

---

CITY OF DRYDEN INTEGRITY COMMISSIONER, GUY GIORNO

**Citation:** Re Noel, 2025 ONMIC 1

**Date:** January 6, 2025

## INQUIRY REPORT

---

# TABLE OF CONTENTS

---

The Complaints .....	4
Summary.....	4
Background to the Complaints .....	6
Background of Drag .....	7
History .....	8
Drag's Connection to 2SLGBTQIA+ Communities .....	8
Drag Storytime.....	9
Process Followed .....	10
Positions of the Parties.....	13
Complainants' Positions .....	13
Respondent's Position .....	13
Complainant's Reply.....	16
Evidence .....	16
Councillor Noel .....	16
Witnesses .....	16
What is Drag? .....	17
Drag and Gender .....	19
Drag as Social/Political Commentary.....	22
Drag and 2SLGBTQIA+ Communities .....	24
Vulnerability of Drag Performers.....	25
Drag Storytime.....	26
Opposition to Drag Storytime.....	30
Findings of Fact.....	31
Preliminary Issues .....	32
Issues and Analysis.....	33
The <i>Webster</i> Case.....	34
The <i>Pickering</i> Case .....	35
The <i>Charter of Rights</i> .....	36
A. Did Councillor Noel make discriminatory comments?.....	37

B. Did Councillor Noel misuse the influence of office? .....	40
Conclusion and Recommendation .....	42
Content.....	42
Appendix .....	43

## THE COMPLAINTS

1. Two individuals (Complainants) separately filed complaints alleging that Councillor Ritch Noel (Respondent), in a June 3 social media post concerning Drag Storytime<sup>1</sup> at Dryden Public Library, contravened the Council Code of Conduct, Policy No. MU-CO-11.

## SUMMARY

2. For consistency, this report uses the same abbreviation that is employed by the City of Dryden: 2SLGBTQIA+.<sup>2</sup> Exception is made when the report quotes individuals and refers to publications; in those instances, the report adopts the abbreviations employed by witnesses and authors.

3. In writing this report, I have attempted to use neutral terminology that does not prejudice outcomes. On some topics, however, no language is universally accepted by scholars and participants. In those instances, I use terminology consistent with the goals of fairness to the Councillor who is the subject of this inquiry and respect for everyone else involved in the process.<sup>3</sup>

4. This appears to be one of the only municipal Integrity Commissioner cases involving a Councillor's comments on drag storytime. I am aware of a 2023 case from the City of Pickering;<sup>4</sup> unfortunately, the Pickering report relied on no jurisprudence or scholarship concerning drag,<sup>5</sup> and its unsourced, superficial analysis is of no precedential value.<sup>6</sup> Consequently, in this inquiry, I was required to devote considerable time as the first municipal Integrity Commissioner to analyze drag, drag storytime, and their underlying concepts. One reason this report is lengthy is because it is based on investigation and research, and gives careful consideration to a sensitive, important, and complex topic.

5. A Code of Conduct inquiry looks only at the alleged conduct of the Council Member involved. The issue in this inquiry is not whether the Library should have

---

<sup>1</sup> This report uses capitalization (Drag Storytime) to identify the specific June 23 event at Dryden Public Library. The lower-case term (drag storytime) refers generally to story readings hosted by drag performers.

<sup>2</sup> City of Dryden, June 2023 Pride Month Proclamation.

<sup>3</sup> In discussing the relevant scholarship, the report uses the literature's terminology of "assigned" gender, and does so without prejudging the Respondent's position on the matter.

<sup>4</sup> *Re Robinson*, Pickering Integrity Commissioner, Corr 30-23 (Oct. 13, 2023), online: <https://shorturl.at/7CUtn>

<sup>5</sup> The Pickering report mentions a *Toronto Star* newspaper clipping. Otherwise, its analysis of drag and drag storytime is unsourced.

<sup>6</sup> In referring to "precedential value," I do not mean to suggest that findings of one Integrity Commissioner are binding on another. Each inquiry is distinct.

accommodated Drag Storytime on June 23. The issue is not the merits of drag storytime generally. The only issue is whether the Code of Conduct was contravened. My report must be considered in this content.

6. Because of the close association between drag and the 2SLGBTQIA+ community, any discriminatory comments about drag performance would be comments in regard to sexual orientation and be covered by section 7.2.3 of the Code of Conduct. The meaning of this section is clear. Slurs against members of the 2SLGBTQIA+ community would breach section 7.2.3.

7. I have considered the vulnerability of drag performers and the 2SLGBTQIA+ community generally and evidence about online hatred. However, there was no evidence of specific impacts flowing from Councillor Noel's Facebook post. Councillor Noel was commenting in a personal capacity in a matter not related to his role as a Council member and the post did not have City-related implications. He did not make allegations against drag performers or the 2SLGBTQIA+ community, and he did not actively incite hatred or repeat inflammatory tropes. His language and tone were moderate and respectful. It is also relevant that Councillor Noel took down the post after a few days. I find no breach of section 7.2.3.

8. Section 12.2 of the Code prohibits the use of the influence of office for any purpose except the lawful exercise of official duties and City purposes. Because City Council appoints the Library Board, every Council Member possesses influence of office that cannot be escaped. For this reason, section 12.2 prevents a Council Member from raising a personal initiative directly with the Library Board. A Council Member who wishes to advance issues related to the Library must act in the course of official duties and use the formal processes of Council and committee meetings.

9. Councillor Noel did not end up writing to the Library Board. In the circumstances, he did not breach section 12.2.

10. The finding that the Code was not breached is not an endorsement of the post. Individual Council Members are free to disagree or agree with its content, and it is open to City Council disavow the communication should it wish to do so.

11. The findings in this report are specific to the June 3 post. Council Members should exercise caution in their use of social media and in the making of public comments, especially when vulnerable people are involved or there is high potential for harm.

12. Council Members should also be mindful that people are entitled to express their views and (subject to compliance with applicable Library policies) are entitled to book space in a public facility for that purpose.

## BACKGROUND TO THE COMPLAINTS

13. On June 23, the event “Drag Storytime with TBay Drag!” was held at Dryden Public Library.

14. The Library did not fund Drag Storytime. It did not pay the performers. It simply made its facility available. Costs of bringing in the performers were assumed by the host organization, Rainbow Alliance Dryden.<sup>7</sup>

15. On June 3, Councillor Noel posted what he called “my personal observations and view and not any other,” concerning the June 23 event. The post is reproduced in the Appendix.

16. The Councillor’s post began by asking rhetorically why the event was being held at the library and not at local schools or a local long-term care facility and local assisted-living home for seniors. The post then answered its own question, stating, “parents would be up in arms about it.”

17. The post continued by explaining that Councillor Noel had inquired at the library and was invited to express his concern to the library board, which he said he would do.

18. The post then quoted from Library Board Policy FN-05 (Diversity):

Libraries understand that an acceptance of differences can place individual and collective values in conflict. Libraries are committed to tolerance and understanding. Libraries act to ensure that people can enjoy services free from any attempt by others to impose values, customs or beliefs.

19. The selected excerpt was taken from section 3.2 of the policy, which endorses and quotes the Canadian Federation of Library Associations *Position Statement on Diversity and Inclusion*.<sup>8</sup>

20. The post then asked, rhetorically, how “this act” (Drag Storytime) was not “imposing values, customs or beliefs” and how it was not “any more or less inclusive or equitable than my custom or [my] belief that this is against my better judgement.”

21. Councillor Noel’s post noted that he was “already being targeted as homophobic and transphobic,” and affirmed, “I am neither.” He was, however, “weary of being afraid to voice what I believe,” and “tired of worrying if anyone is going to be offended or hurt.”

---

<sup>7</sup> Douglas Judson, interview (Aug. 2, 2024).

<sup>8</sup> Online, <https://cfla-fcab.ca/en/guidelines-and-position-papers/position-statement-on-diversity-and-inclusion/>

22. “I am offended by this practice,” the post stated, before calling for the exercise of “growth and maturity.”

23. Before concluding, the Councillor’s post invited “those who wish” to make their concerns known to the Library and the Library Board. It included a link to the Library’s home page, on which appears (at the bottom) an email link.

24. The post stated that the Councillor was “interested to know” how many people support and how many oppose, “people in drag reading to children in our public library.” It ended as follows:

It just seems that the “give an inch take a mile” scenario has far been surpassed at this time. Thanks for the read and hang on for the fallout.

## BACKGROUND OF DRAG

25. Drag continues to evolve, embodies different meanings, and is difficult to define with precision.<sup>9</sup>

26. Drag is not a general expression of identity, including but not limited to a trans identity or any other identity within the 2SLGBTQIA+ community or otherwise. Expressing a gender other than a gender assigned or perceived is not drag in and of itself, and should not be confused as such. As set out in the scholarship below, drag is a purposeful expression of art and/or political statement, which has evolved and grown. Though most often from the 2SLGBTQIA+ community, drag performers come from a full array of sexual orientation, gender identity, and gender expression backgrounds – both in and out of drag personas. There is no “one size fits all.”

27. Typically, it is a form of performance art that deliberately engages and often disrupts societal norms regarding gender expression. Often, but not always, performers adopt gender identities that differ from their assigned or perceived off-stage genders.<sup>10</sup> For example, a male performer may embody a female persona as a “drag queen,” and a female performer may portray a male persona as a “drag king.”<sup>11</sup> Some performers, who view their portrayals as genderless, call themselves “drag things.”<sup>12</sup>

---

<sup>9</sup> Caterina Rachele Rossi, “Re-thinking drag: from night clubs to white cubes” (2023), *International Journal of Social Science and Humanity*, 13(6): 422-428, online: <https://doi.org/10.18178/ijssh.2023.v13.1180>

<sup>10</sup> Mark Satta, “Shantay Drag Stays: Anti-Drag Laws Violate the First Amendment” (July 18, 2023), *Georgetown Journal of Gender and the Law*, 25, 1 (2023): 95-140, online: <https://ssrn.com/abstract=4514504>

<sup>11</sup> *Ibid.*

<sup>12</sup> Caitlin Hartlen, interview (Aug. 2, 2024).



## History

28. Pinpointing drag's origin is a challenge. Drag has roots in ancient civilizations and in the histories of Indigenous peoples. It was practised in many cultures around the world.<sup>13</sup>

29. In many theatrical traditions, male actors assumed female roles and attire.<sup>14</sup> Conversely, in some instances, for example, in Chinese opera dating back to the Yuan Dynasty, female actors impersonated males.<sup>15</sup> Within the Shakespearean tradition, men traditionally played all female roles, with several characters explicitly engaging in cross-dressing across different plays.<sup>16</sup>

30. Modern drag performance, characterized by satire and influenced by genres such as burlesque and vaudeville, traces its roots to rise of dame impersonators in vaudeville shows.<sup>17</sup> Notably, these performers did not merely don women's clothing but employed a sophisticated blend of cultural satire, musical performance, and comedic storytelling.<sup>18</sup>

31. The etymology of the term "drag" is also elusive. One theory suggests its emergence in the late 19th century, stemming from male actors wearing petticoats that would drag along the stage floor during performances.<sup>19</sup> Another theory connects "drag" to Polari, an English slang that was spoken in different environments, including the homosexual subculture. Some experts suggest that, in Polari, "drag" was a coded reference to one's sexuality.<sup>20</sup> According to Professor Thomas Sasso, "There is no conclusive evidence as to the origins of the word."<sup>21</sup>

## Drag's Connection to 2SLGBTQIA+ Communities

32. In the cultural context, drag performances have been historically intertwined with 2SLGBTQIA+ communities. Experts note that drag performances have predominantly taken place in subcultural venues such as 2SLGBTQIA+ clubs, bars, and ballrooms, with

---

<sup>13</sup> Professor Thomas Sasso, interview (Aug. 12, 2024).

<sup>14</sup> Cameron Crookston, "Off the clock: Is drag 'just a job'?" (2018), *Queer Studies in Media & Popular Culture*, 3:1, 101–115, online: [https://doi.org/10.1386/qsmc.3.1.101\\_1](https://doi.org/10.1386/qsmc.3.1.101_1)

<sup>15</sup> Siu Leung Li, *Cross-dressing in Chinese opera* (2003).

<sup>16</sup> Isaac Robertson, "How Drag Culture Resolves Tensions in Victorian Shakespearean Cross-Dressing; Or, Slay, Feste, Slay" (2018), *Criterion: A Journal of Literary Criticism*, 11(1): Article 11, online: <https://scholarsarchive.byu.edu/criterion/vol11/iss1/11>

<sup>17</sup> Cameron Crookston, *Living Legends: Performing a Queer Past through Drag*, 2019, University of Toronto, online: <https://tspace.library.utoronto.ca/handle/1807/108113>

<sup>18</sup> *Ibid.*

<sup>19</sup> Rossi, note 9, at 422.

<sup>20</sup> *Ibid.*, at 423.

<sup>21</sup> Sasso, note 13.



roots tracing back to the Molly Houses and balls of Montreal, London, Manchester, and New York.<sup>22 23</sup>

33. According to Dr. Cameron Crookston, modern drag emerged alongside the formation of a distinct homosexual identity in Western culture.<sup>24</sup> Beyond its origins in cultural parody, burlesque, and the vibrant atmospheres of music halls and nightclubs, Crookston argues that drag must maintain a connection to queer culture. Whether this connection is overt or subtle, it remains a defining characteristic that distinguishes drag from other forms of stage cross-dressing.<sup>25</sup>

34. The connection between drag and 2SLGBTQIA+ communities is explored in more detail, starting at paragraph 109.

### *Drag Storytime*

35. Drag storytime is commonly understood to be a program in which drag performers, often drag queens, but occasionally drag kings or other gender-bending performers, read children's books to an audience of young children and their families.<sup>26</sup>

36. Library-based drag storytime is widely attributed to author Michelle Tea, who in 2015 launched Drag Queen Story Hour in a branch of the San Francisco Public Library<sup>27</sup> and then, the next year, introduced the concept to the Brooklyn Public Library in the City of New York.<sup>28</sup> While these may have been the first organized drag story readings in public libraries, readings in other locations pre-dated them.<sup>29</sup>

---

<sup>22</sup> Richard Burnett, "The evolution of drag in Montreal, and how RuPaul changed the game" (July 29, 2022), *Montreal Gazette*, online: <https://montrealgazette.com/entertainment/local-arts/the-evolution-of-drag-in-montreal-and-how-rupaul-changed-the-game>

<sup>23</sup> Mark McCormack & Liam Wignall, "Drag Performers' perspectives on the Mainstreaming of British Drag: Towards a Sociology of Contemporary Drag" (2021), *Sociology* 56:1, 3-20, online: <https://doi.org/10.1177/00380385211008387>

<sup>24</sup> Cameron Crookston, note 17.

<sup>25</sup> *Ibid.*

<sup>26</sup> Harper Keenan and Lil Miss Hot Mess, "Drag Pedagogy: The Playful Practice of Queer Imagination in Early Childhood" (2020), *Curriculum Inquiry* 50(5): 440-461, at 441, online: <https://doi.org/10.1080/03626784.2020.1864621>

<sup>27</sup> Anisse Gross, "Once Upon a Time in San Francisco: Michelle Tea and the humble origin of Drag Story Hour" (Jan. 4, 2024), *Alta Newsletter*, online: <https://www.altasonline.com/dispatches/a46287543/once-upon-a-time-in-san-francisco/>

<sup>28</sup> Marisa Meltzer, "Kids Attend Drag Queen Story Hour: A new reading series at the Brooklyn Public Library introduces elements of gender bending and camp to little ones" (Nov. 13, 2016), *The New Yorker*, online: <https://www.newyorker.com/magazine/2016/11/21/kids-attend-drag-queen-story-hour>

<sup>29</sup> Matthew S. Bajko, "Castro bookstore hosts first drag storytime" (June 26, 2013), *The Bay Area Reporter*, online: <https://www.ebar.com/story.php?ch=news&id=243650>

37. A typical drag storytime is not the same as a drag performance in another venue, such as a nightclub.<sup>30</sup> Performers are mindful of the need for attire and content to be age-appropriate.<sup>31</sup> Readings are carefully selected, usually in collaboration with the public library.<sup>32</sup> "Book selections often include queer and/or trans characters, gender-transgressive themes, or narratives about not fitting in and finding one's voice."<sup>33</sup>

38. According to the research of Professor Sasso, while 34.5 per cent of drag performers have engaged in drag storytime at some point in their careers, only 4 per cent regularly host drag storytime.<sup>34</sup> Typically, hosts of drag storytime are individuals for whom drag is paid work.<sup>35</sup>

## PROCESS FOLLOWED

39. In operating under the Code, I follow a process that ensures fairness to both the individuals bringing a Complaint (the Complainants) and the Council Member responding to the Complaint (the Respondent). This fair and balanced process begins with me issuing a Notice of Inquiry that sets out the issues in the inquiry. The Complaints, including any complaint materials, are attached to the Notice. The Respondent is given the opportunity to respond, and then the Complainants receive the opportunity to reply to the Response. The Respondent is made aware of the Complainants' names. I do, however, redact personal information such as personal phone numbers and email addresses. I may accept supplementary communications and submissions from the parties, generally on the condition that each party gets to see the other's communications with me. I do this in the interest of transparency and fairness.

40. I received one individual's complaint form on June 10 and the other individual's complaint form on June 21.

41. On June 26, I issued a Notice of Inquiry. The Notice told the Respondent and the Complainants that I would be conducting an inquiry into the following two issues

---

<sup>30</sup> Sasso, note 13.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> Keenan and Mess, note 26, at 441.

<sup>34</sup> Sasso, note 13.

<sup>35</sup> *Ibid.* Professor Sasso explained that these performers are independent contractors and not permanent paid employees.

- A. Did Councillor Noel make online comments about Drag Storytime at Dryden Public Library that were discriminatory in regard to one or more individuals based on sexual orientation, contrary to section 7.2.3 of the Code?<sup>36</sup>
- B. Did Councillor Noel breach section 12.2 of the Code by attempting to use the influence of office for a purpose other than the lawful exercise of official duties and City purposes, namely the purpose of affecting a decision of Dryden Public Library concerning Drag Storytime?<sup>37</sup>

42. The Notice invited each Complainant, by July 8, to provide additional details of the allegations, including copies of any posts or messages. The only additional information that I received was copy of the Facebook post on which the Complaints were based.

43. I shared the additional information with Councillor Noel and his lawyer, Mr. Robert Sinding, and invited the Councillor to respond to the Complaints by July 22. The Response was submitted July 19.

44. Councillor Noel's Response included copies of text messages between him and the first Complainant. The earliest text pre-dated the June 3 Storytime post by more than seven months. Most of the texts were part of an exchange that followed the post. The response also advanced a theory about the second Complainant's motivation. The theory was based on what I have concluded was a mistaken factual assumption about the second Complainant.<sup>38</sup>

45. On July 20, I shared the Response with each Complainant, and invited any Reply. The first Complainant declined the opportunity to reply and gave reasons for deciding not to participate further in the process. The second Complainant replied on July 26, and also gave reasons for declining to participate further.

46. Subsection 223.6(2) of the *Municipal Act* states that an Integrity Commissioner may disclose in an inquiry report such matters as in my opinion are necessary for the

---

<sup>36</sup> Section 7.2.3 of the Code states: "Council Members shall not speak or otherwise communicate in a manner that is discriminatory to any individual; or that is discriminatory in regard to any individual based on that person's race, ancestry, ethnic origin, colour, place of origin, creed, citizenship, gender, sexual orientation, same-sex partnership status, age, record of offences, marital or family status, or disability."

<sup>37</sup> Section 12.2 of the Code reads: "No Council Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for City purposes."

<sup>38</sup> In general, nothing is wrong with a respondent referring to a complainant in a response. An inquiry is a search for truth, and references to a complainant (for example, communications between complainant and respondent related to the subject of the complaint, or circumstances that speak to the motivation for bringing a complaint) might be relevant to an Integrity Commissioner's review. Certainly, one cannot generalize that respondents' mentions of complainants are necessarily improper! Further, since the respondent in an inquiry is in jeopardy of sanction (a potential suspension of pay for up to 90 days), the respondent must be free to provide any information or make any submission that is relevant to the allegation.

purposes of the report. Typically, I consider it necessary to identify the complainant who has triggered an inquiry. Integrity Commissioner inquiries are formal, legal processes that consume municipal resources and (regardless of outcome) have a significant effect on the Respondents; outside exceptional circumstances, it is necessary for Council and the public to understand who is behind them. This is particular true, when, as here, a complainant has no particular connection to the issues raised other than a general interest, as a member of the public, in seeing the Code of Conduct upheld.

47. In my view, this case is one of the exceptions. Having considered both Complainants' reasons for declining to participate further in the inquiry, I have determined that in this particular circumstance it is unnecessary to name them.

48. I issued a delegation under subsection 223.3(3) of the *Municipal Act* to Mr. Aniket Bhatt, a lawyer who works with me, authorizing him to conduct interviews. He interviewed Councillor Noel in the presence of his lawyer. He also interviewed the two drag performers who hosted Drag Storytime at the Library, and a representative of the host organization, Rainbow Alliance Dryden.

49. Mr. Sinding's lengthy submissions on behalf of the Respondent relied both on court and tribunal jurisprudence and on the social-political context of drag, particularly drag storytime. In order to complete the inquiry, it was necessary to consider the legal and sociological arguments that were raised. With the research assistance of Mr. Bhatt, I engaged in extensive reading into the case law, the origin and nature of drag, its place in queer culture, and drag storytime.

50. I also interviewed Thomas Sasso, Assistant Professor in the Department of Management at the Gordon S. Lang School of Business and Economics, University of Guelph. Professor Sasso's research interests include diversity, equity, and inclusion, as well as precarious and marginalized work and workers. He has researched, written and presented on drag, particularly, drag as work.

51. The Respondent and the Complainants had full and fair opportunities to provide evidence and to state their positions on the issues in this inquiry. While this report summarizes the evidence and the argument, and does not mention everything I considered, the report is based on all information, all interviews, all submissions, all jurisprudence and all scholarship received and gathered during the course of this inquiry.

## POSITIONS OF THE PARTIES

### *Complainants' Positions*

52. The first Complainant submitted that the Respondent's comments were homophobic, discriminatory and offensive, and that the post generated a number of hateful comments directed to the 2SLGBTQIA+ community.

53. The Complainant also argued that it was no answer for Councillor Noel to state that the comments were personal and not made in the capacity of Councillor, as he represents City Council at all times.

54. The second Complainant submitted that, by posting publicly and encouraging others to complain to the Library and the Library Board, he was using his influence in an effort to marginalize further an already marginalized community.

### *Respondent's Position*

55. As a preliminary matter, the Respondent's lawyer argues that the Complainants were required, and failed, to pursue the informal resolution process under section 13.3.1 of the Code of Conduct before filing formal Complaints. I address this issue, below, starting at paragraph 153.

56. The Respondent's lawyer states that his client was speaking personally and not on behalf of Council. He notes that Councillor Noel did not use a Council email address, Council letterhead, or the City's website. He did not purport to speak for anyone but himself. According to the Response, not everything a Council Member does engages the influence of office: "Councillors must have room to act for their own personal and private purposes in some parts of their life, and act in private rather than always exercising or engaging their Council duties."

57. Further, the Response submits that the June 3 post was, "a polite, balanced and respectful public comment." The Respondent encouraged people on both sides of the issue to contact the Library Board, and did not seek complaints that aligned with his own view. In doing so, he "encourag[ed] a democratic solution, or at least participation, in the issue." The Respondent acknowledged that he might be in the minority, and was interested to know how many were on each side. "At no time did he articulate or advocate to prevent the drag event from occurring."

58. Through legal counsel, the Respondent denies that the Facebook post (which was removed after only a few days) triggered hateful commentary, and notes that no examples of hateful comments have been produced.

59. The Response notes that gender identity and gender expression are not prohibited grounds of discrimination under the City's Council Code of Conduct, though sexual orientation and gender are. Because most 2SLGBTQIA+ persons do not do drag and some non-2SLGBTQIA+ persons do drag, questioning a drag event cannot be discriminatory towards someone's sexual orientation or gender.

60. It continues:

Even if gender identification and gender expression were protected grounds, many in those groups do not participate in drag, or public displays, so there is a disconnect between questioning drag performances in front of children, and questioning or challenging a transexual identity. In any event, Mr. Noel was not suggesting drag is bad in general or that it should be stopped, or even that drag queen story time should be stopped.

61. Citing *Andrews v. Law Society of British Columbia*,<sup>39</sup> the Respondent's counsel submits that the post was not discriminatory, because it did not impose an adverse effect on any identified group. The post did not have the effect of withholding anyone's right to access, to use, or to participate in events at the Library. It did not advocate that Drag Storytime be cancelled. The Councillor did not, at a Council meeting, move a motion to ban the event. The Respondent's lawyer says that Councillor Noel merely asked questions.

62. Legal counsel notes that the post did not express hatred toward, or denigrate, drag queens or members of the 2SLGBTQIA+ community. He reiterates the Respondent's longstanding belief that all citizens and human individuals should be treated equally. The Councillor previously helped plan the vendors' portion of a past Pride event in Dryden, he has promoted the Pride event, and for several years he sponsored Pride and made large donations.

63. On the distinction between fair commentary and commentary that is abusive or unduly discriminatory, the Response cites and relies on the decision of the Canadian Broadcast Standards Council in *Re CHIN*.<sup>40</sup>

64. Councillor Noel's lawyer explains that the statement, "I'm offended by this practice," has been taken out of context. He says the Respondent was not offended by drag performances or drag performers; he was commenting specifically on the use of the Library to host this particular event. According to the Response, even then, "He did not adamantly oppose it, or advocate for it ending; rather he asked people to consider and question it."

---

<sup>39</sup> [1989] 1 S.C.R. 143, at 174-5.

<sup>40</sup> [2019] C.B.S.C.D. No. 2.



65. The Response both distinguishes and relies on the decision of Justice T.J. Nieckarz in *Rainbow Alliance Dryden v. Webster*.<sup>41</sup> The defendant in that case allegedly called drag performers groomers and implied they engaged in predatory behaviour. The Response notes that Councillor Noel made no such allegations. He never said that children need to be protected from drag queens. Instead, he engaged in what Justice Nieckarz, at paragraph 48 of that decision, described as “public interest expression.” I consider the *Rainbow Alliance Dryden v. Webster* case starting at paragraph 163.

66. The Respondent’s lawyer also relies on the *Canadian Charter of Rights and Freedoms*. He argues that an Integrity Commissioner inquiry is state action subject to the Charter, that the Council Code of Conduct must be interpreted in a manner consistent with the *Charter*, and that Code cannot disallow commentary that appropriately engages the right of freedom of expression. I address the *Charter* arguments commencing at paragraph 174.

67. One-quarter of the Response<sup>42</sup> advances the argument that drag is (or is often) sexualized,<sup>43</sup> that drag is inextricably linked to a tenet that gender is fluid and non-binary, that a political purpose of drag storytime is to introduce young people to the concept of gender fluidity, that theory of gender is a legitimate subject of public debate, and that Councillor Noel was entitled to express himself respectfully on the topic.

68. In support of this argument, the Response cites comments in several news articles, such as the observation that, “you are trying to read books on gender ideology to kids and get them to view the world in this radically new way,”<sup>44</sup> and the explanation of an expert who told CBC News that drag storytime:

is creating opportunity to reimagine gender for the future and also hopefully show children and young people that gender can be transformative. It can be outside of the binary.<sup>45</sup>

69. Finally, the Respondent’s lawyer points to the cost of participation in this inquiry and argues that the Integrity Commissioner’s authority to conduct a hearing implies the

---

<sup>41</sup> 2023 ONSC 7050 (CanLII).

<sup>42</sup> The Response, exclusive of attachments, is 52 paragraphs long. The argument about gender fluidity and non-binarism is developed in paragraphs 21, 22, 29, 30, 31, 32, 35, 36, 37, 38, 39, 43 and 44.

<sup>43</sup> According to the Response: “Drag is sexualized dress ... most drag queen stage names have none-too-subtle sexual or related innuendoes, like local Dryden Drag King ‘Jack Doff’ ... Some other names: Shirley Delta Blow, Izzy Uncut, Terra Hymen, Tasha Salad, Dixie Normous, Saline EsTitties, Betty Bitchslap, Sigourney Beaver, Anna Bortion, Avery Goodlay, Anne Fetamine, Phallic Cunt, Lucy Stooles, Olive D. Cox, and Malestia Child ...”

<sup>44</sup> Response, Appendix G, “How drag queen story hour became a battle over gender, sexuality and kids” (Feb. 22, 2023), *Los Angeles Times*. The excerpted quotation is from Ms Alexandra Chrostowski, who identifies as a gay woman with three middle-school-aged children.

<sup>45</sup> Response, Appendix E, “Are drag queen storytimes worth fighting for? These people think so” (June 7, 2023), CBC News. The excerpted quotation is from Mr. Adam Davies, Co-Chair, Anti-Oppression Rainbow Research Lab, University of Guelph.

authority to control the process, including the power to order payment of Councillor Noel's legal costs. I address this submission starting at paragraph 158.

### *Complainant's Reply*

70. Only one Complainant replied. The Complainant reiterated that Councillor Noel occupies "a position of power and privilege" and was using it to rally public opinion against the voice of a marginalized community.

## **EVIDENCE**

### *Councillor Noel*

71. During his interview, Councillor Noel stated that he does not use his Facebook profile to post content related to City Council. He said that occasionally a constituent contacts him on Facebook Messenger and he will respond, but he has not posted about Council matters.

72. He also explained that had he considered the matter to involve Council business, then he would have dealt with it in a formal way – such as by tabling a notice of motion before Council – "certainly not on a personal Facebook page like this."

73. Councillor Noel stated that he had intended to send a letter to the Library Board, in his capacity as a private citizen (as opposed to his role as a Council Member), but he never wrote or submitted the correspondence.

### *Witnesses*

74. Several witnesses accepted my invitations to be interviewed to provide background information and to explain the context of drag.

75. Caitlin Hartlen, co-Chair of Rainbow Alliance Dryden, was interviewed by Mr. Bhatt. As noted above, Rainbow Alliance Dryden hosted the June 23 event. Caitlin Hartlen is creator and host of the Out of Context podcast and is a drag performer with "a pretty intimate knowledge of drag."

76. By coincidence, Caitlin Hartlen and Rainbow Alliance Dryden are the plaintiffs in *Rainbow Alliance Dryden v. Webster*, but the interview was related to this Integrity Commissioner inquiry, and not to that court proceeding.<sup>46</sup>

---

<sup>46</sup> The court case was raised only toward the end of the interview, by Caitlin Hartlen, in commenting on the connection between online hate and harm.

77. Lady Fantasia LaPremiere and Mz Molly Poppinz are the stage names of two Thunder Bay-based drag performers<sup>47</sup> who were the hosts of Drag Storytime at Dryden Public Library. Mr. Bhatt interviewed them. While the performers participated in the inquiry as witnesses, they exercised the right to be accompanied by legal counsel, Mr. Douglas Judson. Mr. Judson also provided helpful background information, including some of the legal context of drag.

78. I interviewed Prof. Thomas Sasso, of the University of Guelph. He is Equity, Diversity and Inclusion coordinator at Gordon S. Lang School of Business and Economics. When he was a graduate student, he co-founded U. Guelph's Sexual and Gender Diversity Research Lab. His research focuses on understanding and improving the experiences of diverse and marginalized populations across industries and sectors, with a particular focus on 2SLGBTQIA+ communities. "Drag as Werk" is a current research project.

79. Though I did not succeed in arranging an interview, I have also reviewed the expert affidavit evidence of Dr. Cameron Crookston, University of British Columbia Okanagan. Dr. Crookston has authored several peer-reviewed journal articles and peer-reviewed book chapters on the subject of drag. His expert affidavit was submitted to the Ontario Superior Court of Justice in the *Rainbow Alliance Dryden v. Webster* case.

80. The evidence of all the witnesses (and as well as the scholarship that I have reviewed) was complementary and reinforcing, and supports the following conclusions:

### *What is Drag?*

81. There is no single type of drag. Dr. Crookston has confirmed *drag* is a broad term that encompasses several subcategories.<sup>48</sup> Drag is as varied as its performers. Prof. Sasso explained that drag comes in different forms and it changes based on the audience, the venue, and the individual worker. "Every single person makes it their own."<sup>49</sup> As a result, "drag" lacks a single definition, and it is an "umbrella term" as opposed to a shared meaning. "There is a vast drag repertoire," observes Professor Meredith Heller.<sup>50</sup> According to Caitlin Hartlen, "the beauty of drag is it can be anything you want it to be."<sup>51</sup>

---

<sup>47</sup> John Forget plays Lady Fantasia and Felicia Crichton is Mz Molly.

<sup>48</sup> Ontario Superior Court of Justice, Court File No. CV-22-00000096-0000, Affidavit of Cameron Crookston, affirmed April 20, 2023, para. 7.

<sup>49</sup> Sasso, note 13.

<sup>50</sup> Meredith Heller, *Queering Drag: Redefining the Discourse of Gender-Bending*, 2020, Indiana University Press, p. 2.

<sup>51</sup> Hartlen, note 12.

82. Drag has evolved and is not limited to people who perform the opposites of their assigned genders. As Mz Molly explained, drag performers now include, without limitation, individuals assigned as men who dress up as women, women assigned as women who dress up as women, women assigned as women who dress up as men, and people of all genders who decide that their characters or their performances are non-binary.

83. During the interviews, witnesses were asked about a few common types of drag performance. They agreed that concepts such as “queening,” “kinging” and “gender-fuck”<sup>52</sup> are common, but they all cautioned against attempting to confine drag to a few well-known categories. Not everyone fits within them. Prof. Sasso has counted more than 50 different terms that drag performers use to categorize and to describe what they do. Prof. Heller writes that some drag performances, “elude language and known methods of classification.”<sup>53</sup>

84. Several witnesses explained that, as drag evolves, so do the labels and the vernacular. Mz Molly added that labelling fails to capture the nuances of art, human expression and human anatomy. It also detracts from the entertainment value and “magic” of the performance.<sup>54</sup>

85. Despite its many variations, what remains clear is that drag is performance.<sup>55</sup> It is a form of artistic expression. The scholarship uniformly identifies performance as an essential element of drag.<sup>56 57 58 59</sup>

86. Merely donning an outfit is not drag. As Mz Molly explained, creating a character and a scene, and then performing, are what constitute drag. Mz Molly described the art form as combining the functions of performance artist, person in theater, makeup artist, costume designer, and singer.<sup>60</sup>

---

<sup>52</sup> Caitlin Hartlen described gender-fuck as, “quite literally fucking with gender. ... You aren’t a king. You aren’t a queen. You’re like somewhere in between. You could embody both and none of it. [I]t’s basically just turning society’s notions of gender on its head.”

<sup>53</sup> Heller, note 50, p. 3.

<sup>54</sup> A further issue is that use of a label to describe a performer entails gendering the individual. Currently, the favoured practice is not to label others, and let performers label themselves if they wish.

<sup>55</sup> Crookston Affidavit, note 48, para. 7.

<sup>56</sup> Heller, note 50, at 1.

<sup>57</sup> Sarah Hankins, “I’m a Cross between a Clown, a Stripper, and a Streetwalker: Drag Tipping, Sex Work, and a Queer Sociosexual Economy” (Dec. 2015), *Signs Journal of Women in Culture and Society*, 40(2): 441-466, online: <https://www.journals.uchicago.edu/doi/abs/10.1086/678149?journalCode=signs>

<sup>58</sup> Rossi, note 9, at 422, lists the five characteristic components of drag as: “theatrical structure, the question of identity, the use of body, gender, and its rendering through performance.”

<sup>59</sup> Crookston, note 17, at xiv, defines “drag as a performance style and cultural practice.”

<sup>60</sup> Mz Molly Poppinz, interview (Aug. 2, 2024).

## Drag and Gender

87. It is also widely accepted that drag is connected to gender. Prof. Heller describes drag as “theatrical gender bending.”<sup>61</sup> Dr. Bri McKenzie observes that drag always “draws attention to gender as a performance.”<sup>62</sup> According to Professor Corinne Mason, “drag is a visual representation of queer cultural values, such as expressing gender beyond cisgender norms.”<sup>63</sup> Cristiano Eduardo da Rosa and Professor Jane Felipe call drag, “intentional gender performance.”<sup>64</sup> To Dr. Sarah Hankins, drag is simply “gender performance.”<sup>65</sup> Professor Guacira Lopes Louro says drag can be “understood as a parody of gender.”<sup>66</sup> Even Dr. Crookston, who stresses the significance of other aspects of drag, acknowledged in his dissertation that:

the performance of gender is perhaps the most distinct thing that sets drag apart from other forms of performance. And I understood that, from an outside perspective, the way drag does gender is potentially the most interesting, and certainly the most obvious aspect of drag.<sup>67</sup>

88. Like Dr. Crookston, the witnesses who were interviewed recognized the role of gender in drag, but all stressed that drag has other aspects.<sup>68</sup>

89. Mz Molly said, “drag now is genuinely accepted and generally accepted as an artistic performance that highlights and exaggerates gender expression.”<sup>69</sup>

---

<sup>61</sup> Heller, note 50, at 1.

<sup>62</sup> Julian Chen, Wendy Cumming-Potvin, Kim Andreassen, Bri McKenzie, “Where is the Safe Space?: From Drag Queen Story Time to LGBTQ+ Inclusive Practice” (2023), *Axon: Creative Explorations*, 14(1): 1-16, at 6-7, online: [https://www.academia.edu/122464804/WHERE\\_IS\\_THE\\_SAFE\\_SPACE\\_From\\_Drag\\_Queen\\_Storytime\\_to\\_LGBTQA\\_Inclusive\\_Practice](https://www.academia.edu/122464804/WHERE_IS_THE_SAFE_SPACE_From_Drag_Queen_Storytime_to_LGBTQA_Inclusive_Practice)

<sup>63</sup> Ontario Superior Court of Justice, Court File No. CV-22-00000096-0000, Affidavit of Corinne Mason, affirmed April 20, 2023, para. 13.

<sup>64</sup> Cristiano Eduardo da Rosa et Jane Felipe, “Gender Performativity Seen Through the Eyes of Children: A drag queen mediates literary encounters” (2021), *Brazilian Journal on Presence Studies*, 11(1): 1-22, at para. 5, online: <https://journals.openedition.org/rbep/1143>

<sup>65</sup> Hankins, note 57, *passim*.

<sup>66</sup> Guacira Lopes Louro, *Um corpo estranho: Ensaios sobre sexualidade e teoria queer*, 2nd ed., 2004, Autêntica Editora, at 87. Original text: “O que faz pode ser compreendido como uma paródia de gênero.”

<sup>67</sup> Crookston, note 17, at vii. He concluded the paragraph as follows: “While gender may be a major part of drag performance, it is not the only factor that makes up drag as an art form or a queer cultural practice. Not all drag performances focus on gender as the locus of that performance. Not every joke or ironic song choice or conceptual costume plays on a parodic or political relation to gender.”

<sup>68</sup> A similar observation has been made by Dr. Jeremiah Davenport: “[D]rag speaks as nimbly of race, class, style, politics, and subcultural aesthetics as it does about the gendered body.” J. Davenport, “From the Love Ball to RuPaul: The Mainstreaming of Drag in the 1990s” (Aug. 2017), at 20, online: [http://rave.ohiolink.edu/etdc/view?acc\\_num=case1499363704491381](http://rave.ohiolink.edu/etdc/view?acc_num=case1499363704491381)

<sup>69</sup> Mz Molly, note 60.



90. Lady Fantasia spoke of an evolution: “For the longest time, drag was considered a gender-bending art form, and now I think it’s more of an elevation of the self.”<sup>70</sup>

91. In an affidavit in an unrelated proceeding, Caitlin Hartlen testified that drag is “performance of masculinity, femininity, or other forms of gender expression or exaggerated gender stereotypes.”<sup>71</sup> At the same time, “there is a wide diversity of drag and there are few fixed categories.”<sup>72</sup>

92. Prof. Sasso explained:

Most of the time we talk about it [drag] in terms of gender, but it doesn’t just have to be about gender. It could be about climate change and in trying to raise attention there. ... It’s going to be very dependent on the individual rather than a uniform or universal meaning behind it.<sup>73</sup>

93. Nonetheless, a wealth of queer scholarship supports the view that drag plays a central role in both exposing and delegitimizing the constructed and performative aspects of gender.

94. The seminal work of Professor Judith P. Butler takes the position that gender is a social and political construct: a fiction or illusion externally imposed to regulate sexuality (within a reproductive, heterosexual frame). Because gender is a fabrication, it follows that the acts, gestures and enactments that, on the surface, indicate gender are merely performative.<sup>74</sup>

95. Prof. Butler was not the first to posit gender as a social construct. Earlier, Professors Candace West and Don Zimmerman had identified gender as “a powerful ideological device” produced by society and enforced by social control.<sup>75</sup> By 2024, as Lewis Goodacre observes, it was well established in feminist and queer scholarship that gender is a socially-constructed category, not a biological reality, and that gender is a matter of *doing* not *being*.<sup>76</sup>

---

<sup>70</sup> Lady Fantasia LaPremiere, interview (Aug. 2, 2024).

<sup>71</sup> Ontario Superior Court of Justice, Court File No. CV-22-00000096-0000, Affidavit of Caitlin Hartlen, affirmed April 19, 2023, para. 11.

<sup>72</sup> *Ibid.*, para. 12.

<sup>73</sup> Sasso, note 13.

<sup>74</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, 1990, Routledge, at 136. See also pp. 140-141: “[G]ender is an identity tenuously constituted in time, instituted in an exterior space through a *stylized repetition of acts*. The effect of gender is produced through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures, movements, and styles of various kinds constitute the illusion of an abiding gendered self. This formulation moves the conception of gender off the ground of a substantial model of identity to one that requires a conception of gender as a constituted *social temporality*.” [italics in original]

<sup>75</sup> Candace West and Don H. Zimmerman, “Doing Gender” (1987), *Gender and Society*, 1(2): 125-151. <http://www.jstor.org/stable/189945>

<sup>76</sup> Lewis Goodacre, “Teaching is a Drag! Performing Gender as a Queer Secondary English Teacher” (2024), *Changing English*, 31(2): 130-145, online: <https://doi.org/10.1080/1358684X.2024.2322963>



96. According to the scholarship, the concepts of gender as social construct and of gender as performance have been and are integral to drag. Prof. Butler found that “drag effectively mocks both the expressive model of gender and the notion of a true gender identity.”<sup>77</sup> She then observed:

The performance of drag plays upon the distinction between the anatomy of the performer and the gender that is being performed. But we are actually in the presence of three contingent dimensions of significant corporeality: anatomical sex, gender identity, and gender performance. If the anatomy of the performer is already distinct from the gender of the performer, and both of those are distinct from the gender of the performance, then the performance suggests a dissonance not only between sex and performance, but sex and gender, and gender and performance. ... *In imitating gender, drag implicitly reveals the imitative structure of gender itself – as well as its contingency.*<sup>78</sup> [italics in original]

97. In the words of Prof. Louro, “Drag exposes the constructiveness of genders.”<sup>79</sup> He found that, “drag allows us to think about genders and sexuality: it allows us to question the essence or authenticity of these dimensions and reflect on their constructed character.”<sup>80</sup> Dr. Hankins notes that drag “delegitimizes the boundary between performance and reality.”<sup>81</sup> Prof. Heller refers to drag’s “great potential ... to reveal how [gender] identities are not biological mandates but rather cultural ideologies that we do – and thus can undo or do differently.”<sup>82</sup> Professors Verta Taylor and Leila Rupp see drag performance as a “deliberate tactic ... to challenge binary gender and sexual categories.”<sup>83</sup>

98. According to Rosa and Felipe:

[Drag] Performativity ... can be understood, specifically, as an intentional way of performing gender which corresponds to challenging its conventional performance and revealing its fragility, and thus, constitutes an action that has political relevance.

... the performativity exercised by the drag queen is revealing of how gender identities are constructed through a whole social, historical and cultural context, in such a way that people are co-opted by their discourses. ... At the same time, we should keep in mind that drag is

---

<sup>77</sup> Butler, note 74, at 137.

<sup>78</sup> *Ibid.*

<sup>79</sup> Louro, note 66, at 21. Original text: “A drag escancara a construtividade dos gêneros.”

<sup>80</sup> *Ibid.*, at 89. Original text: “... a figura da drag per mite pensar sobre os gêneros e a sexualidade: ela permite questionar a essência ou a autenticidade dessas dimensões e refletir sobre seu caráter construído.”

<sup>81</sup> Hankins, note 57, at 446.

<sup>82</sup> Heller, note 50, at 4.

<sup>83</sup> Verta Taylor and Leila J. Rupp, “When the Girls are Men: Negotiating Gender and Sexual Dynamics in a Study of Drag Queens” (2005), *Signs: Journal of Women in Culture and Society*, 30(4): 2115-2139, at 2131.

unable to dismantle binaries and conventions – but does perhaps contribute relevant questions that act to denaturalize that which is taken for granted ...<sup>84</sup>

99. Consistent with the conclusions in the scholarship, Caitlin Hartlen observed during the interview that:

getting to perform as a drag king really opened my eyes to the fact that gender is a construct and we put all these rules and boxes for ourselves, that we just don't need.

... [In drag performance] in many cases we're lampooning what society thinks gender should be.<sup>85</sup>

### *Drag as Social/Political Commentary*

100. As parody that exposes and delegitimizes gender constructs, drag has historically been viewed as a form of social and/or political commentary. Certainly, 2SLGBTQIA+ representatives and allies view drag in this manner, describing it as “a powerful avenue for self-expression and political activism,”<sup>86</sup> “a performance art that ... present[s] exaggerated forms of gender expression to critique gender inequalities and imagine a transformational future,”<sup>87</sup> and “at the forefront of queer organizing and activism ... [and] an inherently transgressive act, defined by resistance to traditional ideas of gender.”<sup>88</sup>

101. As expressed by well-known drag performer RuPaul: “Every time I bat my eyelashes it's a political statement.”<sup>89</sup>

102. Scholarship supports the view that drag conveys a political message even without the use of words. Professor Jay Whitehead explains that drag performers, “stand for something political, whether they know it or not.”<sup>90</sup> The research of Prof. Taylor and Prof. Rupp convinced them that drag shows were “a genre of political theatre.”<sup>91</sup> Professor Jeffrey McCune considers drag to be both entertainment and “a political or

<sup>84</sup> Rosa and Felipe, note 64, at paras. 21-22.

<sup>85</sup> Hartlen, note 12.

<sup>86</sup> Jude George, Outright International, “Drag Is a Powerful Avenue for Self-Expression and Political Activism” (Jan. 19, 2024), online: <https://outrightinternational.org/insights/drag-powerful-avenue-self-expression-and-political-activism>

<sup>87</sup> Human Rights Campaign, “Understanding Drag: As American as Apple Pie” (undated), online: <https://www.hrc.org/resources/understanding-drag>

<sup>88</sup> GLBTQ Legal Advocates & Defenders (GLAD Law), “International Drag Day: Drag and the Fight for LGBTQ+ Rights” (July 16, 2024), online: <https://www.glad.org/international-drag-day-drag-and-the-fight-for-lgbtq-rights>

<sup>89</sup> RuPaul (@RuPaul), Post on X [at the time of post, Twitter] (June 5, 2011) online: <https://x.com/RuPaul/status/77407798316630016>

<sup>90</sup> Jay Whitehead, “Theatre for the Offended: ‘Safety’ – Sashay Away” (2020), *Canadian Theatre Review*, 185: 17-21, at 18.

<sup>91</sup> Taylor and Rupp, note 83, at 2119.

highly politicized act."<sup>92</sup> Rossi notes that drag, "conveys political messages about the boundaries of gender and sexuality."<sup>93</sup> Charlotte Coles observes, "Drag becomes political through the body"<sup>94</sup> According to Megan Leona Bronson, "gender bending will always be a political act."<sup>95</sup>

103. Professor Richard Niles, following an examination of drag performer Charles Busch, concluded that:

even though Busch himself produces theatre without a political agenda, audiences (particularly those who are queer) can view his performance as activist in nature.<sup>96</sup>

104. We asked the witnesses to comment on drag as a form of social or political commentary. They indicated that, as any art form, drag may be used to make a political statement, but it is not made political in every case. Using an analogy in specific reference to drag storytime, Mz Molly explained: "... if it was puppet storytime, the puppets don't have a political movement to turn everyone into puppets. It just happens to be who's reading the books."<sup>97</sup>

105. Mz Molly dispelled any misconception that the hosts of drag storytime directly drive certain messages. Mz Molly cited, as an example, the trope of boys being encouraged to wear dresses. Instead, the typical message is one of inclusion, often delivered visually, without using words: "It just happens to be that people come in all different shapes and sizes and people just happen to wear lots of different clothes."<sup>98</sup>

106. Prof. Sasso echoed the view that whether a drag performance contains political content is up to the artist. Historically, drag has been used to critique, to challenge, and to question; consequently, from an academic perspective, a majority of drag would be considered political expression or social commentary. That does not, however, mean that political commentary is the primary purpose of every performer.<sup>99</sup>

---

<sup>92</sup> Jeffrey Q. McCune, Jr., "Transformance: Reading the Gospel in Drag," in Lisa Underwood, *The Drag Queen Anthology: The Absolutely Fabulous but Flawlessly Customary World of Female Impersonators*, 2004, Taylor & Francis Group, 151-168, at 154.

<sup>93</sup> Rossi, note 9, at 423.

<sup>94</sup> Charlotte Coles, "The Question of Power and Authority in Gender Performance: Judith Butler's Drag Strategy" (2007), *eSharp*, Issue 9, at 10, online: [https://www.gla.ac.uk/media/Media\\_41211\\_smxx.pdf](https://www.gla.ac.uk/media/Media_41211_smxx.pdf)

<sup>95</sup> Megan Leona Bronson, "Drag Queen Discourse: Social Circulation, Restorative Literacies, and Rhetorical Space" (May 2020), at 20, online: <https://scholarworks.calstate.edu/downloads/br86b856r?locale=zh>

<sup>96</sup> Richard Niles, "Wigs, Laughter and Subversion: Charles Busch and Strategies of Drag Performance," in Lisa Underwood, *The Drag Queen Anthology: The Absolutely Fabulous but Flawlessly Customary World of Female Impersonators*, 2004, Taylor & Francis Group, 35-54, at 51.

<sup>97</sup> Mz Molly, note 60.

<sup>98</sup> *Ibid.*

<sup>99</sup> Sasso, note 13.

107. Prof. Sasso did explain that individuals who perform drag as work are more likely to place deliberate intention behind their performances, resulting in “some level of expression of ideas or messaging or meaning,” usually “com[ing] from a place of satire or critique.” Even then, not every expression or critique is about gender.<sup>100</sup>

108. Further, Prof. Sasso noted that bars and similar venues (and online) are the most common places to find drag as a form of satire or commentary. At drag storytime in a library, one would not observe social or political critique, though one would encounter explicit and implicit messages of inclusion and belonging. “How do we demonstrate respect? How do we demonstrate inclusion?” While such messaging might be considered “political,” it is not on the same level as the political satire and critique of gender that might be manifested in drag performances elsewhere.<sup>101</sup>

### *Drag and 2SLGBTQIA+ Communities*

109. Not all who perform drag and not all who attend drag performances identify as members of 2SLGBTQIA+ communities. Nonetheless, there is a very high correlation between drag and 2SLGBTQIA+ identity.

110. According to Prof. Sasso, “It’s not a prerequisite that someone who does drag is queer.” Nonetheless, more than 90 per cent of individuals who perform drag “identify within the queer community.”<sup>102</sup>

111. Mz Molly explained why this is the case:

[B]ecause 2SLGBTQIA people have a gender expression journey or a sexual identity journey that they may struggle or not to come to terms with ... it makes sense that an art form that has gender expression and gender bending in it would be so instantly adopted by the 2SLGBTQIA community. That doesn't mean that straight people or cis people don't have something to do with the drag community and it definitely doesn't mean that the drag is for the gays.

[follow-up question omitted]

... doing drag doesn't mean that you are gay, or that you're pushing a gay agenda. It just happens to be the art form that you choose to do. But it makes sense that the vast majority of drag performers are either people on the 2SLGBTQIA spectrum or at the very least, not the kind of person who's hateful about people dressing in costume.<sup>103</sup>

---

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> Sasso, note 13.

<sup>103</sup> Mz Molly, note 60.

112. Dr. Crookston has testified to the same effect:

Drag is also a central aspect of LGBTQ2+ or “queer” cultural expression and has historically been connected to the development, cultivation, and survival of queer subcultures since the late 19th century.<sup>104</sup>

...

For more than a hundred years, drag has been a cornerstone of queer culture. It has served as a site of resistance and survival for queer communities. It was instrumental in fostering a sense of identity and representation in the days when queerness was classified as a crime and a mental illness. Today drag shows remain a vital celebration of queer culture, connecting queer folks to their history while adapting to changes in politics and popular culture.

Drag has, over the past hundred years, become not only a symbol of queer culture but of queer resistance and activism. For many, drag represents a refusal to hide, a bold visibility of the very aspects of queer culture that have been the most stigmatized and policed.<sup>105</sup>

### *Vulnerability of Drag Performers*

113. According to Prof. Sasso, individuals who engage in drag experience great vulnerability.

114. He shared the results of yet-unpublished research based the experiences of 141 drag performers aged 17 to 48.<sup>106</sup> 30 per cent of the group have experienced physical violence at least once while engaging in drag. 56 per cent have experienced threats of violence while working in drag, 80 per cent have been targeted with unpleasant teasing, and 81 per cent have experienced unwanted sexual attention.<sup>107</sup>

115. The rates of harassment and assault of drag performers are “much higher” than the rates experienced by other professions. Statistically, they are at higher risk of violence and harm.<sup>108</sup>

116. According to Prof. Mason’s affidavit, hosts of drag events have received threats of violence, including gun and death threats.<sup>109</sup> Anti-LGBTQ+ rhetoric, including online anti-drag messaging, is rising, and it has “a direct connection to the rise in violence against those who identify as, or are perceived to be, LGBTQ+.”<sup>110</sup>

---

<sup>104</sup> Crookston Affidavit, note 48, para. 8.

<sup>105</sup> *Ibid.*, paras. 24-25.

<sup>106</sup> 69 per cent of the study participants were from Canada and the remainder from the United States.

<sup>107</sup> Figures have been rounded to the nearest percentage.

<sup>108</sup> Sasso, note 13.

<sup>109</sup> Mason Affidavit, note 63, para. 39.

<sup>110</sup> *Ibid.*, para. 40.



117. The witnesses shared complementary information. They stated that general anti-drag online messages have “radicalized” some people and led to personally-targeted online abuse. Anti-drag messaging can be harmful to mental health. Many people who engage in drag are already coping with lack of acceptance by families, in workplaces, and among peers. Online attacks target an already vulnerable community. Mental health is just one impact on the drag community. Another impact is the feeling of being unsafe in their own neighbourhoods.<sup>111</sup>

118. The impacts extend beyond those who engage in drag. One witness noted the potential effect on young people who might be on their own journeys to self-acceptance. Shutting down a child’s safe space and messaging that the child’s preferences are deviant can be traumatizing. Rates of suicide, attempted suicide, and suicidal ideation are higher among queer youth than in the general population.<sup>112</sup>

### *Drag Storytime*

119. Because drag lacks a single definition and every performer (or storytime host) is unique, there is no “universal” drag storytime.<sup>113</sup> Nonetheless, based on the witness interviews and the scholarship, it is possible to make general observations.

120. All the witnesses identified entertaining the children and having fun as essential elements of drag storytime.<sup>114</sup> For example, Mz Molly explained that dressing for a children’s performance is not about highlighting sexual identity, but about selecting an outfit that “makes me feel pretty and fun, and I bet the kids would think it’s pretty and fun.” (Storytime attire is not provocative and the hosts are fully clothed.)<sup>115</sup>

121. They all agreed that drag storytime is a “safe space.” Parents know that it is a place to bring their children where there will no societal or gender pressure, where it’s a safe space for questioning one’s sexuality. Storytime is a safe place for *everyone*, but drag is highlighted so that 2SLGBTQIA+ minorities “know right off the bat that we’re a safe space for them. So they have something to look forward to.”<sup>116</sup>

122. At the same time, the presence of the term “drag” or “drag queen” in advertising informs the choices of parents who wish to avoid such events.<sup>117</sup> Caitlin Hartlen pointed out that attendance is voluntary and meant for parents who choose “to expose their kids

---

<sup>111</sup> Interviews.

<sup>112</sup> *Ibid.*

<sup>113</sup> Sasso, note 13.

<sup>114</sup> Interviews.

<sup>115</sup> Mz Molly, note 60.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*



to a more diverse world.”<sup>118</sup> Lady Fantasia summarized, “if you don’t like drag storytime, don’t come.”<sup>119</sup>

123. In addition to entertaining and offering a safe space, drag storytime is a teaching event. Keenan and Mess observe that, “DQSH [drag queen story hour] is pedagogical without being particularly pedantic.”<sup>120</sup>

124. The witnesses agreed that, as mentioned in paragraph 108, the principal messaging of drag storytime relates to respect and inclusion. Messages may be present in the books, and they arise from the medium of drag itself.

125. Caitlen Hartlen said that the books selected must, first of all, be fun. The content typically aligns with a theme of inclusion or diversity: “getting kids to see that there are all kinds of people in this world, and they all deserve the same amount of love.” In the process, the stories might, “introduce them to some concepts they may not have been aware of, like a child having two dads.”<sup>121</sup>

126. Prof. Sasso has no involvement with drag storytime in Dryden, but confirmed that, generally, a theme is inclusion, often with representation of stories and voices that tend to be ignored. Similarly, Prof. Mason’s affidavit stated, “kids experience literacy programming that is focused on self-love, tolerance, and acceptance.”<sup>122</sup>

127. Curtin University scholar Kim Andreassen makes this assessment of drag storytime readings:

DQS [drag queen storytime] opens the door to promoting the LGBTQIA+ rainbow. It allows openness in discussions and learnings beyond the binary. It lets people who have been oppressed and discriminated against to feel seen and heard. It also allows them to enjoy progressive non-heteronormative books being read, whilst reinforcing uniqueness and individuality. The glorious conversation sparked by DQS allows for subtle (or not!) shifts in gender roles and allowing people to stop being limited by perceived masculinity and femininity. In turn, the acceptance and celebration of trans and gender-diverse people is promoted.<sup>123</sup>

128. A message of inclusion also flows from the medium of drag. Children see the differences among people – as previously mentioned (paragraph 105), that people have different shapes, sizes and clothing – and learn “that it’s OK to be different.”<sup>124</sup>

---

<sup>118</sup> Hartlen, note 12.

<sup>119</sup> Lady Fantasia, note 70.

<sup>120</sup> Keenan and Mess, note 26, at 449.

<sup>121</sup> Hartlen, note 12.

<sup>122</sup> Mason Affidavit, note 63, para. 30.

<sup>123</sup> Chen, Cumming-Potvin, Andreassen and McKenzie, note 62, at 11.

<sup>124</sup> Lady Fantasia, note 70.

129. In addition, Prof. Sasso observes that experiencing drag provides affirmation to queer youth who are not old enough to enter the nightclubs and bars to which “queer identities have largely been segmented.” He said that making queer identities,

hidden and ... invisible to children ... creates long standing psychological harm on young queer folks thinking that they're alone, thinking that that there's something wrong with them.<sup>125</sup>

130. Expressed positively, seeing drag performers demonstrates to them that, as expressed by Lady Fantasia, “there are adults who are what you might want to be one day.”<sup>126</sup>

131. The scholarship confirms that drag storytime educates visually as well as through words. Keenan and Mess explain:

Though there are many layers to drag, its most-immediate process of denaturalizing gender and culture happens on the surface, through the potentiality held in aesthetics. ... Within the context of DQSH [drag queen story hour], the visual style of the queen serves as a provocation that invites inquiry into normative fashion and embodiment. Glitter, sequins, wigs, and heels all serve as pedagogical tools, inviting questions like why and how is drag made unusual in this environment? In other words, while verbal communication is a crucial element of DQSH, **even if the queen said nothing, we argue that her mere aesthetic presence would be generative. While simultaneously destabilizing many of the mundane assumptions of gendered embodiment and of classroom life through the style, movement, and gesture, DQSH presents a queer relationship to educational experience.**<sup>127</sup> [emphasis added]

132. Rosa and Felipe found that young children already have some understanding of gender performativity. Drag storytime can awaken in them “new curiosity regarding the construction[s] of identity,”<sup>128</sup> constructions that can be undone and recreated.<sup>129</sup>

133. Contrary to common misconceptions and tropes, drag queen storytime does not advocate and encourage children to act in a particular manner. Ideas are not “shoved down kids’ throats,”<sup>130</sup> children are not told to think about their sexuality,<sup>131</sup> performers are not recruiters for the 2SLGBTQIA+ community,<sup>132</sup> and participants are not lured into

---

<sup>125</sup> Sasso, note 13.

<sup>126</sup> Lady Fantasia, note 70.

<sup>127</sup> Keenan and Mess, note 26, at 450-451.

<sup>128</sup> Rosa and Felipe, note 64, at paras. 51-52.

<sup>129</sup> *Ibid.*, at para. 56.

<sup>130</sup> Hartlen, note 12.

<sup>131</sup> Mz Molly, note 60.

<sup>132</sup> Mason Affidavit, note 63, para. 32.

behaviour.<sup>133</sup> Drag pedagogy, a term used by Keenan and Mess, is about fostering deeper, longer-term understandings:

We propose that DQSH offers a particular kind of queer framework – what we call drag pedagogy – for teaching and learning that extends beyond traditional approaches to LGBT curricular inclusion. **The themes within drag pedagogy**, applicable beyond the context of drag itself, move away from vocabulary lessons and the token inclusion of LGBT heroes to **begin to engage deeper understandings of queer cultures and envision new modes of being together**.<sup>134</sup> [emphasis added]

...

Though DQSH publicly positions its impact in “help[ing] children develop empathy, learn about gender diversity and difference, and tap into their own creativity” (Drag Queen Story Hour, n.d.-a), we argue that its contributions can run deeper than morals and role models. In what follows, we keep with a common drag performance trope in redirecting our readers away from what’s said on the surface and towards the subtle nods and zingers that gesture at what is happening between the lines. **For us, drag pedagogy is less about imitating drag queens’ specific behaviours, and more about embodied inquiry into queer/trans ways of being that reach beyond the present**.<sup>135</sup> [emphasis added]

134. According to Dr. Crookston, drag storytime “normalizes gender and sexual diverse families.” He explained as follows in his affidavit:

The ability to offer representation that normalizes gender and sexual diverse families for children is a critical contribution of Drag Queen Story Hour that addresses an important gap in both queer culture and education more broadly. For decades, education scholars have advocated for programming that addresses homophobia and erasure of queer representation in schools that create debilitating psychological effects for children and youth. [footnote omitted] While LGBTQ2+ education programs have increased in recent decades, advocates have historically been undermined by the recurrent cultural prejudice that queerness is inherently dangerous to children and families. Diverse, accessible, and culturally-inclusive family programming such as Drag Queen Story Hour are key counterpoints that undermine such persistent cultural undercurrents.

...

Drag Queen Story Hour represents an important and long-awaited victory for the promotion of diversity and acceptance for both members and allies of queer culture. Through its connection to drag, it represents generations

---

<sup>133</sup> Lady Fantasia, note 70.

<sup>134</sup> Keenan and Mess, note 26, at 443.

<sup>135</sup> *Ibid.*, at 448.

of work to dispel dangerous prejudices about queer communities and their relationship to children and their own families.<sup>136</sup>

135. Keenan and Mess observe that drag storytime “is ‘family friendly,’ in the sense that it is accessible and inviting to families with children, but it is less a sanitizing force than it is a preparatory introduction to alternate modes of kinship.”<sup>137</sup>

### *Opposition to Drag Storytime*

136. The witnesses were invited to comment on public criticism of drag storytime. In response, they offered three observations.

137. First, as explained above (see paragraphs 37, 104, 105, and 133), the content of drag storytime is age-appropriate and not sexualized, and it is simply false to claim that storytime hosts are luring or recruiting, or advocating particular behaviour.

138. Second, in the current climate, irresponsible criticism can fuel hatred and create an unsafe environment for people who engage in drag and other members of the 2SLGBTQIA+ community. Free speech is different than hate speech. The incitement of hatred and violence is harmful and dangerous.

139. Third, the witnesses all view opposition to drag storytime to be nothing but thinly-disguised hostility to the 2SLGBTQIA+ community. As they explained, claims about age-inappropriate and sexualized content are false, and the critics (presumably) don’t oppose libraries or reading. It follows that critics’ hostility is aimed at the drag hosts who read the stories and at the stories’ messages of inclusion – in short, hostility toward the 2SLGBTQIA+ community – in other words, homophobia and transphobia.

140. Mz Molly explained:

It becomes immediately apparent that the aspect they don’t like is the link to the gay community, is the idea that kids are being exposed to the normalization of a queer experience or the normalization of a different gender expression, or the normalization of a different way of thinking, acting, whatever.

...

As soon as you get down to it, it’s because it’s queer leaning. ... it’s the only aspect of the thing that they pretend that they hate that has anything to do with what they hate.<sup>138</sup>

---

<sup>136</sup> Crookston Affidavit, note 48, paras. 51, 53.

<sup>137</sup> Keenan and Mess, note 26, at 455.

<sup>138</sup> Mz Molly, note 60.

## FINDINGS OF FACT

141. Findings of fact are made based on the standard of the balance of probabilities.

142. I find that the Respondent did not associate the Facebook post with his office as a Council Member.

143. I find that the tone of the June 3 post was moderate and its language was respectful.

144. I find that the June 3 post was not directed at any individual and did not expressly identify a particular group. However, based on the evidence, I find that comments about drag storytime were, effectively, comments about members of the 2SLGBTQIA+ community. I find that a reasonable person would have perceived the comments that way.

145. The evidence is clear that members of the members of the 2SLGBTQIA+ community generally and drag performers particularly are more vulnerable to hatred, abuse and harm than the population at large.

146. I agree that Councillor Noel encouraged engagement by people on both sides of the issue. He wrote, "if you support this practice or if you wish it to be reviewed, please make your feelings known." His invitation to participate was not one-sided.

147. On the other hand, I find that the Respondent was not neutral on the Drag Storytime event. He wrote, "this is against my better judgment ... I'm offended by this practice." He clearly expressed his position. He was opposed.

148. His lawyer argues that Councillor Noel was writing only about use of the Library for the event, and was not opposed to drag storytime in general. I accept that the Facebook post was about use of the Library and I find that this was its meaning. As to whether Councillor Noel opposes drag storytime in general, I have no ability to determine what he was thinking; in any event, his thoughts are not relevant to the inquiry. A Code of Conduct inquiry must be based on conduct (what someone did or did not do) as opposed to an individual's thoughts.

149. I find that the post was taken down after only a few days.

150. While I accept that hateful online messaging can and does exist, including in Dryden, in this particular case I have seen no evidence that the Respondent's specific Facebook post triggered hateful online commentary by others.

151. The following books were read during the June 23 Drag Storytime:

J.J. Austrian, *Worm Loves Worm*. Two worms get married.

Grace Byers, *I Am Enough*. About self-confidence, respect for others and kindness.

Juno Dawson, *You Need to Chill!* The principal character explains that her brother Bill has become her sister Lily.

Susin Nielsen, *Princess Puffybottom ... and Darryl*. A pampered cat must live with a new puppy.

152. I find that, at the time of his June 3 Facebook post, Councillor Noel could not have known these books were going to be read.

## PRELIMINARY ISSUES

153. The Respondent argued that both Complainants were required to attempt informal resolution before submitting formal Complaints. I agree that the wording of the Code of Conduct is confusing, but I find that the Complainants did not need to proceed informally before filing their complaint forms.

154. Section 13.3.1 of the Code states as follows:

Informal Complaints – Any individual who has identified or witnessed behavior or activity by a Member that appears to be in contravention of the Code of Conduct **is encouraged** to address his or her concerns in the following manner:

- (a) Advise the Member that their behavior or activity contravenes the Code of Conduct;
- (b) Encourage the Member to stop the prohibited behavior or activity;
- (c) If applicable, confirm to the Member his or her satisfaction or dissatisfaction with the Member's response to the concern identified;
- (d) **If not satisfied with the response received through the informal process, an individual may proceed with a formal complaint** through the Integrity Commissioner as outlined in section 13.3.
- (e) Any individual filing a complaint should keep a written record of the incidents including date, times, locations, other person(s) present, and any other relevant information, including steps taken to resolve matter.

[emphasis added]

155. Above, I have bolded the text that may give rise to confusion. On the one hand, paragraph (d) suggests that a formal complaint may be filed if the individual is not satisfied with the informal response. On the other hand, the opening words of section 13.3.1 indicate that the informal process is merely "encouraged," not mandatory.



156. Section 13.3.1 is preceded by section 13.3, which commences: "Complaints or inquiries concerning the ethical conduct of any Council Member shall be made in writing and in the prescribed form, to the Integrity Commissioner." The informal process is not mentioned until later.

157. I agree with the Respondent's submission that the informal process would, "save significant public expense when such complaints can earlier be resolved." Nonetheless, the better and correct interpretation of the Code is that informal complaints are "encouraged," but they are not required. An individual may bypass the informal process and start with a formal complaint.

158. The Respondent's lawyer also argues that an Integrity Commissioner possesses the authority to make a cost award, stating that, "Costs are appropriate to discourage political and/or spurious or vexatious complaints."

159. Part V.1 of the *Municipal Act* does not confer on an Integrity Commissioner the authority to make costs awards against respondents or complainants. An Integrity Commissioner is permitted by subsection 223.4(2) of the Act to elect to exercise powers under sections 33 and 34 of the *Public Inquiries Act* but in this case I did not elect to exercise *Public Inquiries Act* powers and, in any event, sections 33 and 34 of that Act do not create authority to award costs.

160. An Integrity Commissioner may in a report to City Council make recommendations to Council that Council might or might not accept. In this particular case, I see no reason to recommend to Council that it pay, or consider paying, Councillor Noel's legal costs.

## ISSUES AND ANALYSIS

161. I have considered the following issues:

- A. Did Councillor Noel make online comments about Drag Storytime at Dryden Public Library that were discriminatory in regard to one or more individuals based on sexual orientation, contrary to section 7.2.3 of the Code?
- B. Did Councillor Noel breach section 12.2 of the Code by attempting to use the influence of office for a purpose other than the lawful exercise of official duties and City purposes, namely the purpose of affecting a decision of Dryden Public Library concerning Drag Storytime?

162. Before addressing each issue, it is appropriate to consider the implications of two cases: the *Rainbow Alliance Dryden v. Webster* case currently before the Superior Court of Justice, and the report of Pickering's Integrity Commissioner in *Re Robinson*. It is also appropriate to consider the Respondent's argument about the *Charter of Rights*.

## *The Webster Case*

163. *Rainbow Alliance Dryden v. Webster* is a defamation case that has yet to be decided on its merits. Rainbow Alliance Dryden and an individual plaintiff are suing Brian Webster for defamation as result of comments allegedly made on Facebook about certain September 2022 drag events, including an earlier instance of Drag Storytime at the Library.

164. The decision cited by Councillor Noel's lawyer is not a final judgment. It is effectively an interim decision. Mr. Webster moved to have the lawsuit dismissed, and the Court decided that the lawsuit would proceed.

165. On the one hand, the decision on Mr. Webster's motion must be approached cautiously. It is not a final decision and – such is the nature of decisions on preliminary motions – the Court made assumptions about whether certain facts might or might not be proved at trial. Further, the issue in the *Webster* motion was the application of section 137.1 of the *Courts of Justice Act* – a different issue than whether an inquiry under section 223.4 of the *Municipal Act* should find that the Councillor contravened the Council Code of Conduct.

166. On the other hand, the cases bear some resemblance, as the *Webster* case involves a Facebook post critical of an earlier version of the same event at the Library. Even then, there are differences. Mr. Webster based his post on a CBC news story, while Councillor Noel's post consisted entirely of his own words. Mr. Webster allegedly used the word “groomers” in connection with drag storytime organizers; Councillor Noel used no such word and did not mention grooming, luring, predation, or anything similar.

167. Councillor Noel's lawyer relies on one paragraph of the decision on Mr. Webster's motion. It reads as follows:

Had Webster merely pointed to the CBC article and questioned whether the taxpayer funded CBC should be promoting drag storytime events, or expressed his opinion that it should not, I would be inclined to find that this constituted public interest expression. Similarly, if the post merely questioned the propriety of drag storytime for children, or expressed his opinion that drag storytime is not appropriate for children, I may have been inclined to find that the matter was social commentary and public interest speech. However, the Defendant's comments went well beyond that, perpetuating hurtful myths and stereotypes about vulnerable members in our society. Webster's argument that he was accusing the CBC of grooming has no merit based on a plain reading of the post. I agree with the Plaintiffs that the post does not represent speech that s. 137.1 intended to protect.<sup>139</sup>

---

<sup>139</sup> 2023 ONSC 7050 (CanLII), at para. 48.

168. I accept the argument of Councillor Noel's lawyer that Councillor Noel's Facebook post appears to fall within the hypothetical scenario described by the judge. Councillor Noel merely expressed an opinion on whether the Library should accommodate drag storytime. He did not accuse anyone of grooming. He did not expressly advance hurtful myths and stereotypes about vulnerable members of society.

169. The parallel does not end the matter. First, a judge's comments about what might have been decided under different facts are not operative parts of the decision. Second, if Councillor Noel were to fall within Justice Nieckarz's hypothetical, then that would be most relevant only if – again, hypothetically – he were sued for defamation over his post and moved to dismiss the lawsuit on the basis that he was being sued for “expression made by [him] that relates to a matter of public interest.”<sup>140</sup>

170. Otherwise, a finding that Councillor Noel's Facebook comments were expression related to a matter of public interest as described in the *Courts of Justice Act* is not determinative of the Code of Conduct allegations. The finding is worthy of consideration, but not dispositive.

### *The Pickering Case*

171. *Re Robinson* is a 2023 report of the City of Pickering Integrity Commissioner in a case related to library drag storytime.<sup>141</sup> While some facts of that case are similar to what occurred here, I do not view the Pickering report as a useful, helpful resource. The Pickering report makes superficial assertions about the nature of drag storytime that are unsourced and, on certain points, inconsistent with the academic literature. No effort was made to examine the origin and nature of drag and its place in queer culture or, if that effort was made, then the report does not show that it was considered.

172. The Pickering report assumes one type of drag and one type of drag storytime, assumptions the evidence in this case and the scholarship clearly refute. It suggests (para. 66) that drag storytime is “qualitatively not any different from other entertainers who dress up for the entertainment of children – clowns, fairy princesses and animation characters in costume” – a shallow assertion deficient in multiple ways. From a human rights perspective, there is a material distinction. Clowning and cartoons aren't proxies for prohibited grounds of discrimination; drag is. There is also an educational distinction, rooted in drag pedagogy. There are social, political and cultural differences, too, between drag and dressing up.

173. The Pickering report (para. 67) conflates movies such as *Mrs. Doubtfire* and *Tootsie* with drag. As Dr. Crookston has written, entertainment by heterosexuals who

---

<sup>140</sup> *Courts of Justice Act*, subs. 137.1(3).

<sup>141</sup> Note 4.

impersonate gender as a “novelty” are not at all the same as queer performances that “express something deeply personal about the performers’ and audiences’ gender identities, sexualities, or both.”<sup>142</sup>

### *The Charter of Rights*

174. Councillor Noel's lawyer also relies on the *Canadian Charter of Rights and Freedoms*.

175. Relevant provisions of the *Charter* include the following:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

...

b. freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

...

24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

...

52.(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

176. Municipal by-laws and resolutions are subject to the *Charter*.<sup>143</sup> Every decision of a municipality is made by resolution or by-law.<sup>144</sup> Consequently, Dryden's Council Code of Conduct is subject to the *Charter*.

177. The Code of Conduct should be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms*, including the right of freedom of expression: *Re VanLeeuwen*, 2021 ONMIC 13 (CanLII), at para. 179. We must assume that the Code is not intended to violate the *Charter*: *Newman v. Brown*, 2021 ONMIC 11 (CanLII), at

<sup>142</sup> Crookston Affidavit, note 48, para. 16.

<sup>143</sup> *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at para. 50.

<sup>144</sup> *Municipal Act*, subs. 5(3).

para. 68. (*Buck v. Morris*, 2015 ONSC 5632 (CanLII), which is occasionally cited on this point, is not a *Charter of Rights* case and contains no *Charter* analysis.<sup>145</sup>)

178. Occasionally someone will point to the fact that *Charter* rights are subject to reasonable limits. This is an incomplete and inadequate observation. *Charter* rights are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Once a *prima facie* breach of a *Charter* right is found, the onus shifts to the law maker to justify the limit according to criteria established by the Supreme Court of Canada. The legislative purpose must be pressing and substantial. The limit on the right or freedom must be rationally connected to the law's purpose, it must minimally impair the right or freedom, and there must be proportionality between the deleterious and salutary effects of the law.<sup>146</sup> A permissible restriction on *Charter* rights requires something more meaningful and substantial than the cursory claim that a limit is reasonable.

179. An Integrity Commissioner cannot strike down a Code of Conduct provision on *Charter* grounds, but an Integrity Commissioner can and should interpret the Code in a manner consistent with the *Charter*.

180. I also note that an Integrity Commissioner should be reluctant to interfere in how a politician chooses to communicate political ideas: *Linton v. Kitras*, 2020 ONMIC 1 (CanLII), at paras. 76-81; *Re Murphy (No. 1)*, 2017 ONMIC 20 (CanLII), at para. 31.

181. Finally, my role as Integrity Commissioner is to interpret and apply the Code of Conduct. My role is not to tell Council Members how to exercise their political judgment, or to opine on what I would have posted on social media, were I in their shoes. As I reported to another municipal council:

I might or might not have used different words to express the same sentiments, and I might or might not have held those sentiments in the first place, but what I would have done is irrelevant. I am not the Mayor of Orangeville and it is not my role to tell the Mayor how to improve the wording of his communications to the community. My role is to report on whether the Code of Conduct was contravened. It was not.<sup>147</sup>

### **A. DID COUNCILLOR NOEL MAKE DISCRIMINATORY COMMENTS?**

182. The Respondent's lawyer has correctly noted that the wording of the Council Code of Conduct is narrower than the wording of the *Human Rights Code*. The *Human Rights*

---

<sup>145</sup> According to the Court, at para. 28: "It is worth pausing at this point to note that this is a defamation action. This is not an action in which anyone's freedom of expression under the *Charter of Rights and Freedoms* is on trial."

<sup>146</sup> *R. v. Oakes*, [1986] 1 S.C.R. 103, at 138-139; *R. v. K.R.J.*, [2016] 1 S.C.R. 906 at 938, para. 58.

<sup>147</sup> *Montforts v. Brown*, 2021 ONMIC 10 (CanLII), at para. 154.



*Code* covers discrimination on the basis of sex, sexual orientation, gender identity and gender expression. The Council Code of Conduct, section 7.2.3, only covers discriminatory communication based on gender and sexual orientation.<sup>148</sup>

183. The Respondent argues that comments about drag are not covered by the narrow language of the Code of Conduct. I disagree. I have extensively explored the association between drag and the 2SLGBTQIA+ community: see paragraphs 32-34 and 110-112. Based on this evidence and research, I have found (see paragraph 144) that comments about drag storytime were, effectively, comments about members of the 2SLGBTQIA+ community. Consequently, any discriminatory comments about drag performance would, in my view, be comments in regard to sexual orientation and be covered by section 7.2.3 of the Code of Conduct.

184. The Respondent also argues that a comment is not discriminatory unless it has an adverse effect, such as by depriving someone of equal treatment or equal access to services, or it advocates for an adverse effect. With great respect, I feel that this argument confuses discrimination with discriminatory speech. Section 7.2.3 of the Code of Conduct deals only with the latter. It states, in part, "Council Members shall not speak or otherwise communicate in a manner that is discriminatory to any individual ..."

185. In my view the meaning of the section is clear. Communicating in a discriminatory manner includes, in addition to hate speech, insults, slurs and disparagement based on prohibited grounds of discrimination. Speech that contravenes section 7.2.3 need not advocate, or result in, a particular outcome, such as that 2SLGBTQIA+ individuals be prohibiting from using the Library. Slurs against members of the 2SLGBTQIA+ community would breach section 7.2.3.

186. While I disagree with the Respondent on these points, there are other factors that weigh in Councillor Noel's favour.

187. First, he was commenting in a personal capacity in a matter not related to his role as a Council member and, significantly, the Facebook post did not have City-related implications. (I appreciate that the Library Board is a municipal entity. I consider that issue under the next heading.)

188. The following sections of the Code of Conduct are relevant:

3.1 **City** means the Corporation of the City of Dryden.

...

6.1 This Code of Conduct applies to the Mayor and Council Members in the execution of their City-related duties.

---

<sup>148</sup> I have omitted "same-sex partnership status," which is mentioned in section 7.2.3 but is not relevant to this case.

189. In posting on Facebook, the Respondent was not executing a City-related duty, and the post did not have an effect on the City. I note that “City” is defined to mean the municipal corporation as a legal entity, as opposed to the community of city residents. “City-related” must be interpreted in the same, restricted manner. (My comments are not meant to apply to a communication, considered by the originator to be personal, that *does* have City-related implications. Section 4.3.1(a) of the Code of Conduct indicates that personal activity *can* contravene the Code if it affects City-related duties.)

190. Second, Councillor Noel did not make any allegations against drag performers or members of the 2SLGBTQIA+ community. The post did not actively incite hatred or repeat inflammatory tropes. The post invited discussion and indicated an openness to alternative opinion. Even accepting, as I have done, that speech discriminatory against drag would be speech discriminatory against 2SLGBTQIA+ individuals, I do not find that his post constituted a discriminatory communication as intended by section 7.2.3.

191. Third, his tone and language were moderate and respectful. I do not find that moderate, respectful opposition to drag storytime was a discriminatory communication.

192. Fourth, while the comments in paragraph 48 of the *Webster* decision are not directly applicable, they indicate that the manner in which Councillor Noel framed his post was consistent with commentary on a matter of public interest. This is further reason to find that he did not contravene section 7.2.3.

193. Fifth, it is necessary to interpret the Code of Conduct, including section 7.2.3, in a manner consistent with the *Charter of Rights*, including the right of freedom of expression.

194. The fourth and fifth factors may be considered in the context of the political aspect of drag. Drag storytime delivers a message of inclusion and guarantees a safe space, but it is clear from the scholarship that drag and drag pedagogy have a political dimension that comments on gender and culture. (The scholarship confirms that drag can have this effect independent of an artist’s intention and that even the non-verbal elements of drag can be political.) It is not the business of an Integrity Commissioner to comment on drag’s political dimension – and this report should not be interpreted as any sort of a statement concerning it – except to note that the Code of Conduct does not require Councillor Noel to subscribe to the political underpinnings of drag, and he is free to express another opinion. This assessment is consistent with paragraph 2(b) of the *Charter* and is influenced by Justice Nieckarz’s comments in paragraph 48 of the *Webster* case.

195. Sixth, I have taken into account that Councillor Noel removed the post after a few days.

196. I conclude that the Facebook post did not contravene section 7.2.3 of the Council Code of Conduct.

197. I have considered the evidence concerning the vulnerability of drag performers and the 2SLGBTQIA+ community generally, and the evidence about the existence of online hatred. Unlike the *Webster* case,<sup>149</sup> there was, here, no evidence of specific impacts flowing from Councillor Noel's Facebook post. The findings in this report are specific to the June 3 post. Council Members must be aware of the risks associated with commentary that pertains to vulnerable people and/or commentary that fuels hatred by others.<sup>150</sup> Harm to an individual or group may contravene the Council Code of Conduct. Further, a comment that the communicator considers personal might, depending on its nature and impact, be "City-related" and subject the Code of Conduct. For this reason, Council Members should exercise caution in their use of social media and in the making of public comments, especially when vulnerable people are involved or there is high potential for harm.

### **B. DID COUNCILLOR NOEL MISUSE THE INFLUENCE OF OFFICE?**

198. Under the *Public Libraries Act*, public libraries are established by municipal councils and library board members are appointed by municipal councils.<sup>151</sup> Consequently, the Library is a City institution. The Library Board is what the *Municipal Act* calls a "local board" of the City.

199. According to section 12.2 of the Code of Conduct: "No Council Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for City purposes."

200. Because of the relationship between municipal councils and their libraries and library boards, it is impossible to avoid the influence of office. Any Council Member who communicates with the Library or with the Library Board possesses influence of office and must comply with section 12.2.

201. It does not matter that a Council Member might want to engage with the Library Board on a personal initiative. As one of the members of the City Council that appoints the Library Board, a Councillor possesses influence of office that cannot be escaped.

---

<sup>149</sup> See *Webster* case, note 41, paras. 18-19.

<sup>150</sup> I am mindful of the comment in *Greatrix v. Williams*, 2018 ONMIC 6 (CanLII), at para. 187, that "Some members of the public did make harsh, unfair and/or inappropriate comments [in response to the Respondent's social media post], but I do not find that the Respondent was responsible for those comments. The Respondent is responsible only for his own conduct. It is the nature of public discussion that some members of the public (usually, and in this specific case, a small number) may make extremely improper or offensive contributions to the debate. It is not reasonable to blame elected representatives for the comments of member[s] of the public." While these observations are true as a general matter, Integrity Commissioner inquiries are fact-specific. There might be cases where the facts lead to conclusions that councillors are responsible for the results of incitement.

<sup>151</sup> R.S.O. 1990, c. P.44, ss. 3, 4, 9.

Because the influence is inescapable, a Council Member cannot communicate with the Library Board without using influence. Each communication involves the use of influence.

202. For this reason, section 12.2 prevents a Council Member from raising a personal initiative directly with the Library Board. A personal initiative is not a lawful exercise of official duties and it is not a City purpose. As the initiative cannot be communicated to the Library Board without using the influence of office, such personal initiative should not be communicated at all.

203. This does not mean that a Council Member lacks ability to influence the Library and Library Board *in an official capacity*. Every Council Member participates in Council's collective oversight. A Council Member who wishes to advance issues related to the Library must act in the course of official duties and use the formal processes of Council and committee meetings: for example, notices of motion, and questions, comments and voting on staff reports and committee reports. (In addition, one Councillor is a member of the Library Board.)

204. I now apply this analysis to the comments of Councillor Noel concerning Drag Storytime at the Library.

205. First, I note that Councillor Noel did not end up writing to the Library Board. This is fortunate. For the reasons outlined above, he should not have written.

206. Second, members of the public do not possess the influence of office, so encouraging them to communicate directly to the Library Board did not contravene section 12.2. (This assumes that the Respondent's encouragement of the public was not a use of his office to influence the public. In this case, I find that it was not.)

207. Third, if Councillor Noel wishes to address an issue related to the Library, then he should use an official Council/committee process as described in paragraph 203.

208. For these reasons, I find that the Respondent did not breach section 12.2 of the Council Code of Conduct.

209. I would be remiss if I did not comment on Councillor Noel's objection to the use of the Library space, in the context of my finding under section 7.2.3. One reason for finding in Councillor Noel's favour on the previous issue is that – separate and apart from the human rights considerations, which I have also addressed – he cannot be compelled to accept the political elements of drag and is free to express a contrary political opinion. However, the same applies to people on the other side of the issue. They are entitled to express their views and (subject to compliance with applicable Library policies) are entitled to book space in a public facility for that purpose. As Councillor Noel exercises the right of freedom of political expression, he should be mindful that those with alternate

political views have the same right and cannot be denied access to public facilities on the basis of those political views.

## CONCLUSION AND RECOMMENDATION

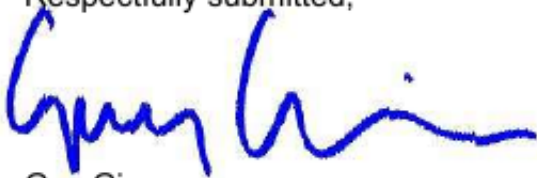
210. While I have found no contravention of the Code, this is not an endorsement of the post. City Councillors individually are free to disagree or agree with the post, and to communicate their views according to their judgement. City Council collectively may wish to take steps arising from the circumstances that underlie this report.

211. It has been approximately two years since I last conducted training on the Council Code of Conduct. I recommend refresher training for Council Members. The inquiry has led me to conclude that there might be benefit in discussing both the use of social media and the section 12.2 prohibition of using the influence of office as it applies to attempted influence of municipal institutions.

## CONTENT

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

Respectfully submitted,



Guy Giorno  
Integrity Commissioner  
City of Dryden

January 6, 2025

## APPENDIX



**Ritchie Noel**



1h · 🌐

The following is my personal observations and view and not any other:

I see a group is attending the Dryden Library on June 23rd to read to children. Its titled "Drag Story time" and I expect it will be people dressed in drag reading to children. I ponder..... why not approach each school and ask to attend on school property and read there? Why not approach Princess Court or Patricia Gardens and read to the residents there? Certainly they would love to be read to? To what purpose is it to read to school age children exclusively, I wonder? I bet none of these other places I mention were approached as parents would be up in arms about it. I attended the library today to ask how this is being endorsed and was told that my objection would be noted and that I was welcome to write a letter to the Board, which I most certainly am doing. My research included reading the DEI policy of the library that notes:

"Libraries understand that an acceptance of differences can place individual and collective values in conflict. Libraries are committed to tolerance and understanding. Libraries act to ensure that people can enjoy services free from any attempt by others to impose values, customs or beliefs."



So how is this act not imposing values customs or beliefs any more or less inclusive or equitable than my custom or belief that this is against my better judgement? I am already being targeted as homophobic and transphobic and that's fine, I'm no stranger to controversy and I have big shoulders. I am neither. However, I am weary of being afraid to voice what I believe, to be the thoughts of many others. I am tired of worrying if anyone is going to be offended or hurt. I'm offended by this practice. We are all born with inherent tendencies that develop and change over time....It's called growth and maturity. Let it happen for heaven's sake. For those who wish, address your concerns to the Dryden Library about this practice and further to the Board. There is a link to email the Library Board directly from the city website at <https://www.dryden.ca/en/explore/library.aspx> .

If you support this practice or if you wish it to be reviewed, please make your feelings known. I would be interested to know how many support this and how many object to people in drag reading to children at our public library. Maybe I am wrong and in the minority here? It just seems that the "give an inch take a mile" scenario has far been surpassed at this time. Thanks for the read and hang on for the fallout....