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CONFIDENTIAL

December 18, 2023

SENT BY EMAIL TO: llee@mcnabbraeside.com

Mayor and Council
c/o Lindsay Lee, CAO/Clerk
Township of McNab/Braeside
2473 Russett Drive
Arnprior, Ontario
K7S 3G8

Dear Mayor and Council:

**RE: Code of Conduct Complaint – Final Report
Our File No.: 33392-4**

This public report of our investigation is being provided to Council in accordance with Section 223.6(2) 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 decisions 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.

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Report Summary

A Complaint (the “Complaint”) was received on April 13, 2023 outlining numerous allegations of breaches of the Code of Conduct by Mayor Mark MacKenzie (hereafter the “Member”).

A preliminary review of the Complaint was conducted which resulted in a narrowing of the allegations due to the limitation period contained in Section 19.5 of the Code of Conduct which requires that a Complainant make a Complaint within six weeks of becoming aware of a contravention.

An investigation was conducted into the remaining allegations that included the review of numerous videos of Council meetings, written materials received from both the Complainant and the Member, minutes, reports, agendas, correspondence and other documentary evidence. A total of 12 witnesses were interviewed, some on more than one occasion, to gather facts relevant to the allegations made in the Complaint.

Our investigation concluded that there were 25 breaches of the Municipality’s Code of Conduct in the period from March 2, 2023 to April 13, 2023 by the Member.

Our investigation found that the Member conducted himself in a manner that was dishonest, false and misleading in breach of Code of Conduct requirements.

Our investigation found a pattern of conduct by the Member that constituted bullying and intimidation of staff, the Complainant and Council as a whole in breach of the Code of Conduct requirements. The investigation found that the Member made threats and behaved in an aggressive manner towards the Complainant within the meaning of the term “harassment” as defined in the Code of Conduct.

Our investigation found that the Member breached the Code of Conduct requirements with respect to confidential information and publicly discussed a staff member’s employment and wages in a public meeting.

Lastly, our investigation found that the Member pressured and directed staff with respect to preparing the budget for a specific department in violation of the Code of Conduct.

We note that our findings of breach of the Code of Conduct are serious in nature and frequency and represent a course of conduct by the Member that demonstrates a serious disregard for the standards of behaviour expected of an elected Member of Council.

Our jurisdiction to recommend a penalty is defined in Section 19.3 of the Code of Conduct and is limited to recommending a reprimand or a suspension of pay up to 90 days.

Given the seriousness and frequency of the breaches of the Code of Conduct detailed in this report we recommend that Council impose a suspension of the Member's pay for a total of 60 days.

Complaint Overview

The Complaint was received on April 13, 2023 and contained numerous allegations of breach of the Code of Conduct by the Member.

Preliminary Review Process

During the preliminary review, we assumed that the facts as set out in the complaint were 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 behavior in fact occurred, would that amount to a breach of the Code of Conduct? If the behavior would constitute a breach, we undertake a full investigation to determine whether the allegations are true. If the behavior, 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 and we do not determine if the allegations are in fact true – we simply assume that they are true as a method to assess the merit of the Complaint at this stage.

Of particular relevance during the preliminary review stage of this investigation was Section 19.5 of the Code of Conduct:

Complaints must be submitted within six weeks of the matter becoming known to the person making the complaint and no more than six months after the alleged violation occurring. No action will be taken on a complaint received beyond these deadlines.

It was determined during the preliminary review that portions of the Complaint did not comply with the requirements of Section 19.5. Those allegations were determined to be time-barred by Section 19.5 as they related to matters that were known to the Complainant more than six weeks before the Complaint was submitted on April 13, 2023.

The preliminary review process narrowed the allegations that were investigated as our offices were without jurisdiction to investigate any matters that were barred by Section 19.5 of the Code of Conduct.

Allegation Overview

The following allegations survived the preliminary review process:

1. **March 2, 2023:** The Member is alleged to have stated to the Complainant “I want to make the financial statements for 2022 look as bad as possible” following a Council Meeting with the auditor.
2. **March 7, 2023:** The Member is alleged to have presented a recommendation from a committee to Council requesting approval of Council for the formation of a sub-committee of which the Mayor would be chair. It is alleged that the recommendation was false and was not approved by the committee for consideration by Council.
3. **April 3, 2023:** The Member attended a meeting where the following is alleged to have occurred:
 - a. The Member is alleged to have stated that he had “Strong Mayor” powers under Section 284.16 of the *Municipal Act* and therefore had the sole responsibility of creating the budget; and
 - b. The Member is alleged to have told the Complainant multiple times that they “better be very careful”.
4. **April 3, 2023:** The Member is alleged to have met with a specific department head with a spreadsheet prepared by a resident, with grant funding removed from the revenue side of the spreadsheet to make the deficit look larger than it was and pressured the department head to make budget changes based on these numbers.
5. **April 18, 2023:** The Member is alleged to have behaved inappropriately during a closed session of Council. Specifically, it is alleged that the Member:
 - a. Was extremely angry and yelling;
 - b. Commented that another Member was incompetent;
 - c. Accused Council of being “on a witchhunt”, “a lynch mob” and that they “should take him out to the nearest tree”;
 - d. Paced around the chambers, slammed things on his desk, packed up his belongings several times and threatened to leave the meeting;
 - e. Threatened to “expose” correspondence of the Complainant; and
 - f. Turned his chair around and put his back to Council for several minutes.

6. **April 2023:** The Member is alleged to have insisted on meetings with department heads regarding the budget and is alleged to have provided spreadsheets that the department heads were to work from in preparing the budget.
7. **Up to and including May 2023:** The Member is alleged to have repeatedly attempted to influence a department head to fire a subordinate.
8. **May 3, 2023:** The Member is alleged to have pressured a department head in a public committee meeting regarding staffing and repeatedly asked why a junior staff person wasn't being promoted, as well as discussing that staff member's hours and wages.
9. **May 8, 2023:** The Member is alleged to have behaved inappropriately during a closed session of Council. Specifically, it is alleged that the Member:
 - a. Was angry and yelling;
 - b. Threatened to "expose" the Complainant and circulate an email from the Complainant outlining their concerns with the Member's behaviour; and
 - c. Behaved in an intimidating and threatening manner towards the Complainant.

Timeline of Investigation

The key dates and events during the course of this investigation are as follows:

- Complaint Received – April 13, 2023
- Addition to Complaint Received – May 11, 2023
- Preliminary Review Conducted – April 2023 – May 2023
- Redacted Complaint sent to Member – June 5, 2023
- Response received from Member – June 19, 2023
- Response sent to Complainant – June 22, 2023
- Response received from Complainant – July 4, 2023
- Complainant's Response sent to Member – July 12, 2023
- Member declined further Response – July 17, 2023
- Interviews Conducted – August 17, 2023 – October 26, 2023
- Draft report prepared - November 2023
- Draft report provided to Member to allow for final comments - December 4, 2023
- Member's submission on draft report received – December 15, 2023

Investigation Process Overview

This investigation proceeded through the following process:

- The Preliminary Review was conducted which included:
 - Reviewing the Complaint and documentation submitted;
 - Reviewing the Code of Conduct and applicable legislation; and
 - Determining which portions of the Complaint should proceed to an investigation.
- Written responses were reviewed and exchanged between the Member and the Complainant;
- Interviews with relevant witnesses and the Member were conducted;
- Relevant agendas, minutes, reports, videos and other documentary evidence was reviewed;
- A Draft Report to Council was prepared;
- The Draft Report was provided to the Member to afford an opportunity for the Member to make final submissions;
- The Member's submissions regarding the Draft Report were considered; and
- A Final Report to Council was delivered.

Factual Findings

The allegations that formed the basis of this investigation required several findings of fact to be able to determine if there was a breach of the Code of Conduct by the Member. The factual determinations made and the evidence relied upon in reaching those conclusions are summarized below with respect to each allegation.

This investigation uses the standard of proof known as the “balance of probabilities” which applies to Integrity Commissioners in Ontario.¹ The standard requires the trier of fact to “scrutinize the relevant evidence with care to determine whether it is more likely than not that the alleged event occurred.”²

Allegation “1”

March 2, 2023: The Member is alleged to have stated to the Complainant “I want to make the financial statements for 2022 look as bad as possible” following a Council Meeting with the auditor.

The Complaint alleged that the Member after a Special Meeting of Council with the Township auditor on March 2, 2023 stated to the Complainant, “I want to make the financial statements for 2022 look as bad as possible” and when asked “Why?” by the Complainant stated, “So everyone knows how bad our situation is and how incompetent the staff and former council were.”

The Complainant’s evidence was that the Member repeatedly questioned the past finances of the Municipality. On this particular occasion, the Complainant’s evidence was that during the meeting with the auditor, the Member questioned if the value of certain municipal buildings could be lowered. The exchange that comprises the allegation allegedly occurred after the meeting with the Auditor.

The Member’s written response to this allegation stated that the Complainant’s contention that he intended to make the last Council look bad is an exaggeration and taking a statement he made completed out of context. The Member’s evidence was that he stated was “If we don’t push to have clean 2022 statements, so that we have a clear picture of where we actually stand at the start of our term, that these adjustments will have to be made during our term.” The Member denied making the statement that forms the basis of the allegation. The Member indicated that he was very concerned about a write-down of the reserves in the financial statements and that any comments made were about that issue.

¹ *Chiarelli (re)*, 2020 ONMIC 20 at para 84.

² *F.H. v McDougall*, 2008 SCC 53 at para 49.

During other interviews conducted during the investigation multiple people indicated there was a pattern of intimidating behavior by the Member related to the financials of the Municipality. It was stated that it seemed the Member asked “unrelenting” questions about the financials and that he commented in a meeting that he would be looking for discrepancies in the finances. Witnesses stated that they felt the Member was insinuating that they “were hiding something and the Member was going to uncover it”. The Member “questioned everything” about past financials and accused staff of not showing the true picture. This pattern of behaviour created significant concern on the part of staff with respect to the impact of the Member’s comments and questions on their professional reputation.

The meeting video of the March 2, 2023 meeting with the auditor was reviewed as part of the investigation. It confirmed that the Member asked questions of the auditor regarding the value of certain buildings and asked about when and how write downs of the book value of certain buildings would be appropriate and what impact that would have on the financial statements as a whole.

With respect to the factual findings, this allegation pertains to a comment that was allegedly made without any other witnesses between the Member and the Complainant. Such allegations are difficult to investigate when, as in this situation, the two individuals have differing accounts of what was said.

In such instances, credibility and considering the weight of the evidence as a whole is essential. As will be detailed in other findings in this report, we found several instances where the Member was not credible in his account of what he said or did with respect to the allegations contained in the Complaint. On the other hand, the Complainant was found to be credible in their accounts of what occurred or was said and these accounts were often supported by corroborating evidence or witnesses.

Further, there is significant evidence that the Member demonstrated on several occasions that he took issue with the past financials of the Municipality and there was an environment of a campaign to uncover past wrongs in the financials. This evidence lends credibility to the Complainant’s account regarding this allegation. This corroborating evidence does not support the Member’s account that he simply wanted to have a “clear picture of where we stood”.

As a result of the foregoing, we find that it is more likely than not that on March 2, 2023, the Member stated to the Complainant, “I want to make the financials for 2022 look as bad as possible” after the meeting with the auditor.

Allegation “2”

March 7, 2023: The Member is alleged to have presented a recommendation from a committee to Council requesting approval of Council for the formation of a sub-committee of which the Mayor would be chair. It is alleged that the recommendation was false and was not approved by the committee for consideration by Council.

The Complaint alleges that the Member presented a recommendation from one of the committees of which he is the chair. The recommendation was presented as a resolution of the committee to request Council’s permission to move forward with the formation of a sub-committee, of which the Mayor would be chair. It is alleged that it was later discovered by the Complainant that this recommendation was not on that committee’s agenda, that there was no vote to send the matter up to Council for approval and that there was simply a brief discussion at the end of the committee meeting as “something to look at.” It was alleged that the recommendation was not given to Council in advance of the meeting but was handed out during the meeting in which it was presented.

In summary, on a balance of probabilities, our investigation determined the following occurred:

- That on March 7, 2023 the Member presented a recommendation to Council from the committee;
- That the recommendation presented to Council was not approved by the committee with a motion or vote;
- That there was an informal discussion regarding the subject matter of the recommendation at the committee, but that there was no intention by the committee to send the matter to Council for approval;
- That the Member instructed staff to prepare the report; and
- That the Member instructed staff to place the matter on the Council agenda.

The Complainant’s evidence was that a report from the committee was presented to Council as a recommendation of the Committee. The recommendation was regarding a subcommittee of which the Member would be chair. The recommendation was defeated by Council. Following the meeting where it was presented, the Complainant alleged that they were informed that there was only a brief discussion regarding the matter at the Committee and that there was no vote, no item on the committee agenda and no suggestion that the Member would be Chair of any potential subcommittee that was formed.

The Member in his written response and interview stated that the subject matter of the recommendation, the formation of a sub-committee, was discussed at the roundtable portion of the meeting and agreed it was not on the agenda. He acknowledged there was no vote but claimed that this was a procedural oversight that was not picked up on by anyone else at the

time. He indicated he should have used the term “working group” rather than subcommittee. The written response of the Member indicated that during the discussion at the committee level “two members cheerfully agreed to join and it was clear that a report would be brought back to the committee where a recommendation would be made to Council.”

Witnesses indicated that there was a brief casual discussion of the formation of a “working group” at the committee level during the roundtable discussion portion of the committee meeting. There was further evidence that Members of Council were contacted following the March 7, 2023 meeting and informed that there was no formal recommendation made by the committee regarding the formation of a sub-committee. Evidence was received that the report was prepared at the Member’s direction. Other evidence was received that committee members contacted Members of Council following the March 7, 2023 meeting to inform them that no formal recommendation to form a sub-committee was ever made at the committee level. This evidence aligned with evidence received from committee members that they were surprised that something was put forward at Council following the roundtable discussion.

Other evidence that was reviewed includes the video of the Council Meeting on March 7, 2023 which confirms that the Member presented a report dated March 6, 2023 to Council which was defeated.

The report dated March 6, 2023 was also reviewed which contained the following recommendation:

Recommendation

THAT Council accepts the recommendation from the [Committee] to create a sub committee called [Name].

FURTHER THAT Council appoints [Member (Chair)]...to this sub committee.

The committee’s agenda and meeting minutes contained no reference to any discussions or vote regarding recommending the formation of a sub-committee to Council.

Lastly, correspondence was reviewed where the Member informed staff that the committee had decided to form a sub-committee and at that time was reminded by staff that a sub-committee required Council approval. In response, the Member instructed staff to place the formation of the sub-committee on the agenda for the March 7, 2023 meeting.

With respect to the factual findings regarding this allegation, it was uncontested that the Member presented a recommendation to Council as a formal resolution of the committee. We find as fact that there was only a casual discussion regarding the formation of a working group

at the committee level. We find as fact that the recommendation was not formally approved by the Committee with a motion or vote. It is our finding that on a balance of probabilities, what occurred was that there was a casual discussion regarding the formation of a working group to gather further information regarding a specific matter. We also found that the report was prepared and placed on the Council agenda at the direction of the Member.

Further, on a balance of probabilities we find that there was no intention at the committee level during the discussion about the formation of a working group to make a recommendation to Council. The Member's evidence that the failure to hold a vote was merely a procedural oversight cannot be accepted. This is supported by the correspondence reviewed which reveals that the Member himself was not aware until after the committee meeting that Council approval was required. This finding is supported by the nature of the discussion and reaction of committee members following the March 7, 2023 Council meeting presentation.

Allegation "3"

April 3, 2023: The Member is alleged to have attended a meeting wherein the following is alleged to have occurred:

- a. The Member is alleged to have stated that he had "strong mayors" powers under Section 284.16 of the Municipal Act and therefore had the sole responsibility of creating the budget; and*
- b. The Member is alleged to have told the Complainant multiple times that they "better be very careful".*

Allegation 3(a)

The Complaint alleges that during a meeting that took place on April 3, 2023 the Member was trying to convince the Complainant and other meeting attendees that he had the sole responsibility for creating the budget, not staff, and that he would be meeting with department heads individually to go over the budgets. It is alleged that the Member stated that the *Municipal Act* gave him this authority. It is alleged that at this meeting the Member was advised that the section did not apply to the Municipality and that he did not have Strong Mayor powers.

The Complaint's evidence during interviews was that the Member argued with staff at the meeting that he had the authority to singlehandedly prepare the budget without staff and Council.

The Member's evidence was that during this meeting he read through the *Municipal Act* and "stumbled upon" the "Strong Mayor" powers. He denied ever saying he had that power but that he identified to staff present what he had found, it was discussed and it was discovered the regulations clarified that it only applies to certain municipalities. The Member stated that he never intended to create a budget but that he was concerned how the budget was going to

be prepared at this time as there was no Treasurer at the Municipality. The Member stated that he never asserted again that he had those powers.

Other witnesses provided evidence that during the meeting the Member was angry. Witnesses recalled that the Member continued to allege on numerous occasions that he had “Strong Mayor” powers and that he was reminded on numerous occasions that those powers do not apply to the Municipality. Evidence of those in attendance was that the April 3rd meeting was very heated and loud and that the Member made a comment along the lines of “I’m not getting anywhere talking to you guys, you don’t know what you are doing.”

No documentary evidence was reviewed regarding this allegation as it was a private meeting between the Member, the Complainant and staff.

We find as fact that the Member alleged he had “Strong Mayor” powers in the meeting on April 3, 2023 and argued with staff regarding his powers with respect to the budget. The Member’s account that there was simply a discussion of the powers between the attendees of the meeting and a determination that they did not apply to the Municipality does not align with the rest of the evidence received. The evidence from the Complainant that the Member “argued” with staff is supported by the other evidence received that the meeting was heated and that the Member was angry and trying to convince the meeting attendees that he did have those powers.

Allegation 3(b)

The Complaint alleges that prior to the April 3, 2023 meeting, the Complainant sent an email to the Member outlining concerns with his behaviour. The Complaint alleges that the following exchange occurred at the meeting on April 3, 2023:

Complainant: I’ve been in the loop until I sent you that email outlining concerns. That’s when things changed. I’ve been systematically cut out of the loop since then. That’s retaliation.

Member: It wasn’t systematically, it was 100 percent. What is your problem?

Complainant: You are isolating council from information and authority

Member: I am isolating you since that email yes.

After several times of him saying “you better be very careful” I finally asked if he was threatening me.

We find that, on a balance of probabilities, the Member threatened the Complainant, stating several times “you better be very careful.”

The Complainant stated she felt that the comment “you better be very careful” was threatening.

The Member’s stated the following in his written response:

I did in fact caution her to be very careful as to what she says about me because it was already coming back to me that she was saying unflattering things to say the least, without basis as was becoming the pattern, and that would only seek to inflame the situation. There was no threat or warning. She initiated the conversation in a tone where she was almost yelling at me and I moved the conversation expediently to the agenda item as I did not see the value of any sort of heated argument.

The Member claimed that his comments were with respect to allegations that were made by the Complainant in the email to the Member that was sent prior to this meeting. The Member indicated they felt they needed to protect themselves given the allegations the Complainant made and that the comment about being “careful” was made with respect to those allegations. Specifically, the Member alleged they were cautioning against potential harm to the Municipality and the Complainant that could result from false allegations.

Other witnesses recalled the meeting in question and that there was a heated exchange and that the Member was angry in the meeting but did not recall the exact words used during the exchange.

On a balance of probabilities, we find as fact that the Mayor stated to the Complainant “you better be very careful.” Given that other witnesses recall a heated exchange wherein the Member was angry, it is more likely than not that this comment was made in a manner that was threatening and intimidating. The Member’s account that he “moved expediently to the agenda item as I did not see the value of any sort of heated argument” is not credible as it does not align with the other evidence received regarding his demeanour during the exchange.

Allegation “4”

April 3, 2023: The Member is alleged to have met with a specific department head with a spreadsheet prepared by a resident, with grant funding removed from the revenue side of the spreadsheet to make the deficit look larger than it was and pressuring the department head to make budget changes based on his numbers.

Our investigation required a finding as to whether this meeting occurred, whether the Member provided their own budget numbers and whether the Member pressured the department head to adopt their numbers. On a balance of probabilities, we find that the Member did meet with the department head and pressured them to adopt budget numbers from a spreadsheet he provided.

The Complainant’s evidence indicated that the Member asked to meet with the department head one on one. The Complainant stated that they attended the meeting at the department head’s request.

The Member’s evidence was that he did meet with the department head with the Complainant and another member of staff in attendance. The Member stated that he had a committee member from the Finance and Administration Committee prepare a spreadsheet – the first draft did not include the grant figures and the second draft did. The second draft was made public at an open session of Council. The Member stated that he did not pressure the department head in any way other than in the “normal process of let’s get the facts out on the table.”

Based on the recollection of attendees, we find that the department head was being pressured to agree with the Member and his figures. Evidence supports a finding that that the Member was upset with the department head and was angry – specifically that his demeanour was one of agitation and irritation and that he was turning red during the meeting.

Documentary evidence was reviewed confirming that the Member met with the department head and provided a spreadsheet that contained budget figures, noting “not for sharing until you and I go over it.”

Based on the foregoing, we find as fact that the Member met with the department head and pressured the department head to adopt the figures in the Member’s spreadsheet. This finding is consistent with the evidence received. Where our finding differs from the recollection of the Member we prefer the evidence of other witnesses. As with other allegations, the Member’s accounts are neither credible nor supported by corroborating evidence.

Allegation “5”

April 18, 2023: The Member is alleged to have behaved inappropriately during a closed session of Council. Specifically, it is alleged that the Member:

- a. Was extremely angry and yelling;*
- b. Commented that another Member was incompetent;*
- c. Accused Council of being “on a witchhunt”, “a lynch mob” and that they “should take him out to the nearest tree”;*
- d. Paced around the chambers, slammed things on his desk, packed up his belongings several times and threatened to leave the meeting;*
- e. Threatened to “expose” emails of the Complainant; and*
- f. Turned his chair around and put his back to Council for several minutes.*

Our investigation required a finding as to whether the above behaviour occurred during a meeting of Council as alleged by the Complainant. On a balance of probabilities, we find that the Member behaved as described during the April 18th closed session of Council.

The Complainant’s evidence was that a closed session was held during which the Member exhibited the behaviour detailed above.

The Member’s written response and interview evidence was that he was “blindsided” by the matter being discussed and that there were no discussions with him beforehand or opportunity to prepare for the meeting. He acknowledged that he did accuse Council of being “on a witchhunt” and “a lynch mob”. The Member acknowledged that he did turn his back to Council during the meeting and asked the Clerk if he could leave the meeting. The Member alleged that he was upset as a result of the content of the meeting and feeling that process was not being followed, resulting in an unsafe environment and unsafe situation for him.

Other witnesses that were present at the closed meeting of April 18, 2023 provided accounts of the Member’s behaviour during the meeting. The accounts of what occurred during the meeting were consistent with the allegations and included that the Member was shouting and pounding his fists on the table. Accounts were consistent that the Member turned his chair around and put his back to Council. A witness interviewed confirmed that he made comments of a disrespectful or threatening nature to other Members of Council including that the Member stated he was “out to sink them” and shouted “remember what I told you.” Witnesses confirmed that the Member has during more than one closed session threatened to “expose” emails sent by the Complainant to the Member.

The minutes from the April 18, 2023 closed session were reviewed to confirm that the discussion pertained to prior conduct of the Member. The minutes did not comment on specific behaviour or comments of the Member to a degree that would assist in verifying the allegations.

On a balance of probabilities, as a result of the foregoing evidence, we find that the behaviour of the Mayor as alleged in the Complaint occurred at the April 18 closed meeting of Council.

Allegation “6”

April 2023: The Member is alleged to have insisted on meetings with department heads regarding the budget and is alleged to have provided spreadsheets that the department heads are to work from in preparing the budget.

The Complaint alleged that the Member insisted on meeting with department heads and was providing spreadsheets that the department heads were to work from in preparing the budget.

The Complainant during the investigation alleged that they were not aware of any further meetings with department heads other than the meeting on April 3, 2023.

The Member’s evidence was that he only met with a single department head on April 3, 2023 and no other meetings with department heads occurred regarding the budget.

No documentary evidence was received with respect to this allegation.

It is our finding that the only meeting that actually occurred between the Member and department heads regarding the budget was the meeting on April 3, 2023.

Allegation “7”

Up to and including May 2023: The Member is alleged to have repeatedly attempted to influence a member of staff to fire a subordinate.

The Complainant alleged that the Member constantly messaged them with comments that he intended to speak to the department head regarding the specific member of staff and his desire that the member of staff be fired.

The Member denied the allegation and stated that he never discussed anything about the staff member with the department head.

Other witnesses were interviewed regarding this allegation. Based on witness accounts, it is clear from the behavior of the Member that he did not like the specific member of staff. However, we found no evidence that the Member ever directed the department head regarding the specific staff member or that he made any direct requests that the staff member be fired.

The only documentary evidence obtained contained messages between the Member and the Complainant confirming the allegation that the Member intended to speak with the department head regarding the specific member of staff.

On a balance of probabilities, based on the evidence received, we find that while the Member may not have liked the member of staff, he never directed the department head regarding the member of staff's employment or requested that the staff member be fired.

Allegation "8"

May 3, 2023: The Member is alleged to have pressured a department head in a public committee meeting regarding staffing and repeatedly asked why a junior staff person wasn't being promoted as well as discussing that staff member's hours and wages.

The Complainant's evidence was that the department head was "put on the spot" and asked questions in a public meeting about the performance, wages and potential promotion of a specific staff member. The Complainant's evidence was that the department head was very uncomfortable during the exchange as they did not want to disclose such information in a public meeting.

The Member's evidence was that he did ask a question of the department head regarding the employment of the specific staff member and whether they would be applying for a particular position. The Member denied putting pressure on the department head and stated that he simply asked a question that he thought was a normal question in the circumstances.

Other witnesses to the May 3, 2023 meeting were interviewed. The evidence received indicated that the Member did question the department head about certain staff members and salaries in a public setting and "pressed" the department head. Other witnesses confirmed that it was "very awkward."

Minutes of the May 3, 2023 meeting were reviewed but did not reveal any evidence to support or refute the allegations.

On a balance of probabilities, we find that the Member did question the department head regarding the employment of a specific staff member. Specifically, based on the evidence received it is more likely than not that the Member discussed in a public meeting the wages and employment of a staff member and asked the department head why they were not being promoted to a particular position.

Allegation "9"

May 8, 2023: The Member is alleged to have behaved inappropriately during a closed session of Council. Specifically, it is alleged that the Member:

- a. Was angry and yelling;*
- b. Threatened to "expose" the Complainant and circulate an email from the Complainant outlining their concerns with the Member's behaviour; and*

c. Behaved in an intimidating and threatening manner towards the Complainant.

The Complainant's evidence was that the Member threatened to "expose" correspondence sent to the Member by the Complainant outlining their concerns with the Member's behaviour. The Complainant's evidence is that they offered to have the correspondence circulated to Council and at that point the Member "dropped it." The Complainant's account was that the Member was angry and "ranting".

The Member's evidence was that he asked the Complainant if they would like him to share the email as they were referring to it but that he didn't threaten the Complainant. The Member's account was that he never got a response to his question from the Complainant.

Several other witnesses were interviewed regarding the May 8, 2023 closed session meeting. The evidence received supported the Complainant's account of the meeting and included commentary that the Member frequently targets the Complainant in meetings and gets "aggressive" with the Complainant in a manner that is very uncomfortable for the others present at the meeting. A witness commented that the Member's behaviour towards the Complainant is "like a bully" and that he regularly makes "derogatory" comments towards the Complainant in meetings.

Minutes of the May 8, 2023 meeting were reviewed but did not reveal any evidence to support or refute the allegations.

On a balance of probabilities, we find that the Member behaved as alleged in the May 8, 2023 meeting. This behaviour is consistent with an ongoing course of conduct directed at the Complainant. The Complainant's account of the Member's behaviour is corroborated by other accounts of the meeting. The Member's assertion that he was simply "asking" if the Complainant wanted the email that was being referred to released is not credible.

Code of Conduct Findings

In summary, our investigation found 25 breaches of the Code of Conduct flowing from the allegations.

A summary of the breaches by section and allegation is below:

		Allegation								
		1	2	3	4	5	6	7	8	9
Code of Conduct Section Breached	5.1	X	X							
	5.3	X	X	X		X				X
	5.14 (c)		X							
	5.14 (e)	X	X							
	5.14 (f)	X	X							
	9.1								X	
	14.1					X				X
	15.3				X					
	15.5				X					
	15.6				X					
	16.1			X	X	X				X
	16.6(c)			X		X				X

Section 5: Breaches regarding General Standards of Conduct

The relevant portions of this Section of the Code of Conduct state:

5.1 Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.

5.3 Members will conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected, are open and honest, focus on issues rather than personalities, avoid aggressive, offensive or abusive conduct.

5.14 Members of Council will:

...

c) When appointed to committees and other bodies as part of their duties must make every effort to participate diligently in these bodies with good faith and care;

...

e) Must seek to advance the public interest with honesty and treat members of the public with dignity, understanding and respect;

f) May not make statements known to be false or make a statement with the intent to mislead Council or the public;

Allegation "1"

We find that the Member breached Sections 5.1, 5.3, 5.14(e) and 5.14(f) of the Code of Conduct with respect to Allegation "1".

With respect to Section 5.1, we find that the statements made by the Member in the March 2, 2023 Special Meeting of Council regarding write downs of certain buildings were made with the intent to mislead Council or members of the public.

The statements made with the intent to mislead Council or members of the public are those comments made during the meeting regarding the value of the buildings and the discussion that occurred at the Mayor's prompting regarding write-downs of certain buildings. While

those statements on their face appear to be questions of the auditor, we find that they were made with the intent to mislead Council and/or members of the public.

We find that the questions of the Auditor were made by the Member deliberately with the intent to “make the financial statements for 2022 look as bad as possible” and “so everyone knows how bad our situation is and how incompetent the staff and former council were.” These statements illustrate the Member’s intent to mislead Council and/or the public as to the financial picture of the Municipality during the meeting with the auditor. This amounts to a breach of Section 5.1 of the Code of Conduct.

With respect to Section 5.3, we find that this conduct by the Member represents a failure to deal with Council in a manner that was “open and honest.”

With respect to Section 5.14(e), we find that this conduct by the Member represents a failure to advance the public interest with honesty.

With respect to Section 5.14(f), we find that this conduct represents, as noted, an intent to mislead Council or the public.

Allegation “2”

We find that the Member breached Sections 5.1, 5.3, 5.14 (c), (e) and (f) of the Code of Conduct with respect to Allegation “2”.

As outlined above, the Member presented what was purported to be a recommendation of a committee regarding the formation of a subcommittee to Council. We found as fact that the committee did not formally approve the recommendation, that there was no intention during the discussion of the matter at the committee level to make a recommendation to Council and that the recommendation report was authored and placed on the agenda at the request of the Member.

We find that the report submitted by the Member to Council on March 7, 2023 was dishonest, false and misleading in breach of Section 5.1. There was no intention or formal vote at the committee to seek Council approval, yet the Member presented the report as if the committee had approved the request.

We do not accept the Member’s account that the failure to take a vote was merely a procedural oversight. We find as fact that there was no intention at the committee level to make a request of Council and that the matter came before Council at the Member’s sole direction.

With respect to Section 5.3, we find that this conduct by the Member represents a failure to deal with Council in a manner that was “open and honest.”

With respect to Section 5.14(e), we find that the presentation made by the Member on March 7, 2023 described herein represented a failure to participate in the committee of which they were a member with “good faith and care”.

“Good faith” is defined in the Code of Conduct as “in accordance with standards of honesty, trust and sincerity.”

We find that this conduct by the Member was dishonest and falls short of the described standard of participating in the committee with “good faith and care.”

With respect to Section 5.14(e), we find that this conduct by the Member represents a failure to advance the public interest with honesty.

With respect to Section 5.14(f), we find that this conduct represents, as noted, an intent to mislead Council or the public.

Allegation “3”

We find that the Member breached Section 5.3 of the Code of Conduct on April 3, 2023.

As detailed herein, we found that the Member on April 3, 2023 threatened the Complainant stating several times “you better be very careful.” We find that this threat constitutes behaviour that is in breach of the obligation of Members to avoid “aggressive, offensive or abusive conduct”.

Allegation “5”

We find that the Member breached Section 5.3 of the Code of Conduct on April 18, 2023.

We found as fact that the Member behaved inappropriately during a closed session of Council and the Member:

- Was extremely angry and yelling;
- Commented that another Member was incompetent;
- Accused Council of being “on a witchhunt”, “a lynch mob” and that they “should take him out to the nearest tree”
- Paced around the chambers, slammed things on his desk, packed up his belongings several times and threatened to leave the meeting; and
- Turned his chair around and put his back to Council for several minutes.

We find that behaviour of this nature is entirely inappropriate during a meeting of Council. We find that this “aggressive, offensive and abusive” behaviour rises to a level that constitutes a breach of Section 5.3 of the Code of Conduct.

Allegation “9”

We find that the Member breached Section 5.3 of the Code of Conduct on May 8, 2023.

We found as fact that the Member again behaved inappropriately during a closed session of Council and that the Member:

- Was angry and yelling;
- Threatened to “expose” the Complainant and circulate an email from the Complainant outlining their concerns with the Member’s behaviour; and
- Behaved in an intimidating and threatening manner toward the Complainant.

Again, we find that behaviour of this nature by a Member is entirely inappropriate during a meeting of Council. We find that this behaviour constitutes “aggressive, offensive or abusive conduct.”

Section 9: Breaches regarding Confidential Information

The relevant portion of this section of the Code of Conduct states:

9.1 No member shall disclose or release by any means to any member of the public, or in any way divulge any confidential information, including personal information of any aspect of deliberations acquired by the virtue of their office, in either oral or written form, except when required by law or authorized by Council resolution to do so.

Confidential information is defined in the Code of Conduct as including “personal information.” “Personal information” is defined as including “information relating to the...employment history of the individual...”

Allegation “8”

We find that the Member breached Section 9.1 of the Code of Conduct on May 3, 2023.

We found as fact that the Member discussed in a public forum the wages and employment history of a specific staff member and asked the department head why they were not being promoted to a particular position.

We find that this discussion constitutes a breach of Section 9.1 of the Code of Conduct. Personal information such as the wages and performance of a specific individual is considered “personal information” within the meaning of the Code of Conduct. The Municipality and Council Members are required to keep such information confidential as noted in Section 9.1. Discussing such matters in a committee meeting with members of the public present is a breach of this requirement.

Section 14: Breaches regarding Conduct at Meetings of Council

The relevant portion of this section of the Code of Conduct states:

14.1 Members shall conduct themselves with decorum at Council and Committee meetings.

While the Code of Conduct does not provide a definition of “decorum”, definitions in the Integrity Commissioner context have included “behaviour in keeping with good taste and propriety” and “propriety and good taste in conduct or appearance.”³

We find that the Member failed to act with decorum at a Council meeting on April 18, 2023 and May 8, 2023.

Allegation “5”

We find that the Member’s behaviour at the closed session held on April 3, 2023 constituted a significant departure from the behaviour expected of a Member of Council during a Council Meeting. A Member of Council is expected to behave appropriately during all Council Meetings, open or closed. The factual findings in this report with respect to what took place at the April 3, 2023 meeting of Council indicate a significant failure on the part of the Member to behave with decorum.

Allegation “9”

Similarly, we find that the Member’s behaviour at the closed session held on May 8, 2023 constituted a breach of decorum. Threatening and intimidating behaviour is never appropriate and falls short of the standard of conduct expected of a Member of Council during meetings. The Member’s words and demeanour towards the Complainant were of a threatening and intimidating nature which is not appropriate and constitutes a breach of decorum.

³ *Jeffrey v Sprovieri*, 2018 ONMIC 21 at para 58.

Section 15: Breaches regarding Conduct Respecting Staff

The relevant portions of this section of the Code of Conduct state:

15.3 Employees serve Council and work for the municipal corporation under the direction of the Chief Administrative Officer. Council directs staff through its decisions as recorded in the minutes and resolutions of Council. Members have no individual capacity to direct members of staff to carry out particular functions.

15.5 Only Council as a whole and no single member including the Mayor has the authority to direct staff, approve budget, policy, committee processes and other such matters, unless specifically authorized by Council. If approached, direct to the CAO or designate.

15.6 Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual members or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the Township.

The Divisional Court has commented with respect to Code of Conduct provisions of this nature that they reflect “the relative power imbalance between staff, who do not have a voice at Council, and elected Members, who do, mean that their respective roles and responsibilities must be acknowledged and respected.”⁴

Allegation “4”

We find that the Member breached Sections 15.3, 15.5 and 15.6 of the Code of Conduct on April 3, 2023.

These breaches flow from our findings that the Member met with a department head regarding the budget and pressured the department head to make changes to their budget figures based on his calculations.

⁴ *Villeneuve v North Stormont (Township)*, 2022 ONSC 6551 at para 37.

This section of the Code of Conduct is clear that Council directs staff as a whole and that Members have no individual capacity to direct staff. In this instance, we found that the Member directly pressured a department head regarding the budget and was presenting his own numbers that the department head should follow. This interference in staff duties and direction of staff constitutes a breach of the Code of Conduct.

Section 16: Breaches regarding Discreditable Conduct (Interpersonal Behaviours)

The relevant portions of this section of the Code of Conduct state:

16.1 All members of Council have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation. All members of Council shall ensure that their work environment is free from discrimination and of personal and sexual harassment.

16.6 Without limiting the generality of the foregoing, Members shall not:

- c) Make threats or engage in any abusive activity or course of conduct towards others.

Bullying and Intimidation

Our investigation revealed a pattern of conduct that constituted bullying and intimidation by the Member directed at the Complainant and members of the Municipality's staff.

Specifically, we found that the Member breached Section 16.1 of the Code of Conduct on the following dates:

- April 3, 2023 – Allegation “3”
- April 3, 2023 – Allegation “4”
- April 18, 2023 – Allegation “5”
- May 8, 2023 – Allegation “9”

As detailed in the factual findings, the pattern of conduct that constituted bullying and intimidation included:

- Making threats and other comments in a manner intended to intimidate;
- Behaving angrily and making demands of staff to a point where they felt unable to deny the Member's requests;
- Behaving in a manner towards Council as a whole and the Complainant that was “extremely angry” and included shouting, slamming things on his desk and turning his back to Council for several minutes;

These allegations are very serious but were corroborated by many accounts received in the course of the investigation and supported by witness testimony as to the Member's conduct

and approach with staff and the Complainant. It was repeatedly heard that the Member uses bullying and intimidation with staff and Councillors.

As a result of the evidence received and the factual findings regarding the Member's conduct detailed herein, we find that the Member did treat members of Council and staff in a manner that constitutes bullying and intimidation in breach of Section 16.1 of the Code of Conduct.

Harassment

Further, our investigation revealed a pattern of comments and conduct directed at the Complainant that constitutes "personal harassment" as defined in the Code of Conduct.

"Harassment" is defined in Section 16.5 of the Code of Conduct as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

Our investigation found as fact that the Member threatened the Complainant on three separate occasions (April 3, 2023, April 18, 2023 and May 8, 2023). We further received evidence that the Member is often "derogatory" and "aggressive" towards the Complainant during meetings of Council or during meetings with staff. We found as fact that the specific incidents of threats constituted part of an ongoing course of conduct directed at the Complainant.

As a result of there being multiple instances of bullying, threatening and intimidating conduct by the Member directed at the Complainant, we find that the conduct of the Member meets the definition of harassment within the meaning of Section 16.5 of the Code of Conduct. This is a breach of Section 16.1 of the Code of Conduct.

Threats

In addition to the other findings detailed herein, we find that the Member breached Section 16.6 (c) on three occasions (April 3, 2023, April 18, 2023 and May 8, 2023) by making threats directed at the Complainant.

We found that the Member on April 3, 2023 threatened the Complainant stating several times "you better be very careful." We found as fact that these statements were made during a heated exchange between the Member and the Complainant and that the Member was angry.

This finding supports a finding that the statements constituted a "threat" directed at the Complainant by the Member in breach of the Code of Conduct.

We found that the Member on April 18, 2023 threatened to "expose" the Complainant at a closed meeting of Council, amongst other inappropriate behaviour exhibited by the Member.

The Member was found to have been angry and behaved with a lack of decorum during the meeting.

The statements by the Member directed towards the Complainant that he would “expose” the Complainant constitutes a “threat” in breach of the Code of Conduct.

We found that the Member again on May 8, 2023 at a closed meeting of Council threatened to “expose” the Complainant and circulate emails of the Complainant.

Similar to the finding with respect to the April 18, 2023 meeting, we find that this constitutes a threat by the Member to the Complainant in breach of the Code of Conduct requirements.

No Breach of the Code of Conduct

The allegations described herein as Allegations 3(a), 6 and 7 did not reveal any breaches of the Code of Conduct.

Allegation “3(a)”

With respect to Allegation “3(a)” we found that the Member did argue with staff that he had “Strong Mayors” powers under the applicable legislation. However, this in and of itself is not a breach of the Code of Conduct. While this belief was false, it is not the assertion of the belief that creates a breach of the Code, it is actions based on this belief that may result in a breach of the Code of Conduct. For example, we note that Allegation “4” wherein the Member met with a specific department head and pressured them to adopt budget figures that had been prepared by the Member amounted to a breach of the Code of Conduct. This allegation represents, as an example, a breach that flowed from actions taken by the Member as a result of the belief he had authority to approve the budget. However, assertion of the belief in and of itself is not a breach of the Code of Conduct requirements.

Allegation “6”

With respect to Allegation “6” we found that the only meeting that actually took place between the Member and department heads regarding the budget was the meeting on April 3, 2023. As no other meetings were identified, this allegation did not reveal any distinct breaches of the Code of Conduct.

Allegation “7”

With respect to Allegation “7” we found that the Member exhibited that he did not like the member of staff but that he never directed the department head regarding the member of staff’s employment or requested that the staff member be fired. This finding does not support a finding of any breach of the Code of Conduct as there is no evidence that the Member expressly directed the department head to fire the specific staff member. While the department head knew the Member “did not like” the staff member there was no evidence uncovered in the investigation regarding this allegation that would amount to a breach of the Code of Conduct.

Recommendation

Our jurisdiction to recommend a penalty is defined in Section 19.3 of the Code of Conduct and is limited to recommending a reprimand or a suspension of pay up to 90 days. The Code of Conduct does not allow us to recommend any sanctions that might modify the behaviour of the Member or assist staff and Council to avoid repetition of the behaviours noted in this investigation.

The breaches of the Code of Conduct outlined herein are serious. The Member's conduct included behaviour that was bullying, intimidating and harassment as well as being dishonest, false and misleading, among other breaches. Not only is the nature of the Member's conduct serious, the frequency with which these breaches occurred during a six-week period demonstrate a marked disregard for the standards of behaviour expected of elected officials as well as the requirements of the Code of Conduct.

The penalty needs to be sufficient to serve two principal functions: first, it must signal to the Member that they must modify their behaviour or face similar punishment, to deter repetition; and second, it must be sufficient to signal to staff and Councillors that the behaviour is not condoned by Council and that the punishment is a repudiation of the behaviour.

As a result, we recommend that the Member's pay be suspended for 60 days.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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