



Integrity Commissioner's Report

To Mayor and Council – The Corporation of the Municipality of Temagami

Date: Monday July 23, 2018

Complaint #: 2018-02

Request for Investigation – Code of Conduct for Members of Council – Schedule A to By-law 13-1138, Appendix B (Copy of signed affidavit attached to report)

Date: 18 June 2018

Name of Requester (Complainant): Councillor Ron Prefasi

Name of member of Council or local board who is alleged to have contravened Code of Conduct: Councillor Carol Lowery

Sections of Code Alleged to have been contravened: Sections 1, 2, 3, 4.1, 4.2, and 4.4

The Key Facts:

Councillor Prefasi attached a letter to his Affidavit dated Saturday June 16, 2018. The first incident Councillor Prefasi has noted is that "Temagami Councillor, Carol Lowery, has contravened the above noted sections and the key facts that lead me to that belief are as evidenced in the April 17, 2018 Committee of the Whole meeting audio recording and Councillor Lowery's comments during that meeting. I was in attendance at that meeting."

In the letter of Saturday June 16, 2018, Councillor Prefasi provides a number of statements of additional examples of allegations of violations of the Code of Conduct. Appendix 1 to Councillor Prefasi's letter is his notes of statements made during the April 17, 2018 Committee of the Whole Meeting relating to a Temagami First Nation resolution regarding the Code of Conduct complaint filed against Councillor Prefasi.

The second incident Councillor Prefasi has noted is a previous incident outlining contravention of the above noted sections and the "key facts that lead me to that belief are as evidenced in the emails of September 6, 2017 that are included in this document.

In the letter of Saturday June 16, 2018, Councillor Prefasi provides a number of statements of additional examples of allegations of violations of the Code of Conduct regarding Councillor Lowery's conduct and remarks made at a Special Council Meeting on September 6th, 2017.

Copies of Documents and Records Relevant to Requested Inquiry:

There were no other documents or records provided.

Copy of The Corporation of the Municipality of Temagami By-law No. 13-1138; Schedule A to By-law 13-1138, Appendix A – Confidentiality Agreement and Appendix B – for of Affidavit – attached to this report.

The Integrity Commissioner advised the parties that this inquiry would be restricted to the Code of Conduct and would not consider allegations of violations of the Human Rights Code, the Charter of Rights and Freedoms (Canada), allegations of violations of the Conflict of Interest Act, any other laws or of the Municipality's Procedural By-law.

For Reference: Section 3 of the Code of Conduct – Purpose

The Purpose section in the Code of Conduct states that "The Code of Conduct for Members of Council and related Policies identify the Municipality's expectations of Members and establishes guidelines for appropriate conduct to ensure that:

- The decision-making process of the Council is transparent, accessible and equitable.
- Independent, impartial decision-making considers the best interests of the entire Municipality as envisioned in the Oath of Office;
- Communications are open, honest, consistent, respectful, consultative and inclusive;
- Private interests, real or perceived, are kept separate from public responsibilities;
- Respect and support for others, including other Council members, members of municipal staff and members of the public, is maintained.

Allegation of Violation Deemed to be of Section 3 of the Code of Conduct – Purpose

With respect to the Special Council Meeting on September 6, 2017, Councillor Prefasi confirmed the meeting he was referencing was the meeting at 4:30 pm that was adjourned due to lack of quorum.

Councillor Prefasi told the Integrity Commissioner that his wife was present and after the adjournment, Councillor Lowery and one other Councillor, made remarks that he found to be "very disparaging, tasteless and crude remarks" about his "bodily functions" and that these remarks made his spouse, Suzanne Prefasi "very uncomfortable.

Councillor Prefasi stated he emailed Councillor Lowery and this other Councillor asking for an apology and did not receive a response from Councillor Lowery but that he did from the other Councillor and he accepted that apology.

Councillor Lowery told the Integrity Commissioner that there was another Special Council Meeting on September 6, 2017, from 10:30 until 3:36 pm and that Councillor Prefasi was “there all day” and that she “assumed he was in the building.”

Councillor Lowery told the Integrity Commissioner that when another Councillor suggested Councillor Prefasi was in the washroom, that she replied “are you saying Councillor Prefasi is full of shit.” Councillor Lowery told the Integrity Commissioner that her comment was “probably inappropriate” and that “it was not nice”.

Councillor Lowery told the Integrity Commissioner that she did not apologize to Councillor Prefasi because she was “annoyed” and that she “thought I’ll apologize to you when you apologize to us for making us wait.”

Councillor Lowery told the Integrity Commissioner that she made the statement “are you saying Councillor Prefasi is full of shit”, at the Special Council Meeting on September 6, 2017. Councillor Lowery’s statement was inappropriate and disrespectful.

Violation of Section 3 of the Code of Conduct – Purpose

Councillor Lowery violated Section 3 of the Code of Conduct – Purpose, on September 6, 2017 by making a remark about Councillor Prefasi that was disrespectful.

For Reference: Section 5.4 Allegations of a Serious Nature

For reasonable allegations of infractions of a serious nature, the CAO shall bring the matter to the Mayor and Council. Council shall give the Member the opportunity to respond to the allegation. Then Council shall decide whether or not to exercise its authority under Section 223 of the Municipal Act 2001, as amended (the Act) to appoint an Integrity Commissioner who would be responsible for performing an independent investigation and reporting back to Council. Consideration of whether or not to appoint an Integrity Commissioner to investigate the allegations shall be done in an open council meeting when the matters discussed deal only with the conduct of the member in the course of his or her professional duties as a member of Council and do not fall within the exceptions to the open meeting requirements. In completing his or her investigation and reporting to Council, the Integrity Commissioner shall have the powers and duties, including the duty of confidentiality, as set out in the Act.

Allegation of Violation Deemed to be of Section 5.4 Allegations of a Serious Nature

The process for proceeding with a complaint as outlined in Schedule A to By-law 13-1138 is vague. However, in section 5.4, it does state that “Council shall give the Member the opportunity to respond to the allegation”, but no specific time frame is stated.

With respect to the Council in Committee of the Whole Meeting on Tuesday April 17, 2018, Councillor Prefasi told the Integrity Commissioner that he believed Councillor Lowery “should have been more professional” and that she had “no idea of the substance of the complaint” and that her “actions were not impartial” and not “fair” and “not complying with the Code”, referencing remarks made related to whether or not the complaint from Ms. Jamie Koistinen should be the subject of an investigation by an Integrity Commissioner.

Councillor Prefasi told the Integrity Commissioner that at that point he had not had his procedural questions answered or been given an opportunity to speak to the allegations.

At the Council in Committee of the Whole Meeting on Tuesday April 17, 2018, Councillor Lowery stated “it is an important enough matter that we have to do what has been asked and take it to the Integrity Commissioner and have Councillor Prefasi have a third person’s viewpoint on it. I think that’s where I feel comfortable.”

Councillor Lowery told the Integrity Commissioner that she agreed to “bring in an Integrity Commissioner” because the complaint was from an employee of Temagami First Nation and as such she believed it was “crucial for a third party” to investigate.

Councillor Lowery told the Integrity Commissioner that Councillor Prefasi knew the complaint was “on the agenda” and that “he should have been prepared” and he “could have said he was in the process of speaking to someone or a lawyer and he wanted this deferred to the next meeting.”

Assessment:

Councillor Lowery should have known and considered, that according to the Code of Conduct in section 5.4, it does state that “Council shall give the Member the opportunity to respond to the allegation” and this had not occurred.

Violation Deemed to be of Section 5.4 Allegations of a Serious Nature

Councillor Lowery violated the Code of Conduct in section 5.4, by recommending the appointment of an Integrity Commissioner prior to Councillor Prefasi being given an opportunity to respond to the allegations in the complaint submitted by Ms. J. Koistinen.

This report is submitted by: **Antoinette Blunt MPA, CHRL, CHRE, FHRPA**
Appointed by resolution at the Municipality of Temagami Council Meeting on June 28,
2018 Part 2 of 2.

MOVED BY R. Prefasi

SECONDED BY J. Harding

WHEREAS three separate Code of Conduct complaints have been received against
members of Council;

AND WHEREAS in the Clerk's absence no one can assess the merits of these complaints;

THEREFORE BE IT RESOLVED THAT these complaints be received by Council and dealt
with as per the requirements of Temagami's Code of Conduct By-law

AND FURTHER THAT these complaints be forwarded on to the Integrity Commissioner
appointed at the last meeting.