

Principles *Integrity*

Township of Springwater

Mayor Allen Code of Conduct Complaint

Report of the Integrity Commissioner

September 24, 2020

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Township of Springwater effective January 1, 2019. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

- [2] The Township of Springwater has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [3] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make

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recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

- [4] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the Township of Springwater community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [5] Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [6] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond the allegations, and to review and provide comment on the preliminary report.

The Complaint

- [8] On July 5, 2019 we received separate Complaints from three members of Springwater Council, Councillors Moore, Hanna and Cabral, regarding concerns about Mayor Allen's conduct and behaviour arising at a golf tournament in late June, at which it is alleged that the Mayor was intoxicated.
- [9] The Complaints alleged that the Mayor's conduct and behaviour constitute a breach of the Code of Conduct.
- [10] The same fact situation also formed the basis of offences for which the Mayor was charged by the OPP.

Process Followed

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[11] In conducting this investigation, Principles Integrity applied the principles of procedural fairness, guided in a general sense by the complaint procedure set out under the Code of Conduct.

[12] This fair and balanced process included the following elements:

- Reviewing the initial Complaints to determine jurisdiction and public interest
- July 8, 2019: Notifying Respondent of the Complaints; seeking his response
- July 11, 2019: Receiving and reviewing the response of Respondent
- July 12 – 17, 2019: Interviewing relevant witnesses
- July 24, 2019: Making inquiries of the OPP regarding potential charges
- August 14, 2019: Providing the Respondent with our preliminary Findings Report and seeking any additional comments
- August 22, 2019: Extending time for review by Respondent
- September 25, 2019: Receiving documentation relating to charges; advising of suspension of investigation pending disposition of charges
- October 24, 2019: Reporting to Council re Suspension Pending Court Disposition

Background of Events

[13] On June 26, 2019 the County of Simcoe held its annual Warden's Golf Tournament at Vespra Hills Golf Club.

[14] The Mayor and Deputy Mayor of Springwater, along with other members of Council for the County of Simcoe were invited to attend.

[15] The Vespra Hills Golf Club clubhouse and dining facility is perched atop a hill in Springwater, northeast of the City of Barrie, with a view all the way to Georgian Bay – a distance of about 25 or 30 km. as the crow flies.

[16] Entry to the facility is off of Wilson Road, up a winding road almost $\frac{3}{4}$ km long and there is a driving range nestled into the hillside about halfway along.

[17] Following a day of golf, dinner and drinks, as the Mayor departed the event, he was observed by and interacted with staff who believed he was intoxicated and in no condition to drive himself home.

[18] Staff at the golf course observed that the Mayor:

- was having difficulty keeping his balance, when he left a golf tournament,
- refused to allow staff at the golf club to arrange a ride home for him or to give up his car keys when asked,

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- loudly and repeatedly identified himself as the Mayor of Springwater in an effort to convince staff not to report the incident, and
- drove away in the dark in his car with the headlights off

[19] Staff contacted the OPP that evening.

[20] On August 6, 2019, criminal charges were laid.

Springwater Code of Conduct

[21] The relevant provisions of the Code of Conduct are Rule 9 and Rule 7:

Rule 9 - Member Conduct

4) Members shall conduct themselves with appropriate decorum at all times.

Commentary

As leaders in the community, Members are held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary.

Rule No. 7 - Improper Use of Influence

1) No member shall use the influence of his or her office for any purpose other than the exercise of his/her official duties.

Commentary

Examples of prohibited conduct are the use of one's status as a Member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's Family Member, or friends. This would include attempts to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties.

Role of Integrity Commissioner When Facts Give Rise to Criminal Allegations

[22] The Municipal Act requires that, where there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code, the

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Integrity Commissioner, shall “*refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of and shall report the suspension to council*”.

[23] The legislation has been interpreted by the Divisional Court¹ to clarify the powers of the Integrity Commissioner in these types of circumstances. The court has held that although the Integrity Commissioner must refer allegations of a criminal nature to the appropriate police service, and suspend investigation of those matters, the integrity commissioner retains jurisdiction. Following disposition of any charges before the court, the integrity commissioner may continue the investigation.

[24] In such circumstances, even where the criminal charges are dismissed, withdrawn, or are not proceeded on, the Integrity Commissioner may still make findings that the Code of Conduct was violated. This is because:

- The onus of proof in a criminal case (beyond a reasonable doubt) is higher than the onus of proof in a civil matter (a balance of probabilities) which applies to findings of violations of the Code of Conduct
- It may well be that police or the Crown decide not to pursue charges, yet the conduct and behaviour still constitutes a serious breach of ethical standards expected of Members of Council, and warrants public reprimand or monetary sanction
- The matter may give rise to an opportunity for relevant recommendations from the Integrity Commissioner in addition to any that might involve the imposition of a sanction on the respondent councillor, or for public education, or for a ‘clearing of the air’ should the matter have been a matter of public discussion.

[25] In all circumstances, where inappropriate conduct or behaviour of a member of council is alleged, it is quite appropriate that the complaint be made to the Integrity Commissioner. The Integrity Commissioner can then determine which aspects of the complaint are criminal in nature, on their face, and refer those to the appropriate police service, while pursuing an investigation of the balance of the complaint.

[26] Such a process recognizes that public resources supporting the administration of justice are scarce, and where warranted and appropriate, an administrative law solution may provide a timely remedy in the public interest.

Disposition of the Charges

¹ Michael Di Biase v. City of Vaughan, 2016 ONSC 5620, Divisional Court, pg.28, paras.194-221

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[27] On July 31, 2020 the criminal charges were withdrawn and the Court accepted a guilty plea from Mayor Allen with respect to the Highway Traffic Act offence of driving without due care or attention or without consideration for other persons using the highway.

[28] On a joint submission, he was sentenced to \$1000 fine, a 4-month licence suspension, and a 12-month probation prohibiting him from driving with any alcohol.

[29] The matter was disposed of on an agreed statement of facts which read as follows:

On June 26th, 2019 Don ALLEN attended a golf tournament at the Vespra Hills Golf Course located on Wilson Drive in Springwater Township. He was observed after the tournament by staff having difficulties with his balance. This was due to a combination of a number of medical conditions Mr. Allen suffers from, including Multiple Sclerosis, a double knee replacement, fatigue from the heat and duration of the tournament in combination with 2 alcoholic beverages Mr. Allen had consumed at dinner at the course.

Around 9:54 p.m. Mr. Allen entered his car, a Toyota Prius and drove off the property with only his daytime running lights on and turned onto Wilson Road,

The combination of Mr. Allen's fatigue, pre-existing medical condition, the 2 alcoholic drinks consumed at dinner and driving after sunset with only his daytime running lights on amounted to his driving on Wilson Road without due care and attention for other users of the roadway.

[30] The Court noted in sentencing:

"I think the joint submission in this case is fitting and appropriate, and certainly meets the needs of the purpose of sentencing which is to promote a sense of responsibility in offenders, and to those who are acknowledging the harm done - and that is certainly the case here - but also to denounce the unlawful conduct and harm done to victims, and to deter yourself and others from committing offence."

Conclusions and Recommendation

[31] An Integrity Commissioner's recommendations may include a reprimand, appropriate remedial actions or a monetary sanction of up to 90-days suspension of pay.

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[32] While there may be circumstances where it would be appropriate and the in public interest that the integrity commissioner recommend sanctions on a member of Council even where the matter had been disposed of by the Court, that is not the case here.

[33] In our view, the Mayor has acknowledged responsibility for his conduct and therefore, no further sanction is warranted.

[34] We therefore recommend:

That this report be posted on the Township's web site for public access.

[35] We will be pleased to be in attendance when this report is considered to respond to questions.