

ROAD USE AGREEMENT

THIS AGREEMENT MADE BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF CALVIN

(hereinafter called the "Municipality")

OF THE FIRST PART

- and -

CHRISTOPHER DAVID BOILEAU AND LAURIE ANN BOILEAU

(hereinafter called the "Boileaus")

OF THE SECOND PART

WHEREAS the Municipality is the registered owner of the seasonally maintained road called "Stewart's Road";

AND WHEREAS the Boileaus have applied to the Municipality for permission to use certain sections of Stewart's Road more particularly described in Schedule "A" attached hereto (the "Premises") as a driveway and to perform maintenance on those sections during the period from October 1st in one year to May 31st in the following year (the "winter period");

AND WHEREAS the Municipality has agreed to permit certain sections of Stewart's Road to be so used on the understanding that the Boileaus will assume all responsibility for maintenance of the driveway and for certain liability arising out of its use as specified in this Agreement;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. PERMISSION TO USE

1.1 The Municipality hereby grants to the Boileaus a non-exclusive permission to use the Premises as a driveway to access their lands and premises as described in Schedule "B" (the Boileaus' Lands) including maintenance and snowplowing during the winter period. Notwithstanding the granting of this permission the Municipality shall continue to have the right to use the Premises and the Premises shall continue to be open for public usage. The Boileaus shall not be permitted to install or erect any barriers, fencing or signage indicating that the Premises are for the Boileaus' sole and exclusive use.

2. TERM

2.1 Subject to termination for the reasons hereinafter set out, this Agreement shall continue unless and until the Municipality, in its sole and unfettered discretion, determines that the Premises are required for municipal purposes that are inconsistent with this Agreement or that it is in the best interests of the Municipality to terminate this Agreement. In such event, the Municipality shall

give to the Boileaus at least six (6) months' notice in writing of its intention to terminate this Agreement.

- 2.2 In the event that the Boileaus fail to keep, observe or perform any of the terms, conditions, covenants and agreements herein contained which the Boileaus are required to keep, observe or perform for a period of fifteen (15) days after notice in writing of such failure has been given to the Boileaus then, at the option of the Municipality, the Municipality may terminate this Agreement by giving notice in writing to the Boileaus.
- 2.3 In the event that the use of the Premises for the purposes more particularly set out in this Agreement have been discontinued for a period of more than twelve (12) consecutive months then the Municipality may terminate this Agreement by giving notice in writing to the Boileaus.
- 2.4 This Agreement shall terminate in the event that the Boileaus are no longer the registered owner of the Boileaus' Lands unless a Transfer of the Agreement has been completed.
- 2.5 Notwithstanding the Municipality's right of termination as set out herein the Municipality may also remedy a default of the Boileaus and the Boileaus agree to be responsible for all costs incurred by the Municipality with respect to correcting the said default.
- 2.6 In the event that the Municipality establishes Stewart's Road as a year- round maintained municipal road this Agreement shall terminate without notice.

3. CONDITION OF PREMISES

The Boileaus accept the Premises in an "as is" condition and shall not make any improvements or alterations to the Premises, other than snowplowing, without the prior written consent of the Municipality.

4. NO INTEREST IN LAND

The Boileaus acknowledge that this Agreement shall in no way create any interest in land or easement rights.

5. MAINTENANCE AND REPAIR

- 5.1 The Boileaus agree to maintain the Premises, including any permitted improvements or alterations, so that the Premises will at all times be in good repair and safe for use during the winter period. Upon termination of this Agreement the Boileaus agree to leave the Premises in good repair and safe for use and this provision shall survive the termination of this Agreement.
- 5.2 The Boileaus acknowledge that the Municipality does not have any obligation or responsibility whatsoever for the care and use of the Premises including tree or vegetation removal, sanding during the winter period.
- 5.3 The Boileaus acknowledge that this Agreement does not increase any local services provided by the Municipality.

6. INDEMNIFICATION FROM LIABILITY

The Boileaus agree and covenant to indemnify and save harmless the Municipality and its employees, officers, directors, agents, servants and invitees (collectively, the “**Indemnified Parties**”) from and against any and all loss, liability, damages, costs and expenses of every nature and kind whatsoever that are asserted against or suffered or incurred by the Indemnified Parties or any of them arising from or as a result of the exercise by the Boileaus of the Agreement rights granted herein or arising from or as a result of any act or omission of the Boileaus resulting from or relating to damage to property or injury or death to individuals. If any of the Indemnified Parties, shall, without fault on his, her or its part, be made a party to any action, application or other legal proceeding commenced against any of the Indemnified Parties and the Boileaus, the Boileaus shall indemnify and save harmless the applicable Indemnified Parties, and shall defend such action, application or other legal proceeding in the name of the applicable Indemnified Parties, or, at the option of the applicable Indemnified Parties, pay all costs, expenses and legal fees (on a full indemnity basis) incurred by the applicable Indemnified Parties, to defend any such action, application or other legal proceeding so that the Indemnified Parties shall suffer no loss or harm in connection with such action, application or other legal proceeding.

7. TRANSFER OF AGREEMENT

7.1 The Boileaus shall not assign or transfer this Agreement in whole or in part without the prior written consent of the Municipality which shall not be unreasonably withheld or delayed, but shall be subject to the following conditions:

- (a) the transferee entering into a new Agreement with the Municipality substantially on the same terms as provided for herein;
- (b) the transferee being the registered owner of the Boileaus’ Lands;
- (c) the transferee being responsible for the reasonable legal and administrative costs incurred by the Municipality with respect to the transfer and the new Agreement.

8. SIGNAGE

The Boileaus shall erect signage at both the north and south end of the Premises which read as follows:

This is a privately maintained road between October 1st in one year and May 31st in the following year. Use at your own risk.

The signage shall be prior approved in writing by the Municipality before being erected and shall be maintained in good condition by the Boileaus.

9. NOTICE

Any notice required or permitted to be given by one party to the other pursuant to the terms of this Agreement may be given by personal delivery, by prepaid first class mail or by electronic transmission addressed to the respective parties as follows:

To the Municipality: The Corporation of the Municipality of Calvin
Attention: Municipal Clerk
1355 Peddlers Drive, R.R. #2
MATTAWA, Ontario, P0H 1V0
Email: clerk@calvintownship.ca

To the Boileaus: Christopher David Boileau and Laurie Ann Boileau
56 Stewarts Road, RR. #2
Mattawa, Ontario, P0H 1V0
Email: laurieboileau@rogers.com

or to such other address or email address as either party may from time to time notify the other. Any notice given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof and if given by email transmission on the same day as the date of sending providing that an email transmission report is generated and retained. Any notice sent by prepaid first class mail as aforesaid shall be deemed to have been given and received on the 5th day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing.

10. GENERAL

- 10.1 Time shall in all respects be of the essence hereof.
- 10.2 No condoning, excusing or overlooking by the Municipality of any default, breach or non-observance by the Boileaus at any time or times in respect of any terms, conditions, covenants or agreements contained herein shall operate as a waiver of the Municipality's rights hereunder in respect of any continuing or subsequent default, breach or non-observance so as to defeat or affect such continuing or subsequent default or breach, and no waiver shall be inferred or implied by anything done or omitted by the Municipality, save only an express waiver in writing.
- 10.3 This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.
- 10.4 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 10.5 This Agreement, including any Schedules attached hereto, shall constitute the entire Agreement between the parties. There are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
- 10.6 In the event that this Agreement is granted to more than one person then the obligations of all persons herein shall be joint and several.

SIGNED, SEALED AND DELIVERED BY:

the Municipality this _____ day of _____, 2021.

THE CORPORATION OF THE
MUNICIPALITY OF CALVIN

Per: _____

Name: Ian Pennell

Title: Mayor

Per: _____

Name: Cindy Pigeau

Title: Clerk-Treasurer

I/We have authority to bind the Corporation.

SIGNED, SEALED AND DELIVERED BY:

the Boileaus this _____ day of _____, 2021.

Witness

CHRISTOPHER DAVID BOILEAU

Witness

LAURIE ANN BOILEAU

**THIS IS SCHEDULE “A” TO THE AGREEMENT BETWEEN THE CORPORATION OF
THE MUNICIPALITY OF CALVIN AND CHRISTOPHER DAVID BOILEAU AND
LAURIE ANN BOILEAU**

THE PREMISES

See Attached Map.

**THIS IS SCHEDULE "B" TO THE AGREEMENT BETWEEN THE CORPORATION OF
THE MUNICIPALITY OF CALVIN AND CHRISTOPHER DAVID BOILEAU AND
LAURIE ANN BOILEAU**

THE BOILEAUS' LANDS

CON 2 PT LT 10 RP 36R5273 PART 1 PCL 25167 NIP
RP36R10241 PART 1 PCL 58693 NIP

THE CORPORATION OF THE MUNICIPALITY OF CALVIN

BY-LAW NO. 2021-029

BEING A BY-LAW TO AUTHORIZE A ROAD USE AGREEMENT BETWEEN CHRISTOPHER AND LAURIE BOILEAU AND THE CORPORATION OF THE MUNICIPALITY OF CALVIN.

WHEREAS THE MUNICIPAL ACT S.O. 2001, c. 25 authorizes municipalities to enter into an agreement,

WHEREAS the Municipality is the registered owner of the seasonally maintained road called “Stewart’s Road”;

AND WHEREAS the Boileaus have applied to the Municipality for permission to use certain sections of Stewart’s Road more particularly described in Schedule “A” attached hereto (the “Premises”) as a driveway and to perform maintenance on those sections during the period from October 1st in one year to May 31st in the following year (the “winter period”);

AND WHEREAS the Municipality has agreed to permit certain sections of Stewart’s Road to be so used on the understanding that the Boileaus will assume all responsibility for maintenance of the driveway and for certain liability arising out of its use as specified in this Agreement;

NOW THEREFORE THE Council of the Municipality ratifies the attached agreement as follows:

- 1) That the Mayor and the Clerk-Treasurer are the designated signing officers and are authorized to execute an agreement on behalf of the Corporation of the Municipality of Calvin.
- 2) That “Road Agreement between Christopher and Laurie Boileau and the Corporation of the Municipality of Calvin” attached hereto and form part and parcel of this by-law as Schedule “A”.

This agreement shall be enacted and in effect upon the signing thereof.

Read a first, second time this 12th day of October 2021.

Read a third time and finally passed in open council this day of 2021.

MAYOR

CLERK - TREASURER

CORPORATION OF THE MUNICIPALITY OF CALVIN

Resolution

DATE: October 12, 2021

NO. ____

MOVED BY _____

SECONDED BY _____

“WHEREAS Communities across the province are addressing an intensified social crisis and Northern Ontario is no different. We recognize that creating solutions will require a multi-ministry approach but if there are lessons to be learned from this pandemic, what were once cracks in the health care foundation, there are now large gaps forming especially around mental health, addictions, and homelessness;

WHEREAS Northern Ontario has significant challenges when it comes to accessing mental health and addictions services for our people in our communities;

WHEREAS over 300 Child care staff who provide services to over 21,000 licensed child care spaces in over 340 locations across the North and they see the effects of Mental Health and Addictions every day in the children they care for and the parents they support;

WHEREAS, the defined area of Northern Ontario is over 800,000 square kilometers. Also, annually over 500 Social Services staff provide financial and employment assistance to over 15,000 families in 37 delivery sites across the North. Over 300 Community Housing staff provide safe and affordable housing to over 17,000 families in the North. In addition, there are many Police Officers and over 900 paramedics who responded to 200,000 medical emergency 911 calls. Paramedics have seen the direct results of the Mental Health and Addictions crisis in the North and some cases becoming ill themselves trying to cope with what they have seen;

WHEREAS the Municipality of Calvin appreciates the efforts of all the agencies that are working to help and support those addicted to opioids. In some districts, over 30 agencies are providing some assistance. But we would like to see consolidation of these agencies with the input of Municipalities/DSSAB’s and local stakeholders. As we believe, a streamlined agency would be able to put the combined funds to better use;

THEREFORE BE IT RESOLVED that the Municipality of Calvin ask that our Northern Ontario Health Teams, in consultation with FONOM/Municipalities/DSSAB’s and local stakeholders, support a province-wide strategy that supports such consolidation;

FUTHER BE IT RESOLVED that a copy of this Resolution to be shared with Premier Ford, Christine Elliott the Minister of Health, Michael Tibollo the Associate Minister of Mental Health and Addictions, the Leaders of the Provincial Oppositions, and the Association of Municipalities of Ontario (AMO).”

CARRIED _____

DIVISION VOTE

<u>NAME OF MEMBER OF COUNCIL</u>	<u>YEAS</u>	<u>NAYS</u>
Coun Cross	_____	_____
Coun Maxwell	_____	_____
Coun Olmstead	_____	_____
Coun Shippam	_____	_____
Mayor Pennell	_____	_____

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: MAYOR IAN PENNELL

I. REQUEST FOR INQUIRY

- [1] On June 25, 2021, Expertise for Municipalities (“E4m”) as Integrity Commissioner received a formal request for inquiry (hereinafter the “Request”) that alleged Ian Pennell (“Mayor Pennell”), a member of Council for the Municipality of Calvin, contravened the Municipality of Calvin Code of Conduct (“Code of Conduct”) when he attempted to deceive Council as he sought reimbursement for a telephone expense.
- [2] The Requestor alleged that Mayor Pennell contravened section 7.11 – (*Use of Municipal Property, Services and Other Resources*), of the Code of Conduct.
- [3] The Requestor more specifically, alleged that during the May 12, and June 9, 2021, Council meetings, Mayor Pennell attempted to deceive Council by submitting personal telephone expenses as vehicle expenses. And further the Requestor stated, “*I believe the incident is a serious breach of conduct and perhaps criminal*”.

II. FINDINGS/CONCLUSION

- [4] The Requestor in this matter made a very serious allegation that Mayor Pennell’s actions were fraudulent and “*perhaps criminal*” when he submitted an expense claim to be reimbursed for long distance charges. Then when interviewed by the Investigator, the Requestor failed to provide sufficient evidence to support, and in fact, contradicted the assertions made when requesting the inquiry.
- [5] We do not find that Mayor Pennell’s actions in requesting reimbursement for expenses incurred for attending electronic Council meetings are in any way inappropriate, nor do we find his actions contrary to the Code of Conduct for the expense to be included on the only form the Municipality used for Members of Council to seek reimbursement for out-of-pocket expenses.
- [6] We do, however, find the Requestor’s intentions questionable and are highly concerned that while the Requestor reported his complaint was in no way retaliatory, we question the motives to make such allegations in the first place.
- [7] This matter is dismissed.

III. INQUIRY PROCESS

- [8] Upon receipt of the Request, we completed an initial review of the Requestor's submission. Allegations of deceit and fraudulent submission of expenses for reimbursement are serious allegations and could be subject to a police investigation. If an Integrity Commissioner finds such a potential contravention of law, they must stop their inquiry and refer the matter to the police.
- [9] In this circumstance, after we conducted our initial review, as is outlined in the Integrity Commissioner Inquiry Protocol we conducted a preliminary review and the matter was assigned to Gil Hughes (the "Investigator"), an investigator with Investigative Solutions Network ("ISN") as an agent of the Integrity Commissioner for this purpose and to further review and consider the allegations.
- [10] The Investigator interviewed the Requestor, the Clerk-Treasurer and Mayor Pennell. Additionally, the Investigator reviewed pertinent municipal records related to the matter.
- [11] 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
- [12] The Investigator reported that the Requestor waited a year to report an issue they submitted was "*is a serious breach of conduct and perhaps criminal*" and that had been properly addressed during two Council meetings. During an interview with the Investigator, the Requestor made it very clear that he was lacking commitment to his complaint, therefore essentially undermining the matter he wanted investigated. The Requestor was not considered a credible witness on this matter.

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.)

IV. FINDINGS OF FACT

- [13] The Requestor alleged that Mayor Pennell on May 12 and June 9, 2021, “deceived council by attempting to pass his phone expenses off as vehicle expenses and by *dividing the bill into two to appear less conspicuous.*” (note: the meetings in question were May 12 and June 9, 2020 and not 2021 as submitted by the Requestor).

Reference: Request for Inquiry dated June 25, 2021

- [14] The Requestor further provided:

At the may 9th meeting Our Worship, Mayor Pennell submitted a “vehicle expense “ of \$245.20 on the Expense report of may 06th. The expense was questioned by a few councillors. The Mayor got loud and stated that he would declare a conflict of interest to appease Councillor Omstead who was insisting on an explanation.

At that time, I assumed it was probably mileage cost for an out of town meeting.

On June 9, another mysterious vehicle expense of \$194.80 appeared from Mayor Pennell on the June 4th expense report.

At this meeting, after more questioning, it was finally revealed that the vehicle expense was actually a long-distance telephone charge which the mayor had received due to signing in with the wrong number for a zoom meeting. Thus he had received a nearly \$400 bill in long-distance charges.

Council was understanding and passed the report. (sic)

Reference: Request for Inquiry dated June 25, 2021

- [15] When interviewed by the Investigator, the Requestor was unsure whether their allegations against Mayor Pennell were a breach of the Code of Conduct and had remorse regarding the cost of an investigation to the taxpayers. The Requestor said that although they did not agree with the Mayor’s decision, they believed Mayor Pennell was an honest man. The Requestor added that any result of the investigation would have been light and meaningless.

Reference: Interview of Requestor

- [16] The Requestor stated that they took issue with the two telephone expenses (\$194.80 and \$245.20) that were submitted as vehicle expenses. Even though they had no doubt that Mayor Pennell’s telephone bill expenses were legitimate and were satisfied with the explanation but advised that they would have preferred that it had been done during the initial challenge by Councillor Olmstead on May 12, 2020.

Reference: Interview of Requestor

[17] On one hand, the Requestor thought the telephone expense might have been a filing error, but on the other hand, he believed it should have been disclosed during the first meeting.

Reference: Interview of Requestor

[18] Mayor Pennell confirmed with the Investigator that the two (2) long distance bills valued at \$245.20 and \$194.80, resulted from mistakenly connecting to what he thought were toll free numbers during Council-related Zoom meetings from his home. Mayor Pennell recalled the telephone bill being astronomical and was divided into two parts because the second portion of the bill fell outside of the first billing period. He advised the bills were submitted to the Clerk-Treasurer, as phone bills, not vehicle expenses, and his wife changed their long-distance plan in order to enable unlimited long distance calling for \$35.00 per month to make sure it didn't happen again.

Reference: Interview of Mayor Pennell

[19] The Clerk/Treasurer confirmed that Mayor Pennell had submitted the phone bills for reimbursement. That the charges were included on the Mayor's expense form and that unfortunately, the form at the time, was only set up to capture vehicle/travel expenses and not other miscellaneous expenses a member of Council might incur.

Reference: Interview of the Clerk/Treasurer

[20] The matter was brought to Council on both occasions and put to a vote, which was subsequently passed.

Reference: Interview of the Clerk/Treasurer
Interview of Mayor Pennell

[21] At the May 12, 2020, Council meeting, Mayor Pennell made the following Declaration of Conflict of Interest: Mayor Pennell declared a conflict of interest on Agenda Item No. 10 – Accounts Approval Report, Reason: *“Made declaration to ease concern of Councillor Olmstead – regarding an expense submitted by me.”*

Reference: Interview of the Clerk/Treasurer

[22] Members of Council are required to declare pecuniary interest in accordance with the *Municipal Conflict of Interest Act (“MCIA”)*.

[23] “Pecuniary Interest” is not defined in the *MCIA* however, the Courts have interpreted it to mean a financial interest, or an interest related to or involving money. It does not matter whether the financial interest is positive or negative and when considering the existence of a “Pecuniary Interest”, it also does not matter the quantum of the interest.

“Pecuniary Interest” is not defined in the [*Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50], but it has been held to be a financial, monetary or economic interest; and is not to be narrowly defined².

A pecuniary Interest [as used in s. 5(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50] is a particular kind of interest. In *Edmonton (City) v. Purves* (1982), [18 M.P.L.R. 221](#)... (Q.B.), at p. 232 [M.P.L.R.] Moshansky J. turns to the Shorter Oxford English Dictionary definition of “pecuniary” as “of, belonging to, or having relation to money.”

[24] Section 4 of the *MCIA* provides certain situations in which a Member does not need to declare a pecuniary interest. In this circumstance, section 4 (i) would apply which states:

(i) *in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;*

[25] The Mayor did not need to make a declaration in this circumstance.

V. ANALYSIS

[26] The Requestor waited a full year to bring forward a matter they claimed to “.. *believe the incident is a serious breach of conduct and perhaps criminal*’. And further the Requestor submitted that in no way was his complaint retaliatory in nature, but thought it was an issue that should be addressed, even at this late date.

[27] The Requestor alleged to believe Mayor Pennell’s long distance telephone bills were falsely submitted as vehicle expenses in an attempt to cover up his claim for personal phone bills. And further reported that the matter had been considered and approved by Council resolution.

[28] It is clear, that this matter had already been addressed by Council and the Clerk-Treasurer sufficiently explained the use of the expense form and that it was not an attempt to deceive Council.

Dated: September 30, 2021

² *Mondoux v. Tuchenhagen* (2011), 284 O.A.C. 324, [2001] O.J. No. 4801, 88 M.P.L.R. (4th) 234, 2011 CarswellOnt 11438, 2011 ONSC 5398, 107 O.R. (3d) 675 (Ont. Div. Ct) at para. 31, Lederer J. (Gordon J. concurring).

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 DANIEL MAXWELL

I. REQUEST FOR INQUIRY

- [1] On May 14, 2021, Expertise for Municipalities (“E4m”) as Integrity Commissioner received a formal request for inquiry (hereinafter the “Request”) that alleged Daniel Maxwell (“Councillor Maxwell”), as a member of Council for the Municipality of Calvin (the “Municipality”), contravened the Municipality of Calvin Code of Conduct (“Code of Conduct”) The Requestor alleged that Councillor Maxwell during a closed portion of Council did make heated and inappropriate comments towards other members of Council.
- [2] The Requestor more specifically, alleged that during the May 11, 2021, closed portion of the Council meeting, Councillor Maxwell insulted the members of the former Council and specifically Mayor Pennell when Councillor Maxwell made inflammatory statements that:
- past Council and past Councillors did not like a certain community resident;
 - past Council and past Councillors would not work with this resident regarding his request for additional service; and,
 - past Council and Councillors passed by-laws that would prevent the requested service to occur.
- [3] And further, in doing so also insulted current members of Council who were on Council during the time frames Councillor Maxwell was referring to in the above-mentioned allegations.
- [4] The Requestor also reported that this was the third such time Councillor Maxwell had made such statements in a Council meeting.

II. FINDINGS/CONCLUSION

- [5] Based on the evidence before us, we find that Councillor Maxwell did use indecent, abusive or insulting words, tone or expression toward past Council and Councillors, during the May 11, 2021, closed portion of the Council meeting and he, thereby violated Section 7(2) of the Code of Conduct.
- [6] Additionally, Councillor Maxwell did contravene sections 6.1 and 6.2 of the Code of Conduct which requires him to be civil and respectful in meetings and to respect the decision-making process. Councillor Maxwell is also required to communicate the attitudes and decisions of Council accurately and adequately, even if he disagrees with a majority decision of Council.

Recommendations

- [7] 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.

- [8] Council was present for and witnessed the behaviour of Councillor Maxwell and is in a better position than the Integrity Commissioner to measure the offence and the appropriate penalty.
- [9] Section 5.7 of the Integrity Commissioner Inquiry Protocol provides that Council may impose any of the following penalties:
1. A reprimand;
 2. Suspension of the remuneration paid to the Member for a period of up to 90 days;
 3. Other penalties, including, but not necessarily limited to:
 - a. Removal from membership of a Committee or Local Board;
 - b. Removal as Chair of a Committee or Local Board;
 - c. Require repayment or reimbursement of moneys received;
 - d. Return of property or reimbursement of its value;
 - e. Request for an apology to Council, the Requestor or other relevant party;
 - f. Revocation of travel or other budget;
 - g. Request for resignation;
 - h. Trespass Order restricting access except for Council Meetings.
- [10] Additionally, we recommend that Council consider recording their closed session meetings. This is a best practice supported by the Ombudsman.

III. INQUIRY PROCESS

- [11] Upon receipt of the Request, we completed an initial review of the application and the accompanying material submitted by the Requestor and determined that there were sufficient grounds to conduct an inquiry into the matter.
- [12] The matter was assigned to Pete Gauthier (the "Investigator"), an investigator with Investigative Solutions Network ("ISN") as an agent of the Integrity Commissioner who interviewed the Requestor, the Respondent, and the other attendees of the May 11, 2021, closed portion of the Closed meeting.
- [13] Those present at the meeting were: Mayor Pennell, Councillors Sandy Cross, Daniel Maxwell ("Respondent") and Heather Olmstead as well as Clerk-Treasurer Cindy Pigeau.
- [14] The Investigator also considered portions of the recorded Council meetings dated April 27, 2021, May 11, 2021, and June 22, 2021.
- [15] The conclusions that the investigator arrived at with respect to this matter are based upon the standard of a balance of probabilities. 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

[16] After obtaining all the above evidence, the Investigator reviewed it along with the Requestor's, witnesses' and Respondent's statements. Each were assessed for their credibility.

[17] The Investigator found the majority of the witnesses to be credible. They cooperated in the investigation, were straight forward and did not attempt to deceive the Investigator. Additionally, they provided appropriate supporting evidence.

IV. FINDINGS OF FACT

[18] Council met in closed session on May 11, 2021. In accordance with the meeting agenda the purpose of the closed meeting was as follows:

This Closed Meeting of Council has been called by Mayor Pennell as per Section 239(2)(b) of the Municipal Act for the purpose of personal matters about an identifiable individual including municipal or local board employees, as per Section 239(2)(d) of the Municipal Act for the purpose of labour relations or employee negotiations, and as per Section 239 (2)(i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization (RE: Stewarts Road, 2021 Employee Wage Negotiations and Cassellholme).

[19] Due to the confidential nature of closed sessions, we will not articulate the specifics of the discussion other than to report that witnesses interviewed by the Investigator had a very good recollection of the events that transpired during the closed portion of the May 11, 2021, Council meeting and of the alleged comments made by Councillor Maxwell.

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.)

- [20] They confirmed the allegations were accurate and did in fact take place and were not out of character for Councillor Maxwell. Witnesses reported that Councillor Maxwell did often become heated and made inflammatory statements at Council meetings in both open and closed session. One witness reported being shocked by the way Councillor Maxwell spoke to Mayor Pennell and about previous Council in the closed session of the May 11, 2021, Council meeting.
- [21] Councillor Maxwell did not think he contravened the Code of Conduct during the May 11, 2021, closed portion of the Council meeting. He stated that the May 11, 2021, Council meeting was quite a civil meeting, and most Councillors were respectful and professional and followed the Code of Conduct. Councillor Maxwell stated he abided by the rules set by the Mayor and that Councillor Maxwell generally abides by the rules of the Code of Conduct and so does everyone else.
- [22] He did not remember saying anything that he shouldn't have or anything that would be a breach of the Code of Conduct. Councillor Maxwell further advised the Investigator that Councillor Maxwell did not lose his temper at the meeting or lose control of his emotions and had no outbursts. Councillor Maxwell stated that if those in attendance had been insulted by his comments that they would talk to him about it or call him the next day.
- [23] Councillor Maxwell recalled that after the meeting, Councillors commented that it was a very constructive meeting and that they had a good conversation. He was surprised by the allegations because he thought the meeting went well and they had made some progress. Maxwell said that they put everything on the table, all the facts, and they couldn't agree but they put everything out there.
- [24] He stated that he was only able to recall some of the statements that he made. The Investigator found that Maxwell remembered an abundance of information from the meeting, however he stated that he could not recall making any of the alleged comments.
- [25] Councillor Maxwell blamed his own poor memory as the reason for the lack of information he was able to provide the Investigator. He further added that his comments were misinterpreted at the Council meeting.
- [26] Based on a review of the recording of the May 11, 2021, Council meeting after coming out of the closed portion, the Investigator reported that Maxwell appeared to be calm and withdrew the resolution he brought forward in the closed portion of the meeting, stating that he was withdrawing it because of the conversation that took place.
- [27] The minutes of the meeting reflect the following motion being withdrawn by Councillor Maxwell:

2021-124 MOTION TO PROCEED WITH MAINTAINING STEWARTS ROAD AS A FULLY MAINTAINED ROAD Moved by Coun Maxwell and Coun Olmstead that Whereas Stewart's Road is a public road that services four properties, two of which are year-round residents; And whereas the road is used for mail delivery, school bus pick up, courier delivery and emergency vehicle access; And whereas it is in the best interest of the municipality to minimize the risk of liability to the township by assuring the road is safe; And whereas, as per the engineers report, the cost to taxpayers can be minimized by bringing Stewart's road up to municipal standards over a five year period; And whereas Stewart's Road is a unique situation from other seasonally maintained roads with residents having year-round occupancy permits to reside there; Therefore be it resolved that the Corporation of the Municipality of Calvin immediately assume year-round responsibility for maintaining Stewart's Road north of the bridge to Homestead Road and that the road's department will work to bring Stewart's Road up to municipal standards over the next five years. THIS MOTION WAS WITHDRAWN BY COUNCILLOR MAXWELL.

[28] Prior to adjournment, Maxwell stated the following:

- It was a good debate.
- I don't take anything personal at Council.
- I hope I didn't hurt anyone's feelings.
- You have to do what's right sometimes.

[29] The Investigator reported that Councillor Maxwell purposely avoided stating that he recalled the comments he made during the closed session. He was evasive when asked specific questions regarding the comments he allegedly made. Based on the fashion in which Councillor Maxwell attempted to diminish the allegations, and the evidence of other witnesses, the Investigator found that on a balance of probabilities, Councillor Maxwell did make the alleged insulting comments.

V. ANALYSIS

[30] Members of Council are held to a higher standard of ethical behaviour and are expected to adhere to the Code of Conduct. More specifically, members of Council are required to treat each other with respect while debating a matter, only consider matters properly before Council (on the agenda) and support decisions once made by Council.

[31] The agenda of the May 11, 2021, Council meeting indicated that a closed session would be held to receive information about Stewart's Road.

[32] The issue has been a long-standing and divisive issue at the Council table. It is clear that Councillor Maxwell does not support the decisions the previous and the current Council have made with respect to the situation. However, Councillor Maxwell is bound by the

tenets of the Code of Conduct which require members of Council to treat each other with respect and not use indecent, abusive, or insulting words tones or expressions toward any other member.

- [33] Additionally, section 6.1 and 6.2 requires that members act in a civil manner and further that once Council has decided with respect to a matter that a member must accurately and adequately communicate the attitudes and decisions of Council, even if they disagree with a majority decision of Council. It is clear in this circumstance that Councillor Maxwell did not behave in a civil manner as he alleged, nor did he support the decisions of Council.
- [34] Councillor Maxwell promoted a resolution, which he later withdrew, regarding a matter that Council has previously debated and decided on. The decision which was contrary to the resolution proposed by Councillor Maxwell.

DATED: September 30, 2021

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 *OHSA*. 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 *OHSA* 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.

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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. Councillor 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