



Staff Report

Administration

Report To: Council
Meeting Date: June 18, 2018
Report Number: FAF.18.95
Subject: Integrity Commissioner Report dated May 25, 2018, on a Complaint Alleging Violations of the Code of Conduct for Members of Council (follow-up report to April 6, 2018 Integrity Commissioner Report). Complaint dated May 8, 2017
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.18.95, entitled “Integrity Commissioner Report dated May 25, 2018, on a Complaint Alleging Violations of the Code of Conduct for Members of Council (follow-up report to April 6, 2018 Integrity Commissioner Report). Complaint dated May 8, 2017”;

AND THAT Council consider the findings and recommendations to Council included in the Integrity Commissioner’s Report dated May 25, 2018 as it relates to the breach of Section 2 (Gifts and Benefits) and Section 9 (Influence on Staff) of the Code of Conduct for Members of Council Policy, POL.COR.07.07 by Councillor Michael Seguin.

B. Overview

The purpose of this report is to attach the Integrity Commissioner’s Report dated May 25, 2018 in response to the May 8, 2017 complaint received under the Code of Conduct for Members of Council Policy, POL.COR.07.07.

C. Background

Attachment #1 is the Integrity Commissioner’s Report dated May 25, 2018, which is a follow-up report to the Integrity Commissioner’s Report dated April 6, 2018 (Attachment #2) regarding a complaint dated May 8, 2017.

In accordance with the “Code of Conduct for Members of Council” Policy No. POL.COR.07.07, as revised, complaints under the Code of Conduct may be submitted to the Clerks Department in written form. Within 48 hours of receipt of the complaint, the Clerk will forward the complaint to the Integrity Commissioner who will process the complaint in accordance with Section 223.3 of the *Municipal Act, 2001*. The complaint to which this Report applies was forwarded to the

Integrity Commissioner, and processed by the Integrity Commissioner in accordance with the Code of Conduct.

The Code of Conduct requires that the Integrity Commissioner shall report the results of the investigation in an open meeting of Council.

At the April 30, 2018 Special Meeting of Council, Council received Staff Report FAF.18.61 “Integrity Commissioner Report on a Complaint Alleging Violations of the Code of Conduct for Members of Council dated April 6, 2018, Complaint dated May 8, 2017”, and resolved as follows:

THAT Council receive Staff Report FAF.18.61 “Integrity Commissioner Report on a Complaint Alleging Violations of the Code of Conduct for Members of Council dated April 6, 2018. Complaint dated May 8, 2017”, **CARRIED.**

THAT with respect to Staff Report FAF.18.61 “Integrity Commissioner Report on a Complaint Alleging Violations of the Code of Conduct for Members of Council dated April 6, 2018. Complaint dated May 8, 2017”, that Council consider the findings and recommendation for reprimand included in the Integrity Commissioner’s Report dated April 6, 2018 as it relates to the breach of Section 9 (Influence on Staff) of the Code of Conduct for Members of Council Policy, POL.COR.07.07 by Councillor Michael Seguin and that Council await a further report regarding the violations of Section 2 (Gifts and Benefits) of the Code of Conduct of Council Policy, POL.COR.07.07, **CARRIED.**

D. Analysis

n/a

E. The Blue Mountains Strategic Plan

Goal #4: Promote a Culture of Organizational & Operational Excellence

F. Environmental Impacts

N/A

G. Financial Impact

1. Integrity Commissioner fees.

H. In consultation with

Janet Leiper, C.S. Integrity Commissioner

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required.

J. Attached

1. Attachment 1, Integrity Commissioner Report dated May 25, 2018
2. Attachment 2, Staff Report FAF.18.61 "Integrity Commissioner Report on a Complaint Alleging Violations of the Code of Conduct for Members of Council dated April 6, 2018, Complaint dated May 8, 2017"

Respectfully Submitted,

Corrina Giles
Town Clerk

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**Report on a Complaint Alleging Violations of the Code of Conduct for
Members of Council**

for

Town of the Blue Mountains

May 25, 2018

Janet Leiper, C.S.

I. Introduction

- [1] This is a follow-up report to Council on a complaint that Councillor Michael Seguin of the Town of the Blue Mountains violated the Code of Conduct for Members of Council (POL.COR.07.07).
- [2] In a report to Council dated April 6, 2018, I found that Councillor Seguin breached Section 9 of the Code by posting social media comments which were disrespectful of staff and Section 2 of the Code by accepting the benefit of donations made to his lawyer for his legal fees in litigation with the Town in his capacity as an elected official. I recommended that Council impose a reprimand for the breach of Section 9 of the Code, and that the question of sanction for Section be deferred pending the Councillor providing further information about the donations for legal fees and meeting for advice about how to address potential conflicts arising from those benefits.
- [3] On April 30, Council received the recommendations as to the breaches of the Code of Conduct. The question of sanction on both breaches was deferred pending a further report in relation to the donations and Section 9 of the Code.
- [4] On May 4, 2018, Councillor Seguin tendered his resignation as a member of Council. The additional information requested has not been provided to date.
- [5] As a result of this new turn of events, I recommend to Council that the matter of sanction be deferred again on the basis that the requested information has not been provided, but more significantly, that Council does not now have the ability to impose a sanction on a former member of Council. Given that there is an upcoming municipal election, the possibility that Councillor Seguin may return to council in 2018 cannot be ruled out.

II. Background

- [6] On May 8 2017, a member of Staff complained that the Councillor breached the Code of Conduct by making public comments on social media sites about the Staff Complainant that were disrespectful of staff (Section 9), that failed to encourage respect for the town and its policies (Section 12) and amounted to retaliation against the Staff Complainant for a prior complaint made against the Councillor.
- [7] The Staff Complaint also provided information suggesting that the Councillor received donations from members of the community for his legal expenses in his litigation with the Town contrary to Section 2 of the Code of Conduct
- [8] The complaints were investigated and the outcome of those complaints were reported to Council on April 30, 2018. A sanction for the finding of a breach of section 9 was imposed on April 30, 2018, that being a reprimand.

[9] In relation to breaching the gifts and benefits provisions of the Code by accepting anonymous donations from members of the public to offset his legal fees for an action against the town for Judicial Review connected to his role as Councillor, I recommended to Council that its consideration of whether there should be any sanction for the breach of Section 2, should:

await the provision of further details to the Integrity Commissioner for the purpose of seeking and receiving advice as to potential for potential or apparent conflict of interest in relation to the acceptance of these benefits, and to inform Council's decision on any sanction that should attach to this breach. The expectation will be that this will take place soon so that the matter is not delayed unnecessarily. (Report to Council, April 6, 2018)

[10] On May 4, 2018, Councillor Seguin tendered his resignation as a member of Council. There has been no discussion of the donations since the report to council on April 30, 2018.

III. Recommendation to Council

[11] Councillor Seguin is no longer a member of Council and thus is not able to be sanctioned by Council for the conduct described in the report of April 6, 2018. There is information outstanding that might usefully assist Council with any such decision. The legal fee donations have the potential to place Councillor Seguin in a conflict of interest, apparent or real, should he run for office in the upcoming municipal election and be re-elected. At the very least, both he and the public would be best served by his remaining open to the receipt of advice about those donations.

[12] I recommend to Council that the matter of sanction be deferred at this time.

DATED this 25th day of May, 2018



Janet Leiper, C.S.



Staff Report

Administration

Report To: Special Meeting of Council
Meeting Date: April 30, 2018
Report Number: FAF.18.61
Subject: Integrity Commissioner Report on a Complaint Alleging Violations of the Code of Conduct for Members of Council dated April 6, 2018. Complaint dated May 8, 2017
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.18.61 “Integrity Commissioner Report on a Complaint Alleging Violations of the Code of Conduct for Members of Council dated April 6, 2018. Complaint dated May 8, 2017”;

AND THAT Council consider the findings and recommendation for reprimand included in the Integrity Commissioner’s Report dated April 6, 2018 as it relates to the breach of Section 9 (Influence on Staff) of the Code of Conduct for Members of Council Policy, POL.COR.07.07 by Councillor Michael Seguin.

B. Overview

The purpose of this report is to attach the Integrity Commissioner’s report in response to the May 8, 2017 complaint received under the Code of Conduct for Members of Council Policy, POL.COR.07.07.

C. Background

In accordance with the “Code of Conduct for Members of Council” Policy No. POL.COR.07.07, as revised, complaints under the Code of Conduct may be submitted to the Clerks Department in written form. Within 48 hours of receipt of the complaint, the Clerk will forward the complaint to the Integrity Commissioner who will process the complaint in accordance with Section 223.3 of the Municipal Act, 2001. The complaint to which this Report applies was forwarded to the Integrity Commissioner, and processed by the Integrity Commissioner in accordance with the Code of Conduct.

The Code of Conduct requires that the Integrity Commissioner shall report the results of the investigation in an open meeting of Council.

D. Analysis

n/a

E. The Blue Mountains Strategic Plan

Goal #4: Promote a Culture of Organizational & Operational Excellence

F. Environmental Impacts

N/A

G. Financial Impact

1. Integrity Commissioner fees.

H. In consultation with

1. Janet Leiper, C.S. Integrity Commissioner

I. Attached

1. Janet Leiper, C.S., Integrity Commissioner "Report on a Complaint Alleging Violations of the Code of Conduct for Members of Council Town of The Blue Mountains, dated April 6, 2018"
2. Code of Conduct for Members of Council Policy, POL.COR.07.07

Respectfully submitted,

Corrina Giles
Town Clerk

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ATTACHMENT #1

**Report on a Complaint Alleging Violations of the Code of Conduct for
Members of Council**

for

Town of the Blue Mountains

April 6, 2018

Janet Leiper, C.S.

I. Introduction and Summary of Findings

- [1] This is a report to Council on a complaint that Councillor Michael Seguin of the Town of the Blue Mountains violated the Code of Conduct for Members of Council (POL.COR.07.07).
- [2] Following an investigation, and for the reasons provided below, I found that Councillor Seguin breached Section 9 of the Code by posting social media comments which were disrespectful of staff. I also found that in accepting the benefit of donations made to his lawyer for his legal fees in litigation with the Town in his capacity as an elected official, he also breached Section 2 of the Code (Gifts and Benefits).
- [3] This report recommends to Council that it adopt these findings and reprimand the Councillor for his breach of Section 9 (Staff). A further report will be provided on the question of sanction for the breach of Section 2 (Gifts and Benefits). The reason for deferring sanctions in relation to Section 2, is that the Councillor should have the benefit of informing himself about the nature of the donations, and to engage with the Integrity Commissioner for advice prior to the matter returning to Council. This is explained further in this report.

II. Background

The Social Media Complaint

- [4] On May 8 2017, a member of Staff, (the Staff Complainant) complained that the Councillor breached the Code of Conduct by making public comments on social media sites about the Staff Complainant that were disrespectful of staff (Section 9), that failed to encourage respect for the town and its policies (Section 12) and amounted to retaliation against the Staff Complainant for a prior complaint (the "Prior Complaint") made against the Councillor.
- [5] Copies of the Councillor's social media postings were provided with the complaint. The comments included a reference to the Staff Complainant undermining Council's authority by developing policies to take away (its) authority. There were multiple uses of the phrase "witch-hunt" on the posts referring to the Staff Complainant. The Councillor posted that there had been a "broad-side attack....to attempt to interfere with my ability to fulfill my duties of office and function as a Councillor." The Councillor alleged in more than one place that the Staff Complainant was using "the public purse, without being accountable to both Council and the taxpayer."
- [6] On April 12, 2017, the Councillor was asked by external counsel to the Town to remove some of the postings that are now the subject of this complaint. The Councillor objected to the tone of the letter and questioned whether or not counsel had been properly instructed about the matter. He did not take down the

posts. As a result, his comments were publicly available until July of 2017 when the investigation was put on hold at the request of the Councillor. At that time, he agreed to take down the comments as part of that request.

- [7] The Councillor was asked to respond to the complaint on May 11, 2017. He responded in writing on May 31, 2017. The Staff Complainant was provided with a copy of the response and provided further comments on June 9, 2017, which were in turn provided to the Councillor who provided an additional response on June 23.
- [8] The correspondence reveals a history of each party expressing frustration with the actions and conduct of the other. The Councillor denied breaching the Code of Conduct because of the context, including his feeling that he had been unfairly treated by Council in the past consideration of the Prior Complaint against him. His responses were lengthy and included additional material for consideration.

The Gifts and Benefits Complaint

- [9] The Staff Complaint also provided information suggesting that the Councillor received donations from members of the community for his legal expenses in his litigation with the Town. Although no details were provided as to the source or amounts donated, the Staff Complainant questioned whether there had been a breach of Section 2 of the Code of Conduct dealing with gifts and benefits.
- [10] In response to the gifts and benefits allegation, the Councillor responded that he had not solicited, approached or established any fund to obtain money from constituents for his legal expenses. Through his counsel, he said that he lacked knowledge of donors and monies donated, and “whatever monies donated have not been paid to our client.” His counsel referred to the benefit of public interest litigation funding and the modest remuneration that members of Council receive.
- [11] The Councillor’s response confirmed that money had been paid directly to counsel for the Councillor’s legal fees. Initially, Councillor Seguin did not direct counsel to provide information to me about the source, relationship, amounts or how these donations were permitted by the Gifts and Benefits provisions of the Code. Shortly before this report was finalized, Councillor Seguin agreed that such information could be provided; this information is still pending.
- [12] In considering the first draft report, the Councillor provided additional information as to his thinking around the funding of his legal fees. He argued that it was akin to a “blind trust” because the money went directly to his lawyer and he was not made aware of the source or amounts. I explained to the Councillor that this was not equivalent to a blind trust because it involved infusions of funds from third parties, and was not merely a way of insulating the Councillor from investment or management decisions with his own investments. This situation involves the receipt of non-transparent quantifiable benefits that could make the Councillor

vulnerable to a conflict of interest in the future. Members of the public could approach the Councillor for favours or a vote, based on their contribution to his legal cause against the City. He received the benefit of not having to provide the additional fees requested by his lawyer for his litigation. The perception could be that he “owes” any such donor a favour. Worse, if he is unaware of who has donated, then others who became aware of such an arrangement could make claims on his loyalty without him being able to verify whether they had also done him a favour.

- [13] The Councillor now appears to appreciate the issue after some discussion of the matter and reviewing the draft findings. However, additional information is required before a final resolution. I will be recommending a meeting with the Councillor and his counsel to discuss ways to preserve his independence as a Councillor and to inform any recommendation as to sanction as a result of the gifts and benefits breach.

Background and the Deferral of the Current Complaint by the Councillor

- [14] The length of time between the filing of the Current Complaint and this report deserves comment.
- [15] The Current Complaint involves social media postings made by the Councillor which were on-line in 2016-2017, following the Prior Complaint in 2016 against the Councillor. After sanctions were imposed by Council relative to the Prior Complaint, the Councillor filed a Judicial Review application (JR) to set aside the Council resolution that sanctioned him. The JR was filed by the Councillor in November of 2016. As of the date of this report, there has been no argument or decision by the court on the JR.
- [16] The JR, is premised on the Councillor’s position that in the Prior Complaint, the Town adopted an unfair process. The Councillor described the process by which a public resolution was passed and a sanction which the Councillor says had the following negative impacts on him:
- a) Impaired his ability to carry out his duties as a Councillor;
 - b) Imposed grossly disproportionate sanctions for vague allegations;
 - c) Imposed sanctions without jurisdiction to do so;
 - d) Denied him procedural fairness and the right to fully respond to the Prior Complaint
- [17] The JR sought to set aside the resolution of Council of September 15, 2016.
- [18] On June 26, 2017, counsel for the Councillor wrote to say that the responding record for the JR had been received, that cross-examinations were being contemplated with the hearing of the matter ‘when possible, likely in the fall.’ Counsel submitted that it would be impossible to assess the Current Complaint

without a complete revisiting of the Prior Complaint. He requested that investigation be deferred pending the results of the JR.

- [19] The request for deferral was considered, with additional information sought about likely timing of the completion of the JR and a request as to whether the Councillor would take down the postings that were the subject of part of the complaint on a “without prejudice” basis. Counsel advised that cross-examinations had been scheduled for August, 2017. The Councillor removed all of the complained-of postings. A status letter was sent to the Councillor and to the Staff Complainant providing reasons for the deferral of the complaint until the JR was completed and confirming the removal of the postings.
- [20] In August and in response to concerns raised by the Staff Complainant about a possible lengthy delay, I corresponded with counsel to the Councillor to indicate that I would be monitoring the status of the JR proceedings. I requested copies of any court filings and updates on the timing of the proceedings.
- [21] On August 24, 2017, counsel for the Councillor advised that the Councillor had taken a leave of absence from his duties on Council for medical reasons. Counsel requested that the complaint be dismissed as moot, on the basis of his client’s leave of absence, the ongoing delay in the JR proceedings, and the fact that the Staff Complainant was no longer employed by the Town. Counsel indicated that he would provide further information about the JR if it was to proceed further. I determined that none of these factors made the complaint moot and that the matter should be concluded.
- [22] On October 31 and November 10, 2017, I asked counsel about the status of the JR and requested submissions from counsel on whether the complaint could be assessed on the basis of a documentary review.
- [23] On November 15, counsel advised he was following up on further information about his client’s leave and would write back once that was obtained.
- [24] On November 20, 2017, counsel sent a one page doctor’s letter which referred to the Councillor’s workplace and Council duties. The doctor recommended no involvement in situations of conflict during his leave. Counsel submitted that it would be inappropriate to proceed with the matter because an interview with his client would be necessary to complete this investigation.
- [25] Counsel also submitted that his client needed to avoid stress and that any letters requesting clarification or conclusions would result in conflict and stress which his client had been directed to avoid. Counsel stated that the JR continued to be held in abeyance for medical reasons. I advised counsel that I would consider these submissions and make a decision as to the appropriate way to proceed, given this updated information.

[26] On January 5, 2018, the Town Clerk advised that the leave of absence which had been approved by Council for the Councillor, expired on November 17, 2017.

[27] On January 22, 2018, the Councillor returned to attending meetings.

III. The Decision to Proceed Before the JR is Completed: Balancing Interests and Considerations

[28] The public interest favours the timely resolution of complaints under a Code of Conduct that applies to public officials. This encourages respect for the complaint process which will be seen to operate efficiently and fairly. It provides feedback to elected officials who are expected to conduct themselves in a way that enhances public confidence in government. At the same time, elected officials must be given adequate time and an opportunity to respond to complaints. This section of the report explains the thinking behind proceeding to report to Council, although the JR proceedings are still outstanding.

[29] The complaint in this matter was filed on May 8, 2017. The Councillor retained legal counsel and responded in detail to the complaints concerning the social media postings, which were not denied, but for which context and background were provided. The Councillor did not deny making the postings, but provided a number of justifications and context for his comments.

[30] The Councillor's replies characterized the complaint as frivolous, vexatious and reflective of personal animus towards him from the Staff Complainant. The complaint was described as being a continuation of a pattern of conduct aimed at attacking the character of the Councillor.

[31] Both the Staff Complainant and the Councillor expressed that they had experienced much stress over this matter. The Councillor took an approved leave of absence from his position as Councillor, which is completed. He was able to participate in this process by providing written comments and further submissions about a draft version of this report.

[32] In reviewing the ample record, I concluded that the Councillor had adequate opportunity to respond via counsel, and need not attend to be interviewed on the social media postings allegation.

[33] The history of the matter and the JR proceedings presented a valid basis some months ago for deferring a finding. Over time, the balance of interests favoured revisiting that decision to defer, especially where there is no longer a reasonable expectation that the JR will be completed in a timely way. I considered whether or not at this stage, there needs to be a decision on JR concerning the Prior Complaint. I have considered a scenario in which the Prior Complaint is found to be lacking in procedural fairness or contrary to law and have asked if that is so would that be a justification for the content of the social media postings by the

Councillor? I concluded that it did not, and part of that conclusion was formed by considering the substance of the complaint, discussed below.

IV. Analysis of the Complaint

[34] The Councillor was asked to respond to allegations of breach relating to the social media postings. A description of each, with his response and discussion of the application of the Code of Conduct to the postings as follows:

1. August 16, 2016 Posting on Facebook and Link from Public Website

[35] The Staff Complainant alleged that a link from the Councillor's website to his Facebook page revealed postings that included a response to a constituent dated August 31, 2016 which was on-line as of May 8, 2017 (the date of the complaint):

The Blue Mountains Councillor "In my opinion-Council's authority is continuously being undermined (sic) by [title of Staff Complainant] and his staff by developing new policies to take away more authority – they say "to be more efficient and save time/money". Then we are told not to "micro-manage" or challenge (disagree with) sensitive issues because we gave up that right.

This posting above was placed directly below comments from a ratepayers' association which was seeking support for the Councillor in relation to the Prior Complaint. The Staff Complainant alleged that in this context, the posting was made in retaliation for the filing of the original complaint.

The Councillor was provided with this context and asked to respond to the question of whether this posting contravened either Section 9 of the Code of Conduct (Influence on Staff) or the Protection from Retaliation provisions of the Code of Conduct.

[36] The Councillor responded that the comment was taken out of context because it was a response to a comment made by a constituent. This was in fact referenced in the letter to him, as described above. He went on to say that it was not a specific criticism targeted at any one individual, but was reflective of a broader concern about Council's authority, which was the platform on which the Councillor ran for office. The Councillor characterized his comment as a "statement of principle that, in the opinion of our client, the authority of Councillors is consistently being undermined by virtue of the development of policies by staff that effectively diminish the authority of Council."

[37] The Councillor's social media comment responding to the constituent did more than raise a general statement of principle: it identified the Staff Complainant by title and accused the identifiable staff member of undermining Council's authority by the development of certain policies. It is not worded so as to merely express

concern for the policies; rather, it accused the Staff Complainant of intending to undermine Council to the staff member who complained.

[38] Section 9 of the Code of Conduct requires compliance with the Town Respectful Workplace Policy. This requires members of Council to be respectful of staff who work for the Town as a body corporate. The Councillor's public comments singled out a staff member and suggested that policies were being developed to undermine Council. This posting breached section 9 of the Code of Conduct.

[39] The protection from retaliation provisions in the Code of Conduct were not clearly engaged by this posting. This is because the materials provided by the Councillor indicate there was friction between the Staff Complainant and the Councillor that pre-dated the Prior Complaint. Also, by the time of the postings, Councillor Seguin saw himself as the victim of an unfair process and took to social media to air his grievances. There are a number of motivations for Councillor Seguin to have made the postings and as a result, I decline to make a finding that Councillor Seguin intended to engage in reprisal against the Staff Complainant for the earlier complaint.

2. **September 10, 2016 Posting on Facebook and Blog**

[40] The Staff Complainant alleged that the Councillor posted disparaging remarks about him on September 10, 2016 as follows:

I want to thank all those that wrote letters/emails to the Mayor and Council in support of my defence regarding a "witch-hunt" and a frivolous harassment complaint against me by the [title of staff member] on behalf of unknown Town staff.

I also wrote a letter to them asking that they consider my situation and/or at least hear some of my side of the story.

However, it appears that my letter and your letters have gone on to "deaf ears" and I have not even received the courtesy of an update (on where I stand regarding the complaint) from the Mayor or anyone on Council. It would appear that the [title of staff member] has a lot more support from Council than I have. Who's running the show?

The Councillor was asked to respond to whether or not this posting contravened Section 9 of the Code of Conduct (Influence on Staff) or the Protection from Retaliation provisions of the Code of Conduct (POL.COR.07.07)

[41] The Councillor responded that these were factual comments and were not disparaging. He noted that the first paragraph referred to his (then) lawyer's letter that was presented to council at the time of the Prior Complaint. He said that the third paragraph was about a process that he felt had been unfair to him. Finally,

the Councillor responded that the posting had “nothing” to do with the Staff Complainant.

- [42] I reviewed a copy of the Councillor’s former lawyer’s letter to Council of June 16, 2016. The letter provided a summary of the lawyer’s position to Council and includes an allegation that another elected official (not staff) “appears to be acting in a campaign and witch-hunt” against the Councillor without legal authority. The letter also referred to a “broadside attack” by the Staff Complainant.
- [43] The Councillor has said that he was referring to his lawyer’s letter, yet the posting does not mention that letter. The posting refers to a “witch-hunt” and a “frivolous” complaint by an identifiable staff member (the Staff Complainant). The lawyer’s letter referred to another elected official in using the term, “witch-hunt.” Further, the posting was made on social media for any member of the public to read. This is a different context from a letter written directly to the parties concerned in seeking relief. Finally, I note that generally, there is a difference in the power dynamic as between fellow elected officials and as between an elected official and staff of a municipality.
- [44] The JR may or may not find that council adopted an unfair process to decide the Prior Complaint. The court may or may not find that Primary Complaint was groundless and could not support the sanctions imposed. Even if all of the findings sought by the Councillor are made, this would not provide justification for the posting in which the pejorative term “witch-hunt” was applied by an elected official to an identifiable member of Staff on social media. The Councillor had legal remedies open to him and he began proceedings to address the issues. A valid legal remedy does not justify insulting staff in a public forum.
- [45] Elected officials are held to a higher standard by virtue of their office and the provisions are informed by the purposes set out in the Code of Conduct for Members of Council for the Town of the Blue Mountains. Publicly elected officials are required to “Act in a way that enhances public confidence in local government.” Section 9 of the Code of Conduct requires respect for staff at all times.
- [46] I have taken into account the fact that a lawyer acting on behalf of the Councillor used rhetoric such as “witch-hunt” and “broadside attack” in correspondence to Council. The Councillor’s use of similar rhetoric addressed to the Staff Complainant does not justify the social media posting and will be considered however it is a factor to be considered in relation to sanction.

3. The Open Letter to Mayor and Council on a Public Blog

- [47] In an open letter posted on the Councillor’s blog, the Councillor wrote:

[T]he complaint or campaign against me was, in his legal opinion, a witch-hunt and a broadside attack by the [title of staff member], on behalf of unknown staff, and an attempt to interfere with my ability to fulfill my duties of office and function as a Councillor.

The letter went on to say:

Based on the foregoing, it should be clear to you that I have taken the [named staff]'s defamatory remarks and attacks very seriously, hence the reason I hired my own lawyer currently at my own expense. It should also be very clear to you that the [title of staff member] has driven a wedge between the Town staff and me. I will no longer have any direct correspondence or discussions with them outside of Council meetings for fear of being falsely charged by the [title of staff member] with harassment.

Without getting into more details of the frivolous allegations against me (which I would gladly share with you individually), I consider this complaint against me as an action of defamation by the [title of staff member]. The broadside list of accusations has forced me to incur, and continue to incur, considerable personal expense to respond while the [title of staff member] uses the public purse without being accountable to both Council and the taxpayer.

Allowing the [title of staff member] to continue his witch-hunt (that is to file another broad-base complaint against me) while using the public purse to fund such activities and not being made account table, could lead to further legal action. I can assure you that nothing good will come from this decision. Failure of the Town to reimburse my legal expenses will force me to advise my constituents that I lack support on this Council which will greatly hinder the ability to fulfill my duties in office and function as their municipal representative.

The Councillor was asked to respond to the complaint that this posting contravened either Section 9 of the Code of Conduct (Influence on Staff) or the Protection from Retaliation provisions of the Code of Conduct (POL.COR.07.07).

- [48] The Councillor responded that the content of this posting were comments made by his lawyer in his letter to Council. The Councillor characterized the Prior Complaint as an attack on his character. Although the Councillor used the word “defamatory” to describe the complaint against him in this posting, he did not and has not brought any action for defamation.
- [49] The posting again used the rhetoric of “witch-hunt” in relation to the Staff Complainant. The posting went further than prior posts and suggested that the Staff Complainant used public funds to make false allegations against the

Councillor. These allegations go further than the rhetoric used by the Councillor's former lawyer in his letter to Council of June 16, 2016. As in the posting of September 10, 2016, the Councillor use the term "witch-hunt" in relation to the identified Staff Complainant, which is not the context in which his lawyer used that term in the earlier letter. Further, the Councillor posted it in the public domain which is disrespectful and harmful to the relationship that staff members are entitled to have with the community.

[50] I find that this posting contravened section 9 of the Code of Conduct.

4. September 15, 2016 Facebook Posting

[51] The Staff Complainant alleged that the Councillor posted the following on Facebook on September 15, 2016:

Judgement day! Not good for me.

Quick comments:

- 1) *[A named person] alleges that I launched a smear campaign against Council but offers no evidence of this campaign;*
- 2) *[A named person] says that I'm not willing to apologize to staff and never will but no one has advised me who and what I should apologize for;*
- 3) *[A named person] says that he has never dealt with an issue like this but waffles about whether some sanctions should be warranted; in other words he is not sure and doesn't want to offend his other Councilor (sic) members;*
- 4) *[A named person] wants me to apologize to unknown staff; but I have to admit she is the only one that stated that "you're hearing one side of story"; bring in the Integrity Commissioner and maybe that will happen; she condemns me anyways;*
- 5) *[A named person] hopes that sanctions will help and have been instituted in the past but offers very little in the way of examples.*
- 6) *[A named person] wanted to reassess the sanctions in 90 days but no one understands him.*

My response:

I deny all the allegations. No one has heard my side of story, I have never been given a defense before an independent investigator and I will not take any training based on frivolous claims and allegation by unknown staff and a witch-hunt started by the [title of Staff member]. Maybe the entire Council should take the training.

P.S. The Picture shown expresses my disgust not worry. I will continue to fight for my constituents, the best way I know how.

The Councillor was asked to respond to the complaint that this posting contravened Section 9 of the Code of Conduct (Influence on Staff), Section 12 of the Code of Conduct (Encouragement of Respect for the Town and its By-Laws and Policies) or the Protection from Retaliation provisions of the Code of Conduct (POL.COR.07.07).

- [52] The Councillor responded that this was a summary of comments made by members of Council during the Council meeting. His position is that this was a legitimate summary of the process that was applied and its failings. He reiterated that he wanted Council to appoint an Integrity Commissioner to deal with the Prior Complaint and that his wish to have that done was ignored.
- [53] The Councillor's response is accepted, in part. He was summarizing the meeting from his perspective. The Councillors who were quoted did not complain. However, again, the Councillor personalized his complaint about the unfairness by blaming the Staff Complainant and using again the pejorative term in relation to an identifiable Staff member, "witch-hunt" in a public forum on social media. For the reasons provided above, this was another breach of Section 9 of the Code of Conduct.

The February 25, 2017 Facebook Posting

- [54] The Staff Complainant alleged that the Councillor posted a message to on a social media page as follows:

Deputy mayor [named official] of [another municipality], I salute your courage and integrity to bring more open and transparent municipal government. Keep up the "good work" and keep asking the difficult questions. Like you, I have always acted in the best interest of the residents and the community that I serve.

However, unlike you, I never did get a fair hearing and in my opinion, I was silenced, shamed, humiliated and treated like a criminal, through sanctions for alleged (and unknown) harassment charges by an authoritarian that were never vetted by an independent Integrity Commissioner and explained to me. To this day, I still don't know what the harassment charges are. I think the fact that the Mayor and the rest of Council needed to take "Harassment Training" (which they did) is an admission that they had no clue in what they were accusing and sanctioning me for.

In my opinion, my so-called Council lacks both respect and professionalism and are forcing me to correct their mistakes by taking the Town to the Divisional Court and asking for Judicial Review of their flawed handling of my case (at the taxpayers (sic) expense.) I will let everyone know when the court case has been scheduled and hope that many (sic) people will attend in Brampton.

- [55] The Staff Complainant alleged that this posting was not accurate in that the sanctions imposed on the Councillor were to require him to attend for workplace harassment training following Council's decision on the Prior Complaint. The Councillor refused to do so, and as a result, Council made the training available to all members of Council. The Staff Complainant alleged that it was not true to say that the fact that all Council took the training meant that Council had "no clue what they were accusing and sanctioning [the Councillor] for."
- [56] The Councillor was requested to respond to whether the post violated the requirement found in the "Purpose" section of the Code of Conduct which requires Members to make honest statements, or whether it violated Section 12 of the Code of Conduct (Encouragement of Respect for the Town and its By-Laws and Policies).
- [57] The Councillor responded that the legitimacy of the sanctions imposed by Council against him is the subject of the ongoing proceedings before the Divisional Court. He continues to maintain that the allegations against him in the first instance were untrue and that his comments serve to promote Town by-laws and policies. He said that Council followed "our advice" to make the training available to all Councillors to ensure that all benefited equally. It is not clear who provided this "advice." The response does not fit with the statement by the Councillor that the fact that all of Council took the training meant they were admitting that they did not know what they were sanctioning him for. In reading this post as a whole, it is largely an expression of the Councillor's personal unhappiness with the process, with Council as a whole and although inconsistent with his own response to this part of the complaint, I am not satisfied that it constitutes a breach of the Code of Conduct.

V. Recommendation as to Sanction

- [58] As discussed above, any sanction for the breach of the Gifts and Benefits provisions of the Code should await the provision of further details to the Integrity Commissioner for the purpose of seeking and receiving advice as to potential for potential or apparent conflict of interest in relation to the acceptance of these benefits, and to inform Council's decision on any sanction that should attach to this breach. The expectation will be that this will take place soon so that the matter is not delayed unnecessarily.
- [59] The social media postings made by the Councillor were made in a particular context. I accept that the Councillor felt aggrieved by the process and findings made by Council in relation to the Primary Complaint. This did not justify treating the Staff Complainant in the way the Councillor did. The conduct here was repeated over time, came to the attention of community members and was a significant source of stress to the Staff Complainant. The requirement that politicians must show respect for the role of staff is clearly set out within the Code of Conduct.

- [60] I initially concluded that no penalty should be recommended to Council and wrote that in an earlier draft of this report that was sent to the Councillor for submissions. However while the draft report was being considered by the Councillor, I became aware of another posting by the Councillor that was made on November 7, 2017, similar in nature to the earlier postings.¹
- [61] At the time of the November 2017 posting, this investigation was well underway and the Councillor was on leave from his duties as a Councillor. Although the most recent posting was also taken down by the Councillor, when he was asked to apologize to the Staff Complainant for this additional posting, he declined to do so. As a result, I have also considered this “after the fact” posting and concluded that a sanction should be recommended to underline the importance of adherence to this provision of the Code of Conduct.
- [62] In considering the appropriate sanction available under the *Municipal Act*, the following factors are relevant:
- the original social media postings have all been removed and have been offline now for a number of months;
 - the Councillor has no prior findings under the Code of Conduct: I do not include the Primary Complaint which was under a different process and is the subject of ongoing proceedings;
 - the Councillor felt he had a legitimate grievance at the time, and his former counsel used rhetoric which the Councillor copied, although he did so against an identifiable staff member and in a forum that was inappropriate, given his obligations under the Code of Conduct;
 - the medical evidence suggests the Councillor has suffered stress related to his actions and the complaint;
 - the Councillor repeated the conduct during the investigation by posting again in November of 2017 and declined to apologize for doing so;
- [63] Given all of these factors, I recommend that Council find that the identified postings (with the exception of the February 25, 2017 Facebook posting) were a breach of the Code of Conduct and impose a Reprimand upon Councillor Seguin.

¹ The November 7 posting referred to “collusion” between the Staff Complainant and another elected member and described the Staff Complainant as “authoritative” (the critical nature and context of the posting implied that the Councillor meant to say “authoritarian.”)

DATED this 6th day of April, 2018

A handwritten signature in blue ink, appearing to read "Janet Leiper". The signature is written in a cursive style with a large initial "J".

Janet Leiper, C.S.

TOWN OF THE BLUE MOUNTAINS

POLICY & PROCEDURES

Subject Title: Code of Conduct for Members of Council

Corporate Policy (Approved by Council)	<input checked="" type="checkbox"/>	Policy Ref. No.:	POL.COR.07.07
Administrative Policy (Approved by CAO)	<input type="checkbox"/>	By-law No.:	2009 - 86
Department Policy: (Approved by Mgr.)	<input type="checkbox"/>	Name of Dept.:	Administration
Date Approved: December 14, 2009		Staff Report:	A.09.11
Date Revised: August 22, 2016		Staff Report:	FAF.16.84

Policy Statement

Policy direction for the behaviour of members of Council in the performance of their duties and responsibilities as elected community representatives.

Purpose

Subsection 223.2(1) of the *Municipal Act, 2001* authorizes a municipality to establish codes of conduct for members of the council of the municipality and of local boards. Subsection 223.3(1) also authorizes a municipality to appoint an Integrity Commissioner who would be responsible for performing in an independent manner the functions assigned by Council with regard to the application of a Code of Conduct.

The Code of Conduct sets minimum standards for the behaviour of Council members in carrying out their functions. It has been developed to assist Council to:

1. Understand the standards of conduct that are expected of them and the law that applies in relation to these standards;
2. Fulfill their duty to act honestly and exercise reasonable care and diligence; and
3. Act in a way that enhances public confidence in local government.

Application

This policy applies to members of the Council of The Corporation of the Town of The Blue Mountains in the performance of their duties and responsibilities as elected community representatives, as well as members of Town Committees and Local Boards.

Definitions

Municipality – means The Corporation of the Town of The Blue Mountains.

Members – means members of The Blue Mountains Council, Town Committees and Local Boards of the municipality.

Committee - means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more Councils or local boards.

Local Board - means a local board established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities but does not include The Blue Mountains Police Services Board or The Blue Mountains Public Library Board, a school board, a hospital board or a conservation authority.

Integrity Commissioner -The person appointed by Town Council By-Law in accordance with Section 223.3 of the *Municipal Act, 2001* and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the Code of Conduct for members of Council and Local Boards.

Procedures

1. Statement of Principle

A written Code of Conduct helps to ensure that the members of Council, Committees and Local Boards of the municipality share a common basis of 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 The Blue Mountain's elected and appointed representatives operate from a base of integrity, justice and courtesy.

Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council members and the public.

The Town of The Blue Mountain's Code of Conduct is a general standard that augments Provincial laws and municipal policies and by-laws that govern conduct. It is not intended to replace personal ethics.

This Code of Conduct is consistent with the existing statutes governing the conduct of members. (ie the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*) The Criminal Code of Canada also governs the conduct of members of Council.

All members whom this Code of Conduct applies to 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 his or her official duties.

2. Gifts and Benefits

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly to the performance of his or her duties of Office, unless permitted by law. Members shall make decisions based on impartial and objective assessment, free from the influence of gifts, favours, hospitality and entertainment.

Members shall decline any personal gift where the acceptance of such gift would imply a contractual agreement with or obligation to the donor.

This section does not apply to tokens, mementoes, souvenirs, or such gifts or benefits up to and including a value of \$300.00 that are received as an incident of protocol or social obligation that normally accompanies the responsibilities of office. Tokens, mementoes, souvenirs or gifts with a value of greater than \$300.00 shall be the property of the municipality.

No member shall seek or obtain by reason of his or her office any personal privilege or advantage with respect to Town services not otherwise available to the general public and not consequent to his or her official duties.

Exceptions to Section 2 shall be approved by the Mayor and in circumstances when the exception is for the Mayor, the Chair of the Finance and Administration Committee shall approve the exception.

3. Confidentiality

All information, documentation or deliberation received, reviewed or taken in closed session of Council and its Committees and Local Boards are confidential.

Members shall not disclose or release by any means to any member of the public either in verbal or written form any confidential information acquired by virtue of their office, except when required by law to do so. Where a matter has been discussed at a closed session meeting and the information remains confidential, no member shall disclose the content of the matter or the substance of deliberations of the closed session meeting.

Members shall not permit any persons other than those who are entitled thereto to have access to information that is confidential.

Particular care should be exercised in ensuring confidentiality of the following types of information:

- Labour relations and personnel matters;
- Information about suppliers provided for evaluation which might be useful to other suppliers;
- Matters relating to the legal affairs of the Town of The Blue Mountains;
- Information that infringes on the rights of others (i.e. sources of complaints where the identity of the complainant was given in confidence);
- Items under litigation or negotiation;

- Price schedules in contract tender or Request for Proposal submissions if so specified;
- Information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*, and
- Statistical data required by law not to be released (e.g. certain census or assessment data).

This list is provided as an example and is not exclusive. It is recommended that requests for information be referred to the Office of the Clerk to be addressed as either an informal request for access to municipal records or as a formal request under the *Municipal Freedom of Information and Protection of Privacy Act*.

4. Use of Town Property

Subject to Section 5, no member shall use for personal purposes any Town property, equipment, services, supplies or services of consequence other than for purposes connected with the discharge of Town duties or associated community activities of which Town Council has been advised.

No member shall obtain financial gain from the use of Town developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains exclusive property of the Town of The Blue Mountains.

No member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

5. Use of Town Technology Resources

The Town of The Blue Mountains licenses the use of computer software from a variety of vendors. The Town does not own the software or its documentation. Software is normally copyrighted, and no individual may copy or distribute the software unless expressly permitted to do so under the applicable licence.

6. Work of a Political/Personal Nature

Members shall comply with Town Policy A.POL.01, Use of Corporate Resources for Election purposes and no member shall use Town facilities, services or property for his or her re-election campaign. Further, no member shall use the services of Town employees for his or her re-election campaign, during hours in which the employees are in the paid employment of the Town.

No member shall use Town facilities, services or property for his or personal business gain. No member shall use the services of Town employees for his or her personal business during the hours in which the employees are in the paid employment of the Town.

7. Conduct at Meetings

Members shall conduct themselves with decorum at Council, Committee and Local Board meetings in accordance with the provisions of the Town's Procedural By-law.

Respect for deputations and for fellow members and staff requires that all members show courtesy and not distract from the business of Council, Committees and Local Boards during presentations and when other members have the floor.

8. Representing the Town

Members shall make every effort to participate diligently in the activities of the Agencies, Committees and Local Boards to which they are appointed. Members are encouraged to attend openings and charity events.

9. Influence on Staff

Members shall comply with Town Policy HR.06.02, Respectful Workplace, and shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective. Members shall be further respectful of the fact that staff carry out directions of Council and administer the policies of the municipality, and are required to do so without any undue influence from any individual member or group of members of Council.

10. Business Relations

No member shall borrow money from any person who regularly does business with the Town unless such person represents an institution or company whose shares are publicly traded and who is regularly in the business of lending money.

No member shall act as a paid agent before Council or any Committee or Local Board of Council or any Agency at which the Town is represented.

11. Expenses

Members shall comply with the provisions of the Town's applicable policies relative to per diem payments and expenses governing reimbursement for attendance at conferences, seminars, training courses and workshops.

Members shall be reimbursed out-of-pocket expenses incurred in accordance with approved Town policies while attending official functions and representing the Town in their official capacity.

12. Encouragement of Respect for the Town and its By-Laws and Policies

Members shall encourage public respect for the Town and its by-laws and policies.

13. Harassment

Members shall comply with Town Policy HR.06.01, Discrimination and Harassment-Free Workplace. Discrimination or harassment of another member, staff or any member of the public is misconduct. All persons shall be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment.

Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the Ontario Human Rights Code.

14. Interpretation

Members seeking clarification of any part of this Code should consult with their solicitor.

15. Complaints

Where a member of Council or local board, an employee of the Town or a member of the public has reasonable grounds to believe that a Member has breached this code, a complaint may be submitted to the Clerks Department in written form. This complaint will be forwarded within 48 business hours to the Town's Integrity Commissioner who will process it in accordance with Section 223.3 of the Municipal Act, 2001.

Confidentiality

1. The Integrity Commissioner shall carry out all enquiries in a manner which will ensure that the individual to whom the complaint relates is treated fairly and all complaints shall be treated as confidential to the extent possible and in accordance with the *Municipal Act*.
2. All records of investigations shall be kept confidential and access limited to those in the Town with a need to know for the purposes of conducting a full investigation.

Investigations

The Integrity Commissioner shall take all steps necessary to promptly investigate the complaint within his or her jurisdiction, including entering any Town office for such purpose and consultation with Town staff with access to all information and records described in subsections 3 and 4 of Section 223.4 of the *Municipal Act* and may retain independent professional services if required.

1. The Integrity Commissioner shall make every effort to complete an investigation within 30 days.
2. If the Integrity Commissioner requires more than 30 days to complete an investigation, the following shall be notified accordingly:
 - a) The complainant;

- b) The individual to whom the complaint relates; and
- c) The Mayor in the case of a complaint concerning another Member; or the three longest serving members of Council in the case of a complaint concerning the Mayor.

Reporting the Results of an Investigation

1. The Integrity Commissioner shall report his/her findings to an open meeting of Council and where the enquiry relates to a local board the report will be submitted to both Council and the local board.
2. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
3. The Commissioner shall give a copy of the final report to the complainant and the Member whose conduct is concerned 15 days prior to the Council meeting at which it will be considered

Actions by Council

1. In reviewing the final report, Council will determine whether it will impose any of the following penalties on a Member if the Integrity Commissioner reports that it is his/her opinion that the Member has contravened the Code:
 - a) Issue a motion of reprimand
 - b) Suspension of the remuneration paid to the Member in respect of his services as a Member for a period of up to 90 days; or such other recommendation put forth by the Integrity Commissioner
2. All reports to Council by the Integrity Commissioner on the investigation of complaints are public documents.
3. The Integrity Commissioner shall be responsible for ensuring the above procedures are followed with respect to requests for enquiries and for conducting investigations. Council shall be responsible for determining penalties where appropriate.

Protection from Retaliation

Any employee who files a complaint of a contravention of the Code of Conduct will not be subjected to any form of penalty or reprisal provided the complaint is made:

- in good faith; and
- in the reasonable belief of the complainant that a contravention of the Code of Conduct has occurred.

Exclusions

None

References and Related Policies

The *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, Procedural By-law No. 2007-29, Town Policies POL.AD.07.01 through and including POL.AD.07.06, as approved, together with this Policy document and the Town of The Blue Mountains Strategic Plan.

Consequences of Non-Compliance

Penalties described in subsection 223.4(5) of the *Municipal Act, 2001* that a municipality may impose if a member has contravened a Code of Conduct include:

A reprimand.

Suspension of the remuneration paid to the member in respect of his or her services as a member of council or local board, as the case may be, for a period of up to 90 days or such other recommendation put forth by the Integrity Commissioner.

Review Cycle

This policy will be reviewed in each term of Council by the C.A.O. in conjunction with Council.