



Cunningham Swan

LAWYERS

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CONFIDENTIAL

August 7, 2024

SENT BY EMAIL TO: sfournier@rideaulakes.ca

Mayor and Council
c/o Shelle Fournier, CAO
1439 County Road 8
Delta ON, K0E 1G0

Dear Ms. Fournier:

**RE: Code of Conduct Complaint – Report
Our File No. 14093-144**

Please be advised that our investigation under the Code of Conduct is now complete. We attach the final report herewith and the report should now be circulated to members of the Council. We have provided a copy of the report to the Member and Complainant separately.

This investigation is hereby closed.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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Township of Rideau Lakes
c/o Shellee Fournier, CAO
1439 County Road 8
Delta, ON K0E 1G0

Dear Mayor and Council:

**RE: Code of Conduct Complaint – Report
Our File No. 14093-144**

This public report of our investigation is being provided to Council in accordance with Section 223.6 of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the

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Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

Timeline of Investigation

The key dates and events for this investigation are as follows:

- Complaint Received – October 26, 2023
- Preliminary review conducted
- Complaint sent to Member – December 26, 2023
- Member's response received – January 17, 2024
- Complainant's response received – March 26, 2024
- Interviews conducted – March – May 2024
- Additional interviews conducted – June – July 2024

Complaint Overview

A complaint (the "Complaint") was received alleging that Councillor Carr (the "Member") made an inappropriate comment towards a member of staff before a Committee meeting. Specifically, it is alleged that the Member said, "are you here to work or to just keep showing off your fine [redacted] self to the crowd?"

Relevant Code of Conduct Provisions

The following provisions of the Code of Conduct were engaged by the Complaint:

6.10.3 All members shall conduct themselves in a manner that ensures a workplace free from harassment, sexual harassment or violence as defined in the *Occupational Health and Safety Act* and in accordance with the Township's workplace harassment policy.

Factual Findings

Findings of fact were required as part of this investigation. Specifically, we were required to make a finding of whether or not the Member made the alleged comment.

This investigation uses the standard of proof known as the “balance of probabilities” which applies to Integrity Commissioners in Ontario.¹ The standard requires the trier of fact to “scrutinize the relevant evidence with care to determine whether it is more likely than not that the alleged event occurred.”²

We received a written response from the Member and also interviewed the Member. The Member’s evidence was that she did not make the remark.

Witness evidence was received in support of the Member’s account. Witnesses were put forward that were near the Member during the meeting who did not recall the Member making any inappropriate comments. Several of these witnesses recalled the Member referring briefly to the staff member but denied hearing her make the comment alleged. One witness indicated that she made a comment referring to the staff member that may have been misheard and mistakenly attributed to the Member.

Evidence was also received from others in attendance at the meeting that contradicts the Member’s account. Several witnesses were unequivocal that the Member made an inappropriate remark to the staff member before the meeting, with one witness confirming that the specific alleged remark was made. Other witnesses were interviewed that recalled that the Member made a remark to the staff member but due to the passage of time had limited recollection of what specifically was said. However, it was recalled that the remark was about the staff member’s looks and that it was “off-colour”.

When there are conflicting accounts of the same event, witness credibility becomes a key concern. Credibility “refers to the witness’s sincerity and willingness to speak the truth as he or she believes the truth to be.”³

We found the witness evidence that contradicted the Member’s account to be more credible and accept those accounts of the comments made by the Member. The evidence of these witnesses was consistent and provided specific details of the meeting and the alleged exchange between the Member and the staff member.

The evidence put forward by the witnesses in support of the Member’s account was less credible. Specifically, some of the witnesses’ interview testimony differed from their written statements and the witnesses had limited or conflicting recollections of what was said by the Member.

As a result of the foregoing, we find on a balance of probabilities that it is more likely than not that the Member made the alleged comment to the staff member.

¹ *Chiarelli (re)*, 2020 ONMIC 20 at para 84.

² *F.H. v McDougall*, 2008 SCC 53 at para 49.

³ *Chiarelli supra* at para 91.

Code of Conduct Findings

This investigation engaged Section 6.10.3 of the Code of Conduct:

6.10.3 All members shall conduct themselves in a manner that ensures a workplace free from harassment, sexual harassment or violence as defined in the *Occupational Health and Safety Act* and in accordance with the Township's workplace harassment policy.

That section relies on the following definitions in the *Occupational Health and Safety Act*:

“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

“Workplace Sexual Harassment” means,

- (a) Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- (b) Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

The definition of “workplace sexual harassment” has been considered in several cases. The leading definition is from the Supreme Court of Canada's decision in *Janzen et al. v. Platy Enterprises Ltd.*

...sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime observed in *Bell v. Landas*, supra, and as has been widely accepted by other adjudicators and academic commentators, an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

Comments with sexual connotations have been found to constitute sexual harassment. For example, in *Huckso v. A.O. Smith Enterprises Limited*⁴ the question “did you dance on tables?” was considered to constitute workplace sexual harassment, as was a suggestion that the complainant go sit on her superior’s lap. According to the Court of Appeal, “sexual harassment is not confined to actions but includes comments with a sexual innuendo.”⁵

Similarly, in *Hamilton (City) v Amalgamated Transit Union, Local 107*⁶ a supervisor asking an employee what she was wearing underneath her uniform was found to be workplace sexual harassment under the *OHS.A.*

There are varying levels of harassment that fall within the broad ambit of sexual harassment in the workplace. The comment in this circumstance was demeaning, and coming from a member of Council was an abuse of the unequal power that exists between staff and members of Council.

We find that the comment made by the Member constitutes workplace sexual harassment within the meaning of the *OHS.A.* As such, we find that the Member engaged in harassment and sexual harassment in breach of the Code of Conduct Section 6.10.3.

Recommendation

Harassment of a staff member by a Member is a serious breach of the Code of Conduct.

The penalty recommended herein is reflective of this seriousness and is intended to deter future contraventions of this nature.

As such, we recommend that Council suspend the Member’s pay for 15 days.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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⁴ 2021 ONCA 728 [*Huckso*].

⁵ *Ibid* at para 43.

⁶ 2013 CANLII 62266 (ON LA).