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Mayor Maureen Cole and Members of South Huron Council

Report to South Huron Council

Retainer

Council directed Chief Administrative Officer Steve McAuley to retain me to provide advice with respect to the situation at hand. He instructed me to interview all members of council and himself. I was instructed to report back to council with recommendations. This report reflects the issues identified during the interviews and my recommendations based on those issues. Issues raised included relationships among members, the use of closed meetings, council and staff interaction, the conduct of the mayor and an alternative governance model. This report concludes with my recommendations.

Between the time of retainer and the interviews Mr. McAuley announced his resignation. This had a significant impact on the tone of the interviews and on this report.

I spoke with each member of council and the then Chief Administrative Officer, Steve McAuley. Each person interviewed was candid in his/her remarks and observations. The observation was made during an interview that, "We've got a mess". This observation was made by several of those interviewed. I would agree.

Most members expressed the view that council has achieved some good things during this term. However, two things are apparent. First, some members of council do not get along with each other. This has resulted in inappropriate behavior. Second, the

relationship between the mayor and the former CAO was strained. These two observations form the basis of this report.

Closed Meetings

There has been a growing distrust by a majority of members of council with respect to the conduct of the mayor. This has resulted in closed, secret meetings of council at which members vent and argue amongst themselves. It is never appropriate to use the closed meeting rules for municipal councils as an opportunity to make accusations and vent against another member of council. One recommendation, therefore, is that council cease the practice of meeting behind closed doors for the purpose of personal attacks against another member.

Code of Conduct

What is the alternative? The Municipal Act authorizes municipal councils to enact a Code of Conduct to govern the conduct of its members. While council has done that the present code is not well thought out in terms of process. Alleged inappropriate conduct by a member should not be dealt with at a closed of council meeting that is grounded in members secretly conducting the investigation. Rather an investigation of the complaint by an independent, knowledgeable person should be the process. There will then be report to council as to whether the alleged conduct is a breach of council's Code of Conduct.

The Municipal Act provides that when council puts in place a Code of Conduct it may also appoint an Integrity Commissioner. This person who is appointed must be independent.

Council can appoint an Integrity Commissioner on a retainer basis for a defined length of time such as 2 to 5 years. This should include a review of the Code of Conduct and education of members. Alternatively, council may appoint one on an as needed basis.

The Integrity Commissioner does not decide on complaints but rather investigates complaints and submits a written report to open council. It is the up to council to determine firstly, whether to accept the recommendations of the Integrity Commissioner and secondly whether to impose a penalty in accordance with the Municipal Act.

This independent investigation is critical given the current situation members find themselves in. Equally as important, the report of the Integrity Commissioner is a public document when presented to council. Members of council hold public office. The community deserves to be informed of inappropriate conduct of members of the council.

Council Meetings

Another aspect of transparency is with respect to council meetings. It has been my experience that people do show up at council meetings only when there is a specific issue that brings them to the meeting. It came out in my interviews that this is very much the case in your circumstance. Often there are only municipal officials present, council members and staff.

Interestingly, when council meetings are televised the public watches. The opportunity to watch is taken up by the community when the meeting can be observed without actually being present. This ability to observe goes directly to council's transparency.

There has been a growing trend around the province in recent years for municipalities to provide live webcasts of the council meetings and in some cases committee meetings as well. Your interviews revealed inappropriate conduct by members at council meetings that included ambushing other members, treating members and staff with disrespect and a lack by some members of their respective roles at the meeting.

Power and Responsibility Rests with Majority of Council

There is a fundamental principle that is important to state. Council exercises power and authority on behalf of the municipality. That can't be done by anyone person unless authorized by council. This is fundamental.

The majority prevails. Local government in Ontario has been established on this principle from the outset. Council cannot conduct itself based on the actions of a few but must function on the basis of the decision of the majority. The majority decision is the decision of the council.

No one councilor speaks on behalf of council. Only the Head of Council, the mayor, speaks on behalf of the corporation. The Head of Council has a statutory duty to uphold and promote the purposes of the municipality. It is the majority of council that

determines the municipal purposes; no one else. The mayor has an obligation when speaking to the media to be clear in put forth council's position.

Training

Part of the role of an elected member of council is to regularly deal with the media. Conducting a media interview requires skill and preparation. It is recommended that all members of council undertake media training to better equip them to fulfill their public role.

Other training should also be considered. Each member will have had Bill168 training. It should be repeated. It should be provided by someone who is expert in that field.

Additional training specific to effective and professional conduct at council meetings should also be considered.

Council / Staff Relationship

There is an interesting article written and published on April 20, 2016 in the St Catharines Standard by Ted Mouradian. A copy is included with this report. In describing the situation in the Niagara Region, he states:

"All I can offer is whenever I am called in by a municipality to deal with staffing issues, one area that exacerbates the dysfunction is when there is a rogue councillor or chair that council neglects to rein in and allows these individuals to interfere with the CAO's ability to do his or her job. And when that breaks down there usually is no going back."

Council has a responsibility to protect municipal staff from abuse by a member or by the public. Council did take the step of passing a resolution to protect the CAO from the mayor. It did not go far enough. The result is the resignation of Mr. McAuley.

Perhaps the most disturbing aspect of this investigation is the media coverage immediately after Mr. McAuley's resignation was announced. MyFM reported that, "Despite some reports of tension between the Mayor and the now former CAO, the Mayor tells MyFM that's not the case."

Clearly, there was tension. In 2015, council brought in Amberley Gavel Ltd. This was one of the issues at the time. Council then dealt with the situation by passing a resolution restricting contact between the two. I was recently told at the interviews that this has continued to be an issue.

The ongoing question then becomes what, if any, action is required by council. The resolution remains on the books. It does not name Mr. McAuley but rather the office of CAO. It should continue in effect for the interim CAO and the new CAO until council is satisfied that it can be repealed.

Council may wish to consider the situation of other staff going forward. Concern was expressed in the interviews about the remaining staff by several members. It is the responsibility of the majority of council to protect municipal staff. Your organization is fortunate to have staff that are well qualified and dedicated to the corporation and community.

Committee Structure

The issue of restructuring to provide for standing committees of council was raised during my discussions. There are benefits for council to create standing committees but there are also some drawbacks. Council may wish to consider this change and I could provide more detail if so requested. The committees are normally composed of three members with the mayor as an ex officio member meaning that she could attend, participate in the deliberations and vote. Traditionally the ex officio member would not be counted in quorum.

Moving Forward

There was discussion at the interviews as to the process moving forward. Council has appointed John Maddox as the interim Chief Administrative Officer. Council has made, in my opinion, an excellent decision. Mr. Maddox brings a wealth of municipal experience to the role.

There was discussion at the interviews as to what process should be followed to fill the office of Chief Administrative Officer. This is a key person in the administration of the corporation and is the link between council and staff. Ultimately, the decision of who to appoint rests with a majority of council. Three processes were identified during the interviews. First, council undertake the recruitment internally; that is, council members together with the interim CAO undertake the recruitment process without outside assistance. This was not seen as a realistic alternative. I agree.

The second process identified was to rely upon the county human resources department to coordinate and administer the recruitment process. The majority on

members did not support this approach. Again, I agree. The county HR department lacks the expertise and independence to undertake the process.

The final alternative is for council to retain outside assistance to advise on the process including, the duties and responsibility of the role, timelines, advertising, put together a list of candidates, recommending a short list to council, organizing and participating in the interviews including preparing questions to be asked of all candidates, recommending a short list to council, again arranging for interviews, recommending and arranging professional assessment of each candidate, undertaking reference checks and facilitating discussion with council members to arrive at a final decision.

The recruitment of a CAO requires the skills, knowledge and background in the recruitment process. It also requires knowledge and background in local government to understand the uniqueness of the CAO position in municipal government.

Conclusion and Recommendations

Council has done some good things since taking office. I heard this from several members. That is important to the community. The issues that got you into "the mess" need to be dealt with by council. There is an opportunity because of the resignation of the CAO but council, that is the majority of council, must act in a way that is in the best interests of the corporation and the community and in a manner that is open and transparent to the community. To be successful going forward, there needs to be an expectation of respect at council. A respect for the office of each person in the organization.

The issues are integrity and trust.

"What the data signals is not just a serious concern about politicians but some of the root causes of why voters will not vote or will vote against their interests and for other parties. The data puts politicians on notice that they face a very skeptical and concerned electorate and have much work to do to establish trust."

Jim Pattison Ethical Leadership Program/Gandolf Group
(November 2014)

I make the following recommendations for consideration of council -

1. Council retain an Integrity Commissioner to which all complaints respecting a member's conduct be directed.

2. There be training on the Code of Conduct by the Integrity Commissioner.
3. Closed meetings of council held for the purpose of attacks on other members be eliminated.
4. The sanction imposed by council restricting the mayor from meeting with the CAO be continued.
5. Council consider a motion to expand the current sanction imposed upon the mayor beyond the CAO to all administration.
6. All members attend bullying and harassment training conducted by a professional.
7. The mayor as the voice of the municipality be limited to discussions with media to those matters approved by council and to support the decisions of council.
8. Council meetings be live video streamed.
9. Council consider a standing committee system with three standing committees and the mayor as ex officio on each committee after receiving a report from the Acting CAO.
10. All members of council receive media training.
11. That the CAO be appointed by by-law as a Deputy Clerk.

All of which is respectfully submitted.



Fred Dean

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OPINION COLUMN

MOURADIAN: Municipal staff versus elected officials

By Ted Mouradian, The Standard
Wednesday, April 20, 2016 9:08:26 EDT PM



Picture of Niagara Region council chambers

For the past 15 years the majority of my clients have been regions, municipalities and counties throughout Ontario, and prior to that when I had my real estate company I taught the Municipal Act at Niagara and Humber colleges.

In light of what has happened at Niagara Region, I want to share some of that vast knowledge with you today.

The concept of a municipality is we elect people to guide our municipalities on our behalf and they in turn hire a chief administrative officer to run the staff and to execute the vision of council.

Here is where it gets a little complicated. The general rule is that there is a dividing line between the two entities.

Council is the public voice and face of the municipality unless it directs otherwise. And the CAO is the person in the background who takes care of all of the day-to-day operations. The CAO and the staff are also there to advise council and to act as a resource for council.

Individual councillors are not to direct the staff unless it is directly related to the work involved regarding a committee they are chairing or sitting on. Any performance issues must go through the proper chain of command, with the CAO being on the top of that chain.

You notice that I keep referring to council. That is because council is the governing body, not the mayor or the chair of the council.

Issues arise when a chair believes that he or she is in charge when in fact that is not the case. It is council that has all of the authority and makes all of the decisions; not any one individual, especially not the chair without council's direction or approval.

Being that the elected officials come and go, it is the CAO who brings continuity and historical memory to the equation. The CAO should also be the keel who ensures the ship is kept on course and that the decisions of council do not put it or the municipality in jeopardy.

It breaks down when council does not take the suggestions of staff seriously, but instead chooses optics over sound professional advice.

Keep in mind that municipal employees are professionals in their fields.

You have lawyers, planners, human resources professionals, economists, accountants and skilled trades who actually know what they are doing, compared to (in some cases, not all) someone who decides that they want to run for elected office with little or no experience on how to run a multimillion-dollar complex corporation.

That is not to say that staff are infallible, they are not, but if I hired a professional to advise me, why would I not follow that advice?

Again, that does not mean that I will not question to understand the law or the logic behind the recommendations but I must consider that they know a little more than I do, especially when I bring politics into the equation.

I don't know what really happened at the Region to have the CAO make the decision he made to accept a job elsewhere.

All I can offer is whenever I am called in by a municipality to deal with staffing issues, one area that exacerbates the dysfunction is when there is a rogue councillor or chair that council neglects to rein in and allows these individuals to interfere with the CAO's ability to do his or her job. And when that breaks down there usually is no going back.

My hope for our regional council is that it will do some serious self-examination to decide what type of CAO it wants to hire.

Once that is decided, then find the match and allow that person to do their job and stop trying to micromanage that CAO and his or her staff.

This council also needs to take back the authority it has and begin to run council the way it was intended to be run, as a majority, not by a few.

Finally, when there is mutual trust and respect both the CAO, the head of council and council itself will be able to challenge each other in a respectful manner and then come out united in how they are going to move the municipality forward ... it's really not that hard.

Ted Mouradian is a lifelong resident of St. Catharines. He is a professional speaker and author, writing on workplace employee management issues. He is a former chair of the mayor's committee on community and race relations and president of the 2 Percent Factor Inc.

