
**TOWNSHIP OF SPRINGWATER
INTEGRITY COMMISSIONER'S REPORT**

Citation: Councillors Moore, Hanna, and Cabral v. Mayor Allen
Date: September 8, 2021
Commissioner: H.G. Elston

REPORT ON THE MATTER OF THREE COMPLAINTS AGAINST MAYOR ALLEN

Notice: Municipal Integrity Commissioners conduct inquiries and provide reports on their findings to their respective municipal councils. They may make recommendations for the imposition of a penalty or other remedial action to the municipal council. 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.

[Link to Council Decision]

PART I - BACKGROUND

1. The 2019 “Annual Simcoe Warden’s Charity Golf Tournament” was held at Vespra Hills Golf Club, in Springwater, Ontario, on June 26, 2019. The Mayor of Springwater, Don Allen, attended the tournament as a guest of the Township’s engineering and planning consulting firm. At the end of the day, as he was leaving, Mayor Allen was suspected by several members of the staff of the golf club as being intoxicated and was detained by them, pending the arrival of a designated driver service. After waiting for over an hour, the Mayor became impatient and left the golf club. The staff members called the police and filed “Incident Reports”, with the golf club.

2. The Mayor’s alleged condition and his decision to drive resulted in criminal charges being laid against him for impaired driving, charges which were later withdrawn and replaced by charges under the *Highway Traffic Act*¹.

3. Also, on July 5, 2019, three separate complaints arising from his alleged behaviour following the tournament were made against Mayor Allen, under the Township’s Code of Conduct² (the “Code”) to the Township’s now former Integrity Commissioners, “Principles Integrity” (the “Commissioners”). The complaints were made by Township of Springwater Councillors Anita Moore, Jack Hanna and George Cabral.

The Complaints

4. Councillor Jack Hanna is a member of the Vespra Hills Golf Club. It was his suggestion that the Township’s 2018 “Mayor’s Tournament” be held there, and, by all reports, that event was a success. It was that success that inspired the Warden of Simcoe County to have his 2019 tournament at Vespra Hills.

5. Councillor Hanna spoke with a person involved in the management of the golf club on June 27, 2019, the day after the Warden’s tournament. As reported to me by Councillor

¹ *Highway Traffic Act*,¹ R.S.O. 1990, c. H.8, as amended

² Council Code of Conduct, being Appendix “A” to By-law 2019-033

Hanna, this person was extremely upset and felt that the employees had been put in danger.

6. Councillor Anita Moore was offended by the Mayor's behaviour for two reasons: the Mayor's attempt to use his position to influence or intimidate the golf club staff who were trying to stop him from driving; and the fact that he was allegedly drinking and driving. She lives in the Ward and is upset that he did not reach out and apologize. In her complaint to the Commissioners, Councillor Moore states:

To say that I am embarrassed and disappointed in our Mayor's conduct would be an understatement. Our residents deserve and expect a higher standard of decorum at all times regardless of situation or circumstances. Unfortunately, I am now having to file a formal complaint and request our Integrity Commissioner conduct an independent investigation into these allegations as a Breach of Code of Conduct, as I never want to appear as condoning or dismissive (sic) of this type of behaviour. If confirmed, our Mayor almost injured two other people, not to mention countless others on the road plus himself.

7. To Councillor Cabral, the Mayor went to the tournament to represent Springwater, a duty that requires exemplary behaviour. He felt the Mayor was trying to use his position to keep the police out of it. In his written complaint, Councillor Cabral states:

I also think it needs to be stated at the outset of this correspondence that I believe any failure on my part to report this matter to the IC after being made aware of it, would place me in an unenviable position whereby it may be perceived that I were to be condoning these actions, or complicit in keeping them hidden and secretive from public scrutiny. ... Staff were advised by Mayor Allen of his position as the Mayor of Springwater. ... I find this extremely troublesome in that it seems to suggest the seeking of favourable treatment, influence, or to curry favour based on individual status as Mayor.

8. The complaints raise issues which are addressed in Code Rule 7, "Improper Use of Influence" and Code Rule 9, "Member Conduct".

9. Regarding the improper use of influence, Rule 7.1) states:

- 1) *No member shall use the influence of his or her office for any purpose other than for the exercise of his/her official duties.*

Commentary

Examples of prohibited conduct are the use of one's status as a Member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's Family Member, or friends.

10. On conduct, Rule 9.4) states:

- 4) *Members shall conduct themselves with appropriate decorum at all times.*

Commentary

As leaders in the community, Members are held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary.

The First Report and Council's Resolution

11. The Commissioners suspended their inquiry into the complaints until after the criminal charges were finally disposed of. This occurred on July 31, 2020, when the criminal charges were withdrawn, and the Court accepted a guilty plea from Mayor Allen to the *Highway Traffic Act* offence of driving without due care or attention or without consideration for other persons using the highway. Mayor Allen was sentenced to a \$1,000.00 fine, a four-month licence suspension and a 12-month probation period, where he was prohibited from driving with any alcohol in his system.

12. The Commissioners resumed their inquiry and presented their report, dated September 24, 2020 (the "First Report"), to Springwater Council, at its meeting of October 21, 2020. I have attached a copy of the First Report as Schedule "A", to this report.

13. The First Report incorporates one of two agreed statement of facts presented to the Court at the Mayor's sentencing hearing: "Mayor Allen was observed after the tournament having difficulties with his balance, due to a combination of a number of medical conditions he suffers from, in combination with two alcoholic beverages he consumed at dinner. Around 9:54 p.m., the Mayor drove off the golf club property, with only his daytime running lights turned on".

14. An overview of the prosecution of the criminal charges and the agreement that the Mayor will plead guilty to the *Highway Traffic Act* offence is provided. The Mayor was sentenced to a \$1,000.00 fine, a four-month licence suspension, and a 12-month probation period where he cannot drive with any alcohol in his system.

15. The First Report then proceeds to briefly outline the nature of the complaints by Councillors Moore, Hanna and Cabral and the process the Commissioners followed in their investigation.

16. In paragraph 21 of the Report, the Commissioners present the two applicable Code of Conduct Rules, Rule 9 and Rule 7, along with a brief commentary on each.

17. Finally, in the "Conclusions and Recommendation" part of the First Report, the Commissioners say:

While there may be circumstances where it would be appropriate and the in (sic) public interest that the integrity commissioner recommend sanctions on a member of Council even where the matter has been disposed of by the Court, that is not the case here. In our view, the Mayor has acknowledged responsibility for his conduct and therefore, no further sanction is warranted.

18. Contrary to the expectations of Council, not to mention what I believe to be the implicit requirements of the Code and the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "Act"), the Report did not say, one way or the other, whether Mayor Allen had contravened the Township's Code of Conduct.

19. The Commissioners attended at the October 21, 2020, meeting of Council to deliver the First Report. Some Members were disappointed that the First Report provided no answer to the question of whether the Mayor had contravened the Code, and the Commissioners were pressed to answer the question. They declined, stating that their report spoke for itself. In response, a prepared motion to receive the First Report, post it on the Township's website and to suspend Mayor Allen of all remuneration for a period of 90 days, was deferred.

20. In light of the findings in the First Report, at its meeting on November 4, 2020, Council:

1) Deferred a prepared motion:

- a) That the report from the Integrity Commissioner regarding Mayor Allen, dated September 24, 2020 be received; and
- b) That the report be posted on the Township's website for public access; and
- c) Be It Resolved That Mayor Allen be suspended of all remuneration and pay effective immediately for a period of 90 days/3 months.

2) Instead, passing a motion:

- a) That the motion now before Council be deferred; and
- b) That Council hereby request that staff seek the services of an independent integrity commissioner being Mr. Harold Elston or another qualified candidate to re-investigate the matter of the complaint against Mayor Allen regarding attendance at a wardens golf tournament in 2019 including details of the inquiry and clearly setting out a determination of whether or not the code of conduct was breached; and

- c) That staff be directed to request all documentation from Principles Integrity regarding this file in accordance with section 6.5 of their agreement and that the documentation be provided directly to the integrity commissioner appointed by Council; and
- d) That a by-law be presented to Council at a subsequent meeting for appointment of the integrity commissioner.

21. To that end, on November 18, 2020, by way of By-law 2020-093, Council appointed me to “re-investigate” the complaints against Mayor Allen.

PART II - THE ISSUES

- 1) Do I have the ability to “re-investigate” the complaints?
- 2) Were the complaints improperly motivated?
- 3) Did Mayor Allen contravene the Code?

PART III - SUMMARY OF FINDINGS

22. On the question of the ability of Council to appoint a new integrity commissioner to “re-investigate” the complaints, I have decided that it does, in the circumstances, have the authority to appoint a new integrity commissioner and assign that commissioner the task of “re-investigating” the complaints, or, as I would describe the task, completing the inquiry.

23. To address the suggestion that the motion to re-investigate was improperly motivated, I find that there was no bad faith involved in Council’s motion. I have interviewed all three complainants and am satisfied that the original complaints and the motion to re-investigate them were made out of a genuine concern about the Mayor’s alleged conduct. Moreover, I have been provided with no real evidence that the complaints were improperly made, only speculation. The suggestion that the Councillor complainants were not satisfied with the findings of the First Report is not, in and of itself,

a basis to declare Council to be acting in bad faith. I dismiss this objection to Council's decision.

24. Finally, because I have been unable to verify to my satisfaction the veracity of the reports of serious misconduct described in the incident reports submitted by members of the golf club staff, and because the accuracy of the Mayor's condition in those reports has been undermined by credible evidence from others, I am unable to say on a balance of probabilities that Mayor Allen breached the Code and I am, accordingly, bound to find that he did not and to dismiss the complaints.

PART IV - DISCUSSION

The Jurisdiction to Re-Investigate

25. Council's decision to re-investigate the Complaints was objected to by Mayor Allen, through his counsel, Sonja Hodis. In a letter to Council, dated November 10, 2020, Ms. Hodis says:

It is clear from Council's actions that they are unaware of legal principles in administrative law with respect to finality and functus officio or they are blatantly ignoring these principles and the advice of the Township's legal counsel. The Supreme Court of Canada has made it very clear that the finality of decisions should be favoured and that there is very limited authority to review a decision. There is no authority to reinvestigate a complaint by a different Integrity Commissioner. Once the final report was delivered by Principles Integrity, the ability of Council to have the matter further investigated or reinvestigated ended. Any attempts to reinvestigate the complaint is ultra vires the powers of Council and contrary to the principles that are fundamental to administrative law. Any decision by another Integrity Commissioner to reinvestigate the same complaint that has already been investigated and decided by Principles Integrity is outside the jurisdiction of that Integrity Commissioner and his opinions and findings would not be upheld and subject to challenge. There is abundant caselaw to support this position from various courts and the Supreme Court of Canada which I am

confident Council's legal counsel can explain to Council if he has not already done so.

26. The Mayor also argues that I should accept a letter to him from the Township's current Integrity Commissioner, Robert Swayze, as Commissioner Swayze's opinion that the Integrity Commissioners found that the Mayor did not contravene the Code. In that letter, Mr. Swayze says:

You have requested my advice as Integrity Commissioner on your participation in any discussion by Council in receiving a report this Wednesday, from the former Integrity Commissioner which recommends only that the report be posted on the Springwater website for public access. I understand that since the report relates to you personally, that you have made a personal decision to relinquish the Chair and not to vote on the item.

However, you wish to make a statement to Council to correct some information and file a Court Statement of Facts which was not included in the report.

I confirm my appointment as Integrity Commissioner effective September 15, 2020 and that the former Integrity Commissioner was directed to complete the investigation of complaints commenced before my appointment and report to Council. The subject report is the last complaint to be dealt with by the former Integrity Commissioner.

Pecuniary Conflict of Interest

I have reviewed the report which makes no finding that you contravened the Code of Conduct. You have advised me that you are not opposed to Council receiving the report directing that it be posted on the web site. The report does not recommend any suspension of your compensation and therefore you do not have a pecuniary interest.

In my opinion, Council does not have the power to suspend compensation unless the Integrity Commissioner finds that you have contravened the Code

of Conduct. If a member of Council proposes that your compensation be suspended, you should not participate in that discussion, but you can ask the Clerk to read my opinion.

Personal Conflict of Interest

The Code of Conduct in Rule 1 on page 4 purports to require that you not participate in the “decision making process” if a reasonable person would believe that you could not be impartial. You agree with the recommendation in the report and therefore it can be concluded that you are able to be impartial. The Code of Conduct in section 4) c) on page 5 gives to me the right, if challenged, to make a decision on whether you are disqualified from participating and I confirm that it is my decision that you may participate in this item on the Council agenda.

27. I believe that Commissioner Swayze’s letter was only intended to address the narrow question of whether the Mayor had an interest in the matter that would prevent him from participating in any discussion of the First Report by Council. He is not providing the opinion that the Mayor did not contravene the Code of Conduct, nor is he interpreting the First Report to that effect. I have attached Commissioner Swayze’s letter as Schedule “B” to this report.

28. In her submissions to me, dated December 15, 2020, the Mayor’s counsel repeats her arguments that any re-investigation would be *res judicata*. She also complains that:

In response to the final report delivered by Principles Integrity, certain Councillors were not satisfied with the findings as they personally felt that they should be able to impose a penalty of a suspension of compensation for 3 months. ... I refer you to Council meetings held on October 21, 2020 and November 4, 2020 which when viewed clearly demonstrate the bad faith motivation behind Council’s desire to ‘reinvestigate’ the matter... Council is clearly looking to impose what they personally feel is the appropriate remedy but is barred from doing so because the Integrity Commissioner did not make a finding that the Code of Conduct was breached. As a result, Council is trying to impose their wishes in relation to the

findings onto a new Integrity Commissioner thus obviating the independence of the role of the Integrity Commissioner. This is clearly an example of bad faith and abuse of process which should not be condoned or allowed to continue.

29. Responding to the Mayor's position that a re-investigation would be *res judicata*, counsel for the Township, Sarah Hahn, wrote to Ms. Hodis, saying:

The Township has taken reasonable and necessary steps to engage its Integrity Commissioner. Unfortunately, the report drafted by Principles Integrity failed to make a finding. The inquiry into the matter at hand is not over simply because the previous Integrity Commissioner failed to complete its duties. Seeking a proper report that reaches a conclusion of whether or not a breach of the Township's Code of Conduct occurred is not outside the scope of Council's authority and follows the principles of administrative law.

30. Following my review of the law and submissions provided to me by counsel for the Mayor and the Township, I find myself agreeing with counsel for the Township. I have come to this conclusion based on my review of the applicable law and policy, and also upon an application of the judge-made law on *res judicata*.

Law and Policy

31. As a starting point, the statutory framework regarding Codes of Conduct and Integrity Commissioners is found in Part V.1 of the Act; "Accountability and Transparency", including sections 223.1 to 223.8 of the Act.

32. According to section 223.3 (1) of the Act, it is Council's prerogative to assign functions to its Integrity Commissioner. That section says:

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.

33. Council's decision would seem to easily qualify as an exercise of its authority under section 223.3 (1) 1.

34. The courts have also considered the role of Council under the Act in determining procedures *vis-à-vis* complaints to the Integrity Commissioner. As explained by Justice Marrocco in *DiBiase v. Vaughan (City)*, [2016] O.J. No. 4822, 270 A.C.W.S. (3d) 873:

The City of Vaughan Council is the master of its own procedure. Indeed, the members of the City of Vaughan Council are the persons investigated by the Integrity Commissioner. The Councillors have codified the procedure or protocol for investigations of complaints about themselves in a bylaw entitled Complaint Protocol for Council Code of Conduct, which I have referred to as the Complaint Protocol.

Who better to decide the procedure or protocol governing those investigations?

35. Section 223.4 applies if the Commissioner conducts an inquiry under Part V.1

(a) in respect of a request made by council, a member of council or a member of the public about whether a member of council has contravened the code of conduct applicable to the member”.

36. Finally, section 223.4 (5) provides that:

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.

- 2 *Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.*

37. Further complicating matters, between the events of June 26, 2019, and the writing of this report, the Township repealed the Code and approved a new Code of Conduct, as Appendix “A” to By-law 2021-025 (the “New Code”). Although the applicable parts of the Code and the New Code are similar, it is important to identify the applicable set of rules.

38. To apply the New Code to an event that took place while the Old Code was in effect and to discipline Mayor Allen on a breach of the New Code is to “look backwards” and attach new rules to a past event, giving retrospective effect to the New Code. There is a strong presumption against giving a retrospective interpretation to legislation.³ Applying these principles and reasoning, I will apply the Code (as opposed to the New Code), including its procedural provisions.

39. “Part B” of the Code’s Complaint Protocol deals with the Formal Complaint Procedure:

Part B: 1.3) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code.

The complaint should include the name of the member, the provision of the Code allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.

40. The second step in the Formal Complaint Procedure is the classification of the complaint by the Integrity Commissioner (Part B: 2):

Part B: 2. 1) Upon receipt of the request, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with

³ *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, [2014] B.C.J. No. 1381, 375 D.L.R. (4th) 160; *Kalin v. Ontario College of Teachers*, 2005, 75 O.R. (3d) 523

respect to non-compliance with the Code and not covered by other legislation, a complaint with respect to the Municipal Conflict of Interest Act or other relevant Council policies.

41. Part B: 3 of the Formal Complaint Procedure deals with the investigation.

Part B:3. 1) The Integrity Commissioner is responsible for performing the duties set out in this Protocol independently and shall report directly to Council in respect of all such matters. In applying this Protocol, the Integrity Commissioner shall retain the discretion to conduct investigations applying the principles of procedural fairness, and any deviation from the provisions of this Protocol for that purpose shall not invalidate the investigation or result in the Integrity Commissioner losing jurisdiction.

Part B:3. 2) If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, or that the pursuit of the investigation would not, in the opinion of the Integrity Commissioner be in the public interest, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.

Part B:3. 15) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, the terms of any settlement, or recommended corrective action.

Part B:3. 16) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other periodic report.

Part B:3. 18) If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of

judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

42. In my respectful view, the Commissioners, having undertaken an investigation and having prepared and submitted a report, must be deemed to have determined that the complaints:

- 1) were with respect to non-compliance with the Code;
- 2) were not frivolous, vexatious, or not made in good faith; and
- 3) revealed grounds for an investigation and that the investigation would be in the public interest.

43. Moreover, by not stating in the First Report that there was no contravention of the Code, or that a contravention occurred although the member took all reasonable measures to prevent it, or the contravention was trivial or committed through inadvertence or an error of judgement made in good faith, the Commissioners must not have come to any of those possible conclusions.

44. Having failed to make a finding on any of the alternate possibilities outlined above, the Commissioners were then obligated to bring the investigation to a conclusion by determining whether or not there was a breach of the Code and, if a contravention was found to have occurred, to make a recommendation to Council.

45. Because the First Report did not properly reflect the obligations imposed by the Act, Council was legally hamstrung in its ability to do its job. To suggest that Council may not complete the task assigned to it because of a failure or omission on the part of the Commissioners' is untenable, transferring to the Integrity Commissioner an authority that clearly resides with Council.

46. The office of the Integrity Commissioner and Council are separate players, with different duties. In the circumstances, their independent functions should not be blended together so that they appear to be a unified decision-maker, subject to the legal principles established to guard against the re-consideration of the same matter by the same body.

47. Rather, I think it better to view the Integrity Commissioner as an investigator who provides advice and recommendations to Council on whether a Member of Council has contravened the Code of Conduct. If the Integrity Commissioner fails to answer the question he or she is commissioned to answer, it simply cannot be that Council is, thereby, rendered *functus*. The Integrity Commissioner/Council arrangement is of a different nature and structure and is necessarily subject to a different analysis than the review of a decision of a court or a tribunal.

48. The two roles are clearly described and assigned in the Act; the Commissioners determine if there has been a breach and, if a breach, Council, in its wisdom and acting in the public interest, determines what sanction or sanctions are appropriate. The imposition of sanctions by Council will not only serve to penalize the Member for the specific breach and deter him or her against future transgressions, but will also reflect the values of the community, as represented by Council.

49. In the alternative to the more straightforward approach I prefer, I am also of the view that, even should the bifurcated Integrity Commissioner/Council process be considered to be akin to a judicial proceeding and subject to the prohibition against judging something already judged, the shortcomings of the Commissioners' work identified above are such that a re-investigation is not *res judicata* and that Council is not *functus*. My reasons for this conclusion, follow.

50. A review of the relevant jurisprudence on the meaning of *res judicata* and *functus officio* helps to explain why those principles do not apply to condemn Council's decision in this case.

51. In *Ahmed v. Canada (Minister of Citizenship and Immigration)*, [2000] I.A.D.D. No. 1870, Yves Bourbonnais, Chair of the Canada Immigration and Refugee Board, Immigration Appeal Division, provides the following definition of the legal maxim, *res judicata*:

A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent

jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.⁴ ... The sum and substance of the whole rule is that a matter once judicially decided is finally decided.⁵

52. As *res judicata* applies to the process, *functus officio* applies to the office or officer adjudicating the case. *Black's Law Dictionary*⁶ defines it as:

A task performed. ... Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.

53. Accordingly, for these two principles to apply, there must be “a thing judicially acted upon or decided” by a body which has fulfilled its purpose. The “thing” to be decided and the purpose of the “body” making the decision is established in the Act and the Code.

54. Counsel for the Mayor relies on *Chandler et al. v. Alberta Association of Architects, et al.* [1989] 2 S.C.R. 848, *Chopra v. Attorney General of Canada*, (2013) Federal Court, 2013 FC 644 (CanLII), *Stanley et al. v. Office of the Independent Police Review Director* ONCA 2020, 2020 ONCA 252 (Can LII), and *Charett v. The Commissioner of Competition*, Federal Court – 2002, 2002 FCT 698 (CanLII).

55. In *Chandler*, the Supreme Court of Canada considered a decision of the Practice Review Board of the Alberta Association of Architects (the “Board”) to continue a hearing into the practice of a firm of architects, after its original findings and order had been quashed, as being made without jurisdiction.

56. The Board, although conducting a valid hearing, mistakenly made findings and recommendations that dealt with the discipline of architects (the jurisdiction of the

⁴ *Matchett v. Rose*, 36 Ill.App.3d 638, 344 N.E.2d 770, 779

⁵ *Allen v. McCurry*, 449 U.S. 90, 101 S.Ct.411, 415, 66 L.Ed.2d 308

⁶ *Black's Law Dictionary*, Fifth Edition, West Publishing Co. 1979

Architects Complaint Review Committee), as opposed to practice related findings and recommendations. Upon being told of its mistake, the Board determined to continue, but this time on the right topics.

57. The Alberta Court of Queen's Bench allowed an application by the firm of architects to prohibit the Board from proceeding further in the matter, finding that the Board had completed and fulfilled its function and that it was therefore *functus officio*. The Alberta Court of Appeal vacated the Queen's Bench order of prohibition and sanctioned the Board's decision to continue its work. An appeal to the Supreme Court of Canada was dismissed, with the judgment of Dickson C.J. and Wilson and Sopinka JJ., delivered by Justice Sopinka.

58. In agreeing that the Board should be allowed to continue its hearing, Justice Sopinka identified the following facts:

- 1) it was the Board's decision to continue the original hearing;
- 2) the Board did not consider whether to make a recommendation and therefore it did not exhaust its jurisdiction;
- 3) there was a failure to consider matters which were part of the Board's statutory duty; and
- 4) the *Architect's Act* did not confer on the Board the power to rescind, vary, amend or reconsider a final decision that it has made.

59. At page 862 of the decision, Justice Sopinka says:

To this extent, the principle of functus officio applies. It is based, however, on the policy ground which favours finality of proceedings rather than the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal. For this reason I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the

reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal.

Accordingly, the principle should not be strictly applied where there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation.

Furthermore, if the tribunal has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete its statutory task.

60. Applying the reasoning in *Chandler*, the question becomes: Did the Commissioners/Council dispose of the issue that they were empowered by their enabling statute to dispose of? In my view, the answer is they did not.

61. As in *Chandler*:

- 1) Council was not able to consider whether to make a recommendation and therefore it did not exhaust its jurisdiction;
- 2) There was a failure on the part of the Commissioners to consider matters which were part of the Commissioners statutory duty; and
- 3) While the Act does not confer on the Integrity Commissioner or Council the power to rescind, vary, amend or reconsider a final decision that it has made (remembering that no decision has been made), neither does it provide for an appeal.

62. The direction that the application of the principle of *functus officio* must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law is also transferrable to the case at bar. Moreover, the Commissioners very clearly failed to dispose of an issue which was fairly raised and of which they were empowered by the Act and the Code to dispose of.

The Public Interest

63. As referenced above, Part B: 3. 2) of the Code allows the Integrity Commissioner to not pursue, or if commenced to terminate, an investigation, if the Integrity Commissioner is of the opinion that the pursuit of the investigation would not be in the public interest. To that end, I have considered whether the investigation is in the public interest.

64. On the one hand, the events in question occurred two years ago and it is, arguably, unfair that Mayor Allen has had to live with the complaints hanging over his head for such an extended period of time. Moreover, his prosecution and the original investigation attracted some publicity, and it may be that Mayor Allen has suffered a loss of support, as a result.

65. At the same time, some of the delay associated with the delivery of the original report was as a result of the mandatory pause in the investigation while the prosecution was ongoing. The Commissioners then undertook a complete investigation (albeit one that did not answer the question of whether there was a breach of the Code), which, but for the Mayor's challenge to Council's ability to impose a suspension of his remuneration because the Report did not say he had contravened the Code, would have been concluded on or about November 4, 2020. While delay is unfortunate, I am not prepared to find that the delay makes it not in the public interest for me to complete this investigation. Rather, I believe that, delay notwithstanding, it is very much in the public interest that the matter be put to rest with a definitive finding on the complaints.

66. I also take note of the long-standing view that Council should determine matters of public interest. In *Kuchma v. Rural Municipality of Tache*, [1945] S.C.R. 234, Justice Estey acknowledges that a municipal council has the best insight into what constitutes a public interest for their municipality:

Upon the question of public interest, courts have recognized that the municipal council, familiar with local conditions, is in the best position of all parties to determine what is or is not in the public interest and have refused to interfere with its decision unless good and sufficient reason be established.

67. It is clear that Council believes that it is in the public interest that the investigation continues and that a finding be made as to whether or not a breach occurred. I agree.

68. As a final comment on Council's decision to re-investigate, I note Justice Marrocco's observation in *DiBiase* that the decision to commence an investigation does not, in and of itself, decide or prescribe the legal rights of the person to be investigated. So too, the decision by Council to call for a reinvestigation. At paragraph 43 of his judgement, Justice Marrocco says:

This Court will always be reluctant to permit judicial review of a decision by the Integrity Commissioner to commence an investigation. The decision to commence an investigation does not decide or prescribe the legal rights, powers, privileges, immunities, duties or liabilities of the Councillor who will be investigated. The decision to investigate does not decide whether the Councillor is eligible to receive or to continue to receive a benefit. Permitting judicial review of this class of decisions will inevitably result in two hearings instead of one. Finally, there is no basis for review of this Integrity Commissioner's decision to commence this investigation.⁷

69. Accordingly, I find that because the Commissioners did not make a finding as to whether or not the Mayor contravened the Code, Council had the jurisdiction to assign the task of "re-investigating" or continuing the inquiry into the complaints.

Did the Mayor Contravene the Code?

70. The question of the Mayor's sobriety has dominated the discussion, both in this inquiry and before the courts. Indeed, the incident reports filed by the eye-witnesses to the Mayor's behaviour all emphasize that the Mayor was intoxicated. On the other hand, the witness statements filed by the people who spent the day and the dinner hour with the Mayor all attest to his moderate consumption and proper behaviour. In my view, while of course relevant to an assessment of his conduct (i.e., the greater the level of intoxication the more likely is there to be undignified behaviour), the question is not simply

⁷ *DiBiase v. Vaughan (City)*, [2016] O.J. No. 4822, 270 A.C.W.S. (3d) 873, 55 M.P.L.R. (5th) 173

whether or not the Mayor was intoxicated, but whether, whatever his condition, he behaved in a way that ran afoul of the Code. I have tried to keep this distinction in mind, as I review the various statements and in my interviews with the witnesses.

71. My understanding of the events of Wednesday, June 26, 2019, has been formed by my review of four “Incident/Accident” reports filed with the golf club by the employees who witnessed the Mayor’s behaviour (“Employees’ Evidence”) and by the statements and my interviews of the three persons who spent the better part of the day and into the evening with Mayor Allen, as well the reports from his physicians (“Respondent’s Evidence”).

The Employees’ Evidence

72. While I am mindful of my duty to keep information that comes to me in the course of my inquiry confidential, given the central role the Employees’ Evidence played in the police and integrity commissioner investigations, I have reproduced these statements, *verbatim*, with all names and positions withheld.

73. The author of Incident Report #1, dated June 26, 2019 (Employee Witness #1) notes the time of the incident as being 8:13 p.m. Employee Witness #1 reported the incident to two co-workers and the police, stating:

As I was leaving work, walking to my car at the back of the parking lot I noticed the trees behind the cars moving, when I saw this man get up off the ground, stumbling and continuously falling over. He got up, holding on to his white Prius and slowly walked to the drivers side of the vehicle and got in the car. At this point (8:13 p.m.) I called (name withheld) (co-worker) asking what I should do. I didn’t know if something medical related happened or if he was highly intoxicated so I followed him down the driveway trying to keep an eye on him and get his licence plate. He then put his signal on and pulled over in front of the driving range, so I pulled over in front of him. He got out of the car and grabbed his golf clubs and stumbled over himself all the way there. I stayed in my car to keep an eye on him to make sure he didn’t leave. At this point as I was still in my car, (name withheld) and (name

withheld) came down to talk to the man at the driving range and I went back up to our pro shop.

About a half an hour after, I went back down to talk to (name withheld) about what happened. I was down at the driving range with a few of our employees (names withheld) hanging out waiting for the DD⁸ to show up to drive him home. All of us were down at the range talking to him, having what seemed to be a good conversation, at this point he was relaxed. A few minutes go by and he got in his car to “get away from the mosquitos” so we let him sit in his car, as (name withheld) stood in front of his car, a little off to the side, thinking that would stop him from leaving. A little while after this he got in his car, out of nowhere he stepped on the gas and nearly hit (name withheld). All in shock, we asked (name withheld) to get in his car and follow him but as soon as he got to the end of the driveway to see where he was headed, the man had turned his lights off and was gone. (Name withheld) had right away called the cops (9:51 p.m.) to report the incident.

74. The author of Incident Report #2, dated June 27, 2019 (Employee Witness #2) notes the time she reported the incident as being 9:51 p.m. Employee Witness #2 reported the incident to the police and states:

8:13 p.m. (name withheld) called to tell me there’s a man in the parking lot stumbling and falling down multiple time (sic). While on the phone with her, she tells me that he is getting into a white Prius and driving down our driveway. I told her to follow his car and try to get his licence plate. (Name withheld) tells me he pulled over on our driveway across from the driving range. At this point I am already in a golf cart with (name withheld) on our way to the range. (Name withheld) approaches him as he is attempting to hit golf balls. He told (name withheld) he was “fine” but clearly showed signs of extreme intoxication. Very slurred words and unable to stand up straight. I stepped in and asked how he was getting home, he told me he was being picked up. I then asked for the keys to his vehicle, he refused to give them to me. I told him if he was to get into his car and leave I would call

⁸ The golf club has arrangements with several companies to provide designated drivers.

911. He told me to “give him 30 minutes and see how he feels”. 8:22 I phoned (name withheld) and explained the situation. She drove to the course. I returned to the dining room as I had 2 tables. (Names withheld) were dealing with Mr. Allen at the range. I was told they had called a DD and he was cooperating. AT 9:40 I called (name withheld) to let him know the dining room was closed up and I was coming to get (name withheld) to help a member find his clubs. I had gotten to the range in a golf cart and saw that (name withheld) had come as well, his car parked a few metres behind Mr. Allen. At this point Mr. Allen said “the bugs were too bad” and was sitting in his car with the keys. (Name withheld) was standing in front of Mr. Allen’s car, kind of off to the side. All of a sudden Mr. Allen took his car out of park and hit the gas, nearly missing (name withheld). This was at 9:51, when I immediately called 911. (Name withheld) jumped in his car to follow but Mr. Allen had turned his lights off. I gave the police his name, license plate and his address. (Name withheld) phoned OPP with the same information. Over the course of this event he was very aggressive towards the pro shop boys.

75. The author of Incident Report #3, dated June 26, 2019 (Employee Witness #3) notes the time of the incident as being between 9 p.m. and 10 p.m. Employee Witness #3 states:

I had just left work for the day after the completion of the Wardens Golf Tournament. I received a call from (name withheld) indicating that one of the other servers had called her after witnessing a man trying to get into his vehicle who could barely stand and kept falling over while trying to get into his car. (Name withheld) had told (name withheld) that he did eventually get in his car so she followed him as he started his way down the driveway where he then veered off into the ditch area of our driveway in front of the driving range.

I immediately got in my car and rushed back to the golf course – I picked up (name withheld) from the pro shop to go down with me to confront the gentlemen who was at this point trying to hit golf balls at the driving range. Once we arrived at the range it was very obvious that the gentleman had was (sic) intoxicated – he fell

over while trying to tee off and wasn't able to keep his balance while standing still. Myself and (name withheld) went up and approached the man and explained our issues with him driving out of the facility. I explained to him I was the (position withheld) and that the girls had filled me in on what they saw and I wasn't ok with him leaving the property in his vehicle. I than (sic) asked if I could take his keys from him which he declined. He told me he was fine and was just going to hit a few golf balls. He said he didn't want this to be an issue and couldn't afford for it to be a problem. At this point I gave him a few options, we could call his wife to come get him, we could call Canada DD to get him and his car home safely or we could call a taxi. I stated that those were his options and if he were to get in his vehicle to drive out, I would immediately call the police.

He agreed to us calling Canada DD we called and all waited by the driving range. (Name withheld) stood with him by his vehicle and chatted while the man had said that he wouldn't tell us his name as he didn't want us knowing who he was. As they continued to talk the man finally told (name withheld) his name Don Allen and that he was the Mayor of Springwater. To confirm this, we googled and saw that he in fact was.

At this point we had been waiting for Canada DD for awhile without them arriving so I called again to get an update on when they would be arriving. They had said they had a busy evening and would be there as soon as they could. At this point Mr. Allen was getting frustrated as the bugs were getting bad and he had been waiting awhile. He got into his vehicle saying that he was just going to wait in there to avoid the mosquitos. He then turned off his lights started his car and took off. Just missing (name withheld) with his vehicle.

We immediately called the OPP and gave as much information as we could.

76. The author of Incident Report #4, dated July 1, 2019 (Employee Witness #4) notes the time of the incident as being 9:45 p.m. to 10 p.m., and that he reported it at 10:15 p.m. Employee Witness #4 states:

Myself and a server saw a man stumble from his car to driving range. Went down to take a look and he seemed pretty intoxicated. We asked for keys and he would not give us keys. We called our (position withheld) over to try and still wouldn't give us his name or keys so we gave him the options of calling a DD, cab or his wife. Decided that he would take the DD so (position withheld) called Canada DD and after an hour of waiting for the DD he started to get a bit aggressive. Asked if any of this will be reported, just after he tells me he's the Mayor of Springwater. A bit later I was standing by the front of the car to try and get a hold of the (position withheld) to see where the DD was when I heard the car start, I jumped out of the way and he takes off and (position withheld) calls 911.

The Respondent's Evidence

77. Mayor Allen provided me with statements from three persons that were with the Mayor all day and into the evening and that were presented to the court. I spoke with each of these witnesses.

78. Respondent's Witness #1 rode in the Mayor's golf cart on June 26, 2019. In his statement to the Mayor's counsel in the criminal proceedings, he says:

Good morning Karen,

As you work with Mr. Allen on this file I offer the following.

On the day in question I rode in the same cart and sat at the same dinner table with Mr. Allen.

As for my state that day, I do not drink much and did not drink while we golfed. I had one beer after the game but drank water for most of the evening.

I noticed that Mr. Allen did not drink beer when other golfers in our foursome purchased beer. The actual format of golf at the course is not conducive to drinking as there are not roaming refreshment carts selling alcohol throughout

the day. Alcohol is only available to be purchased at the main concession area every 9 holes. I did not watch Mr. Allen like a hawk that day but can only recall him drinking potentially one drink by adding 1 prepacked shot into a container of water/sparkling water.

During dinner, the table had a bottle of white wine and a bottle of red wine. I did not see Mr. Allen drink any white wine. I did see Mr. Allen drink red wine but only 2 to 3 glasses.

I find this accusation odd, especially the assistance Mr. Allen gave me that day. I was prescribed a new medication a few days before the golf game and was having challenges that day with dehydration and not feeling well. The hot day may have contributed to this. I even sat out the last 3 holes. During the evening I was able to drink a lot of water and felt much better by the time dinner ended. During this time Mr. Allen noticed that I was a little out of character and looked over me quite a bit. Made sure I was fine. Checked on me throughout the evening to see that I was okay. I do not think this would be typical of someone that would be intoxicated or under the influence.

I was with Mr. Allen from the time the tournament started until approximately 7:30 pm when I left for home.

Let me know if you have any questions or require clarification.

79. Respondent's Witness #2 states:

On Wed; Jun. 26, 2019 I attended the Simcoe County Golf tournament at Vespra Valley Golf course and played in a foursome along with Mr. Don Allen.

Throughout the day our foursome met the beverage cart on two or three occasions around the golf course and each time I offered to buy the individuals in our foursome a beer; however, Mr. Allen declined each time noting that he was

on a special diet and as such only wanted a soda water or passed without having anything at all.

After playing the round of golf we went back to the clubhouse for the dinner and speeches. I sat beside Mr. Allen during dinner and again Mr. Allen declined to have any beer; however, he did have two glasses of wine with dinner. Shortly after the dinner and speeches were over, I left the event, but before leaving I spoke to Mr. Allen and thanked him for a very enjoyable day on the golf course. When speaking with Mr. Allen he did not appear inebriated or intoxicated to me.

Regards,

80. Respondent's Witness #3 was in the group behind Mayor Allen. He says:

It was great to be teed up on the same golf hole as Don Allen, June 26, at the Simcoe County Wardens Golf Tournament. Our group started on hole 4B and we played behind Dons group which was slotted on hole 4A.

I have known Don and (his wife) for 5 years through our mutual friends ... (who) are next door neighbours to Don and (his wife).

Shotgun tournaments are notoriously slow moving events and it was great to have Don around to chat with as we waited on every hole. ...

We were together for 5 hours in constant contact on the course. Don did not have one alcoholic beverage during the round of golf. He was on a diet and was drinking soda water on the golf course. ...

We sat together for beverages during the cocktail hour and Don had one glass of wine in a period of an hour and a bit. We were called to dinner and my group sat at a table adjacent to Don. There were a couple of speeches and a silent auction, we ate our dinner and as luck would have it, we did not win a thing.

Our group finished our meal and dessert, said our goodbyes, and headed for home. It was a great day!!

During the 6 hours of close contact with Don Allen, I witnessed him have 1 glass of white wine. I would be more than happy to answer any questions you may have!!!!

81. I was also provided with three letters from Mayor Allen's doctors.

82. Dr. Jocelyn Charles, MD CCFP (COE) FCFP MScCH, practices in the Department of Family & Community Medicine, at Sunnybrook Health Sciences Centre. Dr. Charles states:

December 6, 2019

To Whom It May Concern,

Re: Donald John Allen

I am Donald Allen's family physician. Donald suffers from multiple sclerosis and has an unsteady gait which has progressively become more unsteady. This gait can be mistaken as related to alcohol or drug intoxication. He does not have any history of substance abuse with alcohol or other medications.

If you require further information, please let me know.

Dr. Jocelyn Charles MD CCFP (COE) FCFP MScCH

83. Dr. Lee is an Associate Professor of Neurology at Sunnybrook. He states:

October 22, 2019

To Whom It May Concern:

RE: ALLEN, Donald

I am writing on behalf of this 67 year old man who has been a patient of mine since 2005. He was diagnosed with clinically isolated syndrome in February 2005 (left arm numbness). It is conceivable that his underlying neurological symptoms

are worsened with heat and fatigability. This could include worsening balance and slower gait.

Thanking You

L. Lee, M.D., M.Sc., F.R.C.P.C.

*Associate Professor of Medicine (Neurology) Sunnybrook Health Sciences Centre
University of Toronto*

84. Dr. Kreder is Mayor Allen's knee surgeon. He states:

August 27, 2019

To Whom It May Concern:

Re: Donald Allen

This note is to confirm that Mr. Donald Allen had bilateral total knee replacements performed by Dr. Hans Kreder on July 20, 2007 at the Sunnybrook Holland Orthopaedic & Arthritic Centre.

If further information is required, please call the office.

Sincerely,

Hans J. Kreder, MD, MPH, FRCSC

Assessing the Evidence

85. It is easy to see how the statements from the four employees set off the chain of events that led to criminal charges being laid against Mayor Allen and to the filing of complaints with the Township's Integrity Commissioners. These reports paint a very damaging picture of the Mayor's condition, colouring their assessment of his behaviour. I have, however, decided that I should not rely on these reports. The employees are not experts, the reports are, in places, inconsistent and all seem to build upon the first witnesses conclusion that the Mayor was intoxicated.

86. My faith in the veracity of these reports was further diminished because, despite repeated requests over many weeks from my law student and from me, none of the witnesses responded to our pleas (I did by chance connect with one of the witnesses, but her evidence was not determinative.) Accordingly, I was not able to clarify the inconsistencies in and between these statements and, with some reluctance, feel that I should not rely on them to find that the Mayor was intoxicated.

87. I do accept that the Mayor identified himself as the Mayor of Springwater, but, in the circumstances, the evidence does not establish and I do not believe that this was an attempt to use the influence of his office to extricate himself from his predicament.

88. That said, I do not blame the employees for reporting what they, perhaps not unreasonably, saw as a person showing signs of impairment and possibly breaking the law.

89. On the other hand, the evidence of the Mayor's Witnesses was mostly consistent, although I do note the discrepancy between statements as to whether it was two or three glasses and whether they were red or white wine. I spoke with all three of these witnesses and found them to be credible and forthright, making it difficult to believe that only some minutes later Mayor Allen was intoxicated. The medical evidence and the long day in the sun provide a better explanation.

90. When I recast the Mayor's presentation as reflecting the symptoms identified by his physicians and not as a result of the excess consumption of alcohol, the episode becomes decidedly more benign. This version is also much more consistent with the reports of his moderate drinking during the day and at dinner.

91. In particular, apart from the observation that he was intoxicated, the statement of Employee Witness #1 raises no questions as to Mayor Allen's behaviour and makes no reference to him identifying himself as the Mayor of Springwater. The only part of the statement of Employee Witness #2 is the reference to the Mayor behaving "aggressively" towards the pro shop boys. There is no elaboration of this allegation and no mention of it by any of the other Employee Witnesses. Similarly, the statement of Complaint Witness

#3 makes no first-hand observation of inappropriate behaviour. While Complaint Witness #4 does allege that the Mayor drove off and almost hit him, without being able to speak with this witness, and in the face of the Mayor's direct evidence, I am not prepared to accept this as a deliberate act, but one more in keeping with the facts leading to the *Highway Traffic Act* conviction.

92. Finally, I had two opportunities to speak with Mayor Allen. He told me that his tee time was 10:30 a.m. and that the round went until about 5 p.m. His group stopped for lunch at 1 p.m. and he had no alcohol. Around 2 p.m. he did drink a one-shot serving of rye from a small bottle, which were being handed-out by one of his golfer colleagues. He had no further drinks that afternoon. At dinner, there were two bottles of wine at each table. He had two, four or five ounces glasses over the 2 ¾ hour dinner. Mayor Allen left after the speeches, saying goodbye to his group sometime before 8 p.m. It was Mayor Allen's testimony to me that he was fine to drive. He was diagnosed with multiple sclerosis in 2005, which affects his balance and gait. Mayor Allen has kept his diagnosis private, only telling his family. He denies falling or stumbling. It was a nice summer evening and he pulled over to enjoy the sunset. Around 8 p.m. he decided to hit a few golf balls. He was not wearing his golf shoes and may have slipped. He was tired from a long day in the heat.

93. When approached by the golf club staff asking if he had been drinking, he was reluctant to explain his unsteadiness by telling them of his multiple sclerosis. Rather than make a scene and use his multiple sclerosis and knee problems as excuses, he agreed to wait for the dedicated driver service. As to the allegation that he identified himself as the Mayor of Springwater, Mayor Allen tells me that this is his custom. He did not say it to influence anyone. As he recalls, the conversation with the staff members was normal and he was not impatient or aggressive.

94. As it grew dark, the mosquitos became bad, and he got in his car. He had by then been waiting about 1 ½ hours and it was just before 10 p.m. He told me he felt totally fine to drive and that the staff person was, in fact, well away from his car. He simply did not want to wait anymore. He was three metres away from Employee Witness #4 when he

pulled away. The lights in Mayor Allen's car come on automatically; he did not turn them off as he drove off. He drove home in about 10 minutes.

95. The Mayor told me that his car was parked in the middle of the lot and that Employee Witness #1's statement could not be true. Mayor Allen also denies the allegations in the statements of Employee Witnesses #2, #3 and #4. In response to my question as to how these witnesses could have gotten it so wrong, he says he feels they jumped to the conclusion that he was intoxicated.

96. It was only 12 days later that he received a letter from the Integrity Commissioners that a complaint had been made against him. He was surprised, and notes that the three complainants were not at the golf tournament.

97. Mayor Allen acknowledges that he was driving without due care and attention because he was tired and that he was prepared to accept the conditions that were ultimately imposed on him upon his plea of guilty to the *Highway Traffic Act* offences.

98. I found the Mayor to be honest and believable in his testimony and I accept it.

99. Consistent with the evidence of Mayor Allen and his witnesses, a Revised Agreed Statement of Facts was prepared for the court. That statement says:

After the golf tournament's dinner he attended the driving range to hit more golf balls. It was when staff saw him get into his car, signal, and pull over, and stop at the driving range, that he came to their attention.

As indicated by the Crown, it was at this time that Mr. Allen was seen by the staff member having difficulties with his balance. He did hit golf balls on the driving range, became more tired, and when staff approached him one member gave Mr. Allen two alternatives - either he wait for a designated driving service to be called by them, or for Mr. Allen to arrange for someone to come and pick him up.

Mr. Allen was not intoxicated - he did consume 2 alcoholic beverages with dinner. As a result of a combination of his medical conditions, which include

MS and double knee replacements, along with being on the golf course for a full day in the heat and being tired, the combination of these factors created a situation of physical difficulty for Mr. Allen.

As Mr. Allen did not want to get into details concerning his medical conditions or make a scene, he cooperated, accepted the staff's assistance and agreed to have the designated driving service called.

When asked to identify himself, Mr. Allen was hesitant, as he did not want to use his position to influence anyone, however, he was continually asked, and as a result he eventually told them his name and position. He said this once. Staff googled him to confirm his identity. This was how the staff was able to eventually give police his name.

After identifying himself, Mr. Allen and the staff continued to wait for the designated driving service. During this time period, Mr. Allen politely cooperated with the staff of the golf course and waited patiently for over 75 minutes for the driving service to arrive. Mr. Allen did not have any encounter with any other members of the public. He showed no signs of being belligerent or uncooperative,

While waiting for the driving service to arrive, the bugs started to get really bad and so Mr. Allen asked the staff if he could sit in his car to avoid getting bitten. While waiting, the staff were unable to confirm if or when the designated driving service would be coming. After waiting for an additional ten minutes while sitting in his car, Mr. Allen became tired of waiting and felt that he was fine to drive home.

Mr. Allen drives a Prius hybrid which, when started in the warm summer, does not make an engine noise, as it initially goes to a quiet battery mode. There was a staff member standing off 2 meters from the front left exterior mirror of Mr. Allen's car, and was startled when he saw the car start moving.

The staff member moved off to the left however, he was not in the direct path of the car and was not in any danger of being touched by the car.

The headlights of this Prius, according to the manual, go on automatically when it is dark. Mr. Allen did not otherwise touch the light switch in his car. The staff member did not see the back lights on, causing the staff some concern and therefore the call to police.

Mr. Allen drove off of the private property onto the roadway safely, but did not touch his light switch from automatic to nighttime. As a result the front running lights were being used. However, once on the roadway, given the combination of the consumption of some alcohol, fatigue from a long day on the golf course in the hot sun, his double knee replacement and the exacerbated MS symptoms, caused him to, objectively speaking, drive without due care and attention.

100. The Agreed Statement of Facts was prepared jointly by the Crown and the defence in support of the plea to the *Highway Traffic Act* offences. Although created for a different purpose, to the extent that it is a statement of facts sanctioned by a court of law and one which aligns with the evidence of Mayor Allen, his physicians and his golfing partners, and which, apart from the belief he was intoxicated, is not inconsistent with the evidence of the golf club employees, I will accept it as the best evidentiary record of the events of June 26, 2019.

PART V - FINDINGS

101. For the reasons stated, I find that Council's decision to reinvestigate or continue the investigation was within Council's authority and that, upon completion of the inquiry, it is my further finding that, Mayor Allen did not attempt to use the influence of his office to his private advantage and did not behave without proper decorum; he did not contravene Rule 7 or Rule 9 of the Code of Conduct. Accordingly, I dismiss the complaints.

All of which is respectfully submitted this 8th day of September 2021.

A handwritten signature in black ink, appearing to read 'H.G. Elston', with a long horizontal line extending to the right.

H.G. Elston
Integrity Commissioner

Principles
Integrity

Township of Springwater

Mayor Allen Code of Conduct Complaint

Report of the Integrity Commissioner

September 24, 2020

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Township of Springwater effective January 1, 2019. We are also privileged to serve as Integrity Commissioner 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 Springwater 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] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make

Principles *Integrity*

recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

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

The Complaint

- [8] On July 5, 2019 we received separate Complaints from three members of Springwater Council, Councillors Moore, Hanna and Cabral, regarding concerns about Mayor Allen's conduct and behaviour arising at a golf tournament in late June, at which it is alleged that the Mayor was intoxicated.
- [9] The Complaints alleged that the Mayor's conduct and behaviour constitute a breach of the Code of Conduct.
- [10] The same fact situation also formed the basis of offences for which the Mayor was charged by the OPP.

Process Followed

Principles *Integrity*

[11] In conducting this investigation, Principles Integrity applied the principles of procedural fairness, guided in a general sense by the complaint procedure set out under the Code of Conduct.

[12] This fair and balanced process included the following elements:

- Reviewing the initial Complaints to determine jurisdiction and public interest
- July 8, 2019: Notifying Respondent of the Complaints; seeking his response
- July 11, 2019: Receiving and reviewing the response of Respondent
- July 12 – 17, 2019: Interviewing relevant witnesses
- July 24, 2019: Making inquiries of the OPP regarding potential charges
- August 14, 2019: Providing the Respondent with our preliminary Findings Report and seeking any additional comments
- August 22, 2019: Extending time for review by Respondent
- September 25, 2019: Receiving documentation relating to charges; advising of suspension of investigation pending disposition of charges
- October 24, 2019: Reporting to Council re Suspension Pending Court Disposition

Background of Events

[13] On June 26, 2019 the County of Simcoe held its annual Warden's Golf Tournament at Vespra Hills Golf Club.

[14] The Mayor and Deputy Mayor of Springwater, along with other members of Council for the County of Simcoe were invited to attend.

[15] The Vespra Hills Golf Club clubhouse and dining facility is perched atop a hill in Springwater, northeast of the City of Barrie, with a view all the way to Georgian Bay – a distance of about 25 or 30 km. as the crow flies.

[16] Entry to the facility is off of Wilson Road, up a winding road almost $\frac{3}{4}$ km long and there is a driving range nestled into the hillside about halfway along.

[17] Following a day of golf, dinner and drinks, as the Mayor departed the event, he was observed by and interacted with staff who believed he was intoxicated and in no condition to drive himself home.

[18] Staff at the golf course observed that the Mayor:

- was having difficulty keeping his balance, when he left a golf tournament,
- refused to allow staff at the golf club to arrange a ride home for him or to give up his car keys when asked,

Principles *Integrity*

- loudly and repeatedly identified himself as the Mayor of Springwater in an effort to convince staff not to report the incident, and
- drove away in the dark in his car with the headlights off

[19] Staff contacted the OPP that evening.

[20] On August 6, 2019, criminal charges were laid.

Springwater Code of Conduct

[21] The relevant provisions of the Code of Conduct are Rule 9 and Rule 7:

Rule 9 - Member Conduct

4) Members shall conduct themselves with appropriate decorum at all times.

Commentary

As leaders in the community, Members are held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary.

Rule No. 7 - Improper Use of Influence

1) No member shall use the influence of his or her office for any purpose other than the exercise of his/her official duties.

Commentary

Examples of prohibited conduct are the use of one's status as a Member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's Family Member, or friends. This would include attempts to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties.

Role of Integrity Commissioner When Facts Give Rise to Criminal Allegations

[22] The Municipal Act requires that, where there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code, the

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Integrity Commissioner, shall “refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of and shall report the suspension to council”.

[23] The legislation has been interpreted by the Divisional Court¹ to clarify the powers of the Integrity Commissioner in these types of circumstances. The court has held that although the Integrity Commissioner must refer allegations of a criminal nature to the appropriate police service, and suspend investigation of those matters, the integrity commissioner retains jurisdiction. Following disposition of any charges before the court, the integrity commissioner may continue the investigation.

[24] In such circumstances, even where the criminal charges are dismissed, withdrawn, or are not proceeded on, the Integrity Commissioner may still make findings that the Code of Conduct was violated. This is because:

- The onus of proof in a criminal case (beyond a reasonable doubt) is higher than the onus of proof in a civil matter (a balance of probabilities) which applies to findings of violations of the Code of Conduct
- It may well be that police or the Crown decide not to pursue charges, yet the conduct and behaviour still constitutes a serious breach of ethical standards expected of Members of Council, and warrants public reprimand or monetary sanction
- The matter may give rise to an opportunity for relevant recommendations from the Integrity Commissioner in addition to any that might involve the imposition of a sanction on the respondent councillor, or for public education, or for a ‘clearing of the air’ should the matter have been a matter of public discussion.

[25] In all circumstances, where inappropriate conduct or behaviour of a member of council is alleged, it is quite appropriate that the complaint be made to the Integrity Commissioner. The Integrity Commissioner can then determine which aspects of the complaint are criminal in nature, on their face, and refer those to the appropriate police service, while pursuing an investigation of the balance of the complaint.

[26] Such a process recognizes that public resources supporting the administration of justice are scarce, and where warranted and appropriate, an administrative law solution may provide a timely remedy in the public interest.

Disposition of the Charges

¹ Michael Di Biase v. City of Vaughan, 2016 ONSC 5620, Divisional Court, pg.28, paras.194-221

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[27] On July 31, 2020 the criminal charges were withdrawn and the Court accepted a guilty plea from Mayor Allen with respect to the Highway Traffic Act offence of driving without due care or attention or without consideration for other persons using the highway.

[28] On a joint submission, he was sentenced to \$1000 fine, a 4-month licence suspension, and a 12-month probation prohibiting him from driving with any alcohol.

[29] The matter was disposed of on an agreed statement of facts which read as follows:

On June 26th, 2019 Don ALLEN attended a golf tournament at the Vespra Hills Golf Course located on Wilson Drive in Springwater Township. He was observed after the tournament by staff having difficulties with his balance. This was due to a combination of a number of medical conditions Mr. Allen suffers from, including Multiple Sclerosis, a double knee replacement, fatigue from the heat and duration of the tournament in combination with 2 alcoholic beverages Mr. Allen had consumed at dinner at the course.

Around 9:54 p.m. Mr. Allen entered his car, a Toyota Prius and drove off the property with only his daytime running lights on and turned onto Wilson Road,

The combination of Mr. Allen's fatigue, pre-existing medical condition, the 2 alcoholic drinks consumed at dinner and driving after sunset with only his daytime running lights on amounted to his driving on Wilson Road without due care and attention for other users of the roadway.

[30] The Court noted in sentencing:

"I think the joint submission in this case is fitting and appropriate, and certainly meets the needs of the purpose of sentencing which is to promote a sense of responsibility in offenders, and to those who are acknowledging the harm done - and that is certainly the case here - but also to denounce the unlawful conduct and harm done to victims, and to deter yourself and others from committing offence."

Conclusions and Recommendation

[31] An Integrity Commissioner's recommendations may include a reprimand, appropriate remedial actions or a monetary sanction of up to 90-days suspension of pay.

Principles *Integrity*

[32] While there may be circumstances where it would be appropriate and the in public interest that the integrity commissioner recommend sanctions on a member of Council even where the matter had been disposed of by the Court, that is not the case here.

[33] In our view, the Mayor has acknowledged responsibility for his conduct and therefore, no further sanction is warranted.

[34] We therefore recommend:

That this report be posted on the Township's web site for public access.

[35] We will be pleased to be in attendance when this report is considered to respond to questions.

ROBERT J. SWAYZE

BARRISTER & SOLICITOR

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20736 Mississauga Road

CALEDON, ONTARIO

L7K 1M7

October 20, 2020

Mr. Don Allen, Mayor
Township of Springwater
2231 Nursery Road
Minesing, ON L9X 1A8

Dear Sir:

You have requested my advice as Integrity Commissioner on your participation in any discussion by Council in receiving a report this Wednesday, from the former Integrity Commissioner which recommends only that the report be posted on the Springwater web site for public access. I understand that since the report relates to you personally, that you have made a personal decision to relinquish the Chair and not to vote on the item. However, you wish to make a statement to Council to correct some information and file a Court Statement of Facts which was not included in the report.

I confirm my appointment as Integrity Commissioner effective September 15, 2020 and that the former Integrity Commissioner was directed to complete the investigation of complaints commenced before my appointment and report to Council. The subject report is the last complaint to be dealt with by the former Integrity Commissioner.

Pecuniary Conflict of Interest

I have reviewed the report which makes no finding that you contravened the Code of Conduct. You have advised me that you are not opposed to Council receiving the report or directing that it be posted on the web site. The report does not recommend any suspension of your compensation and therefore you do not have a pecuniary interest.

In my opinion, Council does not have the power to suspend compensation unless the Integrity Commissioner finds that you have contravened the Code of Conduct. If a member of Council proposes that your compensation be suspended, you should not participate in that discussion, but you can ask the Clerk to read my opinion.

Personal Conflict of Interest

The Code of Conduct in Rule 1 on page 4 purports to require that you not participate in the "decision making process" if a reasonable person would believe that you could not be impartial. You agree with the recommendation in the report and therefore it can be concluded that you are able to be impartial. The Code of Conduct in section 4) c) on page 5 gives to me the right, if challenged, to make a decision on whether you are

disqualified from participating and I confirm that it is my decision that you may participate in this item on the Council agenda.

If you have any further questions, please contact the undersigned.

Yours very truly,

A handwritten signature in blue ink, appearing to be 'RS', with a long horizontal flourish extending to the right.

Robert J. Swayze
Integrity Commissioner

cc. Renee Ainsworth, Clerk