

To: The Council of the Town of Petrolia
From: Amberley Gavel Limited, Integrity Commissioner
Subject: Complaint under the Town's Code of Conduct
Date: February 12, 2018

Jurisdiction

Amberley Gavel Limited was appointed Integrity Commissioner for the Town of Petrolia on November 14th 2017. This appointment is pursuant to the Municipal Act 2001 which reads in part as follows:

Integrity Commissioner

223.3 (1) Without limiting sections 9, 10 and 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 of either of them;
- (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or
- (c) both of clauses (a) and (b). 2006, c. 32, Sched. A, s. 98.

The Act also requires the Integrity Commissioner to maintain confidentiality during an investigation; subject to the exercise of discretion by the Integrity Commissioner in disclosing such matters as are necessary for the report to council

The Complaint

At that same November 14th 2017 meeting Town Council passed a resolution indicating that a member of council had acted in contravention of the Town's code of conduct and possibly contrary to Bill 168. The Bill 168 reference is assumed to refer to the Occupational Health and Safety Act dealing with workplace harassment.

The complaint was forwarded to our office along with a copy of a letter that had been submitted to council in closed session indicating that a member of council had breached sections 2, 5, 13, and 17 of the code of conduct.

A representative of Amberley Gavel attended the Town offices on November 21st and met with the mayor and members of senior administration to review the complaint

At that meeting the mayor was requested to provide greater detail with respect to the complaint and he did so via email citing twelve specific allegations against Councillor Grant Purdy.

With these allegations in hand, we proceeded to review Council minutes, facebook postings, and newspaper reports, and interviewed every other member of council and senior administration. We also interviewed members of junior staff and the public who had requested that we interview them as part of this investigation. Many were interviewed on more than one occasion, both in person and by telephone.

Following these interviews, we met with Councillor Purdy for a general conversation.

That meeting was followed up with a subsequent meeting prior to which we provided Councillor Purdy with seven specific areas that we wished to review with him. Not all of the matters in the twelve specific allegations fell within the code of conduct.

As Integrity Commissioner we have the authority to rephrase the complaints for the purposes of the investigation and also to dismiss any allegations that we believe are outside of our authority.

The seven specific allegations that were subject of the second meeting with Councillor Purdy were as follows:

1. Identifying himself as a Town Councillor when being publicly critical of a municipal issue in Chatham-Kent
2. Asking a Town supplier and a supplier's employee's spouse to provide information and documentation regarding work done by that supplier and in the process making a comment regarding possible forging of documents by town staff
- 3 Responding publicly with a posting of " feel free to contact me at 519.... " to an incorrect inflammatory facebook post by J. Morningstar regarding an alleged improper act, without first contacting staff, already knowing himself what the likely circumstance was and that an improper act was unlikely to have occurred.
4. Frequently raising issues in the media without raising them first in Council or with appropriate staff, in an apparent attempt to embarrass them.
5. Texting with public gallery member(s) while in Council session
- 6 Possible discussion with a journalist about in camera information from a November 14 2017 meeting
7. Commenting in open Council regarding the need for a "forensic audit" with a view to determining if there is "money laundering" going on at the Town

Responses and Findings

1. Councillor Purdy indicated that this did happen and that he had appropriately apologized in writing to those involved

There is no need for us to pursue this matter further.

2. In response to this item Councillor Purdy indicated that he had been told by a former employee, that he chose not to name, that something was amiss with work done by this company on Town buildings. When the supplier responded to the councillor's request for detailed invoicing by contacting Town Administration, Councillor Purdy was invited to meet with the Town Treasurer to review invoicing received from this company to demonstrate that nothing unusual had occurred.

Our concern here is that Councillor Purdy in his role as a member of council told a supplier that he suspected Town staff of forging documents or invoices rather than first expressing his concerns to Council in camera, the Municipal Auditor or the OPP. It wasn't until he was invited by Municipal staff as a result of the supplier's communication to staff that he engaged the Town in order to determine if the rumour that he had allegedly heard had any validity.

3. A member of the public was served with a notice of a by-law infraction by the by-law enforcement officer for the Town who also happened to be the Fire Chief. The by-law enforcement officer had for sometime been attempting unsuccessfully to file the notice with the individual and had sought advice and assistance from the OPP. The tactic that he used in order to meet with the individual and hand him the document was, according to the by law enforcement officer, discussed with and done with the full knowledge of the OPP.

Once served, the individual involved posted on facebook that he had been the victim of a criminal act, being forcible confinement, committed by Town staff. From our investigation, it clearly was not.

Councillor Purdy, apparently upon reading this post, proceeded to post a definition of forcible confinement that he had acquired somewhere on the internet, and indicated to the party served in a facebook posting to call him.

From our discussions with staff, we've concluded that Councillor Purdy should have had some general awareness that staff were pursuing a matter with the individual involved. But even if he had forgotten, we are quite surprised the counselor Purdy did not begin his review of the matter by contacting the by law enforcement officer first.

We have concluded that a reasonable person would assume from the Councillor's postings that the councillor had actual knowledge that caused him to think something improper had been done.

If it were intentional, despite that knowledge, then it might be also considered that the councillor was in breach of his duty to support the bylaws that have been adopted by council.

4. A member of council is free to grant interviews to the media or to make social media postings on matters that are either before Council or might come before Council. Such comment is part of the political process.

Social media postings are completely the responsibility of the person posting them and there is no excuse possible to indicate that they have been edited or taken out of context as they are the responsibility of the person posting them, even if they are a reposting of someone else's comments

The first instance of concern that was brought to our attention was a posting by Councillor Purdy wherein he attached an article from the Toronto Star entitled "City of Brampton Sacks 25 Managers, Key staff".

Councillor Purdy wrote "It's about time that someone had the courage and the fortitude to cut from the top when there's incompetency, duplication and/ or redundancy in municipal administration rather than the usual occurrence of cutting frontline employees in an effort to save costs, which only affects the public who benefit from these services. This is long overdue and will hopefully be the catalyst needed for this kind of change across the province. "

He indicated to us that this was not intended to reflect on the Town of Petrolia and its staff as he didn't mention the Town in his posting. We've concluded that a reasonable person reading this posting would assume that knowing he was a member of Petrolia Town Council, that his remarks were also reflective of his knowledge and beliefs about Town staff particularly when he used the phrase "across the province."

Councillor Purdy indicated to us that this was not his intention. Whether or not it was his intention we understand that statements such as this can cause significant concern among municipal staff. By itself it may not mean very much other than be reflective of a political position, but in context with other remarks it appears that there is a pattern of comment by Councillor Purdy that is inappropriate.

5. The behaviour of members at a Council meeting in the council chambers is subject to the Procedure By-law adopted by the Town and its provisions and concerns about improper or uncivil behavior should be addressed by the chair of the meeting in accordance with the Procedure By-law. The Procedure By-law also provides that any other member of Council in the absence of action by the chair on a perceived breach of procedure can rise on a point of order and deal with that matter.

Councillor Purdy indicated to us that he only had texted during a council meeting in an emergency. Evidence provided to us by others indicated that he had done so on many other occasions. This issue should be dealt with by the chair of a meeting at which it occurs.

6. Councillor Purdy did indeed speak with a journalist about some of the circumstances around his departure from an in camera meeting on November 14th 2017 as reported November 23rd 2017; however, it appears that he did not speak to the journalist about the substance of the meeting but only about the circumstances of his departure and as such breached no confidentiality with respect to matters that were either before, or dealt with by, the council at that closed meeting.

7. Councillor Purdy did indicate that he had spoken at Council regarding the need for a “full forensic audit” of town operations although he denied referencing at that time possible “money laundering” at the town.

At least two persons, who were at the meeting where he raised the issue of a forensic audit, recalled his having spoken about money laundering.

But that discussion is moot. Councillor Purdy on a facebook posting in response to a citizen's comment regarding the role of the external auditor indicated that “those financial audits are for accounting and book balancing purposes only...” He also stated “they don't look for fraudulent activities, misappropriation of funds, laundering, or other potential illegal activities. A forensic audit does that.

Counselor Purdy clearly misrepresented the role of the external auditor who does have a role in preventing and detecting fraudulent activity, and also the nature of a forensic audit which is usually targeted at a specific area of an organization's operations.

While the opportunity exists in any organization for fraudulent activities or misappropriation of funds, money laundering would be a very remote, if not almost impossible, activity to undertake in a municipal government because it involves activities that handle large amounts of cash on a regular basis, something that municipalities generally do not do.

Our conclusion is the Councillor Purdy made these postings and used the terms that he did, either carelessly, or deliberately, in an attempt to attract attention to his role as a member of council while at the same time implying that other members of council or more likely members of staff are involved in improper, if not illegal, activities generally.

He has not provided any evidence to council, to us, and to our knowledge neither to the external Municipal Auditor nor to the OPP of any such wrongdoing.

Conclusion

Councillor Purdy has told us he has only the best interests of the residents of Petrolia at heart. He indicated that his activities, his posts, and his media interviews are only directed at that objective.

We're not able to determine what's in his mind. We can only review his behavior and conclude the appropriateness of it.

Our conclusion is that Councillor Purdy has indeed breached the Code of Conduct in his comments and with his choice of particular words.

If a member of council has a concern about the conduct of a member of senior administration, and is not comfortable pursuing this concern with other members of senior administration, the head of council, or the balance of council in camera, then if they believe an improper act has taken place they have an obligation to pursue it with other external parties such as the Municipal Auditor, the Ontario Provincial Police, the provincial Ombudsman, or in some cases the Ontario Ministry of Municipal Affairs.

It is not up to the member of council to take on the role of investigator, nor to publicly infer negative conduct by staff of the municipality.

In determining our recommendation to Council with respect to a penalty that it can consider imposing on Councillor Purdy for his breaches of the code, we must turn our mind to whether or not we believe the breach was intended to harm the reputation of staff or only to attract political support for himself from others within and outside the community.

In the course of our investigation we reviewed numerous postings on social media which included commentary on matters outside of his purview as a member of council. Our observation is that Councillor Purdy exhibits a fair degree of mistrust with respect to numerous matters, and that this distrust has followed through into his role as a member of council for the Town of Petrolia.

Our conclusion is that Councillor Purdy's primary objective is to attract attention to himself as a member of council.

We do not believe that his primary intention is to harm the reputation of the members of Petrolia staff or his colleagues on Council, if in fact he indeed understands that they are personally and professionally damaged by his choice of words in his public comments and postings.

Thus, it is our recommendation that Council pass a resolution formally reprimanding Councillor Purdy for his comments regarding forging of documents, money laundering, a call for a “full” forensic audit, and his failure to inquire of staff first before responding to an obviously incorrect and inflammatory facebook posting by a citizen.

Should we find that Councillor Purdy not temper his behavior in his public comments in future we would have no problem recommending to council that a further sanction be applied by way of a suspension of remuneration as a Councillor.

The choice of penalty, or the imposition of none, rests with Council.

Smaller municipalities across this province are competing with larger centers for new industry, new residents, and young professionals to relocate and bring continued prosperity and quality of life to them.

One would be extremely naive not to assume that parties do most of their research before anyone ever knows that they're looking at your municipality.

The economic development community suggests that almost 80% of the work that a new employer undertakes before deciding on relocation is done before the community ever knows that they're interested and looking.

One of the things that they look for is councillor commentary which can be an indicator of community stability. We are not suggesting that anyone hide issues from the public such as the recent circumstances leading up to the resignation of the Town CAO. But it is important that such events be seen to having been dealt with in a professional manner.

Unfounded speculation by a member of Council in a public forum does nothing to enhance the reputation of the community that he or she was elected to serve.

Nigel Bellchamber

for

Amberley Gavel Ltd.