

Report IC2023 - 01
to the Council of the Township of Wilmot
in relation to an investigation under the
Code of Conduct for Members of Council related to
Council Code of Conduct Inquiry 2023-01

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Robert J. Williams, Ph.D.
Integrity Commissioner
Township of Wilmot
March 20, 2024

Summary

1. Report IC2023-01 of the Township of Wilmot Integrity Commissioner dated March 20, 2024 advises Wilmot Township Council that an investigation under the Township of Wilmot's Code of Conduct for Council as a result of an application for an investigation (Code Inquiry 2023-01) concludes that a contravention has occurred.

A. Context

2. Amendments to the *Municipal Act, 2001* passed in 2006 added a new part to the Act entitled "Accountability and Transparency" which authorized municipalities to establish codes of conduct for members of the council and to appoint an Integrity Commissioner. The Township of Wilmot adopted a Code of Conduct for Elected Officials (the Code) on November 19, 2007. At the time this inquiry was begun, that Code had not been amended.

3. The Township of Wilmot retained me in January 2014 to serve as its Integrity Commissioner under the terms of what are now section 223.3 of the Ontario *Municipal Act, 2001*. Under that section, the Integrity Commissioner is responsible for performing in an independent manner the functions assigned by the municipality including "the application of the code of conduct for members of council" and "the application of any procedures, rules and policies of the municipality ... governing the ethical behaviour of members of council." The Integrity Commissioner is also authorized to carry out an inquiry concerning alleged contraventions by a member of council of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. An inquiry under the *MClA* would follow separately-defined procedures set out in the *Municipal Act, 2001*, as revised in 2017

4. In October 2023, the Township issued RFP 2023-05 seeking applications for Integrity Commissioner Services. After careful consideration, I informed the Township Mayor, Chief Administrative Officer and Clerk that I would not submit an application in response to the RFP. On November 20, 2023, the contract for Integrity Commissioner Services was awarded to ADR Chambers Inc. of Toronto. However, since I had already provided advice separately to members of the public, the Applicant and the Respondent on the matters eventually addressed in the present investigation, I was authorized to complete the inquiry addressed in this report.

B. The Request for an Inquiry

5. A resident of Wilmot Township (the Appellant) filed a request for an inquiry in accordance with the proper procedure for the submission of a formal complaint under the Township of Wilmot Code of Conduct for Elected Officials. In response to such a request, it is the responsibility of the Integrity Commissioner (s. 223.3 (1) of the *Municipal Act, 2001*) to apply the Code to determine whether a member has contravened the Code and, if so, to report that finding to Council. In that event, a penalty may be imposed on the member of council based on the Integrity Commissioner's finding.

In this case, a submission by the Appellant alleges that the behaviour of Ward 4 Councillor Lillianne Dunstall (the Respondent) contravened several provisions of the Code of Conduct for Elected Officials in relation to an initiative that she herself proposed to consider the participation of the Township of Wilmot in 2024 Canada Day celebrations in New Hamburg (the Motion).¹

6. The Appellant submits that Councillor Dunstall's statements to Council and the media, presentations and actions in relation to what became the 2024 Canada Day Event Task Force "fail to uphold and promote the municipality's integrity and values grounded in decorum, accountability and transparency." The Appellant frames the request broadly around the following points that will be examined in detail below:

- The Motion includes false statements that are "unfounded and unsupported by corroborating evidence" that were used to back up her assertion that the Township of Wilmot had "organized, managed, and promoted a Canada Day event" in the past.
- During the September 25, 2023, Councillor Dunstall made what the Appellant calls unfounded allegations in the council chambers in support of the Canada Day 2024 initiative that are "baseless" and "misleading", including "unsubstantiated" claims regarding participants in previous events, "financial wrongdoing" and "arbitrary decision-making."
- During her presentation on July 24, 2023, Councillor Dunstall stated that some service clubs and community organizations in the Township would be able to generate funding through a Township-run Canada Day event. One of the organizations that would be expected to benefit from the arrangement is the New Hamburg Board of Trade; Councillor Dunstall is a member of the New Hamburg Board of Trade executive and a member of other organizations that would be "at the table" as a result of this initiative.

7. The submission I received was complex and detailed but not organized in a way that could be applied directly to specific legally enforceable obligations set out in the Code. Two of the three grounds cited on the application for an investigation are a confusing mixture of partial or

¹ The text of the Motion is found in Appendix A.

selective phrases drawn from separate parts of the Code that are treated as if they constitute substantive rules for members of Council to follow. As submitted, they do not.

A number of requests for an inquiry filed during the term of the previous Council were similarly hampered by the format and terminology found in the Code which is now under revision to address these limitations. Nevertheless, the seriousness of the specific contentions and the overall themes convinced me that there are “reasonable and probable grounds for the allegation” (in the language of the mandatory affidavit submitted with the application) and that the application should not be simply turned down because of the way it was written.² I have conferred with the Appellant in an attempt to align the submission with the provisions of the Code and I am basing this report on grounds understood by both the Appellant and the Respondent.

8. I spoke with the Appellant and Councillor Dunstall by telephone on more than one occasion to clarify some of the matters raised in the submission and to gather evidence that each relied on. I shared a summary of the submission and the allegations with Councillor Dunstall and requested that she provide me with a written response to assist me in preparing this report. I viewed the video record of Council meetings on July 24, August 28, September 25 and October 16, 2023 to help me identify and understand what the Appellant described in those meetings. In addition, I have conferred with Township staff about the 2024 Canada Day Event Task Force and earlier Canada Day activities in the Township and provided an opportunity to the Appellant and Councillor Dunstall to review the penultimate draft of this report (see paragraph 12).

9. Inquiry IC-2023-01 is based on Councillor Dunstall’s role in the initiation of and approval by Wilmot Council of the 2024 Wilmot Canada Day Event Task Force (the Task Force). Holding a “Canada Day Event” itself is not at issue and its positive value to the Wilmot community will be taken for granted in this inquiry. However, much of the evidence provided to me centres on differing – indeed in places contradictory - interpretations of the history of previous Canada Day events over the last decade and longer and the implications of that history for a new approach to the event in 2024.

The material I have reviewed suggests that Wilmot residents had – and may still have – different understandings of the organization and presentation of recent Canada Day events in New Hamburg. However, my jurisdiction does not include investigating or making any findings on the actions of what will be referred to as “the current Canada Day committee” or its

² To be clear, the signed affidavit accompanying the request is made for the purpose of requesting that a matter be reviewed “and for no other purpose.” It is submitted to confirm the identity of the individual or organization who has “reasonable and probable grounds to believe that a contravention has occurred as set out in Schedule ‘A.’ The Integrity Commissioner’s inquiry will determine whether or not the grounds submitted support the applicant’s belief.

predecessors nor any role played by local organizations in relation to previous Canada Day events. This Inquiry addresses allegations filed against Councillor Dunstall – and only Councillor Dunstall – in 2023.

10. In conjunction with the request for an investigation, the Appellant submitted a lengthy supporting document that provided factual evidence, much of which I have been able to corroborate or supplement through independent research. At the same time, the supporting document makes assertions about the Respondent's words and actions that go beyond what is verifiable, frequently attributing to the Respondent intent or motivation that are not open to the same sort of evidential test; these allegations will not play a part in this inquiry. Nor will allegations in the submission that fall outside the legislated authority of the Integrity Commissioner as grounds for an inquiry under the *Municipal Act, 2001* or the Code of Conduct for Elected Officials.

11. The *Municipal Act, 2001* (s.223.6 (2)) directs that an Integrity Commissioner shall only disclose "such matters as in the Commissioner's opinion are necessary for the purposes of the report." In keeping with the responsibility of the Integrity Commissioner to respect confidentiality during the conduct of an inquiry, I will continue to hold the name of the Appellant in confidence in this report.

For the same reasons and under the same authority, I have not disclosed the identity of some of the sources whose written words and recollections I cite in this report, despite being questioned about their relevance or credibility in the course of the inquiry. These are not anonymous sources but, in my judgment, provide acceptable and credible evidence to use in the examination of the Applicant's allegations.

C. The Five Allegations

12. The allegations included in the submission will be organized around five issues that were identified in consultation with the Applicant.

In paragraphs 14-15, 18-19, 22–25, 29-34 and 37-38 the evidence submitted by the Appellant and by the Respondent is summarized in relation to the five issues. To be clear, the perspectives of the Appellant are drawn from a number of documents submitted with the formal complaint and others submitted during my research while Councillor Dunstall's evidence was submitted to me in response to an information request emailed to her early in my investigation. I spoke more than once to each party by phone about the evidence provided and have also conducted my own research to supplement these submissions where I deemed it necessary and/or appropriate.

A draft of this report was sent to the Appellant and Councillor Dunstall as required under policy with the additional notation that I was prepared to consider corrections to factual

information in the report before it is placed on the Council agenda and that I would amend factual errors in the document if necessary. While there were errors of fact noted in their responses that I have corrected in this version, the two parties to this inquiry used the opportunity to make fresh allegations and to dispute the analysis, the conclusions and the recommendations found in the following pages. They are certainly free to question my approach to the issues and their submissions have encouraged me to re-examine some earlier conclusions, but my offer was not an invitation to undertake a new analysis.

I. Making False Statements in the Motion

13. Making False Statements in the Motion: Grounds for an Inquiry

The Appellant submits that the premise of the Motion and the characterization of the Township's role in previous Canada Day events are false and mislead Council and the public about the need for the initiative, both contrary to the statement of principle in the Code that members of council are "responsible for making honest statements." Although the Motion asserts that "WHEREAS for past Canada Day events, Township staff worked with community groups and individuals to plan and host a variety of activities on July 1st annually to celebrate Canada Day" [emphasis added], the Appellant believes that this characterization is erroneous. The Appellant maintains that the Township's role has been limited to serving as an in-kind sponsor and ensuring regulatory compliance for what has been a volunteer-led Canada Day event in New Hamburg.

14. Making False Statements in the Motion: Evidence

The statement at the centre of this inquiry is unequivocal and is quoted above. To support this allegation, the Appellant provided a reference to statements in the FAQ section of the "Canada Day in Wilmot" website that was first indexed by Google in April 2018.³ The information posted there in response to the question "Is Canada Day in Wilmot organized and run by the Corporation of the Township of Wilmot?" reads "Canada Day in Wilmot, a not-for-profit event, is organized and run by a volunteer association of local community members" and "The Corporation of the Township of Wilmot sponsors snacks (Cakes or Cookies) for attendees and provides in-kind facility usage as per the Wilmot Arts & Culture Master Plan and Parks, Facilities, and Recreation Services Master Plan." [underlining in the original] As will be seen, the date associated with this information is important since it follows the change in the direction of Canada Day activities in 2017 and reflects the way the "Canada Day in Wilmot" committee ran the event, not necessarily how it was run before that date.

The Applicant provided links to some media reports about the event that make no reference to a Township role in organizing or funding "a 34-year tradition of fireworks and family activities." For example, a report published in the *New Hamburg Independent* (June 28, 2016)

³ <https://www.canadadayinwilmot.com/>

indicates that “The event is funded by a mix of service clubs, local businesses, and free-will donations on the day.”⁴ An article a year later (July 7, 2017) also refers to the event relying on “gate donations”⁵

When Staff Report COR-2023-66 (“2024 Wilmot Canada Day Event Task Force Terms of Reference”) was placed before Council on October 16, the report’s author, Clerk Jeff Bunn, stated that this is “the first year” that Wilmot “will be looking at coordinating this as the Township itself....”

This evidence supports the perspective of the Appellant that the Township has not planned or hosted a Canada Day event, thus demonstrating that Councillor Dunstall’s motion is based on false and misleading statements.

15. However, other media reports provided by Councillor Dunstall in reference to the cancellation of the event in 2021 (see paragraph 23) leave the opposite impression: that is, the event was being run by the Township and that the cancellation was “a Township-initiated decision.”⁶ A Canadian Press report begins with the statement that “A township in Waterloo Region says it has decided to cancel Canada Day festivities this year”⁷ The fact that the chair of the committee at that time was a sitting member of Council adds to this impression, even though there is a reference to the “Canada Day in Wilmot Committee”, a distinction that is accurate but unlikely to be grasped by most readers of the press report.

I undertook to follow up on one of the Councillor Dunstall’s submissions and have learned directly from a long-time resident who served on a Canada Day committee and a long-serving Township staff member that there was a Canada Day Committee as far back as 2004 and that, moreover, prior to 2017, Township staff served on it along with representatives of organizations and clubs based in New Hamburg such as the Board of Trade, Lions, Optimists and Legion. Specifically, for several years two Township managers attended monthly meetings of the Committee, typically one per month from January to June every year and played an active role in carrying out some responsibilities for organizing the event.

⁴ https://www.newhamburgindependent.ca/news/more-donations-needed-if-new-hamburgs-canada-day-will-survive/article_c9eaac05-5035-552a-88b5-a70698d54fd5.html

⁵ https://www.newhamburgindependent.ca/news/donations-down-for-canada-day-festivities/article_deaa7002-2254-5b85-b87d-125c734ac8a8.html?

⁶ CTV Kitchener, “Wilmot Township committee cancels this year's Canada Day celebrations,” June 14, 2021

<https://kitchener.ctvnews.ca/wilmot-township-committee-cancels-this-year-s-canada-day-celebrations-1.5469561>

⁷ “Wilmot Township, west of Kitchener, cancels Canada Day festivities,”

<https://toronto.citynews.ca/2021/06/14/wilmot-township-west-of-kitchener-cancels-canada-day-festivities/>

This subsequent research supports the statement made in the Motion by Councillor Dunstall that Township staff worked with community groups and individuals to plan and host a variety of activities through a Canada Day Committee, albeit prior to 2017. As will be discussed below, one of the contributing factors to this inquiry is that there was a change in the organizational arrangements following the emergence of new leadership for the event (see paragraph 22) but, to repeat, the role of the Integrity Commissioner is not to probe into or to evaluate these matters except where they have a bearing on allegations submitted for this inquiry (paragraph 9).

16. Making False Statements in the Motion and the Code of Conduct

The Appellant bases this allegation on language found in the Statement of Principles of the Code of Conduct for Elected Officials: “Members of Council are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council members or the public.”

As discussed in Reports IC2021-04, IC2021-05 and IC2021-06, the statement of principle found in the Code creates no legally enforceable obligations and therefore cannot be applied to evaluate specific allegations made by the Appellant. As noted in Report IC2021-06, under what may be called the ordinary principles of statutory interpretation, a statement of principle does not create a clear enforceable obligation.⁸ Rather, it establishes a framework for expected behavior and decision-making that may be used to interpret substantive obligations that are found elsewhere in the Code that can be applied to the behaviour of an individual Member.

My reading of the Motion indicates that only one section of the Motion itself is at issue: “WHEREAS for past Canada Day events, Township staff worked with community groups and individuals to plan and host a variety of activities on July 1st annually to celebrate Canada Day.”

Evidence presented in this report (paragraph 15) indicates that the statement is not actually a misrepresentation since there had been involvement in Canada Day events, albeit before 2017.

The language found in the Motion does not constitute a breach of the Code of Conduct for Elected Officials.

II. Making False Statements in Support of the Motion

17. Making False Statements in Support of the Motion: Grounds for an Inquiry

The Appellant submits that uncorroborated assertions found in the text of the Motion (paragraph 14) were repeated orally in the Respondent’s remarks to Council about the Motion and in response to the subsequent staff report. Furthermore, these some assertions are repeated

⁸ See, for example, Township of Madawaska Valley Integrity Commissioner File 2016 - 03, August 9, 2018.

in media reports. As in the previous section, the Appellant considers these “uncorroborated assertions” a breach of the Code of Conduct for Elected Officials.

18. Making False Statements in Support of the Motion: Evidence

The Appellant’s request refers to Councillor Dunstall’s goal of bringing the celebration back “under the township umbrella” but that no corroborating evidence was presented “to support up her assertion that the Township of Wilmot had organized, managed, and promoted a Canada Day event in the past” (see paragraph 8). While the motion states that Township staff worked with community groups and individuals planning and hosting previous Canada day events, the video recording of that meeting (July 24, 2023 beginning at 3:54:55) does not include a statement from Councillor Dunstall that matches the alleged assertion.

The Appellant also drew attention to correspondence submitted to Council which was noted by the Mayor ahead of its consideration of the Motion and which is included in the August 28, 2023 Council minutes.⁹ The two letters argue that Councillor Dunstall misrepresented the Township’s role in the organization of the Canada Day activities and that the Motion gives direction to the Township “to commandeer control of the organization and management of this specific volunteer-run single day family event” without the participation or consent of current or past Canada Day in Wilmot volunteer organizers. Since neither letter was referred to during Council deliberations on the Motion or when subsequent staff reports were on Council’s agenda, the Appellant contends that Council made its decision without reference to available evidence contrary to the “uncorroborated assertions” presented by Councillor Dunstall.

19. As discussed in paragraph 8, Councillor Dunstall was given a summary of the allegations submitted by the Appellant and was asked to respond. She freely acknowledged that her wording (bringing the celebration back “under the township umbrella”) was “perhaps a poor choice to describe a committee that included the service clubs and businesses.” She added that she made the statement “in the spirit that this used to be a full Community event prior to June 2021” and “from my perspective this was truly a Township/Community event. There was no intent to mislead but state this event used to be a Township Community event.”

20. Making False Statements in Support of the Motion and the Code of Conduct

This allegation is also advanced on the same basis as in relation to the previous one, namely that statements made during Council deliberations and in the media are in contravention of the Statement of Principles of the Code of Conduct for Elected Officials related to making false and misleading statements.

⁹ <https://pub-wilmot.escribemeetings.com/Meeting.aspx?Id=ebfc6405-a7c9-4047-badb-eda255d44a26&Agenda=Agenda&lang=English&Item=24&Tab=attachments> [Agenda items 13.2 and 13.4.]

As noted in paragraph 16, the statement of principle does not create a clear enforceable obligation. Councillor Dunstall acknowledged (paragraph 19) that she had made a “poor choice” of words to describe way previous events had been organized.

Although correspondence was received by Council that suggested that Councillor Dunstall misrepresented the way previous Canada Day events were organized, it was not discussed during the meeting. Such correspondence is routinely forwarded to all members of Council ahead of the meeting and Councillors are invited to pull items from the agenda for discussion. In this case, Council would have been aware of the correspondence but no one pulled it from the agenda. I do not believe that Council’s handling of the correspondence can be construed as making a decision without reference to that evidence or as an endorsement of Councillor Dunstall’s remarks.

In my assessment the available evidence demonstrates that statements made in support of the Motion by Councillor Dunstall do not constitute a breach of the Code of Conduct for Elected Officials.

III. Making False Statements of Exclusion

21. Making False Allegations of Exclusion: Grounds for an Inquiry

One of the key justifications Councillor Dunstall presented to Council and the community in support of this initiative is that “local New Hamburg community organizations were being excluded from participating in the organizing of the Canada Day Celebration, as they had done previously for years.” (*Wilmot-Tavistock Gazette*, October 5, 2023) Although the Motion itself does not refer to what organizations or individuals might participate in planning the 2024 Canada Day event, Councillor Dunstall has identified the Optimists, Legion and Board of Trade as organizations that fall into the group “excluded” from participation.

As noted just above, one goal of the motion was to “re-instate past Canada Day Committee members, the township, service clubs and organizations back to the table” since, in Councillor Dunstall’s own words, it appeared “that up until 2021 the Clubs being excluded had been part of the Canada Day Celebration Organizing Committee, along with the Township.”

The Appellant particularly objects to the terminology used several times by Councillor Dunstall (“excluded” from participation) as a misrepresentation of what led to the composition of the current Canada Day committee, as will be discussed next.

22. Making False Allegations of Exclusion: Evidence

The Appellant submits that in 2016, when Tina Broda, the Canada Day committee chair, stepped down, “not one service club, organization or affiliated member” volunteered to lead the event and by the end of 2018, the final representative affiliated with the service clubs had stopped attending meetings of the committee. The Appellant’s submission asserts that “despite email invitations to subsequent meetings in 2018, none of the Optimist Club executive or other

club representatives attended any meetings from this point forward” and the Canada Day event has been planned and organized since then by “a volunteer association of community members” not by service clubs and organizations. The Appellant’s understanding of the recent history of the Canada Day committee is straightforward: “Choosing not to participate is not the equivalent of exclusion.”

23. Councillor Dunstall submitted correspondence from representatives of three local organizations in her response to me that make explicit references to being “excluded” from the 2021 decision by Angie Hallman¹⁰ to cancel the Canada Day event in response to the discovery, announced a few days before, of the remains of 215 children at the site of a former residential school in British Columbia. The cancellation was described by CBC News¹¹ as a way “to support reconciliation with Indigenous people.” The same report states “Hallman says the decision was made after consulting with members of the Indigenous community in Wilmot township.”

Implicit in the correspondence from the organizations that I have seen is their assumption that they were still part of the Canada Day committee by virtue of their participation on the day of the event but that they were “excluded” from the 2021 decision to cancel the event and were surprised that they heard about it through the media. In one instance, a club representative supported the decision itself but not the way it was made (“unilaterally”) and by the way it was communicated to the community.

24. One outcome of this situation was that in August of 2021 a meeting was called of various New Hamburg community organizations that considered themselves “traditional organizational participants” in the Canada Day event. Among the concerns raised at that meeting was the fact that community organizations that had previously participated in the Canada Day Committee were no longer being included in the decision making (see paragraph 23). One of those present at the meeting agreed to follow-up with Angie Hallman on behalf of the organizations “to determine what (if any) plans are in place for Canada Day moving forward.” Correspondence submitted by Councillor Dunstall appears to indicate that the approach was not well-received and that these groups were not, to my knowledge, involved in organizing the 2022 or 2023 event.

25. Township Report CS 2023-19 (September 25, 2023), prepared to inform Council about the level of community interest in hosting a Canada Day event among “local organizations, groups and stakeholders” notes that, based on initial outreach, several groups “expressed a strong

¹⁰ Angie Hallman took on the role of chair of the Canada Day in Wilmot committee in 2017 and in 2018 was elected a member of Township Council.

¹¹ CBC News KW, “Wilmot's Canada Day committee cancels July 1st celebrations,”

June 15, 2021, <https://www.cbc.ca/news/canada/kitchener-waterloo/cancel-canada-day-celebrations-wilmot-2021-1.6065125>

interest to participate in organizing the events and/or noted their support in the Township hosting the Canada Day events. Many of the groups had previous participation in organizing Canada Day events.” The “current Canada Day committee,” however, is not listed among the groups invited to provide feedback but staff planned to reach out “with furthering participation opportunities as future plans are developed.” It was only after the agenda package for the October 16 Council meeting was made public that “Senior Township staff met with volunteers involved with the current Canada Day event to ask for their input into future Canada Day events.” I understand that it was the volunteers who initiated the meeting.

26. Making False Allegations of Exclusion and the Code of Conduct

This allegation is also advanced on the basis that statements made during Council deliberations and in the media are in contravention of the Statement of Principles of the Code of Conduct for Elected Officials related to making false and misleading statements. Despite this limitation, there is an important component of this inquiry raised under this heading that requires comment.

As noted, the Appellant strenuously objected to the claim made by Councillor Dunstall that local organizations had been “excluded” from participating in the Canada Day committee. The Appellant’s assertion, backed up by plausible evidence that “choosing not to participate is not the equivalent of exclusion” is compelling. At the same time, information presented to me by Councillor Dunstall indicates that some organizations that had played a role in organizing the event were unaware that they were no longer considered part of the Canada Day committee. Why they understood this to be the case and how their attempts to resolve the situation were addressed are not within my mandate, but the fact that many members of these local organizations held this perception is relevant.

27. Given that Councillor Dunstall has close ties to some of these “excluded” organizations (to be discussed below), the interpretation she presented as a justification for her Motion is plausible. At the same time, it is unfortunate that Councillor Dunstall, other members of Council or staff did not apparently undertake due diligence on the history of this event or address contrary evidence that was made available as the Township moved ahead with the proposal (see paragraph 18), to the point where the “current Canada Day committee” was itself excluded from Staff’s initial outreach to the community about the Township hosting the Canada Day events.

Despite the apparent confusion about the composition of the “current Canada Day committee” and the role of local organizations in it, the statements made by Councillor Dunstall about “exclusion” do not in my assessment constitute a breach of the Code of Conduct for Elected Officials.

IV. Disrespect

28. Disrespect: Grounds for an Inquiry

Speaking to Report CS 2023-19 on September 25, Councillor Dunstall endorsed the terms of reference for a Task Force (although she referred to it as a committee) “that is fully transparent where all financials are open to public scrutiny, arbitrary decision making is eliminated, and the township actively recruits young people to volunteer.” These statements are quoted in an article in the *New Hamburg Independent* (September 27, 2023) and similar perspectives are also evident in a report in the *Wilmot-Tavistock Gazette* (October 5, 2023) where Councillor Dunstall is quoted as stating that the goal of the Motion is “to supply much-needed transparency to the committee.”

The Appellant submits that these remarks, made both in an open Council meeting and in media reports, show what amounts to a disrespect for members of the community currently involved in running the “Canada Day in Wilmot” event (in particular by alluding to financial accountability), contrary to the expectation in the Code’s Statement of Principles that “elected representatives operate from a base of integrity, justice and courtesy.”

29. Disrespect: Evidence

The term “disrespect” is being used to describe what the Appellant contends is Councillor Dunstall’s implicit allegations of questionable actions that together contribute to undermining the credibility of the current Canada Day event committee within the community. That is, disrespect will mean willfully or negligently making a statement about any person or organization tending to bring harm to a reputation or loss of respect for a person, group or idea. In this sense, disrespect is implicit in the Code that expects elected officials “to uphold and promote the municipality’s integrity and values grounded in decorum, accountability and transparency” but is not a specific provision of the Code.

The Appellant attributes the allegations to correspondence “from a coalition of service clubs” that surfaced in 2021 after the “Canada Day in Wilmot” event was cancelled (see paragraph 23) and submits that Councillor Dunstall’s statements, particularly alluding to financial records that are not fully transparent and arbitrary decision-making in relation to the Canada Day event, were made in public contexts “devoid of the fundamental right of due process.” That is, those who were presumably responsible for this purported misconduct did not have an opportunity to defend themselves and to respond to Councillor Dunstall’s remarks, thereby constituting disrespect.

30. Councillor Dunstall’s reference to arbitrary decision-making is clearly a reference to the cancellation of the 2021 Canada Day that has already been considered (paragraph 23). During the September 25 Council meeting she stated that she could “attest ...that we need new and young volunteers. Engaging in introducing our young people to volunteerism.” The Appellant maintains that the call for the active recruitment of young people should be seen to be an unfounded and misleading insinuation that local youth were excluded from playing a role as

Canada Day in Wilmot organizers and volunteers, since evidence submitted with the application for this inquiry indicates that young people were indeed involved. Further support of the Applicant's claim is found in Staff Report COR-2023-66 where Council was informed that the "volunteers indicated that they are working closely with youth in the community, including Indigenous youth, on the content for the Canada Day event and that they have received federal funding based on the event's support of the Truth and Reconciliation Commission's 94 Calls to Action."

31. Among the documents provided to me by Councillor Dunstall is a message (dated October 7, 2021) from the individual who wrote to Angie Hallman about questions raised by the "traditional organizational participants." (paragraph 24) In response to Ms. Hallman, the author writes: "I want to be very clear that there is absolutely no suggestion that there is anything untoward re the finances of the day. With that being said, there is concern within these organizations that for the last several years (to the best of our knowledge) there is been no public disclosure of the finances of the day. I would suggest that being very transparent on the handling of these community funds is in everyone's best interest including yours." Other submissions from local organizations also noted that they never received an answer "as to an accounting of the funds that had been donated."

32. Both the Appellant and Councillor Dunstall provided me with a copy of an unsigned letter on official letterhead from the Optimist Club of New Hamburg dated February 24, 2022 addressed to Angie Hallman that requested an opportunity "to have an open discussion focused on outstanding questions around the Canada day committee account dating back to the 2019 budget." The letter goes on to claim that "we have a right and responsibility to know the manner in which donations we have collected have actually been invested in the community we serve." This theme was also raised in the message from the "traditional organizational participants" cited above where, as noted, questions were also asked about the cancellation of the 2021 event.

33. A copy of a message from a member of the Canada Day in Wilmot committee In response to an earlier request from the Board of Trade (dated October 21, 2021) for information about the finances of the Canada Day Committee "since there has been no public disclosure of the finances of the Canada Day Committee for the last several years" is insightful. The response includes the following: "Although constructive feedback is genuinely welcome, there is no record of fees paid by participating Canada Day vendors, sponsors and individual donors including any entitlement to influence or dictate this volunteer association's event policies, activities, schedule nor execution of the event's activities on the day of."

This response suggests to me that there was apparently not a willingness to open financial records to public scrutiny on the part of the current Canada Day in Wilmot committee. However,

as stated more than once in this report, my jurisdiction does not include investigating the actions of the Canada Day in Wilmot committee. The point here is that there appear to be reasonable grounds for Councillor Dunstall to support an organizational arrangement that requires “transparency” from a future Canada Day committee, especially one that is operating under the auspices of the Township.

34. In her response to me, Councillor Dunstall also notes that she deliberately did not name anyone in relation to the matters raised here and that, moreover, she did not make any actual accusations about the way the event has been run in recent years. Her comments to Council on September 25 in support of the Terms of Reference for the Canada Day Task Force may have sounded to the Appellant like a criticism of the Canada Day in Wilmot committee as they were uttered live during the meeting but listening to them several times on the video recording lead me to conclude that she was endorsing a format to provide transparency in the running of future Canada Day events that she expected to occur in a Township-led event.

35. Disrespect and the Code of Conduct

Perhaps surprisingly, while the Wilmot Code of Conduct for Elected Officials directs members to conduct themselves with decorum at Council meetings and calls for respect for delegations and fellow members of Council, it does not explicitly address statements made in Council meetings about members of the public. However, the Township’s Procedural By-Law 2023-43 section 8.1.1 states that no person present in a meeting will ‘Speak disrespectfully of anyone present or not present in the Meeting.’

I undertook to review the evidence presented by the Applicant and Councillor Dunstall in relation to disrespect since I believe it was an important component of the Applicant’s position even though there are no legally enforceable obligations in the Code. That said, the allegations submitted by the Applicant fall outside the scope of the Integrity Commissioner’s mandate and do not constitute a breach of the Code of Conduct for Elected Officials.

V. Bias and and Undue Influence

36. Bias and and Undue Influence: Grounds for an Inquiry

Councillor Dunstall acknowledged in a Council meeting on September 25 and in media reports (*Wilmot-Tavistock Gazette*, October 5, 2023 and *New Hamburg Independent*, September 27, 2023) that she is a member of three local organizations (in one case a member of its executive) that were consulted by Township staff about their interest in “offering the Canada Day activities as a Township operated special event.” Moreover, she claimed that her membership in these groups is one of the reasons “constituents felt comfortable speaking with [her]” about the initiative (*Wilmot-Tavistock Gazette*, October 5, 2023).

In the view of the Appellant, advocacy for the purported “reinstatement” of these organizations in the planning of Canada Day 2024 (using Councillor Dunstall’s terminology) could be considered as exercising “undue influence” on their behalf in Township business.

37. Bias and and Undue Influence: Evidence

Councillor Dunstall’s Motion calls for staff to conduct “outreach to local organizations, groups and stakeholders” for offering the Canada Day activities as a Township operated special event, although the specific organizations were not identified in the Motion.

From the outset of the discussions about establishing the 2024 Canada Day Task Force, Councillor Dunstall has regularly acknowledged that she is a member of three New Hamburg organizations (the Optimist Club, the Legion and the Board of Trade) that considered themselves part of the Canada Day committee prior to 2017 (see paragraph 21) and that her husband has also played a significant role in at least two of the same organizations.

The Appellant submits that Councillor Dunstall exploited her position on Council and the legislative tools available to her in order “to remove current volunteers to fill seats that had been freely vacated by New Hamburg service clubs five years ago” and to replace them with “members of select service clubs and paid township staff.”

As observed in paragraph 10, verifying intent or motivation are not open to an evidential test; however, I have concluded that Councillor Dunstall’s membership in these local organizations has played a significant part in her initiation and endorsement of the 2024 Canada Day in Wilmot Task Force. In the July 24 Council meeting she described previous Canada Day events as “one of the biggest money-makers” for these groups that provided important funding for their charitable activities. For that reason, these groups “need to be at the table.” As well, she told Council that she expected that the service clubs involved in the event will give part of any proceeds raised at the event to the Township to cover any costs not already approved in the budget to keep the Canada Day event free. She could offer this information since she was invited by Township staff to attend the “outreach” meeting because of her involvement in relevant local organizations (see paragraph 25).

38. The 2024 Wilmot Canada Day Event Task Force was established pursuant to the Township’s Committee Governance Policy GP-23-01 and Council appointed the members of the 2024 Canada Day Event Task Force at its December 11, 2023 meeting. Under its Terms of Reference, two categories of volunteers would be appointed by Council from among applications submitted to sit on the Task Force.¹² Among the representatives from service organizations

¹² 2024 Wilmot Canada Day Event Task Force Terms of Reference

Section 4: Committee Composition:

The Committee will be composed of:

- Township of Wilmot Mayor (ex officio);

(service clubs) operating within the Township of Wilmot were applicants identified as belonging to the New Hamburg Optimist Club, Optimist Club Wilmot, the New Hamburg Board of Trade and the New Hamburg Legion. Angie Hallman, chair of the Canada Day in Wilmot committee, submitted an application but was not appointed to the Task Force. Council subsequently selected Councillor Dunstall as the one member of Council to serve on the Task Force.

39. Bias and and Undue Influence and the Code of Conduct

The Wilmot Code of Conduct for Elected Officials contains a section on “Conflict of Interest” that includes the following: “It is the responsibility of individual members of Council to ensure that they are aware and trained in the application of the *Municipal Conflict of Interest Act*” and goes on to state that the “onus is on the member to identify a conflict of interest, and he/she shall take the appropriate action to disclose/identify the existence of a conflict in favour of his/her public duty.”

During 2023, two Wilmot residents and five of the six members of Council sought my advice on the application of the *Municipal Conflict of Interest Act* in relation to a matter before Council, as they are permitted to do under legislation; in all but one case these enquiries related to the relationship between a member of council and various local organizations.

Councillor Dunstall herself contacted me in July ahead of presenting her Motion and again in September when Report CS 2023-19 was received by Council for information. In the former case, without seeing the actual Motion, I wrote that since the proposal only asks staff to investigate the cost and scope of having the municipality host a Canada Day event, I believed she was not obliged to declare a conflict of interest “at this time.” In the latter case I wrote that it would not be necessary to declare a pecuniary interest on the report since it makes “no specific reference to what organizations or individuals might participate in that task force or (eventually) in the Canada Day events.”

In both instances, however, I explicitly advised Councillor Dunstall that subsequent steps may have to be treated differently if/when Council actually considers the allocation of resources to the event in which the organizations that she belongs to are participating. There were two sides to this relationship: on one hand the formal requirements under the *Municipal Conflict of Interest Act* but on the other her participation in deliberations by such organizations related to seeking or accepting public support. The former is a matter of law, the latter can be considered a matter of personal ethics (as described in the Code’s statement of principle).

A recent Integrity Commissioner’s report offers a useful perspective:

-
- One (1) member of Council appointed by Council Up to eight (8) representatives from service organizations operating within the Township of Wilmot (i.e., service clubs); and,
 - Up to three (3) members from the community at large (e.g., business owners, community stakeholders, residents, etc.).

“66. A member of Council is entitled to wear two hats and to be a member of another body – whether it is a charitable foundation, a non-profit corporation or, as in this case, a very worthwhile local service club. However, members must recognize that, unless they are appointed to such a body by Council, they cannot participate in the decision-making process on any matter or question involving the financial interest of the body as such financial interest is imputed to the member as an indirect pecuniary interest under section 2 of the MCIA.”¹³

40. Although this inquiry is not proceeding under the *Municipal Conflict of Interest Act*, the preceding paragraph is intended to shed light on the rationale for including a section on conflict of interest in the Code and what it is intended to address. The Wilmot Code advises members of Council that a “conflict exists when an individual is, or could be, influenced, or appear to be influenced by a personal interest, financial (pecuniary) or otherwise, when carrying out their public duty. Personal interest can include direct or indirect pecuniary interest, bias, prejudgement, close mindedness or undue influence.” It also states that “When considering whether or not a conflict exists, it is important to consider whether there are any grounds for a reasonable person to think that a conflict exists.”

Notwithstanding the positive value of a Canada Day in Wilmot event itself (see paragraph 9), the way the project was characterized and promoted by Councillor Dunstall from the premise of the Motion and subsequent approval process, through to the eventual composition of the Task Force, has been biased towards certain organizations that stand to benefit from the public money that will be put into the venture. Councillor Dunstall is a member of three of these organizations.

Councillor Dunstall sought clarification from me on this point: if, for example, the exact same organizations are involved in organizing Victoria Day celebration in New Dundee, why should the same clubs not be “at the table” for the New Hamburg event? My response is that it is not a matter of which organizations are “at the table” but how they secured those places. To my knowledge, Council did not determine which organizations are “at the table” in New Dundee but it did so in New Hamburg where Councilor Dunstall sits at both the Council table and is a member of three of the organizations now back “at the table”, as well as being the leading advocate for that arrangement.

The evidence presented in this report confirms to me that Councillor Dunstall’s influence on the outcome of her Motion cannot be disputed and her role, in my assessment, is consistent with the understanding of an apparent or perceived conflict of interest in the Township Code. As a result, I conclude that her actions constitute a breach of the Code of Conduct for Elected Officials.

¹³ Corporation of the Municipality of Brooke-Alvinston, *Integrity Commissioner Report on MCIA Application 2023-01 Re Councillor Nemcek and Councillor Redick*, July 7, 2023.

D. Some Lessons

41. Section 1.1.4 of the *Municipal Conflict of Interest Act* states: "There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise."

The experiences and insights that such activities bring are frequently important factors at election time and can be helpful in Council deliberations, but as this inquiry has demonstrated the elected member of council must be constantly mindful of the "two hats" (paragraph 39) they wear and the need to be aware of which one is, so to speak, on their head at any given time. During the December 11, 2023 Council meeting, Councillor Cressman inadvertently provided a reminder of the need to recognize and respect the distinction between "the personal and the public" in the life an elected official. "Given Councillor Dunstall's personal interests in this and to see it through to a successful conclusion," he nominated her to be the Council representative on the Task Force. The motion was passed unanimously. Personal interests, in my view, should be the very reason not to place a motion like that before Council.

I do not doubt that Councillor Dunstall believes she acted in the way any Member of Council would respond when constituents who believed they had a concern brought it to her attention and that "a reasonable person" would agree. Councillors are elected to represent their constituents during Council deliberations but also to help when asked. That is one of her "public roles" and I had no difficulty advising her that her Motion did not constitute a conflict of interest (paragraph 39) since it was intended to ask staff to investigate possible actions related to the matters brought to her attention based on conversations with various community organizations. Indeed, it is very likely that she was aware of these concerns before she was elected to Council.

As I wrote (twice), though, once Council initiates a set of specific responses that involve any organization she belongs to, she no longer has an interest "which is an interest in common with electors generally" (in the language of the *Municipal Conflict of Interest Act*) but has what is deemed in the Code of Conduct an indirect personal interest in a matter that conflicts with her public interest, meaning she should have recused herself from taking part "in the discussion of, or vote on any question in respect of the matter."

I advise all members of Council to avoid future encounters with the Code of Conduct by being aware of any grounds for a reasonable person to think that a personal conflict exists.

E. Consequences

42. Subsection 223.4 (5) of the *Municipal Act, 2001* provides that "if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct", the municipality may impose either a reprimand or suspension of "the remuneration

paid to the member in respect of his or her services as a member of council . . . for a period of up to 90 days.”

43. Council should understand that its decision to impose these penalties is discretionary and that other non-punitive penalties may be imposed.

H. Recommendations

44. I make the following recommendations to Wilmot Township Council:

- 1. That Council receive the Integrity Commissioner’s Report 2023 – 01 dated March 20, 2024;**
- 2. That Councillor Lillianne Dunstall no longer serve as the Council representative on the 2024 Canada Day Event Task Force; and**
- 3. That Councillor Lillianne Dunstall acknowledge publicly that she participated in Council business to the benefit local organizations of which she is a member, contrary to the Code of Conduct.**



Robert J. Williams, Ph.D.
Integrity Commissioner, Township of Wilmot
2014-2023

Appendix A: "The Motion"

Moved by: Councillor L. Dunstall

Seconded by: Councillor S. Cressman

WHEREAS the Township of Wilmot has historically celebrated Canada Day each year with a special event, usually held at Norm Hill Park; and,

WHEREAS for past Canada Day events, Township staff worked with community groups and individuals to plan and host a variety of activities on July 1st annually to celebrate Canada Day; and,

WHEREAS in recent years, the Township involvement includes providing free use of Norm Hill Park and funding for distribution of free cake or cookies; and,

WHEREAS many communities have events such as Canada Day organized by Township staff in collaboration with community groups and individuals; and,

WHEREAS the Township supports and encourages the involvement of local community groups and organizations in events such as Canada Day;

THEREFORE BE IT RESOLVED that the Council of the Township of Wilmot directs staff to conduct outreach to local organizations, groups and stakeholders for offering the Canada Day activities as a Township operated special event, and report back to Council, in September 2023, on the costs and anticipated budget implications, staff capacity and level of community interest in hosting such an event.