

Township of Melancthon Integrity Commissioner File 2016-01
REPORT UNDER SUBSECTION 223.6(2) OF *MUNICIPAL ACT, 2001*
RE INQUIRY INTO COMPLAINT

Pursuant to subsection 223.6(2) of the *Municipal Act, 2001*, I submit this report to Township Council of my opinion about whether the Member of Council in File 2016-01 has contravened the Code of Conduct for Members of Council.

The Complaint

A complaint alleged that a Member of Council had contravened section 1.14 of the Code of Conduct for Members of Council, By-law Number 17-2016, by making derogatory comments about members of two public bodies that operate in the Township. The Complainant also suggested that the Member of Council had not followed proper process and lacked authorization to make the comments.

I commenced an inquiry into whether the Member of Council had contravened section 1.14. I declined to investigate whether the Member of Council had failed to follow proper process or spoken without authorization, because my jurisdiction under the *Municipal Act, 2001* and the Code does not extend that far.

Summary of Findings

After hearing from both parties to the complaint, allowing each to consider the other's position, and taking into account their representations, I terminated my inquiry without finding that the Code of Conduct had been contravened.

Process Followed

Neither the Code nor the *Municipal Act* dictate the process that I must follow in processing a complaint and conducting an inquiry.¹ In operating under the Code I follow a process that ensures fairness to both the individual bringing a complaint (known as the Complainant) and the Council Member(s) responding to the complaint (known as the Respondent(s)).

This fair and balanced process includes the following elements:

- The Respondent receives notice of the complaint and an opportunity to respond.
- The Complainant receives the Respondent's response and an opportunity to reply.
- More generally, the process is transparent in that the Respondent and Complainant get to see each other's communications with me.
- As a further safeguard to ensure fairness, I will not help to draft a complaint and will not help to draft a response or reply. I will, however, if necessary, ask a party to clarify a complaint, response or reply.

¹ In a separate report, I will recommend that Council adopt a clear protocol for handling future Code of Conduct complaints.

On October 6 an individual emailed to me a complaint form and several attached documents. In the complaint form and accompanying email, the individual (Complainant) expressed concern about comments made by a Member of Council (Respondent).

A complaint must be precise enough that the Respondent understands the allegation and has a fair opportunity to respond. It also must be precise enough for an Integrity Commissioner to investigate. I therefore interpret "complaint" to mean *an allegation that specific actions or omissions have breached specific sections of the Code*.

In my view, the October 6 complaint form, email and attachments were not specific enough to constitute a complaint. On October 10, I wrote to the Complainant and invited the individual to clarify the communication. The complaint form did not cite a specific section of the Code, but indirectly quoted part of the language of section 1.14. I therefore asked whether section 1.14 or additional sections would be the basis for the complaint. I told the individual that I would consider the complaint to have been "received" once clarification was provided.

The Complainant provided clarification the next day, October 11, so I consider October 11 to be the date the complaint was formally received.

The gist of the complaint is that on two occasions a Council Member (Respondent) is alleged to have made derogatory and disrespectful comments about members of two public bodies that operate in the Township. One occasion was a meeting of Township Council. The other occasion was a public meeting in another municipality. The Complainant felt that these comments contravened section 1.14, which provides as follows:

Conduct During Meetings

During meetings, members shall conduct themselves with decorum. Respect for delegations and fellow members and staff requires that all members show courtesy and not distract from the business of the Council or Committee during presentations and when other members have the floor.

Members will avoid any conduct towards a member of council or staff which is known or ought reasonably to be known to be unwelcome, which offends, embarrasses or intimidates, or which reflects intolerance towards any group or individual.

The Complainant also felt that on the occasion of making the comments in another municipality the Council Member had not followed proper process and lacked authorization to make the comments.

The next day, October 12, I wrote to the Council Member (Respondent) to give notice of the complaint. I attached all the communications that I had received from the Complainant, including the clarification, and said that collectively they comprised the "complaint." In the interest of transparency, I also gave the Respondent a copy of my letter to the Complainant.

I invited the Council Member (Respondent) to respond to the complaint, in writing, within seven business days, that is, by October 21. I stated that the response should address the substance of the complaint and in particular the allegation that section 1.14 of the Code had been contravened. I added that the response could also include any objections that the Respondent might wish to raise concerning jurisdiction or process.

The Respondent wrote back to me, October 21, to seek further clarification of the complaint. The Respondent felt that it was unclear which meetings constituted the two occasions described above. The Respondent also felt that one or more of the attachments seemed unrelated to the section 1.14 issue. I asked the Complainant for further clarification, which was received October 26.

The next day, that is, October 27, I wrote again to the Respondent, shared the Complainant's clarification, and invited the Respondent to respond by November 10 to the allegations that section 1.14 of the Code had been contravened.

I did not ask the Respondent to address the portion of the complaint which alleged that the Respondent had not followed proper process and lacked authorization in making the comments in another municipality. The position of Integrity Commissioner is an important one, but its functions are limited both by the *Municipal Act* and by the functions assigned by the municipality. Despite the fact that "integrity" is part of the name, not every issue related to ethics or integrity falls under the purview of an Integrity Commissioner. My role in Melancthon is limited to complaints under By-law Number 17-2016 (the Code). My jurisdiction under the *Municipal Act, 2001* and the Code does not extend to whether a Member of Council has failed to follow proper process or has made comments without authorization. I so informed both parties.

The Respondent provided a response early on November 11. According to the Respondent, the comments made at the meeting outside the municipality were accurate, were not derogatory, and were accurately captured by the minutes of that particular meeting. Meanwhile, the Respondent disputed the Complainant's characterization of the comments at the Township Council meeting and did not agree that the words spoken were the same as the Complainant alleged. The Respondent said that the actual comments were accurate and not disrespectful of, or derogatory toward, members of either public body.

After the weekend, I shared the response with the Complainant and offered a right of reply. The Complainant replied November 16. The reply said the Complainant was using the Code partly to make the Respondent aware that certain comments were perceived as offensive and to challenge those comments. I shared the reply with the Respondent.

I confirmed with the Chief Administrative Officer/Clerk that there is no video or audio record of Township Council meetings. I was informed that meeting notes tend to focus on what was done, not what was said.

Obviously, in order to come to my own conclusion about what was said at the Township Council meeting, I would need not only to review the notes taken by staff but also to interview those present at the meeting about their recollections. While the *Municipal Act* clearly gives me the authority to do these things, I decided to consult again with the parties before putting the Township to the time and expense of what might be a lengthy next phase of the inquiry.

This follow-up confirmed that the Complainant understands my authority is limited to determining whether there has been a contravention of the Code and does not extend to whether a statement by a Member of Council was made within the Member's authority and complies with other Township by-laws and policies.

Both the Complainant and the Respondent were aware that there were no recordings of the meetings where the statements were made and that if I moved to the next stage of the inquiry I would need to interview the note-takers and other witnesses who were present in order to determine precisely what words had been used.

The Complainant was satisfied with the opportunity to file a complaint about comments the Complainant felt were derogatory and to make the Respondent aware of the concern.

Therefore, after each party had the chance to consider the other's views, the Complainant felt that it would be unproductive and unnecessary for me to move to the next stage, namely, interviewing witnesses to determine what specific words were spoken (in order to assess whether they contravened section 1.14 of the Code). The Complainant therefore invited me not to proceed further.

Conclusion

Having considered the positions of both parties and in light of the Complainant's invitation, I decided to terminate my inquiry without finding that the Code of Conduct had been contravened.

I want to thank both the Complainant and the Respondent for their cooperation during this inquiry.

Recommendation

I recommend that Council receive this report for information.

Respectfully submitted,



Guy W. Giorno
Integrity Commissioner
Township of Melancthon

December 7, 2016

APPENDIX: RELEVANT PROVISIONS OF CODE OF CONDUCT

Code of Conduct	1.1	Members shall conduct themselves according to the Code of Conduct.
Preamble	1.2	A written Code of Conduct helps to ensure that the members of Council share a common basis for acceptable conduct. These standards are designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate. These standards should serve to enhance public confidence that Township's elected representatives operate from a base of integrity, justice and courtesy.
...		
Conduct During Meetings	1.14	<p>During meetings, members shall conduct themselves with decorum. Respect for delegations and fellow members and staff requires that all members show courtesy and not distract from the business of the Council or Committee during presentations and when other members have the floor.</p> <p>Members will avoid any conduct towards a member of council or staff which is known or ought reasonably to be known to be unwelcome, which offends, embarrasses or intimidates, or which reflects intolerance towards any group or individual.</p>
...		
Alleged Breaches of the Code of Conduct	1.19	If a breach of the Code of Conduct is alleged the Complaint should be lodged with the Integrity Commissioner.