

**Town of Atikokan Integrity Commissioner
Ron Bourret**

Report on the Complaint
of
Councillor Mary Makarenko
Regarding
Alleged Violations by Mayor Dennis Brown
under the Town of Atikokan's
By-law 14-19 'Proceedings of Council By-law'
By-law 02-19 'Council-Staff Relations Policy'

TABLE OF CONTENTS

Introduction	.....	3
Investigatory Process	.....	3
Background to the Complaints	.....	4
Issue raised in the Initial Investigation	.....	5
Conversion of Alleged Violations	.....	7
Scope of Complaints	.....	8
Complaints	.....	8
Complaint 1	.....	8
Complaint 2	.....	9
Complaint 3	.....	11
Opinion	.....	13
Recommendations	.....	14

INTRODUCTION

Through the Municipal Act, 2001 (S.O. 2001, c. 25, as amended), the Province of Ontario allows its municipalities to appoint “integrity commissioners”, and for those commissioners to investigate complaints brought against members of the municipal council regarding their professional conduct. If a municipality does not appoint an integrity commissioner, the office of the Ontario Ombudsman is mandated to provide the services. Municipalities must have codes of conduct for their council members, as well as various other health and safety policies to protect the integrity of the municipal operations.

I have been appointed an integrity commissioner for the Town of Atikokan and, as such, provided with a series of complaints relating to the conduct of Mayor Dennis Brown, the Respondent. The complaints that are the subject matter of this report were filed by another member of Atikokan Council, Councillor Mary Makarenko.

I wish to thank the Respondent, the Complainant, Council members and the Town of Atikokan staff for their cooperation and assistance as I investigated this matter. They provided extensive submissions, answered many questions and provided important information. I am grateful for the time they spent participating in this process.

INVESTIGATORY PROCESS

In operating under the authority vested in me through my appointment, I follow a process that ensures fairness to both the individual bringing a Complaint (the “Complainant”), and the Council Member responding to the Complaint (the “Respondent”). This fair and balanced process includes the following elements:

- The Respondent receives notice of the Complaint and, once my initial Inquiry confirms that the Complaint was properly made and is capable of investigation, is given an opportunity to respond.
- The Complainant receives the Respondent’s comments and is given an opportunity to reply.
- I interview all witnesses to the actions that lead up to the Complaint, and review the relevant documents, on-line information, photographs, videos, etc.;
- More generally, the process is transparent in that, throughout the process, the Respondent and the Complainant get to see each other’s communications with me.
- In most cases, as was the case in this investigation, the Respondent is made aware of the Complainant’s name. Personal information (such as phone numbers or email addresses) is redacted.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a response or reply.
- Where appropriate, I will invite a Complainant to clarify a Complaint. When a Complaint has been clarified, the Respondent is provided with the original document and the clarification.
- When I have completed my report, a copy is provided to the Complainant and the Respondent, before the report is circulated to Council.

- In accordance with the Municipal Act (Subsection 223.6(3)), the final report must be made available to the public.

In this particular investigation/inquiry process, I interviewed all seven members of Council (including both the Complainant and the Respondent), the CAO and the Town Clerk. I reviewed relevant documentation, including emails, and a video of the May 10th, 2021 Council meeting (open session).

While not all interviews, documents and other evidence are specifically mentioned in this report, I have reviewed and considered:

- By-law 10-21 (the By-law which appoints me as an Integrity Commissioner for the Town of Atikokan);
- The Town of Atikokan's Code of Conduct for Councillors;
- The Town of Atikokan's By-law 14-19 (which governs the proceedings of Council meetings);
- The Town of Atikokan's By-law 11-20 – (which amended By-law 14-19);
- The Town of Atikokan's By-law 02-19 – (which approves a Council-Staff Relations Policy);
- The Town of Atikokan's By-law 25-19 – (which approves a Workplace Anti-Violence, Harassment and Sexual Harassment Policy);
- The Town of Atikokan's By-law 38-17 – (which deals with the Accountability and Transparency of Council);
- The Ontario Municipal Councillor's Guide 2018, prepared by the Province of Ontario for the 2018 municipal election);
- A 2011 publication entitled "The Role of the Municipal Integrity Commissioner in Ontario" (written by George Rust d'Eye, and published on line by the Municipal Information Network);
- The *Municipal Act, 2001* (S.O. 2001, c. 25), as amended; and
- Various legal cases and other investigators and Ombudsman's reports, as cited.

BACKGROUND TO THE COMPLAINTS

The Town of Atikokan was considering the renewal of an agreement with an existing contractor for the provision of concession/restaurant services in a municipally-owned building. The existing contractors and the representatives of administration of the municipality had reached an impasse regarding negotiation for the terms for renewal of the contract.

The Town of Atikokan administration planned a report to Council outlining the circumstances, to be presented to The Committee of the Whole Meeting on May 3rd, 2021. The CAO's report advised members of Council that the terms requested by the applicants could not be permitted as detailed in Section 106(1) of the *Municipal Act, 2001*, for 'Assistance prohibited' and Atikokan By-law 56-07 pertaining to a prohibition for bonusing of industrial and commercial enterprises. Item 4e of the Committee of the whole Minutes of May 3rd indicates that the CAO would continue "to work with the tenants to see if an agreement could still be made" prior to the Council meeting of May 10th. In the interim the Mayor proceeded to meet with the CAO, administration personnel and the contractors.

Mayor Brown then prepared a resolution which supported awarding a contract to the applicants which he intended to present at the May 10th Closed meeting. Prior to the Council meeting, Mayor Brown approached members of Council individually, circulated his proposed resolution, and sought the Councillors' support.

ISSUE RAISED IN THE INITIAL INVESTIGATION

Councillor Makarenko, the Complainant, alleged that Mayor Brown, the Respondent, in dealing with this matter, had breached sections of Atikokan's Code of Conduct for Councillors. These alleged breaches involved circumstances leading up to, and during, both open and closed sessions of the Council meeting held on May 10, 2021.

In particular, the Complainant referenced Code of Conduct Sections: 7.1, 7.2, 8.2, 8.3, 8.5, 10.4 and 13.2.

I provided the following information to the Respondent and the Complainant, in a letter dated September 6th, 2021. The purpose of the letter was to advise them of my jurisdiction as an Integrity Commissioner, and the approach I recommended for the investigation of these complaints. I advised both parties that I had correlated the alleged Code of Conduct complaints with 3 by-laws of the Town of Atikokan: The Proceedings of Council By-law (Number 14-19); the Council-Staff Relations Policy (adopted by By-law 02-19); and the Workplace Anti-Violence, Harassment and Sexual Harassment Policy (adopted by By-law 25-19).

These By-laws have sections that mirror the Code of Conduct allegations.

This change in approach took the following issue into consideration:

Jurisdiction: Does an Integrity Commissioner have jurisdiction over statements made during a meeting of Council or a committee?

I have researched decisions by other Integrity Commissioners and am of the opinion that I do not have jurisdiction for the following reasoning:

In the City of Toronto, integrity commissioners have consistently taken the position that they do not have jurisdiction over the behaviour of Council Members during Council and committee meetings. Professor David Mullan¹, the first municipal integrity commissioner ever appointed in Canada, noted that the Municipal Act requires that each municipality pass a procedure by-law and that the procedure by-law provides a clear mechanism for enforcing decorum and orderly conduct during meetings. Integrity Commissioner Mullan concluded:

“In general, the Integrity Commissioner does not have authority under the Code of Conduct to review complaints about the behaviour of Councillors at Council and Committee meetings. The behaviour of Councillors at Council, while regulated by the Code of Conduct, is the responsibility of Council (acting primarily through the Mayor or his deputy). Absent a resolution of Council requesting the Integrity Commissioner to become involved, this self-policing is part of the statutory rights and privileges of Council.”

¹ City of Toronto, Report on Complaint (April 6, 2005, Integrity Commissioner David Mullan)

Subsequently, Toronto's Interim Integrity Commissioner Lorne Sossin², Integrity Commissioner Janet Leiper³ and Integrity Commissioner Valerie Jepson⁴ have all declined to exercise jurisdiction over comments made during meetings. As Integrity Commissioner Jepson has explained:

"The strong policy principle behind this approach is that the Integrity Commissioner ought not to interfere with the conduct and management of any particular meeting. This makes good sense. The Speaker, or any Chair of a meeting, requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with the procedural bylaw and as specifically stated therein, to oversee order and behaviour of members. So, if a councillor uses an insulting term against another councillor, in an effort to ensure decorum, the speaker might rule the question out of order and seek some remedial measure such as an apology or - in a serious case - ejection from the meeting. In most cases, these issues are resolved and the meeting proceeds. There would be little gained by a subsequent referral to the Integrity Commissioner to review the actions. I also note, as Toronto's integrity commissioners have observed, that federal and provincial integrity commissioners/ethics commissioners do not exercise jurisdiction over comments made in the House or in committee. In Parliament, the Legislature, and committees, responsibility for enforcing order rests with the Speakers and the committee chairs."

Atikokan's Proceedings of Council By-law (No. 14-19), in parts 4, 10 & 20, sets clear rules of decorum and conduct and gives the presiding officer all the tools necessary to enforce order.

Part 4 provides for the rules for Closed Meetings. For the purpose of this report, paragraph 4.1(n) states:

Meetings may be closed to the public when the subject matter under consideration relates to one or more of the following: a position, plan, criteria or instruction to be applied to any negotiations carried on or to be carried on by or behalf of the municipality or local board.

Part 10 makes it the presiding officer's duty to restrain Members within the rules of order and to enforce the observance of order and decorum. This section gives the presiding officer powers to maintain order, including the authority to expel from a meeting anyone who engages in improper conduct.

Part 20.1, paragraph (b) provides that no Member shall use offensive words or unparliamentary language in or against the Council or against any Member; and includes the power to expel a Member and allow for an apology, and with a vote of Council, be permitted to retake their seat.

It seemed that some of the subject matter of this Complaint involved conduct at Council meetings. As such, it falls within the boundaries of the rules and enforcement mechanisms of the Proceedings of Council By-law. In those circumstances, as noted, the Integrity Commissioner should not intervene.

² City of Toronto, Integrity Commissioner Annual Report-2009 (July 29, 2009, Interim Integrity Commissioner Lorne Sossin).

³ City of Toronto, Integrity Commissioner Annual Report-2010 (June 28, 2010) Integrity Commissioner Janet Leiper

⁴ City of Toronto, Report from the Integrity Commissioner on Violation of Code of Conduct: then-Mayor Rob Ford (September 22, 2015), Integrity Commissioner Valerie Jepson.

However, the Integrity Commissioner has the authority to review the Complaint in the context of all relevant by-laws, codes and policies.

Under these circumstances, and following precedent, it is appropriate that the Complaint be adapted to fall under other relevant documents that provide jurisdiction to the Integrity Commissioner.

The previously referenced correspondence (September 6, 2021) detailed the “conversion” of the alleged violations, as set out below. Both parties accepted the conversions.

I understand that, from the Complainant’s position, these changes could be frustrating. I want to make clear that they in no way reflect on the Complainant or on her decision to file a Code complaint.

The conversion provides me with the jurisdiction necessary to complete the investigation/inquiry.

CONVERSION OF ALLEGED VIOLATIONS

Complaint 1

Originally phrased as an alleged violation under Section 7.2 ‘indecent words’ of the Atikokan Councillors’ Code of Conduct (“Conduct Respecting Staff and Others”), the alleged conduct will be considered under Atikokan’s Council Staff Relations Policy (adopted by By-law 02-19).

The Complaint is that Mayor Brown spoke rudely to the CAO.

Complaint 2

Originally phrased as an alleged violation under Sections 8.2, ‘directing staff’; 8.3 ‘respect for staff’; 8.5 ‘threatening and coercing staff’; and 13.2 ‘using position to influence’ of the Atikokan Councillors’ Code of Conduct (“Conduct Respecting Staff and Officials”), the alleged conduct will be considered under Atikokan’s Council Staff Relations Policy (adopted by By-law 02-19).

The Complaint is that the Mayor attempted to direct senior staff to change their opinions/positions.

Complaint 3

Originally phrased as an alleged violation under the Code of Conduct of Section 10.4 (“Confidential Information”), the alleged conduct will be considered under the Proceedings of Council By-law (14-19), Part 4 - Closed Meetings.

The Complaint is that the Mayor, in reading a proposed resolution, divulged confidential information.

SCOPE OF THE COMPLAINTS

My role as Integrity Commissioner is to investigate the complaints received. However, in reporting the matters that impacted her, Councillor Mary Makarenko gave information about others' complaints against the Mayor. My authority limits me to only investigating the complaint that I received, and not to address third parties' complaints indirectly reported. As a result, after screening the allegations filed by the Complainant, I was left with three to investigate. The comments detailing the impact of the Mayor's conduct on other Councillors are not within my jurisdiction.

COMPLAINTS

Each of the three complaints will address the following:

- a) Relevant by-law and definition(s);
- b) Statement of the Complainant;
- c) Statement of the Respondent;
- d) the Integrity Commissioner's Rationale; and
- e) the Integrity Commissioner's conclusions.

Complaint 1

- a) Relevant by-law and definition

Council Staff Relations Policy By-law 02-19 P2. Namely: 'Refrain from behaviour that could constitute an act of disorder or misbehaviour; is an abuse of power or otherwise amounts to verbal abuse.

- b) Statement of Complainant:

...during the May 10th In Camera Meeting Mayor Brown said "be quiet" to CAO Young, when the CAO tried to provide information on negotiations."

- c) Mayor's Response:

"I never said this - Jason didn't say anything to support my idea".

- d) Integrity Commissioner's Rationale:

The CAO Jason Young was interviewed and he acknowledged that the May 10th closed session meeting was contentious. However, he could not recall exactly what had been said to him. He also stated that he and the Mayor have had a very close working relationship over the years.

Four Councillors who were interviewed also expressed that they could not be sure that this statement was made. Many commented on the high level of conflict in both the open session Council Meeting and the "in camera" portion of the meeting. One Councillor noted that while he did not recall this exact incident, that he had confidence in Councillor

Makarenko's memory stating, "I cannot remember exactly what he (Mayor) said but I do believe if Mary said that he said that, I would believe her."

1. The CAO to whom the words "be quiet" were alleged to have been spoken can't recall this taking place.
2. None of the other Councillors interviewed can personally recall this statement having been made.
3. The Minutes of the Closed Meeting do not reflect this comment.
4. Councillor Stimson strongly believes that if Councillor Makarenko heard it then it must have taken place.
5. The Respondent denies having made the alleged statement.
6. Sec 225 of the *Municipal Act* states that the role of the head of Council, herein the Mayor presides over council meetings.

Sec.225.of the *Municipal Act, 2001*:

It is the role of the head of council,

- to act as chief executive officer of the municipality;
- to preside over council meetings so that its business can be carried out efficiently and effectively;
- to provide leadership to the council;
- c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);

Based on witness interviews, it is unclear whether or not the comment "be quiet", made by the Respondent to the CAO, occurred. However, the Respondent, in his role as Mayor, was also the Chair of this Council meeting, and within that role, he can (and should) exercise control over who is speaking and when. To tell the CAO to "be quiet", though perhaps not diplomatic and perhaps seen as abrupt, was within his rights as the Chair presiding over the meeting.

e) Integrity Commissioner's Finding:

I determine that this complaint is not substantiated.

Complaint 2

a) Relevant by-law and definition:

By-law 02-19 Council-Staff Relations Policy

Applicable regulations:

- Councillors are expected to uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions.
- Councillors must acknowledge that only Council as a whole has the capacity to direct staff members through the CAO to carry out specific tasks or functions.
- Council members agree that staff members have a duty to the whole Council rather than any individual member.

- Councillors must refrain from using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.
- No Member shall 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, including the duty to disclose improper activity.
- Councillors must refrain from behaviour that could constitute an act of disorder or misbehaviour.
- Direction is given to staff through resolution of Council as a whole.

b) Statement of Complainant:

"Following is my account of what happened within the few days before the Council meeting, which culminated in Mayor Brown's Resolution being defeated by a recorded vote. When Mayor Brown added his Resolution, which was a "pseudo" contract with First Round Draft to the Agenda for the May 10/21 (Mon.) Council Meeting on May 7/21 (Fri.), I realized he had undermined the work of CAO Young and Community Services Manager Hainey, Council's Negotiators for the renegotiating of that contract, and, in fact, had decided to perform that duty himself with no authorization. Over the weekend he attempted to persuade several Councillors to support his Resolution and emailed May 8/21 – Sat. AM a further document from Tara Warren – "Costs of Opening First Round Draft" to Council, but not to Administration. The dates for Mayor Brown's interference with the Negotiation Process began at least several days earlier than May 7, when it became evident to me what had happened. On May 6, Thurs. a meeting had been held with CAO Young, Community Services Manager Hainey, Mayor Brown, Dan and Tara Warren (First Round Draft), at which Mayor Brown and the Warrens were told that Negotiations had reached an impasse information I received in a phone call with CAO Young on June 4). On Wed. May 5, the Clerk had emailed a letter, dated May 4, that had been sent to the CAO from Dan and Tara Warren to Council and the Mayor. This communication was followed by an email from the Mayor, telling CAO Young and Community Services Manager Hainey what to do, while negotiating. I, as a Councillor, was not present at portions of this Incident that occurred in the workplace (Town Hall). As of May 7, Council had had one report from the Negotiating Team, and was expecting a further update at the May 10 Council Meeting. As a Councillor, I did not know that Negotiations had reached an impasse, until I became aware of Mayor Brown's Resolution on May 7."

c) Mayor's Response

"Yes I tried to do this for the town of Atikokan that wanted the place open - no councillors cared"; and further stated in correspondence dated June 8th 2021: "I wanted to do anything I could to keep the facility open with Dan and Tara continuing to operate for at least another 3 years. I got heavily involved as our CAO, Jason Young and Tom Hainey, our Community Services Manager, couldn't get an agreement with Dan & Tara. No Councillor was interested in trying to solve the problem either, so as Mayor I wanted to keep the facility operating for our team."

In reply to the allegation of “telling CAO Young and Community Services Manager Hainey what to do while negotiating” he states: “I was suggesting; not telling.”

d) Integrity Commissioner’s Rationale:

The Mayor was dissatisfied with the report from the CAO to Council relating to renewal of a contract for a concession/restaurant business in a Town-owned facility. The recommendation that was presented in the report did not recommend renewal of the contract.

He took it upon himself to continue negotiations with the owners of the business. Council ultimately supported the recommendations in the CAO’s Report presented at the May 3rd Committee of the Whole Meeting. The Mayor drafted a new resolution based on his negotiations and brought it to the May 10th Meeting of Council. Council did not support his alternate resolution.

e) Integrity Commissioner’s Findings:

Though being zealous and taking steps to ensure his point of view for having this contract for a restaurant, it did not constitute an act of disorder. The Mayor, or any Councillor as elected members of Council can agree to disagree at times and may push on matters which are of concern. It is my opinion that this matter is not “an abuse of power or otherwise amounted to intimidation, verbal abuse, and the adverse treatment of others;”

Quite often a Member of Council will directly engage senior management to discuss a problem and even offer methods to help resolve situations. Any member of Council including the Mayor can bring forward a resolution. On May 10th the Mayor contacted the Town Clerk to have his resolution put on the Closed Meeting Agenda. Though late for the agenda, he spoke to it at the Open Meeting seeking votes to have it put on the Closed Meeting agenda for discussion, in order that Council could hear his recommendations.

Council, as a whole, has the capacity to direct staff members through the CAO to carry out specific tasks or functions. In this case the Mayor’s action in continuing negotiations with this food establishment contractor was not a breach of the By-law. His resolution contained recommendations to Council and there is no evidence that he made any promises to the applicants, or that he directed staff to change their positions or opinions.

I find that the Respondent did not breach By-law 02-19.

Complaint 3

a) Relevant by-law and definition:

The Proceedings of Council By-law 14-19 Part 4 -CLOSED MEETINGS

“Meeting may be closed to the public when the subject matter under consideration relates to one or more of the following:

...(n). A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

b) Statement of Complainant:

“Negotiating in Public in an Open Council Meeting.

The Warrens, who had declined previously to negotiate in public (email available) were discussing the situation with the Mayor before his Resolution was defeated...No matter how appropriate the Mayor and the Warren’s thought it was, Atikokan does not negotiate in Public”

c) Mayor’s Response:

“I tried to work with them to keep the place open and operating even though councillors didn’t care”.

d) Integrity Commissioner’s Rationale:

The Respondent had drafted a Resolution detailing information concerning details about negotiations between the Town and a private business.

I have examined emails and viewed the video of the Town’s May 10th Council Meeting open session. The video confirms the allegation of the Complainant. The Mayor did not deny the allegation of the Complainant. His response spoke more to trying to get Council to support his efforts to keep an eating establishment operating on Town property.

In that the bylaw reads that the meeting “may be closed to the public” and not, “shall be closed to the public” there was no reason for the Mayor not to read his draft resolution in the Open Session of the Council Meeting of May 10th.

In general, any member of council can put forward a resolution, any time on any matter. Resolutions fall within Robert’s Rules and/or most procedural by-laws.

The information in the resolution may have been sensitive to the contractors. However, they were present, knew the contents of the resolution, and did not complain.

e) Integrity Commissioner’s Finding:

It may have been more transparent if the Mayor had given his proposed resolution to the Clerk and the Clerk would then have given the Mayor advice as to whether this should be considered in open or closed session.

However, I have determined that the Mayor did not violate The Proceedings of Council By-law 14-19 Part 4 -CLOSED MEETINGS.

It is true that negotiation should not be done in open session, however the reading of the resolution was not “negotiation”. There was no debate prior to the recorded vote which defeated the resolution.

OPINION

All Councillors, and citizens have a right to file complaints under the requirements of the complaint process of the Town of Atikokan. Through the course of this investigation many of the Complainant's allegations involving third parties were not able to be processed. As already stated, "As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a response or reply."

This investigation was initiated as a result of a member of Atikokan's Town Council filing complaints against the Mayor of Atikokan. A situation arose which required Council to make a decision to award a private food service company a contract to operate in a municipal building. A report to Council by the Town's Chief Administrative Officer did not recommend the terms for renewal that had been requested by the contractor.

The Mayor, a strong proponent to awarding the renewal of the contract, took a hands-on role to negotiate directly with the current contractor. He prepared a resolution to Council to renew the contract on terms he had negotiated.

Mayor Brown, is certainly a dedicated civil servant and a strong promotor for the Town of Atikokan. While his behaviour through this process appeared adversarial towards fellow Councillors, his fervour was rooted in his belief in having a food service operating for the betterment of the community. Unfortunately, this caused him to appear rude and adversarial towards the Council members.

The Open Meeting that I observed showed unparliamentary language being used by the Mayor towards the Complainant and another member of Council. When Councillor Makarenko made a statement at the meeting, the Mayor's response was "that's your trouble". This was impertinent and unparliamentary, although Councillor Makarenko did not address this in her complaint.

Several witnesses who were interviewed complained about Mayor Brown's conduct. It is evident that Council Members are finding working with the Mayor to be challenging.

The complaints brought forward leading to this investigation also uncovered concerns regarding the knowledge level of Councillors relating to administration, policies and procedures.

When queried about training provided for the role of Councillor, one of the Councillors reported being given a large binder and was told to take it home to read, but that it had been too overwhelming.

RECOMMENDATIONS

I make the following recommendations to assist Council in fulfilling its obligations under the *Municipal Act, 2001* and enhancing the transparency of its meetings.

Recommendation 1

Members of Council should be vigilant in adhering to their obligation to ensure that Council complies with its responsibilities under the *Municipal Act, 2001* and its own Proceedings of Council By-law No 14-19. In order to achieve this, all Council Members should attend an instruction session given by a facilitator with knowledge in this field to ensure that administrative policies, practices and procedures are understood.

Recommendation 2

All newly elected Councillors should be provided with orientation training to learn the roles and responsibilities of their position and those of staff.

