

INTEGRITY COMMISSIONER REPORT
REGARDING CODE OF CONDUCT COMPLAINT -
COUNCILLOR BILL FEHR

Date: May 17, 2022

To: Mayor & Council
Municipality of Central Elgin

From: Mark G. McDonald
Integrity Commissioner

INDEPENDENT RESOLUTIONS INC.

INTRODUCTION:

A formal and duly executed complaint was filed with the Integrity Commissioner by Mayor Martyn (complainant) on February 16, 2022 alleging that Councillor Bill Fehr (respondent) had contravened several sections of Council's Code of Conduct and the Municipality's Workplace Harassment Policy. In essence, it is alleged that Councillor Fehr exhibited a course of conduct, over an extended period, that violated the Code and the Workplace Harassment Policy, despite repeated attempts to redirect the Councillor to the appropriate mechanism(s) for addressing complaints (ie. The Municipality's formal Complaint Resolution Policy). It is further alleged that Councillor Fehr continued to publicly undermine the credibility of staff and the Municipal Corporation. Councillor Fehr, in his various responses, provides evidence which he claims supports his statements, thereby making them acceptable; or that his remarks were made in an unbiased manner; or that there was nothing wrong with his statement; or that it was "logical" to ask the personal questions; or that he was representing his constituents' interests and has proof to say what he did therefore there is no violation of policy, among other responses. Councillor Fehr does not deny the majority of the allegations as indeed many are contained in emails and documented on social media accounts and on video recordings. He believes his actions are justified because he has evidence to support his statement(s).

COMPLAINT PROTOCOL:

In order to ensure fairness to both the complainant and the respondent, the Integrity Commissioner utilizes the following procedure:

- 1) The respondent receives a copy of the complaint and is given the opportunity to respond. It is important to note that Councillor Fehr asked for more time to respond and was granted extensions as requested. It is also noted that the recent service disruption involving internet access has impacted reporting timelines.
- 2) The complainant then reviews the response and is given the opportunity to reply.
- 3) If need be, additional information may be supplied, so that both the applicant/ complainant and the respondent have the benefit of this supplementary documentation.
- 4) A draft report is then sent to the respondent, with an invitation to make a written submission on draft findings.
- 5) A final report is submitted to Council.

SUMMARY OF COMPLAINTS:

What follows are the various allegations directed at Councillor Fehr, his response where provided and commentary from the Integrity Commissioner:

- 1) On December 9, 2020 Councillor Fehr sent an email (proof provided) to Council and select staff accusing (and naming) a senior staff member of being "*deceitful*." It is important to note that about two hours later, Councillor Fehr sent another, follow-up email to the senior staff member and copied to the same email group, apologizing for "*my out of line and unfair reaction*." Interestingly, in his formal response to this allegation, Councillor Fehr stands by his initial categorization of the senior staff member as being "*deceitful*" and provides other evidence to suggest that this

particular staff member has lied before, therefore by implication, it is somehow appropriate and he is justified to write in an email and to share with others.

Code of Conduct and Other Policy Implications:

Section 5.3 of the Code requires members to ... *“focus on issues rather than personalities and avoid aggressive, offensive or abusive conduct.”*

Section 8.1 of the Code compels members to *“treat members of the public, each other and staff with respect and dignity and without abuse, bullying or intimidation.”*

Section 8.2 of the Code specifies that *“Members have a duty to ensure the Municipality’s work environment is safe and free from discrimination and harassment.”*

Section 11.3 of the Code clearly stipulates that *“Members shall refrain from making disparaging remarks about other members, members of the public, employees or Council’s process and decisions.”*

In relation to the Municipality’s Health and Safety Policy Manual regarding Harassment and Discrimination Prevention/Respect in the Workplace there are specific provisions with general application to these allegations, they are:

Section 2. Workplace Harassment is defined as:

a) *“engaging in a course of vexations (causing or tending to cause annoyance, frustration or worry) comment or conduct against a worker in a workplace that is known or ought reasonably known to be unwelcome.”*

Section 4. Application This policy applies to the behaviour of Members of Council, members of committees of Council...

Employment related incidents that occur beyond the normal workplace, on social media or outside of working hours may be captured in this policy.

Back to the Code, Section 5.1 compels members to abide by all applicable legislation, policies and procedures such as Workplace Harassment.

SUMMARY OF ALLEGATION #1:

Clearly, the Code of Conduct has been contravened in the various sections described above. Some credit should be extended to Councillor Fehr for realizing his error in being so obviously critical and personal of a staff member and apologizing for it, even if he ultimately believes it was an accurate description and assessment. The bottom line is he ought to have known better. Councillor Fehr, like all of Council, has had specific training on the Code, including expectations of behaviour. Councillors, including Councillor Fehr, have received previous reports on conduct from the Integrity Commissioner regarding the behaviour of other members, emphasizing the heightened expectations of Council when interacting with others.

As for the harassment, the definition includes a “course” or pattern of behaviour that ought to be known as unwelcome. In this instance, a pattern or course of harassment has not been established. I will have more to say about this policy later, in relation to Councillor Fehr’s conduct.

It should also be emphasized that Councillors have the right to complain about staff behaviour, to relay constituent complaints about conduct and interactions with staff. However, Councillors must follow established protocols and policy when launching a complaint. The Municipality has a “Complaint Resolution Policy” which clearly establishes processes for filing complaints with appropriate safeguards respecting due process, privacy and the protection of individual information. Individuals, including Councillors, are encouraged through the policy, to attempt to resolve issues informally by speaking with the staff member and understanding the background to the issue before reaching a conclusion. If that is not possible, then a formal, written complaint with details and evidence shall be submitted to the Chief Administrative Officer for review. Councillors shall not “short circuit” this process by making claims somewhat publicly through email strings or other methods of social communication.

Councillors must also recognize the imbalance of power in relation to staff. Staff are at a decided disadvantage when accusations are made by Councillors. Staff do not have the freedom to respond, especially if these allegations are made publicly. Council should therefore, refrain from taking advantage of this imbalance. Hence, the Complaint Resolution Policy addresses the process required for a fair and proper assessment of the facts in a dignified and respectful manner.

Allegations #2 and #3:

The next two complaints relate to comments made by Councillor Fehr in emails dated March 25, 2021 and March 29, 2021, one claiming his “*frustration with people saying a [specific department] treats people less than objectively*” and the other alleging that a named but different senior staff member has a “*vendetta*” and “*behaved inappropriately.*” These allegations do not rise to a Code of Conduct violation as the emails were restricted to the C.A.O. and Mayor only. Councillor Fehr has a justified and reasonable expectation of privacy and confidentiality, especially when corresponding with the Head of Administration (C.A.O.) and the Head of Council (Mayor). There is no contravention here as these emails were sent discreetly to the correct authorities, although the formal Complaint Resolution Policy was not utilized, the complaints were accepted and responses were provided.

Allegation #4:

On May 10, 2021, at a regular Council meeting recorded and available for public review, Councillor Fehr commented that staff who were doing their duties assigned by Council was “*another threat*” to a resident.

Accusing staff of “threatening” behaviour during an open meeting of Council, clearly violates several Code policies, especially when there is a complaint process designed to address these types of concerns available. Councillor Fehr was aware of the Complaint Resolution Policy and was reminded of it during earlier discussions involving other

concerns he had raised. These types of public comments, knowingly directed to specific staff can initiate a pattern of behaviour that can be considered antagonistic, disrespectful of staff's professional capacities and contrary to the decision-making process, the Code of Conduct and the Workplace Harassment Policy.

Allegation #5:

On May 11, 2021, Councillor Fehr sent an email to Members of Council and the C.A.O. claiming "*harassment and ultimatums*" emanating from staff. Again, this is inappropriate and in breach of the Code and Workplace Harassment Policy. It is clearly a pattern or course of behaviour that ought to be known as unwelcome, contrary to policy. Councillor Fehr, by directing his comments to a particular staff member is demonstrating an antagonistic attitude towards the individual, impugning staff's professional and ethical reputation. I note that the C.A.O. promptly responded to Councillor Fehr's email with a comprehensive and professional response and explanation once again encouraging the Councillor to use the Complain Policy Process for such matters.

Allegation #6:

On September 13, 2021 at a regular meeting of Council recorded and available for public review, Councillor Fehr publicly questioned the "*motivation*" behind the proposed Encroachment by-law under consideration. An employee should be able to advance a position, by-law or policy with the expectation of respectful treatment. Questioning one's motivation for doing one's job clearly brings personality into the mix instead of sticking to issues, a violation of the Code.

Allegation #7:

On May 25, 2021 during an in-camera meeting concerning a Confidential Human Resources Report, Councillor Fehr is alleged to have said that "*the question was probably not appropriate but I was going to ask it anyway, when will 'staff X' be retiring?*"

Given the previous inappropriate comments directed to the same staff person, this statement, taken in context, certainly meets the definition of workplace harassment as it depicts a continuation of previously unwelcome comments.

In his defence, Councillor Fehr believes it was a logical question to ask as Council was discussing a transition plan and the staff member had previously spoken about retirement in any event.

This may be true, but one's retirement date is a personal matter and given that Councillor Fehr prefaced his question by indicating that it was probably inappropriate, it is not illogical to conclude that he knew there was a risk in posing the question.

Again, this represents another example of a pattern of workplace harassment when taken in context. It raises the concern: Is the Councillor trying to intimidate or bully the staff member into retiring?

Allegation #8:

In an email sent by Councillor Fehr on September 16, 2021 to a Department Head, he insinuates that the C.A.O. was untruthful with Council. As per the Code of Conduct and the Complaint Resolution Policy, this is in direct contravention of both policies and it is highly inappropriate. Councillor Fehr, in his written response, does not address this matter directly, instead he focused on the issue that gave rise to his comments. The C.A.O. expressed his objections to Councillor Fehr in a carefully worded and highly professional response whereat he quoted what he really said in a recording. In the C.A.O.'s response, Councillor Fehr was reminded of his obligations under the Code of Conduct and the need to follow the Complaint Resolution Policy. In addition, Councillor Fehr was asked to put a stop to "uninformed allegations" against staff.

Allegation #9:

On September 27, 2021 Councillor Fehr sent an email to Council claiming a resident received "*unique preferential treatment*" from staff. Again, issues with the conduct of staff must be addressed through proper channels such as the Complaint Resolution Process. Councillor Fehr stands by his assertions and by implication believes he has the right to make the allegation due to his evidence. As indicated throughout this report the Code of Conduct and Workplace Harassment policies demand respect, dignity and decorum in the workplace. Code violations are in play here as well as the Workplace Harassment provisions. There is a process for making complaints and Councillor Fehr chose to ignore the established method of resolution.

Allegation #10:

On or about October 13, 2021, Councillor Fehr made a number of statements on social media related to the Municipality and staff such as "*A few staff and one in particular exerts too much power*" and "*I have been bringing everything to staff right from day one and really tried to work with all but got shut down and resistance at every turn. Even now all enquiries are to go through the C.A.O. and not direct to staff or departments. New by-laws for every complaint we had park by-law, by access rules, encroachment rules, parking by-law changes. Harder and harder to get action.*"

As with any other activity, Members of Council, while acting in their elected capacity, must ensure that their use of social media is consistent with the Code of Conduct. They must not use this forum of communication to mislead or attack individuals. Decorum, civility and respectful interpersonal communications apply equally while attending Council meetings and/or communications through the various forms of social media.

On balance, it must be emphasized that Members have a right to disagree with Council policy but are to do so "in a respectful manner" (Section 11.1). Section 5.4 of the Code compels Members to "accurately and adequately communicate the attitudes and decisions of Council even if they disagree with Council's decisions, such that respect for the decision-making processes of Council is fostered." Members are held to a high standard.

Councillor Fehr, in his response, defends his social media posts as being accurate and claims his statements are well-known.

Comments such as this made on social media are not helpful nor are they in keeping with the Code of Conduct. They affect the Municipality's and staff's reputation and can lead to loss of credibility.

Informal Complaint Procedure:

On October 18, 2021, following various complaints and responses listed above, the C.A.O. and Mayor met with Councillor Fehr in an effort to address the concerns pursuant to the Code of Conduct. Allegations of Code violations and workplace harassment were discussed in the hope that "the discussions would afford Councillor Fehr an opportunity to recognize the inappropriate nature of his conduct and rectify it. The ultimate goal of the informal process was to persuade Councillor Fehr to end his inappropriate behaviours and activities and return to conduct supporting a respectful workplace."

Councillor Fehr responded that "*I will try not to do that as much publicly.*" He noted that other Councillors do not use the Complaint Resolution Policy and get results, and he brought up an issue respecting the new C.A.O. which is not the subject of this report.

In summary, this was a valid and sincere attempt to resolve, informally, outstanding issues and concerns. It was a pro-active and civil way of dealing with the recurring issue of publicly criticizing staff. It served to reinforce the need to utilize the guiding principles of the Complaint Resolution Process which is discreet and fair. It allows staff to explain matters before the "rush to judgement." In an uneven playing field, where the balance of power lies with Council, it enables the C.A.O. to evaluate the reported behaviour of staff and to deal with it.

Allegation #11:

On November 24, 2021 Councillor Fehr sent correspondence accusing staff of "*duping*" Council and other concerns. In this instance, like allegations #2 and #3 of this report, the email was sent to the C.A.O. and Mayor only. As with those allegations, Councillor Fehr had a reasonable expectation that his comments would be dealt with confidentially, discreetly and be afforded the privacy they were due. Raising issues of concern in this way does not invoke a violation under the Code.

Allegation #12:

In January 20, 2022 Councillor Fehr sent correspondence to a member of the public that, it is alleged:

- 1). *Misrepresented municipal procedures and communications from staff to Council;*
- 2). *Stated that it 'seems' admin is able to override or ignore Councillor's input;*
- 3). *Utilized corporate resources for private matter that Council passed a resolution on (October 25, 2021) to take no action on.*

Councillor Fehr, in his own defence, claims he was representing his constituents of Ward 4 and by implication it was not a private matter.

Once again, sections of the Code of Conduct have been contravened (5.4 and 11.1), regarding reporting decisions of Council accurately and respectfully.

Allegation #13:

On January 31, 2022 during an in-camera session at a special Council meeting, Councillor Fehr utilized his position as a Councillor to bring up an unrelated, private matter during the meeting. This item does not rise to the level of a Code of Conduct contravention. Integrity Commissioners have consistently taken the position that they do not have jurisdiction over the behaviour of Councillors at Council and Committee meetings unless there is a code violation; Integrity Commissioners ought not to interfere with conduct and management of any particular meeting. The procedural by-law allows the Chair a certain degree of autonomy to ensure that the meeting is conducted in accordance with its rules. So, if Councillors are “out of line,” the Chair can rule the Member out of order, for example.

In this instance, the responsibility for enforcing order rests with the Chair and Councillor Fehr could have been ruled out of order. There was no Code violation.

Allegation #14:

On February 14, 2022 during a regular meeting of Council, it is alleged that Councillor Fehr made public accusations undermining Council approved procedures and the credibility of staff by stating that:

- 1). *It had already gotten to the point where Councillors cannot send in residents’ complaints or letters without them being rejected.*
- 2). *Councillor Fehr had submitted complaints to senior staff and stated staff would not accept the complaint unless it was in proper filled in form.*
- 3). *He sends in items from residents and tax payers and they are clearly rejected or ignored by staff.*

Councillor Fehr does not deny the allegations claiming he has proof thereby making the statement acceptable. When asked for the due diligence to support his claims he was not able to supply the necessary proof at the time of the request.

As stated numerous times throughout this report, Councillors are entitled to inquire, to seek answers and to take on various positions on issues of concern to them. However, they are to focus on issues, not personalities and are encouraged to utilize the Complaint Resolution Process by submitting complaints regarding staff conduct to the Head of the Administration for action or resolution. On some occasions, Councillor Fehr submitted complaints discreetly but on many others he did not.

Summary:

As detailed above, the Code of Conduct for Members of Council and the Municipality’s Workplace Harassment Policies have been contravened in several instances. Council has options to address these contraventions including imposing:

- 1) a written reprimand; and/or
- 2) suspension of remuneration paid to a Member with respect to services up to 90 days

Furthermore, the Municipal Act provides Council with the ability to impose additional remedial measures such as more focused training on the Code and Workplace Harassment training and an apology, for example.

It should be noted that following his review of this report and its findings, Councillor Fehr made the following statements:

"Thanks for the information and explanation of your ruling. In the future I will deal more directly through the formal complaint process with the Mayor and C.A.O. or call in a Third party if in doubt. I will continue to strongly advocate and represent for my constituents within the rules."

Recommendation:

Given that this is Councillor's Fehr's first reported Code of Conduct complaint, I recommend that:

- 1). Council receive the Report, including the finding that the Code of Conduct was contravened on several occasions as well as the Municipality's Workplace Harassment Policy: and
- 2). That with respect to corrective action, that Council impose a written reprimand on Councillor Fehr's behaviour and instruct Councillor Fehr to re-acquaint himself with the Code of Conduct and the Workplace Harassment Policy, with a view to preventing any further violations in the future.

All of which is respectfully submitted,



Mark G. McDonald
Integrity Commissioner