

Report IC2020 - 01
to the Council of the Township of Wilmot
in relation to an investigation under the
Code of Conduct for Members of Council related to
Council Code of Conduct Inquiries
2020-01 through 2020-04

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Robert J. Williams, Ph.D.
Integrity Commissioner
Township of Wilmot
November 27, 2020

Summary

1. Report IC2020-01 of the Township of Wilmot Integrity Commissioner dated November 27, 2020 advises Wilmot Township Council and Waterloo Regional Council that an investigation of the Township of Wilmot's Code of Conduct for Council and the Regional Municipality of Waterloo Code of Conduct for Members of Council (collectively, the "Codes") as a result of four inquiries concludes that contraventions have occurred.

A. Context

2. The Township of Wilmot (the "Township") retained me in January 2014 to serve as its Integrity Commissioner under the terms of what are now section 223.3 of the Ontario *Municipal Act, 2001*. Aird & Berlis LLP was appointed as the Integrity Commissioner for the Regional Municipality of Waterloo ("the Region") pursuant to the *Municipal Act, 2001* on May 8, 2019.

3. A total of five complaints based on the same incident (a video posted on Facebook by Mayor and Regional Councillor Les Armstrong – the "Member") were filed. Three complaints were submitted in accordance with the proper procedure for the submission of a formal complaint under the Township Code of Conduct for Elected Officials (the "Township Code"). Two of the complaints filed under the Township Code also addressed an additional subsequent action by the Member.

4. Two complaints were submitted under the Regional Municipality of Waterloo Code of Conduct for Members of Council (the "Regional Code") but one was determined to be deficient. Aird & Berlis LLP provided notice to the complainant with an opportunity to remedy the deficiency but a response was not received. Aird & Berlis LLP terminated the complaint.

5. Given the multiplicity of complaints arising from the same incident, Mr. John Mascarin of Aird & Berlis LLP and I discussed whether we could cooperate with respect to our investigation and reporting, in order to share resources and avoid unnecessary expense to the municipal taxpayers. We determined that it would not be in the public interest for us to undertake separate and concurrent investigations of the matter. Given that the majority of the complaints were made under the Township Code, Mr. Mascarin and I determined that I should carry out the investigations. Accordingly, Aird & Berlis LLP delegated its authority as Integrity Commissioner for the Region to me to investigate and to report with respect to the complaint

under the Regional Code in accordance with the authority set out in subsection 223.3(3) of the *Municipal Act, 2001*.

6. The two Codes differ in format and specific language but both contain provisions that address the key allegation made by all complainants that a video posted by the Member on Facebook constitutes a form of harassment.

B. The Requests for an Investigation

7. In late June 2020, I received a notarized request for an investigation under the Township Code filed by a resident of the Township (hereafter “Inquiry 2020-01”) in relation to a Facebook posting by the Member on June 20, 2020 that the complainant believes was “clearly hurtful and offensive to people of colour in Wilmot Township and beyond.” Over the next several weeks two other requests were filed by Township residents (hereafter “Inquiry 2020-02” and “Inquiry 2020-03”).

8. Aird and Berlis LLP received a valid complaint under the Regional Code dated June 29, 2020 (hereafter “Inquiry 2020-04”).

9. Each of latter three complaints (Inquiries 2020-02, 2020-03 and 2020-04) alleged that the manner in which the Member’s Facebook posting was reported in the media conclusively demonstrated that it constituted “racist and discriminatory behaviour” (Inquiry 2020-04) that caused people of colour in the community to be “traumatized and harmed” (Inquiry 2020-04).

10. Two of the submissions (Inquiries 2020-02 and 2020-03) go on to allege that the public apologies delivered by the Member separately to Waterloo Regional Council and Wilmot Township Council are a further form of unacceptable behaviour since he failed to accept responsibility for the impact of the video. The apologies did not satisfactorily acknowledge that the original action was inappropriate, and furthermore were seen as directed to fellow councillors rather than to those hurt by the content of the video.

11. Another matter was raised in one submission (Inquiry 2020-03) that will be addressed briefly later in this report.

12. Subsection 223.5 (1) of the *Municipal Act, 2001* provides that an Integrity Commissioner and every person acting under the instruction of the official shall preserve secrecy with respect

to all matters that comes to his or her knowledge in the course of his or her duties under Part V.1. Subsection 223.6 (2) directs that an Integrity Commissioner shall only disclose “such matters as in the Commissioner’s opinion are necessary for the purposes of the report.” Accordingly, the only party to this appeal who will be named in this report is the Member since the allegations involve matters based on public knowledge, primarily media sources, recorded minutes of meetings or video streaming of council deliberations.

13. In keeping with the responsibility of the Integrity Commissioner to respect confidentiality during the conduct of an inquiry, I did not share the complainants’ names with the Member during this inquiry. I further requested that the complainants not discuss their submission with the media (although one appellant had done so before I spoke with him).

C. The Submissions

14. As noted above, four complaints under the two Codes have been properly filed and have been investigated.

15. The allegations of contravention of the Codes all stem from the Member sharing a video on Facebook that is dated Wednesday June 17, 2020, framed by a banner entitled “WHITE LIVES MATTER” with the source listed as “Conservative Nation” (a Facebook group) and the declaration “THE SCAM HAS BEEN EXPOSED TAKE A LOOK! What Do You Think?”

16. The only words in the Member’s post were “Another view. Interesting.”

D. Does posting the “White Lives Matter” video violate a Code of Conduct?

17. The first aspect to consider is whether the act of posting the “White Lives Matter” video can be considered a violation of the relevant Codes. Other allegations will be considered separately, to the extent that is possible.

18. Based on information included with Inquiry 2020-01, several people immediately challenged the Member on Facebook to explain himself or to acknowledge that the post was inappropriate. I have no access to other posts related to the Member’s original post. It was only sometime after the Wilmot Council meeting on June 22 that the post was removed.

19. What is clear is that the posting on social media prompted numerous members of the public and the media to weigh in on the issue through a variety of public and private means. To

my knowledge, all of those who commented uniformly condemned the Member for posting the video.

20. Councillors at both the Region and the Township reported receiving phone calls and messages about the Member's action, many residents of Wilmot Township and Waterloo Region were interviewed by various media outlets, several people appeared as delegations before the Regional Council and Wilmot Council to address the video and many newspaper stories in the *Waterloo Region Record*, *Kitchener Today* and *The New Hamburg Independent* (among others) followed events during the week of June 22, 2020.

21. I can also report that I received a number of emails over this period from residents who sought to have the Member removed from office because they were offended by what they had learned about the "White Lives Matter" video, and that they considered the Member's post "an act of racism." In all cases, I informed the residents that it is not within the powers of an Integrity Commissioner to remove or even to recommend the removal of a sitting member of council from office but that there is a process to file a request that an inquiry be conducted under the *Municipal Act, 2001* and the applicable Code of Conduct.

22. This report will not delve into the content of the video itself or its messages or into the intricacies of the Black Lives Matter (BLM) movement that has advocated on behalf of people who have faced persecution or injustice nor into the contrary views of those who have engaged in the issue of racism by promoting the phrase used as the title of the video that has been described as a staple "white supremacist mantra."

23. Many community leaders, including the Regional Chair, have condemned the video as "an absolutely reprehensible message." That perspective will be taken as "given" in what follows: it was inappropriate for a municipal official to give any credence to the video and its contents.

24. I have learned, however, that on June 16, 2020 (the day before the "White Lives Matter" video was originally posted by Conservative Nation), the Member participated in a Regional Committee of the Whole meeting at the Region that included a motion from the Regional Chair that "recognized that it is the duty as elected officials, public servants, and human beings to focus efforts and work together to make progress in the fight towards diversity and inclusion and against systematic racism."

25. The motion further directed staff to “provide options on the creation of an Anti-Racism Secretariat” and to “develop an Anti-Racism Plan within the Region of Waterloo.”

26. The Member had therefore just participated in a discussion on the topic of systemic racism in Waterloo Region and the goal of addressing it through various means, including the Region’s “5 Year Diversity & Inclusion Plan” and “engaging with an organization to do training on equity and anti-racism for Regional Council, regional staff, and Area Municipal Councils.” In other words, it is plausible to conclude that seeing a video a short time later that purported to be “another view” would be “interesting” to the Member. Gaining a personal perspective on racism is one thing; a public official flagging “another view” on a social media platform is an entirely different matter.

27. The submissions by residents allege that by drawing attention to the video, and its message that BLM was a scam, the Member was abetting in the dissemination of claims that were perceived as offensive to people of colour in Wilmot and beyond. The Member claims, in subsequent interviews and in a written response to these inquiries, that he did not endorse the content and only wanted to “get a conversation going that needs to be kept going until we resolve the problem of racism in this country and the world.” In one interview, however, he is also quoted as saying that he did “not know if the video is factual and did not try to verify its contents before sharing it.”¹

28. Whether posting the video was a genuine revelation that such views exist, an error in judgment in failing to recognize the implications of the title of the video or an ill-considered contribution to the fight “against systematic racism,” it is clear that the Member’s action was judged as inappropriate and offensive by numerous residents of Wilmot, Waterloo Region and beyond. As one Wilmot Councillor said during the June 22, 2020 virtual council meeting, “We're all free to post what we like and think what we wish ... at the same time we must be responsible for the impact of our actions and words.”²

¹ Terry Pender, “Wilmot mayor unapologetic for sharing ‘White Lives Matter’ video,” Waterloo Region Record, June 22, 2020. This article was submitted in support of Inquiry 2020-04.

² Paula Duhatschek, “Councillor questions Wilmot mayor apology after sharing ‘White Lives Matter’ video,” CBC KW News, June 23, 2020

29. Section 21.1 of the Regional Code provides: “Harassment of another Member, Staff or any member of the public is prohibited under the Human Rights Code (Ontario). Harassment, whether it occurs inside or outside the workplace, or whether it is related to the work environment or other activities of a Member, is inappropriate behaviour for the purpose of this Code.”

30. The relevant section of the Township Code states: “Harassment of another member of Council, staff or any member of the public is misconduct ... Harassment may be defined as any behaviour/activity by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the Ontario Human Rights Code.”

31. To be clear, the term “harassment,” is described in Ontario’s Human Rights Code as “words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning or unwelcome.” Specifically, the Human Rights Code prohibits discrimination or harassment based on certain personal characteristics including ancestry, colour, ethnic origin, place of origin and race, as well as other “protected” grounds related to age, handicap, and sexual orientation.

32. A Facebook post by an elected official that explicitly draws attention to a message intended to discredit a movement seeking to overcome racism cannot be seen as simply “another view.” If, indeed, as the Member has claimed in response to these inquiries, that he “did not and would not condone any racist or demeaning point of view” and that the video shows that the task of addressing racist and hateful behaviour “will not be easy,” he failed to make those positions clear. He thereby left himself open to the allegations that the video represented views he wanted his Facebook followers to be aware of. Clearly the post and the media attention it generated had an impact – a negative impact – and for that outcome he must be considered responsible.

33. Based on the foregoing, I find that the Member has violated the Township of Wilmot Code of Conduct for Elected Officials and Waterloo Region Code of Conduct for Members of Council, section 21.1.

E. Do the Member's apologies also violate a Code of Conduct?

34. From the outset, fellow members of the Township and Regional Councils and members of the public called for the Member to delete the Facebook post and to apologize for posting the "White Lives Matter" video, as well as to take other actions to atone for his actions, ranging from participating in anti-racism training through to resigning his office.

35. At a special meeting of Wilmot Township Council called on June 22, 2020 to address the post as well as incidents of vandalism on the grounds of the Township offices related to another aspect of the racism question, the Member was asked by a councillor "to acknowledge the hurt it has caused and to remove the post."

36. According to the minutes of that meeting, the Member made the following statement in response:

"I understand the ire of people and I think a lot of people have misread what I have done. I did not at any point when I shared that expressed my belief that they are true. I do not believe the comments that were said and I have no proof that they are accurate. The unfortunate thing about Facebook is those things are not scrutinized and proven to be right or wrong, whether they are a farce or not somebody does it as a joke or not we don't know, but I have been reading Facebook over the last few weeks and there have been other comments similar to that by various people and I find it frustrating that it is out there and the reason that I shared it is as I stated, another view, it's interesting which means I do believe that we need more discussion and we do need to erase racism and we do need to get to a point on this planet that there is one race, human race. That is my belief and always has been and I continue to fight for that and if my share caused people to have a conversation that's good and as usual people will either take it out of context or not it is how they determine it and I know people are going to do that."

37. On Wednesday June 24, 2020 the Member read the following prepared statement to Waterloo Regional Council and repeated it on Friday June 26, 2020 to Wilmot Township Council:

"To the Chair, my colleagues on Regional Council, the constituents that we serve and the greater community, I have been ignorant and am incredibly sorry for my actions. Upon reflection of the recent post that I made on social media, and the ongoing justification for my actions, I know now that this was truly a significant error in judgement. I would never, in any way, want to diminish discussions surrounding the importance of Black Lives Matter. Never.

To the Council and staff that I work with in Waterloo Region and Wilmot Township, I am heartbroken that I've let you down. I take my role as mayor seriously and have always

welcomed and enjoyed discussions with all residents and staff and deeply regret doing anything to negatively affect those significant relationships. To redeem myself, and to show that actions speak louder than words, I will work hard to be a part of the movement to create a new platform for change. I know too that Freedom of Speech is a right and also a serious responsibility. I accept full responsibility for what I have done. I don't expect forgiveness based on my words alone. I will show you that I am serious and that you can count on me to continue fighting hard for everyone. Again, I am very sorry."

38. Two of the complaints filed under the Township Code (Inquiries 2020-02 and 2020-03) viewed these formal apologies as a failure to erase the harm caused by the Member's original posting of the White Lives Matter video since they were apologies eventually delivered and directed to members of the two councils and not to those people who were offended and harmed by the video's message. As such, the apologies are alleged to be further instances of harassment since they failed to show the Member's remorse for his action to people of colour or even to take responsibility for them.

39. In a response to the complaints, the Member wrote to me that he was "shocked and appalled" by the way his sharing of the posting and his observational comments were used as the basis for making inaccurate and malicious claims about his own character and personal beliefs. He sees his apologies as an affirmation of his commitment "to address the racism that exists in the region." They were directed to his friends and colleagues who "knowing who I am, were upset by the vicious attacks" on him and they were intended to confirm his sincerity about working with them to set "an example for others to follow."

40. Although none of the complainants cited it, Ontario's *Apology Act, 2009* is relevant. In the statute, "apology" means "an expression of sympathy or regret, a statement that a person is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit fault or liability or imply an admission of fault or liability in connection with the matter to which the words or actions relate." However well-meaning the Member's words to his colleagues, the complainants are correct: those who were offended by the content of the video would not see in the statements delivered by the Member any acknowledgement of the potential negative impact of the video on persons of colour. I agree that the apologies were misdirected, fell short of a sincere admission that the video was harmful to people of colour and that, by failing to declare his opposition to the blatantly racist message conveyed by the video, the Member's apologies compounded the harassment originally generated by posting it in the first place.

41. Based on the foregoing, I find that the Member has also violated the Township of Wilmot Code of Conduct for Elected Officials and Waterloo Region Code of Conduct for Members of Council, section 21.1 by failing in his apologies to acknowledge and address the implications and the impact of his original post on social media.

F. Did the Member's actions during the June 26, 2020 Wilmot Council meeting violate the Township Code of Conduct?

42. At the time this issue was before the two Councils, meetings were being conducted virtually and in the case of the Township meeting on June 26, 2020 the Member was presiding over the meeting.

43. One of the complainants reported that at one point during "the delegation of the first racialized person to speak," the Member "could be seen with his microphone muted . . . speaking to someone off camera and not listening to the delegate articulate his very real concerns." The complainant alleges that this action is a violation of the Township Code that expects that members "show respect for delegations" and "show courtesy . . . during presentations."

44. In his response to this complaint, the Member acknowledged that while listening to a delegation, his phone rang "and in a moment of automatic response" he answered it. He wrote, "This I do regret and feel an apology is very much in order." As most people who have been participating in virtual meetings since March can likely attest, distractions from the "real world" frequently intrude into those meetings.

45. Based on the foregoing, I find that the Member did not violate the Township of Wilmot Code of Conduct for Elected Officials by mistakenly answering his telephone while a delegate was speaking but I accept that an apology would be appropriate in the circumstances.

G. Consequences

46. Subsection 223.4 (5) of the *Municipal Act, 2001* provides that “if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct,” the municipality may impose either a reprimand or suspension of “the remuneration paid to the member in respect of his or her services as a member of council . . . for a period of up to 90 days.”

47. Wilmot Council adopted a resolution (2020 – 88) on June 26, 2020 denouncing the Member’s actions and directing that he provide “a progress report on his actions to Council each quarter.” In compliance with this resolution, the Member provided to Wilmot Township Council a “Quarterly Update on Racism Education” on September 28, 2020 at which time he “advised that he continues with reading, attending workshops and watching videos on the subject matter.” The minutes included a small sample of educational videos, readings and workshops he has taken part in.³ Since the Member also sits on Waterloo Regional Council, it would be appropriate for the Member to make a similar report to that Council on the same basis as directed by the Township Council. Although Resolution 2020-88 does not specify, I would recommend that these updates continue until the end of the present term of Council (November 14, 2022).

48. Given the actions initiated by Wilmot Township Council and the pledges the Member has made to his colleagues, I am not recommending a suspension of pay. I caution, though, that any further contraventions of the Codes by the Member could result in more severe consequences.

49. I do not recommend further penalties in relation to the first finding.

50. The courts have recognized that remedial measures may be valid corrective actions that an Integrity Commissioner may recommend and that a municipal council may impose for

³ Township of Wilmot Council Meeting Minutes, September 28, 2020. The entire list of resources provided by the Member is noted as Appendix A

matters relating to code of conduct contraventions.⁴ The intent of such measures is to rectify or repair the damage or injury caused by the contravention, or to prevent further issues.

51. The Regional Code (section 9.3) provides that Council can “request that the Member apologize to Council, the complainant or both” and/or can take “any other action authorized by law.”

52. With respect to the finding that the Member contravened the two Codes in relation to his apologies, I recommend that he be directed to present a truthful, honest and sincere apology to people of colour in Waterloo Region that, at minimum, acknowledges the offensive nature of the video, that accepts responsibility for the harm caused by posting the video and that affirms the steps he is taking to educate himself on the issues facing people of colour in Canada. The apology should be presented to both Councils in written form and as an oral statement delivered in open session.

53. There are many people who may see these as insufficient disciplinary actions given the harsh penalties many members of the public advocated in the immediate aftermath of the Member’s actions. Without discounting the genuine hurt and trauma that was widely and passionately expressed both by people of colour and those who saw themselves as their allies, this investigation should be seen as a contribution to healing and collective learning about what it means to be a member of a racial minority in Canada in 2020 and what must be done to overcome the way the community has fallen short of understanding that reality. The Member under investigation is the most visible point of reference but his experiences can be a catalyst for achieving a more just and inclusive community.

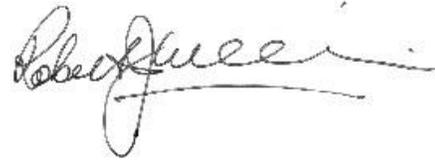
H. Recommendations

54. I make the following recommendations to each of Wilmot Township Council and Waterloo Regional Council:

- 1. That Council receive the Integrity Commissioner’s Report 2020 – 01 dated November 27, 2020; and**

⁴ See *Madger v. Ford* (2013), 7 M.P.L.R. (5th) 1 at para. 66 (Ont. Div. Ct.) and *Altmann v. The Corporation of the Town of Whitchurch-Stouffville* (2018), 81 M.P.L.R. (5th) 1 at paras. 39 and 49 (Ont. S.C.J.).

2. That Mayor and Regional Councillor Les Armstrong provide an apology within sixty days as required in this Report.

A handwritten signature in black ink, appearing to read "Robert J. Williams". The signature is written in a cursive style with a long horizontal line extending from the end.

Robert J. Williams, Ph.D.
Integrity Commissioner, Township of Wilmot