

September 26, 2021

File No. 468

Madame Mayor and
Members of the Municipal Council of Hawkesbury:

RE: Complaint of September 4, 2020 - Inquiry Report

Subsequent to my presentation to Council in camera on Wednesday September 15th, but *after* we had submitted our report on August 20th, a number of things needed to be addressed.

The first is an error brought to our attention by the Mayor. The explanation is a bit convoluted, but we ask all to be patient while we try to explain it.

We had stated, in our final report, that something had been said to me, by the Mayor. We then commented, negatively, on the Mayor's statement in that regard, saying that HER statement (the Mayor's) appeared to be false or mistaken. Unfortunately, it appears that the Mayor had been mistaken when she had stated to me that something had been said in the Commissioner's (Saywell) report when it had not, in fact, been contained in that report. It had been reported to the Mayor, but in a different context and different report by a different person. Unfortunately, because of the timing of all of this, I acted and reported upon the first information which the Mayor gave me, and drafted my report to Council accordingly. Now that I know, only because the Mayor offered that information, that she was in error in what she had reported to me the first time, we both feel the need to correct that.

The Mayor had reported to me that Commissioner Saywell's report had said something. We reviewed Commissioner Saywell's Report and was satisfied that Commissioner Saywell's report had not, in fact, said what the Mayor claimed it had said. We then reported that what the Mayor had stated that the Commissioner's report had said, was an incorrect statement on her part. The report that she had been wanting to ask me to make reference to, [in support of her argument and against what I had said] was NOT Commissioner Saywell's report, it was something that she had seen elsewhere in all of this material. In other words, when we chastised the Mayor for her incorrect statement of what the previous Commissioner's report had stated, we, too, were mistaken. She had erroneously made reference to a document which was not in the former Commissioner's information and report, and which my investigation has shown did not exist in the Commissioner's records, because it was a document in the

possession of someone else completely. We could not, accordingly be expected to know or appreciate the reference she was making, and had formed our conclusions based on incorrect and incomplete information. We apologize to Council, the Mayor particularly, and the public for misleading them, albeit inadvertently. We also wish to correct that error: on page 24 of the earlier report, where we made reference to the comments of Madame le maire as not reflecting accurately what the report of the previous Commissioner had said, it turns out that the Mayor had made a mistake in her reference so, naturally, when this office compared the two statements, all we remarked upon were the significant differences between those two statements. We apologize if stating that the Mayor's statement in that regard (that the Mayor's statement appears to be false or mistaken)¹ caused her or others any discomfort or inconvenience. It was an error on the part of both the Mayor and this office, and we regret any of the consequences that may have flowed from that error.

Continuing with other matters relevant to the final report, we have gone through the "feedback" provided by others in the Hawkesbury Municipal Council in some detail. Our comments with respect to them generally, follow.

On Page 5, paragraph 3, we indicated that the 3 people fired on June 16th, 2020 were from the Recreation, Community and Cultural Services area of the municipality. We had used, unfortunately, an erroneous title. The area is correctly called the Recreation and Tourism Services area. One of the people also displaced was apparently from the Municipal Infrastructure and Building Services. Unfortunately, which particular area of the municipality they were displaced from has no bearing on or relevance to the point we were trying to make, which was that firing any number of people without following any kind of proper process or paying appropriate damages *in lieu*, is a recipe for disaster.

It has also been brought to our attention that the Mayor asking the former Clerk for advice on a matter which the Mayor says is unrelated to this issue of the firing of 3 people is "not conclusive evidence that the Mayor had anything to do with the posting of the agenda on the website.....". Whether or not the issue of posting on the website had anything to do with the firing of people on June 16th, is not relevant for the purposes of this report. The Mayor disclaims all knowledge of how to post something on the website, and of having access sufficient to allow her to do that. And, apparently, the Agenda for the Council meeting is supposed to be published seven (7) days in advance, unless there is a good reason not to do so.

Regardless - the point of my observation was multi-faceted: Something happened, that should NOT have happened, to get the matter of "Discussion about Staff" on the agenda for June 16, 2020. Regardless of when it had been added to the agenda - it should NOT have been. Regardless of who added it, it should not have been - there are a whole lot of unanswered questions about all of that which we drew to

¹At the top of page 24

Council's attention because, as we said in the report, we am concerned for the security of the municipality's computers and documents. And, it is also apparent that SOMEONE is not telling the truth.²

The Mayor is correct that she told the C.A.O. that he could state that he did not agree with the instructions which he had been given, and that she told him that at both in camera and at the resumed "open" session, we believe. We agree - we do not, however, understand the point of mentioning that here.

By July 14, 2020, the local newspaper was reporting that a *selection committee* for a new Director of Recreation and Tourism had been created. Council may not have hired that person until February of this year, but that doesn't change the fact that it was clear, as of July 14th (according to the newspaper) that a committee had been created to try to hire a new Director of Recreation.

Clearly, information that three (3) employees were to be let go should have been, and, we believe, was intended to remain, confidential. The C.A.O. was permitted to "speak freely" and say that he was not in favour. Although the Mayor does not believe that that was the case, the translation which we received certainly says that. It is very unfortunate that we do not possess fluent French, so we can only rely on the translation service which we have, which gave us the translation which we offered in the report.

The Mayor then makes reference to Page 8 of the reporting document, paragraph 2. Her comment is that she, too, plus the members of Council, had "hoped" that everything would have been done differently. Her explanation of why it was done the way it was, however, is a bit peculiar. Her first position is that she and the other councillors who voted for the firing of those people would have preferred to approach every member individually. Her explanation for the failure to have done that is that they already knew what the position of the other three members of Council would be. That may well have been the case - but it still does NOT excuse 1) proceeding without the knowledge or involvement of the other Councillors, OR 2) deciding to fire people with no notice or warning or anything that is appropriate and responsible, if one is going to dismiss people from one's employ.

She then blames the C.A.O. of the day, but says that the Councillors could not talk to him about the complainant because the C.A.O. was "unable to control his behaviour, especially when the subject matter of the complainant came to his attention". Although her account of all of this is a bit confusing, it is clear that she, at least, found the former C.A.O.'s behaviour inappropriate and misguided. To the writer, this, again, means that Council was going about things the wrong way. This kind of "scatter-gun" approach is singularly unhelpful - if there is an issue with an employee, follow the proper chain of command to deal with it. Do NOT simply decide one day, more or less "out of a clear blue sky", that now is the time, that you will deal with it right now, and

² I have no proof with respect to anyone - but I have seen it happen before, elsewhere, seemingly inexplicably.

then proceed to fire someone. That is NOT the way things are done in a a modern and supposedly civilized society!

With respect to the next few points raised by the Mayor, we are somewhat at a loss how to respond. We only partially sustained the complainant's issue in that regard, so the fact that we referred to a timeline that is more generous in its references to "the past" than the Mayor would have made it, and to the fact that Hawkesbury has had a C.A.O. since the "early 1990's" is really not relevant to anything in the report. The only point that is relevant is the error on Page 10, 2nd paragraph . We stated that the BIA already had "accountants and auditors already in place, who were also the City's employees...." when commenting on whether or not the BIA was or appeared to be the "lead player" in the group. That was an error. The City DOES have accountants on staff, but the auditors are required, by law (s. 296 (4) Municipal Act, R.S.O. 1990, c. M. 45) to NOT be municipal employees. Accordingly, that statement should have indicated only that the Accountants were City employees, but the auditors were not, but were "in place", so to speak - they had been hired and had done the audits for the City for some time. We apologize for any confusion or misunderstanding which may have arisen because of that error on our part.

The Mayor goes on to state that there was no overlap between the role of the Recreation Director for Hawkesbury and the Project Manager of the triumvirate. That may be true - what this report observes, though, is that there *could be*, but also, that the burden of NOT treading on the toes of the municipal employee, is cast upon the Project Manager. In other words, even if there might be some overlap, the responsibility for NOT doing things that could interfere with what the City employee was doing, falls on the Project Manager of the triumvirate. And, the Mayor is correct that all parties had the opportunity to comment on the agreement if there had been anything "untoward", and did not. As we said earlier, however, and as my report says - while there may have been an occasion for the two roles to overlap, the onus was on the project Manager to make an effort to try to make sure that they did not. My other comments about that issue remain as set out in my report.

The Mayor goes on to reference something at "Note 7, Page 12" which we were simply unable to locate in the materials with which we were working.

Nor do we understand the Mayor's concern about the writer's statement that "We think everyone simply got a bit carried away". Her criticism of that statement is that the entire Council and the C.A.O. had been involved. We thought, and still think, that "everyone" includes the entire Council and the C.A.O.

We were chastized for use of the word "contracts", in the plural, as the Mayor has advised that there was only one contract agreed upon by Council. That may be so - we have not attempted to go through all of the minutes, which are in French, since this Council was elected, so we cannot say for sure that the word should be "**contracts**", as opposed to "contract". However, we were definitely provided with a contract - unsigned though it was - between Jean Sirois and the Community Development Association,

which, as we said in the report, did not actually go anywhere, for other reasons. Again, we are somewhat unsure of why Madame le Maire has made this point. Whether it was one contract or two separate ones, doesn't matter - the complainant had expressed concerns that her job had been deliberately taken away from her by decisions of the Mayor and Council, and, while that allegation of hers was only upheld in part, (and only because it seemed that all Council had agreed to it) we did express some concern about the seeming duplication of the roles and duties, and whether or not that was appropriate or was being monitored appropriately. The number of contracts, however, is not the point.

The Mayor has also noted that the Project Manager has never done a concept plan or taken credit for producing one for the downtown core. We can only say two things about that. We put the comments in the report, in quotation marks, because they were a direct quote from somewhere else in the myriad of materials that we have been given through this process. Secondly, why is this a concern? The whole of that discussion of the complainant's issues was simply part of the explanation of the analysis that this office had undertaken to arrive at the conclusion that it did. And, we only partially sustained the complaint on that particular issue anyway.

Madame le maire has also stated that she thinks the terminology we used in the report with respect to Council and the hiring of the Project Manager for downtown, was very condescending. We certainly did not think so, or we would not have used it. Nor did we mean it that way, and wish to apologize profusely for any offence that may have been caused or taken.

Although the Mayor has taken some offence at this office's statement that she had been "extremely involved" in the hiring of the Project Manager, that was the conclusion we came to and stand by it. As we said in the report, the Project Manager has received a number of challenges, but, as we also said previously, the onus is on him, in his contract, to NOT step on the complainant's toes or job responsibilities. That is a built in recognition that there may be some friction between the Project Manager and the Director of Recreation and Tourism (the complainant).

The Mayor takes issue with the statement that she was the main person insisting on the complainant's firing, stating that the Councillors had to agree to it and that she only took action because she had received a lot of complaints, and the C.A.O. was not doing anything about it. Whether the Mayor had received complaints from others, or not, and whether or not the C.A.O. had been approached by her but refused to act on her complaint, is simply not relevant, whether it is true or not. No decent, respectful employer would ever treat any employee as the complainant and the others were treated. As for the statement that Councillors voted for the terminations of their own volition, while that is technically true, the vote to terminate those people cannot have been a "sure thing", or the Mayor would not have gone to the trouble of speaking with each of the Councillors who voted for the termination, separately, in advance, nor had them actually sign a document confirming their intentions, in advance. She seems to have been uncertain enough about the outcome to have taken those extra precautions,

so responding that any of them could have changed their minds by the next day, is simply not an answer - it is evasive, at best.

No-one is saying that, once you have an employee, they cannot be terminated. What is being said, though, is that it ought to be done properly, it ought not to be done by a group of politicians who have essentially been persuaded or encouraged or simply decided, independently, in advance to commit to a particular course of action. There is nothing that stops Council from terminating anyone's employment, if they so wish, but Council will also end up paying a price for that, if it is not done properly. Not just in punitive damages for anyone who decides to sue for that reason, but also, because Hawkesbury will develop a reputation for being NOT a good place to work. Surely every municipality would like to try to attract good, responsible, honourable people for a job with the municipality in the future, and not dissuade people who might otherwise be perfect for the job, simply because Hawkesbury develops a reputation for treating people poorly.

The Mayor takes issue with my use of the word "seems" so often - but that is the word I have to use, only because we do not know anything definitively about her or her thoughts or beliefs, nor, for that matter, anyone else's. We regret that she sees it as "character assassination" - that was certainly never our intention. We were simply trying to set out our impression of what motivates her - but we would never profess to know her or be able to read her mind. Nor do we wish to belittle her or try to hurt or distress or anger her in any way - that is not this job nor do we choose to engage in that method of dealing with anyone. So, we can only use "seems" or "appears" or "it looks as if..." - expressions like that, because we cannot know with crystal clarity what her thoughts are or may be - we can only state how things appear to the writer.

To the extent that that part of the complaint was sustained, in part, it is all of Council who we hold responsible. We do not have a complaint against the former C.A.O., so, even though the Mayor believes that some of the "blame" rests with him, the complaint that we received did not make any allegations against or about him that we could investigate or make findings about. So, the findings stand, and as against all of Council, as we said earlier. Although we hold some Council members somewhat less responsible than others, even those who did not vote to proceed as Council did on that dreadful day in June of 2020, perhaps some quick thinking would have enabled matters to be brought to a halt for long enough for some of these things to be able to be sorted out appropriately.

We do not intend to engage in some kind of "tit for tat" squabble with the Mayor, or anyone else on Council - that is not this role, it is not appropriate, it is not polite, and it is not relevant to the issues here. We do note that the Mayor has indicated that she has learned from some of the things that she has done, or that have happened, and we heartily commend her for her efforts in that regard. Indeed, others have indicated that she appears to have learned much from all of this, which we sincerely hope is true.

The next matter addressed by the Mayor is the allegation that the former C.A.O.

and the complainant were having an inappropriate relationship. We indicated, as said at the outset, that the Mayor's recitation to me of what Commissioner Saywell's report says, was incorrect and there had been one basic error, about whether or not Commissioner Saywell's report dealt with the Mayor taking pleasure in spreading rumours, when, in fact, it did not. We appreciate the Mayor acknowledging that she had made an error in her reference to what Commissioner Saywell's report had said, which means that there was that same error in my report. However, the point we were attempting to make in dealing with that whole issue was the level of distrust that seems to have existed or developed between the former C.A.O. and the Mayor which, in our view, is simply not appropriate.

We were also chastised for using the term "at great length", with reference to the Mayor's comments about 4 staff members. In our view, an entire typewritten page on that issue qualifies as "at great length". It was also not just about one staff member, but in reference to 4 staff members or former staff members.

The Mayor makes fairly frequent, but important references to a report from Alternative RH, which she says was "hidden from Council". Perhaps the more appropriate phrase might be "not volunteered to Council", especially bearing in mind that a number of the people on staff at Hawkesbury currently were not on staff at the time that report came in.

With respect to comments on the recommended sanctions, it has been said that there was "no misguided or inappropriate behaviour on June 15 or June 16, 2020." We thought that those adjectives were appropriately mild and unlikely to cause offence. While it is true that the Ombudsman's office found that Council had not technically contravened the *Municipal Act*, that is solely because the Mayor had "organized a voting bloc of councillors who strategically agreed ahead of time about how to deal with a specific matter". And that "..... the Mayor could have acted in a more transparent and accountable fashion....."³. There may not have been a promise to dismiss, but there certainly was an agreement signed by 3 members of Council and the Mayor, to dismiss several people, including the complainant. It wasn't a "so-called document" - it was a real, actual document, on a piece of paper, signed by 3 councillors and the Mayor, according to the Ombudsman. The Mayor went no farther in soliciting support because, according to the Ombudsman, she didn't believe that the other councillors would support a resolution to terminate the employment of those people. It is true that any member of Council could have voted differently the next day - but that simply does not excuse proceeding the way the Mayor and those three Council members proceeded on June 15 and 16, 2021.

The Mayor takes issue with the language of the apology we drafted, by saying that Council can still dismiss employees with payment in lieu of notice. That is correct, BUT the apology we drafted doesn't have to and is not set up to require all of Council to

³Ombudsman's Report, March 2021, para 20

sign - only those who took it upon themselves to vote to terminate a number of employees. It may be Council's right, as a group, but it is not the right of any one member of Council and, in fact, a majority of Council will not typically even deal with that - that is the role of the C.A.O. and/or the HR department.

As for the next sentence in the apology, Madame le Maire states that it is inappropriate because a problem with an employee must be brought to the attention of the C.A.O. and no-one else because that is the proper chain of command. Firstly, that sentence in the apology uses the word "or" - issues with a staff person should be brought to the attention of one of three (3) people - four, if Council wishes to include the Town's legal advisor as one of the group. What there should be, is a proper organizational chart, showing who reports to whom, at which point some of these items which are of concern to the Mayor may be straightened out. In the short term, if Council wishes to simply designate one person so the complainant (if there ever is another one) has no choice of who to go to, that is fine - the draft apology can certainly be amended to reflect that.

There has been a concern expressed that the apology and acknowledgment opens the door to lawsuits against the municipality. We disagree. It is the making of the mistakes that may lead to lawsuits against the municipality, not the apology or acknowledgment of having made them. If anything, such a document, entered into in advance of an civil action being taken by anyone, **reduces** (mitigates) the damages which could be awarded.

With respect to recommended Sanction 3, the Mayor is singled out only because the Mayor was the principal focus of the complaint. The two Councillors named in the Mayor's comment had no specific complaint made against them by the complainant in this matter. As we have said before, we hold all Council responsible, to some degree, some more than others, but anyone - Madame le Maire included - may bring a complaint to the Town's IC, if they so choose, and the IC will, we are sure, investigate it if warranted.

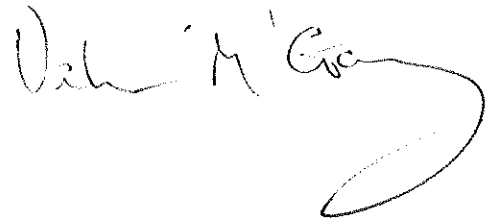
With respect to recommended sanction #4, while we appreciate that Her Worship has set out who she thinks is a member of the management team, we believe that a discussion and a formal resolution are required. Other members of Council, for example, may disagree with the staff positions she has named.

As for the second part of that recommended sanction, Council may choose to move away from a simple majority vote by resolution, or amendment to the procedure by-law, at any time, so long as it isn't done just on a whim, for one isolated event. Yes, tradition says that a simple majority vote carries the day, but Council can establish a higher threshold for some purposes, particularly when it is a matter where a "sober second thought" may be needed.

On a final note, we have finally received some feedback about the BIA and its failure to comply with the *Municipal Act*. It appears that the rules for the BIA were enforced in 2016 and 2017. It also appears, however, that between 2018 and 2021,

the BIA failed to comply with the *Municipal Act*, ss. 205 and 207, by failing to submit both budgets and annual reports. In that regard, we would recommend that the Treasurer be instructed to send an annual reminder to the Board of Management of the BIA whenever the municipality is preparing its own budget, of the BIA's obligation in that regard. It may not have to be done indefinitely, but a reminder for at least the next 5 years should help to restore or establish a pattern or routine.

Subject to any further question or comments, this completes the addendum to our report.

A handwritten signature in black ink, appearing to read "Dale M. Goo". The signature is written in a cursive style and includes a large, sweeping flourish that extends to the right and then loops back down.