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**CONFIDENTIAL**

January 17, 2022

**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 Pursuant to the Code of Conduct re: Councillor Bill King  
Our File No. 15027-35**

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 otherwise 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.

## **PRELIMINARY REVIEW**

On November 17, 2021 a complaint under the Code of Conduct (the "Complaint") was forwarded to our attention alleging that Councillor Bill King, (the "Member") had breached the Code of Conduct as a result of a comment made at the November 9<sup>th</sup>, 2021, Council meeting, in which the councillor allegedly stated, "Councillor Roberts has been a chronic problem in this administration".

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 the Member, with a request for any written response to be provided within 10 days;
- Reviewing the Member's Response
- Reviewing a recording of the November 9, 2021, Council meeting, as made by a member of the public; 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 complaint did not warrant investigation.

The Member stated that he did not recall the comment in question, but that he did not dispute that he made comments to that effect. The Integrity Commissioner has had the benefit of listening to a recording of the November 9, 2021, meeting, as taken by a private citizen. The alleged comment was not heard on the recording. Rather, the Member is heard as saying, “Once again we are dealing with allegations against Councillor Roberts [...]again, I’m disappointed, I’m not surprised, because this has become a pattern now, where Councillor Roberts is found guilty of breaking the integrity rules that we as councillors have set for ourselves, the standards that we have set for ourselves, and he won’t take responsibility for that, and I guess that’s the lesson I’m taking from this myself.”

The remainder of this report shall deal with the comments as actually made; however, the Integrity Commissioner notes that his conclusion would not be different had the comments been as stated in the complaint.

The Integrity Commissioner acknowledges that he was present at the November 9, 2021, meeting; however, he does not recall the impugned statement. In any event, the Integrity Commissioner was not asked to offer any comments or assess the statement during the meeting and his mere presence at the meeting does not present a conflict in rendering a decision in this matter.

## **ANALYSIS**

### **Facts:**

The Integrity Commissioner finds that:

At the November 9, 2021, meeting of Council, the Member stated, “Once again we are dealing with allegations against Councilor Roberts” and “again, I’m disappointed, I’m not surprised because this has become a pattern now”.

### **Code of Conduct:**

#### **6.0 GENERAL 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.

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.

**Determination:**

The Integrity Commissioner finds that the Member's remarks were a comment of a political nature made by one Councillor with respect to another. Neither the remarks as actually made nor the alleged remarks contained in the complaint constitute abuse, bullying, harassment or intimidation, or indecent, abusive, or insulting words or expressions. Accordingly, there is no violation of the Code. Commenting that Council was dealing with a complaint against Councillor Roberts, and that this was not the first complaint is a personal opinion expressed by the Member. While Councillor Roberts or others might take issue with characterizing the scenario as a "pattern" this is an opinion that the Member is entitled to have and express, provided that it is expressed in a way that is not prohibited under the Code of Conduct.

Political speech, including criticism of another member of Council, is addressed in a number of reported Ontario Municipal Integrity Commissioner decisions from around the province, which the Integrity Commissioner had the benefit of reviewing. These cases generally stand for the proposition that the Integrity Commissioner has a limited role in "refereeing" political speech and disagreement – see for example, City of Brampton, Report No. BIC-030-192. Although not binding, these decisions are informative, and provide useful context. The Integrity Commissioner would echo the decision in *Linton v. Kitras*, 2020 ONMIC 1, in finding that, "If an unfair or inaccurate criticism is made in the course of political debate, then political debate offers its own remedies to address those inaccurate or misleading comments. Specifically, the other side has the ability to correct the record, to provide context, to counter attack, and to defend the conduct".

While some may find the comment made by the Member and his choice of words objectionable, the Integrity Commissioner finds that it does not rise to the level of a Code of Conduct violation. Neither the language used nor the manner in which the comment was made constitutes bullying or abusive behaviour. The Member is entitled to provide a characterisation of any member of Council's actions as part of political discourse. Unless the comments rise to a level of abuse or are made in a manner that is offensive, insulting or indecent, the Integrity Commissioner has no jurisdiction to interfere in political debate.

The Integrity Commissioner reminds all members of Council that there are limits on political speech under the Code of Conduct; disrespectful comments that rise to the level of abuse, bullying, harassment, intimidation or using offensive language are within the Integrity Commissioner's jurisdiction and must be avoided.

## **CONCLUSION AND RECOMMENDATIONS**

The Integrity Commissioner finds that the Member did not breach the Code of Conduct.

This concludes the investigation and report in this matter.

Sincerely,

**Cunningham, Swan, Carty, Little & Bonham LLP**



Tony E. Fleming, C.S.  
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