



Cunningham Swan

LAWYERS

• EST 1894 •

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CONFIDENTIAL

February 17, 2022

Delivered by email: CAO@lanarkhighlands.ca

Township of Lanark Highlands
75 George Street
P.O. Box 340
Lanark, Ontario
K0G 1K0

Attention: Ryan Morton, CAO/Clerk

Dear Mr. Morton:

RE: Complaint Pursuant to the Code of Conduct re: Councillor Steve Roberts
Our File No. 15027-27

Please be advised that our investigation under the Code of Conduct is now complete. We attach the final report herewith and the report should now be circulated to members of the Council. We have provided a copy of the report to the member and complainants separately.

As a financial sanction was recommended, the Member has a direct pecuniary interest in the report and they would not normally be able to participate in the discussion about the penalty. However, amendments to the MCIA now allow the Member to make submissions to Council and attempt to influence their decision as it relates to the recommendation financial sanction only:

Section 5

....

Exception, consideration of penalty

(2.1) The following rules apply if the matter under consideration at a meeting or a part of a meeting is to consider whether to suspend the remuneration paid to the

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member under subsection 223.4 (5) or (6) of the *Municipal Act, 2001* or under subsection 160 (5) or (6) of the *City of Toronto Act, 2006*:

1. Despite clauses (1) (b) and (c), the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.
2. Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration. [emphasis added]

The Member is not permitted to attempt to influence Council's decision as to receipt of the report itself. The Act creates an exemption that only permits the Member to attempt to influence the decision on penalty or any question related to that recommended financial penalty.

We recommend that the Member follow the process set out below when Council receives and considers the report:

1. The Member must declare a conflict of interest and abide by section 5(1)(a) of the MCIA for any part of the consideration of the report that does not relate to Council's consideration of the recommended financial penalty;
2. The Member may take part in the debate on Council's decision on whether to implement the financial penalty or the amount of the penalty;
3. They may not vote.

This investigation is hereby closed. If Council requires the attendance of the Integrity Commissioner when the report is dealt with by Council, please advise.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
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TEF:mj
Enclosures



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February 17, 2022

SENT BY EMAIL TO: CAO@lanarkhighlands.ca

Reeve and Members of Council
c/o Ryan Morton, CAO/Clerk
Township of Lanark Highlands
75 George Street
P.O. Box 340
Lanark, Ontario
K0G 1K0

Dear Reeve and Members of Council:

**RE: Complaint Pursuant to the Code of Conduct re: Councillor Steve Roberts
Our File No. 15027-27**

A complaint was received on February 24, 2021 alleging that Councillor Steve Roberts had breached numerous sections of the Code of Conduct as well as the Township's Violence and Harassment Policy.

An informal attempt to resolve staff concerns was undertaken on July 30, 2020 at a meeting attended by Councillor Roberts, staff, and assisted by the Reeve. At the July 30 meeting, staff reported that Councillor Roberts acknowledged his need to alter his behaviour and committed to do so. At that meeting staff recalled that Councillor Roberts agreed to:

1. direct residents to express their complaints to staff directly;
2. cease taking up excessive amounts of staff time with multiple emails;
3. cease sending intimidating emails and using his position to advance his personal agenda related to the fire service; and

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4. identify himself in all emails with respect to whether he was acting in his role as a councillor or member of the fire service.

This meeting, and Councillor Roberts' agreement to "commence change immediately", were welcomed by staff and it was felt that the informal resolution process provided in the Code of Conduct had been successful.

Staff advised that very soon after the meeting, Councillor Roberts' behaviour did not change. Staff compiled evidence in support of a complaint and the formal complaint was submitted in February of 2021.

The Integrity Commissioner forwarded the original complaint to Councillor Roberts (the "Member") on March 22, 2021 and asked him to respond. A response was received on March 31, 2021. The response was provided to the complainants on April 22, 2021 and the complainants responded on May 14, 2021. The complainants' response was forwarded to the Member on May 26, 2021, who responded June 7, 2021.

After receiving the written response of the Member, the Integrity Commissioner commenced a preliminary review of the merits of the complaint.

The Member raised a concern in his written response with the fact that a number of the emails submitted in support of the complaint were outside the 6 month limitation period established in the Code of Conduct and that the volume of material (emails in excess of 450 pages, a number of which were duplicates) was difficult to properly respond to as they were not identified with respect to which section of the Code of Conduct was allegedly breached.

The Integrity Commissioner discussed these issues with the complainants and confirmed that due to the volume of the supporting materials and the detailed complaint, as well as difficulties posed by COVID-19 limitations, many of the emails were dated beyond the 6 month limitation period established in the Code of Conduct within which a complaint must be brought. Regardless of the limitations imposed by COVID-19, the Integrity Commissioner determined that no emails would be investigated outside of the 6 month limitation period.

The remaining supporting information that was within the 6 month limitation period was summarized in chart form and the Integrity Commissioner identified possible sections from the Code of Conduct that may have been raised by those emails. This summary was provided to the complainants in August 2021 with a request that the summary and identified Code sections be reviewed and confirmed. After receiving confirmation from the complainants that the summary was consistent with the scope of their complaint, on September 8, 2021 the Integrity Commissioner provided the summary chart to the Member with a request that any additional comments on the reduced scope and the identified possible breaches be provided. The Member requested and received an extension to provide comments and his response was received on October 24, 2021.

The Member criticized the Integrity Commissioner's summary of certain emails provided and suggested that this demonstrated a bias because of the use of the word "rhetoric" to describe the nature of one comment made by the Member. "Rhetoric" is commonly defined as, "language that is intended to influence people that may not be honest or reasonable". The Integrity Commissioner disagreed with the Member's characterization of the summary.

After this exchange, it turned out that the emails in question were in fact outside the 6 month limitation period and ought not to have been considered. The Member corrected the Integrity Commissioner's oversight in his final written submission (discussed below). Including this series of emails was inconsistent with the limitation period and after being advised of this error the Integrity Commissioner deleted reference to these emails and reconsidered the findings accordingly.

Finally, the Member suggested that his behaviour since the complaint was filed had improved and that the issues raised in the complaint had been resolved. The Integrity Commissioner consulted with the complainants and they confirmed that the behaviour, while not as severe as before the complaint was received, had not been resolved.

A Member of Council cannot avoid an investigation and findings related to their behaviour simply by reducing the severity of that behaviour after the complaint is filed. To the extent any improvement in behaviour is relevant, that will be considered only if a breach is found and a penalty or sanction is recommended.

While the preliminary review was more detailed than is typical, and consumed far more time than is normal, it was necessary to ensure that the Member had a fair opportunity to provide his response. It was also necessary to scope the supporting information to respect the limitation period found in the Code of Conduct and assist the Member to understand the nature of the complaints.

The Integrity Commissioner also identified a matter which formed part of the complaint for which the Integrity Commissioner's law firm had provided advice to the Township as its solicitors. Because of this potential conflict of interest, the complainants were advised that the investigation could not address that aspect of the complaint. The complainants were given the opportunity to continue the complaint with the services of another Integrity Commissioner that would be appointed for that aspect of the complaint only. The complainants elected to abandon that aspect of the complaint and the Integrity Commissioner advised the Member of that decision.

After reviewing the written responses, there was a sufficient basis to proceed with an investigation. The investigation consisted of interviews with staff, in addition to a detailed review of the emails that were sent within 6 months of the date of the complaint.

In order to further assist the Member in navigating the volume of emails submitted in support of the compliant, the Integrity Commissioner provided the Member with a draft of his report to allow the Member to understand the nature of any concerns found by the Integrity Commissioner. In this way, the Member had the opportunity to identify any facts that he considered incorrect and to understand the basis for the Integrity Commissioner's preliminary finding that the Member was in breach of the Code of Conduct. This afforded the Member the opportunity to comment directly on the findings of the investigation. Those comments have been incorporated as necessary into this final report.

The Member identified a disagreement with the recollection of staff that the informal resolution process resulted in an agreement from the Member that his communications were used for his own political or personal gain. The Member stated that this point was never raised and had it been, he, "would have vehemently objected to such a statement then as I do now. There exists a fundamental disagreement with what transpired at that meeting on key points..."

The Integrity Commissioner was provided with notes taken by staff at the meeting which reflect that Councillor Roberts was advised of various behaviours that were concerning to staff. The notes also reflect a commitment from Councillor Roberts to change his behaviour. In response, Councillor Roberts provided his notes of the meeting. While there were some discrepancies between the two sets of notes, the Integrity Commissioner finds on a balance of probabilities that the meeting occurred as reported by staff and that Councillor Roberts agreed to alter his behaviour. No finding is possible on whether Councillor Roberts agreed that his various emails were submitted for personal gain, and the Integrity Commissioner places no reliance on such a statement. It is sufficient for purposes of this report that there was an agreement by Councillor Roberts that aspects of his behaviour would change, regardless of any perceived motivations for the behaviour.

COMPLAINTS

The Complaint listed many areas of alleged breaches. In order to assess the nature of the alleged breaches, the Integrity Commissioner categorized the allegations into several groups of alleged behaviour under sections of the Code of Conduct. This report does not speak to each of the alleged complaints as detailed in the complaint itself, instead considering the behaviour under each of the following sections of the Code of Conduct:

1. Code of Conduct section 6.1 – treating staff with respect;
2. Code of Conduct section 11.2 – interfering with staff duties;
3. Code of Conduct section 11.3 – ignoring the resident complaints protocol;
4. Code of Conduct sections 11.4- 11.6 – directing staff; and
5. Code of Conduct section 11.7 – engaging staff with excessive emails.

For each email submitted in support of the complaint, the Integrity Commissioner considered the facts, interviews, written submissions and applied the findings of fact to the Code provisions that were relevant to the complaint. Because any email or group of emails may be relevant to multiple alleged Code of Conduct breaches, the balance of this report is organized by email correspondence with findings of fact and an assessment of Code compliance for each email or group of emails.

It is important to note that staff availed themselves of the informal complaint resolution protocol set out in the Code of Conduct in an attempt to avoid a formal complaint and investigation. The July 30, 2020 meeting appeared to successfully resolve matters and it also appeared that the Member was prepared to correct the behaviour identified as problematic. While this meeting occurred outside the 6 month limitation period, it is appropriate to consider this fact, as behaviour contrary to the agreement did occur within the 6 month limitation period. The fact that the Member acknowledged that certain behaviour was unacceptable and then continued to act without regard for his agreement to change that behaviour is relevant to the complaint. As stated above, the Integrity Commissioner did not assume as a fact that Councillor Roberts agreed that his behaviour was motivated by personal or political gain.

August 28, 2020 - fire service agreements

In late August of 2020 staff reported to Council that the Fire Chief, in consultation with the CAO, had been in discussions with a neighbouring municipality's Fire Chief about a fire services agreement. A resolution being presented to the neighbouring municipality's Council was provided to Lanark Highlands Council to ensure they were aware of what that municipality was doing, and to indicate that staff would be requesting approval from Council to negotiate an agreement related to supplemental fire services.

The Member was critical of this process and used the following language in a series of emails to members of the Senior Management Team:

“how do you know [other municipality] will pass? Sounds presumptuous or orchestrated”

“sounds to me that Staff are freelancing right now on there [sic] own accord, with no direction and no parameters and no authorization. ... Its [sic] less than transparent.”

“I have serious concerns about this recent development.” [referring to the negotiations at the staff level]

“When things don't pass the smell test, its incumbent of the position to inquire and if necessary scrutinize. That just good business.” [referring to a statement by the CAO that the negotiations were only to be able to present something to Council for consideration]

Staff confirmed to the Integrity Commissioner that a similar arrangement had been in place previously and that no agreement could be entered without Council approval (as stated in the email to the Member).

The interviews disclosed that this interaction stemmed from the Master Fire Plan process and recommendations from the consultant that the White Lake area was understaffed. Staff considered how to address this identified concern and what options might be available for Council. Discussions with the other municipality were conducted on the understanding that Council would need to be consulted. However, if staff of the other municipality were not interested, staff would not waste Council's time with a solution that was not a reasonable possibility.

The CAO confirmed that his job description includes the authority to negotiate various agreements on behalf of the Township. In addition, the Master Fire Plan recommended that the Township enter into an automatic aid agreement with neighbouring municipalities to ensure adequate fire protection services were available. There is no disagreement that the negotiation process was intended to determine what type of agreement might be possible and then to bring the decision back to Council, with an understanding of what was possible so that Council could make an informed decision.

Finding

The Member accused staff of, "... freelancing right now on there [sic] own accord, with no direction and no parameters and no authorization. ... Its [sic] less than transparent."

In addition, the Member suggested that the action of staff did not pass the "smell test".

This type of allegation is inappropriate and has no factual foundation. Members of Council are directed in section 11.4 of the Code of Conduct to, "recognize and respect that many members of Staff are bound by professional associations to a code of ethics and professional conduct and that they provide their reports and recommendations objectively, in the best interests of the Municipality and within the requirements of their profession." The Member did not abide by this section of the Code of Conduct.

In addition, the Member breached section 6.1 which requires members of Council to treat staff respectfully and not to bully, abuse or harass them. At the meeting in July 2020 the Member was made aware that (and he acknowledged) this type of comment was not welcome. This is one example of conduct that constitutes harassment.

August 31, 2020 – Media Article from August 27, 2020

An article was printed in the Perth Courier on August 27 about the Master Fire Plan approval by Council. The article read, "We reached out to the White Lake Property Owners Association, an active voice about this matter in the community. We have yet to hear back

from them, but they are scheduling a meeting on Sept. 6 at 10 a.m. to ‘discuss where we go from here.’”

A resident emailed the Member at 6:16 a.m. asking who called the White Lake Property Owners Association meeting referenced in the article, and specifically asked if the Fire Chief called the meeting. The Member responded to the inquiry at 8:20 a.m. and copied the CAO, stating, “I wonder what are [sic] media relations policy has to say and who authorized Staff to speak on your behalf? Is it more drama and manipulation?” The Member clarified that this was a typo and that he meant to write, “...who authorized Staff to speak on ‘our’ [meaning Council] behalf? Is it more drama and manipulation?”

The CAO responded at 10:30 a.m. that the Member’s email was confusing and he requested clarification as to what meeting the resident was referring to. The CAO also expressed concern about the email from the Member and asked whether he was insinuating that the Fire Chief was engaged in drama and manipulation. There then followed a confusing series of emails where the Member asked the CAO what “insinuation” he was making, which prompted the CAO to write back to seek clarification from the Member about his comments and to ask again if the Member was insinuating that the Fire Chief was manipulating the situation or initiating drama.

In a separate email (not a reply to the earlier emails) the Member provided the CAO with a quote from the article. The quote did not relate to the concerns initially raised by the resident or the Member, further confusing the CAO, who again sought clarification.

The Member did not answer the question, stated he continued to be confused and then asked if there was some sort of “witch hunt” occurring.

The Member followed up later the same day, to the original email “thread”, stating, “are you threatening me with Conduct investigations? For what? Following chains of communication. This is unacceptable. ... The avenue of questions and direction you have lead [sic] into. [sic] are inappropriate for the role of CAO. I would respectfully add that perhaps the ratepayer be taken as a priority and not an overly protective and rather intimidating dismissive and insulting stance to elected official, an officer of the corporation, bound by oath to ratepayer service. This has been a rather enlightening but disappointing morning.”

When asked about this comment, the Member stated that his reference to “drama” was about the media article and author, “which many residents took to be a manipulation of the facts and created a great deal of social media discussion and not all good points.” The Member also suggested the complaint listed the emails in the wrong chronological order, which created confusion.

After the draft report was provided to the Member, he continued to assert that the Integrity Commissioner was reading the emails out of order and that when read in the proper order it was clear that the confusion was not that of the Member, but rather the CAO.

The Integrity Commissioner re-read the emails and paid particular attention to the time stamps to confirm his understanding of the entirety of the communication.

The media article was not confusing – it spoke to a meeting of the White Lake Property Owners Association. The explanation from the Member after reading the draft report about what he intended and meant in the emails could have easily been addressed in the original emails. The exchange was confusing because the Member wrote vaguely. The CAO's interpretation was not only reasonable, but it accorded with how the Integrity Commissioner read the emails.

The CAO confirmed that this type of email exchange was and remains (albeit less frequently) typical with the Member. Councillor Roberts is often confusing in his written communication and accusatorial of staff, often while including members of the public on the chain of emails.

Finding

The Integrity Commissioner reviewed the emails in order, in detail, several times – they are time stamped as to when they were sent so there is no confusion about what the emails are related to or in what sequence they were sent. They do need to be read carefully as they are not part of a continuous “thread” and a new “thread” is started during the exchange.

It is clear that the original email from the member of the public was concerned that the Fire Chief had called a meeting of the White Lake Property Owners Association. This is not what the article stated and could have been easily clarified by the Member. Instead, the Member wrote to the CAO, copying the resident, and proceeded to question whether the Fire Chief had inappropriately spoken to the media. The emails that followed, while confusing, escalated into the Member alleging that the CAO had acted inappropriately during the email exchange. The Integrity Commissioner found no inappropriate comments by the CAO and no basis for the allegations made by the Member.

The Member accused the Fire Chief of acting outside Township media protocols - which was not true - and then accused the CAO of engaging in a “witch hunt”. This behaviour is a breach of section 6.1 of the Code of Conduct as the Member was not respectful to staff and acted in an abusive, bullying and harassing manner.

This is also a breach of section 11.4 as the unfounded allegation against the Fire Chief did not respect the professional role that the Chief holds. It was unwarranted to question the Chief's authority to speak to the media on an issue related to the Fire Service and can only be seen as an attempt to question the professionalism of the Fire Chief in front of a member of the public.

September 22, 2020 – Fire Service Agreement

In September, the Member confirmed during a Council meeting that he contacted the CAO of a neighbouring municipality to discuss a fire services agreement. The Member's understanding of the status of the agreement was different from that of staff. The materials reviewed by the Integrity Commissioner did not indicate whether the Member was approaching the neighbouring municipality as a member of Council or as a member of the Fire Service. Regardless, neither Council nor the Fire Service authorized the Member to contact the neighbouring CAO.

Councillor Roberts did not advise staff in advance of the September 22, 2020 meeting that he had discussed this issue with the CAO of the neighbouring municipality. Instead, the Member raised this issue and his discussions for the first time at the meeting. During the meeting the Member disagreed with staff that the Township had a valid agreement with the neighbouring municipality. When the CAO read the correspondence provided to him by the CAO of the other municipality that confirmed the agreement was still in force, the Member refused to believe the CAO until the Member read the document himself. Even after the Member read the correspondence, he continued to question the CAO.

Finding

The Member did not identify what role he was serving when he approached the neighbouring municipality, contrary to his previous agreement under the informal resolution process. The Member advised the Integrity Commissioner that he informed the neighbouring municipality that he was speaking as a Councillor. However, the Member did not explain this to Council at the meeting.

The Member refused to believe the CAO when the CAO's information contradicted the Member's, despite being advised that the neighbouring CAO provided written confirmation. This behaviour demeans the professional integrity of staff and is a breach of section 11.4.

In addition, the Member assumed the role of staff in approaching the neighbouring CAO without the knowledge of Council or the CAO and therefore usurped the proper role of staff, contrary to section 11.7. In response to his review of the draft report, the Member both acknowledged his error in speaking to the CAO of a neighbouring municipality without authority and simultaneously argued that this happens "all the time" (generally, not by him specifically). The Member endeavored to conduct himself differently in the future.

October 2, 2020 – Pre-populating motions

The Member sent an email to the CAO stating that he did not want his name used on motions as mover or seconder in advance of a Council meeting. In virtual meetings the practice adopted was to have a pre-populated mover and seconder filled in on a notice of motion to

make the process less cumbersome. The member objected to this practice, stating, “When my name is used in public information like this it diminishes my public image. In a worse case as being reckless, or, at least, as merely approving actions in non compliance of our procedural by-law.” The CAO provided a rationale for the practice and explained that moving or seconding a motion merely places the item on the table for debate and does not signify approval of the item. The Member replied, “In your rationals [sic] there exists the oxy moron of having a motion to enter in to closed not approved, again how can that be assessed without the materials, its a [sic] endless loop that doesn’t have a positive aspect to it. Again I state not to repopulate motions with my name, Im [sic] not sure how to make that more understandable.”

Staff was concerned that this was an established practice and if they agreed to his direction, they would be treating Councillor Roberts differently from other Councillors. Staff attempted to explain that merely moving or seconding a motion is not support for the motion as any Member may vote for or against regardless of whether it was moved or seconded by them. This was a process that was instituted to streamline meetings – especially when they were held virtually.

Finding

Regardless of the merit of the practice, the Member was not prepared to have his name used to pre-populate motions in virtual Council meetings.

The language, tone and content of the email correspondence did not breach any aspect of the Code of Conduct.

October 1, 2020 – Communication with Consultant

The Member sent an email to a consultant retained by the Township asking for an update about a request for information sent by a resident. The CAO was not copied on the email, but the consultant forwarded the email to the CAO rather than responding directly to the Member. The CAO emailed the Member asking that the Member not directly email consultants asking for information as the consultant may charge the Township for work performed and members of Council do not have authority to authorize a consultant to undertake any work.

The Member responded that he did not authorize the consultant to spend money and stated, “Thank you for the advice, I will also continue using my ratepayers service, security and wellbeing as guide to my conduct as propriety inside my compliance to any corporate codes applicable.”

Council had not authorized the Member to communicate directly with the consultant. The resident’s request had been responded to by the CAO prior to the October 1 email request.

Finding

The Member's response is neither respectful nor compliant with section 11.4.

In his written response to the draft report the Member disagreed with this characterization of his behaviour and suggested he was in fact respectful, but at the same time expressed that he would continue to use his commitment to client service as a guide to his conduct.

The Member's response can only be interpreted as a refusal to accept his role and a rebuke to the CAO for attempting to enforce well-established rules that members of Council have no authority to direct staff (including consultants). This is also a breach of section 11.7 which specifically directs members of Council not to direct staff (which the Integrity Commissioner interprets to include consultants).

November 13, 2020 – Communication with Treasurer

In a series of emails, the Member requested information about tax arrears from the Treasurer, specifically tax arrears certificates, stating at one point that if the certificates were not issued, "what are we doing just covering these up?"

Finding

The Integrity Commissioner was not able to interview the Treasurer as they were no longer employed by the Township. Based on the language used in the emails the Integrity Commissioner finds that the emails are a breach of section 6.1. It is inappropriate to accuse a member of staff of "covering up" financial matters. This language was either intended to bully the Treasurer into providing the information that the Member wanted, or it was an allegation that they were in breach of their job duties – neither of which is consistent with the Code of Conduct.

The Integrity Commissioner was not provided any evidence to suggest that the Member brought his allegation of a "cover-up" to Council for a discussion and action. It is inappropriate to make this type of allegation against staff. There is a process for Council members to address any concerns with staff behaviour; writing threatening emails is not part of the process.

December 3, 2020 – Snye Road

The Member was seeking repairs to Snye Road and provided his "personal opinion" of how to address the road issues with a detailed technical description of the steps he proposed to fix the road condition.

The series of emails in December of 2020 related to Snye Road all potentially fall into the category of responding to complaints and attempting to direct staff, subject to sections 11.3 and 11.7 of the Code of Conduct. The Integrity Commissioner has combined the findings for all of these emails into the “Findings” section under the discussion of the December 11, 2020 email exchange.

December 4, 2020 – Lakeshore Road

A series of emails starting December 1 involved the Manager of Public Works and a resident about road conditions on Lakeshore Road. The Member requested a meeting with the Manager on site for a “consult”. Due to scheduling issues the Manager was not able to meet at the proposed time, but he confirmed a site visit by staff was planned. The Member responded, “we can regroup and proceed hopefully to a resolve with salvation or promotion of our public image”.

December 4, 2020 – Snye Road

The Member engaged in a series of emails with staff trying to convince them to repair Snye Road to a condition satisfactory to the Member. The CAO explained the actions being taken and the Member responded, trying to convince the CAO that more needed to be done, stating, “I don’t think any more politicization of a simple problem will help with the composition of this Council. If I am in error take this as a formal request to add it to the 15 Dec session. Basic road maintenance to the lowest standard in Ontario needs council session time? well I guess that says volumes.”

December 8, and 9, 2020 – Manager of Public Works

The Member provided suggestions about the role of the Public Works Manager and options to consider as well as locations where road repair were needed.

December 11, 2020 – Manager of Public Works

The Member emailed the Manager of Public Works requesting a rationale for road repairs and why certain areas were excluded. The Member wrote that he was responding to a resident complaint and wanted answers that could be shared with the resident. Notwithstanding that the Member indicated that he initially directed the resident to contact staff, this email was detailed in what work was not done correctly in his opinion.

The Member also provided what he believed was the right method to fix the road and expressed that he was “disappointed” with the failure of staff to repair areas he expected would have been dealt with.

Staff confirmed that the protocols in place for road repairs had been followed and that Council had not directed the type or level of road repair requested by the Member. It was also confirmed that the Member did not bring a motion to have these issues approved by Council.

Finding

The series of emails discussed above related to road repairs follows a pattern whereby the Member is dissatisfied with the state of the road and/or receives complaints from residents and takes it upon himself to write to staff to seek answers for the residents.

Section 11.3 sets out the process to follow where complaints are received. The Member did not follow this process. The Member complained that in section 11.3(d) where unresolved complaints exist there is no “municipal complaint policy” to refer residents to. While this is true, the Member does not then have an unfettered right to engage in his own personal email campaign with staff to suggest the proper course of action for technical road repairs.

The protocol expressly directs members of Council to refer residents to staff. In the examples above the Member copied residents on his emails, but not to refer them to staff. The emails go on to suggest that the road is not being maintained in accordance with Township standards and that his suggestions for repairs ought to be followed – this is not the role of a member of Council. The emails demonstrate a clear refusal to follow accepted policy, even where the CAO explains how the repairs are being undertaken under an established process.

It was also explained to the Integrity Commissioner during the investigation that the Member at no time brought forward a motion to Council to seek approval to implement the repairs suggested in his emails. A motion to seek Council direction would have been the appropriate response.

The Member’s December emails constitute a breach not only of the complaint protocol in section 11.3, but also section 11.7, which prohibits Councillors from directing staff.

February 22 and 23 2021 – Request for Tax Arrears Information

An individual requested tax arrears information from staff. Staff responded that the type of information was unavailable in the form it was requested. The Member emailed the Treasurer about the response, stating,

“is that what the gentleman asked for?”

He is not an accountant,

I looked through what you sent and doesn’t look to be the info pertaining to his questions. Be like being handed a book of wiring diagrams when you asked the shop about a burnt taillight.

Not very transparent.

There is an expectation on us to be that.”

A further email to the Treasurer demanded the release of the information the person requested and argued that staff’s interpretation of MFIPPA was incorrect, commenting, “its [sic] been a long simple ask for transparency on this matter”.

Finding

The language and tone of the email is not respectful and illustrates an aggressive and harassing response to staff. This type of communication is not appropriate and breaches section 6.1. In addition, the emails are a clear attempt to bully or intimidate the Treasurer to provide information to a person which the Treasurer refused to provide, for valid reasons set out by the Treasurer. Section 11.2 prohibits members of Council from using their position to intimidate, threaten or coerce staff in a manner that interferes with their duties. In this circumstance, the Treasurer made a decision, and the Member then engaged in a written campaign to attempt to get the Treasurer to provide information that the person was not entitled to.

Section 11.4 obligates members of Council to respect the professionalism of staff. The emails sent to the Treasurer are not respectful of his professional qualifications and demonstrate a breach of this section.

RECOMMENDATIONS

Part of the complaint was that the communications with the Member were, in addition to being abusive and harassing, time consuming and confusing. After reading the voluminous emails and the written responses from the Member the Integrity Commissioner understands the concern of staff. Councillor Roberts’ written style tends to be confusing because of his grammar and syntax as well as the manner in which he arranges his thoughts. It is beyond the scope of this complaint to address this issue, other than to note that section 11.7(g) requires Council members to respect that staff are busy and should not engage in conversations or correspondence that takes excessive time or diverts them from their duties.

During the course of the investigation both staff and the Member advised that some progress had been made in addressing this complaint. Staff are not of the view that the issue is completely resolved, but the Member asserts that it has been addressed and as such no penalty ought to be imposed.

The Integrity Commissioner has included a recommendation under the sanction section below to ensure that progress to date is sustained.

Penalty

Based on the numerous instances of Code of Conduct breaches the Integrity Commissioner recommends the following penalty:

- That the Member's remuneration be suspended for a period of 180 days;
- That Council issue a formal reprimand to ensure that staff understand that Council does not condone the behaviour of the Member.

While staff confirmed that his behaviour has shown improvement following the filing of the formal complaint, staff were disappointed that the informal resolution process in July of 2020 did not succeed in changing the Councillor's behaviour. More than one staff member commented that if the formal complaint process was necessary to effect change, they had little comfort that any improvement since filing the complaint would last beyond the investigation unless a strong message was sent by Council. In addition, staff confirmed that the behaviour had not ceased; it had merely been reduced in frequency.

Despite his assertion that the informal resolution process did not include any acknowledgement that his communications were intended to further his political or personal agenda, the Member responded that he had addressed staff concerns about his emails and his communication style.

The Integrity Commissioner saw a pattern of behaviour emerge from the investigation. Where Councillor Roberts receives a complaint about his Ward or a matter that concerns the Fire Service, he engages in often aggressive and usually protracted email campaigns to attempt to force staff to agree with his views. These emails many times devolved into personal attacks and had no regard for the proper role of a Councillor. For these reasons, the Integrity Commissioner recommends a strong denunciation of this behaviour so that Councillor Roberts will continue to make progress in modifying his behaviour.

It is relevant to the penalty recommendation that the Integrity Commissioner found 7 separate incidents that demonstrated behaviour that breached the Code of Conduct. Each of these incidents could attract a penalty of up to 90 days suspension of pay. A total penalty of 90 days per incident would be disproportionate to the nature of the behaviour.

A penalty of 30 days suspension of pay per incident, for a total of 210 days, would be reasonable in the circumstances. However, the Integrity Commissioner recognizes that some improvement has occurred over the course of the investigation and Councillor Roberts should be encouraged to continue this improvement. As such, a total penalty of 180 days suspension of pay is more reasonable.

This penalty reflects the fact that Councillor Roberts agreed to change his behaviour and then soon after ignored his promise. It is also relevant that Councillor Roberts disputes that some aspects of the informal resolution occurred. The behaviour exhibited by Councillor Roberts is disruptive for staff and should not be tolerated by Council.

Councillor Roberts has demonstrated that it is possible for him to change his behaviour, but only when faced with a formal complaint process. It is therefore the finding of the Integrity Commissioner that a significant financial penalty is warranted to recognize the severity of the past behaviour and to deter future behaviour.

Sanctions

While a financial penalty and reprimand are considered necessary to demonstrate that Council does not accept this behaviour and that it is serious about protecting Township staff, it is unlikely to affect lasting change. The Integrity Commissioner believes that a sanction is also necessary to put in place processes to change the circumstances that give rise to the offensive behaviour.

The Integrity Commissioner recommends that Council require Councillor Roberts to apologize in writing to staff for his past behaviour.

The Integrity Commissioner further recommends that Council require Councillor Roberts to immediately enter into a written commitment to change his behaviour, incorporating the following:

- Any phone call must be prepared by Councillor Roberts in advance so that the discussion is concise and does not consume more than 30 minutes of staff time;
- All emails to staff must be copied to the Reeve and CAO;
- All correspondence and telephone calls must identify whether Councillor Roberts is acting in his role as Councillor or member of the Fire Service;
- Where a complaint is received from a member of the public, Councillor Roberts shall:
 - Direct the resident to contact the appropriate department for review/resolution
 - If the member of the public is reluctant to contact the department directly, Councillor Roberts shall take the person's name, phone number and details of the inquiry/complaint and advise them that the matter will be referred to the Chief Administrative Officer for review/resolution
 - Where the complaint is received by email, Councillor Roberts shall forward the email to the appropriate department and copy his email to the Reeve and CAO

- No communications to staff will contain any direction or suggestions to staff related to resolving the complaint
 - Councillor Roberts shall not follow up with the department to request a status update. Any update will be provided by the CAO only
- Where the CAO or the Reeve identify inappropriate language or behaviour in written or verbal correspondence, Councillor Roberts shall be advised of the issue and no further communication shall be allowed on that topic. Any additional emails from Councillor Roberts after he is notified will not be responded to and shall only be saved in the file.

This is the final report of the Integrity Commissioner in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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TEF:mj