

Expertise for Municipalities (E4m)
Non-Profit Association
1894 LASALLE BLVD. SUDBURY, ON, P3A 2A4

Integrity Commissioner for the
Township of Chapleau



INQUIRY REPORT/DECISION

**ALLEGATION: CONTRAVENTION OF THE
TOWNSHIP OF CHAPLEAU CODE OF
CONDUCT**

BY: Councillor Lisi Bernier

I. REQUEST FOR INQUIRY

- [1] Expertise for Municipalities (“E4m”), as Integrity Commissioner received a request for inquiry (hereinafter the “Request”) with respect to Lisi Bernier (“Councillor L. Bernier”), an elected member of the Municipal Council (“Council”) for the Township of Chapleau (the “Township”). The Requestor alleged that Councillor L. Bernier contravened the Township of Chapleau Code of Conduct (“Code of Conduct”).
- [2] The Requestor is a member of Council and is therefore entitled to make an Application for an inquiry under section 223.4 of the *Municipal Act*.
- [3] In the Request for Inquiry, the Requestor alleged that Councillor L. Bernier contravened the Code of Conduct when she:
- was overheard discussing confidential information from a closed meeting with a third party during an open (public) meeting of Council conducted via teleconference and witnessed by members of Council; and
 - that the matter discussed in the Closed Meeting is one for which Councillor L. Bernier had previously declared a pecuniary interest.

II. FINDINGS/CONCLUSION

- [4] Based on the evidence before us we find that Councillor L. Bernier contravened section 10.3 and 10.4 of the Code of Conduct by breaching confidentiality when she disclosed information related to the in-camera discussion during an open session of Council.

Recommendations

- [5] 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 their services as a member of council for a period of up to 90 days for each breach.
- [6] This is the second Integrity Commissioner inquiry related to the actions of Councillor L. Bernier and breaches of confidentiality are not to be taken lightly. It is clear in the evidence before us that Councillor L. Bernier believed her actions did not disclose the substance of the closed session and therefore did not constitute a breach of closed session confidentiality. To be clear, she believed it is acceptable to speak about a portion of what was discussed in closed meeting if you do not divulge personal information. This is not accurate. She disclosed to her spouse that Council was discussing the probation period related to the CAO candidate.
- [7] We recommend that Council suspend her remuneration for thirty (30) days.

- [8] It is further recommended that Council consider holding a training session in the immediate future concerning Conflict of Interest and Code of Conduct for all elected Members and senior administrative staff.

III. INQUIRY PROCESS

- [9] 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.
- [10] After receiving the Request for Inquiry, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of the allegations to determine if it is within the jurisdiction of the Integrity Commissioner. We determined that the matter was properly within the jurisdiction of the Integrity Commissioner and the matter was assigned to Sean Sparling and Shawn Mahoney (both herein will be identified generally as the "Investigator") who are experienced investigators with Investigative Solutions Network ("ISN"). As agents of the Integrity Commissioner, they interviewed the respective Requestor, witnesses, and Councillor L. Bernier.
- [11] Additionally, Council Minutes and other pertinent Municipal records from both open and closed sessions as they related to the matters before us were reviewed including:
- Council Meeting Agenda and Minutes April 26, 2021
 - Closed Meeting Agenda and Minutes April 26, 2021
- [12] The conclusions we arrived at with respect to this matter 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 Township'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 dishonesty

The Investigators found the Requestors and the witnesses to be credible. The investigator noted that Councillor L. Bernier with forthright and credible as well.

FINDINGS OF FACT

- [13] The circumstances that give rise to the Request for Inquiry are that Councillor L. Bernier is alleged to have:
- Breached confidentiality by discussing matters subject to an in-camera meeting of Council with a third party, overheard during an open session of Council; and
 - Participated in closed meeting discussions concerning a matter on which she had previously declared a Conflict of Interest.

- [14] Councillor L. Bernier was elected October 22, 2018 for the 2018 to 2022 term of Council commencing December 1, 2018. She is not a first time Councillor. She has served a previous term of Council between 2010 and 2014.

Reference: Township of Chapleau Election Results

- [15] Council was trained regarding their roles and responsibilities in accordance with the *Municipal Act* and the *Municipal Conflict of Interest Act* ("MCIA").

Reference: Township of Chapleau Council Orientation Package

- [16] On April 26, 2021, Council met in closed session to discuss confidential matters related to filling the CAO vacancy. Both the open and closed meeting were conducted by teleconference. The topic for discussion in the closed portion of the meeting was identified on the public agenda as "Item 1. One item concerning labour relations or employee negotiations related to the recruitment of a Chief Administrative Officer".

Reference: Council Meeting Agenda/Minutes April 26, 2021
Closed Meeting Agenda/Minutes April 26, 2021

- [17] Two (2) separate teleconference numbers are set up one (1) for the open public portion of the meeting and another for the closed portion of the meeting. Council must leave the first call, phone into the closed portion number and then when the closed session is complete, return to public meeting call in number.

- [18] Councillor Bernier attended the Closed Meeting and participated in the discussion. Upon transitioning between the Closed Meeting and the subsequent open public portion of the meeting she was overheard speaking to her spouse about the matter that was discussed in the Closed Meeting.

Reference: Witness Interviews

- [19] Upon rising from the in-camera session, the Interim CAO verbally reported the following in open session:

“Council discussed one item concerning labour relations or employee negotiations related to the recruitment of a Chief Administrative Officer”.

After returning to the open-session, Council passed Resolution 13-136:

“That Council authorize the Mayor to issue a revised offer of employment to the CAO candidate as presented.”

Reference: Council Meeting Minutes April 26, 2021

[20] We will not disclose the substance of the discussion held during the Closed Meeting other than that the matter considered was related to negotiating a contract with a CAO candidate. A matter in which Councillor L. Bernier had previously declared a pecuniary interest because her spouse had applied for the position.

[21] When transitioning from the Closed session to the open session, Councillor L. Bernier was overheard speaking with someone about the appropriate length of a probationary period.

Reference: Witness Interviews
Written Declaration date September 14th, 2020
Written Declaration date October 5th, 2020
Written Declaration date October 14th, 2020

[22] Councillor L. Bernier confirmed that she had approached her spouse for information on the standard probationary terms for managers within the Ontario Public Service immediately following a closed meeting of Council. She reported that the identity of the candidate and specific terms discussed in-camera were not shared.

[23] Councillor L. Bernier advised the Investigator that she left her microphone open as she tuned back into the public portion.

[24] When asked by the Investigator *Do you not think there might have been an issue of confidentiality there that was broken in spirit?* Councilor Bernier replied:

“I don't feel like there was and you know, I'm being very honest with you because sometimes- I'm quite willing to admit when I've done wrong. I don't feel like I've breached any confidentially, you know, past or now with my husband. I've never discussed any meetings, ever, or any content to those meetings. I was asking a question just as we were coming into camera, just, you know, if I hadn't gotten a sense or you know, he said, “I didn't know”, I would have just said in the call, “can we go back in camera ‘cause I'm not comfortable”

[25] Councillor L. Bernier publicly exposed information as to what occurred within the closed session. There is no resolution of Council requesting the Councillor L. Bernier consult with her spouse on the length of a probation period.

Reference: Interview with L. Bernier

[26] Councillor L. Bernier confirmed that she had declared a Conflict of Interest regarding the recruitment of a CAO when her husband was a candidate in August/September 2020. She believes that her conflict was resolved when he withdrew his candidacy, and the Township initiated a second call for applications. At that time, she resumed participation in decisions related to the recruitment for a CAO. Councillor L. Bernier stated that her husband had no further interest in applying for the CAO position after he withdrew but acknowledges that there was nothing to prohibit him re-applying.

Reference: Interview with L. Bernier

[27] Councillor L. Bernier's spouse withdrew his application for the position of CAO prior to the April 26, 2021, Closed Meeting.

IV. Analysis

[28] We considered:

- Whether Councillor L. Bernier contravened section 10 of the Code of Conduct when she spoke to her spouse about a matter that had been the topic of a closed session discussion of Council;
- Whether Councillor L. Bernier contravened the *MCI/A* by participating in a Closed Meeting when she had previously declared a pecuniary interest in the filling of the CAO vacancy.

Breach of Confidentiality

[29] Section 10 of the Code of Conduct prohibits members of Council from disclosing or improperly using confidential information.

[30] Section 10.3 specifically considers Closed Meeting discussion:

*Unless required by law, no Member shall disclose the **substance of deliberations** of meetings held in-camera and that are authorized to be held in-camera under the Municipal Act, 2001 or any other legislation unless or until Council discloses such information at a meeting that is open to the public or otherwise releases such information to the public. [emphasis added]*

[31] Councillor L. Bernier admitted querying her spouse about the length of the probation period for the Ontario Public Service. She reported that she did not disclose the name or other material details about the CAO candidate.

[32] Section 10.3 specifically prohibits the disclosure of the substance of the deliberations which is not limited to the name of the CAO candidate or other personal information about the individual.

[33] The meeting agenda acknowledged that the CAO vacancy was a topic of discussion. More specifically, that the discussion would be related to labour relations or employee

negotiations related to the recruitment of a Chief Administrative Officer. This indicates the nature of the closed session matter being considered by Council, it does not disclose specific details of the negotiation. The public would not be aware that the discussion would include the length of the probation period.

- [34] Councillor L. Bernier's query of her spouse about the length of probation periods in the OPS disclosed part of what was considered in the Closed Meeting and constitutes a contravention of section 10.3 as she was not authorized to do so by resolution of Council.

Conflict of Interest

- [35] The *MCIA* requires members of Council to declare a conflict of interest when they have a direct, indirect or deemed pecuniary interest in a matter Council is deliberating.
- [36] "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.

For instance, in *Mondoux v Touchenhagen*, the Divisional Court explained:¹

"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 defined.

Further, in *Campbell v Dowdall*,² Justice Rutherford stated:

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."

In essence, we look at whether a financial interest exists and whether it is direct (personal to the Member), deemed or indirect pursuant to the *MCIA*.

- [37] A Member may have a Direct Pecuniary Interest where the matter being considered by Council affects the Member's own finances.
- [38] A Member may have a Deemed Pecuniary Interest [see s.3 *MCIA*] where a matter being considered affects the finances of a Member's parent, spouse or child [as defined by the *MCIA*].

¹ *Mondoux v. Tuchenhagen* (2011), 284 O.A.C. 324, [2011] 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).

² (1992), 12 MPLR (2d) 27 (Ont Gen Div).

- [39] When Councilor L. Bernier's spouse applied for the CAO vacancy, she would have a deemed pecuniary interest in all deliberations/decisions related to the filling of the CAO vacancy because her spouse had a financial interest in the position.
- [40] When Councillor L. Bernier's spouse withdrew his application for the CAO vacancy, he would no longer have a financial interest in Council's deliberations/decisions related to the filling of the vacancy.
- [41] At the April 26, 2021, Closed Meeting, Councillor Bernier did not have a pecuniary interest and the allegation is dismissed.

DATED: January 17th, 2022