



ADR
C H A M B E R S

Integrity Commissioner Office
for the Town of Pelham

MICHAEL L. MAYNARD
E-mail: mmaynard@adr.ca

June 1, 2020

SENT BY EMAIL TO:

Councillor Ron Kore: rkore@pelham.ca

And to:

Mayor Marvin Junkin: mjunkin@pelham.ca

And to:

Nancy Bozatto, Town Clerk: NBozzato@pelham.ca

**Re: Complaint Reference Number IC-154-0220
Mayor Marvin Junkin**

Dear Mr. Kore and Mr. Junkin:

1.0 Delegation of Investigative Powers

Pursuant to a written delegation of powers dated February 5, 2020, Edward T. McDermott ("Mr. McDermott" or the "Integrity Commissioner"), in his capacity as Integrity Commissioner for the Town of Pelham ("Pelham" or the "Town"), delegated to the undersigned pursuant to section 223.3(3) of the *Municipal Act, 2001*, certain of his powers and duties as Integrity Commissioner to inquire into, investigate, and prepare a report (subject to his review and approval) with respect to the complaint (the "Complaint") described herein.

This Complaint was deemed received by the Integrity Commissioner on February 5, 2020.

2.0 The Complaint

2.1 Matters at Issue

The Complaint is brought by Councillor Ron Kore ("Councillor Kore", or the "Complainant") against Mayor Marvin Junkin ("Mayor Junkin", the "Mayor", or the "Respondent") (collectively, the "Parties").

The Complainant alleges that the Respondent breached the *Code of Conduct* in several ways. His allegations are summarized as follows:

1. That Mayor Junkin contravened the *Municipal Act, 2001* and the Town's *Procedural By-law* (and thereby contravened the *Code of Conduct*) by improperly convening meetings of Council (first in-person and then later by email) to consider a proposed donation to the Fonthill Concert Bandshell Committee (the "Bandshell Committee");
2. That by improperly convening such meeting(s) (as noted, *supra*), the Mayor improperly attempted to conceal from the public the potentiality of the donation being made by the third-party company;
3. That the Mayor improperly solicited donations from businesses in the Town on behalf of the Bandshell Committee to fund the Bandshell renovation project;
4. That the Mayor disparaged Councillor Kore when, in replying to an email in which Councillor Kore had asserted that the Mayor's informal approach to Councillors in respect of the potential third-party company donation to the Bandshell Committee (as noted in points 1 and 2, *supra*) amounted to a "back room deal", the Mayor referred to such assertion by the Councillor as the "height of silliness";

2.2 Code of Conduct

Pursuant to the direction of the Integrity Commissioner, the Complainant identified the following sections of the *Code of Conduct* in relation to the above enumerated matters as being at issue in his Complaint:

4.0 General Obligations

4.1 In all respects, Members shall:

[...]

- (b) conduct themselves with integrity, courtesy and respectability at all meetings of the Council or any committee and in accordance with the Town's Procedural By-law or other applicable procedural rules and policies;
- (c) seek to advance the public interest with honesty;
- (f) refrain from making statements the Member knows or ought reasonably to know to be false or with the intent to mislead Council or the public;
- (g) accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings; and
- (h) refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member.

10.0 Improper Use of Influence

10.3 Members who are asked to support charitable activities within the community may do so by accepting honorary roles, lending their names to organizations or events and encouraging public support of events. In doing so, Members shall ensure that they do not have a conflict between their private interest and their duties to the public. Members shall not directly solicit funds nor receive funds for charitable purposes in their role as a Member. Members shall remain at arms-length from financial

aspects of external events which they support in their public capacity and shall not participate in decisions concerning the disbursement of funds or determining the beneficiaries of the funds.

12.0 Council Policies and Procedures

12.1 Members shall observe and adhere to the policies, procedures and rules established by Council.

3.0 Preliminary Issues: Jurisdiction and Coordination with the Ontario Ombudsman

3.1 Jurisdictional Question

In late February through early March 2020, communication was established with the Office of the Ontario Ombudsman who had advised the Integrity Commissioner that the Ombudsman was in receipt of a Complaint involving certain matters which were also included in (and potentially overlapped with) the Complaint submitted to the Integrity Commissioner.

This circumstance gave rise to a jurisdictional question as to which office would process the particular matter involving the allegation that the Mayor had convened an improper meeting of Council by approaching several other Members of Council at an in-person event on the question of the third-party donation (as referenced *supra* at page 2). It was also confirmed that the Ombudsman, pursuant to a decision made in another matter, had already found that emails between Members of Council do not constitute meetings of Council under the *Municipal Act*¹, and accordingly are not subject to the open meeting requirements of that statute (notice to public, minutes, etc.).

It was ultimately determined by the Integrity Commissioner in a written decision dated March 6, 2020, that the issue of whether the Mayor had **held an improper meeting of Council** contrary to the *Municipal Act* and the Town's *Procedural By-law* as alleged in this Complaint fell under the jurisdiction of the Ombudsman, who the Integrity Commissioner knew to have been engaged in the matter by

¹ <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2019/city-of-hamilton>

way of having received a similar (or perhaps identical) complaint from the Complainant in respect of the same factual allegations.

It must be noted that this position of the Integrity Commissioner (i.e. to defer this question to the Ombudsman) did not pre-suppose the Ombudsman's determination in this matter, including whether to proceed with an investigation thereof. It was clear, however, that the Ombudsman had received a complaint with respect to this issue and had jurisdiction to determine it.

Additionally, the Integrity Commissioner determined that the question as to whether the email exchange allegedly initiated by the Mayor constituted an improper closed-door meeting of Council contrary to the *Procedural By-law* was outside of the Integrity Commissioner's jurisdiction, as the Integrity Commissioner is not the appointed Closed-Door Meeting Investigator for the Town.

But even if it were not outside of the Integrity Commissioner's jurisdiction, the cited case decided by the Ontario Ombudsman², in which the Ombudsman determined an email exchange between Council Members does not constitute a meeting of Council, is compelling and in our view correct.

The question however remains as to whether the Mayor attempted to improperly conceal information from the public through his alleged email to other Members, and thereby contravened the provisions of the *Code* referred to above. After careful consideration, it is our view that such allegations do fall within the jurisdiction of the Integrity Commissioner to determine.

3.2 Determination on Jurisdiction

Accordingly, the following matters in the Complaint remain the subject of inquiry and determination by the Integrity Commissioner: (i) the email exchanges in respect of the potential third-party company donation to the Bandshell Committee and any *Code* implications arising therefrom; (ii) the alleged solicitation of funds by the Mayor for the Bandshell Committee, as well as the allegations relating to the disbursement of those potential funds back to the Town of Pelham; and, (iii) the alleged disparagement of Councillor Kore by the Mayor.

² Ibid

4.0 The Investigation Process

The investigation into this matter involved a review of written statements and documentary evidence from the Complainant, who provided the totality of his evidence in writing. Written statements were also received from the Respondent, who additionally took part in a telephone interview on April 21, 2020.

Written materials which were reviewed in this matter include:

(i) the Complainant's statements detailing the events upon which the Complaint is predicated, and the Respondent's response thereto; (ii) copies of emails exchanged between the Parties (and other third-party individuals, including, *inter alia*, other Members of Council and Town Staff); (iii) excerpts from a newspaper article published in *The Voice of Pelham* on November 7, 2017; (iv) excerpts from the relevant by-laws of the Town, including the *Code of Conduct* and *Procedural By-law*;

5.0 Statements and Evidence

5.1 General Background Information

The following background information is provided to set the scene for the matters at issue in this Complaint.

In the Town of Pelham, a citizen-led Bandshell Committee, which has been operating for some period of time, organizes regular musical events at Peace Park, which is a Municipal park in the Town of Pelham.

The Bandshell Committee is not a committee of the Municipality; that is, the Municipality does not control the Bandshell Committee or its activities, nor does it appoint members thereto. However, it is understood that the Bandshell Committee and the Town work together in partnership when necessary, as the Bandshell Committee organizes events for the benefit of the community, and such events take place on Town property at Peace Park.

The Bandshell Committee has been working towards making certain improvements to Peace Park in support of their events and proposed a \$75,000.00 refurbishment plan to the Town. The plan was ultimately approved by the Town,

with the Bandshell Committee being responsible for undertaking to raise the necessary funds to complete the improvements.

However, it was also agreed that the Town would pay for certain up-front costs associated with the refurbishment in order for the work to be done quickly, with the understanding that the fundraising efforts of the Committee may take longer to bear fruit. Accordingly, to the extent the Town incurred up-front costs for the refurbishment, any funds raised by the Bandshell Committee's efforts would then be used to pay back the Town for its financial support.

As noted in the Bandshell Committee's fundraising literature (which was provided by Mayor Junkin), the Town also agreed to support the project by conducting some of the work itself (e.g. doing the locates) and by "[...] offering charitable receipts for all donations over \$10".

More information about the arrangement between the Town and the Bandshell Committee regarding the improvements at Peace Park can be found on the Town of Pelham's website³.

The above historical facts are understood to be undisputed by the Parties.

5.2 The Complainant's Submissions

On January 9, 2020 at 10:22 p.m., Mayor Marvin Junkin sent an email to Councillor Kore and two other Members of Council, as follows:

Back in August, I sent to several Town businesses a request on behalf of the Band Shell Committee, for a donation to fund the improvements. One of the companies to respond was [a local Cannabis Company, (hereinafter "Cannabis Co")]. They are willing to donate 25,000.00 to the bandshell, with no strings attached, to show they are trying to be a good corporate citizen.

Because this discussion does not fit the criteria, it cannot be discussed in-camera, and it was decided by David [the Town CAO] and I **that perhaps we really wouldn't want to discuss this in open session, so just this once we would**

³ <https://www.pelham.ca/en/news/peace-park-construction.aspx>

make a decision by email, outside of Council. I spoke to Mike, John, and Bob [other Members of Council] tonight at the MCC, so they already know the situation. **If you decide to communicate by email to discuss this donation, so be it, I don't want to know about it.**

So the question is... Should Council accept this donation. It will be paid to the Bandshell Committee, which in turn will use it to pay us back the money we loaned them.

If you have any questions, feel free to contact me. I have told [a Bandshell Committee member] that I would have the answer for her by Saturday evening, so I would appreciate each of you to email your decision by Saturday afternoon.... thanks... marv

[additions added] [**emphasis** added]
[word and paragraph spacing edited for ease of reading]

On January 10, 2020 at 7:34 a.m., the Complainant, Councillor Kore, replied by email (with copies to the CAO and other Members of Council) as follows:

Good morning,

Morally we should not accept a donation from [Cannabis Co] or any other cannabis industry in our community, and to think there are no strings attached? What message are we sending to our community? This kind of decision should be debated in chambers, in full view of the citizens. We talk about transparency and then it appears we are making a back room deal here. I am totally not in favour of making decisions like this.

Thank you

Ron

At 12:52 p.m., on January 11, 2020, the Mayor again emailed Members of Council:

My informal poll is complete, and I will be informing [Member of the Bandshell Committee] that Council does not want the Bandshell Committee to accept this donation...
marv

At 6:49 p.m. the same day, the Complainant forwarded the above 12:52 p.m. email from the Respondent to the other Members of Council. Then at 7:09 p.m., he replied to the Mayor (with copies to all other Members of Council), stating:

Good evening

Please don't insult my intelligence. I will be passing your email over to the Pelham Voice and also to the chairperson of the cannabis committee and ask them if they think it's a poll or a back room deal with [Cannabis Co].

Thank you

At 10:43 p.m. the same day, the Mayor replied by email:

Ron... I have talked to Dave Burket [a Voice of Pelham reporter] Just now, and have sent an email to the chair of the ccc [Cannabis Control Committee, a Committee established by the Town of Pelham], hoping to talk to him tomorrow. Is there anyone else you think I should talk to??... marv

[additions added] [word and paragraph spacing edited for ease of reading]

On January 13, 2020 at 8:20 a.m., Councillor Kore emailed the Mayor, other Members of Council, and the CAO, stating:

Good morning,

I am not sure you realize the severity of what your email implied. Saying that the discussion of a \$25,000 donation from [Cannabis Co] did not fit criteria for in-camera and

you did not want to discuss it in an open forum. That is wrong. We don't do back room deals, that is one of the things the former council did, not us. I think you knew it was wrong when you said.....only this one time we will do this. We took an oath and vowed to be open and transparent when making decisions that affect our community and through this email, you asked us to basically break our oath and the code of conduct.

Thank you

Ron

At 8:27 a.m. on the same day, the Mayor replied by email (recopying all recipients):

Well Ron, when I explained this event to Dave Burket and Tim of ccc [Cannabis Committee], they both kinda yawned and more or less shrugged it off, as have the majority of Council ..You calling it a back room deal is **the height of silliness...** marv

[**Emphasis** added]

Based on the information contained within the above email exchanges, the Complainant has advanced the view that the Respondent breached the *Code of Conduct* in several ways⁴, which, leaving aside the matters already determined by the Integrity Commissioner to be excluded from consideration in this present matter, are summarized as follows:

- *5.2.1 - Code Section 4.1 (c) – Members shall...seek to advance the public interest with honesty;*

The Complainant asserts that the Respondent breached *Code of Conduct* provision 4.1 (c) by attempting to conceal the matter of the third-party

⁴ As noted, the issue of whether the Respondent breached the *Code* by holding an improper meeting of Council contrary to the *Procedural By-law* is not before the Integrity Commissioner as the inquiry into such matter has been deferred to the Ontario Ombudsman.

donation to the Bandshell Committee's Peace Park project through private conversations and emails out of the public view, which the Complainant describes as, "[...] a dishonest act that undermines the public interest."

The Complainant further states that: "[...] redirecting funds through a third party is an attempt to keep the public from understanding the actions of and benefits to the town in receiving funds."

On this point, the Complainant concludes that:

"Mayor Junkin's intention was to keep the public from learning that [Cannabis Co] was the Town's benefactor. A fact that would prove distasteful to the public given the negative impact of [Cannabis Co's] cannabis operation and their legal action against the town of Pelham."

- *5.2.2 - Code Section 4.1 (f) – Members shall...Refrain from making statements the Member knows or ought reasonably to know to be false or with the intent to mislead Council or the public;*

The Complainant points out that in his email to Members of Council, the Respondent "[...] invites Members [of Council] to 'communicate by email to discuss this donation' and attempts to excuse himself from any wrongdoing by stating: 'I don't want to know about it.'"

The Complainant asserts that: "The statements made in the email message [...] are intended to mislead, confuse and divide Members of Council and the public."

- *5.2.3 - Code Section 4.1 (g) – Members shall...accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings;*

The Complainant asserts that in his initial email, "Mayor Junkin openly admits that he is disrespecting Council's decision-making process by stating [in that email]:

'Because this discussion does not fit the criteria, it cannot be discussed in -camera, and it was decided by David [the Town's CAO] and I that perhaps we really wouldn't want to discuss this in open session, so just

this once we would make a decision by email, outside of Council.'"

The Complainant further asserts that Mayor Junkin also disrespected the decision-making process "[...] by requesting that Council make a decision by emailing him and avoiding a discussion in open Council."

- *5.2.4 - Code Section 4.1 (h) – Members shall...refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member;*

On this point the Complainant asserts that Mayor Junkin, "[...] dismissed my concerns and insulted me in the process," (i.e. by referring to the Complainant's concerns as the "height of silliness").

- *5.2.5 - Code Section 10.3 – [...] Members shall not directly solicit funds nor receive funds for charitable purposes in their role as a Member. Members shall remain at arms-length from financial aspects of external events which they support in their public capacity and shall not participate in decisions concerning the disbursement of funds or determining the beneficiaries of the funds;*

The Complainant pointed out that Mayor Junkin admitted to directly soliciting funds for a charitable purpose when he stated in his email that:

"Back in August, I sent to several town businesses a request on behalf of the Band Shell (sic) Committee, for a donation to fund the improvements."

The Complainant further asserted that the Mayor did not maintain an arms-length relationship in respect of the financial aspects of the third-party donation, and subsequently that he participated in "[...] both a decision concerning the disbursements of those funds and [in] determining [the] beneficiary."

In this respect, the Complainant pointed out that the Mayor stated in his email the intention that the donation would be paid to the Bandshell Committee by the donor, and then be used to pay back the Town of Pelham for the money which had been advanced to the Bandshell Committee for the Peace Park improvements.

- *5.2.6 - Code Section 12.1 - Members shall observe and adhere to the policies procedures and rules established by Council.*

The Complainant concluded that, due to the above noted issues outlined in his Complaint, Mayor Junkin "[...] failed to observe and adhere to the Town's *Code of Conduct* and the [*Procedural*] *By-law*."

5.3 The Respondent's Submissions

Mayor Junkin responded to the allegations of the Complainant by way of a letter dated February 14, 2020, in which he broke the Complaint into two sections for his response: first, he responded to what he considered to be the issue of the "[Cannabis Co] vague offer of a \$25,000 donation"; and, secondly to the issue he describes as the "[a]sking of various businesses to donate to a community cause."

- *5.3.1 - Communications with Councillors re: the potential donation (Code sections 4.1 (c), (f), (g), (h))*

The Mayor provided the following response:

As stated by Councillor Kore, I sent an email to [Cannabis Co] in early September informing them of a community project that they might want to contribute to, and by doing so, showing the community that they are a good corporate citizen. Because of their history in this Town with the severe odour and light emissions, I thought they would welcome the opportunity to show that they could be a good corporate neighbor. At a meeting in Town Hall in late October, the CEO of [Cannabis Co] indicated that the company would perhaps, at some point in the future, be willing to contribute to this project. Knowing their history with the previous fundraising obligation with Project Share, a charity in Niagara Falls, I was somewhat dubious that this potential offer would even be fulfilled. There was at no time any cheque offered nor any definite timeline offered for payment.

Sometime after this conversation, it occurred to me that it would be prudent of me, as head of Council, to get a feel from the rest of Council concerning this hypothetical offer. After discussing options with the town CAO David Cribbs, it was at this point that I decided to do an unofficial poll of Council. At no time was this an agenda item, nor did I see it becoming one as it was so vague an offer to begin with.

The Mayor went on to describe that he had seen three Members of Council at an event where the Mayor was performing an official duty. The Mayor described approaching those three Members and asking for their opinions as to "[...] how they would feel about accepting any money from [Cannabis Co] if it turned out to be a solid offer sometime down the road."

The Mayor stated that on the same night he sent an email to all three remaining Councillors (i.e. those who he had not spoken with at the event) "[...] asking them if they would be in favor of accepting any money from [Cannabis Co]."

According to the Mayor:

"Councillor Kore replied with an email that appeared to me to border on an attempt to blackmail me, threatening to show the emails to two other individuals."

In response to this reply from Councillor Kore, the Mayor recounted that he:

"[...] promptly contacted these individuals, one being the editor of our Town's newspaper and neither one saw any fault in my actions."

[Note: The other individual referenced is the Chair of the CCC, per the email records]

The Mayor then contacted Councillor Kore again to see if there was anyone else the Councillor thought the Mayor should contact.

From that point, Councillor Kore "[...] expressed his thought that I was attempting a backdoor deal" and the Mayor replied that such an assertion was, in his view, "[...] the height of silliness."

The Mayor stated that there was a need for the issue to be expedited, as a member of the Bandshell Committee, with whom the Mayor had discussed the potential [Cannabis Co] donation, was intending to make reference to such in a report which would have been presented by him/her to Council at a public Council meeting on January 13, 2020 in an attempt to publicize the potential donation which would then have made it difficult for the donor to back out of. However, the Mayor's view was that if Council would be opposed to accepting such a donation in any case, it would amount to "a moot exercise".

The Mayor stated that after he learned of Council's collective opinion on receiving such a donation from [Cannabis Co], he then advised the Bandshell Committee member in question to "[...] drop the company's name from [the] list of donors."

The Mayor asserted that if, on the other hand, Council had voted to accept the donation, the matter would have been publicly disclosed that evening through the delegation of the Bandshell Committee member, who was, according to the Mayor, intending to reference the matter in a report to Council. The Mayor asserts, therefore, that such circumstances negate "[...] Councillor Kore's incorrect assertion that this would have been a backdoor deal."

In his written submissions on this point, the Mayor lastly asserted that:

"[...] when [Cannabis Co] mentioned this offer, there were no dates set for it to be finalized, nor any concrete amount mentioned. It was a hypothetical offer, nothing more. Because of this vagueness and the fact that at no time was it on any upcoming agenda, I did not feel this item was off limits, as per the Municipal Act."

In his oral submissions, the Mayor provided greater general insight into the background of the Bandshell Committee, the Peace Park improvements, and other contextual information, and additionally reinforced his position which had been communicated in writing.

Regarding the potential [Cannabis Co] donation, the Mayor stated that the company had suggested they could potentially donate up to \$25000.00 for a specific aspect of the park refurbishment (specifically, that [Cannabis Co] would pay to install lights with a value of approximately \$25,000.00), but that this was never set in stone, and it came as a "side bar" in discussions the Mayor was having with the company related to other business in November 2019.

The Mayor acknowledged that his January 9, 2020 email to Members of Council stated that the company was "[...] willing to donate \$25000.00" but took the position that such statement did not accurately reflect the situation, and should have said something less definitive, such as that they "might be willing to donate \$25,000."

With respect to his comment to other Members of Council (on January 9, 2020) that "[...] **it was decided by David [CAO] and I that perhaps we really wouldn't want to discuss this in open session**", the Respondent stated that he felt the offer was "oblique" and he believed it would be a waste of Council's time to consider something which, in his view, might never crystallize.

With respect to his comment to other Members of Council (on January 9, 2020) that "[...] **just this once we would make a decision by email, outside of Council**," the Mayor stated that he was merely looking for consensus on an idea, not to make a formal decision of Council.

With respect to his comment to other Members of Council (on January 9, 2020) that, "**If you decide to communicate by email to discuss this donation, so be it, I don't want to know about it**," the Mayor stated that he merely meant he was not concerned about how Council Members arrived at their decision. He advised that his thinking at the time was that: (a) it was unlikely that this potential donation would actually be made;

and (b) that this situation was not really a "big deal" and therefore he did not want to be "bogged down" by the back-and-forth details.

The Mayor denied any intent to hide this issue from the public, stating that the Bandshell Committee's intent was to reveal the potential donation publicly to encourage [Cannabis Co] into following through and actually make the donation.

With respect to his comment to Councillor Kore that certain of the Councillor's comments in respect of this matter were the "**height of silliness**", the Mayor stated that he does not believe such comments to be particularly insulting. He reiterated his position that the issue of the potential donation was "trivial" and accordingly he believed "Councillor Kore was blowing this out of proportion."

Among the materials submitted by the Mayor were the various emails involving Members of Council who responded to the Mayor's January 9, 2020 email. It is noted from these materials that all Members of Council determined that the donation from [Cannabis Co] should not be accepted.

However, in addition to both the unanimous rejection of the proposal, it is further noted that Councillor Lisa Haun (like Councillor Kore) also expressed her concerns with the Mayor's approach, stating:

"I [...] do not agree to voting about this via email. This should be debated properly and publicly inside council chambers. In my opinion we are setting ourselves up for a future scandal otherwise. You sent us the email using your town email address for this "off the books" council decision so it should be noted that all of this is potentially FOI-able. If this is not made public now then once this hits the paper at a later date it will tell the public we are not being transparent in our decision making."

- *5.3.2 - Solicitation of Donations (Code section 10.3)*

With respect to the issue that he improperly solicited funds from local businesses, the Mayor confirmed that he contacted local businesses (either

personally or via email) to inform them of the Bandshell Committee's park refurbishment plan and the opportunity to donate to it.

The Mayor further took the position that his activity in this instance is similar in nature to "[...] the previous Mayor holding a Mayor's gala, then donating the proceeds to local charities."

He stated that he "[...] had no idea that anyone could take offence to this action, and from all businesses contacted, [he] had nothing but favourable responses [...]".

When asked why he reached out to businesses for donations to this cause, the Mayor stated that he viewed it as his role "[...] to build and strengthen relationships so that we can work together to support and encourage the feeling of community," and further stated that:

"Making businesses aware of such opportunities, (sic) only provides them with options that they may not be aware of to help enhance the Town of Pelham."

6.0 Analysis and Decision

6.1 Issues

The questions to be answered by the investigation are:

1. Did the Respondent breach section 4.1 (c) of the *Code*?
2. Did the Respondent breach section 4.1 (f) of the *Code*?
3. Did the Respondent breach section 4.1 (g) of the *Code*?
4. Did the Respondent breach section 4.1 (h) of the *Code*?
5. Did the Respondent breach section 10.3 of the *Code*?
6. Did the Respondent breach section 12.1 of the *Code*?

6.2 Decision

On the basis of the evidence presented in this matter, and for the reasons set out below, it has been determined through this investigation that the Respondent did contravene sections 4.1 (c); 4.1 (f); 10.3; and (technically) 12.1 of the *Code of Conduct* (although section 12.1 is redundant in this case and overlaps with the other sections).

It is further determined through this investigation that the Respondent did not contravene sections 4.1 (g); or 4.1 (h) of the *Code of Conduct*.

As previously noted, the Complainant's allegation related to section 4.1 (b) of the *Code* is excluded pursuant the Integrity Commissioner's decision on preliminary jurisdictional issues as outlined (*supra*).

6.2.1 - Did the Respondent breach section 4.1 (c) of the Code?

Section 4.1 (c) of the *Code* requires Members to "seek to advance the public interest with honesty".

Whatever the Mayor's underlying rationale may have been, it is clear that he intended to keep the notion that Council ought to consider [Cannabis Co's] potential donation to the Bandshell Committee's project (which would have resulted in that Committee repaying monies to the Town for its advance of funds to the Committee for the Bandshell renovation project) off the public agenda and away from public scrutiny.

While the Mayor later described his actions as the taking of an "informal poll" the language employed in his January 9, 2020 email made it very clear that he wanted a "decision" of Council to be made "by email, outside of Council", with such decision-making process to occur "just this once."

However, it was not until after he was pressed by Councillor Kore (and Councillor Lisa Haun) regarding his utilization of this procedure for engaging Council on this matter that he referred to his method as an "informal poll", which he then did by way of reply emails to individual Council Members on January 11, 2020.

Prior thereto, there was no indication in the language employed by the Mayor that this was informal or merely an "informal poll".

However, whether the later reference to his question to Council being an "informal poll" was intended to cover for having made an ill-advised request of Council to consider public business off the books (as the Complainant asserts), or whether it was simply to clarify language as to his real intention the second time around (as the Respondent asserts), the fact remains that the Mayor initially engaged his fellow Councillors to "make a decision" via a process which could have resulted in the very fact that Council even *considered* the potential [Cannabis Co] donation being concealed from the public.

This action does not in my view, nor in the view of the Integrity Commissioner, attain the standard proscribed by section 4.1 (c) of the *Code*.

I also do not find in favour of the Mayor's position that the matter would have appeared on the public agenda in any event if the response of Council had been favourable to the proposal (and therefore would have been made public eventually).

While it may be true that a favourable response by Council to the proposed donation might have resulted in the matter coming on the public agenda eventually, a decision of Council (whether for or against) requires such decision to be made in accordance with its procedural by-laws and statutory requirements. It is therefore by definition Council business, and accordingly the public's business, and should have been dealt with in a public manner.

There is nothing in the *Code of Conduct* stating that Council must support a proposal in order for the *Code's* provisions to be engaged. Whether Council would accept or reject this donation, the matter remains of public interest (particularly as it involves the eventual repayment of funds to the public coffers by the recipient (i.e. the Bandshell Committee) which had been advanced the money by the Town for improvements to a public park).

Accordingly, irrespective of Council's ultimate decision on this issue, it should not have been concealed from the public. To even attempt to do so does not, in my view, nor in the view of the Integrity Commissioner, meet the requisite standard set out in the *Code*.

As the Mayor initiated this discussion with Council, and proposed this method of decision-making, he bears responsibility for the breach of the *Code of Conduct* such actions represent.

6.2.2 - Did the Respondent breach section 4.1 (f) of the Code?

Section 4.1 (f) of the *Code* requires Councillors to "refrain from making statements the Member knows or ought reasonably to know to be false or with the intent to mislead counsel or the public".

I find the Respondent also breached this section of the *Code*, but not for the reasons put forward by the Complainant.

The Complainant asserts that the Mayor breached this section of the *Code* by asking Members to vote by email, discuss the matter amongst themselves if they wanted, and that if they did so, by advising them that he did not want to be a part of it. He claims these comments were intended to mislead Council.

I do not find the Mayor's comments to be intentionally misleading or representative of some deceitfulness toward Members of Council.

However, there is an instance in later emails within the exchanges between the Mayor and Members where some misdirection on the Mayor's part, in my view, occurred.

As noted, the Mayor initiated a process whereby his Council colleagues were, by his request, asked to debate and decide on a matter of public interest by email. Two of his Council colleagues (Councillors Kore and Haun) pointed out to the Mayor their disagreement with his approach. It was after that point the Mayor altered the language by which he referred to his intentions.

Whereas the Mayor initially asked his colleagues to make a "decision by email, outside of Council", he subsequently advised them two days later, after receiving negative feedback on that approach to governance from two of his colleagues on Council, that his efforts simply represented an "informal poll".

That, in my view, was a misleading characterization of his original proposition to deal with the matter via email and outside of the public's view.

I am not persuaded by the Mayor's position that he was merely untidy or imprecise in the language he first employed, and that I ought instead to believe the truth is represented in his subsequent framing of the question that his efforts were merely an invitation to informal polling.

I note, for instance, that the Mayor did not appear to attempt to clarify his intentions after receiving the feedback from Councillors Kore and Haun; rather, he appears simply to have attempted to pass it off as some informal polling once all the feedback had been received.

I find that this change in language being employed by the Mayor is, on a balance of probabilities, more likely to have been an attempt to recover from an ill-conceived decision to potentially conceal (depending on the outcome) the matter from the public, than it was a simple rephrasing of his true intentions which had been disclosed in a detailed email to his fellow Councillors two days prior.

By that reading of the facts, it necessarily follows that the language later employed by the Mayor to revise the essence of what he had actually asked his colleagues to do represents an instance of making a misleading statement to other Members of Council, contrary to section 4.1 (f) of the *Code*.

6.2.3 - Did the Respondent breach section 4.1 (g) of the Code?

This section of the *Code* requires Members to "accurately communicate decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings".

It is my view, and that of the Integrity Commissioner, that this section is very particularly applied, and specifically relates to decisions Council has already made. It requires that any decision(s) of Council, and the process by which Council made such decision(s), be respected, even if the Member disagrees with the decision(s). The implication in the wording of this section is that the decision(s) contemplated under this section have already been made.

Accordingly, this section does not apply to the matters at issue in this case.

6.2.4 - Did the Respondent breach section 4.1 (h) of the Code?

This section requires Members to "refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member".

The Respondent referred in his response email to the Complainant's concerns about the (herein recounted) decision-making process as the "height of silliness", which the Complainant claims to be disparaging of him, and accordingly contrary to the *Code*.

The Respondent, however, indicated that he does not believe this language to be particularly insulting.

I agree with the Mayor and do not find it to be particularly insulting either, and certainly not such that it rises to the level of "disparagement" that it would trigger a *Code of Conduct* violation.

The language employed by the Respondent did not attack the Complainant's character or directly insult him as a person; rather, it cast the Complainant's legitimate concerns in a negative light. While it is certainly not the most productive language the Mayor could have employed to voice his disagreement with the Councillor's position, it can hardly be characterized as a "disparaging comment about another Member".

Accordingly, I do not find this to be a *Code of Conduct* violation.

6.2.5 - Did the Respondent breach section 10.3 of the Code?

The *Code of Conduct* states that "Members shall not directly solicit funds [...] for charitable purposes in their role as a Member", and moreover that they "[...] shall remain at arms-length from financial aspects of external events which they support in their public capacity [...]".

The Complainant alleges that the Mayor improperly solicited funds by approaching [Cannabis Co] (and other businesses) for donations on behalf of the

Bandshell Committee, and that he involved himself in non-arms-length aspects of the donation in question.

The Complainant also asserts that the Mayor improperly indicated to Members of Council how any funds raised would be disbursed (i.e. determining the beneficiary – in this case the Town, which would be reimbursed in part for the monies which it had advanced to the Committee).

The Respondent, on the other hand, likened his actions to the previous Mayor's activities in hosting a charitable gala, which he did in his role as Mayor, and which resulted in funds being disbursed to local charities.

Our determination on these points is as follows:

- a) The facts clearly demonstrate that Mayor Junkin did engage in a direct solicitation of funds on behalf of the Bandshell Committee for charitable purposes with local businesses (which he acknowledges) and, furthermore that he also engaged in direct, non-arms-length discussions with at least one third party (i.e. [Cannabis Co]) about a potential donation the company might make to the Bandshell Committee's cause, noting specifically how such funds would be used (i.e. on lights).

In my view, and in the view of the Integrity Commissioner, these activities are contrary to the *Code*, which directly prohibits them.

- b) However, the facts do not support the allegation that the Mayor engaged in a decision-making process about the disbursement of such funds (i.e. in determining the beneficiaries), as he was never going to be in receipt of the funds directly, and would not have been in a position to disburse them according to his own discretion.

The Mayor has advised that his solicitation efforts on behalf of the Bandshell Committee were limited to distributing a letter created by the Bandshell Committee which provided the scope of the project and need for donations, and/or discussing the letter's contents with owners (or representatives) of local businesses. He undertook these actions directly on behalf of the Bandshell Committee.

It is also noted that the Town had already committed to financially supporting the Bandshell Committee's Peace Park refurbishment, with the understanding that the fruits of the Committee's fundraising efforts would be used to repay the Town. Therefore, the proposed potential donation to the Bandshell Committee would already be earmarked for such purpose.

Accordingly, I do not find that the Mayor was engaged in any decision-making with respect to beneficiaries or the disbursement of funds. In communicating with Council about the potential [Cannabis Co] donation, he was only representing the existing reality pursuant to a previous decision of the Town (and agreement of the Committee), and was not directing how the funds ought to be disbursed (i.e. choosing a beneficiary).

The issue of the previous Mayor holding a Mayor's Gala (as referenced by the Respondent) does not excuse the Mayor from his obligations under the *Code* as written. It is not known (or found to be relevant) how the previous Mayor went about raising such funds, nor is it known (or found to be relevant) whether the raising of funds using the vehicle of a Mayor's Gala is *Code*-compliant.

It is accordingly found that the Mayor did contravene section 10.3 of the *Code* by soliciting funds for the Bandshell renovation project of the Bandshell Committee.

6.2.6 - Did the Respondent breach section 12.1 of the Code?

This section of the *Code* requires all Members of Council to "[...] observe and adhere to the policies, procedures and rules established by Council."

By nature of the findings of this investigation (i.e. that the Respondent did breach several sections of the *Code of Conduct*) it necessarily follows that this section of the *Code* has also been breached.

However, considering a breach of this section in determining a recommended penalty in this matter would appear to be unfairly double-counting the contraventions, as in this instance, section 12.1 was only breached because other sections of the same *Code* were found to have been breached.

Accordingly, while I find that the Respondent contravened this section of the *Code* as written, it has not been considered by the Integrity Commissioner or me in determining a recommended penalty flowing from the contraventions which have already been found to have occurred.

7.0 Conclusion and Recommendation

7.1 Conclusion

For the reasons set forth herein, I find, with the concurrence of the Integrity Commissioner, that Mayor Junkin contravened sections 4.1 (c); 4.1 (f); 10.3; and (technically) 12.1 of the *Code of Conduct*.

It is not our view that the Mayor did so for nefarious purposes; rather, we accept that the Mayor likely intended to avoid the potential for public discourse over a potential donation which may never materialize. In other words, he did not want to cause a problem for Council, or for the Bandshell Committee, or for the residents of Pelham without there at least being a benefit for all at the end of the road.

While I find this to be a mitigating factor for the Mayor's improper actions, it does not absolve him entirely.

It is a basic principle that the public's business must be conducted in the public's view, except for, in limited circumstances as proscribed by law. Any attempt to conceal the public's business from the public, whether such concealment is well-intentioned or not, cannot be endorsed by the Integrity Commissioner or his office.

7.2 Recommendation

Where a Member of Council has been found to have breached the *Code of Conduct*, the authority rests with Council to impose a penalty pursuant to Section 15.1 of the *Code*, and Section 223.4 (5) of the *Municipal Act, 2001*.

The available penalties include:

- (a) a reprimand; or

(b) suspension of remuneration paid to the Member in respect of his or her services as a Member for up to ninety (90) days.

Given the nature of the contraventions found herein, and the understanding that this is a matter of first instance for such contraventions by the Member, who appears to have made such contraventions as the result of an error of judgment rather than by any nefarious design, it is hereby recommended (with the concurrence and endorsement of Mr. Edward T. McDermott, Integrity Commissioner of the Town of Pelham) that Mayor Marvin Junkin **receive a reprimand** from Council for the *Code* contraventions found to have occurred in this investigation and Report.

Yours truly,

ADR CHAMBERS INC.

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

Michael L. Maynard
Office of the Integrity Commissioner