

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

Integrity Commissioner for the  
Municipality of Val Rita-Harty



# INQUIRY

## REPORT/DECISION

**ALLEGATIONS: CONTRAVENTION OF THE  
MUNICIPALITY OF VAL RITA-HARTY**

**CODE OF CONDUCT**

**BY: MAYOR JOHANNE BARIL**

## I. REQUEST FOR INQUIRY

- [1] Expertise for Municipalities (“E4m”) as Integrity Commissioner (“IC”) received a request for inquiry (hereinafter the “Request”) that alleged Johanne Baril (“Mayor Baril”), a member of Council for the Municipality of Val Rita-Harty, contravened Val Rita-Harty’s Code of Conduct (“Code of Conduct”) when she undertook municipal staff work and subsequently made a request for remuneration for that work.
- [2] The Requestor alleged that Mayor Baril contravened the Code of Conduct by:
- a) **undertaking administrative work without the direction of Council or as a volunteer under the direction of senior staff;**
  - b) **drafting, reviewing and editing staff reports, draft bylaws, policies etc. prior to them going to the Council table;**
  - c) **interfering in the day-to-day work of staff by telling them what to do in their jobs;**
  - d) **attempting to influence senior staff with respect to HR matters;**
  - e) **requesting payment or some form of Council remuneration increase to cover the work undertaken.**

## II. FINDINGS/CONCLUSION

- [3] We find that Mayor Baril acted outside of her role as Mayor contrary to the Val Rita Harty Code of Conduct with respect to all of the allegations outlined above with the exception of: **e) requesting payment or remuneration**. Additionally, she contravened the *Municipal Conflict of Interest Act* by failing to submit a written declaration of pecuniary interest.
- [4] Of consideration, is that these contraventions occurred under extenuating circumstances brought about by an extended period of transitional turmoil between filling Clerk/Administrator/CAO positions and the additional workload created by the onset of COVID-19 that was experienced by all municipalities no matter how small and under-resourced.
- [5] In light of this, we will not be recommending any penalties, just some learnings and advice for both the Mayor and all of Council going forward.
- [6] We advise Mayor Baril to ensure that she acts within her role and does not interfere with municipal operations going forward regardless of the circumstances. Members of Council, regardless of their skills and qualifications, should never take on an administrative, managerial or other operational role.

- [7] We recommend that:
- a) Mayor Baril immediately complete and submit written declarations for any decisions made by Council related to her remuneration for administrative work. Furthermore, that at the next meeting of Council that Mayor Baril formally declare such interest.
  - b) Going forward, bylaws and policies be drafted in a manner that clearly delineates the role of Council and the role of administration/operations.
  - c) That the CAO ensures that Council is trained on their obligations under the **Roles and Responsibilities of Council and Senior Management**.
  - d) That Val Rita-Harty update their Code of Conduct and Integrity Commissioner Protocol.

### III. INQUIRY PROCESS

[8] Upon receipt of the Request, we completed an initial review of the accompanying material submitted by the Requestor and upon finding the Request properly considered by us, we conducted a preliminary review of the allegations to determine if there were sufficient grounds to conduct a full inquiry.

[9] We interviewed the Requestor, Witnesses and Mayor Baril.

[10] Additionally, we reviewed minutes and other relevant documentation.

[11] We reviewed the evidence before us and considered the following pertinent sections of Provincial legislation, as well as local bylaws and policies.

1) **Rita-Harty “Code of Conduct”,** which is included within Schedule “A” to **By-law #879-10 “ACCOUNTABILITY AND TRANSPARENCY POLICY AND CODE OF CONDUCT POLICY FOR COUNCIL MEMBERS & LOCAL BOARDS” OF THE MUNICIPALITY**

- a) In the Background section the policy states: *“To assist the Municipality of Val Rita-Harty and Council in interacting effectively with all stakeholders, the following obligations are expected of each of them:*
1. *That they solemnly promise, declare and carry out their responsibilities as prescribed in the **oath of office**.*
  2. *That they familiarize themselves with and follow the **Procedural By-law** for Council and its committees.*
  3. *That members of Council are to read and respect the **Roles and Responsibilities of Council and Senior Management** document.*
  4. *That they read, understand and follow the provision of the **Municipal Act** and **Municipal Conflict of Interest Act**.”*
- b) In Section 2. Policy Statement 4 under PURPOSE: *Provide a means for Municipal Council Members to obtain authorization for some contemplated conduct in circumstances where they are uncertain as to the ethical appropriateness of that conduct.*

- c) *Under Section 4. Responsibilities - Statement of Commitment: In addition to all legislative requirements, the Members of Council of the Corporation of the Township of Val Rita-Harty have adopted the requirements of this Code of Conduct Policy and ethics as standards that will be adopted in the performance of its roles and responsibilities.*
- d) *Conflict of Interest - Every Council member shall have regard to the provisions contained in the Municipal Conflict of Interest Act, R.S.O. 1990.*
- e) *Financial Transactions - Every Council member must adhere to Municipal by-laws and policies regarding any municipal financial transaction.*

**2) Roles and Responsibilities of Council and Senior Management – “RELATIONS WITH ADMINISTRATION AND PERSONNEL”** (this policy refers to By-law #879-10) *(translated from the original French version)*

- 1) The Policy Development Role of Council and the operational implementation role of the Administration will be respected.
- 2) The members of the Council shall not attempt to direct the activities of the staff or departments unless they go through the established chains of authority.
- 3) Staff skills, expertise and contributions to the municipality have been recognized and appreciated.
- 4) Board members will direct any criticism of the staff to the Chief Administrator/Registrar and refrain from criticizing staff in the field of staff.

**3) Municipal Act - Role of members of Council**

- a) **Section 224** provides that Council’s role is as a governing body. The role of Council should be limited to creating policies and giving directions to staff (by resolution and at a Council meeting, not individually).
- b) **Section 225** of the Municipal Act outlines the role of the Mayor as head of Council not the head of both Council and the administration. The CAO or the other most senior manager is responsible for the administration/operation of the Municipality.
- c) **Section 258 (1)** states, “The following are not eligible to be elected as a member of a council or to hold office as a member of a council:
  - i. an employee of the municipality,
  - ii. a person who is not an employee of the municipality but who is the clerk, treasurer, Integrity Commissioner, Auditor General, Ombudsman or registrar referred to in section 223.11 or an investigator referred to in subsection 239.2 (1) of the municipality, or”

## ***Municipal Conflict of Interest Act (MCIA)***

### **When present at meeting at which the matter is considered.**

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- b) shall not take part in the discussion of, or vote on any question in respect of the matter; and;
- c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

### **Written statement re disclosure**

5.1 At a meeting at which a member discloses an interest under [section 5](#), or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the Municipality or the secretary of the committee or local board, as the case may be.

### **Where [ss. 5](#) and [5.2](#) do not apply**

4 Sections 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have:

- a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
- b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
- c) by reason of the member purchasing or owning a debenture of the municipality or local board;
- d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;
- e) by reason of having an interest in any property affected by a work under the [Drainage Act](#) or by a work under a regulation made under Part XII of the [Municipal Act, 2001](#) or Part IX of the [City of Toronto Act, 2006](#), as the case may be, relating to local improvements;
- f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the [Assessment Act](#);
- g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality

or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;

- i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;
- j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
- k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

#### IV. FINDINGS OF FACT

- [12] The majority of the allegations concern actions/behaviour of Mayor Baril extending from early 2020 (the beginning of COVID and the extended vacancy of the CAO position), to the hiring of the current CAO in April of 2021 and the issue that came to the Council table respecting compensation for Mayor Baril in early 2022.
- [13] When interviewed, Mayor Baril advised that she and other Council members felt the need to take on some of the administrative duties generally undertaken by staff.
- [14] It was the Mayor's understanding that she and other Councillors carrying out administrative duties had received Council direction to take on this work in order to keep the Municipality functioning and in compliance with legislative requirements.
- [15] The evidence before us does not support that a formal decision was made by Council authorizing Mayor Baril to assume administrative duties. To be clear, there were no Council resolutions or notations in the Council Meeting Minutes that verified that Council indeed had given this direction.
- [16] Mayor Baril is in her second term as Mayor. She has attended training sessions whereat she was made aware of the roles and responsibilities of Council and staff. Mayor Baril admitted that she believed she had the necessary skills, she did assume an administrative and managerial role that was outside her role as Mayor. She further noted that the departure from her mayoral role was due to extenuating circumstances.
- [17] Mayor Baril reported that she spent twelve (12) years in the military and worked in communications and volunteers for a number of other local organizations.
- [18] As required by the *Municipal Act*, Council for Val Rita-Harty adopted a ***Roles and Responsibilities of Council and Senior Management*** policy which clearly describes the roles and responsibilities of Council and those of Senior Staff. Furthermore, Mayor Baril is aware of her responsibility to abide by the policy.
- [19] At the January 18, 2022, Council meeting, Item 12.4 brought the "Additional Workload of the Mayor" to the open Council table. The minutes read: "*Discussion on a salary increase for the mayor*"

*for the additional administrative workload that she did in the last two years. The clerk advises the member of council that it is prohibited to remunerate a member of council for administrative tasks performed and that this would go against the Municipal Act as well as the code of conduct for councillors. The clerk strongly recommends that the council seek a legal opinion on this subject.*

- [20] *The council will seek a legal opinion on this matter.”*
- [21] The above discussion did not result in a formal resolution at that time.
- [22] Mayor Baril provided Council with a spreadsheet of the tasks she undertook while the Municipality was understaffed. The list included tasks that would be performed by the CAO or other statutory officers of the Municipality.
- [23] The Clerk reached out to E4m seeking advice. Advice was provided dated February 10, 2022.
- [24] The matter was brought back to the March 15, 2022 Council meeting. Mayor Baril attended by phone but did not chair the meeting. Councillor Tremblay acted as meeting chair. No declaration of pecuniary or general conflict of interests were noted in the minutes for any item.
- [25] The following formal resolution was adopted under Item 6.1 as Resolution #22-021. It read as follows: *“That the municipal council directs the Wishart Law Firm to undertake the necessary steps to perform the work demanded and provide a legal opinion concerning the additional workload of the mayor.”*
- [26] A recorded “registered” vote was asked for respecting the above resolution. Mayor Baril abstained from voting but did not declare a pecuniary interest according to the approved meeting minutes.
- [27] Council received the requested legal opinion in which they were advised not to compensate Mayor Baril as doing so would be contrary to the *Municipal Act*.
- [28] Council decided not to reimburse Mayor Baril for the additional work she took on.
- [29] It was confirmed by Mayor Baril and another witness that other members of Council did generally approve of her, as well as other Council members, stepping up to “help out staff” during the period mentioned. However, they did not realize the extent to which Mayor Baril had pursued the administrative work she believed were her duties.
- [30] The request for reimbursement was brought up by Councillor Lachance during the Council meeting and did not come from Mayor Baril. Councillor Lachance confirmed that at the time he did not realize that it would be against the rules to compensate a member of Council something for the administrative work especially in light of the exceptional circumstance.

- [31] Mayor Baril claimed she volunteered to take on the administrative duties because most other Councillors did not have the same time available as she did to take on the additional work and it needed to get done.
- [32] Mayor Baril reported that Council searched outside the Municipality for additional qualified help during this time, as existing staff resources were not sufficient to deal with the workload, but they were unsuccessful in getting someone with the right skill set due to everyone else (other municipalities) being either short staffed or also overwhelmed by COVID requirements at the same time.
- [33] According to the current CAO, Mayor Baril has not been undertaking administrative duties since he became CAO.

## V. ANALYSIS

- [34] Mayor Baril did not contest the allegations with the exception of her remuneration. She reported that she did not bring forward the request for compensation or remuneration.
- [35] Mayor Baril understands the difference between the roles and responsibilities of Council and Administration.
- [36] Mayor Baril admits she has high standards and expectations of staff and tends to be very straightforward in her communication in that respect, possibly to the point of being overbearing in some instances for some personalities.
- [37] In a small office, when even one position is vacant, existing staff or external inexperienced staff may not be able to accomplish all the various duties in a manner that may be expected by Council/legislation. However, it is still not the role of a mayor or a councillor to take on an administrative or management role.
- [38] Section 258 of the *Municipal Act* provides that if a member of Council is carrying out administrative functions in the Municipality, and particularly to the extent Mayor Baril did in this circumstance, they cannot sit on the Municipality's Council. In other words, by undertaking administrative duties the Mayor in essence vacated her Council position because she cannot be both Mayor and an administrator/manager at the same time.
- [39] While Council appears to have condoned Mayor Baril and other Councillors to take on some level of administrative/managerial tasks, even if they had passed a resolution or bylaw directing this action it would not be within their jurisdiction to pass as the decision would be contrary to the Municipal Act.
- [40] According to the *Municipal Conflict of Interest Act (MCIA)*, great care must be exercised by members of Council to avoid a contravention. Members of Council are required to provide a



written declaration with any matter before Council which they are prohibited from participating in, or even influencing the debate.

- [41] While members of Council may debate their remuneration as Councillors (section 4 (i) of the *MCI*A), the *MCI*A does not provide members with the right to lobby Council for compensation for work carried out that falls outside of their role as a member of Council. In this case, a Council member other than Mayor Baril brought forward the motion to compensate Mayor Baril. However, because this was compensation for Mayor Baril that was not remuneration for her role as Mayor and was in fact for her acting contrary to her role, she did have a pecuniary interest in the matter and while she abstained from the vote, she did not submit a written declaration which is contrary to Section 5.1 of the *MCI*A.
- [42] Mayor Baril did contravene the Code of Conduct and the *MCI*A. We do not find that her actions/behavior were for a nefarious or self- serving purpose. It is evident that Mayor Baril believed she was acting in the best interests of her municipality and not for her own benefit in any way.

Dated August 18, 2022