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**CONFIDENTIAL**

January 13, 2021

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

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

Dear Mayor and Members of Council:

**RE: Complaint Pursuant to the Code of Conduct re Councillor Steve Roberts  
Our File No. 15027-20**

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 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 August 28, 2020, 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 as a result of:

- conduct on his Facebook account, including using language that was insulting and abusive of other Councillor's posts;
- directing staff;
- undermining staff qualifications; and
- stating that another Councillor condoned or enabled the "neglect" of Township roads.

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;
- 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 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 warranted an investigation. During the investigation, the Integrity Commissioner interviewed witnesses, gathered and examined evidence relevant to the complaints and made findings of fact that are set out below.

## **ANALYSIS**

### **Allegation 1 – Offensive Facebook Post**

#### **Facts:**

After undertaking an investigation, the Integrity Commissioner finds that:

1. The Member operates a Facebook account under his name. While using this account, the Member shared a Post in the Facebook group “White Lake Property Owners Association” on August 25, 2020.
2. The Post was critical of Council’s decision to support the Master Fire Plan. In this Post, the Member wrote:
 

“Disturbing. Follow the process, abide and to what end. Dismiss. I’m afraid this is the evil in our midst. The root of all problems.”
3. The Member alleged that the labels “evil” and “root of all problems” were intended to describe the disconnect between the views held by the Council majority and the residents of White Lake.

#### **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.

...

10.1 Members, when communicating with the public and media, will accurately and adequately communicate the decisions of the Council, Board or Committee, even if a

Member disagrees with the majority decision, so that there is respect for and integrity in the decision making process.

...

10.4 Any use of social media in any form by a Member constitutes communication with the public that is governed by this section. Members shall identify in any social media communication that the views expressed by the Member are the views of that Member personally, and do not represent the views of the Municipality.

### **Determination:**

The Integrity Commissioner finds that using the phrase “evil in our midst” cannot be interpreted in any manner other than to refer to the decision of Council and the Members who supported the Fire Master Plan. While Councillor Roberts may consider that the decision reflected a disconnect between Council’s decision and the residents of White Lake, the decision represents that of the elected representatives of the municipality; and it must be respected. His language was insulting to those Council Members who voted in the majority and was disrespectful, both to the individual Members and to the democratic process. This is a breach of sections 6.1 and 10.1.

Council Members have the right to disagree with decisions of Council, but they must do so respectfully and in a manner that fosters public respect for the decision and the democratic process; Councillor Roberts failed in this obligation.

### **Allegation 2 – Directing Staff**

#### **Facts:**

After undertaking an investigation, the Integrity Commissioner finds that:

1. A resident of the White Lake area emailed the Member in August 2020, raising issues regarding the use of Dalhousie beach.
2. The Member responded to the resident on August 5, 2020, suggesting the resident and others make a delegation to Council to advocate for their views.
3. The Member subsequently visited the beach and identified what he perceived as traffic safety concerns.
4. There is no evidence that the Member requested any traffic data analysis from a member of the Township’s Public Works department. While a traffic study was completed, it does not appear that it was done at the direction of the Member.

5. The Member involved members of the Police Services Board in an attempt to advocate for traffic improvements in the area.
6. Council was not involved in this process.

**Code of Conduct:****11.0 INTERACTION WITH STAFF**

11.5 Municipal Council, acting as a body, can dictate that Staff perform such duties as are necessary for the efficient management of the affairs of the community, and/or research such matters as the Council deems necessary. Individual Council members do not have authority to direct Staff. Council shall direct Staff through the Chief Administrative Officer.

11.6 Board and Committee Members do not have the authority to direct Staff, with the limited exception of any Staff member assigned by Council to that Board or Committee. Ultimately, Council retains the discretion to assign, remove and direct Staff who provide assistance to any Board or Committee. Requests for Staff changes shall be directed to the Chief Administrative Officer who shall make Staffing determinations, and consult with Council as necessary.

**Determination:**

The Integrity Commissioner concludes that there is no evidence that the Member directed Public Works Staff to prepare a traffic study. As such, there is no breach of the Code of Conduct.

**Allegation 3 – Undermining Staff Qualifications****Facts:**

After undertaking an investigation, the Integrity Commissioner finds that:

1. At a Council meeting on June 23<sup>rd</sup>, 2020, the Member stated that Snye Road was unsafe.
2. In response, Township's Roads Superintendent, Mr. McCarthy, offered his opinion on the condition of the road.
3. After Mr. McCarthy's comments, the Member expressed his doubt about the accuracy of Mr. McCarthy's opinion. The Member stated that he was going to get a second opinion on the condition of Snye Road.

4. At the same meeting, the CAO commented that the Member's statement was inappropriate and improperly challenged the professional opinion of Mr. McCarthy.

**Code of Conduct:**

11.0 INTERACTION WITH STAFF

11.2 Members shall not:

- a) maliciously or falsely injure the professional or ethical reputation of Staff;

....

11.4 Members shall recognize and respect that many members of Staff are bound by professional associations to a code of ethics and professional conduct and that they provide their reports and recommendations objectively, in the best interests of the Municipality and within the requirements of their profession

**Determination:**

The Integrity Commissioner concludes that the Member breached Section 11.4 of the Code of Conduct by stating that he would personally get a second opinion as to the state of the road. There is no other way to interpret this comment other than that the Member did not accept the opinion of staff. The Member did not respect the professional opinion of Mr. McCarthy and his statement that he would personally get another expert to review Mr. McCarthy's opinion directly brings into question Mr. McCarthy's ability to undertake his duties.

Any Member of Council is entitled to disagree with staff; but it must be expressed professionally and respectfully. The proper course of action where a Member wants to confirm or challenge a staff opinion is to bring a motion to obtain a second opinion. If Council agrees, then it has made a decision that is within its authority – but even then it should be clear that taking such action is not intended to question staff's qualifications or to suggest that staff are not capable of completing their duties. When the Member stated that he personally would obtain a second opinion, the Member exceeded his authority as a Member and in so doing diminished the reputation of staff.

**Allegation 4 – Accusing Councillor of enabling “neglect”**

**Facts:**

After undertaking an investigation, the Integrity Commissioner finds that:

1. At a Council meeting on June 23<sup>rd</sup>, 2020, the Member brought a motion to repair Snye Road, claiming it was in poor condition.
2. Another Councillor stated that other roads were in the same condition and thus Snye Road should not take priority.
3. The Member emailed the Councillor on July 15, 2020 stating:  
  
“You have mentioned roads of similar poor condition as some justification of neglect. I’ve asked for them to see, but I’ve never got that information. So can you please tell me what other roads are in a state of such disrepair.

Thanks”

### **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 concludes that the reference to “justification of neglect” is not a breach of the Code of Conduct. The phrase and any imputed meaning are not sufficient to trigger the prohibitions contained in the Code.

### **CONCLUSION AND RECOMMENDATIONS**

The Integrity Commissioner finds that the Member did not breach the Code of Conduct with respect to allegations 2 or 4.

The Integrity Commissioner finds that the Member breached the Code of Conduct with respect to allegations 1 and 3.

It is appropriate for Council to issue a reprimand to Councillor Roberts and the Integrity Commissioner recommends that Council reprimand the Member for his inappropriate comments to staff and his disrespect for the decision of Council.

This concludes the investigation and report in this matter.

Sincerely,

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

A handwritten signature in black ink, appearing to read 'TEF', with several horizontal lines drawn through it.

Tony E. Fleming, C.S.  
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TEF:am