

# DECISION OF THE INTEGRITY COMMISSIONER

THE TOWN OF IROQUOIS FALLS

ALLEGATION: CONTRAVENTION OF THE CODE OF CONDUCT

BY: COUNCILLOR COLIN KENNEDY



## Prepared By:

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## I. EXECUTIVE SUMMARY

- [1] These reasons relate to inquiries under section 223.4(1) of the *Municipal Act, 2001*, (the "*Municipal Act*") about Colin Kennedy ("Councillor Kennedy"), an elected member of the Town Council ("Council") for the Town of Iroquois Falls (the "Town").
- [2] Between August 2019 and May of 2020, our office received multiple requests for inquiry from Mr. James "Jim" Brown ("Mr. Brown"), Mayor Pat Britton ("Mayor Britton") and several municipal employees regarding Councillor Kennedy. Collectively they will be referred to as the "Requestors".
- [3] The Requestors alleged that Councillor Kennedy contravened the Township's Code of Conduct when he:
- Made disparaging remarks on a website named "Everything Iroquois Falls" about a fellow candidate during the 2018 Municipal Election.
  - Placed flyers/leaflets of a derogatory nature on the windshield of vehicles at the local Iroquois Falls Legion during a mayoral campaign event [2018 Municipal Election].
  - Failed to afford his position the appropriate level of seriousness by stating that he and a former councillor should "flip a coin" to see who would run for Mayor in the next election event [2018 Municipal Election].
  - Contravened the *Municipal Conflict of Interest Act* ("MCIA") when he actively worked to host a for profit Demolition Derby as part of the Town's winter carnival and used his position as a Councillor to further his family's private business interests.
  - As the owner of a funeral service, attended the municipal office and engaged in an inappropriate conversation with staff and attempted to influence the staff by using his position as a Councillor to benefit his private business. It was also alleged that his conduct with the staff was disrespectful.
  - Berated staff and pounded his fist on a table during a strategic planning session.
  - Behaved disrespectfully toward the Mayor and the Economic Development Officer ("EDO") at an Economic Development Committee Meeting [April 10, 2019].

### **Disparaging Remarks on Social Media Site "Everything Iroquois Falls"**

- [4] Mr. Brown alleged that Councillor Kennedy made disparaging remarks on a social media site ("Everything Iroquois Falls" Facebook page) during the 2018 Municipal Election about Mr. Brown who was a Mayoral candidate at the time.
- [5] Councillor Kennedy was on Council in 2018 and was also a candidate in 2018 Municipal Election.
- [6] Councillor Kennedy did not deny making the statements. He did deny posting the statements on the "Everything Iroquois Falls" Facebook page. Councillor Kennedy said his remarks about Mr. Brown were made privately to an acquaintance who then posted the comments on the Facebook page.

- [7] The Integrity Commissioner does not have jurisdiction over candidates during a Municipal Election<sup>1</sup>.
- [8] In some circumstances and Integrity Commissioner may consider election-related conduct of a member of Council. David Mullen, Integrity Commissioner for the City of Toronto did consider and make findings regarding a matter involving the conduct of a member of Council during a Municipal Election<sup>2</sup>.
- [9] The circumstances considered by Mr. Mullen were significantly more egregious than those before us and involved two (2) election candidates who were also holding seats on the council at the same time.
- [10] We find that there are insufficient reasons to apply the exception established by Integrity Commissioner Mullen. This complaint is dismissed.

### **Derogatory Flyers/Leaflets Placed on Cars During Campaign Event**

- [11] Mr. Brown alleged that during the 2018 municipal election, Councillor Kennedy placed flyers/leaflets on vehicles parked near the Royal Canadian Legion on the same day that Mr. Brown, who was a Mayoral candidate, hosted a campaign event. These flyers/leaflets were allegedly derogatory toward Mr. Brown.
- [12] The Integrity Commissioner does not have jurisdiction over candidates during a Municipal Election<sup>3</sup>.
- [13] As previously reported, there are times when an Integrity Commissioner may consider Councilor conduct during a municipal election. Councillor Kennedy denied placing the flyers/leaflets on the vehicle and our inquiry did not yield evidence that corroborated Mr. Brown's allegation.
- [14] We find that there are insufficient reasons to apply the exception established by Integrity Commissioner Mullen. This complaint is dismissed.

### **Failing to Afford His Position the Appropriate Level of Seriousness**

- [15] Mr. Brown alleged that Councillor Kennedy contravened the Code of Conduct when he and another Councillor would "flip a coin" to see which one of them would run for Mayor. Mr. Brown said he was shocked to see the flippant attitude of Councillor Kennedy and believed Councillor Kennedy's attitude was disrespectful of the process.
- [16] Councillor Kennedy admitted that he and another Councillor did discuss flipping a coin to see who would run for Mayor.
- [17] The Integrity Commissioner has no jurisdiction to consider this matter. The Code of Conduct only came into effect July 30, 2018, which is after nomination day for the

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<sup>1</sup> *Municipal Act*, 2001, S.O. 2001, c. 25 sections 223.4(7) and 223.4.1(12)

<sup>2</sup> *Li Preti v. Augimeri*, 2007 ONMIC 2 [Marcy 22, 2007]

<sup>3</sup> *Municipal Act*, 2001, S.O. 2001, c. 25 sections 223.4(7) and 223.4.1(12)

municipal election. The conversation between Councillor Kennedy and a fellow Councilor occurred prior to nomination day and therefore prior to the Code of Conduct applying to the parties.

- [18] Had we had jurisdiction, and upon review of the evidence, we would not find that this incident meets the test required to be a contravention of the Code of Conduct. We are aware of randomized tools being used in council decisions from time to time, like flipping a coin or drawing a name from a hat where either decision is otherwise reasonable and acceptable. Specifically, we are aware that municipalities have historically used processes like this when filling vacancies on Council and have even gone so far as to include this in their written policies.
- [19] This matter is dismissed.

### **Contract with the Municipality for a Demolition Derby**

- [20] Municipal employees alleged that Councillor Kennedy used his influence as a member of Council to gain a private advantage for himself, his father, and his sister. Further that he did so in contravention of the *MCIA*.
- [21] Councillor Kennedy is involved with a business called Extreme Productions which is partly owned by his Father. The business promotes demolition derbies to municipalities. Councillor Kennedy's sister is also involved.
- [22] Councillor Kennedy stated that he was a "consultant" for his father's business and that he historically, attended trade shows on behalf of the business. He clearly had a personal interest in the business.
- [23] Councillor Kennedy admitted wanting to bring the Demolition Derby to the community. He further stated that he "knew there was a fine line" between his promoting an activity that supported his father's private business and his role as a Councillor and did not want to overstep his boundaries as a Councillor.
- [24] Councillor Kennedy as a member of the Recreation Committee put forward the idea of the Demolition Derby.
- [25] He declared a pecuniary interest at the Recreation Committee and at Council for matters related to the Demolition Derby.
- [26] The *MCIA* requires that a member who has a pecuniary interest, declare the interest in writing and not influence the decision before, during or after the decision has been made. Councilor Kennedy clearly did not recuse himself from involvement with the Demolition Derby.
- [27] In fact, Councillor Kennedy:

- did not recuse himself from all activity associated with the Demolition Derby. Instead, he actively participated. To the point where he was identified as ‘Councillor Colin Kennedy’ the one promoting the event in an online article.
- Signed the contract on behalf of his father’s business.
  - a. Of interest is that he had his sister present the contract at the Council meeting.
- Used his Council email to direct staff to remove the contract from the open session agenda.
- Attempted to secure the cash payment for the event.

[28] Section 223.4.1 of the *Municipal Act* gives the Integrity Commissioner jurisdiction to conduct an inquiry into an allegation that a member of Council has contravened the *MCIA* and if a contravention has been found, the Integrity Commissioner may take the matter to court.

[29] For the Integrity Commissioner to make an application to court when a contravention of the *MCIA* is found, the individual requesting the inquiry must swear a statutory declaration stating that they found out about the alleged breach within the previous six (6) weeks. In this case, the request for inquiry has been made well outside of the timeframe. The six (6) week limitation period does not apply to Code of Conduct inquiries. For this reason, our findings are confined to the Council Staff Relations Policy and the Code of Conduct.

[30] We find that Councillor Kennedy did:

- a. Contravene section 1 of the Code of Conduct by failing to comply with the *MCIA*. Of importance is that the Code of Conduct contemplates that members of Councils and Local Boards must be familiar with their obligations under provincial and other legislation. Councillor Kennedy had a positive obligation to be knowledgeable of his responsibilities under the *MCIA*. Had Councillor Kennedy been concerned about the “fine line” he was dealing with, he should have sought advice in writing from the Integrity Commissioner as to his obligations.
- b. Contravened section 13.1 of the Code of Conduct when he used his Council email for something other than Council business and directed the Clerk/Administrator to remove the contract related to the Demolition Derby from the Town website.
- c. Contravened section 13.2 on at least four (4) occasions when he:
  - i. Participated in recruiting the Town (through the Recreation committee) to be a host for the Demolition Derby. An event that directly benefited Councillor Kennedy, his sister, and his father.
  - ii. Signed the Demolition Derby contract on behalf of Extreme Productions (his father’s business) that was to be negotiated between Extreme Productions and the Town.
  - iii. Directed the Clerk/Administrator to remove the Demolition Derby contract from the agenda package/website.
  - iv. Attempted to collect the cash payment for the Demolition Derby.
- d. Contravened section 6.3 of the Council Staff Relations Policy [which is also a contravention of the Code of Conduct] when he directed the Clerk/Administrator to remove the contract document from the agenda package/website and when he directed staff to make a payment to him in cash for the Demolition Derby. A single

member of Council has no authority to direct a municipal officer or staff person without the express authority of Council (by Bylaw or resolution).

### **Use of Position to Influence Personal Business Interest and Inappropriate Conduct with Staff**

- [31] Councillor Kennedy contacted the Town Office to discuss a problem a client of his was having securing a cemetery plot. When he failed to get the response he was looking for from the employee he was speaking with, Councillor Kennedy attended the Town Office and met with the former Clerk-Administrator.
- [32] At this meeting Councillor Kennedy was sufficiently aggressive/intimidating that afterward, the former Clerk/Administrator was visibly shaken up and she advised other staff that she would not meet with Councillor Kennedy alone again.
- [33] Councillor Kennedy attempted to defend his actions by reporting that he always advised staff when he was speaking with them if he was doing so in his role as a private business owner or as a member of Council. Put differently, he did not deny the inappropriate behaviour but suggested it was in his capacity as a ratepayer. That distinction does not, however, make the behaviour acceptable.
- [34] Councillor Kennedy as a single councillor (or, indeed as a ratepayer) had no statutory authority to direct the Clerk/Administrator to undertake a task or provide advice on how to interpret legislation, a municipal Bylaw, or the operation of a municipal cemetery.
- [35] To be clear, no individual member of Council has the authority to direct a municipal officer or staff person to undertake a task, nor do they have the authority to supersede a Bylaw or policy that has been established by Council, unless Council has adopted a Bylaw or resolution authorizing otherwise.
- [36] Council did not adopt a Bylaw or pass a resolution which authorized Councillor Kennedy to have jurisdiction over the operation of municipal cemeteries.
- [37] Nor did Council pass a Bylaw or resolution that gave express authority to Councillor Kennedy to direct staff on how to manage municipal cemeteries.
- [38] Councillor Kennedy has been on Council for several years. He was reelected in 2018. He ought to be aware that he has no authority to direct employees including the former Clerk/Administrator. Only Council as a body can direct an office or employee of the Municipality and specifically in this instance, the former Clerk/Administrator, by the passing of Bylaws or adopting of resolutions.
- [39] We found no resolutions/direction of Council giving authority to Councillor Kennedy to direct the Clerk/Administrator generally or more specifically, in this matter.
- [40] The Town has adopted such a Bylaw governing the operation of municipal cemeteries as required by provincial legislation [a decision of Council].

- [41] At the time, Councillor Kennedy operated a funeral home and the service he provided included burials in the Iroquois Falls area.
- [42] Councillor Kennedy therefore has a financial or pecuniary interest in all matters related to the governing/operating of municipal cemeteries in Iroquois Falls.
- [43] He was therefore obligated to comply with the *MCIA* and more specifically, section 5.2(1). His obligations under the *MCIA* are to not influence an Officer of the municipality [the Clerk among others] on a matter he has a pecuniary interest in. He clearly attempted to intimidate the Clerk to seek an outcome that benefited Councillor Kennedy's client. His actions are contrary to his obligations under the *MCIA*.
- [44] Section 223.4.1 of the *Municipal Act* gives the Integrity Commissioner jurisdiction to conduct an inquiry into an allegation that a member of Council has contravened the *MCIA*. For a matter to be properly filed, the individual requesting the inquiry must have found out about the alleged breach within the previous six (6) weeks. The allegations herein have been made well outside of the timeframe.
- [45] For this reason, our findings are confined to the Staff Council Relations Policy and the Code of Conduct which do not have a similar six (6) week limitation.
- [46] We find that Councillor Kennedy:
- a. Contravened section 1 of the Code of Conduct by failing to comply with the *MCIA*. Of importance is that the Code of Conduct contemplates that members of Councils and Local Boards must be familiar with their obligations under provincial and other legislation. Councillor Kennedy had a positive obligation to be knowledgeable of his responsibilities under the *MCIA*.
  - b. Contravened sections 13.1 and 13.2 of the Code of Conduct when he used his influence to attempt to resolve a matter for a client related to the operation of a municipal cemetery when he met with and intimidated the former Clerk/Administrator.
  - c. Contravened section 6.3 of the Council Staff Relations Policy [which is also a contravention of the Code of Conduct] when he attempted to direct the former Clerk/Administrator to resolve a situation regarding a cemetery plot in a manner that benefited a client of Councillor Kennedy's business.

### **Berated Staff and Pounded Fist on Table**

- [47] It was alleged that Councillor Kennedy acted inappropriately toward the former Clerk/Administrator at a public strategic-planning session when he berated her for not providing a link to the presentation the consultants were at the meeting to present and again when he banged his fist on the table.
- [48] When Councilor Kennedy berated the former Clerk/Administrator, she requested that he speak to her with respect and another Councillor in attendance at the strategic planning meeting advised Councillor Kennedy that his behaviour could be seen as harassment.
- [49] Councillor Kennedy clearly acted inappropriately at this meeting.

- [50] Members of Council are expected to behave in a manner that is in keeping with their status as an elected official and in accordance with the Staff Council Relations Policy as well as the Code of Conduct. It is completely improper for an employee to be ridiculed, belittled, or otherwise criticized for their performance in front of other individuals. Councillor Kennedy's behaviour was unacceptable and uncalled for.
- [51] No individual member of Council has the authority to direct a municipal officer or staff person to undertake a task, nor do they have the authority to manage the performance of an officer or an employee. To be clear, Councillor Kennedy did not have the authority to berate the former Clerk/Administrator either privately or in the presence of others.
- [52] Council, as a body, has the authority to manage the performance of their only employee, the CAO or in this circumstance the Clerk/Administrator. Councillor Kennedy ought to have raised his dissatisfaction with the former Clerk/Administrators work performance with the Mayor who would have then brought the matter forward during a Closed Session of Council whereat the matter could be properly discussed.
- [53] Additionally, to evaluate an employees' performance in a public setting is a contravention of the *Municipal Freedom of Information and Protection of Privacy Act* ("MFOIPPA"). Section 14 (3) (g) provides that it is an unjustified invasion of privacy to make public personnel evaluations. Clearly, Councillor Kennedy's berating of the former Clerk/Administrator was done in contravention of this section of MFOIPPA.
- [54] Councillor Kennedy did:
- a. Contravened section 1 of the Code of Conduct by failing to comply with the MFOIPPA.
  - b. Contravene sections 6.10 and 6.11 of the Council Staff Relations Policy [which is also a contravention of the Code of Conduct] when he was verbally disrespectful to the former Clerk/Administrator at a strategic planning meeting and a further breach when he pounded his fist on the table.
  - c. Contravene section 7.1 of the Code of Conduct when he was disrespectful to the former Clerk/Administrator and pounded his fist on the table at a strategic planning meeting.
  - d. Contravene section 7.2 of the Code of Conduct when he was disrespectful to the former Clerk/Administrator.

### **Behaved disrespectfully to the Mayor and the Economic Development Officer**

- [55] Mayor Britton and a member of staff [not the EDO] alleged that Councillor Kennedy behaved disrespectfully toward Mayor Britton and the EDO when Councillor Kennedy expressed his disappointment in an email that Mayor Britton and the EDO did not attend the Teeny Tiny Summit in Matheson and by Councilor Kennedy's subsequent behaviour at Economic Development Committee ("EDC") meeting held on April 10, 2019.
- [56] In an email to the Mayor and the members of the EDC, Councillor Kennedy expressed his displeasure with the EDO and the Mayor for not attending the Teeny Tiny Summit held in Matheson, Ontario, on April 8, 2019. Councilor Kennedy further requested that this matter be placed on the EDC meeting agenda.



- [57] Councillor Kennedy at no time attempted to contact Mayor Britton to find out why he had not attended the event. Instead, Councillor Kennedy spoke to the matter at the EDC in a manner that was disrespectful to both Mayor Britton and the EDO. Some of the committee members reported feeling extremely uncomfortable by what transpired at the meeting.
- [58] Mayor Britton reported that he, as the meeting chair, called Councillor Kennedy out of order and that the Councillor Kennedy continued the behavior. Mayor Britton in an elevated voice advised Councillor Kennedy that he was acting contrary to both the Procedure Bylaw and the Code of Conduct. Councillor Kennedy demanded that Mayor Britton put the allegations in writing.
- [59] A week after the meeting, Councillor Kennedy sent an email to Mayor Britton and copied the EDC members stating that the allegations made by Mayor Britton at the EDC meeting were serious and that Mayor Britton needed to cite the sections that Councilor Kennedy was allegedly in contravention of in writing to him "*or publicly retract and apologize for these libellous accusations*".
- [60] Councillor Kennedy's behaviour is clearly disrespectful of Mayor Britton, the EDO and the members of the EDC.
- [61] Members of Council are held to a higher standard. Councillor Kennedy ought to have expressed his concerns directly with the Mayor, with Council as a body and/or the Integrity Commissioner (with respect to the Mayor), not announce his displeasure in an email to the members of the EDC. This action was uncalled for, disrespectful and contrary to the expected behavior of members of Council.
- [62] We find that Councillor Kennedy:
- a. Did not contravene section 7.2 of the Code of Conduct when he emailed the EDO asking that a matter be placed on the Agenda for the EDC meeting. However, he ought not to have included his remarks about being disappointed that the EDO and Mayor Britton did not attend the Teeny Tiny Summit.
  - b. Contravened sections 4.5.1 and 4.5.3 of the Procedure Bylaw at the meeting on April 10, 2019, when he blatantly disregarded the point of order called by the Chair (Mayor Britton) and continued to express his opinion on the matter the Mayor called a point of order on. His actions are a contravention of section 5.1 of the Code of Conduct.
  - c. Contravened section 6.1 of the Code of Conduct for disrespecting Mayor Britton and the EDO when he put them on the spot about their failure to attend the Teeny Tiny Summit in front of the EDC committee at their meeting on April 10, 2019.
  - d. Contravened section 6.11 of the Council Staff Relations Policy when he was critical of the EDO for not attending the Teeny Tiny Summit. Councillor Kennedy's actions are not in keeping with the Code of Conduct requirement to build a climate of mutual respect with staff.
  - e. Contravened section 7.2 of the Code of Conduct when he emailed Mayor Britton and copied the EDC members demanding a response or an apology from Mayor Britton. Because this was done 'publicly' we find that it is a contravention because Councillor Kennedy's email, while not overtly disrespectful, was an intentional act of intimidation.

## II. LEGISLATIVE FRAMEWORK

- [63] 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 has contravened the Code of Conduct applicable to that member.
- [64] The *Municipal Act* requires that municipalities adopt a Code of Conduct.

Section 1.2 (a) of the Code of Conduct States:

*“The statements and behaviour of Council affect the Municipality’s reputation as a place to live and do business. Conflict and inappropriate conduct among Members, staff, officers and members of the public, adversely affects the Municipality’s reputation and is to be avoided.”*

Section 5.1 of the Code of Conduct states:

*“Every Member shall observe and comply with every provision of this Code of Conduct, as well as all other policies and procedures adopted or established by Council.”*

Section 6.1 of the Code of Conduct states:

*“Every Member shall conduct himself or herself properly and in a civil and respectful manner at meetings, and in accordance with the provisions of the Procedural Bylaw, this Code of Conduct, and other applicable law.”*

Section 7.1 of the Code of Conduct states:

*“Every Member has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the municipality’s Workplace Anti-Violence, Harassment and Sexual Harassment Policy.”*

Section 7.2 of the Code of Conduct states:

*“A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.”*

Section 8.1 of the Code of Conduct states:

*“Under the direction of the senior administrative staff, and in accordance with the decisions of Council, staff and Officers are required to serve the municipal corporation as a whole. Every Member shall be respectful of the role of staff and Officers to provide advice based on political neutrality and objectivity and without undue influence from any Member or group of Members. Accordingly, no Member shall maliciously or falsely injure or*

*impugn the professional or ethical reputation of any staff person or Officer.”*

Section 8.3 of the Code of Conduct states:

*“Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.”*

Section 8.5 of the Code of Conduct states:

*“No Member shall use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or improperly influencing any staff person or Officer or interfering with that person’s duties, including the duty to disclose improper activity.”*

Section 13.2 of the Code of Conduct states:

*“No member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member’s private advantage, the private advantage of the Member’s parent, child, staff member, friend or associate, business...no Member shall attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties...”*

[65] Section 270 of the *Municipal Act* was amended on March 1, 2019, to require that municipalities adopt a policy regarding the relationship between members of council and the officers and employees of the municipality<sup>4</sup>. Council has adopted such a policy.

Section 6.3 of the Council Staff Relations Policy states:

*“Members of Council must understand they have no individual capacity to direct Staff to perform, or not perform functions or duties...Council who need to engage with Staff and Officers must do so through the Clerk-Administrator. This would include both in person, verbal, written and electronic messages.”*

Section 6.10 of the Council Staff Relations Policy states:

*“Members of Council, Staff and Officers must treat each other with professionalism. When Council requests that Staff and Officers appear before Council, they must comply and be prepared for any questions Council has. Advance notice of questions to Staff provides an opportunity for Staff to provide quality reports and advice.”*

Section 6.11 of the Council Staff Relations Policy states:

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<sup>4</sup> *Municipal Act*, 2001, S.O. 2001, ch.25 section 270(1)2.1

*“Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of other’s intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Municipality.”*

[66] Section 270 of the *Municipal Act* also requires that Council adopt a Procedure Bylaw. The Procedure Bylaw governs the process and Councillor behavior during meetings. This Bylaw also governs the EDC meetings.

#### Section 4.5 - Rules of Order

This section states, among other things, the following in relation to the behavior at meetings:

##### 4.5.1, no person shall:

- (a) disturb a meeting by any disruptive or distracting conduct, including private conversations among Members, Staff, or Attendees at a meeting
- (b) use profane or offensive words or insulting expressions.
- (c) disobey the rules of procedure
- (e) speak until they have been recognized by the Chair
- (f) speak on any subject other than the subject under debate
- (g) display signs, place cards, applaud, heckle, or engage in telephone or other conversation, or any behavior, which may be considered disruptive.

4.5.3, No Member shall interrupt a Member who is speaking, except to raise a Point of Order or a Point of Privilege.

Section 3 of the *MCIA* provides as follows:

#### *Interest of certain persons deemed that of member*

**3** For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3).

[67] Sections 5, 5.1 and 5.2 of the *MCIA* provide as follows:

**5** (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s.5 (1).

**Where member to leave closed meeting**

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s.5 (2).

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**Written statement re disclosure**

**5.1** At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be. 2017, c. 10, Sched. 3, s. 4.

**Influence**

**5.2** (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use her or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4.

[68] When a matter is referred to us, we may then conduct an inquiry in accordance with the Municipality's Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

**III. THE REQUEST**

[69] The request before us was properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the Town of Iroquois Falls.

[70] The Requestors alleged that Councillor Kennedy contravened the Township's Code of Conduct and/or the Council Staff Relations Policy when he:

- Made disparaging remarks on a website named "Everything Iroquois Falls" about a fellow candidate during the 2018 Municipal Election.
- Placed flyers/leaflets of a derogatory nature on the windshield of vehicles at the local Iroquois Falls Legion during a mayoral campaign event [2018 Municipal Election].
- Failed to afford his position the appropriate level of seriousness by stating that he and a former councillor should "flip a coin" to see who would run for Mayor in the next election event [2018 Municipal Election].
- Contravened the *Municipal Conflict of Interest Act* ("MCIA") when he actively worked to host a for profit demolition derby as part of the Town's winter carnival and used his position as a Councillor to further his family's private business interests.
- As the owner of a funeral service, attended the municipal office and engaged in an inappropriate conversation with staff and attempted to influence the staff by using his position as a Councillor to benefit his private business. It was also alleged that his conduct with the staff was disrespectful.
- Berated staff and pounded his fist on a table during a strategic planning session.
- Behaved disrespectfully toward the Mayor and the Economic Development Officer ("EDO") at an Economic Development Committee Meeting [April 10, 2019].

#### IV. THE INQUIRY PROCESS

[71] The responsibilities of the Integrity Commission are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.4 of the Municipal Act was amended, and the municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commission 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.

[72] After receiving the complaint, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint which resulted in the decision to conduct an inquiry into these matters. Darren Nesbitt and Sean Sparling, professional investigators with Investigative Solutions Network (ISN), were assigned as agents of the Integrity Commissioner to carry out an investigation into the Requestor's allegations. The inquiry followed the process outlined in section 5 of the Integrity Commissioner Inquiry Protocol which included reviewing the available evidence, interviewing the Requestor, witnesses, and the Respondent Member, Councillor Kennedy.

[73] The conclusions we arrived at with respect to this matter are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Town's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:

- whether or not the individual had first-hand knowledge of the situation,
- whether or not the individual had an opportunity to observe the events,
- whether or not the individual may have bias or other motive,
- the individual's ability to clearly describe events,
- consistency within the story,
- the attitude of the individual as they were participating,
- any admission of dishonesty.<sup>5</sup>

[74] Of importance to this inquiry, is that the allegations made by the Requestors are supported by bylaws and policies/procedures, emails and interview responses. These materials are not in dispute.

[75] A full investigation of the documentary evidence and information obtained from the interviews was performed and our findings from that are the basis for this report.

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<sup>5</sup> *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. *Alberta (Department of Children and Youth Services) v. A.U.P.A.* (2009), 185 LAC (4<sup>th</sup>) 176 (Alta.Arb.)

## V. THE FACTS

### Disparaging Remarks on Social Media Site “Everything Iroquois Falls”

[76] Mr. Brown alleged that Councillor Kennedy made disparaging remarks about Mr. Brown, during the 2018 Municipal Election. These remarks were posted on a Facebook site called “Everything Iroquois Fall”.

[77] Mr. Brown alleged that Councillor Kennedy commented/posted:

*“LMAO, that’s Jimmy style. When he doesn’t have a leg to stand on anymore he starts threatening and attacking personally! Ignore him and when it gets to be personal phone the OPP and tell them you’re afraid for your safety. Problem solved!...*

*Jim has to convince at least 1 person that he is right. He’ll stop at nothing to achieve that. He is a sociopath...*

*He also has a severe drinking problem...*

*People have no idea just how much IF really has lost because of him. I’ve seen email he sent to Richard Garneau, CEO of Resolute telling him to, and I quote pack his bags and get out of town. We don’t need you or your company anymore. This was August of 2014...*

*Lmfao, the people who follow him-Woody Harkins, Rosie Peever, Jake Kulgawchuk, Bever Joseph and a small handful of others are mislead sheep and nothing more. If they want the post I will gladly step aside next October! The movement lmfao...*

*yeah cause I’m around that table for the money I make...that must be it 😊 Your absolutely right, in many instances our staff simply doesn’t have time, nor should they be expected to drop everything to answer to him. The rest of the stuff is shit he isn’t entitled to and he can fight and bitches until he is blue in the face and he’ll never get it. Jokes on him; I have absolutely no intention of running for Mayor!”*

[78] When interviewed, Councillor Kennedy confirmed that he made the alleged post. He contended that his remarks were made during private conversations to someone with whom he had a personal relationship and this person then posted the comments.

[79] Councillor Kennedy was asked if he attempted to have the person who posted the comments take them down. Councillor Kennedy advised that he did not want to “inflare” the person who made the posts, so he instead reported the posts to Facebook, but no action was taken.



### **Derogatory Flyers/Leaflets Placed on Cars During Campaign Event**

- [80] Mr. Brown alleged that Councillor Kennedy put flyers/leaflets on vehicles parked outside the Royal Canadian Legion Hall while Mr. Brown was hosting an event. The Legion was asked to provide video of those responsible for placing the leaflets on the cars but refused to do so and were advised the inquiry would have to be made through the Ontario Provincial Police. Mr. Brown did not believe this was ever done.
- [81] Mr. Brown did not have evidence that Councillor Kennedy did put the flyers/leaflets on the vehicles. Mr. Brown reported that it was rumored that Councillor Kennedy was the one who put the flyers on the vehicles.
- [82] One of the remarks on the flyer/leaflet about lost business is the same information found in one of Councillor Kennedy's Facebook postings about Brown.
- [83] Councillor Kennedy denied placing the flyers/leaflets on the vehicles. He advised that it was *"common knowledge that Jesse Cybolsky [Councillor Cybolsky's brother] placed the leaflets on the car windshields"*.

### **Failing to Afford His Position the Appropriate Level of Seriousness**

- [84] Mr. Brown reported being appalled by Councillor Kennedy's behaviour related to the 2018 Municipal Election. Mr. Brown alleged that Councillor Kennedy had made a comment to another member of Council that they should "flip a coin" to see who would run for Mayor.
- [85] Mr. Brown did not hear the conversation firsthand.
- [86] Councillor Kennedy admitted that he and another member of Council did joke about flipping a coin to see who would run for Mayor. He also admitted to making a post on social media stating the same.

### **Contract with the Municipality for a Demolition Derby**

- [87] It was alleged by several municipal employees that Councillor Kennedy used his position on Council to further his family's private business interests when he promoted having a demolition derby at the 2020 winter carnival. To be clear, the Demolition Derby had a direct financial impact on Councillor Kennedy's father's business Edge Motorsports.
- [88] Councillor Kennedy was alleged to have had direct communications with staff, set up/signed the contract between his father's company and the Town for the event and attempted to collect cash payment for the event.

- [89] During his interview, Councillor Kennedy advised that he struggled to see what the allegation was. He felt the accusations were defamatory and that he had declared conflicts on anything to do with these issues when it came to the Council table.
- [90] Councillor Kennedy indicated that he was on the Carnival Committee as a consultant in 2019, to see if there was viability in having a carnival and that this committee has been a committee of Council. There was an issue regarding the finances of the committee and the finances were taken over by Council.
- [91] Councillor Kennedy indicated that his father owns one portion of the Demolition Derby business known as Extreme Productions. At the Carnival Committee discussion, he declared a conflict of interest to not be seen as using his position to influence the decisions. Historically, he represented his father at conventions for this business. In 2019 Councillor Kennedy wanted to bring the Demolition Derby to the community but was “walking a fine line” as he was also the consultant for Extreme Productions while trying not to overstep his boundaries as a Councillor.
- [92] At one point the contract for the event was published as part of Council’s weekly agenda package. Councillor Kennedy indicated that his sister, who was also part of Extreme Productions, dealt with the issue of the publication of the contract. It was at this point he felt the line of him being a councillor and a family member became blurred. Councillor Kennedy indicated the contract was supposed to be confidential and he asserted in his interview that he stayed out of this issue.
- [93] The Investigator showed Councillor Kennedy the contract with Extreme Productions that was published in the councillors’ package and Councillor Kennedy confirmed that his name and handwriting were on the contract document. Councillor Kennedy established the contract with the municipality for the event.
- [94] The Investigator also showed Councillor Kennedy an email from his Iroquois Falls Councillor email account to a staff member February 15, 2020, where he stated,
- “Please remove the contract from the public portion of this meeting immediately. This is a price given with special consideration and is not for public information.”*
- [95] In response to this email being brought to his attention, Councillor Kennedy replied,
- “Oh...ok so that would be an error instead of sending it from a personal email...”*
- [96] Councillor Kennedy emailed the staff member after his sister had emailed the following to that same staff member on that same day:
- “It has come to my attention that you have posted a copy of my contract on a public forum...I was offering my services to the Town of Iroquois Falls at my cost as a favour to my brother...I do not appreciate your making my special offer to you public knowledge. Your actions could impact my relationships with my existing clients whom I charge far more for the same services...”*

- [97] There was then a series of emails about this issue between Councillor Kennedy and the staff member with the balance of the emails being sent from his personal business email address.
- [98] Also contained in the email was Councillor Kennedy's request that the contract be paid in cash. He explained that he had no idea why it had to be paid in cash and only that it was a stipulation in the contract. He indicated that it was his father that instructed him to include this in the contract.
- [99] Councillor Kennedy explained that they requested the fees be paid in cash as they were charging the Town substantially less than other municipalities; this matter also spoke to the issue regarding the disclosure of the contract. They were concerned that publishing the contract would put the company in a precarious position with other municipalities due to the lower cost charged to Iroquois Falls.
- [100] The Investigator noted two separate contracts for the Demolition Derby. One dated December 20, 2018, and the other dated December 11, 2019. Both were signed by Councillor Kennedy. The Investigator also noted the following emails of interest:
- On January 30, 2019, a staff member sent Councillor Kennedy an email asking for clarification on the company the contract was established with. Councillor Kennedy responded to clarify the issue.
  - On February 4, 2019, a staff member and Councillor Kennedy discussed the insurance required for the event by email.
- [101] An online article in the My Kapuskasing Now, clearly quoted and identified "Councillor Kennedy" as the promoter/producer of the event:

*Written By: Bob McIntyre*

*The roar of engines. The smell of exhaust The crunching of metal on metal in the winter air. All of that together might take you back to when Iroquois Falls had a demolition derby during its winter carnival.*

*It's being revived after at least 30 years, at noon on Sunday, March 17<sup>th</sup>.*

*Town Councillor Colin Kennedy is the promoter/producer of the derby, with his family's company, Edge Motorsports.*

*"It's such a huge draw, Kennedy notes. "People love the action. People love to see the cars smash and we run a safe event, so people want to see people going back to work on Monday, too."<sup>6</sup>*

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<sup>6</sup> <https://www.mykapuskasingnow.com/26655/demolition-derby-is-back-at-i-f-winter-carnival/>

## Use of Position to Influence Personal Business Interest and Inappropriate Conduct with Staff

[102] On October 18, 2019, Councillor Kennedy attended the municipal office to speak with then Clerk/Administrator Linda McLean ("Ms. McLean"). At this meeting, he was reportedly upset about a client of his personal funeral services business not being able to purchase a particular cemetery plot from the Town. Ms. McLean reported to the Investigator that Councillor Kennedy demanded that she take action on this right away and that he was very disrespectful with her.

[103] Ms. McLean advised that when she told Councillor Kennedy that she would look into the issue he said to her **"do you think I'm speaking to you as a councillor or as the funeral director?"** and she replied to him that he was not going to give her direction on what to do. Councillor Kennedy reportedly responded, *"yes I am"*.

[104] A staff person who was interviewed as part of this inquiry reported that it was clear that certain councillors where *"out to get"* Ms. McLean and Councillor Kennedy was specifically identified. Councillor Kennedy was described:

*"... [Councillor Kennedy] would raise his voice and get the last word and accusatory and throw Linda under the bus. To me it was obvious they were out to get Linda..."*

[105] Also described was Councillor Kennedy's conduct with other staff:

*"...he came in he was very cocky and didn't like the answer to some of our regulations. He got angry and red in the face. I told him that if you don't like the answer my boss's office is right across there. He was all insulted and stormed out."*

[106] Many additional and ongoing issues were reported with respect to Councillor Kennedy's dealings with the Town over his funeral home business. Staff described a back-and-forth power struggle between Councillor Kennedy and staff. Some of these incidents did occur before he was elected to a position on Council and some of the incidents occurred after.

With respect to one of the incidents it was reported that Councillor Kennedy came into the office to see the Clerk/Administrator as he did not like the answer another staff person had given him. Councillor Kennedy went into the Clerk/Administrator's office and had words with her. When he left, the Clerk/Administrator reported to a staff person that she would never meet with Councillor Kennedy alone again.

[107] Councillor Kennedy's evidence was that a client contacted him and had been trying to buy a plot for an extended period of time. He went to a staff person in the fall of 2019 and asked them what the delay was in being able to purchase a plot and was told that the staff person was just doing what they had been instructed to do. Councillor Kennedy advised he then went to the Clerk/Administrator and asked the same question and was told that the Clerk/Administrator did not know anything about it and would have to look into it.

[108] Councillor Kennedy described a back-and-forth conversation with the Clerk/Administrator over the issue of obtaining this cemetery plot. He advised that ended with him telling the Clerk/Administrator that he just needed to know when he could purchase the plot. It was

evident during the interview with Councillor Kennedy that was clearly frustrated by the events.

[109] Councillor Kennedy indicated that he was upset with staff over this but did not raise his voice. He indicated “...**there is a difference between being upset with someone and holding someone to account...**”. He indicated that, as a licensed professional representing his client, he was holding them to account to abide by the legislation as they are supposed to do.

[110] When Councillor Kennedy was questioned about the blurring of the lines between his role as a councillor and his role as a business owner, Councillor Kennedy responded:

*“I would suggest the issue is their inability to differentiate between Colin business owner and Colin as Councillor. I was always very careful when I walked into to Linda’s office to say Linda I’m here wearing my councillor hat or Linda I’m here wearing my business owner hat because I know there is definitely an opportunity for those lines to be blurred...I said to Linda are you speaking to me as a councillor or as a funeral director because I think you’re blurring lines here.”*

[111] Councillor Kennedy did not deny saying to the Clerk/Administrator that he was giving her direction to do something about the cemetery plot in response to her comment to him about giving her direction. He instead explained that it was him as a funeral director giving her this direction and not him as a councillor.

[112] It was clear from the evidence that staff did not see any separation with Councillor Kennedy acting as a councillor or as a private businessperson.

### **Berated Staff and Pounded Fist on Table**

[113] Councillor Kennedy was reported to have become upset with and berated the Clerk/Administrator during a strategic planning session about a link not working on a presentation they were reviewing. His conduct was reportedly so bad that one of the staff members was shocked and another Councillor allegedly told Councillor Kennedy that his conduct could be construed as harassment.

[114] Councillor Kennedy’s frustrations were directed at the Clerk/Administrator who reported receiving an email from the consultants present at the meeting, afterwards expressing their concern about Councillor Kennedy’s conduct at the meeting.

[115] Initially during his interview, Councillor Kennedy advised that this event did not occur. He stated that he had no recollection of this event. Once the Investigator read to Councillor Kennedy the full context of the allegation, he indicated he remembered the exchange and it was about a link that had not been sent to them by the Clerk/Administrator when she had been instructed to send it to them. The exchange between them was about the link. He further stated, “...pounding fists on the table is not my MO.”

[116] The Investigator noted that Councillor Kennedy did not deny pounding his fist on the table, only that it was not his “MO”. Councillor Kennedy then explained that he was “short” with the Clerk/Administrator; however, it was a cumulative frustration of her inability to follow instruction. Councillor Kennedy essentially blamed the Clerk/Administrator for his conduct. Councillor Kennedy also offered the following contrition, “...*Could I have handled the situation differently, certainly.*”

### **Behaved disrespectfully to the Mayor and the Economic Development Officer**

[117] Mayor Britton and a member of staff [not the EDO] alleged that Councillor Kennedy behaved disrespectfully toward Mayor Britton and the EDO when Councillor Kennedy expressed his disappointment in an email that Mayor Britton and the EDO did not attend the Teeny Tiny Summit in Matheson. And that Councillor Kennedy then brought it up in an Economic Development Committee (“EDC”) meeting on April 10, 2019.

[118] Councillor Kennedy sent an email on April 08, 2019, requesting an addition to the EDC Agenda for the April 10, 2019, meeting regarding the Teeny Tiny Summit that occurred that day [April 8, 2019] in Matheson. The email was sent to the EDO and copied to the Clerk/Administrator and Mayor Britton. In the Email Councillor Kennedy made the following statement “***To which I will add I was genuinely disappointed that neither of you made the attempt to attend.***”

[119] At the EDC meeting of April 10, 2019, Councillor Kennedy gave a report on the highlights of the Teeny Tiny Summit. Prior to ending his presentation, Councillor Kennedy added the comment that he was “*embarrassed/or genuinely disappointed that we weren’t represented by Iroquois Falls.*” We cannot confirm actual words used by Councillor Kennedy as all witnesses gave slightly different versions of what was stated and no audio or video file is available for review. We do find that Councillor Kennedy did openly express his displeasure with Mayor Britton and the EDO for not attending the event. Witnesses reported that Councillor Kennedy was rude and that that they did not feel the topic was properly discussed at the EDC.

[120] Councillor Kennedy is the Chair of the EDC as appointed by Council.

[121] The Town’s Procedure Bylaw states that when the Mayor is in attendance at a committee meeting, he/she Chairs the meeting.

[122] On April 10, 2019, Mayor Britton was in attendance and according to policy acted as Chair for the meeting.

[123] When Councillor Kennedy started expressing his personal opinion on the failure of Mayor Britton and the EDO to attend the Teeny Tiny Summit, Mayor Britton, attempted to explain that he was travelling with the EDO and that the weather was inclement, so they were concerned about safety and opted not to attend. When Councillor Kennedy continued to be disrespectful and pointed out that others attended even though the traveling conditions were not ideal. Then as Chair, Mayor Britton called Councillor Kennedy out of order. Councillor Kennedy continued to speak, and Mayor Britton as Chair, in a raised voice, again called Councillor Kennedy out of order. The Mayor further stated that Councillor Kennedy was in contravention of the Code of Conduct and the Procedural Bylaw.

- [124] It was reported by some that Councillor Kennedy did not raise his voice.
- [125] Mayor Britton did apologize those in attendance at the Meeting for his outburst.
- [126] Witnesses reported being very uncomfortable with the situation.
- [127] On April 17, 2019, Councillor Kennedy emailed Mayor Britton and copied to the Members of the EDC. Councilor Kennedy wrote:

*“Mayor Britton,*

*During the April 10 Ec Dev and Tourism Meeting you stated that I had contravened the Municipal Code of Conduct as well as the Procedural Bylaw. These are serious allegations. At the time I requested that you put these allegations in writing, citing the specific sections that you said I was in contravention of. Over a week later I have yet to see anything in writing as requested. Please accept this e-mail as a second request for you to either put these very serious allegations in writing, citing the specific sections that you feel I was in contravention of, or publicly retract and apologize for these libellous accusations.”*

## **VI. THE ISSUE**

- [128] We considered:

### **Disparaging Remarks on Social Media Site “Everything Iroquois Falls”**

- a. Whether or not Councillor Kennedy contravened the Code of Conduct when he posted disparaging remarks about Mr. Brown.
- b. Whether or not the Town’s Code of Conduct applies during a Municipal Election.

### **Derogatory Flyers/Leaflets Placed on Cars During Campaign Event**

- c. Whether or not Councillor Kennedy placed the alleged derogatory flyers on parked vehicles during a campaign event held by Mr. Brown
- d. Whether or not the Town’s Code of Conduct applies during a Municipal Election.

### **Failing to Afford His Position the Appropriate Level of Seriousness**

- e. Whether or not Councillor Kennedy contravened the Code of Conduct when he and another member of Council discussed flipping a coin to see who would run for Mayor.
- f. Whether or not the Town's Code of Conduct applies during a Municipal Election.

### **Contract with the Municipality for a Demolition Derby**

- g. Whether or not Councillor Kennedy contravened the *MCIA* when dealing with matters pertaining to the Demolition Derby.
- h. Whether or not Councillor Kennedy contravened the Code of Conduct when dealing with matters pertaining to the Demolition Derby.
- i. Whether or not Councilor Kennedy contravened the Council Staff Relation Policy when dealing with matters pertaining to the Demolition Derby.

### **Berated Staff and Pounded Fist on Table**

- a. Whether or not Councillor Kennedy contravened the Code of Conduct by his behavior during a strategic planning session.
- b. Whether or not Councilor Kennedy contravened the Council Staff Relation Policy by his behaviour at the strategic planning session.

### **Behaved disrespectfully to the Mayor and the Economic Development Officer**

- a. Whether or not Councillor Kennedy contravened the Code of Conduct when he emailed the EDO and Mayor Britton on April 8, 2019.
- b. Whether or not Councillor Kennedy's behavior at the April 10, 2019, EDC meeting was contrary to the Procedure Bylaw.
- c. Whether or not Councillor Kennedy's behavior at the April 10, 2019, EDC meeting contravened the Code of Conduct.
- d. Whether or not Councillor Kennedy's behavior at the April 10, 2019, EDC meeting contravened the Council Staff Relation Policy.
- e. Whether or not Councillor Kennedy contravened the Code of Conduct when he emailed Mayor Britton and copied the EDC members on April 17, 2019.



## VII. THE OPINION

### Disparaging Remarks on Social Media Site “Everything Iroquois Falls”

- [129] Councillor Kennedy made remarks about Mr. Brown on a social media site during the 2018 Municipal Election. Mr. Brown was insulted by the remarks.
- [130] Mr. Brown was a candidate running for the position of Mayor during the 2018 Municipal Election. Mr. Brown was not an incumbent candidate. However, Mr. Brown had previously held the position of Mayor (1991).
- [131] Councillor Kennedy was also a candidate in the 2018 Municipal Election. He was running for a position on Council.
- [132] The Town adopted the Code of Conduct on July 30, 2018, and its provisions applied to Councillor Kennedy. In this instance, we specifically considered section 7.2 which states *“A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.”*
- [133] Councillor Kennedy did not deny making the statements. He did report that the statements were part of a private discussion that was then posted by another individual.
- [134] It is clear, that Councillor Kennedy’s comments were his personal opinion and not necessarily the opinion of Council.
- [135] There is no provision of the Code of Conduct that prohibits a member of Council from having an opinion. However, members of Council are held to a higher standard of conduct than members of the public.
- [136] Councillor Kennedy ought to have known that even private conversations can be made public. Especially during an election campaign.
- [137] The *Municipal Act* sections 223.4(7) and 223.4.1(12) require an Integrity Commissioner to terminate an inquiry that has not been completed before nomination day for a regular election and not re-commence the inquiry unless the Requestor/Applicant requests the inquiry recommence within six weeks of election day.
- [138] The Integrity Commissioner does not have jurisdiction over candidates during a Municipal Election. However, election-related conduct under certain circumstances may be considered by an Integrity Commissioner. David Mullen, Integrity Commissioner for the City of Toronto did consider a matter involving the conduct of a member of Council during a Municipal Election. He reported in *Li Preti v. Augimeri, 2007 ONMIC 2 [Marcy 22, 2007]*:

*“I do not have general jurisdiction over the conduct of candidates (including incumbents) during a municipal election campaign. However, election-related conduct (such as the use of City resources for campaign purposes) can give rise to a violation of specific provisions of the Code of Conduct. Included within the range of possibilities is conveying false information about a fellow Councillor for*

*the purposes of discrediting him (whether for election or other purposes). This can amount to discreditable conduct under Clause XI of the Code of Conduct. In the language of that provision, this may constitute a breach of the duty to treat "one another.... fairly".*

And

*Councillor Augimeri violated Clause XI of the Code of Conduct by leaving a voice mail message on a Member of Parliament's voice messaging system alleging that a colleague (seeing re-election) was actively being investigated by the police. This conduct was reckless at best and amounted to a serious violation of the ethical standards expected of Members of Council in their conduct in relation to their peers."*

- [139] We find that there are insufficient reasons to apply the exception established by Integrity Commissioner Mullen. This complaint is dismissed.

#### **Derogatory Flyers/Leaflets Placed on Cars During Campaign Event**

- [140] The Integrity Commissioner as stated previously, does not have jurisdiction during a Municipal Election.
- [141] We find that there are insufficient reasons to apply the exception established by Integrity Commissioner Mullen. This complaint is dismissed.

#### **Failing to Afford His Position the Appropriate Level of Seriousness**

- [142] The discussion Councillor Kennedy had with a fellow Councillor regarding flipping a coin to see who would run for Mayor was reportedly inappropriate to Mr. Brown. Councillor Kennedy did not deny the discussion.
- [143] The Code of Conduct only came into effect July 30, 2018 which is after nomination day for the municipal election (July 27, 2018). All candidates in a municipal election must apply before nomination day. Nomination day for the 2018 municipal election was July 27, 2018. The conversation between Councillor Kennedy and a fellow Councilor occurred prior to nomination day and therefore prior to the Code of Conduct applying to the parties.
- [144] Had the Code of Conduct been in effect at the time the conversation occurred between Councillor Kennedy and the other member of Council, we would have dismissed this complaint on a preliminary review. We are aware that from time-to-time Councils use random processes like flipping a coin or drawing from a hat to make decisions. Either process is an acceptable practice when making certain decisions such as filling a position on Council as in this case.
- [145] This matter is dismissed.

## **Contract with the Municipality for a Demolition Derby**

- [146] Councillor Kennedy's father is part owner of a business called Extreme Productions. The business promotes demolition derbies to municipalities. Councillor Kennedy's sister is also involved.
- [147] Additionally, Councillor Kennedy admitted that he was a "consultant" for his father's business and that he historically, attended trade shows on behalf of the business.
- [148] Councillor Kennedy reported being part of the Carnival Committee. He further advised that he was trying to walk a very fine line. He wanted to bring the Demolition Derby to the community and not to overstep his boundaries as a Councillor.
- [149] Councillor Kennedy was aware that he had a pecuniary interest in the matter and did declare the interest. However, Councillor Kennedy did take an active role:
- He did not recuse himself from all activity associated with the Demolition Derby. Instead, he actively participated. To the point where he was identified as 'Councillor Colin Kennedy' the one promoting the event in an online article.
  - He signed the contract on behalf of his father's business.
    - a. Of interest is that he had his sister present the contract.
  - He used his Council email to direct staff to remove the contract from the open session agenda.
  - He attempted to secure the cash payment for the event.
- [150] There was no evidence before us, including directly from Councillor Kennedy, that he took proactive steps to ensure that he did not exercise influence (contrary to the *MCIA*) on a matter he declared having a pecuniary interest in. In fact, Councillor Kennedy did influence the matter on several occasions. One example is on February 15, 2020, Councillor Kennedy gave the Clerk/Administrator direction in an email to remove the events contract from the Town's website immediately. When interviewed, Councillor Kennedy explained sending the email from his municipal email address was in error. He did not however address the issue of giving the Clerk/Administrator direction. A private business owner, or an individual member of Council cannot give direction to a municipal employee.
- [151] Councillor Kennedy in using his municipal email address and by directing the Clerk/Administrator to do something immediately, was clearly attempting to exert his influence as a member of Council to benefit a private enterprise Councillor Kennedy had direct involvement in.
- [152] The *MCIA* requires that a member who has a pecuniary interest, declare the interest in writing and not **influence** the decision before, during or after:
- "5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way*

*to attempt to influence any decision or recommendation that results from consideration of the matter.”*

- [153] Councillor Kennedy had a pecuniary interest in the Demolition Derby. It is also clear that while Councillor Kennedy was aware of his obligations under the *MCIA* he actively influenced the matter contrary to the *MCIA*.
- [154] Section 223.4.1 of the *Municipal Act* gives the Integrity Commissioner jurisdiction to conduct an inquiry into an allegation that a member of Council has contravened the *MCIA* and if a contravention has been found, the Integrity Commissioner may take the matter to court.
- [155] For the Integrity Commissioner to make an application to court when a contravention of the *MCIA* is found the individual requesting the inquiry must swear a statutory declaration stating that they found out about the alleged breach within the previous six (6) weeks. In this case, the request for inquiry has been made well outside of the timeframe. For this reason, our findings are confined to the Council Staff Relations Policy and the Code of Conduct.
- [156] Our findings are made in consideration of the following:

*Section 6.3 of the Council Staff Relations Policy states:*

*“Members of Council must understand they have no individual capacity to direct Staff to perform, or not perform functions or duties...Council who need to engage with Staff and Officers must do so through the Clerk-Administrator. This would include both in person, verbal, written and electronic messages.”*

*Section 6.11 of the Council Staff Relations Policy states:*

*“Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of other’s intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Municipality.”*

*Section 1. In addition to all legislative requirements, we the Members of the Corporation of the Town of Iroquois Falls Council have adopted the requirements of this Code of Conduct...*

*Section 13.1 “No Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.”*

*Section 13.2 “No member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member’s private advantage, the private advantage of the Member’s parent, child, staff member, friend or associate, business...no Member shall attempt to secure preferential*

*treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties...”*

- [157] We find that Councillor Kennedy:
- a. Contravened section 1 of the Code of Conduct by failing to comply with the *MCIA*. Of importance is that the Code of Conduct contemplates that members of Councils and Local Boards must be familiar with their obligations under provincial and other legislation. Councillor Kennedy had a positive obligation to be knowledgeable of his responsibilities under the *MCIA*. Had Councillor Kennedy been concerned about the “fine line” he was dealing with, he could, and should have sought advice in writing from the Integrity Commissioner as to his *MCIA* obligations.
  - b. Contravened section 13.1 of the Code of Conduct when he used his Council email for something other than Council business and directed the Clerk/Administrator to remove the contract related to the Demolition Derby from the Town website.
  - c. Contravened section 13.2 on at least four (4) occasions when he:
    - i. Participated in recruiting the Town (through the Recreation committee) to be a host for the Demolition Derby. An event that directly benefited Councillor Kennedy, his sister, and his father.
    - ii. Signed the Demolition Derby contract on behalf of Extreme Productions (his father’s business) that was to be negotiated between Extreme Productions and the Town.
    - iii. Directed the Clerk/Administrator to remove the Demolition Derby contract from the agenda package/website.
    - iv. Attempted to collect the cash payment for the Demolition Derby.
  - d. Contravened section 6.3 of the Council Staff Relations Policy [which is also a contravention of the Code of Conduct] when he directed the Clerk/Administrator to remove the contract document from the agenda package/website and when he directed staff to make a payment to him in cash for the Demolition Derby. A single member of Council has no authority to direct a municipal officer or staff person without the express authority of Council (by Bylaw or resolution).

### **Use of Position to Influence Personal Business Interest and Inappropriate Conduct with Staff**

[158] Councillor Kennedy was self admittedly frustrated when one of his clients reported a difficulty in obtaining a cemetery plot. So much so, Councillor Kennedy took it upon himself to attempt to remedy the situation. After getting an unsatisfactory response from a junior municipal employee, he attended the Town Office and met with the former Clerk/Administrator.

[159] After the interaction, the former Clerk/Administrator was visibly shaken up and she advised other staff that she would not meet with Councillor Kennedy alone again.

[160] Councillor Kennedy stated that he regularly told staff when he spoke to them about his personal businesses that he was not acting in his capacity as a Councillor. We do not find this assertion to be genuine. The evidence gathered as part of this inquiry shows that Councillor Kennedy on more than one occasion exerted his influence as a member of

Council and that he had other avenues to seek the resolution he was looking for – none of which involve intimidating or influencing officers or municipal employees.

- [161] Even if Councillor Kennedy had typically delineated his two (2) roles with staff, he clearly conflicted the two (2) roles in this instance when he attempted to direct the former Clerk/Administrator. Members of the public or an individual member of Council do not have the authority to direct an employee. If they are dissatisfied with the response they receive from an employee, they can submit a complaint following the Town's complaint policy. Councillor Kennedy did direct the former Clerk/Administrator.
- [162] Section 5 (1) of the *Municipal Act* states that the powers of the municipality [in this case regarding giving direction to staff] are exercised by Council. It does not say 'Councillor'. This means that no individual member of Council has the authority to act on behalf of the municipality. An exception would be when/if Council adopted a Bylaw or resolution at a Council meeting giving a particular member of Council the authority to act on behalf of the municipality for a certain matter.
- [163] To be clear, no individual member of Council has the authority to direct a municipal officer or staff person to undertake a task, nor do they have the authority to supersede a Bylaw or policy that has been established by Council, unless Council has adopted a Bylaw or resolution authorizing otherwise.
- [164] Council did not adopt a Bylaw or pass a resolution which authorized Councillor Kennedy to have jurisdiction over the operation of municipal cemeteries.
- [165] Nor did Council pass a Bylaw or resolution that gave express authority to Councillor Kennedy to direct staff on how to manage municipal cemeteries.
- [166] Councillor Kennedy has been on Council for several years. He was reelected in 2018. He ought to be aware that he has no authority to direct employees including the former Clerk/Administrator. Only Council as a body can direct an office or employee of the Municipality and specifically in this instance, the former Clerk/Administrator, by the passing of Bylaws or adopting of resolutions.
- [167] We found no resolutions/directions of Council giving authority to Councillor Kennedy to direct the Clerk/Administrator generally or more specifically, in this matter.
- [168] Of note, is that Councillor Kennedy often referenced that the former Clerk/Administrator failed to listen or do what she was told when giving his evidence in this inquiry. Clearly, Councillor Kennedy had been dissatisfied with the response or action/non-action from staff, instead of making a complaint under the policy adopted by Council for such purposes or making a complaint to the Bereavement Authority of Ontario, Councillor Kennedy went directly to staff, demanded action, and overstepped his role as a Councillor.
- [169] Section 5.2 of the *MCIA* states:  
*"5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way*

*to attempt to influence any decision or recommendation that results from consideration of the matter.”*

- [170] At the time, there was no decision before Council related to the cemetery.
- [171] However, municipalities are required to operate a cemetery in accordance with provincial legislation. Furthermore, municipalities operating a cemetery must adopt the appropriate bylaws.
- [172] The Town has adopted such a Bylaw [a decision of Council]. The former Clerk/Administrator is responsible for following the Bylaw. Council is responsible for ensuring that the Bylaw is followed.
- [173] Councillor Kennedy operated a funeral home and the service he provided included burials.
- [174] When Councillor Kennedy attended the Town Office and met with the former Clerk/Administrator to resolve an issue for a client of his business related to the acquisition of a cemetery plot. Councillor Kennedy wanted a resolution that benefited his client.
- [175] Because Councillor Kennedy was acting on behalf of a client, he had a pecuniary interest in resolving the situation. He was therefore obligated to adhere to the MCIA and more specifically, section 5.2(1). His obligations under the MCIA are to not influence an Officer of the municipality [the Clerk among others] on a matter he has a pecuniary interest in. He clearly attempted to intimidate the Clerk to seek an outcome that benefited Councillor Kennedy's client. His actions are contrary to his obligations under the MCIA.
- [176] Section 223.4.1 of the *Municipal Act* gives the Integrity Commissioner jurisdiction to conduct an inquiry into an allegation that a member of Council has contravened the MCIA. For a matter to be properly filed, the individual requesting the inquiry must have found out about the alleged breach within the previous six (6) weeks. The allegations herein have been made well outside of the timeframe.
- [177] For this reason, our findings are confined to the Staff Council Relations Policy and the Code of Conduct. More specifically, sections 6.3 and 6.11 of the Staff Council Relations Policy as well as sections 1, 7.2, 13.1 and 13.2 of the Code of Conduct.

*Section 6.3 of the Council Staff Relations Policy states:*

*“Members of Council must understand they have no individual capacity to direct Staff to perform, or not perform functions or duties...Council who need to engage with Staff and Officers must do so through the Clerk-Administrator. This would include both in person, verbal, written and electronic messages.”*

*Section 6.11 of the Council Staff Relations Policy states:*

*“Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of other's intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Municipality.”*

*Section 1. In addition to all legislative requirements, we the Members of the Corporation of the Town of Iroquois Falls Council have adopted the requirements of this Code of Conduct...*

Section 7.2 of the Code of Conduct states:

*“A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.”*

*Section 13.1 “No Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.”*

*Section 13.2 “No member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member’s private advantage, the private advantage of the Member’s parent, child, staff member, friend or associate, business...no Member shall attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties...”*

[178] We find that Councillor Kennedy:

- a. Contravened section 1 of the Code of Conduct by failing to comply with the *MCIA*. Of importance is that the Code of Conduct contemplates that members of Councils and Local Boards must be familiar with their obligations under provincial and other legislation. Councillor Kennedy had a positive obligation to be knowledgeable of his responsibilities under the *MCIA*.
- b. Contravened sections 13.1 and 13.2 of the Code of Conduct when he used his influence to attempt to resolve a matter for a client related to the operation of a municipal cemetery when he met with and intimidated the former Clerk/Administrator.
- c. Contravened section 6.3 of the Council Staff Relations Policy [which is also a contravention of the Code of Conduct] when he attempted to direct the former Clerk/Administrator to resolve a situation regarding a cemetery plot in a manner that benefited a client of Councillor Kennedy’s business.

### **Berated Staff and Pounded Fist on Table**

[179] Councillor Kennedy became upset with the former Clerk/Administrator at a strategic planning meeting when he alleged that she failed to provide a link to a report necessary for that meeting. Witnesses reported that the former Clerk/Administrator requested that Councillor Kennedy not speak disrespectfully toward her and another member of Council warned him that his behaviour could be seen as harassment.

[180] It was also reported that Councillor Kennedy pounded his fist on the table. Councillor Kennedy did not deny the action instead he said that it was not his “MO” to behave that way.



- [181] Councillor Kennedy clearly acted inappropriately at this meeting.
- [182] An individual member of Council has no legislative authority to chastise, criticize or otherwise disrespect an employee at a meeting. If Councillor Kennedy had believed that the former Clerk/Administrator had not done her job, the matter should have been documented with the Mayor after the meeting and brought up during a performance discussion if ALL of Council agreed that the situation warranted being considered.
- [183] Members of Council are expected to behave in a manner that is in keeping with their status as an elected official and in accordance with the Staff Council Relations Policy as well as the Code of Conduct.
- [184] Councillor Kennedy's behavior was aggressive, unprofessional, and extremely inappropriate under the circumstances.
- [185] The position of Clerk/Administrator reported to Council as a body. Not an individual member of Council. Section 5 (1) of the *Municipal Act* states that the powers of the municipality [in this case as an employer] are exercised by Council. It does not say 'Councillor'. This means that no individual member of Council has the authority to act on behalf of the municipality. An exception would be when/if Council adopted a Bylaw or resolution at a Council meeting giving a particular member of Council the authority to act on behalf of the municipality for a certain matter.
- [186] To be clear, no individual member of Council has the authority to direct a municipal officer or staff person to undertake a task, nor do they have the authority to manage the performance of an officer or an employee unless Council has adopted a Bylaw or resolution authorizing otherwise.
- [187] Council has not adopted a Bylaw or passed a resolution authorizing Councillor Kennedy to manage the work performance of a municipal officer or employee.
- [188] In other words, Councillor Kennedy did not have the authority of Council or the *Municipal Act* to berate the former Clerk/Administrator either privately or in the presence of others.
- [189] Council, as a body, has the authority to manage the performance of their only employee, the CAO, or in this circumstance the Clerk/Administrator. Councillor Kennedy ought to have raised his dissatisfaction with the former Clerk/Administrators work performance with the Mayor who would have then brought the matter forward during a Closed Session of Council whereat the matter could be properly discussed.
- [190] Additionally, to evaluate an employees' performance in a public setting is a contravention of the *Municipal Freedom of Information and Protection of Privacy Act* ("MFOIPPA"). Section 14 (3) (g) provides that it is an unjustified invasion of privacy to make public personnel evaluations. Clearly, Councillor Kennedy's berating of the former Clerk/Administrator was done in contravention of this section of MFOIPPA.

[191] We find Councillor Kennedy:

- a. Contravened section 1 of the Code of Conduct by failing to comply with the *Municipal Act* and *MFOIPPA* by attempting to manage an officer or employee of the Town. Of importance is that the Code of Conduct contemplates that members of Councils and Local Boards must be familiar with their obligations under provincial and other legislation. Councillor Kennedy had a positive obligation to be knowledgeable of his responsibilities under these Acts.
- b. Contravene sections 6.10 and 6.11 of the Council Staff Relations Policy [which is also a contravention of the Code of Conduct] when he was verbally disrespectful to the former Clerk/Administrator at a strategic planning meeting and a further breach when he pounded his fist on the table.
- c. Contravene section 7.1 of the Code of Conduct when he was disrespectful to the former Clerk/Administrator and pounded his fist on the table at a strategic planning meeting.
- d. Contravene section 7.2 of the Code of Conduct when he was disrespectful to the former Clerk/Administrator.

#### **Behaved disrespectfully to the Mayor and the Economic Development Officer**

[192] Councillor Kennedy authored an email requesting that the Teeny Tiny Summit be placed on the agenda for the EDC meeting. Also, in this email, Councillor Kennedy expressed his displeasure with the EDO and the Mayor for not attending the Teeny Tiny Summit.

[193] Councillor Kennedy at no time attempted to contact Mayor Britton to find out why he had not attended the event. Instead, he brought the matter up in the email and at an EDC meeting. When Mayor Britton, who was acting as meeting Chair, advised Councillor Kennedy he was out of order, Councillor Kennedy did not discontinue his behaviour. Mayor Britton advised Councillor Kennedy that he was acting contrary to both the Procedure Bylaw and the Code of Conduct. Councillor Kennedy demanded that Mayor Britton put the allegations in writing.

[194] A week after the meeting, Councillor Kennedy sent an email to Mayor Britton and copied the EDC members stating that the allegations made by Mayor Britton at the EDC meeting were serious and that Mayor Britton needed to cite the sections that Councilor Kennedy was allegedly in contravention of in writing to him "*or publicly retract and apologize for these libellous accusations*".

[195] We find Councillor Kennedy's behaviour to be disrespectful and uncalled for when he stated his displeasure in an email directed at Mayor Britton and the EDO for the sole reason that Councillor Kennedy sent this email to several parties in addition to the Mayor and the EDO. While his language is pointed and not overtly rude, it appears his intention was to make Mayor Britton and the EDO look bad. Had he spoken/written to Mayor Britton directly to find out why Mayor Britton did not attend the event our finding may be different.

[196] With respect to the EDO, he should have spoken/written directly to the former Clerk/Administrator to find out why the EDO did not attend. Councillor Kennedy's action

was inappropriate under the circumstance and contrary to the Council Staff Relations Policy and the Code of Conduct.

[197] Additionally, Councillor Kennedy should not have made the statements at the EDC meeting. Again, it was a disrespectful act and appeared to be done to make the Mayor look bad. When Mayor Britton advised Councillor Kennedy that he was out of order, he ought to have respected the Chair and behaved accordingly. It is our opinion that Councillor Kennedy's behaviour was intentional and uncalled for. He did not apologize to the meeting attendees.

[198] We find that Councillor Kennedy did:

- a. Not contravene section 7.2 of the Code of Conduct when he emailed the EDO asking that a matter be placed on the Agenda for the EDC meeting. However, he ought not to have included his remarks about being disappointed that the EDO and Mayor Britton did not attend the Teeny Tiny Summit.
- b. Contravene sections 4.5.1 and 4.5.3 of the Procedure Bylaw at the meeting on April 10, 2019, when he blatantly disregarded the point of order called by the Chair (Mayor Britton) and continued to express his opinion on the matter the Mayor called a point of order on. His actions are a contravention of section 5.1 of the Code of Conduct.
- c. Contravene section 6.1 of the Code of Conduct for disrespecting Mayor Britton and the EDO when he put them on the spot about their failure to attend the Teeny Tiny Summit in front of the EDC committee at their meeting on April 10, 2019.
- d. Contravene section 6.11 of the Council Staff Relations Policy when he was critical of the EDO for not attending the Teeny Tiny Summit. Councillor Kennedy's actions are not in keeping with the Code of Conduct requirement to build a climate of mutual respect with staff.
- e. Contravene section 7.2 of the Code of Conduct when he emailed Mayor Britton and copied the EDC members demanding a response or an apology from Mayor Britton. Because this was done 'publicly' we find that it is a contravention because Councillor Kennedy's email, while not overtly disrespectful, was an intentional act of intimidation.

## VIII. CONCLUSION

[199] The volume and nature of the complaints our office has received and reviewed herein, clearly shows that Councillor Kennedy has disregarded the ethical responsibilities outlined in the Code of Conduct and legislation governing the behaviour of members of Council like the *Municipal Act* and the *MCIA*.

[200] In fact, his behaviour has been long standing and often quite egregious. He has placed the Township at considerable risk of litigation, and he has clearly contravened the *MCIA* on two (2) reported occasions. We therefore we recommend that Council request that Councillor Kennedy resign his position. We understand that this request is not enforceable, but it demonstrates Council's censure and the seriousness of these cumulative issues.

[201] Alternatively, should Council not wish to take such action or should Councillor Kennedy refuse to resign Council should strictly impose the following:

- a. With respect to the contraventions of the *MCI*A and thereby contraventions of the Code of Conduct, our recommendation is that Council suspend his remuneration for a period of ninety (90) days for the multiple breaches.
- b. With respect to the multiple contraventions of sections 13.1 and 13.2 of the Code of Conduct our recommendation is that Council suspend his remuneration for a period of ninety (90) days.
- c. With respect to the repeated attempts to influence an officer or employee of the Town, that Council removes him from any standing or *ad-hoc* committees of Council and suspend his remuneration for a period of ninety (90) days. We also recommend that he not be permitted to communicate with staff without another member of council present as a witness and a buffer to ensure the safety of staff and the propriety of Councillor Kennedy's conduct.

[202] We further recommend that the Head of Council, immediately stop Councillor Kennedy when he begins to openly become aggressive or berate/attack officers or employees at Council meetings. Individual Councillors can support the Mayor by raising a point of privilege if this behaviour occurs. Should he fail to stop, the Mayor should have Councillor Kennedy removed from the meeting. This behaviour should not be tolerated by Council.

[203] We also recommend that Council:

- a. Review/update their Workplace Violence and Harassment Policy
- b. Provide training on both to all members of Council, members of committees of Council and municipal employees on the Council Staff Relations Policy.

DATED March 31, 2021