

Township of Bonfield Integrity Commissioner – David C. King
Citation: Mayor Randall McLaren v. Councillor Eric Foisy
Code of Conduct Complaint
Date: April 14, 2022,

REPORT ON COMPLAINT

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

Reference should be made to the minutes of the Township of Bonfield Council meeting to obtain information about their consideration this report.

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THE COMPLAINT

1. Mayor Randall McLaren (Complainant) alleges that Councillor Eric Foisy (Respondent) distributed a flyer to the residents of the Townships of Bonfield and Rutherglen entitled “OUR LIVES MATTER!”
2. By doing so, the Complainant alleges that the Respondent contravened the Township of Bonfield Council Code of Conduct.

SUMMARY

3. The Code of Conduct sets standards for the acceptable conduct of Council Members in conducting their functions which include acting in a way that enhances public confidence in local government and acting with integrity and impartiality.

4. The authority of an Integrity Commissioner is limited to the Code of Conduct and the Municipal Conflict of Interest Act. Despite the existence of evidence that links the Respondent to the distribution of the "OUR LIVES MATTER" flyer, it is not my role to make judgement on this matter. As a result, I am unable to conclude that the Respondent contravened the Township of Bonfield Council Code of Conduct.

5. As for the allegations of the Respondent, I find that the Complainant did not contravene the Township of Bonfield, Council Code of Conduct.

BACKGROUND

6. On September 17, 2020, a flyer entitled "OUR LIVES MATTER!" was mailed out to all residents in the Township of Bonfield on behalf of the neighbors (victims) of the racetrack. (See appendix 1)

7. The flyer/letter caused a great deal of concern in the community as it compared the noise from the Bonfield Event Park/Dragstrip to the tragic death of George Floyd, in the United States, suggesting that the Township of Bonfield Council was kneeling on the necks of area residents, as police officer Derek Chauvin did to Mr. Floyd, by "ignoring its resident's plea for reprieve of the harmful excessive noise caused by the racing activities."

8. On September 22, 2020, CTV news reported that the Ontario Provincial Police (OPP) had investigated the distribution of the letter and determined it was not a criminal offence. (See Appendix 2)

9. On December 14, 2020, a delivery slip obtained through an Access to Information and Privacy request to Canada Post indicates that a "political Flyer was mailed to houses; apartments; farms and businesses on September 17, 2020, by the owner/resident at 330 Development Road. (See Appendix 3)

10. During virtual Council meetings held on February 9th, March 9th, April 13th, April 27th, May 18th, and June 8th, 2021, the Complainant inquired if a member of Council had distributed the controversial flyer and questioned if the Respondent was responsible for distributing the flyer.

11. When these questions were asked, the Respondent was either not in attendance at the meeting or purported to have audio problems. When in attendance and questioned about his involvement, the Respondent did not confirm or deny his involvement in distributing the flyer.

12. On March 3, 2021, I received a Code of Conduct application from the Respondent alleging that the Complainant had contravened section 15 of the Township's Code of Conduct when he sent an email marked "Confidential and without prejudice" to Councillor Foisy.

13. On March 8, 2021, I notified the Complainant via email that I would not conduct an inquiry as I had determined his complaint to be a personal and confidential matter between himself and the Mayor.

14. On March 26, 2021, I received an application from the Complainant, alleging the Respondent had violated the Township's Code of Conduct, and that it had been proven to him that the Respondent was responsible for distributing the "OUR LIVES MATTER!" flyer.

PROCESS FOLLOWED

15. The following is the process followed to ensure fairness to both the individual bringing the complaint and the respondent:

- i) The Respondent receives notice of the Complaint and is given an opportunity to respond.
- ii) The Respondent(s) is made aware of the Complainant's name.
- iii) I interview any witnesses that I believe have relevant evidence.

POSITION OF THE COMPLAINANT (Mayor Randall McLaren)

16. The following are excerpts of information provided by the Complainant as part of his application for this Municipal Code of Conduct inquiry:

17. The Complainant alleges that the Respondent contravened the Township of Bonfield Council Code of Conduct "statements of principle" by failing to uphold a high standard of ethical behavior to ensure that their decision making is impartial, transparent, and free from undue influence and, by engaging in conduct that would bring the Township or Council into disrepute or compromise the integrity of the Township Council.

18. It is also alleged that the Respondent, through his alleged actions, engaged in discreditable conduct which is prohibited under section 15 of the Township's Council Code of Conduct.

19. " It has been proven to me in my capacity of Mayor, that Councillor Foisy did distribute to all Canada Post recipients in the municipality, a hateful flyer with racial content."

POSITION OF THE RESPONDENT (Councillor Eric Foisy)

20. The following are excerpts of information provided by the Respondent in response to the allegations made by the Complainant:

21. "I do not recognize the authority of Mayor Randall McLaren in holding what I consider an illegal inquiry into the "Our Life Matters" flyer. It was dealt with by the O.P.P., the legal authority in such investigation that was initiated by Mayor Randall McLaren. It was concluded by the O.P.P. that no crime was committed, that nothing wrong was done."

22. "I certainly do not recognize Mayor Randall McLaren's interpretation of the "Our Lives Matter" flyer. His interpretation only served to inflame, to incite and to villainize an innocent, exonerated person."

23. "Check out the following YouTube Virtual Bonfield Township Council Meetings to see if Mayor Randall McLaren's personal inquiry holds up to a high standard of ethical behaviour, if it holds up both the letter but the spirit of the law":

- February 9th, 2021, at 40:12. [Council Meeting February 9, 2021 - YouTube](#)
- March 9th, 2021, at 56:52. [Council Meeting March 9, 2021 - YouTube](#)
- April 13th, 2021, at 1:26:48. [My Meeting - YouTube](#)
- April 27th, 2021, at 1:23:09. [Council Meeting April 27, 2021 - YouTube](#)
- May 18th, 2021, at 1:05:55. [Council Meeting May 18, 2021 - YouTube](#)
- June 8th, 2021, at 1:09:50. [Council Meeting June 8, 2021 - YouTube](#)

24. "I do not accept his references to a Canada Post Freedom of Information request as he failed to produce this evidence through his five month and ongoing inquisition and now including this Code of Conduct Complaint."

25. " I find it extremely disconcerting that when I complained about a Code of Conduct violation, it was dismissed because it was "personal in nature". I strongly believe that the alleged attempt to defame (slander) me in open session of council is very personal."

FINDINGS OF FACT

26. The Township of Bonfield Code of Conduct for members of Council, Local Boards and Committees was adopted by by-law No. 2019-04 on March 12, 2019. The Code of Conduct applies to the Mayor, Council and Local Board members. See:

<https://bonfieldtownship.com/uploads/documents/By-Laws,%20Policies%20&%20Plans/By-Law-2019-04-Code-of-Conduct.pdf>

27. The Bonfield Event Park and its associated activities conform to the Township of Bonfield Official Plan and Zoning By-law.

28. A “Neighbourhood Mail Delivery Slip” obtained through an Access to Information and Privacy request to Canada Post indicates that a political flyer was mailed to houses; apartments; farms and businesses on September 17, 2020, by the owner/resident at 330 Development Road

29. The Respondents mailing address is the same as indicated on the Canada Post delivery slip.

ISSUES AND ANALYSIS

30. I have considered the following issues in relation to the Township of Bonfield, Code of Conduct:

Would the distribution of the “OUR LIVES MATTER” flyer by a member of Council, constitute a violation of Council Code of Conduct?

31. Yes. The Township of Bonfield, Code of Conduct for members of Council, Local Boards and Committees, was adopted by By-law No. 2019-04. It is the goal of the Township of Bonfield to improve the quality of public administration and governance by encouraging high standards of conduct on the part of the Mayor, Council and Local Boards.

32. The key statements of principle that underline the Code of Conduct and apply in this instance are as follows:

- Members of Council and Local Boards shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- Members of Council and Local Boards shall uphold a high standard of ethical behavior to ensure that their decision making is impartial, transparent, and free from undue influence;
- Members of Council and Local Boards shall refrain from conduct that would bring the Township into disrepute or compromise the integrity of the Township Council.

33. Specifically, under Section 15 of the Code of Conduct. “All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure their work environment is free from discrimination and harassment. The Ontario Human Rights Code applies and the Occupational Health and Safety Act.

34. Like many residents in the Township of Bonfield, I find the comparison between the tragic death of George Floyd and the alleged inaction of the Township of Bonfield Council regarding the Bonfield Event Park noise to be inappropriate and discouraging.

35. The flyer as written, is contrary to one of the Code’s key statements of principle as it brings the Township into disrepute and compromises the integrity of Council.

Did the Respondent distribute the “OUR LIVES MATTER” flyer as alleged by the Complainant?

36. The authority of an Integrity Commissioner is limited to the Code of Conduct and the Municipal Conflict of Interest Act. Despite the existence of evidence (see paragraph 9 above) that links the Respondent to the distribution of the “flyer”, it is not my role to make judgement on this matter.

Did the Complainant contravene the Municipal Code of Conduct by questioning the Respondent, over a five month period regarding his role in distributing the flyer?

37. Under Section 15 of the Code of Conduct. “All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure their work environment is free from discrimination and harassment.

38. The Respondent alleges that over a five month period from February 9th to June 8, 2021, he was the subject of an inquisition by the Complainant during open council meetings, in an attempt to defame him.

39. As illustrated in the videos of the Council meetings (see paragraph 23 above) the Respondent was either not in attendance at the meeting or experienced audio difficulties that prevented him from answering the questions of the Complainant. As a result, the agenda item continued to be carried over to the next meeting.

40. It was not until the Council meeting of May 18, 2021, that the Respondent commented on the “our Lives Matter” issue and entered into a debate with the Complainant.

41. Based on my review of the meeting minutes from February 9th to June 8, 2021, I find the evidence does not support the claims of the Complainant.

COMPLIANCE WITH THE CODE OF CONDUCT

42. Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the Criminal Code of Canada or for failing to declare a conflict of personal interest under the Municipal Conflict of Interest Act.

43. Sub-section 223.4(5) of the Municipal Act, authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the Code of Conduct:

1. A reprimand; or
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board for a period of up to 90 days.

Other Actions

The Integrity Commissioner may also recommend that Council or a local board (restricted definition) take the following actions:

1. Removal from membership of a committee or local board.
2. Removal as Chair of a Committee or local board.
3. Repayment or reimbursement of moneys received.
4. Return of property or reimbursement of its value.
5. A request for an apology to Council, the complainant, or both.

CONCLUSION

44. As indicated in (paragraph 36 above) I am unable to conclude that the Respondent contravened the Township of Bonfield Council Code of Conduct.

45. As for the allegations of the Respondent, I find that the Complainant did not contravene The Township of Bonfield, Code of Conduct.

CONTENT

46. Subsection 223.6(2) of the Municipal Act states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

RECOMMENDATIONS

47. That Council authorizes the development of complaint and application procedures that set out the application process and time limits for Code of Conduct inquiries. Once complete and approved by Council, the information be posted on the Township's web site.

48. That Council undertakes a review of Township's procedural by-law and receives training on its content and application.

Respectfully submitted,

David King

Integrity Commissioner
Township of Bonfield
April 14, 2022

Appendix 1

On behalf of the neighbours (victims) of the racetrack:

OUR LIVES MATTER!

The knee on the neck is so symbolic!

We have complained many times about the excessive offsite noise from the racetrack and its associated activities. But it has come upon deaf ears. We, like George Floyd, the African-American man who was killed during an arrest in Minneapolis are pleading the Township to stop kneeling on our necks because we can't breathe, we are suffering because of this. It is affecting our morale, our spirit, creating stress, anxiety, headaches, causing sleep deprivation, loss of enjoyment of our property, loss of our social networking with family and friends. Please do not do like Derek Chauvin, the policeman who knelt on George Floyd's neck for 9 minutes ignoring his plea for a reprieve so he could breathe again, so he could again enjoy life. The Township is ignoring its residents' plea for reprieve of the harmful excessive noise caused by the racing activities.

Slowly but surely it is sapping the life out of us, the tax paying residents of the Township of Bonfield who expect the protection and promotion of our health and welfare. Help us breathe again. Do not let the activities of the race track destroy our spirit, destroy our morale, destroy our mental health, destroy our will to be part of the Township and not set us apart from it, as collateral damage, as a sacrifice for a non essential business. There is no compromise to be had for this situation. It is them or us, and we are losing badly. It may be a political game to you, but to us, it is our lives you are playing with. Our lives matter as much as the resident who complains about the ruts or potholes in the road, or the dust from a gravel road. These situations are taken care of. So should our situation be tended to.

We have a right to exist, to live out our lives in dignity and not be pushed out of existence, forced to move if we don't like it. Please stop protecting the racetrack and start protecting your residents no matter where they live. We were here before the racetrack and we would like to continue to build, to beautify our homes, our refuge, our last stand in life when we retire here.

Please take your knee off our necks and let us live and prosper. Don't be a Derek Chauvin or be like the two other policemen who just stood by and did nothing, just watched it happen. Put a stop to the Racetrack and its defiant attitude towards the neighbours. We are suppose to get along with our neighbours not walk all over them or let someone else walk all over them.

Let's remember the Township of Bonfield's logo:

Small Community, Big Heart

Appendix 2

POLICE SAY CONTROVERSIAL LETTER DISTRIBUTED IN BONFIELD NOT CRIMINAL

CTV NORTHERN ONTARIO DIGITAL CONTENT SPECIALIST

Chelsea Papineau

Tuesday, September 22nd 2020 - 10:40 am

There's controversy brewing in Bonfield after a letter was mass mailed to the entire township from a disgruntled citizen comparing noise from the Bonfield Event Park's drag strip to the killing of George Floyd in the U.S. (Eric Taschner/CTV News)

Ontario Provincial Police (OPP) say a controversial, anonymous letter comparing noise from Bonfield Event Park's drag strip to the killing of George Floyd is not a criminal offence.

A police investigation into the letter, which was sent to the entire town east of North Bay by a disgruntled resident that shocked many, has been completed and no charges are warranted.

"The OPP conducted an investigation and canvassed the area near the racetrack to speak to residents about the letter," said police in a statement. "The OPP have concluded that the letter in question does not equate to a criminal offence. At this time, the OPP have not identified the person who wrote or distributed the letter."

The letter compares the noise complaint to the murder of George Floyd in the U.S., claiming non-action by the township is similar to the non-action of the police officers on duty when Floyd was dying.

Bonfield Mayor Randy McLaren said the comparison is not appropriate.

"I just couldn't believe the analogy that was being used," said Lisa Groves, the owner of Bonfield Event Park.

Residents that live near where the drag racing occurs have mixed opinions on the noise.

"We support the police and will respect their decision pertaining to criminal activity," said Groves. "We are thankful for the 100's of messages of support from the local community. Messages have come from the racing/event community all over North America as well."

With files from Eric Taschner, CTV News North Bay

Appendix 3



CANADA POST
2701 RIVERSIDE DRIVE
SUITE N1180
OTTAWA ON K1A 0B1
CANADAPOST.CA

POSTES CANADA
2701 PROM RIVERSIDE
BUREAU N1180
OTTAWA ON K1A 0B1
POSTESCANADA.CA

December 14, 2020

PROTECTED B



Request number: A-2020-00067



This is further to your request made under the *Access to Information Act* received by Canada Post Corporation on October 13, 2020, for the following:

Request for form signed to distribute mail within our municipality. It was placed in our mailboxes on Sept 17/2020. This individual is expressing their anger at the (illegible)-strip, the municipality the police. I feel this is distribution of hate mail.

See attachment for form/letter.

Please find enclosed the relevant records in response to your request. Please note that portions of the record(s) have been severed, pursuant to section 25 of the *Act*. The portions severed qualify for exemption under sections:

19. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the Privacy Act.

Please be advised that you are entitled to bring a complaint regarding the processing of your request to the Information Commissioner within 60 days of this notice. Should you decide to avail yourself of this right, notice of complaint should be addressed to:

The Information Commissioner of Canada
30 Victoria Street
Gatineau QC K1A 1H3

Should you have any questions, please do not hesitate to contact Sophia Alleyne by telephone at (613) 734-4964 or by email at sophia.Alleyne@canadapost.postescanada.ca

Yours sincerely,

Anne-Mari Phillips
Director
Access to Information and Privacy

Appendix 3 Continued

CANADA POSTES POST CANADA		Neighbourhood Mail™ Delivery Slip		Feuille de dépôt Courrier de quartier™		Delivery Start Date Premier jour	
Customer Identification Identification du client		Delivery Office Address Adresse du bureau de livraison		Instructions de livraison		2020 10 17	
Addressed by (same as complete address) Expanses pay (nom et adresse complète) 330 Development		Butfield + Rutherglen		s.19(1)			
Title of mail piece Titre de l'article Political Flyer		FSA(s), Delivery Mode(s) and Number(s) Indiquez spécifiquement les FSA(s), les modes de livraison et numéros :		RTA, mode(s) de livraison et numéros(s) Précisez les RTA, les modes de livraison et numéros :		<input type="checkbox"/> All FSAs, Delivery Modes and Numbers Tous les RTA, modes de livraison et numéros :	
Statement of mailing fee N° de déclaration de dépôt Titre et paiement Bureau de paiement		Coverage - Indicate if delivery required to: <input checked="" type="checkbox"/> Houses <input checked="" type="checkbox"/> Domiciles <input checked="" type="checkbox"/> Apartments <input checked="" type="checkbox"/> Appartements <input checked="" type="checkbox"/> Farms <input checked="" type="checkbox"/> Fermes <input type="checkbox"/> Businesses <input type="checkbox"/> Commerces		Dimensions Overrides 1 Up to 39.5 x 28 cm (14" x 11") Overrides 2 Up to 35.00 x 28 cm (14" x 11")		Thickness/Épaisseur More than 1.91 cm (0.75") Plus de 1.91 cm (0.75 po)	
Weight per item (g) Poids par article (g) 205		Number of containers Nombre de conteneurs 45		Size Selection Standard Up to 39.5 x 15.24 cm (12" x 6") Standard Jumbo's 39.5 cm x 15.24 cm (12 po x 6 po)		Dimensions Overrides 1 Up to 39.5 x 28 cm (12" x 11") Overrides 2 Up to 35.00 x 28 cm (14" x 11")	
Barcode 0 664 841 746		Receipt - Office of delivery Réception - Bureau de livraison Date This Hour		Delivery completed Livraison complétée Signature Date		On Residue Bundle in Last Container Sur la liasse des articles résiduels dans le dernier conteneur	