



Tony E. Fleming

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September 23, 2024

SENT BY EMAIL TO: clerk@southalgonquin.ca

Mayor and Members of Council
c/o Bryan Martin, Clerk
Township of South Algonquin
7 Third Ave. PO Box 217
Whitney, Ontario
K0J 2M0

Dear Mr. Martin:

**RE: Conflict of Conduct Complaint– Report
Our File No. 35965-23**

We received a complaint against Councillor Joe Florent (the “Member”). 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 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 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.

Timeline of Investigation

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

- May 2024 complaint received
- June 2024 preliminary review concluded
- July 2024 complaint sent to Member
- August 2024 re-sent complaint to Member (Member did not receive original email)
- September 2024 Response from Member received

Findings and Analysis

Complaint #1

The complainant alleged that the apology issued by Councillor Florent in response to the direction of Council following the last report from the Integrity Commissioner breached section 10 of the Code of Conduct.

We reviewed the apology and find that it was not a breach of the Code of Conduct. No members of the community were named or identified in the apology, even by inference. Even if a member of the community could be discerned, the statements made were not disparaging in the sense prohibited by the Code of Conduct. The statements do not “create a hostile and abusive environment” as alleged in the complaint. There is no basis to infer that these statements are aggressive or that they are directed at female and/or indigenous persons as alleged in the complaint.

The Code of Conduct provides:

10(3) In all media communications, including social media, members will treat each other, staff and members of the public with decorum, dignity and respect, and shall avoid messaging that amounts to abuse, bullying or intimidation.

The statement from the Member is not a breach of this section of the Code of Conduct. the apology was not abusive, bullying and was not a form of intimidation.

Complaint #2

The complaint alleged that the Member's statement during the apology that if people thought his statement was a campaign speech they were correct, was a breach of the Code of Conduct provisions against using municipal resources for campaigning and were a breach of the *Municipal Elections Act*.

The Integrity Commissioner has no jurisdiction to investigate allegations of *Municipal Elections Act* breaches.

The Code of Conduct provides:

6(2) No Member shall use the facilities, equipment, supplies, services, staff or other resources of the Township (including Councillor newsletters, individual websites linked through the Township's website and social media accounts used for ward communication) for any election campaign or campaign-related activities and all such sites shall not use the Township of South Algonquin logo.

To the extent that the complaint attempts to draw in a Code of Conduct breach, we find that there was no breach. The Member is not engaged in a campaign as defined in the *Municipal Elections Act*, incurred no expenses and did not use any Township personnel or equipment during the apology. This is not a breach of the Code of Conduct.

Complaint #3

The complainant alleges that the Member disclosed the identity of the complainant in a previous complaint. The previous complaint process did not disclose the identity of the complainant to the Member. There is no evidence (even if we assume that he was correct as to the identity of the Member) that it was as a result of having confidential information from the Integrity Commissioner or the Township.

We are aware through the investigation process that the complainant approached Township staff after making the original complaint, disclosed that they were the complainant and offered the Township a way to have the complaint withdrawn. Staff discussed this proposal with members of Council as information only; no report was presented to Council as staff were not prepared to recommend that Council accept the offer. The information was not presented in closed session and Councillors were not advised that the name of the complainant was confidential. The complainant divulged this information to Township staff in the context of an offer that they ought to have expected would be communicated to Council; there could be no expectation of privacy in those circumstances.

The Code of Conduct provides:

4(2) No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except where required by law or authorized by Council to do so.

As the identity of the complainant was not communicated as confidential information to Council, the subsequent disclosure of the information is not a breach of the Code of Conduct.

Complaint #4

The complaint alleges a threat of reprisal against the complainant who submitted a previous complaint against the Member. Screen shots of Facebook Messenger messages show the Member called an individual “evil” and then stated that person, “has to pay the price for as long as I’m on council.”. Other messages state that the Member won’t/can’t deal with the individual and will not deal with a group represented by that individual unless the individual resigns from the group.

It is clear from the messages that the Member is threatening to oppose anything that comes to Council from the group represented by the individual that the Member believes made a complaint against them.

The Code of Conduct provides:

16(2) No Member shall threaten or undertake any active reprisal against a person initiating an inquiry or complaint under the *Code of Conduct*, or against a person who provides information to the Integrity Commissioner in any investigation.

Stating that the Member will not support any request coming to Council from a named individual or a group that they represent is a form of reprisal and is a breach of the Code of Conduct.

In response to the allegation, the Member claims that refusing to cooperate with someone is not a threat. The Integrity Commissioner rejects this argument. The Code is drafted to protect any person who brings a complaint from future reprisals based solely on the fact that they brought a complaint. The Member’s statements constitute a threat to oppose any matter brought before Council expressly because of who is bringing the matter forward. That is a breach of this section.

Complaint #5

The complaint alleges that the Member has a “disqualifying interest” as defined in the Code of Conduct because of his overt statements related to a member of the community and a group that they represent. The complaint does not however, cite any actions taken by the Member that breaches the Code of Conduct. Having a “disqualifying interest” is not a breach of the Code of Conduct. We make no finding as to whether the Member does or does not have a “disqualifying interest” as that finding is fact and context specific. As

submitted, the complaint does not disclose any behaviour that is a breach of the Code of Conduct.

Conclusion and Recommendation

The complaint was substantiated with respect to the allegation that the Member was engaged in a form of reprisal. This is a serious breach, as no person should be intimidated from making a complaint because they fear a reprisal. The form of reprisal in this case is political and not personal, which is a mitigating factor. That does not make the position taken by the Member correct. Members of Council must vote on the basis of what is best for the community, not on the basis of trying to punish someone that they believe submitted a complaint against them.

For this breach of the Code of Conduct the Integrity Commissioner feels a monetary penalty is necessary to demonstrate that Council will not condone reprisals. The Integrity Commissioner recommends that Council suspend the pay of the Member for one week.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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