CITATION: Racco v. Corporation of the City of Vaughan, 2026 ONSC 1075
DIVISIONAL COURT FILE NO.: 1602/24
DATE: 20260310

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Fitzpatrick, O'Brien, and Tranquilli JJ

BETWEEN:	
MARIO RACCO Applicant	*Rohit R. Kumar and Erica Fini,* for the Applicant
– and –	
THE INTEGRITY COMMISSIONER FOR THE CITY OF VAUGHAN AND THE CORPORATION OF THE CITY OF VAUGHAN	*Julia Wilkes and David Ionis*, for the Respondent, Integrity Commissioner for the City of Vaughan
Respondents	*John Mascarin,* for the Respondent, Corporation of the City of Vaughan
	HEARD on January 20, 2026 in Oshawa

O'BRIEN J.

REASONS FOR DECISION

Overview

[1] Vaughan City Council voted to sanction the applicant Mr. Racco, a local councillor, at two Council meetings. The meetings followed investigations by the Integrity Commissioner arising from complaints under the City's *Code of Conduct*. At the first meeting, which occurred on October 29, 2024, Council accepted the Integrity Commissioner's recommendation that Mr. Racco be sanctioned with a reprimand and ten-day suspension of pay. At the second meeting, on February 25, 2025, Council accepted the Integrity Commissioner's recommendation of a suspension of 60 days. Mr. Racco brings two applications for judicial review, which were heard together, to challenge the findings of the Integrity Commissioner and the sanctions imposed by Council.

Background: Complaints and Investigations

[2] The Integrity Commissioner (IC)'s investigations were related. The first investigation responded to two complaints by another councillor. Those complaints arose from various emails that included Mr. Racco and, among others, Vaughan residents, ratepayers associations and the complainant. They related to development projects. The concerns raised in the complaints were that (1) Mr. Racco made comments denigrating Council's decision-making and disparaging members of Council; (2) Mr. Racco made derogatory comments knowing that the complainant would be unable to respond because Council members were not supposed to comment on matters before the Ontario Land Tribunal; and (3) Mr. Racco removed the complainant from an email thread and went on to make comments disparaging her and Council. I will refer to these complaints and the related investigation as the email complaints and investigation.

[3] In her October 4, 2024 report, the IC accepted that concerns arising from the email complaints were made out. She concluded Mr. Racco made disparaging comments about members of Council and violated the *Code of Conduct*, including the requirement to act with appropriate decorum. His conduct lacked decorum both in the language he used in some emails and by removing the complainant from the email thread so she could not respond to his criticisms.

[4] The second investigation arose because of Mr. Racco's actions leading up to the Council meeting after the first investigation. Following the first investigation, counsel for Mr. Racco sent the complaint forms/affidavits on which the previous complaints were based to members of Council, asking that they be considered at the Council meeting. A complaint form/affidavit is the form on which a complaint must be submitted to the IC. However, it is a confidential document. A further complaint was made to the IC about this disclosure. I refer to this complaint and investigation as the confidentiality complaint and investigation.

[5] In her second report, dated January 28, 2025, the IC again found Mr. Racco had breached the Code of Conduct, this time by disclosing confidential material to people not entitled to review it.

[6] Mr. Racco raised an array of issues in this court. He alleged procedural unfairness, a reasonable apprehension of bias on the part of the IC, and that the decisions were unreasonable. I find these submissions to be without merit as detailed further below. The issue that is more difficult is whether the complainant's actions in voting at the Council meetings gave rise to a reasonable apprehension of bias in the process leading to the sanction decisions. Ultimately, considering the specific context of City Council meetings and the circumstances of this case, I am not persuaded Mr. Racco has demonstrated Council had a reasonable apprehension of bias. I therefore would dismiss the application.

Standard of Review

[7] There is no dispute that the standard of review for the decisions of the IC and of Council is reasonableness. With respect to procedural fairness, the question is whether the decision was procedurally fair considering the factors in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817, at paras. 22-28.

Were the investigations procedurally unfair?

[8] Mr. Racco alleges the IC breached procedural fairness during the investigations in three ways: (1) With respect to the email investigation, she failed to provide him with the documents on which the complainant submitted her complaints (the complaint forms/affidavits); (2) she improperly expanded the scope of the investigations beyond the subject of the complaints; and (3) she erred by refusing to disclose the complaint forms/affidavits to Council for the councilors' consideration prior to their meeting. I do not find any procedural unfairness.

Not required to disclose complaint form/affidavits

[9] Starting with the first two allegations, I disagree that the IC erred by not disclosing the complaint forms/affidavits or by expanding the scope of the investigations.

[10] By way of background, the IC is appointed under the *Municipal Act, 2001*, S.O. 2001, c. 25 (the *Act*). Part V.1 of the *Act* requires municipal councils to establish codes of conduct for members of council (s. 223.2) and to appoint integrity commissioners (s. 223.3). The IC in this case is responsible for investigating and reporting on alleged breaches of the *Code of Ethical Conduct for Members of Council and Local Boards* (*Code of Conduct*) adopted by Vaughan City Council. Vaughan City Council also adopted a *Complaint Protocol* for receiving and investigating complaints and for the IC to report her opinion.

[11] I agree with the submissions of the IC that the *Complaint Protocol* did not require her to disclose the complaint forms/affidavits to Mr. Racco. Subsection 5(i) of the *Complaint Protocol* states that "all complaints must be made on the Complaints Form/Affidavit." Section 7(i)(a) then states the IC must "give the complaint to the Member whose conduct is in question." I do not interpret s. 7(i)(a) to mean the IC must give the respondent the complaints form/affidavit for two reasons. First, the *Complaint Protocol* uses the term "Complaints Form/Affidavit" in various provisions and could have specified that the form needed to be provided if that is what was intended. Second, s. 5(iv) deals directly with what is to be provided to the respondent. It states: "The Integrity Commissioner will provide a summary of the complaint to the respondent and to others who may be involved in carrying out this procedure." The IC therefore is mandated by the Protocol only to provide a summary of the complaint.

[12] Leaving aside the strict requirements of the *Complaint Protocol*, I also find the requirements of procedural fairness did not require the IC to disclose the complaints form/affidavits to Mr. Racco. The IC instead sent Mr. Racco a "notice of complaint" for each complaint. The notices of complaint summarized the complaints against him, including, for the first two complaints, that he had removed the complainant from an email thread; that he included denigrating comments in his emails about the complainant and other members of Council; and that he had left the complainant in the position of not being able to respond to his accusations. The notices of complaint provided detailed bullet points summarizing each complaint and attached the underlying email chains that were complained about.

[13] Mr. Racco has not been able to point to any information found in the complaints form/affidavits that was not provided to him by way of the summaries. He does, however, submit that his responses to the complaint notices reveal a confusion between the two complaints. He has not shown how the complaint summaries caused the confusion or how receiving the complaints form/affidavits would have prevented the confusion, particularly given that he had the email chains themselves and the dates of the emails at issue in each complaint.

[14] In addition, on September 10, 2024, the IC sent Mr. Racco a copy of her draft findings. Mr. Racco then provided further submissions addressing all allegations in detail. Further, because Mr. Racco indicated in his submissions that he had not had time to retain a lawyer, the IC offered him additional time to obtain legal advice and provide further submissions. On September 26, 2024, Mr. Racco's counsel provided the IC with additional comments on the draft findings. In other words, Mr. Racco had repeated opportunities to respond to the IC`s analysis arising from the complaints and emails. In all the circumstances, I am not persuaded there was any breach of procedural fairness caused by not providing the original complaint forms/affidavits.

No breach by expanding the scope of the complaints

[15] I also do not find merit to the allegation that the IC impermissibly expanded the scope of the complaints. Mr. Racco submits that the notices of complaint for the first two complaints only referred to a breach of r. 15 of the *Code of Conduct*, which deals with discreditable conduct and requires members "to conduct themselves with appropriate decorum at all times." However, the IC ultimately found Mr. Racco also breached rules 10 and 13 of the *Code of Conduct*, which deal with accurately communicating decisions of Council "so that there is respect for and integrity in the decision-making processes" and encouraging respect for the City and its by-laws.

[16] Although the complainant did not raise rules 10 and 13 in her initial complaints, according to the IC, she did raise them in her submissions replying to Mr. Racco's initial submissions. The analysis under rules 10 and 13 is found in the IC`s draft findings. As set out above, Mr. Racco had more than one opportunity to respond to those findings, including specifically to rules 10 and 13. In his submissions, including those made with the assistance of counsel, Mr. Racco did not object to rules 10 and 13 being raised. Finally, the finding that three rules were breached did not affect the IC's recommendation on sanction. She expressly stated in her report: "I made my recommendation based on the misconduct found considered wholistically. Even if I had only determined that the conduct violated Rule 15, I would have made the same recommendation on sanction." I do not find any procedural breach caused by the IC considering the additional rules.

[17] For the confidentiality complaint, although the notice of complaint reproduced r. 3.1, it referred more generally to r. 3 of the *Code of Conduct*. The IC ultimately made findings under r. 3.5. As with the first investigation, Mr. Racco had several opportunities to respond. His counsel responded to the initial complaint and, later, to the draft findings. The draft findings identified r. 3.5 as relevant. Because Mr. Racco's counsel asserted the IC had expanded the complaint, she gave Mr. Racco a further opportunity to respond to the r. 3.5 allegation. His counsel did so by further submissions. There was therefore no breach of procedural fairness on this issue.

No breach by not disclosing complaints form/affidavits to Council

[18] There is also no merit to the submission that the IC was required to disclose the complaints form/affidavits to Council, as asserted by Mr. Racco. The IC is subject to a duty under the *Act* to preserve secrecy. Subsection 223.5(1) of the *Act* provides that the IC and every person acting under her instructions "shall preserve secrecy with respect to all matters that come to …her knowledge in the course of …her duties under this Part."

[19] Mr. Racco submits the IC could have disclosed the complaints form/affidavits to Council under s. 223.6(2), which is a limited exception permitting disclosure, and fettered her discretion by refusing to do so. I disagree. There is a limited exception in s. 223.6(2) that permits the IC to disclose such matters as in her opinion are necessary for the purposes of the report. Subsection 223.6(2) provides:

> 223.6(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

[20] The exception grants the IC wide discretion to determine whether disclosure, in her opinion, is necessary "for the purposes of the report." Former ACJ Marrocco emphasized her autonomy over disclosure decisions, stating: "The statutory scheme provides the Integrity Commissioner with significant autonomy regarding the disclosure of her investigation": *Di Biase v. City of Vaughan*, 2016 ONSC 5620, at para. 120.

[21] Mr. Racco has pointed to an email from the IC dated October 29, 2024 in which she explained she would not be releasing the complaint forms/affidavits. She explained that she relied on the *Act*'s confidentiality requirements. She noted that in other cases she had provided a redacted form to the respondent. In this case, she stated that the "substance" of the complaint forms were in her report.

[22] The IC's summary of the complaints in her report gave the readers of the report the required context, while preserving the confidentiality of the underlying documents. Simply raising concerns of procedural fairness does not mean the IC is mandated to disclose information that is otherwise confidential and that the IC does not consider necessary for the purposes of her report. The IC's email shows that she turned her mind to the requirements of the *Act* and to the exception under s. 223.6(2).

[23] Mr. Racco has not demonstrated that the IC fettered her discretion or was otherwise required to disclose the complaints forms/affidavits to Council.

Did the IC exhibit a closed mind with respect to the confidentiality investigation?

[24] I also am not persuaded by Mr. Racco's submission that the IC exhibited a closed mind with respect to the confidentiality investigation. Mr. Racco relies on comments the IC made during Council's October 29, 2024 meeting. By that time, the issue of the disclosure of confidential information had crystallized because Mr. Racco's counsel had sent the complaints form/affidavits

to members of Council. The IC indicated at the meeting that she would retain carriage of any complaint about the confidentiality issue. She also explained the reasons for not making the complaint forms/affidavits public, including referring to the confidentiality provisions of the *Act* and to the goal of protecting complainants and witnesses.

[25] I agree with the IC that Mr. Racco was required to raise this concern to the IC and did not do so. This meant she did not have the opportunity to rule on his allegation that she was biased. Mr. Racco has pointed to a letter dated October 21, 2024 in which he said that "someone other than the present IC" should be found to address the complaints. Those comments were in reference to the email complaints, not the confidentiality complaint. They did not constitute a clear request for the IC to recuse herself with respect to the confidentiality complaint.

[26] This court explained in *Chiarelli v. Ottawa (City of)*, 2021 ONSC 8256, at para. 77 that the requirement to raise an allegation of bias at the first instance, is not a mere technicality. Failure to raise it is fatal in most cases because it does not allow the decision-maker to respond to or rule on the allegation:

> This is no mere technicality. An allegation of bias impugns the integrity and conduct of the person against whom it is made. That person is not a party to the underlying conflict, and the allegation by its nature, seeks to cast a neutral party into the conflict itself. That person is entitled to respond to the allegation and, where the allegation of bias is rejected, to explain why they are not biased in fact, and why their conduct does not give rise to a reasonable apprehension of bias. Usually, this is the only chance the person has to respond to serious allegations made against them. If this issue is then pursued on judicial review, it is the task of this court to review the decision on the bias issue – a task we cannot perform since the issue was not raised with the Commissioner and so he has not made a decision on the issue that we can review.

[27] Mr. Racco did not squarely raise his allegation in the proceeding below and I would find he cannot do so now.

[28] In any event, I am not persuaded the IC exhibited a closed mind. The IC's role is investigative, not adjudicative. While the test to show a reasonable apprehension of bias on the part of an adjudicator is high, it is even higher for someone performing an investigative function. The question is not just whether there is a reasonable apprehension of bias but whether the investigator exhibited a "closed mind" such that she "predetermined the issue": *Chiarelli*, at para. 76.

[29] Here, saying she would retain carriage of any complaint was not controversial because she was the designated person for complaints. The IC also referred to the statutory requirements regarding secrecy and explained why she did not disclose certain types of information. This did not exhibit a closed mind on whether Mr. Racco had breached the *Code of Conduct*. I am not satisfied that Mr. Racco has met the high bar of showing the IC predetermined the issue in the confidentiality investigation.

Were the IC's decisions and the 60-day sanction unreasonable?

[30] Mr. Racco submits the IC's reports and the sanctions against him were both unreasonable. With respect to her first report, responding to the email complaints, he submits an objective reading of the emails would find they reflect a policy dispute. He emphasizes that, while the language he used was critical, it did not mention the complainant by name.

[31] I disagree that the report was unreasonable. In the emails, Mr. Racco made critical comments that denigrated other members of Council, such as stating "Council is mad/confused and have taken childish actions." He also stated that "only 2 of us supported the People and 8 did not. So if you will wait for the 10 of us to do what the people want, in this case it will not happen unfortunately. I am with you. The majority is not."

[32] In finding that Mr. Racco violated several provisions of the *Code of Conduct*, the IC laid out her reasoning in a transparent and intelligible manner. She reasoned that the *Code* does not require members of Council to express public support for a decision with which they disagree but also said Council members are prohibited from making disparaging comments. She concluded that in this case Mr. Racco went beyond stating his dissent. The IC also rejected Mr. Racco's submission that his conduct was appropriate since he did not name the complainant, finding that he denigrated all members of Council and, in one email, the "group of eight" allegedly not "for the people." The IC finally concluded the intentional removal of the complainant from the email thread was inappropriate and did not constitute exemplary behaviour, as required by r. 15 of the *Code of Conduct*.

[33] The IC's conclusions were justified and available to her on the record before her: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653, at para. 15. I find the email complaints report to be reasonable.

[34] With respect to the confidentiality complaint, Mr. Racco's makes two primary submissions. First, he says it was unreasonable for the IC to find a breach of the *Code* because her decision was predicated on the importance of protecting the complainant's identity. He points out that a version of the email investigation report that was publicly posted as part of Council's agenda included the complainant's name. He argues, in other words, that her name was already public.

[35] Second, he submits the people who received the complaints form/affidavits were all Council members and staff who are themselves bound by confidentiality obligations.

[36] The IC report reasonably found a breach of the *Code of Conduct*. Rule 3.5 of the *Code* provides that "No Member shall permit any persons other than those who are entitled thereto to have access to information that is confidential." The IC's findings were not premised on protecting the complainant's identity but on following the requirements of r. 3.5, which prohibits the disclosure of confidential information to those who are not entitled to receive it. Although the IC stated the confidentiality of the complainant was one important purpose of the confidentiality obligations, she reasoned that all materials received must remain confidential for important reasons, including to protect the integrity of the investigation process. She also pointed out that r. 3.5 does not contain an exception for those otherwise bound by confidentiality obligations. Again,

her reasoning was transparent, intelligible and justified. There is no basis for the court to interfere in her conclusions.

[37] Finally, I find the 60-day sanction imposed by Council to be reasonable. Mr. Racco submits it was unreasonable because it represented a significant and unexplained departure from sanctions in other cases. I disagree. The two cases he relies on are distinguishable. In *Code of Conduct Investigation #152818 (F)*, although a Council member disclosed confidential information, the member's response to the complaint was prompt, forthcoming and included a sincere apology. In *Town of Gravenhurst Code of Conduct Complaint Investigation #100724*, the member inadvertently disclosed information that he forgot he had learned in a closed meeting. In the current case, by contrast, the IC found Mr. Racco provided confidential information to dozens of people who should not have had it even though she expressly advised his legal counsel that the complaints form/affidavits were confidential and could not be disclosed. The cases Mr. Racco relies upon are not comparable. He has not shown a basis to interfere in the sanction adopted by Council.

Did Council demonstrate a reasonable apprehension of bias in its decision?

[38] The question of whether Council's decisions exhibited a reasonable apprehension of bias because the complainant did not recuse herself is more difficult. However, ultimately, I have concluded there was no reasonable apprehension of bias.

[39] To understand the decision-making role of Council members, it is important to consider the nature of Council and the particular statutory context. Council members are elected to represent their constituents. The decisions they make are voted on in transparent, open sessions. There is no statutory requirement for a Council member to recuse themselves from voting on any matter, except where they have a pecuniary interest: *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, s. 5.

[40] There can be no doubt that a Council member would need to recuse him or herself where it was established there was a reasonable apprehension of bias. But the test for bias in this context is stringent. In *Old St. Boniface Residents Assn Inc. v. Winnipeg (City)*, 1990 CanLII 31, [1990] 3 SCR 1170, the question was whether a city councillor who had been personally involved in the planning of a proposed development and had appeared as an advocate for it was disqualified from voting on the related zoning by-law. The court found he was not. Although he had advocated for the development, he did not have a personal interest in it. At p. 1197, the court found the test to be whether a member of council is "capable of being persuaded."

[41] I have considered the possibility that the current situation is different because it did not involve a council member expressing views on a policy issue. On that question, it is helpful to look to *Chiarelli,* where the council member was sanctioned by city council for sexual harassment against three women seeking employment in his office. Although the council members themselves were not the complainants, some council members made strong statements in favour of the complainants before the vote. For example, some councillors issued public statements supporting the women and commending them for coming forward. Two council members publicly stated they believed the women's allegations to be true.

[42] This court concluded that the public statements did not reflect a closed mind on the part of the council members. The court was more troubled by some council members' actions in refusing to sit with Councillor Chiarelli at Council table and calling on him to resign. Because the penalty council could impose was limited to suspension of remuneration for up to 90 days, resignation was not a publicly available penalty. Demands to resign therefore gave the appearance of pre-judgment on the issue of sanction.

[43] Considering the guidance from *Chiarelli*, I would not find Council exhibited a reasonable apprehension of bias in this case. To start, Mr. Racco did not raise the allegation of bias before Council and give the complainant a chance to respond or for Council to rule on it. As set out above, this is fatal in most cases. The complainant had no opportunity to express the degree to which she had an open mind on sanction.

[44] I am also not satisfied the nature of the complainant's interest was sufficient, to be of the type that disqualified her, without needing an inquiry into whether she had an open mind, for two reasons: First, it is anticipated by the wording of s. 223.4(1) of the *Act* that Council members, or Council as a whole, may make complaints to the IC. If Council as a whole complained to the IC, it could not be expected that all Council members would recuse themselves from a resulting vote. It is therefore possible under the legislation to be both complainant and voting member of Council.

[45] Second, although the complainant lodged complaints about Mr. Racco's conduct, the role of Council is not to make factual determinations or reach conclusions about conduct. It is only the IC's report that reaches those types of determinations. Pursuant to s. 223.4(5) of the *Act*, the role of Council is only to determine whether to impose penalties on a member of Council if the IC reports to the Council that the member has contravened the *Code of Conduct*. Although she filed the complaints, the complainant did not express an opinion in her complaint on sanction. She could have been of the view that the sanctions recommended by the IC were too lenient or too stringent. However, she did not say anything in the Council meeting at all. There are therefore no comments that reflect any predetermined view on sanction

[46] I also note that, having not made any comments during the Council meeting, the complainant did not try to influence the vote of any other Council member. In all of these circumstances, I am not persuaded Council's decision exhibited a reasonable apprehension of bias.

Sealing Order

[47] The applicant uploaded material to Case Center that was in some places heavily redacted. I understand this was both because the applicant was unsure whether it was necessary to keep information about the complaints confidential and because of the need to maintain privacy over "personal information" as defined in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 and the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (together the "Privacy Acts").

[48] The parties now agree that the information related to the complaints need not be redacted. The parties also agree "personal information" as defined in the Privacy Acts should remain confidential. I agree that redacting the information meets the requirements of the test in *Sherman Estate v. Donovan*, 2021 SCC 25. The important public interest is maintaining the confidentiality

of statutorily-protected private information for individuals that have had no involvement in the court proceedings and/or whose personal information is entirely irrelevant to the court proceedings. The redactions are the only method to prevent the disclosure of the information and are proportional given that they are targeted and prevent only the disclosure of information irrelevant to the proceeding.

[49] The applicant shall ensure he files copies of all his materials with the court to be available on the public record. Those materials shall be fully unredacted, except for the irrelevant information required to be kept confidential by the Privacy Acts.

Disposition

[50] The applications are dismissed. As agreed by the parties, Mr. Racco as the unsuccessful party shall pay costs of $30,000 all-inclusive to each of the respondents.

O'Brien J.

I agree

Fitzpatrick J.

I agree

Tranquilli J

Released: March 10, 2026

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– and –

THE INTEGRITY COMMISSIONER FOR THE CITY OF VAUGHAN AND THE CORPORATION OF THE CITY OF VAUGHAN

Respondent

REASONS FOR DECISION

O'Brien, J.

Released: March 10, 2026