



**Cunningham Swan**

LAWYERS

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**CONFIDENTIAL**

June 3, 2021

**Delivered by email: CAO@lanarkhighlands.ca**

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

Dear Mayor and Members of Council:

**RE: Complaint to Integrity Commissioner – Final Report  
Code of Conduct Complaint – February 25, 2021  
Our File No.: 15027-26**

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 otherwise deciding how the report should be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually 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 alter the findings of the report, only consider the recommendations.

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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.

## INVESTIGATION

On February 25, 2021 a complaint under the Code of Conduct (the "Complaint") was forwarded to our attention alleging that Councillor Steve Roberts, (the "Member") had breached the Code of Conduct by being verbally abusive and threatening to another member of Council at a closed session of Council held on February 23, 2021. The incident was alleged to breach the Township's Workplace Violence Policies and the Code of Conduct.

We completed a preliminary review which included the following:

- 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 the Member, with a request for any written response to be provided within 10 days;
- Providing a copy of the Member's response to the complainant, with a request for any written response to be provided within 10 days; and
- Reviewing all submissions.

On March 23, 2021 we advised the parties that the preliminary review concluded there was a sufficient basis to undertake an investigation. We then proceeded with an investigation that included interviewing members of staff who were present at the meeting and all Members of Council, including Councillor Roberts.

After interviews were complete, we undertook our analysis of the facts and the relevant provisions of the Code of Conduct and provided a final report to Council and the Member. Councillor Roberts requested an opportunity to discuss the findings and during this discussion advised for the first time that there was a recording of the meeting. Councillor Roberts had not advised of the existence of a recording in his written submissions or during his interview (this may be because the Councillor believed that the Township was recording the session). The Integrity Commissioner confirmed with staff that the Township had not recorded the meeting as it was a closed session and were not aware of any other recording.

Councillor Roberts provided the Integrity Commissioner with a copy of the recording and confirmed that it was his personal recording.

After reviewing the recording of the entire meeting, the Integrity Commissioner re-issued this report to reflect the fact that a recording had been disclosed and to ensure that the findings of fact reflect what is on the recording. While the recording quality is poor in places due to the fact that it appears to have been recorded on a cell phone, it was sufficient to confirm the recollections of a number of attendees, as set out below.

## **ANALYSIS**

### **Facts:**

The Integrity Commissioner finds:

1. On February 23, 2021 Council held a closed session for the purposes of receiving legal advice.
2. A member of Cunningham Swan was present at the meeting, but the Integrity Commissioner was not involved in the matter and did not provide substantive advice related to the issues discussed, either before or after the meeting;
3. After the presentation by the Township's solicitor, Council members debated the issue. During the debate an exchange between Members of Council and Councillor Roberts occurred;
4. Councillor Roberts, during an exchange with one Member of Council, used profanity, to which another Member responded, "watch your language". Councillor Roberts then said to the Member who asked him to watch his language, "do you want to talk to me outside". The Member immediately cautioned Councillor Roberts not to threaten them with violence. Councillor Roberts then said, "do you want to talk to me about this outside". The Member again cautioned Councillor Roberts not to threaten him with violence. Councillor Roberts then said again, "do you want to talk to me outside". The sound quality was poor, but at this point Councillor Roberts indicated he was not threatening the Member and repeated his "invitation" to talk outside and then commented that the Member needed to talk through the Chair.
5. Councillor Roberts conceded that he did invite the Member to go outside, but in his words, only to discuss the issues outside of the procedural restrictions of a Council meeting. If this was the Councillor's intent, it was not clear from the recording that this was the case;
6. With the exception of one person (in addition to Councillor Roberts), all persons interviewed interpreted the words used and the manner in which they were said as a threat of violence;
7. The only other person who disagreed it was threatening stated that when the words were first stated they felt it "sounded bad", but then Councillor Roberts stated that he

wanted to go outside to continue the discussion – this person then considered the “invitation” not to be threatening;

8. The same person who did not believe the words were threatening also did not recall Councillor Roberts using profanity. Every other person interviewed (again, with the exception of Councillor Roberts) recalled Councillor Roberts using profanity, which is borne out by the recording;
9. The majority of those interviewed recalled that after order was restored by the Chair that Councillor Roberts stared for a prolonged time at the Councillor whom he “invited” to go outside. This stare was variously described as a, “poisonous stare of evil” and a, “stare of death”;
10. The Member who was the subject of this incident felt threatened and had no doubt that the “invitation” was to go outside to fight;
11. Councillor Roberts disagreed with the suggestion that he was threatening a Member of Council. In his words, he was inviting the Member to go outside if they wanted to speak face to face, otherwise the discussion should go through the Chair as that was proper meeting protocol;
12. When interviewed, Councillor Roberts described the situation as his being interrupted by the Member of Council. He considered this interruption, “a prehistoric tactic that is not welcome”. When this happened, Councillor Roberts stated that he adopted a tactic of starting his statement again and trying to stay on point. Councillor Roberts expects to be “attacked” by members of Council and so he comes to Council meetings prepared with these types of tactics to protect himself;
13. Councillor Roberts also described taking “meticulous” notes during the incident as well as after. He does this for accountability, knowing the day will come when he will need to defend himself because of endless attacks against him. Councillor Roberts did not advise the Integrity Commissioner during his interview that he also recorded the meeting as part of his tactics;
14. Councillor Roberts provided copies of his notes that were reviewed as part of the investigation;
15. Councillor Roberts denied swearing, threatening or staring at the Member.

### **Code of Conduct:**

The Integrity Commissioner considers the Purpose and Policy Statement of the Code an important starting point for this investigation. It reads, in part, “The public should expect the highest standards of conduct from the members they elect to local government ... adherence

to these standards will protect and maintain the Municipality's reputation and the integrity of its decision-making process.”

Relevant portions of the Township Code of Conduct include:

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.

6.2 A Member shall not use indecent, abusive, or insulting words or expressions toward any other Member, any member of Staff, or any member of the public. A Member shall not speak in a manner that is discriminatory to any individual based on that person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status, or disability.

7. Every Member shall conduct themselves with decorum and professionalism at all Council, Committee, Board and other meetings in accordance with the provisions of the applicable Procedure by-law, this Code, and other applicable law.

The Municipality also has workplace harassment and violence in the workplace policies. Although a Council meeting is a workplace, it is not necessary to consider if two council members engaging in this type of behaviour is a breach of this policy, given our finding on the Code of Conduct.

### **Determination:**

The Integrity Commissioner concludes that the Member breached the Code of Conduct. All findings made within this report are based on a standard of a balance of probabilities. This standard is applied in civil cases and requires the Integrity Commissioner to “scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”<sup>1</sup> The Integrity Commissioner carefully reviewed of all of the evidence. Where the recording quality was poor, the Integrity Commissioner relies on the recollection of the majority of person present at the meeting. The Integrity Commissioner finds that the following is more likely than not to represent the events of the evening of February 23, 2021:

1. Councillor Roberts was interrupted by a Member of Council while speaking;
2. Councillor Roberts asked that Member at least three times if they wanted to “talk to him outside”;
3. His statement contained profanity;

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<sup>1</sup> *F.H. v. McDougall*, [2008] 3 SCR 41; 61; 2008 SCC 53 (SCC) at para. 61.

4. The Member who was the subject of Councillor Roberts' verbal abuse asked Councillor Roberts a number of times in response if he was threatening them – and the Member confirmed that they felt threatened;
5. Councillor Roberts' words and mannerisms at the time of this incident clearly conveyed that his intent was to engage in physical violence;
6. Councillor Robert's explanation that his "invitation" was to allow he and the other Member to have an open dialogue outside the rules of Council – to speak freely without going through the Chair – is simply not credible. At no time during the entire meeting did Councillor Roberts once preface any of his comments (not just the comments that form the subject of this complaint) by directing them through the Chair. It is not credible that Councillor Roberts chose the moment when he was asking another Member to "talk about it outside" that he formulated the intent to use that phrase to respect the rules of procedural decorum. It is more likely than not that Councillor Roberts realized that he had just threatened a Member of Council and was attempting to "soften" his remarks or deflect the nature of his conduct;
7. After the Chair restored order, the majority of those interviewed recalled Councillor Roberts staring at the Member, further supporting the finding that Councillor Roberts was very angry and was seeking to intimidate the Member;
8. Councillor Roberts did not apologize to the Member.

This is an egregious example of a Member of Council allowing their emotions to govern their behaviour at the expense of professional decorum and basic principles of common courtesy and respect. There is no excuse for any Member to threaten another Member with physical violence. Councillor Roberts' action is a breach of sections 6.1, 6.2 and 7 of the Code of Conduct.

Councillor Roberts' words speak for themselves, and stand as a stark reminder of why a Code of Conduct is unfortunately necessary.

## **CONCLUSION AND RECOMMENDATIONS**

The Integrity Commissioner finds that Member Roberts breached Sections 6.1, 6.2 and 7 of the Code of Conduct. Councillor Roberts' attempt to justify or re-characterise his behaviour, rather than admitting his error and apologizing to the Member compounds his breach.

Threatening another Member of Council is an extremely serious breach of the Code of Conduct and one that attracts a significant recommended penalty. This behaviour does not accord with the overall purpose of the Code of Conduct, which is stated in the preamble as,

“The public should expect the highest standards of conduct from the members they elect to local government ... adherence to these standards will protect and maintain the Municipality’s reputation and the integrity of its decision-making process.”

Councillor Roberts must be sent a very strong message by Council that this behaviour is completely unacceptable and must never be repeated. In order to deter further breaches of this nature by Councillor Roberts, and to confirm Council’s respect for all Members of Council, the Integrity Commissioner recommends that Council suspend Councillor Roberts’ remuneration for 90 days.

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)  
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