

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

**REPORT ON THE MATTER OF A COMPLAINT AGAINST  
COUNCILLORS DYMENT, DRUER, RONDEAU, SCHMIDT, NEAL AND GADOURY**

Issued: April 18, 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’s Code of Conduct for Members of Council (the “**Code**”) to any complaints I receive and report my findings to Council.

2) On August 4, 2023, I received one such complaint, made jointly by the Township’s Mayor, Doug Bender, its Chief Administrative Officer (“**CAO**”), Chris Wray, and its Clerk, Cassandra Child (“**Clerk**”). The complaint was against all Members of Council, except the Mayor. The complaint related to events that took place during the closed meeting of Council on July 18, 2023 (the “**Complaint**”).

3) The facts are that on July 18, 2023, under section 239 (2) (b) of the Act, Council held a Special closed session meeting to consider two matters: 1) the renewal of the CAO’s employment contract; and 2) complaints made under the Township’s Workplace Violence and Harassment policy. All the requirements of the Act and the Township’s Procedural By-law were met.

4) It is important to note that the Mayor, all Members of Council, and the Clerk were in attendance at the meeting. The CAO was not invited to and did not attend the meeting.

5) The agenda for the closed part of the July 18<sup>th</sup> meeting stated:

That Council now comes into a portion of the meeting that shall be closed to the public at \_\_\_\_\_ p.m. in accordance with section 239 (2) (b) of the *Municipal Act, 2001* in order to discuss personal matters about an identifiable individual re:

- CAO Employment Contract:
- Complaint Letters under Policy CO-1830-01: Workplace Violence and Harassment.

- 6) Prior to or at the commencement of the July 18<sup>th</sup> meeting, Councillor Druer, in a most clandestine way, handed out a plain, unmarked envelope to all Members (except the Mayor) containing what I would describe as selective and confidential information, comprised mostly of selective emails between the CAO and a person interested in developing a hotel on a parcel of Township-owned land.
- 7) Unfortunately, during the closed part of the July 18<sup>th</sup> meeting, under the topic “CAO Employment Contract”, the discussion degenerated into more of a gripe session, negatively targeting the CAO, as opposed to a review of the terms of his contract - the reason for the meeting. I am satisfied that the surreptitious introduction of this information contributed not only to the drift of the discussion from the identified topic, but also to the vindictive tone that arose.
- 8) The following morning, July 19<sup>th</sup>, Councillor Rondeau texted the Clerk to say that Councilor Druer had given her the envelope at the meeting and asked her not to open it, until she got home. She attended at the Township’s offices and met with the Mayor, the CAO and the Clerk.
- 9) With the approval of the Mayor, the Clerk called an emergency meeting of Council for that evening, July 19<sup>th</sup>. All Members attended, except for Councillor Druer, who submitted her resignation that morning.
- 10) During the closed session meeting, the Mayor asked about the envelope, why he had not been given a copy, and why they did not share the information in the previous evening’s meeting.
- 11) The responses from the Members varied, with some acknowledging that they had also received phone calls from one of the proponents, while others claimed not to have opened the envelope.
- 12) The CAO spoke, expressing his concern about how the meeting unfolded and what had been presented, alleging that it was an attempt to influence his contract renewal. The CAO stated that he had not acted outside his duties and responsibilities and undertook to provide Council with a full report on the discussions and actions concerning the hotel

development. (I have been provided with a copy of that report and can confirm that it substantiates the CAO's response and the propriety of his actions.)

## **THE ISSUE**

13) The Complainants allege that the Members of Council knew, or ought to have known, that the information constituted a confidential record of the Township, which had been improperly taken, and that they should have disclosed its existence at the outset of the meeting. By not doing so, and by letting it impact upon and divert their consideration of the CAO's contract, it is alleged that the Members contravened the Township's Code of Conduct (the "**Code**") and/or the Township's Council and Staff Relations Policy (the "**Council and Staff Relations Policy**").

14) The conduct is alleged to be all the more serious because the information related to a matter under discussion amongst the Members in a closed meeting.

## **THE CODE AND COUNCIL AND STAFF RELATIONS POLICY**

15) The Complaint alleges that these actions resulted in breaches of sections 1.2 a), 1.2 b), 1.2 f), 1.2 h), 7.1, 8.1, 8.2, 8.3, 10.1, 10.2, 10.3 and 10.4 of the Code and sections 2.0, 7.0 and 11.0 of the Council and Staff Relations Policy.

### ***The Code***

- 1.2 Key statements of principle that underline this Code of Conduct are as follows:
- a) Council, and its Members are the leaders of the Municipality both inside and outside its geographic boundaries. Especially in an age of social media and electronic messaging, strong positive management of the reputation of the Municipality is needed. The statements and behavior of Council affect the Municipality's reputation as a place to live and do business. Conflict and inappropriate conduct among Members, staff, officers and members of the public, adversely affects the Municipality's reputation and is to be avoided. Put differently, Council has a strong role to protect and promote the Municipality and its reputation as an excellent place to live, work and do business;
  - b) Members must serve and be seen to serve their constituents in a conscientious and diligent manner;
  - f) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Municipal Council;
  - h) Members shall be respectful of the role of staff to provide advice with political neutrality and objectivity and without undue influence from a Member or Members.

- 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.
- 8.1 Under the direction of the senior administrative staff, and in accordance with the decisions of Council, staff and Officers are required to serve the municipal corporation as a whole. Every Member shall be respectful of the role of staff and Officers to provide advice based on political neutrality and objectivity and without undue influence from any Member or group of Members. Accordingly, no Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any staff person or Officer.
- 8.2 Members shall acknowledge and respect the fact that staff carry out directions of Council, through senior staff, including but not limited to the treasurer, clerk, director of public works, and administer the policies of the Municipality. No Member shall perform, direct or attempt to undermine the duties of any staff person or Officer except in accordance with the Municipality's procedural by-law.
- 8.3 Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.
- 10.1 No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office, in any form including, but not limited to, written notes reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so.
- 10.2 No Member shall use Confidential Information for personal or private gain or benefit, or for the personal or private gain or benefit or to disadvantage of any other person or body.
- 10.3 Unless required by law, no Member shall disclose the substance of deliberations of meetings held *in camera* and that are authorized to held *in camera* under the *Municipal Act, 2001* or any other legislation unless or until Council discloses such information at a meeting that is open to the public or otherwise releases such information to the public.
- 10.4 Without limiting the generality of the foregoing, no Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information:
- a) Information concerning litigation, negotiation or personnel or labour matters;
  - b) Information, the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence);
  - c) Price schedules in any contract, tender or proposal document while such remains Confidential Information;
  - d) Information deemed to be "personal information" under the *Municipal Freedom of Information and Protection of Privacy Act*; and
  - e) Any other information or statistical data required by law not to be released.

#### ***Council and Staff Relations Policy***

- 2.0 Regardless of how they interrelate with Members, Staff and Officers must avoid favouritism and the appearance of favouritism. Differences in experience and

abilities amongst Members of Council are irrelevant - they all must be treated equally.

- 7.0 Members of Council should avoid the temptation to play up divisions or conflicts. Staff and Officers shall not be targets of derisive/vexatious comments/behaviour/conduct. The public expects Members to do the job that they have been elected to do. The public expects Staff and Officers to do the job that they have been hired to do. Comments on Staff and Officer performance shall be directed through the appropriate confidential performance reviews.
- 11.0 Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others' intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Township.

### **THE COUNCILLORS' RESPONSE**

20) I provided written notice of the Complaint to the Councillors on August 15, 2023, asking for a written response by August 29, 2023. I received written responses from all the Councillors, except Kim Duer.

21) Former Councillor Druer resigned her position on Council on July 19, 2023.

22) Councillor Rondeau was given a copy of the envelope by former Councillor Druer upon her arrival at the July 18<sup>th</sup> meeting of Council. Councillor Druer told her not to open it until after the meeting.

23) Councillor Rondeau describes the closed session discussion of the CAO's contract as being full of accusations, complaints and statements about matters that she was unaware of. She opening the envelope when she got home and her "jaw dropped", as she knew she was given information that she should not have been in possession of. Her biggest concern was that the CAO's work emails had been breached, as the envelope contained correspondence between the CAO and a potential purchaser/investor concerning the motel land. As it was by then quite late, Councillor Rondeau contacted the Township's Clerk the following morning, asking to meet with her, the CAO and the Mayor, as soon as possible.

24) On the morning of July 19<sup>th</sup>, Councillor Rondeau attended at the municipal offices and met with the Clerk, CAO and Mayor. She gave them the envelope and expressed her concern about the potential impact of the apparent breach of the CAO's email account. Councillor Rondeau describes it as breaking every ethical protocol and rule regarding the

protection of confidential information, as well as being morally wrong. She remains baffled why such actions were taken to try to, in her opinion, negatively impact the negotiation of the CAO's contract.

25) Councillor Allana Schmidt received the envelope, but did not open it and destroyed the contents.

26) Councillor Keith Neal was given the envelope by Councillor Dymont, who had received it from Councillor Druer. Councillor Neal tells me that he only gave the documents a "quick perusal". He did not know that the Mayor had not received a copy.

27) Councillor Neal does not feel that he was influenced in any way by the material in the envelope, as he did not have time to fully review and consider it.

28) It was Councillor Neal's position that the CAO should be hired by way of a contract, as opposed to an open-ended arrangement. He felt that Council was being led to make a decision, without the proper background information.

29) Councillor Dave Dymont provided a detailed response, defending Council's actions and raising a series of questions. I have summarized and/or paraphrased Councillor Dymont's arguments, as follows:

1. All six members of Council, plus the Mayor and the Clerk-Treasurer were in attendance. At no time did the Clerk-Treasurer or the Mayor stop anyone to say this was a breach of conduct.
2. His research was detailed. He had one discussion point about the hotel and probably 20 more about other items. The contents of the envelope did not influence his position on the CAO's contract.
3. The Mayor did not "question" but only commented on the fact that some Councillors did not share the information. He asks, rhetorically: "Are we to question every piece of information that each Member receives?"
4. He could find nowhere where it states that information that a Member receives that is part of an on-going closed matter or could jeopardize economic growth of the municipality should be brought to staff.

5. Councillor Dymont always treats everyone with respect. There was absolutely no undermining of staff, he received no personal or private gain and has never disclosed confidential information.

30) The envelope was left on Councillor Louise Gadoury's truck at a local farmers' market event in Matheson. She read the contents but was not influenced by them because she was already aware of the information contained therein.

31) Although Councillor Gadoury acknowledges receiving training, she states that Council was not instructed on how to deal with allegations of misconduct by staff. She does not claim there was any misconduct here, but she feels that the CAO's response to the developer, as was reported to her, to have been somewhat misleading. She was uncertain about what to do with the information she had been given.

32) As for the July 18<sup>th</sup> meeting, Councillor Gadoury confirms that the discussion involved many issues and that she expressed her own frustrations. She states that, in her view, the CAO's performance is very relevant to his contract and asks, again rhetorically, whether giving someone a raise is performance related?

33) Councillor Gadoury states that she treats everybody with respect, including employees, fellow Councillors, or members of the public. She does her best to serve the best interests of the people of Black River-Matheson and assures me that any breach of policy was not malicious, but rather committed out of inexperience and lack of knowledge.

34) Councillor Steve Campsall was not on Council during the time-period in question in this matter. He was sworn in in October, 2023.

35) During the course of my investigation, I also interviewed Mayor Bender, the CAO, and the Clerk.

## **DISCUSSION AND FINDINGS**

36) It is by their conduct that Members of Council demonstrate their understanding of and support for the principles enunciated in the Code and other policies governing municipal governance: the importance of the Township's reputation as an excellent place to live, work and do business; the imperative that constituents be served in a conscientious and diligent manner; the requirement to serve the public interest by

upholding both the letter and spirit of the laws and policies adopted by Council; and the need to respect the role of staff to provide advice with political neutrality and objectivity, without undue influence from Councillors.

37) It goes without saying that these principles apply to all occasions and circumstances, including in meetings that are closed to the public. In fact, there is an even greater need for a collective discourse that is respectful, thoughtful and courteous when out of the public eye. The fact that no one is watching is, of course, no excuse for individual or group behaviour that is unworthy of the office they hold.

38) It is against these principles, as well as the overriding need to show respect for staff and the protection of confidential information, that I have considered the events of Council's closed meeting session of July 18<sup>th</sup>. As I have determined, this was not Council's finest hour.

39) To begin, I note that the Code defines "confidential information", in the following way:

*Confidential Information" means any information in the possession of, or received in confidence by, the Municipality that the Municipality is prohibited from disclosing, or has decided to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act or any other law. Confidential Information also includes information of a corporate, commercial, scientific or technical nature received in confidence from third parties; personal information; information that is subject to solicitor-client privilege; information that concerns any confidential matters pertaining to personnel, labour relations, litigation, property acquisition, the security of the property of the Municipality or a Local Board; and any other information lawfully determined by the Council to be confidential, or required to remain or be kept confidential by legislation or order.*

40) The subject information, as a record residing on the CAO's computer, was "in the possession of the Municipality". The second part of the test asks whether the Township was prohibited from disclosing the information, under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended (the "MFIPPA").

41) To answer this part of the test, I will employ the conceit that a member of the public has requested the email exchange between the CAO and his correspondent(s).



42) Section 1 of the *MFIPPA* states that the purposes of the Act are: “(a) to provide a right of access to information under the control of institutions in accordance with the principles that, (i) information should be available to the public, (ii) necessary exemptions from the right of access should be limited and specific; and (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information and (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information”.

43) Moreover, section 4 makes it clear that “every person has a right of access to a record or a part of a record in the custody or under the control of an institutions unless, (a) the record or the part of the record falls within one of the exemptions under sections 6 to 15; or (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious”.

44) I will begin with my opinion that this fictional request would not be refused under section 4(b) as being frivolous or vexatious.

45) At the same time, whether under the exception for the substance of deliberations of a meeting of council, advice or recommendations of an officer or employee of the Township, third party information, information that could prejudice the economic interests of the Township, or personal privacy, I am satisfied that at least part of the information in the envelope was such that the Township would be justified in refusing to disclose it; it was, therefore, confidential information.

46) The Code contains detailed rules as to how information known to be confidential is to be treated by Members of Council.

47) The most directly applicable parts of the Code are section 10.1, 10.2 and 10.4:

*10.1 No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office, in any form including, but not limited to, written notes reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so.*

*10.2 No Member shall use Confidential Information ... to [the] disadvantage of any other person or body.*

*10.4 Without limiting the generality of the foregoing, no Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information: a) information concerning litigation, negotiation or personnel or labour matters; b) Information, the publication of which may infringe on the rights of any person; d) Information deemed to be "personal information" under the Municipal Freedom of Information and Protection of Privacy Act; and e) Any other information or statistical data required by law not to be released.*

48) The disclosure, distribution, and use of the envelope's contents to any person and, in particular, to the CAO's disadvantage, if known to be confidential, constitutes a clear breach of sections 10.1, 10.2, and 10.4 of the Code by any Councillor knowingly engaged in such activities.

49) Starting with former Councillor Druer, it is clear to me that her actions constituted a grievous breach of the aforementioned sections of the Code. Specifically, once she became aware of the contents of the envelope, she knew, or ought to have known, that they were obtained through improper means and constituted confidential information, and should not be released or used; it was patently wrong for her to distribute them, particularly with instructions as to when and where they should be viewed.

50) Moreover, by distributing the envelope at a meeting to review the CAO's new contract, there can have been no other purpose to her actions but to impugn the CAO's professional and ethical reputation, to his disadvantage in the negotiations over his contract. The attempt to malign the CAO demonstrated a marked lack of respect.

51) While each Councillor had a different response to the materials, the overriding fact is that not one Member in possession of the illicit material admitted to its possession or spoke up to try to stop the discussion.

52) While I have carefully considered Councillor Dymant's submission, with respect, I cannot agree. Responding to his six points:

1. The impropriety of withholding and employing the ill-gotten contents of the envelope should have been clear to the Councillors. The fact that the Mayor or Clerk-Treasurer failed to address the fact of or the use of the envelope is explained

by the fact they did not have a copy but, in any event, does not relieve these Councillors from a responsibility to do the right thing.

2. Whether or not the contents of the envelope influenced anyone's opinion is not the point. It is the failure to reject the contents of the envelope out-of-hand, disclose the circumstances of their delivery, and at least attempt to put a stop to the discussion that tainted the integrity of the meeting.
3. The short answer to the question of whether Councillors should question the material they receive is, yes. It seems to me that there is an onus on the Members of Council to critically review information they receive, particularly when it is delivered in a suspicious fashion to be employed in a closed session meeting.
4. I do not see these contraventions as being for a lack of training, or training that was biased.
5. As a courtesy to the CAO, any concerns should have been put to him in a proper manner, in the proper forum. Instead, Mr. Wray was tried and convicted *in absentia*.

53) While recognizing that there was a range in the response to the materials amongst the Members and their participation in the Council room on July 18<sup>th</sup> (and a corresponding degree of culpability), in keeping with the rule that Council speaks as a whole, it is my determination that my findings should avoid singling out individuals, but should apply to Council, as a whole.

54) Accordingly, I find that the introduction of the materials by former Councillor Druer, and the lack of a timely and forceful response from any other Member in possession of the ill-gotten materials, there was a collective breach of sections 10.1, 10.2 and 10.3 of the Code and sections 7.0 and 11.0 of the Council and Staff Relations policy by those Members in attendance on July 18, 2024.

**RECOMMENDATIONS**

55) Council Members should direct staff to arrange an education session for Council on the principles of proper municipal governance, including on the Code, the Council and Staff Relations Policy, the roles and responsibilities assigned by the Act to various municipal actors, Part V.1 (Accountability and Transparency) of the Act, the principles underlying the *Municipal Freedom of Information and Protection of Privacy Act* and the *Occupational Health and Safety Act*, the Township’s Procedural By-law, and any other laws, policies or guidelines the educator may determine.

56) All of which is respectfully submitted this 18<sup>th</sup> day of April, 2024.



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Harold Elston  
Integrity Commissioner