

# “The Powers of a Municipality Shall Be Exercised by its Council”

## Introduction

This report has been prepared to respond to three separate complaints with respect to alleged contraventions of the Code of Conduct adopted by the Municipality of Brighton. At the heart of the three complaints is the failure of the cited members of Council to “demonstrate respect for employees’ professional roles, responsibilities, opinions and expertise” (Section 2.4 para 1 of the Code of Conduct, adopted May 3, 2010 pursuant to Section 223.2 of the Municipal Act 2001)

This investigation has been conducted by Amberley Gavel Ltd, appointed by Council as its Integrity Commissioner under the above mentioned Code.

The complaints could also have been investigated under the Council’s adopted Workplace Violence and Harassment Prevention Policy which considers psychological harassment which includes persistent , excessive and unjustified criticisms and constant scrutiny which is inappropriate and affects the person’s dignity or psychological integrity and results in a poisoned work environment.

Mayor Walas has been cited in all three complaints, and Councillors Tadman and Martinello in two of them.

## Background

At the heart of the behaviour that is alleged to have resulted in breaches of the code appears to be a fundamental lack of understanding, or perhaps a personal disagreement with, the underlying premise of the Municipal Act 2001. This Act is the key Provincial law that governs how Ontario municipalities operate. Municipalities cannot operate contradictory to the Act.

The title chosen for this report is drawn directly from that Act which clearly states:

### ***Powers exercised by council***

5. (1) *The powers of a municipality shall be exercised by its council. 2001, c. 25, s. 5 (1)*

What does this mean? We have all heard media reports that make reference to Mayors elected to “run” a City or Town. Is this not the case? Indeed it is not.

Powers are exercised by **the council** as stated above.

Ontarians can be forgiven if they assume that Ontario Mayors have independent powers with respect to directing municipal staff, programmes or spending. We view television programming about American Mayors that, in some cities, do have such powers; or read about Mayors in other Provinces that head civic parties that hold majorities on Councils, like in a parliamentary system. That’s not how it is in Ontario.

The only time that Ontario mayors have any specific powers is if other Provincial Acts such as the Emergency Management and Civil Protection Act direct, or if by-laws passed by their Councils delegate, specific powers to the Mayor as head of council. We have recently seen where a Mayor’s delegated powers, such as Council delegated authority to make civic appointments or to hire personal staff were either withdrawn or reduced when the bylaws doing so were amended or repealed by Toronto City Council.

So what does the Municipal Act say a Mayor can do?

The detailed wording from the Municipal Act 2001 is attached as Appendix A .

In summary it says that the role of the Mayor is to preside over Council meetings, to provide leadership to Council, to ensure that Council receives advice regarding transparency and accountability, to represent the municipality at events and to Act as Chief Executive Officer. But the Act is very clear that acting as CEO includes only behaviour that has been described as being a cheerleader or champion for the municipality, and it does not assign any operational responsibility to a Mayor or other Head of Council.

In effect, a Mayor has many opportunities to exercise influence, but not authority.

So who does have authority?

Ultimately, Council as noted above. But municipalities have many services they must and may provide. Councils cannot have the expertise nor the time to manage the delivery of these services.

That is why the Act states in part:

## **Municipal administration**

*227. It is the role of the officers and employees of the municipality,*

*(a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;*

and

### **Chief administrative officer**

*229. A municipality may appoint a chief administrative officer who shall be responsible for,*

*(a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality;*

A Council, in a duly constituted meeting with quorum and with public notice having been given, exercises power.

It appoints officers, and delegates powers to staff to purchase, manage, spend, and hire etc.

The Mayor presides over and leads Council. The Head of Council is not an operational position in Ontario, unless specific powers are delegated by the Council, or by legislation such as the power to declare an emergency.

### **The Complaints**

The complaints are in essence the same complaint, each with a slightly different different focus. They demonstrate as mentioned earlier, demonstration of a substantial lack of respect for the role of appointed staff.

It is not unusual for differences to arise between groups of councillors. What is unusual, and inappropriate as the Code of Conduct reflects, is for that disagreement to transform itself into attacks on staff when efforts to achieve results through votes in Council fail.

Essentially, the first complaint, filed by Council on motion of Councillor Tadman, seconded by Councillor Rowley and carried unanimously with Councillor Martinello and Mayor Walas absent, was that there was a pattern of behaviour emerging on the part of the Mayor and Councillor Martinello that evidenced a series of behaviours that were

designed to discredit and/or dishearten the Chief Administrative Officer and either remove her from office or encourage her to resign, despite her having been given quite satisfactory performance appraisals by Council.

This motion was passed on February 1, 2013 and relayed to Amberley Gavel Ltd as the Municipality's Integrity Commissioner, with a request that the investigation not begin until a formal employment contract had been negotiated between the Council and the CAO, Ms. Frost.

We were informed on June 3, 2013 that agreement had been reached and were requested to begin the investigation.

A date was scheduled for early July in order that individual interviews could be held with all senior staff and with the members of Council who requested the investigation. Replies were received from all but Councillor Tadman. Interviews were conducted July 8, 2013 at the Brighton Offices.

Subsequent to that group of interviews, attempts to meet with Councillor Tadman were unsuccessful as she informed us through her legal firm that she would be unavailable until February 2014 for an interview. Given the consistency of information coming forward from others and the fact that Councillor Tadman had supported the original request for an investigation it was determined that an interview would not add significantly to the investigation.

The next step was to seek interviews with Councillor Martinello and with Mayor Walas.

Both requested interview dates with their solicitors present and we agreed but although we offered numerous dates they were unavailable until the fall of 2013.

The second complaint was filed against Mayor Walas and Councillor Tadman concerning what was felt to be repeated criticism of staff in response to incorrect wording in a proposed by-law and the related staff explanation. While the behaviour at that meeting could be considered a breach of the code because it was unnecessarily repetitive and the Mayor did not call a halt to it, it could have been dealt with at that meeting by members of Council through an appeal of the ruling of the Chair pursuant to the Municipal Procedure By-law.

No further comment is warranted on that complaint by itself.

The third complaint, filed jointly by four senior staff members, was added to the file on December 20, 2013 after a draft 2014 Budget had been tabled in the manner directed by Council.

Although the complaint referenced behaviour of Mayor Walas and Councillors Tadman and Martinello, the evidence submitted directly concerned Mayor Walas.

Council had directed at an October meeting that staff table a budget that included all outside requests plus all projected operating costs for existing services, and recommended capital requirements for investments in infrastructure and in equipment.

In some municipalities, administration pares back additions in order to present to Council a budget that includes a tax levy that they believe would be acceptable to Council. The practice in Brighton has been to leave such decisions to Council in order that it would be clear who was making the decisions and that Council would be adopting a budget on the basis of all available information.

Staff followed the October direction that confirmed the existing process. The draft budget, with a double digit tax increase, was presented at a meeting of Council December 4, 2013. There is no evidence to indicate that the ensuing discussion was anything but congenial and educational. All members of Council participated including Mayor Walas.

However, five days later, Mayor Walas gave what appeared to be a prepared statement on a local radio station, critical of the budget process, and more importantly, calling into question the professionalism of staff with respect to the material that had been presented on December 4.

In the statement, which was made available to us on a clip from the station, he said that the budget as tabled "shows a blatant disregard for ratepayers and to Council"....."it was a waste of staff time and of my time"... and.... "good management would have presented a document with a modest tax increase.....".

Members of staff indicated that they were taken aback by those statements.

It is possible that between December 4 and December 9 the Mayor changed his mind about what had been presented. However, if he wished to be critical of the process and the December 4th document, it was to Council that he should have directed his comments, not to staff, as staff was simply complying with the direction clearly provided by Council.

We find that Mayor Walas' statement was a clear and intentional breach of the Municipal Code of Conduct. The Code requires Members of Council, and this includes the Mayor, to demonstrate respect for employees' professional role, responsibilities, opinions and expertise.

A review of Council decisions indicates that there are some significant political divisions on Council. There is no apparent consistency with respect to these divisions other than the Mayor seems to be on the "losing side" more often than most Mayors are across Ontario.

It appears that in response to this fact the Mayor has adopted a strategy of targeting staff or supporting others in doing so in order to attempt to weaken the perceived opposing forces on Council.

This behaviour takes us back to the first complaint.

When first reviewed it seemed to reflect a group of anecdotes indicating that the Mayor was out to get the CAO, that he and the CAO had disagreed on a number of administrative matters that she considered to be her delegated responsibility, that he had been publicly critical of staff performance, that he had a staff hit-list at one time and that he had interfered in the conduct of normal business.

It is not unusual for Mayors and CAOs to have differences of opinion. Both roles require strong personalities committed to their municipalities and willing to stand up for what they believe.

What is unusual is for them not to be able to work these differences out.

What is even more unusual is for a Mayor to take clear steps towards the dismissal of the CAO without it being a decided matter of the Council.

And while this investigation was under way it became clear that that was exactly what the Mayor had done.

Material from Council's solicitors has already been tabled publicly in the summer of 2013 that is conclusive in this regard.

He has contended that he needed legal advice in order that he could provide leadership to Council on this matter, should Council agree with his desire to dismiss the CAO. But he went far beyond that and directed the solicitors to prepare a detailed termination agreement giving the impression that Council direction had been given.

It has been alleged that this action was taken directly as a result of an administrative action taken by the CAO; however, we could not identify a clear link other than coincidental timing.

In our opinion, Mayor Walas has clearly demonstrated a lack of respect for the employees' professional role, responsibilities, opinions and expertise, and has thus breached the Code of Conduct.

In doing so, he has also demonstrated a lack of understanding of, or respect for, the statutory role of Council.

This is confirmed by a document he submitted to Council on September 3, 2013, presumably in defence of his actions in directing the solicitors and incurring expense without approval regarding the preparation of the above mentioned termination agreement. This document is attached as Appendix B.

This document, which he signed, indicated that he was a member "of a group of four members of Brighton Council that agreed to and supported the removal of Ms. Gayle J. Frost from her duties as the Chief Administrative Officer of the Municipality of Brighton".

Even if four members of Council, being a majority of the members of Council agree on a matter, this agreement has no force in law unless it is expressed by resolution(s), duly considered and adopted at an open public meeting of Council for which public notice has been given in accordance with Council's Procedure By-law.

The above is the reason for the choice of title for this report. **The powers of a municipality shall be exercised by its Council.** Not by Mayors. Not by individual councillors. And power is only exercised by staff when authority to do so is delegated by by-law.

### Conclusions and Recommendations

With respect to each of the three Complaints, we have concluded that Mayor Walas intentionally contravened the Council Code of Conduct.

Our investigation concluded that Councillor Martinello's behaviour is also from time to time in breach of the Code, although breaches may be either unintentional or inadvertent, due to a focus on some specific policy or service initiative. Councillor Martinello is encouraged to discuss with the Integrity Commissioner how he might take steps to alter his behaviour so as not to be in breach.

We concluded that Councillor Tadman was encouraged to breach the Code with respect to Complaint number two and is advised to be more cautious in future.

We recommend that each of the three take the time to review and become more familiar with the Code of Conduct that has been adopted by Brighton Council.

We also recommend that Mayor Walas review the material that we know he has received at several sessions with respect to roles and responsibilities, particularly those of the Head of Council and the limitations thereon. Heads of Council are under a statutory obligation to uphold the policies and purposes adopted by their Councils.

Council has limited options in response to a finding of a breach of its Code of Conduct.

The Municipal Act 2001 states that:

***Penalties***

*(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. 2006, c. 32, Sched. A, s. 98.*

It is recommended that Council defer any such action to its next regular meeting, and it may wish to establish a subcommittee of no more than two of its members to recommend any such action.

If breaches of the Code continue, competent staff will leave Brighton's employ and it will be even more difficult to recruit qualified replacements in what is a very competitive labour market for skilled municipal staff. And ultimately, the citizens of Brighton suffer the consequences.

Amberley Gavel Ltd

Integrity Commissioner

Per: \_\_\_\_\_



February 2014