

INTEGRITY COMMISSIONER INQUIRY REPORT

FOR THE TOWNSHIP OF NAIRN AND HYMAN

CODE OF CONDUCT COMPLAINT RE:

COUNCILLOR BRIGITA GINGRAS

*Office of the Integrity
Commissioner*



Prepared By:

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I. EXECUTIVE SUMMARY

ALLEGATIONS

- [1] These reasons relate to inquiries under section 223.4(1) of the *Municipal Act, 2001*, (the "*Municipal Act*") about Councillor Brigita Gingras ("Councillor Gingras"), an elected member of the Township Council ("Council") for the Township of Nairn and Hyman ("Township").
- [2] The Applicant alleged that Councillor Gingras contravened the Township's Code of Conduct when she:
- By her actions, toward the CAO, on a number of occasions contravened the *Occupational Health and Safety Act* ("OHS");
 - By her actions on at least two occasions contravened the *Ontario Human Rights Code* ("OHRC") by discriminating with respect to employment of a member of municipal staff on the basis of religion and on the basis of gender expression. She also committed harassment contrary to the OHRC on the basis of religion and gender expression;
 - Routinely attempted to direct the work of the CAO/Clerk Treasurer; and
 - Interfered with a property sale conducted under part XI of the *Municipal Act – Sale of Land for Tax Arrears* and at the same time disparaged both the CAO/Clerk Treasurer and the Mayor. This action was also a breach of section 5.2 of the *Municipal Conflict of Interest Act* although no specific complaint and statutory direction was filed.
- [3] Councillor Gingras filed a complaint against the Applicant in retaliation for the allegations against her thereby committing a reprisal. The matter Councillor Gingras complained of had been previously brought to Council and was dealt with by Council in February 2019. This matter is being considered herein only as an alleged contravention of the Code of Conduct by Councillor Gingras.
- [4] Contraventions of the *OHS* or the *OHRC* are not within the jurisdiction of the Integrity Commissioner and will not be adjudicated herein. However, failure to comply with this legislation constitutes a contravention of the Township's Code of Conduct.

FINDINGS

- [5] The Township's Code of Conduct requires that members of Council, among other things:
- a. Act within their role as defined in the Code of Conduct and the *Municipal Act*,
 - b. Understand and give proper consideration to legal requirements,
 - c. Behave in a manner that maintains and enhances the image of Council and does not reflect adversely on Council,
 - d. Act in good faith and not for improper or ulterior motive,

- e. Prevent the misuse of his or her position to gain an advantage for themselves or others,
- f. Prevent the misuse of their position to influence employees to gain an advantage for themselves or others,
- g. Demonstrate respect for employees' opinions and professional expertise,
- h. Conduct the relationship with courtesy and respect [with other members of Council],
- i. Maintain behaviour that seeks to establish mature and constructive working relationships [with other members of Council],
- j. Respect the decisions of Council,
- k. Being aware of and conversant with the statutory obligations imposed on Council as a whole, as well as each individual member of Council.

Contravention of the *Occupational Health and Safety Act*

- [6] Allegations that Councillor Gingras contravened the *OHS Act* were investigated separately to this inquiry. It was found that Councillor Gingras did contravene the *OHS Act* on multiple occasions.
- [7] Councillor Gingras did contravene the Townships Code of Conduct by her contravention of the *OHS Act*.

Contravention of the *Ontario Human Rights Code*

- [8] Allegations that Councillor Gingras contravened the *OHRC* were investigated separately to this inquiry. It was found that Councillor Gingras did contravene the *OHRC*. These breaches were shocking and intolerable in current society. Councillor Gingras ridiculed and belittled staff explicitly based on their religion. She ordered staff to behave in a particular manner when informed that to do so was not in accordance with their religion. She made offensive comments about staff based on their gender expression. She behaved in a manner completely in contravention to the *OHRC* and without any awareness or regard to equality rights in Ontario. By these flagrant breaches she put the Municipality in a position of significant liability had complaints been made to the Human Rights Tribunal or had legal proceedings been commenced.
- [9] Councillor Gingras did seriously contravene the Townships Code of Conduct by her flagrant contraventions of the *OHRC*.

Routinely Directing Municipal Employees

- [10] Councillor Gingras was reported to have repeatedly stated to municipal employees when she told them to do something, (NOTE: Telling municipal employees to do something is never within a Councillor's role) "***I'm not telling you what to do, I'm not trying to micromanage, but you know maybe you should do this...***". Additionally, it was reported by multiple parties that Councillor Gingras would become angered and retaliate against the employee when her direction was not followed.
- [11] Councillor Gingras, on a routine basis and without authorization by Council, did attempt to direct municipal employees contrary to her role as a member of Council as defined by the *Municipal Act, 2001*, the Township's Code of Conduct, and the Township's Role and

Responsibility of Council and Senior Management Policy. Councillor Gingras on a routine basis contravenes the Township's Code of conduct.

- [12] Councillor Gingras is not a new member of Council. She has been a municipal Councillor for twenty-one (21) years and ought to know this practice/behaviour is unacceptable.

Interference with a Statutory Process and Role of a Statutory Officer

- [13] It was alleged that Councillor Gingras interfered a property sale that the Township was conducting in accordance with part XI of the *Municipal Act* – Sale of Land for Tax Arrears and disparaged both the CAO/Clerk Treasurer and the Mayor during this process.

- [14] It was further alleged that Councillor Gingras made disparaging remarks about the CAO/Clerk Treasurer, the Mayor, and other municipal staff. She wrongfully and without any evidence accused them of collusion, fraud, and incompetence.

- [15] When interviewed, Councillor Gingras admitted to attempting to assist a specific business in obtaining the property being sold in the statutory tax sale process and further admitted her unprofessional and inappropriate comments to the CAO/Clerk Treasurer and the Mayor.

- [16] The sale of a property by a municipality for the purposes of recouping tax arrears is a regulated and very public process. Municipalities failing to follow the process can be challenged in court. Councillor Gingras attempted in a very significant way to interfere in and skew the process to benefit a single taxpayer.

- [17] Additionally, Councillor Gingras used her influence as a municipal councillor to inappropriately obtain the contact information of the successful purchaser whom she threatened to contact. Councillor Gingras reported that she did not contact the individual but that she forwarded this information to the taxpayer she was trying to benefit. This disclosure was a breach of the *Municipal Freedom of Information and Protection of Privacy Act* as she took this action without consent and thereby disclosed personal information for a purpose for which it was not collected by the Municipality. This action again put the municipal corporation in a position of liability and risk.

- [18] Interference with the role of a Treasurer conducting a tax sale is a serious act and more significantly so with Councillor Gingras' many years of training and experience as a municipal councillor.

- [19] We find that this action on behalf of Councillor Gingras constitutes multiple contraventions of the Township's Code of Conduct and not just one single overarching breach.

Retaliation Against the Applicant/Interference with an Integrity Commissioner Inquiry

- [20] The investigator found that Councillor Gingras retaliated against the Applicant in this matter when she lodged a complaint with the Integrity Commissioner after the inquiry into her actions had begun. Reprisals are prohibited by the *OHSA* and the *OHRC*. We find this reprisal to be a serious contravention of the Township's Code of Conduct.

II. LEGISLATIVE FRAMEWORK

- [21] 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.
- [22] When a matter is referred to us, we may then conduct an inquiry in accordance with the process established by the Township and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

- [23] The requests before us were properly filed with our office in accordance with the *Municipal Act* and the relevant policies and procedures for the Township of Nairn and Hyman.

IV. THE INQUIRY PROCESS

- [24] 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.
- [25] After receiving the complaints, we followed the inquiry process as set out in the Township's Code of Conduct. We did a preliminary review of each complaint to determine if they are within the jurisdiction of the Integrity Commissioner. Those matters not with the Integrity Commissioner's jurisdiction are referred to be considered by other appropriate parties. In this circumstance several the allegations were referred to be investigated under the *OHSA* and the *OHRC*. The matters considered by our office followed a process whereby the available evidence was reviewed, and the Applicant, witnesses, and Councillor Gingras were all interviewed. Interviews were recorded and transcriptions prepared for each individual interviewed.
- [26] 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 are participating
- any admission of dishonesty¹

[27] Worthy of note is that the investigator reported that based on his experience of Councillor Gingras, “***it is very clear that she is a person who is used to getting her way. She is persistent in her arguments, a loud speaker and difficult to convince of facts contrary to the direction she is set on going***”.

[28] He further reported that he would only accept Councillor Gingras’ evidence when it was corroborated by others. The investigator found that Councillor Gingras would deny events until faced with evidence to the contrary, then she would admit her role in the event and would often downplay the facts.

V. THE FACTS

Contravention of the *Occupational Health and Safety Act*

[29] Many of the allegations received by our office were more properly considered as contraventions of the *OHS Act*.

[30] These allegations were referred to an independent third-party having expertise in such investigations.

[31] The findings of the investigator are that Councillor Gingras on several occasions did contravene the *OHS Act* and that one such breach was egregious.

Contravention of the *Ontario Human Rights Code*

[32] At least two (2) of the allegations received by our office were more properly considered as contraventions of the *OHRC*.

[33] These allegations were referred to an independent third-party having expertise in such investigations.

[34] The findings of the investigator are that Councillor Gingras did contravene the *OHRC* with respect to both allegations.

Routinely Directing Municipal Employees

[35] Councillor Gingras would routinely give employees direction without the authority of Council to do so. To be clear, Councillor Gingras has not been appointed by bylaw or resolution of Council to be the “overseer” of the municipal operation nor are there any Council resolutions on record giving Councillor Gingras the authority to direct staff with respect to a specific matter.

¹ *Faryna 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.)

- [36] Evidence from current and former employees shows a consistent and ongoing pattern of behaviour by Councillor Gingras. Her requests are often couched by saying “*I’m not directing you*” or “*I’m not trying to micromanage, but we should do this*”. Municipal employees reported that they believed this was a way for Councillor Gingras to mitigate her liability by opening with those statements.
- [37] As example, in April 2019, an Ontario Clean Water Agency (OCWA) report was given to Council. Councillor Gingras expressed her concern with this report and was very adamant about hydro costs for the water plant being unnecessarily expensive. Councillor Gingras would not let the matter drop and Mayor Falldien suggested that Councillor Gingras come up with a plan of how they could lower hydro costs. Councillor Gingras agreed that she would. The next morning, Councillor Gingras went to the municipal office and directed the CAO/Clerk Treasurer to come up with this strategy. Councillor Gingras reportedly stated, “*that’s your job, not mine...she was like, well, you know this is your job. As a councillor, this is not my job...you do a report to Council...*”
- [38] The CAO/Clerk Treasurer completed the report as directed by Councillor Gingras rather than returning the matter to seek proper approval from Council.
- [39] In another such example, Councillor Gingras called the municipal office [September 16, 2019] upset that a member of staff had loaned out chairs to a member of the public for a family wedding. Councillor Gingras demanded that the CAO/Clerk Treasurer “write up” the individual and wanted to fire them. The CAO/Clerk Treasurer asked Councillor Gingras if she was directing the CAO/Clerk Treasurer to discipline the member of staff. Councillor Gingras responded, “***Well of course I’m not but you should use your own discretion, but yeah, that’s what I want...***”
- [40] CAO/Clerk Treasurer reported that she was obligated to carry out an investigation prior to disciplining an employee yet she gave this individual a written warning as directed by Councillor Gingras. She then wrote a report to Council regarding the situation.
- [41] The CAO/Clerk Treasurer has never reported to Council on employee discipline issues as such an action could be considered a contravention of the *Municipal Freedom of Information and Protection of Privacy Act*. The CAO/Clerk Treasurer reported the issue with the member of staff to Council because she was directed to by Councillor Gingras. The CAO/Clerk Treasurer stated that she felt bullied into writing the report.
- [42] Current and former municipal employees reported that failing to comply with direction from Councillor Gingras most often resulted in ostracization for a period of time, verbal attacks at Council meetings or other unprofessional behaviours.

Retaliation Against the Applicant

- [43] On May 1, 2020, the investigator called Councillor Gingras to advise her of the allegations made against her. She immediately responded that she had her own complaint to file against Mayor Falldien. This complaint was surrounding the hiring process of Belinda Ketchabaw as CAO/Clerk Treasurer and was considered as part of this inquiry. However, this complaint was originally February 15, 2019, with Council after Ms. Ketchabaw was hired.

- [44] In her complaint to Council, Councillor Gingras expressed displeasure after three members of Council were contacted by the Mayor, but she had not been consulted [about a matter Council had already given the Mayor direction on] and further that he [the Mayor] overstepped his role by directing municipal employees. Specifically, she wrote: *.....In my opinion, the Mayor's actions are unacceptable and disregard of policy and procedure and quite frankly an abuse of power....*”.
- [45] This matter was reviewed by the investigator who found that Mayor Falldien did not act improperly, and the complaint was dismissed.
- [46] Additionally, after Councillor Gingras was notified of the complaints against her she called the CAO/Clerk Treasurer on April 30, 2020. Councillor Gingras wanted to know who the Integrity Commissioner was and when they were appointed. Councillor Gingras said that she understood that the Integrity Commissioner had been called. Councillor Gingras asked, **“did you follow the by-law with respect to getting Council's approval?”** The CAO/Clerk Treasurer informed Councillor Gingras that Council does not approve matters that go to the Integrity Commissioner.
- [47] Councillor Gingras also asked the CAO/Clerk Treasurer to divulge what the investigation was about, and she advised Councillor Gingras that she could not as it was confidential.
- [48] Councillor Gingras was asked during her interview with the investigator why she filed a complaint with the Integrity Commissioner a year and a half after her original complaint was dealt with and found to be unsubstantiated. Councillor Gingras stated, **“Because the Mayor chose to launch an investigation about me. Do you think that's retaliatory? No. I think it's – if the Mayor wants to do his business this way, then that's okay, then I will go there...I see that it looks retaliatory for sure...”**

Interference with a Statutory Process and Role of a Statutory Officer

- [49] The *Municipal Act* requires that a municipality appoint a Treasurer. This position has a statutory role and numerous legal obligations under the *Municipal Act* when it comes to tax collection, tax enforcement and the selling of property for tax arrears.
- [50] In April of 2020, the Treasurer posted a property for tax sale. This property was located on Highway 17 and had been the subject of a failed tax sale previously since the arrears at that time were \$137,000.00 [no bids were received].
- [51] This time, upon advice received by the Treasurer, the property was posted at a significantly reduced rate. In fact, the minimum bid was \$5,000 and four (4) bids to purchase were received.
- [52] After the opening of the bids to purchase the property on April 20, 2020, a local taxpayer one of the unsuccessful bidders called the CAO/Clerk Treasurer and advised her that he was contesting the sale of the property and that he deserved it. He further said that he was going to call the Mayor and the Councillors, and that they had promised him the property.
- [53] Later that night there was a Council meeting. Prior to the meeting, the CAO/Clerk Treasurer received a call from Councillor Gingras accusing the CAO/Clerk Treasurer of

getting the tax sale wrong. Councillor Gingras said the CAO/Clerk Treasurer had made a mistake and that her preferred taxpayer should have gotten the property. The CAO/Clerk Treasurer explained that she had followed the *Municipal Act*.

- [54] Councillor Gingras also accused the CAO/Clerk Treasurer and the Mayor of being ***“in bed together”***, that they had ***“fucked this up”***, and challenged their integrity and professionalism.
- [55] The CAO/Clerk Treasurer reported that she asked Councillor Gingras ***“are you accusing me of fraud? And she [Councillor Gingras] said yes, I feel that something dirty has happened and you and the Mayor do not want [her preferred taxpayer] to have it.”***
- [56] The CAO/Clerk Treasurer also reported that Councillor Gingras at one point stated ***“she [Councillor Gingras] would stick her neck out and do whatever it took for them to have the property regardless if she lost her seat on Council...”***
- [57] It was reported that the day after the Council meeting there were many phone calls from Councillor Gingras to the municipal office and she indicated that the taxpayer [the one preferred by Councillor Gingras] and his business partner, were making allegations that the CAO/Clerk Treasurer and the Mayor had somehow fixed the sale so they [the taxpayer and his business partner] would not get it. Councillor Gingras said that she was going to call the buyer of the property to try and intimidate them out of the deal. The CAO/Clerk Treasurer advised Councillor Gingras this was a very bad idea, but Councillor Gingras said she did not care and asked for the buyers contact details.
- [58] Councillor admitted ***“...I swore at them, yes and I was argumentative, yes. Yes, I did do that”***. She also admitted that she asked the CAO/Clerk/Treasurer for the successful bidder’s contact information. She reported that she may have said that she was going to contact them, but she didn’t do it. The taxpayer that she preferred to have this property and his partner contacted the bidder not her: ***“...as soon as I got that information from Belinda, I transferred it directly to [her preferred taxpayer and his business partner] and absolutely did not in any way, shape, or form contact the successful bidder. I left it up to them to do...I feel I was acting on behalf of a taxpayer who is a pillar in our community...I was emotionally attached to it for years and years trying to secure this property for him...”***

VI. THE OPINION

- [59] It was very apparent that Councillor Gingras has a long-standing pattern of ignoring rules, applying them as she feels fit and bullying to get what she wants.
- [60] Councillor Gingras contravened the *OHSA*.
- [61] Councillor Gingras contravened the *OHRC*.
- [62] Councillor Gingras continually micromanaged employees contrary to her role as a municipal councillor.

- [63] Councillor Gingras interfered in a statutory process and attempted to bully a statutory officer to change the outcome of the process when she:
- a. Continually attempted to insert herself into the selling of a property for tax arrears;
 - b. Made disparaging remarks about the Mayor and the CAO/Clerk Treasurer;
 - c. Demanded the CAO/Clerk Treasure provide her with the contact information of the successful bidder; and
 - d. Threatened to call the new property owner and threaten them.
- [64] The Township's Code of Conduct requires that members of Council among a number of other things:
- a. Act within their role as defined in the Code of Conduct and the *Municipal Act*,
 - b. Understand and give proper consideration to legal requirements,
 - c. Behave in a manner that maintains and enhances the image of Council and does not reflect adversely on Council,
 - d. Act in good faith and not for improper or ulterior motive,
 - e. Prevent the misuse of his or her position to gain an advantage for themselves or others,
 - f. Prevent the misuse of their position to influence employees to gain an advantage for themselves or others,
 - g. Demonstrate respect for employees' opinions and professional expertise,
 - h. Conduct the relationship with courtesy and respect [with other members of Council],
 - i. Maintain behaviour that seeks to establish mature and constructive working relationships [with other members of Council],
 - j. Respect the decisions of Council,
 - k. Being aware of and conversant with the statutory obligations imposed on Council as a whole, as well as each individual member of Council.
- [65] Furthermore, the *Municipal Act* section 224, clearly sets out Council's role. No where in either the Township's Code of Conduct or the *Municipal Act* does it provide exemption for any of these provisions for Councillor Gingras. Yet Councillor Gingras appears to disregard them at all times when it pertains to her own behaviour but will make accusations about others contravening the same rules when it suits her.
- [66] Councillor Gingras contravened the Township's Code of Conduct

VII. CONCLUSION/RECOMMENDATIONS

- [67] The conduct of Councillor Gingras in these matters was astounding. She has shown not only disregard for the ethical responsibilities in the Code of Conduct, but egregious and flagrant disregard for serious legislation like the *OHRC*, the *OHS*, the *Municipal Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. This behaviour has been long standing and often quite egregious. It is our opinion that her behaviour will be ongoing and will place the Township at considerable risk of litigation therefore we recommend that Council request that Councillor Gingras resign her position.

[68] Alternatively, should Council not wish to take such action or should Councillor Gingras refuse to resign Council should strictly impose the following:

- a. With respect to the contravention of the *OHSA* our recommendation is that Council suspend her remuneration for a period of ninety (90) days for the multiple breaches. This is the maximum financial penalty we can recommend.
- b. With respect to the two (2) contraventions of the *OHRC* our recommendation is that Council suspend her remuneration for a period of ninety (90) days for discrimination based on religion and the events of discrimination based on gender expression.
- c. With respect to the repeated micromanaging that Council remove her from any standing or adhoc committees of Council and suspend her remuneration for a period of ninety (90) days. We also recommend that she not be permitted to communicate with staff without another member of council present as a witness and a buffer to ensure the safety of staff and the propriety of Councillor Gingras' conduct.
- d. With respect to the act of reprisal against the Applicant we recommend Councillor Gingras be required to undergo training with respect to her role/responsibility, conflict resolution training and emotional intelligence.
- e. With respect to interfering with a statutory process/statutory officer, we recommend that she receive a public reprimand and that she publicly apologizes to the CAO/Clerk Treasurer and the Mayor for this misconduct.

[69] We further recommend that Council stop Councillor Gingras when she begins to nitpick, question, or openly attack staff at Council meetings. Should she fail to stop, the Mayor should have her removed from the meeting. This behaviour should not be tolerated by Council.

[70] We also recommend the following:

- Council update their Code of Conduct to be compliant with changes to the *Municipal Act* that came into affect March 1, 2019.
- Council adopt a Council-Staff Relations Policy as now required by the *Municipal Act*.
- Council provide training on both to all members of Council, members of committees of Council and municipal employees.