

Municipality of South Huron

FINDINGS REPORT

November 27, 2017

Submitted by Lisa Korab, Integrity Commissioner

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Part 1: Background

A. Jurisdiction

I was retained by the Municipality of South Huron ("the Municipality") to act as its Integrity Commissioner pursuant to By-law #49-2016 passed on or about July 18, 2016. Generally, my duty is to perform in an independent manner functions related to Policy 03-2016 ("the Code of Conduct") governing the conduct of members of Council. Having been so appointed, my role is to interpret and apply the Code in such a manner as to ensure that the Municipality's goal in maintaining a high quality of public administration and governance is achieved by encouraging high standards of conduct by Council members. These standards are designed to supplement the legislative parameters within which members of Council must act¹ and are intended to enhance public confidence that the Municipality's elected and appointed officials operate from a basis of integrity, justice and courtesy. The Formal Complaint Procedure set out in sections 6.4 to 6.7 of the Code of Conduct has been followed.

B. Nature of Complaint

I received an affidavit from Mayor Maureen Cole ("the Complainant") sworn October 5, 2017 setting out the grounds for a complaint against Councillor Wayne DeLuca, ("the Respondent"). The Complainant alleged that the Respondent breached Sections 5.2(b), 5.3(a) and 4.1 of the Code of Conduct. Specifically, the allegations involve harassment, bullying and lack of respect for the decision-making process.

C. Report Format

The evidence upon which I have based my findings consists of the interview(s) conducted as well as a review of the written complaint and other relevant background documentation which were provided to me. The interview process was designed to

¹ Among other changes to the *Municipal Act, 2001*, recently proclaimed Bill 68 Modernizing Ontario's Municipal Legislation Act, 2017 makes Codes of Conduct mandatory, rather than optional.

obtain as complete and accurate a record of the evidence as reasonably possible². My findings of fact require an assessment of the evidence, the credibility of the parties and the reliability of the evidence.

Part 2: The Evidence

The following facts were alleged by the Complainant:

- At the Council Meeting on September 18, 2017, Council received a letter from a resident dated September 11, 2017 requesting that Council consider the construction of an indoor pool rather than spending money on refurbishing the outdoor pool. The letter was sent by a female high school student who lives in Exeter on behalf of "the youth of this community" ("M"). Attached to the letter was a sheet with the signatures of 48 other individuals, a number of whom are members of the swim team.
- The writer of the letter, M, happens to live next door to the Complainant.
- According to the Minutes of the September 18th Meeting, Council directed the Clerk to respond to the letter.
- At the next Council Meeting on October 2, 2017, another letter from a couple, residents C.E. and B.E., in support of an indoor pool was received by Council. This letter enclosed a petition with signatures of over 400 people.
- The Minutes of the October 2, 2017 meeting state: "Mayor Cole advised that Councillors should not contact anyone on behalf of Council, correspondence should go through staff, as directed by Council." Again, the Clerk was directed to provide a response to C.E. and B.E. noting their correspondence was received by Council.
- The written complaint states that the Respondent "attempted to contact an under 16 year old female [M] after she had submitted a letter of support for an indoor pool". The Complainant writes: "In my role as CEO/Mayor of the Municipality I have attempted several times to openly discuss the interference of [the Respondent] in allowing the Mayor and Council to fulfill their duties and responsibilities and to be accountable for his actions. This is a result of a lack of respect for Mayor and Councillors and a culture of bullying as acceptable. Repeated acts of bullying leads to perceptions of harassment."

² In terms of the format of the report, the reader should note that any excerpts from emails, notes and reports etc. are quoted exactly as contained in the original document despite the fact that phrases may be grammatically incorrect or words misspelled.

- When the second letter in support of the indoor pool was received by Council on October 2nd, the Complainant directed her comments at the Respondent, with specific reference to M's letter received two weeks beforehand, advising that there was no need for individual Councillors to follow up to thank those that had sent letters.
- The Complainant then alleged that contrary to the direction provided at the Council Meeting on October 2 she was notified [by her neighbour] that the Respondent had gone to the home of M on October 3rd. "She was home alone with her younger brother and although they recognized the Respondent, they did not answer the door".
- Her neighbour, M's father ("C"), came to the Complainant's house and advised the Complainant's husband that the Respondent rang their doorbell but M did not answer the door because her parents were not home.

The Respondent provided a written response setting out his evidence as follows:

- The Respondent stated that he and his wife know C's family since his wife has supply taught both children and they see the family on Sundays at church.
- On September 19, he sent an email to M complimenting her on her letter and passion for the indoor pool project.
- The Respondent provided a copy of his email to M dated September 19th:

*Hi "M",
Thank you for taking the time to share your concerns regarding the Exeter pool.
Your letter was very well written and highlighted your passion for this project.
I would be more than willing to speak with you further if you wish. I am currently on vacation until next Monday, please feel free to contact me at your convenience.
Thank you.
Wayne DeLuca
Exeter Councillor*

- On Sunday October 1st upon leaving church after mass the Respondent mentioned to M's mother that he had sent her daughter an email congratulating her on her involvement in the pool project however M's mother said that she wasn't aware of it. The Respondent commented that maybe the email had not gone through because he had experienced some email difficulties in the past.
- The Respondent then alleged that the next day he was "verbally attacked" by the Complainant at the Council Meeting on October 2nd. The Complainant told him that he

had no right sending an email to M and then stated twice "You have no right to be emailing young girls".

- The Respondent was taken aback by the Complainant's accusation however he disagreed that his email to M was inappropriate or contrary to the direction of Council.
- The Complainant asked whether the Respondent intended to contact all 400 names on the petition which was attached to the second letter which Council received in support of an indoor pool.
- The Respondent replied that he only emailed M since he knows the family and was commending her for taking the time to share her feelings.
- He advised Council that he did not intend to represent Council when he sent the email to M however if he offended anyone he would apologize. When another Councillor pointed out that the Clerk had already responded to the letter, he stated again that he did not mean to offend anyone and he apologized again.
- After reflecting on the meeting the next day, the Respondent decided to apologize to M and her family if they were offended and went to their home. When he rang the doorbell it appeared that no one was home so he left.
- The Respondent stated that about a half an hour later, M's father, C, was at his front door and wanted to know why he came by their house.
- The Respondent explained that he went by to apologize for his email if he or his family felt offended by it. They then had a discussion about the pool.

In her written reply the Complainant states that "The council documentation and witnesses of Council, CAO and clerk, as well as several in the gallery would confirm no one approved of his actions, and in fact one councillor confirmed my suggestion. No one said my response was incorrect either." The Complainant refers to M as a "fourteen year old female" twice in her written reply and states, "His third attempt to contact [M] was another repeat of what I would consider unwanted targeted behaviour, as she did not answer the door."

Several witnesses, including staff, who were in attendance at the October 2nd Council Meeting were asked whether they recalled the discussion between the Complainant and the Respondent regarding the Respondent's attempt to contact M. They confirmed that the Complainant directed that it was unnecessary for individual Councillors to

acknowledge letters sent to Council since the Clerk was doing so. This was accurately recorded in the Minutes of the Meeting. They also recalled the verbal exchange between the Respondent and the Complainant and the stern warning to the Respondent that he had "no right to be emailing young girls". Witnesses stated that it was not uncommon for the Respondent and the Complainant to enter into heated verbal exchanges during meetings. According to these witnesses, any looks of disapproval by "Council, CAO and clerk, as well as several in the gallery staff" which were observed by the Complainant were more likely in response to the verbal exchange itself, rather than the Respondent's admission that he had emailed M.

The Code of Conduct provides that Members shall conduct themselves with decorum during the proceedings of meetings and that they shall show courtesy and not distract from the business of Council or Committee during presentations. In addition to the fact that the Respondent has not filed his own complaint against the Complainant with respect to the accusation made against him, I do not have jurisdiction to interfere with the conduct and management of meetings. The Speaker or Chair has autonomy to oversee order and behaviour of Members and it is not up to the Integrity Commissioner to intervene. I will therefore not make a finding as to whether either party's comments during the meeting may have constituted a breach of the Code of Conduct.

I conducted a telephone interview of M's father, C on October 27. The evidence he provided was as follows:

- When the Respondent ran into C's wife at church and mentioned that he had sent M an email to thank her for her letter to Council and said that he would like to speak to her about it, this struck C as "odd". C knows the Respondent and he stated that his first thought was, "why wouldn't you speak to me about it rather than my daughter"? He did not recall mentioning this to the Complainant.
- As a result of the email and the conversation with M's mother at church that the Respondent would like to speak to M about it, C stated that M was reluctant to go to church for a few weeks because she wasn't comfortable speaking to the Respondent. M knew that the Respondent was not in favour of an indoor pool and did not want to have a discussion with him about it, so she chose to avoid him.

- When the Respondent attended at the family's home on the evening of October 3rd, M called C on his cell to let him know. C was really angry about this and after stopping by the Complainant's house and telling the Complainant's husband about it, C went over to the Respondent's house.
- The Respondent was very apologetic and advised that he came by the house to apologize if any of them were offended.
- The Respondent also then told C all the reasons why he thought that having an indoor pool wasn't good for the community.
- C advised the Respondent that he would appreciate it if he would keep his family out of this issue and that they would agree to disagree on the issue of the indoor pool.
- A few days later C ran into the Complainant who stated that he had "missed the fireworks" after the Council Meeting on October 2nd when she told the Respondent not to contact M.
- C advised the Complainant that he had a conversation with the Respondent as well and the Complainant advised that "I am going to be taking this further".
- The family did not want there to be any further action against the Respondent and were reluctant to be involved in this complaint process. C had spoken to the Respondent himself and told him that he appreciated his views on this issue but disagreed with him.
- With respect to his daughter M, C's only concern was that she was reluctant to go to church for a few weeks but admitted that this was "not a big deal".
- The family did not chose to have this issue pursued and did not feel it was that important otherwise they would have filed their own complaint. C advised that if there were any serious concerns about the Respondent contacting M or the family, they would have reported it to the police. This was not the case.
- C indicated that although he did not attend a lot of Council meetings he "just can't believe the manner in which people behave at Council meetings. I was shocked at [the Respondent's] back and forth banter with [the Complainant]. I thought it was very disrespectful. I am surprised by [the Respondent's] tone at these meetings. It was extremely unprofessional."
- C also advised that he has recently agreed to be on the Community Hub Steering Committee, as long as the Respondent is not on it, and he plans on continuing to attend community public meetings.

Part 3: Application of the Code of Conduct

The Complainant alleged that the Respondent breached Sections 5.2(b), 5.3(a) and 4.1 of the Code of Conduct.

Allegation 1

Section 5.2(b) of the Code of Conduct deals with "harassment" and provides that members shall not expose anyone to conduct representing harassment. Harassment includes engaging in a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome." Harassment can occur in the context of one solitary incident or it can occur through a course of continuous conduct which a person finds unwelcome.

In support of this allegation, the Complainant stated that the Respondent attempted to contact M three times; once by email, again when he mentioned to her mother at church that he would like to speak to her and a third time when he stopped by her family's house. With respect to the Respondent's email on September 19th, which is reproduced above, on its face the content and tone cannot reasonably be interpreted as being harassing in nature. It is simply a note acknowledging the youth's concern and involvement in her community and complimenting her on her letter. I note that despite the Respondent's position on this issue, he does not mention his reasons for opposing the construction of the indoor pool in the email, rather he invites her to speak to him further "if she wishes". He signs the email as Councillor of Exeter.

With respect to the second time that the Respondent allegedly "tries to contact" M, it is a couple of weeks later when he runs into her mother at church. He mentions the email to her and wonders whether M received it. He allegedly says that he would be happy to speak to M. Although the Respondent doesn't recall the part of the conversation about either wanting to or inviting M to speak with him, I find that on the balance of probabilities it was more than likely that he did say something to this effect because of the fact that he did invite M to speak with him in his email. Also, although M's father

didn't recall if, or when, he mentioned this fact to the Complainant, it is likely that either he or his wife did tell the Complainant about this. For this reason, when Council received a second letter in support of the indoor pool on October 2nd, the Complainant took the opportunity to directly address the Respondent about his email to M. She refers to this as the "informal resolution" process despite the fact that she did not mention that his conduct may be harassing in nature or that it was disrespectful of the decision-making process.

During the conversation with M's mother at church the Respondent commented that she should be proud of her daughter and that he would be happy to speak with M about it (given that she may not have received his email). The Respondent knows the family and the conversation itself was not offensive. In fact, according to M's father, C, the family did not find his conduct offensive or harassing, although it did strike them as "odd" that the Respondent would offer to speak to their daughter.

This brings us to the incident when Respondent attends at the home of M on the evening following the Council Meeting on October 2nd. The Respondent's explanation is that it occurred to him that M's family must have been really offended and he wanted to personally apologize. He stated that he was not aware that the parents were not home. When M's father came to his house, the Respondent explained his reason for going there and apologized. The Respondent stated that he did not get the impression that M's father was upset, rather, C just wanted to know why the Respondent was at his house.

According to C, he was angry when his daughter called him to tell him that the Respondent had come to their door on October 3rd. At this point, C was not aware that there had been a verbal exchange between the Complainant and the Respondent at the Council Meeting the night before.

After going to the Respondent's house, M's father was satisfied that the issue had been cleared up and believed that the Respondent got the message that M did not wish to

debate the pool issue with him. Although M wrote the letter to the Mayor and Council, she did not write the letter to the Respondent personally, and she had no interest in discussing it with him.

According to M's father, the family was very reluctant to be involved in the complaint process and didn't think that it was necessary under all of the circumstances. After C's discussion with the Respondent, the situation had been dealt with and in their minds it was over. Although they did not agree with the Respondent about whether or not having an indoor pool in Exeter was a good idea, no one from M's family felt that the Respondent's actions constituted harassment.

Given the evidence of M's father, I find that the allegation that the Respondent's actions constituted harassment, in breach of section 5(2) of the Code of Conduct, is unsubstantiated.

Allegation 2

Section 5.3 (a) of the Code of Conduct deals with Personal or Psychological Harassment under the *Occupational Health and Safety Act* and provides that Members must ensure that their interactions, personal communications and conduct are constructive, civil, respectful and devoid of any content or tone that would constitute "personal harassment" or "psychological harassment". Personal or psychological harassment includes unwelcome words and/or actions that are known, or should have been known, to be embarrassing, humiliating or demeaning. One example of this sort of conduct is "bullying".

The Complainant has alleged that the Respondent's actions constitute personal or psychological harassment. She states that the Respondent "interferes with the Mayor and Council who are trying to fulfill their duties and responsibilities as a result of a lack of respect for Mayor and Councillors and a culture of bullying as acceptable." The Complainant states that the Respondent contacting M (and her family) is one example of bullying.

The Complaint also mentions alleged statements which the Respondent made regarding the indoor pool issue to the Minister of Energy at the AMO Conference in the summer. I sought clarification from the Complainant about whether or not she wished to include this incident as another allegation for investigation against the Respondent however she stated that she mentioned it only to prove what the Respondent's intentions were when he was trying to speak to M. She stated that this showed that the Respondent had no intention of discussing M's letter in a positive manner, nor in a way that would encourage M or family members to be involved in projects that are managed by Council. Because this incident was not a separate allegation of a breach of the Code of Conduct, the Respondent did not provide a written response to it.

M's father did confirm that it was because of the Respondent that he would reconsider becoming involved in any community hub committee but also indicated that he it didn't seriously bother him to have to debate the pool issue with the Respondent. This would not deter him from participating in public meetings and he remains in support of the indoor pool. The Complainant refers to the conduct of the Respondent as "unwanted targeted behaviour" however given the evidence of M's father, I do not find that they characterized the Respondent's behaviour in the same manner. Despite the fact that M did not follow up on the Respondent's invitation to speak to him about her letter to Council about the indoor pool issue, the Respondent's communications with her and her family were not offensive, embarrassing, humiliating or demeaning. What M's family was most concerned about was the Respondent showing up at their door however, they were not at the October 2nd Council Meeting and at that time were not aware that the Respondent wanted to apologize to them.

Given the reasons above, I find that the allegation that the Respondent psychologically harassed and bullied others in breach of section 5(3)(a) of the Code of Conduct is unsubstantiated.

Allegation 3

Section 4.1 of the Code of Conduct addresses the ethical conduct requirements of Members of Council with respect to the Decision-making Process. It states:

Members shall conduct themselves with decorum during the proceedings of meetings. Members shall show courtesy and not distract from the business of the Council or Committee during presentations and when other Members have the floor. Members shall accurately and adequately communicate the attitudes and decisions of Council and Local Boards, such that respect for the decision-making process is fostered.

Following the discussion with the Complainant at the Council Meeting on October 2nd, the Respondent decided that he needed to apologize to M's family if they were offended that he had emailed M. As stated above, even despite the fact that the Clerk was supposed to respond to M's letter, his personal email to her congratulating her on a well written letter does not on its own constitute harassment. Further, mentioning the email to her mother a couple of weeks later also does not constitute harassment which is defined as vexatious conduct that is known or ought to be known to be unwelcome. However, at the October 2nd Council Meeting the Mayor advised that "Councillors should not contact anyone on behalf of Council, correspondence should go through staff, as directed by Council." The Clerk was directed to provide a response to C.E. and B.E. noting their correspondence was received by Council. Despite this direction, the Respondent went to M's house.

As set out above, both the Respondent and his wife know M's family. Given the strong admonition from the Complainant at the meeting the night before, it was understandable that the Respondent would want to privately apologize to them before he ran into them at church again. Also, given that M's family lives next door to the Complainant, it was reasonable for the Respondent to assume that they had mentioned it to the Complainant. The Respondent was not aware that M's parents were not home when he rang the doorbell and there is no reason to suggest that the Respondent had improper motives. When M's father went to the Respondent's house, he confirmed that the

Respondent was very apologetic and sincere. M's father did not seek to pursue this issue further.

Furthermore, the Respondent was not contacting M's family "on behalf of Council". The direction from the Complainant and Council was that "Councillors should not contact anyone on behalf of Council, correspondence should go through staff, as directed by Council." The Clerk was directed to provide a response to C.E. and B.E. noting their correspondence was received by Council. Council did not advise the Respondent that he should never attempt to contact M or her family again. In fact, there were no bona fide grounds upon which Council or the Complainant would have made such a direction.

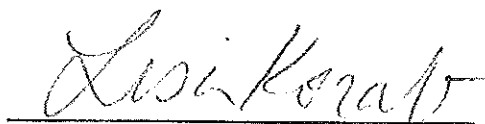
As such, I find that the allegation that the Respondent did not respect the decision-making process in breach of section 4(1) of the Code of Conduct is unsubstantiated.

Part 4: Findings and Recommendations

Based on the reasons set out above, I have found that none of the allegations against the Respondent have been substantiated and this Complaint is hereby dismissed.

Notwithstanding these findings, I would like to remind all Members that they are responsible for ensuring that the spirit and intent of the Code of Conduct is to be observed through their own conduct and further that any behaviour of fellow Members which deviates from those expectations should not be condoned by silence or acquiescence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 27TH DAY OF NOVEMBER, 2017.



Lisa Korab
Integrity Commissioner
Municipality of South Huron