

BARRISTON

LAW

RESPOND TO: 1 FIRST STREET, SUITE 224, COLLINGWOOD, ON L9Y 1A1

MAY 14, 2024

BY EMAIL: MARTYZANDBERGEN_58@HOTMAIL.COM

Martin Zandbergen
637 Euclid Ave
Township of Black River-Matheson
Ontario, P0K 1C0

Dear Mr. Zandbergen:

RE: CODE OF CONDUCT COMPLAINT

I have now had an opportunity to review your complaint of November 8, 2023. For the reasons that follow, I have decided to dismiss the complaint.

As I understand it, on June 30, 2023, using Township letterhead, the Mayor wrote to several residents, explaining that the Township's senior staff were being subjected to "hurtful, absurd, uninformed and inaccurate comments that (have) continued to cause mental or emotional suffering" (the "cease and desist letter"). The allegedly defamatory comments were said to damage the reputation of the Township's senior staff. Many of these comments had been made on the Facebook sites, the "New Matheson Group" and "Matheson 2021 What's Happening". The letter demanded that she "cease and desist this harmful behaviour".

In a letter to the Mayor dated July 18, 2023, responding to the cease and desist letter, a lawyer representing "various constituents" suggested that it was inappropriate for the municipality to "wage threats of such legal action on behalf of staff members" and contrary to the *Canadian Charter of Rights and Freedoms* for the municipality to attempt to "silence the voice of its constituents". The letter makes no mention of and alleges no contravention of the Code.

I received a response to the Complaint from Mayor Bender on November 25, 2023. The Mayor states that the letters were sent in an attempt to urge people to "cease and desist" their defamatory and incendiary comments about senior staff and to protect staff under the *Occupational Health and Safety Act* and the Township's policy on Workplace Harassment. Some of the staff have since suffered from anxiety and increased stress. Not only has this been detrimental to the Township's staff but also to the Township's reputation as an excellent place to live and work.



According to the Mayor, the assertion that Council members were not aware of these letters is false. The letters were emailed to all of Council a week before they were mailed. The Township has the proof of this and at least one council member responded to the email.

It is regrettable in the extreme that the nature of the public discourse in the Township of Black River – Matheson has descended to the point where staff are being attacked and defamed on social media. And, while it seems a somewhat extreme measure to send a cease and desist letter to a group of residents, as it has been said, desperate times call for desperate measures. To that end, I accept the Mayor's evidence that he felt that the letter was necessary, as part of the Township and Council's duty to provide a safe workplace for staff. I also find that it was sent with the knowledge of Council.

As such, the propriety of the cease and desist letter is best characterized and considered as a matter of law, not ethics. Without judging in any way the legal reasoning or strategy behind it, I also note that some residents have availed themselves of counsel, who has responded on their behalf, choosing to frame the issue as a matter of defamation and constitutional law, without any reference to the Code.

In the end, upon review of the tone and content of the letter, and recognizing the context within which it was generated, I do not believe that it can be considered to be abusive, bullying or intimidating, or a contravention of the Code.

Accordingly, I find no contravention of the Code by the Mayor and I will dismiss the complaint.

Yours truly,

BARRISTON^{LLP}

Per: Harold Elston

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c.c. Mayor Doug Bender
Township Clerk
Township CAO