



EWART

O'DWYER

Barristers and Solicitors

THE CORPORATION OF THE TOWNSHIP OF STIRLING-RAWDON

TO: Kathy Pearl, Clerk
AND TO: Municipal Council
DATE: April 14, 2022
SUBJECT: Behaviour of Council Member – Planning Committee Meeting of November 9, 2021 and Regular Meeting of Municipal Council – November 15, 2021 and November 16, 2020

COMPLAINT

The Complainant alleges that the Member of Council (the “Respondent”) during three (3) separate public meetings involving another Member of Council behaved in a manner which contravened the Municipal Code of Conduct for the Corporation of the Township of Stirling-Rawdon.

Specifically, it is alleged that the Respondent on three (3) occasions engaged in behaviour towards another Member of Council that served to contravene Section E-3(b) of the Municipal Code of Conduct as adopted by By-law 1273-19 for the Township of Stirling-Rawdon.

The three (3) public meetings have been identified as follows:

- (a) The Planning Committee Meeting – November 9, 2021;
- (b) The regular meeting of Council – November 15, 2021; and
- (c) The regular meeting of Council – November 16, 2020.

It was at these three (3) public meetings that is alleged that the Respondent “lost his temper” resulting in unacceptable behaviour and comments towards another Member of Council and, on November 16, 2020, towards a Member of Public.

NATURE OF COMPLAINT

The Complainant does not disclose any specific allegations as against the Respondent other than that the Respondent was “out of control” and that the behaviour displayed by the Respondent had been “going on for a long time and has now reached a point of no return”.

Other than reference to Section E-3(b) of the Municipal Code of Conduct, reference was made to the existence of Face Book recordings of the three (3) meetings referenced in the complaint.

For the purposes of this inquiry, I have reviewed the Face Book recordings of the following meetings:

- (a) The Planning Committee meeting of November 9, 2021; and
- (b) The regular meeting of Council of November 15, 2021.

For reasons which I will address in this report, I did not view the recording of the Council meeting of November 16, 2020.

BACKGROUND

The complaint filed in this matter was dated November 18, 2021 and was assigned our File No. 2039-010 for the Township of Stirling-Rawdon.

The Complainant relies upon Section E-3(b) of the Municipal Code of Conduct as adopted by By-law No. 1273-19.

The Complainant while providing reference to Section E-3(b) further alleges that the behaviour displayed by the Respondent during three (3) public meetings referenced above, constitute a “abuse of power or otherwise amounts to a discrimination, intimidation, harassment, verbal abuse”.

PROCESS FOLLOWED

In operating under the Code, I generally follow a process that is intended to ensure fairness to both the individual bringing the complaint (the “Complainant”) and the Member of Council responding to the complaint (the “Respondent”). In this case, the usual process has been truncated because of the fact that the evidence to be relied upon are the subject of Face Book recordings of which any Member of the Public can access.

In order to understand the complete nature of the complaint, an interview was conducted with the Complainant.

In turn, an interview was conducted with the Respondent wherein the Respondent was provided an opportunity to respond to the allegations.

Prior to speaking with the Respondent, a review of the Face Book recordings of the Planning Committee meeting of November 9, 2021 and the regular meeting of Council dated November 15, 2021 was undertaken.

In speaking with both the Complainant and the Respondent, I advised the parties that the inquiry was to move forward to the next step. I asked both the Complainant and the Respondent to be as specific as possible in regards to the allegations put forward.

In coming to the conclusions in this report, I have considered the submissions of both parties as well as the recordings of the live meetings which served to capture the basis of the complaint as against the Respondent.

As noted, a review of both the November 9 and 15, 2021 public meetings were reviewed by the writer twice in their entirety. The approximate timing of the events which the writer understands to form the basis of the complaints as against the Respondent have been identified.

POSITION OF THE PARTIES

A. COMPLAINANT'S POSITION:

The Complainant relies on Section E-3(b) of the Municipal Code of Conduct for Members of Council and Local Boards of the Township of Stirling-Rawdon.

Section E-3(b) provides *inter alia* as follows:

1. 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 an abuse of power otherwise amounts to discrimination, intimidation, harassment, verbal abuse or the adverse treatment of others.

The Complainant's concerns falls under Section E-3(b) of the Code of Conduct.

While the complaint form contains minimum information, the reference to the Face Book recordings of the Council Meeting and Planning Meeting serve to identify the Complainant's position.

The Complainant alleges that the Respondent displayed a "lack of control of temper" which was disrespectful of another Member of Council. Furthermore, both at the November 9, 2021 Planning Committee meeting and November 15, 2021 meeting of Council, the Respondent had "lost his temper" and was "rude" to the Member of Council during deliberation of an agenda item.

According to the Complainant, the behaviour displayed by the Respondent during the November 9, 2021 Planning Committee meeting and the November 15, 2021 regular meeting of Council, had been in "existence for a couple of years" and "something must be done to stop the Respondent's behaviour".

B. RESPONDENT'S POSITION:

In speaking with the Respondent, the Respondent acknowledged a degree of frustration with respect to the proceedings of the November 9 and November 15, 2021 meetings, but does not believe that he behaved in a manner which was contrary to the provisions of Code of Conduct and in particular Section E-3(b).

Furthermore, the Respondent advised that the events of November 9 and 15, 2021, was a continuation of a pattern that was particularly difficult to manage.

Notwithstanding such statements, it is important to state that the behaviour of the Member of Council is not the subject of the complaint or of this inquiry.

FINDING OF FACT

In coming to the conclusion reached in this matter, I have relied primarily upon the video recordings of the November 9, 2021 Planning Committee meeting and the November 15, 2021 regular meeting of Council.

As noted, both meetings were reviewed in their entirety twice, once before speaking with the Complainant and Respondent and subsequent to my telephone interview with both parties.

ISSUES & ANALYSIS

I have considered the following issues:

- (a) Did the Respondent contravene the Municipal Code of Conduct for the Township of Stirling-Rawdon; and
- (b) What action should be recommended to Council.

In addressing these two (2) issues, I intend to review each of the public meetings which have been identified to myself in which it is alleged that the Respondent contravened the Municipal Code of Conduct, specifically Section E-3(b).

NOVEMBER 9, 2021 – PLANNING COMMITTEE MEETING

The meeting of November 9, 2021 was a Planning Committee meeting in which all Members of Municipal Council sit as members.

During the course of the meeting at approximately 29:29 mark, a recess was called for by the chair of the Committee.

Proceedings recommenced at approximately 55:13 mark with no further adjournments or recess.

Prior to the calling of the recess at 29:29, the Committee Chair (“Respondent”) had received questions from another Member of Council which, in the opinion of the Chair were not on point and not relevant to the re-zoning application which was the subject matter before the Committee.

This was explained by the Chair to the Member of Council prior to the recess being called. The Chair (“Respondent”) did ask the Member on two (2) occasions to proceed “quickly”, “that 5 minutes were up”, “that you had your say”, and finally “to stop”. It was at this point that the recess was called.

When the hearing resumed, discussions moved on to other agenda items.

NOVEMBER 15, 2021 – REGULAR MEETING OF COUNCIL

The meeting of November 15, 2021 was a regular meeting of Municipal Council for the Township of Stirling-Rawdon.

At approximately 10:28 mark, an issue arose with respect to delegations and public participation. In doing so, another Member of Council was afforded in excess of 5 minutes to address concerns involving public participation.

At the 16:30 mark, the Respondent left the meeting and returned at 24:12 mark.

Matters proceeded until the issue of re-zoning arose, which had been the subject of the November 9, 2021 Planning Committee meeting.

At 47:42 mark, a Member of Council was allowed to express concerns on the topic of the re-zoning by-law which continued to the 53:52 mark at which point the Respondent stopped the Member’s comments.

The regular meeting adjourned at 1:07:46.

ISSUE “A”

Did the Respondent contravene the Code of Conduct during either of the November 9, 2021 Planning Committee meeting or the November 15, 2021 regular meeting of Council?

Based on my review of the two (2) meetings, it is my finding that the Respondent did not contravene the Code of Conduct at either of the two (2) referenced meetings.

When reviewing both meetings and in particular the November 9, 2021 meeting, it is obvious that the Respondent, admittedly, was frustrated with the proceedings. A review of the video recording demonstrates that another Member of Council was allotted the prescribed time period and that in an attempt to gain control of the meeting, time frames had to be imposed.

A review of the proceedings serve to demonstrate that the issues being raised at the time of the alleged contravention, were not entirely germane to the subject matter either before the Committee or Council resulting in the Respondent having to exercise the powers bestowed upon the Chair.

To find however that the Respondent was “out of control”, I am not prepared to do so, nor does the evidence support such a finding.

Accordingly, it is my finding that the Respondent did not contravene the Municipal Code of Conduct and specifically Sections E-3(b) of the Municipal Code of Conduct.

ACTION RECOMMENDED TO COUNCIL

In light of my finding that no contravention of the Code of Conduct had occurred, it is my recommendation that Council receive this report, but no further steps be taken.

NOVEMBER 16, 2020 – REGULAR MEETING OF COUNCIL

Schedule “A” to the Code of Conduct provides pursuant to Section 3(f), that complaints must be submitted no later six (6) months from the date in which the alleged violations occurred. No action is to be taken on a complaint received after this deadline.

The allegations involving the regular meeting of Council of November 16, 2020 were identified pursuant to a complaint filed November 18, 2021, almost a year after the meeting date of November 16, 2020.

Consequently, the allegations as against the Respondent as it pertains to the meeting of November 16, 2020 are untimely and I have no jurisdiction to consider them.

Pursuant to Section 3(f), Schedule “A” to the Municipal Code of Conduct, the complaint involving the regular meeting of Council of November 16, 2020 are out of time.

SUMMARY

In summary, having dismissed the allegation as against the Respondent, I further note that the issues raised in this complaint have as much to do with procedure as it does the conduct of individual Members of Council.

To this end, Section F(2) of the Code of Conduct serves to identify the conduct expected of a Member of Council, Committee or Local Board.

Section F(2) further states that there is not authority bestowed upon the Integrity Commissioner to conduct matters involving any matter that occurs at a council meeting or a committee of council that is covered by the Township’s Procedural Order.

In the case at hand, both meetings, November 9 and 15, 2021, touched on matters that were procedural in nature but not entirely. It is for this reason that I assumed jurisdiction in this matter and I believe it is appropriate for me to explain my reasons for doing so.

Furthermore, the assumption of jurisdiction allows for the reiteration of the fact that all Members of Council are reminded of the requirements set out in the Code of Conduct to act with civility to each other and to participate in deliberations which serve the overall interest and objectives of the Municipality, without protracted interruptions or delay.

CONTENT

Subsection 223.6.2 of the *Municipal Act, 2001*, states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All of the content of this report is, in my opinion necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY M. JOHN EWART ON APRIL 14, 2022.



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