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Consulting**

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OFFICE OF THE INTEGRITY COMMISSIONER

INVESTIGATION REPORT

**FOR THE TOWN OF ENGLEHART
CODE OF CONDUCT COMPLAINT RE:**

COUNCILLOR JASON deLEEuw



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

**Reviewed by: Cassandra Child
Investigator**

Date: July 24, 2023

Preamble

The purpose of this investigation report is to provide the findings of an alleged Code of Conduct breach against a member of Council who holds public office with the Town of Englehart. The events contained in this report occurred the weekend¹ of September 10, 2022, up to and including November 22, 2022

In order to produce a factual report with evidence-based findings, a pre-determined framework based on legislation and internal policies is used which sets out the specific roadmap.

The Office of the Integrity Commissioner must also balance the scales of probability based on hearsay and the applicant/complainant recollection of the situation.

Executive Summary

Probity Municipal Consulting has been appointed as the Town of Englehart's Integrity Commissioner. Members of the public, staff, and 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 Town's internal policies/procedures.

This report explores the behavior demonstrated by Councillor Jason deLeeuw on September 12, and November 22, 2022. The complaints received alleged breaches of conduct which potentially violate the Town of Englehart's Code of Conduct policy.

Legislative Framework & Relevant Code Rules

The investigation against Councillor Jason deLeeuw took into consideration the following pieces of legislation and municipal policies:

- ✓ *The Municipal Act, 2001, S.O. 2001, c.25*
- ✓ *The Municipal Freedom of Information and Protection of Privacy Act*
- ✓ *The Town of Englehart Integrity Commissioner Protocol*
- ✓ *The Town of Englehart 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 Conduct².

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 responsible for performing in an independent manner the functions assigned by the municipality.

³

¹ This was the result of a softball tournament and dance held that weekend.

² 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.

³ 223.3 (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:

The Town of Englehart 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 two (2) separate Code of Conduct applications/complaints related to Sections 1, 7, 8, 10 and 15 of the Code of Conduct.

Application / Complaint No. 1 – Alleged Breach of Code of Conduct on September 12, 2022; Directing Municipal Staff.

In the application, the Applicant, Malorie Robinson, alleged that Councillor Jason deLeeuw contravened the municipal Code of Conduct policy when he spoke with and directed staff member Alex Beachey.

More specifically, *“On September 12th at 2:00 pm, Councillor Jason deLeeuw texted public works employee Alex Beachey on his personal cell phone requesting camera footage from the baseball dance from 9:30 pm to 11:30 pm as he was advised there was underage drinking in the community hall. Mr. Mark Gorecki a teacher from the Englehart High School had asked about the pictures as he wanted to see who was attending the dance while “underage.”*

On September 22nd at 11:23 am, former Clerk Hailey Clarke and myself spoke with Councillor deLeeuw on the phone regarding the above statement.

Jason confirmed he received the pictures but hadn’t shown anyone the photos, Jason hadn’t seen the underage’s going into the community hall but was told about them.”

“Therese Hall on September 22nd advised that Councillor deLeeuw showed her the photos he got from Alex Beachey on Monday September 12th at approximately 4 pm.”

-
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.
-

Application/Complaint No. 2 – Alleged Breach of the Code of Conduct on November 22, 2022.

In the application, the Applicant, Ms. Malorie Robinson alleged Councillor Jason deLeeuw contravened the Municipal Code of Conduct. The particulars of which are as follows:

“On November 22nd at approximately 8:20 pm, Councillor deLeeuw asked to speak with me in my office after our Councillor training. Councillor deLeeuw told me he shouldn’t get in trouble for the photos as he didn’t know about the Code of Conduct and if I submitted the complaint I would get into trouble as well because I didn’t provide him the proper information.”

The Inquiry Process

On December 7, 2022, Probity Municipal Consulting, as the Integrity Commissioner for the Town of Englehart, received an application surrounding an alleged Code of Conduct breach against Councillor Jason deLeeuw concerning behavior exhibited on September 12, 2022, and November 22, 2022.

Therefore, this investigation report highlights the alleged complaints filed against Councillor Jason deLeeuw in relation to potential Code of Conduct breaches concerning the Town of Englehart Code of Conduct. Note that the complaint referred to an outdated Code of Conduct. This in no way invalidates the subject Complaint.

The Office of the Integrity Commissioner, Probity Municipal Consulting, conducted confidential meetings with Ms. Malorie Robinson (Applicant), Councillor Jason deLeeuw (Respondent) and witnesses on April 14 and April 20, 2023. These meetings provided an opportunity for Ms. Robinson to verbally detail her recollection of the exhibited behavior displayed by Councillor Jason deLeeuw (the Respondent) within the parameters of her complaints. This meeting also provided an opportunity for Councillor Jason deLeeuw to defend his actions in light of the allegations.

Further, the meetings conducted between the witnesses and Probity Municipal Consulting provided an opportunity for Probity Municipal Consulting to gather additional information that may not be available through either through Ms. Robinson or Councillor Jason deLeeuw.

As per legislation and internal policies with the Town of Englehart, complaints can remain anonymous from the purview of the Applicant submitting the complaint. In this case, the Applicant, Ms. Malorie Robinson, CAO of the Town of Englehart has agreed to allow her name as the Complainant to be known.

The Facts

The circumstances that give rise to the request for this inquiry are related to discussions that Councillor Jason deLeeuw’s had with the following Town of Englehart Staff Members on the dates noted:

Staff Member	Date of Discussion
Alex Beachey	September 12, 2022
Therese Hall	September 12, 2022
Clerk Hailey Clarke	September 22, 2022

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Malorie Robinson	September 22, 2022
Malorie Robinson	November 22, 2022

That, a complaint was received alleging a Code of Conduct breach on the part of Councillor Jason deLeeuw on September 12, 2022, and November 22, 2022.

That, an investigation did unfold in the Town of Englehart on April 14, 2023, and April 20, 2023, where both Ms. Malorie Robinson (Applicant), Councillor Jason deLeeuw (Respondent) and witnesses were interviewed.

That, the Code of Conduct dated, August 2018 will be used in the course of this investigation.

The Issue

Members of Council are held to a higher standard of conduct and should govern themselves on basic local government principles such as accountability and transparency. When Members of Council cross the line of conduct, accountability and transparency, it can be construed as abuse of office, disrespectful conduct towards other members of Council, staff and potential breach of public trust.

Understanding the role of staff and the role of Council is paramount to the overall success of the municipality. It is also critical that members of Council understand their role under the Procedural by-law, Code of Conduct, Staff-Council Relations policy, Municipal Conflict of Interest Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Complaint that was filed referred to an outdated Code of Conduct that was replaced in 2018 by the current version. This in no way invalidates the Complaint. The general principles are the same and the general contents are also somewhat similar.

For the purposes of this investigation, the following paragraphs from the current Code of Conduct were considered:

1. Principles Upon Which This Code is Based

1.1 A municipality is a responsible level of government. Improving the quality of municipal governance and administration can best be achieved by encouraging high standards of conduct on the part of all Members. In particular, the public is entitled to expect the highest standards of conduct from the Members of its local government. In turn, adherence to these standards will protect and promote the Municipality's reputation and integrity.

1.2 Key statements of principle that underline this Code of Conduct are as follows:

a) 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;

- b) Members must serve and be seen to serve their constituents in a conscientious and diligent manner;*
- c) 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;*
- d) 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;*
- e) Members must recognize and act upon the principle that democracy is best achieved when the operation of government is as transparent and accountable to the Public as possible;*
- f) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Municipal Council;*
- g) Members must not use the status of their position to inappropriately influence the decision of another individual or body. For example, to obtain a personal advantage for the Member, the Member's parents, children, spouse, staff, friends, associates, business or otherwise; or to disadvantage another party.*
- h) Members shall be respectful of the role of staff to provide advice with political neutrality and objectivity and without undue influence from a Member or Members.*

7. Conduct Respecting Others

7.1 *Every Member has the Duty and responsibility to treat members of the public, one another, staff and volunteers appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the Municipality's Workplace Anti-Violence, Harassment and Sexual Harassment Policy.*

7.2 *A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff, member of the public or volunteer.*

8. Conduct Respecting Staff and Officers

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.*

8.5 No Member shall use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or improperly influencing any staff person or Officer or interfering with that person's duties, including the duty to disclose improper activity.

10. Confidential Information

10.1 No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office, in any form including, but not limited to, written notes, reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so.

10.4 Without limiting the generality of the foregoing, no Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information:

- a) Information concerning litigation, negotiation or personnel or labour matters;
- b) Information the publication of which may infringe on the rights of any person (e.g., source of a complaint where the identity of a complainant is given in confidence);
- c) Price schedules in any contract, tender or proposal document while such remains Confidential Information;
- d) Information deemed to be "personal information" under the Municipal Freedom of Information and Protection of Privacy Act; and
- e) Any other information or statistical data required by law not to be released.

10.5 No Member shall obtain access, or attempt to gain access, to Confidential Information in the custody of the Municipality, Local Board or Committee except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law.

15. No Reprisal or Obstruction in the Application or Enforcement of this Code

15.1 Every Member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it and shall co-operate in every way possible in securing compliance with its application and endorsement. Any reprisal or threat of reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person is prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner, or any other municipal official involved in applying or furthering the objectives or requirements of this Code, in the carrying out of such responsibilities or pursuing any such objective.

Complainant's Position

The complainant feels the following provisions of the Code of Conduct⁴ were breached concerning the behaviour of Councillor Jason deLeeuw (Councillor deLeeuw). Sections 10 and 11 of an outdated Code of Conduct were referred to in the Complaint and are only mentioned here for completeness.

Section 10

As a representative of the Municipality, every member has the duty and responsibility to treat members of the public, one another, and staff appropriately and without abuse, bullying, or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, a member of staff, or a member of the public. A member shall not speak in a manner that is discriminatory to any individual based on that person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability. A member shall not speak negatively about any staff in a meeting of Council, to other members of Council or to members of staff.

Section 11

Individual members of Council do not have the authority of the whole of Council. Only Council as a whole has the authority to set policy or direct senior staff, including, but not limited to:

- a) budget approvals;*
- b) governance processes; and*
- c) staff work plans.*

Council directs the business of the Municipality and passes by-laws, or resolutions/motions as appropriate, for decisions adopted by Council. Council has delegated responsibility to the Chief Administrative Officer (CAO) for the administration of the affairs of the Town of Englehart in accordance with decisions adopted by Council. This means that under the direction of the CAO, staff have the responsibility and the authority to provide consultation, advice, and direction to Council and to implement Council approved policy.

Members shall be respectful of the fact that staff work for the Town of Englehart as a corporate body and are charged with making recommendations that reflect their professional expertise, without undue influence from any individual member or group of members. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation of any staff and all members shall show respect for the professional capacities of staff.

Accordingly, staff establish administrative policies, systems, structures and internal controls necessary to implement the goals and objectives of Council. Council should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power or their personal opinions. No member shall compel any staff

⁴ Note that the reference to Sections 10 and 11 refer to an outdated Code of Conduct that was replaced in August 2018.

member to engage in activities that are contrary to the directions of Council or the policies of the Municipality.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. No member shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with that person’s duties, including the duty to disclose improper activity.

Interview with Ms. Malorie Robinson (Complainant) – April 14, 2023

The following are the points made by Ms. Robinson in support of her Complaint during an interview conducted on April 14, 2023.

1. The Complainant, Malorie Robinson is the Chief Administrative Officer (CAO) for the Town of Englehart. Ms. Robinson stated that she fully understands both the role of Council and the role of Staff, more particularly the CAO.
2. Ms. Robinson believes that Councillor deLeeuw had no authority to request or obtain selected pictures that were contained on the municipal security system at the Englehart & Area Community Arena Complex for a dance held at this location on September 10, 2022.
3. Ms. Robinson stated that she understood that the subject pictures were taken from the Englehart & Area Community Arena Complex security system during a dance held at that location on Saturday, September 10, 2022.
4. Ms. Robinson said that municipal staff member, Alex Beachey was on site that evening. She stated that Mr. Beachey was directed by Councillor deLeeuw to provide still pictures from the security system for a time period where “underage” teenagers were thought to have been in the dance, where alcohol was available. The direction given by Councillor deLeeuw was unauthorized and not in keeping with the Town’s Code of Conduct.
5. Ms. Robinson believes that the possession of the subject pictures by Councillor deLeeuw may have placed the Town in a libellous position.
6. Ms. Robinson stated that she was genuinely concerned that the Councillor deLeeuw had attempted to “bully” her on November 22, 2022 by suggesting that she would be “in trouble” because she failed to make the Councillor deLeeuw aware of the Code of Conduct, thereby allowing Councillor deLeeuw to fall into the situation that is the subject of the complaint.
7. Ms. Robinson stated that the Councillor deLeeuw was well aware of the existence of a Code of Conduct since he was a returning Council Member, and it was also available on the Town’s website. She also stated that at the inaugural meeting of Council on December 7, 2022, she was asked by the Mayor to not submit the complaint. She did respond to the Mayor that it had already been submitted, noting that there was no further discussion or consequences after this request.
8. Ms. Robinson provided the names of two (2) witnesses in support of her application.

Interview with Witness Therese Hall – April 14, 2023

1. Ms. Hall is employed as the Deputy Clerk/Administrative Coordinator, Town of Englehart.
2. Ms. Hall understood that the Councillor deLeeuw was in charge of the subject softball tournament and dance. This was assigned to him as a part of his duties as a Council Member.
3. Ms. Hall is of the opinion that Councillor deLeeuw broke confidentiality by approaching staff about information that should have been confidential. She also confirmed that Councillor deLeeuw showed her the pictures on his phone.
4. Ms. Hall believes that the issue started when Mr. Marc Gorecki approached Councillor deLeeuw at the dance, stating that he (Gorecki) thought that “underage” teenagers had entered the dance. Ms. Hall also stated that it was her understanding that Mr. Gorecki wanted Councillor deLeeuw to provide him (Gorecki) some kind of proof.
5. Ms. Hall also said that Councillor deLeeuw attended the Town office on September 12 and provided information to her about the success of the dance and what had occurred. It was at this time that Jason made negative comments about Ms. Robinson stating that her behaviour at the softball tournament (September 17 and 18, 2022) was not appropriate.
6. Ms. Hall stated that she understood, that while involved in a softball game, Ms. Robinson was taunted by a player on an opposing team concerning remarks made about her (Robinson’s) sister. In reaction to these negative comments, Ms. Robinson did respond to the opposing player in a “reactionary” fashion.
7. Ms. Hall stated that Councillor deLeeuw told her that Mr. Gorecki approached him (deLeeuw) at the dance and asked Councillor deLeeuw to check video cameras for proof that “underage” teenagers has attended the dance. Ms. Hall also understood from the conversation that Mr. Gorecki also wanted to know the identity of the “underage” teenagers.
8. Ms. Hall further understood from her discussion with Councillor deLeeuw that he then approached Town employee Alex Beachey and asked him to obtain the footage. She understood that the footage identified three (3) or four (4) “underagers” who appear to have snuck into the dance through the elevator.
9. Ms. Hall feels that Councillor deLeeuw as a long-time Councillor should have been aware of the Code of Conduct and should have recognized that both obtaining the pictures and openly criticizing Ms. Robinson was a violation of the Code of Conduct. Ms. Hall further stated that as far as she knew there had been no complaints about the behaviour of Ms. Robinson while participating in the softball tournament.

Interview with witness Alex Beachey – April 20, 2023

1. Alex Beachey is employed by the Town of Englehart as a Public Works Operator. He stated that part of his duties requires him to be at the Englehart & Area Community Arena Complex during community events.
2. He was working at the event held on September 10, 2022.
3. Mr. Beachey stated that he observed Councillor deLeeuw arrive at the Englehart & Area Community Arena Complex.
4. Councillor deLeeuw stated to Mr. Beachey that he understood there may be “underage” teenagers at the dance.
5. Mr. Beachey stated that Councillor deLeeuw requested that he provides him with the pictures from the dance for a particular time period (9:30 to 11:30 pm)
6. Mr. Beachey stated that he was the only Town employee who could operate the video security system.
7. Mr. Beachey stated that he did find video for the time period, and it appeared that four (4) or five (5) underage teenagers had accessed the dance via the elevator in the building.
8. Mr. Beachey complied with the request of Councillor deLeeuw and sent the subject pictures to Councillor deLeeuw’s phone via text.
9. Mr. Beachey stated that he never spoke with Mr. Gorecki.
10. Mr. Beachey did speak with Ms. Robinson about the footage requested by the AGCO for an unrelated investigation. He also stated that Ms. Robinson did not ask him (Beachey) about any conversation that he had with Councillor deLeeuw, and that he had no conversations with Ms. Hall.

In summary, four themes emerge from the interviews with the Complainant and the witnesses. First, that there was access to the video tape and pictures by Councillor deLeeuw. Second, there was no concern about the implications of the Municipal Freedom of Information and Protection of Privacy Act. Third, Councillor deLeeuw threatened Ms. Robinson with reprisal for making the complaint. Fourth, Councillor deLeeuw spoke negatively about Ms. Robinson to another employee (Ms. Hall).

Response by Councillor Jason deLeeuw – April 20, 2023

Councillor deLeeuw was provided with the details of the complaints that were filed against him and given the opportunity to respond and defend the allegations.

1. Councillor deLeeuw stated that he was one of the organizers of the softball tournament dance.
2. During the evening of the dance, Councillor deLeeuw was in and out of the dance running errands related to the dance.

3. He stated that during the evening of the dance, he got word that there were incidents where underagers snuck into the dance. Others told Councillor deLeeuw that the underagers had been removed by Mr. Gorecki.
4. He stated that not watching the elevator was an oversight.
5. Councillor deLeeuw did say that he had asked Mr. Beachey if he (Beachey) could look at the camera system to see when the “underage” teenagers came in and when they left.
6. He stated that Mr. Beachey said he would look at the video and that Beachey did text him the pictures.
7. Councillor deLeeuw stated that he was doing this because he thought the matter would come up at a Closed Council Meeting. This never materialized.
8. Councillor deLeeuw stated that staff went through his phone and confirmed that the photos had been sent by text to Councillor deLeeuw from Mr. Beachey.
9. Councillor deLeeuw did not think that there was nothing wrong with asking for the pictures. He stated that he really wanted to know the time the underagers came in and then stated that this was his due diligence.
10. He stated that if asking Mr. Beachey to obtaining the pictures or having the pictures was wrong, Mr. Beachey did not inform him.
11. Councillor deLeeuw stated that Ms. Hall approached him about the underagers at the dance.
12. Councillor deLeeuw says that the pictures did not leave his device.
13. He stated that Ms. Robinson called him and asked him to delete the pictures right away, which he did.
14. Councillor deLeeuw understands that Mr. Gorecki asked for the subject pictures but did not ask him (deLeeuw).
15. Councillor deLeeuw says that he did show the pictures to Ms. Hall but did not know that this was wrong.
16. He stated that Mr. Gorecki knew who the underage teenagers were that entered the dance. He stated that Mr. Gorecki had already spoken to the underage teenagers at school on the Monday following the dance (September 12, 2022).
17. Councillor deLeeuw did not believe he did anything wrong as he was in charge in the event and wanted to be able to fully inform Council at a Closed Meeting of Council.
18. Councillor deLeeuw agrees that he said he did not know about the Code of Conduct. It was “done” in the year he was not on Council. He had no physical copy and agreed he was responsible for these actions but if they were wrong then why did staff not inform him?

19. When asked, Councillor deLeeuw stated that he has had no training for the Municipal Freedom of Information and Protection of Privacy Act.
20. Councillor deLeeuw stated that he did not say Ms. Robinson would “get in trouble” but did offer a suggestion that the Code of Conduct should be acknowledged that it has been read and understood by all of Council. This would prevent these events from happening again.
21. Councillor deLeeuw recognizes that the event had some shortcomings and wants to get them fixed so this does not happen again - or worse.

Analysis

The following was considered:

- a) Whether Councillor deLeeuw breached the municipal Code of Conduct due to his comments about Ms. Robinson to Ms. Hall
- b) Whether Councillor deLeeuw breached the municipal Code of Conduct by stepping outside his authority as a Council Member when he requested and obtained the subject pictures.
- c) Whether Councillor deLeeuw breached the Municipal Code of Conduct by making Ms. Robinson feel that she was being threatened with a reprisal.
- d) Where Councillor deLeeuw breached the Code of Conduct for the disclosure of Confidential Information, being the subject pictures.

The complaints were analyzed against the interviews of Ms. Robinson, Councillor deLeeuw’s and the witnesses. The complaints were also analyzed against the municipal Code of Conduct.

The following hypotheticals were considered:

- a) Did Councillor deLeeuw violate the Code of Conduct by making comments about Ms. Robinson to Ms. Hall.?
- b) Did Councillor deLeeuw step outside his authority as a member of Council and thereby violate the Code of Conduct?
- c) Did Councillor deLeeuw violate the Code of Conduct when he directed municipal staff to obtain and provide him with the pictures?

The Opinion

The Complaints are closely linked so they will be combined for the purposes of an opinion in this matter.

Application / Complaint No. 1 – Alleged Breach of Code of Conduct on September 12, 2022; Directing Municipal Staff.

In relation to the above Complaint No. 1, we find that Councillor Jason deLeeuw breached Sections 8.2 and 8.5, Conduct Respecting Staff and Officers of the Code of Conduct.

This Sections read as follows:

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.

8.5 No Member shall use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or improperly influencing any staff person or Officer or interfering with that person's duties, including the duty to disclose improper activity.

It is imperative for the good operation of the Town; that Council Members refrain from operating outside their authority by directing staff without the direction of Council. It is also important that the same Council Members are seen to be avoiding any influence by their “implied” authority over any staff person.

On the balance of probabilities, and based on his own words, Councillor Jason deLeeuw violated Sections 8.2 and 8.5 of the Code of Conduct. His assertion that he did not know about the Code of Conduct or that staff did not inform him is not appropriate nor correct. First, the Code of Conduct was provided to him upon running for Council and second it is contained on the Town’s website. Thirdly, Councillor deLeeuw cannot shift a responsibility that clearly belongs to him on the staff or any other person. He must take control of his own situation.

We would be remiss, if we did not mention that providing, obtaining or holding personal information, such as the pictures / video tapes in question, would appear to be a serious violation of the Municipal Freedom of Information and Protection of Privacy Act. This must be prevented from again occurring because at some point, the Town will be subject to a complaint which could bring an action from an applicant or the Privacy Commissioner.

Application/Complaint No. 2 – Alleged Breach of the Code of Conduct on November 22, 2022, Section 7.1 and 7.2, Conduct Respecting Others and Section 15.1, No Reprisal or Obstruction in the Application or Enforcement of this Code.

In relation to the above Complaint No. 2, we find that Councillor Jason deLeeuw breached Sections 7.1 and 7.2, Conduct Respecting Staff and Officers of the Code of Conduct and Section 15.1, No Reprisal or Obstruction in the Application or Enforcement of this Code.

These Sections read as follows:

7 Conduct Respecting Others

7.1 Every Member has the Duty and responsibility to treat members of the public, one another, staff and volunteers appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the Municipality's Workplace Anti-Violence, Harassment and Sexual Harassment Policy.

7.2 A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff, member of the public or volunteer.

15 No Reprisal or Obstruction in the Application or Enforcement of this Code

15.1 Every Member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it and shall co-operate in every way possible in securing compliance with its application and endorsement. Any reprisal or threat of reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person is prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner, or any other municipal official involved in applying or furthering the objectives or requirements of this Code, in the carrying out of such responsibilities or pursuing any such objective.

There are two (2) issues at play here. First, Councillor Jason deLeeuw, speaking to Ms. Hall in a demeaning way about Ms. Robinson, was a clear violation of the Code of Conduct. Ms. Hall as Ms. Robinson's direct report should not be subject to such comments from any member of Council.

The apparent conduct of Ms. Robinson at the softball tournament is, in my opinion, beyond the scope of influence of the Town. Competing in sports events gives rise to the opportunity that "heated" words may be exchanged. This is human nature and should not be viewed as anything but that.

Second. The discussion between Councillor Jason deLeeuw and Ms. Robinson on November 22, 2022, left Ms. Robinson with the impression that she would be subject to some type of reprisal for her lack of informing Councillor Jason deLeeuw about the Code of Conduct or that his actions had violated the same.

We cannot accept his comment that he was not aware of the Code of Conduct because of some shortcoming of staff. In fact, earlier in the day, all of Council had just received Council training which would have been discussed.

Promoting or allowing a work environment that includes the threat of reprisals for providing information honestly will only create a toxic work culture. Toxic work cultures are not conducive to efficiency or success and should be avoided at all costs.

Conclusion

Although Councillor deLeeuw contravened sections 7.1, 7.2, 8.2, 8.5 and 15.1 of the Code of Conduct, the situation presents an opportunity for change and education. It's important to note that all individuals involved in the investigation, including Councillor deLeeuw, have the best interest of the municipality at heart and want to move the municipality forward in a positive manner. This will require a "cultural" change where the priority is a team environment.

All that participated in this investigation appeared to be honest and forthright, which is a credit to their personalities.

Recommendations

While Councillor deLeeuw technically breached the Code of Conduct policy, the breach is not malicious or ill-intentioned. This is something that we see from many Council's. As such, we do not recommend any penalty for Councillor deLeeuw (penalties under the *Municipal Act* being a reprimand or suspension of remuneration.) Instead, we recommend training as discussed below.

During the investigation, it became clear that there is a misunderstanding of the function of the Council, staff, the Code of Conduct, Staff-Council Relations policy and the Municipal Freedom of Information and Protection of Privacy Act.

Therefore, as stated above, we recommend that Councillor deLeeuw along with all Members of Council and staff receive additional training and education on the above, with special emphasis on the Municipal Freedom of Information and Protection of Privacy Act.

The Town should adopt a process where all Human Resource Policies, including the Code of Conduct, be acknowledged in writing (by signature) that they have been read and understood. Should violations occur in the future, such acknowledgement should remove all doubt.

Lastly, if anyone on the Council is concerned about their interpretation of the Code of Conduct or any other policy, they can receive some direction and comfort by writing to the Integrity Commissioner.

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