

Integrity Commissioner's Recommendation Report Regarding Complaints Against Councillors Leahy and Yamada

March 11, 2025

Executive Summary:

- [1] This report results from a complaint against Councillors Leahy and Yamada for their conduct as Members of Council for the Town of Whitby.
- [2] The Councillors made statements at public Council meetings which allege anti-Asian racism and racist motivations on the part of Whitby Town Council.
- [3] We find that Councillor Leahy's unsubstantiated statements made in Council on October 7, 2024 - in which he accused Council of anti-Asian racism towards Councillor Yamada - breached his obligations under the Code of Conduct.
- [4] We find that Councillor Yamada's statements made in Council on October 9, 2024 - in which he cast aspersions on the integrity of his colleagues, implying that his Council colleagues engaged in racism towards him - breached his obligations under the Code of Conduct.
- [5] There are appropriate channels by which to bring concerns to Council or the administration in order to seek a proper investigation and redress of racist discrimination. However, making unsupported public accusations of racism are harmful to the reputation the municipality and damaging to the functioning of Council.
- [6] We find that their statements breached the Code of Conduct.

Process

- [7] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.
- [8] This fair and balanced process includes the following elements:
 - Reviewing the complaints to determine whether they are within scope and jurisdiction and in the public interest to pursue, including giving consideration to

whether the complaints should be restated or narrowed, where this better reflects the public interest;

- Notifying the Respondents, and providing them with the opportunity to respond in full to the allegations;
- Reviewing the Code and other relevant documentation and interviewing relevant witnesses as necessary; and,
- Providing the Respondents with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report and taking those comments into consideration prior to finalizing and submitting a Recommendation Report.

Code Provisions

[9] The relevant provisions of the Code are set out below:

Purpose:

The principal objective of this Council Code of Conduct is to outline the behaviours expected of all Members to ensure that:

- Council works as a strong, respectful team with a positive vision;
- All municipal affairs are conducted with professionalism and integrity;
- ...
- The conduct of Members of Council is of the highest standard.

Scope:

This policy applies to the Mayor and all Members of the Council of the Town of Whitby. It is incumbent upon Members of Council to be aware of, and understand, statutory obligations imposed upon municipal Council as a whole, as well as on Members of Council individually. This Council Code of Conduct is supplementary and should be viewed in conjunction with existing legislation and policies.

2. Responsibilities

2.1 Every member of Council shall observe and comply with every provision of this Code of Conduct, as well as all applicable legislation and other policies and procedures adopted by Council.

3. Conduct at Meetings

3.1 Every member shall conduct himself or herself **properly and in a civil manner** at Council, Committee, and other meetings in accordance with the provisions of the Town's Procedure By-law, this Code, and other applicable policies and laws.

4. Conduct Respecting Others:

4.1 Every Member of Council has the duty and responsibility to treat members of the public, one another and staff **appropriately and without abuse, bullying or intimidation**, and to ensure that the municipal work environment is free from discrimination and harassment.

12. Compliance

12.1 All Members shall be aware of and comply with this Code.

...

12.3 Any individual, including members of the public, Town employees and Members who have reasonable grounds to believe that a Member has breached a provision of the Code may proceed with a Complaint. Complaints must be submitted **within six (6) weeks of the matter becoming known to the individual and no more than six (6) months after the alleged violation occurring**. The Integrity Commissioner shall be responsible for ensuring compliance with these deadlines, and **shall take no action on a complaint received beyond these deadlines**.

(emphasis added)

The Complaints

[10] This investigation stems from multiple complaints relating to the same incident received between October 21 and 25, 2024. Mayor Roy, supported by Councillors Lundquist, Cardwell, Lee, Mulcahy, and Shahid submitted a complaint regarding statements made by Councillors Leahy and Yamada which allege anti-Asian racism and racist motivations on the part of Whitby Town Council. Councillors Lundquist, Mulcahy, and Shahid also submitted their own separate complaints in respect of the same conduct. In addition, a citizen submitted a complaint in respect of the same matter. It is alleged that these acts and statements breach the Code.

Background and Context

[11] Councillor Yamada was Deputy Mayor of Whitby from January 1, 2024, until June 2024. At a meeting on June 24 2024, he took exception to the Mayor's use of stronger mayor powers under the Municipal Act 2001 to present a multi-year budget, referring to her as a "liar" for using the powers contrary to her prior statements. He resigned the Deputy Mayor role in protest:

"In light of this motion that just passed, I feel it would be inappropriate for me to carry on as the Deputy Mayor in the Town of Whitby."

- [12] Previously, on May 13, 2024, a report introducing a procedural change was presented in respect of the assignment of the Deputy Mayor role. Historically, this role has rotated on an annual basis among the four Regional councillors in a manner established by the Procedural By-law. Under the new procedure, the Mayor would appoint a Deputy Mayor on an annual basis, to be subsequently ratified by Council. Councillors Leahy and Yamada disagreed with this process; it was not anticipated that Councillor Yamada would be selected for the role in future given his relationship with the mayor.
- [13] The by-law putting the procedural change into effect was adopted at the June 24th meeting.
- [14] When the appointment of Councillor Lundquist to the Deputy Mayor position under the new procedure came to Whitby Council on October 7, 2024, it was opposed by Councillors Leahy and Yamada. Councillor Leahy made statements regarding the Deputy Mayor position as a whole, referring to it as a “patronage appointment” and then accused Council of “treating Councillor Yamada in a different manner than those of us who aren’t of an Asian background.”
- [15] The Mayor immediately stopped the Councillor and ruled him out of order, indicating he needed to retract his comments and apologize. Councillor Leahy refused to do so. The meeting was recessed briefly and subsequently adjourned until October 9, 2024.
- [16] After the meeting at which he made these statements, Councillor Leahy then released a review of public meetings conducted by a community member, indicating that the review demonstrated that Councillor Yamada was never referred to as “Deputy Mayor” nor given preferential seating during his tenure in that role, which was evidence of anti-Asian racism on the part of the Members.
- [17] It is also noted that Councillor Leahy requested a closed-meeting investigation into the actions of Council during the recess in the October 7 meeting. This investigation by the Ombudsman’s office was presented at the December 16 meeting of Council, and it found that Council did not breach any closed-meeting provisions during the period in question.
- [18] Councillor Yamada made no comment during the October 7 meeting, but upon its resumption on October 9, he rose on a point of personal privilege and made what he characterized as a “friendly statement” in which he indicated “It’s true, I do find that Council has treated me differently.” He described the experiences of his grandparents at the hands of the Canadian government during World War two, and

subsequently compared the “drumbeat” of the propaganda and discrimination to his own experiences: “I want to suggest Councillor Leahy’s comments Monday were an even match against the cannons of microaggression against me.”

[19] It is alleged that these statements and actions are breaches of the Code.

Analysis and Findings

[20] At times we are called on in our role as integrity commissioner to determine whether an act or a statement is racist or otherwise discriminatory. This is not one of those times. The purpose of this report is not to investigate racism or allegations of racism, but rather to determine whether the conduct complained of constitutes a breach of the Code. Therefore our review is restricted to a consideration of the conduct complained of, being the behaviour at Council. Whether or not Whitby Council or others are motivated by racism is a separate issue that should be raised by the concerned parties with the Town of Whitby.

[21] Racism is odious and has no place in civil society, let alone in government. Therefore, the allegation that one is expressing racist ideals or is motivated to act through racism is extremely serious and must be made carefully and thoughtfully, not only because of the impact it has on those accused of racism but also because of the impact it has on those affected by it. Allyship is powerful, and a swift and effective response to racist behaviour is crucial to prevent its growth or spread. However, weaponizing the legitimate struggle of racialized people for one’s own benefit, regardless of whether one identifies as racialized, diminishes the understanding of the harms perpetuated by racism and trivializes the ongoing fight against racism in all its forms.

[22] To suggest that an unsupported accusation of racism is not harmful to the reputation of individuals or damaging to the functioning of a municipal council is simply not rational. The same critical harms that require allegations of racism to be taken seriously also inform the risks of those allegations being made flippantly. This balancing is not intended to create a chilling effect on the addressing of racism, but rather to introduce a pause or a sober second thought before labelling individuals and behaviours as racist without meaningful and persuasive evidence to that effect.

[23] In considering these complaints, we were also presented with theories on the sincerity of the complaints or the impugned statements. However, these are just that: theories. What may motivate one party to allege racism without grounds or another party to complain about that is ultimately not relevant to the core question of whether the behaviour in question is acceptable under the Code. That is the basis on which we investigated these complaints and have come to our conclusions.

Councillor Leahy

- [24] In response to these allegations, Councillor Leahy encouraged us to find the complaints to be vexatious and motivated by the complainants' personal dislike of him rather than any sincere concern of a breach of the Code.
- [25] We decline to find these complaints to be vexatious or made in bad faith. In reviewing the video of the incident, the reaction of the Mayor to the statements is instantaneous and unambiguous. She expresses clear disapproval of the statements, articulating the basis for her objections: "You are insinuating that Members of Council are racist towards Councillor Yamada." The meeting was disrupted and the Councillor refused to extend an apology for the statements made. Whether or not there is personal animus among the parties to this complaint, the issue raised is genuine and was raised at the moment the impugned statement was made.
- [26] In his response, Councillor Leahy also raised truth – a statutory defence for defamation – to justify his comments.
- [27] This is not a defamation hearing and our role as integrity commissioner is not to adjudicate whether the Councillor defamed his colleagues at law, but rather to assess whether his comments were in breach of the Code. The Councillor has not provided persuasive evidence to support the truth of his allegations other than stating that these are his own feelings and perceptions, which are not a substitute for facts and do not protect him from the consequences of making serious and damaging accusations.
- [28] Councillor Leahy indicated that he has a right to raise serious issues and bring them forward for discussion. While this may be true, he is bound by the Code and the Procedural By-law in doing so and he is not absolved from the consequences of failing to meet those obligations. The Councillor does not deny that he did not appeal the decision of the Chair regarding her sanctions in respect of his statements, and further that he did not respect the direction given, but takes the position that the issue of whether or not Whitby Council is tainted by racism ought to have been debated at that time. We disagree. It is not the Councillor's role to determine when issues are to be addressed by Council; the question of racism is separate and apart from the subject matter on the floor and it was and remains open to the Councillor to bring a Notice of Motion to discuss that issue.
- [29] In Councillor Leahy's response, he stated that he "did not use any offensive words" and that his statement was "not disrespectful". He further stated that because his statements were "true", they cannot be abusive or disrespectful. We disagree with

this position. His statements represent his views and feelings, and while those may be his “true” views and feelings from his own perspective, that is not the same thing as objective facts. Characterising personal perception as a fact and using that to publicly accuse people of serious bias is very much an abusive act of disrespect.

[30] As noted above, as a means of supporting the allegations of racism, Councillor Leahy stated that a resident had reviewed 60 hours of meetings during Councillor Yamada’s tenure as Deputy Mayor and, during those meetings, Councillor Yamada had never been referred to by the title “Deputy Mayor.” The accuracy of these reviews has not been independently verified, although we have no reason to dispute the truth of the information stated. However, these facts are without context and are, on their own, ambiguous. No assessment has been made as to whether there was a pattern of disrespect that differs from the norms usually applied to the role, or whether any behaviours identified could be attributed to racism or some other factor such as informality, personality conflict, poor process, convention, or other reasons not associated with race. As noted, our investigation was not focused on the question of racism; suffice it to say, however, that this statistic is far from conclusive in the establishment of anti-Asian racism.

[31] We find that Councillor Leahy’s unsubstantiated statements made in Council on October 7, 2024 constitute a breach of his obligations under the Code; specifically to conduct himself properly and in a civil manner at a meeting, and to treat members of Council appropriately and without abuse. We also find that his refusal to respect the direction of the Mayor to either give an apology or leave the Chambers is a breach of his obligation to conduct himself properly and in a civil manner at a meeting, and also to observe the obligations imposed by the Procedural by-law

Councillor Yamada

[32] In his response, Councillor Yamada distanced himself from the initial statements made on October 7, indicating he was unaware that Councillor Leahy was going to make the remarks he did. We have no reason to disbelieve this, however he did not speak up or in any way challenge or correct the statements in respect of how they portrayed his time as Deputy Mayor. His resignation from the role of Deputy Mayor took place during a livestreamed meeting of Council on June 24, 2024 and he himself directly attributed it to the exercise of stronger mayor powers by Mayor Roy at that same meeting. Despite that, he allowed the implication that racism affected his time as Deputy Mayor to stand and the integrity of his colleagues to be attacked, and, in so doing, can be considered to have supported that act.

- [33] With respect to the statements made by Councillor Yamada during the special meeting of Council on October 9, he takes the position that because he made his statements in a polite and courteous manner and that they represented his own feelings and thoughts, there could be no breach.
- [34] We disagree. Within his statements, Councillor Yamada compared the reprehensible acts of World War two Canada against its Japanese citizens, including his grandparents, with his own municipal council. He also referred to “cannons of hate” being aimed at him, implying again that his colleagues on council were actively targeting him due to his race.
- [35] There is no evidence that Councillor Yamada had at any point in the past raised the issue in Whitby of anti-Asian racism, either on Whitby Council generally or in respect of himself personally. There is no evidence of discussion regarding racism, no recorded complaints about conduct or lack of proper honorific or seating, either during the time of his tenure or subsequent to it during the discussion of changing the Deputy Mayor Role. Councillor Yamada has been unafraid to take a stand against racism; during COVID he was rightly a vocal opponent of anti-Asian racism that had become alarmingly prevalent at that time. Along with Councillor Lee, he sponsored a resolution aimed at combatting this racism, passed at Regional Council in April of 2021.
- [36] We find that Councillor Yamada’s behaviour at the October 7 meeting in permitting the statements of Councillor Leahy to stand without clarification does not exemplify the highest standard of behaviour of a municipal councillor but does not rise to the level of a breach of the Code. In our opinion, the Code does not require a Member to correct another Member on matters such as these.
- [37] Councillor Yamada took a much more active position during the October 9 meeting. While making his remarks, he stated “I want to suggest that Councillor Leahy’s comments [that there was disrespectful treatment due to racism] match the cannons of microaggression toward me.” He also referenced the treatment of interned and dispossessed Japanese Canadians during World War Two, including his own grandparents. At the end of his remarks he sates “To be clear, I don’t know what the motives of councillors were and frankly I don’t care....”
- [38] Councillor Yamada states that he never explicitly called his colleagues racist, did not specifically compare his own experiences in the role to that of Japanese-Canadians wronged at the hands of the federal government during the second world war, and clearly stated that he did not know nor care what motivated his colleagues to behave in the way he alleges they did. For these reasons, he argues that he was not alleging racism.

- [39] We do not agree. In making his statements, Councillor Yamada tied his remarks directly to those made by Councillor Leahy and adopted them by saying that they “match the cannons of microaggression towards me.” That is, that the allegation of racism made by Councillor Leahy was in line with Councillor Yamada’s feelings or experience. Microaggressions are commonly accepted to be small, almost imperceptible acts of discrimination against a person that accumulate over time.
- [40] Stating that he did not know or care what the motives of his colleagues were in respect of the treatment he received – presumably the failure to be referred to as Deputy Mayor and not receiving preferred seating – highlights both the ambiguity of the evidence provided as well as the willingness of Councillor Yamada to allow the implication that the referenced treatment resulted from racism despite professing not to be aware of the cause. While Councillor Yamada did not at any time specifically call his colleagues racist, he endorsed the statements of Councillor Leahy, who did. And while he did not specifically compare his own experience to that of his grandparents, he chose to highlight those acts of racism and utilize parallel language to talk about himself in the modern context (“cannons of hate”; “cannons of microaggression”).
- [41] We are very sensitive to the fact that this is deeply personal to Councillor Yamada; he has indicated that these are his true feelings and indeed, no one is in a position to determine the validity of the feelings of another. Councillor Yamada is descended from persons who faced significant hardship due to their Asian heritage, and anti-Asian racism remains a live issue in our society. That being said, this is not an inquiry into whether the Councillor faced racism, it is about how he expressed himself at Council and the accusations he made of his colleagues. Councillor Yamada was not responding to an issue or addressing a matter before Council. Instead, he chose to rise on a point of personal privilege to deliver prepared remarks wherein he implied that his colleagues on Council engaged in racism. He did not choose to bring his concerns to any member of Council or administration in order to seek a proper investigation and redress, but rather he made a public display of presenting his perceptions and levelling serious accusations at his colleagues.
- [42] It bears repeating that this is not an assessment of whether the accusations of racism are accurate, but rather whether the conduct regarding these accusations is appropriate and acceptable under the Code. We find that it is not. For the same reasons that allegations of racism must be treated with the utmost seriousness, these same allegations must not be made lightly, overbroadly, and without consideration. Separating allegations of racism from the reality of racism may seem

like an artificial distinction, but the difference is clear: an allegation is simply an allegation until it is proven.

- [43] Accordingly, we find that Councillor Yamada's comments, howsoever intentioned, cast aspersions on the integrity of his colleagues and the Council as a whole, and fell short of the obligation under section 4.1 to treat them "appropriately, and without abuse, bullying or intimidation".

Summary of Findings

- [44] The purpose of the Code is to advance the effective governance of Whitby by ensuring that "Council works as a strong, respectful team with a positive vision; all municipal affairs are conducted with professionalism and integrity", and that "the conduct of Members of Council is of the highest standard." Measured against these standards as further enumerated in the Code under sections 2, 3, and 4, the conduct of Councillors Leahy and Yamada fail to advance those principles. Alternate paths could and should have been pursued to address these serious allegations, but raising them for the first time in a public forum undermines public confidence in both the elected officials as well as the institution.

Jurisdiction

- [45] Within their submissions, the complainants made reference to other alleged breaches of the Code in respect of language or procedure. The respondents objected to the investigation of these complaints based on the provisions of section 12.3 of the Code, which requires a complaint be made within six weeks of the complainant becoming aware of the issue and in no event more than six months following the issue.
- [46] Although the Code clearly applies to Member conduct at all meetings – not just Council meetings – we agree that these matters occurred outside of the prescribed 6-week timeline in the Code to give us jurisdiction to investigate them as stand-alone incidents. In our view, the incidents depicted in the complainants' statements did not rise to the level of formal complaints. Instead, they were offered as a means of demonstrating a pattern of poor or disrespectful behaviour on the part of the Councillors.
- [47] We view a bald allegation of anti-Asian racism made in Council chambers to be something quite apart from rude conduct or procedural violations. While we do not disagree that these matters would be relevant to investigation of persistent disregard for the conduct provisions of the Code, the subject matter of this

complaint is rooted in the making of serious, unproven public accusations and not general misconduct.

Recommendations and Concluding Remarks:

- [48] The role of an Integrity Commissioner is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.
- [49] It is important for members of Council to recognize their own on-going responsibility for their public statements.
- [50] The Councillors must recognize that as leaders, they have a following, and people will be listening to them; raising accusations of racism by Council for the first time in a public forum undermines public confidence in its local elected representatives and in its municipal government.
- [51] Based on our conclusions set out above, we are of the view that the sanction of a suspension of remuneration for each of the Councillors is warranted, to clearly signal that such serious allegations, unsubstantiated yet publicly pronounced, are irresponsible and should not be condoned.
- [52] The sanctions that may be imposed following a finding of contravention by an Integrity Commissioner are a reprimand, or a suspension of remuneration for up to 90 days.
- [53] A suspension of pay, while not representing a significant monetary amount, can assist in driving home the point that such conduct is unacceptable.
- [54] We therefore recommend:

That the remuneration paid to each of Councillor Leahy and Councillor Yamada be suspended for a period of one week (one-half of a two-week pay period).

- [55] We will be available to introduce this report and respond to questions about how our recommendations relate to our findings during the Council meeting at which this report is considered.

About Principles *Integrity* and the Complaint Process

Principles *Integrity* was appointed the Integrity Commissioner for the Town of Whitby on November 15, 2022. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

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

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

Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

It is important that this broad range of functions be mentioned in this investigation report. Our goal, as stated in our operating philosophy, is to help members of the community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.

Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.

Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.