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Integrity Commissioner Office
for the City of Markham

BEN DRORY, J.D., M.B.A., O.Med., O.Arb
[REDACTED]

July 29, 2015

SENT BY COURIER AND EMAIL TO: (KKittingham@markham.ca)

Ms. Kimberley Kitteringham, City Clerk
City of Markham
Anthony Roman Centre
101 Town Centre Boulevard
Markham, ON L3R 9W3

**Re: Complaint Reference Number MIC-002-0115
Mr. Howard Shore**

Dear Ms. Kitteringham:

This is my report respecting a complaint brought by Councillor Valerie Burke (the "Complainant") against Mr. Howard Shore under the *Council Code of Conduct* (the "Code"), arising out of an incident in the early hours of November 29, 2014. Mr. Shore was an outgoing Councillor at the time of the incident, and as such is subject to the jurisdiction of the Office of the Integrity Commissioner. Mr. Shore's term in office ended on November 30, 2014.

Original Written Submissions

By affidavit sworn at the City of Markham dated January 14, 2015, Mrs. Burke alleged that Mr. Shore violated the Harassment provision of the Code. She stated as follows:

On Monday, December 1, 2014 I drove my car to my parking spot at the Markham Civic Centre at approximately 4:45 pm. It was the evening of the inaugural Council. Upon entering my parking spot I was startled and deeply disturbed by a picture of Frankenstein that I felt was very creepy and threatening. Upon close examination I noticed that the flashing red eyes had been torn off and were stuck on the back of the picture.



I immediately contacted security and senior staff. An investigation found that Councillor Howard Shore put the picture on my name plate at 12:45 am, Saturday, November 29, 2014. This incident has been reported to the police.

Councillor Howard Shore's behavior contravened Section 18.1—Harassment, under the Council Code of Conduct.

Please see attached picture.

The picture is reproduced as Appendix 1 to this Report.

The Code is applicable to Members of Council for the City of Markham. Section 18.1 of the Code reads as follows:

18. Harassment & Discrimination

18.1 Harassment of another Member, Staff or any member of the public is prohibited under the Ontario Human Rights Code. Harassment, whether it occurs inside or outside the workplace, or whether it is related to the work environment or other activities of a Member, is inappropriate behavior for the purposes of this Code of Conduct.

In accordance with s. 4(IV)(a) of the Council Code of Conduct Investigation Protocol, I served Mrs. Burke's complaint and supporting material upon Mr. Shore, with a request that a written response to the allegation be provided by way of affidavit.

Mr. Shore responded as follows, by affidavit dated June 5, 2015:

- 1. I was, until 11:59 p.m. on Sunday, November 30, 2014, a City Councillor for the City of Markham, representing Ward 2 of that City.*
- 2. The office that I occupied up to that time had previously been occupied by Councillor V. Burke, the complainant in this matter.*
- 3. On the evening of November 30, 2014, I had been cleaning out my office.*
- 4. In the course of taking what I believe to have been the last box to my car, a small Halloween mask fell from the box as I was en route to the garage. Not recognizing it as my own, my best guess as to where it had come from was that it might have belonged to Councillor Burke, everything in the box having come from the filing cabinets in my office, which, as indicated, was also her former office.*



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5. *Having lost the election, and with it my job, I was physically and emotionally tired at the time, and rather than take the mask back up to the office, or write a note to go with it, I simply left it above Councillor Burke's nameplate on her parking space in anticipation that its owner, whom I thought to be Councillor Burke, would find it there. There was no malice whatsoever intended.*
6. *In doing this, I intended no offence to Councillor Burke, whether in the context of harassment or lack of decorum. My only intention at the time was simply to attempt to allow her to recover what I thought might be her property.*

In accordance with s. 4(IV)(b) of the Council Code of Conduct Investigation Protocol, I served Mr. Shore's response upon Mrs. Burke with a request for a written reply. I also invited both parties to meet with me, or otherwise personally discuss the matter with me.

Discussions With Parties and Others, and Further Submissions

Mr. Shore

My first opportunity was to discuss the matter with Mr. Shore, by telephone. He suggested that this situation was one of "the pot calling the kettle black." He believed that Councillor Burke's complaint to our Office was entirely politically-motivated, and that Mrs. Burke was making far more out of the situation than it was. He stated that he did not have any malice towards Mrs. Burke, either at the time of the incident or now.

He stated that he knew the mask was not his. He did not know whose it was, but stated that Mrs. Burke occupied his office for about 1.5 years before he did, and he was exhausted at the time. It was late at night and he had just spent the day cleaning out his office following an electoral defeat. (At my prompting, Mr. Shore confirmed for me that the day in question was in fact Friday, November 28—with the incident occurring in the early hours of November 29—and not November 30 as stated in his affidavit.)

Mr. Shore stated that he had a civil relationship with Mrs. Burke around the Council table. They were both Councillors for a four-year period, and worked together in several meetings. By virtue of their roles, they operated in the same circles of influence. He admitted that he and Mrs. Burke had taken different



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positions on things during the election, and he had “called her out” to debate on matters during that time, but at no time did it constitute harassment. He stated that he has not spoken with Councillor Burke since the time of the incident, and didn’t feel it was appropriate to malign somebody else in this way.

Mr. Shore outlined for me why he felt the complaint was politically-motivated. He stated that if the allegations were disclosed publicly, it would damage his reputation, even if the claim was dismissed. Mr. Shore talked at length about a previous series of complaints made by unnamed individuals, which were the subject of a separate investigation by the Office of the Integrity Commissioner earlier in 2015. Those complaints are not the subject of this investigation, and were addressed by our Office at that time. However, Mr. Shore suggested that he was aware of who the unnamed individuals were, and felt they were all “Valerie Burke supporters, with political axes to grind.” He suggested that Mrs. Burke’s supporters have had “a really good time going after Howard Shore,” and now this was a “final shot” being taken by Mrs. Burke herself. Mr. Shore was upset that all of the previous allegations had been publicly disclosed to Council in one report, even though the majority of claims against him were dismissed; he suggested that local media re-printed the allegations with very little reference to what was decided, which was harmful to him reputationally and politically. He also felt this didn’t accord with the worded intention in the Investigation Protocol.

Mrs. Burke

I subsequently received Mrs. Burke’s written Reply to Mr. Shore’s affidavit, on June 18, 2015. Among the notable statements in that Reply were as follows (emphasis as in original):

I find the response from Howard Shore to lack credibility for the following reasons:

Mr. Shore’s affidavit states “There was no malice whatsoever intended”. Mr. Shore has a history of angry behavior towards me and the placement of the mask was in keeping with that history.

*The affidavit alludes to the possibility that the Frankenstein face (mask) might have been mine. For the record, the Frankenstein face (mask) most definitely did **not** belong to me. ... When I moved from the 4th floor office, approximately over 2*



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years ago, I cleaned it extremely well prior to leaving. I was very diligent in making sure that I removed all of my possessions.

To clarify, the Frankenstein face (mask) is not "small". It is an unusual, large, "creepy" object measuring 10" by 7.5" with flashing red eyes which were torn of the front and put on the back. This is hardly an object that would be unnoticed when Councillor Shore was packing up his boxes and was still in the building.

If I had left such a large and unusual object in my former office it would be inconceivable that Mr. Shore would not have noticed it when he moved into his new office. He obviously would have returned it to me at that time if he thought it was mine. It is also inconceivable that such a large and unusual object would not be noticed by me when vacating my previous office.

Mr. Shore states "There was no malice whatsoever intended." And that he "intended no offence to Councillor Burke, whether in the context of harassment or lack of decorum." If this was true, then why would Mr. Shore not communicate in some fashion, an e-mail, text message, or phone call, advising me that he was returning something that he thought might be my property and why he placed it on my nameplate. ... Since I was Mr. Shore's colleague for four years and still a public figure, Mr. Shore cannot deny that he had easy access to my e-mail and phone numbers.

It would be impossible to believe that Mr. Shore would not understand that anybody finding this object so unexpectedly on their parking spot would not have felt it was threatening and creepy. ... [O]ne can only conclude that this was a deliberate act of spite, malice and was a conscious and deliberate act intended to offend, and harass me on the occasion of Council inauguration.

York Region Police and City of Markham Director of Human Resources and Solicitor took the incident very seriously and considered it to be harassment.



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After I reported this incident to police, they went and talked to Mr. Shore about the incident. If Mr. Shore had recounted this same explanation to the police, they would have come back to me with this simple explanation and I would have not taken it any further. The police concluded after talking to Mr. Shore that it was harassment and they informed me that they instructed Mr. Shore to stay away from me personally and from my house. They instructed me to report to them if he violated these terms and stated that he could face criminal harassment charges. If Mr. Shore gave this same explanation to the police why would they be so severe in their instructions?

Unfortunately, this part of the police report has been redacted from my copy. I am not sure how or if the full copy can be obtained by the Integrity Commissioner but I suspect it has a substantially different explanation from the one presented in reply to this complaint. Either that, or the police did not believe the same explanation as provided to you, for the reasons I have stated above.

This Reply was clearly significantly more detailed than the original complaint. Accordingly, although not mandated by the Investigation Protocol, I forwarded this Reply to Mr. Shore, providing him with an opportunity to respond in kind if he wished.

I subsequently had an opportunity to meet with Councillor Burke in person at her office at the Markham Civic Centre. She advised that there had always been a highly-competitive relationship between her and Mr. Shore, as they were the two Councillors from Thornhill. She showed me a map of Markham, and explained that in the previous Council, she and Mr. Shore had been Councillors for Ward 1 and Ward 2, respectively. However, because of population growth, Council had changed the electoral districts for the 2014 election, which functionally had the effect of virtually merging Wards 1 and 2 into one Ward—now simply Ward 1. The 2014 election for Ward 1 was a contest directly pitting Mrs. Burke and Mr. Shore against each other. Councillor Burke described Mr. Shore as “highly competitive, and not a team player”. She suggested he was always trying to one-up her, and prove he was better or smarter than those around him. Councillor Burke won the election.

Mrs. Burke was startled by the Frankenstein mask on Monday, December 1, 2014, which was Inauguration Day following the long and hard-fought election. Mrs. Burke described the importance and pride that Inauguration Day has for all Councillors. When she drove into her parking space, she felt creepy and violated by the Frankenstein mask wedged behind her nameplate, and later angry. She spoke to security, the City Solicitor, and the Director of Human Resources about the incident. Mrs. Burke also showed me the mask in question, and granted me



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the opportunity to take some of my own photos of it, for reference (see Appendix 2).

The police viewed the security video of the garage; Mrs. Burke was not personally allowed to see it, but it was apparently completely obvious that it was Mr. Shore on the video. She stated that the police had warned Mr. Shore to stay away from her, and that if he did it again, there would be criminal harassment charges; the police also advised her to call them anytime if she needed. Mrs. Burke told the police that the incident did not cause her to fear for her life, but if she didn't report it then it would effectively be giving Mr. Shore permission to do this to anybody else, including constituents she was responsible for. She challenged Mr. Shore's alleged state of mind on the night of the incident, since he had five weeks between the election and the end of term (October 27-November 30) to clean out his office. She believed the incident was harassment, and that Mr. Shore is a bully. She also advised me of a sequence of anonymous emails sent to Councillors and the Mayor repeatedly which criticized her and praised Mr. Shore, which she was convinced (based on the writing style and persistence) all originated from Mr. Shore himself. Mrs. Burke stated that she would like to see Council reprimand Mr. Shore as a result of this investigation—although she would abstain from any such vote.

Mr. Shore

I received a written Response from Mr. Shore on June 26, 2015 respecting Mrs. Burke's Reply. He opened by stating that *"I really do not believe that it is a stretch to suggest that the complaint is, in fact, motivated by personal malice arising from the financial interests of Mrs. Burke and her family."* He described his work on a Thornhill Revitalization Working Group in 2013, following which he alleged he had been on the receiving end of "considerable ill will" by Mrs. Burke and her husband. He also alleged of an incident at a coffee shop in June 2014 where attendees at one of his monthly "coffee klatches" felt intimidated by a group of Mrs. Burke's supporters who attended. He reiterated his belief that, despite being victorious in the election, Mrs. Burke and her supporters have had a vendetta against him, which he believed was reflected in the first series of complaints.

With respect to the harassment allegation at issue, Mr. Shore stated as follows (emphasis in original):

"After I reported this incident to the police, they went and talked to Mr. Shore about the incident."



This never happened, and I take great exception to Mrs. Burke, in this context, simply inferring things and presenting them as truth. I most definitely did not receive a visit from the police. To the contrary, roughly three weeks into December, I received a telephone call during the evening. When the individual said he was from York Regional Police and calling about a complaint by Mrs. Burke, I thought it must have been a joke. I was so startled and offended that Mrs. Burke would outrageously contact the police over something this petty that I did not even get the individual's name or a contact number.

"The police concluded after talking to Mr. Shore that it was harassment and they informed me that they instructed Mr. Shore to stay away from me personally and from my house."

*Again, this is simply not what happened. In fact, what the gentleman told me was that 'harassment' is subjective to the individual. He explained that someone could contact the police and complain about anything so long as they felt 'harassed'. He advised that this was a courtesy call and **suggested** to me that it might be a good idea for us to stay away from each other under the circumstances. The subject of Mrs. Burke's house never even came up. There were absolutely no "instructions" given to me and the entire conversation was quite brief. The individual even went so far as to tell me that I could proceed with a harassment complaint against Mrs. Burke if I felt the need but that it would be dealt with separately. The implication Mrs. Burke makes here is offensive and insulting.*

I believe that Mrs. Burke has proceeded with this complaint in a vindictive fashion, to attempt to convert what was at worst an innocent mistaken assumption on my part into an opportunity to abuse the process of the Integrity Commissioner in an effort to smear my name.

Following the discussions with Mr. Shore and Mrs. Burke, I requested to talk with the City Solicitor and the Director of Human Resources, as they were central figures in Mrs. Burke's written reply. I had the authority to speak with these senior officers pursuant to s. 4(V) of the Investigation Protocol, which states:

V. Section 33 of the Public Inquiries Act allows the Integrity Commissioner to speak to anyone relevant to the complaint, access and examine any of the information relevant to the complaint and to enter any City work location relevant to the complaint for the purpose of investigation and settlement. The Integrity Commissioner is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality.

Mrs. Burke also provided me with a copy of the redacted police report.



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City Solicitor and Director of Human Resources

I had an opportunity to speak with the City Solicitor, Ms. Catherine Conrad, and the Director of Human Resources, Ms. Sharon Williams, simultaneously by telephone. Both recalled that Mrs. Burke believed the situation was criminal harassment.

Ms. Williams recalled that Mrs. Burke was clearly distressed in recounting the story, and that she was emotional as she recalled the event.

Ms. Conrad and Ms. Williams viewed the security footage of the November 29 incident. They stated it was very clear that Councillor Shore entered the garage from the lower lobby, veered to the right, disappeared, and then returned into view. He was carrying something in both hands initially, but then had one hand empty upon his return.

They stated I should be aware as background context that it was well-known the Councillors' two seats were being reduced into one seat in the election, so the election was hotly-contested and there was a fair amount of emotion around it.

Police Report

Mrs. Burke provided me with a copy of the redacted police report she obtained respecting the incident, pursuant to a freedom of information request, dated March 3, 2015. The Report stated that "*[s]ome personal information of persons other than yourself, from whom we do not have consent to release their information has been deleted from the attached records.*" The Office of the Integrity Commissioner would not have any greater authority to access un-redacted records.

Among the information that was maintained available, the operational status of the occurrence was listed as "Non-Criminal—No Further Action". The initial officer report of Christopher Korte, dated December 10, 2014, included as follows:

Police were able to view security video from the parking garage in which Howard was identified as the male who appeared to move towards Valerie's car and disappeared out of view from the camera for some time.

The decoration placed on the parking sign was a Frankenstein head with light up red eyes.

Valerie advised Police that she did not have any fear for her safety but was just concerned as she had heard some stories regarding Howard around the office.



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Police called Howard and cautioned him regarding his behavior. Howard was instructed to not have any contact outside of professional situations with Valerie and that if his behavior continues he could be facing Criminal Harassment charges.

A narrative of investigative activity by Investigator Karen Elizabeth Hodge, dated December 17, 2014, included the following:

On December 17, 2014 the investigator received a call from Valerie Burke the complainant in this incident. She was advised that media was seeking information from YRP about this incident. Valerie was unaware of how the media was engaged. Within the body of the original report, Valerie made reference to "hearing stories" about Howard Shore from others at the City. When questioned about these stories, Valerie stated that she has heard that Howard is inappropriate on Facebook. She has also read an article in the Toronto Star about Howard Shore and troubles that he was in while residing in the United States. Valerie was not able to substantiate on any of these stories.

Valerie does not currently fear for her safety, however was advised that if this changes to call police right away.

Valerie was very pleased with the actions taken by YRP.

Analysis

A reference to the office of the Integrity Commissioner invites us to investigate a matter with respect to the entirety of the *Code*, considering both its rule and spirit.

I begin my analysis by focusing on the provision of *Code* specifically complained of. Section 18.1 of the *Code* reads as follows:

18. Harassment & Discrimination

18.1 Harassment of another Member, Staff or any member of the public is prohibited under the Ontario Human Rights Code. Harassment, whether it occurs inside or outside the workplace, or whether it is related to the work environment or other activities of a Member, is inappropriate behavior for the purposes of this Code of Conduct.



The term “Harassment” is further defined in section 1.1 of the Code as follows:

1. Definitions:

1.1 In the Council Code of Conduct (“The Code”):

“Harassment” includes, but is not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted.

Mr. Shore’s actions were borne out of a long-standing political rivalry between himself and Mrs. Burke, which was exacerbated by a merger of their Wards and a subsequent election pitting them against each other. I am not convinced that Mr. Shore’s conduct constituted harassment, as defined in the *Code*.

However, all of the evidence supports that Mr. Shore placed the mask on Mrs. Burke’s nameplate as alleged, and Mr. Shore admitted doing so. While Mr. Shore provided explanations, none of them constituted compelling good-faith reasons for why he did what he did.

Rule 17 of the *Code* states as follows:

17. Conduct of Members

17.1 Members will conduct themselves with appropriate decorum at all times and ensure that their behaviour does not bring the reputation of the City into disrepute.

17.2 Members will be respectful of other Members, Staff and the public and their views and will encourage others to do the same.

Rule 3 (“**Purpose**”) also states that “[t]he Code of Conduct also serves to uphold the principles, goals and values of the City and provide standards for appropriate interaction between Members, Staff, the public and Elected Officials.”

I believe these provisions of the Code speak directly to the type of inter-Member conduct complained of in this case. Whatever the appropriate standard is for interaction between Members, Mr. Shore’s conduct in this case fell below it. Mr. Shore’s actions towards Mrs. Burke were unwelcome, and she was disturbed by those actions. Descriptions I heard of the security footage video strongly suggested that Mr. Shore’s actions could not have been accidental.



Both Mrs. Burke and Mr. Shore expended significant effort in trying to describe the Frankenstein mask, where it originated from, and how a reasonable person would react if faced with it. The mask looked like an ordinary Halloween decoration, but I find that in placing the mask on Mrs. Burke's nameplate, Mr. Shore was not acting within the standards of professionalism the City of Markham expects of its Councillors.

Conclusion and Further Comments

Mr. Shore's actions contravened section 17 of the *Code of Conduct*. He failed to be respectful of another Member, and did not conduct himself with the appropriate decorum.

This Report is being provided to Mrs. Burke and Mr. Shore in accordance with section 5(I) of the Investigation Protocol, and also to Council in accordance with section 5(II) of the Protocol. An earlier draft of this Report was previously sent to Mr. Shore, in accordance with section 4(VI) of the Protocol, providing him with reasonable notice of the basis for my proposed finding and an opportunity to comment on it.

Mr. Shore provided me with a number of comments in response to the earlier draft of this report, in memos dated July 23, 2015 and July 24, 2015. He raised several concerns respecting both this and the earlier investigation. I will note some of the comments pertinent to this case, and my responses to them:

- Mr. Shore suggested the context of the situation was germane, and that he was seconds away from leaving the Civic Centre for the last time as a Councillor—i.e., not a situation where there would be any kind of ongoing relationship between himself and Mrs. Burke.
 - While relevant, Mr. Shore was a Councillor at the time of the incident, and as such is subject to the *Code of Conduct*.
- Mr. Shore attached his own photograph of the mask, taken at the time of the incident, and noted that that it had no red lights.
 - This is consistent with my own observation—although it is not a factor that impacted the recommendations in this report.
- Mr. Shore objected to the fact that this Report includes what he considers disparaging and false remarks made by Mrs. Burke.



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- I have done my best to state accurately the allegations made by Mrs. Burke and the responses made by Mr. Shore. I believe it was necessary for me to set out the allegations in the report.
- Mr. Shore reiterated that there was no malice or mischief contemplated, and that if Mrs. Burke was not being truthful, or was mistaken or forgetful on key points, then my conclusion would be doing him an injustice. Mr. Shore asserted that since no one other than he can know what was in his mind on the relevant night, he ought to be afforded the benefit of any doubt.
 - My investigation focused on the impacts of Mr. Shore's actions, and how a reasonable neutral party might perceive the consequence of those actions. I have not concluded that Mr. Shore's intentions were bad. I have only focused on the consequences of his actions and whether the actions contravened the *Code of Conduct*, when viewed objectively.

In accordance with this Report, section 19.2(a) of the *Code* authorizes Council to impose a reprimand upon Mr. Shore if it deems such appropriate. Section 19.2(b) of the *Code* is not applicable in these circumstances.

Yours very truly,

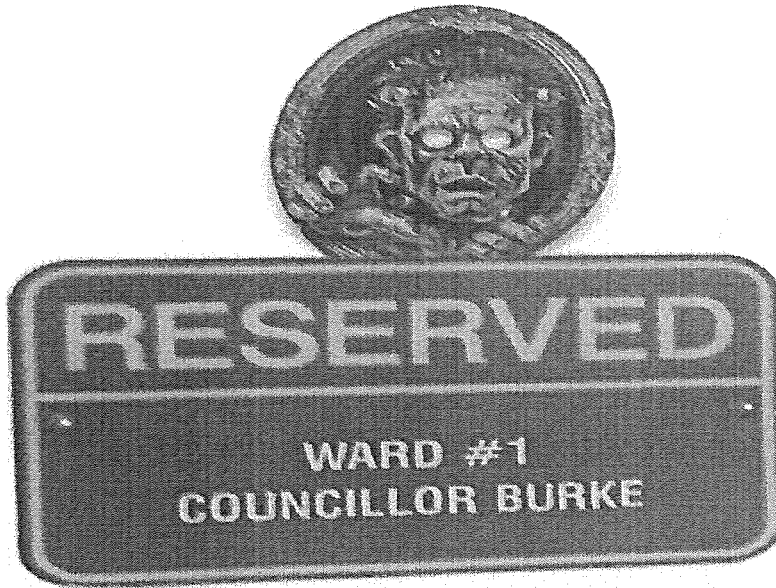
Ben Drory, J.D., M.B.A., Q.Med., Q.Arb.
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Appendix 1—original image submitted by Valerie Burke with her affidavit





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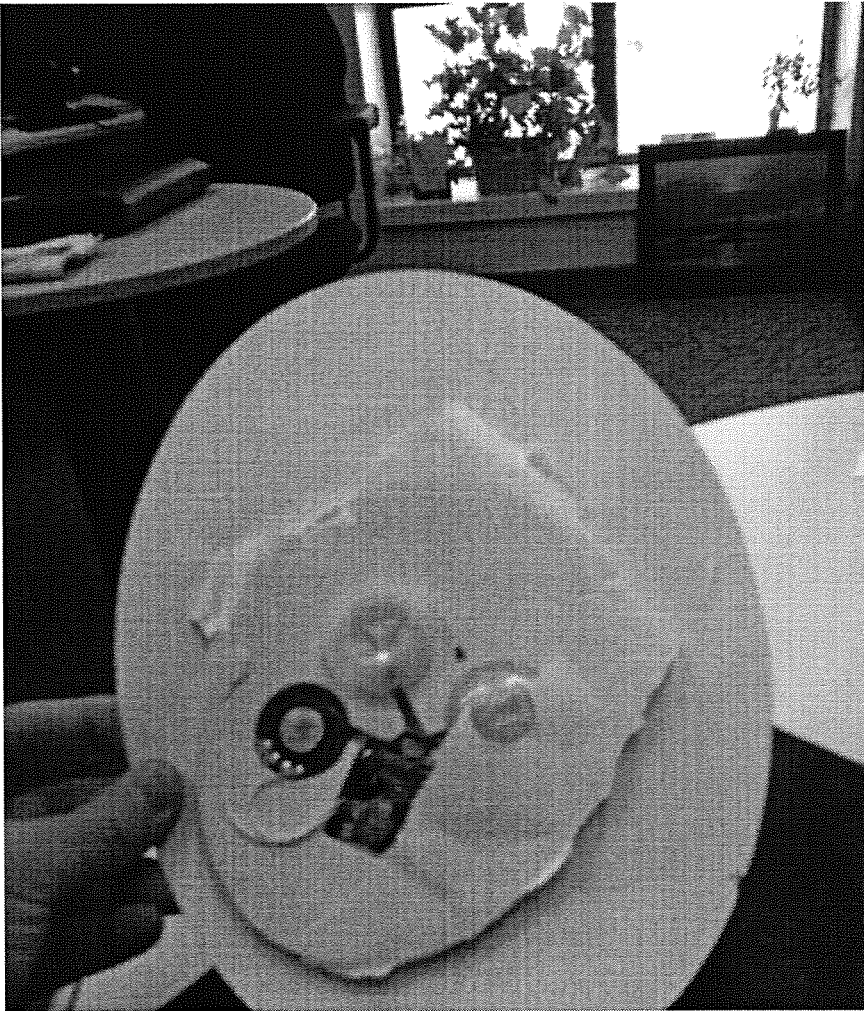
Appendix 2—My pictures of the Frankenstein mask





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