

**THE CORPORATION OF THE TOWNSHIP OF
BLACK RIVER – MATHESON**
Integrity Commissioner’s Report
H.G. Elston

**REPORT ON THE MATTER OF A COMPLAINT AGAINST
MAYOR BENDER**

Issued: May 14, 2024

BACKGROUND

- 1) I was appointed as the Integrity Commissioner for the Township of Black River-Matheson (the “**Township**”) on July 12, 2022. As part of my duties under section 223.3 (1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “**Act**”), I am to apply the Township of Black River – Matheson’s Code of Conduct for Members of Council (the “**Code**”), to any complaint I receive.
- 2) On October 10, 2023, I received a complaint from Pauline Francis, against Mayor Doug Bender. This report contains my findings and recommendations regarding that complaint.
- 3) The complaint alleges two contraventions of the Code. First, that Mayor Bender visited Ms. Francis to improperly attempt to influence her to continue to lease her rental units to tenants, including the Township’s Chief Administrative Officer, Chris Wray (the “**CAO**”). Second, that on June 30, 2022, Mayor Bender sent a “cease and desist” letter to about 30 residents threatening legal action with respect to comments on social media that allegedly constituted harassment of Township staff.

THE CODE

- 4) The allegations involve possible breaches of the following sections of the Code: sections 7.1, 7.2, 13.1, 13.2, 13.3 and 13.4.

7. Conduct Respecting Others

- 7.1 Every Member has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the Municipality’s Workplace Anti-Violence, Harassment and Sexual Harassment Policy.
- 7.2 A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.

13. No Improper Use of Influence

- 13.1 No Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.
- 13.2 No Member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage, the private advantage of the Member's parent, child, spouse, staff member, friend or associate, business or otherwise or the disadvantage of others. No Member shall attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties. No Member shall hold out the prospect or promise of future advantage through the Member's supposed influence within Council in return for any action or inaction.
- 13.3 For the purposes of this provision "private advantage" does not include a matter:
- a) That is an interest in common with electors generally as defined in the *Municipal Conflict of Interest Act*,
 - b) That affects a Member, his or her parents/children or spouse, staff, friends or associates, business or otherwise, as one of a broad class of persons; or
 - c) that concerns the remuneration or benefits of a Member.
- 13.4 This provision does not prevent a Member from requesting that Council grant a lawful exemption from a policy.

THE VISITS TO MS. FRANCIS

- 5) Ms. Francis is the co-owner of a residential building containing four rental units in the Township. She and her husband live in one of the units.
- 6) The Township's Council determined that it was necessary to increase the rates charged to residents for some utilities and for property taxes. Not surprisingly, there was a significant outcry on social media against the increases.
- 7) According to Ms. Francis, the increase in the costs to her business attributable to the rise in the utility and property tax rates rendered her rental business unprofitable and she terminated her residential tenancies. One of the tenants terminated was the CAO.
- 8) On April 17, 2023, Mayor Bender paid a visit to Ms. Francis. She claims that Mayor Bender told her that the Township "needs her building and the CAO needs a place to live". Ms. Francis says that she reminded Mayor Bender that she would not be able to carry on with the property rental business after the property tax increase. Mayor Bender also contacted Ms. Francis's husband to discuss the rate increases.
- 9) A few days later, Mayor Bender again attended at the Francis residence to try to explain the rate increases and also to describe the difficulties in providing individual water

meters to her units (Ms. Francis has been trying to arrange this for years.) Present at this meeting was a friend of Ms. Francis.

10) Ms. Francis claims that Mayor Bender told her that he would have the CAO file a claim against her at the Landlord and Tenant Board, if she would not let him stay.

THE “CEASE AND DESIST” LETTER

11) On June 30, 2023, using Township letterhead, the Mayor wrote to Ms. Francis and several others, explaining that the Township’s senior staff were being subjected to “hurtful, absurd, uninformed and inaccurate comments that (have) continued to cause mental or emotional suffering”. The allegedly defamatory comments were said to damage the reputation of the Township’s senior staff. Many of these comments had been made on the Facebook sites, the “New Matheson Group” and “Matheson 2021 What’s Happening”.

12) The letter states that Ms. Francis had been identified as “a person who has conducted themselves in this manner” and demanded that she “cease and desist this harmful behaviour”.

13) In a letter to the Mayor dated July 18, 2023, responding to the cease and desist letter, a lawyer representing “various constituents” (including, I assume, Ms. Francis) suggested that it was inappropriate for the municipality to “wage threats of such legal action on behalf of staff members” and contrary to the *Canadian Charter of Rights and Freedoms* for the municipality to attempt to “silence the voice of its constituents”. The letter makes no mention of and alleges no contravention of the Code.

14) Finally, Ms. Francis claims that Mayor Bender made a statement reported in the media that Ms. Francis was a “disrupter and troublemaker”.

THE MAYOR’S RESPONSE

15) I received a response to the Complaint from Mayor Bender on November 25, 2023.

16) Mayor Bender says that the purpose of his meeting with Ms. Francis was to discuss the recent increase in the water and sewer rate. His understanding of the shift in water rates was that it would result in an increase of about \$24 per unit per year, in Ms. Francis’s building.

17) Ms. Francis had been asking staff, including the CAO, to install water metres in her building. His further intent in meeting with Ms. Francis was to explain to her why water meters couldn't be installed, at this time. He states that he explained that before the Township could consider water metres, it would need to inspect its water systems to find any water leaks or other issues that would create problems with a metering program.

18) The Mayor acknowledges that he did ask her to please keep her building rental units available, since there is a shortage of all rentals in the Township, especially of the short-term type she offered.

19) He also suggested that she could raise rents to cover costs. The Mayor is familiar with these rules as an owner of a rental building and mentioned that rental costs can be increased to cover cost increases, due to things like increased utility payments.

20) Mayor Bender is adamant that at no time did he ever tell Ms. Francis that she must let the CAO continue to live in her building.

21) In terms of his April 17th visit, the Mayor states that his recollection of the conversation is very different from that of Ms. Francis. The Mayor states that at no time did he ever suggest to the CAO that he file a complaint about Ms. Francis with the Landlord and Tenant Board. He does not recall saying that Ms. Francis was a disrupter and troublemaker.

22) On the letter to ratepayers, the Mayor states that the letters were sent in an attempt to urge people to "cease and desist" their defamatory and incendiary comments about senior staff and to protect staff under the *Occupational Health and Safety Act* and the Township's policy on Workplace Harassment. Some of the staff have since suffered from anxiety and increased stress. Not only has this been detrimental to the Township's staff but also to the Township's reputation as an excellent place to live and work.

23) According to the Mayor, the assertion that Council members were not aware of these letters is false. The letters were emailed to all of Council a week before they were mailed. The Township has the proof of this and at least one council member responded to the email.

DISCUSSION AND FINDINGS

24) In the course of my preparation of this report, I interviewed Ms. Francis, the Mayor and the friend of Ms. Francis who was present at one of the Mayor's visits. I also reviewed the cease and desist letter and the lawyer's letter in response.

The Visits

25) I will first consider the Mayor's visits to Ms. Francis, and whether they can be considered an improper use of influence, contrary to the provisions of section 13 of the Code.

26) Although Council speaks as a whole, the Act bestows specific powers on the head of council, in this case, the Mayor. Specifically, sections 225 and 226.1 of the Act provide as follows:

Role of head of council

225 It is the role of the head of council,

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;
- (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act.

Head of council as chief executive officer

226.1 As chief executive officer of a municipality, the head of council shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality's activities;
- (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

27) I will confess that I had an initial concern that the Mayor's decision to visit Ms. Francis was a rather more pro-active initiative than would seem to be captured by the description of his role as Mayor, and the accepted norm for a head of council. That said, I am prepared to accept his visit as made in a genuine effort to represent and serve the municipality and its residents.

28) As for the propriety of his actions, the Code provides some assistance. Section 13.1 of the Code prohibits the use of influence that is “not a lawful exercise of the Mayor’s duties or done for a non-municipal purpose”, while section 13.2 makes it improper for the Mayor to use his influence to his or another person’s private advantage that is not an “interest in common with electors generally”¹.

29) I think it is fair to characterize the purpose of the Mayor’s visit to Ms. Francis as being a lawful exercise of his duties, done for a municipal purpose. He was attempting to explain the reasons for the rate increases and hoping to persuade her to continue to provide rental housing to the residents of the Township; a legal exercise of his duties as a community leader and one with an important municipal purpose. Accordingly, I find there was no breach of section 13.1 of the Code.

30) Moreover, while the visits clearly also had as their purpose the advancement of the private interest of the CAO, I believe that the CAO’s interest in retaining rental accommodation is very much an interest he shared or had in common with many other electors in the Township. Accordingly, I find there was no breach of section 13.2 of the Code.

The Cease and Desist Letter

31) It is regrettable in the extreme that the nature of the public discourse in the Township of Black River – Matheson has descended to the point where staff are being attacked and defamed on social media. And, while it seems a somewhat extreme measure to send a cease and desist letter to a group of residents, as it has been said, desperate times call for desperate measures. To that end, I accept the Mayor’s evidence that he felt that the letter was necessary, as part of the Township and Council’s duty to provide a safe workplace for staff. I also find that it was sent with the knowledge of Council.

¹ The *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended, defines an “interest in common with electors generally” to mean a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part.

32) As such, the propriety of the cease and desist letter is best characterized and considered as a matter of law, not ethics. Without judging in any way the legal reasoning or strategy behind it, I also note that Ms. Francis has availed herself of counsel who has responded on her behalf and chosen to frame the issue as a matter of defamation and constitutional law, neglecting to make any reference to the Code.

33) In the end, upon review of the tone and content of the letter, and recognizing the context within which it was generated, I do not believe that it can be considered to be abusive, bullying or intimidating, or a contravention of the Code.

34) Accordingly, I find no contravention of sections 7 or 13 of the Code by the Mayor and I will dismiss the Complaint.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of May, 2024.

A handwritten signature in black ink, appearing to read "Harold G. Elston", with a long horizontal line extending to the right from the end of the signature.

Harold G. Elston
Integrity Commissioner