
**REPORT ON THE MATTER OF TWO COMPLAINTS
AGAINST COUNCILLOR DORNE FITZSIMMONS¹
June 15, 2022**

**MUNICIPALITY OF KINCARDINE, INTEGRITY COMMISSIONER
H.G. ELSTON**

Overview

1. In Ontario, every four years, there is a municipal election where a group of individuals is elected to work together to advance the business of the Town. They are elected for their perceived ability to make wise decisions on behalf of the Town's residents, not based on any special qualifications or expertise. The fact that most are not necessarily trained or skilled in the various fields that are needed to effectively manage the Town is not, however, as much of a problem as one would think, because they have a professional staff at their disposal. The arrangement is established by provincial law² and represents the essential framework for a healthy local democracy. Council sets the course and staff stays it.

2. The arrangement was not necessarily intended to and, in fact, does not, establish a level playing field between Council and staff. Council is clearly in charge and empowered to issue directions to staff. Moreover, in the worst of cases, Councillors can be abusive and intimidating to staff. In recognition of the susceptibility of the arrangement to such abuse, the province has seen fit to protect it by requiring that all Councils adopt a Code of Conduct for Members of Council. An important part of the Code, dealt with in this report, concerns Council's relations with its staff.

3. While this report deals with only the events of a single meeting between a member of Council and two senior staff, I am hopeful that it will also serve to remind Council of the duty to treat staff with respect and encourage a renewed commitment to that duty.

¹ Municipal Integrity Commissioners provide investigation reports to their respective municipal council and, in most cases, make recommendations for imposition of penalty or other remedial action to the municipal council. Therefore, 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.

² The *Municipal Act, 2001*, S.O. 2001, c. 25, as amended

The Complaints

4. In complaints sworn April 11, 2022 and April 14, 2022, Kincardine's Director of Community Services (the "Director") and Acting Chief Administrative Officer/Director of Corporate Services (the "Acting CAO"), respectively, alleged that, at a meeting on April 1, 2022, Councillor Dorne Fitzsimmons breached section 6.0 (Discrimination and Harassment) and section 7.0 c), h) and i) i. and iii (Conduct Respecting Staff) of the Code of Conduct for Kincardine's Council and Local Boards (the "Code").

5. For the reasons that follow, I have determined that, at the April 1, 2022 meeting with staff, Councillor Fitzsimmons contravened sections 6.0 and 7.0 c), h) and i) i and iii of the Code.

The Meeting of April 1, 2022

6. On Friday, April 1, 2022, at 3:00 p.m., an in-person meeting was held at the Acting CAO's office. At the meeting were the Acting CAO, the Deputy Mayor, the Director and Councillor Dorne Fitzsimmons. The meeting was held at the request of Councillor Fitzsimmons to discuss staff reports containing recommendations on an off-leash dog park and a pickleball court, which were on the agenda for Council's meeting on Monday, April 4, 2022.

7. Both the Acting CAO and the Director are accomplished professionals. The Acting CAO holds an Honours Bachelor of Commerce degree from the University of Toronto, is a Chartered Accountant and member of the Institute of Chartered Accountants of Ontario. She has just celebrated her ten-year anniversary at Kincardine. As Acting CAO she is responsible for the general management of the Town. As Director of Corporate Services, she is responsible for Finance, IT, Human Resources and the Clerk's department.

8. The Director has been with Kincardine for just six months, but comes from the neighbouring municipality of Saugeen Shores, having spend 27 years at that municipality, which included a time as the Acting Chief Administrative Officer. She was the Director of Community Services at the time she left Saugeen Shores.

9. At the outset of the meeting, Councillor Fitzsimmons expressed his disappointment with the staff reports on the pickleball court and the off-leash dog park and indicated that the reports did not address the resolutions passed by Council. In the Director's words, Councillor Fitzsimmons scoffed at the Director when she provided her expert opinion regarding the recommendation. When the Director asked why he questioned her expertise, Councillor Fitzsimmons immediately became agitated and was visibly upset.

10. Councillor Fitzsimmons accused the Director of not supporting recreation in rural areas, such as Tiverton and Inverhuron. After being questioned on the various aspects of the report by Councillor Fitzsimmons, the Director stated that she felt Councillor Fitzsimmons was not respecting the expertise that she had. Councillor Fitzsimmons denied this and became visibly agitated.

11. In response to Councillor Fitzsimmons's challenges, the Acting CAO noted that staff are often hesitant to bring forward reports to a council meeting because they were afraid of the reaction from some council members, particularly Councillor Fitzsimmons. The Director stated that, following a difficult meeting on the budget in January, several staff members had contacted her to ask her if she would be returning to work the following day. Councillor Fitzsimmons was extremely upset with this statement. Deputy Mayor Roppel requested several times that Councillor Fitzsimmons leave the meeting.

12. Councillor Fitzsimmons remained, however, and told the Acting CAO that she should be doing a better job managing the performance of her staff, clearly indicating the Director. He stated that he wanted a closed-session meeting of Council to discuss what he saw as the poor performance of the Acting CAO, and stated that the hiring of a new CAO "could not come soon enough".

13. As tensions rose, the Acting CAO saw that Councillor Fitzsimmons was glaring at her from across the table, refusing to look away. His body language and his facial expressions were very aggressive, and she asked him to stop staring at her, as it was making her uncomfortable.

14. Councillor Fitzsimmons stood up, pointed his finger at the Acting CAO and said angrily, "You just wait until Monday night". He repeated that statement, and then left the room. Both Complainants took this as a threat against the Acting CAO.

15. Deputy Mayor Roppel remained in the room. According to the Complainants, he apologized for Councillor Fitzsimmons's behaviour and said that his behaviour was completely unacceptable and that, if Councillor Fitzsimmons hadn't left the meeting, he, the Deputy Mayor, would have asked him to go.

16. The meeting ended and Deputy Mayor Roppel said that he would be immediately contacting the Mayor, to update him on this meeting.

Councillor Fitzsimmons's Response

17. I provided notice of the complaints to Councillor Fitzsimmons on April 11, 2022, saying:

...

Specifically, it is alleged that at the meeting you were disrespectful of the professional expertise of staff, that you were unfairly critical of the competence of [the Acting CAO] and [the Director], and that you became visibly agitated. It is further alleged that you glared at [the Acting CAO], making her uncomfortable and afraid, and tried to influence, intimidate and threaten them by saying, "You just wait until Monday night". It is asserted that your conduct was in breach of sections 6 and 7 c), h) and i) of the Municipality's Code of Conduct (the "Code").

18. On April 21, 2022, I received a detailed response to the allegations from Councillor Fitzsimmons, along with several attachments. Councillor Fitzsimmons organized his response to address several issues, including a new community centre for Tiverton, some budget matters and the pickleball court and off-leash dog park. He then provided me with his recollection of the April 1, 2022 meeting, and some concluding remarks.

19. While it is not necessary for me to determine the appropriateness of staff's recommendations on these matters, there being no circumstances that will excuse an attack on staff, I have provided some of the details to establish the Councillor's frame of mind at the time of the meeting and to demonstrate why a member of Council must not take it upon him or herself to interfere in staff's commitment to its recommendations.

20. While not on Monday's agenda, Councillor Fitzsimmons took the opportunity to revive his complaint that he felt that the Director had not accurately reported the position of the Tiverton Lions Club, charged with the operation of the existing centre, on the new community centre to Council, resulting in a letter from the Club. He was very unhappy with how the matter was handled.

21. In reply to Councillor Fitzsimmons, the Director notes that neither she nor the Acting CAO raised the issue of the Tiverton Community Centre at the meeting and that the Councillor used the meeting as a further opportunity to confront her about it. She indicates that her report to Council was based on information she received from the person who operates the current facility, the person she understood to be the municipality's point-of-contact. The Director also reports to me that she had, in fact, talked with the President of the Lions Club and offered to attend a meeting of the Club and that she was, therefore, very surprised by his letter.

22. Councillor Fitzsimmons also references a request he made at the January 26, 2022 budget meeting to have the roof replaced on the Tiverton Ball Diamond snack bar and washrooms, and his dissatisfaction with the response from the Director of Community Services that a consultant should be hired to assess the condition of the roofs of all municipal buildings.

23. In reply, the Director agrees that the snack bar roof was in bad shape, but that her advice had been that there may be many roofs in need of repair and that a more comprehensive approach would lead to greater efficiencies and savings.

24. The next two issues involve pickleball courts and the Inverhuron Dog Park.

25. At the June 21, 2021, meeting of Council, Councillor Fitzsimmons presented two notices of motion. The first was that Council direct staff to create a proposal to build outdoor pickleball courts, both inside and outside the Town of Kincardine, and that the proposal be presented at the 2022 budget deliberations. The second was that Council direct staff to prepare a report on the conversion of the Inverhuron Bike Park to an off-leash, unfenced dog park using existing bike trails. Both motions were carried.

26. On December 15, 2021, Council held its initial meeting on the 2022 budget. Councillor Fitzsimmons was disappointed and frustrated that these two projects did not appear in the budget.

27. At the January 12, 2022 budget meeting, two staff reports dealing with the pickleball courts and the off-leash dog park were presented to Council, by staff. On the dog park, the recommendation was that "Staff develop and report back to Council at a future date a strategy for a rural Off-Leash Dog Park that includes a Stewardship Program and Management Plan". On the pickleball courts, the recommendation was that "Council approve Staff to develop a Pickleball Strategy to measure the needs of Pickleball Usage throughout the Municipality".

28. To Councillor Fitzsimmons, these recommendations did not satisfy the motions that Council approved. Nevertheless, they were approved by Council.

29. On March 31, 2022, Councillor Fitzsimmons saw the agenda for the April 4, 2022 Council meeting and became upset by the dog park and pickleball recommendations.

30. On the dog park, staff's recommendation was:

Based on the survey results, and the research that staff has conducted, staff is recommending that:

The Inverhuron Bike Park continues to operate as a destination for active transportation;
And Further that Staff investigate as part of the 2023 budget deliberations enhancements to the existing Off-Leash Dog Park that could include an area for small dogs and additional access points;

And Further that staff consider as part of the 5 year capital forecast costing for an off-leash dog park at the Tiverton Sports Centre, if there is sufficient support from members of the community for a Stewardship program, along with a successful fundraising campaign led by the public.

31. On pickleball, the recommendation was:

Based on the survey results, and the research that staff has conducted, staff is recommending that:

The Municipality continue to support and enhance the Pickleball program operated in Ward 1 by continuing to offer pickleball on the tennis courts for the summer of 2022;

And Further, that the existing skatepark located at the Davidson Centre be considered for the future home of outdoor pickleball and potential multiple sports pad;

And Further, that the Municipality support Service Clubs that show interest to take on the role of providing Pickleball to our users.

32. Councillor Fitzsimmons felt that the recommendations were, in his words, completely opposite to the direction of Council. He contacted the Mayor and requested that a meeting be held to discuss the recommendations with the Acting CAO and the Director of Community Services. The Director of Community Services stands behind the recommendations in her report, as being responsive to the public input and fiscally prudent.

33. The Mayor arranged the meeting for April 1, 2022, and included the Deputy Mayor, Randy Roppel.

34. Councillor Fitzsimmons relayed to me his recollection of the April 1, 2022 meeting:

The meeting started off cordial enough.

I challenged [the Director] on her reports which did not meet the direction that council authorized.

[The Director] continued to push the point and I became more and more agitated. I was also upset that [the Acting CAO] remained silent even when I asked her to calm down her employee, twice. I do admit to "glaring" at [the Acting CAO] because she opted to remain silent.

[The Director] then mentioned the Tiverton Lion's Club episode described above, and that is when I realized that there was more to this than the discussion at hand. I feel, given the above background provided, that there is a resentment of me for advocating for projects, as they were not initiated by staff, and for demanding that decisions of councils are respected.

It was becoming quite apparent that the meeting was not going anywhere so I got up out of my seat to remove myself from the situation and told [the Acting CAO] that I thought that a closed meeting of council should be convened to discuss that this (*sic*) *whole* episode. To date this meeting has not happened.

Also, when I was leaving, I did say something to the affect "You just wait until Monday night".

My statement was only to inform [the Acting CAO] that if we are not going to discuss these recommendations then it will have to be done Monday night in public.

I then removed myself from the meeting.

35. Councillor Fitzsimmons does not believe that he was disrespectful of the professional expertise of staff or unfairly critical of their competence. While the Director had accused him of this, he tells me that me made it quite clear that this was not the case, but that he was not happy with her recommendations to council and wonders how she continued to "reject" Council's directions.

36. Councillor Fitzsimmons also notes that he has been instrumental in having an Employee Code of Conduct established (not complete yet) and knows that there are some suspicions as to his motives. It is his position that, "in this day and age", the municipality should have a robust Employee Code of Conduct. He also wants a detailed mechanism for Council members to bring conduct concerns to management or Council. He has also felt resentment for this.

37. The Councillor feels that he has been more than patient in having these projects moved along. Council has continually supported these two projects, despite the recommendations of the Director. He feels that the Acting CAO only sees issues from the staff point of view and is reluctant to question staff recommendations.

38. In conclusion, Councillor Fitzsimmons hoped that he was able to show the barriers he has faced to ensure that Council decisions are respected with regard to the issues (pickleball courts and dog park) for which the April 1, 2022 meeting was arranged.

The Code

39. Sections 6 and 7 of the Code mandates, in crystal clear language, that Members of Council must not mistreat staff:

6.0 Discrimination and Harassment

All members have a duty to treat members of the public, one another, and staff with respect and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. The Ontario Human Rights Code applied and, where applicable, the Municipality's Workplace Harassment Policy.

7.0 Conduct Respecting Staff

- a) Members shall acknowledge the fact that staff work for the Municipality as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate objectives. Municipal Council has the authority to approve budget, policy, governance, and other such matters. Under the direction of the Chief Administrative Officer, Municipal staff serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council as recorded in the minutes and resolutions.
- b) Members shall acknowledge and respect the fact that staff carry out directions of Council as a whole and administer the policies of the Municipality, and are required to do so without any undue influence from any individual member or group of members.
- c) Members shall refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility. The role of staff is to provide advice and services based on political neutrality, objectivity and professional judgement which may not necessarily reflect the opinion or position of a single member of Council.
- d) Members of Council have no individual capacity to direct staff to perform specific functions. Inquiries of staff from members of Council should be directed to the Chief Administrative Officer or the appropriate Senior Manager.
- e) The Municipal Act, 2001 sets out the roles of members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer and the Integrity Commissioner.
- f) Members of Council are expected to:
 - i. Represent the public and to consider the well-being and interests of the Municipality;
 - ii. Develop and evaluate policies and programs of the Municipality;
 - iii. Determine which services the Municipality provides;
 - iv. Ensure the administrative policies, practices and procedures and controllership policies, practices and procedures are in place to

- implement the decisions of Council;
 - v. Ensure the accountability and transparency of the operations of the Municipality, including the activities of the senior management of the Municipality;
 - vi. Maintain the financial integrity of the Municipality; and,
 - vii. Carry out the duties of Council under the Municipal Act, 2001 or any other Act.
- g) Municipal staff is expected to:
 - i. Implement Council's decisions and establish administrative practices and procedures to carry out Council's decisions;
 - ii. Undertake research and provide advice to Council on the policies and programs of the Municipality; and
 - iii. Carry out other duties required under the Municipal Act, 2001 or any Act and other duties assigned by the Municipality.
- h) Members shall be respectful of the role of staff to provide advice based on political neutrality, professional judgement and objectivity.
- i) Members should not:
 - i. Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
 - ii. Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
 - iii. Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties.

Discussion and Findings

40. As a starting point, it is important for Council to understand the impact that abusive behaviour can have on staff. As I have described, both of the Complainants are experienced, loyal and dedicated officers of the Town. They have shared with me the impact this encounter has had on them, their families and their colleagues at work. It is significant and distressing. Moreover, this is not the only example of the mistreatment of staff by some members of Council. It has become almost endemic, representing a threat to the on-going governance of Kincardine and the municipality's ability to retain, let alone recruit, top employees.

41. To that end, I note that at its meeting of February 7, 2022, Council passed the following resolution:

WHEREAS the Council of the Municipality of Kincardine values its employees;
 AND WHEREAS during the budget meeting of January 26, 2022 comments were made by members of Council that for staff were hurtful and unfair;
 AND WHEREAS there is a Code of Conduct to regulate Council's behaviour;

AND WHEREAS each member of Council has a duty and obligation to behave in a manner consistent with the Code of Conduct, and to call out fellow members when the Code of Conduct is breached;

AND WHEREAS, this did not occur on January 26, 2022;

NOW THEREFORE BE IT RESOLVED THAT We, Kincardine Council, re-commit to honouring the Code of Conduct that we established and apologize for the comments made at said budget meeting and we will endeavour to do better going forward.

42. I have had the opportunity to speak with both Complainants and to review their written submissions on what happened at the April 1st meeting and the impact that it has had on them. Their accounts were delivered in a measured and forthright fashion, without hyperbole, and I accept their evidence in all respects, in its entirety.

43. I also firmly believe that they made these complaints to bring what they see as a serious and rising threat to the administration of the municipality to Council and the public's attention. The complaints were made without malice or vindictive purpose.

44. I also spoke with the Deputy Mayor.

45. Councillor Fitzsimmons provided me with a very detailed history of the several matters that were discussed at the April 1, 2022, meeting and, for the most part, I accept these facts. I also acknowledge that he has felt frustrated at what he sees as disrespectful attempts to circumvent or even avoid acting on certain directions from Council. As I have noted, however, no amount of disappointment or frustration with a recommendation of staff can excuse abusive behaviour.

46. Although Councillor Fitzsimmons denies that he was disrespectful or unfairly critical of the competence of staff, with respect, I disagree. Based on all the evidence I heard, I find that the Complainants' recollection of what he said and how he said it to be more likely. It is clear to me that he made his feelings known in a forceful and disrespectful way that he disagreed with staff on their recommendations regarding pickleball and the dog park.

47. By challenging the expertise, actions and advice given by the Director on the pickleball court and the off-leash dog park, Councillor Fitzsimmons publicly (i.e., not in a private one-on-one meeting) criticized the Director in a way that cast aspersions on her professional competence and credibility, contrary to sections 7.0 c) and h) of the Code.

48. The Councillor also breached section 7.0 c) of the Code by telling the Acting CAO that she should be doing a better job managing the performance of her staff and that he wanted a closed meeting of Council to discuss her performance. His comment that “hiring a new CAO could not come soon enough” was mean-spirited and an attempt to injure the professional reputation of the Acting CAO, contrary to section 7.0 i) i of the Code.

49. It is also my conclusion that, by glaring at the Acting CAO, by conveying through his aggressive body language and facial expressions his anger with her, and by pointing his finger at her and saying, “You just wait until Monday night”, Councillor Fitzsimmons attempted to use his authority or influence for the purpose of intimidating or threatening the Acting CAO, thereby contravening section 7.0 i) iii of the Code.

50. Taken together, his treatment of the Acting CAO and the Director at the April 1, 2022, meeting constitutes a contravention of section 6.0 of the Code.

Recommendations

51. I consider the contraventions described in this report to be very serious and worthy of the highest sanctions available to Council. I recommend that Council suspend Councillor Fitzsimmons’s remuneration for 90 days.

52. I also recommend that Council resolve that Councillor Fitzsimmons be forbidden from directly meeting or communicating in any way with any members of staff for the remainder of the term. If he has any questions of staff, he should provide them to the Mayor, or such other person as Council may delegate, to forward the inquiry to the CAO for referral to the appropriate staff member.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of June, 2022.



H.G. Elston
Integrity Commissioner