, is conduct which should not be condoned and should attract appropriate consequences.
- [124] This type of conduct and behaviour can have a corrosive effect on democracy, allowing the loudest voices to drown out the marginalized and vulnerable in the community.
- [125] The Councillor defends her conduct, asserting that neither her motions, nor her speech on the steps of the DDSB, contain ‘hateful rhetoric’ or ‘hate speech’.
- [126] We agree. In fact, if we had observed ‘hate speech’, or that the Councillor’s conduct rose to the level of inciting hate, we would be obligated to refer the complaints to the appropriate law enforcement agency as a breach of the Criminal Code prohibition against hate speech.
- [127] On numerous occasions, the Councillor has advised us of her status as a professional paralegal.
- [128] We observe that the Law Society’s Paralegal Professional Conduct Guidelines provides as follows:

Guideline 1: Professionalism: Integrity and Civility provides as follows:

3. A paralegal has special responsibilities by virtue of the privileges afforded the paralegal profession and the important role it plays in a free and democratic society and in the administration of justice. This includes a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals

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and to respect human rights laws in force in Ontario.

[130] While it is not our role to make findings as to whether the Councillor's conduct may be contrary to her professional duty *to protect the dignity of individuals and respect the human rights laws in Ontario*, we simply note, in passing, that this along with the Council Code of Conduct and the Ontario Human Rights Code, imposes constraints on unfettered 'freedom of expression'.

Recommendations and Concluding Remarks:

[131] The role of an Integrity Commissioner is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.

[132] During the investigation the Councillor proceeded to lodge counter-complaints against two of the Councillors who brought this complaint forward. This action must be recognized as a reprisal – conduct clearly contrary to the Code of Conduct.

[133] She alleged bias against the Integrity Commissioner. Again, this must be recognized as an attempt at obstruction, intended to derail our investigation of the complaints.

[134] Her steadfast refusal to recognize such conduct as a contravention of the Code or to acknowledge the hurt and harm she inflicts on others through her actions denied us the opportunity to resolve this matter informally.

[135] Indeed her behaviours were reflective of the polarized political stances which have grown in frequency and intensity in Canada and the United States in recent years.

[136] Her conduct raises real concerns about impacts on those individuals within already-marginalized groups in Pickering, such as the LGBTQ+ community, trans-individuals and others potentially affected by the Councillor's motions.

Council's Role in Considering this Report

[137] We wish to remind Council that as the City's independent Integrity Commissioner we have a responsibility to conduct investigations by adhering to the tenets of procedural fairness which apply to all participants in an investigation. This we have done, including by facilitating the Councillor in knowing the allegations she was required to respond to, and by considering her responses to them.

[138] We also wish to remind Council that the role of the Integrity Commissioner is to conduct a fair investigation and make considered recommendations in the context of the ethical framework that applies to elected officials in municipal government.

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[139] The Integrity Commissioner having completed an investigation, it is not the role of Council to conduct its own investigation.

[140] It is important that Members of Council maintain an open mind when considering this report. The decision to be made by Council with respect to our recommendations should be based on the findings we have made in this Report and not whether they agree or disagree with Councillor Robinson's personal opinions on the subject matter of the motions.

[141] This report is about whether the Councillor has complied with the ethical framework which applies to her, with consideration being given to the impact of that non-compliance.

Sanctions

[142] The sanctions that may be imposed following a finding of contravention by an Integrity Commissioner are a reprimand, or a suspension of remuneration for up to 90 days. A monetary penalty, although not remedial, can have a salutary effect and serve as a deterrent.

[143] Based on all of the above, we find that a significant sanction is warranted.

[144] We therefore recommend:

1. That the remuneration paid to Councillor Robinson be suspended for a period of 60 days (four pay-periods);

[145] We wish to conclude by publicly thanking the parties and administrative staff, and all those who participated in our investigation.

[146] We will be available to introduce this report and respond to questions during the Council meeting at which this report is considered.

— City of —
PICKERING

Notice of Motion

Non-Government Flag Raising

Date: May 23, 2023

Moved By: Lisa Robinson

Signature:

Seconded By:

Signature:

WHEREAS public spaces such as schools, city halls, and libraries must remain neutral and the “Duty of State Neutrality” stipulates that neutrality must be adhered to and upheld by elected officials and must be done so without favour and in respect of the law.

And Whereas, when flying non-government flag(s) such as special interest groups adheres to a belief, it is not merely expressing an opinion on the subject, but it is creating a hierarchy of beliefs

And Whereas, a hierarchy of beliefs casts doubt on the value of those it does not share

And Whereas, it creates a ranking of the individuals who hold such beliefs.

And Whereas, by expressing no preference, the state ensures that it preserves a neutral public space that is free of discrimination and in which true freedom to believe or not to believe is enjoyed by everyone equally, given that everyone is valued equally.

Now therefore be it resolved that the Council of The Corporation of the City of Pickering create policy that:

1. only federal, provincial, and municipal flags be permitted to be raised in all public spaces,
2. the Poppy flag and Veterans flag to be exempted from this policy
3. a copy of this motion to be sent to The Region of Durham, all Durham Municipalities, AMO, and FCM

— City of —
PICKERING

Notice of Motion

Drag Shows and Pride Parades

Date: May 23, 2023

Moved By: Lisa Robinson

Signature:

Seconded By:

Signature:

WHEREAS: a drag show is a form of adult entertainment performed by drag artists impersonating men or women, typically in a bar or nightclub reserved for patrons aged 19 years of age and older

And Whereas, pride parades (also known as pride march, pride event, or pride festival) is an outdoor event celebrating lesbian, gay, bisexual, transgender, and queer (LGBTQ)....

And Whereas, both drag shows and pride parades are adult live performances

And Whereas, children of all ages are being exposed to these adult live performances

And Whereas, to protect children and their childhood innocence from live adult performances

Now, therefore, be it resolved that the Council of The Corporation of the City of Pickering prohibit:

- a) a person from knowingly admitting a child to an adult live performance.
- b) not issue a permit or authorize a person to conduct an adult live performance who will knowingly admit a child.

- c) any licensed public lodging or public food service establishment or any premises that have a beverage license knowingly admits a child to an adult live performance, the establishment or premises is subject to having that license suspended or revoked and being fined.
- d) a copy of this motion to be sent to The Region of Durham, all Durham Municipalities, AMO, and FCM

Definitions:

Child – any person aged 18 or under

Adult Live Performance - is any show, exhibition, or other presentation that is performed in front of a live audience and in whole or in part, depicts or simulates nudity, sexual conduct, sexual excitement, specific sexual activities, ... lewd conduct, or the lewd exposure of prosthetic or imitation genitals or breasts.



Notice of Motion

**Chestnut Hill Recreation Complex
Universal changeroom Policy**

Date: May 23, 2023

Moved By: Lisa Robinson

Signature:

Seconded By:

Signature:

WHEREAS: Chestnut Hill Recreation Complex has 3 designated changerooms consisting of a female members-only change room, a male members-only change room, and a co-ed universal change room used by members with children under the age of 18 and all other guests.

And Whereas, the co-ed universal changeroom gives an opportunity for predators to be alone with vulnerable children

And Whereas, children have a right to feel and be safe when using these vulnerable spaces

And Whereas, it is critical that The Corporation of the City of Pickering minimize the risks of predators preying on children who are not accompanied by an adult within the recreation complex changerooms

And Whereas, shouldn't it be the choice of the individual, or family to choose which changeroom they feel safe using,

Now, therefore, be it resolved that the Council of The Corporation of the City of Pickering create a new policy within the Chestnut Hill Recreation Complex that permits:

1. a female the choice to use a female-only change room
2. a male the choice to use a male-only change room
3. the universal changeroom be inclusive to all genders and or families and
4. this policy to come into full force and effect immediately.
5. a copy of this motion be sent to The Region of Durham, all Durham Municipalities, AMO, and FCM