

Integrity Commissioner's  
Recommendation Report  
Conflict of Interest Complaint against  
Alnwick/Haldimand Councillor Mike Ainsworth

April 27, 2023

**Introductory Comments**

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Township of Alnwick/Haldimand October, 2018 by the adoption of By-law Number 98-2018. We are also privileged to serve as Integrity Commissioner, as well as Closed Meeting Investigator and Lobbyist Registrar, for a number of other 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 Township of Alnwick/Haldimand 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. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [3] Members of Township Council are also governed by the provisions of the *Municipal Conflict of Interest Act*. Both the *Municipal Conflict of Interest Act* (the MCIA) and the Code of Conduct are relevant to and form the framework for the matters reviewed in this report.
- [4] 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

## Principles *Integrity*

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.

- [5] 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 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.
- [6] This being our function, as Integrity Commissioner we play an important role in the administration of justice, including with respect to the oversight given members of Councils and of local boards with respect to the avoidance of conflicts of interest.
- [7] As noted later in this report, prior to March 1, 2019 a person who believed a member had breached the *Municipal Conflict of Interest Act* would have been required to apply to the courts to seek the imposition of a penalty under that Act. As of March 1st, Integrity Commissioners have standing to make that application on behalf of the complainant.
- [8] While there may be circumstances where integrity commissioners will seek that a penalty be applied by the courts under the *MCI/A*, we importantly have the jurisdiction to instead investigate such complaints as breaches of a municipal code of conduct. In doing so we balance the nature of the penalty that best serves the public interest (for example, only the courts can remove a member from office; both the courts and the integrity commissioner have the jurisdiction to address the suspension of a member's pay for up to three months<sup>1</sup>).
- [9] The choice made by the integrity commissioner is an important one. In each case we are to decide whether the circumstances are such that it is in the public interest to incur the costs and complications of an application to the courts (and thus also burden an otherwise busy court system with another matter on the docket) or to apply administrative law principles in carrying out a review function under the code

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<sup>1</sup> Generally speaking, the courts can impose the penalty whereas an integrity commissioner can recommend to council that the penalty be imposed

## Principles *Integrity*

of conduct to determine whether a member has breached provisions with respect to the avoidance of conflicts.

- [10] 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.
- [11] 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.
- [12] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond the allegations, and to review and provide comment on the preliminary findings

### The Complaint

- [13] On February 23, 2023 we received a complaint against Councillor Mike Ainsworth. The complaint asserts that the Councillor had a conflict of interest and breached the Code of Conduct when he participated in deliberations at Council on February 2, 2023 regarding potential closure of unopened road allowances which might limit access by motorized vehicles.

### Process Followed for this Investigation

- [14] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct and the legislative process contained in the MCIA.
- [15] 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 against him where proceeding on investigation, and providing adequate disclosure of the information we possessed so that he could prepare his response
  - Reviewing the Code of Conduct and the *Municipal Conflict of Interest Act*, relevant documentation, and the recording of the meeting in question

# Principles *Integrity*

- Conducting interviews including of the complainant and the Respondent
- Providing the Respondent with the additional opportunity to review and provide responses to the Integrity Commissioner's draft Findings Report, and taking any additional response into consideration prior to finalizing and submitting our Recommendation Report

## **Analysis of Complaint:**

### **Background and Context:**

[16] The Township of Alnwick/Haldimand has experienced community concerns relating to the use of trails by motorized vehicles – snowmobiles in the winter and all terrain vehicles (ATVs) during the other seasons.

[17] While the popularity of motorized vehicles has been growing across the province, the trails used for such recreational activity, often located on unopened road allowances, are also used for walking, hiking, biking. Typically ATV and snowmobile users must share these trails with non-motorized recreational activity.

[18] The issue of closing unopened road allowances – effectively transferring the spaces occupied by trails within them to private ownership – would largely preclude motorized vehicles such as ATVs from accessing them.

[19] Township Council has considered closing certain unopened road allowances in the past.

[20] On February 2, 2023 Council had before it a petition to close the unopened road allowances at Russ Creek and Hogan Road. The purpose of the Report was articulated as follows:

Council needs to decide if it wishes to keep the unopened road allowances at Russ Creek and Hogan Road as is or if you want to pass a by—law to prohibit the use of motorized vehicles on these trails.

[21] The Report attached a staff report previously provided on August 18, 2022 which captured the issue as follows:

The Township received a request from a concerned ratepayer for the closure of a narrow road allowances to motorized vehicles except for service vehicles. The request pertains to the road allowance at the end of Hogan Road and the one at Russ Creek. The request was made in writing and not in person.

The ratepayer listed the following concerns:

## Principles *Integrity*

1. The Township is opening the door for liability claim regardless of insurance and agreements.
2. Motorized vehicles have an unfair advantage.
3. Motorized vehicles damage pathways and those users leave behind trash.
4. Motorized vehicles are loud and emit fumes and dust.

The Manager of Public Works/Parks and Recreation met with the ratepayer on site.

The Manager has consulted with the Northumberland District ATV Riders Club who has advised that the Russ Creek Road Allowance has been part of their trail system since the beginning and Hogan Road Allowance is not part of the main trail but is used as well so it would be detrimental if the allowances were closed to motorized vehicles.

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### Consultations:

The Manager of Public Works/Parks and Recreation met the ratepayer and spoke to a representative of the Northumberland District ATV Riders Club.

### Actions:

After reviewing the area and speaking with both the property owner and the representative of the Northumberland District ATV Riders Club, it is recommended that the request to prohibit motorized vehicles on the road allowances adjacent to the Hogan Road and Russ Creek Road be denied.

- [22] It is clear that the Northumberland District ATV Riders Club has a vested interest in maintaining the trail system available to its members.
- [23] The representative of the Northumberland District ATV Riders Club with whom staff consulted, in reviewing the request to prohibit motorized vehicles on the road allowances, was Mike Ainsworth, President and founder of the Northumberland District ATV Riders Club.
- [24] On October 25, 2022 Mike Ainsworth was elected as a Councillor in Alnwick/Haldimand.
- [25] When the issue came before Council on February 2, 2022 Councillor Ainsworth participated fully in the deliberations and voted on deferral of the Report.

### Relevant provisions of the Code of Conduct and *Municipal Conflict of Interest Act*

- [26] Members of Council (and local boards) are subject to subsections 5(1) and 5(2) of the *Municipal Conflict of Interest Act*. Those sections require that members not participate in or vote on any matter where they have a direct, indirect or

## Principles *Integrity*

deemed pecuniary interest. Where the matter under consideration takes place in a closed session, the Act requires the member to not be present.

[27] The provisions which require a member to declare an interest and recuse themselves are as follows:

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

[28] An indirect pecuniary interest is defined under section 2, as follows:

2. For the purposes of this Act, ***a member has an indirect pecuniary interest*** in any matter in which the council ... is concerned, if

(a) the member ...

(iii) ***is a member of a body that has a pecuniary interest in the matter***  
(emphasis added)

[29] The Council Code of Conduct requires as follows:

VI. Conflicts of Interest – Pecuniary Interest, Members of Council will recognize their obligations to:

Follow and respect both the letter and spirit of the provisions of the Municipal Act and the Municipal Conflict of Interest Act, as amended from time to time, and ***will disclose other interests which may not necessarily be of a pecuniary nature.***

IV. Relationships with Staff and Other Members of Council, Members of Council will:

Refrain from using their position to ***improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.***

(emphasis added)

## Principles *Integrity*

[30] Finally, there is the concept of bias which, although not directly addressed under the Council Code of Conduct, is in our view included in the admonition '*to disclose other interests which may not necessarily be of a pecuniary nature*'.

### The Concept of Bias:

[31] The test for bias is whether as a member of Council, the member is completely incapable of being persuaded of a different point of view.

[32] The courts recognize that members of bodies popularly elected, such as municipal councils, are not expected to approach all matters with disinterest and strict impartiality.

[33] Members of public office often bring with them some preference or predisposition towards the various issues upon which council must decide. In fact, these might well be the positions for which electors supported them.

[34] The test for bias for members of municipal council requires establishing that there has been prejudgment to the extent that any representations to the contrary, or in support of an alternative view, are futile. The onus on establishing bias rests with the person alleging it.

[35] Although articulated as a conflict of interest complaint, the concept of bias is relevant to the circumstances of this matter.

### **Analysis and Findings:**

[36] The Northumberland District ATV Riders Club was founded in 2002 by Mike Ainsworth, long before he was elected to Council. He is the original President of the club and remains in that role today.

[37] As he shared with us in the course of this investigation, he has grown the club to 1000 members in the 21 years since he established it.

[38] Member of the ATV club benefit from information, social events, and expanded access to a wide network of trails across the jurisdiction and beyond, largely achieved through the advocacy work of the club and its President.

[39] Although there is no monetary gain for Councillor Ainsworth as President, we note that pursuant to the club's by-law, the annual \$150 fee for the President may be waived.<sup>2</sup>

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<sup>2</sup> Upon completion of a year satisfactorily fulfilling their role as a director (officer), as deemed by vote of Officers of the Club, 100% of the trail permit fee for the following year will be paid for service to the club to help offset some of the reasonable expenses occurring throughout the year.

## Principles *Integrity*

- [40] In our view, this token benefit likely does not begin to offset the personal investment which the club President commits in advocating and providing outreach on behalf of the club.
- [41] The Councillor was forthcoming during our discussion to acknowledge that he has worked tirelessly to advance the interests and grow the membership of the club.
- [42] He should be rightfully proud of its success.
- [43] That said, there is no doubt that the Councillor's personal interest and long term quest to establish, grow and advocate for the ATV club mitigates against any ability to consider, with the appearance of impartiality, the issue of trail access along road allowances.
- [44] Trail access would be constrained by the closure of road allowances in the Township.
- [45] Whether his interest is characterized as a conflict of interest or as bias, we are satisfied that the Councillor is unable, impartially and in a detached, objective manner, to give due consideration to the issue of road allowance closures when these come before Council.
- [46] As such, we find that the Councillor had a conflict of interest when he participated in consideration of the report regarding road allowances on February 2, 2023.
- [47] As required under the MCIA, the Councillor should declare an interest and recuse himself anytime the ATV club, of which he is President, has an interest in the matter before Council, and particularly when the issue of trail/road allowance access is being considered.
- [48] Moreover, the Councillor cannot serve as the representative from whom staff seek input, guidance and information when they are reviewing these issues. This is because the MCIA prohibits a member, who has an interest, from attempting to influence the matter, even when it is in the hands of staff

### MCIA Complaints to Integrity Commissioner

- [49] The MCIA is the governing legislation and provides a statutory framework for determining when a member of municipal council (or local board) may be in a conflict of interest. Until recently, the only remedy available to an elector seeking a determination of whether a member of council has contravened the MCIA required an application to court.



## Principles Integrity

[50] Amendments to the MCIA which came into force March 1, 2019 enable an applicant to pursue a remedy by making application to the municipality's Integrity Commissioner.

[51] The legislature has seen fit to provide citizens with a less costly and more expeditious remedy, by authorizing an Integrity Commissioner to respond to applications under the MCIA. It is through this mechanism that the complainant/applicant brought this allegation to our attention for review and investigation.

[52] The relevant provisions under the *Municipal Act* are as follows:

Inquiry by Commissioner re s.5, 5.1 or 5.2 of *Municipal Conflict of Interest Act*

223.4.1 (1) This section applies if the Commissioner conducts an inquiry under this Part in respect of an application under subsection (2).

(2) An elector, as defined in section 1 of the *MCIA*, or a person demonstrably acting in the public interest may apply in writing to the Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of that Act by a member of council or a member of a local board.

### No Application Will Be Made to Court By the Integrity Commissioner

[53] The MCIA authorizes the Integrity Commissioner to bring an application before the court, whereby a judge may impose sanctions beyond those within the jurisdiction of the Integrity Commissioner to recommend. Where the Integrity Commissioner determines that no such application is to be brought, the applicant/complainant is to be advised and reasons for such decision must be published. The relevant provisions of the MCIA are as follows:

223.4.1 (15) Upon completion of the inquiry, the Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act.

(16) The Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge.

(17) After deciding whether or not to apply to a judge, the Commissioner shall publish written reasons for the decision.

[54] Under the *Municipal Act*, following an investigation of a contravention by a member of council, the sanctions which an Integrity Commissioner may recommend are:

- A reprimand

## Principles *Integrity*

- Suspension of remuneration paid to the member for up to 90 days

[55] Under the MCIA, following a determination of contravention of the MCIA by a member of council, the sanctions which a judge may impose are:

- A reprimand
- Suspension of remuneration paid to the member for up to 90 days
- Declaring the member's seat vacant
- Disqualifying the member from being a member for up to seven years
- If personal financial gain has resulted, requiring the member to make restitution

[56] As statutory officers carrying out an administration of justice function we are charged with the responsibility to choose which route to follow. Are the circumstances such that court time and legal expense should be incurred to seek a remedy only the courts can impose, or is it a case where the integrity commissioner should review the matter and if it is in the public interest to do so, make recommendations to Council for the imposition of a recommended penalty (if any)?

[57] It is apparent that, unless removal from office is sought, or unless a member who has benefited financially is refusing to voluntarily disgorge such profits, it is not in the public interest for the Integrity Commissioner to pursue additional sanctions by way of application to a judge.

[58] It is our view that no such sanctions are warranted in the circumstances of this case, and therefore no such application will be pursued. The Integrity Commissioner has advised the complainant/applicant, as required by the legislation, that no application will be made by the Integrity Commissioner to a judge in this matter.

### Summary of Findings

[59] We find that the Councillor had a conflict of interest when he participated in the report regarding road allowances on February 2, 2023. We find that this contravened both the MCIA and the Code of Conduct.

[60] During our investigation, the Councillor has acknowledged that his participation in these matters is rightly perceived as a conflict of interest, and that as a strong advocate on behalf of the ATV club, the public reasonably perceives him as unable to impartially consider the issue when it is before Council.

[61] He has committed to publicly declaring his interest in the matter and recusing himself when the issue is before Council, and to refrain from dealing with staff in regard to the issue, behind the scenes.

## Principles *Integrity*

[62] While we do not find that these contraventions warrant an application to a judge, they do warrant a sanction.

### **Recommendations:**

[63] The Integrity Commissioner may recommend that certain sanctions be imposed when a complaint has been sustained. The purpose of a sanction is to reinforce Council's ethical framework.

[64] A monetary penalty, although not remedial, can serve as a deterrent.

[65] The rules around conflicts of interest under both the MCIA and the Code are in place to protect the public interest. The rules in place obligate the Member, finding himself in such situation, to step away – without prompting, without quantifying, and without justifying. It is a simple, effective rule to protect the public interest.

[66] In contemplating an appropriate sanction for the contravention which arose by the Councillor's failure to recognize and disclose the conflict of interest noted in this report, we have considered the following:

- a. For all Members of Council, seeing a matter on the Agenda in which a club, association or other body in which they hold membership has any interest should send up a red flag
- b. Members of Council are in the best position to see the red flag – they know what clubs, associations and bodies in which they hold membership
- c. When in doubt, Members should seek advice and guidance
- d. With access to an Integrity Commissioner, there is no good reason not to obtain timely, reliable and binding advice
- e. The public should be able to rely on Members to follow the rules, seek guidance where required, and act accordingly
- f. Where a Member acts contrary to the rules, as in this, case because they do not think the rules apply to their situation and they fail to seek advice, a sanction is appropriate and in the public interest

[67] With respect to our findings that Councillor Ainsworth was in a conflict of interest on the matter, contrary to both the MCIA and the Code, we recommend a 10-day suspension of pay.

[68] We therefore recommend:

1. That Council receive this report for information, and that it be posted on the Township web site for public access;

## Principles *Integrity*

2. That Council pass the following resolution:

That having been found to have breached the Municipal Conflict of Interest Act and the Code of Conduct for Members of the Council of the Township of Alnwick/Haldimand, the remuneration paid by the Township to Councillor Ainsworth be suspended for a period of ten (10) days commencing with his next pay period.

We wish to conclude by publicly thanking those who participated in our investigation.

We will be pleased to be in attendance virtually when this report is considered, to answer any questions you may have relating to its contents.