



ADR
C H A M B E R S

Integrity Commissioner Office
for the City of Markham

MICHAEL L. MAYNARD
[REDACTED]

March 14, 2019

SENT BY COURIER AND EMAIL TO:

Kimberley Kitteringham, City Clerk
City of Markham
101 Town Centre Boulevard
Markham, Ontario L3R 9W3
[REDACTED]

Dear Ms. Kitteringham,

**Re: Complaint Reference Number IC-35-1118
Councillor Karen Rea**

Appointment of Investigator

Pursuant to an appointment by the City of Markham (the "City"), in accordance with Section 223.1 of the *Municipal Act, 2001*, the undersigned has been retained to inquire into, investigate, and report on a complaint alleging a breach of the City's Code of Conduct ("*Code*" or "*Code of Conduct*"), as described herein (the "Complaint").

The Complaint was forwarded to the Office of the Integrity Commissioner and was assigned for investigation on November 27, 2018.

Investigation Report

Please note:

In order to protect their privacy, third parties have been anonymized in the public version of this report.

The Complaint

The Complaint at issue was made against Councillor Karen Rea ("Councillor Rea") by Mr. Christopher Zeppa, the proprietor of City Park (Town Crier) Homes Inc., (the "Complainant") (collectively, the "Parties").

In his submission, the Complainant alleges that during a brief verbal exchange between the Parties at the Duchess of Markham restaurant (the "Duchess"), Councillor Rea acted without proper decorum by "yelling" and "pointing her finger" at the Complainant, contrary to Section 17 of the *Code*, which states:

17. Conduct of Members

17.1 Members will conduct themselves with appropriate decorum at all times and ensure that their behaviour does not bring the reputation of the City into disrepute.

17.2 Members will be respectful of other Members, Staff and the public and their views and will encourage others to do the same.

The Complainant further alleges that Councillor Rea improperly attempted to have the Complainant charged with a crime by falsely reporting to York Regional Police ("YRP") that the Complainant had threatened her during their exchange at the Duchess. The Complainant claims that this action by Councillor Rea is contrary to Sections 17 (*supra*) and 18 of the *Code*, which states:

18. Harassment & Discrimination

18.1 Harassment of another Member, Staff or any member of the public is prohibited under the Ontario Human Rights Code. 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 of Conduct.

18.2 Members will not engage in workplace discrimination (as defined by the Ontario Human Rights Code), harassment (as defined by the Ontario Human Rights Code and the Ontario Occupational Health and Safety Act), or violence (as defined by the Ontario Occupational Health and Safety Act) when dealing with other Members, Staff, residents or other members of the public.

Investigation

The investigation included: (i) a review of written statements, affidavits, and video evidence; and, (ii) in-person interviews with the involved Parties and their legal representatives. Relevant governing documents and legislation were also considered and reviewed, including the *Code of Conduct*, the *Ontario Human Rights Code*, and the *Occupational Health and Safety Act*, the latter two of which are referenced in Section 18 of the *Code*.

Statements and Evidence of the Complainant

Through the initial filing of the Complaint, affidavit evidence and statements made during the investigation interview, the Complainant set out the following as the basis for his Complaint:

The Complainant, a property developer, owns and operates the corporation called City Park (Town Crier) Homes Inc. Through the purview of his occupation, the Complainant has applied to the City for a variety of development permissions. Due to the Complainant's intent to build on lands with a "heritage" designation, one of the Complainant's applications had been contested by a group of City residents. The proposed development had therefore taken on some measure of political disagreement. Among those opposed was Councillor Rea. Eventually, the applications were approved by City Council, though approval was then appealed by several residents to the Local Planning Appeal Tribunal ("LPAT"). The Complainant has since pursued civil litigation against those residents in opposition, and the City.

On October 27, 2018, shortly after 2:00 p.m., the Complainant attended the Duchess and was accompanied by "Complainant Witness #1" and "Complainant Witness #2". The Complainant was also accompanied by two minors.

Upon entering the Duchess, the Complainant was approached by Councillor Rea, who stated: "Aren't you going to congratulate me? You're stuck with me for a further four years," to which the Complainant responded: "Enjoy it while it lasts." The Complainant asserts that in response to his cordial sentiment, Councillor Rea "[...] became enraged, yell[ed] and point[ed] her finger at [him]", and that "[...] on three separate occasions, [Councillor Rea] walked away and then would return and move towards [him]", all while his group were in the process of seating themselves at their table.

During our interview, the Complainant could not recall every word that was uttered by Councillor Rea. He did, however, recall her yelling: "Don't threaten me" and "I'm going to call the YRP". The Complainant explained that he did not immediately understand the "YRP" acronym to mean "York Regional Police".

Following the altercation at the Duchess, Councillor Rea went to the department of the YRP, located on Main Street in Markham. Councillor Rea filed a complaint

with Police Constable KK ("PC KK"). A copy of the General Occurrence Information ("Police Report") was provided by Councillor Rea's counsel, on request.

According to the Complainant, certain information provided to PC KK by Councillor Rea was false, including as follows:

1. The Complainant denied replying, "That's if you make it for four years," to Councillor Rea's initial comment about winning re-election (*supra at page 3*). In an affidavit, and during the investigation interview, the Complainant stated that he replied: "Enjoy it while it lasts."
2. Though he recalled Councillor Rea accusing him of threatening her, he denied responding: "That's not a threat, that's a promise," as indicated in the Police Report. The Complainant further denies making any statement of any kind relating to the making of a threat or a "promise".
3. In his further affidavit, the Complainant noted an inconsistency between Councillor Rea's written statement to the Integrity Commissioner and the statement in the Police Report. According to the Complainant, Councillor Rea informed PC KK, in the Police Report, that the Complainant allegedly responded to Councillor Rea by stating: "That's not a threat, that's a promise." In contrast to the Police Report, Councillor Rea's written statement to the Integrity Commissioner stated that Complainant's reply was "[...] that he didn't make threats 'only promises'".

The Complainant was contacted by PC KK later on October 27, 2019, who advised him that Councillor Rea had lodged a complaint against him, but that "[...] there was no merit to Councillor Rea's complaint and the matter was closed."

Following the incident, the Complainant noted that he feels his reputation has been injured by Councillor Rea's actions. He stated that it was embarrassing to have Councillor Rea publicly involve him in the scene caused at the Duchess. He continues to assert that Councillor Rea's Police Report is false and that Councillor Rea's act of filing the report to the YRP was vexatious and intended to damage his reputation. Moreover, the Complainant advised that the two minors who accompanied him were emotionally scarred by the incident, and stated that one of the minors has since expressed concern about the Complainant attending meetings or other events where Councillor Rea may be present.

The Complainant pointed out that the Police Report acknowledged that Councillor Rea "[...] clarified that [Councillor Rea] did not feel a genuine threat to her safety, but felt the developer's intimidation tactics were inappropriate and wished for police to explain that to him." This, the Complainant contends, is compelling evidence that Councillor Rea's report to PC KK was made for an

improper purpose and supports his position that the Police Report is defaming and vexatious.

In addition to his own evidence, the Complainant provided affidavit evidence from the aforementioned Complainant Witness #1 and Complainant Witness #2, as well as from another individual "Complainant Witness #3", who knows both the Complainant and Councillor Rea and was present during the incident. Video evidence from the Duchess was also provided as evidence.

Affidavit of Complainant Witness #1

The affidavit of Complainant Witness #1 corroborates the Complainant's version of events. Complainant Witness #1 gave evidence of overhearing the discussion between the Complainant and Councillor Rea. According to Complainant Witness #1, Councillor Rea said: "Aren't you going to congratulate me? You're stuck with me for a further four years," and the Complainant responded: "Enjoy it while it lasts." Complainant Witness #1 stated that Councillor Rea became "enraged" and was "yelling and screaming". Complainant Witness #1 advised that: "[...] Councillor Rea began yelling and pointing her finger, walking away, and then returning and moving towards [the Complainant] and our group on at least three occasions." *Exhibit A* to Complainant Witness #1's affidavit is a copy of an email sent by the Complainant to Complainant Witness #1 on the same day at 2:25 p.m., contemporaneously documenting the exchange. The email, which is copied verbatim, states:

[Complainant Witness #1] for your records.

[Complainant Witness #2, Complainant Witness #1 and the two minors] walked into the dutches pub to say hi to [Complainant Witness #3]. Karen rae was behind [Complainant Witness #3] and walked very quickly to me with a smile on her face and said aren't you going to congratulate me on winning. You | Have me for another 4 years and I said enjoy it while it lasts.

She snapped right away raising her voice and getting aggressive and in my face saying are you threatening me and don't threaten my I'm going to yrp | [Complainant Witness #3] and [Complainant Witness #1] said what did he say to you he didn't say anything like that and she still was jumpping up and down in my face that I threatened her and she was going to go to the yrp! I walked away as I with [the two minors] and she chased me to my table. The restaurant Was full she approached me a second time agressivley waiving her finger yelling at me. I was with [the two minors] and she was chasing me to my table trying to

antagonize Me and I walked away for a third time not engaging her when she realized I would engage

She stormed out.

This is for your records.

Affidavit of Complainant Witness #2

Complainant Witness #2 swore an affidavit giving evidence of personally witnessing the incident in the Duchess. The evidence given by Complainant Witness #2 corroborates the statements of the Complainant (*supra* at page 3).

Affidavit of Complainant Witness #3

Complainant Witness #3 also swore an affidavit giving evidence of personally witnessing the incident in the Duchess. The evidence given by Complainant Witness #3 corroborates the statements of the Complainant (*supra* at page 3).

Video Evidence

The Complainant provided video evidence from the restaurant. One video is a narrow angle shot of the entrance; the other is a wide angle shot of the establishment taken from the back. The Complainant advised that no audio accompanies the videos. The videos appear to show that:

1. The Complainant entered the Duchess with Complainant Witness #1, Complainant Witness #2, and two minors;
2. Complainant Witness #3 approached and shook the Complainant's hand, followed closely behind by Councillor Rea who appears to do the same;
3. Councillor Rea followed the Complainant towards a section with tables, then moved towards the door, then back towards the Complainant's direction twice. Councillor Rea also appears to be enthusiastically pointing her finger in the air, while leaning forward in what could be interpreted as an aggressive posture; and,
4. The wide-angle view shows several other restaurant patrons turning to witness the apparent altercation between Councillor Rea, the Complainant, and the parties accompanying the Complainant. The synchronicity of their movement strongly suggests that the interaction between the Parties had caused a startling disturbance to uninvolved third-parties.

Statements and Evidence of Councillor Rea

Councillor Rea responded to the Complaint with a letter drafted by her counsel, along with affidavit evidence from "Respondent Witness #1" and "Respondent Witness #2". She also provided a copy of the Police Report (*supra* at page 3), a copy of the Statement of Claim filed by the Complainant against the City of Markham and several individuals (noted *supra* at page 3), a Statement of Claim filed by the Complainant against Councillor Rea seeking damages relating to the Duchess incident, and a copy of an email from an unknown sender (name redacted) sent to Councillor Rea and another individual, dated September 15, 2016 (the "September 15 email"). Councillor Rea provided a verbal statement during an in-person interview. After receiving a draft of this report for comment, she subsequently provided a response letter and affidavit.

Councillor Rea explained that the Complainant's development project in Markham is controversial due to its location on lands with a heritage designation. Councillor Rea first met with the Complainant regarding this development in or about September 2015. At the time, Councillor Rea advised the Complainant that she could not support any of his plans, but "[...] could support a more modest proposal that would develop fewer homes and protect the dairy [a heritage building on the site]." Councillor Rea stated that the Complainant was "[...] not interested in compromise; if he did not obtain the approval he was requesting, he would appeal to (what was then) the Ontario Municipal Board."

Councillor Rea took the position that the Complainant is "[...] engaged in an aggressive campaign to secure a construction project [...]". She reported that the Complainant, along with others she deemed to be "his allies", including Complainant Witness #3, engaged in a "[...] campaign to persuade [Councillor] Rea (and other City Councillors) to support the project," further noting that the Complainant was "[...] in constant contact [...]" with Councillor Rea, in an attempt to solicit her support. Councillor Rea pointed out that the Complainant is suing the City, along with several residents who are in opposition to his development plans. Councillor Rea further advised that in a separate action, the Complainant is suing Councillor Rea, which she contends is evidence of his attempts to intimidate those who oppose him.

Councillor Rea stated that the Complainant has a history of engaging in "intimidation tactics", noting that several residents had approached her complaining of such. An email was sent to Councillor Rea on September 15, 2016, wherein the author (identified by Councillor Rea as a resident of the City) accused the Complainant of exchanging "[...] dirty and imposing looks [...]" after leaving a Heritage Committee meeting. The author of the email claimed that the Complainant was "[...] trying to stare us down," and "[...] start something with my husband [...]". The author ultimately expressed discomfort with seeing the Complainant's attendance at public meetings.

Councillor Rea additionally provided a link to a news article detailing a public apology made by the Complainant to the municipal council of another municipality for remarks he made, which were deemed by some to sound threatening. Specifically, according to the article, the Complainant had stated that if his application to convert the zoning of a plot of land to support residential development was not supported, then he would build a commercial property on the land instead. The article states that he later apologized for these remarks during the same meeting. Again, this evidence was provided to support Councillor Rea's contention that the Complainant threatens those who interfere with or oppose his development projects.

On December 12, 2017, the Complainant's development applications were approved by the City's Council, with Councillor Rea among the minority opposed. Several residents then brought an appeal of the decision to the LPAT. On some later (unspecified) date, Complainant Witness #3 approached Councillor Rea to advise that the Complainant was "[...] planning on suing 'everyone'". Shortly thereafter, a Statement of Claim was served on these particular Markham residents and the City of Markham.

Regarding the October 27, 2018 incident at the Duchess, Councillor Rea's response to the Complaint, drafted by her legal counsel, states:

"The facts contained in the letter and affidavits [the Complaint filing] are inaccurate and incomplete. Ms. Rea did not engage in any misconduct. At all times she acted with decorum and treated [the Complainant] with respect. There is no basis to [the Complainant]'s and City Park's allegations."

Councillor Rea set out her perspective on the incident as follows:

On October 27, 2018, having been recently re-elected, Councillor Rea was visiting local businesses, and was speaking with Complainant Witness #3 at the Duchess. She and Complainant Witness #3 engaged in a dialogue in part about the ongoing issues with the Complainant, particularly the litigation launched by the Complainant against the residents opposing his development project. According to Councillor Rea, Complainant Witness #3 advised her that she "[...] needed to 'fix this mess'," and that if she did not "[...] things would get 'really ugly'". Councillor Rea advised Complainant Witness #3 that she was available to discuss the matter if the Complainant wanted to speak with her. Complainant Witness #3 advised her that the Complainant would be attending the Duchess shortly.

Councillor Rea stated that she did not want to see the Complainant at the Duchess, and she was preparing to leave when the Complainant arrived. Shaking the Complainant's hand, Councillor Rea asked the Complainant if he was going to congratulate her on her election win. According to her written

statement, Councillor Rea "[...] light-heartedly noted that she would 'be here [*i.e.*, as a Councillor] for four years". She claims that the Complainant responded: "If you last that long". According to Councillor Rea, this response confused her. She sought clarification. She asked the Complainant if he was threatening her, to which he replied that he "[...] [did] not make threats 'only promises'".

Councillor Rea described feeling "startled" following this exchange. She stated that she told the Complainant not to threaten her again. She denied yelling at the Complainant. She stated: "If you threaten me again, I'm going to the YRP." Councillor Rea advised that the Duchess was noisy at the time of the incident, and she is of the opinion that nobody else could have heard the Complainant say: "If you last that long". She claims the witnesses in support of the Complaint are incorrect, despite them having sworn affidavits in support of the Complainant's version of events.

Councillor Rea stated that when she left the Duchess she felt "[...] disconcerted about [the Complainant's] threat." When she returned home, she contacted Respondent Witness #1 who advised her to file a report with the police. When she called the YRP, she was advised to attend a detachment to make a formal statement, "[...] in case another incident occurred in the future."

Councillor Rea reported feeling "overwhelmed" by the incident at the Duchess, and as such, she called Respondent Witness #2, to request assistance in attending the YRP detachment. Respondent Witness #2 drove Councillor Rea to the Main Street YRP detachment, where she made her report to PC KK and another officer. Respondent Witness #2 was also in attendance during the police interview. While giving her statement to PC KK, Complainant Witness #3 called Councillor Rea on her cellphone. Councillor Rea put Complainant Witness #3 on speakerphone so the police could listen in, though no one advised Complainant Witness #3 that the call was being monitored in this manner. During the call, Complainant Witness #3 again attempted to intervene in the dispute, asking Councillor Rea to "[...] drop her objection to [the Complainant's] building plan in [the City]." Complainant Witness #3 also stated that "[...] there was no actual threat made [...] just a clash with the developer's personality." PC KK advised Councillor Rea that no criminal activity had transpired; that what the Complainant had allegedly said "[...] does not constitute uttering threats". He advised Councillor Rea to document any further direct or indirect interactions with the Complainant, "[...] in the event any further action [...] constitutes harassment." He also informed her that he would contact the Complainant.

Councillor Rea advised that when she arrived at home after leaving the police station, she texted a friend about installing security cameras on her property. She reported during the investigation interview that she did, in fact, feel "physically scared" and worried about possible harm to her.

Several weeks later, the Complainant sued Councillor Rea for defamation and concurrently filed the Complaint with the Office of the Integrity Commissioner. It is

Councillor Rea's contention that the Complainant is using "strategic litigation" to discourage people from dissenting his building project in the City. Councillor Rea further elaborated that she believes that the Complainant views Councillor Rea as an "obstacle" to his goals, an opposition that led the Complainant to seek to intimidate her through his words at the Duchess; through litigation; and through the filing of the Complaint.

Affidavit of Respondent Witness #1

Respondent Witness #1 swore an affidavit giving evidence that Councillor Rea called on October 27, 2018 to report about the incident at the Duchess which transpired shortly before. Respondent Witness #1 advised:

"Although I do not recall the exact words, I remember Ms. Rea telling me that he said she might not survive the entire length of her term. I understood this to be a threat to Ms. Rea's life. I advised Ms. Rea to report this threat to the police."

Respondent Witness #1 reported being of the understanding that Complainant Witness #3 is a friend of the Complainant and "[...] had a history of contacting [Councillor] Rea to solicit her to support [the Complainant's] project." Councillor Rea informed him that Complainant Witness #3 had told her "[...] not to get involved with [the Complainant's] affairs."

Affidavit of Respondent Witness #2

Respondent Witness #2 gave affidavit evidence in support of Councillor Rea's position. Respondent Witness #2 stated that Councillor Rea called to advise that a developer had threatened her. Respondent Witness #2 accompanied Councillor Rea to the police station and stayed with her while she filed a complaint with the police. According to Respondent Witness #2, Councillor Rea seemed "stressed" in both her demeanour and her manner of speaking.

Response of the Complainant

Following receipt of Councillor Rea's response, the Complainant provided verbal statements during an in-person interview and supplemented those statements with a further affidavit sworn on January 21, 2019. He also provided a supplementary affidavit of Complainant Witness #3 sworn on January 11, 2019.

In his further affidavit, the Complainant denied Councillor Rea's allegation that he said he "[...] did not make threats 'only promises'". Specifically, he denied "[...] making any such Promise Statement." He also noted the discrepancy between this version of the alleged statement and the version recorded in the Police

Report, which stated: "That's not a threat. That's a promise." He likewise denied making this statement.

The Complainant questioned Councillor Rea's intent in going to the YRP, noting that according to the Police Report, she told PC KK she "[...] did not feel a genuine threat to her safety, but felt the developer's intimidation tactics were inappropriate and wished for police to explain that to him." The Complainant believes that Councillor Rea's actions denote an "[...] agenda against [him]," and that she "[...] uses her power within the City of Markham to try to meddle in any of the issues that [he] bring[s] on behalf of [his] corporation before the City of Markham." To that end, the Complainant pointed out that City Council met on November 27, 2019 to deal with a demolition permit application for the City Park development. According to the meeting minutes, Councillor Rea did not declare a pecuniary interest, and, in the Complainant's view, she ought to have done so because of this investigation. It should be noted that the issue of Conflict of Interest raised by the Complainant at this juncture is not part of this investigation.

The Complainant also strongly disagreed with the September 15, 2016 email from a City resident which accused him of exchanging "dirty and imposing looks" (*supra* at page 7).

In the supplementary affidavit sworn by Complainant Witness #3, the witness claimed to be a neutral person who has both agreed and disagreed with Councillor Rea on various matters in the past. Complainant Witness #3 denied telling Councillor Rea that things would get "really ugly", contrary to Councillor Rea's statement (*supra* at page 8), due to a belief that "[...] this matter has proceeded to such an extent that it is a mess and it is ugly." Complainant Witness #3 reiterated previous evidence that the Complainant did not say "If you last that long," and instead said "Enjoy it while it lasts." Complainant Witness #3 noted an inability to recall whether the Complainant stated that he "only makes promises" but stated that he was "[...] at all times cordial and polite." Complainant Witness #3 "[...] did not find [the Complainant's] demeanour or words to be threatening in any way."

Complainant Witness #3 also disagreed with Respondent Witness #1's statement claiming that Complainant Witness #3 is involved in a dispute with Councillor Rea, professing instead to have a good working relationship with her.

Lastly, Complainant Witness #3 disagreed with the statements of Respondent Witness #2 by denying contacting Councillor Rea as an "agent" of the Complainant. Rather, Complainant Witness #3 claimed to do so due to feeling "[...] disappointed by her conduct particularly because [Complainant Witness #3] had encouraged her to resolve the issue earlier that day."

Further Response of Councillor Rea

After receiving a copy of the video evidence and the further affidavit of the Complainant (sworn January 21, 2019), Councillor Rea issued a supplementary response through her counsel dated February 13, 2019. It is Councillor Rea's position that the video evidence supports her version of events, noting that the discussion between the Parties appears to last approximately 15 seconds, that it does not demonstrate Councillor Rea being "enraged" (as alleged), or that she returned to the Complainant three times having previously walked away.

Councillor Rea disagreed with the Complainant's contention that she made an improper report to the YRP. She noted that the Supreme Court of Canada in *R. vs. McRae*, 2013 SCC 68 at para 13, held "[...] that the criminal charge of uttering threats can be made out regardless of whether the recipient of the threat was intimidated by it or took it seriously." She argued that she had a good faith basis to visit the YRP, chief among them that she felt the Complainant had said something threatening and intimidating, and moreover, that the YRP advised her to attend and file a report when she called them with her concerns.

Lastly, Councillor Rea argued there is no relevance to the Complainant's statement regarding her attendance and participation in the November 27, 2018 Council meeting. She expressed that since she has no financial interest in the City Park development, it is unclear as to why she should have to declare a pecuniary interest, as argued by the Complainant. It is again noted that the issue of whether a pecuniary interest ought to have been declared is not part of the Complaint and is not being investigated.

The Code and Supporting Legislation

The Complainant claims that the alleged actions by Councillor Rea are in violation of Sections 17 and 18 of the *Code* (*supra* at page 2).

Section 17 deals with decorum and respect towards others, both of which are common terms with straightforward meaning.

Section 18 deals with harassment and discrimination. The definition section of the *Code* defines harassment as: "[...] includ[ing], but [...] not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted."

Specific reference in Section 18 is also made to "[...] harassment (as defined by the *Ontario Human Rights Code* and the *Ontario Occupational Health and Safety Act*." The definition of "harassment" under each piece of legislation must be examined to bring appropriate context to this section of the *Code* and whether or how it relates to the content of the Complaint against Councillor Rea.

Ontario Human Rights Code

The *Ontario Human Rights Code*, R.S.O. 1990, c H. 19, defines harassment as:

"[...] engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

Where harassment is considered in the legislation, it appears under the section on Freedom from Discrimination, specifically as it relates to Harassment in Accommodation, Harassment in Employment, and Sexual Harassment and Harassment because of Sex (whether in accommodation or employment).

Protected grounds guarantee the right to be free from discrimination because of *race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability*.

Occupational Health and Safety Act

The *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 deals with harassment in the workplace and sexual harassment in the workplace, which are defined respectively as:

[...] engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome

and

[...] Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or

[...] making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

Analysis

The questions to be answered in this investigation are as follows:

1. Did Councillor Rea's conduct at the Duchess contravene Section 17 of the *Code*?
2. Did Councillor Rea's complaint filed with YRP regarding the incident at the Duchess contravene Section 17 of the *Code*?
3. Did Councillor Rea's complaint filed with YRP regarding the incident at the Duchess contravene Section 18 of the *Code*?

Councillor Rea's Conduct at the Duchess and Section 17

In the Police Report, PC KK concludes that it "[...] appears there are two conflicting stories." Those two conflicting stories are what now appear before the Office of the Integrity Commissioner. As ever, the truth of a "he said / she said" scenario is difficult to determine. And though it is not possible to recreate events or discussions, evidence from each side has been provided and must be weighted according to its quality.

The Complainant has provided affidavit evidence from himself and from three witnesses who personally observed the Duchess incident. He has additionally provided video evidence in support of his claims. His evidence across all forms is consistent. All parties in support of the Complaint state that Councillor Rea was "yelling" and moved towards the Complainant on three occasions while pointing her finger at him. Despite Councillor Rea's argument to the contrary, I find the video evidence supports the Complainant's claims. In the video, Councillor Rea can be seen taking steps in the direction the Complainant, then heading back towards the door. She then stops, turns, and steps back towards the Complainant and his group, leaning forward, and shaking her finger in his direction, as described. Turning back towards the door, she then turns again and steps towards the Complainant and his group, finger raised, before turning back to the door one final time and exiting the premises. Other patrons in the Duchess can be seen turning abruptly in the direction of the incident as this plays out, despite being several tables away in what was described by Councillor Rea as a "noisy bar".

Councillor Rea provided written and verbal statements, a Police Report, and two affidavits from third parties who were not present at the Duchess during the incident in question. She subsequently provided an affidavit of her own. Councillor Rea denied the Complainant's allegations during the investigation interview. She rejected the Complainant's version of events and maintained that: "At all times she acted with decorum and treated [the Complainant] with respect. There is no basis to [the Complainant's] allegations."

The evidence of Respondent Witness #1 and Respondent Witness #2 amounts to hearsay, in so far as they discuss the events at the Duchess (though not in respect of their observations regarding Councillor Rea's demeanour thereafter). Both are swearing to what Councillor Rea told them transpired at the Duchess,

not what they witnessed for themselves. While hearsay is not inadmissible in this process, I am weighing the evidence of these third-parties with respect to the events at the Duchess accordingly.

My attention is also drawn to the apparent discrepancy between the information appearing in the Police Report, (which also constitutes hearsay evidence) and Councillor Rea's statements (both verbally and in writing), which were made as part of this investigative process. Where Councillor Rea has stated that she felt fearful following her exchange with the Complainant, the Police Report notes that she "[...] did not feel a genuine threat to her safety, but felt the developer's intimidation tactics were inappropriate and wished for police to explain that to him." Councillor Rea disputed this characterization of her comments to PC KK, and denied they were an accurate reflection of her state of mind at the time. This discrepancy raises some concern about the credibility of Councillor Rea's position. However, I note again that Councillor Rea stated during the investigation interview that she was feeling fearful during and after the exchange at the Duchess. She has since sworn an affidavit attesting to the fact that she was genuinely concerned for her safety and has subsequently taken steps to increase her personal security, the details of which are intentionally omitted from this report.

While I will accept and acknowledge that Councillor Rea may have felt uneasy in the circumstances, I find that the incident at the Duchess, more specifically the exchange of dialogue between the Complainant and Councillor Rea, did not justify Councillor Rea's actions.

Based on the aggregate of evidence presented by the Parties, I am inclined to believe that Councillor Rea did not act with proper decorum, and that she demonstrated disrespectful behaviour towards the Complainant and his companions in a public setting. I am persuaded by the evidence in support of the Complainant's position that he did not threaten Councillor Rea, irrespective of whether she perceived his words as such. Councillor Rea's lack of appropriate decorum publicly brought negative attention to the Complainant and his group, which included two minors. I find that Councillor Rea's display of actions in the Duchess contravene Section 17 of the *Code*.

The Police Complaint and Section 17

Councillor Rea advised that she called police on October 27, 2018, following a discussion she had with Respondent Witness #1 after arriving home from the Duchess. She expressed a genuine concern that the Complainant had threatened her. She shared this concern contemporaneously with Respondent Witness #1 and Respondent Witness #2. On the advice of the YRP, Councillor Rea then attended the police station to give a formal statement. Councillor Rea takes the position that she had *bona fide* reasons for calling the police and attempting to have the Complainant charged. This is challenged somewhat by her own statement, as recorded by PC KK, that she "[...] did not feel a genuine

threat to her safety". She strongly advised otherwise during her investigation interview. Councillor Rea has been consistent in expressing her belief that the Complainant engages in intimidation tactics and, most significantly, had done so with her in the Duchess. This, in her view, warranted a call to the police.

Whether the YRP determined a criminal offence was committed is not relevant to the question of whether Councillor Rea had a *bona fide* reason for calling the YRP in the first place.

I am in no position to disbelieve that Councillor Rea had perceived attempts to intimidate her. While there appears to be some inconsistency in Councillor Rea's account of, and rationale for, contacting the police, I do not find that doing so was inappropriate.

The Police Complaint and Section 18

Section 18 of the *Code* deals with harassment, which is defined within the *Code* as "[...] includ[ing], but [...] not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted." The Section specifically references two pieces of Ontario legislation in further refining what is meant by "harassment", namely, the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*. I read the intent of this Section of the *Code* as primarily prohibiting harassment on the basis of certain enumerated human rights grounds (*supra* at pages 12-13), though it is clear it also contemplates any conduct that is "vexatious" or "unwanted".

As I did not find that Councillor Rea reported the incident to the YRP improperly or contrary to Section 17 of the *Code*, it therefore follows that I cannot find this action to be vexatious. It also clearly does not fit under the enumerated grounds of discrimination contemplated by the legislation. As such, I do not find Councillor Rea to be in violation of Section 18 of the *Code*.

Addendum

The Parties were provided with a draft of this investigation report on February 15, 2019 and were given an opportunity to provide comment.

On February 20, 2019, Councillor Rea's counsel responded with a letter and an affidavit sworn by Councillor Rea on February 19, 2019.

On February 22, 2019, the Complainant's counsel provided a letter and an affidavit sworn by the Complainant that same day, offered in response to Councillor Rea's submissions.

As a result of the Parties' responses, I have amended certain language within this investigation report for the purpose of providing clarity to the findings, though

the initial conclusions are not altered. The attached addendum deals with the issues raised in the Parties' responses to the draft report.

As also noted above, this final report also differs from the draft reviewed by the parties in that it has been anonymized to protect the identity and privacy of third parties.

Conclusion

Pursuant to the foregoing, I find Councillor Karen Rea to be in contravention of Section 17 of the *Code of the Conduct*, as it relates to her actions at the Duchess of Markham.

Conversely, I do not find Councillor Rea to be in violation of either Section 17 or 18 of the *Code* as it relates to her contacting and reporting the incident to York Regional Police.

It is my recommendation that Markham City Council issue a reprimand to Councillor Rea for her conduct at the Duchess of Markham.

All of which is respectfully submitted.

Yours truly,
ADR CHAMBERS INC.

A handwritten signature in black ink, appearing to read "Michael L. Maynard". The signature is fluid and cursive, with a horizontal line at the end.

Michael L. Maynard
Office of the Integrity Commissioner