

Recommendation Report  
of the Integrity Commissioner  
Respecting Complaints against Councillor Gordon  
November 21, 2019

**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] Members of Town Council are also governed by the provisions of the *Municipal Conflict of Interest Act*. Both the *Municipal Conflict of Interest Act* and the Code of Conduct are relevant to and form the framework for the matters reviewed in this report.
- [4] 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.

- [5] 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 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.
- [6] 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.
- [7] 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.
- [8] 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 Complaints

- [9] This Report responds to several complaints we received against Councillor Gordon between September 27 and October 25, 2019 arising out an email message and related social media posts authored by the Respondent Councillor.
- [10] The email, and the post of that email by the Respondent to his Facebook page, are included in the attached Appendix along with another Twitter post by the Councillor in which he publicly expressed frustration following a Council meeting.
- [11] The complaints can be summarized as follows:
- The Respondent demonstrates a consistent pattern of behaviour that is disrespectful and disparaging of others and of Council
  - That pattern includes behaviour that is rude, aggressive, bullying, threatening and intimidating
  - The Respondent’s comments suggest and imply that there is corruption or inappropriate activity occurring in Town, at Council or in Town Hall

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- The Respondent's comments tend to reveal the subject of in camera and confidential information and to undermine Council's decisions

[12] We have determined that the public interest is best served by consolidating some of the complaints in this investigation, which we believe are of a similar character and raise similar issues, into this one report. Not only does this help focus on broader-based issues and allows for consolidated recommendations, it is more cost-effective for the Town.

[13] The identity of complainants is not disclosed in this Report as we saw no public interest purpose which would be served by such disclosure.

### Process Followed for this Investigation

[14] 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.

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

- 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 with him, and providing him with an opportunity to respond in full to the allegations
- Reviewing the Code of Conduct and other documentation including emails, internet postings, and reviewing online archived meetings
- Conducting interviews of persons with information relevant to the complaints
- 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:

[16] Prior to the 2018 Municipal Elections, the Respondent was employed by the Midland Police Service as its IT manager.

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- [17] During the last term of Council, Midland Council resolved to contract police service from the OPP and to dismantle and discontinue the Midland Police Service.
- [18] The decision to discontinue the Midland Police Service was a controversial decision which caused considerable consternation among some in Midland, not the least of which, those employees whose employment would be thereby ended.
- [19] The Respondent was among those who spoke out adamantly against the decision.
- [20] Prior to concluding his tenure with Midland Police Service, and in his capacity as head of IT there, the Respondent created an encryption key to protect the security of the data files held within the Midland Police Service servers.
- [21] The files on the server included all manner of data, ranging from sensitive police (and personal) information, to email records, to other administrative information.
- [22] Obtaining a hand-over of the encryption key (without which the data files which were required to be handed over upon dissolution of the Midland Police Service are inaccessible to either the OPP or the Town of Midland), has now become the subject of litigation brought by the Town of Midland against the Respondent.
- [23] The Ontario Provincial Police has either been unwilling or unable to resolve the matter, which has left the dispute between Councillor Gordon and Town officials to fester, and gave rise to the litigation.
- [24] The Respondent is someone who has been at times outspoken in voicing his views on the decisions of Midland Council, this matter included.
- [25] Witnesses have described the Respondent as appearing to adopt somewhat of a vigilante 'defender' approach when engaging in debate either in person or through social media.
- [26] Once it became clear that the Respondent had a pecuniary interest in the encryption key matter as a result of the Town's commencement of litigation naming the Respondent as defendant, he has not participated in Council's deliberations.

### The Applicable Code of Conduct Provisions, and their Interpretation:

- [27] On February 6, 2019, Midland Council adopted a new Code of Conduct. The Code of Conduct provides an ethical guide and framework for Members of

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Council for conduct and behavior which promotes confidence in the office which they hold as elected officials of municipal government.

[28] 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...

[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.

[30] The Rules which are most relevant to our findings and analysis in this investigation are Rule 9, Member Conduct and Rule 10, Media Communication.

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

4. 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:

1. Members of Council will accurately communicate the decisions of Council, even if they disagree with the majority decision of Council, and by so doing affirm the respect for and integrity in the decision-making processes of Council.

...

3. 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

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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.

### Findings and Analysis:

- [33] The Respondent does not dispute that he sent the email of August 31, 2019, with the Subject line "August Update", as alleged. He sent it from his [bgordon@lifestyleintegrated.com](mailto:bgordon@lifestyleintegrated.com) email address, to a large number of individuals with whom he shares community activities.
- [34] In that email, the Respondent was insulting and disrespectful about a member of the public, identifying him by name, and calling him an inappropriate name.
- [35] The individual who is being disparaged in the post is also a citizen appointed to some boards and agencies in the municipality, and is apparently well-known in the community. While this is not a necessary component, it is certainly in our view an exacerbating factor when a Member of Council is disparaging a citizen who is actively engaging and participating in the processes of our democratic institutions.
- [36] We find that the Respondent's email constitutes a breach of the Code of Conduct.
- [37] The Respondent's view was that he is entitled to his opinion, and so long as he shared it via his personal email, and not on a Town server, he is not constrained by any rules around decorum.
- [38] The Respondent also does not dispute the social media posts, included above. In one of those posts, included in the Appendix hereto, he states:

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“Just so you all know I wrote this email to a group of friends and stand by every single word. [...] I won’t miss you but if you keep publishing your trash I’ll keep rebutting it....”

- [39] His view is that, so long as he is not stating anything that is, in his opinion, false or untrue, then he is entitled to post whatever comments he wishes.
- [40] This is not our view of the proper application of the Code of Conduct.
- [41] The erroneous view – that ‘truth’ is a defense to critical comments posted by an elected official – is a misapplication of the law on defamation. In an action for defamation (slander or libel), one of the available defenses is that the words spoken were true. In other words, truth is a defense in a defamation lawsuit, but it is not a defense or a justification for breaching the Code of Conduct.
- [42] We find the use of vulgar names such as ‘a\*\*hole’ in the email of August 31, 2019, which was sent by the Respondent and then posted on his Facebook, constitutes a clear breach of the Code of Conduct.
- [43] Beyond the name-calling, which is obviously disrespectful and lacking in decorum, the reference to the line from a movie (about the Town ‘needing an enema’) is deplorable, rude, crude, disrespectful and disparaging of the Town, and, by innuendo, its leadership on Council.
- [44] It is not an answer that the statements are an ironic reference to a line from a movie. When the clear message is disrespectful and disparaging, couching it in irony does not make it acceptable.
- [45] We find further that the Respondent’s post, following a Council meeting at which he met with frustration on procedural issues, regarding ‘Lowering Expectations’, is disrespectful and disparaging of Council’s decisions and of processes at Town Hall generally. This kind of comment can only bring local government into disrepute.
- [46] While robust debate in the public forum is laudable and a normal manifestation of a healthy democracy, disrespectful and disparaging comments – innuendo disparaging the actions or decisions within Town Hall, whether of its Council or its staff as represented by the post: “*The key to happiness is low expectations. Lower. Nope Even Lower*” posted in the context of the Respondent’s frustration with decisions made at the Council table, has the effect of undermining public confidence in the Town, its elected officials, and its staff.
- [47] Similarly, the language and phraseology of vigilantism has no place in the vocabulary or statements of members of municipal councils.

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- [48] We find, and the Respondent has acknowledged during this investigation, that his comments do not reflect the higher standard of conduct and behavior expected of elected officials.
- [49] The analogy we use is that of a law court, where vigorous litigation occurs, yet where the lawyers and parties do not ever stoop to calling each other names, treating each other with disrespect, or to personal attacks. Even in the heat of litigation, the lawyers are courteous while often disagreeing vehemently with each others' arguments. Lawyers will commonly refer to each other as 'my friend', even while delivering withering (but professional) criticisms of the other side's legal logic.
- [50] At the conclusion of a trial, when one party is unsuccessful, the lawyer on the losing side does not disparage the judge deciding the case through either words or actions. To do so would invite a motion for contempt. Rather, the unsuccessful lawyer is just as respectful and demonstrates just the same appreciation for the judge's decision as the successful lawyer.
- [51] These behaviours demonstrate and convey respect for the institution of justice. This is the manner in which, in our view, Members of Council ought to demonstrate respect for the institution of local government.
- [52] Members of Council are expected to treat members of the public with respect and decorum.
- [53] The Respondent, while initially failing to abide by this concept, now appears to recognize what it means to be held to this higher standard, and has undertaken to meet it through his future actions.
- [54] We are prepared to accept that the Respondent has come around to appreciating the error of his ways in regard to the matters complained of in this investigation. He has now removed the offending Facebook posts and has committed to us that he will refrain from engaging in this type of conduct and behavior going forward.
- [55] He has further agreed to try to emulate and model better behavior, adopting the example of jurists and lawyers in the courtroom who, despite being vehement opponents during trial, are able to maintain respectful demeanour and decorum towards each other throughout the proceedings and afterward.
- [56] Noting that our findings reveal a pattern of behaviour, we are nevertheless prepared to allow the Respondent the benefit of the doubt that he will change his ways going forward.
- [57] For this reason, while we find that the Respondent did indeed breach the Code of Conduct in regard to both Member Conduct and Communication, we do not

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believe it should be necessary to impose a sanction in order to drive the message home.

- [58] We are hopeful that the clarifications around proper interpretation which we have given will provide guidance to the Respondent in how best to reflect the higher standards expected of members of council.
- [59] While robust debate in the public forum is laudable and a normal manifestation of a healthy democracy, this kind of criticism, negative comment, and innuendo disparaging the motives of others has the effect of undermining public confidence in the Town, its elected officials, and its staff.
- [60] These kinds of disparaging comments are more than merely the colourful expressions of a robust political debate. These disparagements are disrespectful, inappropriate and unacceptable.
- [61] Members of Council are entitled, and indeed expected to disagree on all manner of issues. However, one of the cornerstones to democracy must be the recognition that different opinions and perspectives are to be respected, and disagreement should not devolve into disrespect, disparagement and name-calling.
- [62] Similarly, while it is appropriate for elected officials to engage with their constituents using a variety of media, the rules around conduct, decorum and behaviour apply equally no matter the medium. The public has a reasonable expectation that elected officials will conduct themselves with appropriate decorum, dignity and respect – for each other, for staff and for the public - whether in meetings, or elsewhere in public.

### Concluding Remarks

- [63] 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. 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.
- [64] We find that the conduct of Councillor Gordon has violated the Code of Conduct in regard to conduct and behaviour that meets the higher standard expected of Members of Council. In particular, our findings above in paragraphs 34 to 49 result in breaches of:
- Rule 9 paragraph 4, which requires that Members conduct themselves with appropriate decorum and demonstrate exemplary behaviour at all times

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- Rule 10 paragraph 1, which requires that Members not communicate in a manner which fails to demonstrate respect for Council's decision-making process
- Rule 10 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.

### Recommendations:

[65] We are of the view that, in light of the Respondent's commitment to refrain from such conduct and behaviour in the future, no monetary sanction need be imposed in this instance. In this regard, a clear public reprimand should serve to send the message that such conduct and behaviour falls well below the standard expected of the community's elected representatives and will not be condoned.

[66] We therefore recommend:

1. That Council receive this report for information, and that it be posted on the Town of Midland web site for public access;
2. That Council pass the following resolution:

That having been found to have breached the Code of Conduct for Members of the Council of the Town of Midland, the Respondent Councillor Gordon be formally reprimanded by Council.

[67] Should there be occasion to find that Councillor Gordon has breached the applicable rules in the future, we would certainly consider whether a monetary sanction would then be warranted.

[68] The question has been asked, in this and other investigations, whether a respondent may participate in the discussion on a recommendation report about themselves on the basis that they have a pecuniary interest in that report. This issue was clarified by amendment to the legislation in March 2019: a member of council may participate in the discussion of a recommendation report about themselves even where they have a pecuniary interest, however, that member may not participate in any vote on monetary sanctions. The member is still required to file the declaration of interest otherwise required.

[69] We wish to conclude by publicly thanking the Respondent and complainants, the witnesses, the CAO, the Clerk, Legal counsel, 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.

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

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## Appendix



**Councillor Bill Gordon**

Yesterday at 19:52

Just so you all know. I wrote this email to a group of friends and stand by every single word. Roy, I won't miss you but if you keep publishing your trash I'll keep rebutting it. Good luck in your new community.

----- Original Message -----

From: Bill Gordon <[bgordon@lifestyleintegrated.com](mailto:bgordon@lifestyleintegrated.com)>

To: many

Date: August 31, 2019 at 8:34 PM

Subject: Re: August Update

Well good ol' Roy has sold his house on the lake and is heading to Newmarket after having lost all his influence and control over this community. Seems our kung foo was better than his. I hope he embraces life as a grampa down there and comes to term with his defeat up here. Should we throw a farewell party for him at his former restaurant?

I will miss his brand of toxicity unless he chooses to carry on the failed [MidlandCommunity.ca](http://MidlandCommunity.ca) efforts from afar via Rogers TV.

Good riddance to an asshole (Zena that's for you) and don't worry about the other issues at play we will get them sorted out.

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Good riddance to an asshole (Zena that's for you) and don't worry about the other issues at play we will get them sorted out.

The opp should have the password soon and will undertake a lengthy and meticulous redaction of the data that should not fall into the town's hands. Mike will get his settlement and the long overdue legal bills will get paid. I'll deal with the players who have been instrumental in this persecution and ensure this all stays public.

As for the business of our town it continues unaffected by these shenanigans. Watch the meeting Wednesday to see what I mean.

To quote Jack Nicholson's "joker" in the first Batman... "this town needs an enema!" and I've got the lube!

Happy long weekend my friends.  
Bill

*(Signature)*

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**Councillor Bill Gordon**

20 hrs · ⚙️



Watching three of my peers try to pull all my motions from the agenda to silence me and stifle the discussions that ensue, I now know how deeply divided this council is. When democracy and freedom to speak are under attack by the mayor and two councillors you see the dysfunction. Thankfully, they lost the motion and I'll bet we see another attempt.

Cher Cunningham, Jim Downer and Stewart Strathearn supported the removal of only "my" motions from the agenda. Shame on you all. And to think I voted for Jim. They lost and great discussion ensued despite their attempt to silence me. It's going to be a long term if I have to fight for every opportunity to speak and advance the business of the town. I await their next move.

