

# Principles Integrity

## Recommendation Report

### Complaint against Committee Member Nigel O'Neill

#### Town of Collingwood

September 3, 2024

#### Executive Summary

- [1] This complaint results from a complaint against a Member of the Collingwood Committee of Adjustment and Property Standards Committee<sup>1</sup> (the Committee) for his conduct at the hearing of an appeal held on June 27, 2024.
- [2] At the hearing, Member O'Neill behaved in a disrespectful and unprofessional manner towards staff, making disparaging remarks, engaging in criticisms of their credentials, and exhibiting disrespectful body language during the hearing.
- [3] He was overheard calling a member of staff a *F\*\*\*ing A\*\*hole* during the hearing.
- [4] Several staff, as well as the Committee members of the public observed this conduct.
- [5] We find that this conduct and behaviour breached the Code of Conduct.

#### Complaint

- [6] On July 2, 2024 we received a complaint from a senior manager in By-law Enforcement alleging that Mr. O'Neill, a Member of the Committee, behaved in a disrespectful and unprofessional manner towards staff, making disparaging remarks, engaging in criticisms of their credentials, and exhibiting disrespectful body language during the hearing. He was overheard calling a member of staff a *F\*\*\*ing A\*\*hole* during the hearing.
- [7] It is alleged that this conduct breached the Collingwood Code of Conduct for local boards.

#### Process Followed for the Investigation

- [8] In conducting this investigation, Principles Integrity applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.
- [9] This fair and balanced process includes the following elements:

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<sup>1</sup> The Town of Collingwood has a combined Committee of Adjustment/Property Standards Committee to which Council appoints Members to serve.

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- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Member of the Complaint and seeking their response
- Reviewing the Code of Conduct
- Reviewing relevant documents and interviewing witnesses, as necessary
- Providing the Member with an opportunity to review and respond to the draft findings of the Integrity Commissioner.

### Background and Context

- [10] The Committee, the Committee of Adjustment and Property Standards Committee, is an adjudicative local board of the Town of Collingwood, There are two separate and distinct functions of this body; for the purposes of this report, the focus is on its function of the Property Standards Committee.
- [11] The function is to hear appeals by property owners from property standards orders which have been issued at the culmination of an enforcement process.
- [12] The procedure at the Committee is for the Town's enforcement staff to present the evidence to support the issuance of an order requiring the property owner to carry out specified remedial work.
- [13] The property owner has the opportunity to plead their case, and members of the Committee may ask questions of either town staff or the property owner.
- [14] The Committee then determines whether to confirm, modify or rescind the order or extend time for compliance.
- [15] At the June 27, 2024 Committee meeting, at issue was an order for removal of trees which Town enforcement staff had determined were diseased.
- [16] The property owner produced letters from two arborists to support a request that the order to remove not be confirmed.
- [17] The arborists' letters confirmed that the trees were diseased, with some indication that the canopy remained although apparently beginning to discolour.

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- [18] Member O'Neill proceeded to question the credentials of the By-law Enforcement Officer, challenging his ability to make determinations about diseased trees.
- [19] Member O'Neill also displayed body language which appeared to demonstrate his disinterest in the evidence, disrespect for, and a general dismissive attitude towards the Town's enforcement staff.
- [20] In particular, he was observed throwing his arms in the air, sighing loudly, leaning back in his chair, shaking his head "no" in disagreement, and generally expressing disagreement in an unprofessional manner towards Staff's evidence as they presented their case to the Committee.
- [21] At one point he was overheard to engage in pejorative name-calling when he stated, in a loud stage whisper, that one of the staff was a F\*\*\*ing A\*\*hole.
- [22] At some points, Member O'Neill was talking to another Committee Member during the presentation of the case, ignoring the evidence.
- [23] The proceedings were stopped on more than one occasion to ask that the Member refrain from talking while Staff were presenting.
- [24] Ultimately, the Committee adjourned the matter to a future meeting date, to enable the property owners to bring their own arborist to the appeal.

### Application of Code of Conduct:

- [25] A Code of Conduct provides an ethical guide and framework for members of Council and local boards for conduct and behaviour which promotes confidence in municipal government.
- [26] The applicable provisions of the Code of Conduct are as follows:

#### General Provisions

Members of Collingwood Council and Local Boards, both adjudicative and non-adjudicative, recognize their obligation to serve their constituents and the public in a conscientious and diligent manner understanding that as leaders of the community, they are held to a higher standard of behaviour and conduct.

#### Rule 9 - Member Conduct (Council and Committee Meetings)

1. Members shall conduct themselves at Council and committee meetings with decorum in accordance with the provisions of the Procedural By-law.

4. Members shall conduct themselves with appropriate decorum at all times.

#### Rule 12 - Respectful Workplace

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1. Members are governed by the Town's Human Resources Policy & Procedure Manual. All Members have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

### Rule 13 – Conduct Respecting Staff

3. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual Member or faction of the Council.

### Analysis:

- [27] During the course of our investigation, we have had the opportunity to interview persons in attendance at the hearing, as well as listen to the archived recording of the June 27, 2024 Committee meeting.
- [28] The manner in which the Member challenged the credentials and impugned the competency and expressed criticism of and contempt for staff, including name-calling in a stage whisper, and his body language demonstrating dismissiveness towards staff, was unprofessional, disrespectful and inappropriate.
- [29] During the investigation, we have been informed that his general demeanor towards staff at every meeting is somewhat antagonistic.
- [30] For example, while it may be fair to note that By-law Enforcement Officers are not certified professional arborists and it is clear the Town does not have the resources to employ arborists to accompany enforcement staff on tree inspections, when the Officer explained that he had taken the opportunity to become informed through on-line resources, in order to better understand how to recognize diseased trees, the Member sarcastically referred to him as an “internet sleuth”.
- [31] Members of Committees are expected to remain neutral in hearing evidence on matters under appeal, and although it is perfectly acceptable to ask questions of clarification, entering into debates with staff which challenge the competency of staff to perform their role is beyond the scope of the role and function of Members.
- [32] Moreover, the fact is that these same staff must appear again before this Committee, and their apprehension is that this Member – who already demonstrates antagonism towards staff at meetings – will be dismissive of the evidence and disrespectful of them.
- [33] This behaviour is discouraging and demoralizing to staff.
- [34] It is also not conducive to supporting the public's confidence in the objectivity and neutrality of the Committee.

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### Findings:

- [35] We find that the complaint is substantiated.
- [36] In particular, the Member failed to conduct themselves with appropriate decorum at all times, and engaged in inappropriate and disrespectful treatment of staff.
- [37] As such, we find that the Member's conduct breached the Code of Conduct.
- [38] It is important for members appointed to local boards and committees to recognize their obligation to treat staff with respect and professionalism.
- [39] This is brought into sharper focus where they serve on adjudicative bodies such as the Committee on which Member serves.
- [40] This is because it is important to maintain decorum and the appearance of objectivity when presiding over an appeal or hearing.
- [41] Portraying, through remarks or body language, that the member is dismissive of staff's presentation at the hearing can lead observers (including staff) to conclude there is a reasonable apprehension of bias in favour of the property owner.
- [42] We do not, in this instance, find that there is a reasonable apprehension of bias.
- [43] Nevertheless, the Member's apparent antagonism towards staff – observed regularly at Committee meetings – creates a difficult environment for staff who must attend to present cases to the panel.
- [44] In his submissions to us, the Member characterized the staff as 'handcuffed' in their work because they are not supported by an in-house or contracted arborist.
- [45] It is our observation that the staff's determination that the trees are diseased was, in fact, corroborated by both arborists.
- [46] The Member asserts that any staff who we may have interviewed would be biased in support of their superior and would not contradict the allegations in the complaint.
- [47] We did not confine our interviews to staff in enforcement.
- [48] We found the evidence regarding the Member's conduct towards staff to be compelling.

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- [49] The Member has advised that, although he does not recall the name-calling incident, he apologizes for it.
- [50] If the name-calling were the only allegation, an acknowledgement and apology might provide an appropriate resolution.
- [51] The Member has categorically denied:
- exhibiting dismissive and disrespectful body language,
  - throwing his arms in the air, sighing loudly, leaning back in his chair, shaking his head “no” in disagreement, and generally expressing disagreement in an unprofessional manner towards Staff’s evidence
  - talking to another Member during the proceedings, and
  - that the proceedings were stopped on more than one occasion to ask that the Member refrain from talking while Staff were presenting.
- [52] The Member’s statement to us that staff were “dead set on getting the charge through” and delayed the continuation of the appeal, ignores the legitimate concerns about proceeding with the matter while our complaint investigation remained outstanding. While a short delay of two months was not mandatory, neither was it prejudicial to the property owner.
- [53] Rather than recognize any opportunity for course correction on his part, the Member has deflected criticism to Town staff as the cause of the conflict, questioning their attitude and their tactics towards the property owners.
- [54] Finally, the Member has sought a discontinuation of the entire Property Standards Appeal hearing, asking us that it be halted at once and set aside due to interference by staff.
- [55] This relief is beyond the scope of an Integrity Commissioner and is in fact an essential element of the appeal to be decided by the Committee.

### **Disciplinary Role of Council**

- [56] This Report is the culmination of an independent and confidential investigation conducted in accordance with the *Municipal Act*, and in accordance with the tenets of procedural fairness (see the insertion at the end of this report to read more about the process itself).
- [57] The role of Council is not to reinvestigate the complaint or the findings in this report. The role of the Integrity Commissioner is to undertake a thorough and impartial investigation, which has now been completed. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we

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have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.

- [58] We have a statutory obligation to conduct investigations in a confidential manner. That means that Council is not **able** to conduct its own 'investigation' because it does not, by operation of the statute, have access to all of the information that contributed to our findings in this matter.
- [59] The obligation to conduct a fair and independent investigation has been discharged.
- [60] The role of Council is to review this report and decide which recommendations to adopt, if any. An Integrity Commissioner can recommend training, remedial steps, and/or sanctions as they deem appropriate based on the circumstances of complaint(s), but it is Council which has the final voice in determining what should be done.

### Recommendations:

- [61] An Integrity Commissioner may recommend that sanctions be imposed, including a reprimand, or a suspension of pay for up to 90-days. Given that Members on the Committee receive only a small meeting per diem, a sanction which included suspension of the Member's pay would be of no practical effect.
- [62] Nevertheless the Member's actions have seriously impaired his professional relationship with the staff who appear regularly before the Committee, and warrant a purposeful sanction.
- [63] The matter having been reviewed by the Town's Integrity Commissioner, a process under which the Member received procedural fairness, it falls within Council's jurisdiction to consider an appropriate remedy, including the continuation of Mr. O'Neill's status as a Member of the Committee.
- [64] Council may revoke Mr. O'Neill's appointment.
- [65] If Council is of the view that the Member's relationship with Town staff is not irreparable, Council may in the alternative suspend Mr. O'Neill from participating on the Committee for a period of time – perhaps 90 days, mirroring the Municipal Act provisions for suspension of councillor compensation – which would allow an opportunity for the Member to 'start fresh' in the new year.
- [66] Accordingly, it is recommended that Council pass one of the following resolutions:

That having been found to have breached the Code of Conduct, that Council revoke Mr. O'Neil's appointment as a Member of the Collingwood Committee

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of Adjustment and Property Standards Committee, and that he be thanked for his service to date.

or

That having been found to have breached the Code of Conduct, that Council suspend Mr. O'Neil's service as a Member of the Collingwood Committee of Adjustment and Property Standards Committee for [a period of time to be determined by Council] from the date of this report.

[67] Should Council suspend the Member, we will consider ourselves to be seized of this matter until the end of 2025, so that any ensuring complaints may be informed by our investigations to date.

[68] We wish to conclude by publicly thanking everyone who was asked to participate in our investigation. We will be pleased to be available at the Council meeting where this report is considered.



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## About Principles *Integrity* and the Complaint Process

Principles *Integrity* was appointed the Integrity Commissioner for the Town of Collingwood in January of 2018. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

*The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.*

The Town of Collingwood has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council and local boards are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.

Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and local boards, and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

It is important that this broad range of functions be mentioned in this investigation report. Our goal, as stated in our operating philosophy, is to help members of the Collingwood community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.

Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.

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Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.