

INVESTIGATION REPORT

FOR THE CITY OF ELLIOT LAKE

CODE OF CONDUCT COMPLAINT RE:

COUNCIL APPOINTED COMMISSION/COMMITTEE

MEMBER

Ms. TAMMY VAN ROON



*Office of the Integrity
Commissioner*

Prepared By:

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PREAMBLE

Expertise for Municipalities (“E4m”) was appointed as the Integrity Commissioner for the Corporation of the City of Elliot Lake (the “City”) by resolution at the February 11, 2019 meeting of Council.

As the Integrity Commissioner, E4m is a statutory officer of the City. The Integrity Commissioner reports to Council and is responsible for independently performing functions assigned to them by the City. Pursuant to section 223.3(6), the City must indemnify and save harmless the Integrity Commissioner or any person under their instructions for costs reasonably incurred by either in connection with the defence of certain proceedings.

E4m has been appointed by the City as the Integrity Commissioner for all functions set out in section 223.3(1) of the *Municipal Act 2001*, and E4m is responsible for conducting inquiries into whether a member has contravened the Code of Conduct pursuant to section 223.4(1) or contravened sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* pursuant to section 223.4.1 (1).

The *Municipal Act, 2001*, awards the Integrity Commissioner a number of powers that the Integrity Commissioner can exercise while conducting Code of Conduct and *Municipal Conflict of Interest Act* inquiries. Specifically, subsections 223.4 (3) and 223.4.1(10) provide that “the municipality and its local boards shall give the [Integrity] Commissioner such information as the [Integrity] Commissioner believes to be necessary for an inquiry.” Moreover, subsection 223.4(4) and 223.4.1(11) provide that the Integrity Commissioner is “entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers things or property belonging to or use by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.”

In addition to the statutory requirements for an inquiry under the *Municipal Act, 2001*, Integrity Commissioner inquiries are governed by the Integrity Commissioner Inquiry Protocol, which was adopted by Council. Pursuant to section 3.4 of the Integrity Commissioner Inquiry Protocol, in performing his or her duties, the Integrity Commissioner may engage outside assistance or consult with the City’s legal counsel.

The City’s legal counsel is employed by the City. The *Rules of Professional Conduct* provide that notwithstanding the fact that instructions may be received from an agent for an organization, when the lawyer is employed by an organization, including a corporation, in exercising the lawyer’s duties and providing professional services, the lawyer shall act for the organization. An incorporated organization has a legal personality distinct from its members, agents, councillors or employees. As such, when the Integrity Commissioner consults with the City’s legal counsel pursuant to section 3.4 of the Integrity Commissioner’s protocol, the Integrity Commissioner providing instructions as a statutory officer of the City and the City’s legal counsel is acting to ensure that the City’s interests are served and protected.

I. EXECUTIVE SUMMARY

- [1] On March 11, 2019, a member of the public who requested that their identity not be released, and on March 29, 2019, Mayor Dan Marchisella (“Mayor Marchisella”) (collectively the “Requestors”) requested an inquiry into allegations that Ms. Tammy Van Roon (“Ms. Van Roon”), a Council appointed member of the Elliot Lake Residential Development Commission/Committee (the “ELRDC”) for the Corporation of the City of Elliot Lake (the “City”) did breach seven (7) sections of the City’s Code of Conduct when she posted inflammatory statements regarding Mayor Marchisella and the March 6, 2019, special meeting of Council.
- [2] After the preliminary review, some of the allegations were determined not to give rise to contraventions of the City’s Code of Conduct and the scope of the investigation was narrowed to fully review four (4) allegations. During the investigation, Ms. Van Roon was found to have shared confidential information and her actions have herein been considered as another alleged contravention of the City’s Code of Conduct.
- [3] Ms. Van Roon also filed a number of complaints against Mayor Marchisella and Councillor Pearce that were investigated and reported separately from the matters herein. She also made a conflict of interest complaint regarding Councillor Cyr which she withdrew.

Offensive Social Media Posts/Subverting Council

- [4] It was alleged that Ms. Van Roon made a number of offensive social media posts about Mayor Marchisella and some members of Council regarding the proposed purchase of the former Algo Mall property at 151 Ontario Avenue in the City of Elliot Lake.
- [5] One of the Requestors reported that Ms. Van Roon was one (1) of “*a group of persons, both former and current members of committee and council*” who “*collaborated and acted in a concerted fashion, publicly, on social media, in personal statements and actions at council in order to.....*”
- “*....quash any attempt by council, as a whole, to be successful in the normal course of business with regard to the procurement and development of a piece of property, and to operate without undue interference and prejudice to accomplish its task*”
 - “*Through public statements, social media posts and public displays unbecoming a public official, to place the current council, as a whole, in doubt to its constituents, degrading the integrity and authority of council.*”
 - “*Through public statements online....., deliberately mislead the public to create the perception that the current mayor and members of council were conducting an illegal act or acts.*”
- [6] It was also alleged that Ms. Van Roon breached the City’s Social Media policy. In reviewing this policy, it was clear that policy only applies to staff and not elected officials or members of boards/committees. For this reason, this policy does not apply to Ms. Van Roon and was not further considered.

[7] Ms. Van Roon was appointed by Council to sit as a member of the ELRDC. She was a member of the 2014, to 2018, City Council. Ms. Van Roon ran in the 2018, election and was not returned to Council. Ms. Van Roon ought to have known that as a representative of the City [Commission/Committee Member] her actions were subject to scrutiny and further that, she must comply with City policies – specifically, the City’s Code of Conduct.

[8] Ms. Van Roon did make several social media posts regarding Mayor Marchisella and members of Council regarding the purchase of 151 Ontario Avenue. In one of her social media posts, Ms. Van Roon disparaged Council for having a special meeting when a Councillor [Councillor Chris Patrie (“Councillor Patrie”)] was on vacation. In her social media posts on Elliot Lake Town Hall March 6, 2019, Ms. Van Roon stated:

“Well, I am very disappointed in some members and I hope my suspicions are wrong, but to be honest I suspected that there might be a “special” meeting called this week, after learning that a certain councilor will be away. This is why I was constantly checking the schedule. Seems like I was right on that score.

*It’s nothing a formal investigation will not reveal. If indeed this has to do with a particular property (and I strongly suspect it does) a certain four know they cannot get their way unless a councilor is missing from the vote, **this type of behavior is unethical, Bad faith, abuse of power, cheating, dishonest, illegal it is a violation of so many things that I can’t even list them all.**” [sic] [Emphasis added]*

[9] When interviewed Ms. Van Roon reported that she never accuses anyone of issues of integrity, fraud or breaking the law.

*“... **that’s not something I would put publicly. Absolutely not. No....”***

[10] Ms. Van Roon also said that she will make the odd comment on Facebook but never anything degrading in any way.

[11] Ms. Van Roon also reported using a pseudonym on some social media sites and specifically “VACMAN” on the “We Are Elliot Lake” blog site.

Disclosure of Confidential Information

[12] During the course of our inquiry, it became apparent that Ms. Van Roon disclosed confidential information pertaining to her complaints we were investigating. All parties to an inquiry/investigation are advised that they are required to keep their evidence confidential. All parties are advised not to discuss their evidence with any other party so as not to bias the investigation. Ms. Van Roon failed to adhere to this. In fact, in a separate investigation wherein Ms. Van Roon made allegations of misconduct by Mayor Marchisella, she admitted discussing her evidence with multiple parties.

[13] Parenthetically, a separate investigation found the allegations were unsubstantiated and Ms. Van Roon was found to have exaggerated her evidence.

[14] Relevant to our ultimate findings in the matters involving Ms. Van Roon were our observations as to her credibility and motivations for filing the various complaints. The following is an excerpt from the investigative report;

“It was very clear to the investigator that VAN ROON was not a credible witness. She was actively engaged in attempts to malign Council and in particular [Mayor] MARCHISELLA. She was doing this in concert with [Rick] HAMILTON and to a lesser degree [redacted]. She was also sharing details of her complaints with [Councillor] PATRIE. The investigator found that VAN ROON’s conduct was to benefit her own personal political ambitions. In her first interview, VAN ROON stated the following;

“I’m next in line if somebody quits or whatever, and traditionally, they usually go with the next person in line and I guess they must have been having a discussion around that.”

Q. “What if somebody told me that this complaint is about you getting back on Council...like if you were if something happens to one of these councillors or the mayor that you’d be the next one to get back in?”

A. “Yeah, yeah, there’s no procedure. We skipped a person last term...I strongly suspect they won’t go to the next person in line because the majority knows that a lot of things would not have happened had I been on council...I’m actually enjoying not being on council anymore. I’m actually making money again.”

VAN ROON was the first to raise the prospect of returning to Council should someone “quit or whatever”. When pressed by the investigator on this issue, VAN ROON did not deny the allegation that her complaints were laid in order to get back on Council. She provided reasons why it may not happen but did not directly address the accusation as to her motivation for making the complaints.

Based on the totality of the evidence, we find not only is VAN ROON not credible but her complaints and overall conduct were made with malicious intent to serve her own political ambitions.”

[15] We find Ms. Van Roon not to be credible. Furthermore, we find her complaints were made with malicious intent as described by the investigator. This determination factors significantly into our final recommendation as to sanctions to be imposed on her.

[16] Our findings on these matters are as follows:

Offensive Social Media Posts

Misconduct re: offensive social media posts. Contrary to section 7.2 of the Code of Conduct.

SUBSTANTIATED

Disclosure of Confidential Information

Disclosure of Confidential Information in regard to this investigation and associated investigations. Contrary to section 10 of the Code of Conduct;

SUBSTANTIATED

Subverting Council

Subverting council in regards to purchase of 151 Ontario Avenue and other related matters. Contrary to section 6.2 of the Code of Conduct.

SUBSTANTIATED

II. LEGISLATIVE FRAMEWORK

[17] Under section 223.1 (1) (a) of the *Municipal Act*, Council, a member of Council or a member of the public may make a request for an inquiry to the Integrity Commissioner about whether the Member has contravened the code of conduct applicable to that Member.

[18] When a matter is referred to us, we may conduct an inquiry in accordance with the City's Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

[19] The request before us was properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the City. We received complaints from Mayor Marchisella and one (1) member of the public alleging Ms. Van Roon contravened seven (7) provisions of the City of Elliot Lake Code of Conduct.

[20] These complaints were filed on March 11th and March 29th, 2019.

IV. THE INQUIRY PROCESS

- [21] The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a Member has contravened the Code of Conduct that is applicable to that Member.
- [22] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint which included reviewing the available evidence and interviewing the Complainants. Subsequent to the preliminary review, the number of allegations to be investigated was reduced to four (4) [from seven (7)]. Two (2) of the allegations specifically related to the City's Procedure Bylaw which the rules of order and debate at a meeting and one (1) related to the *Municipal Act* neither of which are applicable in this circumstance and therefore did not give rise to contraventions of the City's Code of Conduct.
- [23] The investigation of these matters involved a voice recorded interview of each complainant. The recordings were transcribed, and the complaints were "crystallized" to clearly indicate the substance of the complaint. Ms. Van Roon was then advised in writing the nature of the complaints filed against her. She was interviewed and had opportunity to further provide a written response.
- [24] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. As required, assessments of credibility have been made. These assessments are based on:
- whether or not the individual had first-hand knowledge of the situation,
 - whether or not the individual had an opportunity to observe the events,
 - whether or not the individual may have bias or other motive,
 - the individual's ability to clearly describe events,
 - consistency within the story,
 - the attitude of the individual as they were participating
 - any admission of dishonesty.¹
- [25] Of importance to this inquiry, is that the allegations made by the Requestors are supported by social media postings and an email both are documentary evidence and not subject to the frailties of credibility. There can be no dispute as to what transpired.
- [26] Both Mayor Marchisella and the member of the public requesting this inquiry were found to be substantially credible.

[1] _____

¹ *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. *Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009)*, 185 LAC (4th) 176 (Alta.Arb.)

[27] Ms. Van Roon was found by the investigator not to be credible. The investigator reported that Ms. Van Roon was prone to exaggerations and making statements that were essentially conjecture or supposition on her part. Therefore, evidence provided by her with respect to this inquiry was only accepted when it could be corroborated by another credible party involved in this inquiry. When it was not corroborated, it was not accepted.

V. THE FACTS

[28] Ms. Van Roon was a past councillor for the City of Elliot Lake. She was defeated in the election held in the fall of 2018. In 2019, she was appointed to the ELRDC and attended the first ELRDC meeting in April of 2019.

[29] During her tenure on City Council, she was closely aligned politically with former Mayor Rick Hamilton ("Mr. Hamilton") and Councillor Patrie. This is relevant to this inquiry because Ms. Van Roon continues to have discussions with both individuals often sharing confidential information with them. Furthermore, all of three (3) expressed opposition to the purchase of 151 Ontario Avenue.

[30] Ms. Van Roon made her first complaint to the Integrity Commissioner on March 5, 2019, against Councillor Pearce and citing that he was in breach of the City's Code of Conduct when he worked with "investors who are interested in purchasing a private piece of property (151 Ontario Ave formerly known as the Eastwood mall) and further that it was a breach of the *Real Estate Business Brokers Act* ("REBBA")

[31] Ms. Van Roon gave evidence that the purchase of 151 Ontario Avenue should have gone through a real estate broker/agent because the actions of Councillor Pearce were that of a real estate broker. In the preliminary interview with Ms. Van Roon on this matter she stated:

"As a realtor I'm offended by it [Councillor Pearce negotiating on behalf of the City] because he's taking potential business away from my industry."

[32] Ms. Van Roon works in the real estate field and is deemed to have an understanding of this legislation. Our review of REBBA did not support Ms. Van Roon's assertion that Councillor Pearce was acting contrary to this legislation.

[33] We do not find her actions to be inadvertent. This allegation intentionally was used by Ms. VanRoon to instigate or support Councillor Patrie's assertion that the Council meeting where Council decided to purchase the Mall property was illegal. It is apparent that Ms. Van Roon's allegation is self-serving and an attempt to thwart the City's purchase of 151 Ontario Avenue."

Offensive Social Media Posts/Subverting Council

- [34] Ms. Van Roon's conduct on social media called into question the process to purchase the property at 151 Ontario Avenue and the means to call the special meeting of Council on March 6th, 2019, to discuss this matter. We have reviewed this purchase in detail and the process to call the meeting and there are no issues. The process was conducted properly and in accordance with the law. The behaviour of those opposed to the purchase such as Ms. Van Roon was petulant. They were not getting their way on the matter and, therefore, resorted to subversive tactics.
- [35] The following is a summary of various social media posts made by Ms. Van Roon. VACMAN is an alias that she used to make some of these posts. We have highlighted the portions that we find to be offensive or attempts by her to subvert Council. We caution the reader of this report not to take what is said by Ms. Van Roon in these posts to be true. She is not a credible source of information.

March 5th, 2018 4:48 pm
VACMAN Blog post

"Special meeting of council tomorrow at 4:15 pm. Hmmm, I wonder what property is being considered for acquisition. Anyone care to wager a guess? **Taking advantage of the fact that a councillor is out of country, I can only assume! Please attend if you can. I'm sure it will go into closed session but I for one would like to know what makes these matter so urgent that they cannot wait 3 days, when all of council is in the same province.**"

March 5th, 2019 4:49 pm
VACMAN Blog post
This is a re-post from December 20th, 2018.

"I always opposed the overspending on this piece of property without a plan. It is entirely irresponsible fiscally. To buy a piece of property to put a complex on without having the money secured for the complex is not wise. A conditional offer would have been more appropriate. Conditional upon funding approval for the hub. That way they would have cohesion on where to place the center, and know that result before spending a million dollars on a property with no clue as to the plan and no commitments by any private investor...**Not one of those who was in favour could come up with a fiscally responsible reason for raiding reserves of a million dollars in tax payers money for this property. Not one. To have the city buy it and sever it themselves and then re sell it? A. they may want to review the municipal act regarding Bonusing...I am flabbergasted at how extremely foolish that entire discussion was, and the obvious lack of research done by those in favour!...Too bad they chose not to get professional advice from a realtor prior to making that ridiculous offer.**

March 6th, 2019
The following posts were made by Van Roon on Facebook;

“...I suspected that there might be a special meeting called this week, after learning that certain councillor will be away...It's nothing a formal investigation will not reveal if indeed this has to do with a particular property and I strongly suspect it does a certain for now they cannot get their way unless a councillor is missing from the votes **this type of behaviour is unethical, bad faith abuse of power cheating, dishonest, illegal it is a violation of so many things that I can't even list...**”

March 7th, 2018 7:51 am

VACMAN Blog post

Note: this post is a reiteration of Councillor Patrie's submissions from the March 6th, 2019 Council meeting. Ms. Van Roon added the following commentary to the end of the post;

“It is clear that this discussion had to do with the former mall site. It is clear that **the mayor and pearce are off doing some backroom deals, it is clear that certain members of council had little to no information, yet a particular 4 seemed to have enough to make an educated decision as to whether or not this warranted a closed session discussion. The mayors comments? To openly threaten to file a complaint against one of his councillors in a televised meeting is an abuse of his position and a violation of the code of conduct. Is suspect that this was discussed in closed session, the ombudsman can investigate that and determine if there was a closed session violation in discussing matters that were not on the agenda.**”

March 7th, 2019 5:24pm

VACMAN Blog Post

“**Complaints sent to IC@E4m.solutions for closed session violation, conflict of interest and code of conduct complaints. All of them were violated last night,** from my view. I am told there has been another post by the mayor on Facebook...”

March 26th, 2019

The following was posted by Ms. Van Roon on Facebook;

“**...is there corruption in politics? YES!! Right down to municipal! I see it happening in my own community...they support what THEY want, not what is best for the community.**”

Disclosure of Confidential Information

- [36] During the course of our inquiry, it became apparent that Ms. Van Roon disclosed confidential information pertaining to her complaints we were investigating. All parties to an inquiry/investigation are advised that they are required to keep their evidence confidential. All parties were advised not to discuss their evidence with any other party so as not to bias the investigation. Ms. Van Roon failed to adhere to this. In fact, in a separate investigation wherein Ms. Van Roon made allegations of misconduct by Mayor Marchisella, she admitted discussing her evidence with multiple parties.
- [37] Parenthetically, a separate investigation found that the allegations relating to mayoral misconduct were unfounded.
- [38] Witness evidence confirmed that Ms. Van Roon shared confidential information with a variety of people. A specific example occurred when Mr. Dan Gagnon the Chief Administrative Officer for the City, sent Ms. Van Roon an email advising her that an investigation had been commenced regarding a complaint that she made to the City [a non-IC complaint]. The purpose of the email was to provide Ms. Van Roon with information about the investigation and that a third party would be contacting her. Ms. Van Roon then sent this email to a ratepayer who advised the investigator. The following is a summary of these communications;

May 28th, 2019

Email from Dan Gagnon (CAO – Elliot Lake) to Tammy Van Roon

Titled: [redacted]

“Sorry for the delay. For a while we were not sure if your concerns were to be treated as [redacted] given that somewhat unique status of the Elliot Lake Residential Development Commission. So we got independent legal advice and they did in fact confirm that the RDC applies as a committee of Council...[redacted] and do in fact apply.

So [redacted] will be in touch accordingly to discuss next steps for an investigation, using a 3rd party. In the meantime, I thought I would give you this interim update and let you know that I will be attending the RDC meeting today (and any future ones as much as possible) and will have eyes on the Mayor just to be a witness (a witness who knows generally that there is a concern although I am not privy to the details and it’s better that way anyway).

May 28th, 2019

Email from Tammy Van Roon to [the Ratepayer]

Re: [redacted]

Two minutes after receiving the email from Gagnon, Ms. Van Roon sent the email to [a Ratepayer]. In her forwarded email she said to [the Ratepayer];

“Well, that’s something...”

May 29th, 2019 12:17 pm

Email from [Ratepayer] to Tammy Van Roon
Re: [redacted] concern

"I was just visited by an "Investigator" contracted by E4M. He was, so he said, investigating mainly you matters, which is fine by me, and the subject came up from him of both the Legion issue and now ELRDC. I mentioned the letter from Gagnon, which he asked to see but told him it would take me time to find. Real reason; you sent this to me in confidence and it was not my place to reveal it. So, if you choose, his name is Sean Sparling (705)943-XXXX..."

Ms. Van Roon responded two minutes later;

"Yes. I met with him this morning. He is the third party investigator that dan referred to...sorry to provide your name without speaking to you first...he asked me to keep our conversation confidential. You're already aware of the issues anyway and mentioned you may have something to contribute. He wasted no time calling witnesses and I didn't want to taint the investigation.

[39] Following the above email, [Ratepayer] sent Ms. Van Roon an email discussing how Mr. Mike Thomas knew everyone on Council was being investigated and opined that either the Mayor or E4m had given Thomas that information. Ms. Van Roon responded;

"Thomas IS dangerous. Has many bits and pieces of legislation he THINKS he knows. He does not. He is not interested in what is best for Elliot Lake. He wants notoriety..."

[40] We found it concerning that Ms. Van Roon would disclose such sensitive information to an outside party. Not only was [the Ratepayer] not entitled to receive this information, it was a violation of the Code of Conduct and provincial legislation. Although she expressed not wanting to "taint" the investigation, that is exactly what she was doing repeatedly.

[41] On May 31st, 2019 we met with Ms. Van Roon and asked her why she disclosed this information. It was apparent that she was engaged in this behavior in relation to all of the issues before us. She advised us that:

- She told Councillor Patrie about the [redacted] allegations she made against Mayor Marchisella.
- She's been in touch with him [Councillor Patrie] since the beginning out of frustration. She called him when she received the disciplinary letter about her social media posts.
- She's also talked to Rick Hamilton about her complaints.

"...I sent Rick and I believe [the Ratepayer] a copy of the complaint that I sent to Peggy [Young-Lovelace – E4m)...the initial one...March 5th...I can't remember if I sent it to [the Ratepayer] or not but I did send it to Rick...nope I met with him [Hamilton] for coffee and I showed it to him..."

- [the Ratepayer] and Hamilton purportedly hate each other. The conversations she's had with them were with each of them separately.
- She shared "basically everything" in her complaints about Mayor Marchisella with both [Ratepayer] and Hamilton;
 - “...basically, everything in my complaint I've talked to them about and then of course, bitch, bitch, bitch, it doesn't look good, all that kind of high school gossipy back and forth kind of stuff.”
- Councillor Patrie called her after the March 6th, 2019, council meeting and asked her if she heard what he said. He actually sent her a copy of what he read aloud.
- She sent the email she received from Dan Gagnon and [the Ratepayer]. Rick Hamilton also knows the [redacted] investigation was happening.

“...I did send [the Ratepayer] that, just showing hey look, something's happening...no details were told to him...”

- She told Rick Hamilton about the [redacted] complaint before she met with Peggy Young-Lovelace – E4m. Ms. Van Roon told him that she was going to file the complaint.

Q. “...What's the point of telling Rick Hamilton there's a [redacted] complaint?”

A. “...because we bitch and moan together a lot...so I did ask him some advice in that area as well...”

VI. THE ISSUE

[42] We considered:

- Whether Ms. Van Roon contravened the City's Code of Conduct when she made social media posts regarding the March 6, 2019, special meeting of Council and the City's purchase of 151 Ontario Avenue;
- Whether Ms. Van Roon contravened the City's Code of Conduct when she shared confidential information; and
- Whether Ms. Van Roon colluded with other Members of Council and/or the public to unduly or improperly influence the meeting and subsequent decision of Council.

VII. THE OPINION

- [43] When interviewed in regard to the allegations against her, Ms. Van Roon denied that she made offensive posts. She further claimed that she does not attack individuals' character or integrity. The evidence reveals otherwise. Ms. Van Roon stated the following in her social media posts;

"...this type of behaviour is unethical, bad faith abuse of power cheating, dishonest, illegal it is a violation of so many things that I can't even list..."

"...the mayor and pearce are off doing some backroom deals..."

"...is there corruption in politics? YES!! Right down to municipal! I see it happening in my own community..."

"...Thomas IS dangerous...He is not interested in what is best for Elliot Lake. He wants notoriety..."

These posts were deeply offensive. There is no plausible explanation as to how she believes these posts were not offensive or in the words from the Code of Conduct "...indecent, abusive or insulting..."

- [44] Mayor Marchisella and all of Council should have been deeply offended by these comments. It is worth noting that Mayor Marchisella did bring Ms. Van Roon's original social media posts to Council. Council opted to send Ms. Van Roon a letter advising her of the Social Media and Code of Conduct policies. This was before the entirety of her conduct was known.
- [45] Based on a balance of probabilities, we find the allegation that Ms. Van Roon violated section 7.2 of the Code of Conduct is **SUBSTANTIATED**.
- [46] When Ms. Van Roon filed her complaint with the Integrity Commissioner, she was creating a workplace document. Although she created it, it was not hers to share outside the City in the manner that she did. She shared them for, as she put it, the purpose of "high school gossip and to bitch." She did not share it with a lawyer or a close confidant for purposes of advice. She admitted to showing her Integrity Commissioner complaint to Rick Hamilton on her phone over coffee.
- [47] Ms. Van Roon also sent [the Ratepayer] a copy of an email she received from Dan Gagnon about the complaint she made about Mayor Marchisella. This is in violation of the Code of Conduct.
- [48] Based on a balance of probabilities, we find the allegation that Ms. Van Roon breached section 10 of the Code of Conduct [Breach of Confidentiality] is **SUBSTANTIATED**.

- [49] We find that Ms. Van Roon's conduct was devised by her to influence Council and spread false information in the community. It is clear she engaged in gossip, disclosed confidential information, and conspired with others such as Rick Hamilton and Councillor Patrie to subvert Council's consideration of the purchase of 151 Ontario Avenue.
- [50] There was also a continuous reference by many people that Mayor Marchisella and Councillor Pearce had "breached the REBBA" laws. REBBA is the Real Estate Business Brokers Act. We have not detailed an analysis of the REBBA allegation in this report as it was considered extensively in a legal opinion separate from this investigation and there are no REBBA violations.
- [51] Ms. Van Roon appears to be the source of the REBBA allegation. She was the only person in this scenario who is a realtor and was vocal in letting us know that Mayor Marchisella and Councillor Pearce had breached this legislation. A person in her position should know that this conduct was not a violation of the REBBA legislation. This only served to further impugn the character of the Mayor and Council.
- [52] Before the March 6th, 2019, Council meeting to discuss the purchase of 151 Ontario Avenue, Ms. Van Roon was on social media criticizing Council and calling into question the process that was followed to hold the meeting. After the vote approving the purchase, Ms. Van Roon again turned to social media to insult and defame council for their decision and accuse them of illegal behavior. Ms. Van Roon's conduct, her disclosure of confidential information and her overall self-serving malicious conduct were created by her to serve her own political purposes and to undermine Council. The allegation that Ms. Van Roon breached 6.2 of the Code of Conduct by subverting Council is **SUBSTANTIATED**.

VIII. CONCLUSION

- [53] We find that the allegations of misconduct against Ms. Van Roon are substantiated. Her conduct was malicious and lacking in the requisite professionalism expected when holding public office. Her conduct was devised by her to subvert Council and is not deserving of any mitigation in penalty.
1. Disclosure of Confidential Information in regard to this investigation and associated investigations. Contrary to section 10 of the Code of Conduct;

SUBSTANTIATED

RECOMMENDATIONS

1. We recommend that within 90 days of this report, **Council, its committees and local boards, should receive further and significant Code of Conduct training with respect to members' obligations under the Code.** It is recommended that this training be provided by or approved by the City's current IC, Cunningham Swan.

2. Ms. Van Roon revealed confidential information and **should be reprimanded for this breach.**

2. Misconduct re: offensive social media posts. Contrary to section 7.2 of the Code of Conduct.

SUBSTANTIATED

RECOMMENDATIONS

1. We recommend that within 90 days of this report, **Council should receive further and significant Code of Conduct training with respect to members' obligations under the Code. It is important that this training extend to members of committees and local boards who are also subject to the Code.** It is recommended that this training be provided by or approved by the City's current Integrity Commissioner, Cunningham Swan.
 2. Canadian society is based upon a principle of free speech. That does not, however, permit a member of a committee, local board or commission to speak in a manner that is factually inaccurate, inflammatory and not in accordance with their civility obligations under the Code of Conduct. Ms. Van Roon's breach of her obligations in this matter is significant. **It is recommended that this breach be considered by Council in conjunction with the breach in item #1 above and item #3 below.**
 3. That the City adopt a social media policy for Council, members of committee and local boards within 120 days.
3. Subverting Council in regard to purchase of 151 Ontario Avenue and other related matters. Contrary to section 6.2 of the Code of Conduct.

SUBSTANTIATED

RECOMMENDATIONS

1. As indicated above, this is another significant breach of her obligations by Ms. Van Roon. Specifically, she participated with Councillor Patrie in attempting to subvert Council's decision with respect to the purchase of 151 Ontario Avenue by indicating that the purchase of the property breached the *Real Estate and Business Brokers Act* when she knew, or ought to have known that the allegation was untrue. Ms. Van Roon is a practicing Real Estate Agent and should have been familiar with the operation of this statute. It is recommended in the circumstances of all of the breaches by Ms. Van Roon that she **immediately be removed from all committees, commissions or boards of Council and as such is not deserving that she not be considered by Council to fill any vacancies that may appear on Council. Further that**

Council lodge a complaint to the Real Estate Council of Ontario (RECO) regarding Ms. Van Roon's behaviour. [Note: The Integrity Commissioner Protocol for Elliot Lake and the Municipal Act, 2001 indicate that the Integrity Commissioner will suspend an investigation and forward a complaint to the appropriate authorities where it is evident that there is a breach of any act or legislation. This means breaches like criminal conduct or breaches of the Occupational Health and Safety Act. This current situation is a breach of professional ethics for a Real Estate Agent, not a breach of legislation and as such the complaint, if one is made, should be made by, or at the direction of, Council.]

DATED October 25, 2019