



Integrity Commissioner's Report

For

The Township of Jocelyn

Investigation of Complaint # 2023-1

Date of Request for Investigation: 30 August 2023

Date of Presentation of Report: 12 March 2024

Integrity Commissioner: Antoinette Blunt MPA, CHRL, CHRE, FHRPA

MANDATE

By-law 2019-1418, appointed Antoinette Blunt, Ironside Consulting Services Inc. as the Integrity Commissioner for the Corporation of the Township of Jocelyn, commencing on February 5, 2019, and ending on December 31, 2021. By-Law 2022-1486 confirmed the extension of By-Law 2019-1418 with it now ending on December 31, 2023. Although the contract has expired, given this inquiry was initiated during the Integrity Commissioner's term, it has been completed and is presented.

DISCLOSURE OF COUNCILLOR'S NAME

Reeve Mark Henderson is the individual member of Council who is the subject of this complaint. Given there are findings and conclusions that Reeve Henderson has breached the Code of Conduct By-law 2019-1417, he is identified in this report.

REQUEST FOR INQUIRY

A member of the public filed a complaint with the Integrity Commissioner dated 30 August 2023.

SUMMARY OF COMPLAINT

The Complainant indicated allegations of an individual Councillor violating the overall purpose of the Code and an allegation that Council contravened Code of Conduct, by not abiding by the Hiring Policy.

The Corporation of the Township of Jocelyn's Code of Conduct (Council and Local Boards), Bylaw 2019-1417; 5 February 2019, states as follows:

"A written Code of Conduct for Council and local boards helps to ensure that the members of Council, advisory committees, and local boards of the municipality (as defined in the Municipal Act) share a common basis for acceptable conduct. This Code is designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate. These standards should enhance public confidence that The Corporation of the Township of Jocelyn's elected and appointed representatives operate from a base of integrity, justice, and courtesy.

The key principles underlining the Code of Conduct are:

- a. All members shall serve and be seen to serve their constituents in a conscientious and diligent manner.
- b. Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent.

- c. Members are expected to perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny.
- d. Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature and Council.

Municipal Council members hold positions of privilege; therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community and regard for the integrity of the Corporation. The purpose of the Code of Conduct is to: protect the public interest; encourage high ethical standards among members of The Corporation of the Township of Jocelyn Council and local boards; provide a universal understanding of the fundamental rights, privileges, and obligations of members of The Corporation of the Township of Jocelyn Council and local boards; provide a means for members of The Corporation of the Township of Jocelyn Council and local boards to obtain information on some contemplated conduct in circumstances where they are uncertain as to the ethical appropriateness of that conduct.”

The Complainant has alleged that an individual Councillor:

- a. Has “demonstrated inappropriate conduct” ... “with respect to unacceptable actions exhibited in open meeting, the lack of decorum and respect.” (See letter to A. Blunt dated August 30, 2023).
- b. Had a “real or apparent” conflict of interest on July 21, 2023, when appointing this individual Councillor’s immediate family member as an officer of the Corporation.”
- c. Had “Refused to answer questions posed by the public on July 21, 2023.”

The Complainant has alleged that an individual Councillor and Council as a whole:

- a. “Did not abide by their own Hiring Policy By-law which states very clearly that positions for staff and vacant council positions are to be advertised.”

PROCESS

Upon receipt of a complaint or request to conduct an inquiry within his/her jurisdiction the Integrity Commissioner will deliver a preliminary information report to an open meeting of Council, in accordance with the Code of Conduct (Council and Local Boards, By-law 2019-1417), for Jocelyn Township, Appendix “A”, Formal Complaints, section 4.

There was a delay in the Integrity Commissioner being able to present prior to November 14, 2023, due to short notices on changes in Council Meeting dates.

Interviews of the complainant, respondent and witnesses were held after this date and up to December 20, 2023.

The specific Council Meetings reviewed for this inquiry included the Special Meeting of Council held on July 21, 2023, and the Regular Meeting of Council held on August 8, 2023, given these were the meetings indicated in the Code of Conduct complaint.

There was information provided by witnesses interviewed who referenced other Council meetings, concerns and incidents occurring outside of or not related to these meetings, and as such, they could not be considered given they fall outside the parameters of this investigation.

ALLEGATIONS, FINDINGS AND EVIDENCE IN SUPPORT

Allegation #1: Reeve Henderson violated the overall purpose of the Code of Conduct.

- a. Reeve Henderson advised the Integrity Commissioner no one was appointed as Deputy Reeve once the complaint was filed notwithstanding that an email the Integrity Commissioner was copied on, dated September 25, 2023, indicates Greg Gilbertson is the Acting Reeve. Greg Gilbertson did not act in place of the Reeve. Reeve Henderson attended at and chaired all meetings of Council following receipt of the complaint.
- b. Council has not developed and evaluated the policies and programs of the municipality. There is no policy regarding the utilization of volunteers to fill positions previously held by paid employees. Council has not developed relevant policies for volunteers who are working in roles normally held by paid staff and have not revised other related employment policies that should be applicable to volunteers such as Criminal Records Checks, and other relevant training stated in Health and Safety for the prevention of workplace injuries and incidents.
- c. Council has not appointed Privacy Officer, or established a policy, or program. The legislation requires personal information to be collected, retained, used, and disclosed in a manner that prevents privacy breaches. The Information and Privacy Commissioner of Ontario indicates that the municipality is required to appoint a privacy officer who will lead the development of the privacy program and be responsible for its implementation and day-to-day operation. On January 24, 2024, Reeve Henderson was asked by email who was appointed as Privacy Officer for the Township, and Reeve Henderson responded stating he believes Council as a whole, is the privacy commissioner. No documentation to support that position was provided.
- d. There is no policy regarding the safe keeping of current and former employee records. Reeve Henderson stated that individuals who were appointed to positions formerly held by paid employees, were not required to comply with policies that related to employees. Reeve Henderson also indicated that while

these individuals have signed Statements of Confidentiality, they have access to confidential employee records. Requests were made to the Reeve and subsequently Clive Henderson by email on December 22, 2023, for the Jocelyn Township’s Human Resources/Personnel Policy Manual. No manual was sent but some policies were provided. The policies provided were the Hiring Policy 2004-1050 (stated as applicable only to employees); Prevention of Bullying, Violence and Harassment Policy 2016-1357 (stated as applicable to employees and volunteers); Personal Use of Municipal Property/Equipment Policy (stated as applicable to employees and volunteers from various committees and departments – not dated); and the Confidentiality Agreement, (stated as for employees). Clive Henderson emailed the Integrity Commissioner on December 22, 2023, at 4:40 pm, stating he had signed the Confidentiality Agreement. On January 25, 2024, Reeve Henderson was asked by email if other pro bono Deputy Treasurers had signed Confidentiality Agreements. A response has not been received.

Allegation #2: Reeve Henderson has “demonstrated inappropriate conduct” ... “with respect to unacceptable actions exhibited in open meeting, the lack of decorum and respect.”

- a. Even though there is no specific section of the Code of Conduct regarding the conduct of the Reeve and Council and how members of the public should be treated, the purpose and the underlying principles of The Code of Conduct confirm that elected representatives should operate from a base of integrity and courtesy.
- b. There was consistency in responses from all those interviewed in their perception of how they were treated by Reeve Henderson. Phrases and wording to describe Reeve Henderson’s communication and relationship management style demonstrated lack of respect, rudeness in his tone of voice, belligerent, dismissive, and an elevation of his voice at times. Some individuals indicated there were some people in the gallery that were responding in a similar fashion.
- c. Reeve Henderson referred to those in attendance at the Council meeting of July 21st, 2023, as being rambunctious and that he said things, and they said things and he could have been perceived as being difficult and that he did not raise his voice, but other people did.

Allegation #3: Reeve Henderson had a “real or apparent” conflict of interest on July 21, 2023, when appointing this individual Councillor’s immediate family member as an officer of the Corporation.”

- a. According to the Code of Conduct, Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both real and

apparent.

- b. The Code of Conduct does not address apparent conflicts of interest arising from non-financial matters or set out how to manage non-pecuniary interests.
- c. The minutes of the Regular Meeting of Council held on July 11, 2023, that were adopted by Council at the Special Meeting of Council of July 21st, 2023, resolution 23-112, state Clive Henderson, brother of Reeve Henderson, was one of two individuals appointed as Deputy Clerk Treasurer – pro bono publico. The minutes of the Regular Meeting of Council held on July 11, 2023, indicate that no disclosures of conflict of interest were declared.
- d. In an email to the Integrity Commissioner dated September 14, 2023, Reeve Henderson stated that Kari Ujanen should be contacted regarding the complaint filed against him as his brother may have a conflict. Clive Henderson’s response was he did not have a conflict.

Allegation #4: Reeve Henderson “Refused to answer questions posed by the public on July 21, 2023.”

- a. Witnesses and the complainant indicated the Reeve and members of Council refused to answer questions at this Council meeting from members of the public and from delegates. This resulted in individuals believing that Council had no interest in listening to and addressing their concerns.
- b. Reeve Henderson advised the Integrity Commissioner that in accordance with their Procedural By-law No. 2018-1398, questions did not have to be responded to if there was no motion on the table to discuss or if he believed the questions had been responded to by a response provided to a previously asked question of a similar nature.
- c. Reeve Henderson indicated the response to questions regarding the Hiring Policy, By-law No. 2004-1050, had been responded to by the Township’s lawyer, Mr. Gordon P. Acton and his response was read out at the Special Meeting of Council held on July 21, 2023, and recorded in the minutes of that meeting. Reeve Henderson stated that subsequent questions regarding the Hiring Policy were not responded to as he believed they were answered previously by Mr. Acton’s response.
- d. Reeve Henderson did confirm that he would not answer questions from the delegates at these Council meetings, and that they were told to send their questions to the office, and someone would respond.

- e. Minutes of the July 21, 2023, meeting indicate “the delegate forms were part of the Agenda for the July 21st, 2023, meeting and their follow up questions were to be emailed to the office. Witnesses indicated no responses were ever received.

Allegation #5: Reeve Henderson and Council “Did not abide by their own Hiring Policy By-law which states very clearly that positions for staff and vacant council positions are to be advertised.”

- a. The Hiring Policy No.2004-1050, does not indicate that all vacant positions must be posted, advertised, or in some manner, filled by paid employees. There are no policies with respect to the utilization of volunteers to fill positions previously held by paid employees.
- b. The Hiring Policy No.2004-1050, does not state that vacant council positions are to be advertised. In fact, this policy does not address or apply to Councillors.
- c. In the Minutes of the Special Meeting of Council July 21st, 2023, an email from Mr. Gordon P. Acton, sent to Reeve Henderson on July 20, 2023, at 2:09 pm was inserted. Mr. Acton stated that, *“1. Sections 259 of the Act state that the office of a member of council of a municipality becomes vacant if the member resigns from his or her office by notice in writing filed with the clerk of the municipality and the council shall at its next meeting, declare the office to be vacant, and within 60 days after the day a declaration of vacancy, council of the municipality shall, appoint a person to fill the vacancy who has consented to accept the office if appointed, or pass a by-law requiring a by-election be held to fill the vacancy; 2. I see no legal issues.”*
- d. A letter to Reeve Henderson and Council dated July 20,2023 from the Jocelyn Ratepayers for Accountable Government, included with the Agenda for the August 8, 2023, meeting of council, stated their strong objection to the withdrawing of the offer made to Mr. Scott Eddy to be seated as a councillor. This group also stated that Reeve Henderson unilaterally decided Mr. Eddy had a conflict of interest. Mr. Eddy did not declare a conflict of interest.
- e. Mike Jagger, By-law Consultant for Jocelyn Township, confirmed in an email to Reeve Henderson, dated July 20, 2023, (which email Jagger forwarded to the Integrity Commissioner), regarding the new Clerk and Deputy Clerk Treasurers who are not employees of the municipality (volunteers – pro bono), that he does not think the hiring policy applies to them or needed to be followed when appointing them.

- f. In the Minutes of the Special Meeting of Council July 21st, 2023, an email from Mr. Gordon P. Acton, sent to Reeve Henderson on July 20, 2023, at 2:09 pm was inserted. Mr. Acton stated that, *“There is an existing hiring policy which was passed some time ago and which we attach which council may find that it is not following the existing policy and may wish to update the policy.”* Reeve Henderson confirmed Council has not reviewed or revised the Hiring Policy since this date.
- g. Several individuals who were interviewed raised concern about volunteers having access to confidential information and records in the Township office and that these volunteers were not required to undergo criminal records checks and other employment related hiring policies, prior to their appointments.
- h. On January 24, 2024, Reeve Henderson was asked by email who was appointed as Privacy Officer for the Township, and Reeve Henderson responded stating he believes Council as a whole, is the privacy commissioner. No documentation has been provided to support that statement.
- i. There is no policy regarding the safe keeping of current and former employee records. Reeve Henderson stated that individuals who were appointed to positions formerly held by paid employees, were not required to comply with policies that related to employees. Reeve Henderson also indicated that while these individuals have signed Statements of Confidentiality, they all have access to confidential employee records.
- j. Requests were made to the Reeve and subsequently Clive Henderson by email on December 22, 2023, for the Jocelyn Township’s Human Resources/Personnel Policy Manual. No manual was sent but some policies were provided, namely the Hiring Policy 2004-1050 (stated as applicable only to employees); Prevention of Bullying, Violence and Harassment Policy 2016-1357 (stated as applicable to employees and volunteers); Personal Use of Municipal Property/Equipment Policy (stated as applicable to employees and volunteers from various committees and departments – not dated); and the Confidentiality Agreement, (stated as for employees).
- k. Clive Henderson emailed the Integrity Commissioner on December 22, 2023, at 4:40 pm, stating he had signed the Confidentiality Agreement. On January 25, 2024, Reeve Henderson was asked by email if other pro bono Deputy Treasurers had signed Confidentiality Agreements. A response has not been received.

CONCLUSIONS

Allegation #1: Reeve Henderson violated the overall purpose of the Code of Conduct.

- a. Reeve Henderson violated the overall purpose of the Code of Conduct By-law 2019-1417, by not having an Acting Reeve act in his place once the complaint was received by him. The Intake Procedures state that, “Upon receipt of a complaint involving the Reeve, the Clerk shall immediately advise the Council member appointed as Acting Reeve at the time of the allegation who is authorized to act in place of the Reeve.”
- b. Council violated one of the key principles underlying the Code of Conduct By-law 2019-1417, that states Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature and Council. Section 224 (b) of the Municipal Act indicates it is the role of Council to develop and evaluate the policies and programs of the municipality.
- c. Council violated Section 224 (b) of the Municipal Act by not proceeding to develop relevant policies for volunteers who are working in roles normally held by paid staff, and revising other related employment policies that should be applicable to volunteers such as Criminal Records Checks, and other relevant training stated in Health and Safety for the prevention of workplace injuries and incidents.

Allegation #2: Reeve Henderson has “demonstrated inappropriate conduct” ... “with respect to unacceptable actions exhibited in open meeting, the lack of decorum and respect.”

- a. Based on the balance of probabilities, the Integrity Commissioner concludes that it is more likely than not that members of the public were treated disrespectfully and without courtesy, by Reeve Henderson, in violation of the overall purpose and underlying principles of the Code of Conduct By-law 2019-1417.

Allegation #3: Reeve Henderson had a “real or apparent” conflict of interest on July 21, 2023, when appointing this individual Councillor’s immediate family member as an officer of the Corporation.”

- a. Reeve Henderson did not violate the Municipal Conflict of Interest Act regarding the appointment of his brother Clive Henderson to the position of Deputy Clerk Treasurer – pro bono publico. There was no pecuniary conflict. Reeve Henderson was not engaged in decision-making process related to matters in which he had a personal economic interest. There was no

reasonable likelihood or expectation of any financial gain by Reeve Henderson in relation to this appointment given Reeve Henderson receives no remuneration for his role as Reeve and his brother was being appointed to the role of Deputy Clerk Treasurer without pay.

- b. Reeve Henderson violated one of the key principles underlying the Code of Conduct By-law 2019-1417, that states Members should be committed to performing their functions with integrity and to avoiding the improper use of influence of their office, and conflict of interest, both real and apparent. As a reasonably well-informed person, Reeve Henderson ought to have known that he had a personal, non-pecuniary, conflict of interest regarding the appointment of his brother Clive Henderson, to the position of Deputy Clerk Treasurer. As an elected official, Reeve Henderson bears a primary duty to serve the public interest above his own self-interest, and a conflict of interest may not be pecuniary and could be non-pecuniary, real, or apparent. Judicial inquiries have stated that the Municipal Conflict of Interest Act does not represent a complete codification of the laws governing conflict of interest and members of municipal Council and the application of common law must be considered. However, it is outside the scope of this investigation and the Integrity Commissioner's role to conclude the Reeve, as brother to the Deputy Clerk Treasurer, and as a reasonably well-informed person, has a personal interest under common law when exercising his public duty.

Allegation #4: Reeve Henderson "Refused to answer questions posed by the public on July 21, 2023."

- a. Reeve Henderson and Council violated one of the key principles underlying the Code of Conduct By-law 2019-1417, that states all members shall serve and be seen to serve their constituents in a conscientious and diligent manner, by not responding to constituents either at Council meetings or to submitted questions from delegates at Council meetings. Reeve Henderson ought to have known that rate payers were frustrated and believed their concerns were not being heard and responded to appropriately and made some effort to find a way to respond to individuals regardless of policy or protocol.

Allegation #5: Reeve Henderson and Council "Did not abide by their own Hiring Policy By-law which states very clearly that positions for staff and vacant council positions are to be advertised."

- a. Reeve Henderson and Council did not violate the Hiring Policy By-law No. 2004-1050 with respect to filling the vacant Councillor positions as this Policy and By-law does not apply to Councillors.

- b. The Integrity Commissioner cannot conclude if Reeve Henderson and Council violated the Municipal Act or the Municipal Conflict of Interest Act regarding the procedure the utilized for filling the vacant Councillor positions as this matter falls outside the jurisdiction of the Integrity Commissioner.
- c. The procedure for declaring a conflict of interest in the matter of the consideration of the appointment of Mr. Scott Eddy would be a matter of consideration under the Municipal Conflict of Interest Act and as such, this particular matter is outside the jurisdiction of the Integrity Commissioner, according to the Code of Conduct, By-law No. 2019-1417.
- d. Council has violated Section 224 (b) of the Municipal Act which indicates it is the role of Council to develop and evaluate the policies and programs of the municipality, by not proceeding to develop a policy regarding the utilization of volunteers to fill positions previously held by paid employees and by not developing relevant employment policies for volunteers and revising other related employment policies that should be applicable to volunteers such as Criminal Records Checks and training in Health and Safety for the prevention of workplace injuries and incidents. The lack of appropriate policies for volunteers is in violations of the Procedural By-law No. 2018-1398, section 8.1, I), which states that the decisions of Council are in conformity with the laws and by-laws governing the activities of Council.
- e. Council has violated the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 (MFIPPA) as the Township has no appointed Privacy Officer, policy, or program. The legislation requires personal information to be collected, retained, used, and disclosed in a manner that prevents privacy breaches.

RECOMMENDATIONS

There can be no action of Council to impose suspension of remuneration of Reeve Henderson given he does not receive any remuneration. However, the Integrity Commissioner recommends that Council consider the following with respect to Reeve Henderson and the Council itself:

- 1.0 Issuing a motion of reprimand to Reeve Henderson for violations of the Code of Conduct By-law 2019-1417, as identified in this report.
- 2.0 Requesting that Reeve Henderson apologize to the public at a meeting of Council and provide a written apology to be posted on the township's website, for not abiding by the Code of Conduct By-law 2019-1417.

- 3.0 Appointing the Clerk or the Deputy Clerk as the Privacy Officer for the Township of Jocelyn.
- 4.0 Reviewing and revising the Code of Conduct, By-law 2019-1417 and add a section clearly describing the requirement of treating members of the public with respect. Also, consideration should be given to add a section related to non-pecuniary conflicts of interest.
- 5.0 Reviewing and revising the Procedural By-Law 2018-1398, to enhance transparency and accountability to the public by:
 - 5.1 In section 3.2, adding a statement that provides for the minutes of the previous meeting and all documents to be presented at the upcoming meeting, to be posted no later than 48 hours before the holding of the regular meetings.
 - 5.2 Adding a section 3.7 stating that all meetings of Council, except for Closed Meetings, shall be Live Streamed.
- 6.0 Reviewing and amending all policies and procedures for employees including:
 - 6.1 Hiring Policy By-law 2004-1050; to include a section on the management of conflict of interest in the instance where an immediate family member is involved. The employee or the Council member should declare a conflict whenever discussions or decisions are being considered related to the performance or compensation of the employee.
 - 6.2 A similar policy should be developed for appointed volunteers who are functioning in staff roles.
- 7.0 Developing relevant Policies and Procedures for Volunteers who are holding statutory roles under the Municipal Act and other volunteers who are undertaking roles previously held by paid employees, including the following:
 - 7.1 Privacy and Protection of Employee and Volunteer Information and a program for training
 - 7.2 Criminal Records Check
 - 7.3 Health and Safety