

DECISION OF THE INTEGRITY COMMISSIONER

TOWN OF KIRKLAND LAKE

ALLEGATION: CODE OF CONDUCT CONTRAVENTION

BY: COUNCILLOR OWEN



Prepared By:

Gil Hughes, Investigator
Investigative Solutions Network (ISN)

Peggy Young-Lovelace
E4m Consultant/Director

I. EXECUTIVE SUMMARY

1. On February 14, 2020, a request was received by our office for an Integrity Commissioner inquiry into allegations that Rick Owen (“Councillor Owen”) contravened section 8 of the Town of Kirkland Lake Code of Conduct (“Code”) as well as the Council Staff Relations Policy (“CSR Policy”).
2. The request was filed by long-term municipal employee, Bonnie Sackrider (“Ms. Sackrider”), Kirkland Lake’s Community Services Director. It is relevant that this position reports to the CAO, not directly to Council in the municipality’s organization chart.
3. Ms. Sackrider alleged that Councillor Owen on multiple occasions did contravene the following sections of the Code:
 - 1.2 (c) not acting with integrity;
 - 7.1 duty and responsibility to treat staff appropriately and without bullying or intimidation and to ensure the work environment is free from discrimination and harassment;
 - 7.2 a member shall not use indecent, abusive or insulting words, tone or expressions toward staff;
 - 8.3 every member shall show respect for staff and officers, and for their professional capacities and responsibilities;
 - 8.5 no member shall further his authority by intimidating [sic]¹
4. Further that Councillor Owen did also contravene the following sections of the CSR Policy in his treatment of her:
 - 5.7 Staff shall not be the target of derisive/vexatious comments/behaviour/conduct. Comments on staff performance shall be directed through the appropriate confidential performance reviews.
 - 5.10 Professionalism – advance notice of questions to Staff provides an opportunity for Staff to provide quality reports and advice
 - 5.11 Members, staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others’ intelligence and professional duties. Members, Staff and Officers must understand that they

¹ Original request for inquiry documents from Bonnie Sackrider

all face different, often unique challenges and recognize their overarching goal is to serve the best interests of the Municipality.

5. Ms. Sackrider reported that despite multiple training sessions **“at which proper conduct and staff relations were specifically addressed”** Councillor Owen’s **“behaviour directly contradicts the principles advocated in these training sessions”**.²
6. She further reported that she had **“repeatedly been subject to overt as well as subtle or covert examples of intentionally rude, demeaning and dismissive behaviour by various Councillors.”**³ Ms. Sackrider cited public reprimands, accusations about professional competence, and undermining of credibility in front of others among the behaviours exhibited by Councillor Owen on an intermittent basis beginning in December of 2018. She reported that these behaviours were demeaning and led to an extended leave from work.
7. Ms. Sackrider reported several situations occurring over a period of several months. Her allegations included the removal of salary, disrespectful eye rolling, interjecting mocking comments during and after presentations, speaking unfavourably in front of staff and blaming her for the Town’s inability to hire staff and generally undermining her credibility. The incidents form a pattern of negativity and disrespect.

Reduction of Salary – Ms. Sackrider reported that she was receiving a “top up” to her salary for extra administrative work added to her original workload due to the CAO vacancy. This “top up” was then allegedly removed by Council notwithstanding that Ms. Sackrider reports to the CAO or Interim/Acting CAO;

Eye Rolling – that allegedly Councillor Owen had a practice of disrespectfully rolling his eyes in public meetings when Ms. Sackrider was presenting reports to Council;

Undermining Credibility – that allegedly Councillor Owen undermined her credibility by:

- interjecting mockingly when she made presentations as reported
 - with respect to Firefighter negotiations (September 17, 2019), Closed
 - with respect to a presentation regarding the Fitness Centre (October 22, 2019)
 - with respect to the presentation of a report regarding the arena chiller (November 6, 2019)
 - with respect to a closed session Council meeting when she began to provide an update on Fighter negotiations as requested by the Mayor and further at the same meeting regarding a report, she was presenting about crossing guards.
- telling a municipal employee [a colleague of Ms. Sackrider] that Ms. Sackrider was the reason the municipality could not hire crossing guards and lifeguards.
- a subordinate employee reported that during a conversation with Councillor Owen, Ms. Sackrider came up and Councillor Owen’s remarks were not favourable.

² Original request for inquiry documents from Bonnie Sackrider

³ Original request for inquiry documents from Bonnie Sackrider

8. The matter was investigated by Mr. Gil Hughes (the “Investigator”) who is an experienced investigator with Investigative Solutions Network (“ISN”) and has carried out similar investigations on behalf of Expertise for Municipalities (“E4m”).

9. The Investigator reported:

“Councillor Owen categorically denied that he had been disrespectful towards Ms. Sackrider. He further advised that he objected to Ms. Sackrider’s word choices and objected to the remaining allegations because they only captured portions of conversations that were subject to interpretation. Councillor Owen added that if he were truly trying to discredit Ms. Sackrider, it would have been done during a session available for public viewing.

Rick Owen’s credibility is undermined after examining his behaviours such as eye-rolling and disrespectful comments. Independent witnesses established that Rick Owen exhibited eye-rolling as an obvious reaction to Bonnie Sackrider’s presentations. This seemingly insignificant behaviour actually formed a portion of a larger constellation of negative behaviours exhibited by Rick Owen. He attempted to justify his eye-rolling by advising that he has some sort of eye movement issue whenever he moves his head in an upward direction.

Independent witnesses recalled hearing Rick Owen making disparaging and disrespectful comments about Bonnie Sackrider, thereby questioning his credibility. Rick Owen did not apologize for his disrespectful words, but instead he offered regret for not realizing his private conversations could be used against him. He further attempted to justify his behaviour as being part of his position as a Town of Kirkland Lake councillor.”⁴

10. The Role of Council is established in section 224 of the *Municipal Act 2001* ch 25. wherein it provides that it is Council’s role to represent the public and to consider the well-being and interests of the municipality; determine the services a municipality will provide, the level to which those services will be offered/managed and to establish policies for the municipal operation.

11. The Role of Officers/Employees is established in section 227 of the *Municipal Act 2001* ch 25. which provides that it is their role to carry out the direction of Council, to undertake research and provide professional advice to Council on the policies and programs of the municipality as well as to carry out other duties required under the *Municipal Act* or other Acts.

FINDINGS

12. Our findings in these matters are as follows:

⁴ Investigation Report – Gil Hughes, ISN dated September 14, 2020

Councillor Owen clearly contravened sections 5.7, 5.10 and 5.11 of the CSR Policy which in itself is a contravention of section 5.1 of the Code of Conduct which states that:

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.

Further, Councillor Owen has contravened sections 7.1, 7.2, 8.1 and 8.3 of the Code of Conduct.

We do not find that that Councillor Owen contravened sections 1.2 (c) or 8.5 of the Code of Conduct.

II. LEGISLATIVE FRAMEWORK

13. 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.
14. 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.
15. Section 270 of the *Municipal Act* requires a municipality to adopt and maintain a policy with respect to the relationship between Members of Council and the Officers and Staff of the Municipality. The Town of Kirkland Lake has adopted such a policy which contains a provision that it is the role of the Integrity Commissioner to investigate matters related to alleged contraventions of this policy by member of Council.

III. THE REQUEST

16. The request before us was properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the Town of Kirkland Lake. The Requestor in this matter is an employee of the Town. The Requestor alleged that Councillor Owen contravened sections 1.2 (c), 7.1, 7.2, 8.3, and 8.5 of the Town's Code of Conduct as well as sections 5.7, 5.10 and 5.11 of the Staff Council Relations Policy.

IV. THE INQUIRY PROCESS

17. The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a member has contravened the Code of Conduct that is applicable to that member.
18. 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 the matter. Gil Hughes, a professional investigator with Investigative Solutions Network (ISN), was assigned as an agent 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 Owen.
19. 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 Township'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 dishonesty⁵
20. Worthy of note is the fact that Mr. Hughes, the investigator, determined that Councillor Owen was less than credible. He attempted to justify his behaviour by making excuses rather than owning his actions.

⁵ *Farnya 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 (4th) 176 (Alta.Arb.)

V. THE FACTS

21. Ms. Sackrider is employed with the Town of Kirkland Lake. She currently holds the position of Community Services Director and reported being employed by the Town for thirty-six (36) years.
22. In February 2020, she submitted a detailed complaint to the Integrity Commissioner alleging misconduct by Councillor Rick Owen.
23. Ms. Sackrider alleged that Councillor Owen was responsible for a series of incidents that she believed to be disrespectful behaviour, thereby violating the Code and the CSR Policy.
24. By all accounts, Bonnie Sackrider is a dedicated, respected, and credible public servant that does not possess a hidden agenda.
25. She reported to the investigator:

*"I'm trying to keep things positive. I'm the exact opposite of the complainer. I am the find a solution, move forward, how do we-... I've been doing that in my job forever. I do that with my family. I do that all the time. So to do this is a little out of my- I guess, my personality. But I know it's the right thing to do. I know that I didn't deserve this treatment and I know that no one else does either."*⁶ [sic]

– Bonnie Sackrider March 11, 2020
26. Ms. Sackrider reported several situations occurring over a period of several months. Her allegations included the removal of salary, disrespectful eye rolling, interjecting, mocking comments during and after presentations, speaking unfavourably in front of other staff and blaming her for the Town's inability to hire staff and generally undermining her credibility. Collectively, the incidents form a pattern of negativity and disrespect.
27. Reduction of Salary – Ms. Sackrider reported that she was receiving a "top up" to her salary for administrative work added to her current workload due to the CAO vacancy and that was then allegedly removed by Council;
28. Eye Rolling – that allegedly Councillor Owen had a practice of rolling his eyes when Ms. Sackrider was presenting reports to Council;
29. Undermining Credibility – that allegedly Councillor Owen undermined her credibility by:
 - interjecting mockingly when she made presentations as reported
 - with respect to Firefighter negotiations (September 17, 2019)
 - with respect to a presentation regarding the Fitness Centre (October 22, 2019)
 - with respect to the presentation of a report regarding the arena chiller (November 6, 2019)
 - with respect to a closed session Council meeting when she began to provide an update on Fighter negotiations as requested by the Mayor and further at

⁶ March 11, 2020, Transcript of Ms. Sackrider, Investigator Report September 14, 2020

the same meeting report regarding a report, she was presenting about crossing guards.

- telling a municipal employee that she was the reason the municipality could not hire crossing guards and lifeguards.
- a colleague reported that during a conversation with Councillor Owen, Ms. Sackrider came up and it was not favourable.

30. Rick Owen was elected to Council [October 2018] and sworn as a Member of the Town of Kirkland Lake Council in December 2018. Councillor Owen is a long-time resident of the Town and was an area journalist prior to his retirement. He stated that he was motivated to become a Councillor because of his belief that no one ever asked tough questions and were always assuming the Town staff was telling the truth.
31. Councillor Owen reported to the investigator that it was his opinion that the hard questions he asks likely ruffled feathers and was the foundation of the complaint against him.
32. Councillor Owen denied the allegations that his behaviour toward Ms. Sackrider was disrespectful. And, rationalized that if he intended to disrespect Ms. Sackrider, he would have done it in a public setting not during in-camera/closed Council sessions.
33. With respect to the specific allegations he reported to the investigator that:
34. Reduction of Salary – that he had no idea of the amount of “top up” being received by Ms. Sackrider but believed that Ms. Sackrider’s extra salary was removed because she had finished a specific task associated with the completion of aquatic centre.
35. Eye Rolling - that this is a practice he uses when distracted by something and needing to refocus his thoughts. When asked if he had ever rolled his eyes during Bonnie Sackrider’s presentations Councillor Owen “*said “I can’t say if I did or didn’t.” He attempted to explain how it might appear that he was rolling his eyes after recently discovering that when he looks up, his eyes go up into his forehead and move back into position when he looks back down. Mr. Owen said he was unaware of the eye rolling until he became aware of the action occurring when he was trying to block distractions such as his grandchildren and refocus on a subject.”*⁷
36. Undermining Credibility – with respect to the allegations made by Ms. Sackrider noted above, the following provides a summary of her evidence, the Respondent evidence of Councillor Owen and relative witness evidence.

Regarding the allegation of October 22, 2019, when Ms. Sackrider was making a presentation regarding the Fitness Centre:

37. Ms. Sackrider presented information in relation to a public and private fitness partnership. She recalled Councillor Owen saying “*This is all wrong*” and remarking about her fancy handouts. Ms. Sackrider felt the remarks were condescending and resulted in her being criticized in a public fashion.

⁷ Investigator Report September 14, 2020, Rick Owen response to allegations

38. A witness recalled Ms. Sackrider having a PowerPoint presentation, a booklet, and statistics during the presentation because she was following the instructions of the CAO. The witness also reported that other private fitness providers who presented to Council at that meeting complained because their presentation was not as sophisticated as Ms. Sackrider's.
39. Councillor Owen denied that he had concerns about the Town of Kirkland Lake having an unfair advantage over the private groups and was trying to reach a common ground. It was Councillor Owen's opinion that Ms. Sackrider made a bad situation worse because of the PowerPoint presentation, 5-page booklet, and the number of staff used to augment their presentation.
40. Councillor Owen said the private fitness providers complained about the town having an unfair advantage.
41. Also, Councillor Owen reported that he took exception to the formula Ms. Sackrider applied to justify the fitness centre's pricing and accounting. Furthermore, he did not believe Ms. Sackrider was accurate and believed the Town's 60% mark-up of costs was unnecessary and affected a recently purchased private fitness provider business and other groups that rent church basements.

Regarding the allegation of November 6, 2019, when Ms. Sackrider was making a presentation regarding the arena chiller:

42. On November 6, 2020, Bonnie Sackrider recollected presenting information regarding a chiller unit that is a part of the ice-making unit and was coming to the end of its planned 25-year life expectancy.
43. A witness reported that Ms. Sackrider was speaking to Council about things that needed fixing and the eligibility of funding for the repairs.
44. Councillor Owen advised that he took exception to what Ms. Sackrider was saying because she used the term "legislated." It was his belief that because she referred to legislation it gave the impression that Council had no choice but to follow what she was saying.
45. Councillor Owen added that the previous Council would have accepted what Ms. Sackrider was presenting and not challenged her position. Councillor Owen said by the third meeting regarding the chiller unit, Ms. Sackrider used the term regulation or regulation as opposed to legislated. He thought Ms. Sackrider's semantic change provided the Council with a choice and it changed her position.
46. Councillor Owen admitted that he did not look into the insurance provisions associated to the chiller unit and was unsure whether or not it fell within an insurance act or regulation. He did understand the chiller unit attached to the boiler had a 25-year life that was due to expire in 2021 and it would require some lead time and budgeting for the replacement of the unit but he did not look into the matter any further.
47. Councillor Owen felt that Ms. Sackrider's information was an example of her "fudging" the facts, but he could not provide a reason why Ms. Sackrider would mislead Council or

what she had to gain by introducing information regarding the replacement of a 25-year old chiller unit.

Regarding the allegation that on January 14, 2019, when Ms. Sackrider was making a presentation regarding Crossing Guards:

48. Ms. Sackrider appeared before the Town of Kirkland Lake Council to provide information regarding the current progress of crossing guard hiring and an update about the Firefighter negotiations. These allegations stem from a closed session meeting of Council. The integrity of the closed session meeting is paramount, and the nature of the discussion will not be disclosed herein.
49. Ms. Sackrider was directed to research and explore options for the replacement of the existing Crossing Guards. During her inquiry, she contacted a business in Timmins, who, without her knowledge, posted a Facebook advertisement to determine the availability of people in the Kirkland Lake area interested in becoming Crossing Guards.
50. Additionally, Ms. Sackrider advised that Mayor Kiely requested that she provide Council with an update on the firefighter negotiations during the in-camera session of the same meeting.
51. Ms. Sackrider recalled Councillor Owen interrupting her being disrespectful to her during the Council meeting.
52. The Interim CAO at the time recalled the January 14, 2020, Council meeting because Councillor Owen was not very nice and acted in an unprofessional manner towards Ms. Sackrider. He reported Councillor Owen's actions were very upsetting for Ms. Sackrider and it was done in front of Council. He also advised the investigator that it was not the first time this had occurred.
53. The Interim CAO reported that he was approached by Councillor Owen after the meeting and recalled him saying that he was sorry and not happy with himself in reference to his comments directed towards Ms. Sackrider. The CAO stated that he thought Councillor Owen's attacks were personal and Ms. Sackrider was blamed for the aquatic centre.
54. Other witnesses reported that:
 - Rick Owens, Casey Owens and Patrick Adams did not treat Ms. Sackrider very well during one of the in-camera sessions in early 2020.
 - Ms. Sackrider was shot down and silenced and it made things very uncomfortable.
 - Rough things were said to the CAO, but they seemed to be directed towards Ms. Sackrider during her Crossing Guard presentation.
 - Councillor Owen later apologized for the way he had spoken to staff.
55. Councillor Owen stated that he interrupted because he was trying to address leaks of confidential information. In Councillor Owen's opinion, if he had of been out of order, it would have been ruled upon by the Mayor which did not occur.

56. Councillor Owen advised that Council does not operate in an unruly manner and believed his behaviour to be appropriate. He added that no other Council member objected to what he allegedly said, and Ms. Sackrider continued with her presentation, therefore it could not have been a problem. Councillor Owen did state that if he did say the alleged words, it would have been in response to a topic that was being introduced that was not on the meeting agenda.
57. Councillor Owen emphasized allegations relating to crossing guards and the other allegations occurred during the in-camera sessions. He denied saying “*She can’t do this! It has to stop!*” because he would not have used the word “she.”

“There’s no two ways about it, I was upset, but I never said ‘she’. That is just wrong. I was referring to the leaks, and I was directing it towards the acting CAO at the time. That’s who I was looking at, that’s who I was talking to.” He also indicated that he was upset with himself after the meeting for the tone he had used.

58. Councilor Owen stated that he was taking exception to the idea that three major leaks had occurred prior to the crossing guard information being disclosed to Council. He added that the crossing guard company was a private company and possessed information before Council was advised. Councillor Owen thought he might have directed the comment “*this has to stop*” towards the Interim CAO because he was upset. Moreover, Councillor Owen made it known that Ms. Sackrider made improper inquiries about the crossing guards and failed to submit an RFP in an attempt to undermine Council. It should be noted that Rick Owen admitted that he was upset because of the tone he used during the in-camera meeting.
59. Councillor Owen additionally reported there was evidence of another leak of information from a closed session when he experienced discourteous behaviour from Ms. Sackrider’s husband. He alleged that Ms. Sackrider shared the contents of the January 14, 2020 meeting, otherwise her husband would not have disrespected Councillor Owen. Councillor Owen said Council and staff have received training regarding the confidential nature of closed meetings and the importance of confidentiality by both Council and Staff. He believes that it can be surmised that Ms. Sackrider divulged confidential information to her husband. Councillor Owen reported that he did not make a formal complaint to the Integrity Commissioner nor was he willing to disclose information from the closed session to the investigator because it would be a breach in protocol. He added that if he was actually trying to undermine Bonnie Sackrider, he would have laid a complaint against Ms. Sackrider.
60. Councillor Owen described to the investigator the relationship between the Town staff and the councillors as saying it was fine with some staff, but that other staff fight them on every move. As an example, he detailed how Ms. Sackrider had resisted putting a port-a-potty on a walking trail, but Council approved it. He felt that Ms. Sackrider had undermined Council by choosing to have the port-a-potty cleaned out daily by contractors, which blew through the designated budget for the port-a-potty quickly, when the cleaning could have been done by Town staff for less money. He felt Ms. Sackrider was essentially “thumbing her nose” at Council’s directive regarding the port-a-potty because she didn’t agree with it.

61. Councillor Owen gave the investigator another example of how he felt Ms. Sackrider was “blocking Council” in describing how she had provided 95 pages worth of reports to address the issue of whether rent should be waived for the food concessions during COVID. He felt she purposely gave them way more information than they needed to make their decision on a very straightforward issue.

62. When asked if he treats Ms. Sackrider differently than other staff, Owen said “No, I don’t”. He said he asks hard questions and expects honest answers. He went on to say that he feels that a lot comes down to credibility and that Ms. Sackrider has a history of not following the rules. He believes he has been targeted because he is the most vocal of the councillors. The investigator reminded Rick Owen that the allegation is that he has been disrespecting staff, and Owen replied, “I’m not sure how I disrespected staff. If having an opinion and seeing things that I don’t believe is being done right and ignoring it, if that’s respecting staff than that’s not something that I can do. I believe that if I see a problem and I want to discuss it with someone, or I want to share an opinion with someone, that I should be able to do that.”

63. The Investigator reported:

“Councillor Owen categorically denied that he had been disrespectful towards Ms. Sackrider. He further advised that he objected to Ms. Sackrider’s word choices and objected to the remaining allegations because they only captured portions of conversations that were subject to interpretation. Councillor Owen added that if he were truly trying to discredit Ms. Sackrider, it would have been done during a session available for public viewing.

Rick Owen’s credibility is undermined after examining his behaviours such as eye-rolling and disrespectful comments. Independent witnesses established that Rick Owen exhibited eye-rolling as an obvious reaction to Bonnie Sackrider’s presentations. This seemingly insignificant behaviour actually formed a portion of a larger constellation of negative behaviours exhibited by Rick Owen. He attempted to justify his eye-rolling by advising that he has some sort of eye movement issue whenever he moves his head in an upward direction.

Independent witnesses recalled hearing Rick Owen making disparaging and disrespectful comments about Bonnie Sackrider, thereby questioning his credibility. Rick Owen did not apologize for his disrespectful words, but instead he offered regret for not realizing his private conversations could be used against him. He further attempted to justify his behaviour as being part of his position as a Town of Kirkland Lake councillor.”⁸

64. Council received training on Effective Municipal Councils in November 2018 from Fred Dean and Nigel Bellchamber as well as from E4m and Wishart Municipal Law Group February 22, 2019, regarding the role of the Integrity Commissioner and the Council Staff Relationship.

⁸ Investigation Report – Gil Hughes, ISN dated September 14, 2020

65. After the retirement of Nancy Allick, who was CAO for the Town until 2017, there have been four (4) different individuals holding the CAO position. This high turnover rate for the Town's most senior management position is notable and causes concern.

VI. THE OPINION

66. We examined the evidence of the parties and considered:

- Whether Councillor Owen spoke disrespectfully to Ms. Sackrider in “public”?
- Whether Councillor Owen by actions or words undermined the credibility of Ms. Sackrider?
- Whether the behaviour of Councillor Owen contravened the CSR Policy?
- Whether Councillor Owen's behaviour contravened the Code of Conduct?

67. It is clear from the evidence before us that Ms. Sackrider's department and the work of Ms. Sackrider has been widely scrutinized and criticized by Councillor Owen as well as other members of Council. It is also clear, that the professional relationship between Councillor Owen and Ms. Sackrider changed significantly, after his retirement and his subsequent election to Council where it now appears that his goal is to “ask the tough questions”.

68. Sufficient witness evidence supports that Councillor Owen did, on several occasions, speak disrespectfully to Ms. Sackrider and other members of staff. The evidence shows that this treatment of Ms. Sackrider was demoralizing for her even though she continued to provide her report in light of such treatment. The fact that Ms. Sackrider continued in her professional role is not an indication that she was immune to the behaviour. It is not the role of Council members to berate a municipal employee, including the CAO, in a public forum. It is evident that several Council members have done so, which is cause for serious concern. However, the matter before us at this time relates to Councillor Owen.

69. While Councillor Owen denied outburst or other physical forms of disrespect during Council meetings, several credible witnesses reported that Councillor Owen apologized for his behavior the next day. The evidence establishes that this occurred on more than one occasion and further that Councillor Owen was aware of his behaviour.

70. Section 5.7 of the SCR Policy states:

Control Anger

Members of Council should avoid the temptation to play up divisions or conflicts. Staff and Officers shall not be targets of derisive/vexatious comments/behaviour/conduct. The public expects Members to do the job that they have been elected to do. The public expects Staff and Officers to do the job

that they have been hired to do. Comments on Staff and Officer performance shall be directed through the appropriate confidential performance reviews.

71. Councillor Owen prides himself on being willing to ask the tough questions because “**he was motivated to become a Councillor because of his belief that no one ever asked tough questions and were always assuming the Town staff was telling the truth.**” Humiliating staff is not “asking tough questions”, it is not good leadership, nor is it consistent with Council’s own policies.
72. It is evident from this statement that Councillor Owen distrusts information received from staff although he did not provide the investigator with evidence either of inaccuracies nor errors in Ms. Sackrider’s work. Moreover, it appears that it is his belief that municipal staff are untruthful and provide biased information to Council.

73. Section 5.10 of the SCR Policy states:

Professionalism

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.

74. Section 5.11 of the SCR Policy states:

Respect

Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others’ 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.

75. Section 1.2 (c) of the Code of Conduct states:

Members must be committed to performing their functions with integrity, avoiding the improper use of their office, and conflicts of interest, both real and perceived.

76. 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.

77. 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.

78. Section 8 of the Code of Conduct refers to the Conduct Respecting Staff and Officers and states

8.1 *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.*

8.2 *Members shall acknowledge and respect the fact that staff carry out directions of Council, through senior staff, including but not limited to the Treasurer, Clerk, Director of Public Works, and administer the policies of the Municipality. No Member shall perform, direct or attempt to undermine the duties of any staff person or Officer except in accordance with the Municipality's procedural by-law. 11 See Human Rights Code, R.S.O. 1990, c.H.19 6 Code of Conduct Version 2.00 (August 6, 2018)*

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

8.4 *No Member shall direct, instruct or compel any staff member or Officer to engage in partisan political activities or subject any staff member or Officer to threat or discrimination for refusing to engage in any such activity.*

8.5 *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.*

VII. CONCLUSION

79. Councillor Owen clearly contravened sections 5.7, 5.10 and 5.11 of the CSR Policy which in itself is a contravention of section 5.1 of the Code of Conduct which states that:

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.

80. Further, Councillor Owen has contravened sections 7.1, 7.2, 8.1 and 8.3 of the Code of Conduct.

81. We do not find that that Councillor Owen contravened sections 1.2 (c) or 8.5 of the Code of Conduct.
82. Of concern, is that after considerable training and expense to Kirkland Lake, Councillor Owen, and indeed other members of Council continue to operate outside of their role. It is not the role of an individual member of Council to attempt to performance manage any municipal employee, including the CAO. Councillor Owen has been attempting to do so by his behaviour toward Ms. Sackrider. Council as a body has one employee, the CAO, and as a body, collectively manages the performance of the CAO. If Councillor Owen did not like the material that Ms. Sackrider was providing, or believed that she was not providing Council sufficient or accurate information he ought to have addressed it in the following manner by:
- a) Ensuring any direction given to Staff from Council was included in the resolution directing the work (All directions to staff should be by way of by-law or resolution and clear parameters, expectations and deliverable dates should be included in that resolution or by-law. A failure by Council to provide clear instruction on expectations does not rest on staff. Further, it is definitely NOT a single Councillor's role to performance manage staff who report to the CAO.);
 - b) Having a private discussion with the CAO regarding his concerns.
83. Alternatively, Councillor Owen is targeting his disrespect to one employee, Ms. Sackrider. Neither behaviour is acceptable.
84. It is not the role of Council to disrespect employees when they don't agree with the advice they are given. Staff role is to provide their best advice to Council based on their professional experience and research. It is not for staff to provide "blanket" information, they are statutorily required to provide their advice and opinions to Council⁹. Thereafter, Council can choose to accept or not to accept or follow that advice.
85. The Role of Council is established in section 224 of the *Municipal Act* 2001 ch 25. wherein it provides that it is Council's role to represent the public and to consider the well-being and interests of the municipality; determine the services a municipality will provide, the level to which those services will be offered/managed and to establish policies for the municipal operation.
86. The Role of Officers/Employees is established in section 227 of the *Municipal Act* 2001 ch 25. which provides that it is their role to carry out the direction of Council, to undertake research and provide professional advice to Council on the policies and programs of the municipality as well as to carry out other duties required under the *Municipal Act* or other Acts.

⁹ Section 227 (b) of the *Municipal Act*, 2001

87. George Cuff in his book *Making a Difference: Cuff's Guide for Municipal Leaders – a survival guide for elected officials*, he writes:

“A Basic Problem

You are not expected to “manage” this “business.” This has been the number one failure of elected officials across Canada. And, regardless of how often the same message is proclaimed at conferences and seminars, this will continue to be the case. Many people will simply fail to learn by either their own experience or that of others. Being elected, in fact, requires the learning of a whole new way of seeing issues, and accepting a new role.

Regardless of how successful you have been in your own business or career; this experience offers few parallels.”

Basic Principles of Elected Office [select statements only]

The role of an elected official is unique. It is distinct and different from any other role. It needs to be learned and consciously applied if a council member is to be successful.

Council and administration should serve as a team, each with distinct roles, yet working together in the interests of the public.

Criticism of the administration, particularly on an individual basis, should never be tolerated by a council.

Council deals with the organization through one employee – the chief administrative officer (CAO). Any other course of action in attempting to guide the work of the administration should not be tolerated.

88. Our summary of findings and recommendations are as follows:

- a) We find that Councillor Owen did contravene several sections of the Staff Council Relations Policy
- b) We find that Councillor Owen did also contravene multiple sections of the Town of Kirkland Lake's Code of Conduct.

89. For these types of contraventions, it is typically our recommendation that Council receive further training on their CSR Policy, their Workplace Anti-Violence & Harassment Policy as well as their obligations under a number of Acts. However, Councillor Owen has received training from various municipal experts on these same matters and seems to continue to believe that it is his responsibility to manage individual staff and more specifically one employee. As such, we are recommending a financial consequence for

Councillor Owen in hopes that perhaps a pinch in the pocketbook may garner attention where training has not. We therefore recommend a suspension of Councillor Owen's remuneration for a period of one month.

90. An apology or other sign of regret for his inappropriate conduct would also be appropriate, but we would hope this would come from Councillor Owen without the need for prompting by Council.

DATED October 18, 2020

E4m

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**INVOICE**

BILL TO
 Town of Kirkland Lake
 3 Kirkland Street, P.O. Box 1757
 Kirkland Lake ON P2N 3P4

INVOICE 2148
DATE 31/12/2020
TERMS Due on receipt
DUE DATE 31/12/2020

DATE	ACTIVITY	DESCRIPTION	TAX	QTY	RATE	AMOUNT
31/12/2020		Preparation/Finalization of Public report including legal peer review	HST ON			2,610.00
SUBTOTAL						2,610.00
HST (ON) @ 13%						339.30
TOTAL						2,949.30
BALANCE DUE						\$2,949.30

TAX SUMMARY

	RATE	TAX	NET
	HST (ON) @ 13%	339.30	2,610.00