

## **TOWNSHIP OF SEGUIN**

IN THE MATTER OF TWO COMPLAINTS against Councillor Jack Hepworth, dated July 9<sup>th</sup> and July 10<sup>th</sup>, 2018, under section 223 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and Resolution Number 2007-151 of the Corporation of the Township of Seguin, being a Resolution to establish a Code of Conduct for Members of Council.

## **REPORT OF THE INTEGRITY COMMISSIONER**

September 26, 2018

H. G. Elston  
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### **INTRODUCTION**

1. The Township of Seguin (the “**Township**”) adopted its Council Code of Conduct by Resolution No. 2007-151, on April 16, 2007 (the “**Code**”). I was appointed as the Township’s Integrity Commissioner by By-law No. 2018-027, which was enacted on April 16, 2018<sup>1</sup>.
2. This report deals with two complaints made against Councillor Jack Hepworth, both relating to an incident at a meeting of Council on July 3, 2018.

### **THE COMPLAINT**

3. The Complaints were made on July 9<sup>th</sup> and July 10<sup>th</sup>, 2018, and allege that on July 3<sup>rd</sup>, 2018, Councillor Hepworth breached the Township’s “Harassment & Violence In The Workplace Policy”, Section 3 of the Code (*Communications and Media Relations*) and Section 5 of the Code (*Conduct at Council Meetings*).
4. In particular, it is alleged that during Council’s discussion about the provision of drinking water fountains in the Village of Rosseau, Councillor Hepworth yelled, pounded his fist on the table, and threatened a fellow Member of Council.

### **THE FACTS**

6. In the course of conducting this inquiry, I reviewed the written complaints of two members of Council, the written response from Councillor Hepworth, and spoke with the two Complainants.

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<sup>1</sup> On August 27, 2018, the Township adopted a new Code of Conduct. As the new Code came into effect after the incident reviewed in this report, I will apply the former Code.

7. I received a written response to the Complaints from Councillor Hepworth, on July 27, 2018. With his response, Councillor Hepworth sent me a “wav file”, an audio recording of the July 3, 2018, meeting of Seguin Council. I have listened to the audio recording of the meeting, which was very helpful to me in preparing this report and formulating my recommendation.

8. Councillor Jack Hepworth was re-elected by acclamation as the Councillor of Ward 6 in Seguin Township in 2014. According to his profile on the Township’s website, he is a graduate of McMaster University. Councillor Hepworth worked as a Department Head of Geography in several secondary schools in Ontario. Councillor Hepworth and his family first came to the region as cottagers and, after retiring in 1999, moved full-time to Seguin.

9. Councillor Hepworth sits on the following boards and committees: Committee of Adjustment, Rosseau Community Action Committee (the “RCAC”), District of Parry Sound Social Services Administration Board, Muskoka Watershed Council, West Parry Sound Smart Community and the Rosseau Area Nursing Station Community Advisory Committee.

10. The Village of Rosseau is in Councillor Hepworth’s Ward. The RCAC is a community group, which advocates for the Village. The RCAC is trying to secure the installation of drinking water fountains for cyclists in Rosseau. In particular, the RCAC has pursued funding for these drinking-water fountains through several programs, including the Mainstreet Revitalization program and a campaign sponsored by “Ontario By Bike”.

11. An important destination requirement of the Ontario by Bike program is a rest area with water fountains. The RCAC requested fountains at both the Rosseau Waterfront and outside the Memorial Hall, with up-graded bicycle racks and casual seating areas at both locations. The funding request totaled between \$15,500.00 and \$20,500.00.

12. Although at its meeting of July 3<sup>rd</sup>, 2018, Council appeared to be on the verge of agreeing to advance the request for water fountains in Rosseau, the discussion moved from the allocation of funds for water fountains for Rosseau, to a more general discussion of the allocation of funding for the provision of water fountains in the other communities in the Township.

13. As Councillor Hepworth tells it: “The culmination of the sequence of requests and the newly directed conversation going off the recommendations in the Staff Report, into another delay awaiting the Staff Report for Council consideration on the feasibility of installing a potable water access for the public at the Humphrey Community Centre, was viewed by the RCAC committee members in the audience and myself with frustration.”

14. Councillor Hepworth admits that he was exasperated at the position Council ended up at, with another delay and additional “off the cuff” policy and input arriving during the meeting from Councillors.

15. Councillor Hepworth’s behavior “went off the rails” when Councillor Osbourne said: “... I have got to address Councillor Hepworth; pretty smooth at the start, Jack, but there is no need to get angry...” The Mayor told Councillor Osbourne he was out of line, however, Councillor Osbourne continued: “I don’t think Councillor Hepworth has been following our Council Protocol, when it comes to thumping the desk, I’ve been called on that”. Councillor Hepworth’s response, and what ignited these complaints, was: “... come over here and I will thump you.”

16. In his submissions to me, Councillor Hepworth maintains that he did follow the Code, and was simply trying to communicate to Council the frustration from the RCAC and himself at the continued delay and confusion flowing from discussions which seemed to conflate the “Main Street Revitalization” funding for Rousseau and the provision of potable water to citizens at the other Seguin Community Centres.

17. Councillor Hepworth describes his voice as “assertive, augmented, and under control”. He “used” his hand on the table to punctuate the delay in the time consuming clarifications that Council used to finally arrive at its recommendation. My listen to the audio recording confirms this characterization of his response.

18. Councillor Hepworth submits that: “It was wrong for me to respond to Councillor Osbourne’s ‘thumping comment’ with a retaliatory threat”. He apologizes to Councillor Osbourne, Members of Council, staff and the citizens in the audience, for his inappropriate remark.

## **THE CODE AND THE HARASSMENT POLICY**

19. Section 3 of the Code states:

**3. *Communications and Media Relations***

*The Head of Council and individual Members of Council will accurately and adequately communicate the attitudes and decisions of the Township of Seguin's Council, even if they disagree with a majority decision of Council so that:*

*a) There is respect for the decision-making process of Council,*

20. Section 5 of the Code states:

**5. *Conduct at Council Meetings***

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

21. Township Policy 5n is the “Harassment & Violence in the Workplace” policy (the “**Harassment Policy**”). The Purpose of the Harassment Policy is stated to be:

***Purpose:***

*The Township is committed to providing and maintaining a working environment that is based on respect for the dignity and rights of everyone in the organization. It is the Corporation of the Township of Seguin's goal to provide a healthy and safe work environment that is free of any form of discrimination, harassment or violence.*

22. The Harassment Policy defines “Discrimination”, “Discriminatory Harassment”, Sexual Harassment”, “Workplace Harassment and Bullying”, and “Workplace and Domestic Violence” and imposes a duty on all to create and maintain a harassment and violence free workplace.

23. More importantly for the purposes of this inquiry, the Harassment & Violence in the Workplace Policy is scoped in its application: *This policy applies to all employees, contractors and consultants.*

## **DISCUSSION**

### ***The Harassment Policy***

24. The law is well settled that Members of Council are not “employees” of the municipality. I think it is also fair to say that neither are they “contractors” or “consultants”.

25. Unlike some Codes of Conduct, and, indeed, unlike Seguin’s newly adopted Code of Conduct, the Code does not refer, or make Members subject to, the Harassment Policy.

26. Accordingly, technically speaking, I do not think the Harassment Policy applies.

27. In any event, even should the Harassment Policy apply, I do not think that Councillor Hepworth’s behaviour could be considered to be workplace harassment.

28. The *Occupational Health and Safety Act* R.S.O. 1990, c. O.1, as amended (the “**OHSA**”) defines workplace harassment in the following way:

“*workplace harassment*” means,

(a) *engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or*

(b) *workplace sexual harassment;*

29. The Harassment Policy discusses “Workplace Harassment and Bullying”.

*Workplace harassment may have some or all of the following components:*

- *It is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect*
- *It is hostile, abuse or inappropriate*
- *It affects the person's dignity or psychological integrity; and*
- *It results in a poisoned work environment.*

30. Examples of workplace harassment are given to be: *verbally abusive behaviour such as yelling, insults, ridicule and name calling including remarks, jokes or innuendos that demean, ridicule, intimidate or offend ...*

31. While clearly a response made in frustration or even anger, in the circumstances, I simply do not see his invitation to Councillor Osborne as rising to the level of harassment, as defined and described in the Policy. Councillor Hepworth did not engage in workplace harassment.

### ***Section 3 – Communications and Media Relations***

32. As for the allegation that Councillor Hepworth showed disrespect for the decision making process of Council, I note that this rule falls under the heading “Communications and Media Relations”. The section is concerned with the communication of the attitudes and decisions of Council, and must be read as a guide as to how and by whom decisions are explained to the public and the media, after the fact.

33. I do not, therefore, find this section to be applicable to Councillor Hepworth’s actions, which occurred during the meeting. In any event, as discussed above, I also note from the audio recording that Councillor Hepworth quite clearly states that he accepts Council’s decision.

5. Accordingly, I find no breach of section 3 of the Code.

## ***Section 5 – Conduct at Council Meetings***

6. The more serious allegation is Councillor Hepworth’s invitation to Councillor Osbourne to “come over here and I will thump you”.
7. For ease of reference, I repeat section 5:

### ***Conduct at Council Meetings***

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

8. “Decorum” is defined in Wikipedia to mean:

*Decorum (from the Latin: "right, proper") was a principle of classical rhetoric, poetry and theatrical theory that was about the fitness or otherwise of a style to a theatrical subject. The concept of decorum is also applied to prescribed limits of appropriate social behavior within set situations.*

9. I suspect that most observers of the political scene in Seguin would agree that, even in the heat of the moment, an invitation from one member of council to another member, to come for a thumping, stretches the limit of what can be considered as proper or appropriate social behaviour. Without putting too fine a point on it, decorum is not an optional accessory to the conduct of government, but an element essential to its integrity.

10. Indeed, while Councillor Hepworth, in his written response, maintains that he did “follow the policy”, at the same time, he acknowledges that it was wrong for him to respond to Councillor Osbourne with a retaliatory threat and he apologizes to Councillor Osbourne, Council, Staff and the Citizens in the audience for his inappropriate remark.

11. I have nothing before me to suggest that Councillor Hepworth has been anything but a committed and productive member of Council, and someone who has made a significant contribution to this Township. I understand that he is not running in the upcoming election, and it causes me some consternation to find myself in the position of having to deliver a judgment of him in what may be one of his last appearances as an elected official. Nevertheless, in the end, and with some reluctance, I find that Councillor Hepworth breached the provision of the Code requiring proper conduct at Council meetings.

12. The penalties I may recommend upon a finding of a breach of the Code, are set out in section 223.4(5) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “Act”):

### ***Penalties***

*(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:*

*1. A reprimand.*

*2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 32, Sched. A, s. 98.*

13. I am not at all inclined to recommend that Councillor Hepworth be reprimanded, and certainly do not believe that a suspension of his remuneration is in order.

14. While many Codes of Conduct include other sanctions which may be considered, and while the Courts in Ontario have accepted that other sanctions outside of those set out in the *Municipal Act, 2001*<sup>2</sup> may be applied, the Seguin Code does not provide any other penalties.

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<sup>2</sup> *Altmann v. The Corporation of the Town of Whitchurch-Stouffville*, 2018 ONSC 5306; *Magder v. Ford* 2013 ONSC 263

15. That said, I believe there is an inherent ability in Council to ask for other sanction and I am comfortable recommending that Council request an apology from Councillor Hepworth to Councillor Osbourne and his fellow Members of Council.

All of which is respectfully submitted this 26<sup>th</sup> day of September 2018.

A handwritten signature in black ink, appearing to read "Harold G. Elston".

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Harold G. Elston