



**Cunningham Swan**

LAWYERS

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**CONFIDENTIAL**

July 4, 2024

**SENT BY EMAIL TO: [municipalclerk@townshipofthenorthshore.ca](mailto: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**  
**Our File No. 36669-3, 36669-5, 36669-6**

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 for this investigation are as follows:

- Complaints Received – February 13-14, 2024
- Preliminary Review Conducted
- Complaint Package sent to Member – April 10, 2024
- Response received from Member – April 22, 2024
- Interviews Conducted – May 2024
- Draft Report provided to Member – June 2024

### **Complaint Overview**

Several complaints were received against Councillor Richard Welburn (the “Member”) who is a Member of Council (collectively, the “Complaint”).

The Complaint alleged that the Member during the February 7, 2024 closed session of Council breached the Code of Conduct. Specifically, it was alleged that the Member expressed a threatening demeanor and became extremely upset, pounded his fists on the table, made accusations at the Mayor and Council while raising his voice and making aggressive gestures which did not stop despite requests of Members.

Further, it was alleged that the Member repeatedly discussed issues pertaining to an ongoing confidential matter during the closed session in the presence of staff.

## **Relevant Policy Provisions**

### **The Code of Conduct**

The Complaint engaged the following provisions of the Code of Conduct:

#### **Section 5.0 - Adherence to Council Policies and Procedures**

5.1 Every Member shall observe and comply with every provision of this Code of Conduct, as well as all other policies and procedures adopted or established by Council.

#### **Section 6.0 – Conduct at Meetings**

6.1 Every Member shall conduct himself or herself properly and in a civil and respectful manner at meetings, and in accordance with the provisions of the Procedural By-law, this Code of Conduct, and other applicable law.

#### **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.

#### **Section 10 – Confidential Information**

10.1 No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her

office, in any form including, but not limited to, written notes, reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so.

### **The Township of 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**

No factual findings were required in this investigation. We reviewed video footage of the closed session meeting that was the subject of the Complaint and as such there is no dispute as to what occurred or was said by the Member during the meeting.

## **Code of Conduct Findings**

### **Section 5.0 - Adherence to Council Policies and Procedures**

#### *Section 5.1*

As is detailed later in this report, our investigation concluded that the Member breached various provisions of the Council Staff Relations policy at the February 7, 2024 closed meeting of Council. As such, we also found the Member breached Section 5.0 of the Code of Conduct.

### **Section 6.0 – Conduct at Meetings**

#### *Section 6.1*

Our investigation determined that the Member breached Section 6.0 of the Code of Conduct during the February 7, 2024 closed meeting of Council.

Throughout the closed session, the Member repeatedly raised his voice towards members of staff and council and interrupted others while they were trying to speak. As detailed in this report, the Member also made disrespectful comments regarding staff and other members of Council. This behaviour was not reflective of the civility and decorum that is expected of elected officials during a meeting of Council and was disrespectful to the other members and staff present at the meeting.

### **Section 7.0 – Conduct Respecting Others**

#### *Section 7.1*

The investigation considered whether the Member's behaviour at the February 7, 2024 meeting of Council constituted abuse, bullying or intimidation in breach of Section 7.1. While the conduct of the Member was disrespectful and lacking in civility it is our finding that it did not rise to the level required to be considered abuse, bullying or intimidation.

The Code of Conduct addresses various degrees of severity for misconduct by Members. A finding that a Member was abusive, bullying or intimidating in his/her conduct has a high threshold and is a very serious allegation. For example, a Member uttering a threat has been considered to be conduct of this nature.

While we have found that the Member's conduct was disrespectful and lacking in civility, the Member's conduct was not so severe so as to constitute abuse, bullying or intimidation. The Code does not define these terms, but it is our finding that the Member's comments and conduct on February 7, 2024 do not rise to the level required to form the basis of a finding of breach of Section 7.1 of the Code of Conduct.

### *Section 7.2*

The investigation considered whether the Member's conduct on February 7, 2024 constituted a breach of this Section. It is our finding that it did not.

As noted, the investigation concluded that the Member's conduct was disrespectful and uncivil. However, this section requires indecent, abusive or insulting words, tone or expressions. This section is intended to capture words, tone or expressions that are derogatory in nature. For example, using foul language or derogatory expressions towards another person would be considered to be a breach of this section.

We found that the Member, while agitated and upset during the meeting, did not breach Section 7.2 of the Code of Conduct.

### Section 8.0 – Conduct Respecting Staff and Officers

#### *Section 8.1*

Our review of the Member's conduct on February 7, 2024 concluded that the Member did breach Section 8.1 of the Code of Conduct during the closed session meeting.

The Member made comments about a member of staff during the meeting and questioned their ethics and professionalism with respect to several actions the Member alleged the staff member had taken. The Member aggressively challenged the decisions of the staff member and called into question the ethics behind the staff members decisions.

Members are not prohibited from asking questions about staff and staff decisions but there is an appropriate forum for such questions and comments. Specifically, as detailed in the Council Staff Relations policy, such comments and questions should be directed through the appropriate confidential performance reviews. The February 7, 2024 meeting was not the appropriate forum to aggressively challenge the decisions and integrity of the staff member.

Further, it is our finding that the Member's comments were made maliciously. The Member was agitated and made several comments about the member of staff to all of council as well as the chair of the meeting. As previously indicated, this is not the appropriate forum to raise these issues. Further, the specific issues raised, the context in which they were made and the demeanour of the member was indicative that his intent was not to clarify or correct an issue but to challenge and discredit the reputation of the member of staff.

As a result of the foregoing, we find that the Member breached Section 8.1 of the Code of Conduct.

### *Section 8.3*

We find that the Member also breached Section 8.3 of the Code of Conduct during the February 7, 2024 closed session of council.

We have detailed in the foregoing section that the Member's conduct regarding a member of staff was found to be a breach of Section 8.1 of the Code of Conduct. We find that this same conduct was disrespectful in breach of Section 8.3.

In addition to the comments made regarding the member of staff's decisions, we also find that the Member interrupted the staff member at the meeting and repeatedly challenged them to a degree that was disrespectful in nature. The staff member attempted to keep the meeting on track and answer the Member's questions. The Member's demeanour when speaking to the staff member and repeated interruptions and comments that he was going to continue speaking despite the staff member's attempts to constrain the discussion to agenda items rose to a level that would be considered a breach of the requirement of the Code of Conduct to be respectful.

### Section 10 – Confidential Information

#### *Section 10.1*

During the February 7, 2024 meeting the Member made several comments regarding an ongoing confidential matter in the presence of a member of staff that should not have been privy to that information.

While we cannot disclose the comments made or the nature of the confidential information we note that we have considered the definition of "Confidential Information" and have found that the information regarding the matter would be considered to meet that definition.

The member of staff present in the closed session would constitute "any person" under Section 10.1.

As such, we find that there was a breach of Section 10.1 of the Code of Conduct by the Member.

### **The Township of North Shore Council Staff Relations Policy Findings**

As indicated in the foregoing sections, the Member exhibited an agitated and angry demeanour during the meeting and made comments directed at a staff member that were found to be disrespectful and uncivil in nature.

We find that this conduct of the Member breached Section 5.7, 5.10 and 5.11 of the Council Staff relations policy.

## **Recommendation**

The Member breached various provisions of the Code of Conduct during the February 7, 2024 closed meeting of Council. We found that the Member's behaviour was disrespectful, intended to be malicious and uncivil and was directed at members of staff as well as the other Members of Council present.

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

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 on February 7, 2024 and make changes to avoid repetition of this behaviour.

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

- Suspension of the Member's remuneration for 15 days; and
- A request for a public apology from the Member.

Sincerely,

**Cunningham, Swan, Carty, Little & Bonham LLP**



Tony E. Fleming, C.S.  
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