

DECISION OF THE INTEGRITY COMMISSIONER

MUNICIPALITY OF CALVIN

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

BY: **COUNCILLOR HEATHER OLMSTEAD**



*Office of the Integrity
Commissioner*

Prepared By:

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I. EXECUTIVE SUMMARY

- [1] These reasons relate to inquiries under section 223.4(1) of the *Municipal Act, 2001*, (the "*Municipal Act*") about Heather Olmstead ("Councillor Olmstead"), an elected member of the Municipal Council ("Council") for the Municipality of Calvin.
- [2] The Requestor alleged that Councillor Olmstead contravened the Municipality of Calvin Code of Conduct ("Code of Conduct") when she used her position as a member of Council to cause the Requestor to be the subject of an investigation by the Chief Building Official ("CBO") and further that she was required to obtain a building permit for a building that had been constructed a number of years ago.
- [3] The Requestor and Councillor Olmstead are neighbours and have been for approximately three (3) years. The Requestor reported that the building in question had been constructed close to the fence line two (2) years before Councillor Olmstead purchased the property and now had been in existence for approximately five (5) years.
- [4] Councillor Olmstead was elected to Council in 2018. Only after that, did Councillor Olmstead complain to the CBO about the Requestor's "barn".
- [5] The Requestor alleged that the actions of Councillor Olmstead were in retaliation because the Requestor had asked Councillor Olmstead to move a manure pile from her driveway. The Requestor advised that the pond on the Requestor's property was turning brown and the well is located next to the pond.
- [6] The Requestor contacted the CBO on April 10, 2019, regarding a manure pile on Councillor Olmstead's property. The Requestor advised the CBO that the pond on the Requestor's property was turning brown and there was a concern that the manure pile was affecting the quality of the water. Moreover, the Requestor's well is located next to the pond and the Requestor was concerned about contamination of the well water. The CBO advised the Requestor that he was not able to address this concern as the matter did not fall within the jurisdiction of his department. Additionally, he suggested four (4) different options for dealing with the situation. One of them was to speak to Councillor Olmstead.
- [7] After this event, on August 16, 2019, Councillor Olmstead contacted the CBO about a manure pile on the Requestor's property that is too close to the property line. The CBO reported providing the same advice to Councillor Olmstead that he had given to the Requestor previously. Then Councillor Olmstead proceeded to advise the CBO that the "barn" on the Requestor's property had been constructed without a building permit and that the Requestor had told Councillor Olmstead this.
- [8] The CBO investigated and advised Councillor Olmstead on August 21, 2019, by email that the "barn" was not in fact a barn and was not subject to the minimum distance setbacks. He additionally, advised Councillor Olmstead that no building permit had been issued.

- [9] The CBO advised that Councillor Olmstead did not identify herself as a member of Council.
- [10] Councillor Olmstead reported that she attended the municipal office and questioned why no municipal employee [specifically three (3) staff members who drive past the Requestors' property] had reported the illegal "barn" and why it was left up to her to do this.
- [11] Councillor Olmstead made it known to municipal staff that she was dissatisfied with the investigation carried out by the CBO. It was reported that Councillor Olmstead was very upset and vocal that no fines were issued to the Requestor.
- [12] On October 8, 2019, this matter was discussed at the Council meeting in closed session. Councillors Olmstead and Grant spearheaded the matter coming before Council.
- [13] When asked by the investigator about why did not bring the matter to the attention of the CBO before, Councillor Olmstead reported that she did not bring the matter up before because her uncle was against complaining about neighbours. She advised that her uncle died November 2018. On August 16, 2019, she made her complaint to the CBO nine (9) months after the passing of her uncle, and after the Requestor asked Councillor Olmstead to move a manure pile on her property.
- [14] Councillor Olmstead defended her actions by portraying herself as being a new Councillor who is ignorant about the processes. At no time did she seek advice or guidance as to how the system or process works. What she did do is make demands of staff and when she did not get the result, she attempted to take the matter to Council for a different outcome. It is in this respect that she offended the Council-Staff Relations Policy and the Code of Conduct.

Findings

- [15] The complaints, their circumstances and timing show a dispute between neighbours that is not within the jurisdiction of the Integrity Commissioner.
- [16] We find, however, that Councillor Olmstead did contravene the Municipality of Calvin's Code of Conduct when she made demands of and was critical of staff including specifically the CBO.
- [17] We further find that Councillor Olmstead did contravene sections 8.1, 8.2, 8.3, and 8.5 of the Code of Conduct when she accused the CBO of backdating a building permit, demonstrated disrespect for the authority of the CBO when no fines were laid and her effort to discredit/question the integrity of the CBO and get a different decision by bringing the matter before Council.

- [18] It is important for Council and the public to understand that statutory officers of a municipal corporation such as the Chief Building Official, have statutory roles and responsibilities that can not be directed by an individual Councillor, nor by Council as a whole. Similarly, by way of example, neither Councillors nor Council are to influence the exercise of discretion of municipal by-law enforcement officers or the municipality's Provincial Offences prosecutor, or the Integrity Commissioner.
- [19] It is improper of a Councillor to seek to influence the discretion of a statutory officer and it is also frankly not appropriate for Council to consider matters where that is the intended result. To avoid this problem in the future, it would be appropriate for Council to develop and adopt a complaint or feedback policy that would guide Council and Staff about what types of complaints, if any, are dealt with by Council rather than entirely by staff as most complaints are properly operational and within the jurisdiction of staff.

II. LEGISLATIVE FRAMEWORK

- [20] 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.
- [21] The *Municipal Act* requires that municipalities adopt a Code of Conduct. Section 8 of the Code of Conduct – Conduct Respecting Others requires Members to:
- 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 undermine the duties of any staff person or Officer except in accordance with the Municipality's procedural by-law. 11 See Human Rights Code, R.S.O. 1990, c.H.19 6 Code of Conduct Version 2.00 (August 6, 2018) 8.3 Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.*
 - 8.3 *Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.*

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.*

[22] When a matter is referred to us, we may then conduct an inquiry in accordance with the City's Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

[23] 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.

[24] The request before us was properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the Municipality of Calvin.

[25] The Requestor alleged that Councillor Olmstead contravened the Municipality of Calvin Code of Conduct ("Code of Conduct") when she used her position as a member of Council to cause the Requestor to be the subject of an investigation by the Chief Building Official ("CBO") and further that she was required to obtain a building permit for a building that had been constructed a number of years ago.

[26] In this inquiry, we find no reason to release the names of the Requestor.

IV. THE INQUIRY PROCESS

[27] 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.

[28] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of the complaint which resulted in the decision to conduct an inquiry into the matter.

[29] Darren Nesbitt, a professional investigator with Investigative Solutions Network (ISN), was assigned as an agent of the Integrity Commissioner to carry out an investigation into the Requestor's allegations. The inquiry followed the process outlined in section 5 of the Integrity Commissioner Inquiry Protocol which included reviewing the available evidence, interviewing the Requestor, witnesses and Councillor Olmstead.

[30] 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 had first-hand 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 were participating
- any admission of dishonesty.¹

[31] The Requestor and witnesses were found to be mostly credible.

[32] Councillor Olmstead was found by not to be credible with respect to her motives for having the complainant's barn assessed, but her admissions about "getting loud" and "high-spirited" with staff were relied on in the investigation.

V. THE FACTS

[33] The Requestor and Councillor Olmstead are neighbours and have been for approximately three (3) years.

[34] Councillor Olmstead purchased the property where she currently resides, from the Requestor.

[35] Both the Requestor and Councillor Olmstead have horses on their properties.

[36] The Requestor contacted the CBO on April 10, 2019, regarding a manure pile on Councillor Olmstead's property. The Requestor advised the CBO that the pond on the Requestor's property was turning brown and there was a concern that the manure pile was affecting the quality of the water. Moreover, the Requestor's well is located next to

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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.)

the pond and the Requestor was concerned about contamination of the well water. The CBO advised the Requestor that he was not able to address this concern as the matter did not fall within the jurisdiction of his department. Additionally, he suggested four (4) different options for dealing with the situation. One of them was to speak to Councillor Olmstead which the Requestor did.

- [37] The Requestor contacted Councillor Olmstead and asked for the manure pile to be removed and suggested a party who would assist with the removal.
- [38] Councillor Olmstead moved the manure pile. Subsequently, Councillor Olmstead became concerned with a manure pile on the Requestor's property close to the property line.
- [39] On August 16, 2019, Councillor Olmstead contacted the CBO about a manure pile on the Requestor's property that was allegedly too close to the property line.
- [40] The CBO reported providing the same advice to Councillor Olmstead that he had given to the Requestor previously.
- [41] Councillor Olmstead proceeded to advise the CBO that the "barn" on the Requestor's property had been constructed without a building permit and that the Requestor had told Councillor Olmstead this. The CBO advised Councillor Olmstead that he could address this concern and would look into the matter.
- [42] On August 21, 2019, the CBO initiated his investigation. He determined that no building permit had been applied for or issued for the building on the Requestor's property. He attended at the Requestor's home to look at the building and determine if a building permit was required. Based on his assessment, the structure is not a barn in accordance with the building code and therefore did not need to adhere to minimum distance requirements in the Zoning Bylaw but would require a building permit.
- [43] The CBO then advised Councillor Olmstead [August 21, 2019] by email of his finding that the "barn" was not in fact a barn and was not subject to the minimum distance setbacks and that no building permit had been issued.
- [44] On August 22, 2019, Councillor Olmstead called the CBO and questioned the minimum distance rules and the CBO responded to her questions.
- [45] On September 18, 2019, the CBO contacted the Requestor asking that a building permit application be submitted.
- [46] The Requestor submitted plans for the structure on September 25, 2019, but not the completed building permit application form. The CBO advised the Requestor that there were a couple of issues with the drawings and the permit fee was \$310.

- [47] On September 28, 2019, the Requestor emailed the CBO asking him why her “barn” was now an issue when it had been there for over five years and the previous CBO advised that a permit was not needed at the time.
- [48] The Requestor additionally asked the CBO about Councillor Olmstead’s barn which had been previously a garage and was now being used to house horses. And further reported that she did not appreciate that Councillor Olmstead was using her position to bully the Requestor.
- [49] It is clear from the evidence that various efforts and municipal resources have been dedicated to the neighbour dispute between Councillor Olmstead and the Requestor.
- [50] Councillor Olmstead’s actions became a problem when sometime between September 25 and October 2, 2019, Councillor Olmstead attended the municipal office and was upset that the CBO had backdated a building permit.
- [51] Councillor Olmstead reported that she attended the municipal office and questioned why no municipal employee [specifically three (3) staff members who drive past the Requestors’ property] had reported the illegal “barn” and why it was left up to her to do this. The Municipality does not have a Level of Service By-Law speaking to enforcement of the *Building Code*, nor does the Municipality have a policy that requires staff to actively search out nor report potential breaches of the *Building Code*. It is common in various municipalities for a Level of Service By-Law to be adopted, and within those, it is also common for enforcement of the Building Code or Property Standards to be enforced on a complaint basis.
- [52] Councillor Olmstead made it known to municipal staff that she was dissatisfied with the investigation carried out by the CBO. It was reported that Councillor Olmstead was very upset and vocal that no fines were issued to the Requestor. Again, it is improper for a member of Council to influence the statutory enforcement discretion of the CBO or other Statutory Officer.
- [53] The CBO emailed the Requestor on October 2, 2019, and advised her that:
- a. He would not get involved in a dispute between neighbours;
 - b. The Requestor had to get a building permit;
 - c. He had no knowledge as to why the previous CBO would have said a permit was not required; and
 - d. He was not aware that Councillor Olmstead was municipal councillor for much of the timeframe of these events.
- [54] On October 8, 2019, this matter was discussed at the Council meeting in closed session. Councillors Olmstead and Grant spearheaded the matter coming before Council. As above, Council is advised to develop a complaint or Feedback policy to ensure that they do not get involved in matters that are not properly within their roles and to ensure that they do not unintentionally become involved in influencing enforcement discretion. Further, the Municipality’s Council-Staff Relations Policy in section 6 indicates that

complaints like this should be dealt with by the Clerk-Treasurer and so this issue should not have been put before Council.

- [55] When interviewed by the investigator, Councillor Olmstead reported that when they had first moved four years ago, her well water passed the test but that after a utility building was built on the Requestor's property, Councillor Olmstead's family became sick from drinking the water. Councillor Olmstead said that she believed this was because the Requestor had seven (7) horses that frequent the utility building.
- [56] When the Requestor previously owned the property now owned by Councillor Olmstead there were no issues with water quality [the Requestor owned the property fifteen (15) years]. Additionally, the Requestor reported that the "barn" was erected two (2) years before Councillor Olmstead purchased the property.
- [57] Councillor Olmstead when questioned by the investigator as to the timing of her complaint reported that she did not bring the matter up before because her uncle was against complaining about neighbours, so she had now done so. She further advised that her uncle died November 2018, and that she now feels it is appropriate to proceed with a complaint. It was unfortunate that Councillor Olmstead could not deal directly with her neighbour.
- [58] Councillor Olmstead made her complaint to the CBO nine (9) months after the passing of her uncle, on August 16, 2019, and after the Requestor asked Councillor Olmstead to move a manure pile.
- [59] Councillor Olmstead attempted to defend her actions vis-à-vis staff and the CBO by minimizing her behaviour and stating that she is a loud person to begin with but not a mean person. She described her actions as "*high spirited*" and lasting between 10-15 minutes with respect to the dialogue that she had with municipal employees regarding the failure of employees to address the illegal "barn" as well as the CBO's investigation of the situation.
- [60] Councillor Olmstead portrayed herself as being a new Councillor who is ignorant about the processes and requires much training.

VI. THE ISSUE

- [61] We considered:
- a. whether Councillor Olmstead contravened the Code of Conduct when she complained about the Requestor's manure pile and failure to get a building permit;

- b. whether Councillor Olmstead's actions regarding staff were contrary to the Council-Staff Relations Policy and thereby a contravention of the Code of Conduct; and
- c. whether Councillor Olmstead's actions were an attempt to influence a Statutory Officer contrary to the Code of Conduct.

VII. CONCLUSION

- [62] Members of Council, like any other ratepayer/member of the public may make complaints to municipal officials when they believe a municipal law/policy has been contravened.
- [63] However, Members of Council, and ratepayers/members of the public, cannot interfere with a Statutory Officer carrying out his or her role. Section
- [64] Councillor Olmstead did not contravene the Code of Conduct by the mere action of making a complaint about the Requestor's manure pile or failure to get a building permit. However, her actions in expressing her displeasure with staff and with the findings of the CBO and her actions thereafter are indeed contrary to the Council-Staff Relations Policy sections 5(3), 5(7) and 5(11) and also a breach of the Code of Conduct.
- [65] The first aspect of the complaint is dismissed. The second and third aspects are substantiated.
- [66] Councillor Olmstead did:
- a. Become loud and very vocal about her displeasure that no fines were laid in the matter;
 - b. Attempted to discredit/question the integrity of the CBO when she accused him of an illegal practice [backdating of a building permit];
 - c. Inappropriately have a personal matter [dispute between neighbours] and a challenge to the CBO's discretion brought before Council in closed session.
- [67] Councillor Olmstead attempted to defend her actions and portrayed herself as being a new Councillor who is ignorant about the processes. We find her portrayal to be disingenuous. At no time did she seek advice or guidance as to how the system or process works. What she did do is make demands and when she did not get her desired result, she attempted to take the matter to Council to affect a different outcome.
- [68] The CBO reported that he gave the same advice to both the Requestor and Councillor Olmstead. The Requestor chose to speak directly to Councillor Olmstead and request that she move the manure pile. Councillor Olmstead did not ask the Requestor to move the manure pile. When the CBO advised Councillor Olmstead that he had no jurisdiction

to address the manure pile, she then advised about the “barn” not having a permit. This action appears retaliatory.

[69] We find that Councillor Olmstead did contravene sections 8.1, 8.2, 8.3, and 8.5 of the Code of Conduct when she accused the CBO of backdating a building permit, her disrespect for the authority of the CBO when no fines were laid and her effort to discredit/question the integrity of the CBO and get a different decision by bringing the matter before Council.

[70] Influencing a Municipal Official like the CBO in their exercise of statutory discretion is a very serious issue. In certain circumstances it even amounts to an offence under section 123 of the Criminal Code.

[71] The manner in which Councillor Olmstead treated staff, her disregard for the Council-Staff Relations Policy, and subsequent breach of the Code of Conduct, while characterized by her as borne of ignorance and unfamiliarity, must not be permitted by Council and warrants significant rebuke.

[72] We make the following recommendations:

1. That Councillor Olmstead be asked by Council to formally apologize to staff and the CBO;
2. That Councillor Olmstead be given a formal reprimand for her conduct toward staff;
3. That Council immediately develops a policy to deal with complaints or “feedback” as it might more positively be characterized to ensure that matters that are not within the role of Council or should not be considered, do not reach the Council table.

DATED: December 22, 2020

DATE PRESENTED TO COUNCIL: February 9, 2021