

Expertise for Municipalities (E4m)
Non-Profit Association
1894 LASALLE BLVD. SUDBURY, ON, P3A 2A4

Integrity Commissioner
for the Municipality of Calvin



INQUIRY REPORT/DECISION

**ALLEGATION: CONTRAVENTION OF THE
MUNICIPALITY OF CALVIN CODE OF
CONDUCT**

BY: Councillor Heather Olmstead

I. REQUEST FOR INQUIRY

- [1] Expertise for Municipalities (“E4m”), as Integrity Commissioner received three (3) requests for inquiry (hereinafter the “Request(s)”) with respect to Heather Olmstead (“Councillor Olmstead”), an elected member of the Municipal Council (“Council”) for the Municipality of Calvin (the “Municipality”). The Requestors alleged that Councillor Olmstead contravened the Municipality of Calvin Code of Conduct (“Code of Conduct”) and/or the Council – Staff Relations Policy (“CSR Policy”).
- [2] The Requestors are members of the public and are therefore entitled to make an Application for an inquiry under sections 223.4 of the *Municipal Act*.
- [3] In the Requests for Inquiry, the Requestors alleged that Councillor Olmstead contravened the Code of Conduct when she:
 - a. By her actions, toward the Road Superintendent, on a number of occasions contravened the CSR and the Code of Conduct;
 - b. By her actions, toward the Road Superintendent, on a number of occasions contravened the *Occupational Health and Safety Act* (“OHSA”);
 - c. Was deceitful to a member of the public about the retrieval of her Live Trap.
- [4] Allegations that a member of Council contravened the OHSA are not within the jurisdiction of the Integrity Commissioner, have not been investigated by our office and have properly been referred to the appropriate authority. However, failure to comply with legislation, and in this circumstance specifically the OHSA, does constitute a contravention of the Code of Conduct.

II. FINDINGS/CONCLUSION

- [5] Based on the evidence before us we find that Councillor Olmstead did contravene the CSR when she was found to have breached the OHSA due to her actions toward the Road Superintendent. This contravention is also a breach of the Code of Conduct.
- [6] We further find that Councillor Olmstead did contravene sections 7.1 and 8.1 the Code of Conduct when she was found to have breached the OHSA due to her actions toward the Road Superintendent.
- [7] We find that Councillor Olmstead did contravene section 1.2(d) when she retrieved her Live Trap and then was deceitful to Ms. Campbell about collecting it causing undo distress to Ms. Campbell.
- [8] We also find that Councillor Olmstead contravened section 7.2 of the Code of Conduct when she made disparaging remarks about Councillor Cross and other members of Council when she dropped off the Live Trap and was speaking with Ms. Campbell.

Recommendations

- [9] Upon finding a breach of the Code of Conduct, section 223.4(5) of the *Municipal Act*, 2001 permits Council to levy a penalty of either a reprimand, or a suspension of the remuneration paid to the member in respect of his services as a member of council for a period of up to 90 days for each breach.
- [10] The conduct of Councillor Olmstead in these matters was astounding. She has shown not only disregard for the ethical responsibilities in the Code of Conduct, but egregious and flagrant disregard for serious legislation like the *OHS*A. Further that she has not taken responsibility for any of her actions and instead blames others or attempts to legitimize her behaviour by deflecting/or focusing on the behaviour of others.
- [11] This is the second Integrity Commissioner inquiry related to the actions of Councillor Olmstead wherein she was found to have contravened the Code of Conduct. Of significant concern is that Councillor Olmstead criticized the Road Superintendent using the most offensive language known to our legal system.
- [12] We are most concerned that this behaviour must stop. It is destructive to the operation of the Municipality and is poisoning the work environment for staff and is diverting valuable taxpayer resources from providing appropriate service.
- [13] We very strongly recommend that Council request that Councillor Olmstead resign her position on Council. It is clear that she does not acknowledge, and even denied her behaviour(s) toward the Road Superintendent as well as others involved in this inquiry. It is our opinion that her behaviour will be ongoing and will place the Municipality and perhaps Councillor Olmstead personally at considerable risk of litigation.
- [14] Alternatively, should Council not wish to take such action or should Councillor Olmstead refuse to resign Council should strictly impose the following:
- a. With respect to the contravention of the *OHS*A and subsequently 1.2 (f) of the Code of Conduct our recommendation is that Council suspend her remuneration for a period of ninety (90) days for the multiple breaches. This is the maximum financial penalty we can recommend.
 - b. With respect to the contravention of the CSR and the Code of Conduct related to her vexatious comments to and about the Road Superintendent, we recommend that Councillor Olmstead
 - i. Not be allowed to participate in any performance management related to the Road Superintendent who currently reports to Council as a whole;
 - ii. Be removed from all boards and committees;
 - iii. Not be allowed to communicate with staff directly, that all communications to staff go through an anonymized email address;

- iv. Not be allowed to attend the Municipal Office or Municipal worksites where staff may be except for retrieving Council mail/packages, make bill payments, attend Council meetings or otherwise fulfilling her statutory roles.
 - v. Be able to request the restrictions be reviewed in six (6) months.
- c. With respect to the contraventions of sections 1.2(d) and 7.2, that Councillor Olmstead be required to make a public apology to Ms. Campbell and Councillor Cross and Council generally, for her behaviour.
- [15] We further recommend that Council consider adopting an administrative or CAO model where employees report to one senior manager and only the senior manager reports to Council.

III. INQUIRY PROCESS

- [16] 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.
- [17] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint to determine if they are within the jurisdiction of the Integrity Commissioner. Those matters not with the Integrity Commissioner's jurisdiction are referred to be considered by other appropriate parties. In this circumstance several allegations were referred to be investigated under the *OHS*A.
- [18] The matters considered by our office followed a process whereby the available evidence was reviewed, and the Requestors, witnesses, and Councillor Olmstead were all interviewed. Interviews were recorded and transcriptions prepared for each individual interviewed.
- [19] The Request for Inquiry related to the live trap and disparaging comments about Councillor Cross and other members of Council was assigned to Jane Martynuck and the alleged violations related to the Road Superintendent was assigned to Jamie Appleton who both herein will be identified generally as the "Investigator". The Investigators are experienced investigators with Investigative Solutions Network ("ISN"). As agents of the Integrity Commissioner, they interviewed the respective Requestor, witnesses, and Councillor Olmstead.
- [20] Additionally, we also reviewed text messages, emails, social media posts and other pertinent municipal records from both open and closed sessions as they related to the matters before us.

[21] The conclusions we arrived at with respect to these matters 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 Municipality's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:

- Whether or not the individual has firsthand 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 are participating
- Any admission of dishonesty¹

[22] The Investigators found the Requestors, and the witnesses to be credible. Both Investigators noted that Councillor Olmstead was not credible. They reported that she would avoid responding to direct questions and further that she minimized her behaviour and deflected blame to others. That her evidence should only be accepted when it was corroborated by another witness.

IV. FINDINGS OF FACT

[23] The circumstances that give rise to the request for inquiry are that Councillor Olmstead is alleged to have:

- a. Made vexatious and unwelcomed comments about Councillor Cross, Council generally and the Road Superintendent;
- b. Made disrespectful and potentially defamatory statements about the Road Superintendent to members of the public;
- c. By her actions, toward the Road Superintendent, on a number of occasions contravened the *Occupational Health and Safety Act* ("OHSA"); and
- d. Been deceitful to a member of the public regarding her retrieval of a Live Trap

[24] Councillor Olmstead was elected October 22, 2018, and is a first term Councillor.

Reference: Municipality of Calvin Election Results

¹ *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 (4th) 176 (Alta.Arb.)

- [25] Council was trained regarding their roles and responsibilities, Council/staff relationship and the *Municipal Conflict of Interest Act* (“MCIA”) as well as their obligations under the OHSA.

Reference: Interview of the Municipal Clerk

- [26] Councillor Olmstead has been the subject of a previous Request for Inquiry in which she was found to have contravened the Code of Conduct. In her submission to Council, Councillor Olmstead denied any wrongdoing toward staff and has subsequently, disparaged the investigators and investigative process. A pattern of behaviour she has repeated during this inquiry.

Reference: IC Inquiry Report

Contravention of the *Occupational Health and Safety Act*

- [27] Nine (9) of the allegations received by our office were more properly considered as contraventions of the OHSA. When the Integrity Commissioner finds contraventions of other law, they are required to report the matter to the appropriate authority.
- [28] In this circumstance, the allegations were brought before Council.
- [29] Investigations of this nature and the findings are statutorily confidential. It is difficult for us to reconcile this statutory requirement for confidentiality and our duty to provide a public report to ratepayers and Council. While we are aware of the OHSA investigation we cannot report details but it is clear that Councillor Olmstead was found to contravene the OHSA and her conduct was extremely offensive

Loan & Retrieval of a Live Trap

- [30] Ms. Campbell is a resident of the Municipality of Calvin. On or about August 26-28, 2020, Ms. Campbell posted on the social media site entitled “Calvin Convo” that she was looking to borrow a live animal trap (“Live Trap”). Councillor Olmstead responded to Ms. Campbell’s request and indicated that Councillor Olmstead had one and would drop it off.

Reference: Interview of Ms. Campbell

- [31] Subsequently, Councillor Olmstead attended the residence of Ms. Campbell and dropped off the Live Trap. While at Ms. Campbell’s residence, Councillor Olmstead (who was unknown to Ms. Campbell at the time) allegedly began to discuss local politics and to make derogatory comments about Councillor Cross and other members of Council. Ms. Campbell cited the following example:

“she was doing more harm than good for the township, she was way too old school and not willing to bend the rules. The bend the rules wasn’t said in those

particular words but that was the gist of it, wasn't willing to compromise when it came to...that sounded odd because a councillors' job is to follow the rules and make sure everything is done the way it should be done and making no exception for anybody because they are a little closer to one person over the other.

I just got the feeling very quickly I could have, it was more of a recruitment conversation and which I did not like at all. Even though I only talked to Sandy once before I knew it was totally wrong. And whether it wasn't true about Sandy or not I knew enough that she was a councillor and she should not be talking that way.

She told me which councillors were good ones to have on a team and which ones were not.

There were a couple of other councillors she said things about, I wasn't paying much attention....There were a few and maybe something about the mayor.

Page 12 of 21

My ears perked up when she started talking about Sandy. I knew where it was going to go.

Not that I know Sandy that well, I still don't, but from what I knew of her that was dead wrong, I knew that councillors should not talk about each other that way and what was said was definitely divisive, definitely divisive.

Reference: Interview of Ms. Campbell

- [32] On Friday September 18, 2020, at 10:15 a.m., Councillor Olmstead messaged Ms. Campbell, *"Good morning lady! Can I pop over and pick up my trap? I have a gopher to get lol"*. [of import is that Councillor Olmstead did not follow up and advise that she would be dropping by to pick up the Live Trap].

Reference: Interview of Ms. Campbell

Messages between Councillor Olmstead & Ms. Campbell

- [33] At some point, between Friday September 18, 2020, and Friday, October 21, 2020, Ms. Campbell left to go to out of town and requested that her son-in-law return the Live Trap to Councillor Olmstead, which he allegedly forgot to do.

Reference: Interview of Ms. Campbell

- [34] Councillor Olmstead reported to the Investigator that she attended Ms. Campbell's residence and picked up the Live Trap when she and her husband were returning from Mattawa. Councillor Olmstead also reported to the Investigator that when she and her husband arrived at the Campbell property, it appeared that nobody was home and that they had not been home for some time. Councillor Olmstead stated that the Live Trap was broken, rusted, and sitting outside. She also reported there were dead decaying animals in the trap and that she was very upset about the condition of the trap. Councillor Olmstead did not notice the "no trespassing" signs on Ms. Campbell's property and

advised that the trap was clearly visible in the front yard by a garden about 100 feet from the house. They collected it and left the property.

Reference: Interview of Councillor Olmstead

- [35] On Thursday October 22, 2020, at 9:20 in the morning Ms. Campbell messaged Councillor Olmstead, *"Hi Heather..... So sorry I didn't know you had messaged me until I asked someone why I have a message I can't find.... They showed me where to get it (smiley face emoji) I never got the cat.... Had a racoon and fox though. I left for a while and asked my son in law to get the trap back to you....I'm assuming he did since it was gone when I got back...I forgot to ask him (frown face emoji)."* At 5:07 p.m. Councilor Olmstead sent a message to Ms. Campbell advising her that Councillor Olmstead *"never got the trap"*.

Reference: Interview of Ms. Campbell
Messages between Councillor Olmstead & Ms. Campbell

- [36] On Friday October 23, 2020, at 7:33 a.m., Ms. Campbell messaged back, "I asked my son in law...he forgot. I'll check my camera. I'll get you a trap.... I love cameras (smiley emoji with big teeth)." At 08:09 a.m. that same day, Councillor Olmstead responded with a thumbs up.

Reference: Interview of Ms. Campbell
Messages between Councillor Olmstead & Ms. Campbell

- [37] Councillor Olmstead told the Investigator she was still upset, and her knee jerk reaction was *"yes she [meaning Ms. Campbell] should be replacing it"*. Councillor Olmstead also felt the comments about the cameras were a reference to social media comments between Councillor Cross and Ms. Campbell in September.

Reference: Interview of Councillor Olmstead

- [38] On Sunday October 25, 2020, at 07:49 p.m. Councillor Olmstead messaged, "I was disappointed that it wasn't returned...eventually I got it back (sad face emoji)."

- [39] Ms. Campbell immediately replied, "Ok...good (smiley-not showing teeth-emoji) I'll take back the one I got yesterday."

Reference: Interview of Ms. Campbell
Messages between Councillor Olmstead & Ms. Campbell

- [40] When interviewed, Ms. Campbell reported to the Investigator that the cameras had been moved away from the driveway to capture the road in her absence as she is the only one who lives on her road, and it is a dead end. Ms. Campbell also told the Investigator she did see Councillor Olmstead's truck on the road at one point on the security camera. This

supports that Councillor Olmstead did drive by but did not enter the property to retrieve her trap. Councillor Olmstead collected the Live Trap when she was in her car.

Reference: Interview of Ms. Campbell

- [41] Ms. Campbell found it highly concerning that only after she advised Councillor Olmstead that the security camera footage would be reviewed, Councillor Olmstead acknowledged that she had collected the Live Trap.

Reference: Interview of Ms. Campbell

- [42] The Investigator requested that Councillor Olmstead provide a photograph of the Live Trap to corroborate her story about the condition of the Live Trap and she told the investigator that she was unable to access where it was stored due to the C-Can being frozen shut.

Reference: Investigator's Report

- [43] When interviewed about the circumstances, Councillor Olmstead blamed her actions on social media posts made by Councillor Cross and Ms. Campbell. Councillor Olmstead said she believed these remarks were about her. Councillor Olmstead advised being messaged by her friend Maz Lalonde that these comments had been made and that they appeared to be about Councillor Olmstead. Maz Lalonde was unavailable to corroborate this story and Councillor Olmstead has been blocked from Councillor Cross' Facebook page, so she was unable to provide the actual social media posts.

Reference: Interview of Councillor Olmstead

- [44] The Investigator was given access to Councillor Cross's Facebook page and reviewed the alleged comments. It is evident from the posts that the interaction between Councillor Cross and Ms. Campbell had nothing to do with Councillor Olmstead. The interchange dealt with having security cameras when you have large dogs with big teeth.

Reference: Interview of Councillor Cross
Councillor Cross' Facebook Page

- [45] The Investigator reviewed the definition of theft as defined in section 322 of the *Criminal Code of Canada* and did not feel the retrieval of the Live Trap constituted theft.

Reference: Investigator's Report

- [46] Section 2 of the *Trespass to Property Act* was also reviewed by the Investigator and again the circumstances did not violate this Act. Councillor Olmstead attended on the property to retrieve her personal property which was allegedly in "plain view". She did not have to go looking around the property. While there were no trespass signs posted, her actions did not support a violation.

Reference: Investigator's Report

[47] The Investigator reported that:

"If not for the behavior of Olmstead with Campbell in October, this complaint would likely not have occurred. However, Olmstead did lie to Campbell and caused her work and some distress about the trap."

Reference: Investigator's Report

V. ANALYSIS

[48] We considered:

- a. Whether Councillor Olmstead contravened the CSR Policy when she contravened the *OHSA*;
- b. Whether Councillor Olmstead contravened the Code of Conduct when contravened the *OHSA*;
- c. Whether Councillor Olmstead contravened the *Criminal Code of Canada* when she retrieved the Live Trap from Ms. Campbell's property;
- d. Whether Councillor Olmstead contravened the *Trespass to Property Act* when she without permission went onto Ms. Campbell's property and retrieved the Live Trap from Ms. Campbell's property;
- e. Whether Councillor Olmstead contravened the Code of Conduct when she intentionally deceived Ms. Campbell; and
- f. Whether Councillor Olmstead contravened the Code of Conduct when she made disparaging remarks about Councillor Cross and other members of Council to Ms. Campbell.

Contravention of the *Occupational Health and Safety Act*

[49] Councillor Olmstead by her offensive conduct was found to have contravened the *OHSA*. Such contravention is also a contravention of the Code of Conduct. The following sections apply:

- a. Section 1.2(f) of the Key Principles of the Code of Conduct requires that members comply with provincial law, the CSR and other ethical policies.
- b. Sections 7 and 8 provide Members with clear expectations about dealing with others:

7. Conduct Respecting Others

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.

8. Conduct Respecting Staff and Officers

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.

[50] We therefore find that Councillor Olmstead has contravened the Code of Conduct.

Loan & Retrieval of a Live Trap

[51] The Investigator considered whether or not Councillor Olmstead's action when she entered onto private property and retrieved the Live Trap was a contravention of the *Criminal Code of Canada* or the *Trespass to Property Act* and found that in this circumstance there were no grounds to substantiate a breach of the noted laws and the matter was not referred to the Ontario Provincial Police.

[52] The question then becomes whether or not Councillor Olmstead contravened the Code of Conduct when she went on private property to retrieve her Live Trap without the knowledge of the property owner and then when asked by the property owner, denied that she had picked up the Live Trap.

[53] Of consideration is whether or not the Code of Conduct applied to Councillor Olmstead when she deceived Ms. Campbell by telling her that Councillor Olmstead was not in possession of the Live Trap when in fact she was, and further, when Councillor Olmstead made disparaging remarks about Councillor Cross and Council generally to Ms. Campbell.

[54] Councillor Olmstead was not acting in her capacity as a member of Council when she loaned Ms. Campbell the Live Trap - she did so as a private citizen. And Councillor Olmstead did not advise Ms. Campbell that Councillor Olmstead was a Councillor.

- [55] Ms. Campbell was aware that Councillor Olmstead was on Council and was disconcerted that Councillor Olmstead would disparage Councillor Cross and Council to someone who is a stranger.
- [56] Section 1.2 (d) of the Key Principles states “*Members are expected to conduct themselves and perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.*” We find that Councillor Olmstead acted contrary to this principle when she intentionally deceived Ms. Campbell about having possession of the Live Trap.
- [57] Additionally, Councillors are entitled to having a personal opinion about political and other matters. However, it is inappropriate and contrary to the core principles of the Code of Conduct for a member of Council to disparage or make false statements about another member of Council. To be clear, section 7.2 requires that a Member not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public. We find that Councillor Olmstead’s statements about Councillor Cross and Council generally were inappropriate and contrary to the Code of Conduct.

DATED: September 30, 2021