



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
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Dear Mayor and Members of Council:

**RE: Complaint to Integrity Commissioner – Preliminary Review
Code of Conduct Complaint – September 16, 2020
Our File No.: 15027-22**

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 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 September 14, 2020, a complaint under the Code of Conduct (the "Complaint") was forwarded to our attention alleging that Councillor Ron Closs, (the "Member") had breached the Code of Conduct as a result of various posts made on his Facebook account between April and September 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 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

Facts:

After undertaking an investigation, the Integrity Commissioner finds:

1. The Member operates a Facebook account under his name. While using this account, the Member has shared a mixture of personal posts, posts promoting his work, and posts from the Township's official page.
2. Between April and September 2020, the Member shared a number of posts on his wall that are the subject of this complaint (the "Posts").
3. The Posts were shared publicly and accessible on the Member's Facebook wall by any Facebook user without requiring permission from the Member. Some of the posts were original content made by the Member, while others were shared from other Facebook users or elsewhere online.
4. Since the complaint was filed, the Posts have been made inaccessible to the public.
5. The content of the Posts includes sexual and vulgar themes and language; stereotypes about indigenous culture; comparisons between COVID-19 public health measures and Holocaust concentration camps; and commentary critical of identity politics.
6. The Member made a post on April 5th, 2020 disclaiming any association between the account and his position as Councillor. This disclaimer was not included on any of the Posts.

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.

...

10.4 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 concludes that a number of the posts were offensive and constitute a breach of the Code of Conduct. We accept that the Member did not intend to offend the public and instead considered the posts humorous. In addition, the posts were not directed to specific individuals or intended to harass or insult any identifiable person; the posts were generic attempts at humour.

Regardless of intent, the Code of Conduct is clear that any use of social media is communication that is subject to the Code. Every Member must accept that when they were elected they became representatives of the Township and that carries with it a higher standard than that of a member of the public. Council Member's actions reflect on the Township and should always demonstrate the values of the Township.

It is not appropriate to use images of the Holocaust and consider that humour – that does not reflect the Township's values of an inclusive place free of discrimination. Other images and posts similarly reflect poorly on the Township and contain discriminatory, sexist and racist images and content – this is contrary to the Code of Conduct.

CONCLUSION AND RECOMMENDATIONS

The Integrity Commissioner finds that Member Closs breached Sections 6.1, 6.2, and 10.4 of the Code of Conduct.

While the posts were a breach of the Code, there is no evidence that the Member had any malicious intent. Intent is however not justification, and the Member must appreciate that his role as a Member of Council places him in a position where the public expect a higher level of conduct.

The Integrity Commissioner recommends the following:

- that Council issue a public reprimand to assure the public that the content of the Member's social media does not reflect the values of the Township;
- that Council direct the Member to cease posting any offensive content on any social media platform; and
- that the member be directed to take diversity and equality training.

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 strokes extending to the right.

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