
**Municipal Code of Conduct Investigation for the Corporation of the Township of
Nipigon**

DATE

**July 26, 2023
Revised August 17, 2023**

Code of Conduct Complaint relating to Purpose, Policy statement and Sections 2.4, 4.2,
4.3 & 9.1(a)

Township of Nipigon Code of Conduct (Resolution number 221-2018)
against Mayor Suzanne Kukko (Respondent)

Complaint filed by – Kelly Paakkunainen – CAO/Clerk/Treasurer (Complainant)

Investigation conducted by:
Darrell Matson
Thunder Bay, Ontario

BACKGROUND

In 2016 the Ontario government introduced Bill 68 - Modernizing Ontario's Municipal Legislation Act. Bill 68 contained a number of amendments to the *Municipal Act, 2001*, [S.O. 2001, c. 25 (referred to in this report as the "MA")], the *Municipal Conflict of Interest Act*, (R.S.O. 1990, c. M.50), the *Municipal Elections Act, 1996* (S.O. 1996, c. 32), and various other Acts. These changes imposed new and important obligations on municipalities. The Bill received Royal Assent on May 30th, 2017. It is important to note that the changes to the Acts came into force over a period of time. Some of the changes included:

- Requiring municipalities to establish codes of conduct for members of municipal council and certain local boards, which could include rules that guide the ethical conduct of those members;
- Requiring municipalities to give the public and municipal councillors access to an integrity commissioner, with broadened powers to investigate conflict of interest complaints and provide advice to councillors;
- Providing for a wider range of penalties for contraventions of the *Municipal Conflict of Interest Act*;
- Updating the definition of "meeting" in the MA;
- Requiring municipalities to maintain a register recording all declarations of interest submitted by members of their councils; and
- Setting out how municipalities may allow for electronic participation by council, local board and committee members at meetings that are open to the public. Participants would not be counted towards quorum and members would not be able to participate electronically in meetings that are closed to the public. (Note this was later amended to first allow full participation during the COVID 19 provincial emergency, and again, later, to allow municipalities to choose whether or not to continue to allow full electronic participation.)

The mandated code of conduct for members of council must set out behaviors that members of council are expected to abide by and follow in support of the good governance of the municipality, and more particularly the confidence of the public in their local government.

The Township of Nipigon Code of Conduct (the "Code"), adopted by Resolution 221-2018 states, "it is the responsibility of elected officials to uphold the integrity and ethical accountability which are the foundation of public confidence in government and the political process."

CONTEXT NOTE

In order to be gender neutral, throughout this report, individuals are referred to as “they” rather than “he” or “she”, and other tenses of the pronoun are used accordingly. Direct quotations referring to “he” or “she” (and other tenses) were not altered.

MANDATE

As a result of an application filed by the Complainant on February 13, 2023, the Nipigon Integrity Commissioner (“IC”) was engaged to conduct an investigation (“Investigation”) into the alleged contraventions of the Code.

On February 21, 2023 the IC received notification from the Township of Nipigon to proceed with the Investigation.

Prior to commencing the Investigation, a review of the “Complaint Response/Investigation Procedure” was conducted. In accordance with section 5, the matter on its face, was a complaint with respect to non-compliance with the Code and not covered by other legislation or other Council Policies. Sections of the application made reference to the Declaration of Office document, which is not within the jurisdiction of the IC. Notwithstanding the reference to the Declaration of Office document, it was concluded that the application, as it specifically referenced sections of the Code, was complete and within the jurisdiction of the Nipigon IC. The issues referencing the Declaration of Office are not part of the Investigation.

The Investigation was conducted in accordance with the Nipigon Integrity Commissioner Investigation Protocol.

Township of Nipigon Council, Mayor (Respondent) Kukko and Mr. Paakkunainen (Complainant) were notified on February 25, 2023 that the Investigation was underway.

This Report responds to a complaint and request for Investigation received against Mayor Kukko arising from Mayor Kukko’s (“Respondent”) actions towards Mr. Paakkunainen (“Complainant”) in his role as CAO/Clerk/Treasurer. The application was provided in the form of an affidavit.

ALLEGATIONS

On January 26, 2023, the Complainant sent a letter to the Respondent with the details of their concerns. The correspondence sought a resolution to the complaint without resorting to the formal complaint procedure. The Complainant requested that the Respondent provide a response by February 3, 2023. A reply was received on January

30, 2023 that stated the Respondent would respond once they received advice from township legal counsel on their response to the complaint.

On February 13, 2023, the Complainant filed a formal Integrity Commissioner Request for Investigation (Application) in the form of affidavit, alleging that the Respondent's actions toward them contravened sections of the Code.

PURPOSE OF THE INVESTIGATION

The purpose of this Investigation is to determine if the Respondent, violated the Purpose, Policy Statement (Key Principles) and Sections 2.4, 4.2, 4.3 & 9.1(a) of the Code, as alleged in the Application.

The affidavit states:

“Since the election, Mayor Kukko’s actions and communications with me (i.e., the Complainant) have been disrespectful, discourteous and demonstrate animosity.”

The alleged sections of the Code in violation are:

From the Section headed “Purpose”:

- *The decision-making process of Councils open, transparent, equitable and accountable;*
- *Public office is not used for personal gain;*
- *Members behave in a manner that is both ethically responsible and accountable at all time in upholding the public interest and will withstand public scrutiny;*
- *Members demonstrate an understanding of the fundamental rights, privileges and obligations of their elected position;*
- *Members are provided with and able to obtain information on the ethical propriety of conduct in different situations.*

From the Section headed “Policy Statement”:

- *Council shall serve and be seen to serve constituents in a conscientious and diligent manner;*

- *Council shall be committed to performing their functions with integrity, honesty and accountability, and to avoid the improper use of the influence of their office, and conflicts of interest, both real and apparent;*
- *Council is expected to perform their duties in a manner that promotes public confidence and will bear close public scrutiny.*

From the Section headed “Standards”:

- *2.4 Council Members shall not access or attempt to gain access to confidential information in the possession of the township unless it is necessary for the performance of their duties and not prohibited by law or Council policy.*
- *4.2 Council Members shall acknowledge and respect the fact that employees work for the Township of Nipigon as a corporate body and are responsible for making recommendations that reflect their professional expertise and corporate objectives, without undue influence from any member of Council*
- *4.3 In addition, Council shall acknowledge and respect the fact that the Township of Nipigon employees carry out directions of Council as a whole and administer the policies of the Township of Nipigon. Members of Council shall refrain from using their position to improperly influence employees in their duties or functions to gain an advantage for themselves or others.*
- *9.1(a) Council may only use Corporate Resources for activities connected with the discharge of their official duties.*

The affidavit states that Mayor Kukko’s conduct is a breach of the Code because:

- *Mayor Kukko has not been open, transparent, equitable and accountable because she has not disclosed her personal vendetta against me and that her actions are personally motivated*
- *Mayor Kukko is using her position as Mayor for personal reason, gain access to confidential information and improperly using the influence of her office*
- *Mayor Kukko is not behaving in an ethically responsible and accountable manner*
- *Mayor Kukko’s actions do not promote public confidence or bear close scrutiny*
- *Mayor Kukko does not acknowledge or respect the fact that Township employees work for the Township and not Mayor Kukko and has sought to improperly influence employees in their duties of functions to gain an advantage for herself.*

The Complainant's name is disclosed in this Report as they agreed to release their identity in their affidavit.

INVESTIGATION APPROACH

The Investigation was conducted in accordance with Township of Nipigon Code of Conduct and Complaint Response/Investigation Procedure.

In conducting the Investigation, the principles of procedural fairness were applied and include the following elements:

1. Provide the complaint to the Member whose conduct is in question, with a request that a written response to the allegation(s) be provided. The IC may review and discuss with the Respondent any information provided in the response to determine the relevance to the matter. A time period for responding will be specified with the request. A request for an extension to the time period specified will be considered.
2. Provide a copy of the response, and any accompanying documents and materials provided by the Respondent, to the Complainant with a request for a written reply. The IC may review and discuss any information provided in the response to determine the relevance to the matter. A time period for responding will be specified with the request. A request for an extension to the time period specified will be considered.
3. Review the responses provided by the Respondent and the Complainant and, if necessary, undertake interviews with witnesses to clarify the information received. The IC may also request access to all books, accounts, financial records, electronic data, records, reports files and all other papers, things or property belonging to or used by the municipality that the IC believes to be necessary for an Investigation.
4. Follow up interviews with the Respondent, Complainant or witnesses if required.
5. Once the report of the IC has been drafted, if the findings are in support of the allegations of the Code of Conduct, the Respondent will receive notice of the findings, the basis of the findings, the recommended sanctions/remedial actions and be provided an opportunity to comment.
6. Finalize the report, and advise both the Respondent and the Complainant of the outcome.

7. Submit the report in accordance with the Protocol.

General note: At any time during the Investigation process where the IC believes that there is an opportunity to resolve the matter, and both of the parties agree, efforts to achieve an informal resolution may be pursued.

In completing this Report, the IC interviewed the Complainant, the Respondent, and 10 other witnesses. The IC also reviewed several hundred pages of paper documents and electronic documents, including email and text message exchanges, council minutes and council package documents.

The witnesses are not named as they requested that their names not be released in the report.

PROCEDURAL ISSUES

The Council Code of Conduct was adopted by resolution and does not take the form of a by-law.

Typically, resolutions expire upon the conclusion of the Council term of office. Accordingly, important and lasting documents such as codes of conduct should be adopted by by-law rather than by resolution.

Some municipalities use “confirming by-laws” to raise the status of resolutions to the status of by-laws, however, Nipigon Council does not ascribe to this practice.

Despite this irregularity, the IC recognizes that every municipality in Ontario is required, by law, to have a Code of Conduct for Councillors (Municipal Act, 2001, S.O. 2001, c. 25, as amended, Subsection 223.2(1)). Accordingly, the Integrity Commissioner has proceeded with the Investigation on the basis that the Code of Conduct adopted by resolution by a former Council remains the current Code of Conduct.

Council is respectfully advised to adopt a Council Code of Conduct by by-law.

BACKGROUND FACTS AND CONTEXT

The scope of the investigation was confined to alleged violations of the Code that were contained in the Application.

The Respondent is the current Mayor of Nipigon. Some events described occurred before their election. As, at that time, they were not a member of Council, they were not

bound by the Council Code of Conduct. Accordingly, these prior events were reviewed solely for context purposes.

The Complainant submitted an affidavit in support of their complaint. It references occurrences that date back to late 2019, when the Respondent was an employee of the Township of Nipigon. The Respondent did not become a member of Council until they were sworn in on November 15, 2022.

The IC has not provided the details from the interviews conducted in this report as the IC is required by provisions in the *Municipal Act* to maintain confidentiality of the individuals that are interviewed. Disclosure of interview details will disclose information that can be used to identify witnesses.

The affidavit also referenced events relating to the involvement of the OPP. These events took place in 2020. As these events took place prior to the Respondent becoming the Mayor, the IC did not investigate nor make any findings in that regard.

During the investigation, correspondence regarding the Firesmart program and the Edge Arts proposal were provided by the Complainant. The IC reviewed the documentation and determined that the correspondence was initiated by another member of council and not included in the investigation.

Subsection 223.6(2) of the *Municipal Act* states that IC may disclose in this report such matters as in their opinion are necessary for the purposes of the report. Disclosure of all the content of this report is, in the IC's opinion, necessary.

The following is a summary of facts, as determined by the IC.

Contextual Facts: Matters Arising Prior to the Respondent becoming a Member of Council

1. December 2019

At this time, the Respondent was an employee with Township of Nipigon.

An anonymous letter was mailed to the Township of Nipigon with complaints against the Complainant.

Council determined that the complaints would not be dealt with as they were anonymous. Council arranged training and education to staff.

The Respondent has confirmed that they did draft and submit these complaints anonymously, out of fear of retribution.

2. January – February 2020

The same or a similar complaint to the December, 2019 anonymous complaint, was received by the Township of Nipigon. Allegations involved actions by the Complainant from late 2017 to late 2019. The Respondent, at this time still a Township employee, had filed this formal complaint (“the 2020 Complaint”).

Council, in receipt of this complaint, hired a third party (Elizabeth McLeod of O’Neill & Associates) to investigate the complaint. Council was appraised of the outcome of the investigation, and initiated corrective action. Records show compliance with the corrective actions recommended in the report, initiated by the (then) Council. All parties were provided summary reports of the findings. Only Council received the full report, dated February 20, 2020 (the “McLeod Report”).

Although many of the accusations are not upheld, the McLeod Report does conclude that there is a “toxic workplace” environment.

3. March 2020 – June 2020:

The worldwide COVID 19 Pandemic hit. Throughout 2020, as occurred with employees of most Ontario municipalities, employees of the Township were either laid off, or, where possible, worked from home.

E-mails provided make it clear that the Respondent was off work for some weeks, but had started working from home, on an increasing hourly basis and, by the end of May, was ready to return to 5 days per week. They refused, however, to return to work from the municipal office, stating that they could not do so until the recommendations in the McLeod Report were undertaken, as they felt that “nothing has changed”. Emails also indicate that they would not communicate with the CAO (the Complainant) by telephone, and it appears that they avoided email communication as well.

4. July 2020

The Respondent’s employment is terminated without cause by the Township of Nipigon Council. Records and witness interviews confirm that Township Council (not the Complainant) initiated this action. All issues associated with the employment termination were successfully resolved, and confidential Minutes of Settlement were agreed to by the employer and the employee. The Minutes of

Settlement contain non-disclosure provisions, and commitments by the Township not to disparage the Respondent.

The Complainant was not a participant in the termination of the Respondent's employment. They did not receive, review, sign, or obtain a copy of the Minutes of Settlement. The Township's solicitor drafted the dismissal letter, which was signed by the Deputy Clerk.

It is noted that the McLeod Report states that Ms. Kukko (the Respondent in this case) "had clear concerns regarding her job security" (page 7, bullet point 2).

(The evidentiary record is "silent" between the Respondent's dismissal in July, 2020, and the 2022 Municipal election campaign period.)

5. May-October 2022:

This was the campaign period for candidates in municipal elections in Ontario.

The Respondent registered for, and campaigned for, the office of Mayor.

There were accusations by the Respondent that the Complainant interfered in the Respondent's campaign based upon a single event, being a conversation between the Complainant and a constituent. Township Council was advised (via letter dated October 13th, 2022) of the accusation ("the 2022 Complaint"). The then Council, nearing the end of its term, did not respond to the letter. This concerned the Complainant, given the accusations against him, personally, which he denied were accurate, however, the (then) Mayor wished to adopt a "wait and see" approach to the complaint. The letter was provided to the Township's solicitor so that they could review the letter and provide advice.

The Respondent was elected Mayor for the Township on October 24th.

6. November 2022:

The new Township Council, including the Respondent as Mayor, was sworn into office on November 15, 2022.

Facts Relating to Matters Arising After the Respondent was Elected as Mayor; Prior to Submission of the Application

7. December, 2022

The Respondent, through their solicitor, by way of letter dated December 13, 2022, advised the new Council that the 2022 complaint would not be pursued.

8. November, 2022 - March, 2023 (Employee Exit Interview Issue)

The Respondent requested information relating to employees who had fairly recently left the Township's employ. They were looking for access to "exit interview" information. Specifically, they requested exit interview notes.

The Respondent seeks to complete an exit survey, along with another member of council, relating to a previous employee. They request the employment polices of Nipigon, for the purpose of reviewing same to recommend some changes regarding an exit interview policy. The Complainant confirms It was the role of the CAO to complete exit interviews and provide the information to Council. (No formal policy exists in this regard). The Complainant seeks clarification as they understand this is their role. The Complainant is advised by the Respondent that a third party would be neutral in order to put the employee at ease and encourage an honest response.

Councillor Sakamoto as requested by the Respondent, requests a cost estimate and availability for a human resources firm to undertake the exit interview and prepare the associated report.

On December 14, 2022, the Respondent directs the Complainant to bring forward a policy on exit interviews for Council's consideration. Following this direction, the Respondent provided the Complainant with input into the development of this policy, suggesting that 2 past employees be included in the independent firm's mandate in order to follow best practices and avoid a missed learning opportunity.

In the context of preparing the policy requested by Council, the Complainant conferred with Trendline, the HR firm he had been working with related to the recommendations arising from the 2020 Complaint. On December 28, 2022, Trendline raised concerns regarding confidentiality issues in conducting a second exit interviews with past employees. Trendline advises that permission to do so should be provided by those individuals.

The Respondent on December 28, 2022 requests the exit interviews for the two past employees.

The Respondent on December 28, 2022 updates council on the policy development process, including obtaining permission from the past employees.

On January 3, 2023, the Respondent directed the Complainant to prepare the necessary documents to bring to council a recommendation for an HR firm to create an exit interview policy and interview questions.

On January 27, 2023, the Complainant advised that they had prepared a draft policy. In order to save the Township money, the Complainant will have it reviewed by an HR firm the following week and, if feasible, have it ready for the February 7th Council meeting.

A draft exit interview policy was reviewed by Council on February 21, 2023 with amendments requested. The amendments were made, and the Exit Interview Policy was approved by Council on March 7, 2023.

On March 16, 2023, the Respondent requested that a resolution be presented on Tuesday to amend the policy to include employees that have left the Township's employment since September 2022 be given the opportunity to complete an exit interview. On March 21, 2023, Council considered and approved the amendment.

On March 27 & 29, 2023, employee exit interviews were conducted with two former employees by an independent human resources firm (Evolv Consultants). The results are provided to council; but not to the Complainant. Both former employees participated on the condition that their responses remain strictly confidential. Both had previously been interviewed by the CAO as "exit interviews". Both individuals gave information to the consultants that they had not shared with the Complainant.

9. Nov 2022 – May 2023 (Council Meeting Postings/Recordings Issue)

Mayor-Elect Kukko (the Respondent), prior to being sworn in, requested that, for the November 22 council meeting agenda, administration be directed to look into purchasing the necessary AV equipment so that online council meetings could be heard. In addition, it was suggested that this equipment could be used for recording the meetings so they can be posted on line. At the current meetings, council cannot be heard because there are no microphones used. The November 22nd meeting was, accordingly, recorded and posted. Subsequently, the Respondent (now the Mayor) advised the Complainant that they would have preferred that the recording and posting did not start with their first meeting when many of the new council were just "figuring things out".

Subsequent emails, between this time, and May, 2023, show that the Respondent both gave direction to the Complainant regarding the recording and

posting of meetings, and the posting of the council agendas, and also criticized the Complainant for following those directions without having a formal policy in place. In their response to the Complaint, the Respondent states that “once in office I took the lead in having meetings recorded and posted on line. Our council packages are now also posted on line. These are all part of my plan to have a more transparent municipal government than the past council”.

10. December, 2022 – June, 2023 (2023 Complaint; Re-visiting the 2022 Complaint)

A “Workplace Harassment” complaint form was completed and submitted by an employee against the Complainant (the “2023 Complaint”). The date on the form is January 11, 2023.

A special meeting of Council was convened for January 26, 2023, with an external clerk, Rosalie Evans, (the “Acting Clerk”) at which time the 2023 Complaint was to be presented for consideration. Instructions to the Acting Clerk for agenda preparation for this meeting were provided by the Respondent, and included the 2022 Complaint and the 2023 Complaint.

At the special meeting, the Council considered the 2022 Complaint to have been concluded and did not direct any further action. The Council directed an investigation into the 2023 Complaint.

It is noted that Mayor Kukko properly declared an interest in the matter relating to the 2022 Complaint, and was not present during discussions relating to that matter at the council meeting on January 26th, 2023.

The Acting Clerk was directed to, and did, obtain the services of a third party (Shawn Bell, solicitor with Edwards Bell Jewitt) to undertake the investigation into the 2023 Complaint.

Mr. Bell submitted their report regarding the 2023 Complaint to the Acting Clerk on March 31, 2023. This report was presented to Council at a special meeting (administered by the Acting Clerk) on April 12, 2023. At this meeting, it is determined that two members of council, (the Mayor and Councillor Mackenzie) will meet with the parties to the 2023 Complaint, separately, to provide the parties with a summary version of the report by Mr. Bell. The Acting Clerk received the summary version from Mr. Bell on May 2, 2023, and forwarded it to the Respondent on the same day.

On May 31st, 2023, the Complainant advised Council (via email) that, as they had heard nothing relating to the 2023 Complaint, they had contacted the Ministry of

Labour. The Acting Clerk was directed to, and does, send each of the parties to the 2023 Complaint a copy of the summary report, via email, on June 1st, 2023. The Complainant responds by email (to the Acting Clerk and Council) stating that they disagree with Mr. Bell's findings.

Filing of the Application:

11. January 26, 2023/February 13, 2023 – present (Generation of/Investigation of the Complaint that is the Subject Matter of this Report – the “Application”)

On January 26th, the same date as the special meeting noted above, the Complainant sent a letter to the Respondent, via email, with the details of their concerns. The correspondence sought a resolution to the complaint without resorting to any formal complaint procedure. The Complainant requested that the Respondent answer by February 3, 2023. A reply was received on January 30, 2023 that stated the Respondent would respond once they received advice from Township legal counsel. The Complainant did not receive any further response from the Respondent relating to their request for informal resolution. On February 13, 2023, the Complainant filed a formal Integrity Commissioner Request for Investigation (Application) in the form of affidavit, alleging that the Respondent's actions toward him contravened sections of the Code.

A subsequent attempt to resolve the matter without formal investigation, facilitated by the IC, was not successful.

Matters Arising After the Filing of the Application

12. January 27, 2023

Councillor John Zechner resigned their position as a member of Council. (Their replacement, Glenn Hart, was appointed on March 7, 2023.)

13. February - March 2023 (“Old Mill Site” Issue)

In late February, the Complainant advised the council members, by email, that a site meeting with potential purchasers at the “Old Mill” site had been postponed and that when a date is set, they would inform Council.

Email exchanges followed in which the Respondent asked questions, and also suggested another member of council (Councillor Pelletier) had a pecuniary interest in the matter. The Respondent stated that council needed to be involved

in negotiations. The Complainant responded, indicating that, should council wish to be at the site meeting, to advise of a suitable date, and who would be in attendance. Emails involving clarification between a “site visit” and actual “purchase negotiations” followed.

Both the Complainant and the Respondent acknowledged some miscommunication on the matter. The Respondent advises the Complainant and members of council that if it is an on-site meeting regarding structures, then it is not necessary for council to attend unless members are interested. The Respondent asked the Complainant to advise council when/if a negotiation meeting is booked.

On March 1, 2023 the Complainant advised the Respondent and council that they contacted the potential purchasers the evening on February 7, 2023 after the council meeting to arrange a meeting. The potential purchasers were not available that week which left the week of February 20, 2023. The Complainant was not available that week due to personal reasons which resulted in advising Council that a site visit would be rescheduled. The Respondent requested that:

“in the future it would be appreciated if you could please provide this update to us in a timely manner. I will be at the site visit tomorrow at 4 p.m.”

The Complainant replies to the Respondent and Council:

I am forwarding this message as per Mayor Kukko’s last e mail commenting that I should be providing updates in a timely fashion

This was sent to me within 3 hours of me returning to work from a very personal tragedy in our family that we are still dealing with.

I do not feel I have to apologize or justify for not informing Council that I had to reschedule a meeting after the ... (personal circumstances disclosed)

The Respondent states:

Clearly that is not what I was referring to. You called the party on Feb 7 and they were not available to meet with you for over a week. I’m saying it would have been good to know that earlier than today. Perhaps an email on Feb 8th or 9th to let us know the update. Less than 4 weeks ago things were moving along, we asked you to further negotiate. Last week we had no update on any negotiation or action, written or otherwise. Now all of a

sudden we are being told that theare looking elsewhere. After 3 weeks? That is not a long time for a major deal like this. I do not appreciate the pressure tactics. We are negotiating in good faith, at least from councils perspective we are. That is clear from our discussions at the Feb 7 council meeting. Lets continue to do that with at least two council members at the table.

Subsequently, some councillors met with the potential purchaser at the site. The Complainant advised that they would amend the council agenda to include the old mill site. They explained the sale of the land process. They also requested clarification of some of the issues. The Complainant did not attend the site visit.

14. March - April 2023 (Bell Street Apartment Issue)

The Respondent sent an email to the Complainant regarding this matter. They stated:

“This has been sent to all council members. There will be no back and forth email discussion regarding this memo over the next few days, please. As you asked, I have provided all of the info I have gathered and the follow up questions I have. Council members may have additional questions after reading this. Please be prepared to provide answers at Tuesday meeting. I expect because there are identifiable persons in regards to this issue that it will be in camera”.

This item appears on the April 4 2023 council meeting agenda. A closed session was convened.

On the instruction received from the Respondent on March 31, 2023, the Complainant prepared a report on the issue based upon information obtained from Nipigon files. This property matter predated the Complainant's tenure as the CAO, and there had been no direction to the CAO from the previous council to deal with this property.

Both the Respondent's memo and the Complainant's response document are made available to Councillors for the closed session. It is clear that the Respondent had attended a meeting regarding this property matter and did not include the Complainant.

During the closed session meeting, the Complainant made multiple attempts to present their memo, which had been prepared at the Respondent's request. Their memo contained information that was inconsistent with the Respondent's

(Mayor's) memo. During the meeting, the Respondent had two outbursts toward the Complainant, and the Complainant requested that the councillors address the Respondent's behaviour. A Councillor intervened and requested that the CAO be allowed to continue. The CAO continued, however a second outburst by the Respondent occurred. At this point in time, the same Councillor intervened as the meeting was out of control, and council moved on to the next agenda item.

15. April, 2023 (Former Councillor's iPad Issue)

Councillor Pierre Pelletier resigned on April 13th, 2023. (His replacement, Gayle Westhaver, was appointed on June 6th, 2023.)

On April 14th, 2023, the Respondent sent an email to the other council members and the Complainant stating:

"There is information contained within Mr. Pelletier's email account and iPad that is strictly confidential and cannot be seen by anyone but Council. I am directing CAO Paakkunainen to not access the iPad or Mr. Pelletier's council e-mail account and immediately seal the iPad in a box or envelope and put it in the mayor's mailbox. I will pick it up and ensure all of that information is removed and then return it to the municipal office. Mr. Pelletier has indicated I have permission to do so as he failed to delete the information before handing it over to CAO Paakkunainen".

The iPad was isolated and remained so until the IC requested access to it on May 5, 2023. The iPad was released to the IC, who reviewed relevant emails. The iPad was returned by the IC to Brickhost (the IT company who manages IT matters for the Township) on June 12, 2023. Nothing reviewed was relevant to the investigation or was already in the possession of the IC.

It is further noted that one of the roles of the Complainant, as CAO of the Township, was to manage tablets (i-pads) for Councillors in conjunction with Brickhost.

16. May, 2023 ("Day of Action" Issue)

The "Day of Action" is a provincial initiative relating to litter clean-up. Administration had scheduled the "day of action" for May 9, 2023, involving a number of organizations.

At the May 2, 2023 Council meeting, Council reviewed the correspondence provided by the Province of Ontario and requested that schools and community groups be contacted to co-ordinate a date.

One of the organizations participating in the event advised the Culture and Recreation Manager that the Respondent had rescheduled the clean-up to be later in the month. There had been no consultation with Administration, including the Complainant, in this regard.

The Respondent states that they were not aware the May 9, 2023 event was happening so they reached out to see if a potential date of May 25 would be good for the schools. The Respondent acknowledges that “if there is a plan for May 9 that’s fine”.

On May 16, 2023 Council approves a resolution that declares the last Thursday of May as the annual Mayor’s Community Clean-up Day with the first annual event to be held on May 25, 2023.

On May 17, 2023 the Respondent advised the Culture and Recreation Manager (but not the Complainant) that the official clean-up day will be May 25, 2023. In this communication, they provided direction on how to co-ordinate the event including their Mayor’s role. At this point, the Respondent had already contacted the schools to confirm that May 25 was a good date. The Respondent had also co-ordinated a meeting with the Culture and Recreation Manager, who is responsible for event planning, to “quickly go over everything”. The Complainant was not included in these conversations.

The Complainant sent the Respondent an email, and asked them not to send direction to staff, as they had already communicated the outcome of the May 16, 2023 Council meeting to the Culture and Recreation Manager. The Respondent then, directed the Complainant to have the Culture and Recreation Manager contact them directly so that they could be kept up to-date on the clean-up and the Mayor’s program. The Respondent’s email states:

“So, it might be easier if she updates me directly instead of going through yourself”.

The Respondent also directs the Complainant to ensure that staff are available to pick up the garbage bags from the schools and any bags that are left in the community at the end of the clean-up.”

The Respondent later in the day advised the Complainant that Council gave direction to administration to have the Culture and Recreation Manager contact the Mayor directly so that they can work together on the event and apologized if they have overstepped.

17. May, 2023 (Councillor Expense Issue)

Councillor Sakamoto attended the NOMA conference in Thunder Bay. They submitted expense claims for accommodation, mileage and fees relating to the boarding of their dog during their absence from Nipigon. Their expenses related to accommodation and mileage were paid, however, the Deputy Clerk advised that the fees for kennel boarding were not covered. Councillor Sakamoto requested, and received, a copy of the travel expense policy for council members.

Councillor Sakamoto emailed the Respondent (not Administration) with the following information:

“Yesterday I submitted my expenses for the NOMA conference in Thunder Bay, which consisted of accommodation, mileage and dog boarding. The accommodation and mileage were quickly processed but the dog boarding was denied. Upon review of the Council Expense Policy, dog boarding would fall under item 5 Expense: incidental or out of pocket. I am well under my allowable budget for travel expense and have no other means to care for my dog while I am away for Town related activities. Please let me know your thoughts on this and how best to move forward.”

An email exchange between the Complainant and the Respondent follows, in which the Complainant advises that Administration is following policy, and if the Council wishes the policy to be reviewed, that can be added to a future agenda. The Respondent disputes the Complainant’s interpretation of the policy and states “Councillor Sakamoto should be reimbursed for her out of pocket expense”.

The Council expense policy was on the agenda for Council’s regular meeting on June 6, 2023. It was deferred for further input.

As of July 10, 2023, Councillor Sakamoto has not been reimbursed for her expenses relating to dog boarding.

PRELIMINARY FINDINGS

The Respondent and the Complainant have a regrettable history, which impacts their current working relationship. There is a very evident lack of trust on the part of each party to the other party. On the part of the Respondent, it is clear that this distrust has existed since at least 2019, and probably since 2017 (the onset of the issues related to the 2020 Complaint), years prior to the Respondent becoming the Mayor of the Township in which the Complainant is the CAO/Clerk/Treasurer (“CAO”). On the part of the Complainant, the timing is less clear, however, the Application is evidence that the Complainant honestly believes the Respondent has a personal vendetta against them.

Since the 2022 municipal election, the Respondent, as the head of council (responsible for overall direction and strategy) and the Complainant, as the CAO (responsible for administrative functions), have rarely, if ever, met in person nor have had regular scheduled meetings. The Complainant does not object to scheduled or in-person meetings as this was their way of doing business prior to the Respondent becoming Mayor. Other members of Council will, at times and when required, meet with the Complainant in person. The Respondent (Mayor) has expressed concern in meeting with the Complainant on a one-on-one basis, and has expressed their preference to communication by email rather than by telephone or by in-person meetings. This is a manifestation of the lack of trust noted above.

Some preliminary observations are;

- there is no employment contract between the Complainant and the employer (the Township);
- the Township of Nipigon does not have a performance management program in place for the CAO;
- the Code has no relevant definitions to assist in its interpretation; and
- Nipigon is a “small town” where many individuals know each other, or know “of” each other, and where individuals meeting outside of a business context is a regular occurrence.

The Purpose and Policy Statement (key principles) sections of the Code are not a basis for a complaint. These sections are more of a “preamble” to the Code, and express an overarching policy statement. They can be used as an interpretive aid, but do not impose a separate duty upon a Member. These are not independently “justiciable” provisions, capable of being decided by legal principles or by a court of justice.

Accordingly, the Investigation was conducted on the basis of allegations relating to Sections 2.4, 4.2, 4.3 & 9.1(a) of the Code, as cited in the Application.

ANALYSIS

As previously noted, the analysis of the facts related to this Application is limited to the relationship of the facts to the Standards set out in the Council Code of Conduct adopted by the Township of Nipigon, as cited in the Application.

Issues and Concerns Reviewed/Investigated

The following are the incidents/issues outlined in the Application and/or arising during the investigation, that were reviewed by the IC for this analysis:

a) The “2020 Complaint”

This is historic, and while it bears no direct relevance to the Application, as the Respondent (complainant in the 2020 Complaint) was not a member of Council at the time. It does provide context to the lack of trust between the parties to the Application.

The Respondent, then an employee with the Township, filed a complaint against the CAO. The 2020 Complaint was properly dealt with by the Council of the day, and should be considered completed. Council of the day received the McLeod Report, and implemented its recommendations. Neither the facts nor the outcome were re-investigated.

Having said that, it is noted that the McLeod Report recognizes the Respondent’s concerns for their job security, and the facts indicate that they were dismissed from employment in July, 2020.

Investigation by the IC disclosed evidence that the Complainant was not personally involved in the Respondent’s dismissal from employment, and, in fact, in May/June 2019 advocated, to the then council to retain the Respondent as an employee in a different role.

b) The “2022 Complaint”

Again, this is historic, and bears no relevance to the Application, as the Respondent (complainant in the 2022 Complaint) was not a member of Council at the time it was initiated (although they were at the time the complaint was withdrawn). This incident again provides context to the lack of

trust between the parties to the Application. The 2022 Complaint was made in October, 2022 (when the Respondent was a candidate for the Mayor's seat in the election), and was withdrawn in December of 2022, after the Respondent had been elected as Mayor. Although the Respondent brought it up again at the Council meeting of January 26, 2023, the Council properly recognized that the complaint had been withdrawn, and should be considered completed. The IC did speak with the Nipigon resident who had allegedly provided information to the Respondent that initiated this complaint, however, the result was not fruitful to the investigation of the issues in the Application.

c) The "2023 Complaint"

This complaint was brought by a staff member against the CAO (the Complainant in this matter.) The Complainant, in the Application, attributes the filing of this complaint to the Respondent having spoken with employees for the purpose of gaining information to discredit them. Witnesses confirm that the Respondent had visited Nipigon facilities to meet with staff. Witnesses also confirm that the Respondent "complained about Kelly" and "nit-picked about Kelly" during these meetings and also asked as a general question "what has gone on over the years?". None of the witnesses, however, acknowledged having been solicited to file a complaint against the Complainant.

The Complainant, in the application, attributes the hiring of an independent third party to investigate this complaint, to the Respondent, personally. Witness interviews and document review do not support that allegation. Council, at its meeting on January 26th, directed the Acting Clerk to obtain an independent third party to undertake the investigation.

This complaint was handled appropriately by Council, and was not re-investigated for the purposes of this report. Nothing indicates a violation of the Code.

d) Employee Exit Interview Issue

It is not possible to address this issue in detail, given the sensitivity and the confidentiality requested by, and assured to, the former employees involved.

The IC has concluded, however, that there was no violation of the Code with respect to Council's handling of this matter. Policy has been appropriately considered by Council and approved.

e) Old Mill Site Issue

Email exchanges were reviewed relating to a site visit at a property the Township had for sale, known as the “Old Mill Site”. While email exchanges on this matter show a confusion and a difference of understanding, there is nothing in the email exchange indicating a violation of the Code.

f) Bell Street Apartments Issue

This incident involved property owned by the Township, and a request by Council for a report on the matter. Emotions ran high at a closed session meeting relating to the matter, when the Complainant had information relating to the matter that differed from the Respondent’s information. This, again, is demonstrative of the lack of trust between the Complainant and the Respondent. The Respondent was highly critical of the Complainant during discussion of the matter. All of the discussion, however demeaning or insulting, occurred in a closed session meeting of Council. It did not involve a public display of hostility between the Respondent and the Complainant. Accordingly, while behaviour might have been inappropriate, nothing indicates a violation of the Code. Council members present “shut down” the conversation, appropriately, under the Procedural By-law. As the Council dealt with the matter, it was not re-investigated.

g) Former Councillor Pelletier’s iPad Issue

The Complainant was directed to, and did, isolate the iPad in question, and did not access its information. The Respondent’s concerns relating to confidential information on the iPad were with respect to the special meeting of Council (April 12th, 2023). Information had been shared with members of Council (and the Acting Clerk) relating to matters which third parties wished to remain strictly confidential, including remaining confidential from the Complainant. There were no e-mails specifically related to the April 12, 2023 special meeting of Council located on the iPad.

Nothing in the IC’s review of information on this iPad had merit or bearing on this investigation.

h) Day of Action Issue

Facts indicate that Township administration (lead by the Complainant) had arranged for a “Day of Action” (about litter) to be held on May 9th, 2023. Without communicating with the CAO (the Complainant), the Respondent

took it upon themselves to contact third parties (school board) and staff members to have the event scheduled for May 25th, 2023.

The outcome of this event was a resolution approved at the May 16, 2023 council meeting that declares the last Thursday of May as the annual Mayor's Community Clean-up Day with the first annual to be held on May 25, 2023.

On May 17 the Mayor generated an e-mail that provided direction to staff. When questioned on their authority to do so by the Complainant, they responded by stating that "Council gave direction to admin to have the culture rec manager contact the mayor directly so we can work together on the event".

In reviewing the video footage of the May 16, 2023 council meeting, a comment by the Mayor is noted, that states:

"As discussed at our public works meeting, I think it was Kristin Dutil that was sort of going to be organizing any kind of community clean up so just direct administration for her to get a hold of me so that we can co-ordinate. I would like to be there present at the clean-up day of course. Anything I can help with because I know staff are very busy and anything in the co-ordination of that I'd like to help, so just get her to contact me at her convenience".

This statement occurred after the resolution had been approved, and is not a Council sanctioned directive that provides authority to the Mayor to not involve the Complainant. Neither the Complainant nor the Culture and Recreation Manager were present at the May 16, 2023 meeting.

The exchange of e-mails and the events as reviewed disclose that the Respondent interacted with staff directly, rather than interacting with them through the office of the Complainant. The exchange of e-mails also demonstrates that the Respondent issued a directive to the Culture and Recreation Manager with no copy to the Complainant. The Respondent, however, did, subsequently apologize for over-stepping their role in that instance.

i) Councillor Expense Policy Issue

Evidence shows there is a difference of opinion between Administration, including the Complainant, and two members of council, including the Respondent, relating to the interpretation of the expense policy. The

Complainant properly advised the Respondent that, in these circumstances, the policy should be re-visited by Council, and that is underway.

No violation of the Code is evident in terms of the handling of this issue.

ANALYSIS OF THE FACTS IN THE CONTEXT OF THE CODE OF CONDUCT

Section 2.4:

2.4 Council Members shall not access or attempt to gain access to confidential information in the possession of the township unless it is necessary for the performance of their duties and not prohibited by law or Council policy.

In terms of Standard 2.4, none of the facts indicate that the Respondent did, or attempted to, gain access to confidential information in the possession of the Township. The Respondent did request information relating to “exit interviews” with former staff members, but they did not do so until they were an elected official, and entitled to access to that information. Exit interviews were, historically, presented to Council (on a confidential basis).

Section 4.2:

4.2 Council Members shall acknowledge and respect the fact that employees work for the Township of Nipigon as a corporate body and are responsible for making recommendations that reflect their professional expertise and corporate objectives, without undue influence from any member of Council

In terms of Standard 4.2, none of the facts support the allegation that the Respondent influenced staff in terms of their ability to make recommendations to council based on their professional expertise. The Respondent disagreed with, as they, as well as any other member of council, are entitled to do, some of the recommendations of the Complainant to the council.

The facts do disclose that, on a few occasions, the Respondent interacted with staff directly, rather than interacting with them through the office of the Complainant. The Respondent discussed matters with staff, and directed staff without involving the Complainant, and without the Complainant’s knowledge.

Section 4.3:

4.3 In addition, Council shall acknowledge and respect the fact that the Township of Nipigon employees carry out directions of Council as a whole and administer the policies of the Township of Nipigon. Members of Council shall refrain from using their position to improperly influence employees in their duties or functions to gain an advantage for themselves or others.

In terms of Standard 4.3, as noted above, the facts do support that the Respondent, as a member of council, interacted directly with staff, without the knowledge of the Complainant. Did the Respondent do so in order to “gain an advantage” for themselves or others?

While not expressly articulated in the Application, the Complainant implies that the advantage gained by the Respondent involved her alleged personal vendetta against the Complainant. There is no other “advantage” (financial or personal) apparent in the Application.

As previously noted, there are no definitions within the Code to assist in its interpretation. It is necessary to resort to external definitions, in the context of the Code (including its preamble), to understand what the council-of-the-day meant when it adopted this Code.

The term “advantage”, used as a noun, in the context of the Code, is understood by the IC to be:

Something that puts a person in a better position than the positions of other people.

(The above is a paraphrase of definitions found on the internet and in the Shorter Oxford English Dictionary.)

It does not necessarily refer to a financial position.

The term “gain”, used as a verb, in the context of the Code, is understood by the IC to be:

To accumulate more of something.

(The above is a paraphrase of definitions found on the internet and in the Shorter Oxford English Dictionary.)

In the context of the Application, the Complainant is alleging that the Respondent used their position as Mayor to increase their leverage over the Complainant, to further their (alleged) personal vendetta against them.

As noted, the parties to this Application have an unfortunate history and neither trusts the other's motives or actions. The Respondent appears to hold the Complainant responsible (wrongly) for their dismissal from employment in 2020. The Complainant appears to believe that the Respondent blames them, personally, for their 2020 dismissal and/or for the allegations in the 2020 Complaint. This is despite the fact that the McLeod Report did not find the Respondent's (then the "complainant's") complaints to have merit as they pertained to them, personally.

Given that the Respondent refuses to meet with the Complainant in person, or have telephone conversations with them, and given the overall tone of the Respondent's communications with the Complainant via email, the Complainant's belief that the Respondent holds a grudge against them is reasonably held.

Given that the Respondent feared retribution for the 2020 Complaint, and given that the Respondent was, in fact, dismissed from employment in 2020, and, given that the Complainant was the CAO of the Township at the time of the Respondent's dismissal, the Respondent's belief that the Complainant was responsible (whether in whole or in part) for their dismissal is also a reasonably held belief. As noted, the IC's investigation determined that the Complainant was not, in fact, responsible for the Respondent's dismissal. Nevertheless, the Respondent's belief that the Complainant was responsible, in the circumstances, is not unreasonable.

To determine whether or not the Respondent used their position to "gain an advantage for" themselves, it is necessary to examine their actions within that context.

As previously noted, the evidence does not support the Complainant's allegation that the Respondent solicited complaints against them through discussion with Township staff. Had the evidence supported this allegation, the conclusion may have been different.

There are no other allegations that would support an effort by the Respondent to use their office as Mayor for personal gain.

Section 9.1(a):

9.1(a) Council may only use Corporate Resources for activities connected with the discharge of their official duties.

In terms of Standard 9.1(a), the facts do not support that the Respondent, as a member of council, used corporate resources for anything other than the discharge of their official duties.

Section 4.4:

Section 4.4 of the Code was not cited in the Application, but, based on the IC's investigation, it merits review. It reads:

“Council shall refrain from publicly criticizing employees in a way that cast (sic) aspersions on their professional competence and credibility.”

Again, without definitions provided for in the Code, it is necessary to look at the commonly understood meaning of “publicly”:

“as to be seen by other people; in public; openly – so that anyone may see”.

(Again, this is a paraphrase of several definitions reviewed.)

This leads to looking at the definition of “public”, which is:

“ordinary people in general”.

(Again, this is a paraphrase of several definitions reviewed.)

As an observation, “complaining” and “nit-picking” about the Complainant to other employees as found to have occurred in the investigation relating to the incident labelled “(c)” – the 2023 Complaint, can be seen to be disparaging the Complainant's professional abilities in “public”. No confidentiality was either requested or assured. While discussions with staff might appear not to be discussions with the “public”, in the context of the Code, which deals with Council/Staff relations as well as Council members' behaviours vis a vis the general public, it is inappropriate behaviour to demean a manager's competence to their employees. In the context of the Code, the IC concludes that speaking to the employees outside of a circumstance where confidentiality is assured, is speaking to “the public”.

Further, in some instances, the Respondent (Mayor) is seen to take, or to attempt to take, control of Township matters with no communication to the Complainant (CAO). This casts aspersions on the Complainant's professional competence and credibility. This approach to conducting Township business undermines the Complainant's role as overall manager of all employees and his role as CAO.

That having been said, it is important to recognize that the Mayor did apologize for overstepping her role on the “Day of Action” issue.

CONCLUSIONS

Investigation by the IC concludes that none of the Code Sections cited by the Complainant, were breached by the Respondent.

The tone of the Respondent's email messages to the Complainant is often less than polite. That having been said, there are no Code provisions addressing such communications.

The IC also concludes that the Respondent's actions in belittling the Complainant to other employees, and in by-passing him in communications relating to Township business, are violations of Section 4.4 of the Code. This is cited as an observation only; without recommended sanctions, in light of the parties' unfortunate history and in light of the fact that the Respondent is new to their role.

RECOMMENDATIONS

As none of the Standards of the Code cited by the Complainant were considered, after investigation, to have merit, no sanctions relating to those matters are included in these recommendations.

Given the history between the parties, given that the Respondent is new to their role, and given that (in one instance) she has apologized, the IC is not prepared to recommend sanctions as a result of violations of Section 4.4 of the Code.

If Township Council so desires, it can impose its own sanctions, within the legal framework.

Should Nipigon Township Council put forward a resolution that is in support of a sanction, specifically a suspension of remuneration, the Respondent is statutorily permitted to make submissions and to attempt to influence Town Council's decision, however they are not permitted to vote and are required to declare a conflict of interest in accordance with 5(1)(a) of Municipal Conflict of Interest Act (MCIA) with respect to any vote.

The Township of Nipigon's Code of Conduct is less than robust, compared to the Codes of Conduct of other municipalities. The IC respectfully recommends that the Township review its Code, consider amending it and adopt it by by-law.

Respectfully Submitted



Darrell Matson-Integrity Commissioner for the Corporation of the Town of Nipigon