

CITY OF HAMILTON INTEGRITY COMMISSIONER, DAVID G. BOGHOSIAN

Citation: Frisina, Anthony (Re) – DGB-HamiltonICI-2024-04

Date: June 28, 2024

REPORT ON COMPLAINT

Introduction

[1] On May 24, 2024, I received a Complaint from Michelle Martin, Manager, Accessible Transportation Services, with the City of Hamilton, regarding allegations made against her to herself and others by Anthony Frisina, a Hamilton resident, prominent disability activist and member of the City’s Advisory Committee for Persons with Disabilities (“the Committee”). The Complaint alleges that Mr. Frisina maliciously and falsely impugned her professional reputation contrary to s. 12 of the City’s Code of Conduct for Local Boards (“COCLB”). I asked Ms. Martin my standard question at the outset of my investigation whether she wished to remain anonymous or be identified as the Complainant in my Report. She indicated that she wished to be identified in my Report rather than remain anonymous. In this particular case, it would be effectively impossible to provide a report without revealing the Complainant’s identity and, in light of the conclusions I have come to, it further permits her to be publicly exonerated in light of the wide publication of the false allegations against her by Mr. Frisina.¹

[2] Mr. Frisina is a person with disabilities who requires the use of a wheelchair for mobility. His publicly displayed website says that he was born with Spina Bifida and Hydrocephalus. He is a regular user of DARTS (Disabled and Aged Regional Transit Service), a transit service contracted by the City of Hamilton. Mr. Frisina has been in a longstanding dispute with DARTS

¹ I also note that s. 223.5 of the *Municipal Act, 2001* provides me with unfettered discretion to determine what aspect of my investigation, including the identity of the complainant and witnesses, shall remain confidential or not:

Duty of confidentiality

223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

...

Exceptions

(2.3) The Commissioner may disclose such information **as in the Commissioner’s opinion** is necessary,

...

(c) in the written reasons given by the Commissioner under subsection 223.4.1 (17).

regarding a number of its policies, including with respect to bringing bundle buggies onto DARTS vehicles. He has been the subject of several written warnings concerning his refusal to abide by DARTS policies and procedures relating to its customers dating back to at least 2021, and for verbally abusing DARTS employees.

Complaint

[3] On March 19, 2024, Mr. Frisina sent Ms. Martin an email request regarding the number and size of bags allowed by clients on DARTS vehicles. Ms. Martin sent him the requested policy information. Mr. Frisina then responded requesting the original policy document, which Ms. Martin provided after requesting a copy of the most recent iteration from the DARTS Executive Director who scanned and sent it to her. Ms. Martin saved a copy of the scanned PDF with a password to protect against editing (because policy documents are controlled documents) and sent the protected document to Mr. Frisina.

[4] Mr. Frisina sent an email to Ms. Martin on March 20, 2024 that included a screenshot of the document properties for the PDF she had created and sent to Mr. Frisina the day before, which matched the dates and times the policy document was scanned by DARTS and when she created the protected version. Mr. Frisina's email was copied to various Councillors, Committee members and staff reporting to Ms. Martin.

[5] Mr. Frisina then sent an email on March 22, 2024, that included the following:

“I have realized i cannot compete with the tampering or forging of policy related documents in an effort to assert some authoritative power, strong-arming the most vulnerable in our community, in hopes we're not smart enough to figure out the truth. This ableism, discrimination and elitist mentality has no place in Hamilton. In 2020, when i was named to the Order of Hamilton, i thought we would for sure be on an upward trend, clearly, I was mistaken and throu the efforts of Tom Foolery we've been taken advantage of.... My health and safety means more than a liability. The bureaucracy needs to stop. If we want to have a diverse community we all need to matter, clearly your actions prove otherwise.”

[6] The attachments to the foregoing email included the scanned policy document she had sent him on March 19th and the screenshot of the document properties Mr. Frisina had sent her on March 20th. This email was copied to four City Councillors; 3 current Committee members, including one who is the Chair of the DARTS Board of Directors; 1 former Committee member; the Director of Transit; the Executive Director of DARTS; and two staff persons who report to Ms. Martin.

[7] On April 3, 2024, Mr. Frisina sent an email with the subject line "Manipulation" which stated the following:

“The fact that we uncovered the truth about what happens at ATS and DARTS for you to get your way is and basically apprehend my quality of life is despicable. Resorting to manipulation of documents is not only illegal as it is fraud and tampering it is down right dirty trick that has gone on for

far too long. It's no secret you are taking quality of life away from people with disabilities and violating the Integrated Accessibility Standards and Regulations... The simple reason is there in lies no other option, so you can bully the disability community. I've questioned morals and ethics and now with validation, it makes me question all the work done for accessibility and inclusion and if you're really allies at DARTS and ATS, is your work obligatory or intentional. Time for accountability and an apology. I love Hamilton, I hope you do too!"

[8] The foregoing email also included, as an attachment, an image of a famous actor with the quote: "Manipulation' is when they blame you for your reaction to their toxic behaviour, but never discuss their disrespect that triggered you." This email was copied to three City Councillors, three Committee members (including one who is the Chair of the DARTS Board of Directors), the Director of Transit and a former Committee member.

[9] On May 3, 2024, a meeting was held that involved Mr. Frisina, Ms. Martin, Jodi Koch (Director, Talent and Diversity, HR, City of Hamilton), Kathy McVicars (DARTS), Jessica Bowen (City of Hamilton), Councillor Mark Tadeson, Tim Nolan (Committee member) and two members of the public invited by Mr. Frisina. The purpose of the meeting was to discuss Mr. Frisina's ongoing request for DARTS Operators to handle his personal carry-on items in contravention of policy and to explore accommodation possibilities that align with existing policy and with DARTS' collective bargaining agreement with CUPE. At the end of the meeting, Ms. Koch indicated to those in attendance that she and Ms. Bowen had compared the document Mr. Frisina alleged Ms. Martin had forged with the original policy document, and that there was no evidence of tampering with the contents of the policy. Mr. Frisina apologized but did not direct the apology to Ms. Martin personally or offer to correct the disparaging emails sent.

[10] In an email sent by Mr. Frisina in the early morning of May 9, 2024, addressed to all in attendance at the May 3 meeting as well as to the Director of Transit, he stated as follows: "I received an email from [Ms. Bowen] yesterday pertaining to the inaccurate document i was sent on February 22nd [sic]. I'm still not convinced as stills only give so much information, when I presented information to [Ms. Koch] I shared my screen validating information presented in the email. Your urgent response is appreciated."

[11] In response to the foregoing email, Ms. Koch replied to all in an email the same day which stated: "With respect to the documents, we provided you with the policy in question from 2022 as per your request. The content is identical to the version [Ms. Martin] provided you recently. I encourage you to compare the documents to fully satisfy your concern that the recent document had been altered. As I explained on our call a few weeks ago, making accusations towards staff suggesting they altered or forged content is not acceptable. I ask that you refrain from continuing this approach or we will need to take further formal action to address."

[12] Mr. Frisina responded to Ms. Koch's email shortly thereafter, replying to all, stating: "Acknowledging I made a bold statement and I'm happy to retract with apologies *when the time comes. I have some concerns with respect to the email sent March 20/24 that requires more attention.*" [emphasis added]

[13] In her Complaint, Ms. Martin expressed concern about the damage to her reputation as a public servant and to the reputation of her employer given the number of persons copied on the emails from Mr. Frisina, especially given that Mr. Frisina has a high profile in the community and has already gone to the media on the matter of the policy in question. She stated she was concerned about how many people Mr. Frisina has forwarded or otherwise communicated his allegation to and who may give it credence due to his profile in the community, especially given that he seems to be holding fast to his false view despite the information provided to him by her colleagues.

[14] She also noted that Mr. Frisina ought to know that the document she originally sent to him on March 19th was accurate given that this policy was discussed in detail at the Transportation Working Group meeting on November 23, 2021 at which he was present and again at a meeting of the Committee on December 14, 2021 at which he was also present.

Mr. Frisina's Response

[15] On May 25, 2024, I sent Mr. Frisina a copy of the Complaint together with the text of Rule 12: Conduct Respecting Staff of the COCLB. I requested a response from him within 15 days.

[16] Prior to submitting his written Response, Mr. Frisina called me on May 28th and I returned his call later the same day. At his request, I explained my process of investigation to him. He also raised the issue of the fact that he had previously contacted me about the very subject-matter of Ms. Martin's complaint, requesting that I investigate *her* conduct. The brief email exchange between us in that regard on March 21, 2024 was as follows:

From Mr. Frisina to Me on Thursday, March 21, 2024 8:13 AM:

My name is Anthony Frisina, a citizen of the city of Hamilton. Since 2019 I've been wronged in terms of the way I've been treated by Darts Transit and accessible transportation services, like many people with disabilities are. Yesterday I was sent a document with a revised date of December 2020 allegedly, only to go into the document properties and notice it was actually created yesterday. They are trying to impede my ability to work and go shopping. I welcome the opportunity to chat with you about it.

From Me to Mr. Frisina on Thu, Mar 21, 2024, 9:35 a.m:

Hi Mr. Frisina:

Are you writing to me in my capacity as Hamilton's Integrity Commissioner?

In that role, I am limited to investigating complaints against City Councillors and members of Hamilton Boards and Committees.

I would suggest that you contact your local Councillor's constituency office to ask for their assistance in resolving your complaint.

From Mr. Frisina to Me on Thu, Mar 21, 2024, 9:43 a.m.:

Hi David

Thanks for your email, I'm looking for support getting down to the bottom of a city of Hamilton staff member frauding documents in an effort to strong arm and bully people with disabilities as it pertains to Darts and bundle buggies.

[17] I did not respond to Mr. Frisina any further after the foregoing exchange. I note that at the time of this exchange, I did not know anything about Mr. Frisina other than what he revealed in his email, including the fact he was on the Committee, was a prominent disability advocate and that he had his own cable TV show.

[18] On May 27th, the day before he called me, Mr. Frisina forwarded the March 21st email chain and reminded me that he had made this complaint to me before. I simply acknowledged that this was the case. During our call on May 28th, he expressed frustration that I would not investigate his complaint against Ms. Martin yet here I was investigating her complaint against him, and appeared to suggest that I was in a conflict in connection with investigating him because of the foregoing exchange. I will address this concern at the outset of the Findings section of this Report below.

[19] Mr. Frisina sent me a detailed written Response by email received by me in the evening of June 5, 2024. My summary of the points he set out in his defence are as follows:

- As an individual with a disability and a wheelchair user, I have long dealt with systemic barriers, societal ableism and discrimination that have significantly impacted my quality of life. Unfortunately, these long-term effects have sometimes caused me to respond emotionally and defensively when I perceive that my access and rights are being compromised. These emotional and defensive responses are referred to as involuntary triggered stress responses. The matter at hand has been ongoing, has caused undue hardship, is continuing to prevent me from reaching my full potential and has limited my access to the public and transportation. It is noted that Mr. Frisina provided no evidence to support a link between his disability and his emotional/defensive response to Ms. Martin's communications;
- On February 22, 2024, a specific policy was implemented against me by DARTS as the "designated passenger" which required me to travel with an additional person when using a bundle buggy, which undermines my dignity and independence in working and doing errands and which I regard as discrimination and a violation of Section 7.2 b. of The Integrated Standards and Regulations;
- I had written to you, as the IC, [on March 21st] formally to address the situation prior to Ms. Martin's complaint. In your response to my initial concern as Hamilton's Integrity Commissioner, you explained your limitations and that I needed to address the issue of "fraud" with the relevant

councillors and DARTS Management. I began my statement to you “as a citizen of Hamilton.” While I understand now that Ms. Martin prefers one-on-one communication, my intention to involve additional parties aligns with your direction, as well as Jodi Koch and in Ms. Martin’s own words” to ensure privacy I generally respond directly to ATS customers without copy to others, so the decision to include others in the correspondence is always up to the customer”. It is noted that my only suggestion to Mr. Frisina when he first wrote to me was to speak to his local councillor’s office, not DARTS management or to include multiple other parties in his dispute;

- In my email on March 22, 2024, I made remarks of document tampering, fraud and ableism. This was an emotional reaction rather than a measured response, and I deeply regret the emotional language used. My tone was directed at the situation and not a personal attack towards Ms. Martin. I understand now and I can see how she may have taken it that way.
- The email I sent on April 3, 2024, with the subject line “Manipulation,” contained further derogatory remarks. These were influenced by my emotional state and misunderstanding of the situation. I regret any harm my words may have caused;
- During the meeting on May 3, 2024, I did apologize, but I realize it was not directed personally to Ms. Martin, but rather everyone as a whole. Had I known then how personally affected she was by all of this, I would have taken the opportunity to address her directly and express my regret for any distress caused;
- My email on May 9, 2024, I indicated my ongoing disbelief despite evidence provided. Upon further review of the document in the word file it does indicate a creation date of Dec 2020. I regret not fully relying on the information provided to me at the time of the incident. Instead of reviewing the corresponding word file, I focused solely on the details found in the pdf document. If I had taken the time to review both files, I would have promptly issued an apology. I take full responsibility for my oversight and sincerely apologize to Ms. Martin and all those impacted by my mistake. He then immediately goes on to state, “Clear communication regarding the creation process of documents would have helped me avoid this error. Despite mentioning the attached pdf for comparison, the use of the term "document" was too broad and led to confusion on my part.”;
- I acknowledge that I was present during discussions about the policy updates in 2021. My failure to recall these details accurately contributed to misunderstanding. It has been a few years since that meeting and now. It is reasonable to think that policies do get changed and/or updated. I requested the information as a customer, not within my role on the committee and my response was due to the ongoing barriers I face as a wheelchair user.

Quoting Ms. Martin’s own words which shows the understanding that I am communicating with her/ATS as a customer, “to ensure privacy I generally respond directly to ATS customers without copy to others, so the decision to include others in the correspondence is always up to the customer” [emphasis added by Mr. Frisina];

- Ms. Martin made reference to [my] high profile in this community and I acknowledge that, our correspondence cordially in the past few years consists of many emails on accountability, specifically that accountability is best achieved when those seeking accountability, show accountability. With a high profile in the community, comes an even higher level of responsibility. I try to be upfront for my actions, good, bad or indifferent. I deeply regret any offense taken by my actions and words towards the situation and indirectly towards Ms. Martin as a public servant. I understand now that she has taken it personally and I am committed to repairing this, please consider this my formal apology to Ms. Martin;
- I recognize that my responses were driven by the long-term effects of societal ableism and the systemic barriers that I along with many members of the disability community face daily. Moving forward, I am committed to seeking further teaching to address these impacts on my mental health. I believe this will help me respond more constructively in the future and avoid similar misunderstandings and emotional, involuntary triggered stress responses;
- I sincerely apologize to Ms. Martin (directly), the staff, Councilors, and all others involved. I hope to work collaboratively towards a more equitable and understanding environment for all. It is noted that Mr. Frisina provided no evidence to the IC of having sent any apology to Ms. Martin and I confirmed with her by email on June 8th that he had not sent her any apology directly.

Investigation

[20] I decided to initially interview Cllr. Mark Tadeson and Jodi Koch regarding the May 3rd meeting and other contacts they may have had with Mr. Frisina regarding the subject-matter of the Complaint and then determine whether there were others I should interview after speaking with them. It turned out that, in my assessment, both were open, comprehensive and objective regarding their involvement and observations, such that I determined it was not necessary to interview anyone else.

Interview with Councillor Mark Tadeson

[21] Cllr. Tadeson sits on the Committee with Mr. Frisina. He is not his Ward councillor. He has been to maybe 8-10 events related to the disability community at Mr. Frisina’s invitation and has interacted with him at these events. He has also occasionally interacted with Mr. Frisina as a “sounding board” in other settings outside of the Committee.

[22] He is aware of the background between Mr. Frisina and DARTS in that Mr. Frisina felt its rules (such as the use of bundle buggies on its vehicles) were restricting his independence. He felt that perhaps Mr. Frisina's anger and frustration with DARTS and its insistence on strictly enforcing its policies spilled over into his interactions with Ms. Martin.

[23] He receives a lot of emails and does not have the time to read them all in detail. With respect to the emails he was copied on relating to the subject complaint, that was the case; however, one of his office staff did read them in detail and felt they were "over the line" and that Mr. Frisina "needs to be told" that his comments were not appropriate. Cllr. Tadeson did speak with Mr. Frisina about the fact that his communications were inappropriate (after the communications that are the subject of this complaint), to which Mr. Frisina attributed his behavior to his "Italian blood," or words to that effect.

[24] Regarding the May 3rd meeting referred to by Ms. Martin at which he was in attendance, his recollection of the discussion was the same as what is summarized in paras. [9] and [10] above. He did not recall hearing Mr. Frisina make any apology at that meeting, certainly not one directly to Ms. Martin.

Interview with Jodi Koch

[25] I met with Ms. Koch virtually on June 6th. She is the Director, Talent and Diversity, in the Human Resources Department of the City of Hamilton.

[26] Ms. Koch has been dealing with Mr. Frisina for a number of years. Her responsibilities include overseeing complaints related to the City to the Human Rights Tribunal and over the past several years, Mr. Frisina has filed 3 human rights tribunal cases against DARTS and the City of Hamilton, all of which remain ongoing. She has also previously had responsibility for coordinating the advisory committees, including the Committee during a period in which Mr. Frisina was a member.

[27] Sometime in March 2024, Mr. Frisina reached out to her wishing to make a complaint about Ms. Martin. After hearing his issue, she told him he did not have a valid complaint. He also brought up his ongoing issue with bringing his bundle buggy on DARTS vehicles.

[28] She met with him one-on-one virtually on April 11, 2024, once again about the bundle buggy issue. At that time, she expressed concern about the tone and content of the emails he had sent regarding Ms. Martin and told him to desist immediately. She also reassured him at that time that the DARTS policy Ms. Martin had sent him had not been altered and that he could verify that himself.

[29] She agreed to participate in a larger, group meeting to discuss his accommodation request and attempt to resolve the human rights tribunal proceedings. This meeting ultimately took place on May 3, 2024. In addition to her, Ms. Martin, some of Ms. Martin's subordinates and Mr. Frisina, the latter had invited a number of ACPD Committee members, City councillors (only one, Cllr. Tadeson, attended the meeting) and some fellow DARTS users to the meeting. As had always been the case, at the meeting, Mr. Frisina rejected every proposed solution, insisting that he would only be satisfied if DARTS drivers carried his bundle buggy on and off DARTS vehicles, contrary to policy.

[30] When I told her that Mr. Frisina had indicated that she had told him that she understood why he had thought Ms. Martin had forged the document, she vehemently denied saying anything of the sort, indicating that she told him that all he had to do was to compare the full policy with the excerpt Ms. Martin had sent him to satisfy himself that the two were identical.

[31] She noted that between late February and early May of this year, Mr. Frisina sent approximately 60 emails regarding his complaints about DARTS which she has received or been copied on, all of which were also copied to numerous others including the Mayor and members of Council, Committee members and members of the disability community. Overall, he consumes a disproportionate amount of time and energy of her department to the detriment of other similarly-situated residents.

[32] She believes the emails regarding Ms. Martin are part of a “pattern of behavior” and that Mr. Frisina is relentless in attempting to get his way by any means. She regards the accusations against Ms. Martin as lashing out over his frustrations with the City’s refusal to meet his demands, and that it is just another aspect of the bullying tactics he has repeatedly used with City staff and DARTS drivers to get his way.² She also believes that Mr. Frisina is leveraging his role as an ACPD member to try to get his way.

[33] It has upset her to see how distressed Ms. Martin has been due to the serious allegations made to a very wide audience and she believes it amounts to harassment of staff.

[34] The last question I ask Ms. Koch was whether Mr. Frisina apologized to Ms. Martin at the May 3rd meeting for falsely accusing her. She advised that one of her staff took notes of the May 3rd meeting and they reflect the following on this issue:

Jodi Koch: I want to thank everyone for joining. I want to address one more item before the end of the meeting. AF, you had raised concerns about the bundle buggy policy and that the document you were most recently provided had been changed. You expressed concern that MM may have altered it. The document has not been altered. We went through the document word for word and there have been no changes from the version you were provided. You can do the same exercise. We will send those documents to you.

Anthony Frisina: I apologize, if that is in fact true. If that is proven to be the case. I’m showing my respect towards accountability.

[35] Ms. Koch noted that Ms. Martin was visibly upset by the equivocal nature of Mr. Frisina’s apology and its lack of direction to her, such that Ms. Koch followed up with Ms. Martin after the meeting to check on her.

² Ms. Koch went into considerable detail regarding particulars of Mr. Frisina’s past behaviour toward City and DARTS staff which I will not delve into here but she noted that the City has video of him verbally abusing DARTS drivers when they would not accede to his demands in breach of DARTS policies.

Notes of May 3, 2024 Meeting

[36] Having learned of the existence of notes of the meeting from my interview with Ms. Koch, I asked her to send them to me and she did. I reviewed the notes and am satisfied that there is nothing in them of relevance to my investigation other than the portion excerpted above in the summary of my interview with Ms. Koch.

Applicable COCLB Provision

Rule 12: Conduct Respecting Staff

...

No Member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff, and all Members shall show respect for the professional capacities of the staff of the City.

Findings

Preliminary Issue #1 – Am I In a Conflict of Interest on Account of My Email Exchange with Mr. Frisina on March 21, 2024?

[37] I am satisfied that I am not in a conflict of interest with respect to investigating and reporting on this Complaint against Mr. Frisina. I received no information of a confidential nature from Mr. Frisina in our earlier email exchange. I did not undertake any investigative steps with respect to his complaint, merely advising him that I had no jurisdiction over it. I am satisfied that I have no conflict of interest, nor is there any reasonably objective basis for any perception of a conflict, in investigating the present complaint against Mr. Frisina on account of my earlier, brief exchange with him. While Mr. Frisina may be upset or frustrated that I have jurisdiction over Ms. Martin's complaint but not his, that does not thereby put me in a conflict of interest.

Preliminary Issue #2 – Is the Accessibility Committee for Persons with Disabilities a Local Board within the Meaning of the COCLB?

[38] In *Goderich (Town of) (Re)*, the Ombudsman for Ontario set out a four-part test to determine whether an entity is a "local board":

1. The entity must be carrying on the "affairs of the municipality";
2. There is a direct link between the entity and the municipality (either by way of legislation or authority from the municipality);
3. There must be a connection to or control by the municipality; and
4. There must be an element of autonomy.

1. Affairs of the Municipality

[39] According to the *Goderich* decision, this has generally been defined in the negative. The following factors generally indicate that the board is not carrying on municipality affairs:

- the body has an object of carrying on operations for a private, rather than a public municipal purpose (for example, the benefit of its shareholders);
- the body is independent;
- the body is created by another level of government;
- the body is not responsible to the municipality; and
- the body requires the approval of another entity before acting.

[40] Section 29 of the *Accessibility for Ontarians with Disabilities Act* requires that municipalities with populations greater than 10,000 establish an accessibility advisory committee. The committee is to, among other things, advise council about the requirements and implementation of accessibility standards and prepare accessibility reports. Council's duties include seeking advice from the committee on whether buildings it purchases or constructs are accessible.

[41] In light of the foregoing, I am of the opinion that the Accessibility Committee carries on the affairs of the municipality by providing advice and reports directly to Council. Its purpose is ensuring that municipal structures are accessible. It's not independent as it must report, and is responsible, to, and was created by, Council.

2. Direct Link

[42] The Committee is one of several advisory committees established by the City for the purpose of addressing issues of equity and inclusion faced by the City. As set out in the City's Equity and Inclusion Policy:

The Advisory Committees to Council provide advice and recommendations to City Councillors, management and staff in order to address the specific issues and concerns facing diverse communities. They provide advice for formulating policies, key directions and decisions intended to improve the quality of life for everyone. Council recruits and/or appoints people to these Committees who reflect the diversity of the City's communities in order to enhance public engagement in the City's business.

[43] The City's By-Law No. 18-270 gives the City authority to establish advisory committees. The By-Law explicitly requires that members of advisory committees abide by a code of conduct.

[44] I am satisfied based on the foregoing that there is a sufficiently direct link between the Committee and Council that this criterion is satisfied.

3. Connection to the Municipality

[45] The Terms of Reference for the Committee indicate that the committee will have access to municipal staff from Transit, Housing, Planning, Building, Recreation, Public Health as a resource to fulfill its mandate. I am satisfied that there is a direct connection between the municipality and the Committee on this basis.

4. Autonomy

[46] According to *Goderich*, this factor differentiates advisory committees without decision-making function from an entity with some level of independent authority. *Goderich* concerned a Recreation Board of Management which oversaw a YMCA. It had been created pursuant to an agreement between the YMCA and the Town. The Board of Management was able to provide oversight to the Y's programming, facilities and employees, which was considered autonomous actions.

[47] The terms of reference of the Committee are as follows:

In accordance with the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA), Ontario Human Rights Code (OHRC), and all applicable legislation, regulations, standards, policies and guidelines:

- (i) Advise Council and staff on barriers affecting full participation of persons with disabilities in the City.
- (ii) Advise Council and staff, annually about the preparation, implementation, and effectiveness of its accessibility plan required pursuant to the AODA.
- (iii) Ensure that the right of access for persons with disabilities to programs and services provided by the City is sustained, maintained, and/or improved.
- (iv) Review and comment to Council and other levels of government on pertinent reports, proposed legislation and studies which affect all persons with disabilities;
- (v) Provide a forum where persons with disabilities and service representatives can express their concerns, identify barriers, share information and recommend improvements to the existing level of City services, goods, facilities and spaces, for persons with disabilities, while taking into consideration a wide spectrum of disabilities in discussions and decision making.
- (vi) Educate and increase awareness to City Council and staff on issues which affect people with disabilities.
- (vii) Regularly review the progress and measure the success of the committee and its activities.

[48] The Committee is also authorized to establish working groups to complete specific tasks and may host an annual “ability first” fair.

[49] It is clear from the foregoing that the Committee does not simply undertake discreet tasks as directed by the City but has complete autonomy in determining what it will look into and how it goes about fulfilling its mandate. I therefore find that the Committee possesses the requisite autonomy from Council to be classified as a local board.

Conclusions Regarding Preliminary Issue #2

[50] In *Kroetsch v. Integrity Commissioner for the City of Hamilton*, the Divisional Court reviewed my predecessor’s decision concerning Cllr. Kroetsch’s conduct as Chair of Hamilton’s Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee. Cllr. Kroetsch challenged the decision on the basis of jurisdiction, arguing that the advisory committee was not a local board. The Divisional Court found the IC’s interpretation of “local board” and its finding that Hamilton’s Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee was a local board was reasonable. Of note, the LGBTQ advisory committee at issue only had the ability to advise; it did not have decision making power. This makes it similar to the Advisory Committee for Persons with Disabilities.

[51] Based on the application of the test from the *Goderich* case, the Divisional Court decision in *Kroetsch*, the Terms of Reference of the Committee and the fact that Bylaw 18-270 explicitly requires that members of advisory committees abide by a code of conduct, I am satisfied that the COCLB applies to members of the Committee.

Preliminary Issue #3 – Was the Conduct of Mr. Frisina Sufficiently Connected to his Role as a Committee Member to Fall under the COCLB?

[52] Not all conduct of a member of an advisory committee automatically falls within the COCLB. In my view, there must be a sufficient connection between the conduct complained of and membership on the Committee in order to trigger application of the COCLB.

[53] I find the following sections of the COCLB to be instructive in considering the issue posed above:

Part 1

General Introduction, Framework, and Interpretation

...

This Code of Conduct is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein.

...

Guiding Principles

...

Members are expected to perform their duties as a member of the Local Board and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

[54] While these general principles are not independently enforceable sections of the Code,³ they do inform the content of the enforceable provisions of the Code. What these provisions indicate to me is that where there is a sufficiently close nexus between the member's "private affairs" and his or her role as a member of the Committee, the conduct is captured by the Code.⁴

[55] In the present case, while Mr. Frisina was complaining about his personal experience as a user of DARTS, I find that his conduct was sufficiently identified with his role as a member of the Committee such as to fall under the Code. I say this for the following reasons:

- the subject-matter of his concern was the very subject-matter overseen by the Committee;
- his communications were with a City staff person who he dealt with regularly in his capacity as a Committee member and as a member of the Transportation Working Group on which he served due to his status as a member of the Committee;
- he repeatedly copied his communications with Ms. Martin to his fellow Committee members as well as some City councillors, suggesting that he regarded the subject of his communications to be official Committee business;
- he attacked Ms. Martin regarding one of the very tasks she was required to fulfill related to her role with the Committee, namely, communicating and educating about accessible transportation services policies.

[56] I reject Mr. Frisina's assertion that not only were the subject communications made only as a customer of DARTS but that this was understood to be the case by Ms. Martin. While his communications may have initially started out solely in his capacity as a DARTS user, once he began including multiple other Committee members, councillors and staff, including Ms. Martin's subordinates, and members of the public, his communications crossed the line into the realm of that of a Committee member.

³ See the reasoning in this regard set out in my decision in Private Complaint re: Councillor Danko Tweet (Re) – DGB-HamiltonICI-2024-01, paras. 11-15.

⁴ A similar approach was adopted by the integrity commissioner in *Gogos v Jones*, 2022 ONMIC 7 (CanLII).

[57] For these reasons, I find that Mr. Frisina's conduct is sufficiently connected with his service as a member of the Committee such as to be subject to review under the COCLB.

Did Mr. Frisina Breach the Code of Conduct for Local Boards?

[58] The statements Mr. Frisina made as set out in paragraphs [5], [7] and [12] above are without a doubt false and defamatory. They falsely accuse Ms. Martin of forging provisions of the DARTS policy and falsely accuse her of fraud and intentionally attempting to inflict mental distress upon him. He made the statements repeatedly, even after being assured by others that the content of the document Ms. Martin sent him was a verbatim copy of the original policy. He repeatedly made these accusations to other members of the committee, members of Council, City staff, including subordinates of Ms. Martin, and members of the public who Ms. Martin has to deal with in her private life. I find that he did so knowing the emotional distress he was inflicting on Ms. Martin, or willfully blind to the pain he was inflicting, in his zeal to advance his personal, political agenda.

[59] I find that Mr. Frisina's communications which are the subject of this Report constitute malicious and false communications with respect to Ms. Martin's professional and ethical reputation, in breach of s. 12 of the COCLB.

Appropriate Penalty

[60] The extent to which Mr. Frisina impugned Ms. Martin's competence and integrity was extreme. Moreover, he included other members of the Committee, members of Council, Ms. Martin's colleague's and superiors and members of the public in his initial email where he first accused Ms. Martin of serious wrongdoing and doubled down on his false allegations in his subsequent emails which he also copied to numerous third party recipients. Even after being reassured by multiple other City staff that Ms. Martin had not committed the forgery he had accused her of, he still claimed to refuse to believe it, indicating that he needed to investigate further, and refusing to provide an immediate apology. That is where things stood when I received Ms. Martin's Complaint. Only after receiving her Complaint did he purport to acknowledge his error.

[61] I am truly sympathetic to Mr. Frisina's frustration with systemic barriers faced by the disability community. I am by no means passing judgment in this Report on the merits of his disputes with the City and DARTS. This does not, however, give him a license to maliciously impugn the integrity of staff or otherwise direct his frustration at them. I accept Ms. Koch's evidence that Mr. Frisina has directed his wrath at other employees, including DARTS drivers and other City staff. These are serious aggravating factors.

[62] Regardless whether Mr. Frisina's actions "were driven by the long-term effects of societal ableism and the systemic barriers that [he] along with many members of the disability community face daily," Mr. Frisina must take full responsibility for his actions, which I am not persuaded he has done. He has still not apologized directly to Ms. Martin for his behavior and only acknowledged he was wrong about the forgery allegation in his Response to the Complaint.

[63] Finally, the severe emotional distress he has caused Ms. Martin cannot be overlooked.

[64] In light of these circumstances and in accordance with Part 3 of the COCLB, I recommend the following:

1. Mr. Frisina forthwith be removed as a member of the Advisory Committee for Persons with Disabilities;
2. Mr. Frisina not be eligible for reappointment as a member of the Committee until after October 26, 2026, the date of the next municipal elections;
3. Mr. Frisina be required to publicly apologize to Ms. Martin for his false and defamatory allegations against her. If he does not, the period during which he cannot be reappointed as a member of the Committee should be continued indefinitely until such time as he does so.

Concluding Remarks

[65] I have carefully considered the penalty set out in para. [66] above and am satisfied it is appropriate in the circumstances, having regard to the need for not only individual behavior correction but also denunciation, deterrence of such conduct in the future by others as well as justice for the victim of his conduct, who must continue to serve the Committee in her role with the City and who has had an unacceptable degree of emotional distress inflicted upon her.

[66] This concludes my investigation.

Respectfully Submitted,



David G. Boghosian,
Integrity Commissioner,
City of Hamilton