



Probity Municipal
Consulting

Specializing in Small Rural & Northern Communities
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OFFICE OF THE INTEGRITY COMMISSIONER

**INVESTIGATION REPORT
FOR THE TOWNSHIP OF NAIRN & HYMAN
CODE OF CONDUCT COMPLAINT**

MAYOR AND COUNCIL

FINAL

**Prepared by: Chris Wray, AMCT
Investigator**

**Peer Reviewed by: Cassandra Child, AOMC, DIPL. M.A.
Investigator**

Date: November 30, 2023

PREAMBLE

The purpose of this investigation report is to provide finding results of an alleged code of conduct breach against the Council, who hold public office with the Township of Nairn & Hyman.

Given that the subject Complainant is a Council Member, the consideration of whether or not the Code of Conduct was violated shall exclude the Complainant from also being a Respondent.

In order to produce a factual report with evidence-based findings, a pre-determined framework based on legislation and internal policies is used to set out the specific roadmap. In addition, the Office of the Integrity Commissioner must weigh the probabilities based on hearsay and the applicant's or Complainant's recollection of the event.

EXECUTIVE SUMMARY

Probity Municipal Consulting has been appointed as the Township of Nairn & Hyman's Integrity Commissioner. Members of the public, staff, and members of Council can apply to the Office of the Integrity Commissioner with a complaint about the potential misconduct of Members of Council or potential pecuniary interest breaches Members of Council may have exposed themselves to, based on provincial legislation and the municipality's internal policies/procedures.

This report explores a situation that took place at the Closed Meetings of June 19, 2023, and July 17, 2023. The complaint received alleges breaches of conduct against the municipal Code of Conduct policy by Council.

The Complainant alleges that at a Council meeting on these dates, the Council agreed by vote to send a delegation of two Council members to a business located in Nairn & Hyman to discuss a noise and heavy traffic complaint against the business. The Complainant also stated that it was his opinion that this was the job of the bylaw officer and not the Council itself. The Complainant further alleges that Council has infringed upon the authority of the staff of the Township.

LEGISLATIVE FRAMEWORK & RELEVANT CODE RULES

The investigation against Council took into consideration the following pieces of legislation and municipal policies:

- *The Municipal Act, 2001, S.O. 2001, c.25*
- *Township of Nairn & Hyman Integrity Commissioner Protocol*
- *Township of Nairn & Hyman Code of Conduct*

Section 223.1 of the Municipal Act, 2001 S.O. 2001 c. 25 speaks to the requirement every municipality has in the province of Ontario to adopt a code of conduct¹.

Section 223.3 (1) of the Municipal Act, 2001 S.O. 2001 c. 25 speaks to the requirement which authorizes municipalities to appoint an Integrity Commissioner who reports to Council and who is

¹ Section 2223.2 (1) A municipality shall establish codes of conduct for members of the Council of the municipal and of its local boards. 2017, c.10, Sched. 1, s. 18.

responsible for performing in an independent manner the functions assigned by the municipality.
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The Township of Nairn & Hyman has an adopted *Integrity Commissioner Protocol Policy* which sets out the framework for the Office of the Integrity Commissioner and reflects policy surrounding the potential breaches of Council *Code of Conduct* and alleged contraventions of *section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act*.

THE APPLICATION / COMPLAINT

This report explores a code of conduct application/complaint filed against Council.

Application/Complaint

Alleged Breach of Code of Conduct at the June 19, 2023, and July 17, 2023, Closed Session of the Regular Council Meetings held on those dates.

In the application, the Complainant alleged that Council contravened sections 8.1 and 8.2 of the municipal Code of Conduct policy when they spoke on agenda item 3 (a) of the June 19, 2023 and agenda item 3 (a) of the Closed Meeting of Council on July 17, 2023, regular Council meeting.

More specifically, it was alleged that Council appointed a Committee that included Council Members to engage in a discussion respecting the enforcement of local bylaws. This appointment violated Section 8.1 and 8.2 of the Council Code of Conduct by instructing Council to conduct business that would otherwise be the responsibility of staff, more specifically the Bylaw Officer and the Chief Administrative Officer.

THE INQUIRY PROCESS

The Office of the Integrity Commissioner received a complaint from Councillor Guy Despatie on July 26, 2023. The initial review of the complaint indicated that a detailed look into the alleged complaint was necessary.

Probity Municipal Consulting conducted an investigation between October 18, 2023, and October 23, 2023, through the "Microsoft Teams" communication tool. The investigation was conducted by Chris Wray, Investigator of Probity Municipal Consulting. Each interview used a series of

² 223.3 (1) Without limiting sections 9, 10 and 11, those actions authorize the municipality to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of Council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of Council and of local boards.
3. The application of sections 5, 5.1, 5.2 and 5.3 of the Municipal Conflict of Interest Act to members of Council and of local boards.
4. Requests from members of Council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of Council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality of the local boards, as the case may be, governing the ethical behaviour of members.
6. Requests from members of Council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.
7. The provision of educational information to members of Council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of Council and members of local boards and about the Municipal Conflict of Interest Act.

questions in an attempt to corroborate the complaint. The investigation further provided an opportunity for Councillor Despatie and the Respondents to verbally detail their recollection of the situation and actions witnessed by the Complainant within the parameters of the submitted inquiry/complaint. This meeting also provided an opportunity for the Council to defend their actions in light of the allegations.

As per legislation and internal policies with the Township of Nairn and Hyman, complaints can remain anonymous from the purview of the Applicant submitting the complaint. However, the inquiry/complaint the Office of the Integrity Commissioner received by Councillor Despatie identified that he agreed to release his identity.

THE FACTS

General

1. During the period of October /November 2022, the Township received complaints of excessive noise and heavy traffic being created by a local business.
2. The local business is located in a Residential (R1) Zone that is identified in the Township's Zoning bylaw.
3. The existence of the subject business is noted as being legal non-conforming within the zoning bylaw. The owner of the property rented the business to another entity who subsequently took over the business. At this point, there was a change in business volume but not use.
4. The noise and disruption increased with the new company followed by complaints from residents.
5. A letter that included statistics was provided by the residents.
6. At the time of the complaints, the Chief Administrative Officer engaged the Bylaw Officer to review the subject matter of the complaint.
7. Once completed, the Bylaw Officer reviewed the findings with the Chief Administrative Officer. The findings included that there appeared to be a possibility that the use of the property may have changed such that it may no longer be of a legal non-conforming use.
8. The Bylaw Officer was of the opinion that perhaps a "cease and desist" order should be issued but the Chief Administrative Officer thought that given the circumstances, the matter should be brought to Council for discussion.

February 13, 2023, Closed Meeting

1. At the February 13, 2023, Closed Meeting of Council, a letter of complaint was received by the residents in the area. As a result, Council passed a Resolution to request an opinion from legal counsel.

May 29, 2023, Closed Meeting

1. At the May 29, 2023, Closed Meeting of Council, the legal opinion obtained from Weaver Simmons was presented to Council. All of Council was given the time to read the opinion.

June 19, 2023, Closed Meeting

1. At the June 19, 2023, Closed Meeting of Council, Weaver Simmons attended as a follow up on the memorandum of advice previously provided. In attendance was Rose Muscolino of Weaver Simmons, the Chief Administrative Officer, Belinda Katchebaw and Council with the exception of Councillor Despatie (the Complainant).
2. Weaver Simmons stated that the legal nonconforming use of the subject property can be flexible but had to balance between the business and the ratepayers in the area. Legal costs in an attempt to get the business to comply could be expensive. Due to this, Weaver Simmons advised that Council could consider the option of meeting with the company in an attempt to avoid a long, drawn-out process.
3. Council did discuss this last option at this meeting and directed that a meeting be conducted between the company and two (2) members of Council.

July 17, 2023, Closed Meeting

1. At the July 17, 2023, Regular Meeting of Council (Closed Session), after again discussing the option, Council agreed that two (2) members of Council (and the Chief Administrative Officer) would meet with the subject business to explore if they were moving locations and if there were any measures that could be taken to mitigate the current loud noises and truck traffic. Council did have the option of a "cease and desist" order but did not simply want to shut down the business.
2. Councillor Despatie objected to this option as it was his opinion that it was the responsibility for staff and not Council to conduct this meeting.
3. The Chief Administrative Officer pointed out that normally Councillor Despatie would be correct but in this case, Council was following the advice of legal counsel and the wishes of the Chief Administrative Officer.
4. Councillor Despatie was absent from the June 19 meeting wherein legal counsel attended but did have the benefit of receiving the letter of opinion from legal counsel at the May meeting.

THE ISSUE

The submission of this complaint has given rise to review the following key issues of the situation:

1. Systemic Issue

The municipality is a corporation and like every corporation, in it lies a hierarchy. Every part of the system must respect the hierarchy in order to keep order to avoid an interruption in operations.

2. Role of Council

There seems to be a split misunderstanding of the role of Council. While generally, it appears that the role of Council is well understood, some may be viewing this an explicit yet clear-cut manner when in fact, at times, it should be viewed in “shades of grey”.

COMPLAINANT’S POSITION

Simply put, the Complainant, Councillor Despatie, is of the opinion that the actions of Council in this matter overstepped their authority and thus interfered with the authority of the Chief Administrative Officer and Bylaw Officer.

The Complainant feels the following provisions of the *Code of Conduct* were breached concerning the interaction between Council and the Chief Administrative Officer as a result of the resolution appointing two Council Members to meet with the subject business over the concerns of the Township and its residents.

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.*

RESPONSE BY RESPONDENT

Council, supported by the Chief Administrative Officer, feels that the staff and Council took all reasonable and necessary steps to support their actions in an attempt to resolve this issue.

The engagement by Council of its legal counsel was in the opinion of the Respondents a necessary step in order to avoid placing the Township in jeopardy and resolve the issue in a reasonable manner.

The Council Respondents also stated that at no time did the Township act without the benefit of an opinion of its legal counsel and at no time did Council act contrary to any legal opinion.

ANALYSIS

As the Investigator, the following was taken into consideration with respect to the Complainant:

1. Was it inappropriate for Council to take the step of appointing a “committee” to act on behalf of the Township in this matter?
2. Was this action contrary to the thoughts of the Chief Administrative Officer?

THE OPINION

In relation to the complaint submitted by Councillor Guy Despatie alleging that Council breached *sections 8.1. and 8.2* of the municipal *Code of Conduct* due to its decisions at the June 19, 2023 and July 17, 2023, Closed Meeting of Council.

I find that the complaint is unsubstantiated.

Below explains the justification for the *unsubstantiated* conclusion.

Section 8.1 of the Municipal Code of Conduct states; 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.

In consideration of the above, I find that Council respectfully followed its own decisions and that such decisions were not disrespectful of the municipal staff or other members of Council.

Section 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.

In consideration of the above, I find that Council conducted themselves appropriately. In fact, Council followed up with recommendations of staff in a reasonable and responsible basis. The root cause of this matter would appear to be a misunderstanding of the Code of Conduct by the Complainant and the non-recognition of the importance of the advice provided by legal counsel.

CONCLUSION


In conclusion, I find that Council did not violate its Code of Conduct. Further, I also find that Council took the appropriate steps, based on the advice of its staff and legal counsel in an attempt to resolve the issue at hand and protect the Township and its residents.

RECOMMENDATIONS

The training of Council in its role and in staff-Council relations is at the heart of the operation of the Township. Council engaged Probity Municipal Consulting to conduct such training earlier in its term. Council may wish to consider conducting some additional enhanced training in 2024 that would include a question-and-answer session that would benefit all.

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