



Cunningham Swan

LAWYERS

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CONFIDENTIAL

August 19, 2024

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

Attention: Lindsay Lee

Dear Ms. Lee:

RE: Code of Conduct Complaint – Final Report
Our File No.: 33392-6; 33392-7

Please be advised that the investigation into the closed meeting is now complete. We attach the final report herewith and the report should now be circulated to members of the Council. We have provided a copy of the report to the complainant separately.

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

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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Mayor and Council
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Dear Mayor and Council:

RE: Code of Conduct Complaint – Final Report
Our File No.: 33392-6; 33392-7

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.

Timeline of Investigation

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

- February 26, 2024 complaint received
- March 2024 documents received from the Township
- April 15, 2024 complaint package provided to Member
- April 17, 2024 addendum to complaint package sent to Member
- May 1, 2024 response from legal counsel for the Member
- May 15, 2024 response provided to Complainant
- June and July 2024 investigation
- August 13, 2024 Mayor declines to submit to an interview

Factual Findings

The allegations that formed the basis of this investigation required limited 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

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

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

Allegation 1 – Breach of Confidentiality

The Member is alleged to have made statements in a closed session attended by staff that disclosed confidential information discussed at a previous closed session where staff was not in attendance. Due to the nature of the confidential information central to the allegation we cannot set out in this report what the subject matter of the meeting was or what information was alleged to have been disclosed.

We were able to view the closed session recordings to confirm what occurred and as such no interviews were necessary to determine what was said by the Mayor.

In order to ensure that Council understood the context of the allegation and could make an informed decision about the findings and recommendation contained in this report we provided Council with a separate confidential report containing those details.

The section of the Code of Conduct engaged by this allegation is:

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 or any aspect of deliberations acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council resolution to do so.

What we can make public in this report is that we find that the Mayor did breach section 9.1 of the Code of Conduct by making certain information available to staff that was only discussed at a closed session. This was a breach of the confidentiality of the closed session and is a breach of the Code of Conduct.

Allegation 2 – Harassment as a result of Notice of Libel

On January 29, 2024 the Township and Deputy Mayor Hoddinott received a Notice of Libel issued by Mayor Mackenzie. The Notice is not a formal civil claim, it is notice that a formal claim may be issued in the future. The Notice claims that the Township and the Deputy Mayor defamed the Mayor's character at the Council meeting of December 19, 2023 when Council received a report from the Integrity Commissioner making findings and recommendations about the Mayor. The Notice required certain actions to be taken to avoid a formal claim being issued and served. As of the date of writing this report we are not aware that a formal claim has been issued and served.

The complaint alleged that the Notice of Libel constituted harassment and intimidation by Mayor Mackenzie. The allegation was that the Notice of Libel was vexatious and was intended to cause harassment, annoyance, frustration and worry – and even potential financial costs – to the Deputy Mayor and the Township.

In order to find that the Notice of Libel was brought for an improper purpose it is necessary to find that the Notice was meritless. If the Notice has legal merit, the Code of Conduct

cannot be interpreted in such a way as to deprive any member of Council of their right under the law to seek redress for what they perceive to be libel or slander.

As Integrity Commissioner, we do not have any legal authority to determine whether the Notice is or is not without merit. The law of libel and slander is complex and requires consideration of not only the claim and the words alleged to be defamatory, but also potential defences available to the person, and in this case the Township, alleged to have defamed the Mayor. On the face of the Notice, we cannot conclude that it is entirely without merit and therefore vexatious and a form of harassment.

We find that serving the Notice of Libel was not a breach of the Code of Conduct and dismiss this allegation.

Allegation 3 – Disrespect of staff and Council

A third allegation was submitted by way of addendum that alleged an email sent by the Mayor to Council was disrespectful. The sections of the Code of Conduct engaged by this allegation include:

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 member 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.

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.

The portions of the email we considered are set out below.

The email asked that “each and every Councillor” respond to the email (but not using reply all to avoid an illegal meeting of Council). The email said, among other things:

- “The by-law section of the agenda is NOT meant to be an information and debate section of the agenda. It should merely be the formal passing in by-law form for something that was already decided separately by Council. All laid out in the Municipal Act. Staff should know this. The Deputy Mayor should know this.”
- “Neighbouring municipalities and developers having their emails ignored by staff. I could give many other examples of how embarrassing it is to have to justify how the Township is governed and administered. All with an increase in salaries of \$1 million in five years with 22 employees and it wasn’t raises to the roads crew.”

- Speaking of an adjournment motion by Council, “Here I am blindsided again in a public meeting with the adjournment and I can’t help but surmise that this was worked out beforehand by the Deputy Mayor, Councillor Brum and the CAO/Clerk. ... I have no evidence of that accusation other than circumstantial but there are regularly circumstances that all have the same pattern of apparent collusion that we have all witnessed.”
- The Mayor also raised allegations that named staff have not provided Council with accurate financial information and mentioned that a named staff person was not in attendance at a specific meeting to answer his questions about that matter and did not provide him with a reason for their absence.

We invited the Mayor to attend an interview during the investigation. The Mayor declined the interview and we proceeded to finalize this report.

We find that various portions of the email excerpted above are a breach of section 15.6 as the comments show disregard for the professional capacities of staff. The basis for our finding is set out below:

- Using the phrase, “staff should know this” when referencing how the Mayor expected the by-law confirmation portion of the agenda to operate is a clear statement that staff are wrong and do not understand their role. We do not need to form an opinion as to whether the Mayor was correct or not with respect to this issue. If the Mayor (or any Councillor) is not satisfied with meeting processes they can move a motion to amend the Procedural By-law or seek a majority of Council to modify procedures; belittling staff in an email to all of Council is a breach.
- Stating that he is “embarrassed” because he has to justify how the Township is administered is a clear attack on the professionalism of staff. Such a broad statement speaks to the professional capacity of staff in such general terms that it cannot be considered a true statement of their capability. If Council is not satisfied with staff performance, there is an appropriate forum for corrective action; an email to all of Council is not the appropriate forum. Discipline is not a breach of the Code of Conduct, but this email was not a form of discipline.
- Despite acknowledging that he had no evidence, the Mayor accused staff and Councillors of “colluding” to orchestrate an adjournment. This is false on its face and by acknowledging that there was no evidence to support this accusation the Mayor confirms in his own email that he is simply attacking the professionalism of staff based on a circumstance.
- The final accusation that staff are falsifying financial records falls into a similar theme investigated in our report dated December 18, 2023. In that report we found that the Mayor pressured staff to modify budget numbers. As in 2023 we have no evidence

that the finances of the Township are being falsified and no evidence was presented by the Mayor to justify his statement. In the circumstances we find the accusation to be false and further find that it was intended to injure the reputation of the named staff member. The statement also implicitly suggests that the staff person was deliberately absent from the meeting in question to avoid questions from the Mayor – again with no evidence from the Mayor to support this statement.

Recommendations

We find that the Mayor breached the Code of Conduct, section 9.1 by disclosing information only available to him as a result of a closed session of Council.

We find that the breach of confidence was not significant and that the Mayor did attempt to maintain confidence of the closed session discussions. The nature of the breach is most properly characterized as a technical breach.

Given our findings, we recommend that Council issue a reprimand to the Mayor to ensure that the Mayor and all members of Council continue to be vigilant about protecting the confidence of closed session information.

We find there is no breach of the Code of Conduct for serving a Notice of Libel, for the reasons set out above.

We find that the email sent to Council injured the reputation of staff contrary to Section 15.6. This pattern of behaviour is similar to a number of findings from the December 18, 2023 report with respect to the treatment of staff by the Mayor. While the number of breaches contained in this report are fewer than in December 2023, it appears that the Mayor has not altered his behaviour as a result of the penalty imposed by Council. In order to ensure that Council is sending a strong message to staff that they respect the efforts of staff and appreciate their professionalism we recommend that Council suspend the pay of the Mayor for a period of 30 days.

This is a lesser suspension that that recommend in the December 2023 report, but that reflects the fact that the email was one incident and not multiple incidents as in the previous report. An aggravating factor warranting a suspension for 30 days is that this is not the first incident, and it follows a previous investigation and penalty.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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