

Township of Melancthon Integrity Commissioner File 2018-01

REPORT ON COMPLAINT

The Complaint

The Complainant alleges that a Council Member (the Respondent) breached section 1.3 of By-law Number 17-2016, the Code of Conduct for Members of Council, by attempting to use the influence of office for a purpose other than the exercise of official duties.

A new Code of Conduct for Members of Council & Members of Local Boards (By-law Number 11-2019) took effect March 7, 2019, but this case was considered under the previous Code.

Summary

Because of the circumstances surrounding the complaint and how I am disposing of it, I am not naming either the Complainant or the Respondent in this report. I am also not identifying the Respondent's outside business or his line of work.

The particular allegation is that the Respondent used his position as a Council Member to influence the Complainant to do something that would benefit the Respondent's outside business.

It eventually became clear that the event giving rise to the complaint occurred in 2015 or earlier, though the Complainant says he did not become aware until "2017-18" that the Respondent worked in a particular business. The Complaint was not filed until after the Respondent defeated the Complainant in the 2018 election.

The Code of Conduct was not in effect in 2015. I therefore am closing the file and am reporting to Council that I find no contravention.

Background

According to the Complainant, during a past encounter the Respondent used his position as a Council Member to attempt to influence the Complainant to do something that would benefit the Respondent's outside business.

The Respondent denied the allegation but also pointed out that the encounter was in 2014.

The Complainant replied that the encounter occurred during spring or summer of 2015. Therefore, no matter who is correct, the incident was no later than mid-2015.

The Complainant explained that it was not until "2017-18" that he learned that the Respondent worked in a particular business. In other words, not until "2017-18" did he

come to understand that, on the prior occasion, the Complainant was (allegedly) being invited to do something that would benefit the Respondent's outside business.

Apart from the Complainant and Respondent, there were two witnesses to the 2014-2015 encounter. I will refer to them as Witness A and Witness B. Witness B was also present on the occasion in 2017 or 2018 that caused the Complainant to become aware that the Respondent worked in a particular business.

The Code of Conduct was passed and took effect March 17, 2016.

The election was October 22, 2018.

The complaint was dated November 25, 2018, and I received it in the mail November 29.

Process

In operating under the Code, I follow a process that ensures fairness to both the individual bringing a complaint (Complainant) and the Council Member responding to the complaint (Respondent). The fair and balanced process I normally use is consistent with the requirements of the Code. The process includes the following elements:

- The Respondent receives notice of the complaint and is given an opportunity to respond.
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- The Complainant receives the Respondent's response and is given an opportunity to reply.
- After the reply stage, I often accept supplementary communications and submissions from the parties, but only on the condition that parties generally get to see each other's communications with me. I do this in the interest of transparency and fairness.

As I have stated, the Complaint was dated November 25 and received November 29.

The Respondent was invited to respond, and did so, December 9. He resent the response, December 11. The response stated that the encounter occurred in 2014.

The Complainant was invited to reply, which he did, December 26. The reply stated that the encounter was in 2015 but that it was only in "2017-18" that the Complainant became aware of the Respondent's outside business.

The Respondent was invited to address the latest submission. He informed me, January 17, that he had nothing to add.

In January and February, I reached out to arrange an interview of Witness A. We communicated but ultimately, because of the disposition of the complaint, I did not end up interviewing Witness A. I concluded it was unnecessary.

On February 4, I was informed that Witness B was unwilling to be interviewed. Witness B might have been able to confirm when, precisely, in the period described as "2017-18" the Complainant became aware of the Respondent's outside business. I subsequently concluded that it was not necessary to interview Witness B.

I have concluded that, because the alleged contravention occurred before the Code took effect, it does not matter when the Complainant first learned of the Respondent's outside line of work.

Issue

I have considered the following issue:

- (A) Even if the Complainant first learned about the Respondent's outside business in 2017 or 2018, do I have jurisdiction over a complaint based on an incident that occurred in 2015 or prior?

Analysis and Findings

- (A) ***Even if the Complainant first learned about the Respondent's outside business in 2017 or 2018, do I have jurisdiction over a complaint based on an incident that occurred in 2015 or prior?***

No.

The Code of Conduct is a by-law. A by-law cannot have retroactive effect unless there is statutory authority for retroactivity.

The *Municipal Act* does not provide for codes of conduct to have retroactive effect.

In any event, section 1.18 of By-law 17-2016 stated, "This By-law shall take effect on the date of its final passing." The date of passage was March 17, 2016.

Something that occurred in 2014 and 2015 cannot have contravened a law that did not take effect until 2016. I therefore have no jurisdiction over a complaint based on an incident that took place in 2014 or 2015.

The Complainant says he first learned about the Respondent's outside business in 2017 or 2018. Having considered this point, I conclude that it does not matter, because the Code cannot have retroactive effect. The Code was not in effect in 2014 and 2015. That ends the matter.

Conclusion

Because the Code of Conduct is not retroactive, there can be no contravention and no basis for the complaint. I must end the investigation.

Content

Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

Recommendation

Apart from the fact that the Code does not have retroactive effect, I also note that the complaint was not filed until a significant period of time after the Complainant says he learned about the Respondent's outside business. Many municipalities have established time limits within which complaints must be submitted.

I recommend as follows:

That the Code of Conduct be amended to provide that no complaint may be made more than three months after the facts giving rise to the complaint occurred or first came to the Complainant's attention.

Cost of this Investigation

The total cost to the Township of the investigation and report, not including HST, is as follows:

Hours (to Jan. 31, 2019): 1.5 @ \$100/hour (previously invoiced)

Hours (Feb. 1 to present): 2.5 @ \$100/hour

Total: \$400

Respectfully submitted,



Guy Giorno
Integrity Commissioner
Township of Melancthon

March 26, 2019

**APPENDIX: RELEVANT PROVISION OF CODE OF CONDUCT,
BY-LAW NUMBER 17-2016**

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General 1.3

The Township of Melancthon Council Code of Conduct is a general standard that augments the provincial laws and municipal by-laws that govern conduct. It is not intended to replace personal ethics.

All members shall serve their constituents in a conscientious and diligent manner. No member shall use the influence of office for any purpose other than the exercise of their official duties.