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INTEGRITY COMMISSIONER REPORT

TO: Council

FROM: Robert Swayze, Integrity Commissioner

SUBJECT: Information report of the Integrity Commissioner

DATE: November 28 , 2017

RECOMMENDATION

That the report of the Integrity Commissioner dated November 28, 2017 be received for information.

BACKGROUND

I was requested in September 2017 by both the Mayor and the Deputy Mayor, to watch videos of Council meetings regarding alleged breaches of the Council Code of Conduct (the "Code") by Councillor Bray. I attach as Appendix 1 the information report I submitted to Council on September 26 after watching the videos. I now find it necessary to write a second information report also concerning the behaviour of Councillor Bray.

In the attached report I advised Council that I spoke with Councillor Bray by telephone and requested that she promise in open Council not in future, to disobey an order of the Chair made in accordance with the Procedural By-law. I undertook with her that if she makes this assurance. I will recommend that Council accept it and move on. She has supplied to me a copy of the written remarks she read to Council which do not make such a promise. She stated: "I will not be intimidated by anyone to say something that I do not believe is necessary just to end this extremely embarrassing situation for others." I was in no way intimidating and the question was essentially: "will you obey the law" and it is clear that she answered no with the intent to prolong the impasse for all members of Council.

She refused to speak with me again by telephone and on October 3, 2017 I wrote to her requesting her to advise me whether she is prepared to comply with the Procedural By-law regarding orders from the Chair. I requested her to respond by October 13, 2017. She waited until that last date to respond and asked me to supply the complaint from the Mayor I was investigating. The formal complaint from the Mayor was received by me immediately prior to this response and I served it on her by return E-mail requesting a response by October 27, 2017. I received her response again on the last day and she referred me to Section 27.5 of the Code which requires that complaints cannot be made more than 6 weeks from the date of the alleged violation which was August 22, 2017. I am therefore required to dismiss the Mayor's complaint.

CONCLUSION

Councillor Bray has refused to assist me in any way to diffuse the stalemate between her and Council. She has strictly followed the rules laid down in the Code including prolonging her response to me twice until the day of the deadline. She advises me that she will not promise to comply with the Procedural By-law in case the Mayor orders her from another meeting. She knows that she has an appeal to the whole of Council but still refuses to make the promise. I will not continue this costly pursuit of her cooperating with me, which has now required me to write two reports to Council.

However, if I receive a future complaint that she has contravened the Procedural By-law by refusing to take the direction of the Chair of a meeting, after an appeal to Council, I will take into account her past intransigent attitude, as observed by me.

In any such complaint, I will consider the following sections of the Code:

- 7.6 It shall be the duty of all Members to abide by all applicable By-laws, legislation, policies and procedures applicable to the Town and pertaining to their position as a Member.
- 21.1 Members of Council shall conduct themselves with decorum at Council and Committee meetings in accordance with the provisions of the Town of Wasaga Beach Procedural By-Law, as amended from time to time and this Code of Conduct.
- 8.1 Members of Council:
 - a) May not impugn or malign a debate or decision or otherwise erode the authority of Council.
 - b) When appointed to committees and other bodies as part of their duties must make

every effort to participate diligently in these bodies with good faith and care.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'RS', written in a cursive style.

Robert Swayze
Integrity Commissioner

APPENDIX 1**INTEGRITY COMMISSIONER REPORT**

TO: Council
FROM: Robert Swayze, Integrity Commissioner
SUBJECT: Information report of the Integrity Commissioner
DATE: September 26, 2017

RECOMMENDATION

That the report of the Integrity Commissioner dated September 26, 2017 be received for information.

BACKGROUND

I have recently been requested by both the Mayor and the Deputy Mayor to watch videos of Council meetings regarding alleged breaches of the Council Code of Conduct (the "Code").

At the request of the Mayor during the week of September 11, 2017, I watched 4 videos of Council meetings beginning with July 6, 2017 when Councillor Bray suggested that the Council would be perceived as cowardly for passing a resolution to decide not to sell Wasaga distribution at a Council meeting when few members of the public were present. A member of Council indicated that he thought that the use of the word was unparliamentary and was offended by the use of the word "cowardly". There was little debate on the issue and the vote was unanimous. The Mayor in the chair, reserved his decision until the next meeting on July 25th when he ruled that this comment was disrespectful of Council and requested an apology from Councillor Bray which was refused. She was then asked to leave the meeting. This unpleasant discourse was repeated in a subsequent meeting held on August 22, 2017 to the point where the OPP became involved and quite appropriately tried to diffuse the situation.

I have no jurisdiction over the Mayor in the chair at any of these meetings and his rulings are not the subject of this report. However, I have been asked by the Mayor to determine if the refusal from Councillor Bray to comply with his ruling and leave her seat is a violation of the Code, which is within my jurisdiction.

I received an E-mail from Deputy Mayor Bifulchi in the same week also requesting me to watch a video of a Council meeting when Councillor Smith commented on the Deputy Mayor's web site which contained information on a development property owned by Fram Building Group, which the Councillor

alleged was inaccurate. The Deputy Mayor retorted: “are you calling me a liar” to which Councillor Smith responded in the affirmative. I reviewed the web site and it contained information on the building site which was not inaccurate but was certainly slanted towards the negative.

ANALYSIS

The Code requires that Councillors comply with the Procedural By-law in meetings who are subject to the rulings of the Chair and it provides as follows:

“All members of Council have a duty to treat members of the public, one another and staff appropriately, without abuse, bullying or intimidation.”

“All members of Council have a duty to treat members of the public, one another and staff appropriately, without abuse, bullying or intimidation. All members of Council shall ensure that their work environment is free from discrimination and of personal and sexual harassment.”

The comment by Councillor Bray was made in the context of suggesting that all members of Council would be perceived as cowards if they did not pass the resolution not to sell Wasaga Distribution when more of the public was present in the Council Chambers. In my opinion, this statement was not contrary to the Code.

The comment by Councillor Smith was brought on by the Deputy Mayor asking whether she was calling her a liar and in my opinion her response was part of spirited political debate common to all municipal councils.

It is not the role of an Integrity Commissioner to stifle political debate and comment. Members of Council need to be able to speak their mind without fear of repercussions. In my opinion, the right to freedom of expression must be respected, particularly for elected representatives. However, Council must conduct its business in a professional and respectful manner. Its business is conducted primarily during meetings and the history in the last few months has not been encouraging.

With respect to the Mayor’s request for advice on whether Councillor Bray contravened the Code when she refused to leave the meeting at his direction, I have considered the following sections of the Code:

- 8.4 a) “Members of Council may not impugn or malign a debate or decision or otherwise erode the authority of Council.”
- 21.1 “Members of Council shall conduct themselves with decorum at Council and Committee meetings in accordance with the provisions of the Town of

Wasaga Beach Procedural By-Law, as amended from time to time and this Code of Conduct.”

The Mayor clearly had the power under the Procedural By-law to make the ruling he made subject only to being overruled by a majority of Council which did not happen. Councillor Bray’s refusal to comply is a contravention of the Procedural By-law and therefore contrary to section 21.1 of the Code. I have spoken with Councillor Bray and requested that she promise in open Council not in future to disobey an order of the Chair made in accordance with the Procedural By-law. If she makes this promise I recommend that Council accept it and move on.

CONCLUSION

I have been appointed Integrity Commissioner since 2008, by more than 20 municipalities ranging in population from more than one million to less than the size of Wasaga Beach. Wasaga Beach has been, by far, the most active municipality in filing formal complaints with me. Now I am concerned with Council being distracted in meetings by the toxic relationship between certain members of Council. This must stop.

I therefore feel it incumbent on me to warn all members of Council that, in any future complaints received by me, I will no longer tolerate personal name calling in meetings or refusal to comply with the Procedural By-law. Vigorous debate is encouraged by me where diverging views are discussed professionally and without rancour. The escalation in making personal references to members of Council in debating issues has now exceeded my definition of healthy political debate and from now on, I must consider it in violation of the intent of the Code. If I receive valid complaints confirming such behaviour in the future, I will recommend sanctions against the offending Councillor.

Respectfully Submitted,



Robert Swayze
Integrity Commissioner