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CONFIDENTIAL

December 2, 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 – Councillor Richard Welburn
Our File No. 36669-4, 36669-16**

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

Due to an internal miscommunication, our file 36669-4 did not proceed through an investigation in the normal timeframe. We subsequently realized our error and combined that matter with our file 36669-16. While this report deals with two separate complaints, both complaints are against Councillor Richard Welburn and Councillor Welburn was given the opportunity to respond to both complaints. The key dates and events for this investigation are as follows:

Matter 4

- Complaints Received - February 13, 2024
- Addendum received - March 8, 2024
- Complaint package sent to Complainant for review and approval – May, 2024
- Complaint Package sent to Member – May 7, 2024
- Response received from Member – May 17, 2024
- Member's response sent to Complainant – June 13, 2024
- Complainant's reply received June 17, 2024
- Interviews Conducted – September 2024
- Draft Report provided to Member – September – 2024

Matter 16

- Complaint received - July 18, 2024
- Preliminary reviewed conducted July, 2024
- Complaint package sent to Member – August 20, 2024
- Response from Member received – September 2, 2024
- Interviews conducted – September 2024
- Draft Report provided to Member – September – 2024

Complaint Overview

The common theme of the complaints is that Councillor Richard Welburn (the “Member”) communicates with staff in an aggressive, sarcastic and unprofessional manner. The Member makes repeated requests for information and when the response is not what he wants, his reaction is to call into question the professionalism of staff and their motivations. Based on the voluminous emails contained in the Complaint, the Member is alleged to demean staff, question their professionalism and generally resort to passive aggressive, or sometimes simply aggressive, communications. Both complaints will be referred to collectively in this report as the Complaint.

With respect to the Member’s behaviour towards the Township Clerk, the Complaint alleged:

- He told the Clerk that he would “fire [her] and start over if he had it his way”;
- When the Clerk asked to be compensated for additional time worked to fill in for other staff on leave the Member questioned the Clerk heavily;
- The Member stated that he had been placed under a “gag” order, when in fact staff had requested that he communicate in writing only, and not to call staff;
- Various emails were submitted containing inappropriate comments.

With respect to the Public Works Manager/Fire Chief:

- The Member made inquiries of staff regarding a snowstorm and asked why the Public Works Manager “took so long” to complete the roads and demanded to know why the Public Works Manager was “not doing his job”;
- The Member questioned the Fire Chief about Volunteer Firefighters also being Council members;
- The Member questioned staff about the budget regarding wages and stated that something “fishy” was going on and that certain staff members were being paid more for their duties than Council is aware of;
- The Member accused the Public Works Manager at the January 17, 2024 Closed Session of “lecturing” or “tongue lashing” Council;
- The Member called the Public Works Manager childish and disrespectful.

Other examples of the Member questioning the professionalism and capability of the Public Works Manager/Fire Chief are described in our report dealing with another complaint (our file 36669-10).

Relevant Policy Provisions

The Code of Conduct

The Complaint engaged the following provisions of the 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.

Section 8.0 – Conduct Respecting Staff and Officers

8.1 Under the direction of the senior administrative staff, and in accordance with the decisions of Council, staff and Officers are required to serve the municipal corporation as a whole. Every Member shall be respectful of the role of staff and Officers to provide advice based on political neutrality and objectivity and without undue influence from any Member or group of Members. Accordingly, no Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any staff person or Officer.

...

8.3 Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.

The Township of the North Shore Council Staff Relations Policy

The Complaint engaged the following provisions of the Township of North Shore Council Staff Relations Policy:

Section 5 – Guiding Principles

5.7 Control Anger

Members of Council should avoid the temptation to play up divisions or conflicts. Staff and Officers shall not be targets of derisive/vexatious comments/behaviour/conduct. The public expects Members to do the job that they have been elected to do. The public expects Staff and Officers to do the job that they have been hired to do. Comments on Staff and Officer performance shall be directed through the appropriate confidential performance reviews.

5.10 Professionalism

Members of Council, Staff and Officers must treat each other with professionalism. When Council requests that Staff and Officers appear before Council, they must

comply and be prepared for any questions Council has. Advance notice of questions to Staff provides an opportunity for Staff to provide quality reports and advice.

5.11 Respect

Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others' intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Municipality.

Factual Findings

In order to provide a full opportunity to the Member to respond, we provided a draft of this report to the Member and invited his comments. This report and the factual findings contained within reflects the response received from the Member.

We set out below the excerpts from various emails that are relevant to this investigation. Before reviewing those findings, it is relevant to consider the written response to the Complaint that was submitted by the Member.

The following are excerpts from the Member's responses to the Complaint:

- "my behaviour and communication is a result of the way that I'm communicated with and the respect and professionalism that I'm dealt with".
- "[I'm] done trying to be the better person in this Council...".
- "At the end of the day the clerk's unprofessional behavior and total lack of respect for my position on council escalated this to the point of her hanging up on me."
- "The feeling of trust is broken with me when it comes to the clerk which is sad."
- [in talking about a request to the Clerk] "I did send several emails beforehand where we go back and forth with her demanding more information from me where I clearly state what I wanted to talk about and I have provided that information but yet she wanted more so I gave her more and apparently it was too much or too honest as she feels slighted. I'm sorry but when you ask a question you should be prepared for the answer."
- "The [redacted] email ... is blaming other people for ... lack of managing skills and running a township if that comes off harsh so be it. I run a company and have been for many years and at the end of the day it's on the boss shoulders for screw ups you don't pass the buck down the line ."

The Member responds to the allegations in the Complaint by restating that he feels staff are not accountable, not professional and by standing behind certain comments like he would fire staff and admitting that he does not like certain staff on a personal level. The Member stated that his comment about firing certain staff was taken out of context and that in that context he acknowledged that he did not have the authority to fire staff.

The overall theme of the Member's response to the Complaint is unapologetic and unaware of his role on Council. The Member refers to himself in his written response as the "boss" and "manager" and states that all staff are answerable to him (and Council).

We note that not all of the emails that were submitted in the Complaint breached the Code of Conduct. Many of the emails are not objectionable and have not been reproduced in this report. However, statements such as:

- Telling the Clerk that he would "fire [her] and start over if he had it his way";
- Telling the Public Works Manager he was "not doing his job";
- Stating that something "fishy" was going on with the budget;
- Accusing the Public Works Manager of "lecturing" or "tongue lashing" Council; and
- Calling the Public Works Manager childish and disrespectful;

are all examples of behaviour that breaches the Code of Conduct. The Member disagrees that he said the Public Works Manager was not doing his job or that there was something "fishy" about the budget. With the exception of the above, the Member either accepted that he made these statements or did not refute them.

What the statements above and the excerpts below demonstrate is a broken relationship. Staff and Councillor Welburn are at a point, in the Integrity Commissioner's opinion, where neither side respects the other and both sides are reading malice into every line of every email. The following emails support the findings in this report:

April 15-16, 2024

As a result of unpleasant interactions with the Member, a member of staff asked that all communications with the Member be conducted only by email. The Member requested a closed session to discuss "Council accessibility to the office and staff, i.e. telephone and in person". In response to a request from staff to clarify the nature of the agenda item the Member responded as follows:

"I'm not sure what more you want but let's try this again

I would like to speak about the lack of access to the staff i.e. not being able to make a phone call to [staff position redacted] is the [staff position redacted] in the right to limit this

Does the [staff position redacted] have the authority to do this

In the [staff position redacted] being insubordinate by doing this

Is the [staff position redacted] being unprofessional by doing this

Is the [staff position redacted] abusing their powers

Why is the [staff position redacted] trying to intimidate and bullying me

Why is the [staff position redacted] harassing me

Why does the [staff position redacted] have a personal vendetta against me

Why is the [staff position redacted] not allowing me to do my job IE with holding requested information

Is the [staff position redacted] breaking any human rights by limiting me access to the office via phone

And why the [staff position redacted] has not provided me with a reason why they feels that I should be banned from calling the office not only this time but in previous times....”

When the staff person responded, the Member replied and made it clear that he considered the staff person to have escalated the matter, to the point that resolution of their differences would require, “experienced professionals”. In response to reviewing the draft of this report, the Member reiterated that in his view it was staff that had escalated the matter and that staff’s response was the problem.

This highlights the dysfunctional relationship between the Member and certain staff. Based on witnessing various elements of this relationship, we find that the relationship has deteriorated to a point where neither staff nor the Member can communicate effectively with one another. What might be an innocuous comment between any other people is given overtones and import in this relationship that fuels poor decisions and inappropriate comments. Tone of voice and inflection are often referred to as inappropriate by the parties regardless of the actual words used. While tone and sarcasm typically do not rise to the level of a breach of the Code of Conduct, the parties to this relationship see intent and malice behind words that in other circumstances would not be viewed as a problem.

April 25, 2024

An email was received in error by a staff member from a member of the public and the external email was forwarded to Council as the staff member felt Council needed to know the contents of the email. We did not review that third party email as part of this investigation and take no position on the substance of the email exchange between the Member and the staff person. The Member’s email in response to staff stated:

“I really don’t put a lot of faith into advice given by yourself or your staff when it comes to this kind of stuff [MFIPPA]. That’s just my opinion and the last time I checked I was able to freely express my opinion correct me if I’m wrong. Sorry if that sounds harsh but when it comes to matters like this we are living in an environment what doesn’t allow me to be trusting at this time.”

April 30, 2024

This email is part of a chain of emails related to the “yellow truck” that is also addressed in our complaint matter #10. This particular email was not however part of that complaint package, so it is addressed here. In response to an email from staff, in which staff referred the Member to the Code of Conduct and Council-Staff Relations Policy, the Member wrote:

“as far as the policy’s or code of conduct I’m far too busy to look that up and to be honest the last person I would take that sort of advice from would be a municipal worker but thanks for the unwanted advice.”

The Member then wrote:

“Anyways you seem angry and I don’t understand why I hope this anger isn’t around tomorrow night as I want to feel safe in the chambers and your really not putting off that vibe at this time. Please take a deep breath and relax it was only a request and a question is all why so defensive.”

May 1, 2024

The following day the Member sent the following to the Mayor and Clerk:

“I need to bring to your attention that I feel [staff member] has some sort of personal vendetta against me and his recent aggressive tones in his email correspondence has me worried.

I know that you both take workplace harassment and safety seriously and I have to say I don’t feel safe around him. The atmosphere that he presents to me is very threatening and that has me concerned.”

We discussed this with the Member, and he was not able to provide any satisfactory reason or evidence to support his allegation; specifically, the staff member did not threaten the Member or do anything to suggest the member should be concerned for his safety. The Member indicted that his concern started when the staff member recommended a police presence at Council meetings – the Member was scared as to what this meant the staff member was thinking. When viewed in the context of the entire exchange of emails this appears to be an attempt to discredit staff with the Mayor and Clerk and/or insinuate that either the Mayor or Clerk are not actually concerned about workplace harassment if they ignore the Member’s complaint.

July 5, 2024

As with other incidents complained of, the Member was not receiving the answers that he was seeking in a time frame he deemed appropriate in July, and he responded by insulting staff in an email addressed to the Mayor:

“I was wondering if you had a time frame when you would either have the info I’ve been asking for from [staff] or a specific reason why [they] will not release this information. This situation seems to be aimed at slowing me down from doing my job.

I’m not sure how anything gets [done] between your lack of concern about this matter and the staffs lack of respect and understanding of [their] jobs.”

He then listed three items he was waiting for and ended the email with, “I’m baffled as to what goes on all day at the office.”.

Code of Conduct Findings

We find as a fact that the Member made the following statements:

- Telling the Clerk that he would “fire [her] and start over if he had it his way”;
- Telling the Public Works Manager he was “not doing his job”;
- Stating that something “fishy” was going on with the budget;
- Accusing the Public Works Manager of “lecturing” or “tongue lashing” Council; and
- Calling the Public Works Manager childish and disrespectful;

For those statements the Member denies making we find that it is more likely that not that the statements were in fact made. The statements are consistent with other statements made by the Member and we find no reason to dispute the veracity of the complaint in this respect.

These statements breach the following sections of the Code of Conduct:

7.1 - the Member does not treat staff appropriately and is abusive;

8.3 – The Member does not demonstrate any respect for staff or their professional capacities and responsibilities.

The statements are evidence of a breach of the following sections of the Township of the North Shore Council Staff Relations Policy:

5.10 – The Member is not treating staff with professionalism;

5.11 – The Member is not respectful of staff’s intelligence and professional duties.

The Member demands accountability and professionalism from staff, but refuses to treat staff with professionalism and respect. This is a viscous circle that is not sustainable.

Councillors individually are not elected to be the “caretaker of the Township’s money”, as claimed by the Member. Council is responsible for the budget and for being fiscally accountable. Council is responsible for staff, not any individual member of Council. The

Member crosses the line repeatedly because he takes it upon himself to question staff about expenses, staff's work and details of operational matters – these are not matters for any individual member of Council.

If staff appear to the Member as defensive it should not be surprising when the Member is asking for information that appears to be directed at attacking staff – and when the perception is confirmed in numerous emails where the Member directly does question the professionalism and capabilities of staff.

April 15-16, 2024

The Member's email implies that the named staff member may be insubordinate, unprofessional and abusing their powers, in addition to other accusations.

The tone of the email is aggressive and confrontational, and although it does not use profane language it is very clear that the Member is angry and portrays himself as a victim of unreasonable staff behaviour.

The email is evidence of a breach of the following sections of the Code of Conduct:

7.1 - the Member does not treat staff appropriately and is using his role on Council to attempt to bully or intimidate the staff member by raising very serious allegations without proof;

8.1 – the Member makes unfounded allegations that maliciously and falsely injure and impugn the professional and ethical reputation of staff;

8.3 – The Member does not demonstrate any respect for staff or their professional capacities and responsibilities.

The email is evidence of a breach of the following sections of the Township of the North Shore Council Staff Relations Policy:

5.7 - Comments on Staff and Officer performance shall be directed through the appropriate confidential performance reviews. No individual member of Council can conduct a performance review. The Member is alleging very serious performance issues in an email. This lack of proper process disadvantages staff and places them in a difficult position with Council.

5.10 – The Member is not treating staff with professionalism;

5.11 – The Member is not respectful of staff's intelligence and professional duties.

April 25, 2024

The Member's email states expressly that he does not, "put a lot of faith into advice given by ... staff...."

The Member's email is a breach of the following sections of the Code of Conduct:

7.1 - the email is inappropriate;

8.1 – stating staff are unable to do their jobs maliciously and falsely injures and impugns their professional reputation;

8.3 – stating that he has no faith in staff's abilities does not show respect for staff and their professional capacities and responsibilities.

The Member's email is a breach of the following sections of the Township of the North Shore Council Staff Relations Policy:

5.7 – stating staff cannot do their job is derisive and vexatious;

5.10 – expressing a lack of faith in staff's abilities is not professional;

5.11 – there is no element of respect in this communication.

April 30, 2024

The Member writing:

"... last person I would take that sort of advice from would be a municipal worker but thanks for the unwanted advice."

"Anyways you seem angry and I don't understand why I hope this anger isn't around tomorrow night as I want to feel safe in the chambers and your really not putting off that vibe at this time...."

is a breach of the following sections of the Code of Conduct:

7.1 - the email is not appropriate and is abusive;

7.2 – the email is abusive and insulting;

8.1 – stating that staff are not capable of giving advice maliciously and falsely injures and impugns the professional reputation of staff;

8.3 – the email does not show respect for staff and for their professional capacities and responsibilities.

This email is a breach of the following sections of the Township of the North Shore Council Staff Relations Policy:

- 5.7 – the Email is derisive and vexatious;
- 5.10 – the email is not professional;
- 5.11 – the email does not foster a climate of mutual respect.

May 1, 2024

The Member sent an email to the Mayor and Clerk accusing a staff member of having a “personal vendetta” and claiming he felt threatened by the staff member. Based on our investigation, this statement is false. The Member had no objective basis to make this statement and his justification for the statement was not credible.

We find this to be an attempt to discredit staff and/or insinuate that either the Mayor or Clerk are not actually concerned about workplace harassment.

This email is a breach of the following sections of the Code of Conduct:

- 7.1 - this is an attempt to portray the named staff member as threatening. Making such a serious accusation with no objective basis for the claim, especially when made to the Mayor and Clerk, is an attempt to abuse the authority of a Council Member and is a form of bullying and intimidation.
- 7.2 – the allegation is abusive;
- 8.1 – the accusation maliciously and falsely injures and impugns the professional and ethical reputation of staff.

This email is a breach of the following section of the Township of the North Shore Council Staff Relations Policy:

- 5.7 – the policy directs Members to avoid the temptation to play up divisions or conflicts and states that staff shall not be targets of derisive/vexatious comments/behaviour/conduct.

July 5, 2024

Stating, “I’m not sure how anything gets [done] between your [the Mayor’s] lack of concern about this matter and the staffs lack of respect and understanding of [their] jobs.” And, “I’m

baffled as to what goes on all day at the office.” is a breach of the following sections of the Code of Conduct:

7.1 - the email is not appropriate and is abusive;

7.2 – the email is abusive and insulting;

8.1 – stating that staff do not understand their job maliciously and falsely injures and impugns the professional reputation of staff;

8.3 – the email does not show respect for staff and for their professional capacities and responsibilities.

This email is a breach of the following sections of the Township of the North Shore Council Staff Relations Policy:

5.7 – the Email is derisive and vexatious;

5.10 – the email is not professional;

5.11 – the email does not foster a climate of mutual respect.

In response to a draft of this report, the member stated that he “stood by” his comments and he believes that the municipality is not efficiently run. The Member appears unable to accept that regardless of his personal feelings he cannot treat staff poorly. Until the Member accepts that he has no authority to discipline staff unilaterally and that it is inappropriate to criticize staff in public and in front of Council this pattern of behaviour will continue, and may escalate.

Recommendation

The Member breached various provisions of the Code of Conduct and Council Staff Relations Policy.

This type of behaviour represents a significant departure from the degree of respect, civility and decorum expected of elected officials.

Our recommendation as to penalty and sanction is intended to communicate that this type of behaviour will not be tolerated and to deter future behaviour of this nature. Lastly, the recommended penalty and sanction incorporates elements that are intended to have the Member reflect upon his actions and make changes to avoid repetition of this behaviour.

As such, we recommend that Council impose the following penalty:

- Suspension of the Member’s remuneration for 40 days

A financial penalty sends a message that Council will not tolerate abusive behaviour of its staff. The financial penalty is also necessary to address the refusal of the member to acknowledge his role in the problem and to commit to changing his behaviour. Continuing to blame others is not a productive response.

A financial penalty on its own is insufficient to address the underlying issues that spawned this complaint – and others.

The following sanction is also recommended to attempt to address the underlying behaviour that is leading to complaints (this sanction is the same as recommended in our report dealing with the compliant in our Matter 10 and need not be imposed twice by Council – we repeat it here as the sanction is also relevant to the behaviour outlined in this report):

1. Communication with staff shall only be by email directed to the Mayor and not copied to staff. The Mayor will then forward the substance of any comments or requests to staff, but not forward the email itself unless the email does not contain inappropriate commentary;
2. This communication protocol shall be continued for 12 months;
3. The Member shall not request any information from staff unless the substance of the request is related to a matter that is on an agenda of Council. This sanction is recommended to limit the instances where the Member seeks information for ideas that he has to improve operations or policies that are not driven by a Council agenda. Many of the instances of poor decision-making and bad behaviour are related to these types of information gathering exercises.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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