

**A Report with respect to an Allegation
of a Violation of the Confidentiality Provisions of the
Township of Leeds and the Thousand Islands Code of Conduct**

Introduction

The Township of Leeds and the Thousand Islands (the Township) has appointed Amberley Gavel Limited (Amberley Gavel) as its Integrity Commissioner for the purpose of dealing with two separate complaints.

As Integrity Commissioner, Amberley Gavel acts pursuant to Sections 223.1 to 223.8 of the Municipal Act 2001.

This report deals with one of those investigations into a complaint referred to Amberley Gavel by Township Council indicating that one of its members had breached the confidentiality of a closed session of Council thereby violating its Code of Conduct for Members of Council.

Background

This Code of Conduct, adopted by bylaw May 8, 2016, and effective May 9, 2016, reads in part as follows:

Confidential information

By way of their office, members of council acquire confidential information from a variety of different sources..... Members of council shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest.

It further states:

... Members of council shall not:

a) Where a matter has been discussed in camera, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the in camera meeting.....; and

b) Disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

This complaint was filed by Council when it adopted the following motion on July 10, 2017:

Whereas on July 5, 2017, Councillor John Paul Jackson violated the Township Code of Conduct with respect to in camera information,
Now therefore be it resolved that the Township would like this matter to be investigated by the Integrity Commissioner previously contracted for another investigation.

In accepting the assignment Amberley Gavel, which was “the Integrity Commissioner previously contracted”, noted that the majority of Council had apparently decided already on the violation, but proceeded on the assumption that such a decision was not a foregone conclusion and that it needed to investigate what it considered to be an allegation of a violation.

Analysis and Findings

It almost immediately became apparent to the investigator however that a breach of the Code had taken place.

It is not necessary to cite the specific evidence other than to say multiple media reports and social media postings by Councillor Jackson made it clear that confidentiality had been breached by Councillor Jackson and that he had publicly stated that he had done so.

Except for Councillor Jackson who was unavailable, one of the principals of Amberley Gavel interviewed each member of Council, on July 18, 2017 at the Township offices. Each of them had concluded that the councillor had breached the confidentiality provision of the Code of Conduct, regardless of their support for or against Council’s related actions.

The investigator and Jackson found a mutually agreeable time for an interview on August 29, 2017 at the Township offices.

At that meeting Councillor Jackson acknowledged that he had indeed breached the confidentiality provisions of the Code. He also reiterated a previously reported statement attributed to him that he expected Council to impose “the maximum penalty’ on him for doing so.

In the interview, when asked why he had breached confidentiality, one of the reasons he offered was that “Ethics trumps procedure”.

This was taken to mean that he believed that his rationale for violating confidentiality was ethical but the maintenance of confidentiality was simply procedure.

Amberley Gavel has considered this statement at length. If it were to accept his argument, then it would affect the recommendation respecting any penalty that Council might impose.

To begin with, we do not accept the argument that maintaining confidentiality is simply procedure.

Municipalities are permitted to hold sessions that are closed to the public (in camera sessions) for a limited number of reasons. One of these is intended to protect the personal interests of

identifiable individuals. A second is to keep confidential those communications that are subject to solicitor client privilege.

There is clear evidence that both of these were breached by Councillor Jackson.

Amberley Gavel believes that maintaining confidentiality is indeed an ethical behavior.

Disclosure of the substance of a conversation or direction given by Council in closed session is clearly a breach of ethical behavior.

Could such a breach ever be warranted? In rare circumstances perhaps it might.

One is with respect to the prevention or detection of a crime.

For example, a municipal Integrity Commissioner is required to conduct his investigation in a confidential manner, however:

Reference to appropriate authorities

223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council.

The same type of obligation exists with numerous professionals and a member of Council might consider a parallel responsibility to exist.

In our determination there was no contravention of the Criminal Code with respect to the matters discussed or the direction given by Council in the closed sessions that were referenced when confidentiality was breached by Councillor Jackson nor has it been suggested by anyone that there was one.

Those who write with respect to ethical behavior also suggest, where public safety is at risk due to a matter either decided or ignored in a confidential session of a body, that a breach of confidentiality to preserve public safety might be justified.

Again, we have concluded that the matters regarding which Councillor Jackson breached confidentiality were not issues with respect to public safety.

There are other consequences of these breaches of confidentiality by Councillor Jackson.

The first is that as a result of his media interviews and posts, the employees that he purports to support, without any evidence that he is speaking on their behalf, as well as those he does not support, now have a permanent internet based record questioning their behaviour and their employment performance by association with his inappropriate disclosure.

The second is that his behaviour in these breaches may even cause a “poisoned work environment” for some of his colleagues on Township Council when dealing with matters in legitimate closed sessions when he is present. Their ability to speak frankly in closed session in future will no doubt be hampered by concern for whether or not confidentiality will be maintained by him in future.

Conclusion and Recommendation

1. There is no doubt that Councillor John Paul Jackson deliberately breached confidentiality with respect to matters discussed in closed session by Township Council and thereby contravened the Leeds and The Thousand Islands Council Code of Conduct.

Where an Integrity Commissioner reports such a contravention the Municipal Act 2001 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.*

2. In our opinion this breach and its consequences warrant the suspension of remuneration of Councillor Jackson for the maximum 90 day period as we were unable to determine that there were any mitigating factors that warranted such a violation.

Nigel Bellchamber

for

Amberley Gavel Limited
September 2017