



Cunningham Swan

LAWYERS

• EST 1894 •

Tony E. Fleming

Direct Line: 613.546.8096

E-mail: tfleming@cswan.com

CONFIDENTIAL

September 30, 2025

SENT BY EMAIL TO: tgorgerat@khrtownship.ca

Mayor and Council
c/o Tammy Gorgerat, CAO/Clerk
1 John Street
P.O. Box 39
Killaloe, ON
K0J 2A0

Dear: Mayor and Council

**RE: Code of Conduct Complaint
Our File No. 33209-5**

Please be advised that our Code of Conduct investigation is now complete. We attach the final report herewith and the report should now be circulated to members of the Council.

This investigation is hereby closed.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation
TEF:sw

{01378135.DOCX:}

TEL: 613-544-0211
FAX: 613-542-9814
EMAIL: info@cswan.com
WEB: www.cswan.com

Tony E. Fleming
Direct Line: 613.546.8096
E-mail: tfleming@cswan.com

CONFIDENTIAL

September 30, 2025

SENT BY EMAIL TO: tgorgerat@khrtownship.ca

Mayor and Council
c/o Tammy Gorgerat, CAO/Clerk
1 John Street
P.O. Box 39
Killaloe, ON
K0J 2A0

Dear: Mayor and Council

**RE: Code of Conduct Complaint – Report – Councillor Bil Smith
Our File No. 33209-5**

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

{01378141.DOCX:}

TEL: 613-544-0211
FAX: 613-542-9814
EMAIL: info@cswan.com
WEB: www.cswan.com

The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

Timeline of Investigation

- August 7, 2025, complaint received
- August 11, 2025, preliminary review conducted
- August 14, 2025, complaint package sent
- August 27, 2025, review response from Member
- August 29, 2025, Member's response sent to complainant
- September 8, 2025, complainant response received

Complaint Overview

A number of allegations were raised against Councillor Bil Smith (the "Member"):

1. That the Member held meetings, along with staff, with the municipal auditor without direction from Council.
2. The Member is an employee of the Community Resource Centre ("CRC"). During a Council meeting on July 15, 2025, the Member declared a conflict of interest in a grant application that involved a boat launch project. Council voted to approve a competing project to install an accessible ramp at the municipal offices.

The complaint alleges that subsequent to the Council meeting the Member engaged with staff and other members of Council to have the CRC project approved and Council's decision reversed.

Relevant Policy Provisions

The Code of Conduct

The Complaint engaged the following provisions of the Code of Conduct:

9.1 Members must be familiar with and comply with the *Municipal Conflict of Interest Act*, as amended. It is the responsibility of each Member, not Staff, to determine whether they have a direct or indirect pecuniary interest with respect to matters arising before

Council, a Board or Committee. Each Member shall determine whether he or she has a direct or indirect pecuniary interest and shall at all times comply with the Act.

9.3 In addition to pecuniary interests, Members must perform their duties impartially, such that an objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence. Each Member shall govern their actions using the following as a guide:

- a) in making decisions, always place the interests of the taxpayers and the Municipality first and, in particular, place those interests before your personal interests and the interests of other Members, Staff, friends, business colleagues or Family Members;
- b) interpret the phrase "conflict of interest" broadly and with the objective of making decisions impartially and objectively;
- c) if there is doubt about whether or not a conflict exists, seek the advice of the Integrity Commissioner or legal counsel;
- d) do not make decisions that create an obligation to any other person who will benefit from the decision;
- e) do not make decisions or attempt to influence any other person for the purpose of benefitting yourself, other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals;
- f) do not put yourself in the position where a decision would give preferential treatment to other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals; and
- g) do not promise or hold out the prospect of future advantage through your influence in return for a direct or indirect personal interest.

9.5 Every Member has the following obligations:

- a) To make reasonable inquiries when there is reason to believe that a conflict of interest may exist;
- b) To make Council or the Board or Committee aware of the potential conflict of interest and where appropriate declare the conflict of interest;
- c) To refuse to participate in the discussion of Council, the Board or Committee and to not vote on the matter or seek to influence the vote of any other Member where a conflict of interest exists;
- d) To refuse to be involved in any way in the matter once the conflict is identified, including without limitation participating in meetings, facilitating meetings or introductions to Staff or Members or providing advice to any person that would materially advance the matter; and
- e) If the matter which creates the conflict of interest is discussed in an In-Camera session, the Member may not attend that portion of the In-Camera session where that matter is discussed.

Municipal Conflict of Interest Act

The complaint also engages the following provisions of the *Municipal Conflict of Interest Act*:

4 Sections 5, 5.2 and 5.3 do not apply to a pecuniary interest in any matter that a member may have,

...

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

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 to 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.

Findings

Meeting with Auditor

The Member acknowledges that he did meet with the Municipal Auditor, but that this happened on only two occasions, and neither meeting was formal, scheduled in advance nor did either meeting last more than 5 minutes. There is no evidence before the Integrity Commissioner to contradict this information.

There are no provisions in the Code of Conduct that speak to this allegation. The Code of Conduct addresses directing staff specifically but does not include contracted services such as the Municipal Auditor. The definition of "staff" includes contract staff, which we interpret to exclude a third-party contractor providing specific services, as opposed to filling in a vacant staff role.

Therefore, even if we assume that the Member directed the Auditor to meet with them (a finding that is not supported on the evidence before us), there is no breach of the Code of Conduct.

Conflict of Interest

The member advised that he was approached by two community members who wanted to build an accessible dock at a Municipal boat launch property. The Member participated in meetings with staff and provincial officials about the project and possible grant opportunities.

The CRC agreed to allow the Member to assist with the project and grant writing and agreed to manage the project and project finances should the project receive funding and be

approved. The CRC would not own the project and would have no financial stake in the project. As we understand the relationship, the CRC proposed to donate its staff time to assist with management of the project championed by community volunteers. The project, if approved, would be located on municipal property and the improvements would become Municipal property.

At the July 15, 2025 meeting the Member declared a conflict on the grant proposals. After the meeting, when the Member learned that Council was supporting an accessible ramp at the municipal building, the Member advised Councillor's and staff that he understood the grant opportunity would not cover the Municipal project. At this time, staff discussed whether the direction from Council could be changed.

At the next Council meeting on August 5, 2025, the Member again declared a conflict (this time with respect to reconsidering the Municipal accessibility ramp project). At this meeting, Council received a report from staff that discussed the accessible dock project. The Member advised that he consulted with staff about a possible conflict prior to this meeting, and despite being advised that there was no conflict he declared to remove any appearance of conflict.

The staff report for the August 5, 2025 meeting describes the project as a "partnership" with CRC and recommended that Council reconsider its decision to support the municipal building access ramp.

In their response to the complaint, the Member confirmed that CRC had no financial interest in the accessible dock project and it was offering its services gratuitously to assist with the project only – if constructed the project would not benefit the CRC nor be considered an asset (the dock would remain in municipal ownership).

Based on the facts found above, the Integrity Commissioner finds that the CRC had no financial interest in the accessible boat ramp project as defined in the *Municipal Conflict of Interest Act* (MCIA). Whether the project was approved or not the CRC was not committing any money to the project and was not receiving any benefit from the project; any offer to provide staff assistance was gratuitous and insufficient to create a financial interest for the CRC.

The interest of the CRC is critical to the assessment of conflict as the Member is an employee of the CRC and under the MCIA any pecuniary interest of the CRC is deemed to be an interest of the Member. Having found no financial interest, there is no breach of the MCIA.

We also considered the potential that even if the CRC had a pecuniary interest, whether the Member would be entitled to rely on the exemption found in section 4(k) of the MCIA. This exemption provides that even if a pecuniary interest exists, the MCIA does not apply where that interest arises only because:

of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member

The Courts have considered this exemption and the analysis from those cases requires that we look at the circumstances of the member and their relationship with the entity that has the pecuniary interest. We find that the Member's employment with the CRC was not connected with the accessible dock project. Regardless of the approval or rejection of the project, the Member: would not receive more or less remuneration; would not be demoted or promoted; would not have any employment repercussions; and would not have any personal financial impact. These circumstances are similar to other cases where the courts have found that this exemption applies.

Based on the analysis above, the Member did not breach the MCIA.

This is not however the end of the analysis, as the Code of Conduct contains provisions that apply even where there is no pecuniary interest. The test under the Code of Conduct is whether an "objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence"?

In other words, even though the CRC and the Member were not benefitting financially, would a reasonable person conclude that the Member could not be objective or impartial because of his employment with the CRC? Certainly, the Member was an advocate for the accessible dock project – but that does not create a conflict of interest. Many members of Council advocate for their residents and for projects they believe in; that cannot in and of itself create a conflict.

The Integrity Commissioner finds that a reasonable person, apprised of the circumstances of the CRC's level of involvement would not consider the Member to be in breach of the Code of Conduct. Even though the CRC was prepared to assist in grant writing and manage the project, the CRC had no corporate interest in the project and they were not "partners" with the community members who were advocating for the project.

In making this determination we considered that the Member declared a conflict. Upon declaring a conflict, the Code of Conduct requires that the Member not take any steps to attempt to influence the decision. In this case, the Member did in fact attempt to influence the decision after they discovered that the accessible dock project had not been approved. If the Member had an actual conflict of interest, their actions in attempting to have the decision reconsidered would have amounted to a breach of the Code of Conduct.

Because the Integrity Commissioner finds that there was no conflict of interest in the project itself, the Member's actions after the Council vote do not breach the Code of Conduct. Merely declaring a conflict does not create an actual conflict of interest – in this case the Member declared out of an abundance of caution and to avoid even the perception of a conflict. That decision did not create a conflict.

Recommendation

There were no breaches identified in this investigation, and as such no recommendation to Council is necessary.

The Integrity Commissioner does recommend to the Member, and all of Council, that if they declare a conflict of interest, even if only to avoid the perception of a conflict, they should abide by all of the restrictions contained in the MCIA and Code of Conduct. Acting as if there is no conflict after making the declaration confuses the public and risks complaints.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation
TEF