

## Township of Horton Integrity Commissioner File 2018-01

### REPORT ON COMPLAINT

#### The Complaint

The Township's Treasurer, Jennifer Barr, alleges that during the recent election campaign Councillor David Bennett (now Mayor Bennett) contravened the Code of Conduct, section 12 of By-law No. 2015-53, by making comments about the Treasurer.

For ease of reference, this report refers to Treasurer Barr as the **Complainant**, Councillor (now Mayor) Bennett as the **Respondent**, and section 12 of By-law No. 2015-53 as the **Code of Conduct** or **Code**.

The Complainant specifically alleges that the Respondent contravened paragraph 6 of the Code, which reads as follows:

Members of Council acknowledge that only Council of the whole has the capacity to direct staff and will refrain from using their position on Council to influence members of staff in their duties. Members of Council will refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility.

#### Summary

I find that the Respondent did not contravene the Code of Conduct.

This is a democracy. The Code of Conduct must be interpreted in a manner consistent with democratic rights: the right of politicians to express their views and the right of members of the public to hear those views.

This is particularly true during of communications made during an election campaign. I do not interpret By-law No. 2015-53 as giving the Integrity Commissioner the power to interfere with communications by candidates standing for election.

#### Background

The complaint was given to the CAO/Clerk on September 28, and forwarded to me the same day.

The complaint alleges that the Respondent said the following at an all-candidates meeting, September 24:

- Three staff members have too much control.

- The Treasurer did not allow purchases by the recreation committee – specifically a \$45 frying pan.
- The Treasurer did not fulfill a mandate to research the possibility of a recreation association.
- The Treasurer was involved in the decision on a particular land acquisition.

The Complainant also included a copy of the Respondent's election pamphlet, because the pamphlet mentions the Township staff.

This pamphlet mentions the staff only once. As context, I am reproducing the entire paragraph in which the mention occurs:

For the next 4 years, taxpayers are paying \$24,000.00 per year for Mayor, and \$17,000.00 per Councillor! This is an \$8000.00 increase from the previous Councils. Some Council members and staff believe this is justified, because the CRA has decided to remove the 1/3 tax exemption. This is not fair to the residents and tax payers of Horton, and must be revisited. Hopefully a majority of Council will vote to reverse the standing motion. The government took this away from elected officials, not you as a rate payer. The 2014-2018 remuneration should remain, and all elected members must be prepared to spend the time required to fulfill their duties and commitments for the betterment of the Community, on an average of 30 hours or more per month.

On July 17, Council voted to fix the 2018-2022 annual salaries at \$24,500 for the Mayor and \$17,500 for Councillors.<sup>1</sup> (The 2014-2018 figures were \$20,000 and \$15,000.<sup>2</sup>) The Respondent and Deputy Mayor Robert Johnston opposed the pay increases. An increase of \$2000 annually (actually the annual increase is \$2500 for Councillors) would work out to an increase of \$8000 over a full, four-year term.

The statement that, "Some Council members and staff believe this is justified," is essentially correct. A July 11 staff report signed by the CAO/Clerk and the Treasurer recommended approval of the salary increase by-law, and three Members of Council voted for it.<sup>3</sup>

The proposal to freeze Council salaries at 2014-2018 levels was a key part of the Respondent's campaign platform, and was closely linked to the Respondent's pledge to hold the line on tax increases. Both issues (Council salaries and taxes) figured prominently in the mayoral election, as the following news report indicates:<sup>4</sup>

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<sup>1</sup> By-law No. 2018-53.

<sup>2</sup> By-law No. 2014-45.

<sup>3</sup> The July 11 staff report clearly recommended that salaries be increased. The staff report said that leaving salaries unchanged "is not recommended."

<sup>4</sup> John Carter, "Horton mayor hopefuls exhibit contrasting leadership styles," *Renfrew Mercury* (September 28, 2018), retrieved from InsideOttawaValley.com.

At an all-candidates meeting Sept. 24 attended by a full house (200+) at the Horton Community Centre, Mayor Bob Kingsbury and challenger, Coun. Dave Bennett, sparred over style of leadership and how council should operate.

Bennett wants to “stop” the string of tax increases and change the council committee system. Kingsbury maintains that “all is well in the township,” so if it’s not broke why fix it.

Arguing that a 15 per cent tax increase in the four years Kingsbury has been mayor is too much, Bennett promised a zero tax increase in 2019 and no more than two per cent annually in the rest of the four-year term of the council to be elected Oct. 22. “It’s doable,” he said, adding it’s a matter of trimming the budget and finding savings.

He supports rolling back (to the 2014 level) the councillor stipend increase that compensated for the reduction of a tax-free provision.

As OPP costs make up a major portion of the increase, the township should form a community policing advisory committee like Admaston/Bromley to give Horton a “stronger voice” in policing decisions, he said. He would also like to see the fire department’s role expanded into such areas as water rescue and natural disaster response.

Kingsbury defended council’s budget decisions, noting last year’s flooding showed that “we have to be flexible” and maintain reserves in case of unexpected emergencies.

Under his leadership, council has accomplished a great deal in the last four years with improvements to roads, landfill, and public works and fire equipment, he said. It’s been achieved while keeping the tax rate increase to two to three per cent and not depleting reserves, he added.

“We have a handle on our taxes,” he said, adding that all council should share in the credit.

### **Process Followed**

In considering Code of Conduct complaints, I follow a process that ensures fairness to both Complainants and Respondents

The fair and balanced process I normally use includes the following elements:

- The Respondent receives notice of the complaint and is given an opportunity to respond.
- The Respondent is made aware of the Complainant’s name. I do, however, redact personal information such as personal phone numbers and personal email addresses.
- The Complainant receives any written response of the Respondent and is given an opportunity to reply.
- The Respondent receives the Complainant’s reply, if any.

The Complainant expressly asked “that this matter not become part of an election issue given the sensitive timing.” This was a reasonable request and I agreed. I paused just under two weeks, with the result that any exchange of submissions would have occurred after the October 22 election.

As it happened, however, the Respondent (as is his right) chose not to submit a written response at all. After giving the Respondent a full opportunity to write back to me, I contacted him by telephone to ascertain his position. I also spoke to the Complainant by telephone in order to understand her position better.

While the Complainant hoped that this investigation report would be presented before the start of the the new term of Council, the timing was such that the investigation-reporting process was not completed until December.

### **Positions of the Parties**

The following is a brief summary of the positions of the parties. In my deliberations, I have taken into account everything communicated to me, not just what appears in the summary below.

#### *Complainant’s Position*

The Complainant points out that there is only one Treasurer so it was clear to the public who was being discussed. The Complaint feels that her professional credibility and reputation were harmed by the Respondent’s comments.

The Complainant also explains that the role and duties of a municipal Treasurer are set out in legislation; she feels it is misleading and unfair to attack a Treasurer for performing what are her statutory functions.

The implication that the Treasurer is not performing her duties is false as she continues to apply the legislation and uphold her duties

#### *Respondent’s Position*

The Respondent feels he was not attacking anybody. He was outlining his campaign platform, including the changes that he felt needed to be made. Everything he said was factual.

He points out that his comments were made during an election campaign, and that candidates need to be free to explain how they would do things differently – even if this means being critical of how things were done in past.

The Respondent believes that he complied with the Code of Conduct.

### **Analysis and Findings**

***Did the Respondent breach paragraph 6 of the Code by publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility?***

No.

Horton is a democracy. Council Members are elected to office. The democratic nature of the office means that Council Members have political and representational roles in addition to their legislative (law-making) role. The Courts have confirmed that municipal councillors have hybrid political and legislative functions,<sup>5</sup> that they are representatives of the communities that elect them,<sup>6</sup> and that members of the public have the right to address their municipal representatives on issues of concern.<sup>7</sup> The *Municipal Act* confirms that a role of the Council is “to represent the public.”<sup>8</sup>

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>9</sup> Some of those views may involve a change in law or a change in direction. Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>10</sup>

The above are the rights and roles of a Council Member at all times, but in this case the Respondent was not only a Council Member, he was a candidate for office campaigning for election. In our democracy, candidates have the right to advocate positions and to defend their views. Sometimes the positions and views of candidates challenge the

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<sup>5</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170 at 1196.

<sup>6</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 5, at 1193.

<sup>7</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 5, at 1193-4.

<sup>8</sup> *Municipal Act*, clause 224(a).

<sup>9</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto*, note 6.

<sup>10</sup> *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

status quo. In a democracy, candidates, indeed, all people, have every right to challenge the status quo.

A sitting Council Member possesses the same right to call for change to the status quo. As the Courts have confirmed, it is a legitimate role of municipal councillors to propose, to advocate and to seek to effect changes to by-laws, policies and processes. Consequently, the Code of Conduct does not prevent a Council Member from explaining or defending the view that a by-law (such as the salary increase by-law) or a process (such as the current decision-making process) ought to be changed.

Take, for example, the allegation that the Respondent stated that three senior staff members possess too much power. If he said this then it was an opinion that he was entitled to express both as a municipal councillor and as a candidate for office. It is not for an Integrity Commissioner to determine whether an opinion is sound. It is not the place of an Integrity Commissioner to regulate the expression of political opinions: not at any time, but certainly not during an election. The health of a democracy depends on the free exchange of views.

As the news story indicates, the major issues in the election campaign included taxes and Council salaries. The Respondent's positions on these issues put him at odds with recommendations previously contained in staff reports. Disagreeing with a staff recommendation and explaining the reason for disagreement do not amount to a contravention of the Code of Conduct. Otherwise nobody would ever be able to disagree with a staff recommendation. What the Respondent was doing was exercising the democratic right to dissent and to explain why.

Any comments made about the Treasurer were part of a larger campaign narrative related to the Respondent's call for changes to how the Township was operating and being governed. The fact that the news story does not even mention the Treasurer is further indication that any references were incidental to a larger narrative.

As Integrity Commissioner, I am reluctant to second-guess the narratives (messages) of candidates standing for election, even candidates who are currently serving as Members of Council. Indeed, I do not believe that when it enacted By-law No. 2015-53 the Council intended to give an Integrity Commissioner the power to interfere with the campaign communications of candidates in an election.

As I interpret the Code of Conduct, the Code does not apply in a way that would interfere with political communications by candidates for office. The Code must be interpreted in a manner consistent with democratic rights: the right of politicians to express their views and the right of members of the public to hear those views.

I find that the Respondent was in compliance with the Code.

### **Recommendation**

I recommend that the Council receive this report which finds no contravention of the Code of Conduct (section 12 of By-law No. 2015-53).

### **Complainant**

The *Municipal Act* provides that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. I have determined that it is necessary for the report to identify the Complainant. The report would not be understandable otherwise.

Nothing in this report is meant to call into question the professionalism or the performance of the Complainant. I find that she came forward in good faith and that she is motivated by a sense of professionalism and a desire to discharge her statutory obligations.

My finding that the Respondent complied with the Code is not a comment on the Complainant.

### **Cost of this Investigation**

The total cost to the Township of the investigation and report, not including HST, is as follows:

Hours:	2.9 @ \$300/hour
Total:	\$870

Respectfully submitted,



Guy Giorno  
Integrity Commissioner  
Township of Horton

December 31, 2018