



A G E N D A

FOURTH SPECIAL MEETING OF THE 129TH COUNCIL

Tuesday, October 16, 2018

Council Chambers

AFTER CORPORATE SERVICES COMMITTEE MEETING

- I Final Report dated October 4, 2018 Integrity Commissioner Tony Fleming
Code of Conduct Complaint – Mayor Louis Antonakos

- II Adjournment

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October 4, 2018

Town of Carleton Place
175 Bridge Street
Carleton Place, ON K7C 2V8

Attention: Council Members

Dear Council Members:

**RE: Integrity Commissioner Complaint - Mayor Louis Antonakos;
Our File No: 28519-9**

Summary of the Investigation

A complaint was submitted on July 11, 2018. The nature of the complaint was that the Mayor, Louis Antonakos, had improperly directed staff, primarily the CAO. Other actions were also the subject of the complaint, including that email discussions about staff were not secure and may constitute a breach of privacy and that the Mayor was engaging in personal attacks on two identified staff members, amounting to harassment.

After a preliminary review of the complaint and the supporting information submitted by the complainant, our office determined that there was a reasonable basis to conduct an investigation.

We interviewed the complainant and Mayor Antonakos, as well as a number of staff members identified during the investigation process.

In our opinion, Mayor Antonakos' conduct as disclosed in the investigation constituted a breach of the Code of Conduct. A Member is directed by the Code very specifically to not direct staff; no Member has the authority to provide direction to staff, only a majority of

Council can do that. Aside from the clear lines of authority established in the *Municipal Act*, this direction provided in the Code (which is very common in most Codes of Conduct) is an important guiding principle for council and staff. Staff have one “master”, Council. If individual Members feel that they can direct staff, what often results are mixed messages, overworked staff and competing priorities and deadlines.

The CAO is no different. The CAO implements Council priorities and directions, not those of the Mayor. While it is not improper for the Mayor to let the CAO know of complaints or issues as they arise, Mayor Antonakos exceeded his authority on a number of occasions by directing the CAO to take actions specified by the Mayor, which is expressly contrary to the Code of Conduct.

The complainant also alleges harassment of staff through emails and other means that has interfered with the ability of staff to do their jobs. The clear message delivered by every person interviewed is that the Mayor focuses a disproportionate amount of his attention on whether a local developer is complying with building and planning regulations. The investigation sought evidence related to the Mayor’s interactions with staff and the issue of harassment, but staff were reluctant to provide that information, even on a confidential basis. The reluctance of staff to speak out is troubling, but this investigation can make no definitive finding relating to harassment on the basis of the materials available and the interviews that were conducted. It is note-worthy that the emails demonstrate a pattern of interference with the building department that, while not sufficient to conclude there was harassment, must be considered a warning to the Mayor that his behaviour is not appropriate.

There was no evidence that the emails sent by the Mayor constituted a breach of privacy or were insecure communications. There is no finding of a breach for this allegation.

This Report is not recommending any penalty.

Rather, the Integrity Commissioner is recommending that the Mayor be cautioned by the findings of this Report and that:

1. Council and the CAO establish a defined working relationship between the Mayor and the CAO so that each of their roles can be respected (specifically that the Mayor cease giving directions to the CAO).
2. Should the Mayor be unable to establish or respect the proper role of a Mayor, sanctions may be necessary in the event that this behaviour is repeated. If Council feels it is warranted, it may be appropriate for both the Mayor and the CAO to attend a facilitation session with the Integrity Commissioner to help define the proper roles for each and to establish a properly defined working relationship;

3. While there is insufficient evidence to make a specific finding of harassment, there is more than sufficient evidence to conclude that the Mayor is interacting with staff in an inappropriate manner. Mayor Antonakos appears to have engaged in a pattern of behaviour designed to force the CBO to impose sanctions on a developer with whom the Mayor has a well-known negative relationship. It is completely improper for the Mayor to use staff in this manner. It is the recommendation of the Integrity Commissioner that Council limit the Mayor's interactions with staff to the CAO only; and

4. That the Mayor undertake appropriate training to ensure that he understands both the proper role of the Mayor and undertake sensitivity training to ensure he avoids potential harassment in the future.

Code of Conduct Provisions:

The Code of Conduct provides:

Section 2, Council & Staff Roles & Responsibilities

"... Clearly defined roles, distinguishing between the concepts of "governance" and "management" are critical to the success of a municipality. It should be reinforced at the outset that Council sets the policy for the community; it does not participate in the daily operations of the municipality."

2. Interaction with Staff

(a) Only Town Council acting as a body, can dictate that staff perform such duties as are necessary to the efficient management of the affairs of the community ... Individual Council members (including the Mayor) do not have authority to direct the CAO, Directors or staff."

This section goes on to describe a process by which Members of Council can "liase" with the CAO or Directors where they have questions about operational matters; if a Member's questions cannot be answered, the matter is to be referred to Committee.

Section 3, Standards of Conduct, establishes a process for dealing with complaints from citizens. Those matters are to be first dealt with by encouraging the citizens to speak with staff. Ultimately, policy matters or matters that the citizen does not wish to take to staff will be placed on a Committee agenda.

Section 3, paragraph 3(c) speaks to a Member's obligations related to harassment:

In accordance with the Town of Carleton Place's Human Resources Policy as amended and the *Human Rights Code*, harassment shall mean engaging in a course of vexatious comment or conduct that is known, or ought to be known, to be unwelcome. Bullying is the ongoing health or career-endangering mistreatment of an employee or colleague, by one or more of their peers or higher-ups. Unlikely to involve physical violence, it usually takes the form of psychological abuse. Often verbal and strategic insults are intended to prevent targets from being successful in their job. Pressuring an employee to deviate from a policy or to provide a form of favour is a form of bullying.

Email Excerpts:

The Complainant provided a series of emails that dealt with two discrete topics:

1. Issues raised by the Mayor related to the building department; and
2. An anonymous complaint about dumping of unknown material on a private property.

1. Building Department:

The initial email related to the building department was dated July 5, 2018 and contained the following language from the Mayor, directed to the CAO:

"I must mention that this is the third time that my concerns regarding this department have gone unanswered."

"I am asking you directly, once again, to find a solution to these on-going and unnecessary problems facing our staff, the business community, and our residents."

The CAO was on vacation when the July 5 email was sent. On July 9 the CAO responded, indicating:

"I want to advise that when issues have been brought to my attention regarding this department, I feel I have addressed them appropriately. That is not to say this means I have addressed them to all people's satisfaction or that I have done what people expected that I should have done. I have done what I felt was appropriate in the circumstances and based on the responses I have received when looking into the situation."

On July 9 the Mayor responded, stating:

"You have taken my correspondence out of context and your response is not something I would consider professional or appropriate in addressing the content or context of my communication. I would suggest that you leave the politics to the

politicians and focus on what is being stated in my correspondence. ... Your assertive attention to these matters would be appreciated."

2. Dumping Complaint:

An anonymous complaint was received by email by the Town on June 25, 2018 alleging illegal dumping on a property owned by a local developer. On the same day staff advised the complainant that the allegation was being forwarded to the appropriate staff member for review. On July 4 the anonymous complainant wrote again, complaining about the lack of action. On July 9 the anonymous complainant wrote again, this time copying the Mayor, stating, "Another week has past [sic] and still not a single legitimate concern or reference to the various infractions. Who else needs to be brought into the conversation in order to get some answers?"

On July 9 the Mayor emailed the CAO and all of Council, stating:

"It is beyond my comprehension on how we can conduct any business or sense of fairness in our Municipality if we continue to hold different people to different standards.

...

As Mayor of Carleton Place, it is my recommendation that this correspondence and the content of the communication be seriously considered and investigated immediately."

On July 12 the CAO responded to advise that staff were looking into the matter, but unfortunately some people were on vacation.

The mayor responded by email the same day, stating:

"At this point, should you not act immediately, I am left with no other option than to call the MOE directly myself. I am very disappointed that you and our staff do not fully appreciate the level of concern and potential ramifications of this complaint and the associated health and safety concerns for our community."

During our interview the mayor confirmed that he did in fact call the Ministry that same day.

Findings of Fact:

1. Direction of Staff:

Beyond the emails contained in the complaint itself, it is clear from the interviews conducted that the Mayor takes an active role in building enforcement matters (these were the focus of this investigation). He has brought complaints from citizens as well as his own observations to the attention of the CAO and to the CBO on more occasions than those emails forming the subject matter of the complaint. If this were the end of matters there would not be a Code of Conduct breach. It is reasonable and compliant with the Code of Conduct for councillors (including the Mayor) to bring concerns/complaints to the attention of staff.

There are two aspects of the mayor's conduct that are troubling:

- a. the subject matter of the complaints communicated by the Mayor have a disproportionate focus on a single developer; and
- b. the Mayor does not stop at simply raising issues, he expects staff to act, report back to him on their actions and he actively directs the CAO as to how he expects the concern/complaint to be handled.

(a) Singling Out One Developer

For purposes of this Investigation the disproportionate number of complaints related to a single developer is relevant. This investigation makes no finding as to the actual proportion of complaints related to one developer compared to the total number of complaints. The salient point is that every person interviewed made the same comment; the Mayor is focused on enforcement related to one identified developer. All staff interviewed, and the complainant, confirmed that the Mayor has a negative relationship with this developer (hereinafter referred to as the "Developer").

This Report make no finding as to whether the Mayor has acted unfairly or inappropriately with respect to the Developer.

(b) Administration of Internal Departments

The Mayor acknowledged in his interview that he routinely has discussions with the CAO and other staff about many issues in the community. He spends time with staff frequently at Town Hall. While the Mayor stated that he does not want staff to come to him directly, and when they have issues he asks if they have gone to the CAO, there was no evidence that the Mayor has in fact redirected staff to the CAO. In fact, everyone interviewed mentioned that

the Mayor spends time in the planning and building departments speaking with staff – he seeks them out.

The CBO advised that the Mayor has on many occasions directed him to undertake specific enforcement actions related to the Developer, and conversely to not enforce against other businesses. The CBO explained during his interview that he tries to apply the *Building Code* equally and more importantly to undertake a fair process with everyone to give them an opportunity to comply. Where any complaint relates to the Developer the CBO advised that the Mayor has been very specific about what actions he wants to see – enforcement. The CBO advised that recently the Mayor is no longer dealing with him, or speaking with him, directly.

The Integrity Commissioner asked the Mayor to explain the July 9 email where he wrote:

“You have taken my correspondence out of context and your response is not something I would consider professional or appropriate in addressing the content or context of my communication. I would suggest that you leave the politics to the politicians and focus on what is being stated in my correspondence. ... Your assertive attention to these matters would be appreciated.”

The Mayor responded that he felt the CAO’s response was “a little flaky”. In his opinion, if the CAO was going to respond to the letter he expected that the letter would have details and explain how she has addressed his concerns. When the CAO stated that she “feels” she addressed the complaints appropriately, the Mayor considered that to be too vague, and did not provide the level of detail that he expected to see.

It was clear that the Mayor expected not only that the CAO would act on his complaints, but that she would report back to him and address the complaints to his satisfaction. The Mayor has made no attempt to hide his dissatisfaction with the CBO’s job performance, but the Integrity Commissioner was not made aware of any attempts to have Council address this issue. The complainant confirmed that Council was unaware of many of these issues.

It is relevant that the emails related to the allegations of illegal dumping were with respect to the Developer’s property and the Developer was undertaking the dumping activity. This investigation makes no finding as to the legality of the activity being undertaken on private property.

What is telling is that the Mayor’s reaction is associated with the Developer. What is relevant is that the Mayor directed staff to contact the Ministry before they completed an investigation and then threatened to call the Ministry personally if staff did not do as he requested.

Again, it is not the substance of the circumstances that are the focus of this Investigation; the relevant issue is that the Mayor believes it is his role to direct staff where the subject matter is of personal interest to him.

2. Harassment:

The emails excerpted above demonstrate a pattern of behaviour where the Mayor directs staff, notably the CAO, to enforce building regulations and to investigate allegations of illegal dumping. These emails were confirmed in the interviews to be representative examples of the Mayor's behaviour towards staff.

The persons interviewed consistently confirmed that the Mayor is not satisfied with the way the Building Department is enforcing the Building Code with respect to the Developer.

Both emails that form the focus of the complaint principally relate to the Developer. The Mayor himself stated in his interview that he is dissatisfied with the job performance of the CBO, and that he believes the CBO is not doing his job. The Mayor advised the Integrity Commissioner that he considers that the Developer is receiving favourable treatment by the Town compared to others, especially in the face of the complaints that the Mayor brings to the attention of the CBO/CAO. In addition, other owners and developers are being asked to do things by the Building Department that the Mayor disagrees with.

This Investigation makes no findings as to the subject matter of the Mayor's complaints about enforcement matters. What is relevant to this Investigation is that there is evidence of a pattern of behaviour by the Mayor to direct how staff undertake their jobs and evidence of a pattern of behaviour by the Mayor to direct the CBO as to how to enforce the *Building Code*.

Staff were not prepared to make any comments on the record relating to harassment. This reluctance to participate in the investigation is troubling and signals that there is a potential issue with how the Mayor interacts with staff.

Decision:

a) Directing Staff

The Code of Conduct clearly delineates the role of Council and staff. Council sets policy and the CAO translates that direction into action by in turn directing staff. This distinction is not unique to Carleton Place and is enshrined in the *Municipal Act* – Council ought not to involve itself in the administration of the municipality, its role is one of setting policy. This applies with even greater force to an individual councillor or the Mayor. It is not appropriate for the Mayor to direct how staff undertake their jobs.

In this case, there are a number of instances where the evidence clearly demonstrates that the Mayor directed staff, predominantly the CAO. This is a clear contravention of the Code of Conduct.

The Mayor himself conceded that he expected the CAO to take certain actions, report back to him and solve the issues he personally raised, to his satisfaction. Where matters were not resolved to his satisfaction, or quickly enough, he repeated his requests for action. This goes beyond the proper role of the Head of Council. The Mayor did not seek the consensus of the majority of Council and did not have any authority to direct the CAO, unambiguously in contravention of the Code of Conduct.

b) Harassment

The Code of Conduct defines harassment/bullying as:

“engaging in a course of vexatious comment or conduct that is known, or ought to be known, to be unwelcome. Bullying is the ongoing health or career-endangering mistreatment of an employee or colleague, by one or more of their peers or higher-ups. Unlikely to involve physical violence, it usually takes the form of psychological abuse. Often verbal and strategic insults are intended to prevent targets from being successful in their job. Pressuring an employee to deviate from a policy or to provide a form of favour is a form of bullying.”

The Mayor is acknowledged to have challenged the CBO about the CBO’s professional opinions related to issuing permits and engaging in enforcement actions, especially as it related to the Developer. The Mayor also repeatedly requested that the CAO direct the CBO as to how to undertake his role.

The Mayor himself confirmed that he felt the CBO was doing a poor job. The source of the Mayor’s frustration related primarily to his belief that the CBO was not enforcing strictly enough where the Developer was concerned.

A previous Integrity Commissioner’s report highlighted the relationship between the Developer and the Mayor. While the complaints of the Developer against the Mayor and the Mayor against the Developer were disregarded in that investigation, it is relevant that this animosity is well-known and well-documented.

It appears that the Mayor has allowed his personal feelings about the Developer to influence his interactions with staff. The evidence supports a finding that the Mayor took it upon himself to direct how the building department should be operated; however, there is insufficient evidence before the Integrity Commissioner to make a finding of harassment.

The Integrity Commissioner cautions the Mayor that despite the reluctance of staff to speak out, the evidence supports a finding of inappropriate behaviour, it is simply insufficient to demonstrate the impact of that behaviour on staff.

Recommendations:

The Integrity Commissioner is aware that previous Integrity Commissioner findings have resulted in the Mayor's remuneration being significantly reduced. This report is not recommending any further suspension of the Mayor's remuneration.

What must happen is that the Mayor needs to acknowledge his proper role as a member of Council and act accordingly. In addition, the Mayor needs to cease his pattern of behaviour that is designed to interfere with how the building department is operated.

Specifically, the Integrity Commissioner recommends:

1. that Council and the CAO establish a defined working relationship between the Mayor and CAO so that each of their roles can be respected (and specifically that the Mayor cease giving directions to the CAO).
2. that Council consider requiring that both the Mayor and the CAO attend a facilitation session with the Integrity Commissioner to help define the proper roles for each and to establish a properly defined working relationship;
3. that Council limit the Mayor's interactions with staff to the CAO only; and
4. that the Mayor undertake appropriate training to ensure that he understands both the proper role of the Mayor and undertake sensitivity training to avoid harassment in the future.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
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