



**Cunningham Swan**

LAWYERS

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**CONFIDENTIAL**

January 5, 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 Bill King, Councillor Ron Closs and Reeve Peter McLaren  
Code of Conduct - Received September 14, 2020  
Our File No: 15027-21**

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council otherwise deciding how the report should be made public.

Should Council desire, the Integrity Commissioner is prepared to attend 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

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does not have the authority to alter the findings of the report, only decide whether to accept its recommendations.

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 September 14, 2020, a complaint under the Code of Conduct (the "Complaint") was forwarded to our attention alleging that Councillor Bill King, Councillor Ron Closs, and Reeve Peter McLaren (the "Members") had breached the Code of Conduct as a result of their conduct at an electronic meeting of the Committee of the Whole on August 11, 2020.

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 Members, with a request for any written response to be provided within 10 days;
- Providing a copy of the Members' responses 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 Members 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 undertaking the Preliminary Review, the Integrity Commissioner determined that there was no breach of the Code of Conduct.

Normally the Integrity Commissioner does not publicly report on the results of a preliminary review. Where a complaint does not disclose a set of facts that should be investigated typically only the Member and complainant receive a report. In this case, it appears that there is significant public dissatisfaction with Council's decision related to the Master Fire Plan and its implementation which is leading to complaints about the conduct of Members. As such, I exercised my discretion as Integrity Commissioner to make public the results of this review so that the public can better appreciate the nature of the Code of Conduct.

## **ANALYSIS**

### **Allegation against Member King – Disrespect toward the public delegation**

#### **Facts**

After undertaking the Preliminary Review, the Integrity Commissioner accepted the following – for purposes of the review:

1. At the meeting of the Committee of the Whole on August 11, 2020 (the “Meeting”), a public delegate made a presentation to Council about the Township’s volunteer firefighter force. The delegate stated, as an example of there being public interest in joining the force, that an individual had recently applied for a position by email but that this application had not been considered.
2. At the Meeting, another Member suggested that the Township’s Fire Chief Gene Richardson had turned down or not considered volunteer firefighter applications.
3. Member King asked the Fire Chief if he had turned down any applications. The Fire Chief responded that he had not. He stated that the individual applicant referred to by the delegate had not submitted a complete application. The individual who applied had not attached the application form to their email, either through inadvertence or technical malfunction.
4. Member King thanked the Fire Chief for providing clarification on the “misinformation” provided to Council by the delegation.

#### **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.

...

#### 7.0 CONDUCT AT MEETINGS

Every Member shall conduct themselves with decorum and professionalism at all Council, Committee, Board and other meetings in accordance with the provisions of the applicable Procedure by-law, this Code, and other applicable law.

#### **Determination:**

The Integrity Commissioner concludes that even assuming the truth of the alleged facts, Member King did not breach Sections 6.1, 6.2, or 7.0 of the Code of Conduct.

The most common definition of “misinformation” is incorrect or misleading information.<sup>1</sup> Under this usage, the word does not carry connotations of intentional deceit or dishonesty, unlike its close counterparts, “disinformation” or “misrepresentation”. Though some dictionaries<sup>2</sup> recognize a secondary meaning that does connote deceitful intent, given the context in which the word was used and the fact that the Member also used the benign word “clarify”, the Integrity Commissioner finds that the Member intended to use the word in its ordinary meaning.

Member King’s characterization of the Fire Chief’s comments as a clarification of “misinformation” does not arise to abuse, bullying, harassment or intimidation. Likewise, the language used was not indecent, abusive or insulting. Using language that suggests a member of the public was misinformed or believes a mistaken set of facts does not rise to the level of indecency, abuse or insult required by the Code. As an elected official, Members are entitled and sometimes obliged to state their opinion on the accuracy of information. This is not a breach of decorum or professionalism.

#### **Allegation against Member Closs – Describing a volunteer as “elderly”**

#### **Facts:**

After undertaking the Preliminary Review, the Integrity Commissioner accepted the following – for purposes of the review:

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<sup>1</sup> Merriam-Webster: “incorrect or misleading information”; Cambridge English Dictionary: ““wrong information, or the fact that people are misinformed.”

<sup>2</sup> Cambridge English Dictionary: “information intended to deceive.”

1. During the August 11<sup>th</sup> Meeting of the Committee of the Whole (the “Meeting”), Member Closs made a comment that referred to an active member of the Lanark Highlands Fire Service as “elderly”. This comment was made in the context of Member Closs’ explaining the availability of the role of Support Personnel (whose duties include traffic control at accidents and medical aid) for volunteers who wish avoid physically intensive firefighting duties.
2. The individual referred to is in his seventies and does not perform physical firefighting duties.
3. The age of the individual was first mentioned at the Meeting by Fire Chief Gene Richardson during his report about the Master Fire Plan. The Master Fire Plan Report also refers to the individual as being of “senior maturity”.

### **Code of Conduct:**

#### **6.0 GENERAL CONDUCT**

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. A Member shall not speak in a manner that is discriminatory to any individual based on that person’s race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status, or disability.

### **Determination:**

The Integrity Commissioner concludes that even assuming the truth of the alleged facts, Member Closs did not breach Section 6.2 of the Code.

Not every comment about an individual’s age or other protected characteristic is discriminatory. This is the case where the context in which a comment is made reflects a good faith, non-discriminatory purpose.

In this case, there was no evidence that the Member’s comment was calculated to belittle, degrade or lower the image of the firefighter. It is not discriminatory to recognize the physical limitations imposed by human aging, particularly in the context of explaining employment accommodations.

### **Allegation against Reeve McLaren – Failing to enforce procedure**

After undertaking the Preliminary Review, the Integrity Commissioner accepted the following – for purposes of the review:

1. At the August 11<sup>th</sup> Meeting of the Committee of the Whole (the “Meeting”), Members did not state their names before voting on two motions.
2. The Meeting was conducted with all Members physically present in the same room. The public participated via teleconference call.
3. In response to the COVID-19 pandemic, the Township of Lanark Highlands enacted By-Law No. 2020-1612 on April 7<sup>th</sup>, 2020. By-Law 2020-1612 provided for electronic meetings during the State of Emergency declared in the Province of Ontario. Section 5.15.8.2 of the By-Law provided that during electronic meetings, Members of Council shall “identify themselves” upon the call of a vote on a motion to determine a vote.
4. The Province of Ontario ended the State of Emergency on July 29<sup>th</sup>, 2020.

### **Code of Conduct:**

#### **6.0 GENERAL CONDUCT**

6.3 Every Member shall abide by the following principles:

- c) Members shall comply with all applicable legislation, by-laws and Municipal policies, including this Code of Conduct;
- d) Members acknowledge that the public has a right to open government and transparent decision-making

### **Determination:**

The Integrity Commissioner concludes that Reeve McLaren did not breach section 6.3 of the Code.

As the Meeting was conducted in-person on August 11<sup>th</sup>, 2020, its procedure was not governed by By-Law 2020-1612. Instead, the Meeting was governed by the Township’s By-Law 2012-1205. There is no requirement in By-Law 2012-1205 that Members state their name before voting. Accordingly, Reeve McLaren did not breach the Code of Conduct. Even if By-law 2020-1612 had been in effect during the Meeting the conduct complained of would not constitute a breach. The Integrity Commissioner is authorized to investigate breaches of policy and by-laws governing the ethical conduct of members of Council and Boards and Committees. The Integrity Commissioner does not investigate alleged breaches of procedural requirements.

## CONCLUSION AND RECOMMENDATIONS

The Integrity Commissioner finds that Member Closs, Member King, and Reeve McLaren did not breach the Code of Conduct.

This concludes the preliminary review and report in this matter.

Sincerely,

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

A handwritten signature in black ink, appearing to read 'Tony E. Fleming', is written over a horizontal line.

Tony E. Fleming, C.S.  
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