Principles
Integrity

Recommendation Report
of the Integrity Commissioner
Respecting Code Complaint Against Mayor Dwight Burley
Township of Georgian Bluffs
October 5, 2020

Introductory Comments

[1] 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.*

[2] 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.

[3] 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.

[4] It is important that this broad range of functions be mentioned at the outset of 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.

[5] 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.

[6] 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.

[7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond the allegations, and to review and provide comment on the preliminary findings.

The Complaints

[8] On February 26, 2020 we received a complaint filed by Councillor Sutherland that on multiple occasions the Mayor made inappropriate, disparaging and disrespectful comments directed at the Councillor and towards other members of Council. In particular, it is alleged that:

- at the February 18, 2020 Committee of Adjustment meeting in Council Chambers, as the Councillor was returning to his seat at the conclusion of an item for which he had declared a pecuniary interest, the Mayor said the Councillor could 'return to his seat as his mother said it is okay'
- the Mayor had made disparaging remarks about the Councillor to the former CAO, revealed in an investigation report into conduct of the former CAO
- when another member of Council did not support the Mayor's request for a break, he made an inappropriate comment with reference to wearing a 'Depends' undergarment

[9] In late March and early April, 2020, we received complaints from Councillors Coburn and Barfoot alleging that Mayor Burley:

- engaged in disrespectful sexist and 'age-ist' comments towards other members of Council, in public and during Council meetings,
- conducted himself in a manner lacking openness and transparency, frequently acting unilaterally without seeking Council direction or informing Council,
- exceeded or breached his authority, directing staff and making decisions on behalf of the municipality without discussion or approval from the rest of Council

Process Followed for this Investigation

[10] 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.

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

- Reviewing the complaints 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 complaints against him, and providing disclosure and interviewing the Respondent
- Conducting interviews of persons with information relevant to the complaints
- Reviewing the Code of Conduct and relevant documentation
- Providing the Respondent with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report, prior to finalizing and submitting our Recommendation Report

Analysis:

Background and Context:

[12] The Township of Georgian Bluffs has experienced some challenges recently.

[13] Mayor Burley, a long-time member of Council and formerly Deputy Mayor, was elected to his new role of Mayor in November 2018.

[14] In early 2020, following an internal investigation prompted by a staff complaint, the Township's CAO left.

[15] The Clerk, who had announced her imminent retirement, was asked to assume a role acting as co-CAO sharing the function with the Treasurer.

[16] In mid-February, arrangements were made to 'borrow' the County's Director of Housing on a part-time basis, to serve as Interim CAO to Georgian Bluffs until an executive search for a new permanent CAO could be conducted.

[17] In August, a new permanent CAO joined Georgian Bluffs but after only 4 weeks, he left to assume another CAO position elsewhere.

[18] Against this backdrop of change in Township administration, an unexpected dynamic was playing out at Council.

[19] The Mayor, still new to his leadership role, and perhaps modelling his behaviour on an old-school style, took some management responsibilities into his own hands.

[20] For example when the Mayor learned on a Saturday morning that the new CAO was quitting, he did not immediately share this with his fellow Council members until the following day, while he set wheels in motion regarding moving forward with a replacement candidate.

[21] When making arrangements with Grey County back in the winter to second a senior staff person to act as Georgian Bluffs interim CAO, he did not first seek Council approval or even input about pursuing that option before inviting senior staff from the County to attend a meeting at the Township on that subject to put the proposal to Council, although he had already apparently engaged in conversations with Township staff about the concept.

[22] The Mayor has advised that he conferred with the Deputy Mayor and, in fact, took her along with him to meet with the County officials. Other members of Council were, however, only informed when the County official attended a Georgian Bluffs' Council meeting to advise that the arrangement was acceptable to the County.

[23] Information daylighted to Council members in the report following the internal investigation the previous fall involving the former CAO put a strain on the interpersonal relationships between the Mayor and other members of Council.

[24] Following the departure of the former CAO, the Mayor's statement to the media regarding a member of staff returning after a leave did not appear to properly reflect the facts. The Mayor accounted for the discrepancy on the basis that he had been misquoted by the media.

[25] On a few occasions, the Mayor made off-hand comments and quips targeting individual members of Council, which were received as offensive and disrespectful, further eroding the relationships.

The Applicable Code of Conduct Provisions:

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

5.2 General Principles and Values

d) Members will maintain professionalism, integrity, respect and trust.

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.

b) Members will ensure their work environment is free from discrimination and harassment.

c) Members will conduct themselves according to legislative requirements, including the municipal workplace harassment and violence policies.

d) Members will observe decorum and conduct themselves as outlined in the procedural by- law.

e) Members will refrain from public criticism of other Members, staff or any other person that questions their professional reputation, competence and credibility.

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.

c) Members will direct any concerns respecting staff through the Chief Administrative Officer.

d) Members of Council will not:

i. Maliciously or falsely injure the professional or ethical reputation of staff;

ii. Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or

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.

Analysis

[27] The Code sets a high standard for Members of Council to follow.

[28] Over the past 10 months, Georgian Bluffs has experienced lack of permanent stability in the role of CAO.

[29] It is understandable that the Mayor, as an experienced business operator throughout his life, would try to apply those same skills and management style to running a municipality.

[30] The role of a Mayor or any member of municipal Council, however, is very different than the role of management.

[31] It is Council's role to direct staff of the municipality, by their decisions taken in Council meetings. No individual member of Council – not even the Mayor – can purport to give direction to staff.

[32] For this reason, individual members of Council, including the Mayor, should not be making decisions and giving direction to individual staff members, whether it is the CAO, the head of a department, or an employee on the street.

[33] It is the role of the administration, reporting to the CAO, to implement Council's decisions.

[34] Before working behind the scenes early in the year to orchestrate a staff secondment from the County to appoint an interim CAO, the Mayor should have first brought the matter to Council for direction.

[35] Similarly, immediately upon learning of the new CAO's resignation in late August, the Mayor should have communicated the information to his Council, if only by contacting each of them individually or collectively to let them know.

[36] At meetings of Council and any time he is addressing his colleagues, the Mayor should refrain from off-hand remarks and quips which may easily cause offense; even in jest, such remarks reflect a lack of courtesy, respect and decorum which is unseemly for municipal officials.

[37] That said, the words of the iconic jurist Ruth Bader Ginsberg ("RBG") may provide helpful guidance for those who felt offended. As published October 2, 2016 in the New York Times, Justice Ginsberg wrote, in an article entitled Advice for Living:

> [quoting the advice of her mother-in-law]… "In every good marriage, it helps sometimes to be a little deaf."
>
> I have followed that advice assiduously, and not only at home through 56 years of a marital partnership nonpareil. I have employed it as well in every workplace, including the Supreme Court. When a thoughtless or unkind word is spoken, best tune out. Reacting in anger or annoyance will not advance one's ability to persuade.

[38] Not every slight need be the subject of an integrity commissioner's report. Members should accept that from time to time unkind words will be spoken in an attempt at jocularity. That said, when it is regular and persistent, minor disrespectful comments create a pattern which can lead to a toxic environment.

Findings

[39] We find that the complaints against the Mayor are generally substantiated.

[40] We find that the Mayor, as a result of the absence of a permanent CAO, overstepped the proper role of Mayor, acting on his own initiate before consulting with or seeking direction from his Council.

[41] We find that his conduct appeared to his fellow members of Council to lack openness and transparency, especially when he failed to inform Council promptly of critical information.

[42] We find that certain comments made by the Mayor and targeted at individual members of Council, even if intended as an attempt at humour, are inappropriate, disrespectful and lacking in decorum.

Recommendations

[43] 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. This report is not simply the sum total of analysis of fact and law.

[44] Our role is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.

[45] An integrity commissioner may recommend sanctions be imposed when a complaint has been sustained.

[46] Rather than a sanction, it is our observation that the Mayor would benefit from the opportunity to engage in training relating to good ethical conduct, appropriate governance practices, and roles and responsibilities of members of Council.

[47] We therefore recommend:

1. That the Mayor and all of Council participate in a training session on good ethical conduct, appropriate governance practices, and roles and responsibilities of members of Council; and

2. That Council receive this report for information, and that it be posted on the Municipality of Georgian Bluffs web site for public access.

[48] We wish to conclude by publicly thanking the Mayor, members of Council and everyone else who was asked to participate in our investigation. We express genuine appreciation for the sharing of time, knowledge and opinions by everyone concerned. Our task would have been much more difficult had there been a reluctance to contribute.

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