

September 23, 2021  
Mayor Wallace & Members of Council  
Town of Englehart  
61 Fifth Ave. PO Box 399  
Englehart, ON P0J 1H0

By Email To: [slacarte@englehart.ca](mailto:slacarte@englehart.ca)

## Preliminary Integrity Commissioner Report

Your Worship & Members of Council

Our office received a request for inquiry from a member of the public. Pursuant to the Town of Englehart's Code of Conduct ("COC") and associated Integrity Commissioner Inquiry Protocol ("IC Protocol") with respect to such requests being directed to the Integrity Commissioner ("IC") that may involve a breach of the COC, we have conducted a preliminary review. We have determined that we will not be conducting a full inquiry respecting this request.

Herein is our report outlining our reasons.

### **The Request**

The Requestor alleged that Council as a body contravened sections 5, 10, 13 and 16 of the COC when they failed to follow/enforce municipal bylaws and when they did not follow provincial law.

Specifically, the Requestor alleged the following:

1. That Council breached the COC and a variety of other bylaws as well as provincial and federal legislation when they allowed two (2) new businesses (in direct competition with the Requestor's) to operate in Town without the required licenses.

The licenses were later approved by Council contrary to an objection by the Requestor. In their submission to our office the Requestor alleged that this action also exhibited favouritism or preferential treatment. It was suggested these accusations were "*improper use of influence*" as addressed in the COC, should one or more of the members of Council have a conflict of interest with respect to this matter.

2. Furthermore, that Council's disregard for Town policies/bylaws as well as provincial/federal legislation was "*done so by fraudulent statements, miss-information, lack of due diligence, action and/or municipal duties*" which was reported in the media to the detriment of the Requestor.
3. That there was a lack of enforcement from a number of agencies, including the Town, surrounding the alleged contraventions.
4. That the Requestor was unable to satisfactorily resolve an issue with the Town related to a water issue and leak into their basement.

## **Legislative Authority**

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 IC about whether a member or members have contravened the municipality's COC.

When a matter is referred to us, we may then conduct an inquiry in accordance with the IC Protocol and, upon completion of the inquiry, if a breach is found, we may make recommendations to Council on the imposition of penalties.

## **Inquiry Process**

The responsibilities of the IC 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 IC who is responsible for the application of the Code of Conduct.

Requests may be made by Council, staff or a member of the public to the IC for an inquiry about whether a member has contravened the Code of Conduct applicable to that member.

It is our practice to review all requests and determine if they are properly filed in accordance with the *Municipal Act* and with the process set out in the IC Protocol. If a matter is not properly filed, we communicate with the Requestor and provide them an opportunity to refine their request. We then conduct a Preliminary Review prior to undertaking a costly inquiry (which is a requirement in the IC Protocol). During a preliminary review, we:

- consider the evidence of the Requestor;
- seek clarification from the Requestor if necessary;
- review the Code of Conduct and other related ethical policies;
- may conduct witness interviews (which are voice recorded and transcribed);
- may interview the respondent; and
- collect related documents (Council or committee meeting documents, Terms of Reference, training records etc.)

In this circumstance the matter was assigned to Shawn Mahoney (the "Investigator"), a professional investigator with Investigative Solutions Network, who as an agent of the Integrity Commissioner did:

1. review the Requestors written complaint;
2. review the COC
3. interviewed the Requestor

## **Facts**

The Requestor is a ratepayer and business owner within the Town of Englehart and is not a member of Council, nor a member of staff.

The Requestor has alleged inappropriate action by the entirety of Council. That council failed to adhere to their own policies/bylaws as well as provincial and federal legislation when they allowed two (2) businesses to operate in Town without the appropriate license in place. Additionally, there was disregard for, among other things, the enforcement of COVID-19

protocols with respect to these two (2) new businesses. The Requestor reported that they had brought these matters to the attention of the appropriate authorities.

The Requestor also alleged that this action benefited *“local boys”* which in their mind was favouritism or preferential treatment. This was, in their opinion, *“appalling and a disadvantage to the community as a whole or as a resident.”*

Further the Requestor reported that an article submitted to the local newspaper by the Town was detrimental to the Requestor’s business and that they had to advise their clients that they were still operating their business. The Requestor advised that they could not determine the resulting overall loss of business from this article. They also reported their personal observations of, and dealings with, the Town over the years have been *“borderline discriminatory, bias and damaging to one’s personal & businesses reputations.”*

The COC requires that Members act in a way that bears the closest scrutiny and that they not influence matters in which they have a conflict, that they follow the Town’s ethical policies and, among other things, comply with provincial and federal legislation.

Specifically related to the matter before us:

- Section 5 requires that Members adhere to Council Policies and Procedures. This refers to the ethical policies of Council and not ALL policies and procedures.
- Section 10 requires that Members maintain confidentiality when it comes to information obtained during the course of carrying out their duties.
- Section 13 requires members to not influence or attempt to influence the decision of any other person, for the Member’s private advantage, the private advantage of the Member’s parent, child, spouse, staff member, friend or associate, business or otherwise or the disadvantage of others. No Member shall attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties.
- Section 16 requires that Members follow statutes and policies that regulate the behaviour of Members. This includes:
  - the Municipal Act, 2001 as amended;
  - the Municipal Conflict of Interest Act;
  - the Municipal Elections Act, 1996;
  - the Municipal Freedom of Information and Protection of Privacy Act;
  - the Ontario Human Rights Code; and,
  - the Occupational Health and Safety Act.

## **Decision**

The Code of Conduct requires that the members of Council, committees of Council and Local Boards (collectively “Members”) must comply with provincial legislation as well as the ethical standards set out in the Code of Conduct. It also requires members to follow Town policies as they relate to ethical practices.

Many of the allegations put forward in this particular request are around the delivery of services, and the enforcement of Town policies/bylaws. These matters are not within the jurisdiction of the IC to adjudicate. Nor is the determination of if or how Council applied other regulatory legislation within the purview of the IC. Additionally, the Requestor reported that they had attempted to address their concerns with the appropriate agencies.

Our preliminary review of the allegations has confirmed they are not related to breaching the Town of Englehart's Code of Conduct and therefore not within the purview of the IC. This has resulted in a decision not to conduct an inquiry and to dismiss this request.

However, had there been evidence before us that a Member was the friend or associate of one (1) or both of the individuals allowed to operate without a license we would have conducted a further inquiry in order to determine if indeed there had been "*improper use of influence*" as addressed in the COC

In accordance with the IC Protocol, we submit our report to Council for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Hannigan", with a long horizontal flourish extending to the right.

Colleen Hannigan RPP, MCIP  
Consultant- Municipal Governance & Planning