



Cunningham Swan

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CONFIDENTIAL

May 25, 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
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Dear Mayor and Members of Council:

**RE: Complaint to Integrity Commissioner – Final Report
Code of Conduct Complaint – March 19, 2021
Our File No.: 15027-29**

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 March 19, 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 signing a petition asking Council to dissolve the Township's ward-based electoral system in favour of a council-at-large system.

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

During the investigation it was not necessary to interview the complainant, the Member or any witnesses. The written response to the complaint confirmed that the Member signed the petition. No other facts were required to undertake an assessment of the Code of Conduct allegation.

ANALYSIS

Facts:

The Integrity Commissioner finds:

1. In September 2020, the Member signed his name to a petition asking Council to "pass a by-law dissolving the existing wards" for the Township of Lanark Highlands.

2. The petition was presented to Council at the March 9, 2021 meeting of the Committee of the Whole. The petition was presented pursuant to section 223 of the *Municipal Act*, which provides that electors may present a petition asking council to pass a by-law dividing or re-dividing the municipality into wards or dissolving the existing wards. The *Municipal Act* permits petitioners to appeal to the Local Planning Appeal Tribunal ("LPAT") if Council does not pass the petitioned by-law within 90 days.
3. The Member did not present the petition at Council;
4. The Member stated in response to the complaint that he did not speak to the petition;
5. When Council discussed the petition at an open council meeting on April 13, 2021, the Member suggested that a consultant's report previously prepared for the Township could provide insight into the matter of the Township's electoral system. The Member did not speak to his position on a councillor-at-large system;

Code of Conduct:

The relevant portions of the Township Code of Conduct are:

9.3

In addition to pecuniary interests, Members must perform their duties impartially, such that an objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence. Each Member shall govern their actions using the following as a guide:

- a) in making decisions, always place the interests of the taxpayers and the Municipality first and, in particular, place those interests before your personal interests and the interests of other Members, staff, friends, business colleagues or Family Members;
- b) interpret the phrase "conflict of interest" broadly and with the objective of making decisions impartially and objectively;
- c) if there is doubt about whether or not a conflict exists, seek the advice of the Integrity Commissioner or legal counsel;
- d) do not make decisions that create an obligation to any other person who will benefit from the decision;
- e) do not make decisions or attempt to influence any other person for the purpose of benefitting yourself, other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals;

- f) do not put yourself in the position where a decision would give preferential treatment to other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals; and
- g) do not promise or hold out the prospect of future advantage through your influence in return for a direct or indirect personal interest.

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 a Committee.

Determination:

The Integrity Commissioner concludes that the Member breached the Code of Conduct.

Section 9.3 requires that members must perform their duties impartially, such that an objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence.

The Member argued in his response to the complaint that the Code does not prohibit a member of Council from signing a petition. This is only true in the sense that the Code does not identify that behaviour precisely. The Code does not identify many specific behaviours that would be a breach of the Code – that is not how Codes of Conduct are written. The examples provided in the sub-paragraphs of s. 9.3 are not exclusive but are intended to signal the general intent of the policy.

By signing the petition, the Member expressed his view on the matter of the electoral wards system and signaled that he had made a predetermination about the matter before it came before Council. More importantly, by signing the petition the Member participated in a statutorily mandated process that directed Council to make a decision, failing which appeal rights are available to any person who signed the petition. Councillor Roberts in effect placed himself in a position where he might be able to take the Municipality to the LPAT for a decision that he was part of making (unless he declared his conflict and refrained from voting).

This could be seen by an objective, reasonable observer to demonstrate a lack of impartiality and objectivity on the issue. Seeing the Member's name on the petition would imply to a reasonable person that the Member's mind was made up and incapable of being persuaded otherwise. This is an indication of bias in decision making.

While section 10.3 preserves any Member's right to express their personal opinions on matters of general interest, this is not a defence in this instance for two reasons. First, the petition has the effect of forcing Council to make a decision or face an appeal to the LPAT. Therefore, by signing the petition Councillor Roberts signaled that he wanted Council to be placed in a position where it had to make a decision. Councillor Roberts did not merely express a personal opinion, he participated in a process that effectively forced a decision point for the Council on which he sat. In addition, the signature is a clear indication that his mind was made up (which is a lack of impartiality). The Member's actions went beyond expressing an opinion about a matter of general interest in a public forum and crossed the line into advocating for a decision, including participating in an attempt to force a vote on the issue in a manner that was not consistent with his duties of impartiality.

A reasonable person considering all of the facts is more likely than not to consider that Councillor Roberts was acting in a manner that demonstrated to the public that he could not vote impartially.

CONCLUSION AND RECOMMENDATIONS

The Integrity Commissioner finds that Member Roberts breached Section 9.3 of the Code of Conduct.

There is no evidence that the Member deliberately intended to breach the Code when signing the petition. The Member must however appreciate that his role as a Member of Council requires that he conduct his personal affairs so as to avoid the perception of partiality or closed-mindedness with respect to Council matters. Having said that, the Member's actions should not attract the most significant penalty given his belief, even though it was incorrect, that signing the petition was not a breach.

The Integrity Commissioner therefore recommends that Council issue a reprimand.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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