

Office of the Integrity  
Commissioner

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Mayor Anderson & Members of Council  
Township of Billings  
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## **Complaint Regarding Committee Member Paul Darlaston**

Your Worship & Members of Council;

Our office received a request for inquiry from a member of the public (the "Requestor"). We have conducted a preliminary review of the circumstances and provide the following report.

### **THE REQUEST**

Our office received a request for inquiry from a member of the public (the "Requestor"). The Requestor alleged that Paul Darlaston ("Mr. Darlaston"), an individual appointed to an Ad Hoc Committee of Council, in a letter to the Editor of a local newspaper known as "The Recorder" [published on January 15, 2021] made comments that were defamatory towards a former member of Council, Barbara Erskine ("Ms. Erskine").

The Requestor believed that Mr. Darlaston is subject to the same rules and regulations as that of members of Council, namely #6 and #9 "Conduct Respecting Others" from the Corporation of the Township of Billings By-Law 2018-41 Code of Conduct for Members of Council ("Code of Conduct").

### **LEGISLATIVE AUTHORITY**

Under section 223.4(1)(a) of the *Municipal Act*, Council, a member of Council or a member of the public may make a request for an inquiry to the Integrity Commissioner about whether the member have contravened the Code of Conduct applicable to that member.

When a matter is referred to us, we may then conduct an inquiry and upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

Code of Conduct Sections:

**Section 6**

*Every member shall treat members of the public, one another, and municipal employees appropriately, and without abuse, bullying, harassment, or intimidation, and shall seek to ensure that the municipality's work environment is free from improper discrimination, harassment or abuse.*

**Section 9**

*No member shall use any indecent, abusive, or insulting words or expression towards any municipal employee, any member, or any member of the public, or maliciously or falsely injure or impugn the professional or ethical reputation of any such person.*

## **INQUIRY PROCESS**

The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a member has contravened the Code of Conduct that is applicable to that member.

After receiving the complaint, it is our practice to review all requests and determine if they are properly filed in accordance with the *Municipal Act* and with the process set out in the municipality's Code of Conduct or other related policy. When a municipality does not have such a process, it is our practice to first conduct a Preliminary Review prior to undertaking a costly inquiry.

During a preliminary review, we:

- consider the evidence of the Requestor;
- seek clarification from the Requestor if necessary;
- review the Code of Conduct and other related ethical policies;
- may conduct witness interviews [which are voice recorded and transcribed];
- may interview the respondent; and
- collect related documents (Council or committee meeting documents, Terms of Reference, training records etc.)

In this circumstance the matter was assigned to Jamie Appleton (the “Investigator”) a professional investigator with Investigative Solutions Network who as an agent of the Integrity Commissioner did:

1. review the Requestors written complaint;
2. review the materials submitted by the Requestor - articles from the Recorder dated January 8, 2021, and January 15, 2021;
3. the terms of reference for the Committee;
4. requested to review training records;
5. interviewed:
  - a. the Requestor
  - b. the CAO
  - c. the Mayor
  - d. Mr. Darlaston (the Respondent)

After the investigator completed his preliminary review, a decision was made to not to conduct an inquiry into the matter.

## **FACTS**

On January 15, 2021, a letter to the Editor was published in a local newspaper, “The Recorder” written by Mr. Darlaston. Mr. Darlaston is a resident of the Township of Billings and a member of the Climate Change Action Committee having been appointed by the Council of the Corporation of the Township of Billings for the period of February 2020 to March 31, 2021.

**Reference:** Written complaint dated January 27, 2021.  
The Recorder [newspaper] dated January 15, 2021.  
Interview of Requestor February 22, 2021.  
Resolution 2020-79 passed March 3, 2020, appointing Mr. Darlaston to the Climate Change Action Committee.

Mr. Darlaston’s letter to the Editor was a direct response to a letter by Ms. Erskine, a former Councillor for the Township of Billings, published on January 8, 2021. Ms. Erskine in her letter was criticizing Council’s decision regarding remuneration for members of Council and offering her opinion about how the matter should have been approached. Mr. Darlaston believed that Ms. Erskine’s letter was incorrect, untrue, and ill-informed.

**Reference:** The Recorder [newspaper] dated January 15, 2021.  
Interview of Mr. Darlaston April 9, 2021.

Ms. Erskine filed a complaint with the Township on January 27, 2021, related to Mr. Darlaston’s letter to the Editor. This matter was dealt with by the CAO/Clerk and a letter was sent to Ms. Erskine advising that her complaint has been addressed.

**Reference:** Letter to Ms. Erskine from the CAO/Clerk February 2, 2021.

Similarly, the Requestor filed a complaint with the Integrity Commissioner on January 27, 2021, regarding the same letter to the Editor.

**Reference:** Written complaint dated January 27, 2021.

Mayor Ian Anderson (“Mayor Anderson”) advised that the January 8, 2021, letter to the Editor was not the first letter that has been authored by Ms. Erskine criticizing Council decisions. He further added that she had written many letters to the Editor in which she had been critical of Council and at times the information she reported was not wholly accurate or was false.

**Reference:** Interview of Mayor Anderson April 8, 2021.

In the January 15, 2021, letter to the Editor, Mr. Darlaston identified himself as a member of the Climate Action Committee. Mr. Darlaston’s letter defended Council’s decision to increase their remuneration, and Mr. Darlaston felt that after reading Ms. Erskine’s letter, it was prudent that he relayed what he believed to be the facts about the Council decision to the public.

**Reference:** The Recorder [newspaper] dated January 15, 2021.  
Interview of Mr. Darlaston April 9, 2021.

Mr. Darlaston did not sign the letter as a member of the Climate Action Committee. Nor did Council authorize Mr. Darlaston to author the letter to the Editor by resolution. To be clear Mr. Darlaston signed the letter “*Paul Darlaston, Kagawong*”.

**Reference:** The Recorder [newspaper] dated January 15, 2021.

Mayor Anderson advised the Investigator that after he saw Mr. Darlaston’s letter in the newspaper, he called Mr. Darlaston and expressed concern that Mr. Darlaston may have gone a bit further than necessary in his efforts to defend Council. Mayor Anderson advised that he reminded Mr. Darlaston that the Code of Conduct was applicable to members of Committees. Mr. Darlaston told Mayor Anderson that he would not do this again. Mayor Anderson sent Mr. Darlaston a copy of the Code of Conduct to refresh his memory.

**Reference:** Interview of Mayor Anderson April 8, 2021.

The Requestor, when interviewed, advised:

- Mr. Darlaston made derogatory comments with regard to the letter to the Editor submitted by Ms. Erskine.
- Of being specifically offended by:
  - the comment about “*licking a finger and holding it up to the wind*” and reported that Ms. Erskine was one of the best-

informed members on the former Council and therefore that comment is derogatory and incorrect;

- the comment that as a failed candidate, Ms. Erskine shouldn't be able to voice an opinion; and
- the comment that Ms. Erskine should not be allowed to run in future elections.
- Of believing that anyone has a right to an opinion, **as long as it's based on fact** [emphasis added]; it should not be personal or slanderous and that Mr. Darlaston's letter to the Editor is not based in fact and is both personal and slanderous.
- That during her term on Council, Ms. Erskine brought forward a motion to increase the rate of pay for Council members, feeling that they were underpaid. Her suggestion for an increase in pay was less than what was approved by current Council. Erskine was crucified by many of the people running for Council for suggesting a pay increase in the year she ran for Mayor. And it is wrong for Mr. Darlaston to indicate anything different.
- That Ms. Erskine is not a member of committees and is not on Council currently.
- That Mr. Darlaston is confrontational and prickly.

**Reference:** Written complaint dated January 27, 2021.  
Interview of Requestor February 22, 2021.

Comments in Mr. Darlaston's article directly related to Ms. Erskine:

- Referenced her letter to the editor January 8, 2021, submitted by Ms. Erskine but does not name her specifically as the author. He wrote *"It comes from a former councillor and failed mayoral candidate in the last election...."*
- Referenced that she was the only Mayoral Candidate until near the deadline for applications and that two additional individuals entered the race for Mayor.
- *"However, when failed candidates question all decisions, it becomes counter-productive, divisive, and frankly, does not show them to be open-minded and worthy of consideration in future elections. At least, that's my opinion!"*

**Reference:** The Recorder [newspaper] dated January 15, 2021.

Ms. Erskine held the position of Councillor from 2014 to 2018 and she did run for the position of Mayor during the 2018 election and was not elected. She did author a letter to the Editor that was published on January 8, 2021, wherein she is critical of Council's decision to increase their stipend and offers her own opinion as to the continuation of a past practice that saw this increase pursued at the end of a Council term so that it would be in place for an incoming Council.

**Reference:** Written complaint dated January 27, 2021.  
The Recorder [newspaper] dated January 8, 2021.  
Interview of Requestor February 22, 2021.

The Code of Conduct requires that the members of Councils and Local Boards (collectively “Members”) must comply with provincial legislation as well as the ethical standards set out in the Code of Conduct. It also requires Members to follow Township policies as they relate to ethical practices. The Code of Conduct does not specifically provide a definition of a Local Board. The *Municipal Act* section 1(1) defines a local board as:

*“local board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority;*

Section 223.1 of the *Municipal Act* (Accountability and Transparency) outlines the definition of a local board with respect to the application of the Code of Conduct. The definition of a local board in this section narrows the definition of what is considered a local board:

*“local board” means a local board other than,*

- (a) a society as defined in subsection 2 (1) of the Child, Youth and Family Services Act, 2017,*
- (b) a board of health as defined in subsection 1 (1) of the Health Protection and Promotion Act,*
- (c) a committee of management established under the Long-Term Care Homes Act, 2007,*
- (d) a police services board established under the Police Services Act,*

*Note: On a day to be named by proclamation of the Lieutenant Governor, clause (d) of the definition of “local board” in section 223.1 of the Act is repealed and the following substituted: (See: 2019, c. 1, Sched. 4, s. 33 (7))*

- (d) a police service board established under the Community Safety and Policing Act, 2019,*
- (e) a board as defined in section 1 of the Public Libraries Act,*
- (f) a corporation established in accordance with section 203,*
- (g) such other local boards as may be prescribed*

Committees of Council are included in the definition of “local board”.

## **DECISION**

Mr. Darlaston has been appointed by Council to the Climate Change Committee. While not explicitly stated in the Code of Conduct, members of Committees of Council would be included in the application of and must adhere to the provisions of the Code of Conduct. Therefore, the behaviour expectations in the Code of Conduct apply to Mr. Darlaston.

## **Section 6 of the Code of Conduct**

Section 6 refers to bullying, harassment, and intimidation. To be clear, the Code of Conduct does not provide a definition of bullying, harassment, or intimidation however, it does require that Members adhere to policies other than the Code of Conduct.

The *Occupational Health and Safety Act* (the “OHS”) requires that every employer adopt a policy regarding workplace violence and harassment.<sup>1</sup> The Corporation of the Township of Billings has adopted such a policy that applies to Members, employees, and members of the public. The *OHS* defines workplace harassment as:

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- (b) workplace sexual harassment;

To meet this test, the action would need to be consistently repeated or extremely egregious. The content of Mr. Darlaston’s letter is not a course of vexatious comment or conduct and does not meet the threshold to be considered egregious. Therefore, his actions in authoring the letter and/or the content of the letter do not meet the test to be a contravention of section 6 of the Code of Conduct and this allegation has not been further considered.

### **Section 9 of the Code of Conduct**

Section 9 of the Code of Conduct states:

*“No member shall use any indecent, abusive, or insulting words or expression towards any municipal employee, any member, or any member of the public, or maliciously or falsely injure or impugn the professional or ethical reputation of any such person”.*

The Requestor in this matter felt that because Mr. Darlaston is a member of a committee of Council, that he has a duty to comply with the Code of Conduct, and further that the Code of Conduct was contravened by writing a letter that is *“defamatory, derogatory and besmirches her [Ms. Erskine’s] name and reputation in a small community”.*

The Requestor is correct and that the Code of Conduct applies to Mr. Darlaston. In considering the standard set out in Section 9, we contemplated the concerns of the Requestor, the actual wording used by Mr. Darlaston in his letter to the Editor and whether or not a reasonable person aware of the facts would believe the remarks to be defamatory, derogatory or harmful to Ms. Erskine’s reputation.

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<sup>1</sup> *Occupational Health and Safety Act*, R.S.O., 1991, c.0.1. section 32.0.1

To be clear, we considered whether or not the comments in Mr. Darlaston's letter to the Editor were indecent, abusive, insulting, false or harmful to Ms. Erskine's reputation or malicious in nature. The Requestor identified key areas of concern:

- the comment about *"licking a finger and holding it up to the wind"*
- the comment that as a failed candidate, Ms. Erskine shouldn't be able to voice an opinion; and
- the comment that Ms. Erskine should not be allowed to run in future elections.

We find that the content of Mr. Darlaston's letter to the Editor was a mix of fact and personal opinion.

We do not find that Mr. Darlaston's comments, and more specifically, those of concern to the Requestor, were an attack on Ms. Erskine personally nor do his comments meet the test set out in section 9 of the Code of Conduct.

Our rationale is as follows:

- Mr. Darlaston's comment *"licking a finger and holding it up to the wind"* does not specifically identify Ms. Erskine. Moreover, it is a generalization that advised the public that Members need to be prepared to make decisions and that the obligation to do so should be taken seriously and requires effort that should be acknowledged and considered as a reason for increased remuneration. We do not find that this comment belittled the efforts of Ms. Erskine as a former Councillor. We find his statement to be a colloquialism and needs to be considered with the next statement which sets out the effort Mr. Darlaston believes is required of any member of Council before they vote on a matter. His statements defend, justify, or rationalize the stipend increase approved by the current Council and do not openly or maliciously attack Ms. Erskine.
- The comment that as a failed candidate, Ms. Erskine should not be able to voice an opinion is not supported by the evidence before us. Mr. Darlaston stated *"I see no problem at all with questioning council's elective decisions. However, when failed candidates question all decisions, it becomes counter-productive, divisive ...."*. This statement is clearly Mr. Darlaston's viewpoint and explains his belief that it is appropriate for members of the public to question decisions Council makes. He does then add that when someone who ran and was not elected questions every decision Council makes it becomes divisive. Again, a personal opinion of Mr. Darlaston which does not directly identify Ms. Erskine nor does it indirectly single out Ms. Erskine as the only potential target. It is clear in Mr. Darlaston's letter that there has been more than one individual who was not successful in being elected including himself. Further, we do not find the comments to be abusive, insulting, false or malicious.



- The Requestor also reported concern with Mr. Darlaston's statement that Ms. Erskine should not be allowed to run in future elections. It appears to be the Requestor's interpretation of Mr. Darlaston's statement and not what was stated in Mr. Darlaston's letter to the Editor which was "...*frankly, does not show them* [those who were not elected and have been criticizing every decision Council makes] *to be open-minded and worthy of consideration in future elections*". This comment does not say that Ms. Erskine should not be allowed to run in future elections, it does clearly state that any individual who ran for Council, was unsuccessful and continually criticizes every decision Council makes may not be open-minded and not the individual the public should consider electing.

The Requestor has alleged that the statements made by Mr. Darlaston were "*inflammatory, derogatory and besmirches her name* [Ms. Erskine's] *and reputation in a small community. It discourages open honest discourse and intimidates others who might consider running for council in future elections, if this sort of attack journalism is allowed from representatives of council.*" (sic) We do not find Mr. Darlaston's letter to the Editor contains brazen or malicious comments that would impugn the reputation of Ms. Erskine.

No further action will be taken with respect to this matter.

### **Higher Standard**

Elected officials are expected to behave in a manner that reflects the principles of the Code of Conduct in addition to the expected behaviour specifically addressed, and this extends to those who have been appointed by those elected officials. In this circumstance, we find that Mr. Darlaston, did not act in a manner considered appropriate for a Member.

To be clear, Mr. Darlaston is a Council appointed committee member and is obligated to adhere to the ethical standards established in the Code of Conduct. Mr. Darlaston, when interviewed, advised that he was provided a copy of the Code of Conduct at the time of his appointment. He is aware of his obligations as outlined in the Code of Conduct. However, he chose to rebut comments made by a member of the public in the local media. The action itself is inappropriate and in our opinion a violation of the principles of the Code of Conduct. It does not reflect a higher standard.

Mr. Darlaston advised that his intention in authoring and submitting the letter to the Editor (January 15, 2021), was to advise the public of the inaccuracies in Ms. Erskine's January 8, 2021, letter to the Editor and to defend Council. The Terms of Reference for the Committee, nor any other Township policy gives Mr. Darlaston (or any other committee/local board member) the authority to speak/write to the media on behalf of the Township. There is no Council resolution that expressly authorized Mr. Darlaston to author/submit a letter to the Editor defending Council.

While Mr. Darlaston, is entitled to have and voice a personal opinion, he should not identify himself as a member of a committee of Council when expressing that opinion, unless he has received permission from Council to do so. Members wishing to express a personal opinion publicly must ensure that they expressly note that this is their personal opinion and not an opinion of Council or the Township and that the opinion they are expressing is not contrary to a decision/policy of Council.

### **Ms. Erskine's Complaint re: Mr. Darlaston's Letter to the Editor**

We have not reviewed the complaint received by the Township from Ms. Erskine. And only became aware of it during this preliminary review. Based on the correspondence from the CAO to Ms. Erskine and to Mr. Darlaston it is clear that Ms. Erskine's complaint was in relation to the behaviour of a Member and ought to have been referred to the Integrity Commissioner and not addressed by the CAO.

## **RECOMMENDATIONS**

While we have not made a finding that Mr. Darlaston has breached the Code of Conduct as outlined by the Requestor, we did find Mr. Darlaston's action in authoring and submitting the letter to the Editor January 15, 2021, to be contrary to the principles of the Code of Conduct. Since Ms. Erskine made a complaint to the Township regarding the same letter to the Editor, and the matter has been dealt with by the CAO on behalf of the Township, we are not recommending that Council impose any further penalty for Mr. Darlaston's action. Our recommended penalty/sanction would have been a written warning advising of the contravention and advising that members of committees, like members of Council, can seek advise from the Integrity Commissioner to ensure that their actions are not contrary to the Code of Conduct or other ethical policies.

We do, however, find it prudent and expedient to provide Council with some recommendations. Accordingly, we recommend the following:

1. That Council review and update/amend the Code of Conduct to include at a minimum:
  - a. Specific reference to members of committees, working groups or other Council appointed bodies that fall outside of the common understanding of a local board.
  - b. A reference to the *Occupational Health and Safety Act* as well as other ethical policies adopted by Council.
  - c. The role of the Integrity Commissioner.
  - d. The process for making a complaint regarding the behavior of a Member.
  - e. A definition of what would constitute a frivolous or vexatious complaint.
  - f. A requirement for the Integrity Commissioner to conduct a preliminary review before conducting a full inquiry.

- g. A requirement for training of Members and a formal system/process for documenting/acknowledging when a Member has received the training.
  - h. A mandatory review.
- 2. Review/update/adopt a communications policy that clearly states Council's expectations with respect to media/social media and ensure Members receive training on the policy.

Regards,



Peggy Young-Lovelace  
Director/Independent Consultant

