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March 16, 2012

Gayle J. Frost
Chief Administrative Officer
Municipality of Brighton
35 Alice Street
P.O. Box 189
Brighton, Ontario
K0K 1H0

Dear Ms Frost:

Enclosed is my report to Council as Integrity Commissioner for the Municipality of Brighton dated March 16, 2012. This report should be presented to Council at the next regular meeting or at a special meeting called for the purpose of receiving it.

I have reviewed the recent emails being sent by members of council and although I have comments and a recommendation respecting email use it is clear that members are using emails as an inappropriate tool for municipal business. It would be my suggestion that members suspend the use of emails and other electronic means of communication for municipal business. Their use is adding to distrust among members and is adding to the dysfunctional state of council.

Thank you for the opportunity of acting in the role of Integrity Commissioner for the investigation of the complaints.

Yours truly,

Fred Dean

Encl.

Report of the Integrity Commissioner to the Council of the Municipality of Brighton

This report is submitted to council as a result of a request by Councillor Craig Kerr. The request was made on November 8, 2011. I was appointed as the Integrity Commissioner to investigate the complaints and report to Council.

I have interviewed eight persons, all members of council and the Chief Administrative Officer. In addition, I have reviewed the Code of Conduct, the Municipal Act and other material, including all of the written materials filed by the complainant and the respondents, Mayor Walas and Councillor Martinello.

Legislative Context

Section 223.2 of the Municipal Act expressly authorizes municipal councils in Ontario to establish codes of conduct for members. Although it has always been available to councils to establish a code of conduct, the 2006 amendments to the Municipal Act expressly authorized the practice as it relates to codes of conduct for members of councils and local boards. The legislation is discretionary, that is each council may decide whether to establish a code. The only exception is the City of Toronto which requires council establish a code and appoint an Integrity Commissioner.

When council establishes a code of conduct it may also appoint an Integrity Commissioner or it may do so at a later date. The appointment is discretionary. The Municipal Act contemplates that an Integrity Commissioner may look to the conduct of members in relation to the code as well as any other procedures, rules or policies governing the ethical behaviour of the members.

Sections 223.2 and 223.3 read in part as follows.

“Code of conduct

223.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality.

No offence

(2) A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence.

Integrity Commissioner

223.3 (1) Without limiting sections 9, 10 and 11, those sections 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,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- (b) 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 or of either of them; or
- (c) both of clauses (a) and (b).

Powers and duties

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.”

The Brighton Code of Conduct

Council enacted By-law 029-2010, “Being a By-law of the Corporation of the Municipality of Brighton to Adopt a Code of Conduct Policy for Council and to Establish Roles and Responsibilities for Council and Senior Staff to promote Accountability and Transparency in Municipal Governance”. The By-law was enacted on May 3, 2010 and came into effect on that date. The code was attached to By-law 029-2010 as Schedule “A” and was entitled, “ACCOUNTABILITY AND TRANSPARENCY AND CODE OF CONDUCT FOR COUNCIL MEMBERS”.

The Code of Conduct (referred to herein as “the Code”) identifies seven general types of conduct to which members are required to adhere. These responsibilities are set out in section 4 of the Code. These responsibilities set out the appropriate conduct for members of council. These are the critical section of the Code and they read as follows.

“4.4 COUNCIL MEMBERS

1. Integrity

Ultimately, ethical behavior relies on the diligence of the individual. However, since a breach of Conduct impacts not only on that Member of Council but also the Corporation, a Code of Conduct is the means by which the Municipality

acknowledges their responsibility in this area. Without restricting the scope of this rule, the following shall be considered breaches of the Code of Conduct:

- i. Conduct in Council activities which render the Council Member unable to perform his or her duties satisfactorily.
- ii. To knowingly breach the law in the performance of his /her duties or to request others to do so.
- iii. To intentionally falsify any Municipal records or municipally related material.

2. Impartiality

Every Municipal Council Member must perform his/her duties in an impartial manner.

Without restricting the scope of this rule, the following gives guidance in the area of gifts, hospitality and entertainment:

- i. Members of Council will only;
- ii. Accept gifts, hospitality or entertainment of a nominal *value* that could not be reasonably construed as being given in anticipation or recognition of special consideration by the Corporation.
- iii. A Member of Council must not place his/her self in a position where they are under an obligation to favour an *Individual* or firm.
- iv. There is a role for "moderate hospitality". Council Members may accept hospitality or entertainment if the offer is infrequent (less than 2 or 3 times a year) and appropriate to the occasion.
- v. Members of Council shall acknowledge that the Mayor shall in his/her role, periodically *receive* and distribute ceremonial or other similar items.

3. Conflict of Interest

Every Council Member shall have regard to the provisions contained in the Municipal Conflict of Interest Act, R.S.O. 1990.

4. Financial Transactions

Every Municipal Council Member must adhere to Municipal by-laws and policies regarding any municipal financial transaction.

5. Confidentiality

Every Municipal Council Member must hold in strict confidence all information of a confidential nature acquired in the course of his or her term with the Municipality. Without restricting the scope of this rule, the following shall be considered breaches of the Code of Conduct:

1. To use confidential information which members have access by reason of their position to further personal interests or interests of others.
- ii. To disclose to unauthorized persons information marked confidential to which the Member of Council has access by reason of his/her position as a Member of Council with the Municipality.

The obligation to keep information confidential is a continuing obligation *even* after the Member ceases to be a Member of Council.

6. Public Comment

Every member of Council shall have the right to publicly express his/her personal opinions on matters of political controversy or on existing or proposed municipal policy or administration, *provided* that such comment shall be respectful of the opinions of Council. Information provided by members of Council representing Council decisions or business shall be provided accurately and be a fair representation of facts.

7. Communications and Media Relations

Members of Council will accurately and adequately communicate the attitudes and decisions of Brighton Council, even if they disagree with a majority decision of Council so that:

- i. There is respect for the decision making process of Council.
- ii. Official information related to decisions and resolutions made by Council will normally be communicated in the first instance to the community and the media in an official capacity by the Mayor or his/her designate."

It is against these responsibilities that I must apply the breaches alleged by Councillor Craig. In applying these responsibilities the Code imposes a high standard of conduct on members of council. Section 4 begins with a statement of commitment:

"We the Members of the Corporation of the Municipality of Brighton Council are committed to discharging our duties conscientiously and to the best of our ability. In the performance of our community role we will act with honesty and integrity and generally conduct ourselves in a way that both generates community trust and confidence in us as individuals and enhances the role and image of the Council and Local Government generally. In addition to all legislative requirements, we the Members of Corporation of the Municipality of Brighton Council have adopted the requirements of this Code of Conduct as standards that we will adopt in the performance of our role."

In addition, Council has included a purpose section in the Code. Two purposes identified by Council are to "protect the public interest" and to "encourage high ethical standards". It is clear that the Brighton Council, in enacting the Code of Conduct, intends members to conduct themselves with a high moral standard and in the public interest.

Nature of the Complaints

Councillor Craig, the complainant, filed complaints alleging a number of breaches of the Code by Mayor Walas and Councillor Martinello. The alleged breaches are known to all

members of council. I do not intend to detail each allegation. Several members indicated during the interviews that the importance of this report is in helping members move forward for the remainder of the term. However, there are several issues that do need to be identified.

Councillors Craig and Martinello

It has been apparent throughout this investigation that councillors Craig and Martinello do not get along. They have had a personal dislike for each other that goes back to well before they were both on council. Much of their respective conduct and decisions as members of council relate directly to their relationship. This is, in my opinion, conduct which is a breach of the Code.

Micromanaging

Councillor Martinello is in his first term on council. He has the opinion that he, as a member of council, has a duty to ask questions of staff. He does so by emailing lengthy lists of questions to staff when he receives a request from a constituent. His intention is to direct work. With respect, that is not his role as a member of council.

There is a fundamental principle in local government in Ontario. All powers of a municipality shall be exercised by council. Powers are not be exercised by individuals within the organization unless the province has granted that power or the council by enacting one or more by-laws has granted the power. Council's power must be exercised at open, public meetings for which notice has been given.

The Municipal Act details the responsibilities of council. The Act does not give any power to individual members to order work by the administration. The lengthy questions are being used not to deal with ratepayer's enquiries but to overburden staff who have to respond to detailed questions. This is micromanagement. It is not what is intended by the legislation.

The handling of requests by ratepayers to members of council should be following a protocol that does not involve micromanaging the work to be undertaken by staff.

It is the responsibility of the Chief Administrative Officer and other senior managers to undertake the work authorized by council. The quality of the work done by staff should be subject to review by way of staff performance reviews. The performance review of the CAO should be done by council. The remainder of the staff will have performance appraisals regularly undertaken by their supervisors.

Procurement Policy

The Code requires compliance with and respect for the by-laws of the municipality. The acquisition of goods and services in the public sector is very different than private sector. There is a requirement that every municipality have in place a procurement

policy, also known as a purchasing by-law” which sets out the methods to be used by the municipality to acquire goods and services. It also determines who has the authority to purchase various goods and services on behalf of the municipality. Again, this is a council policy that must be enacted as a by-law by council. There is no inherent right in any member of council or staff to commit the municipality to a purchase unless that official is specifically authorized to do so.

Mayor Walas exceeded his authority when he began negotiations for the purchase of a truck that was budgeted for by council. While he did so with good intentions, he acted beyond the scope of his powers.

Leadership

The issue of leadership came up in the interviews. Section 224 of the Municipal Act is one of the sections that sets out the duties and responsibilities of the Head of Council. Paragraph (c) states that it is the role of the Head of Council, “to provide leadership to the council”.

Every person placed in a leadership role brings a different leadership style to the office. Not only does the legislative framework place leadership obligations on the mayor, so does the community. Being a leader in the public sector brings some very different challenges than the private sector. The mayor is one vote on council. The power of a municipality is exercised by council, that is, all of the duly elected members, acting together at a public meeting with decisions made by a majority vote. In Brighton’s case, that means four votes.

The leadership strengths of a mayor lie not with the legislated mandate but with the ability of the individual to influence and build toward consensus among members.

There are two relatively recent comments by former mayors that illustrate this point.

Former Toronto mayor David Crombie is quoted in a September 24th Toronto Star article:

“Saying that building consensus is important to being a successful mayor”, remarks former mayor David Crombie, “is almost like saying air is important for breathing. Its the job. We get into this kind of thinking that somehow the mayor is the chief executive officer or president. He’s not. If you walk in and say, ‘Excuse me, new sheriff in town, here is how we are going to do things,’ you will find people dig in”.

On February 28, 2012 Senator Art Eggleton wrote an editorial in The Globe and Mail in which he said in part:

“I had the privilege of serving 11 years as mayor of Toronto. I learned very quickly that the job is to bring people together, not drive them apart. The mayor’s

office ought to be a place where, on difficult issues, you bring in all the stakeholders – many with opposing views – and hammer out practical solutions, solutions that move the city forward.

“The mayor has another responsibility, one that I and past mayors have taken very seriously: attracting and keeping high-calibre public servants to give us their best advice and expertise on how to make our city better. Why would good people with professional integrity want to work for a city where you either fall in line with what the mayor thinks or risk being fired?”

Mayor Walas, in response to a question about leadership stated, “I am new to politics. In business, I operated in an open and cooperative style, but ultimately I had the last say on any decision. I am finding this not to be working with Council”. This quote is at the crux of the issue of leadership in local government. It is not working with Council and that is because it is Council and not the head of council or any individual councilor that has the last say. Council exercises power on behalf of the municipality at duly constituted public meetings.

Conflict of Interest

Mayor Walas declared a conflict on a matter in 2011, properly referred to as a pecuniary interest. When the matter came back to council, including closed meetings of council, he did not declare. I do not intend to deal with the issue of whether Mayor Walas had a pecuniary interest in the matter. It should be noted that the Municipal Conflict of Interest Act requires that a member declare a pecuniary interest each time the same matter comes before council. It is therefore unusual and noteworthy that he declared in the first instance but did not do so subsequently. He gave no explanation to council even though it was a matter being dealt with at a closed meeting of council and one which he would not be entitled to attend if he had a pecuniary interest.

Conclusions

It was clear in all of the interviews that most members of council appreciate that council is not working. The common refrain I heard was, “We are dysfunctional”. That is my conclusion as well.

There are a number of factors that have led to this situation and there is no easy fix. The Code requires members to protect the public interest and act with high ethical standards. That is not the standard that some members of council are following.

There are a number of reasons for this conduct. They include:

- a Head of Council that is new to the office with no previous public sector experience who lacks the practical experience of leadership of council;
- two members who dislike each other and whose conduct as a member of council is governed more by that relationship than the interests of the public;

- at least one member who is micromanaging staff and exceeding the statutory requirements of the responsibilities of a member of council;
- a demonstrated disrespect for staff by some members which has resulted in an unpleasant working atmosphere for many staff; and
- communication practices by members of council intended to keep deliberations from the public resulting in a less than transparent local government.

The recommendations to council that follow will, if implemented, allow council to move forward for the benefits of the community. Municipal government in Ontario is intended by the province and by the public to be the most open and transparent level of government. Legislation requires that council makes decisions and sets policy which are in the best interests of the community.

I recommend the following to Council:

1. Council appoint an Integrity Commissioner for a minimum term to ensure security of tenure. I would recommend the term be for five years. This will provide members with an ongoing resource. It will also provide the community with the assurance that the conduct of members of council will be scrutinized by an independent observer to determine if the members are taking seriously their commitment to act in compliance with the Code and with integrity and in the public interest. That is not happening now.

The appointment will also provide opportunities for the training of members in matters relating to the Code and other municipal documents affecting members' roles and behaviors. Indeed, I recommend that the first undertaking of the Integrity Commissioner be to conduct a training day for members on the Code. One example of the reason for training is found in section 4.4, paragraph 5 (i). There may be conduct which violates this paragraph that may have implications for civil litigation or be an offence under the Criminal Code of Canada. Therefore, training is required.

In the appointment of an Integrity Commissioner, council should be aware that it may grant to the Integrity Commissioner the authority to call for a public inquiry. This is authorized by section 223.4 of the Municipal Act. If the conduct of members does not change, it may be in the public interest for such action.

2. Ongoing training should be provided to members and senior staff. It is not sufficient for the municipality to provide or arrange for orientation training immediately after an election. New members who are given such training will only appreciate parts of it because they have no context into which to place the information. The same training offered 12 to 18 months into the term will be heard differently and be of greater benefit. There are benefits to all members of council and senior staff being trained together.

Local government in Ontario is regulated by the province through a number of different statutes and regulations. This includes the duties and responsibilities of members, the Head of Council and the administration. There are limits as well as responsibilities imposed on each of these parties by provincial legislation, primarily the Municipal Act. These relationships need to be explained so that members understand the scope of their duties and powers.

This is particularly important when new members of council are assessing the conduct of staff. Without the members having the knowledge and understanding of the respective roles of staff and members of council it is inappropriate to be undertaking any review or commenting on the performance of the administration.

3. Members who are micromanaging the administration stop doing so. Members require ongoing training and reminder in this regard. Other members of council who observe or are aware of this interference with staff have a responsibility to speak out. There needs to be a protocol adopted between council and the CAO, spelling out the appropriate relationship between members and staff.
4. Members of council and senior staff undertake a team building programme as soon as possible. This should be conducted by a qualified facilitator. The programme should be conducted in accordance with subsection 239 (3.1) of the Municipal Act as it for education and training. There must not be any municipal business conducted. The Act specifically prohibits any member from materially advancing the business of the municipality.

This meeting(s) will require that public notice be given in accordance with the Procedure By-law.

The key is that moving forward members will conduct themselves in a professional manner consistent with the obligations imposed by the Code of Conduct. Decisions must be made and positions taken on principle and not on personalities.

Council's obligation is to make decisions and set policy. To be effective moving forward, those decisions must be made in the public interest.

5. The use of email and electronic messaging by members be restricted. It is inappropriate for members to be sending emails to all other members for the purpose of advancing the business of council and urging other members to adopt a position on a matter. That is not transparent. There is an expectation that debate on a matter will take place at a council meeting that is open to the public, for which notice has been given in advance. This is an expectation of the public and it is the legislated requirement on councils across Ontario.
6. Despite breaches of the Code of Conduct by both Mayor Walas and Councillor Martinello no penalty should be imposed by council.

In closing...

There remains approximately two and a half years until the next municipal election. Members of council have acknowledged that council is dysfunctional. This was clear in the interviews.

Members can continue to choose to fail or can take steps both personally and corporately to change their conduct and begin to act in a transparent way that respects the views of other members and is in the public interest.

It is imperative that staff be allowed to do their jobs. This means that councillors must refrain from micromanaging the day to day staff responsibilities. Staff need to be able to provide the services authorized by council and not by individual councillors.

Finally, I wish to acknowledge and thank all those interviewed for their cooperation and their frank and open comments.

Signed:

Date: March 16, 2012



Fred Dean
Integrity Commissioner