



Cunningham Swan

LAWYERS

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CONFIDENTIAL

February 24, 2021

BY E-MAIL: MLevesque@cornwall.ca

Mayor and Council Members – City of Cornwall
c/o Manon Levesque, Clerk
City of Cornwall
360 Pitt Street
Cornwall, ON K6J 3P9

Dear Mayor and Members of Council:

**RE: Code of Conduct Complaint to Integrity Commissioner re Councillor Justin
Towndale
Our File No.: 28637-6**

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 virtually attend 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.

PRELIMINARY REVIEW

On June 11, 2020, a complaint under the Code of Conduct (the "Complaint") was forwarded to our attention alleging that Councillor Justin Towndale, (the "Member") had breached the Code of Conduct of the City of Cornwall (the "City") as a result of public posts made on social media about the resignation of a City employee.

The City's 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 City's 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. Due to a previous commitment, the Member was on a work assignment and was therefore given an extension until late September to provide his comments;
- Providing a copy of the Member's response to the complainant, with a request for any written response to be provided within 10 days;
- Providing a copy of the complainant's response to the Member with a request for any written response to be provided within 10 days;
- 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 the complaint warranted an investigation. During the investigation, the Integrity Commissioner interviewed witnesses, gathered and examined evidence relevant to the complaints and made findings of fact that are set out below.

ANALYSIS

Facts:

After undertaking an investigation, the Integrity Commissioner finds:

1. Fire Chief Pierre Voisine interviewed for the position of Director of Protective Services at the City of Clarence-Rockland. Mr. Voisine was successful and at a public meeting on May 20, 2020, at 8:20 P.M., Council for the City of Clarence-Rockland ratified the hiring of Mr. Voisine.
2. At 8:26 P.M. on the same night, Mr. Voisine sent a letter of resignation to the City of Cornwall's Chief Administrative Officer.
3. At 9:35 P.M. on the same night the City of Clarence-Rockland announced that it had hired Mr. Voisine via a post on Facebook.
4. Councillor Towndale operates a Facebook and Twitter account under his name. Between 10:13-10:15 P.M. on May 20, 2020, he posted the following to his Facebook page:

Just found out our Fire Chief is leaving for the same job in Clarence-Rockland. Know how I found out? Someone sent me a screenshot of the press release from Clarence-Rockland. I would have expected this sort of news from our administration, or Chief himself, first.

Mind you, I guess I learned about our previous Manager of Environmental Services leaving for another municipality through the media, and not administration or herself, first. So I'm not exactly surprised. #cwlpoli

5. The Member posted the same text simultaneously to his Twitter account.
6. The posts on both platforms were shared publicly, meaning they were accessible to any member of the public who visited the Member's Facebook or Twitter pages.
7. Twenty-five members of the public made comments in the "Comments" section of the Member's Facebook post. Some comments were critical of the Fire Chief, his job performance and his character. It is not necessary to reproduce those comments in this Report.

8. The Member did not respond to or otherwise interact with these comments.
9. At 7:36 A.M. on May 21, 2020, the CAO sent an email advising Council of the Fire Chief's resignation. She sent a second email an hour later in which she identified the Member's social media posts as "unacceptable" and "outrageous". She noted that she had only received confirmation of the Fire Chief's resignation the previous night.
10. At 10:00 A.M., the Member sent an email response to the CAO, Mayor and Council. The Member expressed concern that the CAO had not notified Council before the City of Clarence-Rockland's public announcement. In his email, the Member stated: "What's truly unacceptable and outrageous is how this keeps happening", referring to a past incident where the Member had learned that another employee had resigned via a media article. He also cited past incidents where he deemed there had been unacceptable delays in Council receiving notice. The Member stated that he held the CAO "responsible for the lack of information being passed on".
11. The Mayor responded via email to the Member. She stated her view that the CAO had advised Council in a timely way and in an appropriate manner. She also encouraged the Member to communicate his concerns to staff directly in-person or by telephone.
12. In an email response sent at 6:04 P.M. to the Mayor, the Member stated he disagreed that the notification was timely and appropriate. He also stated:

"Quite frankly, and bluntly, I don't trust our administration enough to simply have verbal conversations. I still stick to email so that I have a written record."
13. The Integrity Commissioner considered allegations that the foregoing incidents followed a history of the Member criticizing the communication abilities of staff. This history was provided in the complaint, but most examples pre-dated the adoption of the Code of Conduct. It is important to state that none of the following incidents were subject to an investigation or finding of fact. The Integrity Commissioner considered the following alleged incidents as background only:
 - a. On September 9, 2016, a fire started in a wood chipper at a City-owned landfill area. The City's Fire Department responded and extinguished the fire. There was some damage to the wood chipper, which was the property of a private contractor.

On September 19, 2016, the Member emailed Councillors stating that the fire had come to his attention via a public Facebook post. In his email he stated, in part:

“The reasons I am raising this issue, is because again, there was an incident at a City owned facility, and there was no notification to Council about it whatsoever.

Council is essentially the Board of Directors for the Corporation of the City of Cornwall. All liability lies with us at the end of the day.

I've raised this issue before and I'm tired of it. Two fires at the dump, an evacuation at the Aquatic Centre and no communication.

I'm looking for some feedback on this issue. I can't be the only one who feels frustrated about this.”

On September 22, 2016 the Member forwarded his email to the CAO, asking:

“After sending this to Council, I am now sending it to you for comment. Why was Council not informed immediately? Thanks, Justin”

In a response the same day, the CAO explained the fire was not a major event and was quickly and appropriately handled by the contractor and the Fire Department. She explained there were no City staff at the facility, whose operation was contracted out privately, and that there was no damage to City property.

In his response on September 29th, 2016, the Member wrote:

“I understand that the scope of the incident might not be considered serious, however, it was still a fire at a City owned and operated facility. As Councillors, we serve as the Board of Directors for the Corporation of the City of Cornwall. As such, I strongly believe that we should be made aware of such incidents.

This falls in line with a previous fire at the dump, and the issue with the HVAC system at the Aquatic Centre. In both instances, Council found out from the media. This isn't acceptable.

Council should be made aware of any incidents at City facilities that result in fire, equipment failure, and/or injuries to persons. Being that this isn't the first instance, I feel compelled to bring forward a motion to ensure that this happens going forward. I will be tabling it for our next meeting.

I am involved with three Boards, and own two businesses in town now. I expect the same level of notification in these other roles, and it is

provided, just not for Council.

- b. On October 26, 2016, the Member brought a motion for a resolution that staff notify Council of incidents at City facilities within one hour of the incident. The motion was defeated by a vote of 8-3.
- c. In an email sent November 15, 2016 to the CAO, Council and then-Mayor Leslie O'Shaughnessy, the Member alleged that he had not been notified of a grant award to the City airport prior to the story becoming public. He asked for an explanation why he was not notified and stated: "...when it comes to sharing information with me, it does not seem to happen. This should be a two way street. I find it very frustrating it is not. I would appreciate an answer for the second time."

In a responding email, Mayor O'Shaughnessy advised the Member that the CAO notified the Member via an email to Council on May 30, 2016. In response the Member apologized for missing this email and noted that he had been deployed on Canadian Forces basic training at the time it was sent.

- d. On May 7th, 2017, the City was notified it had been named a respondent in an application to the Human Rights Tribunal of Ontario. The CAO was notified of this development on June 8, 2017. The CAO arranged for a notification to be prepared and sent to Council on June 9, 2017. After receiving this notification, the Member sent an email to Council and the CAO in which he expressed disappointment with the delay in learning about the application, and stated:

"I feel like this information was withheld. I feel like my trust of administration is being eroded. And I think that my feeling this way is not only sad, but serious as well. Again, maybe I'm the only Councillor who feels this way, but I am going to voice my feelings on the way that this matter has been handled so far. To me, there is a pattern of information not getting passed along."

- e. On April 1st, 2020, a suspected outbreak of COVID-19 was identified at a City-run facility. The outbreak was reported by public media that day. At 5:14 P.M., City staff sent an email notifying Council of the outbreak. At 5:15 P.M., the Member sent an email to the CAO referring to a media article about the outbreak, and stating: "Why am I finding out about this from the media? Regardless of whether or not it's COVID-19 or not, this is unacceptable."

In the ensuing email exchange between the CAO and Member, the Member stated: "This isn't about criticizing the administration. At least it wasn't at first."

The same day, the Member posted a public comment on his Facebook account that stated, in part:

“I was only informed of this outbreak via the media, and not from our own administration... When asked why, I wasn’t given what I would call an acceptable answer. I was told that Council isn’t usually informed of serious incidents like this (Side note – based on my history this sadly seems true)...”

14. The City of Cornwall does not have any policy that requires a staff member to advise Council of their resignation.
15. The City of Cornwall does not have any policy that requires Administration staff to advise Council of the resignation of any member of staff, or to do so within any prescribed period of time.

Code of Conduct:

6.0 GENERAL CONDUCT

6.1 Every Member has the duty and responsibility to treat members of the public, Staff and each other in a respectful manner, without abuse, bullying, Harassment or intimidation.

6.3 Every Member shall abide by the following principles:

c) Members shall comply with all applicable legislation, by-laws and Municipal policies, including this Code of Conduct;

11.0 INTERACTION WITH STAFF

11.1

The Corporation of the City of Cornwall will promote a respectful, tolerant, harassment-free relationship and workplace between members of Council, and the officers and employees of the corporation.

11.2

Members shall not:

- a) maliciously or falsely injure the professional or ethical reputation of Staff

Council-Staff Relations Policy

1. Guiding Principles

(d) Respect

- The relationship between Staff and Members and their defined roles must be respected to ensure that all members of Staff and Members are treated fairly;
- Members and Staff shall foster a climate of mutual respect, recognizing the role that they play in serving the Municipality;
- In order to promote respect in the workplace, Staff and Members shall listen to the ideas of each other without judgment, seek to understand the unique challenges to each other's roles in serving the Municipality, provide constructive feedback when necessary, and encourage a collaborative relationship based on trust, kindness, and respect for individual skillsets.

2. Clarifying the Role of Council and the Role of Staff

1. Role of Council

(d) Members shall work with the CAO and Senior Management in a collaborative and supportive manner and not seek to usurp the administrative function of the CAO and Senior Management

(e) Individual Members shall not direct Staff or intimidate Staff in the performance of their duties;

(j) Members shall respect the role of the Municipality as an employer and provide direction and support for Staff that adheres to all legal obligations of an employer;

(l) Members shall be respectful of Staff in the workplace and shall not denigrate Staff in public or on social media;

(m) Members shall refrain from any behaviour that the Staff member knows, or should reasonably know, is offensive and/or unwelcome.

Determination:

For ease of reading, we set out below the social media post by Councillor Towndale which forms the basis for the complaint:

Just found out our Fire Chief is leaving for the same job in Clarence-Rockland. Know how I found out? Someone sent me a screenshot of the press release from Clarence-Rockland. I would have expected this sort of news from our administration, or Chief himself, first.

Mind you, I guess I learned about our previous Manager of Environmental Services leaving for another municipality through the media, and not administration or herself, first. So I'm not exactly surprised. #cwlpoli

The complaint alleges that the Member deliberately posted the comment to be critical of senior administration and to create an image of the administration that was negative in the eyes of the public. This comment was viewed by the complainant as an attempt to injure the reputation of senior staff. This type of negative social media post was also seen as unsupportive and an attempt to usurp the administrative function of staff, contrary to the Council-Staff relations Policy.

The historical examples cited above were provided to demonstrate what the complainant considered a long-standing pattern of similar behaviour by the Member. As stated above, the Integrity Commissioner cannot find fault with historical behaviour and those incidents have been considered only to assess the motivation of the Member. The historical incidents were supported by emails and the fact that the incidents occurred is not in dispute.

What the historical incidents reveal is that Councillor Towndale has consistently advocated for greater and more timely reporting by staff of any incident involving the City that might be of interest to Council. Council however disagreed with Councillor Towndale and did not support his motion in 2016 to broaden the reporting responsibilities of staff. Despite this clear direction from Council the Member continued to advocate for greater reporting and was unapologetic that he would continue to demand more timely reporting. The incident that forms the core of this investigation is one example of the Councillor's continued campaign to force senior staff to do what he thinks is necessary.

Councillor Towndale is entitled to have strong beliefs, and to advocate for policy change. The Councillor is not however entitled to elevate that campaign to the point that staff are publicly criticized and privately chastised. Councillor Towndale has taken his personal campaign for more timely reporting to an unacceptable level and has now breached the City's Code of Conduct.

The Integrity Commissioner is satisfied that Councillor Towndale did not intend to injure the professional reputation of Pierre Voisine, nor did he intend to incite members of the public to post negative comments about former Chief Voisine. The report of the Integrity Commissioner dealing with the complaint brought by former Chief Voisine speaks to this aspect of the investigation and it need not be repeated here.

What is clear is that the post was intended to be critical of senior staff, and particularly the CAO.

In the Member's written response to the complaint he stated, "any negative image of administration was created by themselves ... we are all responsible for our own actions ... if

administration believes there is a negative image of themselves in the public realm it is the result of their own actions.” Councillor Towndale further suggested in his written reply to the complaint that his comments were entirely factual and therefore he cannot be accused of injuring the reputation of staff – again, as staff must be held accountable for their own actions.

While it may be true that Councillor Towndale personally would have expected the information that Chief Voisine had resigned to come from staff first, stating that in a social media post is a direct criticism of staff and it is made in a forum and in a context where it cannot be interpreted by any third party as anything other than a criticism. Councillor Towndale cannot hide behind the fact that his post was factual. While it is true that he did not receive the information from staff, his commentary and the tone of the post are clearly critical and are intended to publicly denigrate the CAO for what he personally feels is inadequate performance.

In his written response, Councillor Towndale confirmed that, “The intent of my post was to make the general public aware of how I became aware of the news that the head of the Cornwall Fire Service had accepted a new position. This is because of the ongoing issue of information not being passed onto Council in an appropriate time frame. I have raised this issue numerous times over numerous years in the public sphere.” Given Councillor Towndale’s consistent criticism of staff for inadequately reporting to Council, it is clear that this post was intended as a public condemnation of staff, particularly the CAO.

In fact, the Member went on in his written response to state that he believed his criticism of administration was in fact warranted; an admission that his intent was to criticize.

A theme throughout the Member’s defence of his actions is his personal view that he is entitled to criticize staff for what he views as a failure to inform Council of incidents. What the Member fails to appreciate is that the complaint is not about whether Council has the right to be informed or the timing of such information. The complaint is also not about whether there should be a new policy to require more robust reporting.

The complaint is about the public manner in which Councillor Towndale chose to criticize staff. The Councillor’s defence is that because he believes the criticism is valid, it is appropriate to make that public.

This is not the standard of behaviour expected of a member of Council and it falls well below the standard the City sets for its elected officials.

Section 6(c) of the Code of Conduct incorporates by reference the Council-Staff relations Policy. The Policy states:

3. Clarifying the Role of Council and the Role of Staff

2. Role of Council

(l) Members shall be respectful of Staff in the workplace and shall not denigrate Staff in public or on social media;

(m) Members shall refrain from any behaviour that the Staff member knows, or should reasonably know, is offensive and/or unwelcome.

Member Towndale knew that his public criticisms of administration were unwelcome. He admitted in his written response to the complaint that he was being critical of staff in social media, but he attempts to justify his behaviour by claiming that he is reporting the truth. This is not a valid defence and the Integrity Commissioner finds that Councillor Towndale deliberately used social media to denigrate the reputation of senior staff, particularly the CAO, to further his personal agenda to correct what he perceives as inadequate reporting of certain incidents by staff. This, despite having no formal policy and despite losing a motion in 2016 to enact such a policy.

If any Member of Council has an issue with staff performance, there is an appropriate way to address that issue – it is not by publicly criticizing staff on social media. The Mayor requested that Member Towndale talk with staff to work out his concerns. Rather than engaging in a dialogue, Councillor Towndale stated that he would only correspond with staff in writing. Further, he stated that he did not trust staff and therefore refused to communicate with staff in person. In his interview Councillor Towndale stated that this view stemmed from an interaction with the previous interim City Manager.

The Council-Staff Relations Policy provides:

4. Clarifying the Role of Council and the Role of Staff

3. Role of Council

(d) Members shall work with the CAO and Senior Management in a collaborative and supportive manner and not seek to usurp the administrative function of the CAO and Senior Management

Refusing to speak with staff and expressing personal mistrust of staff is contrary to the policy and counter-productive to an effective working relationship.

The Code of Conduct requires that Councillors be respectful of staff (sections 6.1 and 11.1) and that Councillors not, “maliciously or falsely injure the professional or ethical reputation of Staff” (section 11.2(b)). The Integrity Commissioner finds that Councillor Towndale was not respectful and that he falsely injured the professional reputation of staff. Councillor Towndale advanced a false narrative that staff were obliged to make reports to Council about the departure of Pierre Voisine, despite knowing that there was no such policy and

despite the knowledge that Council had voted against imposing a higher reporting obligation on staff.

The Integrity Commissioner further finds that Councillor Towndale created the social media post with the intent of publicly shaming staff for what he perceived as inadequate reporting to Council. This is consistent with his pattern of advocating for a higher reporting obligation and being publicly critical of staff when they do not live up to his personal standards.

CONCLUSIONS/RECOMMENDATIONS

The Integrity Commissioner finds that Member Towndale breached the Code of Conduct with respect to sections 6.1 and 11.1 as well as the Council-Staff Relations Policy, section 3(2)(1).

Councillor Towndale has shown no remorse or even understanding of why his behaviour is not appropriate. In addition, when asked by the Mayor to engage with staff to try to resolve his concerns his response is to refuse to speak with staff.

There are limitations to what an Integrity Commissioner can do to resolve interpersonal problems. Councillor Towndale clearly feels very passionately about the need for greater communication on certain matters. Unfortunately for Councillor Towndale, Council does not agree with him. At this point, Councillor Towndale needs to temper his passion and demonstrate his respect for both Council and staff.

The Integrity Commissioner recommends that Council issue a public reprimand to Councillor Towndale to show that it supports its staff and does not condone Councillor Towndale's behaviour.

The Integrity Commissioner further recommends that Council direct Councillor Towndale to cease referring to staff of the City in any social media activity.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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