

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 of **Requester (Complainant):** Councillor Ron Prefasi

Name of member of Council or local board who is alleged to have contravened Code of Conduct: Mayor Lorie Hunter

Sections of Code Alleged to have been contravened: Sections 1, 2, 3, 4.1, 4.2, 4.4 and 4.7.

The Key Facts:

Councillor Prefasi attached a letter to his Affidavit dated Saturday June 9, 2018. Councillor Prefasi has noted is that the "Mayor of Temagami, Lorie Hunter, 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 that the Mayor's actions prior to that meeting and after that meeting."

In the letter of Saturday June 9, 2018, Councillor Prefasi provides a number of "examples of the background and conduct of the Mayor."

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

Councillor Prefasi told the Integrity Commissioner that Mayor Hunter did not contact him prior to him receiving the email from the Clerk on Thursday April 12, 2018 and that he received no direction or information with respect to the process or given any indication of when he would be provided an opportunity to respond to the complaint.

Mayor Hunter told the Integrity Commissioner that that she did not speak to Councillor Prefasi about the Code of Conduct complaint filed by Ms. J. Koistinen prior to the complaint being posted on the Municipality's website on Friday April 13, 2018 or prior to the Council in Committee of the Whole Meeting on Tuesday April 17, 2018.

Assessment:

It is reasonable that once a complaint has been received, the respondent to the complaint, Councillor Prefasi, should have been contacted by Mayor Hunter prior to the complaint being posted on the Municipality's website on Friday April 13, 2018.

Violation of Section 3 of the Code of Conduct – Purpose

Mayor Hunter violated the Code of Conduct – Purpose, by not respecting Councillor Prefasi and communicating with him about the complaint prior to the complaint being posted on the Municipality's website on Friday April 13, 2018.

For Reference: Section 5.3 Allegations of a Minor Nature

For reasonable allegations of infractions of a minor nature, the Chief Administrative Officer shall advise the Mayor and together they shall investigate the matter, including receiving comments from the member about whom the complaint was made. If recommendations regarding the Members' conduct are determined to be warranted, the Mayor shall make said recommendations to the Member, in accordance with the role of Head of Council as prescribed in the Municipal Act. After recommendations are given to the Member, or if no action is warranted, the Mayor and/or CAO shall also advise Council and the complainant(s) of the outcome.

If the complaint is in regard to the Mayor, or if the Mayor is unavailable to act on the complaint within a reasonable amount of time, the Deputy-Mayor shall act in place of the Mayor.

Allegation of Violation Deemed to be of Section 5.3 Allegations of a Minor Nature

Councillor Prefasi received the Code of Conduct complaint filed by Ms. J. Koistinen from the Clerk/Acting CAO by email on Thursday April 12, 2018. Councillor Prefasi indicated there was no direction or information included in this email.

Mayor Hunter told the Integrity Commissioner that it was her role and that of the Clerk, to determine if the complaint was of a serious nature and that she felt the issue was of a serious nature. Mayor Hunter confirmed the determination was made by herself and the Clerk.

Mayor Hunter told the Integrity Commissioner that that she did not speak to Councillor Prefasi about the Code of Conduct complaint filed by Ms. J. Koistinen prior to the complaint being posted on the Municipality's website on Friday April 13, 2018 or prior to the Council in Committee of the Whole Meeting on Tuesday April 17, 2018.

Assessment:

The process for proceeding with a complaint as outlined in Schedule A to By-law 13-1138 is vague. Mayor Hunter told the Integrity Commissioner that there are no written definitions of what constitutes an allegation of a minor nature or one of a serious nature.

It is reasonable that once a complaint has been received, the respondent to the complaint, Councillor Prefasi, should have been advised of the process and why the complaint was determined to be of a serious nature, at the time a copy of the complaint was provided to him.

Section 5.3 does confirm the Chief Administrative Officer together with the Mayor shall investigate the matter to determine if it is of a minor nature. However, it also states this process includes “receiving comments from the member about whom the complaint was made”. It is reasonable that the Mayor should have, as part of an initial assessment, sought out comments from Councillor Prefasi regarding the Code of Conduct complaint filed by Ms. J. Koistinen.

Violation of Section 5.3 Allegations of a Minor Nature

Mayor Hunter violated the Code of Conduct Schedule A to By-law 13-1138, section 5.3 by making a determination the allegations were of a serious nature without seeking out comments from Councillor Prefasi regarding the Code of Conduct complaint filed by Ms. J. Koistinen and without advising him of the process.

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

At the Council in Committee of the Whole Meeting on Tuesday April 17, 2018, Ms. J. Koistinen was allowed to speak to her complaint and during her presentation, Ms. J. Koistinen asked Council to appoint an Integrity Commissioner to investigate her complaint. This occurred prior to Councillor Prefasi providing any comments about this complaint. Mayor Hunter told the Integrity Commissioner she allowed members of the public to speak, one being the complainant, because it was “an important issue”.

At the Council in Committee of the Whole Meeting on Tuesday April 17, 2018, various Councillors spoke to the process. Councillor O’Mara stated that in fairness, and as part of the process, Councillor Prefasi should be “given some time”¹ and an “opportunity to

¹ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

respond² to the complaint filed by Ms. J. Koistinen. Councillor O'Mara also stated that he did not know if Councillor Prefasi was in a position to respond tonight.

Mayor Hunter stated that she assumed "this was the time"³ but if Council felt differently she wanted to hear about it. Mayor Hunter stated she and the Clerk decided this was "an important decision"⁴ and she was going to "support going to an Integrity Commissioner".⁵

Councillor Koski stated that Council should be going to an Integrity Commissioner "right now"⁶.

Councillor Harding stated that Council should not "rush into a decision at this time"⁷ and that it had "not been a week"⁸, referencing the time since the complaint had been received.

Councillor O'Mara asked if there was an option of "a way for discussion"⁹, or "getting both sides together"¹⁰ or for a "facilitator"¹¹, instead of appointing an Integrity Commissioner.

Mayor Hunter then commented that this matter was "important enough that when we go back into Council session we should pass a motion to move to an Integrity Commissioner and I'm hoping that we do that."¹² Mayor Hunter then asked if Council was in support and Councillor Harding stated he would be "looking to defer it"¹³ until Councillor Prefasi got "legal advice"¹⁴ and also that "this was not much time for him to react."¹⁵

Assessment:

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.

² Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

³ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

⁴ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

⁵ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

⁶ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

⁷ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

⁸ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

⁹ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

¹⁰ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

¹¹ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

¹² Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

¹³ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

¹⁴ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

¹⁵ Reference Audio Recording: Council in Committee of the Whole Meeting on Tuesday April 17, 2018

Mayor Hunter told the Integrity Commissioner that this complaint was a matter that she considered important and this is why she allowed members of the public, one being the complainant, to speak at the meeting. It is reasonable that Mayor Hunter should have provided Councillor Prefasi adequate time to prepare a response to this complaint and a period of one week is not considered to be a reasonable period of time for a respondent to prepare responses.

Mayor Hunter told the Integrity Commissioner that she did not speak to Councillor Prefasi about the Code of Conduct complaint filed by Ms. J. Koistinen prior to the complaint being posted on the Municipality's website on Friday April 13, 2018 or prior to the Council in Committee of the Whole Meeting on Tuesday April 17, 2018. Mayor Hunter told the Integrity Commissioner she did not speak to Councillor Prefasi because "no where in the Code of Conduct does it allow for this." It is reasonable that Mayor Hunter should have spoken to Councillor Prefasi at the time the complaint was provided to him and seek his input as to the time he required to provide his response to the allegations.

Despite not being specifically mentioned in the Code of Conduct, Council could have considered mediation or other options as a means to resolve the complaint but there were no discussions about other options.

Violation of Section 5.4 Allegations of a Serious Nature

Mayor Hunter violated the Code of Conduct Schedule A to By-law 13-1138, section 5.4 by not providing Councillor Prefasi a reasonable period of time to respond to the allegations in the complaint filed 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.