

# Principles *Integrity*

## Recommendation Report Code of Conduct Complaints Against Councillor McGinn April 26, 2021

### **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 respondents named in this Report to respond to the allegations, and where findings were made, to review and provide comment on the preliminary findings

### The Complaint

- [8] This Report responds to a complaint dated February 3, 2021 filed by Laura Yourkin, Director of Human Resources/Health & Safety against Councillor McGinn. The Director alleges that in Councillor McGinn’s communications with Midland staff about staff’s response regarding her partner, who is an employee of the Town, she:
- attempted to improperly use her influence
  - interfered with staff and administrative operations
  - failed to treat staff with respect and without bullying and intimidation
  - falsely impugned the professional reputation and practice of staff

- [9] It is alleged that, in so doing, the Councillor has contravened the Code of Conduct.

### 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 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, and providing her with an opportunity to respond in full to the allegations
- Reviewing the Code of Conduct and other documents
- Conducting interviews, as necessary, of persons with information relevant to the complaint, including the Respondent's then partner
- Reviewing records, including emails and other documents of the municipality, and listening to a voice memo recorded by the Respondent's partner on his phone while the final moments of the incident on January 8, 2021 were taking place
- 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.

### Background and Context:

[12] The Respondent has been in a long term permanent relationship with an employee of the Town.

[13] In a previous investigation involving the Councillor, which resulted in a Recommendation Report by the Integrity Commissioner dated July 8, 2020, it was determined that the Respondent lived with the employee and had done so for the past number of years.

[14] In that Report, concerns had been raised to the Respondent about involving herself in operational and management issues that involved her partner.

[15] On Friday January 8, 2021, just after 12:00 noon, the employee who is the Councillor's partner reported neck pain to his manager ("the Operations Manager").

[16] The Operations Manager directed the employee to sit in the lunchroom and wait to see if the pain subsided.

[17] Contrary to the Operations Manager's direction, the employee left the lunchroom and operated one of the City trucks.

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- [18] The employee was contacted by two-way radio and asked to return to the Operations Centre to see the Operations Manager.
- [19] When the employee returned to the Operations Centre, at approximately 2:30 pm, he announced that he was unable to continue working as a result of his neck pain. He asked to either go home or to go to the hospital.
- [20] The Operations Manager observed that he appeared to be fine, but as the employee approached the Operations Manager, he began to shake, and his breathing changed so that the Operations Manager was concerned about his health and safety.
- [21] The employee asked to leave. As he did not appear able to safely drive himself, he was asked if he needed an ambulance or someone to drive him to the hospital.
- [22] He declined to go to a hospital. He stated that he wanted to go home. Asked again if he wanted someone to drive him home, he said he preferred to drive himself.
- [23] Management again told him he should not drive himself, as he did not appear able to safely drive, and he was again asked if he needed a ride or an ambulance.
- [24] At that moment, the Respondent Councillor McGinn called the employee's cell phone and the employee put her on speaker phone.
- [25] The Respondent immediately began giving instructions to the staff present with her partner, via speaker phone, telling them what to do.
- [26] 911 was called and paramedics came to the Operations Centre to administer to the employee.
- [27] Both the Operations Manager and the Lead Hand were present when the paramedics arrived, and the employee was transported to the hospital Friday afternoon.
- [28] The employee's incident was being properly attended to prior to the Respondent's involvement by cell phone.
- [29] On the morning of Monday January 11, 2021 the employee reported for work.
- [30] On January 26, 2021, a full eighteen days after the incident, the Respondent sent an email regarding "Ambulatory evac – January 8<sup>th</sup>, 2021" to the employee's manager, his executive director, the lead hand, two other operations employees who are union stewards, an HR coordinator, the Director of HR, and the Mayor.

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[31] Notably, the Respondent failed to include the Chief Administrative Officer in the January 26, 2021 email distribution list.

[32] In her January 26, 2021 email, sent to a broad range of recipients, the Respondent wrote:

- that no one at the Operations Centre took the lead, that they were biased against the employee and that because of this bias, emergency first aid may not have been offered to him;
- that people may not be responding to scenarios in a timely manner that could be immediately life threatening or require medical intervention and diagnostics;
- to direct how an emergency situation should be handled both pre- and post-incident;
- that a qualified and competent responder was needed to assess, secure the employee and the scene, and call 911;
- that moving forward, the appropriate best practice should be adhered to.

[33] It is alleged that by sending the January 26<sup>th</sup>, 2021 email, the Respondent was attempting to improperly use her position as Councillor to intimidate the Operations Manager and damage the reputation of the Operations Manager among his staff, peers, and upper management.

[34] On February 28, 2021 the employee retired from his position with the Town of Midland.

### Code of Conduct

[35] The relevant provisions of the Code of Conduct are as follows:

#### **Rule No. 7 – Improper Use of Influence**

1. No member shall use the influence of his or her office for any purpose other than the exercise of his or her official duties.
3. Pursuant to corporate policy, the Chief Administrative Officer directs Town Directors, who in turn direct Town staff. Town Council and not individual members of Council appropriately give direction to the Town administration.

#### **Rule No. 12 – Respectful Workplace**

1. 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

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to ensure that their work environment is free from discrimination and harassment.

### **Rule No. 13 – Conduct Respecting Staff**

4. No Member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff, and all Members shall show respect for the professional capacities of the staff of the Town.

### Findings and Analysis:

- [36] As noted above, the Respondent was previously the subject of an Integrity Commissioner's Report dated July 8, 2020 which highlighted the concern about her interfering in operational issues.
- [37] Members of Council recognize and understand that their role does not entail individually directing staff, and that issues and concerns should be raised with the Chief Administrative Officer or the designated Department Head.
- [38] This is highlighted in orientation and training provided to Members of Council, and underscored in the Council Staff Relations Policy, which all municipalities are required by the Municipal Act to adopt.
- [39] The Respondent's direct instructions and interactions raise a more unique concern – improper interference with operational staff in an attempt to affect her partner's employment and management's role in that regard.
- [40] In our July 8, 2020 Report, we cautioned the Respondent not to interfere in the operational issues of her partner's workplace.
- [41] Less than a month later, on August 6, 2020, the Respondent sent an email, with the subject line *pay roll, contract, CRA, balancing, legal compliance*, to the new Operations Manager – her partner's direct supervisor - introducing herself and telling him that the employee is her partner; she proceeded to instruct the Operations Manager on how to do his job.
- [42] August 6 was the new Operations Manager's third day on the job. The email was shared by the new Operations Manager up the chain of command.
- [43] Although the Respondent characterized her actions as well-intentioned and looking out for the interests of employees and staff morale, it was a clear example of overreaching and interfering in operational issues.

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- [44] On Friday January 8, 2021, when the Respondent's partner had his medical incident, staff – who have received appropriate training and were attending to the employee – had the situation well in hand.
- [45] The Town's Health & Safety Statement promotes the safety of Town employees. There are extensive processes, training and dedicated personnel across the organization as well as a Joint Health & Safety Committee.
- [46] In addition to training provided through the Town, the recently-hired Operations Manager had over a dozen years' municipal experience in Ontario and elsewhere, including the previous five years as New York City's Manager of Operations for Central Park, a position which provided him with significant experience managing emergency situations, ensuring the health and safety of his employees.
- [47] Midland's Operations Manager is well-equipped and experienced to respond to medical situations arising with his staff.
- [48] As noted, the Operations Manager, who was eventually joined on-scene by a Lead Hand, offered options to the employee:
- be taken to the hospital, or that 9-1-1 be called to take him to hospital – the employee refused, insisting the situation was not an emergency and expressing concern with a hospital because of COVID-19
  - be taken home – the employee refused to be driven, or to have his partner (the Respondent) contacted to come and pick him up
- [49] The employee insisted he be allowed to just go home, so he could apply Voltarin to his neck, and lie down.
- [50] The approximately 8-minute voice memo recorded by the employee on his cell phone captures this exchange, ending only when the Respondent called and the employee answered.
- [51] While it might be expected that a significant other would be distraught and concerned when her partner was perceived to be in distress, under any other circumstances the distraught significant other would not be able to insert herself into the operational response, over-ride staff and take charge of the incident by issuing directions over the speaker phone.
- [52] However, because the Respondent is a Councillor, staff felt pressured to acquiesce to the directions and demands of a member of Council.
- [53] On January 26, 2021, the Respondent sent the email outlined above regarding the January 8, 2021 incident - a full eighteen days after the event - copying numerous employees and senior management.

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- [54] This was the catalyst for the complaint.
- [55] By sending her January 26, 2021 email to the Operations Manager, his Director, the Lead Hand, two employees who are union stewards, and two employees of HR including the Director, the Respondent was interfering in operational matters.
- [56] We find that she was attempting to use her position as a Councillor to intimidate the Manager of Operations, her partner's direct supervisor.
- [57] The Respondent's email asserted that no one at the Operations Centre had taken the lead, that they were biased against the employee, and that because of this bias, emergency first aid may not have been offered to him.
- [58] We find that, on the contrary, it was clear that staff had assessed the situation and properly attended to the employee's health issues. Best practices were followed, and that the employee was provided with the appropriate emergency first aid response.
- [59] In her email, the Respondent made negative statements about staff's response to the incident. She wrote that a qualified and competent responder was needed, implying that the Operations Manager was neither qualified nor competent.
- [60] We find that the Respondent thereby impugned the competence of the Operations Manager; by impugning his competence, and broadcasting the statement to his peers, employees and superiors, she was damaging his reputation.
- [61] The Respondent failed to include the Chief Administrative Officer in the email distribution list as she should have done.
- [62] As noted earlier, every member of Council receives training during orientation to ensure that they understand that they are not authorized to direct staff or to interfere directly with staff operational matters. (In the case of the Respondent, this has also been the subject of a caution in an earlier Report.)
- [63] In the Town of Midland, this is reinforced by the specific inclusion, in the Code of Conduct, Rule 7, Improper Influence, that provides as follows:
3. Pursuant to corporate policy, the Chief Administrative Officer directs Town Directors, who in turn direct Town staff. Town Council and not individual members of Council appropriately give direction to the Town administration.
- [64] We find that in sending her January 26, 2021 email, which directed how an emergency situation should be handled, the Respondent was improperly

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attempting to use the influence of her office contrary to Rule 7 of the Code of Conduct.

[65] We find that the Respondent, in sending her January 26, 2021 email, and also in purporting to direct staff via telephone on January 8, 2021 during the incident involving her partner, was interfering with staff and administrative operations, contrary to Rule 7 of the Code of Conduct.

[66] We find that the Respondent was attempting to intimidate and damage the reputation of the Operations Manager among his staff and peers, contrary to Rule 12 of the Code of Conduct.

[67] We find that the Respondent falsely impugned the professional reputation and practice of staff, contrary to Rule 13 of the Code of Conduct.

[68] The Respondent has demonstrated a pattern of behaviour by involving herself in operational and management issues involving the employee.

[69] We find that the Respondent has disregarded our caution contained in the July 8, 2020 Recommendation Report, which provided as follows:

[90] During our investigation, we were made aware of numerous instances of involvement by the Respondent in operational and management issues involving her partner, which in our view constitute evidence of the nature of their relationship, but would certainly constitute evidence of improper use of influence, contrary to the Code of Conduct provision and commentary regarding Avoiding Conflicts of Interest.

[91] In this regard, we caution the Respondent that in future inappropriate interference in the operational issues of the employee's workplace might, if the subject of a complaint, constitute a violation of the Code of Conduct.

[70] We find that despite being cautioned, the Respondent has continued to interfere in operational and management issues involving her partner.

[71] The partner is no longer employed by the Town, which eliminates the potential of the conduct arising again in the future.

[72] The Respondent advises that she is no longer in a relationship with the former employee. Regardless, the conduct and behaviour reflected a complete disregard for the Code of Conduct.

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[73] The evidence supports a finding of the Respondent's persistent and flagrant disregard for the standard of behaviour established under the Town's Code of Conduct, of which she had been openly cautioned last summer in our report of July 2020.

[74] The impact on staff where one member of council is permitted to ride roughshod over the policies in place – particularly those policies which ensure the proper operational and administrative management of the municipality – can be extremely harmful and challenging to overcome, leading to difficulties in recruitment and retention.

### Recommendations:

[75] The sanctions that may be imposed following a finding of contravention by an integrity commissioner are a reprimand, or a suspension of remuneration for up to 90 days.

[76] The purpose of a sanction is to reinforce Council's ethical framework when education, or acknowledgement, is insufficient. In other words, the Code of Conduct must ultimately have 'teeth'.

[77] A monetary penalty, although not remedial, can have a salutary effect and serve as a deterrent. In this regard, we would admonish the Councillor to be more mindful of his interactions with members of the public and avoid making inappropriate and threatening statements.

[78] In light of our finding that the Respondent's conduct represents a persistent and flagrant disregard of the Code of Conduct, in the face of a clear caution, it is our view that a significant sanction is appropriate.

[79] We therefore recommend:

1. That the remuneration paid to Councillor McGinn be suspended for a period of 30 days;
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 parties, staff and all other witnesses who participated in our investigation. We express genuine appreciation for the sharing of time, knowledge and opinions by everyone concerned.

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