

TOWNSHIP OF RAMARA
INTEGRITY COMMISSIONER'S REPORT
H.G. Elston

Citation: *Anonymous v. Councillor Snutch*

Date: November 9, 2021

**REPORT ON THE MATTER OF A COMPLAINT AGAINST
COUNCILLOR DAVID SNUTCH**

Notice: Municipal Integrity Commissioners conduct inquiries and provide reports on their findings to their respective municipal councils. They may make recommendations for the imposition of a penalty or other remedial action to the municipal council. Reference should be made to the minutes of the municipal council meeting where the Commissioner's report was presented to obtain information about council's consideration of each report. When possible, a link to the relevant municipal council minutes is provided.

[Link to Council Decision]

INTRODUCTION

1. On March 17, 2021, I received a formal complaint made against Councillor David Snutch by a person who wished to remain anonymous (the "Complainant"). The Complainant alleges that, on multiple occasions in his dealings with his fellow Councillors and members of staff, Councillor Snutch has breached the Township's Code of Conduct¹ (the "Code").

2. In simple terms, the complaint may be characterized as expressing concerns about Councillor Snutch's style and methods, as he seeks to represent his constituents, particularly in those instances when he is opposed to a position supported by his colleagues on Council, or when he meets with resistance from staff in the pursuit of his objectives. It is both general and specific in nature.

¹ By-law No. 2011-81 Municipal Code of Conduct for Members of Council and Appointed Members of Local Boards and Committees, as amended

THE ALLEGATIONS

3. The Complaint is general in nature in that it alleges that, since December of 2020, Councillor Snutch has been very aggressive at Council and Committee of the Whole meetings in advancing matters that he is concerned about. I am told that Members of Council have told the Complainant that they were uncomfortable with what the Complainant describes as Councillor Snutch's aggressive approach.
4. The specific event that seems to have spawned the Complaint was the Township's sale of part of a Township-owned road allowance to the owner of the Orillia Rama Regional Airport (the "Airport").
5. It was reported to me that the matter came to a head this past spring. Prior to Council's February 22, 2021 meeting, Councillor Snutch sent emails to members of the Lake St. John Cottage Association to encourage support for the effort to stop the sale of the Township road allowance. It is suggested that Councillor Snutch ought to have informed Ward 2 Councillor Jennifer Fisher and given her a heads up on what to expect from residents of her Ward.
6. On Thursday, February 25, 2021, there was a meeting that Councillor Snutch attended with a group of residents from the area near the Airport. Both Councillors Fisher and Deputy Mayor Gough offered to attend but were told it was a planning and strategy session for residents only. It was after this meeting that Councillor Snutch reportedly said he had hired a lawyer for the group out of his own pocket and that they were filing a request under the MFIPPA to discover what involvement the CAO may have had. Councillor Snutch spoke with or left messages with other Councillors about the matter.
7. At the March 1, 2021 meeting of the Committee of the Whole, Councillor Snutch presented a series of reasons why Council should not sell the unassumed road allowance. When asked if he had a conflict of interest because he had said he would be hiring a lawyer, Councillor Snutch said he hadn't hired a lawyer but had only talked to a lawyer for advice. It was at that meeting, where Councillor Snutch commented that the staff report was "the fastest staff report in history", a comment that the Complainant alleges was disrespectful.

8. Specifically, it is alleged that Councillor Snutch:
- a) Breached Sections 5.3, 5.4 and 5.6 of the Code by aggressively seeking to impose his issues on the agenda at meetings of the Committee of the Whole and Council;
 - b) Breached Section 5.8 a) of the Code by objecting to the sale of a municipal unopened road allowance to the owner of the Airport, contrary to the common good of the Township;
 - c) Breached Sections 5.13 by, prior to the February 22, 2021 meeting of Council, encouraging residents to oppose the sale of the road allowance and by excluding other Members of Council from attending a February 25, 2021 meeting with area residents, thereby impugning a decision by Council;
 - d) Hired a lawyer for the Lake St. John Cottagers Association and therefore has a conflict of interest;
 - e) Has suggested that he will be making a request under the *Municipal Freedom of Information and Protection of Privacy Act*² (the “MFIPPA”) for records documenting the involvement of the Township’s Chief Administrative Officer in the matter, to support an effort to have the C.A.O. terminated;
 - f) Breached Section 10.1 of the Code (Confidential Information); and
 - g) Breached Sections 19 and 20 of the Code by being unduly critical of a staff report, by dealing directly with members of staff and not the CAO, without Council direction, tried to influence staff and sent intimidating emails to staff.

9. For the purposes of this report, I have separated the allegations into three general concerns:

- 1) **General Conduct:** Councillor Snutch’s attitude and tone in his interactions with fellow Councillors (Code Sections 5.3, 5.4 and 5.6);

² *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c M.56

2) **The Common Good:** Councillor Snutch's failure to advance the common good by objecting to the sale of part of a Township-owned road allowance to the owner of the Airport and failing to declare a conflict of interest (Code Sections 5.8 a) and 5.13 a), d) and e)); and

3) **Conduct Respecting Staff:** Councillor Snutch's treatment of staff, particularly the then CAO, John Pinsent (Code Sections 19.1, 19.4, 19.5 and 20.1).

THE CODE

10. For ease of reference, the provisions of the Code to be considered are:

5.3 Members will conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected, are open and honest, focus on issues rather than personalities, and shall avoid aggressive, offensive or abusive conduct.

5.4 Members should be committed to performing their functions with integrity, accountability and transparency, avoiding improper use of influence of their office, and conflicts of interest, both apparent and real.

5.6 It shall be the duty of all Members to abide by all applicable legislation, policies and procedures pertaining to their position as a Member.

5.8 Every Member in exercising his or her powers and in discharging his or her Official Duties shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Township Council. In so doing every member shall:

a) Seek to advance the common good of the Township;

5.13 Members of Council:

a) May not impugn or malign a debate or decision or otherwise erode the authority of Council;

d) Must avoid conflict of interest;

e) Must seek to advance the public interest with honesty and treat members of the public and staff with dignity, understanding and respect;

10.1 No member shall disclose or release or publish by any means to any member of the public, or in any way divulge any confidential information, including personal information or any aspect of deliberations acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council resolution to do so.

19.1 Mutual respect and cooperation are required to achieve the Council's corporate goals and implement the Council's strategic priorities through the work of staff.

19.4 Inquiries of staff from Members should be directed to the Chief Administrative Officer or the appropriate senior Managers as directed by the Chief Administrative Officer.

19.5 Only Council as a whole and no single member including the Mayor has the authority to direct staff, approve budget, policy, committee processes and other such matters, unless specifically authorized by Council.

20.1 Every member has the duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation. All members of Council shall ensure that their work environment is free from discrimination and harassment.

COUNCILLOR SNUTCH'S RESPONSE

11. On April 6, 2021, Councillor Snutch provided me with his initial response to the complaint and requested a copy of the Formal Complaint Form. In this initial response, Councillor Snutch noted that he was aware of sections 5.3, 5.4 and 5.5 of the Code and had always abided by those sections.

12. Councillor Snutch believes that he is entitled to represent the residents of the Township as to what is of "common good" to the Township" and that he has always acted to advance that common good. He explained that he "always encourages residents to get involved in Township issues" and has never excluded anyone from any meeting. He did not hire a lawyer and did not make a MFIPPA request (while correctly noting that he certainly would be entitled to make such a request).

13. On his dealings with staff, Councillor Snutch denies being critical of them. Any comments would have only been in a Council or Committee of the Whole meeting, which are all recorded. He does, however, acknowledge an unfortunate email exchange with CAO Pinsent, which I discuss later in this report.

14. On November 1, 2021, I provided Councillor Snutch with my "Proposed Findings Report". I received a detailed response from him on November 9, 2021. Where necessary or helpful, I have noted Councillor Snutch's comments on the facts or findings, in the body of this report.

15. I will, however, deal with one issue raised by Councillor Snutch; his entitlement to know the identity of the complainant. Councillor Snutch has deduced whom he believes to be the complainant (information that I have repeatedly denied to him) and very much wants to name that person. He has asked for my advice as to the consequences if he were to do that.

16. Speaking for myself, to identify or not to identify the complainant is one of the first questions that needs to be answered when a complaint is received. Leaving aside instances where the particular Code of Conduct requires the disclosure, in my view, the answer turns on whether it is necessary that the respondent know the identity of the complainant so as to be able to make a “full answer and defence” to the allegations. If so, generally speaking, the respondent should be told the name of his or her accuser. An example might be a complaint of bullying or intimidation against a person.

17. On the other hand, if the identity of the complainant is not material to the specific allegation and withholding his or her identity does not in any way prejudice the respondent’s ability to respond, generally speaking, the name should not be revealed. For example, allegations of conflict of interest or improper use of municipal resources would usually not require the respondent to know the name of the accuser; there either was a conflict or an improper use of a resources or there wasn’t.

18. Revealing the name of the complainant by the respondent for the purpose of shaming or intimidating that person should never be condoned.

19. I believe that this approach best balances the obvious need for protection of a “whistle blower” against the right of a respondent to properly answer the complaint.

20. I will leave this issue simply by saying that I am not prepared to reveal the identity of the complainant, believing as I do that it is not necessary for Councillor Snutch to know, a belief sustained by his ability to fully answer the allegations against him in this case.

PROCESS

21. In the course of this inquiry, I have interviewed Councillor Snutch, the Complainant, and two others, reviewed all the written materials, including four email exchanges brought to my attention, and watched the March 1st Committee of the Whole meeting.

ANALYSIS AND FINDINGS

22. As the first order of business, I will dismiss the parts of the complaint that relate to Councillor Snutch's hiring of a lawyer and suggesting he would make a request under the MFIPPA. While I suspect the concern was more that Councillor Snutch made those claims as somewhat of a veiled threat, I do not regard them as being necessarily improper, or so aggressive as to constitute a contravention of the Code. In any event, no lawyer was hired and no MFIPPA request was made, and I need not deal further with these allegations.

23. Also, having been provided with no evidence that Councillor Snutch disclosed or released or divulged any confidential information, I am dismissing the allegation that Councillor Snutch divulged confidential information.

24. As to Councillor Snutch not inviting Councillor Fisher or Deputy Mayor Gough to the meeting with area residents, while it may have been better politics, there is no obligation to invite fellow councillors to meetings with constituents, even where those constituents are shared. I do not see the omission as being a breach of the Code of Conduct and I will dismiss this part of the complaint. That said, in any meeting with constituents it is of paramount importance that the Member accurately represent the position of Council on the particular issue, even when he or she does not agree, and that no confidential or incomplete information is shared.

General Conduct

25. It is alleged that Councillor Snutch breached sections 5.3, 5.4 and 5.6 of the Code by being overly assertive in his efforts to add issues to meeting agendas, and by improperly interacting with and being overly critical of staff, to that end.

26. In support of the allegation that Councillor Snutch has attempted to control the agenda at meetings, I was referred only to an email exchange between Councillor Snutch and a member of staff, dated February 18, 2021, and the video of the March 1, 2021, COW meeting. (I have restricted this inquiry to that email exchange and the events of the March 1st meeting, it being terribly inefficient, if not beyond my jurisdiction, for me to engage in an exercise of reviewing meetings in search of poor behaviour.)

27. The email exchange began with an email on February 18, 2021 from the Council Liaison person to all Members of Council, setting out a list of six items to be discussed at the March 1st COW meeting. The liaison officer closes her email by saying: "Please let me know if you have any further questions regarding the items above. Thank you". Councillor Snutch replies about an hour later, asking to have six items added to the March 1st agenda. I see nothing inappropriate in this brief exchange and ten days seems to be plenty of notice to staff to have a matter added to an agenda. According to Councillor Snutch, he has been told that he is allowed to provide discussion topics to the Council Liaison, in this way.

28. Neither do I consider Councillor Snutch's behaviour at the March 1st meeting of the COW to have contravened the Code. Referencing the relevant provisions of the Code: it was not such as to undermine public confidence in the office of a Councillor, it was open and honest, and did not focus on personalities. Moreover, he is not aggressive, offensive or abusive. Nor have I been presented with compelling examples or evidence of Councillor Snutch failing to perform the functions of his office, of improperly using the influence of his office, acting when he has a conflict of interest, or that he has not followed all applicable law, policies and procedures.

29. Accordingly, I am dismissing the Complaint to the extent that it alleges Councillor Snutch contravened Sections 5.3, 5.4 and 5.6.

The Common Good

30. On the sale of the airport road allowance, it is alleged that Councillor Snutch breached sections 5.8 a) and 5.13 a), d) and e) of the Code.

31. Section 5.8 of the Code instructs Members of Council “to seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Township Council. In so doing every member shall: a) Seek to advance the common good of the Township”.

32. To put it another way, Councillors are to advance the common good of the Township, with an important aspect of that obligation being to uphold all federal, provincial and municipal laws; to break the letter and spirit of any of these laws would, in most cases, not be in pursuit of the common good. To the best of my knowledge, Councillor Snutch has not broken any laws. The fact that his view of an action under consideration by Council may differ from some or even all Member of Council does not, in my view, constitute a breach of any Township “law”, as contemplated by Section 5.8 a) of the Code. Moreover, on my review, Council (sitting as the COW) had not made a decision and Councillor Snutch was simply advocating his position.

33. Accordingly, I am dismissing the complaint that Councillor Snutch contravened Section 5.8 a) of the Code.

34. Section 5.13 provides a detailed list of “do’s and don’ts”³ for Members of Council. From my perspective, Councillor Snutch’s position and actions in opposition to the sale of the road allowance to the Airport is best examined against Section 5.13 a) – *Members of Council may not impugn or malign a debate or decision or otherwise erode the authority of Council.*

35. After a careful screening of the video of the March 1st meeting, I do not believe that Councillor Snutch’s participation can be characterized as “impugning” or “maligning” the debate, or that he eroded the authority of Council. He was certainly well prepared to make his points and was effective in that pursuit, but a respectful and powerfully delivered challenge is a hallmark of effective decision-making and should never be characterized as an attack on the honesty or integrity of those opposite.

³ I recognize that there are a number of different approaches to the spelling of *do’s and don’ts*, but have settled on the spelling recommended by the Associated Press.

36. Nor can he be seen as inflaming the issue or encouraging others to be disrespectful. On February 20, 2021, Councillor Snutch sent the following email to two Lake St. John area residents:

Item 8.2 on agenda for Monday's council meeting is to sell the airport the unopened road allowance the township owns so they can build a new runway that goes north/south. This could affect the residents and cottages on lake St. John. I thought you might want to know. You may want to gather some residents together to make sure they have some input on the decision.

Call me if you want to discuss.

37. I do not see this notice and invitation as in any way impugning or maligning a debate or decision or otherwise eroding the authority of Council. Moreover, I note that Section 5.2 of the Code directs Members to *at all times serve and be seen to serve their constituents in a conscientious and diligent manner.*

38. On occasion, there will be a tension among Councillors on an issue. I do not believe that Section 5.13 a) should be read in such a way as to undermine or impair the direction to conscientiously and diligently serve a Member's constituents, as set out in Section 5.2. In this case, I do not believe that Councillor Snutch's advocacy for his constituents was of such a nature and extent to be seen as an affront to Council and I am dismissing the Complaint under Section 5.13 a), d) and e).

Conduct Respecting Staff

39. I have been presented with three email exchanges between Councillor Snutch and members of staff: 1) a January 19, 2021 exchange that began with an email from Councillor Snutch to the Township's Manager of Business, Communications and Community Engagement, that ends with an exchange between CAO Pinsent and Councillor Snutch, some two hours later: 2) a February 10, 2021 evening exchange between CAO Pinsent and Councillor Snutch; and 3) an exchange on June 23, 2021 between the aforementioned manager and Councillor Snutch.

40. In my review of these three email exchanges, I will consider: 1) Do they show a lack of respect, or are they abusive, bullying or meant to intimidate (Section 19.1, 19.5 or 20.1)? and 2) Does the fact that two were sent to staff directly constitute a breach of the Code (Section 19.4)?

41. My attention was also drawn to Councillor Snutch's observation that the staff report on the land sale was "the fastest in history".

The January 19th Email

42. The January 19, 2021 exchange begins with Councillor Snutch writing to the Township's Manager of Business, Communications and Community Engagement, based on his understanding that Council had decided that she would be assisting with the internet structure initiative. He asked three questions, in what I would describe as a non-confrontational way and thanks her, in advance. Within the hour, Councillor Snutch receives an email from John Pinsent, providing a different view of what had happened at Council and answering the Councillor's questions, but chastising him for not, at the very least, copying him on his interactions with staff. Mr. Pinsent says: "I decide how staff is tasked".

43. Councillor Snutch responds, saying he disagrees with Mr. Pinsent's version of what happened at Council and saying: "I do not recall hearing that all communications to [Council Liaison] must go through you. If that is your wish and Council's wish, I will gladly comply. I was under the understanding that Ashley was to coordinate comments from Council related to the internet. ...I any event, I was just asking basic questions, so I can be informed as a Councillor".

44. I find that the tone and content of Councillor Snutch's January 19th emails to staff and Mr. Pinsent is respectful and cannot in any way be characterized as abusive, bullying or meant to intimidate. No breach occurred on January 19, 2021.

The February 10th Email

45. The already strained relationship between Councillor Snutch and CAO Pinsent broke out into the open on February 10, 2021.

On Feb 10, 2021, at 8:24 PM, John Pinsent wrote:

Mr Snutch,

The names and addresses of people who responded to our survey will not be shared, we were explicit when we made that request of the residents. We will aggregate that data in March when we present our report to council.

Any further requests for staff assistance are to be directed to me.

John Pinsent

46. At 8:57 p.m., Councillor Snutch replied:

Sorry John, it is not going to work that way. I am not interested in your summary, I am interested in what the residents are saying.

I am a Councillor and entitled to the emails. If you want to make a big deal about this I will pass a motion at next meeting. Or access through freedom of information. You could redact the names but not the addresses if you want.

Make no sense to me why you should have access to read but not me.

I will speak to staff whenever I want and it will not be through you. Grow up.

47. I have some concerns about this exchange. First, CAO Pinsent's statement that any further requests for staff assistance are to be directed to him, reflects the rule in Section 19.4 of the Code. For ease of reference, I repeat Section 19.4:

19.4 Inquiries of staff from Members should be directed to the Chief Administrative Officer or the appropriate senior Managers as directed by the Chief Administrative Officer.

48. The Code very clearly encourages Councillors to make all inquiries of staff through the CAO, or as directed by the CAO. Councillor Snutch's defiant position that he is entitled to speak to staff as he sees fit is concerning, however, I note that 19.4 is suggestive, not mandatory: "Inquiries of staff from Members should be directed to the Chief Administrative Office...". I am advised and accept that this rule is honoured more in the breach; apparently, it is quite common for Members to reach out directly to staff.

49. Moreover, a relaxed application of the rule is suggested by Mr. Pinsent in his January 19th email to Councillor Snutch where he asks that the Councillor "at least" be copied on Councillor Snutch's emails to other staff.

50. I will admit to being torn regarding the February 10th exchange between Councillor Snutch and CAO Pinsent. Councillor Snutch is clearly upset and strikes a very aggressive tone but, at the same time, the CAO, for lack of a better way of putting it, seems to “give as good as he gets” in their dialogues. Finally, it was not the CAO who put forward this complaint and, although not determinative, it does suggest to me that CAO Pinsent was not so upset by the exchange that he felt compelled to make a complaint.

51. I find that Councillor Snutch did not breach the Code in the February 10th email exchange with CAO Pinsent.

The March 1st COW Meeting

52. Councillor Snutch’s sarcastic characterization of the staff report on the sale of Township lands to the owner of the Airport as the “fastest in history” at the March 1, 2021 meeting was an unfortunate comment but, in the circumstances, not one that I am prepared to find was meant to convey contempt or disrespect of staff.

The June 23rd Email

53. In his response of November 8, 2021, Councillor Snutch objects to the inclusion of this email as part of this inquiry and report. He correctly notes that the complaint was filed on March 17th, over three months before the email exchange of June 23rd, and that the scope of my investigation should have been limited to the same period of time outlined in the complaint. Moreover, he notes that there was never any complaint filed about the June 23rd email and that it is not fair for his emails to be continually monitored, unless a new complaint is filed. I accept Councillor Snutch’s submissions and agree that it is both beyond the scope of the original complaint and unfair to him for me to extend the reach of the original complaint so as to consider allegations relating to this email.

54. That being said, and in the hopes of circumventing any future complaints about this event, I will say that, while my Proposed Findings Report did reference this exchange in way that was not flattering to Councillor Snutch, to his credit, he has undertaken to me that he will make the necessary apologies to the staff member involved and I take him at his word on that.

CONCLUDING REMARKS

55. Having found that Councillor Snutch has not breached the Code of Conduct, there is no authority for me to recommend, or for Council to impose, any sanctions. I do hope, however, that this inquiry will serve to alert Councillor Snutch to the concerns of some of his fellow Members of Council and encourage him to adopt a more conciliatory tone in his efforts to advance the common good of the Township. I sincerely believe that, at the heart of the matter, that is all his colleagues ask of him.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of November, 2021.



H. G. Elston
Integrity Commissioner, Township of Ramara