

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