

Township of Bonfield Integrity Commissioner – David C. King
Citation: Councillor Eric Foisy v. Mayor Randall McLaren
Date: October 22, 2021

REPORT ON COMPLAINT

Notice: Municipal Integrity Commissioners provide investigation reports to their respective municipal council and in most cases, make recommendations for imposition of penalty or other remedial action to the municipal Council.

Reference should be made to the minutes of the Township of Bonfield Council meeting to obtain information about their consideration this report.

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THE COMPLAINT

1. Councillor Eric Foisy (Complainant) alleges that Mayor Randall McLaren (Respondent) contravened Section 8 the Township of Bonfield Code of Conduct for Members of Council.

SUMMARY

2. As in the case of my report filed with the Township of Bonfield on February 26, 2021, Councillor Beaudoin v. Mayor McLaren, I find that the Respondent did not contravene Sections 8 of the Township of Bonfield Code of Conduct when a Township Park was used for a private wedding, nor did he contravene Section 8 of the Township of Bonfield Code of Conduct when he left it to the Township Fire Chief and Deputy Fire Chief to decide if municipal fire equipment, staff should be deployed on standby at the Test and Tune event at the local drag strip.

BACKGROUND

3. On March 25, 2020, at 10:15 a.m. in the Township of Bonfield, the Respondent declares a state of Emergency for the entire municipality in accordance with the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E 9 s.4.(1) due to the COVID -19 Pandemic.

4. As a result of this declaration and in accordance with the Township of Bonfield Emergency Response Plan issued under By-law #2006-37 and the amended by-law 2018-25, the Respondent notifies Emergency Management Ontario; Township Council; the Public; neighboring community officials; the local MP and MPP and takes control of the Township of Bonfield Emergency Control Group (ECG).

5. The Township of Bonfield ECG, led by the Respondent, met on a weekly basis to coordinate the provision of essential services necessary to minimize the effects of the emergency on the municipality.

6. On October 16, 2020, I received an application from the Complainant, dated October 13, 2020, alleging the Respondent violated the Section 8 of the Township's Code of Conduct on two occasions. The first alleged contraventions occurred on June 20, August 22, and October 10, 2020. The second alleged contraventions occurred July 24-26 and September 18-20, 2020.

PROCESS FOLLOWED

7. The following is the process I followed to ensure fairness to both the individual bringing the complaint and the respondent:

- i) The Respondent receives notice of the Complaint and is given an opportunity to respond.
- ii) The Respondent(s) is made aware of the Complainant's name.
- iii) I interview any witnesses that I believe have relevant evidence.

POSITIONS OF THE PARTIES

POSITION OF THE COMPLAINANT (Councillor Foisy)

8. The following are excerpts of information provided by the Complainant as part of his application for this Municipal Code of Conduct inquiry:

9. The Complainant alleges that **Section 8** of the Township of Bonfield Code of Conduct was violated when requests were received to use of the Municipal Park on June 20th August 22nd and October 10, 2020, for weddings.

10. "The first wedding on June 20th was authorized solely by the Mayor when the parks were closed to the public by provincial /municipal orders. The August 22nd and October 10th were authorized by the Mayor with Emergency Control Group guidelines. A reception accompanied the wedding in Kaibuskong Park on the 20th. To my recollection Council never authorized weddings to take place in our public parks."

11. " Authorization of weddings in the Kaibuskong Park given during Emergency Control Group meetings except for June 20th. These meetings are closed to the public and confidential. Mayor, CAO, Public Works Manager would have been present at the meetings."

12. The Complainant also alleges that **Section 8** of the Township of Bonfield Code of Conduct was violated when the Mayor permitted the use of Municipal Fire Equipment, staff, and resources at a private race event.

13. "At the Emergency Control Group (ECG) meeting before the private race event at the Bonfield Event Park on July 24-26, the CAO, Peter Johnston gave permission to the Fire Chief by stating "it's up to you" and for September 18-20, at the ECG meeting just before, the Mayor with a similar wording gave authorization to attend the public main race event. Comment from a resident: Bonfield Fire Department was there? That's what our tax \$\$'s paying for?"

14. "Authorization of the hiring of Firefighter (First responders) Staff and Equipment was given during Emergency Control Group meetings which are closed to the public and are confidential. Mayor, CAO, Fire Chief and Heads of Department of the Township of Bonfield would have been present during these meetings."

POSITION OF THE RESPONDENT (Mayor McLaren)

15. The following are excerpts of information provided by the Respondent in response to the allegations made by the Complainant.

16. "There are two parts to Councillor Foisy's allegations so I will respond separately. The first concern he has relates to outdoor weddings that took place in our municipal parks on three occasions in the summer of 2020."

17." The three weddings that took place were held outdoors in a Twp. Of Bonfield municipal park. It should be noted that in a previous term of Council when Councillor Foisy was a member of the recreation committee, he advocated to have electricity and other services added to the park gazebo to assist events such as wedding receptions etc. This was ultimately approved by Council and actioned."

18. "Under the COVID -19 pandemic situation at various points in time there have been restrictions on the number of attendees and other mitigations required for any gatherings of public either indoor or outdoor".

19. "Under past practise, the use of a municipal park for something as organized as a wedding was usually with a formal notification to the municipality as a courtesy, but also to ensure the park was in a condition fit for the occasion. Such was the case with the weddings of 2020. Because our municipality was under a state of "locally declared emergency" at the time of the events, the ECG (Emergency Control Group) did have conversation related to any COVID related mitigations we could suggest or impose on the events."

20. "As Councillor Foisy correctly asserts, Council as a whole did not approve these weddings. This is because under the state of local emergency Council has no authority then or at any other time outside of a state of local emergency to approve these weddings."

21. To the best of my knowledge the weddings occurred within the guidelines of the Provincial mandates in place at the time. It should further be noted that as Mayor, I hold no policing authority to barge into someone's outdoor wedding in a municipal public park and enforce municipal or Provincial health guidelines."

22.. "It is for the reasons listed above that Councillor Foisy's concerns related to the weddings of 2020 are completely without basis for any further discussion.

23. "The second concern in Councillor Foisy's allegation relates to a local event park and the fact it held 2 private functions in the summer of 2020."

24. "The events were related to car drag strip racing type activity. This is an activity that could have some likelihood of need for emergency services for fire or first aid. Because of this, and within historical practise, it was such that our local volunteer fire department was made aware of the events and further invited to attend on a standby basis."

25. "The subject was raised in ECG meetings prior to the events by fire department leaders. My direction to the department was that on all occasions of public safety, it is up to the Chief and Deputy Chief to decide on the department's deployment. This is the reason they are appointed and compensated to make such decisions. They have authority and responsibility for the department."

26. "As it turns out the department did attend on a standby basis at both events. This came to my attention because of a bit of a fiasco that occurred related to it. It was brought to my attention that the department was ordered to leave the event park by a member of Council. Further investigation by me revealed that Councillor Foisy acting unilaterally had in fact telephoned the Fire Chief at home late at night and demanded the department not attend on the second day of events."

27. "It should be noted for context that Councillor Foisy lives nearby the event park and has long voiced opposition to its operation. He has indicated his pecuniary interest in the subject regularly by corresponding that it devalues the local real estate surrounding it. He further alleges it causes him to suffer ill effects.

28. "Councillor Foisy's assertion that it is wrong to use the local volunteer fire departments resources for to protect the public against fire and injury is in itself, absurd. That is the very reason the department exists. Protecting public **and private property** is exactly what they do. If the department did not defend private property, it would never respond to 99 per cent of the locations in the municipality."

29. "Further to this, the Fire Chief stated to me that the events in question were a great morale boosting occasion for his volunteers. "It can't always be just about attending fires and deadly car crashes" is how he described it to me. I fully concur."

30. "The department did attend on both occasions. Aside from Councillor Foisy's ghastly breach of perceived unilateral authority he felt he held, everything was a positive outcome related to the events and dates named in his complaint related to the event park."

31. "In summary related to the event park and use of municipal resources complaint, again it is baseless and without further discussion required. The matter was conducted (aside from the aforementioned transgressions of Councillor Foisy) in an appropriate manner."

FINDINGS OF FACT

32. Under the authority of *Emergency Protection and Civil Protection Act, Section 4(1)*, "the head of council of a municipality may take such action and shall make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area."

33. Sections 8 and 14 of the Township of Bonfield Council Code of Conduct read as follows:

8. USE OF MUNICIPAL PROPERTY, SERVICES AND OTHER RESOURCES

No member of Council should use, or permit the use of municipal land, facilities, equipment, supplies, services, staff, or other resources (For example, municipal-owned materials, websites) for activities other than the business of the Corporation. Nor should any member obtain personal financial gain from the use or sale of municipal-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the Township of Bonfield.

14. CONDUCT RESPECTING STAFF

Under the direction of the Chief Administrative Officer (CAO), staff serve the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Council members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or a faction of Council.

Members of Council shall not give direction to individual staff, save and except for the CAO who shall receive his or her direction from Council as a whole, or as specifically delegated by the whole of Council to the Mayor, or a committee of Council.

Accordingly, no Council member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

No Council member shall compel staff to engage in political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any Council member 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 with that person's duties.

ISSUES AND ANALYSIS

34. I have considered the following Code of Conduct issues arising from the Complainants allegations:

35. Did the Respondent contravene Section 8 of the Township of Bonfield Code of Conduct when a Township Park was used for a private wedding?

36. No. Given the March 25th, 2020, emergency declaration for the Township of Bonfield, the Respondent, in his role as the head of council, exercised his authority to for the event to take place.

37. Did the Respondent contravene Section 8 of the Township of Bonfield Code of Conduct when he left it to the Township Fire Chief and Deputy Fire Chief to decide if municipal fire equipment, staff should be deployed on standby at the Test and Tune event at the local drag strip?

38. No. The ECG minutes of June 23, 2020, indicate that a discussion took place regarding the Bonfield Volunteer Fire Department attendance at the Test and Tune event and concluded with the Respondent (in his role as the head of council during the state of emergency), delegating the decision to the Chief and Deputy Chief to determine if volunteers and equipment should attend the event.

39. Section 8 of the Township of Bonfield Code of Conduct is intended to prevent members of Council from unilaterally using, or permitting the use of municipal land, facilities, equipment, supplies, services, staff, or other resources for activities other than the business of the Corporation. In this instance, the Respondent did not unilaterally grant the use of municipal resources, but rather, delegated the decision to attend the event to the Fire Chief and Deputy Fire Chief.

40. Based on the statement of the Respondent as described in paragraph 26 above and emails exchanged between former Councillor, Sylvie Beaudoin, the Deputy Fire Chief and the Respondent on June 27, 2020, the Applicant acted contrary to section 14 of the Township of Bonfield Code of Conduct and section 28 1(a) of the Fire Protection and Prevention Act by unilaterally providing direction to the Fire Chief demanding the department not attend on the second day of events.

41. COMPLIANCE WITH THE CODE OF CONDUCT

Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the Criminal Code of Canada or for failing to declare a conflict of personal interest under the Municipal Conflict of Interest Act.

Sub-section 223.4(5) of the Municipal Act, authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the Code of Conduct:

1. A reprimand; or
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board for a period of up to 90 days.

Other Actions

The Integrity Commissioner may also recommend that Council or a local board (restricted definition) take the following actions:

1. Removal from membership of a committee or local board.
2. Removal as Chair of a Committee or local board.
3. Repayment or reimbursement of moneys received.
4. Return of property or reimbursement of its value.
5. A request for an apology to Council, the complainant, or both. ¹

¹ Corporation of the Township of Bonfield Code of Conduct Policy for Members of Council, Local Boards and Committees. Approved by By-law 2019-04.

CONCLUSION

42. I find no evidence to support the allegations of the Complainant that the Respondent contravened Sections 8 of the Township of Bonfield Code of Conduct.

CONTENT

43. Subsection 223.6(2) of the Municipal Act states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

Respectfully submitted,

David King

Integrity Commissioner

October 22, 2021