

September 20, 2020

Office of the
Integrity Commissioner

Mayor Noon & Members of Council
Municipality of Callander
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RE:

**Decision of the Integrity Commissioner
Municipality of Callander**

**allegation: Code of Conduct Contravention
by: All Members of Council
(Including former members H. Lavigne & M. Turgeon)**

Your Worship and Members of Council,

As you are aware, Expertise for Municipalities Not-for Profit Association (E4m) has been appointed as Integrity Commissioner for the Municipality of Callander (the "Municipality"). As the Municipality's Integrity Commissioner, E4m is a statutory officer and reports to Council. The responsibility of the Integrity Commissioner is to independently perform functions assigned to them by the Municipality.

E4m has been appointed by the Municipality as the Integrity Commissioner for all functions set out in section 223.3(1) of the *Municipal Act 2001*, and E4m is responsible for conducting inquiries into whether a member has contravened the Code of Conduct pursuant to section 223.4(1) or contravened sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* pursuant to section 223.4.1 (1).

Our office is in receipt of thirteen (13) requests for inquiry from Chantal Cormier and her husband Patrick Friel (together herein the "Complainants" unless context requires either one or both to be identified independently). Herein is our report respecting these matters.

LEGISLATIVE AUTHORITY

1. 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.
2. Section 270 of the *Municipal Act* was amended as of March 1, 2019, requiring municipalities to adopt a Staff-Council Relations Policy. If a staff person believes a member of Council has contravened this policy, they can file their complaint with the Clerk who will then refer the matter to the Integrity Commissioner to conduct an inquiry.
3. 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.

THE REQUEST

4. The request for inquiry under the Municipality's Code of Conduct before us was properly filed in accordance with the *Municipal Act* and the relevant policies and procedures for the Municipality of Callander.
5. We received multiple complaints from Ms. Cormier and Mr. Friel alleging the following:
 - a. Former Mayor H. Lavigne contravened section 7.1 and 10.4(a) of the Code of Conduct [Schedule A dated September 15, 2020]
 - b. Former Mayor H. Lavigne contravened section 7, 8 and 10 of the Code of Conduct [Schedule A dated November 14, 2020]
 - c. Former Mayor H. Lavigne contravened section 4.1 of the Code of Conduct [Schedule A dated November 28, 2020]
 - d. Former Councillor M. Turgeon contravened section 4.1 of the Code of Conduct [Schedule A dated November 28, 2020]
 - e. Councillor L. Alkins contravened section 4.1 of the Code of Conduct [Schedule A dated November 28, 2020]
 - f. Councillor J. Carr contravened section 4.1 of the Code of Conduct [Schedule A dated November 28, 2020]
 - g. Councillor R. Noon (prior to being appointed Mayor) contravened section 4.1 of the Code of Conduct [Schedule A dated November 28, 2020]
 - h. Mayor R. Noon contravened section 5 of the Code of Conduct as well as sections 224 (d.1) and 225 of the *Municipal Act*. [Schedule A dated November 28, 2020 – submitted on April 29, 2020]
 - i. Mayor R. Noon contravened section 5 of the Code of Conduct as well as sections 224 and 270 of the *Municipal Act*. [Schedule A dated September 8, 2020]

- j. Councillor L. Alkins contravened section 5 of the Code of Conduct as well as sections 224 and 270 of the *Municipal Act*.
[Schedule A dated September 8, 2020]
 - k. Councillor J. Carr contravened section 5 of the Code of Conduct as well as sections 224 and 270 of the *Municipal Act*.
[Schedule A dated September 8, 2020]
 - l. Councillor I. Smit contravened section 5 of the Code of Conduct as well as sections 224 and 270 of the *Municipal Act*.
[Schedule A dated September 8, 2020]
 - m. Councillor D. Vaillancourt contravened section 5 of the Code of Conduct as well as sections 224 and 270 of the *Municipal Act*.
[Schedule A dated September 8, 2020]
6. Herein, the respondents will be addressed collectively as Members or individually by name as may be necessary.

THE INQUIRY

7. Typically, all allegations related to an individual Member would form a separate inquiry and subsequent public report. In the current circumstance however, it would be a repetitive undertaking. The allegations before us are related to the same set of circumstances and it is in the public interest to have one single public report and not several.
8. Section 5.4 of the Integrity Commissioner Inquiry Protocol provides for an initial review of all requests for inquiry to determine if request is a proper allegation of a breach of the Code of Conduct.
9. We undertook such a review.
10. Our review included:
- a. Consideration of all documentation submitted by the Complainants including, correspondence between the Complainants and the Municipality, staff reports and meeting minutes.
 - b. Interviews of Ms. Cormier and Mr. Friel.
 - c. Interview of the CAO [Mike Purcell].
 - d. Interview of a Member.
 - e. Consideration of the Municipality's Code of Conduct, not limited to sections 4.1, 5, 7, 7.1, 8, 10 and 10.4(a).
 - f. Consideration of Sections 224, 225 and 270 of the *Municipal Act*.
11. Of importance to this inquiry is that the Members of Council changed after the initiation of the request for inquiry. In early 2020, both former Mayor Lavigne and Councillor

Turgeon passed away suddenly. Councillor Noon was appointed as Mayor and two new Members were appointed [Councillors Smit and Vaillancourt].

12. The Complainants alleged the Municipality allowed a home to be built on the property [prior to the Complainant's ownership of this property] without the proper drainage and grading reports. The Complainants indicated that ***"While reviewing the property file, [they] recognized several oversights that occurred by the Municipality regarding drainage in the development and severance of [their] property"***.
13. Ms. Cormier reported that Mr. Friel had been seeking confirmation ***"from the CAO that the swale system was adequately sized and graded to effectively drain water originating from Crown land wetlands and municipal roadside ditching. During the period from April 2018 to December 2018, we have been consistently dismissed with email communications ignored and meeting requests with staff denied to the point where it was necessary for the Office of the Ombudsman to follow-up on our behalf"***.
14. Ms. Cormier reported ***"personally contacting the Mayor [H. Lavigne at the time] and in a lengthy telephone conversation, [she] asked for his assistance and intervention in this matter. [She] believes he did not read any of [her] emails and did not follow through with anything that he has told me in telephone conversations. He has regularly ignored and dismissed"*** and submitted emails between her and former Mayor Lavigne as evidence of this behaviour.
15. The Complainants alleged that the CAO accused Mr. Friel of harassment. Ms. Cormier in her written submission reported: the ***"CAO took offense to our complaint and subsequently alleged harassment against my husband. He copied the Mayor, a former employee, and the Office of the Ombudsman. I question if the Mayor is inclusive in this statement (please note the CAO uses the word "we") and his actions seem to be supportive of the CAO's misuse of the workplace harassment policy. We have never been informed as to what language constitutes harassment"***. Since then, the Complainants reported that the CAO has "somewhat" apologized but the Municipality has failed to publicly retract the harassment allegation.
16. The CAO did send a letter to Mr. Friel in which it was written that the Municipality was in receipt of an email dated November 9, 2019 and that Mr. Friel ***"Please be advised that we take exception to your opening comments, as they constitute a form of harassment that is not acceptable"***.
17. According to the Complainants former Mayor Lavigne failed to properly look at the concerns with the CAO's report of harassment and allowed him to remain in a closed

Council meeting regarding the allegations of harassment against Mr. Friel. This was after former Mayor Lavigne had advised the Complainants that the CAO would be excluded. More specifically, Ms. Cormier reported in her written submission that ***“On Tuesday August 6, 2019, we received letters dated July 25, 2019 from the Mayor and a letter dated July 31, 2019 from the CAO in relation to our tabled matter, subsequently, I telephoned the Mayor to discuss the contents of these letters and expressed that our matters were not properly addressed. We did not ask if the CAO’s allegation was formal. I also pointed out to the Mayor that the CAO’s allegation is formal, as it was made on municipal letterhead, made use of policy language, signed by the CAO and forwarded to third parties. When asked, the Mayor refused to inform me what Council’s resolution was in regards to the harassment matter, but did articulate that ‘Council found no basis for harassment’ and ‘that harassment did not occur’. I responded by stating that we should receive a letter stating that. I informed the Mayor that the CAO’s false allegation of harassment is an abuse of the workplace policy and his position and that [her husband Mr. Friel] feels bullied by the CAO’s statement.*”**

18. The Complainants, and specifically Ms. Cormier, alleged that the CAO produced a report that had inaccurate information in it. Report Admin 2019-44 was referenced in her detailed report to Council attempting to address the inaccuracies. Further, that once Council was aware of this the report was not subsequently corrected.
19. The Complainants alleged that on or about February 19, 2020 Mayor Noon failed to adhere to the Municipality’s complaint policy. Ms. Cormier allegedly submitted a written complaint to the Municipality ***“in regards to the contributors of falsified report ADMIN 2019-44. I filed complaints regarding three senior officers of the Municipality in December 2019. I was advised the complaints were forwarded to the municipal solicitor for review in February and I have not been informed of the outcome, contrary to municipal policy”***.
20. The Complainants filed a civil action against the Municipality on January 16, 2020.
21. On September 8, 2020, the Complainants alleged that Council contravened the Code of Conduct when they failed to investigate allegations made by the Complainants regarding Report Admin 2019-44 which they claim is a ***“falsified report”***.
22. The sections of the Municipality’s Code of Conduct the Complainants alleged have been contravened state:

- a. Section 4.1: Every Member shall act in accordance with his or her declaration of office sworn pursuant to section 262 of the *Municipal Act, 2001*.
- b. Section 5: 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.
- c. Section 7:
 - 7.1 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.
 - 7.2 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.
 - 7.3 A Member shall not speak in a manner that is discriminatory to any individual, based on any protected grounds. Protected grounds include: citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed, sex/pregnancy, family status, marital status, sexual orientation, gender identity, and gender expression¹.
- d. Section 8
 - 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

¹¹ See *Human Rights Code*, R.S.O. 1990, c.H.19

undermine the duties of any staff person or Officer except in accordance with the Municipality's procedural by-law.

- 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.

e. Section 10

- 10.1 **No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office**, in any form including, but not limited to, written notes, reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so.
- 10.2 No Member shall use Confidential Information for personal or private gain or benefit, or to disadvantage any other person or body.
- 10.3 Unless required by law, no Member shall disclose the substance of deliberations of meetings held *in-camera* and that are authorized to be held *in-camera* under the *Municipal Act, 2001* or any other legislation unless or until Council discloses such information at a meeting that is open to the public or otherwise releases such information to the public.
- 10.4 Without limiting the generality of the foregoing, no Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information:
 - a) Information concerning litigation, negotiation or personnel or labour matters;

- b) Information the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence);
- c) Price schedules in any contract, tender or proposal document while such remains Confidential Information;
- d) Information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- e) Any other information or statistical data required by law not to be released.

10.5 No Member shall obtain access, or attempt to gain access, to Confidential Information in the custody of the Municipality, Local Board or Committee except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law.

23. The sections of the *Municipal Act* the Complainants alleged Members contravened:
- a. Section 224 outlines the role and responsibility of Council
 - b. Section 225 outlines the role and responsibility of the Mayor
 - c. Section 270 outlines the types of policy municipalities must adopt.

CONCLUSIONS OF INQUIRY

24. It is clear from the documentation before us that the Complainants feel aggrieved by the alleged actions/inactions of the Municipality and their attempts to resolve the matter. Their expectation that the CAO should provide assurances regarding the maintenance of the drainage system is not within the role and responsibility of a municipal employee. This is a policy/service level decision and is rightly a decision of Council.
25. It is also evident in the documentation provided by the Complainants that the Municipality and more specifically, Council did attempt to address the concerns. Furthermore, Council considered this matter on more than one occasion and made decisions that were not in agreement with the expectations of the Complainants.
26. With respect to the Complainants assertions that Mr. Friel felt bullied and harassed by the CAO’s **“false allegation of harassment is an abuse of the workplace policy and his position and that [Mr. Friel] feels bullied by the CAO’s statement”**. The *Occupational Health and Safety Act* obligates employers to have workplace anti-violence and harassment policies. Further, that

allegations of harassment must be investigated. The Municipality has such a policy. In keeping with the policy, the CAO would need to file a complaint of workplace harassment with Council. Any investigation carried out under this policy/legislation is confidential. In this circumstance, the statement made by the CAO in his letter to Mr. Friel and the subsequent follow up letter are indicative that a workplace complaint was not made/nor intended to be made by the CAO. Had such a complaint been made by the CAO, Mr. Friel would be notified in writing of the details of the allegation as is required by the policy.

27. The material before us clearly demonstrates a disagreement between the Complainants and Members on how a situation should be dealt with. It does not demonstrate a contravention of the Municipality's Code of Conduct or other ethical polices.
28. The Integrity Commissioner can only adjudicate matters related to the ethical behaviour of Members as detailed in their Code of Conduct or other ethical policies. The Complainants allegations do not relate to ethical behaviour of the Members. They do relate to performance of services and are therefore not within the scope of the Integrity Commissioners role. The Municipality's Code of Conduct has not been contravened and a full formal inquiry will not be conducted. The complaints are therefore dismissed. Our reasons are as follows:
 - a. Council is obligated to make decisions that are in the best interest of the whole Municipality and not individual tax/rate payers. There is no evidence submitted by the Complainants that Members had been acting in bad faith in dealing with their issues. Moreover, the evidence they did submit showed that Council directed staff to fully review the situation on more than one occasion.
 - b. The *Municipal Act*, [Section 270] requires the passing of a set of specific bylaws; there is no obligation on behalf of Council to enforce any or all bylaws/policies. Case law provides that Council can choose when and how bylaws and policies are enforced. The Complainants allegation that Members are not following municipal policies as laid out in the requests for inquiry, do not meet the threshold of a contravention of the *Municipal Act* or the Code of Conduct. In fact, it is settled law that Council can determine not to enforce a by-law and further that inequality of enforcement or selective enforcement is also permitted.²
 - c. The Integrity Commissioner has no jurisdiction to adjudicate matters related to Municipal officers or employees, only Members. We will therefore not be commenting on the alleged "*falsified report*".

² *Lester v. Smith* (November 27, 1990), Doc. Windsor 4256/90 (Ont. Gen. Div.); *Toronto (City) v. Polai* (1969), 1969 CarswellOnt 907 (Ont. C.A.); affirmed (1972), 1972 CarswellOnt 215 (S.C.C.)