

Recommendation Report  
of the Integrity Commissioner  
Respecting Complaints Involving  
Mayor Bifulchi and Councillor Belanger  
April 10, 2019

**Introductory Comments**

[1] Principles *Integrity* was appointed the Integrity Commissioner for the Town of Wasaga Beach February 1, 2018 by the adoption of By-law Number 2018-14. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

*The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.*

[2] The Town of Wasaga Beach has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.

[3] Members of Town Council are also governed by the provisions of the *Municipal Conflict of Interest Act*. Both the *Municipal Conflict of Interest Act* and the Code of Conduct are relevant to and form the framework for the matters reviewed in this report.

[4] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and

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guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

- [5] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the Town of Wasaga Beach community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [6] Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [7] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [8] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondents named in this Report to respond to the allegations, and where findings were made, to review and provide comment on the preliminary findings

### The Complaints

- [9] This Report responds to a number of complaints dealing with the same two Members of Council, based on similar facts. Indeed the two Members of Council are both complainants and respondents in this Report. We have determined that the public interest is best served by consolidating all of the complaints investigated into this one report. Not only does this help focus on broader-based issues and allows for consolidated recommendations, but it is more cost-effective for the Town.
- [10] The identify of complainants is disclosed in this Report only where the complainant is a town official. For all other complainants, we saw no purpose served by disclosing their identity.

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- [11] On January 12, 2019 we received a complaint against Mayor Bifulchi. In it the complainant alleges that Mayor Bifulchi has a conflict of interest in respect of decisions on the choice of proposed casino site, and in particular the proposed site which is commonly referred to as the 'Highway 26 roundabout site'. This conflict of interest arises, it is alleged, because Mayor Bifulchi's parents are the owners of a property on which they operate their company Litz Construction, which is located approximately 1 km. from the Highway 26 roundabout site.
- [12] We received another complaint filed on January 12, 2019 alleging that Wasaga Beach Council had improperly met in closed session and was improperly withholding information from the public. In the course of conversation with the complainant, it was agreed that while Council may have erred in holding a closed session on a single occasion in early January 2019, this had been recognized and corrected at the very next meeting of Council, so no purpose would be achieved in pursuing this complaint. In any case, Principles Integrity is not the Closed Meeting Investigator for the Town of Wasaga Beach.
- [13] On January 27, 2019 Councillor Belanger filed a complaint against Mayor Bifulchi. In it he alleges that Mayor Bifulchi has breached proper process and procedure, and has overstepped her authority by encouraging Gateway Casinos to choose the Highway 26 roundabout site, and has conveyed inaccurate information to Council and the public. In addition, although the Complaint Form does not explicitly allege that Mayor Bifulchi is in a conflict of interest, the substance of the body of the complaint clearly articulates that the complainant believes Mayor Bifulchi is in a conflict of interest with respect to the Highway 26 roundabout site, because her parents own Litz Construction which owns a property 'in close proximity' to the proposed site, and because of a perceived benefit to the Litz Construction business from contract or equipment rentals related to development of that site.
- [14] On February 4, 2019 Mayor Bifulchi filed a complaint against Councillor Belanger. In it she alleges that Councillor Belanger has breached 22 different provisions of the Code of Conduct relating to his conduct and behaviour impugning the ethics and motives of others on Council, publicly attacking other Members of Council, and Council processes. The essence of this complaint is that Councillor Belanger is not being a 'team player' on Council and is, in fact, through his conduct and behaviour, publicly and inappropriately attacking and undermining Council as the governing body, contrary to the Code of Conduct.
- [15] On February 8, 2019 we received another complaint filed against Councillor Belanger. In it the complainant alleges that Councillor Belanger has suggested that Mayor Bifulchi has a conflict of interest in regard to any discussions involving the proposed Highway 26 roundabout site for the casino, and that he continues to cast doubt on her motives in a public manner. The complaint further alleges that Councillor Belanger, as administrator of the Facebook page IMPACT Wasaga

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Beach which is allegedly selective of who may become a member, is discriminating against persons in the community who may wish to join.

[16] On February 25, 2019 CAO George Vadeboncoeur filed a complaint against Councillor Belanger. In it he alleges that Councillor Belanger made an offensive comment at a public meeting of Committee of the Whole, suggesting that a Report from the CAO titled 'Beach Area 1 Casino Site' was "inaccurate and somewhat misleading", which violated the Code of Conduct provision cautioning members not to 'falsely impugn or injure the professional or ethical reputation of staff'. The CAO asserts that his several requests for an apology for the remarks were not accommodated.

[17] On March 1, 2019 Councillor Belanger supplemented his initial complaint against Mayor Bifulchi with a list of the specific provisions which he asserts that she has violated, including issues of procedure, honesty, and conflict of interest.

[18] We note, as well, that a number of other complaints were filed during this same timeframe, making allegations against either Mayor Bifulchi or Councillor Belanger for various perceived violations of the Code of Conduct. Those complaints not specifically referenced in this report were disposed of through a preliminary review, when they were determined not to fall within our jurisdiction and/or were matters which were resolved or were of a minor nature and did not warrant investigation.

[19] In summary, the remainder of this Report speaks to the five complaints that were not resolved through informal processing.

### Process Followed for this Investigation

[20] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.

[21] This fair and balanced process includes the following elements:

- Reviewing the complaints to determine whether they are within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaints should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondents of the complaints against them where proceeding on investigation, and providing adequate disclosure of the information we possessed so that they could prepare their responses

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- Reviewing the Code of Conduct and the *Municipal Conflict of Interest Act*, documentation including emails, meeting minutes, media publications, and reviewing online archived meetings
- Conducting interviews of persons with information relevant to the complaints
- Providing any Respondent, who was found in contravention of the Code, with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report, and taking those comments into consideration prior to finalizing and submitting our Recommendation Report
- Following his receipt of our Preliminary Findings Report, we provided Councillor Belanger with time – initially two weeks, but extended by one week in response to a request from the Councillor – in order to review and provide comment. Upon receipt of his comments, we have made some minor revisions, adding points of clarification to our Recommendation Report.

### **Analysis of Complaints:**

#### **Background and Context:**

- [22] In 2012, the Town of Wasaga Beach learned that it had been selected as one of five new gaming sites to be established by the Ontario Lottery and Gaming Corporation (“OLG”) in an announced expansion. Following consultation, Council for the Town of Wasaga Beach identified four (4) potential sites for such a facility. One of those sites was identified as Beachwood Drive (old Highway 26), Collingwood Airport Road and Mosely Street (referred to in this report as the Highway 26 roundabout site).
- [23] In 2015, Council added a 5th potential site to the list, lands owned by the Town, known as the Beach One site.
- [24] In March 2018, OLG named Gateway Casinos & Entertainment Limited (“Gateway”) as the casino operator, and in October 2018, Gateway selected Wasaga Beach as the location of one of its casinos. All that remained was for Gateway to select from among the five potential Wasaga Beach proposed sites.
- [25] In early fall 2018, it appears that Gateway was being encouraged to locate on the Beach One site. Steps were initiated to provide incentives for Gateway to choose the Beach One site for its casino development. A Memorandum of Understanding was drafted by the Town solicitors, to address challenges of access and parking identified by Gateway in developing at that location, which included the Town purchasing the additional properties required, upgrading infrastructure and building structured and underground parking to accommodate the casino; in addition, a tax rebate would be provided with a 10 years phase out.

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- [26] No report regarding the incentives was provided to Council in the fall of 2018. On October 22, 2018 there was a municipal election. The election ushered in changes on Council. The only remaining Members of the previous term of Council were Mayor Bifulchi, Deputy Mayor Bray and Councillor Belanger.
- [27] While Gateway had not yet announced its choice, behind the scenes it had indicated a preference for the Highway 26 roundabout location. On January 31, 2019, Council voted down any incentives for Gateway to locate at the Beach One site, estimated as committing the Town to between \$26.1M and \$38.9M.
- [28] Councillor Belanger, throughout this period, continued to express strong support for the Beach One site, and opposition for the Highway 26 roundabout location. He articulated concern that the financial benefits of locating at the Highway 26 roundabout site would be far less significant to the Town of Wasaga Beach than a casino developed at the Beach One site.
- [29] It is clear that while Councillor Belanger continued to strongly support the Beach One site, the majority of Council did not.
- [30] While Gateway had not yet publicly declared their selection, issues of alleged conflicts of interest began to surface – suggestions made in conversation, in media, on Facebook – that Mayor Bifulchi might have a conflict of interest in participating in any discussions around the potential sites because her parents own a property where they operate their business in proximity to the preferred Highway 26 roundabout site.

### The Applicable Code of Conduct Provisions, and their Interpretation:

- [31] In February 2019, Council adopted a new Code of Conduct. In this new Code, the essential elements of the provisions were not significantly altered, although a number of new provisions were added, and additional guidance was provided through the introduction of Commentary. All but one of the complaints were commenced under the previous Code of Conduct, and where specific provisions were cited in the complaints, these citations referenced the previous Code. For the purposes of this Report, except where otherwise noted, reference is made to the previous Code of Conduct.
- [32] The purpose of a Code of Conduct is to:

*[E]stablish standards of conduct for Members of Council, Local Boards and Committee Members in the individual conduct of their official duties...*

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*The Code represents the general standards. The Code does not replace the Member's roles, responsibilities, actions and behaviours required by various statutes, by-laws and policies.*

[33] The Code also contains a Statement of Principle:

*A written Code of Conduct helps to ensure that the members of Council share a common basis of acceptable conduct...These standards are intended to enhance public confidence that the Town of Wasaga Beach elected and appointed officials operate from a basis of integrity, justice and courtesy.*

[34] As is noted in section 8.4 c) of the Code, Members of Council must ... “conduct themselves with the highest degree of ethical behaviour and integrity”.

[35] The Code intentionally sets a very high standard for Members of Council to follow.

[36] In analyzing the complaints, two things become clear: Councillor Belanger is outspoken and persistent in his view that the Highway 26 roundabout site is the wrong location; and Mayor Bifulchi is leading a Council which is quite prepared to let Gateway choose that location rather than provide extensive Town-financed incentives.

[37] All of the complaints which have proliferated since early January fall into one of these two camps. It is in the context of these ‘warring factions’ that this investigation arose.

[38] The provisions of the Code of Conduct allegedly violated by Councillor Belanger are paraphrased below:

**S. 7.1** relating to members making false statements with intent to mislead

**S. 7.3** requiring members to conduct themselves with the highest degree of ethical behaviour and integrity, and avoid aggressive or offensive conduct

**S. 7.5** requiring members to perform their duties in a manner that promotes public confidence that will bear close public scrutiny

**S. 7.6** requiring members to follow policies and procedures

**S. 8.4(a)** Members may not impugn or malign a debate or decision or erode the authority of Council

**S. 8.4(c)** Members must uphold law and conduct themselves with highest degree of ethical behavior and integrity

**S. 8.4(f)** Not make false or misleading statements

**S. 9.1** Members shall accurately and adequately communicate decisions of Council, foster respect for decision and decision-making process

**S. 9.2** Members not to attempt to influence award of contracts

**S. 13.1(a)** Members must accurately and adequately communicate the attitudes and decisions of Council, even if they disagree, so that there is respect for the decision-making process

**S. 13.1(c)** the Mayor is the official spokesperson, and when not available, the CAO

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- S. 13.1(f) when publicly communicating, members must maintain public confidence, remain open and honest, and avoid offensive conduct
- S. 18.1 prohibiting members from using their influence of office other than for proper purposes
- S. 21.1 requiring members to conduct themselves appropriately in meetings
- S. 22.3 requiring members to respect that staff work for Council, not individual members
- S. 22.4 requiring members to directing concerns about staff to the CAO
- S. 22.6 requiring members to respect staff role and not impugn staff's professional reputation
- S. 23.1 requiring members to avoiding bullying and intimidation
- S. 23.2 requiring members to treat others with dignity and respect

[39] The provisions of the Code of Conduct allegedly violated by Mayor Bifulchi are paraphrased below:

- S. 7.1 relating to members making false statements with intent to mislead
- S. 7.3 requiring members to conduct themselves with the highest degree of ethical behaviour and integrity, and avoid aggressive or offensive conduct
- S. 7.4 requiring members to perform functions with integrity, accountability and transparency
- S. 7.6 requiring members to follow policies and procedures
- S. 7.8(a) requiring members to seek to advance the common good
- S. 8.2 requiring open, accountable and transparent government
- S. 8.4(d) requiring members to avoid conflicts of interest
- S. 8.4(e) requiring members to advance the public interest with honesty and treat the public with dignity and respect
- S. 8.4(f) not to make false or misleading statements
- S. 8.4(g) holding members responsible for the actions of their staff or others working on their behalf
- S. 9.2 Members not to attempt to influence award of contracts
- S. 15.2(a) Members must place public interest above interests of family, friends
- S. 15.2(b) the phrase 'Conflict of Interest' is to be interpreted in the broadest possible terms
- S. 15.2(c) any factor which could be considered a conflict by taxpayers should be treated as a conflict and be disclosed by member.

### Summarizing the Complaints:

[40] As noted in the introductory comments to this Report, the public interest is an important guidepost to how we conduct our work as integrity commissioners. For example "*In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.*"

[41] In this regard, it is our view that the public interest will be best served by a Report addressing the conduct and behaviours which breach the Code of Conduct in a more general way, rather than the provision-by-provision approach embarked on by some of the complaints filed.



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[42] While several of the complaints cited lengthy lists of provisions of the Code which were alleged to have been breached, the complaints can generally be boiled down to the following:

- Mayor Bifulchi, in her leadership of Council to not push Gateway towards the Beach One site (as appears may have been the vision of the previous term of Council) is allegedly failing to follow the correct policies and procedures, is acting improperly, and is in a conflict of interest because of the proximity of her parent's business property to the proposed Highway 26 roundabout site. Her conduct and behaviour in this regard is allegedly inappropriate and is contrary to the public interest, because allowing Gateway to locate at the Highway 16 roundabout site will not serve the best interests of the Town of Wasaga Beach.
- Councillor Belanger, in vocally and persistently opposing location of the casino at the Highway 26 roundabout site, is allegedly attacking the motives and actions of the Mayor and others (for example, suggesting or implying that others may be improperly motivated by personal interests, that others are misleading Council and the public, that others are acting inappropriately). His conduct and behaviour in this regard, whether through public statements in the media, in meetings, on Facebook or social media which he engages in, or by participating in specific groups or associations, is inappropriate and undermines public confidence in the integrity of the Town's elected officials.

[43] Against these complaints as re-stated above, we have assessed whether either of these Respondents has acted contrary to the Code of Conduct provisions recited in paragraphs [38] and [39] above.

### Analysis

#### Mayor Bifulchi's Alleged Conflict of Interest

[44] Mayor Bifulchi's parents' business is located on a property of approximately 35 acres, which is located about 1 km from the Highway 26 roundabout site. They have owned and operated a business at this location for many years. All five (5) proposed casino sites were approved by previous terms of Council. Mayor Bifulchi was a member of those previous Councils.

[45] The *Municipal Conflict of Interest Act* ('MCIA') applies with respect to the pecuniary interests (direct, indirect and deemed) held by Members of Council. When the Code of Conduct makes reference to conflicts of interest, that reference must be understood to encompass the broader common law concept of conflicts of interest. For the purposes of this Report, both the MCIA and the broader common law concept of conflict of interest have been considered.

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[46] Members of council are required to avoid apparent or perceived conflicts of interest by arranging their business affairs so as to preclude such conflicts from arising; and where this is not feasible, by disclosing and stepping away from participation in matters where there may be an apparent or perceived conflict.

[47] The objective test for apparent conflict of interest is set out below:

[An apparent conflict of interest...] “exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.”

(*Stevens v. Canada (Attorney General)* 2004 FC 1746)

[48] The allegation is that Mayor Bifulchi’s parents’ business will benefit from development of the casino at the Highway 26 roundabout location. We note that if this were the case, a conflict of interest would have existed for Mayor Bifulchi at the time that location was initially proposed for a casino site in 2012. It is perhaps telling that at no time in the past two terms of Council, was the issue of a potential conflict of interest arising from the proximity of that property to the proposed casino site ever raised.

[49] The Mayor’s parents’ business involves the sale of top soil and excavations, and its business does not appear to be in a position to benefit in any likely way from the development of a casino, aside from any resulting general uplift to the economy which may be experienced by the entire Town.

[50] The property is subject to site specific zoning which restricts the use to a particular business operation – relating specifically to topsoil – and is located across the road from an operating landfill, and its potential for redevelopment is, to some degree, thereby constrained. Obviously, any application to rezone or redevelop the property would give rise to a conflict of interest for the Mayor.

[51] In terms of determining what would be considered a sufficient distance from the casino site to not be considered as particularly impacted by the prospect of a casino development, we considered that the distance required under the Planning Act for Notification of changes to land use – reflecting presumed radius of impact - is legislatively established as 120 m. (400 ft). A few municipalities increase this required notification area<sup>1</sup> from the requirements set out in the Planning Act but none of these extend to 1 km. On this basis, the Mayor’s parents’ business property is beyond the reasonable distance of any presumed impact by the development of a casino.

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<sup>1</sup> For example, Vaughan has an increased distance of 150 m., Milton requires notification in rural, agricultural and hamlet areas within 300 m., and Brampton requires notification of development applications of 800 m. or 900 m. depending on the Secondary Plan.

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[52] The common law establishes an objective test for determining whether a real or apparent conflict of interest exists places weight on the need for reviewing the facts: ‘can the well-informed person properly believe that a conflict exists’.

[53] In this case, where the Mayor’s parents’ property is located significantly beyond the radius of presumed impact established by the Planning Act and even beyond a reasonable extension of that distance, and that property is, in any case, constrained in any potential redevelopment by adjacent land uses and restrictions on current uses, we are of the view that no conflict of interest arises for the Mayor in any consideration of, or decision regarding, the Highway 26 roundabout site for any potential casino development.

[54] Having examined issue from different perspectives, we find that there is no conflict of interest for the Mayor in regard to this issue.

[55] Although we recognize that in the absence of financial incentives, Gateway appears to prefer the Highway 26 roundabout site, we note that there has not actually been any decision before Council regarding the Highway 26 roundabout site, which was previously approved as a potential casino site by a previous term of Council. That decision is to be made by Gateway, based on the sites previously approved by Council.

### Mayor Bifulchi’s Alleged Inaccurate and Misleading Comments

[56] As indicated in paragraph 10, Councillor Belanger filed an initial complaint against Mayor Bifulchi in which he alleged that Mayor Bifulchi had breached proper process and procedure, and overstepped her authority by encouraging Gateway Casinos to choose the Highway 26 roundabout site, and conveyed inaccurate information to Council and the public. In early March, he supplemented his initial complaint with a list of the specific provisions which he alleged that she had violated.

[57] He alleges that Mayor Bifulchi publicly stated that Gateway, not Council, will ultimately select where they choose to develop the casino, and that while all of the Council-approved casino sites are available, conversations behind the scenes are pushing Gateway towards the Highway 26 roundabout location. Thus, her statements to the public are inaccurate and misleading.

[58] It is clear that the injection of significant financial incentives from the Town was necessary to persuade Gateway to consider the Beach One site. The January 31, 2019, Beach Area 1 Casino Site report, from the CAO, reported on the work by staff and the previous Mayor to support the Beach One site. This work and the significant financial commitment required from the Town to overcome Gateway’s concerns with the Beach One site was rejected, when finally brought to Committee of the Whole on January 31, 2019.

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[59] Clearly, conversations behind the scenes were such that the appetite for extensive financial commitments by the Town was being re-visited.

[60] Comments by the Mayor that all five sites were still on the table, and Council did not get to decide the ultimate location are not inaccurate. Council's rejection of the incentives does not technically eliminate the Beach One site as a possible location, although it does send a clear message to Gateway, and the public, that it is no longer Council's preferred location.

[61] Nevertheless, it is still the case that all five proposed sites approved by previous Council remain on the table.

[62] We do not find that comments by Mayor Bifulchi that the decision was Gateway's were inaccurate or misleading.

### Mayor Allegedly Overstepped Her Authority

[63] The complaint alleges that the Mayor overstepped her authority in engaging in discussions with a representative of Gateway behind the scenes.

[64] While a Mayor cannot commit a municipality, absent Council direction, it is clear that Mayors do play an important role in discussions with business interests in the municipality. In this regard, the current Mayor engaging in conversations with Gateway is no different than the previous Mayor working with Gateway in the development of the potential incentives which only just made their way forward to Council last month.

[65] In this regard, we do not find that the Mayor overstepped her authority in engaging in discussions with Gateway behind the scenes.

### Mayor Allegedly Breached Policy and Procedure

[66] The complaint alleges that the Mayor ignored proper process by improperly conducting meetings in camera, by causing information to be withheld from Council, and by refusing to require an economic impact study before proceeding.

[67] Decisions to move into closed session (in camera) are made by Council and not by the Mayor. Any member can challenge such decision at the meeting, under the Procedural By-law.

[68] Meetings held in closed can subsequently be investigated by the Closed Meeting Investigator. We note that Amberley Gavel is the Town's Closed Meeting Investigator, and that this is not within our jurisdiction as the Town's Integrity Commissioner.

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[69] We note that an issue around the proper subject-matter for closed meetings was brought to our attention in early January and was resolved in consultation with Amberley Gavel.

[70] We do not find that the Mayor breached the Code by ‘improperly conducting meetings in camera’, since it was not her decision, but rather Council’s decision, to conduct a meeting in camera, and in any event, the appropriate remedy is an investigation by the Closed Meeting Investigator.

[71] With respect to causing information to be withheld from Council, the allegation relates to an update to the Coordinated Committee scheduled for December 13, 2018 which was deferred until a later date.

[72] The setting of meeting agendas is undertaken by the Clerk and CAO in consultation with the Mayor and Committee Chairs.

[73] The decision to delay the update certainly resulted in greater opportunities for behind-the-scene discussions in advance of the update to Council. Nevertheless, we do not find that removing the update from the December agenda to defer it for a few weeks can be construed as ‘causing information to be withheld’, nor do we find that it is a breach of the Code of Conduct.

[74] The complaint alleges that the Mayor, in refusing to support an independent third party economic impact study of the casino locations, is failing to follow procedure and failing to advance the common good of the Town.

[75] Council has the authority to direct such an economic impact study, should it so decide. The Mayor cannot unilaterally prevent Council from directing the study. Any member of Council may move a motion, and if it is seconded, the Mayor’s refusal to support it represents just a single vote. Her refusal to support it cannot be construed as a breach of the Code of Conduct.

### Councillor Belanger’s Alleged Attacks on Others’ Motives

[76] The complaints against Councillor Belanger allege that he is engaging in inappropriate conduct and behaviour by attacking the motives and actions of the Mayor and others, for example, suggesting or implying that others may be improperly motivated by personal interests, that others are misleading Council and the public, that others are acting inappropriately.

[77] The complaints allege that his statements through media, in meetings, on Facebook or social media are inappropriate and undermine public confidence in the integrity of the Town’s elected officials.

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[78] The complaints allege that his participation in specific groups or associations, such as Impact Wasaga Beach Club and the Wasaga Beach Business Association, lack transparency and are inappropriate for an elected official.

[79] In his response, Councillor Belanger asserts his right to voice his own and his constituents' concerns, and the concerns of the many residents, local businesses and developers he has heard from on the issue of the casino location.

[80] We find that the Councillor's involvement and participation with Impact Wasaga Beach and the Wasaga Beach Business Association are not, in and of themselves, violations of the Code. Members of Council can and do meet with individuals or groups, and can participate in organizations and rally support for a position. There is no obligation on Members of Council to ensure every such meeting is open to the public, nor that every such organization has no restrictions on membership, although not all restrictive criteria would be acceptable.

[81] In the case of the Wasaga Beach Business Association, it does not appear to us to be unreasonable to restrict membership to owners and managers of businesses in Wasaga Beach.

[82] It is apparent to us that with the new term of Council, most of the support for the Beach One site has evaporated, and in its wake, there exists the rising frustration of the last remaining member of Council who supported that location.

[83] It is apparent that Councillor Belanger, although no doubt sincerely well-intentioned, has taken it upon himself to reverse the tide. In this endeavour, he has occasionally crossed the line and engaged in less-than appropriate behaviour. He appears to have embraced a 'take no prisoners', 'win-at-any-cost' attitude.

[84] For example, the comment published in the Wasaga Sun January 10, 2019:

"Belanger is also concerned that at least two individuals at the table will have a conflict of interest when it comes to some of the major decisions that this council will make; he declined to identify the councillors...(they) should not be involved; they shouldn't be in the room", he said, adding he has discussed his concerns with the integrity commissioner, and they are in agreement that there certainly would appear (to be a conflict or probability of conflict)."

[85] We note the comment posted by the Councillor to Facebook in early February:

"...the hiway 26 roundabout location is the worst location possible related to the economic benefit to Wasaga Beach. If this is the chosen location the fight will continue. If it is not in the best interest of our community we need to question the motivation to locate it there!"

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- [86] While robust debate in the public forum is laudable and a normal manifestation of a healthy democracy, this kind of criticism, negative comment, and innuendo disparaging the motives of others has the effect of undermining public confidence in the Town, its elected officials, and its staff.
- [87] We find that Councillor Belanger has crossed that line. Apparently driven by his determination to bring the casino to the Beach One site (or more recently, the Water World site), he has assailed some of those he perceives as blocking his path – the Mayor, other members of Council, and the CAO.
- [88] We find that his public criticism of the CAO's January 31, 2019 Beach 1 Site Report, in stating during the meeting of the same date that the information was "inaccurate and somewhat misleading", was an inappropriate comment. Councillor Belanger justified his comments as true because, in Councillor Belanger's view, some of the preliminary discussions between former staff officials and Gateway were not included. He defended his statement by pointing to conversations which did not find their way into the CAO's report.
- [89] The CAO explained that the report did not include information regarding discussions which were undocumented in the Town's files and not capable of confirmation by current Town staff or Town Solicitors.
- [90] Municipal staff, even the CAO, are not in a position to debate or defend themselves against members of Council. As such, it is unfair and inappropriate to criticize them in a public forum. It has the effect of eroding public confidence in the Town's Administration, and undermines the morale of others on staff who are witnessing it.
- [91] In this matter, we find that the Councillor, while initially perhaps wondering why the report lacked certain information, ought perhaps to have chosen a more appropriate turn of phrase than to suggest that the CAO's report was "inaccurate and somewhat misleading".
- [92] Moreover, once he was made aware of the explanation for not including what can only be considered (without documentation or confirmation) merely preliminary discussions, it is our view that the Councillor should have offered an apology, or at the very least, re-characterized the lack of information as just that, a lack of information. In point of fact, his public statements at a subsequent meeting appear to do that, although he adamantly refused to apologize to the CAO.
- [93] As part of our process, as noted above, we provided Councillor Belanger, as the respondent against whom findings have been made, with the opportunity to provide comments to our preliminary findings report. In his comments, Councillor Belanger justified his reluctance to apologize to the CAO on the basis that his comments were fair criticism, but also that an apology would come at a time when it would be

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“unduly politicized” and “have the potential to further involve the CAO in political controversy”. In our view it was the Councillor’s comments about the ‘inaccuracy’ of the CAO’s information which risked “politicizing” the report in the first place.

[94] We find that the public criticism that the CAO’s report contained inaccurate and misleading information to be inappropriate. In isolation, such a finding might not be substantial, but taken together with other conduct and behaviour which have the effect of casting doubt on the trust the public may place in its Town officials, it cannot be condoned. Councillor Belanger’s behaviour most directly pointed to a violation of section 22.6 of the Code of Conduct, requiring Members to respect staff in their roles and not impugning staff’s professional reputations.

[95] With respect to complaints alleging that the Councillor, through his Facebook ‘Impact Wasaga Beach Club’, his participation in the Wasaga Beach Business Association, and on social media, fails to adequately and accurately communicate respect for the decision-making process of Council, we find that although his participation per se in those organizations and media do not contravene the Code, his comments, when they tend towards personal criticisms and disparagement, do violate the Code. For example, we note that he has commented on the presumed improper motives of other members of Council, and has attributed to others – who may hold different views than himself – a lack of diligence in pursuing the public interest. S. 13.1(f) of the Code requires when publicly communicating, members must maintain public confidence, remain open and honest, and avoid offensive conduct

[96] These kinds of disparaging comments are more than merely the colourful expressions of a robust political debate. These disparagements are disrespectful, inappropriate and unfair.

[97] Members of Council are entitled, and indeed expected to disagree on all manner of issues. However, one of the cornerstones to democracy must be the recognition that different opinions and perspectives are to be respected, and should not be presumed to be motivated by personal gain, improper motives, or neglect of duty.

[98] Similarly, while it is appropriate for elected officials to engage with their constituents using a variety of media, the rules around conduct, decorum and behaviour apply equally no matter the medium. The public has a reasonable expectation that elected officials will conduct themselves with appropriate decorum, dignity and respect – for each other, for staff and for the public - whether in meetings, or elsewhere in public.

[99] In his comments to our Preliminary Findings Report, Councillor Belanger indicated his belief that criticism of the possible selection of the Highway 26 roundabout location did not involve any personal attack or harsh and disrespectful comments.



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We do not agree. Suggesting that the selection of the Highway 26 roundabout location might be motivated by conflict of interest (of the Mayor and another member of Council) is a personal attack – on those who are impugned to be motivated by their own personal interest, rather than the public interest.

[100] In this regard, it was indicated to us that use of the word ‘motivation’ (in the phrase “we need to question the motivation to locate it there!”) is synonymous with ‘reasons’, ‘rationale’, ‘the basis for’, ‘factors’ or ‘variables’.

[101] We do not agree that this would be the public’s understanding of such phrase. Recognizing that it was posted on Facebook in early February, we find the use of the phrase ‘question the motivation’ suggests synonyms such as ‘incentive’ or ‘inducement’, as in some personal interest being the motivation for preferring that location.

[102] Councillor Belanger indicated that while he “likely received bad advice on the Mayor’s alleged conflict of interest”, once he had the benefit of our advice on this subject, he “refrained from referring to it in the media or in public”.

[103] The chronology of events around the Mayor’s alleged conflict of interest is as follows:

- On January 18 the Mayor sought our confidential advice on the issue.
- On January 21 we provided the Mayor with our written advice that we did not perceive any conflict of interest for her in participating on the matter.
- On January 22 the Mayor made a public statement in this regard (called a ‘transparency disclosure’ under the recently-adopted Code of Conduct).
- On February 6, in a telephone conversation with Councillor Belanger, we discussed our view, and our advice in regard to the alleged conflict of interest.
- On March 1, in his supplementary filing to supplement his initial complaint against Mayor Bifulchi with a list of the specific provisions, Councillor Belanger continued to assert a conflict of interest by reason of her parents’ business property’s proximity to the Highway 26 roundabout site.

[104] Notwithstanding his assertion to the contrary, Councillor Belanger did not drop the issue of an alleged conflict of interest, including continuing to allege it as a breach of the Code of Conduct as recently as his supplementary complaint filing to us of March 1.

[105] Councillor Belanger, while not required to ‘toe the line’ and support the shift towards a casino located at Highway 26 roundabout site, must not disparage the motives of those who do.

[106] Accordingly, we conclude the conduct of Councillor Belanger has violated the general behaviour provisions of the Code of Conduct (specifically sections 7.3, 7.5 and 8.4(c)):

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- by not exhibiting the highest degree of ethical behaviour and integrity, as required by s. 7.3 and 8.4 (c) of the Code of Conduct;
- by not performing his duties in a manner that promotes public confidence and that will bear close public scrutiny, as required by s. 7.5 of the Code of Conduct,

and the specific provisions set out below.

### Concluding Remarks, Findings and Recommendations

[107] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. This report is not simply the sum total of analysis of fact and law. Our role is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.

#### Mayor Bifulchi

[108] We find that the complaints against Mayor Bifulchi are not substantiated.

[109] We find that Mayor Bifulchi does not have a conflict of interest with respect to dealings with the Highway 26 roundabout site arising from the location of her parents' business property.

[110] In any event, we find the decision to include such site was made by Council several years ago and has not been before Council at all in recent months.

[111] We find the allegations against Mayor Bifulchi that she failed to follow the correct policies and procedures and acted improperly or overstepped her authority are not substantiated.

[112] We find that the comment by the Mayor that all five sites were still on the table, and the statement that Council did not get to decide the ultimate location, are not inaccurate. Despite Council's rejection of financial incentives to motivate Gateway to select the Beach One site, it is still the case that all five proposed sites approved by previous Council remain on the table.

[113] We do not find that the comments by Mayor Bifulchi that the decision was Gateway's were inaccurate or misleading.

[114] With respect to the allegation that the Mayor overstepped her authority, we find that the Mayor has not overstepped her authority, thereby violating the Code, by

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engaging in conversations with Gateway. It is understood that there is a role for Mayors to engage in such discussions, with business interests, and such discussions may be beneficial to investment in the Town.

[115] It is alleged that the Mayor, in refusing to support an independent third party economic impact study of the casino locations, is failing to follow procedure and failing to advance the common good of the Town.

[116] As noted, Council has the authority to direct such an economic impact study, should it so decide and the Mayor cannot unilaterally prevent Council from directing the study. Any member of Council may move a motion, and if it is seconded, the Mayor's refusal to support it represents just a single vote.

[117] We find that her refusal to support it cannot be construed as a breach of the Code of Conduct.

### Councillor Belanger

[118] With respect to the allegations against Councillor Belanger, we find that some of these have been substantiated.

[119] The complaints allege that his participation in specific groups or associations, such as Impact Wasaga Beach Club and the Wasaga Beach Business Association, lack transparency and are inappropriate for an elected official. We disagree. We do not find that the mere participation in such an organization to be a breach of the Code of Conduct – whether the Member is the organizer or not. In our view, the use of such tools for communicating publicly must be used with caution, and due diligence exercised to ensure no inappropriate comments are posted. As noted earlier, Members are bound by the Code in regard to communications regardless of the medium.

[120] We find that the Councillor's criticism of the CAO's report as "inaccurate and somewhat misleading" is inappropriate and not to be countenanced.

[121] This in our view amounts to a breach of section 22.6 of the Code of Conduct, which requires that Members be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. The section prohibits Members from maliciously or falsely injuring the professional or ethical reputations of staff, or the prospects or practice of staff, and requires that all Members show respect for the professional capacities of staff. While on its own, the comment might be considered a minor criticism regarding which senior staff should have more resilience, coupled with his other statements and the tone they create, we find the transgression to be a greater concern.

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[122] We find that Councillor Belanger is engaging in inappropriate conduct and behaviour by attacking the motives and actions of the Mayor and others. In particular, we find that statements and innuendo by Councillor Belanger that the Mayor may be improperly motivated by a conflict of interest were inappropriate and false. Whether he made these comments to the print media, or on social media, we find that they undermine public confidence in the integrity of the Town's elected officials and constitute a breach of the Code of Conduct.

[123] It is one thing for elected officials to claim that their own view of the public interest is the best one, that they are personally on the side of the angels and speak with a clarion voice. The public can make their own decision.

[124] But it is inappropriate to suggest that others - with whom they disagree - are self-serving or ill-motivated and imply that they are not to be trusted. That kind of mudslinging and impugning motives of colleagues has the effect of planting doubt in the public's mind about the integrity of its decision makers'. It cuts to the very core of trust and confidence in local government and is not to be condoned.

[125] With respect to the innuendo and suggestions shared privately and publicly by Councillor Belanger that the Mayor is motivated by a conflict of interest, we find this allegation to be inappropriate and contrived. Such conduct cuts to the very heart of trust in local government.

[126] Our findings in paragraphs [118] to [125]:

- amount to a breach of section 13.1 (f) of the Code of Conduct, which requires that communications by a Member be accurate, open and honest, and convey the attitude and decisions of Council in a way that maintains public confidence in their office.
- Further, the public statements suggesting that the Mayor was disqualified from participating in the casino discussions, by Councillor Belanger, also tend to impugn or erode the authority of Council, contrary to section 8.4(a).

[127] We also find that the conduct of Councillor Belanger has violated the general behaviour provisions of the Code of Conduct (specifically sections 7.3, 7.5 and 8.4(c)):

- by not exhibiting the highest degree of ethical behaviour and integrity, as required by s. 7.3 and 8.4 (c) of the Code of Conduct;
- by not performing his duties in a manner that promotes public confidence and that will bear close public scrutiny, as required by s. 7.5 of the Code of Conduct.

### **Recommendations:**

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[128] The integrity commissioner may recommend that certain sanctions be imposed when a complaint has been sustained. The purpose of a sanction is to reinforce Council's ethical framework. In other words, the Code of Conduct must have 'teeth'.

[129] A monetary penalty, although not remedial, can serve as a deterrent.

[130] A penalty is warranted to clearly send the message that the behaviour falls below the standard expected of the community's elected representatives.

[131] With respect to our findings that Councillor Belanger's conduct and behaviour have breached the Code of Conduct, we recommend 10-day suspension of pay. We find that Councillor Belanger, by attacking the motives and actions of the Mayor and others, through public statements and innuendo, suggesting that the Mayor may have been improperly motivated by a conflict of interest, engaged in inappropriate conduct and behaviour in a way that undermines public confidence in the integrity of the Town's elected officials and constitute a breach of the Code of Conduct.

[132] To suggest that others on Council - with whom they disagree - are self-serving or ill-motivated and imply that they are not to be trusted, cuts to the very core of trust and confidence in local government and is not to be condoned.

[133] We therefore recommend:

1. That Council receive this report for information, and that it be posted on the Town of Wasaga Beach web site for public access;
2. That Council pass the following resolution:

That having been found to have breached the Code of Conduct for Members of the Council of the Town of Wasaga Beach, the remuneration paid by the Town to Councillor Belanger be suspended for a period of ten (10) days commencing with his next pay period.

We wish to conclude by publicly thanking the Mayor, Councillor Belanger, the CAO, the Clerk, and everyone else who was asked to participate in our investigation. We express genuine appreciation for the sharing of time, knowledge and opinions by everyone concerned. Our task would have been much more difficult had there been a reluctance to contribute.

We will be pleased to be in attendance when this report is considered to answer any questions you may have relating to its contents.