

DECISION OF THE INTEGRITY COMMISSIONER

TOWNSHIP OF BLACK RIVER-MATHESON

ALLEGATION: CODE OF CONDUCT CONTRAVENTION

BY: COUNCILLOR CUMMING



Prepared By:

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Investigative Solutions Network (ISN)

Peggy Young-Lovelace
E4m Consultant/Director

I. EXECUTIVE SUMMARY

- [1] On August 13, 2019, a request was received by our office for an Integrity Commissioner inquiry regarding allegation that Township of Black River-Matheson Councillor, Carrie Cumming (“Councillor Cumming”) contravened sections 1.2 (c) and (d) as well as 11.1 of the Township’s Code of Conduct. The Requestor reported Councillor Cumming being amongst a group of people that attended an unauthorized and un-licenced after-hours tour of the Thelma Myers Historical Museum (the Museum) in Matheson, Ontario. The idea for the Museum tour was introduced during a Council sanctioned wine and cheese fundraising event organized by the Municipality on behalf of the Museum. The after-hours tour was not condoned either through policy or a resolution of Council.
- [2] At the conclusion of the fundraiser, Township CAO, John Regan (“Mr. Regan”), advised the group that an after-hours tour of the Museum would be permitted. During the inquiry, witnesses identified Councillor Cumming as being a participant of the after-hours Museum tour. Councillor Cumming admitted to being in the Museum and believed her presence was permitted because of the approval by Mr. Regan and an off-duty police officer.
- [3] The allegation is that Councillor Cumming engaged in an activity after the fundraiser that occurred on August 9, 2019 that brought disrepute to her position as a Black River-Matheson Township Councillor, thereby violating section 1.2(c) and (d) as well as 11.1 of the Code of Conduct.

Section 1.2 (c) states:

Members must be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest, both real and perceived;

Section 1.2 (d) states:

Members are expected to conduct themselves and perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny;

Section 11.1 states:

No Member shall use, or permit the use of, municipal equipment, land, facilities, supplies, services, staff or other resource, including any municipally-owned information, website, or funds allocated for Member expenses, for any purpose or activity other than the lawful business of the municipal corporation. No Member shall seek or acquire any personal financial gain from the use or sale of Confidential Information, or of any municipally-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copyrighted, for which property remains exclusively that of the Municipality.

- [4] On September 9, 2019, our office received a further request for an Integrity Commissioner inquiry regarding Councillor Cumming. The Requestor alleged that Councillor Cumming, provided confidential details of an in-camera or closed Council meeting [August 15, 2019] to Mr. Regan thereby breaching section 10.3 of the Township's Code of Conduct.

Section 10.3 states:

Unless required by law, no Member shall disclose the substance of deliberations of meetings held in-camera and that are authorized to be 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.

- [5] During the inquiry Councillor Cumming reported that she believed she had received a telephone call from Mr. Regan on August 15, 2019 but denied providing him any details about the discussion held during the in-camera [closed] portion of the Council meeting. Mr. Regan denied that he received confidential information from Councillor Cumming.
- [6] The details of the information alleged to have passed from Councillor Cumming to Mr. Regan will not be discussed herein. It is our practice not to violate the confidential nature of the in-camera [closed] meeting where possible. It is not necessary in this circumstance to release this information.

FINDINGS

- [7] Our finding in these matters is as follows:

After-Hours Tour of the Museum

We find that the allegation that Councillor Cumming breached section 1.2 (c) of the Township's Code of Conduct by participating in an after-hours tour of the Thelma Myers Historical Museum to be **SUBSTANTIATED**.

We also find that the allegation that Councillor Cumming breached section 1.2 (d) of the Township's Code of Conduct by participating in an after-hours tour of the Thelma Myers Historical Museum to be **SUBSTANTIATED**.

We further find that the allegation that Councillor Cumming breached section 11.1 of the Township's Code of Conduct by participating in an after-hours tour of the Thelma Myers Historical Museum to be **SUBSTANTIATED**.

In addition, we find that Councillor Cumming did also breach section 1.2 (a) of the Township's Code of Conduct which states as follows:

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;

Release of Confidential Information

Both Councillor Cumming and Mr. Regan denied the exchange. The denial of the disclosure of confidential information was self-serving for both witnesses. There were no other witnesses to the alleged conversation. Additionally, the investigator found that Councillor Cumming was only somewhat credible with respect to her evidence in this matter. He found that Mr. Regan was not credible in this matter and required corroborative evidence which was not available.

We find that the allegation that Councillor Cumming breached section 10.3 of the Township's Code of Conduct by disclosing confidential information to be **UNSUBSTANTIATED**. This does not mean that Councillor Cumming did not breach section 10.3 of the Township's Code of Conduct, it means the investigator was not able to decide that it occurred on a balance of probabilities based on the evidence received. We concur with the finding.

II. LEGISLATIVE FRAMEWORK

- [8] Under section 223.4(1)(a) of the *Municipal Act*, Council, a member of Council or a member of the public may make a request for an inquiry to the Integrity Commissioner about whether the member has contravened the Code of Conduct applicable to that member.
- [9] When a matter is referred to us, we may then conduct an inquiry in accordance with the Municipality's Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

- [10] The requests before us were properly filed, in accordance with the *Municipal Act* and the relevant policies and procedures for the Township of Black River-Matheson. The Requestors in this matter wish to remain anonymous. It is our practice to honour a

request for anonymity unless the complaint is frivolous and/or vexatious or the Requestor's identity is important to the inquiry or the findings. In this inquiry, we find no reason to release the names of the Requestors. The Requestors alleged that Councillor Cumming contravened sections 1.2 (c) and (d) as well as 11.2 [August 13, 2019 request] and section 10.3 [September 9, 2019 request] of the Township's Code of Conduct.

IV. THE INQUIRY PROCESS

[11] The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a member has contravened the Code of Conduct that is applicable to that member.

[12] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint which resulted in the decision to conduct an inquiry into the matters. Gil Hughes, a professional investigator with Investigative Solutions Network (ISN), was assigned as an agent of the Integrity Commissioner to carry out an investigation into the Requestors allegations. The inquiry followed the process outlined in section 5 of the Integrity Commissioner Inquiry Protocol which included reviewing the available evidence, interviewing the Requestors, witnesses and Councillor Cumming.

[13] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Township's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:

- whether or not the individual had first-hand knowledge of the situation,
- whether or not the individual had an opportunity to observe the events,
- whether or not the individual may have bias or other motive,
- the individual's ability to clearly describe events,
- consistency within the story,
- the attitude of the individual as they were participating,
- any admission of dishonesty¹

[14] Worthy of note, is the fact that Mr. Hughes, the investigator, determined Councillor Cumming to be credible regarding the after-hours museum tour but some doubt was

¹ *Farnya v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. *Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009)*, 185 LAC (4th) 176 (Alta.Arb.)

raised to her credibility with regard to the breach of confidentiality, as the details of how she may have communicated with Mr. Regan were never fully established. The witnesses were all deemed to be credible, except for Mr. Regan, whose evidence was only accepted if it was corroborated by another source.

V. THE FACTS

After-Hours Museum Tour

- [15] A wine and cheese fundraising event was held at a local curling club in Matheson, Ontario, to raise money for the Thelma Myers Historical Museum on August 9, 2019. During the event, the Director of Corporate Services recalls being approached by the Museum Curator regarding a specific request made by one of the guests. Director of Corporate Services understood that the guest was asking for the Museum Curator's permission for a tour of the Museum after the event. The Director of Corporate Services denied the notion of such a tour; not only did she report the idea unethical [meaning not condoned by Township Council by resolution or policy], but also, there were concerns about the level of sobriety of the people making the request. Further, the absence of licensing for alcohol was also a concern. The wine and cheese event was appropriately licensed but this license did not extend to include the Museum and did place the Township at risk of liability had any injury or loss occurred at the after-party.
- [16] During the interview with Councillor Cumming, she stated that CAO John Regan informed her at the end of the event on August 9, 2019, that everyone was going on a midnight tour of the Museum. Councillor Cumming understood that the Curator had said that Mr. Regan approved the idea and recalled him saying he "had a master key to the Museum". Councillor Cumming said she assumed she was allowed to go and was interested in the idea of seeing the ghost in the Museum.
- [17] Councillor Cumming recalled being let into the Museum and the Curator giving them a tour. Councillor Cumming estimated that she stayed at the Museum for approximately 45 minutes and then she left and went home, while the other members of the group went to Jeff Collins' home.
- [18] Councillor Cumming said she did not drink while she was at the Museum and did not recall anyone else drinking. Councillor Cumming did state that she had a bottle of wine, but it was unopened after she purchased it at the end of the wine and cheese event. Councillor Cumming admitted that she had been drinking the equivalent of one bottle of wine over the course of the entire evening. Councillor Cumming stated that she was with another female in the upstairs area of the Museum, as they were "seancing" a ghost.
- [19] Councillor Cumming recalled asking three people if it was okay before she attended the Museum with the group. She added that she assumed it was alright when Mr. Regan actually let them in. Councillor Cumming further rationalized her decision to go on the after-hours tour by offering that the Museum had previously held "murder

mystery nights". (Note: These "Murder Mystery Nights" were organized events unlike this after-party.) She recalled that the Museum lights were off when the group entered the building.

- [20] In a written response, Mr. Regan included information that directly related to the after-hours Museum tour. Mr. Regan admitted to being amongst the group of people that attended the Museum after the fundraiser but denied being the leader of the group. He stated that the issue was outside of his purview and authority. Mr. Regan denied having any open alcohol at the Museum.
- [21] The Curator told the Director of Corporate Services that on August 10, 2019, the day after the after-hours Museum tour, the Curator had to return to the Museum and clean up beer cans and wine glasses that were left in the parking lot and on the Museum shelves. The Curator claimed that she felt pressured by Mr. Regan and believed that if she declined to open the Museum, the group would have gone on the tour anyway, using Mr. Regan's key. She further rationalized her presence by stating that if she opened the door and attended the after-hours tour then she could keep an eye on things.
- [22] Councillor Cumming did attend the after-hours tour of the Museum. The CAO, as the Township's most trusted employee, is obligated to abide by Township policies and directives from Council. Additionally, the CAO's role is to act as a professional advisor to Council providing advice/guidance on matters before Council and includes mitigating or planning for risk. It is evident that the CAO acted outside of his role by either leading or allowing this unlicensed, after-hours tour of the Museum. Moreover, this placed Councillor Cumming [since she trusted Mr. Regan] and the Township at risk of loss/damage to the Museum and injury to anyone in attendance.

Release of Confidential Information

- [23] The second incident involved an alleged breach of confidentiality by Councillor Cumming from an August 15, 2019 closed session Council meeting. The Requestor alleged that Councillor Cumming stated on September 5, 2019 that she had received a call from Mr. Regan after the emergency Council meeting that occurred on August 15, 2019. The Requestor also heard Councillor Cumming mutter that she had provided Mr. Regan with some details about that meeting. On September 11, 2019, the Requestor and Councillor Cumming exchanged text messages where the Councillor said she had not spoken to Mr. Regan since August 15, 2019, except for a brief conversation regarding garlic and onions at an airport one week later. Of note is that Mr. Regan was excused from the meeting and was the topic of discussion by Council.
- [24] Councillor Cumming denied calling Mr. Regan and providing him with details from the closed session Council meeting on August 15, 2019. In Councillor Cumming's statement she reported that she thought it was Mr. Regan who called her, and she advised him that she could not talk about the meeting with him. Councillor Cumming then indicated that Mr. Regan did call her, but that she did not answer.

- [25] Subsequently, Councillor Cumming suggested that her contact with Mr. Regan might have been through text message. An inspection of the text exchanges between Councillor Cumming and Mr. Regan over the relevant period of time revealed no references to the August 15, 2019 Council meeting, and her phone bill did not show any calls from Mr. Regan's number.
- [26] Mr. Regan did not specifically recall having contact with Councillor Cumming on August 15, 2019. He stated that he did not call her and suggested that he would have to check his text messages in order to determine if they communicated via text that day. Mr. Regan offered to check his Snapchat and Messenger messages in order to find any communication with Councillor Cumming but the results of his search were not provided to the investigator.
- [27] The investigator could not find any evidence of a conversation occurring between Councillor Cumming and Mr. Regan regarding the in-camera or closed session of the August 15, 2019 Council meeting. He did, however, conclude that Councillor Cumming was less credible when providing evidence about this matter than she was when providing evidence about the after-hours Museum tour.

VI. THE OPINION

- [28] It is apparent that Councillor Cumming attended the unauthorized after-hours Museum tour on August 9, 2019. This action was in violation of the Township Code of Conduct. Councillor Cumming is a Township Councillor and should have or ought to have known the after-hours tour of the Museum was not permissible under regular circumstances. Councillor Cumming believed the tour was permissible because other individuals, specifically Mr. Regan, had assured her that it was allowed.
- [29] Councillor Cumming further rationalized her decision by offering that the Museum had previously held murder mystery nights but that notion is questionable at best. These were clearly publicized, organized and Council sanctioned events. The unauthorized after-hours Museum tour was not. At no time during Councillor Cumming's interview did she indicate that she regretted her actions.
- [30] Councillor Cumming is a representative of the community and there are expectations that she will conduct herself with decorum and reflect the values of the people she was elected to serve. In this case, Councillor Cumming failed to satisfy the expectations of her position and appeared to be a willing participant in the unauthorized after-hours activity.
- [31] Councillor Cumming also admitted that she had been drinking the equivalent to one bottle of wine throughout the course of the evening. The alcohol consumption might have been an extenuating factor in her decision to be part of the after-hours Museum tour, but it seems that Councillor Cumming may be more comfortable placing the blame on others, such as Mr. Regan and the off-duty police officer.

[32] As for the allegation into a breach of confidentiality by Councillor Cumming, no conversations or exchanges provided to the investigator displayed any reference to the August 15, 2019 Council meeting.

[33] Under the circumstances, the lack of verifiable information is expected and neither strengthens nor weakens Councillor Cumming's version of the events. It seems plausible that Councillor Cumming and Mr. Regan did have communication on the evening of August 15, 2019, but the absence of documentation and records undermines clarity in the investigation. At this time a conclusion cannot be reached that could clearly substantiate this allegation.

VII. CONCLUSION

[34] Our summary of findings and recommendations are as follows:

1. We find the allegation that Councillor Cumming breached section 1.2 (c) of the Township's Code of Conduct by participating in an after-hours tour of the Thelma Myers Historical Museum to be **SUBSTANTIATED**.
2. We also find that the allegation that Councillor Cumming breached section 1.2 (d) of the Township's Code of Conduct by participating in an after-hours tour of the Thelma Myers Historical Museum to be **SUBSTANTIATED**.
3. We further find that the allegation that Councillor Cumming breached section 11.1 of the Township's Code of Conduct by participating in an after-hours tour of the Thelma Myers Historical Museum to be **SUBSTANTIATED**.
4. In addition, we find that Councillor Cumming did also breach section 1.2 (a) of the Township's Code of Conduct which states as follows:

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;

5. We find that the allegation that Councillor Cumming breached section 10.3 of the Township's Code of Conduct by disclosing confidential information to be **UNSUBSTANTIATED**. This does not mean that Councillor Cumming did not

breach section 10.3 of the Township's Code of Conduct, it means the investigator was not able to decide based on the evidence received. We concur with the finding.

Recommendations

We recommend Council consider the following:

1. That Councillor Cumming be provided with training on the roles and responsibilities of Council as well as Leadership training designed specifically for Municipal leaders.
2. That Councillor Cumming be reprimanded for the various contraventions of the Township's Code of Conduct by her attendance at the after-hours Museum tour.
3. That Councillor Cumming receive training regarding the professional relationship that should exist between Council and the CAO or other senior staff.

DATED May 12, 2020