

Town of Petrolia
Report of Independent Investigator
John E. Fleming

Into Certain Events which occurred May 2021 to Fall 2021

I Introduction and Mandate

I was retained by a Resolution of Petrolia Town Council on October 12 2021 to "enlist a third-party investigator currently not engaged with Town staff who specializes and has a background in municipal business to conduct an investigation related to this item ["a council staff relations item.....and a concern with continued activity of Councillor ██████, and also address the manner in which the senior member of Management, ██████, brought it forward"] with recommendation that the investigation be conducted by Mr. John Fleming to conduct (sic) and report back to Council."¹

II The cause for concern

Town Council over the current term has previously addressed allegations of unidentified persons following, watching and potentially photographing members of Town staff as they go about their duties around the municipality. So far as I have been able to determine, those allegations pertain only to employees who work under the direction of the Director ██████.

In the past, there have been allegations that a member of the current Council had been involved in this behaviour. I have been advised that members of the Council addressed this alleged behaviour with the Councillor some months ago, at which point the Councillor acknowledged he had done so, and committed to cease and desist engaging in such activities.

More recently, the Council has learned of expressions of concern from a number of ██████ staff (both ██████ and ██████ employees) who have observed persons in vehicles following, stopping, watching and potentially photographing them while at work.

Only employees of the ██████ Dept. have raised such concerns.

Ultimately, these concerns were brought to the attention of the Petrolia Detachment of the Ontario Provincial Police (OPP), following which the police undertook an investigation to determine whether criminal harassment had taken place. I am advised, although I have not spoken with the OPP Detective who conducted the investigation, that no activity that met the definition of criminal harassment had been proven, and that no charges would be laid.

The manner in which the OPP became involved in this matter, the process followed by senior staff and the ultimate outcome of this situation all led to the resolution of Council to seek the external third party investigation of how this most recent matter was handled.

¹ Minutes of an In Camera Session of the Council of the Town of Petrolia, held during a special Meeting of Council, Oct. 12, 2021, 7:00 p.m.

II Methodology

I have interviewed 16 individuals, including the Mayor and all members of Council as well as a number of employees at various levels who I understood had information pertinent to this investigation.

I have also consulted with Mr. John Mascarin of the firm Aird and Berlis which acts as the Integrity Commissioner for the Town, pursuant to The Municipal Act. I conferred first with Mr. Mascarin before agreeing to undertake this assignment to ensure that it was not more appropriately a Code of Conduct matter. We agreed that I would proceed, and consult further with him, should the investigation lead to Code of Conduct issues.

This report has been forwarded to Mr. Mascarin, for his information only.

I have reviewed a range of pertinent documentation made available to me from several sources including Council Minutes, various notes and communications and the pertinent policy documents approved by the CAO and Council concerning personnel and workplace safety provisions. Of necessity, some of the information reviewed extends further back than this current calendar year.

I would be remiss if I did not express my appreciation to the senior leadership of the Town, including the Mayor and members of Council and senior management for their full cooperation as I undertook this task.

III The Context

It's instructive to begin with an overview of both the law and Petrolia's Code of Conduct when it comes to the matter of harassment in the workplace. Harassment is, ultimately, one of the core issues in question.

The Criminal Code

(emphasis added is that of the author of this report)

The investigation by the OPP as I understand it addressed the complaint under the provisions of the Criminal Code RSC 1985, c. C-46 which in Section 264 states the following:

Criminal harassment

264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to **fear for their safety or the safety of anyone known to them.**

Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of

(a) **repeatedly following** from place to place the other person or anyone known to them;

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(c) **besetting or watching** the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or

(d) engaging in threatening conduct directed at the other person or any member of their family.

The Occupational Health and Safety Act

There are also provisions in the Ontario Occupational Health and Safety Act, R.S.O. 1990 Chapter 0.1 on the subject of harassment. The Act defines harassment in Section 1.1 as follows: (emphasis added is that of the author of this report)

“workplace harassment” means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.”

To deepen the understanding of the application of the law, it's useful to add some additional points about harassment:²

- The term “vexatious” while not defined in the Act is a course of comment or conduct that is **“annoying distressing or agitating”** or if it is **“worrisome, discomfiting or demeaning.”**
- The question to be applied is whether the **perception of the receiver** is considered acceptable or not.

It's clear in this instance that the alleged following, watching and potential filming of work activity was, in the minds of the workers, vexatious.

One of the clear determinations in the case law is that a finding of harassment has less to do with the **intent** of the harassing person, and more to do with the **impact of that harassment** on the person being harassed.

The same Occupational Health and Safety Act goes on in considerable detail setting out the requirements of employers in Ontario to create safe workplaces. Specifically, employers are to put in place a range of policies and procedures available to employees should they identify workplace conditions that, in essence, cause them to feel unsafe while working.

Town of Petrolia Code of Conduct for Members of Council & Local Boards

Also relevant to the issues in question are the provisions of the Code of Conduct since it addresses the matter of the distinctive and different roles of elected members of council and employees.

Article 13 of Petrolia's Code is quite direct on that point, as follows:

ARTICLE 13 - CONDUCT RESPECTING TOWN EMPLOYEES

(emphasis added is that of the author of the report)

32. Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, a Member shall direct requests for action outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

33. Under the direction of the Chief Administrative Officer, Town employees serve the Council as a whole, and the combined interests of all Members as evidenced through the decisions of Council. Accordingly:

² Streeter v. HR Technologies, 2009 HRTO 541 (CanLII)

- (a) **Members shall be respectful of the role of Town employees to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council;**
- (b) **Members shall show respect for the professional capacities of Town employees;**
- (c) **no Member shall maliciously, falsely, negligently or recklessly injure the professional or ethical reputation, or the prospects or practice of Town employees; and**
- (d) **no Member, including the Mayor, is entitled to provide individual direction or instructions to Town employees, except for the Chief Administrative Officer and any direction or instructions to Town employees must be authorized or sanctioned by Council as a whole.**

34. No Member shall ask, request or compel Town employees to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.

35. **No Member shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any Town employee with the intent of interfering with that employee's duties, including the duty to disclose improper activity.**

I have, in my investigation, carefully reviewed the policies and procedures in place in the Town of Petrolia's overall policy framework, and the measures taken to ensure that employees are well aware of and trained in how to recognize and address workplace safety concerns. Those policies and procedures have been reviewed and approved by both the Chief Administrative Officer (CAO) and the Town Council. They are, in my estimation, complete, up to date and reflect what the Act requires. I am assured by the CAO and the Town Clerk/Operations Clerk (Clerk) that regular training on these matters, and reinforcement 'reminders' are carefully followed by management for all staff, with special focus on new employees and indeed for summer and short term 'contract' employees.

The critical question, of course, is how well those policies and procedures have been followed by Town staff especially those in management positions.

IV The Town's updated and Approved Policy and Process

It's important to note that some of the Town's documented policies and procedures have been reviewed and fine-tuned as a result of recent events. Some of those refinements flow from the advice of the OPP officer who investigated this matter.

To summarize, it is a well-established policy that if employees feel unsafe in their workplace at any time, that they are to speak to their supervisor or manager, and complete the required documentation set out in the policy. Only in the event that there is an immediate concern about potential violence or personal danger are employees advised to dial 911 and report the issue to the police.

V The Facts

From my numerous interviews and review of documentation, and focusing only on events over the last six months or so, this situation arose as follows;

- All new Town staff were given an orientation and briefing as to the relevant policies and procedures in the Town. To the best of my knowledge, this occurred appropriately to the affected employees who eventually expressed concern to their supervisor and manager.
- That orientation occurs in two parts:
 - A general orientation suitable for all employees, addressing relevant corporate policies and procedures, including those pertaining to workplace safety
 - A further more focused orientation to employees of the ██████████ Dept., the focus of which pertains to the specific operations of that department, including among other things ██████████.
 - Of particular note here is a specific reference in those briefings to be on the alert for any incidents where workers are being observed, followed or photographed by persons not known to be part of the Town administration.
 - More on this matter is addressed in the Addendum to this report, attached as Confidential Appendix A.
- Concerns were raised by more than one employee of the Town regarding what they felt was unusual and discomfiting observation of their work, in several locations and on more than one occasion, by persons not known to them, generally by persons in several different vehicles. Some of these observations are described as frequent “drive by’s” while others are described as park and watch situations. Staff are sometimes able to identify those ‘driving by’ or parking and watching; on other occasions, not.
- Those concerns were raised by those workers to their immediate and next level supervisors, identifying the fact that these incidents made them feel uncomfortable and unsafe. More than one described these incidents as “creepy.”
- Supervisory and management staff raised the issue with another senior management official who, after recognizing that these employees might be at some personal risk, raised the matter *informally* with an OPP officer.
- The OPP ultimately undertook an investigation of these concerns, and at the conclusion of that investigation revealed to Town management, at the Director level, that there was no evidence of criminal activity, that no charges were to be laid, and that their investigation had been concluded.
- Around the time of the conclusion of this investigation, the matter came to the attention of the Mayor and the CAO, which ultimately led to the Council’s decision to seek a third party review, to determine how the matter came to the attention of the police, and more pointedly, whether or not the policies and procedures of the Town were properly followed by supervisory and management personnel.
- More details regarding these matters, *clearly personnel matters* and therefore *appropriately confidential*, are addressed further in Appendix A.

VI Adherence to Town Policies and Procedures

As noted above, in Section IV of this report, the Town of Petrolia has in place up to date policies and procedures as required by the Occupational Health and Safety Act.

I am advised by the CAO of the Town that those policies and procedures have been reviewed and updated where necessary to make very clear to all employees the appropriate course of action when they have concern about any potential workplace safety issue.

At the heart of those recent updates, reinforced by staff meetings to underscore the learning from recent events, is additional clarity as to when concerns should be raised to the supervisor

or manager, and ultimately to the CAO, and when the appropriate action is to call 911 and seek the intervention of the OPP.

As presented further in Appendix A, that additional clarity was needed, since in this case the OPP became involved ahead of any reference to or knowledge of the CAO, rather than following the established procedure of engaging management as set out in the corporate policy.

It is clear to me that there were steps in the proper process that were missed, or not followed, resulting in concern being raised, ultimately to the level of Town Council.

In sum, my conclusion is that, unfortunate as it may well be, that this has proven to be a learning event on several levels, from the combined perspectives of Town policy and that of senior staff about compliance with policy.

VII The Core Issue

Underlying this entire issue is the matter of the efficiency and effectiveness of the Town and its operations. For those long experienced in municipal administration, as I am and as members of Council and staff are equally, there is constant pressure on government for cost savings. As a result, all of those associated with local government are accustomed to being “watched” as they go about their daily work, very often in the public eye.

Perhaps appropriately, perhaps not, some take more extreme measures in their interest in cost constraint, and spend more time and attention to that “watching” that most would consider normal. Persons who take that preoccupation to the extent of following, stopping and staring from the privacy of a vehicle and perhaps photographing municipal staff at work have the consequence of, at times, making workers feel unsafe and uncomfortable. Of relevance in the earlier definitions of harassment is the term “repeatedly” together with the notion of the *impact* on those being repeatedly observed, watched and followed.

It's known in the Town of Petrolia that at least one member of Council has shown ongoing concern with the efficiency and effectiveness of Town employees, to the point where that Member has been cautioned by the Mayor and Council colleagues that unacceptable monitoring of staff while at work, by him and on occasion with a number of other persons, could reach the definition of harassment. This is the reason why, at the outset of this report, I go to considerable lengths to define harassment, in the interest of all understanding that such behaviour would not only be a breach of the Code of Conduct for members of Council, but could be considered to be a breach of the Occupational Health and Safety Act and arguably the Criminal Code.

The councillor has, at some length, assured me that he and the other persons who have joined him in the past are no longer engaging in such behaviour.

VII ANALYSIS AND CONCLUSIONS

The circumstances leading up to and culminating in a police investigation point to several “lessons learned”, several of which have already been addressed. Nevertheless, ongoing diligence on the part of both elected officials and staff of the Town is indicated, as follows;

- Members of Council must clearly understand and respect where the line lies between their role as the elected, governing body (the Council) and that of management and staff (the employees).

At no time is it the responsibility of any member of council to be giving direction to employees, other than through the CAO as a part of a Council direction, or for that matter to be personally and individually interfering with the supervision and/or management of those employees. That is the responsibility of the CAO.

- All staff must be aware of, and well trained in, the various policies and procedures of the Town, especially when it comes to such important personnel policies as those pertaining to workplace safety. That's the law in Ontario!
- Enhanced training and diligence of senior managers in respect to their responsibilities in these areas is important. It is the responsibility of the CAO to ensure that such policies and procedures are in place, well understood *and followed*.
- Given the events of recent months, a thorough review of job descriptions of key positions in the Town's senior ranks may be merited, to ensure that the intersection of responsibilities between and among senior leaders is clear and understood.
- Finally, it would be beneficial if, in the ongoing training of members of council by the Integrity Commissioner, further education on the matters addressed above could be provided.

Any further recommendations for Council's consideration, regarding personnel matters, are provided in the confidential Appendix A.

All of which is respectfully submitted for the consideration of Council.

John E Fleming

Investigator

November 9, 2021

STRICTLY CONFIDENTIAL

Addendum to the report of Investigator John Fleming

Summary of findings

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CONCLUSIONS

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RECOMMENDATIONS

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