

**Annual Report
of the
Integrity Commissioner
for
The Corporation of the City of Sault Ste. Marie**

(Covering the period from May 1, 2018 until December 31, 2018)

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Date: February 6, 2019

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Background

On May 1, 2018, the Council of the Corporation of the City of Sault Ste. Marie, appointed Antoinette Blunt, President, Ironside Consulting Services Inc. as the city's first Integrity Commissioner. The period of appointment is from May 1, 2018 until December 31, 2020. This report represents the services provided from the date of appointment of May 1, 2018 until December 31, 2018.

The Code of Conduct (Council and Local Boards), was approved by Council on December 11, 2017, as Bylaw 2017-242.

Code of Conduct

In the purpose of the Code of Conduct it is stated that it is “a written Code of Conduct for Council and local boards helps to ensure that the members of Council, advisory committees, and local boards of the municipality (as defined in the *Municipal Act*) share a common basis for acceptable conduct. This Code is designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate. These standards should enhance public confidence that Sault Ste. Marie's elected and appointed representatives operate from a base of integrity, justice and courtesy. The key principles underlining the Code of Conduct are:

- a. All members shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- b. Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;
- c. Members are expected to perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny;
- d. Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature and City Council.

Municipal Council members hold positions of privilege; therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community and regard for the integrity of the Corporation. The purpose of the Code of Conduct is to: protect the public interest; encourage high ethical standards among members of Sault Ste. Marie City Council and local boards; provide a universal understanding of the fundamental rights, privileges, and obligations of members of Sault Ste. Marie City Council and local boards; provide a means for members of Sault Ste. Marie City Council and local boards to obtain information on some contemplated conduct in circumstances where they are uncertain as to the ethical appropriateness of that conduct.”

Role of Integrity Commissioner

The role of the Integrity Commissioner is defined in the Municipal Act, 2001 and further, in the *City's Complaint Protocol for Code of Conduct (Council and Local Boards)*. The process for the Integrity Commissioner applies to members of Sault Ste. Marie City Council and its local boards as defined in section 223.1 of the *Municipal Act* (members). As Integrity Commissioner, "responsibilities include the following:

1. To provide written and oral advice to members and City staff concerning the interpretation of and compliance with the Code of Conduct for Council and Local Boards governing the ethical behaviour of the members (the "Code");
2. To provide Council and its local boards with specific and general opinions and advice on the interpretation of the Code;
3. To conduct inquiries into a request made by Council, a local board, a member of City staff or any person demonstrably acting in the public interest into whether a member has contravened any application provision of the Code;
4. To attempt to settle any complaint between the complainant and the member before commencing an inquiry."

Recommended Amendments to Appendix "A" Complaint Protocol for Code of Conduct (Council and Local Boards)

The Integrity Commissioner has undertaken a review of the Complaint Protocol for amendments. These recommendations are made for the purpose of clarification and not to alter the intent of the protocol with the exception of a recommendation regarding the management of formal complaints.

Under the section titled "Integrity Commissioner", the sections noted below in bold are the recommended amendments:

"The City of Sault Ste. Marie Integrity Commissioner shall be responsible for the provision of services as established by Council which will include the following:

1. To provide written and oral advice to members and City staff concerning the interpretation of and compliance with the Code of Conduct for Council and Local Boards governing the ethical behaviour of the members (the "Code");
2. **To review the Code of Conduct to ensure it accurately reflects best practice for the conduct of members of Council, local boards, members of City staff or any person demonstrably acting in the public interest and recommending any amendments thereto;**
3. To provide Council and its local boards with **training regarding the Code of Conduct, the role of the Integrity Commissioner**, specific and general opinions and advice on the interpretation of the Code;
4. To conduct inquiries **or investigations as appropriate**, into a request made by Council, a local board, a member of City staff or any person demonstrably acting in the public interest into whether a member has contravened any application provision of the Code;

5. To attempt to settle any complaint between the complainant and the member before commencing an inquiry.”

Under the section titled “Informal Complaints in the preamble, add the phrase “and its Local Boards” as follows:

“Any individual who identifies or witnesses behaviour or activity by a member of Council **and its local boards** that appears to be in contravention of the Code of Conduct for Council and Local Boards may address the prohibited behaviour or activity themselves in the following manner”

Under the section titled “Formal Complaints”, specifically sections 1., 2., 3., and 4., the sections noted below in bold are the recommended amendments:

1. “All complaints or requests for inquiries shall be submitted to the City Clerk’s Department and sworn before a commissioner of oaths in the form provided in Appendix “B” and the Clerk shall forthwith forward the complaint to the Integrity Commissioner.
2. All complaints or requests for inquiries must clearly state:
 - a. The member to whom the complaint relates
 - b. The nature of the alleged contravention
 - c. The specific provision(s) of the Code allegedly contravened;
 - d. Names of any witnesses to the alleged contravention; and
 - e. Written material in support of the alleged contravention.
- 3. All complaints or requests for inquiries must be accompanied by all written materials (documents or records), considered to be relevant to the complaint or requests for inquiry.**
4. Upon receipt of a complaint or request for inquiry, the Integrity Commissioner shall first determine if it is within his/her jurisdiction and whether there is a procedure under other legislation or City policy to deal with the complaint. If it is determined that other procedures apply, the Integrity Commissioner shall refer the complainant to the appropriate person or agency to follow that process. This would include such matters as:
 - ~~a. The grievance provisions of a collective agreement;~~
 - b. The complaint provisions under the *Ontario Human Rights Code*;
 - c. A complaint of alleged criminal activity;
 - d. Procedures under the *Municipal Act*, the *Municipal Conflict of Interest Act* or the *Municipal Elections Act*;
 - e. The complaint provisions of the *Workplace Violence and Harassment Prevention Policy*, as stated in that policy.

Where it has been determined that a complaint should be dealt with under one of the above processes, it will no longer be considered or dealt with by the Integrity Commissioner and the time limits within the above processes will apply accordingly.”

The rationale for the deletion of the deferral of a complaint or request for an inquiry to the Integrity Commissioner to the grievance provisions of a collective agreement arose from a complaint that was deferred to the grievance provisions of a collective agreement, and the subsequent decision of the arbitrator as noted below in the section titled “Receipt of Formal Complaints”.

Recommended Amendments to Appendix “B” Request for Investigation Code of Conduct for Members of Council and Local Boards

In the Form, additional sections are being recommended to seek more specific details including as follows:

- Date of Incident
- Time of Incident
- Location of Incident
- Names, Position, Contact Information (phone number or email address) of all witnesses to the incident

A notation is being recommended to clarify for complainants that the List of documents or records that are relevant to the requested inquiry must include the document title and date. Another statement has been added in upper case noting that “ALL DOCUMENTS OR RECORDS CONSIDERED RELEVANT TO THE COMPLAINT OR REQUEST FOR INQUIRY MUST ACCOMPANY THIS REQUEST FOR INVESTIGATION FORM”. This is to ensure all information considered to be relevant to the complaint or requests for inquiry to support the decision-making processes of the Integrity Commissioner.

Receipt of Formal Complaints

Shortly after appointment, the Integrity Commissioner received two formal complaints that had been in the queue.

There were no informal complaints, questions, requests for information, or inquiries from staff, members of Council or Local Boards or the public, received during this period.

As required under the protocol, upon receipt of a complaint or request for inquiry, the Integrity Commissioner shall first determine if the complaints were within my jurisdiction, and whether there is a procedure under other legislation or City policy to deal with the complaint. The protocol stated that if it was determined that other procedures apply, the Integrity Commissioner was to refer the complainant to the appropriate person or agency to follow that process. This included “such matters as:

- f. The grievance provisions of a collective agreement;
- g. The complaint provisions under the *Ontario Human Rights Code*;
- h. A complaint of alleged criminal activity;
- i. Procedures under the *Municipal Act*, the *Municipal Conflict of Interest Act* or the *Municipal Elections Act*;
- j. The complaint provisions of the *Workplace Violence and Harassment Prevention Policy*.”

The protocol also indicated that where it had been determined that a complaint should be dealt with under one of the above processes, it was no longer to be considered or dealt with by the Integrity Commissioner and the time limits within the above processes would apply accordingly.

One formal complaint was determined not to be in the jurisdiction of the Integrity Commissioner as it was from a member of staff who was a member of a bargaining unit. This individual had simultaneously filed a complaint under the grievance provisions of their collective agreement. The grievance proceeded to arbitration. The arbitrator, Lorne Slotnick, noted the Integrity Commissioner relied on the clause that if it was determined that other procedures apply, the Integrity Commissioner was to refer the complainant to the appropriate person or agency to follow that process. Arbitrator Slotnick, noted in his decision that the municipality in its role as an employer cannot be held responsible for statements made by an elected Councillor and for this reason, believed the Integrity Commissioner should have viewed this matter within her jurisdiction. Arbitrator Slotnick, also noted in his decision that the Integrity Commissioner has the power to make a finding on whether a Councillor has breached the code of conduct while the labour arbitrator's jurisdiction arises from the collective agreement between a union and employer and does not include the power to sanction municipal Councillors. Based on this decision, the Integrity Commissioner has recommended amending the protocol for complaints and removing the clause that would refer a unionized complainant to the grievance provisions of a collective agreement.

A review of the second formal complaint found that further investigation was not necessary in this matter as there were no violations of the Code of Conduct found.

Expenditures During Period

The cost for services rendered for the period from May 1, 2018 until December 31, 2018 was \$1,158.25. This included the expenses related to the preliminary investigations of the two formal complaints submitted during this period.

Integrity Commissioner's Preliminary Information Report

To Mayor and Council – The City of Sault Ste. Marie

Date: Monday July 16, 2018

Complaint #: 2018-02

**Request for Investigation – Code of Conduct for Members of Council and Local Boards
(Copy of signed affidavit attached to report)**

Date: 6 April 2018

Name of Requester (Complainant): Helen and Ken Marshall

Name of member of Council or local board who is alleged to have contravened Code of Conduct: Councillor Judy Hupponen

Sections of Code Alleged to have been contravened: Conduct and improper use of influence

The Particulars:

Helen and Ken Marshall stated that “At a Council meeting she [Hupponen], is recorded saying that Spruce Haven was the most depressing and deplorable place she had been to. (Spruce Haven is OSPCA and MNR approved/inspected). She [Hupponen] further took upon herself to call and have MNR, Algoma Health Unit, Humane Society and Canadian Wildlife Association to do inspections. She slandered Spruce Haven on social media (Facebook, Zoo Check and Soo Today) claiming animal abuse, mistreatment and sharing an online petition to close Spruce Haven down.”

Copies of Documents and Records Relevant to Requested Inquiry:

None submitted at the time the request for investigation submitted. On Sunday July 15, 2018, emails sent to the Integrity Commissioner with a total of twenty screenshots from inserts into Facebook, saultonline.com and sootday.com by Councillor Hupponen.

***Excerpt From: Code of Conduct (Council and Local boards), Bylaw 2017-242; 11
December 2017***

“Conduct”

“As a representative of the City, every member has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying

or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, any member of staff or any member of the public. A member shall not speak or communicate in a manner that is discriminatory to any individual based on that person's race ancestry, place of origin, creed, gender, sexual orientation, age colour, marital status or disability."

Excerpt From: Code of Conduct (Council and Local boards), Bylaw 2017-242; 11 December 2017

"Improper Use of Influence"

"No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's immediate relatives, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

For the purposes of this provision "private advantage" does not include a matter:

- a. that is of general application;
- b. that affects a member of Council, his / her immediate relatives, staff members, friends, or associates, business or otherwise as one of a broad class of persons;
or
- c. that concerns the remuneration or benefits of a member of Council.

Members should not advocate on behalf of any person at a hearing of an adjudicative board and should not contact any member of such a board regarding any application before it."

Assessment:

- 1.0 The Clerk's office advised that the date of the Council meeting this matter was discussed was February 20, 2018. The Integrity Commissioner listened to the sections of the Council meeting regarding this issue (time stamped 1:19:59 to 3:08). Helen and Ken Marshall allege that at this Council meeting, Councillor Hupponen is recorded saying that "Spruce Haven was the most depressing and deplorable place she had been to".

The expressions of opinion by Councillor Hupponen at this Council meeting were found not to be violations of the Code of Conduct.

- 2.0 No other information needed to respond to this allegation. Helen and Ken Marshall allege that Councillor Hupponen, “further took upon herself to call and have MNR, Algoma Health Unit, Humane Society and Canadian Wildlife Association to do inspections.”

Councillor Hupponen advised the Integrity Commissioner she contacted the MNR regarding requirements under their license but that she did not contact the OSPCA or the local humane society. Councillor Hupponen has the right to seek this information from the MNR and in doing so, this was not a violation of the Code of Conduct.

- 3.0 Helen and Ken Marshall allege that Councillor Hupponen “slandered Spruce Haven on social media (Facebook, Zoo Check and Soo Today) claiming animal abuse, mistreatment and sharing an online petition to close Spruce Haven down.”

A preliminary inquiry is within the jurisdiction of the Integrity Commissioner if there are documents or reports submitted for review. The Marshall’s did not submit documents or reports on April 6, 2018. The Integrity Commissioner contacted Mrs. Marshall and she indicated she would be able to forward documents by email. On Sunday July 15, 2018, emails sent to the Integrity Commissioner with a total of twenty screenshots from inserts into Facebook, saultonline.com and sootday.com, by Councillor Hupponen. The Integrity Commissioner assessed the contents of these screenshots.

The expressions of opinion by Councillor Hupponen as assessed in the screenshots submitted, were found not to be violations of the Code of Conduct.

- 4.0 No further investigation is necessary in this matter as there were no violations of the Code of Conduct found.

Regards,



Antoinette Blunt MPA, CHRL, CHRE, FHRPA
Integrity Commissioner
City of Sault Ste. Marie