

Principles  
*Integrity*

City of Burlington  
Integrity Commissioner's Recommendation Report  
Code of Conduct Complaint  
Against  
Committee of Adjustment Member Nicholas Leblovic

April 6, 2023

Introductory Comments

[1] Principles *Integrity* was appointed the Integrity Commissioner for the City of Burlington in June of 2018. We also serve as Integrity Commissioner, and in some cases Closed Meeting Investigator, Lobbyist Registrar, and Municipal Ombudsman for over 50 Ontario municipalities as well as school boards and a police services board.

[2] Our firm focuses exclusively on accountability and governance services to our clients. 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.*

[3] Our efforts in concert with our clients are therefore to help establish an ethical framework through which the public perception of their municipality's council and local boards is deservedly enhanced.

[4] The Municipal Act requires that municipalities adopt a code of conduct for members of local boards, and appoint an integrity commissioner responsible for overseeing the application of the code of conduct for local board members.

[5] 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

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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.

- [6] This being our function, as Integrity Commissioner we play an important role in the administration of justice.
- [7] 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.
- [8] 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.
- [9] 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 in the complaint, and to review and provide comment on our preliminary findings report.

### The Complaint

- [10] On December 22, 2022 we received a complaint from an applicant to the Committee of Adjustment (the C/A) in regard to the conduct of member Leblovic at the hearing of her application for minor variance held on December 7, 2022.
- [11] The complaint asserted that member Leblovic made statements at the C/A hearing that were unfounded and false, and risked influencing the outcome of the hearing on the application. In her view, the member had engaged in malicious gossip almost derailing a long and costly minor variance process, which no member of an adjudicative tribunal should be allowed to do.
- [12] It was alleged that the member's conduct breached the Code of Conduct for Local Boards.

### Process Followed for this Investigation

- [13] In conducting this investigation, Principles Integrity applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.

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[14] This fair and balanced process includes the following elements:

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent on December 29, 2022 of the complaint against him, and providing adequate disclosure of the information we possessed so that he could prepare his response
- After initial resistance to the process, wherein the Respondent raised preliminary concerns questioning the complainant's motives, asserting reputational damage, and challenging our jurisdiction and process, we extended time for, and ultimately received, the Respondent's response to the complaint
- Reviewing the Code of Conduct for Local Boards, the relevant Committee of Adjustment Minutes, and other relevant documents and jurisprudence, and conducting interviews as necessary
- Providing the Respondent with the additional opportunity to review and provide responses to the Integrity Commissioner's preliminary Findings Report, sent to the Respondent February 16, 2023, and extending time for his final submissions and comments to March 17, 2023
- Carefully reviewing and giving his 13-page response and legal arguments due consideration prior to finalizing and submitting our Recommendation Report

### Background and Context

[15] The Respondent Nicholas Leblovic is a member of the City of Burlington C/A and on the C/A for another Township where he owns another property, and has served as such for eight (8) years.

[16] He is a lawyer with over 40 years' experience, retired from practice at a large law firm.

[17] The Complainant is the owner of a century home in downtown Burlington which she has owned and lived in for 42 years. The home is located in an area designated as Downtown Mixed Use Centre – Emerald Neighbourhood Precinct.

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- [18] This is the story of a long-time resident, now living alone, seeking to turn her detached garage into a secondary suite in the back yard of her large home, and a tribunal member trying to block her because, according to an unidentified neighbour who is friends with the member, she has been illegally renting out a basement apartment for years – a fact she vehemently denies.
- [19] Taken aback by the misinformation – unfounded malicious gossip in her view – the homeowner wanted the member to resign from his role. She discovered that both staff and Council were powerless to intervene in the conduct of members of the Committee of Adjustment.
- [20] The tribunal member, as a lawyer himself, has criticized our investigation as lacking jurisdiction because in his view we are presuming to review the conduct of an adjudicative body's hearing. We agree that it is beyond the jurisdiction of an Integrity Commissioner to review the hearing process of the Committee of Adjustment.
- [21] However, it is well-established that the conduct of members of local boards, the Committee of Adjustment included, falls squarely within the jurisdiction of the municipal Integrity Commissioner to review. In fact, it is only the Integrity Commissioner, in first instance, who has authority to review and make findings on the conduct of individual members of local boards<sup>1</sup>.
- [22] The member claims that we have improperly embarked on a review of the procedure at the hearing – something which can only be reviewed by appealing the decision. The focus of our investigation, and findings, is solely the ethical propriety of the member's own conduct.
- [23] In order to understand the chronology of events, it is helpful to go back to the start of the complainant-homeowner's journey in the process.
- [24] In October 2021, the homeowner retained a planning consultant firm to assist her with navigating the process for obtaining the necessary permissions to construct an accessory dwelling unit to be attached to her home by an underground extension (for Heritage compliance purposes). The project required 7 minor variances, regarding which staff of the City of Burlington had no objection.
- [25] Because the home is designated as a Heritage property, prior to consideration by the C/A, she had to first obtain the approval of the City's Heritage Committee.
- [26] A Heritage Impact Study was commissioned by the complainant, and the Heritage Committee considered and approved the request on June 8, 2022, clearing the way for the application to be considered by the C/A.

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<sup>1</sup> The Ombudsman may review such conduct, but only once a complaint has been concluded by an Integrity Commissioner, or where the Integrity Commissioner declines to investigate.

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[27] On January 13, 2022 the Complainant filed an application to the C/A for the minor variance to allow the conversion of a detached garage to a secondary dwelling unit.

[28] On December 7, 2022 the application for minor variance was before the C/A for hearing. The very substantial application package included:

- Staff Report
- C/A Application
- Cover letter from the owner's planning consultant firm
- Planning Justification Report submitted by the owner's planning consultants
- Tree Inventory & Preservation Plan Report

[29] The Staff Report from planning staff supported the application. As set out in the Planning Act, a minor variance application must meet four tests:

Do the requested variances maintain the general intent and purpose of the Official Plan?

Do the requested variances maintain the general intent and purpose of the Zoning By-Law?

Are the requested variances desirable and appropriate for the lands?

Are the requested variances minor in nature?

[30] Staff advised that the application met the four tests.

[31] Nobody appeared in opposition to the application.

[32] The homeowner was not present at the C/A and was represented by her planning consultant.

[33] Although the Heritage Impact Study was not included in the Application Package before the C/A, member Leblovic produced it at the hearing in order to ask the planning consultant questions.

[34] The member proceeded to ask questions of the homeowner's planning consultant, focused on what he perceived as inconsistent descriptions in the Heritage Impact Study about the interior finishes in the basement of the home – in particular, what he perceived as conflicting information about the presence of a bathroom and a bedroom in the basement – revealing, in his view, the existence of a rental suite.

[35] It should be noted that, although the complainant's home does not include a secondary suite or basement apartment, we understand that a secondary suite would be permitted as-of-right, should she have desired one.

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[36] Member Leblovic made a statement asserting the existence of an undocumented rental unit in the basement, claiming that the neighbours all knew about it.

[37] The member's comments at the hearing are reflected in the Minutes<sup>2</sup> as follows:

N. Leblovic did not support the application; noted for the following reasons: did not believe the Owner/Agent were being entirely truthful regarding the use of the existing home and had knowledge from other community members as well as the Heritage Impact Study that the home had been previously renovated to include a basement living space which was not reflected in the site plans presented and that non-family members had lived in the house; believed some of the information provided by the applicant was questionable; these concerns prevented the member from supporting the application as presented and believed that perhaps a deferral might be an option to allow the agent to go back and work with the Owner to provide additional information regarding the current use of the property; from a legal perspective, could not support the application.

[38] The next member who spoke reminded members that the C/A must confine itself to consideration of the application based on the merits and the evidence before the Committee. This is reflected in the Minutes, as follows:

...the Committee must evaluate an application based on the merits of the application before the Committee; noted that the application itself became a sworn affidavit when submitted for review; there were no members of the public in opposition to the proposal nor were written comments provided as a result of the public notice; how the Owner utilizes their property was not the purview of the Committee and if there were enforcement concerns there were more appropriate City departments to handle those matters;

[39] Subsequently, the Chair also chastised member Leblovic for his statement, noting that enforcement concerns were not the purview of the Committee; there were other City departments in place to handle enforcement issues; and that the applicant presented good planning rationale for the proposed development.

[40] One other member of the C/A adopted the position and the rationale articulated by member Leblovic.

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<sup>2</sup> The initial draft Minutes indicated that the member made no reference to the Heritage Impact Study, but simply asserted he "did not believe the Owner/Agent were being entirely truthful regarding the use of the existing home and had knowledge from other community members that the home was being rented illegally; believed some of the information provided by the applicant was questionable; prior knowledge of the property prevented the member from supporting the application as presented". This was revised, on the request of the member.

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- [41] In the end, the C/A Decision to grant the minor variance was reached on a 3-2 split.
- [42] In the days that followed, the complainant raised her concern with the Secretary-Treasurer about the conduct of the member and the unfounded statements which very nearly resulted in a refusal of her application.
- [43] The Secretary-Treasurer advised that the Integrity Commissioner was the proper party to consider her concerns.

### Code of Conduct for Local Boards

- [44] Members of local boards are governed by a Code of Conduct.
- [45] The relevant provisions of the Code of Conduct provide as follows:

#### **Guiding Principles**

Members shall act with honesty and integrity, serving in a diligent manner, and performing their duties in a manner which promotes public confidence.

#### **Rule 16: Independent Nature of Local Boards**

The Chairs of Local Board should ensure that the actions of any member, as well as Council members and staff attending adjudicative board meetings, are consistent with the arm's-length, quasi-judicial nature of the adjudicative board. Any actions compromising this position should be immediately dealt with by the Chair or panel chair.

### Analysis and Findings:

- [46] There are two categories of Local Boards to which Council appoints members: adjudicative and non-adjudicative.
- [47] Adjudicative bodies are independent and act in a quasi-judicial manner. That means that they are required to arrive at their decision on the evidence before them at the hearing or meeting where the matter is considered.
- [48] An adjudicative body applies the applicable law and policy to the relevant facts.
- [49] A member of an adjudicative body is similar in this regard to any other tribunal or to a judge presiding in court: they are confined to making determinations of fact on the evidence presented to them.
- [50] Member Leblovic's statement made during the hearing regarding his belief that there was already an existing rental unit at the home, was improper for 3 reasons:

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As it was based on what the neighbours apparently had told him, it amounted to nothing more than hearsay, and was not admissible as evidence;

Even if true, it was not a relevant consideration for the C/A; and

Even if relevant, the member was attempting to introduce evidence at the hearing, which was improper given his role as a member of the tribunal adjudicating the hearing.

### Hearsay

- [51] A member sharing information he has heard about a subject property does not comply with the rules of evidence applied by adjudicative bodies and it runs afoul of the procedural fairness an applicant should be afforded when participating in a matter before an administrative tribunal such as the C/A.
- [52] The rules of evidence – relevance, admissibility and a tribunal member’s jurisdiction to adduce it – could not have been at the front of the member’s mind when he shared what information he had heard about the property.
- [53] He may have had an honest belief in his own statement about the existence of a second dwelling unit. He did not, however, provide any evidence to support his claim. Importantly, the applicant was not afforded the opportunity to consider the ‘evidence’ and prepare a response to it.
- [54] He says he heard from a close friend who lives in the complainant’s neighbourhood.
- [55] Notably, no one appeared at the hearing in opposition to the application, or submitted any contrary comments.
- [56] Had legal counsel for the owner been present at the hearing, the statements by the member would likely have provoked a swift response.
- [57] The applicant’s planning consultant, who was present at the hearing, was blindsided by the line of questioning and attempted to navigate the unexpected tangent.
- [58] Having not attended at the home of her client, the planning consultant was at a loss to explain what member Leblovic perceived as inconsistencies in the Heritage Impact Study.
- [59] As noted, the Heritage Impact Study was not part of the C/A application materials provided to the members, as it had been part of the materials for consideration by the Heritage Advisory Committee the previous summer.

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[60] Nevertheless, when the member produced it unexpectedly at the C/A hearing, the planning consultant simply advised that she was unaware of the existing interior improvements of the owner's basement, but that to the best of her knowledge the owner lived alone in the home.

[61] During our investigation, the member provided the following explanation around the unfolding of events at the C/A as follows:

Also... provided was a draft Heritage Impact Assessment dated May 22, 2022, prepared by Robinson Heritage Consulting relating to the house and garage on the Property. ...

In reviewing this documentation, I noted a major inconsistency relating to the basement of the house. The Heritage Impact Assessment at pages 28 to 32 had a brief description of each room in the House and contains the following statement at page 32:

"The basement is finished and is large and bright with laundry, bath, bedroom and family room with walkout to the rear yard."

However, the Site Plan of the basement area of the house (at page 92 of the Staff Report) showed existing space labelled as laundry room, mechanical room, unexcavated and existing basement with no existing space identified as a bath, bedroom or family room.

At the hearing, the Complainant was represented by XX. In my questioning of XX I asked her to reconcile this inconsistency.

...[the planning consultant was unable to explain the inconsistency, in that she had not attended the property to observe the basement layout, and she understood that her client lived alone in the home.]

When it was the time for Committee members to reach a decision on the application, I made comments to the following effect:

- I did not accept the testimony of [the planning consultant] as being credible on the issue of the additional dwelling unit in the basement as it was inconsistent with both the clear wording of the Heritage Impact Study as well as the prior information that I had obtained from my friends noted in the fourth paragraph of this letter.
- The potential existence of an additional dwelling unit in the basement of the house was in my mind extremely material to the application as it raised the prospect of their being three not two separate dwelling units in the house and garage. This in turn would

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increase the potential number of people who could live in the house and renovated garage.

- This would result in potential for material compatibility and nuisance issues with the neighbourhood, which was entirely comprised of single-family dwellings, the likelihood of overcrowding of the limited on-site parking space and the possibility for future use of the house as a rental or short-term rental facility.

[62] When the planning consultant would not agree with the member's suggestion that there was a rental unit in the basement, he stated that he was '*questioning the integrity of the application and the integrity of the planners*'.

[63] The planning consultant was shocked, upset and taken aback. All the while, her supervising partner was watching the virtual meeting electronically.

[64] Planners are subject to a Professional Code of Practice and Standards of Practice; ethics and integrity are cornerstones of their professional reputation.

[65] Questioning the integrity of a professional planner goes to the core of their professional reputation.

[66] The member, in openly questioning the planning consultant's integrity during the hearing, was impugning her professional ethics.

[67] The issue, arising during the course of our investigation, will be addressed later in this report.

[68] From an evidentiary perspective, it is apparent that the finished basement contains no kitchen, which would be crucial in determining whether a basement rental apartment existed – were that a relevant consideration before the C/A. This underscores the problem of introducing hearsay conclusions in the course of a hearing held for other purposes, and which was supported by ample professional evidence tendered by both the applicant and City staff.

### Irrelevant Considerations

[69] Even if the information had been introduced by an objector to the application, it is well-established that non-compliance with existing regulatory requirements is not a relevant consideration on an application for minor variance at the C/A.

[70] Alleged illegal or non-compliant use of property can only be pursued through enforcement action because:

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withholding a minor variance because of alleged zoning violations constitutes an error of law; and

enforcement action provides the property owner with due process and ensures a full and fair opportunity to defend against unfounded allegations.

- [71] Though not the case here, existing non-compliance - with zoning or building requirements - is often the motivation for making minor variance applications to the C/A.
- [72] Concerns about existing non-compliance are simply irrelevant to the C/A's considerations.
- [73] Similarly, speculation about the possibility that the minor variance may open the door to a future illegal use is equally irrelevant.<sup>3</sup>
- [74] As noted above, the Chair and at least one other member of the C/A were at pains to correct member Leblovic as to the irrelevance of the alleged existence of a second dwelling unit.

### Improper for Tribunal Member to introduce own evidence

- [75] It is important that members appointed to adjudicative bodies understand the nature of their role.
- [76] This is especially the case in the City of Burlington, where appointees serve collectively on all three adjudicative tribunals – the C/A, the Property Standards Committee, and the Committee of Revision.
- [77] Misunderstanding their jurisdiction or the need for procedural fairness may cause a tribunal to exceed its jurisdiction or otherwise err in law in arriving at a decision, leading to unnecessary and time-consuming appeals to the Land Appeals Tribunal or the courts.
- [78] In the complainant's application hearing, despite attempts by another member and by the Chair to correctly guide the C/A away from irrelevant and erroneous considerations, the member's strong and authoritative assertions influenced another member to take into consideration irrelevant and possibly erroneous statements, improperly introduced.
- [79] Even if the member had *personal knowledge* of the existence of a second dwelling unit in the home (which he admits he does not have), tribunal members – like judges – must make their decisions based on the application of the law to the facts *presented* at the hearing or trial.

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3 Pillon v Lakeshore (Twp), 2020 CanLII 66012 (ON LPAT)

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- [80] A tribunal member cannot introduce their own evidence, or supplement the evidence before them with anecdotal information drawn from their own sources.<sup>4</sup>
- [81] The bald unchallenged assertion made by the member abrogated the procedural fairness of the C/A hearing and risked tainting the decision, as underscored by the narrow margin on the vote, which might have resulted in an unnecessary, time-consuming and costly appeal for both the applicant and the City.
- [82] We find that the conduct of the member on this occasion undermined public confidence in the adjudicative body.
- [83] It is important that misunderstandings - about jurisdiction, procedural fairness and appreciating what are the relevant considerations - be corrected, especially since an erroneous or misguided approach by a single member may influence the thinking of other members. Ultimately, these may lead to undermining the public's confidence in the process.
- [84] The member is an experienced lawyer, and no doubt had an honest belief in what he was doing.
- [85] Members of adjudicative local boards are not expected to possess legal expertise, and indeed, the Chair and staff play an important role in guiding the committee to staying focused on relevant considerations and ensure procedural fairness.
- [86] There are also opportunities for municipalities to ensure that their local boards, including adjudicative committees, receive training from the Integrity Commissioner, the Ontario Association of Committees of Adjustment, and from staff.

### Impugning reputation of planning consultant

- [87] When the planning consultant would not agree with the member that there was a basement rental unit in the home, the member stated that he was '*questioning the integrity of the application and the integrity of the planners*'.
- [88] The member thereby cast doubt on the information properly before the C/A and cast a shadow over the planning consultant's honesty and integrity.
- [89] Although there is no specific provision under the City of Burlington's Local Board Code of Conduct which addresses impugning the professional ethics and integrity

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<sup>4</sup> There is a narrow category of facts where a tribunal member or judge may make findings without any evidence by taking *judicial notice* of certain facts. There are strict rules and specific criteria under which tribunal members and judges may take *judicial notice*, and no such conditions existed in this case to allow the member to introduce evidence or to find that a basement dwelling existed on the property.

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of others - whether members of the local board, staff or others - it should be recognized as inappropriate and contrary to a standard which requires Members to *act with honesty and integrity, serving in a diligent manner, and performing their duties in a manner which promotes public confidence.*

[90] Challenging the truthfulness of a professional, without a rationale basis, is tantamount to calling them a liar.

[91] Burlington Council's own Code of Good Governance states the following which, although in regard to social media (Rule 13), nevertheless provides good guidance:

*We will ensure that commenters are respectful, and do not impugn the motives, integrity, or competence of our Council colleagues, other members of the public, or staff.*

[92] We find that the conduct of the member in impugning the integrity of the planning consultant was inappropriate, and constituted behaviour which did not promote public confidence.

### Recourse for complainant

[93] When the complainant raised her concern with the Secretary-Treasurer in the days that followed, it was explained to her that there was nothing the staff or the City could do and her only recourse was a complaint to the Integrity Commissioner.

[94] The member has expressed to us his concern that the complainant's inquiries to the Secretary-Treasurer's office have damaged his reputation.

[95] While a member may regard any complaint about his conduct as concerning, and the scrutiny of a member's conduct may bring unwanted attention to short-comings, persons feeling aggrieved by a member's conduct should not be deterred from legitimate complaint by the fear of an accusation of 'damaging the reputation' of a respondent.

[96] Certainly there was nothing inappropriate for the complainant to speak with the Secretary-Treasurer to understand what complaint mechanisms were available to her.

[97] The complainant pursued the only recourse available. Whether a respondent believes the attention of a complaint diminishes their reputation should not be the reason that an investigation is not pursued.

### Member's Response to Complaint and Findings

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- [98] Rather than acknowledge room for improvement on his part, the member has dug in, justifying his actions and attacking the investigator, engaging in ad hominem attacks on the Integrity Commissioner alleging bias, incompetence, arrogance, negligence, lack of diligence, legal errors, ignorance of the law and practice, and a lack of jurisdiction and procedural fairness.
- [99] This sometimes happens in Integrity Commissioner investigations – the respondent takes a legalistic or adversarial approach. Care should be taken to recognize that an Integrity Commissioner’s goal in investigating a complaint is aimed at upholding the expectations set by Council for its appointees.
- [100] The investigation is conducted under the tenets of procedural fairness, providing the respondent with an open ended opportunity to respond to the allegations.
- [101] Significantly, nowhere does the member justify his discussing the case with others, by which he apparently heard the gossip.
- [102] The member has asserted that the Integrity Commissioner lacks jurisdiction regarding conduct of members when they are fulfilling their responsibilities as a member of the C/A, because to do so interferes with the administrative quasi-judicial body, penetrates their decision-making independence, and breaches their protective adjudicative immunity, which in his words “*extends without limitation*”.
- [103] We note that the doctrine of adjudicative immunity prohibits *legal proceedings* against members based on their actions as adjudicators or decision-makers. However, a complaint investigation of an Integrity Commissioner is **not** a legal proceeding; it is an administrative process, comparable to a workplace harassment investigation.
- [104] It goes without saying that if no such mechanism were available, there would be no potential recourse in respect of a member of a C/A displaying bias, undue influence, harassment, or engaging while in a conflict of interest<sup>5</sup>.
- [105] In fact, the jurisdiction of an Integrity Commissioner over conduct by members of adjudicative local boards has been well-recognized.<sup>6</sup>
- [106] It cannot be the case that members of adjudicative local boards are at liberty to engage in inappropriate, unfair or otherwise improper conduct with impunity.

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<sup>5</sup> The fact that the MCIA clearly makes available legal proceedings against a member of the C/A, just as any other member of a local board or council, also shows that adjudicative immunity does not constitute some absolute protection from legal proceedings for members of adjudicative local boards.

<sup>6</sup> Oct. 2019 Report by Toronto IC Valerie Jepson, re: Administrative Penalty Tribunal Member;  
Oct. 2020 Report by Mississauga IC Principles Integrity, Heritage Advisory Committee Member Mateljan;  
Oct. 2021 Report by Greater Madawaska IC Guy Giorno, *Gillette v. Giffin*, 2021 ONMIC 32.

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- [107] While ultimately, removal of the member by Council is a possible remedy, any member might rightly demand the procedural fairness of an investigation before being removed. This is the function which the Integrity Commissioner provides.
- [108] The member has asserted that there can be no finding he contravened the principles of the Code of Conduct, because in his opinion the guiding principles are unenforceable; and that there can be no finding he contravened the prohibition against compromising the arm's-length, quasi-judicial obligations of the body (Rule 16) because that provision can, in his opinion, only be dealt with by the Chair of the body.
- [109] There is an argument by some that the Guiding Principles articulated in a Code of Conduct are incapable of enforcement against a member – a legalistic approach which construes code provisions as legislative enactments and characterizes the Guiding Principles as merely '*Preamble*'.
- [110] We believe that the better approach is to embrace the Code of Conduct as a policy statement adopted by council, and to understand that the underlying guiding principles, as well as the specific stipulations in each provision, are indeed capable of articulating enforceable standards and expectations unless specifically excluded.
- [111] This view has been adopted by other Integrity Commissioners.<sup>7</sup>
- [112] The Guiding Principles attempt to set out the intention and purpose for adopting a Code of Conduct.
- [113] They are more than merely a preamble to the Code. They are the starting point for members, readers and the public to understand that the overarching goal of members, to whom the Code applies, is to recognize that they have a role to play in enhancing public confidence and trust in local government. The Guiding Principles speak directly to the obligation to conduct oneself with honesty and integrity.
- [114] A preamble, in its pure sense, such as a preamble to a by-law or legislation, cannot form the basis for prosecution or legal proceedings. A Code of Conduct is not however akin to codified offenses recited in a statute, and a complaint investigation is not a legal proceeding.

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<sup>7</sup> Oct. 2019 Report by Toronto IC Valerie Jepson, re: Administrative Penalty Tribunal Member: [at p.12] "...members appointed to the City's boards are required to meet a very high set of conduct standards - in fact the Code of Conduct requires members of the City's tribunals to meet both the letter and spirit of the Code (Preamble to the Code of Conduct)."

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- [115] Especially where the goal is public confidence, and where Guiding Principles underly and support the standard of conduct expected, it cannot be the case that a violation of the Guiding Principles is incapable of forming the basis of a finding that the member has failed to meet the standard expected.
- [116] This view would be completely inconsistent with the purpose and objectives of providing a framework to ensure members conduct themselves with the highest standards of integrity in a manner that withstands public scrutiny.
- [117] Conduct or behaviour which contravenes and undermines the Guiding Principles should not be ignored or condoned, simply because there is not a specific provision of the Code which prohibits it. Afterall, there are any number of matters not articulated in provisions of a Code – for example one would not find specific provisions prohibiting lying while carrying out their public role, yet no one would argue that this could not sustain a complaint under the Code.

### Summary of Findings:

- [118] We find that the conduct of the member on the occasion in question – engaging in hearsay on matters irrelevant to the Committee of Adjustment’s proper considerations, and purporting to introduce evidence in the course of a hearing - undermined public confidence in the adjudicative body, in breach of the Guiding Principles of the Code of Conduct applicable to him.
- [119] Rule 16, in imposing obligations on the Chair, confirms the importance of recognizing the arm’s-length, quasi-judicial nature of an adjudicative local board. Though the Chair, in compliance with Rule 16, attempted to rein in the member, he persisted in raising conjecture in the course of a quasi-judicial hearing. We find that the member ignored both the Chair’s efforts and the underlying principle articulated in Rule 16 and undermined public confidence in the adjudicative body.
- [120] We also find that impugning the integrity of the planning consultant, which was tantamount to calling her a liar, was inappropriate and a breach of the Guiding Principles.

### Recommendations and Concluding Remarks:

- [121] An Integrity Commissioner may recommend that sanctions be imposed, including a reprimand, or a suspension of pay for up to 90-days.

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- [122] Members of the Committee of Adjustment receive a nominal per diem, however, we are of the view that a sanction which included suspension of a per diem would be of little consequence.
- [123] The complainant sought the member's removal from the Committee of Adjustment, and that he not be appointed to serve on any other City committee.
- [124] There is no doubt the member has the ability to offer legal expertise to the Committee of Adjustment, however his defensiveness to criticism and refusal to acknowledge room for improvement, does not lend itself to course correction.
- [125] Despite this, it must be recognized that a similar situation is unlikely to be repeated, and if it were, we are optimistic that the member would be more circumspect in his conduct .
- [126] As a member of the Committee of Adjustment, member Leblovic holds a privileged position. He should embrace the opportunity to serve in that capacity with courtesy, and a modicum of humility.
- [127] We would also hope that the member would publicly concede second thoughts for his conduct.
- [128] We believe that the complaint investigation may be sufficient to remind him to refrain from contributing gossip (or giving credence to it) during the adjudication of hearings, and to treat those who appear before the board – whether staff or others – with professionalism and respect.
- [129] As such, in contrast to the complainant's position, we are not recommending his removal as an appointed member to the C/A.
- [130] Rather, as is commonly the case for municipal local boards, we recommend that all members of local boards for the City of Burlington be required to participate in training to be conducted by the Integrity Commissioner, to ensure an understanding of expectations for their role set by the Code of Conduct and the MCIA.
- [131] Accordingly, it is recommended:
1. That Council direct staff to make arrangements for the conduct of training to be conducted by the Integrity Commissioner on the ethical framework applicable to local board members.
- [132] We wish to conclude by publicly thanking everyone who was asked to participate in our investigation.

## Principles *Integrity*

[133] We will be pleased to be present at the Council meeting where this report is considered.

All of which is respectfully submitted

Principles *Integrity*  
Integrity Commissioner for the City of Burlington