

# INTEGRITY COMMISSIONER'S REPORT

**Date: September 8, 2020**

**Item: Conduct of 4 Members of Council and Seven Complaints from 3 of them**

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**Recommendation: Be It Resolved That:**

Council receive for information, the report from the Integrity Commissioner dated September 8, 2020

## **Background:**

### Complaints Received

My report to Council on complaints against Councillor Van Alstine by the Mayor, Councillor Hayden and the Chief Administrative Officer was heard on June 23, 2020. I recommended, and Council approved, a sanction of the suspension of 90 days compensation paid as a Councillor, to Councillor Van Alstine. The grounds for my recommendation was her introduction of 2 malicious resolutions to open Council, one of which called for the reprimand of the CAO for a baseless reason. It was her second offence.

Councillor Van Alstine received an advance copy of that report on June 17, 2020 and on June 19, 2020, I received 4 complaints from her, 3 against the Mayor and 1 against Councillor Hayden. On July 3, 2020 I received 2 complaints also against the Mayor, one from Councillor Duplessis and the other from Councillor Dufour. I then received a 5<sup>th</sup> complaint from Councillor Van Alstine against the Mayor dated July 13, 2020. The 5 complaints from Councillor Van Alstine were obviously in retaliation to the complaints dealt with in my June 23 report. One of them employs a writing style and graphics used by another citizen and it is suspected that it was not written by Councillor Van Alstine.

Later in this report, I will describe the 7 complaints and explain why in my opinion, none of them has any validity.



I quote the following from one of the complaints received from Councillor Van Alstine on July 19, 2020:

“At present there are 2 distinct groups” [on Council]:

1. “Mayor Jill Beer, Deputy Mayor Bill Foster and the Mayor’s close friend, Councillor Sandra Hayden.
2. Councillors Ray Dufour, Ken Duplessis, Heather Malott and Maureen Van Alstine.

Group 1 always agrees with management reports and recommendations regardless of the issue.

Group 2 members will ask various questions and make decisions based on the facts presented and their own research.”

This report will later review a list of the voting decisions made by Group 2.

### The Town of Espanola

Since the hiring of CAO Cynthia Townsend in 2011, the Town of Espanola has maintained the same or the equivalent level of service for all of its citizens. This has been accomplished in challenging financial times for municipalities.

The below chart displays a remarkable performance by staff and Council in keeping tax increases substantially below the Consumers Price Index and at the same time, building substantial reserves. In 4 of the 8 years, taxes were decreased and in the last 3, held level. The reserves have increased from 2 million dollars to 11 million dollars.

Budget Year	Residential Tax Rate Increase/decrease	Prior Year CPI Rate	Reserve Balance Year End
2012	2.18% decrease	3.1%	\$1,914,884
2013	10.7% decrease	0.8%	\$2,651,303
2014	0.29% increase	0.9%	\$4,960,294
2015	0.19% decrease	2.9%	\$4,946,942
2016	0.12% decrease	1.2%	\$5,570,949
2017	1.03% increase	1.5%	\$6,646,270
2018	0%	1.9%	\$4,508,031
2019	0%	2.0%	\$10,902,536
2020	0%	2.2%	\$10,902,536



### Chief Administrative Officer

The CAO was hired in 2011 without an employment contract and one was entered into in 2016 with a salary grid at the step 4 level. The contract provided for two additional steps granting increases subject only to a satisfactory performance review.

For the purpose of this report, I interviewed the Town's human resource consultant who has chaired several in camera meetings of Council and has expressed to me the following opinions:

1. The employment contract has not been adhered to because both step increases have been denied by Council when the performance evaluation rating from the consultant was either "superior" or "satisfactory" for all factors,
2. The salary scale of the CAO compared to other similar sized municipalities in the area is reasonable, and
3. There is a huge lack of trust between these members of Council (Group 2) and Administration in general, but specifically against Cynthia. In my opinion, their conduct towards the CAO is unacceptable.

### Group 2 Voting

- Council meeting - June 25, 2019: A motion was carried by the vote of all members of Group 2 to require all new and replacement positions to come to Council for approval. Replacement positions which are contained in an approved budget are normally filled by staff without reference to Council.
- Council meeting - February 11, 2020: Two Notices of Motion were voted on by all members of Group 2 to reprimand the CAO and change the financial statements to accord with general accounting principles.
- Closed session - February 11, 2020: In a closed session chaired by the Human Resources consultant, all members of Group 2 voted to refuse a step increase required by the employment agreement for the CAO, after hearing a positive performance evaluation by the consultant.
- Council meeting - June 2, 2020: The Administrative Clerk was retiring and filling the position was refused by a vote of all members of Group 2. This is the person that greets all citizens who attend the Town Hall to pay taxes and to provide a myriad of other services provided by the Town. This position is the first point of contact with the Town and collects 14 million dollars of cash receipts each year. A detailed report on the critical functions performed by this position was presented at another meeting on July 14, 2020 which received no recognition by Group 2.
- Council meeting - July 14, 2020: A laborer in Public Works was retiring and the request was to replace the position. All of Group 2 voted against it without giving a reason.

- Council meeting – July 14, 2020: Councillor Duplessis moved and seconded by Councillor Dufour that the authorization to appoint members of committees be changed from the Mayor to Council. The rationale for this change was stated as “it is less likely for four councillors to be corrupt than it is for the Mayor”!

### Complaints

In addition to the 7 complaints referred to above, I have also received several against the Mayor earlier this year, from a citizen activist, Mr. Joe Kozlowski. These complaints were summarily dismissed by me without a report to Council. At a recent meeting of Council held in the Zoom format on August 11, 2020, Mr. Kozlowski was clearly viewed in Councillor Van Alstine’s screen. This meeting went into closed session, still on Zoom, and it is hoped that Councillor Van Alstine did not permit Mr. Kozlowski to be present during that closed session.

The common theme for most of the referenced complaints against the Mayor is criticism of her for arguing against the above voting decisions of Group 2 and supporting professional staff. This is a Mayor who is dedicated to preserving the necessary and essential operations of the municipality in the face of Group 2 who appear to have a vendetta against the CAO and other staff. The same dedication and support can be credited to the 2 other members of Group 1.

The following is a brief description of the 7 complaints received from the three members of Group 2:

- From Councillor Van Alstine:
  1. The Mayor has complete jurisdiction to appoint members of Town Committees and Councillor Van Alstine complained that she was removed from the Corporate Services Committee. The Chair of that committee advised the Mayor that she was not “a good fit” on the Committee and the Mayor did her job.
  2. All members of Council received training that holding meetings in private, discussing business of the Town, where a quorum was present, is contrary to the Municipal Act. A recent case found that an E-mail to all members of Council risks being ruled as a virtual meeting because of the “reply all” feature. The Councillor’s complaint number 2 was that an E-mail to her from the Mayor and copied to all members of Council criticizing her for using “reply all” on a business E-mail was harassment and also, contrary to the Act. In my opinion, such an E-mail to all members of Council did not involve business of the Town but rather its subject was educational.
  3. A complaint against Councillor Hayden for using an expletive in a Zoom meeting when she thought her computer was on mute. She apologized

profusely for the mistake and in my opinion, it was inadvertent and not contrary to the Code.

4. The Mayor wrote an E-mail to Group 2 arguing that the failure to replace the Administrative Clerk would be a disaster and Councillor Van Alstine complained that this was disclosure of information from a closed meeting. The vote to not replace the position was taken in open Council and in my opinion, the Mayor's E-mail did not amount to disclosure of confidential information.
5. This complaint against the Mayor alleged "showing favoritism towards the CAO" and harassing Council into granting a salary increase. A law firm presenting to Council indicated in a letter, reference to "tainted Council members" and animosity from such members towards the CAO. The Mayor was charged to brief the law firm and, in my opinion, gave a completely accurate portrayal of the problem.

- From Councillor Duplessis

This complaint refers to the E-mail the Mayor sent to Group 2 arguing against not replacing the Administrative Clerk and alleges that it is harassing. Except for the members of Group 2, every person I spoke to on Group 1 of Council or staff during this investigation expressed the strong opinion that eliminating this position will be a disaster in serving the citizens of Espanola.

- From Councillor Dufour

The complaint from Councillor Dufour repeats parts of the above complaints including harassment by the Mayor in her E-mail on replacement of the Administrative Clerk and disclosing confidential information. I have ruled that none of these allegations amount to a contravention of the Code of Conduct.

### Decision

For the reasons expressed in this report, all of the above 7 complaints are hereby dismissed.

### **Conclusion:**

I have considered very carefully my jurisdiction as Integrity Commissioner to respond to the behaviour of the members of Group 2. There has been no plausible rationale offered by any of them for their voting record. The only conclusion I can reach is that the 4 members of Group 2 have a common vendetta against the CAO



and the only way to express that vengeance with me is to complain against the Mayor who is a supporter of staff. In my opinion they are not fulfilling their fiduciary obligations as elected representatives of the citizens of Espanola.

However, they have been elected by the citizens of Espanola and I must respect democracy and the choice made by the electorate. I have no jurisdiction to interfere with their right to vote. They also represent a majority of Council, to which I report. At this time, I am unable to find that their biased voting is contrary to any provisions in the Council Code of Conduct which are enforceable by me.

A handwritten signature in blue ink, appearing to be 'RS', is written above a horizontal line.

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**Prepared By: Robert Swayze**  
**Integrity Commissioner**