SCHEDULE "A"

CITY OF NORTH BAY ACTING INTEGRITY COMMISSIONER, NICOLE SINGH

Citation: Horsfield v. Inch, 2023 ONMIC 2
Date: October 6, 2023

INQUIRY REPORT

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I. MANDATE

1. On or around March 28, 2023, I, Nicole Singh, was delegated the role of Acting Integrity Commissioner for the City of North Bay (the "**City**") to conduct an inquiry into allegations made by Deputy Mayor Maggie Horsfield (the "**Complainant**") against Councillor Sara Inch (the "**Respondent**"). Specifically, I conducted an inquiry under section 223.4 of the *Municipal Act*, 2001, S.O. 2001, c. 25 ("***Municipal Act***") into whether the Respondent contravened Articles VIII and VI of the City of North Bay's Code of Conduct for Members of Council of the Corporation of the City of North Bay and Certain Local Boards, Schedule A to By-Law No. 2019-16 (the "**Code of Conduct**").

2. I was engaged in my capacity as a lawyer to investigate the Complaint in accordance with the Code of Conduct, assessing credibility and reliability, applying a balance of probabilities standard of proof, making factual findings, and making an assessment of whether or not any of the findings of fact amount to a violation of the Code of Conduct.

II. THE PARTIES

The Complainant

3. The Complainant, Maggie Horsfield, holds the position of Deputy Mayor with the City. She has held this position since the City's inaugural meeting of Council, which took place on or around November 15, 2022 (the "**City's Inaugural Meeting of Council**"). The Complainant was elected on or around October 24, 2022.

4. As Deputy Mayor, the Complainant sits as a Council appointed member on various boards and committees. Among other responsibilities, she acts as the Budget Chief and chairs the General Government Committee. She also oversees the clerk's office and solicitor's office at the City.

The Respondent

5. The Respondent, Sara Inch, holds the position of Councillor with the City. She has held this position since the City's Inaugural Meeting of Council. She was elected in or around October 24, 2022.

6. In her capacity as Councillor, the Respondent sits on a number of boards and attends Council meetings.

The Witness

7. The witness, Peter Chirico, holds the position of Mayor in the City of North Bay (the "**Witness**" or "**Mayor Chirico**"). He has held this position since the City's Inaugural Meeting of Council. He was elected in or around October 24, 2022. Mayor Chirico also participates in various boards and attends Council meetings.

III. PROCESS FOLLOWED

8. The investigation was conducted by assessing credibility and whether or not the findings of fact amount to a violation of the Code of Conduct. I have set out a chronology of the investigation process below, including meeting times with the Parties.

9. On or around March 15, 2023, Guy Giorno, the Integrity Commissioner of the City of North Bay, received a complaint (request for investigation) under the Code of Conduct via the City of North Bay's website (the "**Complaint**").

10. On March 23, 2023, Mr. Giorno requested and received clarification of the Complaint. The clarification is treated as part of the Complaint and the date of clarification, March 23, 2023, is deemed to be the Complaint date.

11. On or around March 28, 2023, Mr. Giorno provided the Complainant and Respondent with a Notice of Inquiry (Investigation) by the Integrity Commissioner and Notice of Delegation (the "**Notice**"). The Complaint, including any complaint materials, was attached to the Notice. The Respondent was given the opportunity to respond to the Complainant in writing by April 11, 2023, and then the Complainant received the opportunity to reply to the response within ten (10) calendar days. As a matter of fairness, each party's submissions were shared with the other side.

12. The Notice also asked both parties to maintain the confidentiality of the complaint process, including but not limited to the confidentiality of the Complaint and any responses or other communication from either party or from the Integrity Commissioner or Acting Integrity Commissioner.

13. For legitimate reasons, Mr. Giorno determined that he could not act as Integrity Commissioner with respect to the Complaint. In accordance with section 223.3(3) of the *Municipal Act*, Mr. Giorno delegated the conduct of this inquiry to me as Acting Integrity Commissioner. I accepted that delegation. I became Acting Integrity Commissioner for the City of North Bay for the sole purpose of investigating and reporting my findings with respect to this Complaint.

14. On April 10, 2023, the Respondent provided a response to the Complaint (the "**Response**").

15. On April 17, 2023, the Complainant provided a reply to the Response (the "**Reply**"), enclosing additional documentary evidence of the emails and social media posts at issue.

16. On May 4, 2023, the Respondent sent me an additional email explaining her position regarding allegations from the Complaint.

17. I reviewed the Complaint, Response, Reply, and all supporting documentation prior to speaking with the Complainant, the Respondent, and Mayor Chirico.

18. I met with the Complainant, the Respondent and Mayor Chirico between April 28, 2023 and May 26, 2023, as described below. All of these meetings were conducted virtually, on the Microsoft Teams platform. During the interviews, I was joined by Brenda Chang, associate lawyer, who assisted throughout the investigation, including with note-taking. At the start of each meeting, we advised each individual of their obligations with respect to confidentiality, non-retaliation and the importance of providing truthful responses to questions. All of the participants were instructed not to speak to anyone, including, in particular, any individuals with knowledge of the matters discussed, regarding the contents of their interview, or the investigation generally.

19. A detailed overview of the steps taken in respect of the investigation is included below, including an explanation for unanticipated delays in the process.

- I interviewed the Complainant on April 28, 2023 from 9:00 a.m. to 10:00 a.m.

- I interviewed the Respondent on May 6, 2023 from 3:05 p.m. to 4:20 p.m.

- On May 17, 2023, I contacted Mayor Chirico to schedule an interview with him. On the next day, May 18, 2023, I was informed that Mayor Chirico was unable to attend the scheduled interview time on May 19, 2023. As such, I interviewed Mayor Chirico on May 26, 2023 from 10:00 a.m. to 10:50 a.m.

20. Both the Complainant and Respondent sent me additional emails after their interviews to clarify their positions and offer supporting documentation. Documents relating to the investigation were reviewed, including emails, social media posts, and other relevant documentation provided by the Complainant and the Respondent.

21. I note that the Respondent emailed me on May 8, 2023 requesting that we connect so she could discuss additional matters. I scheduled a meeting with the Respondent on the same day. A day later, May 9, 2023, the Respondent advised that she no longer wished to meet virtually with me, as the matter she wished to address was unrelated to the Complaint. On May 10, 2023, I asked the Respondent for further clarity and encouraged her to meet with me to share information, to the extent the matter was related and relevant to the Complaint. On May 11, 2023, the Respondent provided particulars of

a matter she wished to discuss, and acknowledged that this matter was not directly related to the Complaint. Finally, on May 12, 2023, I advised the Respondent that the particulars she raised in her May 11, 2023 email appeared to be outside of the scope of the inquiry into the Complaint. I advised that if she wished to have her concerns reviewed by the Integrity Commissioner, she could follow the applicable processes pursuant to the Code of Conduct and the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 ("***Municipal Conflict of Interest Act***").

22. On June 29, 2023, I shared with the Respondent a draft of this report. The Respondent asked for a time extension to make submissions on the draft. I provided her an extension to July 13, 2023 if she did not intend to retain counsel, and to July 20, 2023 if she did retain counsel.

23. I received comments from the Respondent in separate emails on July 4, 6, 7, 9, and 12, 2023.

24. On July 13, 2023, the Respondent informed me that she was in the process of retaining counsel and, therefore, required a time extension.

25. On July 17, 2023, the Respondent's counsel contacted me requesting a further time extension to allow him time to review the matter, which I granted.

26. On August 2, 2023, the Respondent's counsel provided me with comments on the draft report over a brief phone call. He followed up with additional comments via email on August 10, 2023.

27. Following my pre-planned absence in August, on September 9, 2023, the Respondent's counsel advised that he would be away on vacation until September 25, 2023 and indicated that if I needed to contact him, he would respond following his return.

28. As I indicate throughout the report, I have taken the Respondent's comments on the draft report, including the comments made through her counsel, into account in finalizing the report. Among various emails the Respondent sent to me about the draft report, in her emails of July 7 and 12, 2023, she questioned the fairness of the investigation process and, specifically, questioned why I did not interview particular individuals. I met with all individuals I deemed relevant and did not meet with any individuals I did not deem relevant and/or necessary in order to form conclusions in this inquiry.

29. In the same emails, the Respondent also claimed that the investigation process was unfair and biased because it failed to account for additional allegations that she raised on April 5, 2023. I did not consider the allegations raised by the Respondent on April 5, 2023 because they did not fall within scope of the Complaint. As the Respondent herself acknowledged when she emailed me on April 5, 2023 to advise me of her

complaint, she indicated that it related to a “different matter”. Accordingly, on April 6, 2023, I advised the Respondent that her concerns could be addressed through the applicable processes under the Code of Conduct and *Municipal Conflict of Interest Act* and shared details of the process. On April 14, 2023, the Respondent indicated that she decided not to proceed with a complaint.

IV. EXECUTIVE SUMMARY

30. I was engaged to investigate alleged contraventions of Article VIII of the Code of Conduct, as set out in detail in Section V (Summary of the Complaint) of this report. I also considered Article VI as part of this inquiry. As part of the investigation, I conducted interviews, as set out above, and the Complainant and Respondent were given the opportunity to clarify any information through email correspondence as well as follow-up interviews.

31. Based on the preponderance of evidence, as it relates to the three (3) specific allegations set out in Section V (Summary of the Complaint) of this report, I conclude that the Respondent treated the Complainant in a manner that was contrary to Article VIII of the Code of Conduct. As I find that there was a breach of Article VIII of the Code of Conduct, I also find that Article VI of the Code of Conduct was also breached.

32. Specifically, the Respondent’s email comments about the Complainant’s age and pregnancy were insulting, discriminatory on the basis of age and sex, and amounted to harassment in breach of Article VIII(a), (b) and (c) of the Code of Conduct. Through these emails, the Respondent inappropriately questioned the Complainant’s level of awareness based on her age and ability to competently perform her duties on Council based on her pregnancy. They were unwelcome comments and ought reasonably to have been known to be unwelcome. Further, her comments could affect a person’s dignity or psychological health and, according to the Complainant, did in fact cause her mental distress, in part, because she felt pressure to prove her abilities as a Council member as a result of the Respondent’s comments.

33. In addition, the Respondent’s social media post violated Article VIII(a) and (c) of the Code of Conduct. The Facebook post made serious allegations implying that the Complainant, among other members of Council, prevented or otherwise limited the Respondent’s ability to access the City of North Bay’s budget information. Based on the preponderance of evidence, I find that the Respondent’s allegations were untrue, disparaging, abusive and ought reasonably to have been known to be unwelcome. This public post was disparaging and abusive as it suggested that the Complainant’s actions concerning the budget process were contrary to the public interest and inappropriately challenged the Complainant’s performance of her duties as Budget Chief without merit. I find that such serious allegations could affect a person’s dignity or psychological health,

particularly a person who holds a public position, is involved in decisions that impact the City's finances, and is accountable to their constituents, like the Complainant.

34. Further, I find that the Facebook post, taken together with the other two incidents complained of, each of which I conclude amounted to harassment under the Code of Conduct, reflects a pattern of behaviour by the Respondent towards the Complainant that was unwelcome and ought reasonably to have been known to be unwelcome. I find that the three incidents complained of, individually and in their totality, could affect a person's dignity and psychological health.

V. SUMMARY OF THE COMPLAINT

35. The Complainant identified herself as a pregnant female in her Complaint. She alleged that the Respondent made comments publicly and emailed comments to Council members about the Complainant that were "unfounded, disparaging and question[ed] [her] abilities and self." The comments made by the Respondent referred to the Complainant's pregnancy and age.

36. Specifically, the Complainant alleged that:

a. During an email exchange regarding LGBTQ+ training, the Respondent emailed her on January 4, 2023 stating, among other things, "I doubt you'll agree with me. You are young and starting life. Give yourself 15—20 years and maybe you'll understand." The Complainant took these comments to be ageist and discriminatory (**Allegation #1**).

b. On February 25, 2023, the Respondent emailed her and other Council members regarding the appointment of Council members to the Chief Administrative Officer ("**CAO**") hiring and selection committee. In this email, the Respondent stated, among other things, "leaving the selection of the new CAO to a new member of the community, someone else with long standing business ties in the community, and **some who may be distracted by changes in their personal lives**, all of whom may be unknowingly and unfairly influenced by the amount of time they are required to spend with staff, is something that needs correction." [emphasis added to original]

   The Complainant alleged that the reference to "individuals distracted by changes in their personal lives" was, in part, in relation to the Complainant because she was pregnant at the time. The Complainant found the comment discriminatory on the basis of family status and pregnancy, as well as highly offensive and insulting (**Allegation #2**).

c. On or around February 25, 2023, the Respondent publicly posted about Council's budget process on her "Sara Inch City Councillor" Facebook page and stated, among other things, "When I accepted the role of vice chair for general governance I assumed I would be included in the process. Instead I had to make multiple requests of the mayor and chair (who I feel was taking direction here) and senior staff to get any kind of information."

   The Complainant stated that the Respondent's post included "false and unfounded statements about the Respondent's "perceived beliefs" about the Complainant's actions, which were "disparaging and misleading the public" (**Allegation #3**).

37. Further details with respect to each of the three (3) allegations can be found in section VIII (Summary of Evidence and Findings of Fact and Analysis) of this report.

38. The Complainant noted that the Respondent attempted to apologize, but the Complainant did not view her apology as meaningful as it was not a one-time incident. The Complainant reported that these actions caused her distress and affected her personal dignity.

VI. CODE OF CONDUCT OBLIGATIONS

39. The framework for conducting this investigation was informed by the City's Code of Conduct.

40. The City's Code of Conduct applies to members of Council of the City and certain local City boards.

41. Article VIII of the Code of Conduct states generally that a Member must treat each other Member appropriately and without abuse, bullying or intimidation, and ensure that the City's work environment is free from discrimination and harassment.

42. Paragraph (a) of Article VIII provides specifically that a Member must not "use indecent, abusive or insulting words or expressions toward any other Member, any member of Staff or any member of the public…."

43. Paragraph (b) of Article VIII states that a Member must not:

> speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

44. Paragraph (c) of Article VIII states that a Member must not engage in harassment of any other Member, any member of Staff or any member of the public.

45. The Code of Conduct defines harassment under Article IV(h) to include:

> (i) any comment, conduct, action or gesture that is unwelcome or that ought reasonably be known to be unwelcome that could affect a person's dignity or a person's psychological or physical health.

46. Article VI of the City's Code of Conduct states that each Member shall observe and comply with every provision of the Code of Conduct. The inquiry under Article VIII encompasses this requirement. Article VI states further that each Member shall comply with all other policies and procedures affecting the Member.

47. Under Part XV of the City's Code of Conduct, the City also makes clear that any reprisal, retaliation or threats of reprisal or retaliation for pursuing rights under the Code of Conduct or for having participated in its procedures is prohibited:

> Each member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it and must co-operate in every way possible in securing compliance with its application and enforcement. Any reprisal or threat of reprisal against a complainant or any other person for lodging a complaint or for providing relevant information to the Integrity Commissioner or any other person is prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner, or any other City official involved in applying or furthering the objectives or requirements of this Code of Conduct, in the carrying out of such responsibilities, or pursuing such objectives.

VII. CREDIBILITY AND RELIABILITY

48. The Complainant's and the Respondent's version of events were at times consistent, although the details provided in their interactions and their interpretations of the alleged events and the circumstances related to the alleged events were different. As a result, an assessment of credibility and reliability was an important factor in considering the information provided and making factual findings.

49. Considering the totality of the evidence reviewed, the following include my general credibility assessments with respect to the Complainant, the Respondent and the witness, Mayor Chirico. Further comments about credibility may also be found in Section VIII (Summary of Evidence and Findings of Facts and Analysis) of this report.

The Complainant

50. Overall, the Complainant was reliable and credible. She was cooperative during my interview with her and answered my questions directly without being evasive. Her interview responses were consistent with the documents and information she provided in her Complaint and Reply. The Complainant was forthcoming at all times throughout the interview when pressed for further details about the alleged incidents. She was able to provide examples and recount situations in an objective and straightforward way. She did not speculate beyond her own experiences and feelings about any alleged incidents.

51. I find that the Complainant genuinely felt mistreated by the Respondent and accept that she felt negatively impacted by what she perceived to be disparaging, discriminatory, and/or harassing treatment by the Respondent.

The Respondent

52. The Respondent was generally cooperative during my meeting with her. The Respondent acknowledged in an objective way that she should have treated email exchanges professionally and she may have been too casual in her social media post.

53. However, the Respondent was also dismissive and evasive in some of her responses during the interview. She often had a difficult time recalling the circumstances behind the emails or social media post put before her, despite the fact that she wrote or was included in the emails or social media post. In particular, the Respondent struggled to answer simple questions.

54. In particular, I find that the Respondent was not credible in the following circumstances when I interviewed her:

- With respect to the allegation concerning the Respondent's January 4, 2023 email, the Respondent was unable to clearly explain why, in response to the Complaint's email providing LGBTQ+ learning resources, she told the Complainant to "give [herself] 15-20 years and maybe [she'll] understand" or why the Respondent correlated the email to the Complainant's pregnancy and a Facebook post concerning Kayla Lamieux. When probed to clarify her response to the Complaint, the Respondent was evasive and stated that I, the interviewer, was "taking [the comments] in a negative way." When probed further, the Respondent laughed stating, "This has nothing to do with anything. It's craziness." She ultimately could not explain the correlation between her January 4, 2023 email and the Complainant's pregnancy and a Facebook post concerning Kayla Lamieux.

- With respect to the allegation concerning the Respondent's February 25, 2023 email, the Respondent could not articulate why she made statements

about Council members. The Respondent stated multiple times that she did not know.

When asked what she meant when she stated “some who may be distracted by changes in their personal lives,” she was evasive and not forthcoming. She deflected by asking me whether I had children, which was not relevant to the question I asked. I probed the Respondent several times until she explained that she was only referring to one individual, Councillor Mitchell. When asked if she referred to other people in this statement, the Respondent denied making reference to other individuals and explained that using the term “some” and the plural form to refer to one individual was simply how she spoke.

When I put to the Respondent that the Complainant believed that the Respondent was referring to the Complainant in her email, the Respondent replied in a dismissive way by stating, “Of course. Honestly. […] I’ve been pregnant. No, it wasn’t in reference to her being pregnant.” The Respondent could not provide any reasonable explanation as to who she was referring to in her email if not the Complainant.

- Further, the Respondent took contradictory and inconsistent positions with respect to pregnancy when explaining her February 25, 2023 and January 4, 2023 emails. Specifically, the Respondent downplayed the significance of pregnancy and stated that her February 25, 2023 email did not refer to the Complainant because pregnancy was “not a big deal” and “being pregnant has [nothing] to do with anything.” However, when explaining why she made comments about the Complainant’s age in her January 4, 2023 email, the Respondent took the position that “pregnancy changes a person’s life.” Her position on pregnancy appeared to change in order to suit her explanation of these two emails.

- With respect to the allegation concerning the Respondent’s Facebook post, the Respondent publicly claimed on Facebook that Council members, including the Complainant, prevented her from accessing budget information, but she lacked evidence to support her bald allegations. The Respondent was unable to recall whether the Complainant responded to her requests to review budget information. When asked if the Complainant had previously agreed to provide her with budget information, the Respondent did not directly respond to the question. Instead, she speculated that, “I would never expect [the Complainant] to say yes….I don’t think she likes me.” Although the Respondent was included in emails where budget information was discussed and Council members, including the

Complainant, responded to the Respondent's questions about the budget process, the Respondent could not recall any of these emails.

The Witness

55. Overall, I find that Mayor Chirico was credible and provided his evidence in a straightforward and objective manner. Mayor Chirico was cooperative and forthcoming in his responses. He did not speculate, and provided a detailed account of the context around the February 25, 2023 email.

VIII. SUMMARY OF EVIDENCE AND FINDINGS OF FACT AND ANALYSIS

GENERAL NOTE

56. The Complainant and Respondent made comments in the Complaint and Response that applied broadly to all allegations. I considered them with respect to each separate allegation when making my findings and set them out below.

57. In the Complaint, the Complainant alleged that the Respondent sometimes sent the Complainant an email to apologize after she made comments. The Complainant felt that the apologies were "not adequate or meaningful, as it is not a one-time incident and the comments have continued to be made." By way of example, the Complainant provided in her Reply, a March 14, 2023 email from the Respondent, which stated that, among other things, "if I was rude earlier or I am rude in the future, it could be either: tired need food, or I'm pushing to make sure you're being real and not being played." The Complainant alleged that the comments made by the Respondent "both publicly and by email ought to be known to be unwanted and unfounded." According to the Complainant, the Respondent's attempts to apologize after making such comments do not "repair the reputational damage" caused to the Complainant, which "affect[s] her personal dignity."

58. In her Response, the Respondent noted that she was unaware of the offense caused to the Complainant. The Respondent also noted that the Complainant had not previously expressed her feelings to her. The Respondent stated that she felt that she had been honest and consistent in her speech and behaviour. She had no desire to harass or undermine the Complainant, and tried to support the Complainant publicly by "liking" social media posts, inviting the Complainant privately to work on the budget together, sharing resources for the selection of the CAO, and supporting the Complainant's pregnancy with a maternity gift.

ALLEGATION 1

59. The Complainant alleged that on January 2, 2023, the Respondent sent an e-mail to the Complainant, Mayor Chirico and staff regarding her desire to have an individual provide Council and staff with LGBTQ+ training. The Complainant replied to the Respondent by sharing some books and resources with her.

60. The Respondent then replied to the Complainant's email on January 4, 2023, stating the following, in full:

> Please know I am not transphobic. I am trying to create dialogue which is important in a democracy. I don't agree with marketing and capitalist ideals of what a woman is. I make issue with overly sexualized representations. I've given birth, nursed children, buried my parents. To me being a woman is much much more than appearances.
>
> You must have some personal experience for my post to have triggered you and you are welcome to share, maybe [sic] you don't.
>
> We have to get along. I think it's a good thing so many different strong women are on Council.
>
> Sometimes we do things for a result. The means justifies the ends.
>
> **I doubt you'll agree with me. You are young and starting life. Give yourself 15—20 years and maybe you'll understand.**
>
> [emphasis added to original]

61. The Complainant responded to the Respondent's email stating the following:

> I never said you were transphobic. I shared some resources with you as you expressed in your e-mail that you felt you needed to do some training and learning. As individuals, we all have a responsibility to be lifelong learners, it can be with training or it can be by engaging resources that exist such as the books I suggested. Learning never stops. I do not doubt the impact of attending a training session but that is one avenue of many to learn.
>
> I don't feel the necessity to share my personal experiences and I was not triggered by your post. I do not to sit idly by when statements are made about marginalized groups.

> I don't think it's necessary to bring my age into this conversation. You do not know my life experiences and cannot critic [sic] my level of understanding.

62. The Complainant alleged that the Respondent's comment was ageist and discriminatory, and ought to be known to be unwanted and unfounded.

The Respondent's Response and Evidence[1]

63. In her Response, the Respondent noted that her statement that the Complainant was young was not ageism, not part of a pattern of behaviour, and not meant maliciously. She said that this statement was not made in reference to the Complainant's abilities or decision-making skills. The Respondent stated that her comment was taken out of context, and that the context was around her personal beliefs that "the experience of being a woman solidifies and changes as we age."

Facebook Post about Kayla Lemieux

64. The Respondent stated in her Response that she made the comment in relation to a disagreement that she and the Complainant had over the Respondent's social media post. Specifically, the Respondent explained that she expressed her feelings on a Facebook social media post about Kayla Lemieux, whom she described as "a 'trans woman' teacher who has since been revealed to be a fake." The Respondent noted that the Complainant posted a comment on the Respondent's social media post "calling her out" and reprimanding her on the platform by saying, "your platform matters, transgender people are already marginalized."

65. However, the Respondent stated that she was unable to provide evidence of this social media interaction because the Respondent had deleted these comments on her Facebook page. The Respondent said that she deleted these comments because she felt it was inappropriate to leave the comments, as they undermined the public's confidence in Council. The Respondent provided screenshots of these Facebook posts in her email to me on May 8, 2023. However, no comments under these posts were shown. As such, I was unable to confirm whether the Complainant left the comments as alleged by the Respondent.

66. In her Response, the Respondent also stated that she felt "entitled to her opinion on trans women" and was allowed to "communicate and clarify [her] beliefs." She noted that her email statement about the Complainant being young relative to the Respondent was true. The Respondent clarified in her Response that the sentence in issue was about a "young woman in general," and being a "primigravida," *i.e.* someone carrying their first

[1] "The Respondent's Response and Evidence" refers to information provided by the Respondent in her Response dated April 10, 2023, during my interview with her, and emails she sent to me on May 4 and 8, 2023.

pregnancy. The Respondent explained that this comment was made to explain her statement about “trans women” and was not meant as an insult, but rather as “a statement of fact.”

67. In her May 4, 2023 email to me, the Respondent further emphasized that she did not believe pregnancy or age was a problem. The Respondent stated that “at no point was [she] ever thinking [the Complainant] couldn’t do the job because of her age.” The Respondent stated that “it is a good thing to have people of different ages on Council, because everyone brings their own experience, skill sets and ways of seeing the world.” The Respondent noted that she was “truly responding to what [she] interpreted as [her] beliefs regarding trans women and cis women.” Finally, she noted that she now “understands that it was inappropriate to engage in such a conversation.” She acknowledged that she had “caused offence on Council,” though she said that was not her intention.

68. Further, in her May 8, 2023 email to me, the Respondent also stated, among other things, that:

> I now fully understand my emails weren’t appropriate, I acknowledge I was ‘stirring things up’ to see what surfaced and did not believe they were hurtful. I now see we all experience things differently. I will strive to do better in the future.

69. During the interview, I asked the Respondent to clarify the connection between 1) her Facebook post about Kayla Lemieux and 2) the comments about the Complainant’s age in the January 4, 2023 email because she did not reference the Facebook post in the January 4, 2023 email. The Respondent explained that she believed being a woman was something a person lived, and changes as you grow. When I probed further, the Respondent could not provide further explanation of how her Facebook post about Kayla Lemieux and her email to the Complainant on January 4, 2023 were connected.

70. The Respondent also claimed that the Complainant was a “primigravida” (*i.e.* someone carrying their first pregnancy) in her Response. As such, during the interview, I also asked the Respondent how she knew that the Complainant was pregnant at the time of the January 4, 2023 email. The Respondent could not provide an explanation and ultimately stated that she did not know.

71. In response to the draft report, the Respondent emailed me on July 4, 2023, stating among other things, the following:

> I can also tell you my knowledge of Ms. Horsfields' [sic] pregnancy was intuitive, as I also discovered Justine Mallahs' pregnancy and confirmed it with her the evening of April 28th, months before she announced it. There

> are tells. Also people give off pheromones. Yet that may sound to weird and need better phrasing.).

Councillor King's Remarks

72. In her Response, the Respondent stated that she was surprised that the Complainant took offense to her "statement of fact" and mentioned that the Complainant had forgiven Councillor King's remarks about the Complainant's age and abilities during election day on October 24, 2022. The Respondent referenced a BayToday article dated November 22, 2022, wherein the Complainant was quoted saying, "It's one of those Mark-isms. He's trying to say something but that's not how it comes out."

73. In my interview with the Respondent, I asked her about the relevance of Councillor King's remarks and her claim that the Complainant had forgiven him. In response to my question, the Respondent referred to another campaign event where an "older gentleman" also made comments about the Complainant's age. The Respondent stated that this gentleman was being "a bit inappropriate," yet the Complainant smiled and laughed. The Respondent remarked that she and the Complainant were "obviously on separate pages" because the Complainant forgave Councillor King for being sexist, while the Complainant took the Respondent's statements about pregnancy and having a baby negatively.

The Complainant's Reply and Additional Evidence[2]

74. In her Reply, the Complainant provided the entire January 4, 2023 email thread, starting from the Respondent's email to the Complainant. This email had the subject line "Clarity" and was only addressed to the Complainant.

75. After the Complainant responded to the Respondent's email, which I set out in full above, the Respondent replied by stating the following, in full:

> Fair, you are right. I overstepped. Age isn't relevant, and we can keep our personal lives private. I apologize.

76. The Complainant noted in her Reply that she had made it clear in her reply email that the comment about her age was not welcome. However, the Respondent "continued to make statements about [the Complainant's] abilities as a Councillor in relation to [her] age and later [her] pregnancy and continued to do so in the Response on April 10th," despite apologizing.

[2] "The Complainant's Reply and Additional Evidence" refers to information provided by the Complainant in her Reply dated April 17, 2023 and during my interview with her.

Facebook Post about Kayla Lemieux

77. In my interview with the Complainant, she stated that she did not comment on any posts made by the Respondent concerning Kayla Lemieux, nor did the Complainant know this person. The Complainant recalled that the Respondent made multiple social media posts about transgender people, but did not know when the Respondent posted these social media posts. The Complainant confirmed that she commented on one of the Respondent's Facebook posts, stating that she disagreed with the Respondent's post. However, the Complainant could not specifically recall commenting on the Respondent's post that "your platform matters, transgender people are already marginalized."

78. In any case, the Complainant understood that the January 4, 2023 email referred to email exchanges on January 2, 2023 concerning LGBTQ+ sensitivity training, and not about any of the Respondent's Facebook posts about transgender people or Kayla Lemieux. The Complainant did not understand the connection between these social media posts and the comments about the Complainant's age or level of understanding in the January 4, 2023 email. The Complainant also did not understand how her age had any relevance to her ability to understand LGBTQ+ issues.

The Complainant's Pregnancy

79. In her Reply and interview with me, the Complainant noted that she had not shared news of her pregnancy at the time of the January 4, 2023 email. The Complainant provided a screenshot of her public Facebook announcement of her pregnancy, which was dated January 25, 2023. The Complainant confirmed that she had only told her family members, Mayor Chirico, and Councillor Mallah about her pregnancy prior to her public pregnancy announcement. She noted to Mayor Chirico and Councillor Mallah that her news was confidential, and she believed they would not have shared this information with other Councillors. The Complainant said that other Council members would only have learned of her pregnancy through her public announcement on January 25, 2023. As such, the Complainant noted that the Respondent's explanation for her ageist comment, which included the Complainant's pregnancy, was neither true nor justifiable.

Councillor King's Remarks

80. In her Reply, the Complainant noted that it was unjustifiable and wrong if the Respondent believed that she could make comments about the Complainant's age and abilities because Councillor King had done the same. Alternatively, the Complainant noted that if the Respondent believed Councillor King's comments to be wrong, the Respondent ought to have known that her comments would be inappropriate as well.

81. In my interview with the Complainant, she noted that the Respondent was not aware of how the Complainant and Councillor King moved forward in that situation. The

Complainant also stated that to use that situation to justify the Respondent's own behaviour was a deflection of personal responsibility.

Finding

82. Based on the preponderance of evidence, I find that that the Respondent made insulting and discriminatory remarks that were unwelcome, and ought reasonably to have been known to be unwelcome, in the January 4, 2023 email. I find that the Respondent's comments in the email could affect a person's dignity or psychological health and, according to the Complainant, did in fact negatively impact her. Accordingly, I find that this email violated Article VIII(a), (b) and (c) of the City's Code of Conduct. As I find that there was a breach of Article VIII of the Code of Conduct, I also find that Article VI was breached.

83. I find as a fact that the Respondent commented on the Complainant's age in the January 4, 2023 email. I do not agree with the Respondent that this comment was merely a "statement of fact" about the Complainant's age relative to the Respondent's age. Instead, the email makes negative inferences about the Complainant's ability to understand LGBTQ+ issues based on her age or, at the very least, negatively implies that the Complainant's views are limited by her age. Further, such comments could affect a person's dignity. Whether the Respondent intended the language to be discriminatory, insulting or harassing is not an appropriate defence for having made the comments.

84. I also find that the Respondent's explanation about her January 4, 2023 email was inconsistent, unreliable, and unclear. Specifically, the Respondent claimed that the January 4, 2023 email was related to a disagreement between her and the Complainant over the Respondent's Facebook post about Kayla Lemieux. However, the Respondent could not provide a clear and justifiable connection between the Kayla Lemieux Facebook post and her reference to the Complainant's age in the January 4, 2023 email. In any case, even if I accept that the Respondent made these comments because she disagreed with the Complainant's Facebook comments or the Complainant's views about transgender people and cis women, my conclusion would be the same: the Respondent's comment is insulting and discriminatory as she made a negative inference about the Complainant's ability to understand LGBTQ+ issues based on her age or, at the very least, implied that the Complainant's views are limited by her age.

85. I also do not accept that the Respondent's comments were made in reference to the Complainant's pregnancy. The evidence supports the Complainant's position that her pregnancy was not publicly disclosed until January 25, 2023. In any case, even if I accept that the Respondent's comment was in reference to the Complainant's pregnancy, which I do not, this explanation does not justify the Respondent having referenced the Complainant being young in her January 4, 2023 email. Further, the fact that the Complainant was pregnant at the time appears to have no logical connection to the content of the Respondent's January 4, 2023 email.

86. I do not accept that the Complainant's response, if any, towards Councillor King after he made remarks about her age or gender in any way justified or explained the Respondent's comments about the Complainant's age.

87. In any event, I find that the Respondent ought reasonably to have known that her comments were unwelcome and could have affected the Complainant's dignity or psychological health. Indeed, I find that the Respondent arrived at this conclusion herself, at least in part, in her reply email to the Complainant where she apologized, acknowledged that she overstepped, and agreed that age was not relevant to the discussion. The Respondent also admitted in her May 4 and May 8, 2023 emails to me that she understood her emails were not appropriate.

ALLEGATION 2

88. On or around February 25, 2023, the Respondent sent an email to Councillor Mitchell, Councillor Mallah, and Mayor Chirico regarding the appointment of Council members to the CAO hiring and selection committee. The Complainant, Councillor Mitchell, Councillor Mallah, and Mayor Chirico were appointed by Council at an in-camera session to be on the CAO selection committee.

89. In the e-mail, the Respondent stated, among other things, the following:

> Hindsight is 20/20. In my point of view, leaving the selection of the new CAO to a new member of the community, someone else with long standing business ties in the community, and **some who may be distracted by changes in their personal lives**, all of whom may be unknowingly and unfairly influenced by the amount of time they are required to spend with staff, is something that needs correction.
>
> [emphasis added to original]

90. As part of the Complaint, the Complainant also attached a screenshot of the entire email.

91. The Complainant alleged that the reference to "individuals distracted by changes in their personal lives" was in regards to her and Councillor Mitchell. The Complainant noted that the only change in her personal life that was publicly known at the time of the email was that she was pregnant. The Complainant alleged that the comment became known to others on Council and the community. The Complainant found the comment discriminatory on the basis of family status and pregnancy, as well as highly offensive and insulting. The Complainant also noted that the comments ought to have been known to be "unwanted and unfounded," and caused her unnecessary distress and affected her personal dignity.

The Complainant's Reply and Additional Evidence[3]

92. In her Reply, the Complainant noted that the February 25, 2023 email was the most upsetting comment to date and led her to file the Complaint. The Complainant said that the email caused her unnecessary mental distress. She also expressed that she has felt an "unneeded pressure to defend and prove that [her] abilities as Councillor are not impeded by her personal choice to be pregnant." The Complainant alleged that the comment ought to have been known to be unwelcomed, and that it was inappropriate for the Respondent to insinuate that the Complainant's abilities to conduct Council business on the CAO selection committee while pregnant would be impeded or would require "correction." During my interview with her, the Complainant further expressed that this statement weighed on her mind and caused her stress. She stated that the email made her feel like she had to prove herself more.

93. During the interview, the Complainant also stated that the Respondent's statement about "some who may be distracted by changes in their personal lives" referred to herself and Councillor Mitchell. The Complainant noted in the interview that the Complainant, Councillor Mitchell, Councillor Mallah, and Mayor Chirico were selected to be on the CAO selection committee. The Complainant understood that the Respondent alluded to Councillor Mallah when referring to a "new member of the community." She also understood that the Respondent alluded to Mayor Chirico when referring to a "known business community member in North Bay."

94. By way of deduction, only Councillor Mitchell and the Complainant remained as Council members on the CAO selection committee. The Complainant explained that both Councillor Mitchell and the Complainant recently experienced changes in their personal lives. She explained that Councillor Mitchell's grandchild had passed away in December 2022, which was publicly known to Council. She noted that Mayor Chirico announced in January 2023 that Councillor Mitchell would be temporarily absent to deal with her family matter.

95. The Complainant also explained during the interview that she publicly announced her pregnancy to Council at the end of January and posted a public Facebook pregnancy announcement on January 25, 2023. A screenshot of this Facebook announcement was included in her Reply. The Complainant also confirmed that there was no one else on the CAO selection committee who, to her knowledge, had changes in their personal lives.

96. When I asked the Complainant during the interview why she believed these email statements became known to others on Council and in the community, the Complainant was unsure how other people found out about the Respondent's comment. However, the

[3] "The Complainant's Reply and Additional Evidence" refers to information provided by the Complainant in her Reply dated April 17, 2023, during my interview with her, and supporting documentation she provided to me on May 4, 2023.

Complainant noted that another Councillor, who was on a community board with the Complainant, approached her in or around March 15, 2023 to ask whether the Respondent asked the Complainant to step down as Deputy Mayor because she was pregnant. The Complainant stated that this remark was an iteration of the Respondent's comment in her February 25, 2023 email.

97. In her Reply, the Complainant also provided email exchanges between Mayor Chirico and the Respondent that followed from the Respondent's February 25, 2023 email. These emails show that Mayor Chirico advised the Respondent that her comments were inappropriate and that she should apologize. Specifically, Mayor Chirico replied to the Respondent on February 25, 2023 by stating the following, in full:

> Sara:
>
> I would suggest that you withdraw these comments and apologize to the others you copied on this email. Your comments are without foundation and are not constructive in anyway. Unless you have a crystal ball or have spoken to the two persons you mentioned, I am not sure where this is coming from.
>
> I would highly suggest that you refrain from these types of comments in the future.
>
> Peter

98. On the same day, the Respondent replied to Mayor Chirico by stating the following, in full:

> Peter to be honest I don't believe anything I said was offensive. I may be proved wrong. I am here to make friends. I am here fir [sic] the community. I don't believe the process I have witnessed to date is transparent or one that can continue without constant vigilance. This is not something I signed up for or enjoy doing.

99. Mayor Chirico replied to the Respondent's email the next day, February 26, 2023, copying Karen McIsaac, the City Clerk, stating the following, in part:

> Sara:
>
> We will disagree on these points. The process was approved by Council and you were part of it. Questioning transparency when this entire process has been nothing but transparent, leaves me at a loss for words.
>
> The naming of individuals in a confidential process is not proper and against procedural process, especially when it is hearsay with no factual content.

> Your description of the individuals (sic) experience, personal lives and the subject of influence due to time spent with staff, are degrading and uncalled for. This is why I believe an apology is required.
>
> For your information, the committee has not met, we have not met individually with Wanda to discuss or review, and have as much information on the applicants, as you do … Your comments on individuals who may be part or not of the process is conjecture solely on your part.
>
> Furthermore, when you throw out the transparency issue, please remember, the committee will bring forward a recommendation to the entire Council for a vote and those are the reasons why you should withdraw those remarks and apologize.
>
> I have forwarded this string of emails to Mrs. McIsaac to ensure no procedural bylaws or code of conduct especially around confidentiality, have been breached and to document your concerns around transparency.

100. Finally, on May 4, 2023, the Complainant provided me with a copy of the motion that was approved by Council on February 14, 2023 to strike the CAO selection committee, which appointed Councillor Mitchell, Councillor Mallah, Mayor Chirico, the Complainant, and the Director of Human Resources to the committee. The motion form indicated that the Respondent seconded this motion. The Complainant did not make reference to the Director of Human Resources throughout the course of my interview with her.

<u>The Respondent's Response and Evidence</u>

101. In her Response, the Respondent confirmed that she believed pregnancy was a "significant change in life." She also stated that she believed that being elected Deputy Mayor was a "significant life change." The Respondent questioned why the Integrity Commissioner was involved in this Complaint, and postulated that "possibly we are here to make this public and put a black mark beside" her name. The Respondent also noted that she was not aware that she had caused offence and that her "first knowledge of [the Complaint] shouldn't have come from the office of the Integrity Commissioner," as there were many opportunities for the Complainant to speak with her about the issue.

102. On May 4, 2023, the Respondent emailed me stating that she did not believe pregnancy or age was a problem. She stated that she was a single mom with three boys and self-employed, so she believes in women and that they can work while pregnant. The Respondent stated that she also worked while pregnant. She acknowledged that, "At council I have been overly familiar and caused offence and done harm. That was never my intent."

103. In her May 4, 2023 email to me, the Respondent also provided additional emails that she exchanged with Mayor Chirico following his email to her on February 26, 2023. These emails were part of the same email thread from February 25, 2023, but had not been provided by the Complainant. Specifically, the Respondent replied to Mayor Chirico on February 26, 2023 by stating the following, in full:

> You know I think this is ridiculous. This consistent effort to stop me from communicating. What are you afraid of??? You're trying to intimidate me now. Really??? Because I think that the selection of the CAO is important???

104. The Respondent also sent Mayor Chirico a separate email the next day, February 27, 2023. Although Mayor Chirico did not reply to the Respondent's emails, the Respondent sent another email to him on February 27, 2023 stating, among other things, the following:

> As for your opinion I overstepped in comments on peoples' personal lives, I am only stating the obvious, information that is in fact public. Someone being new to the community can be a good thing with 'fresh eyes' and new different lived experience to draw on. Someone with ties to the business community has experience in that sector. Major changes in family structure may cause us to reflect on our values and that is something that can positively inform their role as City Councillor. Take it as you like.

105. In my interview with her, the Respondent expressed concern about the makeup of the CAO committee and questioned the process in which the CAO selection committee members were selected. She felt the selection process was not transparent and that Mayor Chirico unilaterally decided that the Council members on the CAO selection committee were going to be Mayor Chirico, Councillor Mallah, Councillor Horsfield, and Councillor Mitchell.

106. When I put the statement "some who may be distracted by changes in their personal lives" to the Respondent, she explained that this statement was not specifically made towards the Complainant. Instead, the Respondent referred to the fact that Councillor Mitchell's "daughter died over Christmas," and that Councillor Mitchell had just returned to Council. She explained that Councillor Mitchell had been gone from Council for a month and appeared withdrawn. The Respondent also mentioned that she was referring to another Councillor who was new to the city in her February 25, 2023 email, but did not specifically name the Councillor to whom she was referring.

107. When I probed further about the identity of individuals that the Respondent referenced in her February 25, 2023 email, she stated that she only referred to Councillor Mitchell. Further, the Respondent explained that using the word "some" to refer to one

individual was “just how [she] spoke.” She expressly denied that she was referring to the Complainant in her email.

108. In her May 8, 2023 follow up email to me, the Respondent stated, among other things, that:

> I now fully understand my emails weren't appropriate, I acknowledge I was ‘stirring things up’ to see what surfaced and did not believe they were hurtful. I now see we all experience things differently. I will strive to do better in the future.

109. In response to the draft report, the Respondent provided comments to me by email on July 9, 2023 stating, among other things, the following:

> Although I never used the word pregnant; I suppose I was referring to it when I spoke of 'significant life changes'.
>
> If you asked me do I believe pregnancy is a time when a woman should take extra care? Get extra rest? Nourish herself?
>
> I would reply, yes. My beliefs are informed by my lived experience, and through my personal research, and work with pregnant clients. Many things can go wrong in pregnancy. Modern media tells us women can have it all, yet the reality is there is only so much time in a day, and so many days in our lives, and the way we spend them matters. Pregnancy is an especially important time. In my opinion, and it's my opinion, we treat it too casually. Bringing a human being into the world shouldn't be treated casually. Does this mean a woman can't work while pregnant? Of course not. Should she be careful? Yes. […]
>
> Do I take pregnancy seriously now? More seriously than I did as a 20 yr old? I do.
>
> Do I believe in a woman's autonomy over her body? I do. Do I believe Ms. Horsfield can't work while pregnant? No of course not.
>
> Did I let my own experience and feelings find their way into an email that was written to colleagues in a professional setting. It seems I did.
>
> The thing is I care. I likely care too much. I acted and behaved as I did because I wanted to correct a problem and stop a fire before it started. Was it my place? I now see it was not. I was overstepping. Ms. Hosfield [sic] does not need me to look out for her.

110. In the same email, the Respondent made reference to her own experiences with childbirth.

111. The Respondent also noted in the same July 9, 2023 email that the City Clerk pre-populates the motion forms with councillors' names before council meetings. Since everyone accepted this practice, the Respondent said that she also "let it slide." The Respondent noted that she was not asked if she wanted to have her name on the motion.

Witness Evidence[4]

112. Mayor Chirico corroborated the Complainant's understanding that the statement in the February 25, 2023 email was about the Complainant. He explained that the CAO selection committee comprised of the top elected Council members, including Councillor Mitchell, Councillor Mallah, the Complainant, and himself. He also recalled that the Complainant announced to Council that she was pregnant in or around January 2023, and was aware of the Complainant's January 25, 2023 Facebook post announcing her pregnancy.

113. He understood that the Respondent referred to all members of the CAO selection committee in her email. Specifically, he understood the reference to a "new member of the community" was about Councillor Mallah, who had only been in the community for seven years. Mayor Chirico also understood the reference to "someone with longstanding business ties" referred to himself because he was born and raised in North Bay, had been a commercial banker in North Bay, and also became President and CEO of North Bay and District Chamber of Commerce. Finally, Mayor Chirico understood that the statement "some who may be distracted by changes in their personal lives" referred to Councillor Mitchell and the Complainant because Councillor Mitchell's granddaughter passed away just before Christmas and the Complainant had recently informed Council that she was pregnant.

114. Mayor Chirico confirmed that he replied to the Respondent's February 25, 2023 email on February 25 and 26, 2023. He explained that he suggested that the Respondent withdraw her comments because he thought the comments were offensive and demeaning. Particularly, he noted that the fact that i) Councillor Mitchell experienced a tragedy; ii) the Complainant was pregnant, and iii) Councillor Mallah was new to the community had nothing to do with the fact that they were duly elected and qualified for their jobs. Mayor Chirico expressed that these comments were demeaning as a Councillor and as a female.

115. When I asked Mayor Chirico to explain why he said in his February 25, 2023 email that the Respondent's comments were "without foundation" and "not constructive," he stated that he felt the Respondent was questioning the Council members' abilities to do jobs for which they were duly appointed and elected. Mayor Chirico noted that the Respondent had an opportunity to speak when the CAO selection committee was struck, but she voted in favour instead of speaking up or objecting. He found that it was not

[4] "The Witness' Evidence" refers to information provided by Mayor Chirico during my interview with him.

constructive for the Respondent to question someone's ability without any basis for the allegation. He noted that if any individual felt that changes in their personal lives – whether it was pregnancy or the death of a grandchild – would impair their ability to do their jobs, it would be up to those individuals to declare it and not for anyone else to speculate. Mayor Chirico said that he would have expected that if someone had these concerns, they would speak to those individuals and ask them personally, rather than putting it out by way of email and out for public knowledge.

116. Mayor Chirico confirmed in the interview that he provided a follow up response to the Respondent on February 26, 2023 wherein he stated, among other things, that: "Your description of the individuals (sic) experience, personal lives and the subject of influence due to time spent with staff, are degrading and uncalled for. This is why I believe an apology is required." He explained that he understood that the Respondent's February 25, 2023 email implied that because Councillor Mitchell was going through a grieving period and the Complainant was pregnant, they would not be able to meet with staff.

117. Mayor Chirico stated that he met with the Complainant, Councillor Mitchell and Councillor Mallah to assure them that he did not agree with the Respondent and to confirm that they were doing a great job in their roles.

Finding

118. Based on the preponderance of evidence, I conclude that the Respondent made insulting, discriminatory, and harassing remarks in her February 25, 2023 email that were unwelcome and ought reasonably to have been known to be unwelcome. I find that the Respondent's comments in the email could affect a person's dignity or psychological health and, according to the Complainant, did in fact negatively impact the Complainant's dignity and psychological health. Accordingly, I find that this email violated Article VIII(a), (b) and (c) of the City's Code of Conduct. As I find that there was a breach of Article VIII of the Code of Conduct, I also find that Article VI was breached.

119. Despite the Respondent's comment that the City Clerk pre-populates the motion forms with councillors' names before council meetings and this was a practice that she let slide, I find as a fact that that the Complainant, Mayor Chirico, Councillor Mallah, Councillor Mitchell, and the Director of Human Resources were appointed to the CAO selection committee by way of a motion on or around February 14, 2023.

120. I also find as a fact that the Respondent sent an email on February 25, 2023 to Councillor Mitchell, Councillor Mallah, and Mayor Chirico expressing concern about the CAO selection process and questioning the makeup of the CAO selection committee by referencing individuals' personal lives.

121. On a balance of probabilities, I find that the Respondent was referring to the Complainant and Councillor Mitchell when she stated that "some who may be distracted

by changes in their personal lives." With respect to the Complainant, I find on a balance of probabilities that the Respondent was referring to the fact that the Complainant was pregnant. I have made this finding based on the following evidence, which I accept:

(a) the Complainant publicly announced her pregnancy to Council and posted about her pregnancy on January 25, 2023, shortly before the February 25, 2023 email;

(b) Councillor Mitchell's grandchild passed away in or around December 2022. As a result, Councillor Mitchell took some time off in January 2023;

(c) The Complainant, Mayor Chirico, Councillor Mallah, Councillor Mitchell, and the Director of Human Resources were appointed to be on the CAO selection committee by way of a motion in or around February 14, 2023;

(d) the Respondent referred to Mayor Chirico when referencing "someone with longstanding business ties";

(e) the Respondent referred to Councillor Mallah when referencing a "new member of the community";

(f) the Respondent's use of the words "some" and "their personal lives" in the February 25, 2023 email implies that she was referring to more than one person, especially when read in the context of the entire paragraph, where she uses the singular to name specific individuals by contrast;

(g) Councillor Mitchell and the Complainant were the only remaining individuals on the CAO selection committee who experienced personal life changes that were publicly known;

(h) the Respondent did not state that the comments at issue referred to the Director of Human Resources;

(i) the Complainant and Mayor Chirico both understood the Respondent's comment referred to both Councillor Mitchell and the Complainant; and

(j) the Respondent stated in her July 9, 2023 email to me that she was referring to pregnancy when speaking of "significant life changes."

122. I also find as a fact that Mayor Chirico and the Respondent exchanged emails after the Respondent's February 25, 2023 email. In these emails, Mayor Chirico asked the Respondent to withdraw the comments, and the Respondent questioned why the comments were offensive. Mayor Chirico told the Respondent, among other things, that her description of individuals' experiences and personal lives was degrading, uncalled for, and not constructive. Mayor Chirico also requested that the Respondent apologize to the individuals she referenced in her email.

123. With respect to the Complainant's allegation that the Respondent's comment became known to others on Council and the community, I find as a fact that other recipients of the email became aware of these comments. Those recipients included Mayor Chirico, Councillor Mitchell, Councillor Mallah, and Ms. McIsaac. Although the Complainant referred to one interaction where another Councillor brought up the Respondent's alleged comments about the Complainant's pregnancy, I cannot conclude that the February 25, 2023 email was in fact disseminated more broadly or that other Councillors were otherwise aware of the Respondent's comments in the February 25, 2023 email.

124. Given the findings of fact that I set out above, I conclude that the statement in issue in the Respondent's February 25, 2023 email violated Article VIII(a) of the Code of Conduct. The statement was, on its face, insulting because it questioned whether the Complainant would be able to adequately perform her duties on the CAO selection committee due to changes in her personal life; namely, her pregnancy. The comment suggested that the Complainant would be impacted by her personal life, which may lead to being "unknowingly or unfairly" influenced by time spent with staff. In particular, the Respondent noted that this is something that needed to be "corrected."

125. Notably, I do not accept the Respondent's characterization of her email as "positive" or "stating the obvious." I also do not find the Respondent's position on this point credible based on an objective reading of the email, especially as she later acknowledged that her emails could be considered offensive. The Respondent also admitted that she overstepped when she shared her personal feelings in a professional work email. Finally, I do not consider the Respondent's personal experiences with childbirth as relevant in explaining or justifying her email statements about changes in the Complainant's personal life (*i.e.* her pregnancy) and her role on the CAO selection committee.

126. In addition, I find that the statement in the Respondent's February 25, 2023 email violated Article VIII(b) of the Code of Conduct. Specifically, the Respondent's comment was discriminatory on the basis of sex because it negatively implied that the Complainant would be distracted and unable to fulfil her role on the CAO selection committee because she was pregnant. In particular, the Respondent's comment implied that the Complainant's pregnancy would result in reduced meeting times with staff and was something "to be corrected". I do not find that the Respondent discriminated against the Complainant on the basis of family status, as the evidence does not indicate that the Complainant had any caregiving responsibilities during the course of the CAO selection committee process.

127. For the same reasons that I find that the Respondent violated Article VIII(a) and (b) of the Code of Conduct, I also find that the Respondent's comments were unwelcome and ought reasonably to have been known to be unwelcome in violation of Article VIII(c)

of the Code of Conduct. I also find that the Respondent ought to have known that her comments could affect a person's dignity or psychological health. Mayor Chirico expressly stated to the Respondent in two separate emails that he found her email about individuals' personal lives degrading and offensive. Mayor Chirico also asked the Respondent to apologize twice. Yet, the Respondent disputed that her comments about people's personal lives were offensive, indicating that she did not agree that the comments were offensive. However, the Respondent ultimately conceded in her May 4, 2023 email to me that the emails could be offensive. The Respondent also acknowledged in her May 8, 2023 email to me that she now understood that her emails were not appropriate, although she did not previously believe they were hurtful. On balance, I conclude that the Respondent's February 25, 2023 email was unwelcome, offensive, and could affect a person's dignity or psychological health and, according to the Complainant, did in fact negatively impact her dignity and psychological health.

ALLEGATION 3

128. On or around February 25, 2023 (on the same day that the Respondent sent the email at issue in Allegation #2), the Respondent publicly posted on her "Sara Inch City Councillor" Facebook page the following, in full:

> I feel I need to comment on my experience, to date, working on the City Budget. When I accepted the role of vice chair for general governance I assumed I would be included in the process. Instead I had to make multiple requests of the mayor and chair (who I feel was taking direction here) and senior staff to get any kind of information. I was directed to the public documents available online and my request to be assigned a junior staff member was denied. I am fortunate in that I don't mind researching things or asking my friends who are CPAs for opinions (as I had no details that weren't already available to the public, no secure information was shared.)
>
> I eventually was given permission to meet with the CFO. Those meetings were helpful. (Thank you! 😊) She answered my questions. However in the process I learned the real work was being done upstairs.
>
> I, like the rest of Council, only got access to the budget documents the same time as the public. I guess this is protocol. Another Council member complained. I think the public needs to know. I don't agree that this is okay or in our community's best interests.

129. The Complainant also included a screenshot of this Facebook post in her Complaint. The screenshot indicates that, at the time the screenshot was taken, five Facebook users reacted to the post while one Facebook user re-shared the post.

130. The Complainant stated that the Respondent's post included "false and unfounded statements about the Respondent's "perceived beliefs" about the Complainant's actions, which were "disparaging and misleading the public." The Complainant said that she only received a few questions from the Respondent about the city budget and the Complainant would respond or a member of staff answered the Respondent's questions. The Complainant said that the Respondent's opinion that the Complainant was "taking direction" was unfounded, but led the public to believe her opinion as fact "when it is not true and without [the Complainant's] ability to defend [herself]."

The Complainant's Additional Evidence[5]

131. During my interview with the Complainant, she explained that she was the Budget Chief, meaning that she chairs the budget discussions and helps direct the budget conversation in Council. The Complainant also stated that she leads the discussions and negotiations with Council as they go through the budget. As such, she said that the Respondent's reference to the "chair" in her Facebook post was a reference to the Complainant.

132. The Complainant also explained that the Respondent was another Councillor who sat on the committee, had access to all information, could ask questions to seek clarification on various budget lines, and could make recommendations for all of Council whenever changes were made to the budget.

133. In her Reply, the Complainant noted that she became aware of the Facebook post when the Respondent approached her and Councillor Mallah after a Council education session on February 28, 2023. The Complainant said that the Respondent stated, "Sorry about my Facebook post, I'll take it down." The Complainant said that both her and Councillor Mallah replied that they were not aware of what the Respondent was referencing. In my interview with the Complainant, she said that she went on Facebook a few days later and saw that a few days earlier, the Respondent made the Facebook post at issue.

134. The Complainant also stated in her Reply that the Facebook post was "inaccurate and used indecent language that affected her personal dignity." The Complainant said that the Respondent knew that the post was inappropriate when she approached the Complainant and Councillor Mallah on February 28, 2023, but the post had already been shared for a few days and its public reach is unknown.

135. The Complainant also stated that the Respondent's Facebook post was disparaging because it was untrue. In my interview with the Complainant, she clarified that the Respondent's statement that "I had to make multiple requests of the mayor and

[5] "The Complainant's Additional Evidence" refers to additional information provided by the Complainant in her Reply dated April 17, 2023, during my interview with her, and supporting documentation she provided on April 28, 2023.

chair (who I feel was taking direction here)" was untrue because the Respondent never approached her directly. The Complaint explained that if the Respondent asked questions about the budget via email, the Complainant would provide budget information or included staff members who could answer the Respondent's questions when asked. The Complainant asserted that she never denied the Respondent access to the Council's Chief Financial Officer, Margaret Karpenko, or any staff members. The Complainant reviewed her own emails and only found three (3) emails with requests and questions from the Respondent about the budget.

136. In support of her position, the Complainant provided three (3) emails in her Reply. In one email dated December 4, 2022, the Respondent asked the Complainant whether she had reviewed the 2022 and 2021 budgets, and if she was interested in meeting with Ms. Karpenko to discuss budget issues. On the same day, the Complainant replied to the Respondent advising that she had spoken to Ms. Karpenko and recommended that the Respondent reach out to Ms. Karpenko to discuss the budgets in more detail. The Complainant also mentioned that there would be several budget meetings in January for Council to ask questions about the proposed budget. Finally, the Complainant advised the Respondent that she could email Ms. Karpenko, copying the Complainant, so that they could sit down to talk about the budget. The Respondent acknowledged and replied to this email, stating: "Great Maggie, and anytime you want to reach to me, that would be welcomed!"

137. The Complainant also provided a copy of another email chain starting from December 31, 2022 in her Reply. In the December 31, 2022 email, Councillor Lowery sent the Complainant, Mayor Chirico, and the Respondent questions about the budget. Mayor Chirico responded with some information about the budget process, and the Respondent replied stating that she appreciated the information and looked forward to learning more.

138. Finally, the Complainant provided a copy of another email thread starting on February 18, 2023 in her Reply. There, Councillor Lowery sent an email about the budget to the Complainant and Respondent, copying Mayor Chirico and John Severino, the Interim Chief Administrative Officer. In the same email thread on February 21, 2023, the Respondent asked about casino funds. On the same day, the Complainant added Ms. Karpenko to the email thread and advised that "we will also be discussing how staff propose the funds be used at the budget meetings." The Respondent replied on the same day to the Complainant's email to say thank you and stated that, "Maybe we wait and I will raise it at the meeting. We're approaching quorum lol!!"

139. The Respondent then replied to the same recipients on the same day with the following message, in full:

> Someone recently gave me some advice. That tone does not come across well in email and that email should be for yes or no questions only.

> I see their point now.
>
> My earlier email may offend people, and staff, as read the wrong way it sounds like I'm saying staff don't work hard enough, and that middle management is weak, when my intention was to share some general truths learned in life. The longer we work with someone and the more we get to know them, the harder it is to make tough decisions.
>
> As well it may read as though I was attributing my ideas to Margaret from my meetings with her. That is not what I meant. They are my opinions.
>
> Anyhow, communication matters, and transparency matters too.
>
> Thank you for the opportunity to grow and learn.

140. The Complainant also provided a separate email thread where both Mr. Severino and Ms. Karpenko responded directly to the Respondent's email on February 21, 2023 inquiring about the casino funds. The Respondent acknowledged the email on February 23, 2023 by replying with "Thank you, John."

141. In my interview with the Complainant, she noted that Council members were always told that if they had any questions about reports coming to Council or staff, they were to email staff such as the CAO and Senior Director to ask questions and schedule meetings. The Complainant said that she knew that there would be a lot of information involved with the budget process, so she asked Ms. MacIsaac to send an email letting Council members (including the Respondent) know which days were scheduled for the budget process, what the Council would be reviewing, and encouraging Council members to send emails to request meetings in order to discuss any questions.

142. In support of her position, the Complainant provided a copy of this email to me on April 28, 2023. The email showed that the Deputy City Clerk circulated an email from the Complainant dated February 14, 2023 addressing all Council members about the budget documents. In this email, the Complainant advised that the reports to Council and budget documents for 2023 had been shared and posted, and she attached a schedule of how budget discussions would take place over the next few weeks. She also noted that members of the business units in discussion would be attending the meetings to answer questions, but encouraged Council members to ask questions of staff ahead of the meetings.

143. On April 28, 2023, the Complainant also provided me with another screenshot of a public post that the Respondent uploaded on her "Sara Inch City Councillor" Facebook page. In this post, the Respondent expressly stated, among other things:

> The Budget deliberations begin tonight, 1st of 6 schedule meetings. I've been meeting with City staff regularly over the past four weeks to get a better understanding of the process and the line items, and what we can do to keep taxes as low as possible for everyone. […]

144. The Complainant noted that this post was dated in or around February 23, 2023 because the Complainant's screenshot of the image was taken on February 28, 2023 and included the term "5d", indicating that the post was uploaded five days beforehand. The Complainant stated that this Facebook post contradicted the Respondent's Facebook statement that the Respondent faced challenges in accessing budget information, which was posted a few days later on February 25, 2023.

The Respondent's Evidence[6]

145. The Respondent did not comment on the Facebook budget post in her Response.

146. In my interview with the Respondent, I put to her that the Complainant found this Facebook post disparaging. In response, the Respondent acknowledged that she was learning that communication is important and that she was too casual with these posts. She also acknowledged that other people could be offended by these posts and admitted she was not proud of the Facebook post. She noted that she was writing "emotionally and not accurately." Finally, she also recalled apologizing to Councillor Mitchell and the Complainant about the Facebook post and stating that she would take it down. The Respondent acknowledged that the post was not supportive and that she had not taken the post seriously.

147. The Respondent could not recall any specific times when the Complainant refused to give her access to budget information. While the Respondent mentioned that she had asked the Complainant questions about the budget process in person, including in education training sessions, she could not recall the Complainant's response to these requests. Instead, the Respondent concluded that the Complainant "obviously" did not say yes. The Respondent did not provide any other evidence to indicate that the Complainant previously denied her access to any budget information.

148. The Respondent could not recall the emails that the Complainant had included in her Reply, which showed that Council members responded to the Respondent's budget questions or offered meetings to discuss the budget. However, the Respondent acknowledged that she was included in the emails and had responded to some of them.

149. When I asked why she felt that she could not bring questions about the budget forward or have meetings scheduled to discuss the budget, the Respondent expressed that she felt the Complainant would refuse her requests. She also noted there was a

[6] "The Respondent's Evidence" refers to information provided by the Respondent during my interview with her and her email to me on May 8, 2023.

"strange culture" in Council where Council members could not meet because it would appear as if Council members were advancing Council business.

150. Following my interview with the Respondent, she emailed me on May 8, 2023 and stated, among other things:

> I must point out Ms. Horsfield really may believe her reputation has been damaged, yet from what I see and hear from the community, she is (sic) remains very respected and valued as deputy-mayor, despite my facebook post.
>
> I also should point out I have under 60 followers on my facebook page therefore I was not taking it as seriously as I should have been. (Most of my friend's aren't on facebook.)
>
> I do support Ms. Horsfield. I hope she does well in her political career. […]

Witness Evidence

151. Mayor Chirico had not seen the Facebook post before. He noted that the Respondent was provided with information at the same time as every other Council member. He was also not aware or did not recall any of the Respondent's alleged "multiple requests" to "get any information." When I presented the budget emails to Mayor Chirico, in which he was a recipient, he could not specifically recall these emails.

Finding

152. Based on the preponderance of evidence before me, I find that the Respondent violated Article VIII(a) and (c) of the City Code of Conduct by posting the Facebook post raising concerns about the budget process. As I find that there was a breach of Article VIII of the Code of Conduct, I also find that Article VI was breached.

153. I find as a fact that the Respondent uploaded a Facebook post on or around February 25, 2023 raising concerns about the budget process and making statements about the Complainant's role in limiting or excluding the Respondent from the process.

154. On a balance of probabilities, I conclude based on the evidence that the Respondent's Facebook post was untrue and disparaging in violation of Article VIII(a) of the Code of Conduct. The Respondent's statements implied that Council members, including the Complainant, were actively denying or, at minimum, failing to respond to the Respondent's requests to access budget information and otherwise limiting transparency in the budget process. These untrue public statements in the Facebook post are particularly disparaging considering they refer to Council members who hold public positions, make decisions that impact the City's finances, and are accountable to their constituents.

155. While not dispositive, the information from the screenshot of the Facebook post suggests that the post was already viewed and shared by the public before it was taken down. As such, the post had, at the very least, the potential to undermine public confidence in City Council's processes generally. It also had the potential to undermine public confidence in the Complainant specifically in her capacity as Budget Chief and Chair of the General Government Committee, particularly when the Respondent's post was positioned as fact rather than her perceived beliefs about the budget process.

156. I find that the Respondent's Facebook remarks were based on her own assumptions and beliefs about the Council budget process and speculation that the Complainant would refuse to provide budget information. In reviewing the evidence, I find that such speculation has no basis and, in fact, the Respondent was unable to provide any evidence to indicate that she was ignored or refused budget information.

157. By contrast, the evidence provided by the Complainant, which the Respondent did not refute, indicates that the Complainant was responsive and provided budget information to the Respondent. The email evidence shows that the Complainant engaged in conversation with the Respondent and that the Respondent was included in Council emails about the budget process. The emails also show that the Respondent was actively involved in communications concerning the budget. In fact, the Respondent's own Facebook post on or around February 23, 2023 contradicted the comments she made on her February 25, 2023 Facebook post. Specifically, the Respondent acknowledged publicly that she was involved in the budget process and had met with City staff regularly to understand the budget and line items.

158. I do not find the Respondent credible in her responses to this allegation. She could not recall any instances where the Complainant failed to provide her budget information, nor could she recall any of the budget emails on which she was copied, despite having directly responded to some emails.

159. For all the reasons that I find that the Respondent's Facebook post amounted to a breach of Article VIII(a) of the Code of Conduct, I also find that this post amounted to harassment under Article VIII(c) of the Code of Conduct. The Facebook post included comments that were unwelcome and ought reasonably to have been known to be unwelcome, and that could affect a person's dignity or psychological health.

160. The Respondent herself acknowledged to the Complainant that the Facebook post was inappropriate and stated that she would remove it. The Respondent also admitted that the Facebook post could be viewed as offensive, indicating that she understood that the comments could be unwelcome. The comments raised serious allegations that the Complainant, among others on Council, prevented or otherwise limited the Respondent's ability to access the City of North Bay's budget information. Given its public nature, the Facebook post reasonably could have a negative impact on the public's perception of Council members, including the Complainant specifically. I find that such serious

allegations could affect a person's dignity or psychological health, particularly a person who holds a public position, is involved in decisions that impact the City's finances, and is accountable to their constituents, like the Complainant. According to the Complainant, the comments did, in fact, affect her dignity.

161. Further, I find that the Facebook post, taken together with the other two incidents complained of (Allegations #1 and #2 above), each of which I conclude amounted to harassment under the Code of Conduct, reflects a pattern of behaviour by the Respondent towards the Complainant that was unwelcome and ought reasonably to have been known to be unwelcome. I find that the three incidents complained of, individually and in their totality, could affect a person's dignity and psychological health.

IX. CONCLUSION

162. I find that the Respondent contravened Article VIII and, by extension, Article VI of the Code of Conduct.

163. Because I am reporting to Council my opinion that the Respondent contravened Articles VIII and VI of the Code of Conduct, Council may, if it decides, impose a penalty under subsection 223.4(5) of the *Municipal Act*. The decision on whether to impose a penalty and what it should be belongs to Council and not the Acting Integrity Commissioner.

X. RECOMMENDATION

164. I recommend that Council accept this report.

XI. CONTENT

165. Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

Respectfully submitted,

Nicole Singh
Acting Integrity Commissioner
City of North Bay
October 6, 2023

APPENDIX: EXCERPTS FROM THE CODE OF CONDUCT

Article IV – Definitions

In this Code of Conduct:

…

(h) “harassment” includes:

(i) any comment, conduct, action or gesture that is unwelcome or that ought reasonably be known to be unwelcome that could affect a person’s dignity or a person’s psychological or physical health; and

…

Article VI – Adherence to Council Policies and Procedures

Each Member shall observe and comply with every provision of this Code of Conduct as well with all other policies and procedures adopted or established by Council affecting the Member.

…

Article VIII – Conduct Respecting Others

Each Member has the duty and responsibility to treat members of the public, each other Member and Staff appropriately and without abuse, bullying or intimidation, and to ensure that the City’s work environment is free from discrimination and Harassment. Without limitation, a Member must not:

(a) use indecent, abusive or insulting words or expressions toward any other Member, any member of Staff or any member of the public;

(b) speak in a manner that is discriminatory to any individual, based on that person’s race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;

(c) engage in any Harassment of any other Member, any member of Staff or any member of the public.

…