

**TOWNSHIP OF HURON-KINLOSS**  
Integrity Commissioner's Report<sup>1</sup>  
H.G. Elston

**REPORT ON THE MATTER OF A COMPLAINT  
AGAINST DEPUTY MAYOR DON MURRAY**

Issued: May 10, 2022

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**INTRODUCTION**

1. Michael Clarke is the owner of a waterfront property at 1582 Bruce Road 1, in the Township of Huron-Kinloss, Bruce County, and the complainant in this matter. The property is located on Silver Lake and contains three cabins or cottages. On July 12, 2021, Mr. Clarke detected a foul smell and discovered that effluent from his septic system was leaking. Concerned about a possible threat to the lake environment and a danger to public health and safety, he quickly made arrangements with a local general contractor and a plumber to have the necessary repairs and mitigation measures undertaken.

2. As the repairs were underway, Mr. Clarke received a call from the Township's Chief Building Official, Matt Farrell, who had received a call from a neighbour, alerting him to the problem and the fact that repair work was underway. According to Mr. Clarke, Mr. Farrell agreed that the work constituted an emergency repair and that he could continue without a permit.

3. Some time later that day, Mr. Clarke received a text from an employee of one of the contractors, telling him that a neighbour had been "harassing" them and that a Councillor had called the office and "warned" them that "there could be fines involved" and to "be careful". Mr. Clarke spoke with the contractor's office and learned that it had been the Deputy Mayor who had called. He then called the Deputy Mayor, telling him he felt that it was inappropriate for him to be calling contractors and involving himself in the matter. According to Mr. Clarke, the Deputy Mayor became aggressive and threatening during the phone call. He alleges that the Deputy Mayor said that, if Mr. Clarke complained that he, the Deputy Mayor, was interfering, that Mr. Clarke would "regret it".

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<sup>1</sup> Note: Municipal Integrity Commissioners conduct inquiries and provide reports on their findings to their respective municipal councils. They may make recommendations for the imposition of a penalty or other remedial action to the municipal council. Reference should be made to the minutes of the municipal council meeting where the Commissioner's report was presented, to obtain information about council's consideration of each report. When possible, a link to the relevant municipal council minutes is provided.

## THE COMPLAINT AND SUMMARY OF FINDINGS

4. On August 26, 2021, Mr. Clarke filed a formal complaint with the Township's Deputy Clerk, who then sent it to my office. The complaint alleges that the Deputy Mayor contravened sections 1.6, 1.8, 1.9, 1.11, 3, 4.2, 4.4, 4.8, 4.9 and 5 of the Council Code of Conduct for the Township of Huron-Kinloss (the "Code").

5. The complaint contains a very detailed account of not only the events of July 12, 2021, but also what Mr. Clarke considers to be a history of "mistreatment" by staff and some council members against him, arising, in his view, from the previous owner's use of the property as a short-term rental accommodation. Mr. Clarke is convinced that this bias is behind the Deputy Mayor's actions and asks that I consider the events of July 12<sup>th</sup> in the context of this history.

6. While I note Mr. Clarke's perspective, in my view, the important context here is that there was sewage effluent visibly leaking from the septic tank, some 110 feet from the water's edge. This very real and concerning threat posed to the environment did, indeed, alarm the neighbours, Township staff and the Deputy Mayor, and resulted, quite properly in my view, in a heightened attention to the remedial work being carried out on the property.

7. Accordingly, I have scoped the complaint to the following issues:

- 1) Did the Deputy Mayor treat Mr. Clarke disrespectfully or abusively in their July 12<sup>th</sup> telephone conversation (Code of Conduct Sections 1.6 and 3)?
- 2) Did the Deputy Mayor disrespect the Township's Chief Building Official or attempt to use his authority or status to influence the Chief Building Official's decision (Code of Conduct Sections 1.8, 1.11 and 4.2, 4.4, 4.8 and 4.9)?
- 3) Did the Deputy Mayor fail to perform the duties of his office with integrity, accountability and transparency (section 1.9, 1.11 and 5.1, 5.2)?

8. For the reasons that follow, I answer all questions in the negative and find that the Deputy Mayor did not breach the Code.

## THE DEPUTY MAYOR'S RESPONSE

9. In response to the allegations, Deputy Mayor Murray maintains that he has always strived to conduct himself in an open and honest manner, to focus on issues rather than personalities, and to avoid aggressive, offensive or abusive conduct. It is his recollection that he has never improperly used the influence of his office and has avoided conflicts of interests, both apparent and real. He denies ever giving any preferential treatment to any individual or organization to advance a private or personal interest.

10. As to the specifics of the complaint, the Deputy Mayor told me:

*I received a complaint and inquiry regarding the said property. The complainant said that they had contacted the Office at the Township of Huron-Kinloss and were told that there had been NO permits issued for this property. It was understood that septic system work was being done, and because this property sits on the shores of a lake, I wanted to make sure there were no issues. This is the reason that I called the CBO to inquire about this property to which there was no answer on the phone. I sent the CBO a text asking what was happening at this property. While awaiting his response I called the contractor and asked if all the permits had been issued? The contractor answered that they had received verbal permission to do the work after they had commenced working. I told him that was good, and that I was following up on a complaint and wanted to make sure everything was in order to protect, the Township, himself and the property owner. I then received a text message back from the CBO stating he had given them verbal permission to get the problem looked after and that the septic inspection people were going to the site that afternoon.*

*I then received a phone call from the property owner, who was aggressive in his voice and accusing me of interfering. I listened to the property owner and tried to reassure him that my only interest was making sure everything was above board because I had received a complaint. I told him I had been in contact with the CBO and things were good. He accused me of using my position on council against him and that many of the neighbors are my friends and that's why I interfered. I tried again to tell him that was not the case, and yes many of the neighbors are my friends or business acquaintances and that I classify the rest of Council and staff my friends. The property owner got increasingly aggressive and threatening and I thought it was best to end our conversation, so I hung up on him.*

*I don't feel I was anything but respectful to all parties involved.*

*I always have shown the Township staff respect. I didn't try to influence anyone on this day or any other day. All I did was make a couple of phone calls inquiring about permits to ensure the well being of the Township, contractor and property owner, so that the environment was not harmed in any way.*

*Again, I feel that for me making a couple of phone calls to enquire and make sure that things were being done properly at this property was to protect the lake and the people that live there which are residence of my community, I feel I did my job.*

*As previously indicated, it was never my intention to any way breach the Council Code of Conduct. I have served on Township of Huron-Kinloss Council for 13 years and have always strived to be open and honest and conduct myself with integrity.*

## **THE CODE**

11. The applicable sections of the Code are:

### **1. General Integrity**

1.6 Members will be open and honest, focus on issues rather than personalities, and avoid aggressive, offensive or abusive conduct.

1.8 Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.

1.9 Members shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.

1.10 For greater clarity, this Code does not prohibit members from properly using their influence on behalf of constituents.

1.11 In accordance with the Municipal Act, 2001 and the Municipal Conflict of Interest Act, every member shall exercise his or her power and discharge his or her official duties in accordance with the following guiding principles:

- a) Seek to advance the common good of the Township;
- b) Exercise care, diligence and skill that a reasonable person would exercise in similar circumstances;
- c) Exercise his or her powers only for the purposes for which they were intended; and,
- d) Truly, faithfully and impartially exercise his or her office to the best of his or her knowledge and ability.

### **3. Discrimination and Harassment**

All members have a duty to treat members of the public, one another, and staff with respect and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. The Ontario Human Rights Code applied and, where applicable, the Township's Workplace Harassment Policy.

### **4. Conduct Respecting Staff**

4.2 Members shall acknowledge and respect the fact that staff carry out directions of Council as a whole and administer the policies of the Township and are required to do so without any undue influence from any individual member or group of members.

4.4 Members of Council have no individual capacity to direct staff to perform specific functions. Inquiries of staff from members of Council should be directed to the Chief Administrative Officer.

4.8 Members shall be respectful of the role of staff to provide advice based on political neutrality, professional judgement and objectivity.

4.9 Members should not:

- a) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
- b) Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
- c) Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties.

**5. Improper Use of Influence**

5.1 As elected officials, members are expected to perform the duties of their office with integrity, accountability and transparency.

5.2 Members should not use the status of their position to influence the decision of another individual to the private advantage of oneself, one's parents, children, or spouse, staff members, friends, or business or other associates.

5.3 In the same manner and as outlined in the Provincial Offences Act, members shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the Provincial Offences Act. 6

**DISCUSSION**

12. In deference to Mr. Clarke, I have informed myself of the historical context from which this complaint arises. Suffice to say that, starting some 34 years ago when the then-owner built a cottage, constructed a large shed, made several additions to an existing building used as a motorcycle shop, and then proceeded to convert the three buildings, without permits, to residential rental units, the property has been the subject of many complaints and much local concern. Mr. Clarke is the successor to not only the title to this property, but also to the suspicions and surveillance that it attracts. The Complainant feels that now he is regularly subjected to unfair treatment, including the Deputy Mayor's involvement in the efforts to repair his septic system.

13. Although there is no denying the notoriety of the property and the vigilance paid to the activities that happen there, I do not believe that bias was the reason for the special attention paid to the property and its owner on July 12, 2021. I think it is fair to say that there was an undeniable threat to the environment that needed to be addressed quickly and it is that circumstance which likely accounts for any exaggerated or impolite actions, on all fronts.

### ***The Telephone Call***

14. I begin with the telephone call. Mr. Clarke says that he called the Deputy Mayor to tell him that it was inappropriate for him, the Deputy Mayor, to be calling contractors and involving himself in the matter. He inferred to the Deputy Mayor that the Deputy Mayor's actions had the appearance of political interference, based on the previous harassment he had received concerning the property from municipal staff and some Council members. He claims that the Deputy Mayor became aggressive and threatening during the phone call, telling Mr. Clarke that he did not like his tone and that if he continued to infer that his conduct was wrong, he would regret it.

15. On the other hand, Deputy Mayor Murray states that it was Mr. Clarke who was aggressive and accusatory. He says that he listened and tried to reassure him that his only interest was making sure everything was above board. The Deputy Mayor claims that he hung up because Mr. Clarke became increasingly aggressive and threatening and he thought it best to end the call.

16. Faced with such completely contradictory evidence, and without any direct, independent evidence to corroborate either version, I am not prepared to find that the Deputy Mayor was disrespectful or abusive to Mr. Clarke.

17. In support of this conclusion, I note that Mr. Clarke admits that he called the Deputy Mayor and accused him of improper behaviour. Fuelled by his belief that he had been unfairly targeted, I am inclined to accept the Deputy Mayor's account that it was Mr. Clarke who started the conversation off in an aggressive and accusatory way and continued in that vein until the Deputy Mayor terminated the call.

18. Accordingly, I am dismissing the complaint of breach of Sections 1.6 and 3 of the Code.

### ***Conduct Towards Staff***

19. It is true that the Deputy Mayor did send a text to the Chief Building Official, however, in and of itself, this does not constitute an attempt to interfere with the CBO's work or to attempt to influence his decision. Members of Council are often the first person contacted by their constituents and it is quite appropriate that they make some initial inquiries. When the Deputy Mayor could not reach the CBO, he called the contractor who, as it turns out, he knows.

20. I have reviewed the text that the Deputy Mayor sent and I have spoken with the CBO. I am satisfied that the Deputy Mayor was simply responding to a call he received expressing concern over work being done on the property and notifying the staff person responsible for ensuring public health and safety. He did so in the belief that he was doing the right thing in the best interests of the Township and was not attempting to direct, intimidate, interfere with or influence the CBO.

21. Accordingly, I am dismissing the complaint of a breach of Sections 4.2, 4.4, 4.8 and 4.9 of the Code.

### ***Improper Use of Influence***

22. To the extent that this part of the complaint deals with the acts of the Deputy Mayor vis-à-vis the CBO, it has been dealt with, above. This leaves me to determine whether the Deputy Mayor may have tried to influence the decision of the Complainant's contractor.

23. The Deputy Mayor acknowledges that, upon being told by a neighbour that the CBO had confirmed that no permits had been issued for the repair work, he did call the contractor, but only after his unsuccessful attempt to reach the CBO.

24. Of all parts of the complaint, this is the most troubling to me. A Member of Council, even a Deputy Mayor, should not become so enmeshed in a matter that is so clearly the domain of the CBO or other municipal officials. At best, it demonstrates an overreaction to a constituent's complaint but also, possibly, a failure to appreciate or respect the limits of the duties of Members of Council prescribed by the *Municipal Act, 2001*.

25. That said, the matter can be viewed as an emergency, one that demanded not only an immediate repair, but also one done in compliance with the requirements of the *Building Code Act*. In the circumstances, and to the extent that it can be said that the Deputy Mayor was using his influence, I find that it was a proper use on behalf of his constituents (see Section 1.10 of the Code) and that he can be forgiven for perhaps straying from his lane.

26. Moreover, I have spoken with the two contractors on-site on July 12<sup>th</sup>. One advises that he was not contacted by the Deputy Mayor. I am completely satisfied that, in his call to the other contractor, the Deputy Mayor was not attempting to interfere with or influence that person's work.

## **FINDING**

27. Accordingly, I find that on July 12, 2021, the Deputy Mayor did not breach the Code of Conduct and I dismiss the complaint.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of May, 2022.

A handwritten signature in black ink, appearing to read 'H.G. Elston', followed by a horizontal line extending to the right.

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H.G. Elston  
Integrity Commissioner  
Township of Huron-Kinloss