



Confidential

July 10, 2020

BY E-MAIL: CAO@lanarkhighlands.ca

Council Member – Lanark Highlands
c/o Ryan Morton, CAO/Clerk
Corporation of the Township of Lanark Highlands
75 George Street, P.O. Box 340
Lanark, ON K0G 1K0

Attention Ryan Morton, CAO/Clerk

**Re: Complaint Pursuant to the Code of Conduct re Deputy Reeve John Hall
Our File No. 15027-19**

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should be made public. There is no discretion as to whether it will be made public – the *Municipal Act* requires that it be made public – the issue is how.

Should Council desire, the Integrity Commissioner is prepared to attend at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to debate the findings of the report, only the recommendations.

The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an

independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

PRELIMINARY REVIEW

On December 17, 2019, a complaint under the Code of Conduct (the "Complaint") was forwarded to our attention alleging that Deputy Reeve John Hall had breached the Code of Conduct.

The Township's Code of Conduct and the *Municipal Act* provide the Integrity Commissioner with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the preliminary review, our process included:

- Reviewing the Township's complaint protocol;
- Reviewing the relevant provisions of the *Municipal Act*;
- Providing a copy of the request for inquiry and supporting materials to Deputy Reeve Hall, with a request for any written response to be provided within 10 business days;
- Providing a copy of Deputy Reeve's Hall's response to the complainant, with a request for any written response to be provided within 10 business days;
- Providing a copy of the complainant's response to Deputy Reeve Hall with a request for any written response to be provided within 10 business days; and
- Reviewing all submissions and analyzing the merit of the request for an investigation.

During the preliminary review we assume that the facts as set out in the complaint are true. We do this not for purposes of finding a breach, but to test the merit of the complaint. In other words, if the alleged behaviour in fact occurred, would that amount to a breach of the Code of Conduct? If the behaviour would constitute a breach, we undertake a full investigation to determine whether the allegations are true. If the behaviour, even if true, would not constitute a breach there is no reason to undertake a full investigation. It is important to understand that we make no finding of fact during the preliminary review - we simply assume the facts are true as a method to assess the merit of the complaint at this stage.

After conducting the preliminary review, the Integrity Commissioner found that the complaints warranted an investigation. During the investigation, the Integrity Commissioner interviewed witnesses, gathered and examined evidence relevant to the complaints and made findings of fact that are set out below. Due to unexpected circumstances, the preliminary review and investigation process was delayed; this delay was in addition to general delays caused by the global pandemic and slower than normal internal processes at our offices.

SUMMARY OF FINDINGS

The complaint included the following:

1. That Deputy Reeve John Hall allegedly spoke to a member of the public at a Committee of the Whole meeting on December 3, 2019 and agreed that the new municipal logo and branding was a waste of money, contrary to sections 10.1 and 10.3 of the Code of Conduct;
2. That Deputy Reeve John Hall attempted to have a decision of Council reconsidered at a meeting of Council on November 19, 2019. When the motion was defeated Deputy Reeve

Hall allegedly stated, “so much for democracy”, contrary to sections 10.1 and 10.3 of the Code of Conduct;

3. That Deputy Reeve Hall, in a series of emails to staff, breached the Code of Conduct by his behaviour toward staff members, contrary to sections 6.1 and 11.2 of the Code of Conduct;
4. That Deputy Reeve Hall commented negatively to a member of the public about a Council decision to rent Christmas lights for the Village in 2019, contrary to sections 10.1 and 10.3 of the Code of Conduct; and
5. That Deputy Reeve Hall had published in the local paper an email from Reeve Peter McLaren dealing with an allegation of improper behaviour on the part of Deputy Reeve Hall. As part of the publication, Deputy Reeve Hall included his response in a letter to the editor, contrary to sections 10.1, 10.2 and 10.3 of the Code of Conduct.

After undertaking an investigation, the Integrity Commissioner finds that:

1. Deputy Reeve John Hall spoke with a member of the public at the December 3, 2019 Committee of the Whole meeting. At this meeting Deputy Reeve Hall agreed with the resident that the new municipal logo and branding was a waste of money, contrary to Sections 10.1 and 10.3 of the Code of Conduct;
2. Deputy Reeve John Hall attempted to have a decision of Council related to funding Township-owned community centres reconsidered at a meeting of Council on November 19, 2019. When the motion was defeated Deputy Reeve Hall stated, “so much for democracy”, contrary to Sections 10.1 and 10.3 of the Code of Conduct;
3. Deputy Reeve Hall, in a series of emails to staff, breached the Code of Conduct by his behaviour toward staff, contrary to Sections 6.1 and 11.2 of the Code of Conduct;
4. Deputy Reeve Hall commented negatively to a member of the public in an email about a Council decision to rent Christmas lights for the Village in 2019. Deputy Reeve Hall stated, “I think I have now seen/heard everything - if this doesn’t get people upset I don’t know what will”. This email is clearly not in support of the decision. Even though the statement was made to a very limited number of people, it is contrary to Sections 10.1 and 10.3 of the Code of Conduct;
5. Deputy Reeve Hall had published in the local paper an email from Reeve McLaren dealing with an allegation of improper behaviour on the part of Deputy Reeve Hall. The publication was intended by Deputy Reeve Hall to express Deputy Reeve Hall’s displeasure at how the Reeve chose to handle the alleged breach of the Code of Conduct. This behaviour is contrary to Section 6.1 of the Code of Conduct.

ANALYSIS

Allegation 1 – Ensure the Integrity of the Decision-making process

Facts:

Deputy Reeve John Hall spoke to a member of the public at the December 3, 2019 Committee of the Whole meeting after a decision of Council to rent Christmas lights in the Village. Deputy Reeve Hall agreed with the resident that the new municipal logo and branding was a waste of money. During his interview, Deputy Reeve Hall conceded that he believed that the exercise was a waste of money and did not dispute that he made that opinion known to a member of the public at the meeting.

Code of Conduct:

10.1 – Members, when communicating with the public and media, will accurately and adequately communicate the decisions of the Council, Board or Committee, even if a Member disagrees with a majority decision, so that there is respect for and integrity in the decision making process.

10.3 – It is not the intent of this Code of Conduct to restrict the ability of a Member to express a personal opinion on matters of general interest. In such cases, the Member must make it clear that the comment is being made in their capacity as a private citizen, and not as a representative of the Municipality. In no event should a Member express a position that is disrespectful of the decision of the majority of Council, a board or Committee.

Finding:

The Integrity Commissioner finds that characterizing a decision of Council as a waste of money does not foster respect for the decision. This is a breach of Sections 10.1 and 10.3 of the Code of Conduct.

In his interview and written response to the complaint, Deputy Reeve Hall stated that he hoped that the Code of Conduct did not require him to tell a member of the public that they are wrong when he agreed with them that the Council decision was the wrong one.

This is a delicate balance for all council members. The nature of local government is that there will always be decisions that are not unanimous. Those who vote in the minority are not mandated to advise the public that they were wrong to oppose the decision, or to tell members of the public that they are wrong to disagree with the decision. However, those in the minority do have a responsibility to foster respect for the decision, even when they disagree. Agreeing with a member of the public that a Council decision is a waste of tax dollars does not foster respect for the decision; it does the opposite.

Deputy Reeve Hall misinterpreted this section; no member of Council is obliged to tell the public they are wrong in order to foster respect for a Council decision the member personally disagrees with. That is not what this Section requires. There are many ways to communicate that while you may not agree with the majority that you still respect the process and the right of the majority to make that decision. Deputy Reeve Hall was not interested in supporting the decision and instead continued to voice dissent, contrary to the Code of Conduct.

Allegation 2 – Disrespect Decisions of Council

Facts:

Deputy Reeve John Hall attempted to have a decision of Council related to funding Township-owned community centres reconsidered at a meeting of Council on November 19, 2019. When the motion was defeated Deputy Reeve Hall stated, “so much for democracy”.

Code of Conduct:

10.1 – Members, when communicating with the public and media, will accurately and adequately communicate the decisions of the Council, Board or Committee, even if a Member disagrees with a majority decision, so that there is respect for and integrity in the decision making process.

10.3 – It is not the intent of this Code of Conduct to restrict the ability of a Member to express a personal opinion on matters of general interest. In such cases, the Member must make it clear that the comment is being made in their capacity as a private citizen, and not as a representative of the Municipality. In no event should a Member express a position that is disrespectful of the decision of the majority of Council, a board or Committee.

Finding:

In his interview, Deputy Reeve Hall did not recall making the statement, “so much for democracy”, but immediately made the comment that if he had used that phrase, he would not have said it loudly enough for everyone to hear. Less than 1 month later, Deputy Reeve Hall wrote a letter to the editor in the Lanark Era, commenting on the same incident, and used the phrase “I guess that’s democracy” to describe Council refusing to allow a reconsideration. It is not credible for Deputy Reeve Hall to claim that he did not make the statement when shortly thereafter he used practically the same phrase in a letter. These facts, coupled with the evidence from the complainant who overheard the statement, allows the Integrity Commissioner to find on a balance of probabilities that Deputy Reeve Hall did in fact make this statement.

Deputy Reeve Hall did not support the new community centre policy and brought a motion to have the policy reconsidered, especially as it affected funding for operating costs. Reeve McLaren did not allow Deputy Reeve Hall to hand out his speaking notes to members of Council in advance of the vote on whether to reconsider the decision. Deputy Reeve Hall disagreed with this ruling and even during his interview did not accept that the ruling was appropriate. Again, supporting the finding that this statement was in fact made.

Section 8.2.3.1 of the Procedural by-law states that no discussion of the original motion is permitted until after the reconsideration vote is held. Section 8.2.3.2 states that only the reasons for reconsideration can be debated. Despite the procedural rules, Deputy Reeve Hall continued to take the position during his interview with the Integrity Commissioner that the rules need to be “cleared up” and that his opinion was that members of Council needed his information. Because that information was not provided, in his view the vote was not proper.

Deputy Reeve Hall was clearly upset with the process and his inability to convince Council to reconsider their decision. His frustration resulted in a statement that did not respect the decision of Council. This comment, made at an open Council meeting and heard by members of the public, is a breach of Sections 10.1 and 10.3 of the Code of Conduct.

Allegation 3 – Respect for Staff

Facts:

Deputy Reeve Hall, in a series of emails directed to the CAO, challenged the CAO and expressed Deputy Reeve Hall's view that changes to internal processes and financial reporting were inappropriate. The details of the emails are not necessary to repeat for purposes of this report, but they centred primarily on changes to budget and financial reporting and other process changes instituted by the CAO.

Deputy Reeve Hall sent a series of emails expressing his disagreement with the decisions of the CAO to change the format of financial reporting and used intemperate language that threatened consequences if the CAO did not follow Council direction. It is important to understand that at the time this email was sent, Council had not provided direction to the CAO to revert to the former financial reporting format and the CAO was not disobeying Council direction. Deputy Reeve Hall was attempting to pressure the CAO to report in a manner that he deemed better, but Deputy Reeve Hall readily admitted that Council did not give any direction to follow his preferred format. Council never voted to give the CAO alternate direction and Deputy Reeve Hall had no authority to speak on behalf of Council on this issue.

In other emails (some of which were provided by Deputy Reeve Hall as part of his response to the complaint) he candidly admits that his goal was to convince the CAO to alter a stated position or interpretation to favour his view of the issue.

Code of Conduct:

6.1 – every member has the duty and responsibility to treat members of the public, staff and each other in a respectful manner, without abuse, bullying, harassment of intimidation.

11.2 Members shall not,
(c) use their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any Staff member with the intent of interfering with Staff duties.

Finding:

The Integrity Commissioner finds that Deputy Reeve Hall has not treated members of staff in a respectful manner. The language contained in certain emails is disrespectful and abusive and constitutes a breach of the Code of Conduct.

It is not the role of a member of Council to give direction to staff or to use their office to pressure staff to make decisions that the councillor feels are appropriate. Council speaks with one voice and through resolution and by-law; no individual member of Council has any authority to direct staff. Deputy Reeve Hall repeatedly ignored this fundamental principle of governance and attempted to interfere with staff duties.

Deputy Reeve Hall identified in his response to the complaint that there were 10 changes made by the CAO that he disagreed with. It was clear from the written response and his interview with the

Integrity Commissioner that Deputy Reeve Hall feels very strongly about a number of changes and has taken it upon himself to attempt to pressure the CAO to return to the previous way of doing things. Again, this is not the role of an individual councillor. We were provided with no evidence that Council had any issue with changes made or that Council had voted to provide direction to the CAO to revert to the previous way of doing things.

The pressure exerted on the CAO to make policy changes is in and of itself a breach of the Code of Conduct. The intemperate language and persistent pursuit of these goals without Council support is abusive conduct. Deputy Reeve Hall breached Sections 6.1 and 11.2(c) of the Code of Conduct.

Allegation 4 – Disrespect Decisions of Council

Facts:

Deputy Reeve Hall commented negatively to a member of the public in an email about a Council decision to rent Christmas lights for the Village in 2019. Deputy Reeve Hall stated, “I think I have now seen/heard everything - if this doesn’t get people upset I don’t know what will”. This email is clearly not in support of the decision. Deputy Reeve Hall defended the statement by suggesting that because the statement was made to a very limited number of people it was not contrary to the Code of Conduct.

The statement does not support the decision of Council nor foster respect for decision making. Even though the email was circulated to a limited number of people, it constitutes a breach of the Code of Conduct.

Code of Conduct:

10.1 – Members, when communicating with the public and media, will accurately and adequately communicate the decisions of the Council, Board or Committee, even if a Member disagrees with a majority decision, so that there is respect for and integrity in the decision making process.

10.3 – It is not the intent of this Code of Conduct to restrict the ability of a Member to express a personal opinion on matters of general interest. In such cases, the Member must make it clear that the comment is being made in their capacity as a private citizen, and not as a representative of the Municipality. In no event should a Member express a position that is disrespectful of the decision of the majority of Council, a board or Committee.

Finding:

The Integrity Commissioner finds that the statement does not foster respect for the decision of Council or the decision making process and breaches Sections 10.1 and 10.3 of the Code of Conduct. The fact that it was initially sent to a limited number of people does not detract from the nature of the breach.

Allegation 5 – Respect for Council Members

Facts:

Deputy Reeve Hall had published in the local paper an email from Reeve Peter McLaren outlining an allegation of improper behaviour on the part of Deputy Reeve Hall and seeking an informal resolution. As part of the publication, Deputy Reeve Hall included his response in a letter to the editor. Deputy Reeve Hall's explanation that because the email was copied to Council and not marked confidential meant that he was entitled to publish the email and his response is either credible nor acceptable.

The complaint referred to Sections 10.1, 10.2 and 10.3 of the Code of Conduct. There is no "decision" of Council that would be applicable in this circumstance and so the Integrity Commissioner considered the balance of the Code of Conduct and determined that this behaviour is more aptly reviewed under Section 6.1

Code of Conduct:

6.1 – every member has the duty and responsibility to treat members of the public, staff and each other in a respectful manner, without abuse, bullying, harassment or intimidation.

Finding:

The Integrity Commissioner finds that the act of sending the Reeve's email to the local paper and submitting a letter to the editor was intended to demean the Reeve and show Deputy Hall's displeasure at the manner in which the Reeve handled what was intended to be a private, informal dispute resolution process. Regardless of Deputy Reeve Hall's belief that the email was not private, he deliberately chose to make the matter public so that he could express publicly his disagreement with the Reeve.

Deputy Hall focused almost exclusively in his interview on the fact that the Reeve's email was copied to Council. He refused to accept that this was a private communication and used this as an excuse to send the email and his letter to the editor to the local paper.

During his interview, Deputy Reeve Hall refused to accept that it was his action, and not the Reeve's, that made this issue public. His actions were very much retaliatory and the Integrity Commissioner has no doubt that the publication was intended to display publicly what Deputy Reeve Hall considered inappropriate behaviour on the part of the Reeve. This is an illustration of how Deputy Reeve Hall approaches decisions that he disagrees with; he goes on the offensive and pushes his view of the facts aggressively without regard for the impact on others or Council as a decision-making body.

Deputy Reeve Hall turned what was intended to be an informal dispute resolution into a public spectacle intended to shame the Reeve (for what the Deputy Reeve considered inappropriate behaviour).

Ironically, the letter to the editor highlights the type of behaviour it appears that the Reeve was trying to get Deputy Reeve Hall to stop. In explaining why he felt he was wronged, the Deputy

Reeve cites examples that form the subject matter of two complaints above. Deputy Reeve Hall misunderstands the intent of the Code of Conduct and rather than seeking guidance on his obligations or talking with the Reeve and his fellow councillors he writes to the local paper criticizing the Reeve and characterizing the Reeve's interpretation of the Code of Conduct as un-democratic and communist.

The letter to the editor and the act of disclosing the email from the Reeve was disrespectful and a breach of Section 6.1 of the Code of Conduct.

CONCLUSIONS/RECOMMENDATIONS

The Integrity Commissioner finds that Deputy Reeve John Hall breached the Code of Conduct, as set out above. Deputy Reeve Hall must acknowledge that the decisions of Council are that of a democratically elected governing body that must be respected. His refusal to acknowledge the validity of decisions undermines the integrity of Council and all of its decisions.

The Integrity Commissioner recommends that Council issue a public reprimand of Deputy Reeve John Hall admonishing him for his public disrespect for Council decisions.

The Integrity Commissioner further recommends that Council impose the following sanctions intended to modify the problematic behaviour:

1. That Deputy Reeve John Hall receive training from a qualified individual on the proper role of council and staff and the Code of Conduct – this may be as part of a training session for all of Council;
2. That Deputy Reeve John Hall cease any in-person meetings with staff and communicate only in writing and only through the CAO and that all communications conform with the Code of Conduct;
3. In the event that the Deputy Reeve cannot comply with the direction of Council set out in paragraph 2 above, the ability to communicate with the CAO may be further restricted by resolution of Council without a further investigation; and
4. That Deputy Reeve John Hall issue a public apology for his public disrespect for the decisions of Council.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation

TEF:am