

INQUIRY REPORT

FOR

THE TOWNSHIP OF BRUDENELL, LYNDOCH AND RAGLAN

CODE OF CONDUCT COMPLAINT



*Office of the Integrity
Commissioner*

Prepared By:

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PREAMBLE

Expertise 4 Municipalities (“E4M”) was appointed as the Integrity Commissioner (IC) for the Township of Brudenell, Lyndoch and Raglan (the “Township”) as per Bylaw number 2019-10.

As the Integrity Commissioner, E4m is a statutory officer of the Township. The Integrity Commissioner reports to Council and is responsible for independently performing functions assigned to them by the Township. Pursuant to section 223.3(6), the Township must indemnify and save harmless the Integrity Commissioner or any person under their instructions for costs reasonably incurred by either in connection with the defence of certain proceedings.

E4m has been appointed by the Township as the Integrity Commissioner for all functions set out in section 223.3(1) of the *Municipal Act 2001*, and E4m is responsible for conducting inquiries into whether a member has contravened the Code of Conduct pursuant to section 223.4(1) or contravened sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* pursuant to section 223.4.1 (1).

The *Municipal Act, 2001*, awards the Integrity Commissioner a number of powers that the Integrity Commissioner can exercise while conducting Code of Conduct and *Municipal Conflict of Interest Act* inquiries. Specifically, subsections 223.4 (3) and 223.4.1(10) provide that “the municipality and its local boards shall give the [Integrity] Commissioner such information as the [Integrity] Commissioner believes to be necessary for an inquiry.” Moreover, subsection 223.4(4) and 223.4.1(11) provide that the Integrity Commissioner is “entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.”

In addition to the statutory requirements for an inquiry under the *Municipal Act, 2001*, Integrity Commissioner inquiries are governed by the Integrity Commissioner Inquiry Protocol, which was adopted by Council. Pursuant to section 3.4 of the Integrity Commissioner Inquiry Protocol, in performing his or her duties, the Integrity Commissioner may engage outside assistance or consult with the Township’s legal counsel.

The Township’s legal counsel is employed by the Township. The *Rules of Professional Conduct* provide that notwithstanding the fact that instructions may be received from an agent for an organization, when the lawyer is employed by an organization, including a corporation, in exercising the lawyer’s duties and providing professional services, the lawyer shall act for the organization. An incorporated organization has a legal personality distinct from its members, agents, councillors or employees. As such, when the Integrity Commissioner consults with the Township’s legal counsel pursuant to section 3.4 of the Integrity Commissioner’s protocol, the Integrity Commissioner providing instructions as a statutory officer of the Township and the Township’s legal counsel is acting to ensure that the Township’s interests are served and protected.

I. EXECUTIVE SUMMARY

- [1] This report relates to a request by Ilkyoung Kim of Palmer Rapids (the “Requestor”), for an inquiry under section 223.4 of the *Municipal Act, 2001*, (Code of Conduct). The Applicant alleges discrimination by the Township of Brudenell, Lyndoch and Raglan (“BLR”). The Requestor provided our office with court documents pertaining to two (2) separate lawsuits, emails, as well as an audio and a video recording.
- [2] This matter was accepted by our office and a preliminary review of the file was carried out. The evidence provided to us, we deemed insufficient to carry out a full inquiry. To that point, the Requester nor the members of Council were interviewed.
- [3] Our review of the material found most of the Requesters concerns rest with the treatment he alleged he received from municipal employees [specifically the Clerk/Treasurer and the Chief Building Official (“CBO”)]. The Code of Conduct does not apply to municipal employees and therefore we have not considered the actions of these employees unless they directly related to Council behavior.
- [4] Due to the concerning allegation made by the Requestor that he was discriminated against by the Township, we determined it necessary and in the best interest of the municipal corporation to be comprehensive in our explanation as to why we did not conduct a full investigation. Moreover, in light of the pending legal matters, we want our reasons to be published in this manner rather than a preliminary report to Council.
- [5] The basis of this request was that the Requestor believed that his difficulty obtaining the required paperwork for his chip stand/truck¹ business was, in part, because he and his wife were the only family of Asian descent in the Township.
- [6] The following itemizes the Requestors concerns as they have been presented to us:
- The Requestor stated that he was discriminated against when he was required to obtain a building permit for his chip stand/truck;
 - The Requestor identified concerns about whether it was appropriate for the Building Inspector (CBO) to issue a “Stop Work Order”;
 - The Requester gave evidence wherein he reported that the owner of another chip stand/truck in the nearby town of “Quadeville” received special treatment when she was not required to get the same permits/follow the same rules as him [Ms. Cindy Luloff is the business owner referred to here];
 - The Requestor also reported that his business was not included in a list of retail stores selling garbage bag tags. Further that this list was printed and circulated to residents by the Township and the store owned by the Councillor was the only listed seller of the garbage bag tags; and
 - The Requestor also indicated in his documents that the Municipal Clerk lied on a number of occasions.

[1] _____
¹ We are using the terminology “chip stand/truck” for clarity and to not confuse the reader. At times it is called a truck and at other times a stand. While there is a significant difference in terms of the way one or the other operates, they are considered sufficiently similar from the Township’s viewpoint in terms of municipal approvals.

[7] We find that this matter does not meet the threshold for a full inquiry. We have conducted a preliminary review and based on the evidence do not believe the Requestor has substantiated a claim of discrimination sufficiently to rise to the level needed to be a contravention of the Code of Conduct.

[8] Our findings therefore are as follows:

- The Code of Conduct does not apply to Township employees.
- There has been no contravention of the Code of Conduct by Council as a whole or individually.
- This matter is before the Courts and will be resolved otherwise.

II. LEGISLATIVE FRAMEWORK

[9] Under section 223.4 of the *Municipal Act*, a request for inquiry may be made in writing to the Integrity Commissioner (IC) by a Member, staff or member of the public about whether a Member has contravened the Code of Conduct.

[10] A request for inquiry shall include sufficient information to set out a prima facie contravention of the applicable Code of Conduct, including, but not limited to, all of the following:

- The Requestors name and contact information
- What happened - a description of the events or situation
- When it happened - dates and times of the events or incidents
- Where it happened - the location(s) where the events or incidents occurred
- Who saw it happen - the names of any witnesses

[11] The IC conducts an initial review of the request to ensure that it is a proper allegation of a breach of the Code of Conduct. If, after the initial review, the IC determines that the request is not a proper allegation of a breach of the Code of Conduct, there are insufficient grounds to believe that there has been a contravention of the Code of Conduct, or the IC determines that an inquiry is not appropriate for any other reason in the IC's reasonable discretion, the IC will dismiss the request. When determining if an inquiry is appropriate, the IC may, among other things, take into account the date of the alleged breach. If, upon initial review, the IC determines that the Requestor has not supplied the necessary information in, the IC will advise the Requestor that he or she must supply additional information and shall take no further action until the information is provided.

[12] The IC may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case, notwithstanding anything to the contrary herein, those sections apply to the inquiry.

III. THE REQUEST

- [13] On March 22, 2019, we received an email from the Requestor [Ikyoung Kim]. The Requestor is member of the public and is therefore entitled to make a request for inquiry under section 223.4 of the *Municipal Act*.
- [14] The Requestor alleged:
- i. That he and his family have been discriminated against by the Township [Council and employees];
 - ii. A member of Council who is also a business owner has benefited unfairly because of her position by being the only business allowed by the Township to sell garbage tags; and
 - iii. A business owner [Ms. Cindy Luloff] in Quadeville did not have to follow the same processes and procedures as the Requestor regarding her chip stand/truck;
- [15] Of importance to note, the Requestor as part of his evidence submitted court documents which identify that there are two (2) active lawsuits against the Township by the Requestor: Court file #16/409 filed in 2016 and Court File #18-031 filed in 2018.
- [16] In Court file #18-031 the plaintiffs allege bad faith and discrimination by the Chief Building Officer and the Township.

IV. THE INQUIRY PROCESS

- [17] The responsibilities of the IC are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the IC for an inquiry about whether a Member has contravened the Code of Conduct that is applicable to that Member.
- [18] After receiving the complaint, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint made by the Requestor. This included reviewing the submitted evidence, Township By-Laws and other policies readily available to us. The Requestor was not interviewed. Materials submitted were sufficient to determine that this matter did not warrant a full inquiry.
- [19] The conclusions we arrived at, with respect to these matters, are based upon the standard of a balance of probabilities. As required, assessments of credibility have been made. These assessments are based on:
- whether or not the individual had first-hand knowledge of the situation,
 - whether or not the individual had an opportunity to observe the events,

- whether or not the individual may have bias or other motive,
- the individual's ability to clearly describe events,
- consistency within the story,
- the attitude of the individual as they were participating
- any admission of dishonesty.²

[20] Of importance to this inquiry, is that the allegations made by the Requestors are supported by court documents, emails, pictures, video and voice recordings. These materials are not in dispute.

[21] A preliminary review of the documentary evidence was performed and our findings from that are the basis for this report.

V. THE FACTS

We have considered the following facts in this matter:

[22] The Requestor alleged that he does not receive the same treatment as other business owners in the Township and more specifically, a member of Council who is also a business owner, receives preferential treatment. Additionally, that the CBO and the Clerk have treated the Requestor and his business differently than another similar business located elsewhere in the Township.

[23] The Requestor advised that he and his family moved to Palmer Rapids in 2015, and in the spring of 2016, the Requestor informed the Township of his intent to purchase a chip stand/truck. He requested to be allowed to place his chip stand/truck on municipal property. He presumably attended a Council meeting April 22, 2016, [we were provided a voice recording of a portion of the meeting and make the assumption he made the recording; alternatively, someone recorded it for him] whereat Council deliberated on whether or not to allow the chip stand/truck on municipal property near the arena. We did not have the voice recording transcribed. The Requestor claims that the matter of him being allowed to park his chip truck/stand on municipal property was not discussed.

[24] We confirm that the voice recording does indicate that the matter was tabled and briefly discussed by Council. Additionally, we can confirm that Council was advised that the Requestor wished to locate his chip stand/truck in the Community Centre parking lot. Further that he would require water and electricity. Council was advised that a By-Law was in place governing Transient Traders and allowing what the Requestor had asked for would be a contravention of that By-Law.

[25] In an email the Requestor advised:

[1]

² *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. *Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009)*, 185 LAC (4th) 176 (Alta.Arb.)

"according to Ms.Mantifel's email dated on April 22, 2016, she said " we did discuss regarding my offer". if you listen this meeting record, where is discussion she mentioned? also she gave me wrong info. based on the Trader by-law you cannot have chip truck on municipal property unless you have a lease.

from the beginning i offered her a lease on arena parking lot, but she refused using false info by only herself's opinion." [sic]

[26] By-Law NO. 2007-11 being a by-law for licensing, regulating and governing Transient Traders within the Township of BLR was properly adopted by Council and as such municipal employees are required to enforce. The content of this By-Law supports the actions of the Clerk/Treasurer are within her obligated duties. The By-Law states among other things:

- Transient Trader - Person who conducts business on an ad hoc basis and pays no business tax to the Township of BLR under the Assessment Act.
- Class #1- Chip Wagons and ad hoc food outlets pay a \$100.00 license fee.
- A Certificate of Authorization from the Renfrew County Health Unit must be produced before a license will be issued.
- No license shall be issued to operate within 300 feet of the Arena.
- This by-law does not apply to any business taking place on Township property where a rental fee has been paid.
- This by-law does not apply to a licensee who has been invited onto Township property by any person or group renting on Township property.

[27] The Requestor alleged discrimination for the Township refusing to allow him to locate his Chip stand/truck on Township property [the Community Centre parking lot]. The Municipal Clerk explained briefly to him the Transient Trader By-Law indicating no license could be issued within 300 ft of the Arena. There is no evidence that the Requestor asked the Clerk or the Township if he could be allowed to rent a spot on the property. The Chip stand/truck in Quadeville pays a monthly rental fee to use the Township property.

[28] The Requestor indicated in an email sent to the IC on June 09, 2019 that the Clerk *"keeps telling a lie even though she knows it is not true"*. His comment was in reference to her affidavit of May 2019, wherein the Clerk said that he modified the chip stand/truck to be a mobile trailer during 2016 and 2017. Since the three (3) orders were issued in May of 2016, and all work was to stop, it appears as if the Requestor has ignored these orders.

[29] Subsequently in May of 2018, the Clerk sent a letter advising the Requestor the Township would take no further action if he opened his chip stand/truck.

[30] We find inconsistencies in the Requestor's evidence that makes us question his credibility. For example, item number seven (#7) of the Clerk's affidavit states "*the chip stand had been substantially altered in the two years since the Orders were issued in an effort to take it outside the definition of a "building" under the Building Code*" The Requestor continues to state the Clerk is telling lies even though he admitted to substantially altering the chip stand/truck to make it a mobile trailer.

[31] The Requestor's complaints about the Township appear to be based on his understanding or misunderstanding of the rules and regulations pertaining to required permits, and a lack of general knowledge about how to get things done. Communications and how such communications are received, seem to have played a large part in his complaints. Of significance in the matter is the fact that the Requestor hired a contractor to do the required work, the contractor should have been aware of the building by-laws and regulations. Such as the following:

From the Building Code Act:

"Building means"

- a) A structure occupying an area greater than 10 square meters consisting of a wall, roof and floor or any of them or a structured system serving the function thereof including all plumbing, works, fixtures, and service systems appurtenant thereto.
 - b) A structure occupying an area of 10 square meters or less that contains plumbing, including the plumbing appurtenant thereto
 - c) Plumbing not located in a structure
 - c1) a sewage system, or
 - d) Structures designated in the Building Code
- A Building Permit is required to build a deck with a floor area of more than 10 square meters (108 square feet), if the deck floor is more than two (2) feet [24 inches] in height above ground it also needs railings and balusters.
 - A Building Permit is required to hook up an existing septic tank.
 - A Letter from the Township's legal counsel, Robert B. Howe, advised the Requestor should he wish not to be bound by the permitting and inspection requirements of the Building Code for the chip stand/truck, he would need to remove or reduce the size of the deck, secure the hitch and ensure that proper wheels/tires are affixed such that the chip stand/truck is not a building.

[32] The classification of the business as a chip truck, chip stand, chip wagon or a building, is irrelevant to the requirement that the Requestor obtain a Building Permit for the construction of a deck over 108 square feet in floor area. The Requestor's contractor started to build a deck without a Building Permit. He ought to have known he required one.

- [33] The Building Code Act states, among other things, it is the role of every person who causes a building to be constructed [Section 1.1 - Role of various persons]:
- 1 (b) to ensure that construction does not proceed unless any permit required under this Act has been issued by the CBO.
- [34] With respect to the role of a builder, section 3(a) states *it is the role of a builder to ensure that **construction does not proceed unless any permit required under this Act has been issued by the CBO***. It is evident that the builder ought to have known a building permit was required.
- [35] The CBO carried out his statutory duties when he issued three (3) separate Orders. The first, an Order to Comply [get a Building Permit] , the second, a Stop Work Order [did not get the permit by requested comply date], and the third, an Order to Uncover [it was unknown if an electrical conduit was buried in the same trench as the water line].
- [36] In a letter from Robert B Howe [Municipal Solicitor] to Mr. Sang Joon Bae [solicitor for the Requestor] dated Aug 25, 2016, Mr. Howe states that *"the Council and the CBO are willing and anxious to co-operate with your client if your client would only signal a willingness on his part to do so...I have informed Council about the various types of alternative dispute resolutions that are available. If you and your client consider that there might be any real prospect of resolving the matter by adapting this approach, the Township is open to it"*. Further, a letter from the Municipal Clerk dated May 25, 2018, states *"The Township of BLR will take no further action if you open your Chip Stand."*
- [37] The allegations made by the Requestor do not name one individual Member of Council with the exception of Councillor Iris Kauffeldt ("Councillor Kauffeldt") who owns the store in Quadeville as part of his compliant.
- [38] Matters pertaining to Councillor Kauffeldt are limited to the Requestor's assertions that Councillor Kauffeldt is benefiting from her position on Council because she sells garbage tags at her store on behalf of the Township.
- [39] The Requestor submitted a document entitled "**Township of BLR Waste Disposal and Tipping Fees and Recycling Instructions effective Aug 16, 2016**", as part of his evidence. Point number four (#4) of this document, indicates that garbage bag tags can be purchased at the Municipal Office or at Kauffeldt's Grocery in Quadeville.
- [40] With respect to the sale of garbage bag tags, we considered this as a potential alleged conflict of interest for the member of Council who sells them. When the Requestor advised that he had knowledge of this from 2016, it was outside of the six (6) week period wherein an individual can lodge such a complaint regarding a breach of the *Municipal Conflict of Interest Act ('MCOIA')* with the IC.

VI. THE ISSUE

[41] We considered:

- a. Whether Council as a whole, or Councillors individually did breach the Township's Code of Conduct by discriminating against the Requestor;
- b. Whether Cindy Luloff and/or her business was/were granted special leniencies due to her operation of her chip stand/truck in Quadeville by Council; and
- c. Whether Councillor Kaufeldt and/or her business benefited from the sale of garbage tags.

VII. THE OPINION

[42] We are unable to find sufficient fact in the Requestors evidence to warrant a full investigation. However, we were highly concerned with the allegation of discrimination and the benefiting of Ms. Cindy Luloff [business owner in Quadeville] as well as a Member of Council and/or their business based on their position within the Township that we felt it important to layout our analysis.

[43] Of key consideration with respect to the Requestor and his business endeavor [chip stand/truck] is the fact that the Township has adopted a By-Law that governs Transient Traders. This By-Law directs staff as to how they are to deal with matters subject to the By-Law. When the Requestor asked for consideration for something that was outside or alternative to the By-Law, the Clerk took the matter before Council. Council clearly decided not to veer from their existing By-Law.

[44] It appears that this did not satisfy the Requestor and he then launched a civil action against the Township. While we have no jurisdiction to discuss the merit of the civil proceedings, we have gleaned from the Court documents provided by the Requestor that he has clearly tried to circumvent the Township rules and Provincial Legislation (Building Code) by alleging that they are being used in a prejudicial manner.

[45] At some point, things progress, and the Township's solicitor corresponds with the Requestor's solicitor in an attempt to resolve the situation. It is clear by the Requestor's action that he is not to be satisfied by the proposed resolution. This matter is before the Courts and will otherwise be resolved.

[46] Of importance is that both the Clerk and the CBO are statutory officers of the Township and they are obligated to carry out their work as prescribed by Federal/Provincial Act/Law as well as all Township By-Laws and policies. From the evidence before us, the Clerk and the CBO are fulfilling this obligation. They have not overstepped their role or that of Council.

- [47] Council has made every effort to address this matter. During the course of this inquiry and the review of emails and/or messages from some members of Council to the Requestor, we became concerned that closed session confidentiality might have been breached. We would like to remind Council that they will be privy to information [closed session/solicitor client privilege] that they may not disclose to the Requestor.
- [48] Councillor Kaufeldt operates a business in Quadeville. Township garbage tags were available in her store in 2016. We have not confirmed that this is still fact. We found no evidence that the Requestor asked either the Clerk or Council for permission to sell the tags. In an email sent from the Requestor to the IC, dated March 29, 2019, he stated that at a cross-examination at the Best Western in Pembroke he asked the Clerk "*how many retail stores in this town including my store?*". The Clerk answered "*two*". He then asked, "*how come only the Quadeville one is in the garbage tag sales paper?*". The Clerk replied, "*Do you want to sell them?*". This suggests that the Requestor had not asked the Municipal Clerk to sell the garbage bag tags.

VIII. CONCLUSION

- [49] It is our opinion that Council as a whole has not breached the Code of Conduct. We find insufficient evidence from the Requestor to show that Council and/or staff are acting in a malicious or discriminatory manner. Based on the materials put before us, and after the preliminary review of the same, the allegations were determined not to give rise to contraventions of the Township's Code of Conduct. This matter was not fully investigated pursuant to the Integrity Commissioner Inquiry Protocol.
- [50] This report has been prepared to provide an account of the complaint to Council and to create municipal record for our findings.

DATED September 30, 2019