

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

Integrity Commissioner  
for the Town of Cochrane



# INQUIRY

# REPORT/DECISION

**ALLEGATION: CONTRAVENTION OF THE TOWN  
OF COCHRANE CODE OF CONDUCT**

**BY: Councillor Rodney Hoogenhoud**

## I. REQUEST FOR INQUIRY

- [1] On October 16, 2020, E4m as Integrity Commissioner received a request for inquiry (hereinafter the "Request") with respect to Rodney Hoogenhoud ("Councillor Hoogenhoud"), an elected member of the Town Council ("Council") for the Town of Cochrane (the "Town"). The Requestor alleged that Councillor Hoogenhoud contravened the Town of Cochrane Code of Ethics and Conduct for Members of Council ("Code of Conduct") and the Staff Council Relations Policy ("SCR Policy").
- [2] The Requestor is a member of the public and was therefore entitled to make an Application for an inquiry under sections 223.4 of the *Municipal Act*.
- [3] In the Application, the Requestor alleged that Councillor Hoogenhoud contravened sections 3 and 3 (c) ii, iv, and vii of the Code of Conduct and sections 3, 11, and 7 of the CSR Policy when he:
- a. Undermined the CAO with Town employees and Members of Council;
  - b. Made vexatious and unwelcomed comments about the CAO to a junior level employee;
  - c. Made disrespectful statements about the CAO to members of the public; and
  - d. By his statements/actions has poisoned the working relationship between Council and the Directors as well as among municipal employees.
- [4] When interviewed, the Requestor made additional allegations related to the behavior of Councillor Hoogenhoud toward Town employees. More specifically, these allegations were about Councillor Hoogenhoud's disrespectful treatment of the CAO, Department Directors, and junior level municipal employees at Council meetings and with members of the public generally. Many of the allegations span Councillor Hoogenhoud's time on Council. However, only those alleged incidents which occurred during the same period as the matter before us were considered as part of this inquiry. More specifically, the following were also considered:
- a. During the October 6, 2020, Council Meeting Councillor Hoogenhoud:
    - i. made disparaging remarks about several of the employees in attendance;
    - ii. asked an unreasonable number of questions and asked inappropriate questions related to the operation of the municipal landfill and other public works matters many of which issues were not related to an agenda item;
    - iii. accused an employee of not following Council's direction in relation to a budgeted item; and
    - iv. accused an employee of inadequately doing their job and implied that there was a generally poor workplace culture resulting in employees leaving their employment with the Town, resulting in the need for a "whistleblower" system.
  - b. Councillor Hoogenhoud participated in a matter related to the municipal landfill in which he had a prohibited pecuniary interest.

## II. FINDINGS/CONCLUSION

- [5] Based on the evidence before us, Councillor Hoogenhoud contravened the CSR and the Code of Conduct when he:
- a. Opined without factual evidence or a decision of Council in a text message to a junior Town employee that the CAO was against the demolition derby and that the CAO “*Just hates Cochrane very sad*”.
  - b. At the October 6, 2020, COW meeting attempted to undermine the credibility of the CAO by misstating comments the CAO made about the importance of economic development.
  - c. At the October 6, 2020, COW meeting he interrogated the DIS about the Town landfill and other matters that were not on the agenda.
  - d. At the October 6, 2020, COW meeting he accused the DCS of failing to carry out a decision of Council related to an item included in a capital budget; and
  - e. At the October 6, 2020, COW meeting he impugned the reputation of the DHR when he implied that the DHR’s exit interviews were ineffectual and further when he implied that there was a generally poor workplace culture resulting in employees leaving their employment with the Town, resulting in the need for a “whistleblower” system.
- [6] Additionally, Councillor Hoogenhoud contravened the *MCIA* when he failed on four (4) occasions to file the statutory written declarations with the Clerk, which is also a contravention of the Code of Conduct. We will not be taking this matter to court as the finding was a result of a Code of Conduct investigation and was not filed as a contravention of the *MCIA*.
- [7] Upon finding a breach of the Code of Conduct, section 223.4(5) of the *Municipal Act, 2001* permits Council to levy a penalty of either a reprimand, or a suspension of the remuneration paid to the member in respect of his services as a member of council for a period of up to 90 days for each breach.
- [8] Council was present for, and saw the questioning of staff by Councillor Hoogenhoud and is in a better position than the Integrity Commissioner to measure the offence and the appropriate penalty.
- [9] We are most concerned that this behaviour must stop. It is destructive to the operation of the Town and is poisoning the work environment for staff and is diverting valuable taxpayer resources from providing appropriate service. As such, we recommend that Council should levy a penalty for each breach, but we very strongly recommend as remedial action that Council embark on a governance training program with George Cuff so that all members can better understand their proper role and that Councillor Hoogenhoud can move into a constructive leadership role rather than continue the counter-productive behaviour he has exhibited.
- [10] We also recommend that Council review and consider updates to their Code of Conduct and adopt an Integrity Commissioner Inquiry Protocol.

### III. INQUIRY PROCESS

- [11] Upon receipt of the Application, we completed an initial review of the request and supporting material submitted by the Requestor and determined that there were sufficient grounds to conduct an inquiry into the matter.
- [12] The matter was assigned to Sean Sparling (the "Investigator"), an investigator with Investigative Solutions Network ("ISN") as an agent of the Integrity Commissioner who interviewed the Requestor, nine (9) witnesses, and Councillor Hoogenhoud.
- [13] Witnesses in this inquiry included Mayor Clement, the Director of Community Services ("DCS"), the Director of Infrastructure Services ("DIS"), the Director of Human Resources ("DHR") as well as current and former employees and members of the public.
- [14] We queried the Municipal Clerk regarding the registry of written declarations of pecuniary interest and reviewed the agendas, minutes, and audio recordings of Council meetings including the following:
- a. May 26, 2020, Closed Session
  - b. June 9, 2020, Regular Council Meeting
  - c. June 23, 2020, Closed Session
  - d. July 14, 2020, Regular Council Meeting
  - e. August 11, 2020, Regular Council Meeting
  - f. October 6, 2020, Regular Council Meeting
  - g. October 6, 2020, Committee of the Whole Meeting
- [15] Additionally, we also reviewed text messages, emails and other pertinent municipal records from both open and closed sessions as they related to the matters before us.
- [16] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Town's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:
- Whether or not the individual has firsthand knowledge of the situation
  - Whether or not the individual had an opportunity to observe the events
  - Whether or not the individual may have bias or other motive
  - The individual's ability to clearly describe events
  - Consistency within the story
  - The attitude of the individual as they are participating

- Any admission of dishonesty<sup>1</sup>

[17] The Investigator found the Requestor, the witnesses and Councillor Hoogenhoud to be credible. He noted that Councillor Hoogenhoud, while admitting to the alleged events did minimize or rationalize his actions.

#### IV. FINDINGS OF FACT

[18] The circumstances that give rise to the request for inquiry are that Councillor Hoogenhoud is alleged to have:

- a. Undermined the CAO with Town employees and Members of Council;
- b. Made vexatious and unwelcomed comments about the CAO to a junior level employee;
- c. Made disrespectful statements about the CAO to members of the public;
- d. Made disrespectful statements about the CAO and three (3) of the Directors at the Committee of the Whole meeting on October 6, 2020:
  - i. made disparaging remarks about several of the employees in attendance;
  - ii. asked an unreasonable number of questions related to the operation of the municipal landfill;
  - iii. accused an employee of not following Council's direction in relation to a budgeted item; and
  - iv. accused an employee of inadequately doing their job and implied that there was a generally poor workplace culture resulting in employees leaving their employment with the Town resulting in the need for a whistleblower system.
- e. Councillor Hoogenhoud participated in a matter related to the municipal landfill in which he had a pecuniary interest; and
- f. By his statements/actions has poisoned the working relationship between Council and the Directors as well as among municipal employees.

**Reference:** Request for Inquiry dated October 16, 2020  
Interview of the Requestor

[19] Councillor Hoogenhoud was elected October 22, 2018, and is a first term Councillor.

**Reference:** Town of Cochrane Election Results

[20] Council was trained regarding their roles and responsibilities, Council/staff relationship and the *Municipal Conflict of Interest Act* ("MCIA") on June 10, 2019, and January 21, 2020, by Paul Cassan a lawyer with Wishart Municipal Law Group/Wishart Law, and

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<sup>1</sup> *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009), 185 LAC (4<sup>th</sup>) 176 (Alta.Arb.)

Peggy Young-Lovelace a Director for E4m. Councillor Hoogenhoud was in attendance and actively participated in the training sessions.

**Reference:** Council Meeting Agenda June 10, 2019  
Council Meeting Minutes June 10, 2019  
Video Recording of June 10, 2019, Training  
Council Meeting Agenda January 21, 2020  
Council Meeting Minutes January 21, 2020

[21] More specifically, Councillor Hoogenhoud was trained that:

- Council is a Governance body that is responsible for setting policy and establishing the types of services the Town will provide and to what level those services are provided. Council is not a management board and is not responsible for the operations of the Town.
- It is Council's role to adopt policy related to municipal services and their operation.
- That Council can only deal with matters that are on the meeting agenda. Discussion about matters not on the agenda is improper and may constitute an illegal meeting with potentially significant legal consequences for the municipality.
- That Council has one employee, the CAO, and is responsible for setting performance expectations and conducting proper performance evaluations of only that single employee.
- Individual members of Council do not direct, or performance manage the CAO that direction comes from Council as a body in the form of a policy or resolution. Similarly, members of Council do not direct or performance manage staff.
- That Members of Council should seek clarification on matters contained in staff reports in advance of the Council meeting from the author of the report and that a best practice is to advise the individual when you intend to question a topic so that they can be prepared in advance of the meeting. That this makes both the Councillor and the employee look good.
- That Members of Council need to follow the Code of Conduct and the Council – Staff Relations Policy.
- That he is required to comply with the *MCIA* and that after March 1<sup>st</sup> of 2019, Councillors are not only required to declare their pecuniary interest at the meeting, but pursuant to section 5.1 of the *MCIA* they must also make a written submission of that interest to be included in the registry.
- That Members of Council are protected by section 448 of the *Municipal Act* for actions done within their role and in good faith, but that this protection does not cover acts that are outside of their role, in bad faith or illegal.

## Disparaging Remarks About the CAO

[22] It was alleged that Councillor Hoogenhoud made disparaging remarks about the CAO on a number of occasions.

[23] On October 2, 2020, a junior municipal employee sent a text message to Councillor Hoogenhoud with a video and a comment "*this would be cool for next demolition derby*". Councillor Hoogenhoud responded "*LOL, if there is one.... cao trying to shut it down*". The employee then asked, "*is he giving a reason why*". Councillor Hoogenhoud then texted "*Liability and he hates carnival*"

**Reference:** Text Messages of October 2, 2020, between 6:24 & 10:38 P.M.  
Supervisor Interview, November 9, 2020  
Employee Interview, November 17, 2020

[24] Councillor Hoogenhoud also texted "*Just hates Cochrane very sad*" [referring to Darren Ottaway] in response to a comment made by the employee.

**Reference:** Text Messages of October 2, 2020, 10:38 P.M.  
Supervisor Interview, November 9, 2020  
Employee Interview, November 17, 2020

[25] The employee reported the exchange to their Supervisor. When interviewed, the employee advised that they reported the matter because Councillor Hoogenhoud was talking about the CAO and shouldn't be talking about the CAO in that way.

**Reference:** Employee Interview, November 17, 2020

[26] The employee reported that they only had a few encounters with the CAO, and never had that feeling at all that the CAO hates Cochrane. And that the CAO has always been positive, wants to be involved in the community and that he is always looking for better ways to do the day-to-day stuff; he wants to be involved and the employee has never gotten the impression that the CAO hates Cochrane or hates the people of Cochrane.

**Reference:** Employee Interview, November 17, 2020

[27] Additionally, at the October 6, meeting Councillor Hoogenhoud made disparaging comments to the CAO including "*...you feel the economic development role is not important, correct?*" when in fact the CAO had made no such statement.

**Reference:** Transcript of the COW Meeting, October 6, 2020

[28] Councillor Hoogenhoud made a lengthy submission on his position regarding the Economic Development Board and the filling of a position. He asked what the “ETA” was on filling this position. The CAO explained that this issue was under review and that it was being brought to Council as part of the overall budgeting process and that he had sent out an email indicating this.

**Reference:** Transcript of the COW Meeting, October 6, 2020

[29] Councillor Hoogenhoud continued extolling his support of the position and ended his comments by saying that Council needed to “*really look at this*”.

**Reference:** Transcript of the COW Meeting, October 6, 2020

[30] The CAO responded:

*“We have a number of operational needs. You may feel that economic development is your priority. We are reviewing that entirely across the organization. We have a number of things we have to accomplish. Council has put a number of different goals in place. We’ll be weighting the different positions and we’ll be making recommendations as part of budget. We’re not going to rush this position. There’s no need to fill it right away...”*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[31] Councillor Hoogenhoud asked the CAO, “*Based on your information presently, you feel the economic development role is not important, correct?*”

**Reference:** Transcript of the COW Meeting, October 6, 2020

[32] This question offended the CAO, who responded, “*That’s not what I said, Councillor.*”

**Reference:** Transcript of the COW Meeting, October 6, 2020

[33] The Investigator reviewed the dialogue between Councillor Hoogenhoud and the CAO and confirmed that the CAO did not say the economic development role was unimportant. The CAO had explained that there were several priorities for Council to consider and not just this one issue presented by Councillor Hoogenhoud.

[34] When interviewed, the CAO advised the Investigator that in his opinion, Councillor Hoogenhoud’s behaviour undermined his professional credentials, alienated him from doing his job and felt like constructive dismissal after a while:



*“It’s the perpetual gotcha approach where he [Councillor Hoogenhoud] feels that he’s some sort of Perry Mason prosecutor and we’re on the witness stand and he’s trying to cross-examine us to show that we’ve done something improper. It’s a very uncomfortable feeling and again, it’s like constant scrutiny for things you try and do because that’s what we’re paid to do and with 24 years of experience, I’ve never had a level of somebody so intent on micromanaging another individual. It’s like there’s a control issue and if he’s not in direct control, he’s not happy.”*

**Reference:** Interview of the CAO, December 12, 2020

[35] The CAO further reported that it is a very toxic type of environment, and he has had feedback from his management team and the consensus among them is that Councillor Hoogenhoud is out to get them.

**Reference:** Interview of the CAO, December 12, 2020

### **Councillor Hoogenhoud’s Response**

[36] Councillor Hoogenhoud advised the investigator that he feels for the CAO because he has had a hard time in the community and hasn’t been welcomed very well. Councillor Hoogenhoud also reported that the CAO has been a difficult person to deal with in comparison to their previous CAO, but he realizes the CAO has a role to play.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[37] With respect to the text messages, he reported the following:

- A member of the fire department had been talking to Hoogenhoud because the fire dept is so involved in the demolition derby
  - That person had information that the CAO was against the demolition derby because of the costs of insurance and felt it was foolish and dangerous for them to be doing that
  - Being a demolition derby lead, he felt their two biggest events (Parade and Demo Derby) were going to take a hit
- There have been few claims and no injuries associate to derby/parade
- These comments were repeated by several firefighters who the CAO was speaking with
- He didn’t hear it directly from the CAO himself
- In regard to not liking the community, the Mayor advised him that the CAO was having difficult times:
  - There was some difficult times in the CAO entering the community; some issues with the children, interaction with other kids and the police were involved and the school and the board

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[38] Councillor Hoogenhoud added:

- That the CAO called Heather Brouwer stupid in Council chambers
- That on January 19, 2020, the CAO replied to an email Councillor Hoogenhoud sent asking for information and the CAO made an accusation about a possible conflict of interest in regard to Hoogenhoud's brother. And that the CAO made some not very nice comments when Hoogenhoud told him it wasn't a conflict of interest.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[39] With respect to the comment that that the CAO hates the people of Cochrane refers to the CAO having some frustration with some of the individuals, and he cited the following:

- He tried to speak with Ottaway about strategic planning and Ottaway told him he didn't have time for Hoogenhoud
- Ottaway attended the EDC meetings; Ottaway was quite rude to one female board member

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

#### October 6, 2020, Council Meeting

[40] At the Council Meeting held October 6, 2020, the CAO and the Directors of Corporate Services, Community Services, Infrastructure Services, Protective Services, and Human Resources were in attendance.

**Reference:** Council Meeting Minutes October 6, 2020  
Council Meeting Recording October 6, 2020

[41] After the Council meeting, Council met as Committee of the Whole. During this meeting, it was alleged that Councillor Hoogenhoud acted disrespectfully toward several of the Directors.

**Reference:** Requestor Interview, December 12, 2020

[42] More specifically, Councillor Hoogenhoud made disparaging remarks about the CAO and the Directors of Community Services, Infrastructure Services and Human Resources.

[43] The matters related to the CAO have been considered previously in this report.

## **Director of Infrastructure Services**

[44] The DIS has been a professional engineer since 2009. He has a master's degree in Structural Engineering and an MBA from the University of Toronto.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[45] He reported that during the October 6, 2020, meeting, he was questioned repeatedly by Councillor Hoogenhoud about engineering issues. The DIS explained that his role is to put all possible options before Council using best practices in accordance with the budget that they have. He also explained that Councillors frequently do not fully read the reports he prepares and instead ask questions about matters that are already explained in his reports.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[46] On October 6, 2020, Councillor Hoogenhoud asked several questions about the weigh scale at the landfill when this information had already been provided to him in a report in August 2020. The DIS explained that he has 20-30 different projects on the go at times and cannot remember the specific details of each one. He further explained that Council is not engaged with them, does not read the information, and tries to micromanage them. He described Councillor Hoogenhoud's questioning as trying to trap him into saying something wrong or different than the written report previously provided.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[47] The DIS also reported that items he was being questioned about were not on an agenda. And that it is difficult to be prepared to answer questions that are related to matters not on the agenda. He also noted that Councillor Hoogenhoud did not provide the DIS with the questions in advance so he could prepare a response.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[48] With respect to questions asked by Councillor Hoogenhoud, the DIS reported that Councillor Hoogenhoud is not actively listening or looking for answers, rather he is just throwing things out and does not give staff a chance to respond to his questions.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[49] The DIS advised that it is a concern when Councillors say that the Directors have only been there two (2) years and do not know the type of services people want. He further

reported he believes that Councillors are suspicious of staff's knowledge or the Councillors think they know more than staff about these types of things and that this is not encouraging, gives a toxic environment in the Council Meeting when you tell the Directors they are unprepared.

**Reference:** Interview of Mr. Rajab, October 27, 2020

- [50] In reviewing the transcript from the October 6, 2020, meeting of Council, the Investigator was able to locate a long series of questions asked of the DIS. It was reported that Councillor Hoogenhoud asked in the range of 40 separate questions of the DIS. The Investigator did not count all the questions; however, he reported the range of separate questions appeared to be accurate.

### **Select Questions asked by Councillor Hoogenhoud of the DIS**

- [51] Councillor Hoogenhoud asked if the municipality was now using a tender platform for their public tenders. The DIS explained that they had started using the platform and offered "...we are using it trying to get better response from the local community, local contractor, and small contractor...". There were then several follow up questions that moved the questioning from the tendering process to winter maintenance which was not on the meeting agenda.

Rodney Hoogenhoud: *How long has this bid and tender been in place?*

Hyder Rajab: *It's been a while. It's used by the school government and now a lot of municipalities and town even I would say cities, they moved to bid and tenders.*

Rodney Hoogenhoud: *No, my question was how long as it been in place? How long you been using it?*

Hyder Rajab: *It's been a month. Around a month...*

Rodney Hoogenhoud: *...This bid and tender process, was that part of your plan to tender plows for the community as you're seeking contractors to bid?*

Hyder Rajab: *Yes, but we didn't put an official RFP, we just trying to see what's available in the local, we didn't put any RFP there for request for plowing yet.*

Rodney Hoogenhoud: *Do we have presently have enough plows for our community to cover the roads that we have?*

Hyder Rajab: *We have the same as last year. We have three plows, two of them they are working. They are fine. One of them is down and it's in the repair stage.*

Rodney Hoogenhoud: *What does it need for repair?*

Hyder Rajab: *It was a blown head gasket. The head of the motor was blow and it's under repair now.*

Rodney Hoogenhoud: *And the repair's probably cheap compared to buying a brand new truck, correct?*

Hyder Rajab: *Yes. Yeah, of course. But it is not that reliable[?] enough. We'll see after the repair what the condition, we'll try it. If it's in good condition, we'll use it, if not, maybe we'll stay same as last year. We'll stay with two plows and we'll use the help of the grader instead of a plow.*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[52] From this exchange of question/answer, the Investigator noted the DIS was being examined as if in a courtroom atmosphere than as a senior official of a municipality providing information and advice to a governance body. The questioning was adversarial in nature.

[53] This pattern by Councillor Hoogenhoud became a common theme throughout the meeting. For example, Councillor Hoogenhoud used leading questions such as “...*repair's probably cheap compared to buying a brand new truck, correct?*”. Such questions are not posed to seek information but to “pin down” a person similar to a witness being cross-examined. They are yes or no type answers typically used to limit staff's response in favour of the person asking the question. This technique introduces a bias determined by the questioner rather than permitting the staff person to provide advice in accordance with their statutory obligation as contained in section 227(b) of the Municipal Act, 2001. This questioning technique is not helpful dialogue, nor information gathering. It makes the person being cross-examined defensive and does not promote a good working relationship between staff and Council.

[54] Councillor Hoogenhoud then asked the DIS if he had made changes to the level of snow removal for the upcoming winter. The DIS correctly pointed out that it was not for him to set the level of service. This item was also not on the agenda.

Rodney Hoogenhoud: *Will our conditions of our roads this year change in regards to budget, or have you implemented any change in regards to snow removal?*

Hyder Rajab: *No, not yet. We are waiting for the level of service. We've come back to the Council with the level of services and with the minimum maintenance standard and we'll- from that time, we'll decide.*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[55] Councillor Hoogenhoud then changed the subject to the landfill site. He asked a series of questions that included:

- What was the return on investment for the [weigh] scale being installed?
- How many tons per year have to be managed to achieve the given return on investment [in the scale]?

**Reference:** Transcript of the COW Meeting, October 6, 2020

[56] Without having been provided notice of this question and without the matter being on the agenda so the DIS could be prepared with helpful information for Council, the DIS responded that a conservative estimate was 10 years to pay off the investments. Councillor Hoogenhoud continued with his off-agenda questions. He asked how many tons per year were needed to achieve the 10 year pay off, what was the complete cost for the project, for the implementation of the scale, the approaches to the scale, the maintenance and "...*whatever service costs we're gonna have?*"

**Reference:** Transcript of the COW Meeting, October 6, 2020

[57] The DIS responded that he could provide Councillor Hoogenhoud this information in an email, however he did not have it off the top of his head. Councillor Hoogenhoud pressed, stating, "*Well, I'm sure when you awarded the bid, I think you would have, know the numbers in your head? Is it \$50,000, \$100,000?*"

**Reference:** Transcript of the COW Meeting, October 6, 2020

[58] The DIS then provided that the scale cost \$112,000 and the concrete and civil work was around \$12,000. Councillor Hoogenhoud continued his questions by first stating it was a \$13,000 / year return and asked "...*and if we don't meet that, what is our plan?*" The DIS then explained developing accurate data for the landfill and finished this response by explaining the recycling of materials. The questions on the ROI for the landfill and the cost had been provided to Councillor Hoogenhoud in previous agenda packages.

**Reference:** Transcript of the COW Meeting, October 6, 2020

[59] Councillor Hoogenhoud then moved on to the recycling program which again, was not on the agenda and staff were not provided an opportunity to prepare for. He opened the questioning with another leading question.

*“You had advised us in our August 11<sup>th</sup> Council meeting and also in September that our program, our recycling program had moved forward and the recycling bins were in full effective. Is that correct?”*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[60] The DIS responded that he agreed this was accurate. Councillor Hoogenhoud then stated the following,

*“I happened to meet with a client of mine down your roadway, and I observed in September, the first week I believe it was, trucks were being loaded by our local loader out of the recycling bin and they were all heading down to the dump disposal location. Was there a problem with some of our recycling materials in September?”*

**Reference:** Transcript of the COW Meeting, October 6, 2020

The DIS explained that he was not sure of this date he thought they had started recycling by that point. He explained that they are always auditing their recycling because they do not want to pay contamination fees and when there is a contaminated load, it is not sorted out. It is taken to the dump. Councillor Hoogenhoud then challenged the DIS's reporting to Council.

*“So, we were a month later after you had submitted your two reports saying that we were doing our recycling program. And we were still taking stuff to the dump at that point in time.”*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[61] The DIS explained that he was not sure which loads Councillor Hoogenhoud was referring to and provided a scenario involving Smooth Rock Falls, who brought contaminated loads that were diverted to the landfill. Councillor Hoogenhoud then turned his questioning to the agreement with Smooth Rock Falls and asked how often they dump at the Cochrane landfill, how is Cochrane compensated, did the DIS have a method in place to measure the contaminated garbage from Smooth Rock Falls, and how is this garbage managed.

**Reference:** Transcript of the COW Meeting, October 6, 2020

[62] The DIS then explained in detailed how the contaminated garbage is managed. Councillor Hoogenhoud ended this line of questioning by asking for a report on the issue.

**Reference:** Transcript of the COW Meeting, October 6, 2020

- [63] When interviewed by the Investigator about being questioned by Councillor Hoogenhoud on October 6, 2020, the DIS explained that it was like he was answering questions for hours on topics that were not on the agenda, and he wasn't prepared for. The way it was done was not respectful and it is like Councillor Hoogenhoud tried to create a negative emotion and negative environment. He's not looking for answers, he's just accusing staff through the questions. There is no active listening.

**Reference:** Interview of Mr. Rajab, October 27, 2020

### **Director of Community Services**

- [64] During the same October 6, 2020, meeting, Councillor Hoogenhoud also interacted with the DCS and accused him of disregarding direction from Council.
- [65] Council had approved the purchase of a fob security system for one of the municipal buildings when they adopted the capital budget for the Town. Although approved in the budget, there was no specific direction from Council that the system must be acquired or that it must be installed at a certain time. Rather, the purchase of the system was "budgeted" for. The cost of the system was around \$7,000.00. Due to issues surrounding COVID 19 and the inability of the public to access some municipal facilities, the DCS decided to not spend the allotted money on the fob system as he was unsure if they would be able to open the facility in the foreseeable future.

**Reference:** Interview of Mr. Boyer, October 27, 2020

- [66] Councillor Hoogenhoud then raised concerns that Council had the final say if the expenditure would proceed and challenged the DCS on taking this step.

*"...So let's get back to procedure and process. Council passed a budget last year. Direction was given. The Directors have the permission to bring back a report and can rebuttal the conversation but Council's given direction, that is the final say. The Council and Mayor are designed and have been elected to work the business for the Town and community. They've been elected to drive the business. And if they've been given direction and Directors, CAO, have been given direction that's a direction to follow. Now if they choose to rebuttal, they can bring that back..."*

**Reference:** Transcript of the COW Meeting, October 6, 2020



[67] As the discussion continued, Councillor Hoogenhoud raised the implications of the DCS's actions, indicating that the DCS was disregarding procedures, bylaws, and resolutions of Council by him doing this. Councillor Hoogenhoud then stated,

*“...I'm not disagreeing to hold back seven grand. I can agree to that. **What's happening is we're being undermined based on the decisions we're making.** So if that report was presented and Council made the decision to push that item to the following session, then I completely agree. But we just have to follow process and procedure, bylaws and resolutions in regards to what Council's role is. And the director's report does not supersede what we've given as direction unless by followed up by Council accordingly. We need to follow that and we have not...” [emphasis added]*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[68] It is the comment by Councillor Hoogenhoud that the DCS was undermining Council that offended staff. (It is also notable that contrary to Councillor Hoogenhoud's statement, Council had not given direction, they had budgeted for the purchase). The CAO responded on behalf of staff:

*“I take great exception to the Councillor's comments about staff undermining Council. That is completely inaccurate, and I take great offence on behalf of all the staff that come to work every day to work extremely hard for this organization and then to be told in public that we're undermining Council is absolutely not true. Perhaps the appropriate question for the councillor to be asking is what is the policy and was the policy followed? That is what we're here to do, and that's the governance role that Council plays. If you want to spend an hour debating about \$7,000, go ahead. It's counterproductive and it's not what the policy says, so again, stick to the policy – if you don't like the policy, then change it. I have the discretion to make that decision. I was not given that- I did not make a formal decision on it. The director has reported to Council and Council has been given the information. It's our job to manage, not yours. So, if you don't like the policy, change the policy, don't scrutinize staff and make unfounded allegations about our intentions because that is undermining our morale and it is certainly uncalled for and unprofessional.”*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[69] When interviewed, the DCS indicated that Councillor Hoogenhoud's conduct has been unprofessional in Council meetings towards staff in general. At the October 6, 2020, meeting, Councillor Hoogenhoud accused him of trying to undermine Council's authority. In his eight years in the position [the DCS has been with the Town for approximately three (3) years], he's never had a Council member tell him that he must spend the money just because it is in the budget. He felt it was a good decision to hold off on the installation,

but Councillor Hoogenhoud publicly portrayed it as undermining Council. He wanted Councillor Hoogenhoud to put out a motion on the floor for Council to vote on, but he wouldn't do that. Councillor Hoogenhoud just makes these accusations and then doesn't follow up.

**Reference:** Transcript of the COW Meeting, October 6, 2020

### **Director of Human Resources**

[70] It was alleged that Councillor Hoogenhoud accused the DHR of inadequately doing his job and implied that there was a generally poor workplace culture resulting in employees leaving their employment with the Town and signaling in the need for a "whistleblower" system. The implication was that this was a staff issue rather than a Council leadership issue.

[71] During the meeting, the DHR gave Council a report on employee recruiting. His report included the fact that seven employees had left their employment with the municipality. Councillor Henderson asked the DHR if there were any concerns that they ought to be aware of. The DHR responded that they had conducted several exit interviews with the employees and that, *"...the commonality with all of the resignations was focused on moving to different organizations for better pay...promotion within their line of normal career succession...there is always room for improvement however there has nothing really I would say raised added flag that could be a reason why these individuals have decided to move on..."*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[72] There was a cordial back and forth dialogue between Councillor Henderson and the DHR. Councillor Hoogenhoud then asked questions in follow up to those from Councillor Henderson. He opened with more of a statement than question. It included,

*"...As a business owner ...when you have that many people leave any organization, it's a red flag. Exit strategy interviews are you often only get told what you want to hear. Because those people aren't going to tell you what is really going wrong with the organization at the end of the day...I do caution – I think we should almost be looking at maybe a whistleblower program or something that protects employees and also a little bit more of the Ministry of Labour code. You know, I've worked with a lot of these individuals' side by side and there's some err of caution that maybe some red flags have raised..."*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[73] The DHR then explained that he was looking at software that would conduct employee surveys and tabulate the responses regarding the organizational culture and that it is a

diagnostic tool used to determine the areas needed for improvement. Councillor Hoogenhoud responded,

*“...unfortunately, there is always somebody that oversees these programs, right? And somebody sees those answers. And we, we’ve ran into confidentiality issues many times...employees will not come to the table, unfortunately, no matter how good your programs are, until there’s an ethic put in place that confidentially will remain with no punishment...And we can smile and laugh about it, but you come from the HR world, you will agree with me that people will not tell you the true story...”*

**Reference:** Transcript of the COW Meeting, October 6, 2020

[74] Mayor Clement (the ‘Mayor’) expressed his opinion to the Investigator about Councillor Hoogenhoud’s treatment of the Directors. He felt Councillor Hoogenhoud’s conduct was not appropriate and not professional. The Mayor confirmed that Councillor Hoogenhoud had been trained to reach out to the individual director in advance of the meeting if he had questions to allow staff an opportunity to prepare for the meeting and provide their best, researched and reasoned advice to Council.

*Peggy [meaning Peggy Young-Lovelace with E4m] told them in their training to send a note if they had a question for a director that the director may not have answer for right away.*

**Reference:** Interview of Mayor Clement, November 17, 2020

[75] With respect to Councillor Hoogenhoud’s treatment of the DIS, the Mayor told the investigator that *“Thirty some questions was an ambush, as far as I was concerned.”* And Councillor Hoogenhoud usually tries to ambush him [meaning the DIS] and not really anybody else too much.

**Reference:** Interview of Mayor Clement, November 17, 2020

[76] The Mayor also told the Investigator he spoke with the CAO and suggested that he should meet with the Directors after what happened at the October 6, 2020, Council meeting. The Mayor reported that the Directors told him that they felt that they were being embarrassed during Council meetings which are televised and streamed, felt their integrity was being questioned.

**Reference:** Interview of Mayor Clement, November 17, 2020

[77] At the meeting, the Mayor emphasized to the Directors that he is very happy with the Director’s and how they are doing things and that they are the strongest group the community has ever seen. He committed to them to keep a tighter hold on the meetings and keep the agenda to governance and policies and those types of things.

**Reference:** Interview of Mayor Clement, November 17, 2020

[78] They've had one meeting since and the Mayor reported that he didn't allow the meeting to stray, kept it on track. He further advised that he doesn't want to stymie anybody from talking in discussions, he likes open discussions, but it has gotten to a point that it is now integrity attacks.

**Reference:** Interview of Mayor Clement, November 17, 2020

[79] The Mayor told the Investigator that he let the questioning go too far, and now he is going to reign it back in.

**Reference:** Interview of Mayor Clement, November 17, 2020

### **Councillor Hoogenhoud's Response**

[80] When interviewed by the Investigator about Councillor Hoogenhoud's questioning of the DIS, Councillor Hoogenhoud advised that his understanding was that the Committee of the Whole was created so Council can ask questions. Further, he asserted that the Procedural By-law permits him to ask those questions and that there are no time limits on how long those conversations can last.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[81] Councillor Hoogenhoud reported that there were a lot of facts that came up during the October 6, 2020 meeting that he wasn't aware of, including contaminated recycling materials coming to Cochrane from Smooth Rock Falls. He advised that at all times he was polite, said please and thank you, and apologized for interrupting.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[82] He also stated that was very concerned about their landfill and the options for extending its life etcetera.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[83] Councillor Hoogenhoud also reported that Councillor Hutchinson was supposed to meet with the DIS at the landfill site to get information, but the DIS did not show up

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[84] With respect to his comments toward the DCS, Councillor Hoogenhoud described that he was not accusing the DCS of subverting Council, but his issue was how information gets communicated to Council. He thinks there's confusion between a resolution and information that's received in a report. He stated that if they accept a report, they accept it for information, but it doesn't mean they aren't going to keep going forward.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[85] Councillor Hoogenhoud opined that the problem is how does the DCS decision get communicated to Council – nobody's sure of the process.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[86] Councillor Hoogenhoud reported that he believes that more education and more effective communication needs to take place.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[87] He advised that he was not trying to accuse the DCS of subverting Council; it wasn't his intention. He's been told that anything he wants to discuss has to go through Council because he's not supposed to communicate with the Directors directly. Councillor Hoogenhoud also reported that he has told Directors they cannot meet with him, that they have to bring it to Council through the CAO.

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[88] Councillor Hoogenhoud also noted that he and DCS have a positive relationship outside of Council. The DCS is a great employee and trying to improve things for the Town and he agreed with the DCS's decision not to install the fob system

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021

[89] Concerning questioning the DHR, Councillor Hoogenhoud insisted that he was only looking for clarity, not blaming the DHR. He suggested that the whistleblower program was something that had come up at past Council meetings, *"The whistleblower program I'd like to have in place as long as the opportunity for employees to voice their opinion and concerns without penalty, right? The whistleblower program was asked quite a bit before this conversation, before this date."*

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021.

[90] Councillor Hoogenhoud also advised that multiple Councillors spoke to this conversation and that they have had a lot of people leave Town jobs – recently three (3) paid and one volunteer. He reported that Councillor Calaizzi mentioned a sense of frustration or disconnect between Directors and employees

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021.

[91] The Investigator questioned Councillor Hoogenhoud:

*“It’s like you’re making an atmosphere that there’s a toxicity within the workplace causing this attrition and what we’re telling you is that appears that you’re making false statements and creating something that wasn’t true because the people that we’ve talked to did not confirm what you’re saying.”*

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021.

[92] Councillor Hoogenhoud responded:

*“The whistleblower program I’d like to have in place as long as the opportunity for employees to voice their opinion and concerns without penalty, right? The whistleblower program was asked quite a bit before this conversation, before this*

**Reference:** Interview of Councillor Hoogenhoud, February 25, 2021.

#### Pecuniary Interest Related to the Municipal Landfill

[93] The DIS advised the Investigator of his concern that Councillor Hoogenhoud was questioning him at the October 6, 2020, COW meeting regarding the Town landfill due to the fact that whenever the matter had been on the agenda previously Councillor Hoogenhoud declared a conflict of interest.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[94] Councillor Hoogenhoud, in 2015, was one of the bidders responding to a request for proposal (“RFP”) for the operation of the Town landfill. His company was not the successful bidder. Now he pulls himself from anything related to the landfill. The DIS advised that he believed that Councillor Hoogenhoud’s company wants to apply to be an operator for this landfill when the RFP eventually does go forward.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[95] There is a proposal for the landfill coming in December. The previous five-year contract ended July 2020, and they are planning to issue an RFP in December. Councillor

Hoogenhoud pulled himself out of the landfill discussions in July/August and declared a conflict of interest.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[96] On October 6, 2020, they weren't even talking about the landfill, Councillor Hoogenhoud just brought up the whole subject again; it was not on the agenda. Councillor Hoogenhoud was asking about information that was public; maybe he doesn't know where to find it or didn't read it.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[97] When the DIS advised Councillor Hoogenhoud that he would provide him with the information he told the DIS told him no, as a Director you should know about this.

**Reference:** Interview of Mr. Rajab, October 27, 2020

[98] Councillor Hoogenhoud declared a pecuniary interest in matters related to the Town Landfill at the following meetings:

- On May 26, 2020, Councillor Hoogenhoud declared a conflict of interest relating to item 4.2 on the Agenda titled; Public Works Operations

Note: This item dealt with the RFP contract for the landfill site.

**Reference:** Council Meeting Agenda, May 26, 2020  
Closed Meeting Minutes, May 26, 2020

- On June 23, 2020, Councillor Hoogenhoud declared a conflict of interest relating to item 5.1 on the Agenda titled;

LITIGATION OR POTENTIAL LITIGATION, INCLUDING  
MATTERS BEFORE ADMINISTRATIVE TRIBUNALS,  
AFFECTING THE MUNICIPALITY OR LOCAL BOARD

Subtitle: 5.1 Public Works Operations.

**Reference:** Council Meeting Agenda, June 23, 2020  
Closed Meeting Minutes, June 23, 2020

- On July 14, 2020, Councillor Hoogenhoud declared a conflict of interest relating to item 8.2.1 on the Agenda titled;

## INFRASTRUCTURE SERVICES DEPARTMENT

Subtitle: Fournier Landfill Scale

**Reference:** Council Meeting Agenda, July 14, 2020  
Council Meeting Minutes, July 14, 2020

- On August 11, 2020, Councillor Hoogenhoud declared a conflict of interest relating to item 8.2.3, 8.2.4 and 8.2.5 on the agenda titled;

8.2.3 RFP 2020-13 Fournier Landfill Truck Sale

8.2.4 Fournier Landfill Operational Hours By-Law 864-2021

8.2.5 Policy Exemption Form Request for Recruitment and Selections.

Note: this matter deals with the hiring of attendants for the landfill site.

**Reference:** Council Meeting Agenda, August 11, 2020  
Council Meeting Minutes, August 11, 2020

- [99] Councillor Hoogenhoud failed to provide the Clerk with the Written Statement of Disclosure of Pecuniary Interest for the noted dates. This statement is mandated by section 5.1 of the *MCIA*, and it is required to disclose the “general nature” of the conflict. In the absence of this mandatory document, a person looking at the public record can not determine the nature of Councillor Hoogenhoud’s conflict.
- [100] When interviewed about his failure to provide these documents, Councillor Hoogenhoud indicated that he never received a document to sign regarding his conflict of interest and has no capability to deal with electronic documents as he only has an iPad and cannot print or scan documents.
- [101] Councillor Hoogenhoud did acknowledge knowing the proper procedure for filing the Written Statement of Disclosure of Pecuniary Interest.
- [102] The Clerk advised that she sent Councillor Hoogenhoud an email on June 25, 2020, advising him to complete the required form and submit it to her office. Councillor Hoogenhoud responded, asking her to print off the form and he would pick it up. The Clerk advised him that she mailed it to him the week prior.
- [103] When interviewed, Councillor Hoogenhoud reported that he never received a document to sign regarding his conflict of interest and has no capability to deal with electronic documents as he only has an iPad and cannot print or scan documents. He did acknowledge knowing the proper procedure for filing conflict of interest documents.



[104] This document is mandatory according to the *MCIA* and the failure to complete and file the document is the responsibility only of Councillor Hoogenhoud, not the Clerk. Electronic issues are not a permitted exception to the requirement to file the document as detailed in section 5.1 of the *MCIA*.

[105] Councillor Hoogenhoud also advised that he had no intention of [or his company] submitting a proposal when the RFP is issued. When the Investigator asked him “*It is your intention to bid on the upcoming tender process to operate the landfill, is that correct?*” Councillor Hoogenhoud responded: “*That is completely incorrect.*” And that his [four] prior declarations of conflict were error; he had no intention of bidding whatsoever. Further that There is no interest in the landfill for himself.

*Investigator: Why are you declaring conflicts? You declared conflicts on it quite a few times. Why?*

*Councillor Hoogenhoud: Because I had conversations in the community, and we were talking about the landfill site and I just didn't want to be accused of maybe knowing information or pushing information forward that might have repercussions or whatever. It was an error on my fault.*

*Investigator: What do you mean by conversations, though?*

*Councillor Hoogenhoud: Just about – people were asking if I was going to bid. I said no interest in it.*

[106] Councillor Hoogenhoud advised the Investigator that he decided right from the get-go that he wasn't going to bid on it; he never had intentions to bid on it and that it was completely his error declaring a conflict of interest.

[107] Councillor Hoogenhoud advised that he looked for some kind of apology or retraction process.

[108] At no time did Councillor Hoogenhoud seek advice from the Integrity Commissioner about the situation.

## **V. ANALYSIS**

[109] We considered:

- a. Whether Councillor Hoogenhoud contravened the CSR Policy when he made disparaging comments about the CAO;
- b. Whether Councillor Hoogenhoud contravened the CSR Policy when at the October 6, 2020, Regular Council Meeting he
  - i. made disparaging remarks about several of the employees in attendance;

- ii. asked an unreasonable number of questions related to the operation of the municipal landfill;
  - iii. accused an employee of not following Council's direction in relation to a budgeted item; and
  - iv. accused an employee of poorly doing their job and implied that there was a generally poor workplace culture resulting in employees leaving their employment with the Town resulting in the need for a whistleblower system.
- c. Whether Councillor Hoogenhoud contravened the Code of Conduct when he made disparaging comments about the CAO;
- d. Whether Councillor Hoogenhoud contravened the Code of Conduct when at the October 6, 2020, Regular Council Meeting he:
- i. made disparaging remarks about several of the employees in attendance;
  - ii. asked an unreasonable number of questions related to the operation of the municipal landfill;
  - iii. accused an employee of not following Council's direction in relation to a budgeted item; and
  - iv. accused an employee of poorly doing their job and implied that there was a generally poor workplace culture resulting in employees leaving their employment with the Town resulting in the need for a whistleblower system.
- e. Whether Councillor Hoogenhoud had a pecuniary interest with respect to the Town landfill
- f. Whether Councillor Hoogenhoud complied with the *MCIA* when he declared pecuniary interest with respect to the Town landfill

[110] In the Preamble of the Code of Conduct section c) states: *Conflicts between private interests and public responsibilities are unacceptable and must be avoided* and section d) states: *As a leader of the community, they [meaning members of Council] are held to a higher standard of behaviour and conduct.*

[111] In section 5 related to the Responsibilities of Members, the following are considered a breach of the Code of Conduct:

## **5.0 Responsibilities**

(a)(i) to knowingly breach the law in the performance of his/her duties, or to request others to do so.

(c) Relationship 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.
- (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 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) ....
- (vi) Council shall not use or attempt to use their authority or in 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.

Disparaging Remarks About the CAO and the October 6, 2020, Council Meeting

- [112] Rather than consider the allegations separately, because they are similar in nature, we have analyzed the incidents in this inquiry together in terms of whether or not Councillor Hoogenhoud has contravened the CSR policy and/or the Code of Conduct.
- [113] It is evident that Councillor Hoogenhoud believes that he, as a Member of Council, and in accordance with the Procedure By-law he is entitled to ask questions of members of staff. Further, Councillor Hoogenhoud believes that he may not engage directly with employees other than at a Council meeting.
- [114] More specifically, Councillor Hoogenhoud reported that the reason Council created the COW was to be able to ask questions of staff.

[115] The *Municipal Act* requires Council to adopt a Procedure By-law that explains how Council meetings/the business of Council will be conducted. The Procedure By-law provides the following related to meeting conduct:

Section 8

VII Any item of business not listed on the Council Agenda cannot be introduced at a Meeting of Council without the approval of Council expressed by motion to amend the agenda.

Section 9 Committee of the Whole

IV The rules of Procedure contained in this bylaw shall be observed in the Committee of the Whole except that:

- a. Discussion may take place in absence of a motion
- b. The number of times a Member to speak on any question shall not be limited, provided that any second and subsequent statements are responsive to issues raised by other Members or contain new information not contained in the Member's original statement.
- c. There shall not be time limit with respect to the speeches of Members

Section 28 Rules of Debate

VI A member may ask a question, through the Chair, only for the purpose of obtaining information relating to the matter under discussion and such question must be stated succinctly and asked only of the previous speaker, the mover of the motion or an employee of the Town.

VII notwithstanding subsection (VI), when a member has been recognized as the next speaker, then immediately before speaking such Member may ask a question of the Chair or an employee of the Town on the matter under discussion but only for the purpose of obtaining information, following which the Member shall speak.

Section 30 Conduct of Members of Council and/or persons addressing council

1) No member or person addressing Council, a Committee of Council .... Shall speak disrespectfully of..... or any person administering the ..... or the Council of the Town or any member thereof, or any member of the Town's staff

II) speak on any subject other than the subject in debate

[116] Council's meeting guidelines require Members to only debate or ask questions about matters before Council which have been identified on the meeting agenda.

[117] At no time was the CAO or any of the Director's work performance a matter of debate at the October 6, 2020, nor were a number of topics brought up/questioned by Councillor

Hoogenhoud on the meeting agenda. Yet, Councillor Hoogenhoud made statements about the performance of the DCS and the DHR. Councillor Hoogenhoud also interrogated the DIS and attempted to attack/discredit the CAO when Councillor Hoogenhoud related to the importance of economic development to the Town.

- [118] Additionally, members of Council are to respect the professional role that staff have. It is evident that Councillor Hoogenhoud attempts to undermine staff when he asked questions that are not related to the matter before Council and further when he falsely accused staff of failing to adhere to Council direction.

#### Pecuniary Interest Related to the Municipal Landfill

- [119] The *MCIA* prohibits Councillors from acting, even from influencing matters where they have a pecuniary interest “*before, during or after*” the meeting<sup>2</sup>.
- [120] The primary issue for analysis is whether Councillor Hoogenhoud had a prohibited pecuniary interest in the matter(s) before Council related to the Town landfill.
- [121] “Pecuniary Interest” is not defined in the *MCIA*, however, the Courts have interpreted it to mean a financial interest, or an interest related to or involving money. It does not matter whether the financial interest is positive or negative and when considering the existence of a “Pecuniary Interest”, it also does not matter the quantum of the interest.

“Pecuniary Interest” is not defined in the [*Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50], but it has been held to be a financial, monetary or economic interest; and is not to be narrowly defined<sup>3</sup>.

A pecuniary Interest [as used in s. 5(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50] is a particular kind of interest. In *Edmonton (City) v. Purves* (1982), [18 M.P.L.R. 221](#)... (Q.B.), at p. 232 [M.P.L.R.] Moshansky J. turns to the Shorter Oxford English Dictionary definition of “pecuniary” as “of, belonging to, or having relation to money.”

- [122] A Member may have a **Direct Pecuniary Interest** where the matter being considered by Council affects the Member’s own finances. A Member may have an **Indirect Pecuniary Interest** where they are a shareholder of a private corporation or have a controlling interest in a public corporation (i.e., director, significant shareholder) or is a “member of a body” that has a pecuniary interest in the matter being considered by Council or the Member is a Partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. A Member may have a **Deemed Pecuniary Interest** where a matter

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<sup>2</sup> *Municipal Conflict of Interest Act*, R.S.O. 1990 C.M.50 s.5(1)(c).

<sup>3</sup> *Mondoux v. Tuchenhagen* (2011), 284 O.A.C. 324, [2001] O.J. No. 4801, 88 M.P.L.R. (4<sup>th</sup>) 234, 2011 CarswellOnt 11438, 2011 ONSC 5398, 107 O.R. (3d) 675 (Ont. Div. Ct) at para. 31, Lederer J. (Gordon J. concurring).

being considered affects the finances of a Member's parent, spouse or child [as defined by the *MCIA*].

- [123] Section 5 of the *MCIA* requires that when a member of Council has a pecuniary interest with a matter that Council is considering that they must disclose not only that they have a pecuniary interest in the matter, but they must also explain the general nature of the interest. Additionally, they are prohibited from taking part in the discussion or any vote on the matter or from influencing the vote.

*When present at meeting at which matter 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. R.S.O. 1990, c. M.50, s. 5 (1).

- [124] Section 5.1 of the *MCIA* requires a member to file a written statement of conflict when he has a prohibited pecuniary interest. The *MCIA* requires elected officials to declare the conflict of interest in matters before Council. Part of the requirement is that they then file their notice in writing with the Clerk as soon as practical.

- [125] The Town's Procedure By-law also requires members of Council to adhere to the *MCIA* and specifically outlines that the written declaration must be submitted to the Clerk.

- [126] For an allegation to be considered a contravention of the *MCIA*, the Applicant must swear that they became aware of the contravention within the previous six week. No statutory declaration was made with respect to this matter. We have therefore considered this matter pursuant to the Code of Conduct.

- [127] Councillor Hoogenhoud on at least four (4) separate occasions did declare a pecuniary interest with respect matters Council was considering related to the Town landfill. Because Councillor Hoogenhoud did not file the required written statements for each of the declarations, we are unable to clearly understand the nature of his pecuniary interest.

- [128] Councillor Hoogenhoud has a business that participated in the tendering process related to the operation of the Town landfill in 2015. Councillor Hoogenhoud was not the successful bidder. He was also not on Council at the time and it should be understood by

the reader that there was not anything improper in his company's bidding for the operation in 2015.

[129] The question therefore is does Councillor Hoogenhoud have a pecuniary interest in matters related to the Town landfill and if so, when did his pecuniary interest crystalize?

[130] Case law shows us that there is a point in time when a pecuniary interest becomes absolute. This means that a matter Council is considering may not be in its entirety a conflict of interest as defined by the *MCIA*. Case Law is also clear that you cannot have a pecuniary interest for something that might happen at a future date.

[131] Justice Michael Penny in *Lorello v. Meffe* surveyed numerous *MCIA* decisions about future or contingent interests in examining whether a contingent interest constitutes a prohibited pecuniary interest pursuant to the *MCIA* and found:

*These authorities seem to establish that, in order to constitute a pecuniary interest, there must be something more than infrequent past business dealings or the possibility of future business. To have a conflict under s. 5 of the MCIA, there must be a pecuniary interest existing at the time of the vote. There must be an actual conflict or a reasonable assumption that the conflict will occur".<sup>4</sup>*

[132] Additionally, in *Mondoux v. Tuchenhagen*, at paragraph 32,

*[32] We do not agree with counsel for Robert Tuchenhagen that this interest crystallized only when he viewed the property and decided to make an offer. This presumes that any discussion at meetings of City Council or any resolution or by-law passed by City Council involving the sale or potential sale which took place as Robert Tuchenhagen was deciding whether to make an offer could not affect that private determination. This is not correct. Any decision of the members of Council could affect the price or whether the property would be sold at all. "The question that must be asked and answered is 'Does the matter to be voted upon have a potential to affect the pecuniary interest of the municipal councillor?'" (emphasis added) (see *Greene v. Borins* (1985), [1985 CanLII 2137 \(ON SC\)](#), 50 O.R. (2d) 513, [1985] O.J. No. 2510, 1985 CarswellOnt 666 (Div. Ct.), at para. 39). **As soon as Robert Tuchenhagen saw himself as a potential buyer, he had become a person with a pecuniary interest.** The e-mail he sent on July 2, 2008 indicated that he might be interested in bidding on the property. At that point, he was no longer looking at this only from the perspective of a member of Council with the public responsibilities that entails. From the moment he decided he might make a bid, he began examining the situation to see how it could advantage his private interests. He had acquired a pecuniary interest.<sup>5</sup> [emphasis added]*

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<sup>4</sup> *Lorello v. Meffe*, 2010 CarswellOnt 11195, 2010 ONSC 1976, 99 M.P.L.R. (4<sup>th</sup>) 107 (OntSCI) at Para 59.

<sup>5</sup> *Mondoux v. Tuchenhagen* (2011), 284 O.A.C. 324, [2001] O.J. No. 4801, 88 M.P.L.R. (4<sup>th</sup>) 234, 2011 CarswellOnt 11438, 2011 ONSC 5398, 107 O.R. (3d) 675 (Ont. Div. Ct) at para. 32, Lederer J. (Gordon J. concurring).

- [133] In the matter before us, Councillor Hoogenhoud questioned the DIS on a matter that Councillor Hoogenhoud has previously declared a pecuniary interest in. Council is not making a decision related to the Town landfill at the October 6, 2020, when Councillor Hoogenhoud questioned the DIS. However, at the May 26 and June 23, 2020, meetings the matter discussed in closed session was directly related to the RFP process and the awarding of the contract in 2015.
- [134] Councillor Hoogenhoud would have a pecuniary interest in matters debated by Council that are related to the 2015 RFP and subsequent contract. His pecuniary interest crystalized the day he was elected to Council. Prior to that date, Councillor Hoogenhoud was not bound by the *MCIA*.
- [135] At both the May 26, and June 23, 2020, meetings Councillor Hoogenhoud declared his interest and left the meeting. Of import is that Councillor Hoogenhoud did not submit the statutory written declaration. Failing to submit the statutory written declaration is a contravention of section 5.1 of the *MCIA* and therefore also a contravention of the Code of Conduct
- [136] At the other two (2) meetings at which Councillor Hoogenhoud declared a pecuniary interest, the Town landfill matters being considered by Council were of an operational nature and unrelated to the 2015 RFP but may be related to the proposed 2020 RFP. For example, the matter related to the change in Town landfill operating hours or the hiring of employees to work at the Town landfill. Members of Council who have a prohibited pecuniary interest must not influence the matter before, during or after the Council decision. Additionally, they are not allowed to influence municipal officers/employees.
- [137] Section 5(1)(c) of the *MCIA* prohibits a member of Council on his own behalf or through another from “attempt[ing] in any way whether, before, during or after the meeting to influence the [voting] of Council.
- [138] While the *MCIA* prohibits “influencing” a vote of Council when a member has a pecuniary interest, it does not provide an express definition of the same. The key principles of the *MCIA* provide that it is to be interpreted broadly with a view to transparent and accountable decision-making. Influence may be exercised by word, body language, laughter or facial expression. It may also be exercised through threats or extortion or through social or political power. By leaving the term undefined, the *MCIA* contemplates influence in all its various subtle and direct forms. All are prohibited.
- [139] Councillor Hoogenhoud’s many questions of the DIS about the Town landfill could be seen as an attempt to influence before a Council decision.
- [140] Councillor Hoogenhoud denied that he had intended to submit a bid and advised the Investigator that he had declared his conflicts previously in error. He went so far as to say that he attempted to find a way to rescind his declaration. We find his denial questionable. It is our opinion that on a balance of probabilities that Councillor Hoogenhoud was considering participation in the upcoming RFP process. Had Councillor Hoogenhoud been serious about rescinding his declarations, he could have requested advice from the



Integrity Commissioner [which he did not do], or at the very least, contacted the Clerk for guidance.

DATED: August 31, 2021