

Principles *Integrity*

Municipality of Brockton

Integrity Commissioner's Recommendation Report Regarding Deputy Mayor Lang

June 12, 2024

Executive Summary

- [1] This report results from a complaint against Deputy Mayor Lang for his conduct as a Member of Council for the Municipality of Brockton.
- [2] Employees of the municipality lodged harassment complaints against the Deputy Mayor for conduct at the Walkerton Community Centre (the Arena), arising out of the Deputy Mayor's involvement with the Walkerton Capitals Junior C Hockey Club (the Capitals).
- [3] The harassment complaints were investigated by a third party investigator who, following a fair and thorough investigation, made findings that the Deputy Mayor had engaged in conduct which constituted harassment under the Municipality's Respect in the Workplace Policy.¹
- [4] While a third party investigator may make findings, the *Municipal Act* provides that Council may impose a sanction against a member of Council following receipt of an Integrity Commissioner's Report.
- [5] Council therefore referred the third party investigator's report to Principles *Integrity*, Brockton's Integrity Commissioner, for a determination as to whether the Deputy Mayor's conduct, which the third party investigator found to constitute harassment, breached of the Code warranting imposition of a sanction by Council.
- [6] On an interim basis, pending receipt of the Integrity Commissioner's Report, Council banned the Deputy Mayor from attending at the Community Centre and Arena for a period of one year or until such time as the Integrity Commissioner's Report is received by Council.
- [7] Having carefully reviewed the third party investigator's findings with reference to the Council Code of Conduct, including giving considering to whether the tenets of procedural fairness were adhered to, and further interviewing the Deputy Mayor,

¹ Brockton's Harassment Policy adopts the workplace harassment definition found in the *Occupational Health and Safety Act*.

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including providing him with an opportunity to review and comment on our draft report, we find that the Deputy Mayor's conduct and behaviour towards staff constitutes a breach of the Code.

- [8] We recommend that the Deputy Mayor continue to be banned from the Arena until the new year, January 1, 2025 at which time he may attend but **only** at such times as the Walkerton Capitals are using the facility or the executive are meeting at the facility, and only when accompanied by another member of the Walkerton Capitals executive or the coach.
- [9] We remain seized of the matter should there be any further concern regarding his conduct or behaviour while in attendance at the Arena, or in relation to staff who work at the Arena.

The Complaint

- [10] Employees at the Arena lodged complaints against the Deputy Mayor alleging that his conduct and behaviour towards them constituted harassment.
- [11] It was alleged that on the evening of December 16, 2023, the Deputy Mayor engaged in behaviour towards employees that included:

yelling, name-calling,
storming around angrily,
slamming doors,
kicking and punching doors open.

- [12] The conduct has been found by the third party investigator to constitute harassment. Council has asked for a determination as to whether the Deputy Mayor's conduct breached the Council Code of Conduct.

Process Followed for this Investigation

- [13] Principles *Integrity* is satisfied that the third party investigator applied the tenets of procedural fairness, including:
- Notifying the respondent of the complaint against him
 - Interviewing the respondent Deputy Mayor
 - Conducting interviews of other persons with information relevant to the complaint, including the employees who filed the complaint
 - Reviewing video recordings retrieved from Arena's security video cameras
 - Reviewing all relevant documentation including the Municipality's relevant policies

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[14] In arriving at our determination, Principles *Integrity* considered the findings of the third party investigator, notified the Deputy Mayor of our review, interviewed him and then provided him with an opportunity to review and provide comments on our draft report. We have also reviewed all relevant documentation and, in particular, the Code of Conduct.

Background and Context

[15] The Deputy Mayor is also a co-owner (one of three co-owners) and the President of the Capitals.

[16] The Capitals are the home team which rents space from the Municipality of Brockton in the Walkerton Community Centre, both to practice and play at the Arena, and for its executive meetings.

[17] In his capacity as President and co-owner of the Capitals, the Deputy Mayor regularly and frequently is at the Arena.

[18] In the past, there have been issues in regard to the Deputy Mayor, in relation to his involvement with the Capitals. It has been challenging for civic administration to manage the conduct of the Deputy Mayor in this regard, given his hands'-on approach to his role with the Capitals and his strong personality.

[19] On the night of December 16, 2023 following a Capitals' game, the Deputy Mayor went raging through the arena – yelling, name-calling and using profanities – aggressively kicking and violently slamming a steel fire door and generally displaying an outburst of anger towards the staff working that night.

[20] During the third party investigation, the Deputy Mayor acknowledged the behaviour, but justified it by the fact that he was conducting himself 'as a manager'.

[21] The third party investigator found that the Deputy Mayor failed to accept responsibility for his actions, or to acknowledge the inappropriateness of the behaviour.

The Council Code of Conduct

[22] A Council Code of Conduct is intended to set a high standard of conduct for Members in order to provide good governance and a high level of public confidence in the administration of the municipality by its Members as duly elected officials and leaders in the community.

[23] The following provisions of the Brockton Council Code of Conduct provide relevant guidance in our consideration of this matter:

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4.1 A Member shall make every effort to:

(c) not make disparaging comments about any other person (including a Member) or unfounded accusations about the motives of any person (including a Member);

5. The Role of Staff – Respectful Conduct Towards Staff

5.1 An individual Member neither directs nor oversees the functions of the staff of the Municipality.

5.4 A Member shall not publicly criticize Staff and any issue with respect to any Staff member shall be referred to the CAO who will direct the matter to the particular Staff member's appropriate superior (if not the CAO).

9. Discrimination and Harassment

9.1 A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.

9.2 A Member shall not use indecent, abusive, demeaning or insulting words, phrases or expressions toward any member of the public, another Member or staff.

9.4 A Member shall comply with the Municipality's Workplace (Harassment and Violence) Policy.

12. Council Policies and Procedures

12.1 A Member shall observe and strictly adhere to any policies, procedures and rules enacted and/or established from time to time by Council.

17. Penalties for Non-Compliance with the Code of Conduct

17.1 Where Council receives a report from the Integrity Commissioner that there has been a violation of the Code of Conduct by a Member, Council may impose the following penalties on the Member:

(a) a reprimand; and/or

(b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period up to ninety (90) days.

18. Remedial Measures or Corrective Actions

18.1 Council may, on the basis of a recommendation from the Integrity Commissioner, also take any or all of the following corrective actions or remedial measures, and require that the Member:

(a) provide a written or verbal apology;

(b) return property or make reimbursement of its value or of money spent;

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- (c) be removed from or not be appointed to the membership on a committee of Council;
- (d) be removed from or not be appointed as chair of a committee of Council; and
- (e) comply with any other remedial measure or corrective action deemed appropriate by the Integrity Commissioner.

Analysis and Findings

- [24] As noted, the Deputy Mayor is also the President and co-owner of the Capitals.
- [25] The fact that the Capitals are the home team using a Municipally-owned and operated facility may have given rise to some role conflation by the Deputy Mayor regarding his role at the facility.
- [26] A Member of Council does not get to ‘remove’ their hat as an elected official; so even while he may be donning his Capitals’ President’s hat, he cannot disrobe from his mantle of responsibility as Deputy Mayor.
- [27] We have heard that when he puts his Capitals President hat on, he bullies staff – at the rink - and treats the facility “as if it were his own living room”.
- [28] Even if he were not Deputy Mayor, a user of the municipal facility would be expected to behave in a civil, respectful and courteous way when interacting with municipal staff.
- [29] It is notable that, in April 2023 Brockton Council adopted an amended Alcohol Policy strictly prohibiting consumption of alcohol in dressing rooms and change rooms/washrooms at municipal facilities.
- [30] In May 2023, Brockton Council adopted a policy (the RZone Respect and Responsibility Policy) to establish guidelines to address inappropriate behaviour or violence in municipal owned facilities.
- [31] The RZone Policy mandates an environment of respect for oneself and others, and responsibility for one’s actions. It obligated staff who observe a violation to report the matter.
- [32] We understand that these Policies were necessary in order to address some conduct issues relating to certain users of the Arena.
- [33] Suffice to say that the Deputy Mayor was a Member of Council when those Policies were being adopted, and fully understood both the purpose and implications of such Policies.

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- [34] A Member of Council has no authority to oversee staff, and absolutely no authority or role to manage or chastise staff.
- [35] If a member of Council is dissatisfied with the performance of any employee, there are appropriate channels to seek corrective action. Any concerns about staff's performance in their job must be directed to that staff's superior, if not the CAO.
- [36] Indeed, name-calling or yelling is not 'managing' staff. If another staff member – a manager or supervisor – indulged in such verbal abuse and hostility in the workplace, it would quickly be recognized as harassment.
- [37] Kicking and slamming doors must be recognized as violent acts of anger and intimidation. These, too, would quickly be called out if done by staff.
- [38] It is inappropriate for staff to return the anger, to argue or to engage in name-calling or yelling with Members of Council.
- [39] Staff cannot fight back, because they are expected to demonstrate respect for Members of Council.
- [40] Staff cannot 'return fire' even when they are being attacked, because Members of Council are perceived as holding power over them. The situation reflects a power imbalance.
- [41] Where such conduct is targeted at one staff member but occurs in the presence of other staff, such bullying is damaging to staff in the workplace environment.
- [42] The damage to staff, and to the culture of respect in the organization, is significant and lasting.
- [43] Such conduct causes stress and anxiety to those on whom it is visited and inculcates a culture of apprehension and fear in others who know they will have to interact with the Member in the course of their employment.
- [44] A concern exists that left unchecked, the behaviour may affect staff morale and retention or recruitment. Staff would be understandably hesitant to risk exposing their reputations to damage wrought in such an environment.
- [45] We find that the conduct and behaviour - which the third party investigator found to constitute harassment under Brockton's Harassment Policy - contravened the Council Code of Conduct.
- [46] More particularly, we find that the Deputy Mayor's conduct and behaviour on the evening of December 16, 2023 contravened several provisions of the Code, in particular:

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- 4.1(c) making disparaging comments about any other person
- 5.4 publicly criticizing Staff
- 9.1 failing to treat staff with respect and without abuse, bullying or intimidation and failing to ensure their work environment is free from harassment
- 9.2 using indecent, abusive, demeaning or insulting words, phrases or expressions toward Staff
- 9.4 breaching the Municipality's Workplace (Harassment and Violence) Policy
- 12.1 failing to observe and strictly adhere to any policies, procedures and rules enacted and/or established from time to time by Council

[47] Employers have an obligation to ensure a harassment-free workplace, in the same way employers have an obligation to ensure a violence-free workplace. The Code of Conduct requires members of Council to refrain from harassing and bullying behaviour towards employees.

[48] Council members are not mere by-standers when conduct escalates. They can play a role in calling it out and challenging it, with the voice of reason.

[49] It would be unfortunate if members of Council do not place value in supporting the appropriate and respectful treatment of professional staff above their personal allegiances and loyalties to each other.

[50] We note that any reprisal or retaliation by the Deputy Mayor can form the basis for a separate finding of contravention under the Code of Conduct.

Recommendations:

[51] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. We see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.

[52] Where a breach is substantiated, the Integrity Commissioner, following procedural fairness, submits a public report.

[53] As detailed above, we are of the view that the Deputy Mayor's conduct contravened several provisions of the Code of Conduct.

[54] In appropriate circumstances, it may be that a Member of Council is able to correct their behaviour.

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- [55] Despite being provided with an opportunity to review the preliminary report for one week, and invited to provide any written comment, the Deputy Mayor has chosen not to make a written submission. We find this to be an unfortunate missed opportunity to offer a belated genuine apology for the conduct in December, and to demonstrate remorse and contrition.
- [56] In these circumstances, we think it is appropriate that the Deputy Mayor be given 'time in the penalty box' for his behaviour.
- [57] While Council's imposition of a one-year ban from the Arena is certainly supportable in our view, the Deputy Mayor has sought leniency on the basis of his important role with the Capitals.
- [58] The hockey season runs from September to March. On the understanding that any repeat misbehavior would result in an immediate imposition of the balance of the one-year ban, we recommending that the one-year ban be suspended on January 1, 2025, to allow the Deputy Mayor to attend the Arena at such times as:
- the Walkerton Capitals are playing or practicing at the facility; or
 - A formal, minuted meeting of the 'Executive' of the Walkerton Capitals (as identified on the team's web site 'Organization' tab) is taking place at the facility; or
 - A meeting of three or more members of the team's 'Hockey Operations' group (as identified on the team's web site) is taking place at the facility:
- And
- The Deputy Mayor is accompanied by another member of the Walkerton Capitals Executive, or the Head Coach, or an Assistant Coach
- [59] In the event of any further concern regarding the conduct or behaviour of the Deputy Mayor while in attendance at the Arena following January 1, 2025, or in relation to staff who work at the Arena, we remain seized. In that respect we also recommend that Council:
- Delegate to the Integrity Commissioner, for the period January 1, 2025 – March 26, 2025, the authority to reinstate the Deputy Mayor's one-year ban from the facility in the event the Integrity Commissioner is satisfied that incidents of bullying or harassment in the nature of the behaviour identified in the third party investigator's has reoccurred, or that acts of reprisal have re-occurred.

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[60] We will be available to introduce this report and respond to questions during the Council meeting at which this report is considered.