



ADR
CHAMBERS

Integrity Commissioner Office
for the City of Kawartha Lakes

March 4, 2022

SENT BY EMAIL TO:

Complainant

Councillor Ron Ashmore

cc: Kenneth Jull, Gardiner Roberts LLP (counsel to Councillor Ashmore)

Eli Bordman, Gardiner Roberts LLP (counsel to Councillor Ashmore)

Cathie Ritchie, City Clerk, City of Kawartha Lakes

Dear Complainant and Councillor Ashmore:

Re: Investigation Report IC-14166-0621

1.0 Introduction

[1] The complainant, a by-law officer for the City of Kawartha Lakes ("City"), alleges that Councillor Ron Ashmore interfered with an investigation underway on June 12, 2021 and by so doing contravened various sections of the City's Code of Conduct and Ethics for Members of Council and Local Boards ("Code").

[2] In the course of my investigation, I have reviewed the written complaint, Councillor Ashmore's written response and the complainant's written replies. I also interviewed the complainant, Councillor Ashmore, Zach Bradbury and Brandon Vanderloo.

[3] Following the completion of the aforesaid interviews, Councillor Ashmore retained legal counsel. I have had the benefit of receiving submissions from his legal counsel dated December 2, 2021. These submissions were shared with the complainant who provided me with a response on December 15, 2021.

2.0 The Evidence

[4] While the facts on their face are quite straight forward, each of the parties and the independent witness Bradbury provided somewhat differing accounts of what took place.

[5] On June 12, 2021, the complainant, a by-law enforcement officer, attended at a business known as Emerald Green Landscaping located at 103 Queen Street, in the Town of Lindsay which lies within the City of Kawartha Lakes. A citizen had complained to the City that a sign at the business was obstructing the view of oncoming traffic. The complainant attended at the premises to investigate.

[6] The complainant was in uniform and driving a white van marked “Kawartha Lakes Enforcement Unit Vehicle” which was parked in front of the business. The owner of the business, Brandon Vanderloo, was off site and not available. An employee, Zach Bradbury, was present and the complainant officer engaged him in conversation as part of the investigation. It was the complainant’s intention to take pictures, gather evidence and make sure that the sign in question complied with the City’s by-laws.

[7] The complainant asked Mr. Bradbury a number of questions about the sign but he was unable to say when the sign was installed and whether a permit had been obtained. At some point during the discussion, Mr. Bradbury volunteered to go inside and get a business card for the officer, which he did.

[8] Mr. Bradbury returned with the business card. The officer then advised Mr. Bradbury that his employer might need to purchase a sign permit and that there could be an issue with the location of the sign.

[9] The complainant stated that at no time was the discussion with Mr. Bradbury anything but polite and amicable. Mr. Bradbury stated otherwise. He felt the officer was pressing him for answers and was rude to him and he was uncomfortable being questioned as he was not the owner of the business.

[10] While the two of them were speaking, a car pulled up. According to both Mr. Bradbury and the complainant, Councillor Ashmore got out of the car and walked directly over to them, keeping a proper social distance.

[11] Councillor Ashmore, in my interview with him on September 15, provided several explanations as to why he stopped at Emerald Green. He said he saw a

“staff member” as he was driving by, which caused him to stop. He explained that he used the term “staff member” to refer to the employee of the business and not the by-law officer. He also said he wanted to look at some of the products at Emerald Green.

[12] Councillor Ashmore told me that he did not know it was a by-law officer speaking to the employee when he first pulled in but he acknowledged seeing a white van at some point.

[13] Councillor Ashmore stated that it took about 5 minutes from the time he parked his car to when he went over to where Mr. Bradbury and the complainant were standing. Councillor Ashmore stated, “I looked at their stuff and then went over. I observed them for 2 or 3 minutes to realize (the complainant) was badgering him.” He also advised me that Mr. Bradbury looked like he was in distress.

[14] Councillor Ashmore acknowledged that he gave both Mr. Bradbury and the complainant his card. He told Mr. Bradbury to call him if he needed to and told Mr. Bradbury that he sits on the By-Law Appeals Committee. When asked why he provided his card, he said he wanted both of them to know who he was. The complainant responded by acknowledging that the complainant knew who he was.

[15] Mr. Bradbury confirmed that Councillor Ashmore was passing by Emerald Green, that he saw the by-law officer and that he pulled in. He confirmed that Councillor Ashmore was polite at all times, provided his business card and explained to the officer that Mr. Bradbury was an employee and not the business owner. Mr. Bradbury further said that Councillor Ashmore told him that the complainant officer should go and look at other signs in the area (Kent St., Queen St.). The complainant confirmed that Councillor Ashmore suggested the complainant should investigate other signs and said the officer should not investigate signs where there is new business that the City wants to have.

[16] It is at this point that the officer, according to Mr. Bradbury, asked Councillor Ashmore to leave two or three times, or the officer would charge him with obstruction of the investigation. Councillor Ashmore complied with this request.

[17] In my interview with Mr. Bradbury, he volunteered that Councillor Ashmore “came in to confront [the complainant]. He saw [the complainant] arguing with

me so he stopped.” Mr. Bradbury further confirmed that Councillor Ashmore never went to look at what Emerald Green was selling.

[18] Mr. Bradbury confirmed that at all times Councillor Ashmore was polite and left the premises when asked to do so.

[19] The complainant said that while Councillor Ashmore interrupted the investigation (in the officer’s opinion), he did not prevent the completion of the investigation.

[20] I spoke with Brandon Vanderloo, the owner of Emerald Green, who could do no more than tell me that Zach Bradbury was employed by him at Emerald Green.

3.0 Findings of Fact

[21] The complainant by-law officer was properly in attendance at Emerald Green pursuant to a complaint received by the City regarding a sign.

[22] The complainant questioned an employee of the business regarding the sign and was, in all probability, somewhat more aggressive than might have been necessary. I make this finding based primarily on the evidence of the independent witness, Zach Bradbury, who I found to be truthful and who said he felt uncomfortable with the discussion. I can appreciate this because as an employee he would not have the knowledge that the owner of the business would have and it is understandable that he might be concerned about inadvertently saying something inaccurate.

[23] While the complainant and Mr. Bradbury were speaking, Councillor Ashmore arrived at Emerald Green. I accept Mr. Bradbury’s evidence that Councillor Ashmore pulled in because he saw the by-law officer speaking with Mr. Bradbury. As quoted earlier, “He came in to confront [the complainant]. He saw [the complainant] arguing with me so he stopped.” I further accept that he directly approached the officer and Mr. Bradbury without delay and, as the complainant and Mr. Bradbury both recounted, that he never looked at any product being offered for sale by Emerald Green. In particular, the complainant and Mr. Bradbury advised me that products being sold were located on the other side of the building from where they were standing and Councillor Ashmore never went there.

[24] It is agreed by everyone in attendance that Councillor Ashmore provided his business card and I accept his evidence that he wanted to make sure everyone knew who he was. In preparing this report, I realized that neither the parties nor the independent witness specifically stated that Councillor Ashmore provided his business card from the City of Kawartha Lakes identifying him as a councillor. However, Councillor Ashmore told Mr. Bradbury to call him if he needed to and volunteered to me that he told Mr. Bradbury he sits on the By-Law Appeals Committee. Accordingly, I find that even if the business card merely identified him as Ron Ashmore, with no reference to his public office, he proffered the card for the purpose of identifying himself to the by-law officer and Mr. Bradbury as none other than Ron Ashmore, City of Kawartha Lakes Councillor, because after handing it over he offered his assistance to Mr. Bradbury and mentioned his involvement with the By-Law Appeals Committee.

[25] It is further agreed by all that Councillor Ashmore suggested that the complainant officer should be investigating signs elsewhere and not investigating a sign at Emerald Green, a new business.

[26] I accept Mr. Bradbury's evidence that Councillor Ashmore was polite at all times and although he had to be asked to leave two or three times by the complainant, he ultimately complied with the request to do so.

[27] I further accept the evidence of the complainant that "he [Councillor Ashmore] did not prevent me from completing the investigation; he interrupted the process".

4.0 Issues

[28] The complainant alleges Councillor Ashmore breached the following sections of the City's Code of Conduct and Ethics:

4. Conduct of Members

4.1 In all respects, Members shall:

a) Make every effort to act with good faith and care;

[...]

f) Refrain from making statements the Member knows or ought reasonably to know to be false or with the intent to mislead Council or the public;

9. Staff Relations

9.2 A Member shall:

- a) Respect the professional competence of staff and acknowledge that staff is required to provide objective advice while remaining neutral, carry out directions of council as a whole, and administer the policies of the City without undue influence from any Member.
- b) Respect the administrative structure (“chain of command”) and direct any staff performance concerns through the Chief Administrative Officer as the person responsible for the general control and management of the affairs of the City.

9.3 No Member shall:

[...]

- c) Use their authority or influence to threaten, intimidate, or coerce staff or interfere with the lawful exercise of the duties of staff or the professional or legal obligations of staff.

13. Harassment

13.1 No Member shall harass any other Member, any staff, or any member of the public.

13.2 A Member shall observe and comply with any workplace harassment and workplace violence policies of the City.

[29] The issue to determine is whether Councillor Ashmore’s intervention breached any of the above Code sections.

5.0 Analysis

[30] Counsel submits on behalf of Councillor Ashmore that the application of the Code is limited to a Member’s activity in their capacity as a Member of Council and that Councillor Ashmore was acting in a private capacity when he pulled over at Emerald Green. I do not accept this characterization. For the reasons below, I find that Councillor Ashmore made it clear he was acting as a Member when he intervened with the by-law officer, and he attempted to exert his authority as such.

[31] Councillor Ashmore made it clear on his arrival at Emerald Green that he was an elected Councillor for the City of Kawartha Lakes. He produced his business card and gave evidence that he did so for the express purpose of making sure

everyone knew who he was. The complainant in fact acknowledged that the complainant already knew who he was.

[32] On the state of the evidence, I cannot be certain that Councillor Ashmore proffered his City of Kawartha Lakes business card identifying himself as a councillor, but I do not find this to be determinative. Even if he provided a business card that did not identify him as a City councillor, it is clear that he gave the officer his card to identify himself as Ron Ashmore, City of Kawartha Lakes Councillor, because, during his intervention, in the officer's presence he offered to help Mr. Bradbury (telling him to call him if he needed to) and told him he sits on the By-Law Appeals Committee. The officer's acknowledgement that the officer already knew he was a councillor also supports this finding. Further, as described below, there would be no reason for a private citizen to intervene in an interaction between a member of the public and a by-law officer.

[33] It is Mr. Bradbury's evidence that Councillor Ashmore attended at Emerald Green to confront the by-law officer: "He saw [the complainant] arguing with me so he stopped." Councillor Ashmore did not attend at Emerald Green to look at any of their products and his suggestion that he did so is refuted by both the complainant and the independent witness Bradbury.

[34] Having found that Councillor Ashmore did not stop to purchase products from Emerald Green, one must ask why he stopped. I find that he stopped and intervened in his role as City councillor, believing he would assist a new business owner. There would be no reason for him to stop, as a private citizen, and intervene in the interaction between the officer and Mr. Bradbury. He offered to assist Mr. Bradbury, told him he sits on the By-Law Appeals Committee and told him quite clearly what he thought the by-law officer should (and should not) be doing. He did all of this in the officer's presence and did not pull Mr. Bradbury off to the side when he made his comments. He made them right in front of the by-law officer to undermine the officer's authority. These comments are not something a private citizen would say to a by-law officer conducting an investigation that has nothing to do with the private citizen. For example, a private citizen does not feel compelled to intervene when passing a stopped motorist, and tell the OPP officer who pulled the car over to go catch speeding motorists on a different highway. I find that Councillor Ashmore made these comments to the officer in Mr. Bradbury's presence after identifying himself because he somehow felt that his role as Councillor entitled him to tell the officer what to do. It would be disingenuous to conclude otherwise.

[35] I find that Councillor Ashmore used his authority as a councillor to interfere with the lawful exercise of the complainant's duties. I specifically reject the submission that Councillor Ashmore was not acting in his official capacity but as a private citizen. His very purpose in attending was to let everyone present know who he was and to confront the by-law officer. He made his opinion clear that the by-law officer should not be investigating a new business. It is difficult to conceive of a private citizen acting in this manner.

[36] I am grateful to counsel for Councillor Ashmore for citing the case of *Greatrix v. Williams*, 2018 ONMIC 6, a decision of Integrity Commissioner Giorno, who stated as follows (at paragraphs 139 to 141, footnotes omitted):

139. While politicians must respect the independence of law enforcement officers, there are many aspects of law enforcement on which they can and do engage. Accountability, for example, is not incompatible with independence. Accountability of law enforcement covers a range of topics (including policy, efficiency, finances, administration, use of authority and ethics) all of which elected officials may properly address. In addition, it goes without saying that political officials may debate, propose and make the laws that ultimately get enforced.

140. While (at a "micro" level) a Council Member must not try to influence the disposition of a specific by-law enforcement case, a Council Member (at the "macro" level) is entitled to engage on policy, on accountability, and of course, on the legislative process of making the by-laws that actually get enforced.

141. Thus, the fact that a Council Member is communicating about a by-law enforcement matter does not necessarily mean that the Council Member has overstepped his or her role. The answer depends on whether the Council Member is impermissibly interfering on a specific case or is properly engaged on general concerns.

[37] Given the guidance set out in paragraph 35 above, I find that Councillor Ashmore was acting at a "micro" level, injecting himself into the disposition of a specific law enforcement case. He was not engaged in a discussion or debate on matters of policy, accountability or on the legislative process of making the by-laws that actually get enforced. This Council Member was impermissibly

interfering in a specific case and was not properly engaged on general concerns, to quote Integrity Commissioner Giorno.

[38] I therefore find that Councillor Ashmore is in breach of section 9.3 (c) of the Code in that he used his “authority or influence to [...] interfere with the lawful exercise of the duties of staff or the professional or legal obligations of staff”.

[39] I further find that Councillor Ashmore is in breach of section 9.2 (a) of the Code. By intervening as he did, Councillor Ashmore did not permit the complainant to “administer the policies of the City without undue influence”. The very suggestion by Councillor Ashmore that the complainant should investigate other violations rather than the alleged violation as prompted by a citizen’s complaint is conclusive proof on a balance of probabilities of this breach.

[40] The complainant also alleges a breach of sections 4.1 (a) and (f) of the Code. I reject a breach of section 4.1 (f) accusing Councillor Ashmore of making false statements with the intent to mislead. His only statement was regarding allegations of other sign violations. While this is quite a bold statement, I agree with the submission of Councillor Ashmore’s counsel that it is of no importance to the substantive issues.

[41] With respect to section 4.1 (a) of the Code, which states Members shall make every effort to act in good faith and care, I find Councillor Ashmore’s actions were deliberate, undermining, and made without care and good faith in recognizing and understanding the importance of the by-law enforcement officer’s impartial role. He is in breach of section 4.1 (a) of the Code.

[42] The complainant further alleges breaches of section 13.1 and 13.2 of the Code. While I have concluded that Councillor Ashmore improperly intervened in the circumstances as set out, there are no facts to support an allegation of harassment as a result of the brief encounter between Councillor Ashmore and the complainant. I therefore would dismiss the allegation of a breach of section 13.

6.0 Summary and Conclusion

[43] Based on the facts described above, I find that Councillor Ashmore breached sections 9.2 (a), 9.3 (c) and 4.1 (a) of the Code.

[44] The circumstances surrounding his Code breaches are troubling and serious. One of the hallmarks of our democracy is the fact that peace officers are not

influenced in carrying out their duties by elected officials. Elected officials make our laws and peace officers apply these laws independently and without political influence or interference. Councillor Ashmore's actions crossed the line and are deserving of punishment.

[45] In determining an appropriate penalty, one must be mindful that penalties should promote both rehabilitation and deterrence. For this reason and because of the seriousness of Councillor Ashmore's actions, a reprimand alone would not suffice.

[46] I would recommend that Councillor Ashmore's remuneration from the City be suspended for one month.

7.0 Councillor Ashmore's Comments on Report

[47] In accordance with section 4(f) of the Council Code of Investigation Protocol which is Appendix "A" to the Code ("Protocol"), Councillor Ashmore was given an opportunity to comment on my proposed finding and recommended sanction as set out above.

[48] His legal counsel provided a response by letter dated February 23, 2021, stating that Councillor Ashmore accepts the factual findings but disputes the recommended sanction. In particular, counsel for Councillor Ashmore suggests I recommend a penalty of an apology by the Councillor, a reprimand, and training on the essential separation between Council Members and municipal law enforcement officers for all members of Council or just Councillor Ashmore.

[49] Section 223.4 (5) of the *Municipal Act, 2001* ("Act") sets out the authority around which an integrity commissioner can recommend a penalty to a municipality. It states:

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

[50] Section 5(d) of the Protocol states that “Any recommended corrective action or penalty [in the Integrity Commissioner’s final report] must be permitted by the Municipal Act, 2001, and shall be designed to ensure that the inappropriate behaviour or activity does not continue and is not repeated.”

[51] As I read these provisions together, I may recommend a sanction of a reprimand or a suspension of remuneration up to 90 days. There is no provision for recommending an apology or training as the municipality has no authority to impose such sanction under the Act.

[52] Counsel also refers me to section 6 of the Protocol which states:

If the IC determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the IC shall so state in the report and shall recommend that no penalty be imposed. (underlining by counsel)

[53] I do not find that Councillor Ashmore’s intervention was trivial. He deliberately intervened in an ongoing investigation where he had no business being involved. His intervention was seriously wrong and I cannot emphasize strongly enough the danger to our democracy when elected officials attempt to intervene in an ongoing justice enforcement matter. The mitigating factors enumerated by counsel do not persuade me that Councillor Ashmore’s actions were trivial nor that they were made in good faith.

[54] I agree with counsel that deterrence and rehabilitation are long accepted criteria for the imposition of punishment and I am grateful to counsel for providing a number of cases regarding recommended penalties. I note that none of these cases deal with an elected official intervening in a law enforcement matter except the *Gobin*¹ case. In *Gobin*, the Councillor wrote an email to City staff² asking that by-law enforcement officers allow members of a volunteer group to continue

¹ *Gobin v. Nicholson*, 2020 ONMIC 13 (CanLII)

² The City staff were the Director of Municipal Law Enforcement and Licensing Services and the Chief Administrative Officer, with a copy to the Mayor.

distributing free food to unhoused individuals in a City park during the COVID-19 pandemic “as long as they meet all reasonable regulations regarding health, safety etc.” until “a full report is presented to members of Council and we as the elected Council have had the opportunity to debate and decide on any further course of action”. Commissioner Giorno acknowledged at the outset of his decision “The basis for my finding [that the Councillor’s conduct breached the Code] is the well-established principle that politicians must not interfere in the independence of law enforcement.” However, he concluded “[d]espite the gravity of interference in the independence of law enforcement” that the contravention was “an error of judgment made in good faith” because there was an altruistic motivation to “secure the continued provision of food and necessities to the homeless and people living in extreme poverty”.

[55] The *Gobin* case is distinguishable from the present facts because the Councillor’s email was not a direct attempt to stop an ongoing investigation but rather a request to defer law enforcement action until Council had an opportunity to review and debate an issue of social policy. In contrast, Councillor Ashmore attempted to directly intervene in a matter of law enforcement on behalf of a business owner, and to influence the outcome by identifying himself, offering to assist Mr. Bradbury, stating in the officer’s presence that he sits on the By-Law Appeals Committee and voicing his opinion about what he thought the by-law officer should (and should not) be investigating. This is very different from intervening in a matter of social policy during the COVID-19 pandemic in support of vulnerable people. It is not conduct that can be classified as a good faith error of judgment no matter how much Councillor Ashmore may now regret his actions.

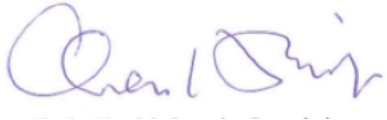
[56] Counsel’s submission that this conduct warrants, at most, a three-day suspension trivializes Councillor Ashmore’s disregard for the independence of law enforcement and his serious breaches of the Code, does not motivate his rehabilitation, and provides insufficient specific and general deterrence in a subject matter of such fundamental importance to our democracy.

[57] I do not believe the imposition of a reprimand would adequately satisfy the principles of deterrence and rehabilitation and I find that a stronger sanction is required given the gravity of the conduct.

[58] I therefore stand by my recommendation to Council that a 30 day suspension of remuneration is appropriate in these circumstances.

Dated this 4th day of March, 2022.

Yours very truly,

A handwritten signature in purple ink, appearing to read "Charles Harnick". The signature is written in a cursive style with a large initial "C".

Charles A. Harnick

Integrity Commissioner for the City of Kawartha Lakes