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OFFICE OF THE INTEGRITY COMMISSIONER**OPEN SESSION REPORT**

TO: Mayor and Members of Mississauga Council
FROM: Robert Swayze, Integrity Commissioner
DATE: June 29, 2022
MEETING DATE: July 6, 2022
SUBJECT: Investigation of Car Scratching

Recommendation:

It is recommended:

That the compensation paid to Councillor Ron Starr be suspended for sixty (60) days commencing with the next pay period.

Background:

On February 2, 2022, City Council, passed the following resolution requesting an investigation into the conduct of Councillor Ron Starr (the "Councillor") (the "Complaint"):

"Whereas it has come to Council's attention that a complaint was lodged by former Councillor Karen Ras against Councillor Ron Starr related to property damage in the underground garage of the Mississauga Civic Centre.

Therefor be it resolved that:

1. Council requests that the Integrity Commissioner investigate whether Councillor Ron Starr engaged in harassing behaviour towards former Councillor Karen Ras that violated the Council Code of Conduct and/or the City's Respectful Workplace Policy.

2. Council requests that Councillor Ron Starr take a leave of absence until the Integrity Commissioner's investigation has been concluded and the report is presented to and dealt with by Council.
3. Council direct the Integrity Commissioner to attend a Special Council meeting scheduled for February 9th, 2022 or at his earliest convenience to explain the rationale for not investigating former Councillor Ras's complaint and to explain how Sections 2(2)(a) and 2(2)(c) of the Council Code of Conduct Complaint Protocol applies to this situation."

The above resolution was within Council's authority to make under s. 223.4 (1)(a) of the *Municipal Act, 2001*, and accordingly I commenced an investigation under the *Municipal Act, 2001* and the Council Code of Conduct for Members of Council (the "Code").

I was earlier consulted about this same incident by Councillor Ras. On September 22, 2021, I received a request for advice from Councillor Karen Ras regarding the scratching of her car on the front bumper on several occasions which she believed to have happened in the City parking garage, starting with the spring of 2019 and most recently occurring on April 13, 2021.

I started a preliminary review of Councillor Ras's correspondence to advise her, and I reviewed the Code which included the following section:

"2 (2) (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force."

At the time, the use of the word "must" in this section was understood as meaning that Councillor Ras would have to pursue the matter with the police force. Based on this, Councillor Ras never filed a formal complaint with me.

Investigation Process:

I received evidence from three witnesses about the incident, including Councillor Ras and the Peel Police Detective assigned to the case. I also reviewed documentary evidence including the police report, in addition to reviewing security camera footage of the incident.

On March 4, 2022, the Councillor was sent a detailed notice letter from me setting out the allegations in the Complaint, a detailed summary of my preliminary investigation of the matter, and the evidence including a copy of the police report, a link to the garage

security camera footage, and the repair bill for the car. I asked the Councillor to provide his response to the Complaint in accordance with the Code no later than March 18, 2022.

On March 7, 2022, the Councillor E-mailed me stating that I had failed to disclose certain documents and evidence and that he could not respond to the Complaint until he was given those documents. I responded on March 8, 2022 indicating that the Councillor had been given sufficient information for him to respond to the Complaint. This was based on my understanding of the standard of procedural fairness that applied to this matter.

On March 11, 2022, I received correspondence which indicated that the Councillor had retained a lawyer for this matter and who requested an extension to respond to the Complaint, but did not specify a date. I granted an extension until April 1, 2022.

On March 16, 2022, I received correspondence from the Councillor's lawyer again asking for the same documents the Councillor had earlier requested, asserting that the Councillor had been denied procedural fairness. After further consideration, I responded on March 25, 2022 to indicate that the Councillor was not entitled to the documents he was continuing to request, and pointing out a misquotation of a relevant provision of the Code which the Councillor was relying on.

On April 1, 2022, I received correspondence from the Councillor's lawyer maintaining that the Councillor was not given procedural fairness and continuing to insist that I provide further disclosure. The Councillor took the position that he had not been given disclosure he needed to make "full answer and defence" to the Complaint, and that he was denied sufficient time to gather information and disclosure to make an answer. Despite this, the Councillor provided a response to the substance of the Complaint, which he purported to make "under protest." The correspondence was accompanied by two "witness statements" and two additional documents.

The April 1, 2022 correspondence indicated that the Councillor had retained a private investigator to assist him in obtaining "necessary information and disclosure...to provide a full defence" to the Complaint. Nowhere in this correspondence did the Councillor indicate that he would be retaining other individuals or firms to assist in preparing his response to the Complaint or that he would be obtaining information or evidence that he would submit to me.

The April 1, 2022 correspondence also indicated that the Councillor had instructed the lawyer to commence a court application to stay my investigation, and that the lawyer was in the process of having this application issued with the court.

On April 8, 2022, I received correspondence from the Councillor's lawyer which enclosed a draft Notice of Application.

In the interest of ensuring that the Councillor understood the substance of what was being investigated and that he had an opportunity to provide a meaningful response, I provided correspondence to the Councillor's lawyer on April 18, 2022, enclosing additional documentation which the Councillor insisted he was entitled to. In my correspondence, I also asked the Councillor's lawyer to immediately produce any relevant jurisprudence which supported his assertion that he was entitled to the degree of procedural fairness he was asking for. I also provided an additional extension until May 2, 2022 to provide a further response.

On April 29, 2022, I received further correspondence from the Councillor's lawyer, asking for further disclosure of documents and materials. This time, the Councillor's lawyer was asking that I produce documents and materials which were not in my possession nor in my investigation records but that were in the possession of third parties. This correspondence did not direct my attention to any other authorities or case law supporting the Councillor's position.

I responded on May 3, 2022 to again ask that the Councillor's lawyer immediately produce any cases which supported the Councillor's request for further disclosure, and indicating that I would be proceeding with my investigation.

The Councillor's lawyer responded again on May 6, 2022 requesting that certain other documents and materials be disclosed and that I convene a series of meetings with other individuals. I was referred to a decision by the Ontario Securities Commission about disclosure in a securities law prosecution, and was told that while the *Municipal Act, 2001* had a confidentiality clause that "full disclosure" was in the public interest.

I fail to see how this decision is more relevant than the several decisions from the courts on the standard of procedural fairness that applies to investigations by municipal integrity commissioners. In any event, the materials which I refer to in my Report have all been provided to the Councillor who had more than a month to review and to provide his response to the substance of the Complaint.

On May 11, 2022, I provided the Councillor with a draft of my report in accordance with Section 5 (3) of the Formal Complaint Protocol in the Code. I provided the Councillor a deadline of May 24, 2022 to provide any comments on the draft report, which in my opinion was an ample and reasonable time period to provide comments.

This step was met with a letter dated May 18, 2022 from the Councillor's lawyer objecting to the release of this report until the issues of disclosure and the method of my investigation were dealt with. This letter renewed the threat to commence an application against me. No comments were made on the draft report, and no extension to provide comments was sought by the Councillor.

At this time, I engaged my own legal counsel to assist in understanding the implications of the Councillor's intention to commence a court application. Through discussions between legal counsel, the Councillor advised that he was in the process of obtaining evidence which he alleged would support his innocence. Despite my requests, through my legal counsel, the Councillor did not disclose or even advise what additional relevant facts he was waiting to release to me before I finalized my report.

By the deadline of May 24, 2022, the Councillor did not provide me any comments on my draft report. By this time, the Councillor's lawyers did not seek an extension to this deadline to submit comments, nor was one ever granted.

Only on May 31, 2022 did the Councillor provide me the "additional materials" he had promised. It was a report from an insurance appraiser retained by the Councillor to provide an opinion that the Councillor physically could not have scratched Councillor Ras's vehicle, along with two medical reports about an accident the Councillor was involved in in April 2019 which speak to his physical ailments.

A letter from the Councillor's lawyer, dated May 31, 2022, indicated that he was: "continuing to receive additional pertinent information in relation to this matter," and asked for an extension to June 3, 2022 to provide a response." No comments were provided on my draft report. There was no indication what this "additional pertinent information" was, or why it had not been provided to me through the Councillor's previous opportunities to provide his submissions in response to the Complaint.

In the interest of bringing finality to this investigation process, I declined to grant this additional extension. In my opinion, there was no reasonable basis to believe that the information which the Councillor said he would provide me was material or why it could not have been provided earlier.

On June 1, 2022, some number of weeks after first indicating the Councillor gave instruction to do so, the Councillor's lawyer issued a Notice of Application with the Divisional Court. I initially did forebear on submitting my final report to Council out of respect for the Court's process. However, at a case conference held by the Court, the Councillor indicated he would not be seeking injunctive relief from the Court to prevent me from reporting to Council. I also understand that the Councillor intends to rely on

the information gathered in my investigation in open Court in advancing his Application. As such, continuing to voluntarily forebear no longer appears to be necessary or appropriate.

Despite having issued the Notice of Application, the Councillor continued to send additional materials he had commissioned to support his position. They were all very late, despite an earlier extended deadline to respond to the substance of the Complaint and also to comment on my draft report. The Councillor never provided any indication that he would be providing these materials to me, nor did he ever ask for an extension which specifically contemplated the preparation of these materials. There is also no indication why these materials could not have been prepared when the Councillor was notified about the Complaint in early March 2022.

On June 1, 2022, through his lawyer, he attempted to submit a “Preliminary Report” from Walters Forensic Engineering Inc., Mr. Hai Huang, a biomedical engineer. The purpose of this report was to obtain an “expert opinion” on whether the security camera footage shows the Councillor scratching Councillor Ras’s vehicle. This report concludes that the actions of the Councillor in the videos are “consistent with” his defense (discussed further below), and that the video does not “show” the Councillor scratching Councillor Ras’s vehicle, given the view from that video angle is obstructed by the car.

On June 17, 2022, the Councillor, through his lawyer, provided a letter, dated June 15, 2022, from Dr. Oral Okem, a chiropractor. The letter advises that the Councillor received treatment at the chiropractor’s office, and that the chiropractor’s opinion is that it would have been “extremely difficult” for the Councillor to have scratched the vehicle.

Preliminary Issues

“Political Motivation”

In a letter to my legal counsel dated May 26, 2022, the Councillor’s lawyer took the position that the Complaint was “politically motivated” within the meaning of Section 2. (2) (d) of the Formal Complaint Procedure, which he says prevents me from investigating, and my failure to consider this at the outset of my investigation is evidence of my bias. He says that the comments of the Mayor in the media indicate Council’s motivation in passing the resolution to request an investigation, and that these motivations are improper and political. He refers to Section 2. (2) (d) of the Formal Complaint Procedure dealing with the initial classification of a complaint by the Integrity Commissioner, and provides as follows:

“2. (2) (d) If the Integrity Commissioner receives a complaint during a municipal election year respecting a member who is seeking re-election and he is of the opinion that it is politically motivated, he may stay the investigation until after the new Council takes office or dismiss it if he concludes it is specious.”

The proper interpretation of this section, in its ordinary meaning and within its context in the Formal Complaint Procedure, is that it is a discretionary step I have available to me as Integrity Commissioner in the course of reviewing a complaint. This section does not require me to make this determination one way or another as it does not contain mandatory language. It also does require me to publish reasons if I am satisfied a complaint is not “politically motivated.” I note again that the Councillor failed to raise a concern with this section of the Formal Complaint Procedure in a timely manner. He waited until after my draft Report was provided to him to raise this as an issue.

In my review of the Code, it is clear that whether a complaint is “politically motivated” is not a “defence” or an exculpatory factor. Only the Integrity Commissioner has independent discretion to determine a complaint is “politically motivated.”

The section says that even if the Integrity Commissioner does determine that the complaint is “politically motivated” (which I have not concluded in this Complaint), this does not automatically stop an investigation. The Integrity Commissioner “may” pause the investigation, or dismiss it. This is a discretionary power, not a mandatory outcome.

My opinion when I began this investigation was that the Complaint was not “politically motivated,” and this continues to be my opinion. The fact that Council is the complainant is not determinative of political motivations. Council is entitled under the *Municipal Act, 2001* to request an investigation, which it did.

Council initiated the complaint process based on concerns voiced that there was some incident against one of its former members, and that it warranted an investigation by me. In reviewing the Complaint on its face, and after conducting my preliminary investigation in which I received real evidence, I determined there was substantial merit to the allegations.

Allegations of Bias

In the letter to my legal counsel dated May 26, 2022, the Councillor’s lawyer alleged that I was biased, and that City Council was also biased.

The Councillor submits that decisions I have made in the investigation process demonstrated a “substantial bias” which prohibits me from investigating and rendering

a report on this investigation. The facts which the Councillor alleges support this position are as follows:

- When this matter was initially brought to my attention by Councillor Ras, I allegedly declined to investigate, but that when Council passed a resolution, that I did commence this investigation. The Councillor does not appreciate that Councillor Ras never filed a formal complaint and, as such, there was no basis for me to commence an investigation. I can only do so where there is a complaint.
- At my attendance before Council on February 9, 2022, I apologized for not acting on the matter when Councillor Ras initially consulted me. In the Councillor's view, that constitutes undue pressure to investigate.
- My alleged refusal to answer certain questions from the Councillor through the investigation process.
- My alleged failure to "confirm [my] appointment to" the Councillor until March 4, 2022. Presumably, this refers to my initial notice letter to the Councillor of the Complaint and request for his response, which is a standard procedural step in any investigation under the Code. In any event, it belies logic that the Councillor was unaware of Council's resolution requesting an investigation (i.e., the Complaint) given that he declared a pecuniary interest and departed from the meeting shortly before Council voted on the resolution in open session.
- My alleged refusal to make certain disclosures to the Councillor (as outlined above in this report) of documents and materials that were not in my possession. This allegation conflates the issue of procedural fairness with bias and is misguided.
- My alleged failure to consider whether the Complaint was "politically motivated."

The Councillor takes the position that these facts demonstrate that I have been biased in my investigation. The Councillor's submissions on bias do not refer me to any authorities, but a heading in his letter seems to suggest that I have an "apprehension of bias."

The leading authority on an allegation of bias against a municipal integrity commissioner is the Divisional Court's recent decision in *Chiarelli v. Ottawa* (2021). The court noted that the general test to show bias is a high one, and that for an integrity commissioner who performs an investigative and not adjudicative function is even higher. The question to be asked is whether the integrity commissioner has exhibited a "closed mind" such that there is a predetermination of the issue:

“The standard of conduct which is applicable to those performing an adjudicative function is different from those performing a purely administrative or investigative function. In the case of an administrative or investigate function, the standard is not whether there is a reasonable apprehension of bias on the part of the investigator, but rather whether the investigator maintained an open mind, that is whether the investigator has not predetermined the issue.” (para. 76)

My conclusion is that I have not disclosed “prejudgment bias” within the meaning of the *Chiarelli v. Ottawa* test.

The Councillor’s arguments that I am biased because I chose to undertake my investigation process in my own independent discretion and without justifying each and every step to him is misguided. So too is his allegation that my failure to answer questions and provide additional disclosures, or seek information and evidence from the sources and in a manner that he demanded. Those issues speak to the procedural fairness of the process, which in my view has been afforded to the Councillor despite his objections.

The Councillor has failed to demonstrate any reasonable basis that, from the outset of the process, I had already determined the issue of whether the Councillor contravened the Code as alleged in the Complaint.

At all times through the investigation process, I remained open to further submission from the Councillor, encouraged the Councillor to provide me all relevant facts and information, and in fact considered the arguments, submissions and materials he chose to provide me, even if they were provided to me well past the deadlines which I had set.

The Councillor has also stated that I cannot proceed to finalize my report and provide it to Council on account of Council’s alleged bias in this matter. The Councillor again refers to the comments of the Mayor in the media statements.

The case *Chiarelli v. Ottawa* provides a complete answer. As Integrity Commissioner, I do not have any jurisdiction to rule on whether City Council, a completely separate entity, has a bias (para. 69).

Review of Evidence and Findings:

The following is a summary of my review of all the evidence and materials in my investigation.

Starting in the spring of 2019, Councillor Ras’s car was scratched on her front bumper on several occasions while she had parked in the City Hall parking garage. She called the

police at that time. There were no security cameras in the garage at that point in time. I understand that the police investigation was unsuccessful.

Additional scratches on Councillor Ras's car were discovered on April 13, 2021, after cameras had been installed in the parking garage. After leaving City Hall on that day, Councillor Ras drove straight home, without stopping anywhere, and noticed additional scratches on her car on the driver's side front bumper. Prior to this, during the Covid shut down, she has been working from home and no new scratches were ever noticed on her car.

Councillor Ras called security and requested that they access the security camera videos from the parking garage. She again called the police and a detective was assigned to the case. After reviewing the security camera footage, the Councillor was identified as a potential suspect.

The police report, which was redacted by the police to remove personal information, provides the following entry on July 1, 2021:

“Investigation revealed that on Tuesday, April 13th, 2021, [redacted] drove [redacted] Chevrolet Avalanche with Ontario licence [redacted] into [redacted] parking spot at City Hall in Mississauga, which is located directly beside the complainant's vehicle. [Redacted] exited vehicle, attended the front driver's side of the complainant's unoccupied vehicle, and [redacted] scratched the paint with [redacted] keys, causing damage to the paint.

Due to prior incidents of similar damage to the complainant's car, an upgraded video surveillance system had recently been installed, which captured the occurrence on April 13.

[Redacted] The complainant is satisfied with the outcome of the investigation and does not wish to take the matter to court.

This occurrence can be closed otherwise.”

The investigating detective of the Peel Regional Police, confirmed to me that she did not interact directly with Councillor Starr except to make two phone calls to him regarding scheduling a meeting with him. No meeting ever took place but she was contacted by a solicitor for the Councillor. The detective advised me that the solicitor admitted his client's guilt and an arrangement was made where the Councillor would pay for the repair of damages to the car to avoid a criminal charge of Nuisance under \$5000. The detective confirmed the solicitor's admission of the Councillor's guilt in a text sent to

Councillor Ras. The detective was aware that the courts were unlikely to schedule and hear such a minor charge because of the Covid crisis at the time.

I have reviewed an invoice from a collision repair centre in Mississauga indicating that repairs had been carried out on Councillor Ras's car. It is the Councillor's evidence in his witness statement, dated April 1, 2022, that he agreed to pay for the repairs based on the advice he received from his solicitor (the same solicitor who contacted the investigating officer).

I viewed the security camera footage taken from two different camera angles in the City Hall parking garage on April 13, 2021 and provided to me by a City security manager. At approximately 10:15 AM, the footage shows Councillor Ras parking her car in her parking space. She pulled into the parking space with the front of her car facing forward to the wall of the parking garage. At approximately 10:20 AM, the footage shows Councillor Starr backing his truck into the adjacent space to the left of Councillor Ras's car. This is shown from both camera angles. The footage then shows the Councillor exiting his truck, and then walking to the front of Councillor Ras's car. He is seen clearly through the side and front window of her car crouching down and turning to face the grill of her car within touching distance from the car. He then stood up and walked to the garage exit. The Councillor is then seen in another camera angle exiting the parking garage.

The Councillor has not denied that it was him in the video footage. The Councillor's presence at the parking garage is also confirmed by access card records at City Hall.

The Councillor has had an opportunity to review and comment on the video footage. Through his lawyer, the Councillor indicates that "the video footage on which you rely does not show Mr. Starr keying Ras's vehicle on April 13, 2021." The Councillor, in a witness statement dated April 1, 2022, denies that he "keyed the Vehicle" and states as follows:

"At 10:20:29 I removed my coffee and a folder from my truck, I walked to the hood of my truck and placed my coffee on the hood. I spotted a piece of paper lying near the driver side front bumper of the Vehicle and so I walked to the front of the Vehicle. I bent to pick up the paper and looked at it and determined that it was just garbage. I then returned to my driver side passenger door, and I removed a second folder from my truck. I picked up my coffee that was on my hood and I walked towards the elevator and the garbage container. I threw out the paper that was lying next to the Vehicle. I then exited the parking area via the elevator. This whole process took approximately one (1) minute."

The Councillor maintains that he “never keyed” Councillor Ras’s car and that he does not agree that the video footage shows him “keying” the car. The Councillor and his solicitor in the police investigation, who also provided a witness statement, dispute that the Councillor admitted to “keying” Councillor Ras’s car during the police investigation. I need not make a finding as to whether the Councillor admitted his guilt.

I do not accept the Councillor’s statement as a credible explanation for what happened. I have reviewed the security footage in great detail. The Councillor provides no information on what the “piece of paper” was, its size, or how it could have gotten there. Before Councillor Ras parked her car, there is no visible material or object on the ground in the area that would be underneath the front driver’s side bumper. Even when the headlights from Councillor Ras’s car shine directly where that “piece of paper” is alleged to be, there is nothing visible.

Even if there was no “piece of paper” before Councillor Ras parked her car, it is not likely that the paper came from Councillor Ras or her vehicle. After she parks her car, the video shows Councillor Ras walking directly away from her car. At no time did she walk in front of her car. She is seen holding a smaller purse under her arm and holding a larger bag in the same hand. In another camera angle, she holds the smaller purse in the other hand. She does not appear to have any loose folders or papers. I do not find it reasonable that a “piece of paper” could have fallen from Councillor Ras to a place on the ground in the front of her car where the Councillor is seen crouching in the video.

Lastly, I do not think it is credible that the Councillor would have noticed a “piece of paper” so small that it was not picked up by security camera footage. It is difficult to believe that he could see any “piece of paper” from his driver’s door over Councillor Ras’s car in a place anywhere close to where he crouched down in front of the car. The Councillor’s defence that he is seen on another camera angle throwing out the “piece of paper” is not helpful, as what he was throwing out could have been anything he had in his possession.

There is no other evidence that supports the Councillor’s explanation that he picked up a “piece of paper.” This explanation was never raised in the police force investigation. The police report does not mention that the Councillor raised this as a possible explanation of what is shown on the video; instead, the police report concludes the Councillor scratched the car. Whether or not he admitted his guilt to the police, which I do not need to make a finding on, he resolved the police investigation by voluntarily paying for the damages to Councillor Ras’s car.

Despite it being filed with me well past the deadline for responding to the substance of the Complaint, I have also considered and reviewed and the report of Mr. John Bellissario of Property Damage Appraisal Services Limited and the attachments thereto, provided to me on May 31, 2022. Mr. Bellissario's report indicates that he was retained and instructed to provide a review and comment on the allegations in the Complaint. Mr. Bellissario is a licensed insurance appraiser and states he is qualified to "assess and quantify damage caused to vehicles and [has] been engaged in the reconstruction of losses, assisting insurance companies, financial institutions, Government, local law enforcement and the public at large." He does not profess to be qualified, nor does he appear to be qualified, to provide an expert opinion on biomechanics or security camera analysis.

An attachment to Mr. Bellissario's report is a cost estimate of the parts used to repair the vehicle, which was prepared by his office, as well as a quote from a KIA dealership. Both are dated May 20, 2022. This indicates to me that Mr. Bellissario was retained and working on this matter as of at least May 20, 2022, yet despite my requests to the Councillor, through my legal counsel, that he advise what material facts he intended to provide, I was not advised that this material was forthcoming.

In his report, Mr. Bellissario indicated that he had reviewed photographs of Councillor Ras's vehicle, the two security camera videos, and the invoice for the repairs to Councillor Ras's vehicle. I note that all of these documents were disclosed to the Councillor on March 4, 2022 along with my notice letter. There is no indication whatsoever why Mr. Bellissario was not able to be retained by the Councillor at the outset of this investigation, nor any explanation provided to me throughout my investigation that the Councillor intended to retain a professional insurance appraiser. I also note that Mr. Bellissario does not appear to have been provided or advised of the police report in this matter, or advised how the police investigation of the Councillor was terminated, being the Councillor's agreement to pay for the damage to Councillor Ras's car to avoid criminal charges.

Mr. Bellissario states that it is his professional opinion that "it would have been impossible for Mr. Starr to cause the scratches to the Vehicle in the timeline shown in the video." Mr. Bellissario's report reviews the timeline in the security camera footage, the nature of the damage to the vehicle, and the Councillor's medical history and apparent level of mobility and physical strength, which seems to be based on two medical reports about the Councillor.

Mr. Bellissario's analysis is summarized as follows. Based on the video footage, the Councillor would have only had 5 seconds to commit any alleged damage to the vehicle.

The Councillor has physical ailments due to being hit by a car in April 2019, explained by medical evaluations dated July 28, 2020 and December 11, 2021. Given the location and height of the damage on Councillor Ras's vehicle, the Councillor's physical attributes and probable limitations, the Councillor could not have been physically able to bend over to scratch the car in manner alleged because he would not have had the physical strength to balance himself in this position. He concludes as follows:

“Having given considerable consideration the facts with respect to this matter, including all relevant timelines, conditions affecting the position of the Vehicle, physical attributes of Mr. Starr, pressure, strength and time needed to cause the damage, it is my professional opinion that it was not possible for Mr. Starr to cause the damage to the vehicle as seen in the photos on the date of April 13, 2021 as alleged.”

Mr. Bellissario's report also indicates that based on the repair invoice, which indicates that replacement parts were used to fix the vehicle, he suspects that “the parts were required as a result of collision or impact to the right front corner of the vehicle which are not at all related to the scratches to the middle and left side of the bumper, of which Mr. Starr is alleged to have caused.”

Despite being provided unreasonably late in this process, I have considered and reviewed these materials. I do not accept this report as a plausible explanation that it was “not possible” for the Councillor to have scratched the car.

First, I note that Mr. Bellissario has no qualification whatsoever to provide expert evidence on the physical capabilities of the Councillor. He is also not qualified to provide analysis of security camera footage, including both timing and spatial considerations. At most, Mr. Bellissario would be qualified to opine on the nature and quantum of the damage to the vehicle.

Second, as to Mr. Bellissario's critique of the repair bill and the components used to fix Councillor Ras's vehicle, it appears that Mr. Bellissario was not advised that the Councillor agreed to pay for the cost of this repair in order to avoid criminal charges. These repairs were not carried out to fix damage sustained in a collision. They were undertaken and paid for by the Councillor himself so that he would avoid criminal charges.

Lastly, Mr. Bellissario's opinion is completely inconsistent with the Councillor's initial defense that he simply picked up a piece of paper on the ground in front of Councillor Ras's vehicle. Again, Mr. Bellissario's opinion is essentially that it was not physically possible for the Councillor to crouch down and apply pressure to scratch the vehicle.

This stands in stark contrast to the medical practitioner's opinion that it was possible, but would have been extremely difficult. This is an incredible conclusion.

In further contrast, by the Councillor's own witness statement provided to me on April 1, 2022, the Councillor says he crouched down to pick up a piece of paper in front of the vehicle. Mr. Bellissario's suggestion is also made in the face of the security camera footage of the Councillor. There is no air of reality in this and I do not accept this explanation.

I have also considered the report from Mr. Huang and the letter from Dr. Okem, both provided to me extraordinarily late in the process. Mr. Huang's conclusions, from a biomedical engineering perspective, are as follows:

"Do the surveillance videos show Mr. Starr's actions consistent with those which he reported?"

Comparing the surveillance video and our re-enactment, the surveillance videos show the actions made by Mr. Starr are consistent with him picking up a piece of paper from the channel in front of the Kia as he reported, except that on April 13, 2021, Mr. Starr did not step forward when he straightened up from bowing over.

Do the surveillance videos show the action of Mr. Starr keying the Kia?

In our opinion, the surveillance videos do not show any actions by Mr. Starr that could be him keying the Kia, in that Mr. Starr was blocked by the Kia when he bowed over, and the actions made by his hand are not visible."

In essence, Mr. Huang concludes that 1) the Councillor's defense about picking up a piece of paper is physically possible, and 2) the security camera videos do not actually show the Councillor scratching the car, given that he was obstructed by Councillor Ras's car.

In my view, Mr. Huang's report adds nothing of value to this investigation, other than to state conclusions which were already clear. This report does not make it any more or less likely that the Councillor scratched the car, as was alleged. It appears to have been prepared in an attempt to corroborate a story, but does not provide any additional facts or real evidence.

Dr. Okem's letter also does not provide anything of substance. It restates the Councillor's medical issues following his accident, and a bare opinion that it would have been "extremely difficult" for the Councillor to have caused the damage to Councillor Ras's car. Again, similar to Mr. Bellissario's report, Dr. Okem's opinion about the

Councillor's physical limitations is not consistent with the Councillor's initial defence that he picked up a piece of paper from in front of the car.

Based on my review of all the evidence in my investigation, including the materials which were provided to me at the very last moment, and on a balance of probabilities, I find that it is more likely than not from all the circumstances that the Councillor caused the damage to Councillor Ras's car on April 13, 2022.

Analysis:

In Rule 12, the Code incorporates by reference the Respectful Workplace Policy as follows:

"Rule No. 12

Respectful Workplace

1. Members are governed by the City's *Respectful Workplace* policy. All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.
2. All complaints received, involving members of Council under the *Respectful Workplace* policy shall be referred to the Integrity Commissioner for processing in accordance with both the said policy and the *Council Code of Conduct Complaints Protocol*."

The City's Respectful Workplace Policy provides as follows:

"POLICY STATEMENT

Employees, elected officials, citizen members of committees and volunteers acting on behalf of the City of Mississauga are entitled to, and are expected to contribute to, a Respectful Workplace. No form of discrimination, workplace harassment, workplace sexual harassment or bullying will be tolerated."

Harassment is defined in the City's Respectful Workplace Policy as meaning "engaging in course of vexatious comments or conduct against an Employee that is known or ought reasonably to be known to be unwelcome. "Vexatious" means annoying. A "course" of conduct means that a pattern of behaviour or more than one incident is usually required to establish Workplace Harassment or Workplace Sexual Harassment. However, a single

significant incident may be sufficiently offensive to be considered Workplace Harassment or Workplace Sexual Harassment.”

“Workplace Harassment and Workplace Sexual Harassment are not defined by intent, but rather by how the behaviour would be perceived or would impact a reasonable person’s perception of the behaviour. Behaviour which constitutes Workplace Harassment and Workplace Sexual Harassment include, but are not limited to:

- Behaviour which creates an environment which is hostile or offensive or which contribute to a poisoned work environment”

In consideration of the Councillor’s actions, I find that he engaged in harassment against Councillor Ras. Damaging someone’s property, especially their vehicle, is behaviour which is demeaning, offensive, and unwanted. The Respectful Workplace Policy makes clear that a single incident of hostile or offensive behavior which is significant can constitute workplace harassment. Intent or motivation is irrelevant. What matters is how the conduct would be perceived. Purposely causing damage to someone’s vehicle is an intrusive and offensive action that would be perceived by any reasonable person as being hostile and unwanted.

Decision:

On a balance of probabilities, I find that Councillor Starr scratched Councillor Ras’s car on April 13, 2022 and that the single incident of scratching constitutes “Workplace Harassment” within the meaning of the Respectful Workplace Policy. I have decided to recommend a relatively higher suspension of compensation paid to him as a member of Council because his action was mindless vandalism and devoid of common decency.



Robert Swayze
Integrity Commissioner