

Principles *Integrity*

Recommendation Report

Complaint against Councillor Oschefski

Town of Midland

September 24, 2020

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Town of Midland February 1, 2019. 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 Town of Midland 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

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recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

- [4] It is important that the integrity commissioner's 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 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.
- [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 Complaint

- [8] On August 24, 2020 we received a complaint alleging that Councillor Oschefski hosted five parties at his house on Lakewood Drive between April and August 2020 during the COVID-19 pandemic at which numerous individuals attended.
- [9] It is alleged that attendees failed to adhere to prevailing health protocols in effect under the Emergency Management and Civil Protection Act.
- [10] The complaint alleges that Councillor Oschefski's conduct in holding these parties was a breach of the Code of Conduct provisions requiring that members of Council encourage respect for, and adhere to, Municipal by-laws, policies and procedures.

Process Followed for the 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.

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[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 complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent Councillor of the Complaint and seeking his response
- Reviewing the Code of Conduct
- Reviewing screen shots of social media posts, and other relevant documents
- Interviewing witnesses, as necessary
- Providing the Respondent with an opportunity to review and respond to the draft findings of the Integrity Commissioner, taking any further comments and submissions into consideration in finalizing this Recommendation Report.

Background and Context

[13] In early 2020, Canada along with the rest of the world implemented significant emergency measures in response to a worldwide pandemic caused by a novel coronavirus, COVID-19.

[14] The Province of Ontario declared a provincial emergency under the *Emergency Management and Civil Protection Act* (EMCPA) and issued several emergency orders under that Act to contain the spread of COVID-19.

[15] The Province, through these orders, defined and regulated:

- Businesses that would be allowed to remain open (essential services)
- When areas of Ontario would move from Stage 1 (the most stringent phase of response), to Stage 2 and Stage 3 as the Province “re-opened” as restrictions relaxed
- Rules and regulations applicable to gatherings during the pandemic

[16] The Province broadly shared a steady stream of information with the public and with municipal councils, in an effort to raise awareness to stem the spread of the virus quickly.

[17] Tremendous resources have been dedicated to informing the public and spreading information to stem the tide of the spread of COVID-19.

[18] Much of the economy largely shut down in March 2020, with municipal services – much like other businesses – disrupted, with service at public facilities completely suspended and other essential services modified to provide continued service at a safe physical distance.

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- [19] 'Physically distancing' – a term now used in regular everyday parlance – was codified by public health to mean remaining at a physical distance of 2 metres from others who are not part of one's 'social circle'. The wearing of a nose and mouth-covering mask where physical distancing could not be achieved is an important aspect of the public health response.
- [20] A 'household' or 'social circle' is the group of individuals who live together.
- [21] These terms, like the concepts themselves, are new to everybody, and following the rules properly has been challenging for some.
- [22] Midland Council, like all other municipalities in Ontario, issued over 3 dozen media releases to keep the public updated on COVID-19 related information and advice, in an effort to reduce the rate of spread in the community. Measures taken by the Town included closing Town Hall, the town recreation facilities and libraries, the dock and marina, boat launch, sports fields, parks, beaches and picnic shelters.
- [23] The Town of Midland website contains approximately 10 pages of COVID-19 information and links, designed to provide maximum information and guidance to its staff and residents.
- [24] Public Health Units, such as the Simcoe-Muskoka District Health Unit, issued guidelines for events and gatherings, the first recommendation stating: "Consider canceling or postponing all non-essential public events..."
- [25] Midland is within the area of Ontario which entered Stage 2 on June 17 and Stage 3 on July 17, 2020.
- [26] The relevant applicable regulations in effect during Stages 1 and 2 provide as follows:

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS

1. (1) Subject to sections 2 to 6, no person shall attend,
 - (b) a social gathering of more than 10 people, ...
- (2) For greater certainty, subsection (1) applies with respect to an organized public event or social gathering even if it is held at a private dwelling.

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Exception, members of single household

2. Section 1 does not apply with respect to a gathering of members of a single household.

[27] The relevant applicable regulations in effect during Stage 3 provide as follows:

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS

Gatherings, Stage 3 areas

1. (1) Subject to sections 2 to 5, no person shall attend,
 - (b) a social gathering of more than,
 - (ii) 100 people if the gathering is held outdoors; or
- (3) A person attending an organized public event or social gathering shall comply with public health guidance on physical distancing.
- (4) For greater certainty, subsections (1) to (3) apply with respect to an organized public event or social gathering even if it is held at a private dwelling.

[28] Councillor Oschefski is a Councillor for the Town of Midland, representing Ward 2.

[29] The Complainant noted a number of occasions where the Councillor held gatherings on his property which to him violated public health directives designed to respond to the COVID-19 pandemic.

[30] On April 16, 2020 the Councillor had a birthday at his Lakewood Drive property. Over a dozen persons attended representing 9 different 'social circles' and though the event was intended as a 'drive by', people exited their vehicles. Physical distancing was reduced, and no masks were observed.

[31] On June 6, 2020 the Councillor held a gathering to mourn the passing of a family pet. Over one dozen persons attended representing 7 different 'social circles'. Although the yard is large, physical distancing appeared to be largely ignored and no masks were observed.

[32] On June 26, 2020 the Councillor hosted a bachelorette party at his Lakewood Drive property. A buffet table was set up for guests. At least 8 guests representing 8 different 'social circles' attended.

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- [33] A Photo posted of the event on social media disclose physical distancing was not fully respected. In the photo, no masks being seen as eight women posed close together, their arms around each other's waists, for a group picture.
- [34] On August 8, 2020 the Councillor hosted a party, having postponed the date for his wedding due to the pandemic.
- [35] More than 10 vehicles were observed parked at the property, many guests appearing to carpool as they arrived together. Two dozen guests attended, representing 15 different 'social circles'. A buffet table was set up for guests. Physical distancing was largely ignored and no masks were observed.
- [36] On August 22, 2020 the Councillor hosted a birthday party for his mother, with more attendees than at the event two weeks earlier. Parked cars lined the street along the front of the Lakewood Drive property. A buffet table was set up for the guests, physical distancing was not being respected and no masks were observed.

Findings of Fact:

- [37] In order to make a finding of fact, the test in an integrity commissioner's investigation is on a "balance of probabilities". This means is it more likely true than not that the alleged conduct occurred. This is a much lower threshold than the criminal standard of proof "beyond a reasonable doubt".
- [38] Councillor Oschefski does not deny any of the events occurred on the dates specified, although he does not agree with the numbers of guests indicated or that social distancing was not respected.
- [39] In particular, he denied that the number of people in attendance exceeded the total number permitted under the relevant regulation, having regard to which Stage (Stage 1, 2 or 3) his region of Ontario was currently within.
- [40] The challenge for the most well-intentioned and diligent host of a social event during the pandemic is to provide hospitality and appropriate amenities (in particular, food, beverages and washroom facilities) while ensuring guests remain physically distanced, utilize hand sanitizer and wear face masks when necessary.
- [41] The Councillor denies that safe physical distancing was ignored. However, a photo of at least one event (June 26) clearly showed up to 8 guests standing closely beside each other without masks.
- [42] While the limit for outdoor gatherings on June 26 was 10 persons, all gatherings were subject to public health directives requiring physical distancing of persons not

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within one's 'social circle', and mandating wearing of masks where physical distancing was not possible.

- [43] The photo - which were posted to social media - demonstrate how challenging it may be for a host to ensure proper protocols are adhered to.
- [44] We understand from the Councillor that there is some animosity between he and the complainant, with whom he has had a falling out.
- [45] Although the animosity may have to some extent motivated the complainant, the Councillor has admitted hosting the events. In any event while a previous relationship with a complainant may influence the weight with which we assess evidence, it does not negate the possibility of the existence of an ethical breach.
- [46] In reviewing the facts alleged, and the evidence provided, we did not find it necessary to embark on a series of interviews with other attendees at the events hosted by the Councillor.
- [47] We accept that the Councillor may have attempted to ensure compliance with the social distancing requirements of public health directives. However, the evidence of non-compliance especially when the public health consequences were so serious, and the number of occasions when he permitted gatherings to occur, is concerning.

Application of Code of Conduct:

- [48] The Midland Code of Conduct provides an ethical guide and framework for members of Council for conduct and behaviour which promotes confidence in the office which they hold as elected officials of municipal government.
- [49] That Code of Conduct sets out, in the General Introduction:

Members of Midland Council recognize...they are held to a higher standard of behaviour and conduct.

Members recognize that ethics and integrity are at the core of public confidence in government...They recognize the need to uphold both the letter and the spirit of the law...

- [50] The Rules of the Code set out specific guidance to be adhered to, along with Commentary to explain and illustrate how the Rules apply.
- [51] Rule No. 11, *Respect for Midland By-laws and Policies*, provides as follows:

Respect for Town By-laws and Policies:

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1. *Members shall encourage public respect for the Town and its by-laws.*
2. *Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.*

Commentary

A Councillor must not encourage disobedience of a Town by-law in responding to a member of the public, as this undermines confidence in the Town and in the Rule of Law.

Analysis and Conclusion:

[52] At a time when the Town of Midland, the Simcoe-Muskoka District Health Unit, and the Province of Ontario were applying enormous effort and allocating significant resources to curb the spread of COVID-19, the Councillor was regularly hosting social events at his Lakewood Drive home.

[53] In hosting a series of events – 5 noted by the initial complaint, and a 6th event recently reported to us – the Councillor is facilitating situations where attitudes towards physical distancing may become unduly relaxed, and the following of proper public health protocols cannot be assured.

[54] Even if we were to find that each event fully complied with the regulations around physical distancing including by attendees remaining 2 metres apart, or wearing masks, we would question the propriety of holding such events during the early stages of a pandemic. Holding numerous events in the midst of a public health crisis encourages disregard for the Town's directive to follow the directions of public health authorities.

[55] On April 2, 2020 the Town of Midland issued a press release which stated, in part:

At its April 1 meeting Midland Town Council approved a report recommending Community Relief Measures for Taxes and Utility Interest, that will help alleviate financial concerns for residents during the COVID-19 pandemic.

...

Residents currently have enough to be concerned with under these unprecedented times. By approving these relief measures we are hopefully alleviating some stress on residents so they can focus on what is really important – following the recommendations of Public Health Ontario and the Simcoe-Muskoka District Health Unit to ensure the health and safety of themselves and their families”, said Mayor Stewart Strathearn. “Practice physical distancing...”

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[56] Throughout the months of April, May and June 2020, every Council Agenda began with the following statement:

Due to the COVID-19 pandemic and the Emergency Order issued by the Province of Ontario under *the Emergency Management and Civil Protection Act* prohibiting gatherings of more than 5 people, this meeting will be held electronically.

[57] Despite all of this, the Councillor proceeded to host not one but 5 parties at his residence. In fact, during the course of our investigation, we were informed another party was held at the Councillor's property on Saturday, September 12, 2020.

[58] The fact that physical distancing was largely ignored and, even when standing right next to each other guests were not wearing masks, demonstrates a disregard for the guidance issued by the Simcoe-Muskoka District Health Unit.

[59] The Code of Conduct requires Members of Council to *uphold the letter and the spirit* of the law.

[60] Rule 11 of the Code requires that Members *adhere to and encourage public respect for* By-laws and policies.

[61] While the directives and protocols mandating physical distancing are not by-laws or policies enacted by the Town of Midland, they do represent Provincial law.

[62] The Councillor advised us that on at least one occasion there were 2 OPP officers, 3 teachers, a municipal bylaw officer, multiple nurses and a doctor in attendance at an event.

[63] Whether or not OPP officers were in attendance at the Councillor's event, our investigation is an inquiry into whether the Councillor's conduct meets expectations under the Code of Conduct.

[64] It is not necessary to find that a member of council broke the law in order to find that he has failed to encourage public respect for the law. A member of council who told constituents they could ignore the posted speed limit would, in our view, be in breach of the Code of Conduct, whether or not he personally was speeding when he drove.

[65] We find that Councillor Oschefski's decision to host 5 (and now 6) separate parties at his residence during these early stages of the pandemic, inviting a disregard of the physical distancing requirements issued by the Province and guidance issued by the Health Unit, contravened the spirit, if not the letter of Rule 11 of the Code of Conduct.

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- [66] The conduct demonstrates a pattern of disregard; rather than demonstrating leadership and some restraint during challenging times, he is setting a tone that others may feel justified in following.
- [67] We find that Councillor Oschefski's conduct failed to *encourage public respect for* Provincial law, public health directives, and the Town Council's admonition to the public to follow safe physical distancing protocols.
- [68] As noted, during the time we were investigating the complaint and drafting our findings, the complainant filed a further complaint, alleging that the Councillor had hosted yet another backyard event at which physical distancing and mask wearing was not observed.
- [69] The complainant also was treated to name-calling by some guests of the Councillor at this most recent party, indicating that the Councillor had likely shared the fact of the complaint with his guests as well as the identity of the complainant.
- [70] While not, strictly speaking, an act of reprisal or retaliation as prohibited under the Code of Conduct, we believe that the Councillor has disregarded our admonition to maintain confidentiality around all information shared while a complaint is under investigation.
- [71] This subsequent house-party, and the name-calling, reflects poorly on the Councillor. It represents a disregard for the process of an investigation by the integrity commissioner, and a cavalier attitude around the concerns raised by the initial complaint.

Conclusion and Recommendations

- [72] During the course of our investigation the Councillor characterized the complaint as unwarranted and part of in an on-going dispute.
- [73] As our investigation has revealed, however, that on the balance of probabilities, the applicable standard of proof, the allegations were borne out.
- [74] The public expects a higher standard from its leaders. The Councillor's approach to what is clearly a public health issue of the broadest impact does not meet that standard.
- [75] We find that the issue is an important one, particularly as municipalities and communities continue to grapple with the restrictions of physical distancing.

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[76] Compliance, like justice, must not only be done, but must be seen to be done. The Councillor failed to demonstrate the restraint required to combat the public health emergency, repeatedly hosting gatherings at his home.

[77] An integrity commissioner may recommend that sanctions be imposed, including a reprimand, or a suspension of pay for up to 90-days.

[78] Under all of the circumstances, we are of the view that a public reprimand serves as a sufficient sanction, and calls adequate attention to the need for members of Midland Council to show leadership in following the guidelines issued by public health authorities and endorsed by the Town.

[79] We therefore recommend:

1. That Council pass the following resolution:

That having been found to have breached the Code of Conduct for the Town of Midland that Councillor Cody Oschefski be and is hereby formally reprimanded.

2. That this report be posted on the Town of Midland web site for public access.

[80] We wish to conclude by publicly thanking the Councillor and the complainant, for their candour and contributions to our investigation.

[81] We will be pleased to be in attendance when this report is considered to assist you in understanding its contents.