

Region of Peel

Code of Conduct Complaint Against Councillor Groves

Recommendation Report

February 16, 2021

Introductory Comments

- [1] Principles Integrity was appointed the Integrity Commissioner for the Region of Peel in January 2018. We are also privileged to serve as Integrity Commissioner for a number of Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

- [2] The Region of Peel has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct.
- [3] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

REFERRAL TO _____
RECOMMENDED _____
DIRECTION REQUIRED ☒ _____
RECEIPT RECOMMENDED _____

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- [4] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the Peel community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [5] Our role differs from other ‘adjudicators’ whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [6] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to both respondents named in this Report to respond to the allegations, and to review and provide comment on the preliminary findings.

The Complaint

- [8] On October 9, 2020 we were contacted by the complainant Councillor Innis to file a formal complaint against Councillor Groves for contravening the Peel Code of Conduct.
- [9] The complaint alleged that Councillor Groves inappropriately and intentionally shared confidential information, by publicly posting about it on Facebook. The information was subject to an in-camera session at Regional Council on October 8, 2020. The allegation is the Councillor Groves made confidential information public, and knew that doing so would raise questions which Councillor Innis would be precluded from responding to without herself breaching the Code of Conduct to maintain the confidentiality of confidential information.

Process Followed for the Investigation

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[10] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness. This fair and balanced process includes the following elements:

- Reviewing the Complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the Complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent of the Complaint and seeking his response
- Reviewing the Peel Code of Conduct, relevant legislation, by-laws, resolutions, archived meetings, minutes, and other relevant documents
- Interviewing relevant witnesses
- Providing the Respondent with an opportunity to review and provide comments regarding the draft findings of the Integrity Commissioner, although no further comments were provided to us by the Respondent.

Background:

[11] The Respondent is a Member of Regional Council and a Member of Caledon Council.

[12] At Regional Council on October 8, 2020 item 24.4 was listed as an In-camera item as follows:

24. IN CAMERA MATTERS

24.4. Proposed Property Acquisition – Town of Caledon, Ward 4

(A proposed or pending acquisition or disposition of land by the municipality or local board)

[13] Following the In-camera discussion of the matter, Council passed the following resolution:

24.4 Proposed Property Acquisition – Town of Caledon, Ward 4

(A proposed or pending acquisition or disposition of land by the municipality or local board)

Resolution Number 2020-818

Moved by Councillor Sinclair


Seconded by Councillor Palleschi

That the direction given “in-camera” to the Interim Commissioner of Public Works and the Regional Solicitor related to item 24.4 listed on the October

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8, 2020 Regional Council meeting agenda be approved, and voted upon in accordance with Section 239(6)(b) of the Municipal Act, 2001, as amended.

- [14] The Resolution carried on a recorded vote, with 21 in favour and 3 opposed, being Councillors Downey, Early and Innis, three of the Caledon Councillors who sit on Regional Council.
- [15] As is evident from the Resolution, no public information was provided regarding either the identity of the matter (beyond Town of Caledon), nor the specific decision or direction given to staff.
- [16] The Region of Peel did not issue any information or media communication regarding the subject-matter of the Resolution.
- [17] In the hours following the meeting, the Respondent posted the following statement on her Facebook page:

 **Annette Groves** 5h · 🌐

Hello everyone,

Many of you will remember the discussion of the land donation from Mr. Wilson for a future health care facility. Mr. Wilson has been trying to donate this land to the Town of Caledon for over 10 years as an appreciation to the residents of Caledon who fought alongside he and his family to stop Bob Rae from turning these lands into a dump. Unfortunately for some unknown reason Caledon Council kept refusing this very generous gift by the Wilson Family. After several times of trying with Caledon Council I suggested to Mr. Wilson that we bring this offer to the Region of Peel.

I am so pleased to announce that today with the support of my Regional Colleagues from Brampton and Mississauga we voted to accept this generous gift for our community. The support was overwhelming with all members of Brampton and Mississauga Council supporting us.

What was very disappointing is that Cllrs. Innis, Downey and Christina Early who was a substitute for Mayor Thompson all voted against accepting this gift to our community.

(continued)

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Thank you Councillor [Ian Sinclair](#) for tabling this motion and Cllr. Michael Palleschi for seconding the motion.

This is a great victory for our community and Councillor Sinclair and I could not have done this without the support of our colleagues from Brampton and Mississauga and for this we are very grateful. It is a real shame that our own Councillors from Caledon could not see the benefit of this gift to our community and turned it down at every opportunity.

Thank you Mr. Wilson to you and your family for caring about your community, your family legacy will live on and remembered forever!

- [18] The Respondent's Facebook post discloses that Regional Council voted to accept a gift of land, and cast doubt on why three of her colleagues from Caledon Council would vote against it: *"Unfortunately for some unknown reason Caledon Council kept refusing this very generous gift...What was very disappointing is that Cllrs. Innis, Downey and Christina Early who was a substitute for Mayor Thompson all voted against accepting this gift to our community...It is a real shame that our own Councillors from Caledon could not see the benefit of this gift to our community and turned it down at every opportunity."*
- [19] Because the entire matter was discussed in-camera, and no part of that discussion was subsequently made public when the Resolution was voted on, the other Councillors from Caledon were not at liberty to properly respond to questions.
- [20] The complainant received several messages through social media questioning why she did not support the Resolution, but felt herself unable to explain or respond without improperly disclosing In Camera information.

Relevant provisions of the Peel Code of Conduct

- [21] The Peel Regional Council Code of Conduct dates from 2014. Throughout 2020 the Peel Policy and Procedures Committee has worked in consultation with Principles *Integrity* towards adoption of a new Code of Conduct which aligns more closely to the Codes of Conduct applicable to the Members of Council at their City Council or Town Council.

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[22] While the complaint dated October 9, 2020 pre-dated adoption of the new Code of Conduct by one month, we have reviewed the complaint in light of both the now-repealed Code, and the new Code of Conduct adopted November 12, 2020.

[23] The provisions of the Peel Council Code of Conduct (now-repealed) which are most relevant to the facts alleged in the complaint are as follows:

A. Application and Purpose:

ii. The Peel Regional Council Code of Conduct (hereinafter after known as the Code) is Council's statement governing the conduct of its Chair and Members of Council in the performance of their official functions and reflects Council's commitment to meet the community's expectations of transparent, accountable and ethical conduct.

iv. The purpose of the Code is to provide the basis upon which any person, including other Members of Regional Council, may promote high standards of ethical conduct of the Regional Chair and Members of Council through a direct referral, or recourse to public opinion.

C. Guiding Principles

vi. The Regional Chair and Members of Council will be fair and respectful of differences and have a duty to work together for goodwill, the common good and the public interest.

G. Conduct in Relation to Regional Business

i. Confidentiality

When making decisions, the Regional Chair and Members of Council will have access to information that may be confidential or contentious.

The Regional Chair and Members of Council will respect and maintain the confidentiality of information communicated to them in confidence by staff or colleagues.

Relevant provisions of the newly-adopted Code of Conduct

[24] As noted, on November 12, 2020 Peel Regional Council adopted a new Code of Conduct. The newly-adopted Code of Conduct aligns with the Codes of Conduct binding on Councillors at their local municipality.

[25] On the matters subject to this complaint, the Code provides guidance under Rule 9 and Rule 10, parts of which are reproduced below:

Rule No. 4, Confidential Information:

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1. No Member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or Committee discusses the information at a meeting that is open to the public or releases the information to the public.
2. No Member shall 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 where required by law or authorized by Council to do so.

Commentary:

The Municipal Act, 2001 allows information that concerns personnel, labour relations, litigation, property acquisitions and security of the property of the Regional or a local board, and matters authorized in other legislation including MFIPPA, to remain confidential. For the purposes of the Code of Conduct, “confidential information” includes this type of information.

Under the Regional Council Procedure By-law, a matter that has been discussed at an in-camera (closed) meeting remains confidential, until such time as a condition renders the matter public.

Rule 10. Media Communication

1. Members of Council will accurately communicate the decisions of Council, even if they disagree with the majority decision of Council, and by so doing affirm the respect for and integrity in the decision-making processes of Council.
2. Members of Council will keep confidential information confidential, until such time as the matter can properly be made public.
3. In all media communications, including social media, members will treat each other, staff and members of the public with decorum, dignity and respect, and shall avoid messaging that amounts to abuse, bullying or intimidation.

Commentary:

When communicating with the media, a Member should at all times refrain from speculating or reflecting upon the motives of other Member in respect of their actions as a Member of Council.

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While social media can be an excellent tool for communicating quickly with constituents and sharing ideas and obtaining input, social media can breed incivility that generally is avoided in face-to-face interactions. In a world where a transitory comment can become part of the permanent record, Members should exercise restraint in reacting too quickly, or promoting the social media posts of others whose views may be disparaging of Council's decisions or another Member's perspectives.

Analysis:

- [26] The Respondent readily admitted to publicly posting the Facebook statement.
- [27] The Respondent's view is that once the Resolution was publicly adopted, the issue became public. In her view, the motion during the in-camera session detailing the direction to staff for the conditions to be negotiated for acceptance of the land was intended to be public information, once the vote in public was complete.
- [28] During the course of our investigation, the Respondent took the position that her public disclosure of the gift of land following the in-camera meeting did not contravene the Code of Conduct in place on October 8, 2020, nor did it contravene the recently-adopted Code of Conduct.
- [29] In her view, anyone viewing the public meeting would clearly have understood that 21 Councillors voted to accept the gift of land and 3 did not. Thus, her statement disclosed nothing which was not already public knowledge.
- [30] In fact, in her view, her statement provided greater transparency for the public, in line with the aspirations expressed in the Code Commentary under Rule 9, Member Conduct: *"Unless prohibited by law, members should clearly identify to the public how a decision was reached and the rationale for doing so."*
- [31] The public Facebook post by the Respondent, in fact, conveys three clear messages:
1. Regional Council agreed to accept a conveyance of a gift of land from a Caledon family.
 2. The Respondent is pleased because she is looking out for her community, (but it took Brampton and Mississauga Councillors to see the value.)
 3. Inexplicably, three named Caledon Councillors, for reasons unknown, did not want this generous gift.

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[32] It might be possible that the Respondent assumed that the details of the offer were not 'confidential', once the public vote was conducted. However, we find that this is not plausible, for three reasons:

1. There was nothing on the public agenda, nor voted on publicly, which would convey any details about the direction to staff or disclose the fact of the gift being accepted.
2. There was discussion, during the in-camera session, about keeping the acceptance confidential and under wraps, until the negotiations and conveyance were concluded and a proper public announcement could be made.
3. The Respondent has previously been the subject to an investigation for a complaint for essentially the same conduct, which was thoroughly canvassed in the Caledon Integrity Commissioner's Report.

[33] There is a separate In Camera Agenda for Regional Council meetings.

[34] The In-Camera Agenda identified the item for discussion as:

Proposed Donation of Lands at 13344 Humber Station Road
Overview of the Proposal, Conditions and Potential Implications for Peel (For Information)

[35] The In-Camera Agenda is not a public document, nor is the In-Camera Direction to staff included in the public minutes of the meeting.

[36] The Public Agenda for the meeting did not specify the property being discussed; the Public Agenda identified the matter in this way:

Proposed Property Acquisition - Town of Caledon, Ward 4.
(A proposed or pending acquisition or disposition of land by the municipality or local board)

The Public Resolution stated:

That the direction given "In Camera" to the Interim Commissioner of Public Works and the Regional Solicitor related to item 24.4 listed on the October 8, 2020 Regional Council meeting agenda be approved, and voted upon in accordance with Section 239(6)(b) of the *Municipal Act, 2001*, as amended.

[37] The disclosure in the Respondent's Facebook post, revealing the acceptance of the conveyance, was not information shared in the public meeting, on the public agenda, or in the public minutes.

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- [38] We find that the Respondent's disclosure of this information constituted the release of in-camera information contrary to the Code of Conduct.
- [39] The disclosure was, in our view, not inadvertent, or the result of a misunderstanding or incorrect assumptions.
- [40] The offer for the donation of this land had been the subject of much public discussion in Caledon over the years, and of controversy in the media.
- [41] In 2017, the Respondent had previously made a public disclosure of confidential information relating to the same proposed land donation, when it was considered in-camera by Caledon Council in September / October 2017, and this disclosure was the subject-matter of complaints under the Caledon Code of Conduct. In that report, the Integrity Commissioner dealt with the "extremely compromised position" the Respondent's Council colleagues were put in, unable to explain what appeared to be an illogical decision on the vote recorded.
- [42] Although the Integrity Commissioner did not find the Respondent, who acknowledged her error, in breach of the Code, he did recommend that Council consider appropriate messaging of future in-camera information intended to be made public.
- [43] The Caledon Integrity Commissioner provided a report on his investigation to Caledon Council on December 18, 2017. In finding that there was no breach of the Code, in part, because "there was no clear-cut evidence that [the Respondent] made public any of the details of the negotiation...", the Recommendations recognized that:

Reviewing all of the social media posts, I find that the confusing array of facts was ultimately set straight by both a post from Councillor Groves that she had made "a mistake" and by Mayor Thompson clarifying the history of the issue.

...

Members of Council were constrained from explaining the full picture; public discussion of one aspect of the issue inevitably led to questions about other parts not in the public domain. That in turn put some Members in an extremely compromised position, unable to explain what appeared to be an illogical decision on the vote recorded on October 10 [2017].

While it's difficult to generalize from such a unique case, I suggest that in future such situations Council collectively and all Members of Council should carefully consider appropriate messaging about complex issues that are discussed in-camera, and finalized only in very general terms in public,

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in order to assist the public in having a fair and balanced understanding of Council's actions and decisions in such situation.

The balance between the Code requirements for [...] Confidentiality and [...] Communication on sensitive matters can at times be challenging. I urge the Council collectively and Members individually to heighten their efforts to address both sides of that balance.

[December 18, 2017 Report of Integrity
Commissioner Fleming, Caledon, p. 6-7]

- [44] Regional Council did discuss appropriate public messaging of the land donation, during the in-camera meeting of October 8, 2020, determining that no public statement would be released until the transaction, which was still conditional and subject to further negotiation by the Regional Solicitor, was concluded.
- [45] We find that the Respondent's disclosure of information in her Facebook post was not inadvertent, nor an error based on misunderstanding or incorrect assumption.
- [46] We find that her Facebook post constituted an intentional release of confidential information from the in-camera meeting, contrary to the Council decision to delay a public announcement pending the conclusion of the conveyance.
- [47] The Respondent's post suggested that lack of support of the Caledon Councillors was completely inexplicable, unreasonable, and embarrassing.

Unfortunately for some unknown reason Caledon Council kept refusing this very generous gift...What was very disappointing is that [...] all voted against accepting this gift to our community...It is a real shame that our own Councillors from Caledon could not see the benefit of this gift to our community and turned it down at every opportunity.

- [48] Regional Council did thoroughly canvass the complex implications for municipal development in the Town of Caledon which might result from the conveyance, just as Caledon Council had done at the closed meeting of 2017.
- [49] The Respondent was present throughout these discussions, participated in the discussion, and heard the concerns expressed. By all accounts, the concerns reflect legitimate planning and development issues.
- [50] It is disingenuous for the Respondent to suggest that the reasons are unknown. The reasons were clearly articulated in the in-camera meeting. That discussion, however, was confidential.
- [51] The 2014 Code of Conduct provides:

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The Regional Chair and Members of Council will respect and maintain the confidentiality of information communicated to them in confidence by staff or colleagues.

[52] The recently-adopted Code of Conduct provides:

No Member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or Committee discusses the information at a meeting that is open to the public or releases the information to the public.

[53] Even where a decision made in-camera is then made public, it is a fundamental principle – reflected in the Code of Conduct – that the substance of deliberations in-camera remain confidential unless and until the Council discloses the information at a public meeting. The substance of deliberations can remain confidential even where a decision is released.

[54] The Respondent's statements in her Facebook post disclose the acceptance of the land donation which was a decision made in-camera and not yet made public. The post suggests the reasons for the position of her Council colleagues' position are unknown, although these reasons were well-canvassed during the in-camera discussion.

[55] The Respondent's statement suggesting an absence of reasons for her colleagues' positions is both disingenuous and dishonest, and is tantamount to impugning the motives of those Councillors. Under the circumstances, this was both unfair and unethical.

[56] Because of the rules in relation to in-camera information, these Councillors and in particular, the complainant, were constrained in their ability to explain their reasons to their constituents and other members of the public reacting to the Respondent's Facebook post.

[57] These Councillors were, once again, as reflected in the Caledon Integrity Commissioner's report in 2017, "put in an extremely compromised position, unable to explain what appeared to be an illogical decision on the vote".

[58] We find that the Respondent placed these Caledon Councillors in this extremely compromised position, knowing they would be unable to provide any explanation without breaching the Code of Conduct.

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Summary of Findings:

- [59] We find that the Respondent's disclosure of information in her Facebook post constituted the release of in-camera information contrary to the Code of Conduct.
- [60] We find that the Respondent's disclosure was not inadvertent, nor an error based on misunderstanding or incorrect assumption.
- [61] We find that her Facebook post constituted an intentional release of confidential information from the in-camera meeting, contrary to the Council decision to delay a public announcement pending the conclusion of the conveyance.
- [62] We find that the Respondent placed other Councillors in a compromised position, knowing they would be unable to provide any explanation without breaching the Code of Conduct. We find that this was unfair and unethical.

Concluding Remarks

- [63] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified and policy. We are not simply assigned the duty of bringing adjudication to grievances between individuals.
- [64] The proper function of an integrity commissioner's report is to illustrate, if there have been transgressions, where the behaviour of elected officials has fallen below the accepted standard. The integrity commissioner is required to administer a fair process to draw findings from relevant evidence, to articulate clearly how the findings and evidence relate to the public interest, and to act as a proxy for the 'Reasonable Person' to conclude whether the community's standards have been breached and if so, to recommend what should be done about it.
- [65] The integrity commissioner is not simply in place to find fault (or to find that there has been no fault). The role is as much about education as it is about adjudication, so that municipal government can function better, and that members of the public are able to gain confidence that their municipal council is operating with integrity.
- [66] The integrity commissioner may recommend that certain sanctions be imposed when a complaint has been sustained. A monetary penalty, although not remedial, can have a salutary effect and serve as a deterrent. The purpose of a sanction is to reinforce Council's ethical framework. In other words, the Code of Conduct must have 'teeth'.
- [67] The *Municipal Act* contemplates sanctions constituting a reprimand or the suspension of pay for up to 90 days. In recommending a sanction, integrity commissioners seek to identify a proportional remedy which both serves to

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recognize the level of seriousness of a breach, and discourage similar conduct in the future.

[68] Breach of confidentiality is the kind of transgression that attracts a significant monetary sanction because the act fundamentally undermines the trust required for Councils to function properly and for the public to maintain respect for Council's adherence to ethical standards.

[69] In our view, the principle that members of council must avoid disclosing confidential information is an important one. Given that the Respondent was previously investigated for similar conduct in 2017 as reported by the Caledon Integrity Commissioner, the intentional disclosure of confidential information in her capacity as a Regional Councillor is especially concerning.

[70] In our view, the Respondent's conduct warrants a meaningful sanction.

Recommendations:

[71] It is recommended:

That the remuneration paid to Annette Groves as a Member of Peel Regional Council be suspended for a period of thirty (30) days.

[72] We wish to conclude by publicly thanking everyone who was asked to participate in our investigation. We express genuine appreciation for the sharing of time, knowledge and opinions by everyone concerned. Our task would have been much more difficult had there been a reluctance to contribute.

[73] We will be pleased to be in attendance when this report is considered to answer any questions Council may have relating to its contents.