

Township of West Grey  
Recommendation Report  
of the Integrity Commissioner  
Respecting a Complaint against Councillor Hergert  
October 18, 2021

**Introductory Comments**

[1] Principles *Integrity* was appointed the Integrity Commissioner for the Municipality of West Grey on April 1, 2018. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

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

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

[3] 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.

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- [4] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the West Grey 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.
- [5] 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.
- [6] 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.
- [7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent to respond to the allegations and provide comment on the preliminary findings.

### The Complaint

- [8] On July 8, 2021 we received a complaint from the Chair of the Saugeen Municipal Airport Commission on behalf of the Commission (the ‘Commission’), alleging that the Respondent, Councillor Rebecca Hergert, contravened the Council Code of Conduct.
- [9] The particulars of the complaint allege that on April 29<sup>th</sup>, 2021 at the trial of a defendant charged with trespassing at the Saugeen Municipal Airport (the ‘Airport’) by the Police when they responded to the Airport’s complaint, the Respondent:
- appeared in Provincial Offenses Court in support of the defendant,
  - represented herself to the Court as a former Saugeen Municipal Airport Commissioner and a Councillor for West Grey, and
  - shared documents in the possession of the Airport not properly in her possession, without authority.
- [10] The complaint alleges that the actions of the Respondent undermine the efforts of the Airport to resolve their ongoing difficulties with a particular individual, undermine the collective efforts and experience of the Commission, and place the Airport at a disadvantage in resolving its ongoing dispute with the defendant, prolonging resolution and costing the Airport increased legal fees.

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## Process Followed for this Investigation

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

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

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent and providing her with an opportunity to respond in full to the allegations, including interviewing her
- Reviewing the relevant provisions of the Council Code of Conduct and other documentation including the transcript of the Court proceedings
- Conducting interviews of current and former staff and Members of the Commission and other persons with information relevant to the issue
- Providing the Respondent with the opportunity to review and provide comments, and giving consideration to the submission prior to finalizing our Recommendation Report.

## Background and Context:

[13] The Saugeen Municipal Airport Commission (the 'Commission') oversees the operation of the Saugeen Municipal Airport (the 'Airport').

[14] Pilots who utilize the Airport are required to enter into an Airport Access Agreement with the Airport. The Airport Access Agreement was recently updated and almost all of the airport's pilots have signed it.

[15] Throughout 2019, the Airport was pursuing steps seeking to remedy safety violations and to pursue entry into the updated Airport Access Agreement, with one of its pilots (referred to as 'the Pilot' in the remainder of this report).

[16] The Respondent is a Councillor for the Municipality of West Grey.

[17] The Municipality of West Grey is one of three municipal partners who together have entered into a joint municipal services agreement to oversee operations of the Airport.

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- [18] During the past several years, the Airport had encountered complaints and on-going problems regarding the actions and conduct of the Pilot. The Airport Commission sought advice from external legal counsel, reviewed its options, and embarked on a course of action to resolve the concerns.
- [19] The Commission is composed of three elected officials, one appointed from the Council of each of the partner municipalities of Brockton, Hanover and West Grey, plus four members at large, including pilots who use the airport. The Pilot is not a member of the Commission but has been in the past.
- [20] Dan Gieruszak, the Deputy Mayor of Brockton, is the Chair of the Commission.
- [21] Councillor Hergert, the Respondent herein, was appointed at the beginning of the term of Council to be the West Grey appointee to the Commission, where she served as Vice-Chair.
- [22] Last year, in July 2020, following a complaint by the Commission that the Respondent was engaging in conduct in contravention of the Codes of Conduct for both the Commission and Council, we conducted a full investigation.
- [23] The crux of the complaint in the summer of 2020 was that there was unauthorized communication by the Respondent with legal counsel for the Pilot, contrary to the clear direction of the Commission and contrary to the Airport's interests, undermining or impeding the Airport's ability to resolve outstanding issues between the Airport and the Pilot.
- [24] On September 15, 2020, following consideration of our recommendation report, Council removed the Respondent from her role as the Municipality's appointee to the Commission.
- [25] While the Respondent was still a member of the Commission, the Commission served the Pilot, on August 14, 2019, with a registered letter serving as notice of trespass for his alleged non-compliance with his Airport Access Agreement, including for safety violations. The trespass notice letter was regarded by the Commission as a necessary step to resolve longstanding issues between the management of the Airport and the Pilot, following earlier issuance of a letter of non-compliance issued May 17, 2019.
- [26] On August 29, 2019, the Pilot was charged at the instance of Airport management with Trespassing on Airport property.
- [27] During 2019 and 2020, the Commission sought legal advice regarding steps available to resolve issues between the Airport and the Pilot.
- [28] Notably the Respondent was still a member of the Commission at that time, not having yet been removed by Council. The Respondent participated in Commission meetings,

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open and closed, at which issues and legal next steps were considered and deliberated.

- [29] Fast forward to the spring of 2021 when the trial of the Trespass charge was heard on April 29 & 30, 2021.
- [30] The merits of the Commission's rationale for the August 14, 2019 notice of trespass, the Pilot's position, and indeed the conclusion ultimately reached by the court hearing the matter, are beyond the scope of an integrity commissioner's investigation. The facts recited in this report in summary form are presented for context only.
- [31] The Respondent appeared at the trial as a witness for the defense.
- [32] She presented herself as the former Vice-Chair of the Commission and a Councillor for the Municipality of West Grey.
- [33] She gave testimony to contradict and undermine the Airport's factual support and legal basis for the Trespass charge, and gave evidence to support the Pilot's defense to defeat the charge.
- [34] The Respondent attended as a witness voluntarily, having received a request to do so by the Pilot's legal counsel. Though a summons to appear as a witness might routinely have been issued, it was not in this case, ostensibly due to the exigencies of the pandemic.
- [35] It is clear, however, that the Respondent offered no reluctance in the face of the request to appear at the trial.
- [36] For example the Respondent did not seek legal counsel from the Municipality's own legal advisors.
- [37] The crux of the Airport's dispute with the defendant Pilot was set out in a letter from the Airport Commission Chair, dated May 17, 2019, itemizing six concerns<sup>1</sup>, reflecting obligations stipulated under the Access Agreement to which the Pilot was a party.
- (i) no burning of items on airport property.
  - (ii) keep land tidy & remove the woodpile
  - (iii) proof of liability insurance
  - (iv) provide parking spaces on his own property

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<sup>1</sup> Municipality of Brockton v. Philip M. Englishman, July 15, 2021, para. 30

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- (v) proper storage/disposal of all waste material
- (vi) not bring equipment on the runway which might damage the taxiway or airport property & no parking on Emergency access road or North Runway

[38] The transcript of the trial indicates that the Respondent's evidence touched on every item in issue: the terms of the Access Agreement, internal documents about fees and payments, the state of the defendant's property, insurance requirements, the state of the property, and ownership of the defendant's property.

[39] On July 15, 2021 the Justice of the Peace issued his decision.

[40] Although the Justice of the Peace stated that he did not rely on the testimony of the Respondent, the very attendance, involvement and participation of the Respondent at the trial is problematic.

[41] The Respondent was the vehicle through which documentary evidence was submitted to the Court. Her appearance was a surprise to the Prosecutor of the matter (despite there being an agreed statement of facts, the defence was under no obligation to disclose its witnesses in advance) and her testimony took the Prosecutor aback and resulted in objections and significant procedural discussions.

[42] The Prosecutor was faced with the task of proceeding on a complaint filed by the Commission, while a former member of that Commission was being asked to provide her own competing view of the circumstances – a confusing contradiction. It was not clarified until midway through the Respondent's testimony that she had been removed from the Commission as a sanction for a Code of Conduct contravention.

[43] Ultimately, the presiding Justice of the Peace ('JP') arrived at a conclusion that the Saugeen Municipal Airport had no ability to pursue a Trespass charge against the Pilot for his conduct at the Airport because aviation is within Federal jurisdiction, and the airplane *was in the process of taking off*. On the strength of this conclusion, the JP quashed the ticket. At paragraphs 45 and 46 of the decision, JP Ziegler writes:

[45] Based on the testimony of OPP Cst. Bobby MacDonald **I find that the defendant was in the process of taking off from a runway** on August 29th 2019 at the Saugeen Municipal Airport, which is a registered aerodrome subject to federal standards and it being part of the nationwide aviation system, the jurisdiction for the taking off and landing of aircraft is exclusively Federal jurisdiction and not subject to The Ontario Trespass to Property Act.

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[46] Certificate of offence number 62806058 dated August 29th, 2019 is therefore quashed as being outside of the authority of the Saugeen Municipal Airport to issue in these circumstances.

[emphasis added]

[44] The issue to be determined in this investigation is whether the Respondent's participation at the trial was contrary to the Council Code of Conduct.

[45] While the issue arises quite infrequently, nevertheless, the issue of an elected official involving themselves or intervening in a matter before the courts is an important one.

### The Council Code of Conduct and the Applicable Law:

[46] The Council of the Municipality of West Grey adopted a robust Code of Conduct on September 15, 2020.

[47] The General Introduction of that Code of Conduct provides as follows:

Members of West Grey Council recognize their obligation to serve their constituents and the public in a conscientious and diligent manner understanding that as leaders of the community, they are held to a higher standard of behaviour and conduct.

Members recognize that ethics and integrity are at the core of public confidence in government and in the political process; that elected officials are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence, avoids the improper use of influence of their office and conflicts of interests, both apparent and real. They recognize the need to uphold the letter and the spirit of the law including policies adopted by council.

[48] Rule 7, Improper Use of Influence, provides as follows:

1. No member shall use the influence of his or her office for any purpose other than for the exercise of his/her official duties.

### Commentary

*Examples of prohibited conduct are the use of one's status as a Member of Council to improperly influence the decision of another person to the private advantage of oneself, one's Family Member, friends. ...*

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### Analysis:

- [49] The Respondent voluntarily involved herself as a witness at the trial of a court proceeding.
- [50] Her involvement did not arise because of a summons issued by the Defence, and she offered no resistance to the request made by the Pilot's legal counsel.
- [51] She participated because she wished to support the defendant in fighting the charge of Trespass laid at the instance of the Airport.
- [52] Sharing information garnered by virtue of her position on the Commission in order to undermine the interests of the Airport would be wholly inappropriate if she were still a Commissioner.
- [53] Her removal from the Commission did not entitle her to continue to act in a manner that undermined the Airport. To continue to undermine, and ultimately participate in support of the defendant Pilot at trial, when the Respondent through her participation was keenly aware of the collective decision made by the Airport's Commissioners to issue the letter of trespass in order to enforce compliance with the existing Airport Access Agreement, did not meet the standard of behaviour expected of the Respondent.
- [54] The Respondent confirmed to us during the investigation that she understood that the Commission decision, in which she participated prior to her removal as the Vice-Chair of the Commission, was to pursue compliance through a notice of trespass.
- [55] Our review of the Minutes of Commission meetings for the period confirms that she was present throughout discussions around resolving concerns caused by the Pilot.
- [56] It is evident that there has been a history of concerns surrounding some of the behaviours of the Pilot. Many of these concerns relate to safety of other pilots and users of the Airport.
- [57] It is apparent that the Respondent, for whatever reason, took up the Pilot's "side" in his dispute with the Commission.
- [58] Her actions in this regard were found to be undermining to the Commission and its efforts to ensure safe and orderly operations at the Airport.
- [59] The Respondent has characterized her position as 'dissenting'.
- [60] It is a fundamental principle of governing bodies, including tribunals, boards and commissions, that the decision of the majority, once made, is not to be undermined or defeated by a dissenting member.



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- [61] An analogy may be drawn to the views of a member of Council who does not support the decision of the majority of Council. It is clear that such member cannot participate or engage in conduct which undermines Council's decision or course of action. Many Codes of Conduct include a specific provision to this effect.
- [62] Even in the absence of a specific provision prohibiting appointees to local boards, such as the Airport Commission, from engaging in actions which undermine decisions of the body, the conduct of the Respondent must be seen as an improper use of her office to influence the outcome of the trial.
- [63] The Respondent represented herself to the court as a Councillor of the Municipality of West Grey – one of the three municipal partners of the Airport – and a former Vice-Chair of the Commission.
- [64] It is recognized that elected officials have a certain status by virtue of the office they hold. Elected office is a privileged position which wields some influence.
- [65] Even merely commenting on a court proceeding is recognized as inappropriate:
- [66] Under a democratic system of government, where the courts are independent of a legislative branch of the government, elected officials are constrained from opining on matters before the courts in a manner which may be perceived as attempting to influence the outcome.
- [67] The principle recognized in the jurisprudence and parliamentary convention is that elected officials should not comment, (much less overtly involve themselves), in matters before the court, where to do so may be seen as an attempt to interfere with the due course of justice or lawful process of the courts.<sup>2</sup>
- [68] Most of the jurisprudence deals with public comments by public officials, a more benign circumstance than an actual court appearance.
- [69] Interference in an actual trial is extraordinary and unquestionably reflects an attempt to influence the outcome.
- [70] The caselaw is instructive in understanding the gravity of such conduct and the serious potential consequences of elected officials appearing as a witness.
- [71] The rule against elected officials commenting publicly on matters before the court is referred to as the *sub judice* rule.

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<sup>2</sup> The principle arises in the context of comments articulated publicly by elected officials, and has been adopted by the Supreme Court of Canada as early as the 1950's in Poje v B.C. (A-G)[1953] 1SCR 516; and Re Duncan [1958] SCR 41.

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[72] Merely commenting on legal proceedings before the court has been found by the Provincial Integrity Commissioner to offend the *sub judice* rule and contravene the Ontario Provincial Members' Integrity Act.<sup>3</sup>

[73] In a Report dated October 25, 2006, the Provincial Integrity Commissioner stated the following regarding an MPP's comments about a court proceeding:

[4] Mr. Runciman's out-of-the-Legislature comments form the factual basis for the complaint under s.30 of the Members' Integrity Act, the crux of which is that Mr. Runciman breached parliamentary convention, and thus the Members' Integrity Act, by commenting directly on a matter that was before the courts. To put it another way, the complaint alleges that he breached the *sub judice* rule.

...

[9] Mr. Runciman contended that his comments as an opposition critic were "appropriate and responsible". He further contended that the *sub judice* rule should be more strictly applied with members of the Executive Council. He based this submission on the capacity of members of the Executive Council to influence decision making...

...

[21] Mr. Runciman's out of the legislature comments were, as I have said, case specific and were intended to influence the disposition of the criminal prosecution arising out of Ms. Russo's shooting. What was said, in my view, constitutes a clear violation of the *sub judice* rule, which is a part of parliamentary convention as that term is referred to in the Members' Integrity Act. ...

...

[23] As far as I know this is the first time that a member has been accused of contravening the *sub judice* rule in a formal complaint made under the Members' Integrity Act. **However, all members know, or should know, that they should not comment on a matter that is the subject matter, or part of the subject matter, of a proceeding pending before a court.** Indeed, there is a standing order of the Legislature which addressed that very issue as related to comments in the Legislative Assembly.

[emphasis added]

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<sup>3</sup>The Provincial Members' Integrity Act provides as follows:

4. Influence

A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest.

5. Activities on behalf of constituents

This Act does not prohibit the activities in which members of the Assembly normally engage on behalf of constituents in accordance with Ontario parliamentary convention.

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- [74] The proper practice, observed regularly when elected officials are asked to take a position on legal proceedings, is to state that they have no comment since the matter is before the courts.
- [75] This is more than a mere device to avoid answering difficult questions. It is the appropriate response, for elected officials to avoid improper influence in legal proceedings.
- [76] The conduct of commenting on a matter before the courts was reviewed by the Canadian Law Reform Commission which gave consideration to codifying 'serious interference' to be codified as criminal contempt<sup>4</sup>.
- [77] The concept is readily recognized by elected officials at the Provincial and Federal levels. It ought to be better understood at the municipal level, as well.
- [78] It would arguably have been open to the prosecutor to move for a mistrial or stay of proceedings, on the basis of the jurisprudence, although it is a rather obscure point as it is rarely required to be invoked, so well-recognized is the concept by elected officials.
- [79] In typical circumstances an elected official would take steps to resist a summons (let alone a mere request) to appear as a witness unless they had particular, probative information to provide.
- [80] While publicly commenting on legal proceedings before the court is recognized as an improper attempt to influence the trial, appearing as a witness must be seen as blatant interference. This is particularly unacceptable where the elected official is directly connected with the government whose actions are at issue before the court. It should be noted that the rule applies whether the legal proceedings are civil or criminal in nature (or quasi-criminal, as in the Trespass charge).
- [81] It is important for Members of Council to refrain from intervening inappropriately. In essence, our system of democracy and respect for the rule of law demands the cooperation of all those who function within it.
- [82] Even providing a letter for an individual being prosecuted in a proceeding before the court has been recognized as inappropriate and contrary to the rules around use of influence<sup>5</sup>.

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<sup>4</sup> Canadian Law Reform Commission, 1982

<sup>5</sup> On the website of the Office of the Integrity Commissioner of Ontario, Guidelines for Writing Letters of Reference and Support, the Provincial Integrity Commissioner advises: While the Minister knows the individual well, the Commissioner advised that any involvement might be interpreted as an attempt to interfere with and/or influence the legal process, contrary to the Act. ***The Commissioner advised that the Minister abstain from providing a character reference unless compelled to do so by subpoena.*** [emphasis added]

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- [83] As noted, the Respondent was not summonsed as a witness under summons, but rather participated voluntarily. Had a summons been issued, there would have been opportunity to be released from it.
- [84] There is, in fact, case law to deter summoning elected officials to give evidence at legal proceedings, where the elected official's only knowledge or information regarding the proceedings has been obtained by virtue of their position on the governing body.
- [85] The Respondent defends her conduct, stating that she felt she was doing the right thing because, when she expressed her dissent at the Commission, nobody was listening.
- [86] She further posits that making herself available to cross-examination (at trial) sufficiently cures any mischief that the *sub judice* rule is in place to prevent.
- [87] With respect, the Respondent had the opportunity – in both open and closed sessions at the Commission – to persuade her colleagues not to pursue a trespass notice against the Pilot. A dissenting member or former member is not entitled to undermine that decision.
- [88] The Respondent also points out that the Chair of the Commission also gave evidence at the trial.
- [89] In fact, the Prosecutor contacted the Chair while the trial was underway, in order to provide evidence in reply to the Respondent's evidence.
- [90] In our view, this simply underscores the mischief which should be avoided – individual Members of Council and local boards should not be testifying on the trial of a charge regarding a decision or action of the collective body unless they have particular, probative information uniquely within their knowledge.
- [91] The fact that the Respondent had already been removed from the Commission, as a consequence of inappropriate conduct, does not make her participation less problematic.

### Findings:

- [92] We find that the Respondent's conduct was contrary to the general principles of the Code:

Members recognize that ethics and integrity are at the core of public confidence in government and in the political process; that elected officials are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence, avoids the improper use of

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influence of their office and conflicts of interests, both apparent and real. They recognize the need to uphold the letter and the spirit of the law including policies adopted by council.

- [93] We find that the Respondent's participation at trial, exacerbated by representing herself using her official status as Councillor, and as former Vice-Chair of the Commission (omitting the basis for her removal), was an improper use of influence. This was contrary to the prohibition in Rule No. 7 of the Code of Conduct not to use the influence of her office for a purpose other than the exercise of official duties.
- [94] The rule prohibiting an elected official from using their office to attempt to influence the outcome of legal proceedings is an important legal principle: the *sub judice* rule.
- [95] While elected officials may hold their own views regarding legal proceedings, they are constrained from publicly commenting on proceedings before the courts. Contrary to the Respondent's position, this is not because their public comments cannot be tested through cross-examination.
- [96] It is recognized that even the comments of elected officials, publicly made, can compromise the administration of justice.
- [97] It is obvious the mischief which would be invited if individual Members participated in the legal proceedings or prosecution of actions or decisions of the body.
- [98] With respect to the allegation that the Respondent shared documents not properly in her possession, without authority, there is some indication that an unapproved draft document was referenced and provided by the Respondent however there is insufficient evidence on which we are prepared to make a finding in that regard.
- [99] In summary, we find that the Respondent's participation at the trial was contrary to the general principles of the Code of Conduct; and constitute improper use her office to influence the outcome of legal proceedings before the courts, offending the *sub judice* rule and contravening Rule 7, Improper Use of Influence.

### Recommendations and Concluding Remarks:

- [100] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. We are not simply assigned the duty of bringing adjudication to grievances between individuals.
- [101] Our findings speak to both the role Councillor Hergert played while representing herself as a Member of West Grey Council, and to the implications of her involving herself in the administration of justice.

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- [102] Councillor Hergert volunteered her involvement in a matter before a Justice of the Peace by making herself available to give testimony ‘dissenting’ from the perspective of (and undermining the actions of) the Commission. Her involvement made necessary rebuttal testimony from the Commission Chair.
- [103] It should never be left to individuals on an elected or appointed body to ‘interpret’ the decisions or rationale of the body. Councils may take circuitous routes involving lengthy debates and various factors before making a decision, but once made, the decision must stand on its own. It is the decision of the governing body – not its debate and deliberations arriving at such decisions – which counts.
- [104] Having been present for the in-camera discussions held by the Commission on the matter when she served on it, there was valid reason for concern that information or documents that she obtained through her role on the Commission could be improperly disclosed.
- [105] We do not know what motivated the Respondent to take such an intense interest in the Pilot’s affairs relating to the Airport, but it is clear that her appearance was intended to undermine the Commission’s position.
- [106] The *sub judice* rule illustrates the concern when an elected official comments when a matter is before the courts.
- [107] The *sub judice* rule is illustrative of the concerns the Commission had in this case. If it is improper to comment in the media about a case, it surely is improper to directly attempt to influence it when the evidence to be given is not uniquely available through the involved elected official.
- [108] It is the Commission’s responsibility to deal with safety and administrative issues related to the airport – and it is clearly not the responsibility of a former member of the Commission to speak on behalf of the Commission.
- [109] By willingly appearing in Court, Councillor Hergert attempted to do just that.
- [110] It is a privilege to serve on a municipal council, and Councillors are rightly held to a higher standard of ethical behaviour. Councillors are supported in meeting the applicable standards by having access to an Integrity Commissioner whose binding advice is fully protected when followed.
- [111] Having previously been found in breach of the Code of Conduct for involving herself in Commission matters on behalf of the Pilot, Councillor Hergert should have been

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particularly cautious before agreeing to participate without seeking the advice of the Integrity Commissioner.

[112] Because the attempt to exert the influence of her office by involving herself in the case before the Court is a serious concern, it warrants a monetary sanction.

[113] A monetary sanction, even a nominal one, serves to underscore that the stated behaviour has fallen below applicable standards. We think a suspension of pay for a period of between 5 to 10 days would be appropriate in this instance.

[114] As necessary as it is to consider whether a monetary sanction should be imposed, it is important for elected officials to recognize the principles that give rise to the sanction regardless of the quantum. To summarize them:

- Elected bodies such as the Council of the Township of West Grey, and the appointed bodies they create (either by themselves or with other Councils) operate by a process of collective decision-making; one individual member should not attempt to interpret its decisions in a matter before the Courts
- The confidentiality of information gleaned in closed session meetings must be respected; where a body suspects the information being discussed might be voluntarily disclosed by one of its members at a future date, a chill on the extent and quality of debate will result.
- Care should be taken by elected officials to not use their status in an attempt to influence judicial or quasi-judicial decisions

### Recommendations:

[115] It is recommended:

1. That Council pass the following resolution:

That having been found to have breached the Code of Conduct for the Municipality of West Grey, that the remuneration paid to Councillor Rebecca Hergert be suspended for a period of between 5 and 10 days commencing with the next pay period.

[116] We wish to conclude by publicly thanking everyone who was asked to participate in our investigation.

[117] We will be pleased to be available at the Council meeting when this report is considered.