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INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT COMPLAINT 2023-01

THE CORPORATION OF THE COUNTY OF ELGIN

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September 19, 2023

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INTEGRITY COMMISSIONER REPORT CODE OF CONDUCT COMPLAINT 2023-01 AGAINST WARDEN ED KETCHABAW

A. INTRODUCTION

1. A formal complaint was received by the Integrity Commissioner on May 2, 2023 alleging that Warden Ed Ketchabaw (the “**Warden**”) of The Corporation of the County of Elgin (the “**County**”) contravened the Code of Conduct for Members of Council and Local Boards for the Corporation of Elgin County (the “**Code**”).

B. PREFACE

2. The County is an upper-tier municipality. Council for the County is composed of nine members. It includes the mayors of each of the seven lower-tier municipalities within the County and the Deputy Mayors of the Municipalities of Central Elgin and the Township of Malahide.
3. The Warden was first elected to office in 2006 as a councillor for the Municipality of Bayham (“**Bayham**”), one of the lower-tier municipalities. The Warden served three terms in this capacity. Thereafter, the Warden has served as Mayor of Bayham. This is his second term as Mayor of Bayham, and his fifth term in office. The Warden was elected to serve as Warden by the County Council at the commencement of this term of Council. Service in the capacity of Warden is for a one-year term. A total of two consecutive one-year terms may be served as Warden.
4. As set out below, for the reasons that follow, this Report finds the Warden has contravened Sections 8.1 and 8.2 of the Code.
5. We recommend that Council reprimand the Warden and that his remuneration at the County be suspended for ten (10) days.

C. APPOINTMENT & AUTHORITY

6. Aird & Berlis LLP was appointed as the County’s Integrity Commissioner pursuant to subsection 223.3(1) of the *Municipal Act, 2001* on October 11, 2022 by By-law No. 22-43 following a public procurement process.
7. The Integrity Commissioner is a statutory officer, created under Part V.1 of the *Municipal Act, 2001*. Municipal councils are required to establish codes of conduct for members of council and of their local boards and are required to appoint or retain an integrity commissioner who is independently responsible for, among other duties, investigating and reporting to council on complaints that a council member has breached the code of conduct or any other ethical rules, procedure, policies or guidelines.¹

¹ *Municipal Act, 2001*, S.O. 2001, c. 25, ss. 223.2 & 223.3.

8. As Integrity Commissioner, we are appointed to act in an independent manner on the application of the Code and other rules and procedures governing the ethical behaviour of members of Council. We are required to preserve secrecy in all matters that come to our knowledge as Integrity Commissioner in the course of our duties. Pursuant to subsection 223.6(3) of the *Municipal Act, 2001*, the municipality is required to ensure that reports received from the Integrity Commissioner are made available to the public.
9. This is a report on the investigation of the Complaint made in accordance with the Code and subsection 223.6(2) of the *Municipal Act, 2001* (the “**Report**”).
10. In conducting an investigation, procedural fairness requires us to provide reasons for our conclusions and recommendations, which we have done in this Report. Our investigation was conducted in accordance with the Code and with a process that was fair to all parties. We have assessed the evidence in an independent and neutral manner.
11. We provided an opportunity to the Warden to respond to the allegations set forth in the complaint, as restated by our office following a preliminary inquiry, and which complaint our office delivered to the Warden. The Warden fully co-operated in this process, as did all witnesses. The Warden provided written responses to all allegations put to him for a response. Moreover, he participated in an interview with our office.
12. In accordance with our standard practice, the Warden was also provided a copy of our draft report, without recommendations, so he could review and make submissions on our preliminary findings and conclusions prior to the Report’s finalization.

D. THE COMPLAINT

13. As noted above, a complaint alleging the Warden had contravened the Code was filed with our office on May 2, 2023 (the “**Complaint**”).
14. Many of the allegations contained within the Complaint were hearsay. We conducted an initial interview with the Complainant to better understand the allegations. Thereafter, we proceeded to conduct a number of preliminary interviews with those persons we understood to be witnesses to determine whether or if there were reasonable and probable grounds to proceed with some or all of the allegations.
15. Based on this review, we concluded that there were reasonable and probable grounds to proceed with an inquiry with respect to two (2) allegations. We otherwise exercised our authority to dismiss a number of allegations as failing to establish reasonable or probable grounds for Code violations.
16. We sent the Warden a Notice of Code of Conduct Complaint and Partial Summary Dismissal on August 11, 2023, containing the complaint as restated by our office. Similarly, we sent the Complainant the Notice of Partial Summary Dismissal on the same date.
17. The Complaint alleges that the Warden contravened Sections 8.1 and 8.2 of the Code with respect to his dealings with the County’s former Chief Administrative Officer (the “**Former CAO**”), described more fully later in this Report.

18. As noted, we followed our standard practice and provided the Warden with a copy of our draft report on September 6, 2023, to allow him the opportunity to review and provide final submissions on our preliminary findings.² The Warden provided his final submissions to us on September 15, 2023, which we have carefully considered and have addressed in this Report.

E. CODE OF CONDUCT PROVISIONS AT ISSUE

19. The Complaint alleges that the Warden contravened the following provisions of the Code with respect to the identified matters, described later in this Report:
- 8.1 Members have a duty to treat members of the public, each other and staff with respect and dignity and without abuse, bullying or intimidation;
 - 8.2 Members have a duty to ensure that the County's work environment is safe and free from discrimination and harassment;

F. REVIEW OF MATERIALS AND INVESTIGATION

20. In order to undertake our investigation and prepare this Report, we reviewed and considered the following materials:
- the Complaint;
 - a timeline of events prepared by County staff;
 - text correspondence;
 - three closed session staff reports;
 - interview with the Warden on August 20, 2023; and
 - the written response from the Warden in response to the Notice of Complaint and written submissions on the draft report which contained our preliminary findings.
21. We also conducted virtual interviews with the Complainant and the Warden and with a number of individuals with knowledge or potential knowledge of the circumstances giving rise to the Complaint. We clarified factual matters through e-mail correspondence. We confirm that at all times we had full co-operation throughout the investigation, including from witnesses who were neither staff (current or former) nor elected officials with the County.

² This is the final opportunity provided to a member to make submissions on the investigation as the delivery of the final report to Council concludes the investigatory function of the Integrity Commissioner. The member will be entitled to make submissions on recommendations contained in the Report but the findings of the Integrity Commissioner are final and Council has no authority to question or contest them: *Assaly v. Hawkesbury (Town)*, 2021 ONSC 1690 (Div. Ct.) at para. 11:

If the Integrity Commissioner concludes that a council member has contravened the Code of Conduct, the municipality has **no power** to contest or question that conclusion. Its only power is to determine whether a penalty should be imposed and, if so, to issue a reprimand or suspend the member's remuneration for up to 90 days under s. 223.4(5).

G. REVIEW OF THE EVIDENCE & FINDINGS

22. When evaluating the ethical conduct of a member, the Integrity Commissioner must apply the rules of the Code to the facts gathered throughout the investigation and make a determination, based on a balance of probabilities, as to whether there has been a breach of the Code.
23. We have set out below the background facts and assertions related to each allegation set out in the Complaint, the Warden's response to the allegations, evidence provided to us in interviews with relevant individuals, and our determinations with respect to whether, on a balance of probabilities, the Warden has contravened the relevant sections of the Code.

(a) Allegations

24. We investigated two main allegations made against the Warden.
25. The first allegation relates to inappropriate verbal communications with and an inappropriate text message to the Former CAO about her performance and/or which applied inappropriate pressure on her (the "**Communications**") during the period between the new term of Council taking office to the time of the Former CAO's resignation on May 4, 2023.
26. The second allegation relates to an incident on April 17, 2023, while the Warden, the Former CAO, and others, were in attendance at the Ontario Good Roads Conference (the "**OGRA Conference**"). Specifically, the allegation is that while outside walking back from a lunch with a group of others, the Warden grabbed the Former CAO by the arm and pulled her away from the group she was walking with and proceeded to "dress her down" in front of others (the "**Street Incident**").
27. On April 28, 2023, the Warden wrote an apology to the Former CAO for comments he made to her on April 18, 2023, while attending the OGRA Conference, unconnected to the Street Incident.
28. The Former CAO had been in her position for almost six years at the time of her resignation, which was on May 4, 2023, noting in her resignation letter that she was "resigning to focus on [her] health, safety and wellness following several weeks of very challenging circumstances."
29. As noted above, the Complainant alleges that the Warden contravened Sections 8.1 and 8.2 of the Code with respect interactions with the Former CAO.

(b) Background Circumstances and Context

30. Through the investigation, we became aware of background circumstances and events which we have concluded did influence the conduct of both the Warden and the Former CAO and likely contributed to the events complained of. Notwithstanding this, we have concluded that the Warden committed a breach of the Code. In our view, these background circumstances and events are relevant to some of the allegations and our findings, as well as the ultimate penalty we recommend to Council.

31. We consider these circumstances in reflection of the Code provisions that when Council is determining what penalty to impose, it will be determined by the Council on the advice of the Integrity Commissioner, and Council shall take into consideration the nature and degree of the current breach of the Code and any prior non-compliance with the Code.³
32. It is our understanding from the Complainant, who had known and interacted with the Former CAO from the time she took the position almost six years earlier, that during approximately the last two months of the Former CAO's tenure, she was behaving in a manner that was not entirely in character; one other witness suggests the Former CAO's behaviour had changed sometime earlier, specifically as of Fall, 2022.
33. We note that as it relates to the two-month time frame noted by the Complainant, this coincided with concerns being raised with the Former CAO by the Warden regarding high employee turn-over and, then, the initiation of a workplace investigation related to a personnel matter, which matter the Warden was made aware of by the Former CAO before Council as a whole was provided notice of the matter.
34. It is our overall assessment of the evidence that we heard from witnesses that the Warden had become more invested in this personnel matter than he should have become – choosing to speak directly to the Director of Human Resources about it – and further, that although these were likely well-meaning attempts to assist, his involvement likely exacerbated, rather than alleviated stressors for the Former CAO, and may have potentially interfering with an ongoing investigation.
35. At the same time, the Former CAO's decision to raise this with the Warden likely contributed to the Warden's response and his conduct at least as it related to the Street Incident, described more fully later in this Report.
36. We also conclude that while the Former CAO had withdrawn from interactions with the Warden following the Street Incident, and that there was some evidence that she was unable to continue working with the Warden following this occurrence, there were other factors that may have contributed to her leaving the County, at least at the particular time that she resigned.
37. As our investigation is limited, we are unable to and specifically do not draw firm conclusions on whether the Street Incident was the sole motivating factor in her resigning her position as CAO or even a factor in her decision to leave the County.
38. However, we have determined there is a reasonable basis to conclude that the Street Incident contributed to her sense of safety in the workplace, and specifically, that she felt, if not unsafe, at least vulnerable, in the presence of the Warden.

(c) Complaint regarding Inappropriate Verbal Communications

39. Our office was provided with a number of statements allegedly made by the Warden to the Former CAO. Each of these was responded to by the Warden. There were, in general, denials that these statements were made, although additional context was provided which

³ Code of Conduct, Part 19: Compliance/Accountability/Enforcement, sub-clause (x).

reflected similar comments that may have been made by himself or another person present during the communications, which statements were misinterpreted as criticisms or displaying a lack of confidence in the Former CAO or were simply mis-stated or mis-remembered by the Former CAO. In light of our limited ability to fully assess these statements with the relevant parties, we cannot make any findings of a breach of the Code based on any of these alleged verbal comments.

(d) Complaint regarding Inappropriate Text Communication

40. In the lead-up to the texts in issue, which are described more fully below, the Warden, Deputy Warden, Former CAO and former Deputy CAO (“Former Deputy CAO”) were scheduled to attend a meeting on March 31, 2023.
41. From our interviews, we understand that a meeting had been scheduled by the Deputy Warden to discuss a particular matter. Prior to the Warden arriving at the appointed time, the Former Deputy CAO and Former CAO had already arrived and were in the meeting room, which we are advised is a board room with glass walls. Upon seeing the Deputy Warden, the Former Deputy CAO and/or Former CAO waved the Deputy Warden into the room.
42. Thereafter, the Warden arrived at the specified time for the start of the meeting. Two attendees of that meeting advise that the topic of discussion, upon arrival of the Warden, concerned unrelated matters. However, it appears that the Warden had formulated the view that the meeting had started without him, even though he had arrived on time. A witness described the Warden as becoming progressively more upset as the meeting continued.
43. It is unclear on what basis the Warden believed that the subject matter of the meeting was already being discussed, but our assessment, following the interviews, is that the formal meeting had not, in fact, commenced prior to the Warden’s arrival.
44. We do note, however, that even if it had, unless there was some clear reason for the Warden to believe that the parties were seeking to exclude him from the discussion or hide information from him – which would be inconsistent with the Deputy Warden having invited him to the meeting – this would not seem to be a significant transgression, warranting either his response to it or the text message he subsequently sent to the Former CAO at 3:30 a.m. in the morning.
45. The Warden sent the following text to the Former CAO and Deputy Warden at 3:30 a.m. on April 1, 2023. We note that the Former CAO was the designated emergency contact for the County and was, therefore, responsible to be available 24/7:

Folks, I’ve been troubled all night and have to get this off my chest. I believe Friday afternoon’s meeting, scheduled for 2:30, for which I arrived at on time, only to find it well underway when I got there. [Deputy Warden], you asked for the meeting, and set the time for it to begin. To be well underway before my arrival I find disrespectful. Rather peculiar behaviour should you want the Warden’s support on an initiative. So the question for you both, is it the office of the Warden you disrespect, or just me in particular.

46. In response, the Former CAO sent the following text message to the Warden and Deputy Warden at 7:26 a.m. on April 1, 2023:

I've drafted a dozen different responses since 3:30 am, when I received your message. I opted not to send any of them because texts are often easily misinterpreted – perhaps a meeting is better? It was never my intention to make you feel disrespected and I'm very sorry. I can make myself available quite a bit over the weekend and next week.
47. At about 8:00 a.m. on April 1, 2023, the Warden and Deputy Warden spoke about the matter. The Deputy Warden advises that he sought to assure the Warden that they did not start the meeting without him, that they were “only shooting the breeze” while waiting for him. By contrast, the Warden in his written submissions, suggests that the Deputy Warden confirmed he was right that the meeting had started without him and, further, that the Deputy Warden asked him not to blame the Former CAO, as it was the Deputy Warden's fault.
48. We made the Warden aware that this was not the evidence of the Deputy Warden and he specifically denies this and confirmed that he advised the Warden that the meeting had not started prior to the Warden's arrival.
49. Following the call between the Warden and Deputy Warden, the Warden then spoke with the Former CAO. It is alleged that on this call the Warden stated that the Deputy Warden had “died on a sword” for her and “that can never happen again”. The Warden has denied making these statements.
50. It is further alleged that he was frustrated with the Former CAO, as a result of a “culmination of a whole lot of things”, but could not provide examples of these things when asked by the Former CAO. He denied, this, too. However, he regretted that the Former CAO had understood or come to believe that he was frustrated with her and admitted he was having difficulty expressing himself during that conversation which he indicated had become emotional.
51. The Warden did admit that he communicated something to the effect of that he had been “walking on eggshells” around the Former CAO since January, 2023. We are aware of certain events in January 2023 which were extremely stressful to the Former CAO, Warden, the then Deputy Warden, which would plausibly explain the Warden's statement.
52. The Warden did also indicate in his response that during that conversation he was feeling embarrassed and regretful that he had sent that early morning text to her and the Deputy Warden. He reiterated this during the interview.
53. Finally, the Warden also admitted that he did suggest at the end of the conversation that they would just put it behind them and move forward. He did so because the Former CAO was distraught and he wanted to resolve the matter.
54. Ultimately, it is our conclusion, on the totality of the evidence, that the Warden improperly concluded that a meeting had started without him, though even if it had, his response was unwarranted. We thus conclude that contrary to Section 8.1 and 8.2 of the Code, the Warden created an unsafe and intimidating working environment by virtue of both the

content of his text – which accused the Deputy Warden and the Former CAO of disrespecting either the office of the Warden or him specifically – and by the fact that it was sent at 3:30 a.m. in the morning, when he would have or should have known the Former CAO would have received it, given she was the County’s emergency contact.

(e) Complaint regarding the April 17, 2023 Street Incident

55. In the lead-up to the Street Incident, the Warden advised he had observed the Former CAO appeared to be preoccupied, tense and was “working the phone”. He was concerned there was a problem at the office. He advised during our interview that he considered that if there was a problem at the County, he thought he might be of assistance in taking care of something.
56. A witness to the Street Incident described it as “a little weird”. The witness elaborated on the incident as follows: the Former CAO, herself, and the Warden were walking back from lunch with councillors from West Elgin. They were standing on the corner to walk across the street. The Warden then grabbed the Former CAO by the arm, pulled her aside and spoke to her off the side. The witness indicated that it seemed she was not supposed to be listening to this conversation, which she described as “intense”. As a result, she walked across the street and waited inside at the hotel.
57. The Warden, in his written submissions, recalled the incident quite differently. The Warden indicated that he “guided” the Former CAO “out of the pedestrian stream” to have a private conversation with her. He further indicated that he spoke to her in a “normal tone” asking if there was a problem at the office, and that she replied “no”. The Warden stated that he was satisfied with her answer and they walked back to the hotel.
58. The Warden further offered that because he and the Former CAO had previously had physical interactions, such as a hug and that she was quick to offer her hand in a greeting, he did not consider it inappropriate to take her arm and guide her out of the way of pedestrian traffic.
59. While we understand the Warden may have been concerned about issues that may have been occurring at the office, we accept the evidence of the witness that the interaction was out of the ordinary and that the discussion between the Warden and the Former CAO was “intense”. We decline to accept the degree of familiarity that Warden described from the other physical interactions he cited as comparable and that such consensual physical contact, not uncommon in a workplace context, appears to have been very different from what occurred at the Street Incident.
60. The Former CAO had travelled with the Warden to the OGRA Conference, but following the Street Incident, she made other arrangements for his return to the County from Toronto and she left the conference on her own.
61. Not long after the Street Incident, the Warden became fully aware that something had significantly altered in his relationship with the Former CAO, but he explained did not know what. He stated that he believed that change in their professional relationship resulted from the comments that he had made to the Former CAO on April 18, 2023, for which he later sent a written apology to her.

62. The recollection of events with respect to the Street Incident is conflicting between the Warden and the Former CAO. The independent witness who described the incident as “a little weird” and used the same term as written in the Complaint (i.e., “he grabbed her arm”), coupled with the ensuing depiction of the discussion between the two as “intense”, corroborates the description of an altercation that appears something less than the kindly gesture that the Warden recalls. We view the actions as hostile and aggressive.
63. It is our conclusion that the Warden breached both Section 8.1 and 8.2 of the Code and created an unsafe and intimidating work environment when he grabbed and pulled the Former CAO out of a group and “intensely” sought an answer to his question about what might be occurring back at the office at the County.

H. CONCLUSIONS

64. In summary, for all of the reasons noted above, we conclude that the accusatory text sent by the Warden at 3:30 a.m. to the Former CAO and Deputy CAO constituted a breach of Sections 8.1 and 8.2 of the Code. We further conclude that the Warden’s decision to pull the Former CAO out of a group of municipal colleagues while walking back from lunch to the OGRA Conference to ask about his workplace concerns also constituted a contravention of Sections 8.1 and 8.2 of the Code.
65. In his final submissions to us, the Warden wrote that he was disappointed that the statements we received did not align with the evidence that he offered as to the events of April 1, 2023 and April 17, 2023. He indicated that he continues to stand by his written responses and the oral statements he provided during the interview. However, the Warden also wrote: “It is therefore with a heavy heart that I hereby acknowledge and accept the findings of the Integrity Commissioner in this report.”

I. RECOMMENDATIONS

66. Subsection 223.4(5) of the *Municipal Act, 2001* and the Code authorize the Integrity Commissioner to recommend, and Council to impose, the following penalties if a member has been found to have contravened the Code:
- (a) a reprimand; and
 - (b) a suspension of remuneration paid to the member for up to 90 days.
67. The Code itself also specifies that penalties can include a written reprimand or suspension of remuneration of up to 90 days for a contravention of the Code.
68. On the totality of the evidence before us, the Warden’s conduct may not have been intended to harm and was no doubt clouded by stressors related to workplace matters, and, although misplaced, by his desire to personally assist in the resolution of those workplace matters. This does not excuse what we have determined was ultimately wrongful conduct, but militates against any financial penalty on the higher end of the spectrum.

69. It is our recommendation that Council issue a formal reprimand to the Warden for these contraventions of the Code and also suspend his remuneration for ten (10) days, in light of all the circumstances. We are specifically recommending the penalties for the purpose of general deterrence and maintaining public confidence in the County's ethical framework.
70. The Warden cooperated fully and courteously with us during the investigation and has, in our view, particularly in his final submissions, shown respect for the process, the ethical and accountability framework of the County and the ultimate conclusions in this Report. The Warden has, in our view, demonstrated his understanding of the situation, taken responsibility for his actions and expressed his contrition for his actions.
71. We have considered whether to recommend remedial measures or corrective actions to Council. Such measures or actions are expressly not penalties or sanctions and have been authorized by the courts for measures or actions that are not punitive in nature. We have determined not to make any such recommendations in this case.
72. In closing, we have investigated and reported on this Complaint as a neutral, objective and independent statutory officer of the County. Council has a decision to make: it can accept the Integrity Commissioner's recommendations in full, it can accept them in part and modify them, or it can reject them in their entirety. In considering the decision that Council will be making, we remind the members that they alone are ultimately responsible for maintaining the integrity of adopted accountability framework that they have adopted for the County.
73. This Report has been prepared for and is forwarded to Council for its consideration of the recommendations set out herein.
74. Subsection 223.6(2) of the *Municipal Act, 2001* provides that this Report be made public.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for the Municipality of the County of Elgin

Dated this 19th day of September, 2023

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