

Recommendation Report
of the Integrity Commissioner
Respecting Complaints against Councillor Gordon
December 2, 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 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

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members of the Town of Midland 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 to the allegations, and where findings were made, to review and provide comment on the preliminary findings.

The Complaints

- [8] This Report responds to 3 complaints filed against Councillor Gordon on September 7, 2020 by Deputy Mayor Ross and Councillors Downer and Main regarding conduct which the complainants allege is contrary to the Code of Conduct.
- [9] The complaints, identical in nature and listing a litany of examples, can be summarized as follows:
- The Respondent, particularly through social media, engages in conduct and behaviour that is disrespectful of Council and Members
 - The Respondent’s statements regarding senior staff and members of Council constitute bullying and harassment
 - On one occasion, the Respondent exerted undue influence to pressure/threaten a local developer

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:

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- Reviewing the complaints to determine whether they are 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, meeting (virtually) with him, and providing him with an opportunity to respond to the allegations
- Reviewing the Code of Conduct and other documentation including emails, social media posts, and reviewing online archived meetings
- Conducting interviews of Members of Council, senior staff and others with information relevant to the complaints
- Assessing all the evidence, interpreting the applicable ethical provisions, and determining our findings as to whether the complaints, or any of them, have been sustained. Our findings (subject to completing our formal investigation) inform whether it is in the public interest to proceed with the submission of a public report to Council
- 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 this Recommendation Report.

[12] In conducting an investigation it falls to the integrity commissioner to weigh the applicable evidence within the context set by administrative law principals. Our work does not and should not resemble a hearing, or a trial. Rather, by exercising our authority and our skills, and by applying the principles of procedural fairness, we become able to 'tell the story' and make informed recommendations so that Council can discharge its responsibility to make a decision it considers best suits the public interest. Put simply, it is the integrity commissioner's responsibility to make conclusions on the facts, and Council's responsibility to determine what ought to be done on the basis of those facts.

Background:

[13] Midland has had some challenges during the current term of Council, and has experienced some turnover in senior leadership in the administration.

[14] Councillor Gordon, the Respondent in this investigation, actively and regularly engages on social media, and has often-times been an outspoken critic.

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- [15] One year ago, we reported on complaints about his disrespectful and disparaging comments and rude, aggressive and intimidating behaviour.
- [16] During that investigation, we provided extensive guidance to the Respondent, to encourage more appropriate behaviour in the future, and we acknowledged the Respondent's commitment to refrain from name-calling, personal attacks, and treating each other with disrespect.
- [17] These current complaints allege what can be characterized as a subtle undercurrent of harassment and bullying which is directed at fellow members of Council and sometimes staff, and an over-stepping of authority or exercise of undue influence, by stepping in to do the work of staff.

Alleged disrespectful, bullying and harassing social media posts:

- [18] In communications between fellow members of Council, the Respondent engages in statements and comments which are disrespectful and harassing. Examples include:

[In an exchange of emails between Councillor Main and the Respondent]

Please don't mistake my assertiveness for aggression. ***I have little to no personal respect for many of you or a couple of our senior team.*** I come by that honestly and have the bills to prove it. ***I have to work with you and have managed to keep most of my contempt for many of you at bay*** preferring to simply ignore the public attacks on my integrity and carry on with my work despite everything that's gone on this term.

- [19] In social media posts and web postings, the Respondent engages in statements and comments which are bullying and harassing. Examples include:

[In a Facebook Direct Message between Councillor Main and the Respondent]

That is far from bullying Jon. ***Don't be such a snowflake.*** The truth may not be a defence in the CoC [Code of Conduct] – which is absurd – but I will do politics my way just as you do it your way. We are polar opposites it seems. That is actually quite healthy for democracy.

As for decorum I think I toe that line with grace and dignity considering the despicable way you treat me. ***I have no respect for most of you as a result. Should not be a shock to you.***

(emphasis added)

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[20] The Respondent defends his statements and comments as reflecting his private persona, rather than his public persona.

[21] He acknowledges that he is not always statesmanlike, and that some of these comments are from a private conversation.

Alleged undue influence to pressure/threaten a local developer:

[22] On July 15, 2020 a deputation before Council brought to Council's attention complaints by residents on Taylor Drive: uncut grass on the parkette, and debris blowing from stored sand piles.

[23] During the Council meeting, it was explained that staff were pursuing remedies under the performance obligations of the Agreement with the developer.

[24] On August 28, 2020 by email, the developer advised that, following discussion with the Respondent and "to avoid a Motion at the next Council meeting", the developer would undertake grass cutting on the Town Parkette "as a courtesy to the Town and our Taylor Drive clients/homeowners"; they would relocate masonry materials; and they would reduce the slope of stockpiled sand.

[25] The Respondent defends his intervention with the developer as simply availing himself of the process. He denies that he engaged in any threats or intimidation, but merely pointed out that the Town might be compelled to draw on the Letter of Credit to rectify performance issues.

[26] The developer followed through and now the residents are happy.

[27] The Respondent believes he is the subject of persecution by fellow Councillors. He believes the Code of Conduct is being weaponized against him.

The Applicable Code of Conduct Provisions, and their Interpretation:

[28] The Midland Council 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...

[29] The Rules of the Code set out specific guidance to be adhered to, along with Commentary to explain and illustrate how the Rules apply.

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[30] The Rules which are most relevant to our findings and analysis in this investigation are Rule 9, Member Conduct, Rule 10, Media Communication, Rule 11, Respect for Town By-laws and Policies, and Rule 12, Respectful Workplace.

[31] Rule 9, Member Conduct, provides as follows:

Members shall conduct themselves with appropriate decorum at all times.

Commentary: As leaders in the community, Members are held to a higher standard of behaviour and conduct, accordingly their behaviour should be exemplary.

[32] Rule 10, Media Communication, provides as follows:

In all media communications, including social media, members will treat each other, staff and members of the public with decorum, dignity and respect, and shall avoid messaging that amounts to abuse, bullying or intimidation.

Commentary:

A Member may state that he/she did not support a decision, or voted against the decision. A Member should refrain from making disparaging comments about other Members of Council or about Council's processes and decisions.

While Members are encouraged to actively participate in vigorous debate, Members should understand that they are part of a democratically-elected representative body and should not engage in social media as if they are outsiders. In this regard, caution should be exercised when blogging, posting, tweeting, re-posting and linking to posts using social media, whether the member is using a personal account or a Midland account.

While social media can be an excellent tool for communicating quickly with constituents and sharing ideas and obtaining input, social media can breed incivility that generally is avoided in face-to-face interactions. In a world where a transitory comment can become part of the permanent record, Members should exercise restraint in reacting too quickly, or promoting the social media posts of others whose views may be disparaging of Council's decisions or another Member's perspectives.

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[33] Rule 11, Respect for Town By-laws and Policies, provides as follows:

Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.

[34] Rule 12, Respectful Workplace, provides as follows:

Members are governed by the Town's Respectful Workplace Policy (CP-2018-03). All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

[35] In addition to the provisions of the Code of Conduct, we have examined and applied the provisions of the municipality's Council/Staff Relations Policy.

Findings and Analysis:

The Respondent's comments constitute harassment

[36] The Respondent continues to make disrespectful and disparaging comments to and about his fellow Members of Council. Examples of these are set out above.

[37] The Respondent makes no attempt to camouflage his animosity for others on Council.

[38] He is entitled to his views. This is not an investigation into what the Respondent thinks or believes.

[39] However, Members of Council, are expected to be respectful, and not hostile, when sharing their views. This is no more than is expected of all citizens.

[40] Prefacing comments to others with "***I have little to no personal respect for many of you or a couple of our senior team***", and "***[I] have managed to keep most of my contempt for many of you at bay***", does not make these statements any less disrespectful and disparaging. They communicate barely concealed hostility towards the recipient.

[41] The definition of harassment is **a course of vexatious conduct or comment against a worker in a workplace that the perpetrator knew, or a reasonable person would have known, to be unwelcome.**

[42] Telling one's colleagues that you hold them in contempt, while continuing to engage with them, does not erase the fact that the statements are rude, offensive and unwelcome.

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- [43] The Respondent's view is that these are 'private' conversations; that he is entitled to express his personal sentiments so long as he does not engage in vulgarity; he believes that his comments constitute 'toeing the line'.
- [44] We find that the Respondent's comments represent a pattern of behaviour and course of conduct which is vexatious, and that a reasonable person would know it to be unwelcome. Certainly, his colleagues on Council experience these comments as unwelcome.
- [45] Similarly, name-calling can be a form of bullying, and even children in the playground are chastised when they engage in name-calling. It is an attempt to devalue or undermine another's input without addressing it. In a sense, it is a verbal sneer and a put-down.
- [46] Calling a colleague a 'snowflake' is name-calling, notwithstanding that it is not a harsh or vulgar term. It is a way of putting down and devaluing another by labelling them.
- [47] When elected officials resort to name-calling, it should be recognized as inappropriate and disrespectful, and as harassment and bullying. Again, it is not the actual term which is in question, but the fact a member regularly calls another a name, and puts a label on them.
- [48] We find that the Respondent has engaged in name-calling. We recognize that in a political setting the niceties of normal conversation may not always be present. Our finding is that the Respondent has gone beyond normal political discourse, and in this regard we find the name-calling to be inappropriate.
- [49] The Town of Midland has adopted a positive obligation for its elected officials to treat each other, the public, and staff 'appropriately and without abuse, bullying or intimidation to ensure that their work environment is free from discrimination and harassment.' This provision is similar, if not identical, to that included in most Codes of Conduct in Ontario municipalities.
- [50] In this regard, Members of Council are not being held to a higher standard of behaviour.
- [51] This standard is no different than the standard expected of any individual in any workplace.
- [52] No workplace would tolerate one of its members addressing co-workers with comments such as "I hold you all in contempt", "I do not respect any of you".

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[53] While an integrity commissioner is not the 'etiquette police', allowing such comments to go unchecked condones them and erodes, if not poisons, the workplace environment.

[54] In this regard we find that the Respondent's comments and behaviour constitute harassment contrary to the Code of Conduct.

Respondent's direct negotiation with developer amounts to inappropriate interference

[55] Municipalities are required to have a Council-Staff Relations Policy. Part of the purpose of such policy is to guide Members of Council to recognize where the 'hand-off' to staff should occur, and to act only within their collective policy-making and oversight roles – in other words to 'stay in their own lane'.

[56] The Midland Council-Staff Relations Policy provides as follows:

Members of Council shall respect the role of staff and shall refrain from engaging in administrative matters. When a Routine Matter or Non-Routine Matter has been forwarded to staff, the Member of Council shall refrain from interfering with staff's carriage of the matter.

[57] On July 15, 2020 when Council received a deputation from property owners on Taylor Drive, staff advised that they were pursuing a remedy through legal channels.

[58] The property in question is contained within a subdivision which is only partially complete. That development is subject to an Agreement between the Town and the developer.

[59] While it may be that the Respondent was dissatisfied with the time staff were taking to remedy blowing stockpiled sand or poorly maintained grass height on a parkette within the subdivision, the remedy available to the Town is to give notice to the developer that the Town will be performing the required work, and then draw the funds from the Letter of Credit under the Agreement.

[60] As is well-understood, Council directs staff to take this step.

[61] In late August, following a Zoom 'meeting' hosted by the Respondent at which the two property owners from Taylor Drive advised that the developer had not yet remediated the property, the Respondent advised his constituents that he would reach out to the developer again. In that Zoom, the Respondent stated:

They seem reasonable but not overly committed to dealing with these things the way you're asking them to. I'm trying to be the moderate but at some point you can only ask people to do what I believe is the right thing for so

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long and then at some point they you gotta make a decision. I'm not the kind of guy that just gives up and walks away so I expect the Town to do the right thing for our community.

Later in the meeting, the Respondent stated:

I have no authority to tell them... I'm just a mediator, but this would go a long way...if there is a contractual button, I'm going to lean on that and it shall be done.

- [62] The next day, the developer, having been advised that the Zoom meeting had occurred and was posted on-line, contacted the Respondent directly and agreed to do more to relocate the stockpiled sand, to cut the grass on the parkette, and to remove the stored masonry materials.
- [63] While it may be that the Respondent perceives himself as more able to effectively get things done, this interference undermines staff's credibility with developers and contractors, setting the Member of Council up as the 'go-to' person, and potentially impairing staff's ability to manage other issues which may be on-going between the Town and the developer.
- [64] Taking it to the extreme, Councillors behaving in such a manner can give rise to 'ward bosses', the colloquial term given to municipal politicians who assume greater authority within their political realms than is authorized. The existence of ward bosses undermines the primacy of council, and unduly limits the ability of staff to administer Town matters in a professional, apolitical manner.
- [65] By personally involving himself in negotiating with the developer, the Respondent interfered with staff's carriage of the matter. Although the outcome may have been to satisfy the residents on Taylor Drive, it is inappropriate for a Member of Council to interject into operational matters in this way, certainly without doing so in collaboration with the responsible staff.
- [66] If Members of Council are dissatisfied with the procedures in place to remedy such situations, the solution is for them to request Council to address the matter so that revised procedures can be applied in a consistent manner, rather than inject themselves into the process, crossing over into and undermining staff's role.
- [67] During the course of our investigation, it was brought to our attention that the Respondent similarly injected himself into another matter involving resident complaints of noise at the Health Hub, by going around staff directly to the head of one of the agencies developing the facility.

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- [68] This behaviour of involving himself in operational matters, injecting himself into matters squarely within staff's authority, is inappropriate.
- [69] 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.
- [70] Councillors also play an important role interfacing between citizens, who are their constituents, and the City's 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.
- [71] Members of Midland's 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 in the absence of an established routine process.
- [72] Members of Council should be following the processes put in place to manage operational aspects of municipal government.
- [73] The Subdivision Agreement between the Town, the developer and his financial institution, makes explicit provision regarding the nature of performance requirements and remedies. That Agreement identifies the Town's Engineer as the Town's point of contact.
- [74] The Respondent's involvement bypassed both the Town's Engineer and Council. This is disrespectful of staff and undermines staff's authority. It also limits staff's ability to influence this developer's, and other developers, future compliance with municipal obligations.
- [75] The Respondent's involvement to negotiate, in the absence of staff, suggests to residents and the developer that the Respondent, not staff, is the "go-to" on future issues.
- [76] We find that the Respondent interfered in staff's involvement with the developer on performance issues relating to Taylor Drive, and again on the Health Hub noise issues.
- [77] Although we do not find undue influence or pressure/threats to a developer, we do find that the Respondent personally negotiating with the developer, circumventing staff's involvement, was contrary to the Council-Staff Relations Policy, and a breach of the Code of Conduct.

Some Additional Observations:

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- [78] In this era of social media, it is not surprising that some elected officials seek to connect with their constituents using virtual meetings – these interactions appear to provide a convenient means of connecting with their constituents and elevating their profile in the community.
- [79] As with other forms of communication, whether broadcast or in print, members of Council need to recognize that statements ‘published’ through the medium are, nevertheless, communications subject to the Code of Conduct.
- [80] In this regard, we observe only that some of the statements made by another member of Council who participated in the Zoom in late August, alleged that the developer was in breach of legal requirements, under the Building Code and/or the subdivision agreement.
- [81] It is evident that, from the Town’s perspective, the developer was not in breach of his obligations under the subdivision agreement, nor under the Building Code.
- [82] It is clear to us, from the email communications between the developer and the Respondent, and from interviews with the developer and with Town staff, that the developer – a local family firm with a long history of development in Midland – is generally regarded as a developer in good standing who is approachable and cooperative.
- [83] The developer was horrified to hear of the disparaging statements made on the late August Zoom meeting, which the developer perceived as inaccurate and unfair.
- [84] Members of Council should be careful in making such statements in a public forum, unless they are grounded in fact. While Members of Council may benefit from a qualified privilege during debates at Council, such privilege would likely not extend to such member-initiated Zoom meetings.
- [85] While the Respondent, during the Zoom meeting, acknowledged his lack of authority to negotiate with the developer, and carefully characterized his involvement as a ‘mediator’, he has elsewhere characterized his actions as ‘brokering’ a deal.
- [86] The Respondent’s actions belie his words – he should not be ‘brokering’ deals with companies, developers, or builders doing business with the Town of Midland, and certainly not without involving the appropriate staff.
- [87] Couching one’s involvement through carefully-worded statements does not disguise the overreach.

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Concluding Remarks

[88] As noted at the outset, we see our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.

[89] As outlined above, no workplace could condone such explicit disrespectful treatment among co-workers. Justifying contemptuous comments and name-calling as expressions of personal sentiment does not make them acceptable.

[90] We find that the conduct of Councillor Gordon contravened the Code of Conduct in regard to:

- Rule 9, Member Conduct, which requires that Members conduct themselves with appropriate decorum at all times;
- Rule 10, Media Communication, paragraph 3, which requires that Members communicate in a manner that treats others with decorum, dignity and respect, and avoid messaging that amounts to abuse, bullying or intimidation;
- Rule 11, Respect for Town By-laws and Policies, which requires that Members adhere to applicable by-laws, policies and procedures; and
- Rule 12, Respectful Workplace, which requires that Members treat one another and staff appropriately and without abuse, bullying or intimidation, to ensure that their work environment is free from discrimination and harassment.

[91] The fact that the complaints in this investigation originate from three Members of Council underscores the divisive consequences of the Respondent's behaviours.

[92] In this regard, a clear public reprimand should serve to send the message that such conduct and behaviour falls below the standard expected of the community's elected representatives and should not be condoned.

Recommendations:

[93] 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 Gordon be and is hereby formally reprimanded.

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

[94] We wish to conclude by publicly thanking the Councillor, the complainants, and all those who participated for their candour and contributions to our investigation.

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