

TOWN OF COCHRANE
Integrity Commissioner's Report¹
H.G. Elston

**REPORT ON THE MATTER OF A COMPLAINT
AGAINST MAYOR PETER POLITIS**

Issued: January 25, 2024

PART I - INTRODUCTION

1. I was appointed as the Town's Integrity Commissioner on December 22, 2022. Under section 223.3 (1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "**Municipal Act**"), I am, among other things, authorized to apply the Town's "Code of Ethics for Town Councillors Policy", Policy GO-002 (the "**Code of Ethics**"), as well as any of the Town's procedures, rules and policies governing the ethical behaviour of Members of Council.

2. This inquiry involves a complaint made by the Town's Chief Administrative Officer, Monika Malherbe (the "**CAO**"), on July 7, 2023, under the Code of Ethics and other Town policies, as well as a request for an investigation under section 32.07 (1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended (the "**OHSA**") (the "**Complaint**").

3. The initial complaint was made to the Town's Human Resources Manager, who made Council aware of the complaint. The Manager also advised Council that he would seek advice from the Town's Clerk. In consultation with the Town's solicitor, the Clerk was satisfied that, as a person appointed under statute as an independent official, I was a suitable person to conduct the OHSA investigation. I received an email from the Town's Clerk on July 11, 2023, authorizing me to proceed. Finally, my appointment as an independent investigator was reviewed and endorsed by the representative at the Workplace Safety and Insurance Board who had with carriage of the matter.

4. Accordingly, this report will serve as both a report on my inquiry into the Complaint, under section 223.6 (2) of the *Municipal Act*, and a report on my investigation into allegations of workplace harassment, under section 32.07 (1) of the OHSA.

¹ Municipal Integrity Commissioners conduct inquiries and provide reports on their findings to their respective municipal councils. They may make recommendations for the imposition of a penalty or other remedial action to the municipal council. Reference should be made to the minutes of the municipal council meeting where the Commissioner's report was presented, to obtain information about council's consideration of each report. When possible, a link to the relevant municipal council minutes is provided.

5. In particular, the CAO alleges that she was subject to workplace harassment, bullying and intimidation by the Town's Mayor, Peter Politis (the "**Mayor**"). The CAO alleges that, in addition to or as part of the alleged personal attacks she has suffered at the hands of the Mayor, the Mayor has also contravened several provisions of the *Municipal Act* and certain Town policies designed to ensure good governance and respectful interactions between staff and Members of Council.

6. The CAO's allegations raise the following questions:

- 1) Did the Mayor engage in "workplace harassment" contrary to the Town's "Respect in the Workplace – Harassment Program", Policy HR-006 (the "**Respect in the Workplace Policy**")?
- 2) Was the CAO subject to harassment in the workplace, as defined in the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended (the "**OHSA**")?
- 3) Did the Mayor contravene sections 6(3), 6(7), 6(8), 6(11) and 7 of the Town's "Council and Staff Relations Policy", Policy GO-004 (the "**Council and Staff Relations Policy**")? and
- 4) Did the Mayor contravene Sections 7(d), 7c i), ii), iii), vi) and viii) of the Code of Ethics?

7. Mayor Politis provided me with a 45-page written response to the Complaint on September 26, 2023 (the "**Mayor's Response**"). The Mayor's Response consists of a summary, a series of "considerations", and his response to the specific allegations and supporting documents.

8. Although subject to separate investigations, this report closely mirrors and is being filed concurrently with a second report by me into similar allegations during the same time period against the Mayor, this time, by the Town's Director of Community Services (the "**Director**").

9. In the course of this inquiry, I have spoken at length with the CAO and the Mayor, reviewed extensive written submissions from the CAO and the Mayor, spoken with some Members of Council and Town staff, viewed videos of Council meetings, and reviewed the applicable law and policies.

10. On January 18, 2024, I provided a copy of a preliminary report to the Mayor, asking him for any corrections to the facts he would propose or further information that might affect my findings. Unfortunately, the Mayor was attending the Rural Ontario Municipal Association conference and was not able to respond.

PART II - SUMMARY OF FINDINGS

11. For the reasons that follow, I find that the Mayor has subjected the CAO to workplace harassment, bullying, and intimidation, contrary to the provisions on workplace harassment in the Respect in the Workplace Policy and the OHSA; contravened sections 6(3), 6(7), 6(8), 6(11) and 7 of the Council and Staff Relations Policy, and contravened sections 7(d), 7c) i, ii, iii, vi) and viii) of the Code of Ethics.

PART III – CHRONOLOGY OF KEY DATES

12. On October 24, 2022, Peter Politis is elected Mayor of the Town of Cochrane. (Mayor Politis previously held the position of Mayor between 2014 to 2018.)

13. On November 22, 2022, Council's first regular meeting, Council rescinds the "Delegation of Authority By-law 1464-2021", the requirement to take the "Pledge of Confidentiality", and determines that it will disband and rescind the current "Recreation Advisory Committee" and replace it with and adopt the "Recreation Board Terms of Reference" and adopt the "Economic Development Board Terms of Reference". It further determines that it will "open for review and adjustment" the following policies: Hiring, Procurement, Confidentiality with employees, Council relationship with Employees, Communications, Expense and Code of Ethics.

14. Also on November 22, 2022, Council moved to adopt "Council By-law Number 1525-2022, Being a By-law to Adopt the Mandate and Direction for the 2022 to 2026 Council Term", which was passed on December 6, 2022 (the "**Mandate and Direction By-law**").²

15. The CAO commenced a leave from the workplace on June 28, 2023.

16. On July 11, 2023, Council passes Resolution Number 379-2023, delegating its powers to the Head of Council to provide day-to-day governance and administrative direction to the municipality (the "**Delegation to Mayor By-law**")³, as follows:

- 1) Municipal administrative powers as per Section 23 sub. (2).
- 2) Governance required to facilitate operational directions provided by council or already underway.
- 3) Day to day decisions that would be typically required from the Chief Administrative Officer.

² The Mandate and Direction *By-law* is attached to this report as Schedule "A"

³ The Delegation to Mayor *By-law* is attached to this report as Schedule "B"

17. On November 28, 2023, Council deferred Resolution Number 583-2023, which called for the suspension of the following policies (the “**Policy Suspension Motion**”)⁴:

- 1) Code of Ethics
- 2) Council and Staff Relations (Suspended under Resolution #339-2023)
- 3) Matters Considered in Closed Session
- 4) Consolidated Reserve
- 5) Debt Management and Capital Financing
- 6) Procurement Policy
- 7) Recreation Board Donation
- 8) Fee Reduction Policy
- 9) Tax Rebates, Reductions, and Refunds Policy
- 10) Water and Wastewater Rates
- 11) Water and Wastewater service and Billing Practise

PART IV – THE ALLEGATIONS

15. The CAO alleges that the Mayor’s unwanted behaviour towards her started early in this term of Council and reached a peak in the final weeks of June, 2023.

16. In addition to her written account of the Mayor’s behaviour and our discussions about that, the CAO provided me with a series of e-mail exchanges between her and the Mayor. I have selected a few of these messages and reproduced parts of them here, as they help inform my understanding of the dynamics between the CAO and the Mayor.

17. In an email about the Mayor’s expense account, sent on March 2, 2023, the Mayor says to the CAO:

... Honestly, my expectation would be that once we crossed the threshold of recognizing that the point being made was legitimate and the issue was accurate, that we simply accept and adjust as professionals. For example, “Yes Peter, we agree that the Mayor has discretion and that there is some lane management/understanding required. We appreciate your recognition that there isn’t anything intentional here and will adjust. This shouldn’t be an issue going forward. Thank you for your patience and hope this helps”.

I know you well enough to know that you appreciate and understand the actual issue here. What I’m not sure of at this point is if you may be allowing the “staff defender” in you to get in the way a little. This is my point with our staff culture about being professionals and to not take things personally. The “Executive” role isn’t for everyone.

⁴ The Policy Suspension Motion is attached to this report as Schedule “C”.

The Executive Public Servant role even more so is one where to be successful, one must master professionally managing scrutiny. I feel like this is an ongoing challenge and an area of growth for us ...

18. On June 8, 2023, in a response to the CAO about an incident with a dog at the library, the Mayor wrote:

Thanks Monika.

Appreciate the news that there were no damages or serious issues as the dog was missing most of its teeth. Also appreciate the intentions were good.

Some concerns to share would be:

- 1. We knew the dog had a tendency to not like to be touched and we didn't think it would be an issue in a Library.*
- 2. An incident form was completed by the family but not by us as a municipality (so it seems).*
- 3. I don't see any indication of correspondence being forwarded to the family by the Town apologizing for the incident and expressing the resulting corrective actions. I recognize that this may have been done but just not part of this report.*
- 4. Council has not been provided the courtesy of a notification that the incident has happened and what the follow up was so they are best prepared to answer the inquiries in the street.*

Some questions:

- 1. Have we reached out to legal to seek advice on how we should react to this?*
- 2. Do we have a formal incident report that we as the Town are required to complete when incidents arise that prescribes a process to follow to understand the issue and effectively determine root causes and corrective actions?*
- 3. Can we confirm if any reach out has been done with the family to demonstrate the responsible handling of the issue and to provide the appropriate empathy?*
- 4. While I do [not] see it in this report, have we forwarded correspondence to the family describing the resulting process and choices? Might be best reviewed by legal.*
- 5. Are there any liabilities (or potential liabilities) that will result from this?*

Thanks for the report and happy to chat if there is anything you need from myself or council to assist.

*Thank You – Merci – Mee'Gwetch!
Peter Politis*

19. On June 10, 2023, regarding the opening of the Town's water slide without Technical Standards and Safety Authority ("TSSA") approval, which, as I understand it is required, the Mayor sent an email to senior staff, including the CAO:

I will circle back next week when there is more time, however, same point I've brought up continuously, the Water Slide operated for five years under the Operations Department and all the legalities including insurance were vetted then.

There were no issues brought up by the TSSA and it's not like this was not a visible and public activity. It's in all our marketing material. My recollection is the way it was built (no structure) qualified it as being TSSA compliant. This begs the question, how is it that now it's no longer doable?

We had these same discussions about engineered structures and insurance and the system that was developed then (and used for five years) was developed by the Operations Department indicating all is legal as they have established it.

The insurance is the same as the smash up derby. It doesn't seem like it has to be complicated.

Have we reached out to (name withheld) or (name withheld) to find out how they were able to "enable" the initiative and make everything compliant?

This will need to be flushed out thoroughly.

Thanks for sharing as usual.

20. On June 12 and 13, 2023, the Mayor and the CAO engaged in the following email exchange (arranged chronologically) concerning the Council and Staff Relations Policy.

Good morning Everyone,

We are now just over 6 months into our "relationship" and have had a lot thrown at all of us over this short period of time.

I would at this time like to remind everyone of the Council and Staff relations policy. If you have not had a chance to have a good review or quite simply need a refresher (understandably there have been a lot of policies to review) please try to take the time to do so.

If you have any questions or concerns, please do not hesitate to reach out to me.

Regards,

Monika Malherbe

Thanks Monika.

Upon further review it looks like this policy is outdated and does not incorporate the Board concept and directions that actually are premised on more direct interaction with staff and officers. The policy does not line up with By-Law 1525-2022 (Council Mandate and Directive) and in some places seems to contradict it. Also, the policy seems to be in need of revision to balance out the obligations and behaviour on both sides of the aisle, to in fact be a "Council and Staff Relations" Policy.

As discussed last fall we have been waiting to address this and many other policies to bring them in line with the Mandate and Directive. Do we suspend this policy until then? Or would you prefer we take a less technical approach and manage accordingly while we are in transition?

*Thank You – Merci – Mee'Gwetch!
Peter Politis*

Hi Peter,

It is extremely important to have good relations between council and staff in a municipality and it affects the overall efficiency of the operations. That is the impetus for the Council and Staff Relations Policy. A key role of the CAO is to ensure all essential policies of the municipality are followed. The operations is not normally asked if they prefer to follow policy or not.

I recognize that this policy is slated for review at the request of Council. Council - we have discussed the backlog of policy updates required within the organization. A discussion at the Policies Committee meeting led to the suggestion that we look at outsourcing some of the policy work as the extent of this work is unmanageable in the timeframes being requested as well as the volume of policy review required. A report will be coming to Council requesting Council approval to proceed with exploring outsourcing some policy work.

Monika Malherbe

Good morning Monika.

While it seems like something that should go without saying, we completely agree that staff and council relations are extremely important. I trust you also agree that is a two way street, not a one way proposition.

With respect, I'm not sure where this is coming from Monika but if you feel there are issues then kindly table those with Council so we can work through them together. As far as I'm concerned and from what I see, the relations between staff and Council are very constructive. I also see nothing in this communication that would suggest council is seeking to do anything but strengthen relations.

The reality is that a policy or document is not required to have good relations between council and staff. Healthy relationships are built and genuinely invested into, not forced. Everyone has roles in this not just the CAO. In fact, in my experience, when the relationship is trying to be forced, and primarily being done so one way, it's usually an indicator of something else.

To your point that one of the CAO's roles is to ensure all policies (not just "essential") are followed, it would stand to reason that By-Law 1525-2022 is an actual municipal law regulating how policies are to be formulated. Also By-Laws 1527-2023 and 1528-2023 are municipal laws which provide for a different staff/governance model then what is in the current conflicting Council and Staff Relations Policy. The Council is not normally asked to ignore by-laws that don't fit the operations intentions. Especially by-laws that have no transition period identified and that have been in force for seven months.

For added perspective, the last regime implemented several policies that this council feels conflict with it's governance model which it clearly identified in the Mandate and Directive under By-Law 1525-2022. I believe Council has been extremely collaborative and patiently waiting for the operation to adjust accordingly. If you disagree, then please, as mentioned above, table this.

For clarity, the ask was not a choice to follow policy or not. It was a courtesy and potential solution to "apply" the conflicting policies in the spirit and intent of the mandate by-law and exercised powers of council you are supposed to be implementing. There is a distinctive difference. The alternative is to suspend all conflicting policies as we wait for the operation to get around to these critical governance instruments. As a polite reminder, last fall after ratifying By-Law 1525-2022 when Council suggested that we do the latter to eliminate the conflicts and re write those policies, you indicated you didn't have time and it would be helpful to wait. At that point we identified the aforementioned alternative as a collaborative response to your expressed concern of capacity, which at the time you also seemed comfortable with.

Now you seem to be indicating that the temporary measure of applying policy under the spirit and intent of the overarching by-law is not something your comfortable with. That

leaves only one alternative.

At this point we are beyond simple communications and clear direction is required. I will ask the Clerk to place this item on the agenda for the June 27th Regular Council Meeting and ask that this communication chain be included as support, as well as to ensure complete public transparency.

We will be discussing the need to suspend all current policies that conflict with this Council's Mandate and Directive.

In the meantime, I will also pole council to see if a special meeting of council might be required in advance of June 27th as your expectation is we operate under the conflicting policies until then.

An option may be that we table a redrafted "Council and Staff Relations" Policy to facilitate the urgency at this special meeting.

Thanks for sharing and hope this helps.

Thank You - Merci - Mee'Gwetch!

Peter Politis

21. In June of 2023, the Town considered a series of proposals received in response to a request for proposals issued for some HVAC work (the "HVAC RFP"). The proposals were assessed by staff and a provider was recommended. The Mayor challenged the recommendation, in particular because he felt it was not, as reported by staff and eventually confirmed to be, the lowest bid. I have included excerpts from the email exchange, in chronological order.

Hi Monika,

As per our discussion there seems to be an issue that needs our prioritized attention. I have fact checked what I can and feel there is merit to this potentially being a serious issue.

The issue is that even though council was informed by the Community Services Department during our last regular council meeting (June 13, 2023) that [name withheld] was the lowest bidder for the HVAC work to be done at the Events Center, this may in fact not be accurate. My understanding is that [name withheld] was the lowest bidder. This is what I have for the details on the bid: ...

You will also notice yourself indicating that the lowest bid was identified (also confirming this) when you were rationalizing the missing amount of information being provided to council as part of our overall discussion on providing a complete matrix.

At no point during this discussion was it even suggested that a local was the lower bidder and the operation was recommending another provider. The impression left was that [name withheld] was the lowest and highest scoring bidder. Since we are not provided the complete list of information council is entirely dependent on the word of the operation, which left council with only one clear direction for support.

As you can imagine, as it stands this is extremely concerning. Can you kindly complete the fact check so we can ensure we aren't missing something and everyone is making an

*informed choice?*⁵

Thanks Monika.

...
During the meeting I personally asked a couple times if this was the lowest bid and you also reinforced it was.

Knowing all this, and knowing how important the issue of transparency and accountability in awarding work has been made by council, as well as knowing how important buying local is to this council, none of you thought that it would be important to identify this for council either in the reporting or during the discussion?

No one thought that council was being unfairly set up?

No one thought that the local would reach out and go after us?

As an FYI, [name withheld] is currently engaging legal council (sic).

*No one thought that there would be any fall out, that it would be important to align with their council on?*⁶

Hi Alice.

Please add this item and the below chain to the agenda for June 27, 2023 as requested below on June 19, 2023.

...
Resolution below:

Whereas an RFP award has been made by council based on missing and / or misinformation.

And whereas Council wishes to review the award to assess whether or not Changing this direction is required.

And Whereas Council wishes to identify a more effective protocol for award.

Now, therefore be it resolved that:

Council direct the operation to supply a matrix to council to accompany any recommendation for award of projects and services being bid upon through municipal policy.

And that the matrix include the following information:

Identity of all bidders who entered a bid into the process

The total cost or price of the bid

The total proposal evaluation score of the bid

*And the recommended bis proposal.*⁷

Good morning Monika

...
I responded by confirming that all information required to facilitate the discussion and rescinding should be brought to the meeting, supporting your suggestion to bring the legal opinion. When we looked for this during the discussion, you indicated that only one "councillor" ask for it and your thought was council would prefer to have a discussion first.

Can I politely suggest that the Head of Council and the Chief Executive Officer of the Corporation is not just a "councillor"? The role is clearly defined separate from councillors and to include ensuring council meetings are properly run, meet the expectations of council, guide the intention of having complete and informed discussions, and provide

⁵ Peter Politis to Monika Malherbe, c.c. Council, June 19, 2023 (11:03 a.m.)

⁶ Peter Politis to Monika Malherbe, June 19, 2023 (4:43 p.m.)

⁷ Peter Politis to Alice Mercier, c.c. to Monika Malherbe June 22, 2023 (4:34:43 PM)

the appropriate advise (sic) required. When I supported your suggestion to have the legal advise and also asked for it, it was in this capacity.

Unfortunately, as a result of the information not being there council has been placed in a difficult position and have rescinded an RFP award lacking appropriate advise that was requested to be available.⁸

22. On the afternoon of Wednesday June 28th, following a meeting with the Mayor, the CAO says that he asked her if they could talk. The CAO told the Mayor that she was not able to have a conversation at that time, as she was extremely stressed and overworked, and furthermore not comfortable talking about it.

23. The CAO alleges that the Mayor told her that what she was doing/what was happening to her was because “you asked for it”. The Mayor allegedly asked why she was being the way she was and allegedly told the CAO that she was dropping a lot of balls and that this would be addressed at the upcoming evaluation of her performance discussion with Council. The CAO felt threatened by the Mayor’s references to her upcoming performance evaluation.

24. The CAO went directly to the Town’s Human Resources office and explained what had happened, that it was a continuation of an unwanted pattern of harassment, bullying, intimidation, and threats. The CAO then left the workplace and has been on medical leave, ever since.

25. The CAO states that, as a result of her treatment at the hands of the Mayor, she was not sleeping well, and was completely exhausted, stressed, and unable to focus or think properly. The stress and anxiety the CAO felt was debilitating.

PART V – THE MAYOR’S RESPONSE

26. In his response, the Mayor argues that the Code of Ethics qualifies any conflict in interpretation to be measured against the principle that the protection of the public interest is to be accepted as the true, and primary, underlying intent of the Code.

27. He states that the allegations do not have merit and that the email communications and supporting documentation in the complaint demonstrate a completely professional, courteous, and highly ethical relationship.

28. What becomes clear from the Mayor’s Response is the importance he places on what he describes as Council’s “challenge to conventional thinking around black and white policy application” and the need to replace it with “flatlined, simpler, and much broader policy”. He argues that the CAO has failed to embrace this challenge.

⁸ Peter Politis to Monika Malherbe, c.c. Council, June 29, 2023 (11:04 a.m.)

29. The Mayor also feels that the new “change agenda” is a stark contrast from the approach taken by the previous Council, which did not allow the opportunity to take a measured approach to some policy change. The new change agenda required immediate and, in some cases, drastic policy change, as some of the current policies were in conflict with policies being developed to support the new mandate.

30. The Mayor asks: “Is it fair and reasonable to suggest that the amount of stress the CAO is suggesting she is under can in part be reasonably associated to her application of her role and her personal management tendencies?” He continues to say: “A reasonable point can be made that part of the role at this level is the ability to manage stress and to effectively use the team dynamic. It’s certainly not a role for everyone. Public scrutiny certainly is not something anyone can function in, let alone thrive. It is reasonable to conclude that one needs to be suited to the role and its environment?”

31. The Mayor argues that the CAO did not notify him or Council that there was anything wrong and there was no formal complaint filed with the Workplace Respect Committee.

32. In the Mayor’s estimation, because “she is five years from retirement, facing a change environment, and added pressures of higher expectations, she may have allowed anxiety to creep in and influence her ability to work through the challenges”.

The Mayor’s “Considerations”

33. The Mayor asks me to reflect on a series of “considerations” (which seem to me to be more properly described as “justifications”), which I have of summarized, as follows:

- a) The policies in question are either inactive or rescinded;
- b) Council has introduced a new mandate and direction for the Town; and
- c) The CAO is partly to blame.

The Status of the Policies

34. The Mayor first asks that I consider his contention that the *Code of Ethics* and the *Council and Staff Relations Policy* are inactive or have been rescinded.

35. He notes that the *Code of Ethics* is one of the policies Council identified as requiring revision at its first meeting on November 22, 2022, and, as it was not reaffirmed by Council in accordance with Section 9 b) of the Code of Ethics⁹, it is, in the Mayor’s view, inactive.

⁹ Inquires/Implementation - For the purposes of implementing this Code, and ensuring that the terms of the Code are accepted by all Councillors each term: ... (b) At the beginning of each term of office, Members of Council will be expected to review and re-adopt the Code into by-law for it to be official and active, and will end at the end of the term.

36. The *Council and Staff Relations Policy* was also identified as requiring rescinding and revision at the Council Meeting of November 22, 2022, and was ultimately rescinded on June 27, 2023.

37. As a starting point, I note that neither the Code of Ethics nor the Council and Staff Relations Policy are optional. Section 223.2 (1) of the Municipal Act provides as follows:

Code of conduct

223.2 (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards. (emphasis added)

38. Similarly, section 270 of the *Municipal Act* requires municipalities to adopt and maintain policies with respect to the relationship between Members of Council and the officers and employees of the municipality. Sub-section (1) of Section 270 states:

Adoption of policies

270 (1) A municipality shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
 - 2.1 The relationship between members of council and the officers and employees of the municipality.
3. Its procurement of goods and services.
4. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given.
5. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.
6. The delegation of its powers and duties.
7. The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.
8. Pregnancy leaves and parental leaves of members of council. (emphasis added)

39. While I will acknowledge that section 9 (b) of the Code of Ethics requires that, at the beginning of each term of office, Members of Council will be expected to review and re-adopt the Code into by-law for it to be official and active, in light of the mandatory requirement to have a Code of Conduct set out in section 223.2(1) of the Municipal Act, it would seem contrary to the intent of the legislation if a new Council could simply refuse to adopt the existing Code.

40. It is, I think, trite law that no person or body may contract out of a statute. To the extent that section 9 (b) of the Code of Ethics relieves the Town of Cochrane from the obligation to have a Code of Conduct, I believe that section should be considered inoperative.

41. As it turns out, on November 2, 2022, the Mayor emailed the newly elected Members of Council, urging them not to acknowledge the Code of Ethics and the Pledge of Confidentiality. In that email¹⁰, the Mayor says:

¹⁰ Prior to the inaugural meeting of Council on November 21, 2022

Hello everyone. As follow-up to the orientations and declarations of office taking place I have a few constructive thoughts to share:

We are being presented [with] both a Code of Ethics and a Pledge of Confidentiality that we are being asked to sign. After reviewing these propositions, it's my sense that there needs to be a review by the new council before informed choices can be made.

The Pledge of Confidentiality is a little concerning to me. The premise of public office and the premise of the Municipal Act is that the public's business is the public's business. This document seems to conflict with the Code of Ethics as well which states, "Local government is an open, accessible and accountable form of government". This is true. The pledge of confidentiality then goes on to qualify the openness by also creating a shroud of confidentiality – undefined confidentiality so it's up to us to figure that out while remaining liable. It's conflicting in my view and only adds confusion.

Part of making an informed choice here is understanding that these documents are what the Integrity Commissioner will use to assess councillor "integrity". When we sign these documents we must be clear on what the impact is on our ability to maintain a "functional" path that allows us to be the public representatives we were elected to be.

While I appreciate the intention, in my view these documents (especially a non-disclosure agreement) don't add value toward councillors being in the best position to represent the public, they create confusion. The Code of Ethics is important and functional, but needs to be reviewed to ensure it too is designed as it should be (it's almost 10 years since the last revision).

Part of the mandate from the community this election is to provide an open, transparent, and accessible government. The law is to do the same. However, if we introduce qualifications like this, my sense is that we run the risk of introducing confusion not stability.

The Municipal Act already defines what is to be confidential, and what isn't. We simply need to acknowledge the municipal act and commit to follow it. Any further detail starts down a slippery slope of potential dysfunctionality and risk in my view.

My polite advise to each of you is to carefully review these documents before signing, and to consider not signing until we have had a chance to review together with the town. There is no requirement to sign these documents in order to sit as a councillor. I personally won't be signing until we gain a better understanding of the dynamics at play.

Feel free to reach out anytime should you wish to discuss this in more detail. Hope this helps.

Thanks | Mee'Gwetch! | Merci Peter Politis,

46. While this is not the time or the place to critique the Mayor's observations and advice, I will say that I disagree with much of what the Mayor is saying here, and believe that the views he espouses in this email permeate many of the disagreements he has with Town staff and contribute to an anxious workplace.

47. In any event, notwithstanding his advice to his fellow Councillors, in his "Onboarding 2022" document the Mayor attaches his signature to the "Policies Acknowledgement Form" acknowledging that he has read and understood the Code of Ethics, the Respect in the Workplace Policy, and other documents. He declined to confirm that he had read and understood the "Pledge of Confidentiality" and the "Council and Staff Relations Policy".

48. Accordingly, I consider the Code of Ethics as having been acknowledged by the Mayor and applicable to him.

49. As for the Council and Staff Relations Policy, I note that it was not rescinded until June 27, 2023 and was in place during most of the time period under review in this inquiry.

50. As it appears that Council will soon be contemplating the suspension of several other important policies in the "Policy Suspension By-law" (deferred for legal advice), attached as Schedule "C" to this report, I will note that, while it is always open to Council to review any of its by-laws or policies, it is well established by convention, if not by law, that a policy remains in place until repealed by the by-law adopting the new policy; the law, like nature, abhors a vacuum.

The New Mandate and Direction

51. The second consideration offered by the Mayor is that the new "mandate" requires extensive revisions of the Town's current policy regime. Mayor Politis argues: "This council has identified a governance model and mandate that conflicted with the administrative structure established by the previous council. The general issue is this council preferred to have an administration that was more accountable, more engaged and less insulated from the public that we serve."

52. The Mayor asks: "An important consideration in this investigation may be to place a high value on this critical dichotomy and how if the policies were changed as expected up front, it might be clearer to assess the behaviour in question and whether or not there is merit to this complaint. In either case, consider that my behaviour has been in large part that of Head of Council leading the cultural change both directed and expected by council."

53. The mandate that the Mayor refers to is found in the Mandate and Direction By-law.

54. In summary, the Mandate and Direction By-law states that in the 2022 municipal election seven out of ten voters "chose an approach and direction that would create a more vibrant, progressive, and developmentally oriented community, that values both social and economic development equally, providing all of this through an easily accessible and consistently welcoming municipal public service". It requires that all policies, decisions, and directions will be measured against this directive with the intention of lining up with the principles and directions contained within.

55. Of relevance to this inquiry, it contains several provisions relating to the operation and its role. It speaks of empowering the community to be actively involved in driving community affairs, by providing modern vehicles that allow for decision making, direct oversight, and engaged planning of services, providing opportunities for the municipal service to take a supportive and

enabling role of community engagement versus a lead role, to promote simple and open access to both municipal government and the public service, to maintain process and policies that create as flat an operation as possible, provide optimal opportunity for council to provide oversight and stewardship to the operation, provide effective public scrutiny, supported by simple, clear and consistent public communications.

56. In response to my inquiries about the Mandate and Directions By-law, the Mayor told me:

While that [the former] council had the right to implement the governance model it chose, so to does this council. Elected by the public to close the door on the insulated operation and austerity approach, and go back [to] the progressive, more public service, engagement, and accountability orientated approach, as Mayor and Council, we assessed the need to undergo a change agenda. As the directions are completely contrasting, and the operation had a vested interest to maintain the previous councils policies and approach, we accepted this was going to be challenging. The challenge lies in the fact that we could not implement our change mandate without changing the policies, and operation led through (the CAO) [who] were reluctant to embrace this change. ... We simply couldn't take the typical measured approach. We needed to have the policy and cultural shift done within the first six months or risk the bigger ticket items being lost opportunity to the community ...

57. Mayor Politis seems to be saying that his behaviour should be assessed in the context of and against the Mandate and Direction By-law. He says: "An important consideration in this investigation may be to place a high value on this critical dichotomy and how if the policies were changed as expected up front, it might be clearer to assess the behaviour in question and whether or not there is merit to this complaint. In either case, consider that my behaviour has been in large part that of Head of Council leading the cultural change both directed and expected by council".

58. First, while I note several questionable propositions in the Mandate and Direction By-law, I see nothing in it that would sanction bullying, intimidation, or workplace harassment. Second, to suggest that his behaviour should be measured against policies changed "as expected", rather than those in force at the time of the alleged contraventions represents more wishful thinking than the proper application of policy.

59. Accordingly, I am not persuaded that any conflict between the policy status quo and the approach outlined in the Mandate and Direction By-law in any way explains or justifies the inappropriate treatment of staff.

60. The Mayor also offers for my consideration that there is to be a new governance structure, with an engaged Council and public through Boards and Community Councils. The Mayor explains:

True to the Mandate and governance model (By-law 1525-2022) of a more engaged council, from an oversight standpoint, and the engagement of the public in driving their affairs, council developed and implanted a hybrid model involving Boards and Community Councils.

...

In my view the CAO did not embrace this and was boxed in by her reluctance to change and her understanding of all the hard work they put into the very policies that conflicted with this approach.

It's my sense that the communications that formed part of the complaint and cited as support for the complaint consistently supports this dichotomy taking place, while not credibly supporting the List of Allegations.

61. Again, notwithstanding any problems I see with the proposed delegation of authority or the upending of the roles and responsibilities assigned to Council and the Town's staff by the *Municipal Act*, I see nothing in the introduction of these new Boards or Community Councils that would in any way excuse harassing behaviour.

62. For these reasons, I do not accept the new hybrid model of boards and committees as being relevant to my inquiry.

The CAO is Partly to Blame

63. The first area where the Mayor believes that the CAO has brought this on herself is by an uneven application of policy. The Mayor explains:

As described herein, there seems to be a vested interest in [the CAO] who was part of building what many would consider an overly insulating environment at the Town Hall to want to maintain as much of this as possible for future councils to follow ...

The Staff don't seem to understand many of the very policies they are in charge of and consistently step out of lanes ...

While [the CAO] cites the need for council to follow policy as this is her role to enforce and if it is not followed it puts her in a difficult position, this tends to conflict with her, and her operations, propensity to inconsistently and casually follow policy depending on the circumstances, directly conflicting with his own narrative above.

...

While there is a double standard being clearly demonstrated here on how policy is applied in operation, the more pertinent consideration would be that long term precedent has been set and established in this operation that actually fosters a loose approach to policy compliance.

64. I don't believe I need spend much time on this consideration. Simply put, it is rarely a winning argument to suggest that you are relieved of the obligation to follow the rules, because you think the other person has not.

65. The next reason that the Mayor asks me to consider is his claim that Council has not been trained on its policies and "there has been no concerted effort to place a high value on them, up until now, suddenly". He feels that Council does not have access to the policies and that "the credibility of [the CAO's] assertion about the critical nature of policy enforcement, comes into serious question, if she doesn't even make providing council access to the policies a priority in the first place, let alone being 'appropriately' trained on them".

66. I understand, however, that training sessions were held, but that the Mayor did not attend.

67. In any event, while I am not inclined to accept the suggestion that no training was provided and that the policies are nowhere to be found, given the nature of the Complaint – bullying, harassment, intimidation etc. – it is difficult for me to accept that any transgression may be attributed to a lack of training in or the inability to access the relevant policies. Indeed, I would hope that, at a minimum, understanding that bullying or harassment is wrong needs no formal instruction.

68. For these reasons, I reject this consideration as a defense to the allegations.

69. Continuing to assign blame to the CAO, the Mayor suggests that the CAO has a record of “poor performance”, purportedly as demonstrated by a list that the Mayor has been keeping.

70. I find this “consideration” to be untenable, first, because I have been provided with nothing that remotely suggests that the CAO was anything other than a dedicated, competent and professional employee, but also because it should go without saying that even an underperforming employee is to be treated with respect.

PART VI - APPLICABLE LAW AND POLICY

The Municipal Act

71. The *Municipal Act* provides a very detailed description of the role of council, the role of the head of council, and the role of the officers and employees of the municipality.

Role of council

224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.

Role of head of council

225 It is the role of the head of council,

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;
- (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act.

Head of council as chief executive officer

226.1 As chief executive officer of a municipality, the head of council shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality's activities;
- (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

Municipal administration

227 It is the role of the officers and employees of the municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality.

The OHSA

72. The OHSA requires employers to prepare a policy with respect to workplace harassment and provides a definition of "workplace harassment".

Definitions

1 (1) In this Act,

"workplace harassment" means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- (b) workplace sexual harassment; ("harcèlement au travail")

Policies, violence and harassment

32.0.1 (1) An employer shall,

- (a) prepare a policy with respect to workplace violence;
- (b) prepare a policy with respect to workplace harassment; and
- (c) review the policies as often as is necessary, but at least annually.

Duties re harassment

32.0.7 (1) To protect a worker from workplace harassment, an employer shall ensure that,

- (a) an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;

The Respect in the Workplace Policy

72. The Respect in the Workplace Policy employs much of the same definitional language as the OHSA and provides examples.

"Workplace Harassment" and Bullying

Workplace harassment is a health and safety issue that is covered under the Ontario Occupational Health

and Safety Act.

The Occupational Health and Safety Act defines "workplace harassment" as:

- Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

Workplace harassment may have some or all of the following components:

- It is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect
- It is hostile, abusive or inappropriate
- It affects the person's dignity or psychological integrity
- It results in a poisoned work environment

In addition, behaviour that intimidates, isolates or discriminates against the recipient may also be included.

Some examples of workplace harassment include:

- Verbally abusive behaviour, such as yelling, insults, ridicule and name calling, including remarks, jokes or innuendoes that demean, ridicule, intimidate or offend
- Workplace pranks, vandalism, bullying and hazing
- Gossiping or spreading malicious rumours
- Excluding or ignoring someone, including persistent exclusion of a particular person from workplace-related social gatherings
- Undermining someone else's efforts by setting impossible goals with short deadlines and deliberately withholding information that would enable a person to do his or her job
- Providing only demeaning or trivial tasks in place of normal job duties
- Humiliating someone
- Sabotaging someone else's work
- Displaying or circulating offensive pictures or materials
- Offensive or intimidating phone calls or e-mails
- Impeding an individual's efforts at promotions or transfers for reasons that are not legitimate
- Making false allegations about someone in memos or other work-related documents

What isn't harassment

Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:

- Measures to correct performance deficiencies, such as placing someone on a performance improvement plan
- Imposing discipline for workplace infractions
- Requesting medical documents in support of an absence from work

It also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.

The test of harassment

It does not matter whether you intended to offend someone. The test of harassment is whether you knew or should have known that the comments or conduct were unwelcome to the other person.

For example, someone may make it clear through their conduct or body language that the behaviour is unwelcome, in which case you must immediately stop that behaviour.

Although it is commonly the case, the harasser does not necessarily have to have power or authority over the victim. Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor.

The Council And Staff Relations Policy

73. The Town's Council and Staff Relations Policy was introduced to comply with the March 1, 2019, amendments to section 270 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "**Municipal Act**"), which require municipalities in Ontario to adopt and maintain a policy with respect to the relationship between Members of Council and the Officers and Staff of the municipality. The sections of the Council and Staff Relations Policy identified by the CAO are:

6. Guiding Principles – General

3. Respect the Chain of Command

Members of Council must understand they have no individual capacity to direct Staff to perform, or not perform functions or duties. The CAO is responsible for Staff and Officers - Members of Council who need to engage with Staff and Officers must do so through the CAO. This would include both in person, verbal, written and electronic messages.

7. Control Anger

Members of Council should avoid the temptation to play up divisions or conflicts. Staff and Officers shall not be targets of derisive/vexatious comments/behaviour/conduct. The public expects Members to do the job that they have been elected to do. The public expects Staff and Officers to do the job that they have been hired to do. Comments on Staff and Officer performance shall be directed through the appropriate confidential performance reviews.

8. Politics or Management – Not Both

Council provides direction, Staff and Officers give professional advice and implement Council's directives. Members of Council are not elected to be technical experts nor to act in their professional capacities. Likewise, Staff and Officers are not politicians. Advice comes from Staff, policy and service delivery decisions are made by Council.

11. Respect

Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others' intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Municipality.

7. Roles and Responsibilities

Role of Council

Policy Focus:

Represent the Municipality, provide direction and create policy.

Role of Senior Management

Direction Focus:

Liaison between Council and Staff, direct implementation of Council's policies, hire and develop a team of competent Staff.

Role of Staff and other Officers

Implementation Focus:

Research policy and programs, give best professional advice, implement decisions of Council, fulfill statutory duties, follow direction of Chief Administrative Officer ("CAO") generally see to the operation of the municipal organization.

The Code Of Ethics

74. The applicable sections of the *Code of Ethics* are:

7.0 Roles and Responsibilities

(d) At all times, be aware of, and familiar with, all statutory obligations imposed upon the Municipal Council as a whole, as well as each individual member of Council, including Municipal By-Laws, the Municipal Act, 2001, and all provincial or federal legislation governing the conduct of business within the Municipality;

Council Members shall adhere to the following guidelines in exercising their duties and powers as Municipal Councillors:

c) Relationships with Staff and Other Members of Council

Council Members recognize the importance of maintaining a strong and constructive relationship with the municipal staff members and all employees of the Town of Cochrane. Municipal Councillors will:

- (i) Not provide directives or instructions to staff members personally, acknowledge that only Council, as a whole, has the capacity to direct staff members to carry out specific tasks or functions; or
- (ii) Refrain from publicly criticizing individual members or staff and employees in a way that casts aspersions on their professional competency, credibility or character.
- (iii) Council shall be respectful of the role of staff to advise based on political fairness, and objectivity, and without due influence from any individual member or group of the Council
- (iv) No member of Council shall maliciously or falsely harm the professional or ethical reputation or the prospects or practice of staff. All members shall show respect for the professional capacities of the staff of the Town of Cochrane.
- (v) No member of Council shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing such activities.
- (vi) Council shall not use or attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with the person's duties including the duty to disclose improper activity.

No Member of Council shall:

- (vii) Maliciously or falsely injure the professional or ethical reputation by spreading rumours;
- (viii) Cause persistent, excessive nit-picking, unjustified criticism and constant scrutiny.

PART VII - THE ISSUES

75. The Issues are:

- (i) Did the Mayor engage in workplace harassment against the CAO, contrary to the *OHSA* and the *Respect in the Workplace Policy*?
- (ii) Did the Mayor fail to treat the CAO with professionalism and respect, contrary to the *Respect in the Workplace Policy*?
- (iii) Did the Mayor,
 - i. fail to respect the chain of command,

- ii. make derisive/vexatious comments or engage in derisive/vexatious behaviour/conduct towards the CAO and engage in management functions,
- iii. fail to respect the CAO's professionalism, and
- iv. fail to respect the roles and responsibilities of Council, Senior Management, Staff and other Officers,

contrary to the Council and Staff Relations Policy?

(iv) Did the Mayor,

- i. demonstrate an awareness of and familiarity with all municipal by-laws, and provincial or federal statutory obligations governing the conduct of business within the Town, imposed upon him,
- ii. provide directives or instructions to the CAO personally, without Council authorization?
- iii. publicly criticize the CAO in a way that cast aspersions on her professional competency, credibility, or character?
- iv. fail to respect the role of staff to advise without undue influence from the Mayor,
- v. use or attempt to use his authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with the person's duties including the duty to disclose improper activity, and
- vi. engage in persistent, excessive nit-picking, unjustified criticism and constant scrutiny,

contrary to the Code of Ethics?

PART VIII - ANALYSIS AND FINDINGS

Issue 1: Did the Mayor engage in workplace harassment against the CAO, contrary to the OHSA and the Respect in the Workplace Policy?

76. For ease of reference, the *OHSA* definition of workplace harassment is:

Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

77. The *Respect in the Workplace Policy* explains that workplace harassment may have some or all of the following components: it is generally repetitive, it is hostile, abusive or inappropriate, it

affects the person's dignity or psychological integrity and it results in a poisoned work environment. It may also include behaviour that intimidates, isolates, or discriminates against the recipient.

78. Examples of workplace harassment include undermining someone else's efforts by setting impossible goals with short deadlines, humiliating someone, or sabotaging someone else's work, or impeding an individual's efforts at promotions.

79. Workplace harassment is not to be confused with legitimate, reasonable management actions that are part of the normal work function, including measures to correct performance deficiencies or imposing discipline for workplace infractions. It does not include normal workplace conflict that may occur between individuals or differences of opinions between co-workers.

80. In their work on *Workplace Violence and Harassment*¹¹ the authors describe harassment as "any behaviour that demeans, embarrasses, humiliates, annoys, alarms or verbally abuses a person and that is known or would be expected to be unwelcome. This includes words, gestures, intimidation, bullying or other inappropriate activities".

81. The *Respect in the Workplace Policy* also adopts the test of harassment as being whether the person knew or should have known that the comments and conduct were unwelcome to the other person.

82. A determination of workplace harassment is, at least in part, context driven. The municipal workplace, being a fragile amalgam of elected officials and the employees who assist them, is subject to inherent and unavoidable stresses and strains, not found in many other work environments. The relationship is complicated by the fact that the employees do not work for the Members, but the Members must ensure the accountability and transparency of the work of the employees.¹²

83. The tension arising from this paradoxical arrangement is made worse by the reality that the Town hall playing field is not level; the Members of Council enjoying an implied level of authority over Town staff.

84. As a result, when push comes to shove between a Member of Council and an employee, the difference in status and perceived authority often leaves the employee feeling vulnerable, defenseless and necessarily deferential. Speaking rhetorically, how can a worker in the parks department be expected to withstand demands, however politely made, from a Member of

¹¹ In § 11.508. *Workplace Violence and Harassment*, Employment - Canadian Forms & Precedents Andrew Monkhouse, Jeff Dutton, Catherine M. Milne, Boris Alexander

¹² *Municipal Act, 2001*, S.O. 2001, c. 25, sections 224 and 227

Council? Any assessment of a complaint of workplace harassment in the municipal workplace must factor in this power imbalance and recognize the rules put in place to protect the employee.

85. The *Municipal Act*, the Council and Staff Relations Policy and the Respect in the Workplace Policy clearly identify the respective duties and obligations of Members of Council and the employees and officers of the Town. These duties and obligations, while hardly inviolable, are nevertheless extremely important. Rather than being regarded as irritants to be ignored or courtesies to be paid lip-service, they form the building blocks for effective and efficient municipal government, and require respect and deference.

86. Knowing the importance of these building blocks, the Town's CAO was, from the beginning of the term, forced to be the "bad guy" and respond to the Mayor's "change agenda" with admonishments not to forget the rules governing proper process and conduct. And while the Mayor's intent to impose a new order may have been within his prerogative, it was the CAO's responsibility to ensure that matters were proceeding according to the rules.

87. It is abundantly clear that the Mayor regularly and adamantly strayed from his statutory role as the Head of Council. He is clearly engaged in what can only be described as micromanagement of Town business and events – the dog in the library incident, the water slide and, more worrisome, the HVAC procurement process. Whatever the merits of his contributions, it is the fact of his involvement in these day-to-day matters that is the problem; a clear conflation of his proper role as a public official with that of a supervisor or manager. It is, in my view, these regular intrusions, coupled with the way they were undertaken, that caused the CAO to feel threatened and bullied; the Mayor's participation was not benign.

88. I say this bearing in mind the Delegation to the Mayor By-law. Although not specifically prohibited, the appointment of a Member of Council as the Town's administrator is unusual and, in my view, inappropriate. The clear distinction between the role of members of council and the role of employees, set out so clearly in the *Municipal Act*, is extinguished.

89. In any event, the Mayor has not pleaded this assignment of power as a defense to the Complaint and made it clear to me in our discussion that he has only used this power on one occasion.

90. The Mayor is at pains to point out that he never provides direction to staff and, accordingly, has not crossed any lines. With respect, I disagree. His interventions had nothing to do with the formulation of policy and everything to do with the micromanagement of Town events and practices. Whatever, his intentions, he regularly and repeatedly interfered directly in the duties and responsibilities of staff, thus creating a workplace circumstance that was primed for conflict between him and the Town's senior officers.

91. It is abundantly clear on several occasions that the Mayor does not accept the CAO's advice or actions. His style of rhetorical responses, although delivered in a polite and at times even demure tone, are nevertheless, in my view, vexatious, or difficult to deal with and causing a lot of anger, worry, or argument.¹³

92. I view the attempts to suspend the Code of Ethics, the Delegation of Authority By-law, the Council and Staff Relations Policy, among others, and the introduction of the Mandate and Direction By-law, as further aggravating factors. In a workplace that was already fraught with concern about the improper exercise of authority, such a sweeping and almost reckless expunging of the Town's policy regime could only serve to raise the level of anxiety of those subject to the protection of those policies.

93. It was also clear to me that, despite the fact that some resolutions and by-laws were made by Council as a whole, the Mayor was the mastermind of this new approach and its chief draftsman. Indeed, he consistently alluded to his primacy in the municipal hierarchy, as head of council

94. It is also necessary for me to comment on the Mayor's insistence throughout his written and oral submissions to me that he was always polite, professional, and courteous. Again, with respect, I find this to be a spurious argument. His messages conveying disappointment and judgment, or which pose veiled threats, survive the use of even the most polite, professional and courteous language. In other words, to be unwelcome, comments need not be delivered in a schoolyard vernacular.

95. While it may be that any single email or exchange may not, in and of itself, constitute harassment, the record must be viewed as a whole, establishing a pattern or course of conduct that had a cumulative impact. I believe that the CAO's feeling that she was being harassed or bullied increased with each new missive from or intervention by the Mayor; the succession of critical emails or upsetting conversations constitutes a course of conduct that the Mayor ought to have known was unwelcome, to a degree that it was harassment.

96. The single most egregious act by the Mayor, however, is his exhortation to the CAO that her resistance to his agenda would be considered at her upcoming performance review. While perhaps said in the heat of the moment and without much forethought, this statement was regarded by the CAO as a direct threat to her employment, in my view a reasonable interpretation in the circumstances and, in and of itself, grounds for a finding of workplace harassment.

¹³ Cambridge University (on-line dictionary)

97. Neither can the Mayor's actions be considered actions that are part of the "normal work function". The Mayor was not the CAO's supervisor, had no oversight or management function, and was not acting under a resolution of Council.

98. I found the CAO to be an honest, sincere, and credible witness. As the CAO, she was looked up to by her staff and, in turn, was protective of them. This responsibility weighed heavily on her and served to magnify the impact of the Mayor's conduct and comments; not only was she worried for herself but for her team, as well.

99. For these reasons, I find that the Mayor engaged in a course of vexatious comment or conduct against the CAO in the workplace that was known or ought reasonably to have been known to be unwelcome.

Issue 2: Did the Mayor fail to treat the CAO with professionalism and respect, contrary to the Respect in the Workplace Policy?

101. In light of and for the same reasons noted above, I find that the Mayor failed to treat the CAO with professionalism and respect, contrary to the Respect in the Workplace Policy.

Issue 3: The Council and Staff Relations Policy

102. Similarly, in light of and for the same reasons noted above, I find that the Mayor contravened the Council and Staff Relations Policy. To wit, he failed to respect the chain of command, he engaged in management functions, he failed to respect the CAO's professionalism, and he failed to respect the roles and responsibilities of Council, Senior Management, Staff and other Officers,

Issue 4: The Code of Ethics

1) Did the Mayor demonstrate an awareness of and familiarity with all municipal by-laws, and provincial or federal statutory obligations governing the conduct of business within the Town, imposed upon him?

103. No. While it cannot be said that the Mayor was unaware of or not familiar with all municipal by-laws and provincial statutory obligations imposed upon him governing the conduct of business within the Town, neither can it be said that he demonstrated an intent to be bound by them. In the pursuit of his objectives he chose to disregard them, repeal them, or replace them with those of his own invention.

2) Did the Mayor provide directives or instructions to the CAO personally, without Council authorization?

104. As discussed above, the Mayor was careful not to specifically direct the CAO. That being said, many of his communications were not so thinly veiled attempts to do so. Moreover, on many occasions there was no Council authorization. I find that the Mayor did contravene this policy.

3) Did the Mayor publicly criticize the CAO in a way that cast aspersions on her professional competency, credibility, or character?

105. Yes. Several of the critical, unfair and, at times, incorrect emails the Mayor sent were copied to other senior officers of the Town and all of Council.

4) Did the Mayor fail to respect the role of staff to advise without undue influence from the Mayor?

106. Yes. As an example, the Mayor's refusal to accept the CAO's efforts to remind Council of the Council and Staff Relations Policy or her suggestions regarding the HVAC procurement are clear examples of the Mayor showing a lack of respect for staff and attempting to influence decisions within her authority.

5) Did the Mayor use or attempt to use his authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with the person's duties including the duty to disclose improper activity?

107. No. I regard this policy as speaking to attempts by Members of Council to intimidate or threaten staff away from reporting serious transgressions by the Member or others. The conduct that was reported on to me and on which I have based my findings, while not proper, did not rise to the level of malfeasance that I believe is addressed by this policy.

6) Did the Mayor engage in persistent, excessive nit-picking, unjustified criticism and constant scrutiny?

108. Yes. I believe the Mayor's conduct meets the descriptors listed in this policy.

109. For these reasons, I find that the Mayor did engage in workplace harassment against the CAO, contravened the Respect in the Workplace Policy, the Council and Staff Relations Policy and the Code of Ethics, and that this was the sole cause of the CAO's distress and her decision to leave the workplace.

PART IX - RECOMMENDATIONS

110. It is my recommendation that Mayor Politis's remuneration be suspended for 45 days, to be withheld consecutively to the 45-day suspension of remuneration recommended in my report on a complaint by the Town's Chief Administrative Officer.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January, 2024.

A handwritten signature in black ink, appearing to read 'H.G. Elston', with a long horizontal line extending to the right.

H.G. Elston
Integrity Commissioner
Town of Cochrane

SCHEDULE "A"

**THE CORPORATION OF THE TOWN OF COCHRANE
BY-LAW NUMBER 1525-2022
BEING A BY-LAW TO ADOPT THE MANDATE AND DIRECTION
FOR THE 2022 TO 2026 COUNCIL ERM**

THE CORPORATION OF THE TOWN OF COCHRANE
BY-LAW NUMBER 1525-2022
BEING A BY-LAW TO ADOPT THE MANDATE AND DIRECTION FOR
THE 2022 TO 2026 COUNCIL TERM

WHEREAS Section 10 (2) 1. of the Municipal Act, S.O. 2001, c.25, as amended provides that a municipality may pass by-laws respecting the governance structure of the municipality and its local boards;

WHEREAS the following mandate and directive is issued by Council as a benchmark for municipal operations and governance.

AND WHEREAS all policies, decisions, and directions will be measured against this directive with the intention of lining up with the principles and directions contained within. Council will have final discretion on this assessment.

THEREFORE BE IT RESOLVE (sic) THAT the Council of the Corporation of the Town of Cochrane hereby adopts the following:

MANDATE AND DIRECTION:

The 2022 municipal election in Cochrane provided a council table with a healthy mix of experience, youth, and fresh thinking, to go along with a balanced gender profile and cross section of the community. The municipality, through the peoples (*sic*) newly elected representatives, was given a very clear mandate and directive. Seven out of ten voters chose an approach and direction that would create a more vibrant, progressive, and developmentally orientated community, that values both social and economic development equally, providing all of this through an easily accessible and consistently welcoming municipal public service.

Combined with the experience of the municipal operation Cochrane's future is bright, it's gas tank is full, and it's motivation is high. Council is thrilled to develop this mandate directive as a tool and beacon of direction for decision making and planning associated to the next four years of local municipal government. This will form the basis for council's governance and oversight model, and for the municipal operation's mission.

The mandate directive is built on the following broad categories:

- Community Engagement
- Municipal Government and Public Service
- Community Socio-economic Development
- Intergovernmental Relations
- Regional Affairs

The mandate and overarching directive for the municipality of Cochrane, Ontario for the 2022 to 2026 Council term is:

Under Community Engagement:

- To empower the community to be actively involved in driving community affairs, by providing modern vehicles that allow for decision making, direct oversight, and engaged planning of services.
- To provide opportunities for the municipal service take a supportive and enabling role of community engagement versus a lead role, with the intent of promoting a healthy balance of community and municipal resources.
- To engaging community task forces comprised of local expertise when planning to understand community opportunities and address community threats, that will serve as guiding support for developing community driven action plans and outcomes.
- To effectively leverage and maximize the resources and experience within the community, to create efficiencies withing the municipal operation.

Under Municipal Government and Public Service:

- To promote simple and open access to both municipal government and the public service. Making it relatively easy and functional for the public to gain answers to their inquiries and to obtain

information on the affairs of their municipal government and operation.

- To adopt an enabling and guiding culture that seeks to help our community get what they're seeking and to get done what they are trying to accomplish, whenever possible and practical.
- To establishing policy and direction that promote governance and operational transparency, simple information access, and operational oversight.
 - While being respectful of the confidential and competitive matters identified in the Municipal Act as being closed to the public, the underlying principle for determining direction if there are competing interpretations being the peoples business is the peoples business.
- To running an operation that places the highest value on providing service to the public.
- To maintain process and polices that:
 - Create as flat an operation as possible, which includes the fewest steps, the fewest layers of process, and the fewest resources required to achieve a given outcome.
 - Provide optimal opportunity for council to provide oversight and stewardship to the operation.
 - Are built upon the recognition that the operation and service are the public's, that the council and municipal workforce are comprised of public servants, and the duly elected council is the public's connection to their service.
 - Promote effective public scrutiny, supported by simple, clear, and consistent public communications.
- To promote a collaborative team driven relationship between the municipal operation and the governance body, that fosters an engaged interaction built on a healthy understanding of the roles between governance and management.
 - Recognizing the small town nature of our community and embracing this as an asset that allows for more effective organizational engagement, than typical larger centers.

Under Community Socio-economic Development:

- To maximize opportunity for social and economic development.
- To explore modern, forward thinking, and fresh opportunities that will maintain a vibrant, leading edge, socio-economic climate in our community.
- To adopt a community building approach that maximizes our assets while promoting growth and investment.
- To promoting an active and healthy community.
- To maximize the opportunity for community celebration and promotion of local pride.
- To maintain fiscally responsible and strategic fiscal management by:
 - maximizing acquisition of funding and resources from outside of the tax levy.
 - Sound situational assessment and planning of opportunity.
 - Leveraging resources, investments, and strategic financing.
- To invest into marketing and promotion opportunities that raise community profile.

Under Intergovernmental Relations:

- To building strong and supportive relationships with Provincial and Federal government.
- To providing maximum exposure of investments made in our community by other layers of government.
- To hosting opportunities that promote Cochrane as a great place for government to invest.
- To being apolitical and supporting the government in power where and when possible, to promote investment of government resources in the community.
- To investing into inter-governmental relationship building.
- To investing into lobbying opportunities.

Under Regional Affairs:

- To maintain respectful and supportive relationships with the other municipalities in the region.
- To take a lead role in regional affairs.
- To invest into regional support and mutual opportunity generation.
- To position Cochrane as a progressive, driven, socio-economic engine of the region.

- To continue to promote Cochrane interests while maintaining supportive regional relationships.

Our council is excited to present this mandate direction to the municipality and the community as forward thinking, modern, and progressive guidance for decision making and policy development. Our intent is to inspire a mission that sees our community develop a vibrant social dynamic, a healthy economic engine, a progressive mindset, strategic and efficient fiscal management, and an enabling, service orientated workplace culture.

This will be an exciting time for our community. Any success we achieve will be done so by us adopting a collaborative, supportive community approach that is founded on our ability to effectively harness the collective wisdom and diverse thinking of the Council, the operation, and the community at large.

THAT this by-law comes into force and takes effect on the date of its final passing.

READ a first and second time this 6th day of December, 2022.

MAYOR

CLERK

READ a third time and finally passed this 6th day of December, 2022.

MAYOR

CLERK

SCHEDULE "B"
DELEGATION TO MAYOR BY-LAW

THE CORPORATION OF THE TOWN OF COCHRANE

REGULAR COUNCIL

DATE: July 11/23
RESOLUTION NO.: 379-2023
AGENDA ITEM NO.: 18.

MOVED BY: Hoogenhoucl

SECONDED BY: Nelson

WHEREAS The town is highly exposed by a series of absences in the operation including the Chief Administrative Officer

AND WHEREAS a number of key files are in limbo and need to be managed accordingly.

AND WHEREAS the potential of labour job action exists in the coming days and the internal staff need to be available to manage services.

AND WHEREAS the operation is currently without structure or leadership.

AND WHEREAS it is not functional for Council to meet daily or more frequently to provide direction and wishes to do this through the Head of Council.

AND WEHREAS this is a temporary measure that is intended to be repealed when Council is satisfied that the absence of the Chief Administrative Officer has been adequately mitigated.

AND WHEREAS the intention is for Head of Council to have authority to provide day to day governance and administrative direction to the municipality while keeping council reasonably informed of decisions being made through back-end control versus front end control, allowing council a reasonable opportunity to review and request a council discussion if required.

NOW THEREFORE BE IT RESOLVED THAT:

Council retains its right to revoke this delegation of authority as prescribed under Section 23, sub.(2), p1. of the Municipal Act.

Council retains the right to overturn or veto decisions if it feels it necessary, as prescribed in the Municipal Act and Procedural By-law.

Council delegates it's powers to the Head of Council to provide day to day governance and administrative direction to the municipality as follows:

1. Municipal administrative powers as per Section 23 sub.(2).
2. Governance required to facilitate operational directions provided by council or already underway.
3. Day to day decisions that would be typically required from the Chief Administrative Officer

Council temporarily appoint Richard Vallee to act as operational lead and to provide both council and Head of Council direction to all staff creating a functional operational vehicle for these delegated powers to be implemented.

Head of Council and the Interim Operational Lead will work collaboratively on keeping the day-to-day operation as functional and as similar as possible to normal as possible.

Head of Council is not expected to seek direction from Council in advance but to keep council appropriately apprised and reasonably informed of directions, as would be expected of the Chief Administrative Officer under typical circumstances.

THE CORPORATION OF THE TOWN OF COCHRANE

REGULAR COUNCIL

DATE: _____

RESOLUTION NO.: _____

AGENDA ITEM NO.: _____

MOVED BY _____

SECONDED BY _____

THAT _____

DECLARED THE MOTION

- CARRIED
- DEFEATED
- DEFERRED
- REFERRED TO: _____

RECORDED VOTE - Requested by: _____

Mayor (Acting Mayor)

RECORDED VOTE	FOR	AGAINST	CONFLICT	ABSENT
France Bouvier				
Daniel Brunet	/			
Sylvie Charron-Lemieux	/			
Rodney Hoogenhoud	/			
Susan Nelson	/			
Peter Politis	/			
Marck Recoskie	/			

DECLARATION OF CONFLICT OF INTEREST

DISCLOSED HIS/HER INTEREST(S)

VACATED HIS/HER SEAT

✓ ABSTAINED FROM DISCUSSION AND DID NOT VOTE ON THIS QUESTION.

Bouvier

SCHEDULE "C"

RESOLUTION NO.: 583-2023 – (POLICY SUSPENSION RESOLUTION)

THE CORPORATION OF THE TOWN OF COCHRANE

REGULAR COUNCIL

DATE:

November 28, 2023

RESOLUTION NO.:

583 -2023

AGENDA ITEM NO.:

13.2

MOVED BY

Fraser

SECONDED BY

Charon-Lemire

WHEREAS there are a number of policies identified by Council that require critical revision or rescinding.

AND WHEREAS the Council of the Corporation of the Town of Cochrane has issued resolution 343-2023 to identify policies that are deemed to be conflicting, problematic, and / or critical to revise, suspend, or rescind.

AND WHEREAS a policy is required by the Municipal Act to replace the suspended policies.

BE IT RESOLVED THAT that the following policies be suspended immediately as of this resolution being ratified:

- Code of Ethics
- Council and Staff Relations (Suspended under Resolution #339-2023)
- Matters Considered in Closed Session
- Consolidated Reserve
- Debt Management and Capital Financing
- Procurement Policy
- Recreation Board Donation
- Fee Reduction Policy
- Tax Rebates, Reductions, and Refunds Policy
- Water and Wastewater Rates
- Water and Wastewater Service and Billing Practise

BE IT FURTHER RESOLVED THAT that the following policy be created to park these ^{policies} policies until such time that they can be reviewed and addressed on their merits:

- The title of this policy will be The Town of Cochrane's Municipal Policy Under Section 270 (1) of the Municipal Act.
- The following policy will replace policies, which have been suspended in accordance with resolution _____ (this resolution number), and serve as the Municipality's obligations under Section 270 (1) of the Municipal Act.
- In accordance with the Municipal Act Section 270 (1) the Municipality's policy with respect to the suspended policies will be to apply the prescribed requirements in the most up to statute, as it applies accordingly.
- The Municipality will review each of the suspended polices and address and revision or even rescinding of the policy as time permits.
- This policy will remain in effect until such time as Council of the own of Cochrane determines to rescind or modify.

THE CORPORATION OF THE TOWN OF COCHRANE

- This policy take effect immediately upon ratification of this resolution. Any formatting or immaterial language adjustments be presented to council by the _____ Council meeting.

DECLARED THE MOTION

- CARRIED
- DEFEATED
- DEFERRED
- REFERRED TO: _____
- RECORDED VOTE - Requested by: _____

Mayor (Deputy Mayor)

RECORDED VOTE	FOR	AGAINST	CONFLICT	ABSENT
France Bouvier	/			
Daniel Brunet	/			
Sylvie Charron – Lemieux	/			
Rodney Hoogenhoud	/			
Susan Nelson	/			
Peter Politis	/			
Marck Recoskie	/			

DECLARATION OF CONFLICT OF INTEREST

DISCLOSED HIS/HER INTEREST(S)

VACATED HIS/HER SEAT

ABSTAINED FROM DISCUSSION AND DID NOT VOTE ON THIS QUESTION.