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CONFIDENTIAL

September 20, 2023

Delivered by email: clerk@carlowmayo.ca

Mayor and Members of Council
c/o Jenny Sider, CAO/Clerk
3987 Boulter Road,
Boulter, Ontario
K0L 1G0

Dear Mayor and Members of Council:

**RE: Complaint Pursuant to the Code of Conduct regarding Mayor Randy Wallace
Our File No.: 27634-3**

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.

ALLEGATIONS

On April 24, 2023, a complaint was received by our office with respect to the conduct of Mayor Randy Wallace (the "Mayor").

The Complaint relates to a variety of different allegations taking place over the course of several months. The Complainant divided the Complaint into seven "examples". For ease of reference, our report is organized in the same manner.

Example 1: The Complaint alleges that the Mayor entered into an agreement with a private land owner with respect to storing salted sand in the owner's pit, for public access by residents. It is further alleged the Mayor "was not happy" to be told proper agreements and insurance were required in order to do so.

Example 2: It is alleged that the Mayor proposed circumventing the Township's by-laws regarding open-air fires, stating that proper process was not required because he had "gone over Council's heads" or otherwise sought higher authority.

Example 3: It is alleged that the Mayor asked that roads crews fight fires using the Municipal water truck, and that he repeatedly brought up this topic in various venues and asked questions as to why it could not happen.

Example 4: It is alleged that the Mayor attempted to operate municipal roads equipment, and when told he could not that he brought the issue up again to third parties, asking for a different answer.

Example 5: It is alleged that the Mayor told County of Hastings Economic Development staff about camping and hiking areas on private property, and that he stated "no one cares" if you cross private property in the Municipality.

Example 6: The Mayor allegedly made a variety of comments regarding office staff, including allegations that he:

- Campaigned on promises to fire staff;
- Stated that the staff in the office are mean to him;
- Proposed getting a dunk tank and putting a specific staff member in it to raise money; and
- Complains to members of the public that a specific staff member does not attend community events.

Example 7: It is alleged that the Mayor attempts to be directly involved in handling of by-law complaints. The Complainant cites a specific situation in which the Mayor allegedly attempted to interfere in how a by-law complaint was handled, and allegedly bullied and harassed staff on the basis of their perceived handling of said complaint.

PRELIMINARY REVIEW

The 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 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;
- Reviewing the Member's Response; 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 some or all of the behaviour complained of would, if the allegations were true, constitute a breach or breaches of the Code of Conduct. As a result, the Integrity Commissioner undertook an investigation of all of the allegations.

FACTS:

Multiple interviews were conducted during our investigation process in order to determine, as much as possible, the facts behind each allegation. These included interviews of different witnesses, in addition to the Mayor. Where information provided by multiple witnesses is substantially the same, or otherwise isn't disputed by the Mayor, we can generally accept it as true. However, when presented with different versions of events, we need to determine which evidence to accept. This is done on what is known as the "balance of probabilities" – that is, which version of events we find to be more likely to be true than the others, based on a variety of factors. Those factors generally relate to the credibility of witnesses – how well they remember things, whether there are any internal inconsistencies, etc. – as well as how testimony from different witnesses compare to one another.

Throughout the investigation, we heard many second or third hand accounts – people sharing rumours they had heard, or information they were told by others. Generally, when a witness discusses what they were told by a third party, that evidence is considered to be hearsay. This is because the party who allegedly made the statement is not present, and so we cannot ask them questions about it and judge the likelihood of it being true. Hearsay evidence is not generally admissible 'for the truth of its contents', which means that, in most cases, decision makers won't accept second-hand information as being true. However, some exceptions apply; notably, hearsay can be used as evidence that the third party made a particular statement, even if it isn't evidence that the statement was true. Where possible, on items that were pertinent to the investigation we interviewed individuals who were directly involved, or present, during the different "Examples".

Below, we have again broken the evidence gathered down by examples.

Example 1:

Based on our interviews, we understand that the Township has a practice of having salted sand available at different locations for the use of members of the Public. The Mayor alleges he had received multiple comments asking him to place the salted sand in a location within a specific area of the Township. There is no reason to doubt this.

The Mayor alleges that he checked in with Municipal Staff before speaking to any private landowners, and was given the green light. He says he only then approached an individual property owner, who told him she would not be able to accommodate the sand as her land was already in use. He says that was the end of the matter.

Other accounts during interviews were at odds with the Mayor's version of events. They allege the Mayor was told he could not make such arrangements without having proper agreements in place. It is also alleged that a specific property owner stated they had entered into an agreement with the Mayor on this matter; that property owner was not interviewed in this course of this investigation.

Example 2:

As part of the Township's Family Day festivities, it was suggested that an open-air bonfire be held. The Township's by-laws require Council permission for an open-air fire; I note, parenthetically, that we have not independently verified this interpretation, but accept that it was the understanding of all relevant parties.

Council did, in fact, hold a vote and permit the bonfire. However, it is alleged that the Mayor, both prior to and following the vote, asserted that this was not necessary. For his part, the Mayor denies making any such comments; he claims that he brought up the idea, was told no by Township Staff, and that subsequently another Councillor proposed granting permission during a Council meeting.

On a balance of probabilities, we find that the Mayor did make the alleged comments to a member of Council. The Mayor's testimony did not come across as clear or forthright, and he referred to himself as "speculating" on a number of items, in this and other examples. On the other hand, the person who alleged that they heard the Mayor make these comments appeared to have a clear memory, and was forthright in their answers.

Example 3

The initial fire which caused the Mayor to inquire about the Municipal water truck being used to fight fires occurred before the Mayor took office, and therefore is outside my jurisdiction. After taking Office, however, a number of witnesses, including the Mayor himself, state that he asked, during both Council meetings and various training sessions, further questions about why the water truck couldn't be used in this way and discussed whether any options were open to Council. I accept this account as true and note that it was not contradicted. Based on the evidence, the Mayor did not, in these comments, make reference to specific staff, disparage staff, or attempt to tell staff what to do; his comments were limited to asking whether there were options available.

Example 4

In his written response, and initially in his testimony, the Mayor stated that he had never operated municipal equipment. Once advised that an eyewitness had seen the Mayor in a municipally owned loader, he acknowledged that he had indeed entered the loader, but denied operating it.

According to the Mayor, his employer had asked him to transport municipal sand that would be made available for the public's use, similar to the circumstances in Example 1 above. I note that this practice appears to be confirmed by multiple witnesses, and there is no reason to doubt the Mayor was asked by his employer to move the sand himself (but as an employee, and not as the Mayor). The Mayor states that he had permission of the relevant municipal

employee, but that once he entered the loader the employee changed his mind, citing concerns that staff at the Township offices might see.

This is directly contradicted by a witness who was present, and states that the staff member in question found the Mayor in the loader, and told him to get out of it.

I accept the witness' testimony over the Mayor's in this regard, for several reasons. First, I find that the Mayor was initially not forthcoming, only admitting he had been in the loader when confronted with the fact that I already knew this to be true. Further, the Mayor's version of events – that he was given permission which was then immediately rescinded – is not credible.

Example 5

This example relates specifically to allegations that the Mayor made comments during a meeting with Hastings County Economic Development. During that meeting, the Mayor suggested specific locations for outdoor recreation. The allegation is that those locations are private property, or only accessible via private property, and that the Mayor made comments downplaying this fact. It was unclear, from our investigations, whether or not the property in question is in fact private property.

Example 6

In his written response, the Mayor denies making any disparaging comments about staff. He writes that, for Canada Day, he suggested a dunk tank be set up for himself, members of Council, and staff. He also denies making any comments that the office staff were unkind to him, or complaining that specific staff members did not participate in community events.

With respect to the dunk tank, witness testimony is that the Mayor, on more than one occasion, expressed that he wanted a specific staff member to be in the dunk tank. On at least one occasion, he is alleged to have stated that the staff member is not well-liked, and so would raise lots of money by being in the tank. The witness agreed the Mayor also offered to go in the dunk tank, but says he never suggested other Council members or staff, beyond the specific staff member he singled out.

During our interview, the Mayor alleged that he only suggested himself and Councillors participate. When I asked about his written response, which included staff, he stated that, by staff, he meant Council. When I noted that he also listed Council in his written response, he simply apologized, but did not explain the discrepancy.

With respect to the dunk tank, I find, on a balance of probabilities, that the Mayor did single out a specific staff member to be in the dunk tank. Whether the Mayor had suggested staff participate in the dunk tank or not is key to deciding this question, and his written and oral statements were contradictory on this point. His explanation that he used the word "staff" to mean members of Council is unconvincing, not only because he specifically stated "staff and

council”, but also because he used those two terms correctly throughout his written response. Overall, this gave me reason to doubt the credibility of the Mayor’s statement and version of events, at least on this point.

Another specific example given under this heading was the allegation that the Mayor had made statements to third parties saying that it was “wrong” that a specific staff member – the same one as in the dunk tank example – did not participate in community events. The Mayor’s written statement did not directly deny saying this, rather he stated that he believed not participating in events was a personal choice and, therefore, could not be wrong. Once again, a witness contradicted this, and said that they had heard him make such comments. On a balance of probabilities, I find that the Mayor did make these comments. I draw this conclusion based on the lack of a direct denial in his written answer, the fact that he did not elaborate when given the opportunity in the interview, and that I have already found there to be issues with the credibility of the Mayor’s statements.

None of the witnesses interviewed had heard the Mayor make comments regarding office staff being mean to him, as alleged, although they did state they’d heard this from others. No specific witness to these comments was named, leaving them as constituting hearsay and, at times, double hearsay. As noted above, hearsay and rumours cannot be relied upon to draw conclusions in this investigation and therefore, absent any evidence to support this allegation, I find that the Mayor did not make these comments.

Example 7

This final example relates to a by-law complaint that was received by the Township. The following facts are accepted by witnesses and the Mayor.

Early in the process, the Mayor became aware of the complaint, and reached out to office staff. He asked how the complaint was being handled, and asked for the By-Law Officer’s contact information so that he could follow up. The Officer does not have a Township-issued phone, and so staff did not provide the Mayor with the Officer’s private phone number. The Mayor then obtained the Officer’s number through other means.

A few weeks later, Council, including the Mayor, attended training delivered by our office. Immediately after the training, the Mayor asked to speak with a staff member about the by-law enforcement issue. The next day, the Mayor came back to again speak to the same staff member about this issue. During the course of this final conversation, another member of staff overheard and stood outside the door of the office in which the conversation took place.

The following facts are in dispute.

Several allegations are made by witnesses. First, they allege that the Mayor began providing instructions to staff – telling them that they needed to take specific actions relating to the

complaint. Next, witnesses allege that the Mayor's treatment of one particular staff member was sufficiently aggressive to constitute bullying and/or harassment.

The Mayor did not provide much in the way of description of his interactions with staff, other than to specify that he had no intent to harass anyone or tell anyone how to do their job. No summary of what was discussed was provided. However, during our interview he made a number of comments about the way staff was handling the investigation, alleging they'd let the underlying issue go too long, that action needed to be taken, and that he felt the staff member in question needed to show more compassion to the complainant. Further, he complained of the staff member laughing or smirking at him, and alleged that they pointed their finger at him and looked down while speaking.

On a balance of probabilities, we accept the witnesses' accounts that the Mayor bullied, harassed, and attempted to direct staff. We come to this conclusion for several reasons. The witnesses we spoke to had clear memories, and provided detailed accounts of what they allege was said. The Mayor did not provide any details about what was discussed, and therefore, beyond a bald denial, did not really contradict witness accounts. Further, the information the Mayor did provide aligns generally with witness accounts; for example, witnesses say the Mayor alleged a staff member was smirking and not taking matters seriously. The Mayor's own comments during the interview critiquing the staff member in question's handling of the file, also suggests that this was the subject matter of his conversation with them.

CODE OF CONDUCT PROVISIONS

Below, we have reproduced those sections of the Code of Conduct which were considered in this matter.

B. DEFINITIONS

[...]

(i) "**Harassment**" includes, but is not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted and includes Sexual Harassment as defined in the Occupational Health and Safety Act, as amended from time to time

C. GENERAL INTEGRITY

[...]

4. Members shall be responsible for complying with all applicable legislation, bylaws, policies pertaining to their position, as well as this Code of Conduct.

[...]

6. Members shall not extend preferential treatment to any individual or organization.

D. CONDUCT

[...]

2. GENERAL PRINCIPLES OF CONDUCT

a. Members shall treat members of the public, staff and each other in a respectful manner, without abuse, bullying, harassment or intimidation.

b. Members 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.

[...]

3. RELEASE OF CONFIDENTIAL INFORMATION

Members have a duty to hold in strict confidence all Confidential Information. A Member shall not, either directly or indirectly, release, make public or in any way divulge any Confidential Information or any aspect of a *Closed Meeting* deliberation to anyone, unless expressly authorized by Council or required by law to do so

[...]

5. ACCEPTANCE OF GIFTS AND USE OF MUNICIPAL PROPERTY

g) No Member shall for personal purposes or profit, use or permit the use of any Municipal property, equipment, services, or supplies other than for purposes connected with the discharge of Municipal duties or associated community activities of which Council has been advised, unless the use is reasonable and incidental personal use of equipment such as computers, fax machines, cell phones, blackberries, etc., where the Municipality incurs no additional costs relating to such use, and the use is of limited duration and frequency.

[...]

7. RELATIONSHIP WITH STAFF

a) Mutual respect and cooperation are required to achieve the Council's corporate goals and implement Council's strategies through the work

of staff. The role of Council is to lead through setting policy and budget. The role of Council is not to manage or administer.

b) Members shall:

- i)** acknowledge that only Council as a whole has the capacity to direct staff members to carry out specific tasks or functions. Council directs staff through its decision as recorded in the resolutions and minutes of Council;
- ii)** refrain from using their position to improperly influence members of staff to carry out specific tasks or functions or to gain an advantage for themselves or others;
- iii)** refrain from publicly criticizing individual members of staff in a way that casts doubt on their professional competence and credibility;
- iv)** respect that staff provide advice and make policy recommendations in accordance with their professional ethics, expertise, and obligations. Councillors must not willfully injure the reputation, question the capabilities or performance of staff in a manner that is inappropriate.

c) Members shall not:

- i)** maliciously or falsely injure the professional or ethical reputation of Staff;
- ii)** compel Staff to engage in partisan political activities or be subjected to threats of discrimination for refusing to engage in such activities; or

Analysis:

Before considering the allegations item-by-item, we wish to begin by remarking upon the jurisdiction of the Integrity Commissioner. The Integrity Commissioner's role is limited to investigations of members of council, including the Mayor, on the basis of the Municipal Code of Conduct, or similar ethical provisions.

The Commissioner does not have jurisdiction over anyone who is not a member of Council; this includes individuals who are campaigning, or have even been elected, but not sworn in. Some of the complaints in this matter pertain to alleged remarks by the Mayor during his

campaign, or between the election and officially taking office. We do not have any jurisdiction over such conduct.

We also do not have jurisdiction to question every aspect of a member's conduct. If a matter cannot be tied back to the Code of Conduct, or some other ethical policy, we do not have any jurisdiction to evaluate it. As long as a member acts within the Code, they are permitted to disagree with staff, and to propose policy changes, and even make suggestions or decisions that are contrary to the advice they receive. The role of the Integrity Commissioner is not to second-guess everything a member does.

What members may not do, however, is breach the Code of Conduct, including by harassing members of staff, interfering in municipal operations, or calling into question staff's competence. It is important to recall that an individual member of Council has no power to unilaterally make decisions or direct staff, absent a decision from Council. This is true of the Mayor as well, at least in municipalities where strong mayor powers have not been introduced. Similarly, while a member can ask for second opinions or suggest a course of action that is contrary to staff recommendations, they cannot openly criticize staff.

What follows is an analysis of each individual Example, and a decision on whether the Mayor breached the Code of Conduct in that specific instance.

Example 1: Following our investigation, it is not clear to us precisely what occurred with respect to the sand pit, including what the Mayor did or did not agree to, and what he was or wasn't told. However, on a review of the Code, we do not see any provisions which would prohibit the Mayor from entering into such negotiations with a member of the public. To be clear, that is not to say the Mayor does or does not have any *authority* to do so; this is a question for municipal law. Nothing in the Township's Code, however, addresses the Mayor attempting to make decisions or engage third parties, and nothing in the investigation indicated that he unilaterally instructed staff to enter into such an agreement. Therefore, we do not find "Example 1" to constitute a breach of the Code.

Example 2: Based on our interviews, we believe that the Mayor did express that the Township's by-laws regarding open-air burning could be circumvented in some way. The Code states that Members are, "responsible for complying with all applicable legislation, by-laws, policies pertaining to their position" in addition to the Code. The question is whether the Mayor breached this provision by simply suggesting that the by-law be breached.

We find he did not. In coming to this conclusion, we have considered the wording of Carlow/Mayo's Code of Conduct in comparison with other codes. Many municipalities have specific provisions requiring members to foster and encourage respect for by-laws. Carlow/Mayo's Code, however, does not contain any such clear language; it simply prohibits breaching the by-laws or policy. Despite the Mayor's comments, the by-laws and policy were followed in the end. As such, we do not find that "Example 2" constitutes a breach of the Code.

Example 3: As noted above, conduct of the Mayor prior to taking office is not under consideration. Accordingly, the initial incident in which the Mayor asked if roads crews could fight fires with the water truck is beyond the scope of this investigation. In our interviews, we heard no allegations that the Mayor ever attempted to instruct staff to fight fires, nor was there any suggestion that the Mayor made any comments attacking staff's reputation. The allegation is simply that he would not accept no for an answer, and asked the question repeatedly to different people.

There is no provision of the Code that prohibits a member from disagreeing with an answer provided by staff, seeking other opinions, or even discussing and proposing changes or policies that run counter to that answer. As long as the member does not injure the professional or ethical reputation of staff, they are free to disagree with and ignore the advice of staff. As such, we do not find that "Example 3" constitutes a breach of the Code.

Example 4: There was disagreement amongst witnesses as to whether the Mayor actually operated municipal equipment or not. The Mayor initially alleged that he had not. When confronted with allegations that an individual had seen the Mayor on the equipment, he changed his story, stating he hadn't operated it, but only entered it. He alleged that he initially had permission, and that permission was revoked for fear that someone might see him there.

On a balance of probabilities, I find that the Mayor did sit on, and intend to operate, a Municipal loader. However, the Mayor alleges that he attempted to do so for the purpose of moving municipal sand to a location where members of the public could use it; this was the regular practice of the Township, and he was merely assisting.

The Code of Conduct prohibits members from using municipal property, "for personal purposes or profit" or "other than for purposes connected with the discharge of Municipal duties or associated community activities of which Council has been advised". Even if the ultimate purpose for attempting to operate the equipment was connected with a municipal decision, the Code of Conduct does not allow members of Council to operate heavy machinery for any purpose, unless that member of Council were otherwise directed by Council and covered by the Township's insurance for that specific purpose. The phrase "the discharge of Municipal duties or associated community activities of which Council has been advised" is an important point of emphasis. Individual members of Council cannot operate heavy equipment unless Council has agreed to that activity – and presumably ensured appropriate insurance coverage.

Example 4 does constitute a breach of the Code.

Example 5: After conducting our investigation, we find on a balance of probabilities that the Mayor, in a meeting with Hastings County Economic Development, suggested various hiking or camping locations. The Mayor and Township staff then discussed, and perhaps disagreed

on, whether these locations were on or accessed via private property, with the Mayor remarking that it was not an issue.

Based on the facts that we have ascertained, this was not a violation of the Code. The only applicable Code provision pertains to violations of the law. There is no suggestion that the Mayor was violating the law. On the evidence available, it is not altogether clear that the Mayor was suggesting trespassing, or that he knew the land he was discussing was private, if it indeed was. As such, we find that “Example 5” does not constitute a breach of the Code.

Examples 6 and 7 - Harassment

We have chosen to treat the allegations of bullying and harassment in Examples 6 and 7 together. Harassment is defined in the code to include a course of vexatious or unwanted comment or conduct known or ought to be known to be unwanted. Bullying is not defined in the Code. It’s important to emphasize the “unwelcome” nature of bullying and harassment. The question isn’t whether the Mayor was intending to be mean, but rather whether he should have known that his comments were not welcome.

Turning to the specific examples, the Complainant alleges bullying or harassment on various occasions. As noted earlier, any alleged comments that pre-date the Mayor taking office cannot be considered in this investigation. What we can consider, however, is whether the Mayor has engaged in a pattern of comments, since coming to office, that he knew or ought have known were unwelcome.

Two particular examples stand out. First, the Mayor is alleged to have suggested a particular staff member be put in a dunk tank, stating that they were not well liked and would raise lots of money. Second, he is alleged to have complained to members of the public that the same staff member does not attend Township events.

As noted above, we found, on a balance of probabilities, that both of these incidents occurred. The question is whether these events constitute bullying or harassment. One of the difficulties with bullying and harassment investigations is that the question often comes down to more than the specific statement that was made. The fact that a statement, in isolation or based on particular interpretation, may seem innocuous, does not mean that it isn’t bullying. The real question is whether the course of conduct was unwelcome, and whether the Mayor knew, or ought to have known, that it was.

We find, first, that the Mayor singled out a specific staff member on multiple occasions, and made comments about her to third parties. We also find that this course of conduct was not welcome by the staff member. Suggestions such as putting another individual in a dunk tank can have many connotations, and be perceived many ways; however, it is clear in this case that this was not a matter of friends bantering or joking with each other. The dunk tank remarks formed part of a pattern of conduct by the Mayor in which he singled out the specific staff member for comments intended or actually having the effect of disparaging that staff member

– this was unwelcome and it should have been known to the Mayor that these comments would be unwelcome.

It is noteworthy that, even during the course of our interview with him, the Mayor continued to complain about the staff member in question, about their decisions, the way that they spoke to him, and how they conducted certain matters. Again, as noted above, Council and the Mayor can certainly raise concerns about staff and about procedures – that’s part of Council’s role. This, however, is very different from complaining about staff members, particularly to outside parties and the general public.

The second major allegation of bullying and harassment comes from the interactions between the Mayor and a staff member in the context of a specific by-law enforcement matter that the staff member was dealing with. Based on our interviews, we find that, on two occasions, the Mayor approached the Staff member to confront them about their approach to a matter. The Mayor had no specific authority to do so, and there was no direction from Council. We find that the Mayor raised his voice and was aggressive and condescending. As such, his conduct was sufficient to constitute bullying and harassment, contrary to the Code.

Example 7 – Interference with Staff

Example 7 contains another issue: allegations that the Mayor improperly interfered in an investigation. Based on our interviews and consideration of the Code of Conduct, we agree, and find that the Mayor breached multiple sections of the Code.

According to the Complaint, on multiple occasions the Mayor contacted a staff member with respect to a specific by-law matter which was under investigation. These interactions went beyond the Mayor merely asking for an update; on several occasions he challenged the decisions staff was making, attempted to direct staff to take certain steps and actions in their investigation, and accused staff of behaving negligently.

The Code of Conduct requires that Members acknowledge only Council, as a whole, can direct staff. Members are not to use their position to “improperly influence members of staff to carry out specific tasks or functions”. Additionally, the Code prohibits “preferential treatment to any individual or organization”.

We find that the Mayor’s conduct violates all three of the above-noted rules in the Code. It is not uncommon for members of the public to contact members of Council with concerns or grievances, and for members to follow up with staff as appropriate. The Mayor’s conduct went further, however, when he attempted to instruct various staff on the actions to be taken, and alleged that they were negligent for not taking the steps he proposed. The Township, like most municipalities, has procedures – in this case, unwritten procedures – determining how investigations are carried out. If the Mayor disagreed with this process, he had every right to raise the issue at Council and propose changes to the procedure. What he had no authority to do was attempt to dictate to staff, unilaterally, how to proceed. Further, by attempting to have

staff deviate from their usual procedures for a specific by-law investigation, the Mayor was giving favourable treatment to the complainant in that investigation.

In addition to the above, a further issue arose during our investigation. One of the key disputes between the Mayor and staff was whether the Mayor could have the By-Law officer's private cell phone number. Staff refused to provide it, but the Mayor did nonetheless obtain it at some point. When we asked how he got the number, the Mayor said he received it from a friend. On further questioning, the Mayor stated that an individual member of the public asked him how this investigation was going, he says they "got to talking" and he mentioned the by-law officer. The third party then allegedly simply said "oh, I have his phone number", without being asked.

In our opinion, the Mayor breached the "Release of Confidential Information" section of the Code. Confidential information is defined to include "information obtained by the Member by virtue of their position as a Member that is not in the public domain". The Mayor was vague about what he discussed with the member of the public; however, his account was that the third party simply volunteered the By-Law Officer's phone number without being asked, upon being told that he was involved in the investigation. We find this explanation highly implausible. On a balance of probabilities, we find that the Mayor revealed confidential information as to the status of the by-law complaint during this conversation.

Based on the above, we find that Example 7 constitutes violations of sections C.6, D. 7(b)(i), 7(b)(ii), 7(c)(iii). These violations are in addition to those noted above with respect to harassment.

CONCLUSION AND RECOMMENDATIONS

Our investigation concluded that, of seven examples raised by the complainant, three constituted breaches of the Code. Specifically, we find that the Mayor violated the Code of Conduct by using municipal equipment, bullying and harassing staff on multiple occasions, attempting to unilaterally provide direction to staff regarding the conduct of an investigation, and by revealing confidential information to a third party.

With respect to **Example 4**, where we found the Mayor used municipal equipment, we note that this is consistent with a pattern of behaviour in other Examples where the behaviour did not actually breach the Code. The Mayor appears to take a very "hands on" approach to governance and this leads to conflict and poor judgment. Being the Mayor does not convey any special status or immunity from the rules for any other member of Council and, we would argue, in fact it creates a higher standard of behaviour to "lead by example". While the other Examples did not result in a finding of a breach, that does not mean that the conduct complained of did not have an impact on the reputation of the municipality or that challenging the recommendations of staff without justification is conducive to a well-run municipal government.

We recommend that the Member be issued a reprimand by Council to ensure that all of Council expresses its position to the Mayor that this behaviour is not to be repeated.

With respect to **Example 6**, where we found that bullying and harassment occurred, we recommend that Council reprimand the Mayor. The Mayor's conduct in this regard did not live up to the expectations of the Code of Conduct; however, the level and extent of harassment regarding the "dunk tank" episode and complaints about a staff member can be sufficiently addressed by a public reprimand, and do not, in our opinion, require a suspension of pay. In addition to a reprimand, the Mayor should be required to provide a written apology to the staff member targeted by this conduct.

With respect to **Example 7**, where we found multiple breaches of the Code, we recommend that Council suspend the Mayor's pay for a period of 30 days. A clear message needs to be sent, to both the Mayor and the public, that interference in by-law investigations will not be tolerated, nor will harassing and bullying staff in order to attempt to influence their decisions.

Finally, we wish to recommend that Council and staff conduct a thorough review of the Township's Code of Conduct. During our investigation, we noted that, on a number of occasions, the Township's Code is silent or unclear on matters which are routinely addressed in other municipalities' codes. Ultimately, it is up to Council to decide what conduct is and isn't appropriate, and it is certainly within Carlow/Mayo's discretion not to adopt approaches and practices present in other municipalities. Our recommendation however is that the Township update its Code of Conduct to address behaviours that we were unable to deal with in this investigation.

This concludes the investigation and report in this matter.

Sincerely,

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