



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.: 28637-5**

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.

PRELIMINARY REVIEW

On June 9, 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 Pierre Voisine, the City's Fire Chief.

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 previous commitments the Member was given an extension of time until late September to provide 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; 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 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. Throughout 2019, the City undertook a review of its Open Air Burning By-law to identify a way to reduce the incidence of complaints about smoke from outdoor fires. Pierre Voisine, who was the City's Fire Chief at the time, recommended to Council that the By-Law be amended to ban open air burning in the City.
2. On September 9, 2019, City Council adopted this recommendation by a vote of 8-3 in favour of repealing the City's Open Air Burning By-law. As a result of this repeal outdoor burning was regulated solely by the provisions of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4, which prohibits outdoor burning. The Member voted against the repeal of the By-Law.
3. Some members of the public opposed this ban. Throughout 2019 and early 2020, some members of the public made critical social media posts about the Fire Chief's involvement in the ban.
4. Throughout February and March 2020, Pierre Voisine interviewed for the position of Director of Protective Services at the City of Clarence-Rockland. Mr. Voisine was successful in his application. 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.
5. 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.
6. At 9:35 P.M. that night the City of Clarence-Rockland announced that it had hired Mr. Voisine via a post on Facebook.
7. The Member operates a Facebook and Twitter account under his name. Between 10:13-10:15 P.M. on May 20, 2020, the Member 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

8. The Member posted the same text simultaneously to his Twitter account.
9. 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.
10. 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.
11. The Member did not respond to or otherwise interact with these comments.
12. The CAO advised Council of Mr. Voisine's resignation at 7:36 A.M. on May 21, 2020.
13. The City of Cornwall does not have any policy that requires a staff member to advise Council of their resignation.
14. The City of Cornwall does not have any policy that requires Administrative staff to advise Council of the resignation of any member of staff, or to do so within any prescribed period of time.

Determination:

This complaint raises the complicated issue of the proper use of social media as a Member of Council. The Integrity Commissioner understands the power of social media and the many benefits it provides to Members of Council and residents. The ability to communicate with citizens is very important, but also poses its own challenges. Social media simultaneously allows instant communications and enfranchises large portions of the population, but also creates a forum where, unchecked, much harm can be done by thoughtless people.

For Members of Council the ethical dilemma is whether and to what extent should they censor or comment on posts from the public where those posts are disrespectful, or worse.

When the Integrity Commissioner interviewed Mr. Voisine, he was upset with the commentary and disappointed that Member Towndale did nothing to control the very hurtful comments made by the public. As the victim of this on-line harassment, Mr. Voisine expected that Member Towndale would step in to protect him – as he could not protect himself in this forum.

There are two issues that arise for the Integrity Commissioner to consider to determine if the Code of Conduct was breached by the Member:

1. Was the post itself a breach of the Code?
2. Should Councillor Towndale have censored the comments or removed the negative and inappropriate comments from his social media page?

1. Was the Post a Breach of the Code of Conduct?

The Post suggests that Pierre Voisine had a positive obligation to give notice of his resignation to Council. It also suggests that Senior Administration had a positive obligation to notify Council.

The post is a breach of the Code of Conduct.

The relevant sections of the Code of Conduct are as follows:

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;

Council-Staff Relations Policy

1. Guiding Principles

(d) Respect

- 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

- (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 [council] member knows, or should reasonably know, is offensive and/or unwelcome

The Code of Conduct clearly establishes the expectation that Members of Council will treat staff with respect. In addition, the Code requires Members to comply with other policies of the City of Cornwall. The Council-Staff Relations Policy provides more depth to the general direction to treat staff with respect.

Members of Council must, “foster a climate of mutual respect”. Councillors must also foster a “collaborative relationship based on trust, kindness ...”. Members are directed not to denigrate staff on social media and to refrain from behaviour that is offensive or unwelcome.

There is no policy of the City that obligated Mr. Voisine to communicate directly with Council when he resigned, and we were not advised of any past practice whereby this was an informal expectation. Mr. Voisine submitted a letter of resignation to the Chief Administrative Officer immediately after his hiring was ratified by the Council of Clarence-Rockland. Until Council of Clarence-Rockland made its decision, Mr. Voisine had not been hired and the appointment was not final.

Mr. Voisine did nothing wrong in these circumstances and it was inappropriate for Councillor Towndale to suggest on social media that he had.

There is also no policy of the City that obligates the Chief Administrative Officer or other senior staff to communicate any staff member’s resignation to Council. In fact, the Chief Administrative Officer did communicate with Council at 7:36 A.M. the day after she received Mr. Voisine’s resignation (once it was ratified by Council for Clarence-Rockland).

The Chief Administrative Officer did nothing wrong in these circumstances and it was inappropriate for Councillor Towndale to suggest on social media that she had. A second complaint was received related to the same social media post and that complaint is dealt with in a separate report that considers the comments related to senior staff.

The post implicitly suggests that Mr. Voisine acted improperly by not communicating immediately with Council. This comment does not “foster a climate of mutual respect”, nor does it foster a, “collaborative relationship based on trust and kindness”. The Integrity Commissioner finds that the comment was a negative comment that reflected poorly on Mr. Voisine for what Councillor Towndale perceived as neglect in his duties to the City. This was Councillor Towndale’s personal opinion and not that of Council.

Councillor Towndale knew that there was no policy in place or obligation on Mr. Voisine to provide this information to Council immediately. Councillor Towndale conceded that he did not consider the impact of his post on staff; his concern was to make it publicly known that Council had not been advised of the resignation. Based on the written response provided by the Councillor and his responses to our interview questions the Integrity Commissioner finds that Councillor Towndale intended to publicly berate staff for what he perceived as a failure on their part to inform him in a timely fashion. This behaviour should have been known to be unwelcome and is disrespectful of staff.

Members of Council must appreciate the disparity in power between them and staff, even the Chief Administrative Officer. Council have the power to affect staff professionally and personally when they chose to use social media to vent their frustrations. Staff have no power to voice their viewpoint or defend themselves when Members of Council chose to air their displeasure publicly on social media.

No Member of Council should ever disrespect staff on social media, for any reason. The City has robust employment policies in place to address any perceived short-comings of staff and Council must follow those policies.

The Integrity Commissioner finds that the social media post was a breach of the Code of Conduct.

2. Should Councillor Towndale have censored the comments or removed the negative and inappropriate comments from his social media page?

The second issue to address is more nuanced. Certainly Mr. Voisine was upset with the public comments that were in response to the social media post from Councillor Towndale. The Integrity Commissioner believes Councillor Towndale did not expect the negative comments about Mr. Voisine, nor did he encourage such comments. Councillor Towndale was only expressing his displeasure at the lack of communication about the resignation.

The question for the Integrity Commissioner is to determine whether the Councillor had an obligation under the Code of Conduct to monitor and manage his social media to ensure that inappropriate comments from the public were not introduced onto his platform?

This question is relevant because the Council-Staff Relations Policy provides:

1. Guiding Principles

(d) Respect

- 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.

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

- (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 [council] member knows, or should reasonably know, is offensive and/or unwelcome

If negative comments about staff are made on a Member's social media page, that has the ability to destroy the "climate of mutual respect" between staff and Council and does not foster a "collaborative relationship based on trust and kindness".

The difficulty is that the Members of Council do not control what the public post on their sites and there is an argument that freedom of expression is robust enough to allow the public to make comments, within certain limits prescribed by law. The question is not whether the public comments were disrespectful and inappropriate – they were. Rather, the question is whether the Code of Conduct requires any Member of Council to censor public comments on their social media?

Councillor Towndale is of the view that it is not reasonable to expect a Member of Council to censor or police their social media. Councillor Towndale is of the opinion that people are entitled to express themselves on social media and if they use that forum to be offensive they must take personal responsibility for their actions. Councillor Towndale stated that he does not have the time or resources to police his social media. Councillor Towndale also expressed reluctance to engage in that type of censorship as it could be seen to be self-serving – he would rather let the comments be expressed (even when they are negative comments directed at him) so that freedom of expression is protected.

Integrity Commissioner Guy Giorno in the report of *Greatrix v. Williams* considered a similar circumstance where the Mayor of Orangeville made a social media post that resulted in a number of negative comments by members of the public directed at by-law enforcement staff. The Integrity Commissioner found that the Mayor was not responsible for the public comments, stating, "it is not reasonable to blame elected representatives for the comments of members of the public. Further, elected representatives are not required to refrain from public communication on issues, including controversial issues, because of what a small number of individuals might say." (paragraph 187)

In addition, Integrity Commissioner Giorno found that nowhere in the Orangeville Code of Conduct did it obligate a Member to, “correct, contradict or engage in debate with members of the public” on social media. (paragraph 205). The most applicable finding is as follows:

“It is a fact of public, political discussion that an elected representative will hear, read or receive numerous comments that might benefit from correction, clarification, additional information or contradiction, or sometimes, that deserve condemnation. It is no exaggeration that an elected representative could spend all day addressing inaccurate, uninformed or offensive comments and have no time left for anything else. It is a matter of political judgement whether, when and how often an elected representative should decide to ignore a comment.” (paragraph 206)

I adopt the reasoning of Integrity Commissioner Giorno in this case. I find that Councillor Towndale was not obligated by the Cornwall Code of Conduct to censor the public comments on his social media sites.

There may however be circumstances where I would find a Member had such an obligation regardless of a direction in the Code of Conduct; where for example discriminatory or hateful comments were being made. Councillors have, in my opinion, an obligation to ensure that they do not preside over a site that condones hatred or racism.

That is not the case in this circumstance, and I find that Member Towndale did not breach the Code of Conduct for allowing the public comments to remain on his social media site. Similarly, the Member had no obligation under the Code of Conduct to correct the public or censor their comments.

CONCLUSIONS/RECOMMENDATIONS

The Integrity Commissioner finds that Member Towndale breached the Code of Conduct for criticizing former Fire Chief Voisine and senior staff for not advising Council of Mr. Voisine’s resignation in a time that Councillor Towndale felt was appropriate. Staff had no such obligation and Councillor Towndale’s post denigrated their professional reputations.

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.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

A handwritten signature in black ink, appearing to read 'Tony E. Fleming', with several horizontal strokes extending to the right.

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