

Expertise for Municipalities (E4m)

Non-Profit Association

1894 LASALLE BLVD. SUDBURY, ON, P3A 2A4

**Integrity Commissioner**

for the

Township of Nairn-Hyman



# INQUIRY REPORT/DECISION

**ALLEGATION: CONTRAVENTION OF THE  
TOWNSHIP OF NAIRN-HYMAN'S**

**CODE OF CONDUCT**

**BY: COUNCILLOR ROD MACDONALD**

## I. REQUEST FOR INQUIRY

- [1] E4m, as Integrity Commissioner (“IC”), received a request for Inquiry from a member of the public (the “Requestor”) with respect to the behaviour and actions of Councillor Rod MacDonald (“Councillor MacDonald”) at the June 7, 2022, Special Council meeting regarding the Budget in the Township of Nairn-Hyman.
- [2] The Requestor more specifically alleged that during the June 7, 2022, Special Council meeting Councillor MacDonald made inappropriate and disparaging remarks about specific Staff’s work behaviour at an open public meeting which contravenes the Code of Conduct and other by-laws.
- [3] After an initial review of the application, it was determined that there were sufficient grounds to complete an inquiry into the matter.

## II. FINDINGS/CONCLUSION

- [4] We find that at the June 7, 2022, Special Council Meeting, Councillor MacDonald contravened nine (9) sections of the governing policies that were put in place by Council. Councillor MacDonald admitted his actions and firmly believes it his role as a member of Council to comment on/or performance manage employees.
- [5] Additionally, Councillor MacDonald seems to believe it is acceptable to contravene by-laws and policies approved by Council if no one is there to hear him do it.
- [6] It is clear, that Councillor MacDonald continues to micromanage the operation of the municipality as well as bring up personnel issues in open public meetings even after significant restrictions were placed on him by Council after Councillor MacDonald was found by the Integrity Commissioner to contravene the Code of Conduct when he was found to have contravened the *Occupational Health and Safety Act* (December of 2020). The allegations we considered were similar in nature to those already addressed in the earlier Inquiry.
- [7] Based on the documentary evidence before us, given that the June 7, 2022, meeting was recorded, we find that Councillor MacDonald did make inappropriate and disparaging remarks directed at more than one member of Staff during the meeting and brought up operational matters that were not on the meeting agenda.
- [8] By doing so he violated Sections 6.1 *Conduct at Meetings* and 8.1, 8.2 and 8.3 *Conduct Respecting Staff*, of the **Code of Conduct**.

- [9] Additionally, Councillor MacDonald contravened the Township's **Council Proceedings Bylaw**, sections 12.4 Conduct and 18.1 Duty of Councillors.
- [10] Finally, Councillor MacDonald contravened By-law Number 2021-10 – **Council-Staff Relations Policy** Section 2. Scope and Intent, 7. Control Anger and 11. Respect.

### **Recommendations**

- [11] Upon finding a breach of the Code of Conduct, section 223.4(5) of the *Municipal Act*, 2001 permits Council to levy a penalty of either a reprimand, or a suspension of the remuneration paid to the member in respect of his services as a member of council for a period of up to 90 days for each breach.
- [12] This is the second time that Councillor MacDonald has been found to have contravened the Code of Conduct in this term of Council. We therefore recommend Council impose a financial penalty of suspension of pay for a minimum of ninety (90) days.
- [13] We further recommend:
- a. That the CAO contact the Information Privacy Commissioner to seek guidance due to the fact that Councillor MacDonald disclosed personal information in a public forum.
  - b. That the Mayor review the Council-Staff Relations Policy with Councillor MacDonald.
  - c. That when Councillor MacDonald attempts to bring matters up that are not on the agenda or are related to operational micromanagement and most importantly the performance of Staff the Mayor and/or Councillors call a point of procedure and request Councillor MacDonald to cease. If Councillor MacDonald fails to comply with the request that the Mayor eject him from the meeting.

### **III. INQUIRY PROCESS**

Our investigation of the allegations included a review of the associated bylaws, policies and legislation, the recording of the June 7<sup>th</sup> Council meeting, and interviews with the the Requestor, witnesses, and Councillor MacDonald.

[14] **Applicable Sections of the Township's Code of Conduct (By-law Number 2021-9)**

*6. Conduct at Meetings*

*6.1 Every member shall conduct himself or herself properly and in a civil and respectful manner at meetings, and in accordance with the provisions of the Procedural Bylaw, this Code of Conduct, and other applicable law."*

**8. Conduct Respecting Staff and Officers**

*8.1 ...Accordingly, no Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any staff person or Officer.*

8.2 ... 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.

**Council proceedings by-law, By-Law Number 2018-39  
Being A By-Law To Govern The Proceedings Of Council, The Conduct Of Its  
Members And The Calling Of Meetings**

**12.0 Conduct**

12.4 Every Member, prior to speaking, shall address the Presiding Officer, shall confine his/her remarks to the question..."

**18.0 Duty of Councillors**

18.1 (b) to speak only to the subject under debate;

**By-law Number 2021-10 – Council-Staff Relations Policy**

**2. Scope and Intent**

The intent of this Policy is to ensure that the relationship between Members of Council and the Officers and Staff of the Municipality is co-operative and supportive with a clear understanding of the respective roles and responsibilities.

**7. Control Anger**

... Comments on Staff and Officer performance shall be directed through the appropriate confidential performance reviews

**11. Respect**

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 Municipality.

[15] The conclusions that the Integrity Commissioner arrived at with respect to this matter are based upon the following findings of fact.

**IV. FINDINGS OF FACT**

[16] In a December 2020 Integrity Commissioner report to Nairn-Hyman Council, regarding Councillor MacDonald's behaviour with respect to staff, it was found that he had contravened the Code of Conduct when he breached the *Occupational Health and Safety Act* and when he had "made disparaging remarks about the competency of municipal employees". Thereafter Council applied a significant penalty rebuffing Councillor MacDonald's behaviour.

- [17] Note: The following evidence was taken directly from the related meeting agendas, recordings and minutes, unless otherwise noted in bracketed italics following the statement.
- [18] The June 7, 2022, Special Council meeting was specifically dedicated to a review of the proposed 2022 budget. The budget was prepared and presented by Staff to Council for their consideration.
- [19] During the budget discussions Councillor MacDonald made disparaging comments, about operational and personnel matters during discussion of the associated department budget items identifying Staff by name or title numerous times throughout the meeting.
- [20] Councillor MacDonald also said, "*I shouldn't – nobody's here, so.*" and then carried on disparaging Staff by relating what he heard said about them from his constituents and what he thought wasn't getting done and what should be done at the operational level.
- [21] Later in the meeting, Councillor MacDonald began discussing an industrial project unrelated to the current budget that is being developed in the Township. He explained that a resident had taken him out to view the project. He said he was shocked at the size of the development. He felt that Council has not been kept in the loop.
- [22] This project was originally approved by Council in 2013.
- [23] He then went on to say that a resident had told him that a certain employee had been fired and that we had already hired someone to fill the position.
- [24] The fact was an employee quit in late 2021 and the position was filled by senior Staff in May of 2022.
- [25] The Council Staff Policy states clearly that "*Comments on Staff and Officer performance shall be directed through the appropriate confidential performance reviews.*"
- [26] Near the end of the meeting Councillor MacDonald says to Council that it is the [Staff's]'s job to communicate to Council what is going on. He then says, "*We're Council, we run this town*". Then again reiterates that he needs to know what's going on.
- [27] Councillor MacDonald finished his interview with the Integrity Commissioner saying he doesn't feel he has done anything wrong and will continue to bring his issues to the table and that complaints to the Integrity Commissioner have been unwarranted.

## **V. ANALYSIS**

- [28] Members of Council are held to a higher standard of ethical behaviour and are expected to adhere to the Code of Conduct and other municipal policies, the pertinent sections of which have been detailed in [14] above.

- [29] When Councillor MacDonald stated, “*I shouldn’t – nobody’s here, so.*” He in essence admitted to everyone, he knew speaking the way he was, was out of line.
- [30] No matter how strongly Councillor MacDonald feels he should know what’s going on operationally because it is his belief “*Council runs this town*”, he is wrong. Council is a governance body whose responsibility is to set the strategic direction of the municipality (mission, vision, future direction), determine what services (and to what level) the municipality will provide and making law as well as evaluating how the adopted law/policies are working. Being on Council is not an administrative position. Councillors individually are not supervisors and ought not to act as such by attempting to micromanage the operation including the management of staff performance. Moreover, Council as a body has one (1) employee the CAO and is responsible for the performance management of that position.
- [31] Council, as a whole, does need to know what’s going on to ensure that Staff are carrying out the direction given to them by Council, as the governing body. That does not mean that Council is privy to minute detail of what work is carried out by staff daily. It does mean that Council requests that Staff provide reports on how the direction of Council is being carried out. To be clear, a member of Council wanting detail about a specific project or policy can request that Council pass a resolution directing the CAO to provide a report on the matter.
- [32] Of concern in this circumstance, is that while he is aware there is a formal process in place that identifies how Council-Staff are to communicate and outlines that Council governs through By-laws and resolutions and Staff make reports to Council when necessary or when directed to do so by Council, not single Councillors, Councillor MacDonald continues to inappropriately bring up matters in blatant disregard Council’s policy.
- [33] Also of concern is that Council may only discuss matters that are on the meeting Agenda. The Office of the Ombudsman has found that when Council speaks to matters that are not on the posted agenda are in essence having an illegal closed meeting (even if the meeting is open to the public). The Agenda of the Special Meeting did not include the industrial project as that matter was not part of the 2022 budget or Staff performance management.
- [34] The remarks made by Councillor MacDonald related to specific Staff behaviors were not properly discussed by Council as it is not Council’s role to performance manage Staff. Additionally, personnel matters are confidential and should never be discussed in public by Council. Section 14(3)(g) of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* provides that it is a “*presumed breach of privacy*” to disclose personal information which “*consists of personal recommendations or evaluations, character references or personnel evaluations*”. Discussing employee performance in public is a breach of privacy. Anyone found to contravene *MFIPPA* could be subject to a fine of up to \$5,000. Councillor MacDonald’s actions are a violation of *MFIPPA*.

- [35] When a Councillor has a concern about the performance of an officer or employee of the municipality, they should bring their concerns to the attention of the CAO. It is the responsibility of the CAO to manage the performance of officers and employees. Councillor MacDonald's comments regarding the work performance and character of Staff were inappropriate and contrary to law.
- [36] At the June 7, 2022, Budget Council meeting alone, Councillor MacDonald contravened nine (9) sections of the governing policies that were put in place by the Council. As a member of Council for many years, Councillor MacDonald seems to think it is acceptable to do so if no one is listening, or possibly even if they are. He continues to attempt to micromanage the municipality as well as bring up personnel issues in open public meetings.
- [37] Councillor MacDonald's statements during his interview confirmed it is unlikely additional training will change this well-established behaviour.
- [38] Councillor MacDonald also feels the expenses relating to Integrity Commissioner inquiries and related *Occupational Health and Safety Act* investigations are the fault of others as opposed to his own unwillingness to change his behaviour as the requirements of his position as a member of Council continue to evolve.

DATED August 18, 2022