

Tony E. Fleming
Direct Line: 613.546.8096
E-mail: tfleming@cswan.com

CONFIDENTIAL

October 17, 2024

SENT BY EMAIL TO: municipalclerk@townshipofthenorthshore.ca

Mayor and Council
c/o Rachel Jean Schneider, Clerk
Township of The North Shore
P.O. Box 108, 1385 Hwy 17
Algoma Mills, ON P0R 1A0

Dear Ms. Schneider:

RE: Code of Conduct Complaint – Report – Robin Green
Our File No. 36669-11

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.

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

00498072.DOCX:

TEL: 613-544-0211
FAX: 613-542-9814
EMAIL: [INFO@CSWAN.COM](mailto:info@cswan.com)
WEB: WWW.CSWAN.COM

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

- Complaint received May 10, 2024
- Preliminary review conducted May 16, 2024
- Confirm details of complaint with Complainant May 2024
- June 18, 2024 complaint package sent to Member
- September 3, 2024 response received from Member
- September and October, 2024 interviews

Allegation

On May 2, 2024 a Committee was meeting at the Council offices. The door to the administrative offices was locked and a staff member needed to unlock it for Councillor Green (the "Member").

The Member had a discussion with a staff member about a procedural matter. The staff member alleged that during the conversation the Member stated that the staff member needed to "show some courtesy" a number of times while raising his voice.

When a second staff member started to speak the Member moved towards them quickly, forcing that staff member to raise their arms and move back. The complaint alleged the Member was raising his voice at this time and sated he "did not need to be schooled".

Factual Findings

The incident in question was remembered differently by the staff members in attendance and the Member. Both staff members had very similar recollections of the event. Staff recalled the Member raising his voice and saying a number of times that staff needed to "show him some courtesy". It was unclear why the Member was making this request.

The staff were not concerned overly about the statements made, but the fact that the Member moved quickly towards one of the staff members as the conversation was wrapping up upset both staff members.

The Member disputed that he raised his voice, but acknowledged that others have commented that his voice "carries". The Member also disputed that he told either staff

member to show him some courtesy. The Member did recall saying that he was in the office as a courtesy to a committee member to inquire with staff about some information that the committee member had requested.

The Member also disputed that he told staff that he “did not need to be schooled”. The Member believed that staff were recalling a different occasion when he does remember saying that he did not need to be schooled – but he disputes that he used that phrase in this meeting.

The Member disputes moving toward the staff quickly or doing so in a manner that would force them to raise their hands.

It seemed apparent that there is some tension between staff and the Member and their working relationship appeared strained – on both sides.

Code of Conduct

Section 7.0 – Conduct Respecting Others

7.1 Every Member has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the Municipality’s Workplace Anti-Violence, Harassment and Sexual Harassment Policy.

7.2 A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.

Code of Conduct Findings

Despite the different recollection of the parties to the incident, we find that it is more likely than not that the Member used the phrase “show me some courtesy” and “I don’t need to be schooled”. The Member’s suggestion that staff were remembering a different time when he used those phrases is not credible in the circumstances. We find that staff had a clear recollection, their version of events was consistent with one another, and the Member admits that he has used those phrases in other circumstances. On a balance of probabilities, we find that it is more likely than not that the Member did in fact use those phrases.

The phrases, in the context of the meeting as we find it unfolded, do not amount to a breach of the Code of Conduct. The phrases are not abusive, bullying or intimidating and do not amount to harassment. We also find the phrases are not indecent or insulting.

The difficult aspect of this investigation is the allegation that the Member moved quickly towards staff. The Member does not dispute that he moved towards staff at the end of the conversation, but he disagrees that it was quickly or should have been considered threatening

or should have caused the staff person to raise their arms. Again, we prefer the recollection of staff on this point and find that the Member did move towards the staff suddenly. We do not impute any ill will or malice to the Member, but find it more likely than not that he moved suddenly.

The staff member's perception was that the sudden movement was threatening. On a balance of probabilities, we do not find that the Member's movement was intended to be threatening. In order to find the actions of the Member were intimidating there needs to be an element of intention and we find that intent is absent in these circumstances. The Member may have been agitated, but there is no evidence that his words or actions were intimidating or threatening. The staff member may have been startled by the sudden turning around by the Member, but that does not satisfy the requirement that his actions amount to intimidation.

There is therefore no breach of the Code of Conduct, and the complaint is dismissed.

Recommendation

Because the complaint is dismissed, there is no recommendation for a penalty or sanction.

We do feel it necessary to speak to the obvious breakdown in the relationship between staff and certain Councillors demonstrated in the various complaints we have investigated. This is the first complaint filed against Councillor Green and we do not suggest the Councillor is the source of the problem. The relationship between Councillor Green and staff is not broken, but it does require positive action now to foster what appears to be some measure of respect that still exists.

What we see from our investigations is that constant tensions between staff and certain councillors is eroding trust between staff and Councillors and that is leading to individuals perceiving that behaviour that in other circumstances would be acceptable is worthy of a Code of Conduct complaint. This is not a criticism of the staff involved in this incident, merely a caution.

We cannot advise Council or staff not to make complaints, the remedy of a complaint is always available. What we recommend is that staff and Council consider the context and whether the behaviour crosses a line that the Code of Conduct is intended to protect before submitting a complaint. Not every instance of uncomfortable behaviour is a breach of the Code of Conduct and both sides of the incident need to think about how they are perceived and how to perceive the behaviour before resorting to a Code of Conduct complaint.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation
TEF:sw