



Cunningham Swan

LAWYERS

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CONFIDENTIAL

November 6, 2023

SENT BY EMAIL TO: hmartin@pembroke.ca

Mayor and Council
c/o Heidi Martin, Clerk
City of Pembroke
1 Pembroke Street East
Pembroke, Ontario
K8A 3J5

Dear Ms. Martin:

**RE: Code of Conduct Complaint – Final Report
Our File No. 33136-21**

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

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The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

Timeline of Investigation

The key dates and events during the course of this investigation are as follows:

- Complaint Received – May 8, 2023
- Complaint sent to Member – June 8, 2023
- Response received from Member – June 28, 2023
- Response sent to Complainant – July 5, 2023
- Response received from Complainant – July 28, 2023
- Interviews Conducted – August 1, 2023 and August 23, 2023

Complaint Overview

More than one Complaint was received regarding the same incident. All of the Complaints allege that Councillor Purcell breached the Code of Conduct at the April 18, 2023 Council Meeting.

Specifically, it is alleged that Councillor Purcell made comments about staff that were derogatory during the public meeting. It is alleged that the comments made negatively affected staff's wellbeing and created low morale.

Code of Conduct

The following provision of the Code of Conduct is relevant to our findings in this investigation:

6.1 Every member has the duty and responsibility to treat members of the public, staff and each other in a respectful manner, without abuse, bullying, harassment or intimidation.

Investigation Process

In conducting the investigation, the Complaints and the responses received from both the Member and the Complainants were reviewed. Interviews were also conducted with relevant witnesses. The video recording of the April 18, 2023 Council Meeting was also reviewed.

Factual Findings

Comment of Councillor Purcell

No factual findings were required to determine what occurred or was said by Councillor Purcell at the April 18, 2023 Council Meeting. As noted above, the video recording of the comments made by Councillor Purcell was reviewed and the accounts of what took place were not in conflict.

Impact of Comments

It was alleged that there was a significant impact from Councillor Purcell's comments on staff following the April 18, 2023 meeting. We received evidence as to the impact of the comments made by Councillor Purcell. We note that this evidence was considered as context, but was not a factor in determining whether the comments of Councillor Purcell breached the Code of Conduct. We make no determinative factual findings as to the impact of the comments made on staff morale and/or wellbeing.

Code of Conduct Findings

As will be detailed below, we find that Councillor Purcell's comments at the April 18, 2023 Council Meeting breached Section 6.1 of the Code of Conduct.

We find that the comments of Councillor Purcell at the April 18, 2023 Council Meeting were not respectful of staff as required by s. 6.1. We note that we did not find that the comments constituted "abuse, bullying, harassment or intimidation"; only the obligation to be respectful was breached.

The context in which the comments were made contribute significantly to our findings in this investigation. It is our finding that a public speech at an open meeting of Council is not the appropriate forum for a Member to discuss their criticisms and perceived failings of staff members. It is our finding that detailing such criticisms and concerns in a public forum is disrespectful and, given the nature of the comments made, rises to a level that is a breach of Section 6.1 of the Code of Conduct.

For clarity, we have included in this report the specific comments that were made by Councillor Purcell that we consider to be inappropriate and disrespectful to staff, taking into account the context in which they were made:

“As an example, the meeting agenda for this council meeting was not even posted to the City of Pembroke website until mere hours prior to the meeting, impeding concerned citizens knowledge of what we’re discussing at our open meeting today and potentially hindering their attendance at this evening’s meeting.”

“You will probably hear from the executive committee that this was done in oversight or error, but this further demonstrates complacency in promoting an open and transparent local government.”

“...the executive committee even going as far as potentially suspending sections of our procedural by-law through a motion, to allow a member to participate in the vote that did not meet electronic participation timelines defined in our procedural by-law, as written”

“I also want to inform our residents of my challenges and frustrations, as a new councillor representing the citizens of Pembroke, in accessing information from the executive committee, copies of approved by-laws, reports and studies, and timely responses to inquiries, with requests for call-backs unfulfilled, demonstrating to me the utter lack of leadership from the executive committee.”

“As an example – by-laws that prescribe how this municipality deals with specific matters are not made readily available to the public – I challenge our residents to find the by-law detailing the sale of surplus lands on the City of Pembroke website. Reports and studies, meeting agendas and meeting reports not posted publicly in a timely manner, not allowing transparency of decisions being made, meetings held with no to little awareness of all of Council of these discussions addressing important community matters and I can go on and on.”

“When I inquire about activity updates, posting by-laws and other supporting documentation to improve transparency, I am told that it causes AODA concerns, we do not have action tracking capabilities at this time, there are record retention issues we are resolving, we have by-laws that go back to the horse and buggy days, and my all-time favourite – if we do this how do we get things done.”

We find that the above comments regarding the staff are disrespectful, especially when made in open session. We make no finding as to whether there is any merit to the complaints made by Councillor Purcell. Even if all of the Member's comments were factual, no Member of Council should bring the professionalism or competency of staff into question at an open meeting of Council. The airing of perceived grievances in public demonstrates a significant lack of respect for staff.

This finding should not be taken as a broad statement that no Member of Council can provide any criticism of staff. Members of Council can and should work with staff to improve their performance, but that exercise is never conducted in a public forum. If any Member of Council has an issue with staff performance, they must bring that to the attention of the CAO. If the performance issue is with the CAO, a closed session of Council is the appropriate forum to address those issues. A public airing of Member's frustrations does not show the level of respect to staff demanded of Members.

As is detailed above, we find that the comments made by Councillor Purcell on April 18, 2023 breached the Code of Conduct.

Recommendation

Our recommendation to Council with respect to penalty for the breach of the Code of Conduct by Councillor Purcell is that his pay be suspended for a period of 15 days.

We further recommend that Council require an apology be read into at an open meeting of Council by the Member within 30 days of its decision.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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