

Township of Georgian Bluffs

Integrity Commissioner's Recommendation Report Regarding Councillor Moore Coburn

April 18, 2024

Executive Summary

- [1] This report results from a complaint against Councillor Moore Coburn for her conduct as a Councillor for the Township of Georgian Bluffs.
- [2] She is alleged to have engaged in harassing behaviour towards ratepayers in regard to a property they own and operate as a cottage rental business, by inserting herself into enforcement activity against the owners, in a manner that they and their family have experienced as harassment.
- [3] The complaint is substantiated on the facts; the Councillor has been overly involved – to the point of relentless pursuit – in following up on the enforcement activity against the property, with Township staff members and those of other regulatory authorities (such as the Grey Sauble Conservation Authority, where she previously served,) and that on occasion this information was passed on to members of the public.
- [4] It is not the role of Councillors to attempt to, directly or indirectly, influence or direct enforcement activities. Councillors should direct complainants to the appropriate staff and then step away entirely. Where Councillors have concerns around the diligent follow-up by staff, these are matters that should be reviewed from the broader perspective of standard enforcement procedures and application of protocols around response times generally, not from the perspective of activity on a single property, which can only be viewed as political interference.

The Complaint

- [5] On November 10, 2023, we received a complaint against Councillor Cathy Moore Coburn, filed by two residents of Georgian Bluffs, who alleged that Councillor Moore Coburn engaged in intimidating and bullying behaviour with her involvement in several ongoing bylaw disputes that were filed by a fellow resident.
- [6] It was alleged that Councillor Moore Coburn has been engaging and directing various staff members, including those working in bylaw enforcement, to carry out

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actions towards the complainants, and that she did so in a coercive and a manipulative way.

- [7] It was further alleged that Councillor Moore Coburn has been using her position and influence as a City Councillor to gain insight and/or information pertaining to this case from staff members at other agencies, including the Grey Sauble Conservation Authority (GCSA) and the Ministry of Natural Resources and Forestry (MNRF).
- [8] It was alleged that Councillor Moore Coburn has been passing this information on to individual ratepayers, and that this information would not otherwise be available to ratepayers.
- [9] It was alleged that this behaviour began in 2020 and continued through to the present day.
- [10] The complaint alleged that the Councillor's conduct breached the Council Code of Conduct.

Process Followed for this Investigation

[11] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.

[12] This fair and balanced process includes the following elements:

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaints should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent of the complaint against her, obtaining her response and interviewing the Respondent
- Conducting interviews of persons with information relevant to the complaint
- Reviewing the relevant documentation
- Providing the Respondent with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report, and taking those comments into consideration prior to finalizing and submitting our Recommendation Report

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[13] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have come to our findings only after providing an opportunity to the respondent to respond to the allegations, and to review and provide comment on the preliminary findings.

Background and Context

[14] The Township of Georgian Bluffs has experienced significant turnover in the CAO role, which has meant that it has been difficult for members of staff to establish and maintain proper organizational structure and policies.

[15] The Councillor is in her second term on Council. To some extent, the observed experiences of previous practices have been shaped by the absence of firmly established administrative leadership and the lack of confidence demonstrably existing between some members of Council and senior staff.

[16] The complainants allege that at least part of the reason they have been “targeted” is racial in nature, as the complainants are people of colour (POC).

[17] Central to the issue are residential properties in Warton that are built on and along the ‘Bayshore’, which is Township-owned land.

[18] The complainants own property which they use for cottage rentals, referred to as short-term rental accommodations (STAs), which has been owned and operated as such by themselves and their family for over 50 years.

[19] They have been undertaking certain refurbishments to the beach and surrounding area.

[20] In the past 3 or 4 years, the property became a concern to a neighbouring owner on the basis that the cottages were being used as STAs and that work was being undertaken along the shoreline, apparently to ‘improve’ the recreational use of the property.

[21] The owners maintain that the work being done is legal and permitted.

[22] The neighbour believes this work has been done illegally and/or without proper permits and has filed multiple complaints to bylaw enforcement. The neighbour has also reached out to Councillor Moore Coburn and others multiple times.

[23] These issues were taken up by a former member of Council, who we note took an energetically active interest in the property, and now by Councillor Moore Coburn who it would appear has taken up the torch.

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- [24] Rather than simply passing the information along to bylaw enforcement and stepping away, Councillor Moore Coburn has repeatedly engaged with these complaints.
- [25] According to an FOI package received by the complainants, Councillor Moore Coburn actively participated in more than 40 separate email conversations with nearly 100 separate emails between January 1, 2019 and January 19, 2024 to various staff members and ratepayers regarding these complainants and their property.
- [26] Councillor Moore Coburn appears to have acted as a liaison of sorts between Township staff and other external regulatory authorities, including the Grey Sauble Conservation Authority and the Ministry of Natural Resources and Forestry.
- [27] Councillor Moore Coburn has also, it would appear, passed information on to the ratepayer(s) who complained of lack of enforcement activity. The information shared may not have otherwise been available to the ratepayers.
- [28] Emails reviewed during this investigation make it clear that Councillor Moore Coburn did not give equal consideration to the perspectives and narratives of the neighbour/ratepayer(s) that brought her their concerns to her, and the property owners who are the complainants in this matter.
- [29] In July 2021, Councillor Moore Coburn first attended at the property in the company of another then-Councillor, the late Carol Barfoot, to ask about work the complainants had been doing on their property.
- [30] It is beyond the role of Councillor to follow up enforcement complaints by visiting the property in question, making their own assessment of the matter, and questioning those who would be the potential defendants, should the Township eventually prosecute a contravention.
- [31] Councillor Moore Coburn, on numerous occasions asked staff from bylaw enforcement to visit the complainants' property to investigate complaints. Even when staff had taken carriage of the enforcement matter, the Councillor insisted on interjecting herself into management of the issue, demanding follow up, updates and further action with respect to this particular property.
- [32] Councillor Moore Coburn requested that the issue be brought to Council in August 2021, October 2021, and March 2023. She also sent updates to all Members of Council regarding the issue on numerous occasions.
- [33] There is evidence that while the actions of the complainants may have, on occasion, not adhered to the Township's bylaws, the lack of adherence has been largely tolerated on other shoreline properties in the area.

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[34] For this particular property, on the contrary, starting in about 2021 there was significant scrutiny involving numerous visits to the property by enforcement officers.

[35] The property serves as the personal residence of the owner's family, which includes small children. The repeated visit to the property by uniformed officers attending in marked vehicles has been experienced as traumatizing to the family.

The Council Code of Conduct and the Applicable Law

[36] The Georgian Bluffs Council Code of Conduct contains the following provisions relevant to this complaint:

5.2 General Principles and Values

e) Members will promote open, accountable and transparent local government.

5.3 Standards of Behaviour and Conduct

5.3.1 Respect and Dignity

a) Members have a duty to treat members of the public, one another, and staff with respect and without abuse, bullying or intimidation.

5.3.2 Conduct Respecting Staff

a) Members will be respectful of the fact that Staff work for the Township and are charged with making recommendations and advice based on political neutrality that reflects their professional expertise and objectivity, without undue influence from any individual member or group of members.

b) Members acknowledge that only Council as a whole has the capacity to direct staff members.

d) Members of Council will not:

iii. Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering in staff's duties.

5.3.5 Confidentiality, Privacy, and Use of Information

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b) Members will not disclose or release by any means to any member of the public either in verbal or written form any confidential information acquired by virtue of their office, except when required by law to do so.

c) Requests for information should be referred to the Clerk to be addressed in conformity with MFIPPA.

Analysis and Findings

- [37] We find that the complaint against the Councillor Moore Coburn, that she has been engaging and directing various staff members to carry out actions towards the complainants, is substantiated.
- [38] We find that she has been using her position and influence as a City Councillor to gain insight and/or information pertaining to this case from staff members at other agencies, and has been passing this information on to individual ratepayers.
- [39] We find that this has been experienced by the complainants as bullying and harassing behaviour.
- [40] With respect to the assertion that the complainants were targeted because they are persons of colour, we found no evidence to support that allegation.
- [41] With regard to the enforcement complaints which the Councillor was receiving, she should have simply passed the on to appropriate staff as she received them, rather than engaging with them herself.
- [42] It is not the role of elected officials to try to 'manage' municipal business. In enforcement-related matters, in particular, it is quite inappropriate for members of Council to interfere or attempt to influence outcomes.
- [43] In enforcement-related matters, members of Council ought to fastidiously avoid any appearance that they are the 'authority' on matter. It is not their role to gather the evidence and therefore they should not take it upon themselves to investigate complaints. Even attending at the property to 'take a look' for themselves lends an inappropriate impression that the member of Council has a hand in enforcement action, which is not the case.
- [44] Often, it is the mistaken expectation of constituents which motivates members of Council to overstep in this manner.
- [45] Members of Council in municipalities across Ontario play important roles: setting strategic direction and policies, setting budgets to implement those, and establishing appropriate oversight for administration and management, among other things. These decisions are made on the basis of the majority of votes made

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during a Council's deliberations on matters over which it has jurisdiction; there is no role for an individual member of Council in conducting by-law infraction investigations.

- [46] Councillors do play an important role interfacing between citizens, who are their constituents, and municipal staff who are tasked with implementing Council's directions. Citizens count on their members of Council to put them in contact with the appropriate staff to resolve issues and concerns.
- [47] Fortunately for many routine situations there are processes which any member of the public can access, through the municipal website, by attending at the municipal offices, or by seeking out their councillor to help them navigate to the right place or person.
- [48] Some citizens however expect their councillor to solve problems by intervening in the process. Where there are established processes, it is unfair and inappropriate for citizens to expect their councillor to work around or interfere with them. This is particularly true with respect to by-law enforcement matters, and so councillors must be vigilant in not overstepping their roles when they are presented with by-law complaint issues.
- [49] Members of Council, under the Code of Conduct and the Council-Staff Relations Policy, know that they must direct their requests and concerns to the Chief Administrative Officer or the appropriate member of Senior Management.
- [50] For concerns about by-law enforcement issues, Members of Council are to direct their concerns to the CAO.
- [51] By-law enforcement is, fundamentally, law enforcement. Members of Council ought not to interfere with law enforcement activities at any level. Law enforcement and the administration of justice should be conducted in a fair and even-handed manner, without undue influence from elected officials.
- [52] At the start of each new term of Council, during training and orientation to members of Council, they are typically reminded that they should not interfere with employees in the exercise of their duties.
- [53] By-law enforcement is a particular area of concern for members of Council in any municipality, and members are cautioned during their training and orientation not to try to intervene on behalf of constituents. This is because intervening on an enforcement matter - to try to fix something for a constituent who is or may be charged, or to push enforcement to lay charges - could be construed as interfering in the administration of justice.

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- [54] An analogy would be if an elected member of parliament contacted the Police or the Crown's office to try to have a charge laid or dropped. This could be seen as an attempt to obstruct justice.
- [55] Whereas these concepts are readily recognized by elected officials and the public at the Provincial and Federal levels, they are often poorly grasped at the municipal level. As a result, citizens who would never dream of approaching their MPP or MP to deal with charges, will quite cavalierly ask their member of Council to 'take care of' municipally enforcement matters.
- [56] Members of Council, in an effort to 'be of service' to their constituent, and failing to appreciate the fundamental problem, instead of simply connecting the constituent with appropriate staff or steering them to the relevant process, may unwittingly step into the middle of the issue.
- [57] As important as it is for members of Council to refrain from intervening inappropriately, it is equally vital that citizens appreciate the dilemma they place their elected officials in when they prevail upon an elected official in such circumstances. In essence, our system of democracy and respect for the rule of law demands the cooperation of all those who function within it.
- [58] Purporting to direct or influence by-law enforcement staff – pressuring them to attend the property, is beyond Councillor Coburn's role.
- [59] Even requesting information (much less repeatedly demanding updates) should be avoided. Members of Council must trust staff to do the job which they for which they are professionally qualified and were hired to do.
- [60] The issue should not have been the subject of updates to Council. Should Council wish to consider its by-law enforcement policies, protocols or staff resources, it should do so in a holistic manner, and not with any single property in its cross-hairs.
- [61] Senior staff need to have the confidence to push back politely but firmly when a member of Council is clearly overstepping their authority and straying from their proper role.
- [62] Similarly, providing updates to the ratepayer(s) is also inappropriate.
- [63] A ratepayer is not entitled to a play-by-play explanation of steps undertaken by enforcement, and revealing information regarding on-going investigations not only risks inappropriate disclosure of personal information but potentially jeopardizes possible prosecution.
- [64] The Councillor should not have passed on information from the GSCA or any other organization that the ratepayers would not otherwise have had access to.

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- [65] Passing on confidential updates – which the Councillor should not have even requested for herself – is unacceptable. The Councillor may have relied on advice from staff that sharing such information publicly was permissible, given that it might ultimately be accessed through a Freedom of Information request (an FOI). This, however, is erroneous and not the proper determining factor, since often information pertaining to properties would only be available to the owner of that property, even under an FOI.
- [66] As noted, in recent years, there has been significant turnover in the role of CAO. While this is not to excuse inappropriate conduct by members of Council, it may go some distance to understanding a failure to push back when a Councillor purports to overstep their authority and inject themselves into operational, administrative and by-law enforcement matters.

Disciplinary Role of Council

- [67] The role of Council is not to reinvestigate the findings in this report. The role of the Integrity Commissioner is to undertake a thorough and impartial investigation, which has now been completed. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [68] Rather, the role of Council is to review the report and decide which sanctions, if any, are necessary. The Integrity Commissioner can recommend training and/or sanctions as they deem appropriate based on the circumstances of the complaint(s), but it is Council who is the final voice in determining what should be done.
- [69] Principles *Integrity* welcomes any questions Council may have regarding the process followed for the investigation as well as its findings.

Concluding Remarks and Recommendations

- [70] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. We see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.
- [71] At the conclusion of an investigation where findings of contravention are determined, an Integrity Commissioner may make recommendations which are aimed at course correction, improving behaviour and avoiding future contraventions.

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[72] A monetary penalty can serve as a deterrent against future such overstepping.

[73] In addition to recommending a monetary penalty in this matter, it is our observation that the Councillor would benefit from the opportunity to participate with all of Council and senior staff in training relating to roles and responsibilities of members of Council, and the related best practices.

[74] While the lack of clear policies or guidelines for staff, as well as the lack of oversight resulting from the frequent turnover in the role of CAO was a contributing factor in enabling the Councillor's behaviour for such an extended period, nothing justifies the relentless scrutiny which the Councillor has brought to bear on this particular property.

[75] We note that, despite her protestations, Councillor Moore Coburn has ultimately acknowledged that she overstepped her role in her involvement in this matter. She has advised us that she regrets this and wishes to apologize. We encourage her to genuinely apologize to the complainants for her conduct towards them.

[76] While we always endeavour to achieve course correction in any complaint investigation, it would have truncated our work significantly had the Councillor made these acknowledges earlier in the process. It would also have allowed us to place some weight on the authenticity of her commitment in this regard.

[77] Having taken issue with almost every allegation contained in the complaint, and defended or deflected in regard to virtually every one of our findings in the preliminary Findings Report, her statement of regret and apology conclusion of this process ring somewhat hollow and disingenuous.

[78] We therefore recommend:

1. That the pay of Councillor Moore Coburn be suspended for a period of 15 days; and
2. That a training session for Council be arranged, to be provided by the Integrity Commissioner, on the roles and responsibilities of members of Council, which training shall be mandatory for Councillor Moore Coburn.

[79] We wish to conclude by publicly thanking the members of Council and everyone else who was asked to participate in our investigation.

[80] We will be pleased to be in attendance when this report is considered to answer any questions you may have relating to its contents.

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About Principles *Integrity* and the Complaint Process

Principles *Integrity* was appointed the Integrity Commissioner for the Township of Georgian Bluffs February 20, 2019 by the adoption of By-law Number 2019-15. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

The Township of Georgian Bluffs has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.

Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

It is important that this broad range of functions be mentioned in this investigation report. Our goal, as stated in our operating philosophy, is to help members of the Georgian Bluffs community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.

Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component. Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.