



EWART

O'DWYER

Barristers and Solicitors

THE CORPORATION OF THE TOWNSHIP OF STIRLING-RAWDON

TO: Kathy Pearl, Clerk

AND TO: Municipal Council

DATE: October 21, 2020

SUBJECT: Behaviour of Council Member – Regular Meeting of Municipal Council – May 1, 2019

PURPOSE:

This is a report to the Municipal Council for the Corporation of the Municipality of Stirling-Rawdon on the Municipal Integrity Commissioner's finding with respect to the conduct of a Member of Council during regular and closed meetings of Municipal Council for the period of March 2019 to May 10, 2019, and subsequently up to and including August 12, 2019.

This report was first presented to Council for the Corporation of the Township of Stirling-Rawdon on October 15, 2019. It was presented as a draft report at which time the Respondent was invited to respond to the findings of the report.

The Respondent did provide responding materials over the period of October 15 to December 2, 2019 which consisted of a 48 page response together with numerous scanned documents.

I have carefully reviewed the materials provided and in doing so have prepared what is my final reporting arising from the complaints received of May 1, 2019. I have given particular regard to the comments contained in the response provided by the Member of Council.

PROCESS:

In preparation of this report, I have interviewed the Complainants and the Member of Council. I have interviewed members of the municipal senior staff. I have also interviewed members of the public who had contacted me directly with respect to this matter.

In addition, I have reviewed the chronology of events as provided by the Complainants, and the various Minutes of meetings of Council up to May 10, 2019 and subsequently up to and including August 12, 2019.

I have reviewed the complaints received both in the context of the Municipal Code of Conduct for the Township, being By-law 1272-19 and the relevant sections of the *Municipal Act*, 2001. Where necessary I have conducted a review of the Procedural By-law for the Municipality.

I have received full cooperation from the Complainants, the Member of Council, municipal senior staff and those members of the public who were interviewed with respect to this inquiry.

It was expected that this final report would be delivered in early 2020. However, the COVID-19 pandemic has prevented this report from presented in person until now.

BACKGROUND:

I was appointed by the Municipal Council for the Corporation of the Township of Stirling-Rawdon to serve as Integrity Commissioner pursuant to a By-law passed April 1, 2019.

This inquiry focuses on the behaviour of a Member of Council during regular and closed sessions of Municipal Council during the period of March 2019 to May 2019.

As a result of the conduct of the Member of Council, formal complaints were received by the Municipality dated May 10, 2019, with respect to alleged contraventions by the Respondent of the Municipal Code of Conduct.

For the purposes of this report, the term Respondent is used interchangeably meaning the Member of Council.

LEGISLATIVE PROVISIONS:

A Municipal Integrity Commissioner is appointed by Council under Section 223.3(1) of the *Municipal Act*, 2001, as amended with the following responsibilities:

Without limiting Sections 9, 10, or 11, those Sections authorize the Municipality to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by the Municipality with respect to:

- (a) The application of the Code of Conduct for Members of Council and the Code of Conduct for members of local boards, or either of them;
- b) The application of any procedures, rules and policies of the Municipality and local boards governing the ethical behavior of Members of Council and of local boards or either of them, or;
- c) Both of clauses a) and b).

MUNICIPAL INTEGRITY COMMISSIONER INVESTIGATION PROTOCOL:

The Township of Stirling-Rawdon does currently have an Integrity Commissioner investigation protocol. The Municipal Integrity Commissioner protocol would serve to outline the protocol to be adopted by the Integrity Commissioner for the Township dealing with complaints within the jurisdiction of the Township. Accordingly, it be a recommendation arising from this investigation that the Township adopt a more defined Integrity Commissioner investigation protocol. This could be adopted by way of a policy in the Code of Conduct, which could read as follows:

Pursuant to Section 223.3(1) of the *Municipal Act*, 2001, the Corporation of the Township of Stirling-Rawdon shall appoint an Integrity Commissioner who reports to Council and who is responsible for performing the following duties in an independent and consistent manner, which includes complaint investigation, complaint adjudication, and annual reporting. Individuals who identify or witness behaviour and activity by Members of Council who appear to be in contravention of the Code of Conduct may address their concerns through a formal complaint process.

In the case at hand, it is noted that a formal complaint intake form is currently being used by the Municipality to deal with issues including that of alleged contraventions of the Code of Conduct for Members of Council. However, as set out above, a specific complaint form setting out specific sections with respect to matters involving Code of Conduct for Members of Council should be adopted.

Notwithstanding the absence of an investigation protocol, I receive my jurisdiction to investigate the issues in this report by virtue of Section 223.3(1) of the *Municipal Act*, 2001.

THE ROLE OF THE INTEGRITY COMMISSIONER IN ASSESSING A COMPLAINT:

The role of the Integrity Commissioner is to determine whether or not there is sufficient information or evidence to support and substantiate the allegations made in the complaint. That determination is made on an evidentiary standard of the “balance of probabilities”, that is whether it is more likely than not that the complaint in each scenario is contrary to the provisions of the Code of Conduct, the *Municipal Act*, 2001, and/or other applicable legislation. In order to ensure fair and credible process, the Municipal Integrity Commissioner must also:

1. Act as an impartial, unbiased third party;
2. Maintain the integrity and confidentiality of the process, to the extent possible;
3. Interview the complainant, the Respondents, and the primary witnesses;
4. Collect and review the evidence;
5. Assess the issue of credibility;
6. Determine whether further witnesses should be interviewed;
7. Determine whether additional evidence or interviews are required;
8. Transmit the final report to the complainant and to the Municipality setting out the findings and conclusions with respect to the allegations.

NATURE OF THE COMPLAINT:

It is alleged by the Complainants that the Member of Council, during regular and closed sessions of Council, engaged in conduct contrary to the Municipal Code of Conduct being By-law 1272-19.

Specifically, it is alleged that the Member of Council contravened the following sections of the Municipal Code of Conduct:

Standards of Conduct

- (1) Members of Council and Local Boards shall at all times seek to advance the common good of the community they serve.
- (3) Members of Council and Local Boards shall refrain from behaviour that could constitute an act of disorder or misbehaviour. Specifically, Members of Council and Local Boards shall refrain from conduct that:
 - (b) Is in an abuse of power or otherwise amounts to discrimination, intimidation, harassment, verbal abuse, or the adverse treatment of others.

Conduct to be Observed – Adherence to Policies and Procedures

Every Member of Council or Local Board shall observe and strictly comply with every provision of the Code of Conduct as well as all other policies and procedures adopted or established by Council effecting the Member, whether or not acting in his or her capacity as a Member of Council or Local Board.

Release of Information

Members of Council and Local Boards acknowledge that official information related to the decisions and resolutions made by Council will normally be communicated to constituents, the community, and the media by Council as a whole, or the Mayor as head of Council, or by those designated.

Fostering Respect for the Decision Making Process

All Members of Council and Local Boards shall accurately and adequately communicate the attitudes and decisions of Council even if they disagree with Council's decision, such that respect for the decision making process is fostered.

Conduct Respecting Others

- (a) Every Member has a duty and responsibility to treat all members, staff, and members of the public appropriately, courteously, and to ensure that the work environment is free from discrimination and harassment.
- (c) No Member shall:
 - (iii) harass, abuse, bully, threaten, or intimidate any other member of staff or member of the public.

Conduct Respecting Staff

- (a) Members of Council and Local Boards acknowledge that only Council as a whole has the capacity to direct staff to carry out specific tasks or functions.
- (b) Members of Council and Local Boards shall refrain from using their position to improperly influence staff and their duties and functions or to gain an advantage for themselves or others.
- (c) Members of Council and Local Boards shall refrain from publically criticising staff in a way that casts aspersions on their professional confidence and credibility.
- (e) Council, Local Boards, and their members shall not comment publically on the performance of any individual member of staff.
- (f) In addition to the foregoing, Members of Council shall observe and strictly comply with the Council/Staff relations policy of the Township.

Conflict of Interest

- (c) A conflict of interest exists where an individual is, could be, or could appear to be influenced by personal interest, financial (pecuniary or otherwise), in carrying out his or her public duty. Personal interest can include direct or indirect pecuniary interest, bias, prejudgment, closed mindedness, or undue influence.

MUNICIPAL CODE OF CONDUCT:

The Corporation of the Township of Stirling-Rawdon adopted a Code of Conduct pursuant to the provisions of the *Municipal Act*, 2001.

The Code of Conduct applies to all members of Municipal Council.

The preamble of the Code of Conduct further identifies the standard by which Council Members are to be held and the expectation of conduct which is to be of “a higher standard of behaviour”.

CONFIDENTIALITY:

The Township of Stirling-Rawdon is not a large Municipality and therefore providing excerpts from witness interviews runs the risk of identifying individuals who cooperated with the Code complaint investigation. As a statutory safeguard to ensure protection from disclosure of the names of those who speak with the Integrity Commissioner during the course of an investigation, Section 223.5(1) of the *Municipal Act*, 2001, sets out the Integrity Commissioner’s duty of confidentiality. This section requires that:

“The Commissioner and every person acting under the instructions of the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this part”.

It is important to state the requirement of confidentiality in order to provide the necessary context to the complaints which form the subject of this inquiry.

INVESTIGATION:

In conducting the inquiry into allegations of the contravention of the Municipal Code of Conduct, and the identified contraventions, the writer on several occasions questioned whether the allegations stemmed from the Respondent’s lack of understanding and experience, or if the actions of the Respondent was a deliberate attempt on behalf of the Council Member not to abide by both the procedural by-law and the Municipal Code of Conduct for the Municipality.

In speaking with several witnesses in the course of the inquiry including the Respondent and upon a review of the responding materials provided by the Member, items such as compliance with time frames to deliberate items, an understanding and knowledge of agenda items, unwillingness to participate in voting, and a desire to revisit items which had been previously

deliberated upon, suggested either inexperience or lack of understanding of basic principles of local governance on behalf of the Respondent.

In any event, whatever the reason for such incidents as set out above, this has led to a great deal of concern and frustration being expressed by other Members of Council as well as senior staff with respect to the conduct of the Respondent. The Respondent has expressed similar concerns in terms of the conduct of others towards the Member.

While I have no doubt that the Member of Council has a genuine concern with respect to matters coming before Council, the conduct of the Respondent has resulted in not only the filing of the within complaint as against the Member of Council, but the expenditure of time by Council as a whole and senior municipal staff in dealing with issues involving the Respondent during the past several months.

In carrying out this inquiry and upon speaking with identified witnesses, numerous issues were identified as being areas of concern involving the conduct of the Respondent.

CONCERN 1: *Standards of Conduct*

With respect to this particular concern, it is alleged that the Member of Council has failed to adhere to the standards of conduct expected of a Member of Council.

While the examples provided were numerous, the one that is illustrative of the issues involved in this matter is the apparent unwillingness of the Member of Council to deal with issues in an expeditious and efficient manner. A common criticism of the Respondent was that a great deal of time has been “wasted” on dealing with issues of apparent singular importance to the Member of Council only to have the issue raised again at a later date at the insistence of the Respondent.

Such conduct has resulted in comments that the Member of Council had effectively “hijacked” discussions and thereby hindered the deliberation of issues of wider municipal importance and which could have been disposed of in an expeditious manner.

Furthermore, the actions of the Respondent has resulted in senior staff spending inordinate time and resources providing information, much of which was previously supplied, to the Respondent. This has served to reduce the amount of time available to staff to deal with other municipal matters.

In response to the draft findings relating to Concern 1, the Member of Council denies having repeatedly raised issues that had been considered by Municipal Council. The Member of Council states that the reason why issues need to be revisited is due to the failure on the part of the other Members of Council and staff to provide answers to questions raised by the Member. To this end, the Member has cited several examples in the responding materials provided by the Member.

The Member has further indicated that as a Member of Council the Member has a right to receive public information and answers to questions.

As a general principle the Member is correct. Those who are elected to govern must be fully informed and be able to acquire the information required and to make sound decisions in the best interests of the public. However, what is issue is the manner by which the Member attempts to seek the information which is of concern to other Members of Council and staff. Based on the complaints received and the response of the Member of Council, there is clearly a difference of view as to how information is being provided to the Member.

What is clear however, is that the attempts by the Member to seek answers to matters which have been previously dealt with by Council during the conduct of a council meeting resulted in a level of acrimony between the Member and other Members of Council and senior staff which is both disappointing and concerning to the writer.

In speaking with the Respondent on this particular issue, it was the suggestion that the Member of Council review the agenda which is circulated days in advance of any regular scheduled meeting of Council. In doing so, any information required could then be requested of either the Clerk or the Chief Administrative Officer resulting in the Member of Council participating in an informed and directed manner.

What is required is a means of ensuring that Council move forward with matters which are identified in Council agenda's which at the same time affords the Member the means to obtain any requested information. This however has not occurred during those Council meetings which were identified and formed the basis of Concern No. 1.

However, the conduct of the Respondent to be informed of agenda items and the failure to advance issues of wider municipal concern rather than singular issues of interest only to the Respondent which has led to the original complaint is conduct which falls below the standard expected of a Member of Council.

CONCERN 2: Conduct to be Observed – Adherence to Policies and Procedures

With respect to this concern, the crux of the complaint is the apparent unwillingness of the Respondent to respect policies and procedures as forth in the municipal procedure by-law and inherent in local governance.

Specifically it is alleged that the Respondent has attempted on many occasions to introduce topics which were the subject of deliberation, and once disposed of, has attempted to re-introduce the topic. This action was identified as a major source of frustration by other Members of Council and senior staff.

Of further concern to the Complainants was the repeated questioning by the Respondent of what actually transpired during Council deliberations resulting in a failure to vote on items or to challenge the accuracy of what had been recorded by the Clerk.

As with Concern 2, the responding Member of Council has provided a lengthy response to this particular concern and as with Concern No. 1, the Member does not agree with the initial findings surrounding this particular concern.

In speaking with the Respondent, a concern was expressed that the Member of Council was not allotted an equal amount of time to either raise or express concerns of topics coming before Municipal Council.

In reviewing the response of the Member with respect to issues such as the environment, there is no doubt that the Member is passionate about such issues which the Member seeks to advance as topics of Council discussion.

The basis of the complaint on this particular issue is not the subject matter but the manner by which the Member accepts or does not accept decisions or directions of Council.

The Member is entitled to the views and issues which are of primary importance to the Member. However, once the issues are deliberated upon, the vote of Council must be respected and adhered to.

In response to the concerns set out above, a simple remedy would be to ensure that each Member of Council adheres to his or her allotted time in accordance with the municipal procedural by-law or as otherwise directed by the Head of Council.

It is, however, imperative that each Member of Council respect the direction of the Head of Council and accept the decision of council once such a decision has been made. This would preclude any attempt by Members of Council to re-introduce topics which had been previously disposed of or the introduction of new topics without proper notice or compliance with municipal procedure.

With respect to the accuracy of the record of Council deliberations, I will address this issue later in the report. A remedy to this concern, however, would be to record (audio only) Council proceedings, not for public dissemination, but as an aid to the Respondent in determining the accuracy of what is ultimately reflected in the official minutes of Council proceedings. Audio recording of Council proceedings for the reason set out above will form a recommendation of this report to Council.

The Respondent has urged me to exonerate the Member in regard to this particular concern. Based on a review of materials provided, I am prepared to amend my draft report to find that the Respondent has attempted to comply with the policies and procedures of Municipal Council. This at times has resulted in the concern that the Respondent has failed to adhere to policies and

procedures for the Municipality. Based on submissions received, there were identified several examples which support the initial complaint raised in this matter.

I do note however that the difficulty experienced by the Respondent in seeking information which is of importance to the Member does serve to at times put the Member in conflict with the Township's policies and procedures. Furthermore, I note that the Member does appear to have an understanding of the policies and procedures of Council which is of paramount importance.

With respect to this particular concern, it remains my finding that the conduct of the Respondent as it relates to the original complaint has demonstrated a failure to adhere to the policies and procedures of the Municipal Council for the Township of Stirling-Rawdon and that attempts to re-visit items which had been the subject of prior deliberation without compliance to the procedural By-law or the direction of the Head of Council is a contravention of the Code of Conduct.

In arriving at this finding, I do note the difficulties experienced by the Respondent in having a voice at Council and the frustration which the Member has experienced up to and including August 12, 2019.

CONCERN 3: Release of Information

The concern with respect to this allegation is the Respondent's use of social media to disseminate the Member's views with regard to Council's decisions. When speaking with the Respondent it was the position of the Member that deliberations of open meetings of Council are public information of which the Member is entitled to discuss on social media forums.

While this position is fundamentally correct, information posted on social media should be devoid of criticism of Council's collective decision or as an attempt to revisit issues which were the subject of Council's deliberation and decision. In this regard the issue of release of information ties in with the complaint that the Respondent has behaved in a manner which fails to foster respect for the decision making process.

In response to the draft report the Member of Council recognized that this was an area of concern. While not admitting to any contravention of the Code of Conduct, the Member did concede that this was an issue that came "close to breaking procedural by-laws". In doing so, the Member provided examples of where the Member believed that the use of social media was necessary to offset the behaviour of the other Members of Council.

As the examples provided by the Member do not constitute the basis of the initial complaint, I cannot take these examples into consideration when arriving at my findings. Furthermore, the examples provided were more of a justification for the actions of the Member rather than an acknowledgement of the need not to disseminate personal views regarding Council decisions.

With respect to this specific concern it remains my finding that the Member did not engage in the release of information as specifically contemplated and prohibited by the Municipal Code of Conduct. Despite this finding the Member is advised of by the obligation not to engage in behaviour which fails to foster respect for the decision making process which conduct would include the use of social media critical of Council's decisions.

CONCERN 4: *Fostering Respect for the Decision Making Process*

A further concern raised by the Complainants is the reoccurring challenge by the Respondent of the proceedings of Council and the accuracy of what was stated and recorded in the Minutes of the Council meeting. In speaking with the Respondent, this issue may be the lack of understanding on behalf of the Member as to the role of the Clerk in the taking of the minutes as required by the *Municipal Act, 2001*.

In subsequent submissions, the Respondent has identified that the actions of the Member is the result of errors in the minutes of Council or the need for additional information to confirm the accuracy of the minutes. In the example provided this would have required Council to defer the approving of the minutes of Council to consult with a chair of a municipal sub-committee. This proposal is contrary to the *Municipal Act, 2001*.

As stated earlier, this issue could be resolved by the Municipality adopting a policy of recording the proceedings of Council as identified above but only for the purposes of preparing the official Minutes of Council and for the benefit of Members of Council and senior staff.

Municipal decision making involves identifying and isolating relevant facts. Once agreement is reached on what the relevant facts are, consideration is to be given to establishing and recognizing the objectives to be met in dealing with them. In some cases it is necessary to confirm that the Municipality has the power and jurisdiction to deal with the matter. Once a decision is made by Council acting within its jurisdiction, individual Members should not engage in any form of commentary which would serve to question the reasonableness of the decision reached. To participate in any such conduct is contrary to Section 5 of the Municipal Code of Conduct being By-law 1272-19.

CONCERN 5: *Conduct Respecting Others*

CONCERN 6: *Conduct Respecting Staff*

It should be evident to any reader of By-law 1272-19 that one of the key objectives of the Municipal Code of Conduct is to require that Members of Council behave in a manner that brings respect and honour to both the office and the Municipality and in doing so, advances the well-being of the Municipality. Accordingly, I have chosen to address these two concerns as one concern.

This ideal is set out in By-law 1272-19 in Section A which identifies one of the purposes of the Municipal Code of Conduct as requiring all Members of Council to act in a way that enhances public confidence in local government. One key indicator that such behaviour is being adhered to is by the respect shown by Members of Council to their colleagues and municipal staff.

It is noted that when investigating this particular complaint as against the Respondent, strong feelings were expressed by both the Respondent and the Complainants. For example, the Respondent was of the opinion that the Member was not being treated with respect by other Members of Council or senior staff by being limited in the time afforded to the Respondent to raise issues and to participate in deliberations.

On the other hand, it was the opinion of the Complainants that ample time has always been afforded to the Respondent and the actions of the Respondent in attempting to revisit agenda items, introduce items not on the agenda, requesting a recorded vote on non-contentious issues, and failing to vote on agenda items has resulted in frustration on behalf of the other Members of Council.

Furthermore, as identified earlier, other Members of Council and staff have expressed frustration and concern with the Respondent when the Member seeks information involving matters which have been the subject of earlier deliberation and decision. The result being the unnecessary expenditure of time and resources by Municipal Council and staff. Two examples cited by several parties interviewed were the staffing of a tree committee for the Municipality and the purchase of a new plow truck by the Public Works Department. In reviewing these two particular issues, neither issue should have been contentious but were made so by the conduct of the Respondent.

In the subsequent response provided by the Member, the Member has provided what can only be described as a vehement denial of having participated in any conduct which is contrary to the Municipal Code of Conduct. In reviewing the response provided with respect to Concerns 5 and 6, the Member identified certain actions of the other Members of Council and staff rather than an explanation of how the actions of the Member did not contravene the Municipal Code of Conduct.

In short, more succinct and focused response would have been of more probative value than what has been submitted as it relates to Concerns 5 and 6.

Members of Municipal Councils are expected to represent their constituents and participate in the operation and management of the municipal administration. However, it is important that all Members of Council be familiar with the policies of the Municipality already developed by the Council and previous Councils based on the experience of municipal practice over time.

Council must rely upon staff to implement its policy decisions but it is Council itself which decides upon the degree of centralization and direct control over the administration of the Municipality.

In terms of communication with staff and the implementation of policies and decision, the principle role is fulfilled by the senior officers and employees of the Municipal Corporation particularly the Chief Administrative Officer, the Clerk, the Treasurer and other officers who serve as resources to council as principle advisors with respect to the general direction of the Municipality.

In the case at hand, the Township of Stirling-Rawdon has the benefit of having both a majority of experienced Council Members and a highly experienced and knowledgeable staff to assist Council in the implementation of municipal policies. To this end it will be the recommendation of this report that the Respondent recognize the experience that exists both amongst Council and staff and to make use of such experience in order to better understand how the Municipality functions. In turn Council and staff will no doubt reciprocate with the respect that the Respondent suggests is lacking but of which the Respondent must bear some responsibility.

Accordingly with respect to this concern, it remains my finding that the Respondent has fallen below the standard contemplated by the Municipal Code of Conduct when dealing respectfully with other Members of Council and Municipal staff. It may be the case that the Respondent did not intend to be disrespectful of Council and staff, it is such conduct that the Municipal Code of Conduct attempts to regulate.

CONCERN 7: *Conflict of Interest*

Section 11 of the Municipal Code of Conduct, By-law 1271-19, adopted by the Township of Stirling-Rawdon specifically provides that it is the responsibility of each Member of Council to avoid any conflicts of interest as identified in the *Municipal Conflict of Interest Act*.

The Code of Conduct goes further to identify that a conflict of interest exists when the Member is influenced by personal interests which may include pecuniary interests but would also include a bias, pre-judgment, or a close-mindedness. This is obviously a very subjective standard when dealing with allegations of bias.

A common theme in the complaints received was that the Respondent engaged in conduct which could be classified as a conflict of interest particularly when dealing with what could be generally termed as environmental matters.

Specifically, the allegation centered on the Respondent attempting to advance matters of a personal interest to the Member rather than to the Municipality as a whole. This has led to an inordinate amount of Council's time dealing with matters that Council has either dealt with or

has no interest in pursuing collectively. The allegation that the Respondent has failed to accept the decision of Council due to strong personal beliefs has resulted in frustration on behalf of the other Members of Council and senior staff. Furthermore, it is alleged that the unwillingness of the Respondent to accept the decisions of Council as a whole is due to an identified bias on the part of the Respondent when dealing with items which may be classified as environmental issues resulting in pre-judgment or close-mindedness. For example, it was cited by one of the Complainants that the Respondent has not voted in favour of any development requiring a severance of land due to concerns of impact on the environment. Such reluctance, it is alleged, is due to the personal beliefs of the Respondent rather than a decision based on planning merits. Another example of the Respondent putting personal beliefs before the collective interests of the Municipality was with respect to the removal of trees within the Municipality.

In speaking with the Respondent on these particular issues, the Member did confirm a strong belief in environmental issues such as preserving trees and plants within the Municipality and larger issues such as climate change. It was with respect to these particular issues that the Respondent was of the opinion that not enough time was allotted to the Member to express such concerns notwithstanding the fact that the issues may have been the subject of earlier Council decisions.

I did not receive any further submissions from the Respondent with respect to this particular concern. However, in the submissions received from the Respondent, the Member did on a number of occasions indicate a deep, felt concern for the environment and "the values of clean air, water, land and land stability and habitat protection".

In any event, with respect to this particular concern I am unable to find that the Respondent breached the Municipal Code of Conduct as I accept that the Respondent was acting in a manner which the Respondent honestly believed to be in the interests of the Municipality.

Despite such finding, it would be in the interest of the Respondent to fully review and understand Section 11 of the Municipal Code of Conduct when presenting items which are of singular interest to the Member of Council and which, in turn, could serve to create a bias or pre-judgment of issues on behalf of the Respondent.

A Member of Council must not use a position of office to advance issues which are of singular interest to the Member and continue to advance such issues contrary to Council's decision on such issues.

Furthermore, a Member of Council must accept the decision of Council as a whole and not continue in attempts to have the matters repeatedly come back before Council with a view to obtaining an alternative decision. To engage in such behaviour is to disregard the policies and procedures of the Municipality and is disrespectful to Council as a whole.

ANALYSIS:

When making decisions on acceptable conduct, it is necessary to keep in mind that Members of Council are required to comply with the Code of Conduct adopted by the Township. These rules provide Council with a reference guide and a supplement to the legislative parameters within which they must operate. When evaluating the integrity and ethical conduct of a Member of Council, the role of an Integrity Commissioner is to apply the rules of the Code of Conduct to the facts gathered throughout the inquiry and make a determination as to whether there has been a breach of the Code of Conduct.

The Municipal Code of Conduct passed by the Township of Stirling-Rawdon sets out in its preamble that elected officials of the Municipality have recognized their obligation to not only obey the law but to go beyond the minimum standards of behaviour and act in a manner that is of the highest ideals so that their conduct will bear the closest public scrutiny.

Furthermore, to be a Member of Municipal Council is a position of honour and privilege. All Members are obliged to comport themselves in such a way that brings respect and honour to both the office and the Municipality. In doing so, Members of Council must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community as a whole and have high regard for the integrity and presence of a Corporation. Any behaviour which falls short of that obligation would need to be the subject of sanction. Accordingly, I have set out below a summary of findings with respect to the Concerns raised by the Complainants.

CONCERN 1: Standards of Conduct

With respect to this concern, it is my finding that the Member of Council did fail to adhere to the Standards of Conduct as identified in the Municipal Code of Conduct.

CONCERN 2: Conduct to be Observed – Adherence to Policies and Procedures

With respect to this concern, it is my finding that the conduct of the Member failed to adhere to the policies and procedures as identified in the Municipal Procedural By-law and as required by the Municipal Code of Conduct.

CONCERN 3: Release of Information

With respect to this concern, it remains my finding that the Member of Council did not release information which could be interpreted as a contravention of the Municipal Code of Conduct.

CONCERN 4: Fostering Respect for the Decision Making Process

With respect to this concern, it is my finding that the Member of Council did engage in behaviour which failed to foster respect for the decision making process of Municipal Council as required by the Municipal Code of Conduct.

CONCERN 5: Conduct Respecting Others

CONCERN 6: Conduct Respecting Staff

With respect to Concerns 5 and 6, it is my finding that the Member of Council did engage in conduct which was disrespectful to both Members of Council and Municipal staff.

CONCERN 7: Conflict of Interest

With respect to this concern, it is my finding that the Member of Council did not engage in behaviour which resulted in a conflict of interest as defined in Section 11 of the Municipal Code of Conduct. However, such a finding is subject to the need for the Member to have regard as to the comments set forth with respect to this particular concern.

RECOMMENDATIONS:

I have chosen not to make any recommendations for sanctions or penalties of a financial nature with respect to the breaches of the conduct that I have investigated. In doing so, it should not be taken as leniency or a signal that my findings do not point to significant concerns identified in this report. I do not believe that financial sanctions or penalties are warranted in relation to the complaints or would have any salutary effect.

In determining the appropriate sanctions, I have considered the gravity of the conduct and responsibility for the Member's conduct, as well as the submissions of the parties interviewed.

Furthermore, I do not believe that it is the place of an Integrity Commissioner to interfere or impose sanctions which would serve to stifle political debate. The Supreme Court of Canada has recognized the "interdependence" between democratic governance and freedom of political speech, in particular the freedom to criticize a governing record:

"Such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack, from the freest and fullest analysis and examination from every point of view of political proposals".

In addition I am cognizant of the need to have the Respondent acknowledge the nature of the complaints and the impact that the Member's actions has had both on the other Members of Council and municipal staff. In this regard it is hoped that this report will have the effect of

doing so thereby allowing this Municipal Council to move forward in a harmonious manner for the remaining term of council and in the best interests of the Municipality.

As noted earlier, the responding materials received do indicate an understanding on the part of the Member and of the need for all Members of Council to abide by the Municipal Code of Conduct which Council itself adopted.

Accordingly, I have recommended the following sanctions that are appropriate to the breaches that I have identified in this report.

The Office of the Integrity Commissioner respectfully recommends:

- 1) That Council impose the following sanction:
 - a) A reprimand to the Member of Council, including an admonition to cease to engage in conduct identified in this report as being contrary to the Municipal Code of Conduct, being By-law 1272-19 for the Corporation of the Township of Stirling-Rawdon;
 - b) That the Member review the agenda in advance of council meetings and that any information required by the Member be sought in advance of any such meeting in a respectful manner consistent with the Municipal Code of Conduct.
- 2) That the Member of Council be provided with a copy of this report and that the Member of Council review the Code of Conduct in light of the concerns and findings set forth in this report.
- 3) That the Member of Council review the relevant sections of the *Municipal Act*, 2001, Part VI, which sets out the duties and obligations of both Municipal Council and Members of Council.
- 4) That the Member of Council review the Procedural By-law passed by the Corporation of the Township of Stirling-Rawdon and in particular the relevant sections dealing with the identified procedure of Council.
- 5) That the Municipality adopt a procedure for the audio recording of Council proceedings for the purpose of assisting Members of Council. The audio recordings may also serve to assist the Clerk in the preparation of Minutes of Council. Such recordings are for the purpose of an aid only and do not serve to represent the official minutes as prepared by the Clerk and do not need to be provided to the public. The past seven months have required all Municipalities to adapt to the fact that social distancing is a requisite and in doing so have embraced technology which before March 2020 may not have been a priority. Audio recordings if not video recordings of open session of council meetings have become more common place. Accordingly, the audio recording of council meetings

should not constitute a hardship to the Municipality and a practice that should be continued post COVID-19.

- 6) That the Municipality adopt a formal Code of Conduct investigative protocol with respect to alleged contraventions of the Municipal Code of Conduct.
- 7) That the Integrity Commissioner for the Corporation of the Township of Stirling-Rawdon be available to review with both Council and the Member the implementation of any recommendations imposed in this matter subsequent to the delivery of the within report.

In conclusion, the investigation of the complaints received in this matter was difficult and the development of salient recommendations equally as difficult. What is further troubling is the fact that from the time that this report was first presented in a draft form, issues continue to exist. As this report can only deal with the complaints involving Members up to and including August 12, 2019, the fact that there have been several subsequent complaints to the Integrity Commissioner is to say the least, troubling. It is truly hoped that the release of this report will serve to identify that Council and staff relationships involving the Respondent are still acrimonious and that changes are required on behalf of all involved. A Municipal Councillor is in the position to participate most directly in addressing those issues closest to the citizens affected. The Member lives and works in the community and is expected to be accessible and have views on every issue of municipal business while being in a position to make decisions directly affecting a wide range of issues. The problem arises when a Member becomes focused on singular issues or fails to respect decisions of Council which serve to delay or prevent Council as a whole from serving the public interest.

In general terms the objectives of good and efficient local governance are goals which all Members of Council should strive to obtain individually as Members of Council and collectively as a Municipal Council. It is with this thought in mind that the recommendations set out above are being suggested to Council to adopt and implement in this particular case.

It has been said that the role of a Municipal Councillor is never easy but somehow manages to attract excellent and qualified candidates, most of whom really do hope and intend to serve the public interest, to achieve important goals and improving the community in which they live.

This can only be achieved by adhering to the established protocol and procedure of Council. It was with this objective in mind that the above recommendations are put forwarded.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY M. JOHN EWART ON OCTOBER 21, 2020.


M. JOHN EWART, B.A., M.A. L.L.B., C.S.