



**Ombudsman
Saskatchewan**

Promoting Fairness

Investigation Report

**The Resort Village of Candle Lake's Handling of
Complaints about Council Member Conduct**



December 2019

TABLE OF CONTENTS

INTRODUCTION	3
INVESTIGATION PROCESS.....	4
WHAT RULES AND PROCESSES DO MUNICIPALITIES NEED TO HAVE TO DEAL WITH CODE OF ETHICS COMPLAINTS?	5
Standards and Values Required of Council Members	6
Process Required to Deal With Contraventions of the Code	7
Candle Lake’s Code of Ethics Bylaw.....	8
WHAT ARE THE FUNDAMENTALS OF A FAIR COMPLAINT-HANDLING PROCESS? ...	9
The Principles of Fairness	9
Procedural Steps	11
WAS CANDLE LAKE’S PROCESS FOR RECEIVING, INVESTIGATING, REVIEWING AND DECIDING THE OUTCOME OF COMPLAINTS ABOUT COUNCIL MEMBER CONDUCT REASONABLE AND CARRIED OUT FAIRLY?	15
Conduct Complaint 1: That Mayor Borden Wasyluk violated Candle Lake’s Code of Ethics by participating in decisions before the council about Sakâw Askiy Management Inc.....	15
Conduct Complaint 2: That Councillor Patricia Matkowski violated Candle Lake’s Code of Ethics by participating in the council’s decision to hire the administrator	23
Conduct Complaint 3: That Mayor Wasyluk and Councillor Matkowski violated Candle Lake’s Code of Ethics by improperly renewing Councillor Matkowski’s janitorial contract	31
Conduct Complaint 4: That Councillor Ron Cherkewich violated Candle Lake’s Code of Ethics by participating in matters before the council and by using confidential information to further either Friends of the Lake’s or his spouse’s private interests	37
Conduct Complaint 5: That Councillor Ron Cherkewich violated Candle Lake’s Code of Ethics by improperly distributing confidential information to the public.....	45
Conduct Complaint 6: That Councillor Ron Cherkewich violated Candle Lake’s Code of Ethics by harassing the administrator.....	50
CONCLUSION AND RECOMMENDATIONS	55
REFERENCES	57
Statutes, Regulations and Bylaws	57
Policies and Procedures.....	57
Other Documents.....	57
ABOUT US.....	58

INTRODUCTION

Situated about 80 kilometres northeast of Prince Albert, the Resort Village of Candle Lake has a year-round population of about 860 residents. According to its website, its population balloons to over 10,000 in the summer months during the height of cottage and camping season. Candle Lake is governed by *The Municipalities Act*. It has a five-member council: a mayor and four council members.

Since receiving jurisdiction over municipalities, Ombudsman Saskatchewan has received a lot of complaints about Candle Lake. In 2016, we received 18 complaints, most of which were about the former council's 2016 decision to approve the Mariners Cove marina development. The entire five-member council changed as a result of the July 2016 election.

After the current council was elected, up until we gave notice of this investigation, we received another 15 complaints about Candle Lake. Many of these included specific allegations of council member misconduct. All but two of these complaints were made by former or current council members or employees of Candle Lake. It was clear to us that these complaints were largely the result of dysfunctional relationships between council members, and between one council member and Candle Lake's administration.

Since starting this investigation, we have received another 12 complaints about Candle Lake, mostly by current council members, again, complaining about each other, or the administration. Six of these were submitted in the last 2 months, by one council member looking for us to intervene in various municipal decisions with which the council member disagrees or finds fault.

The Ombudsman's role is to encourage municipalities and council members to carry out their duties fairly and reasonably in accordance with legislation. We are not to be used to referee in-fighting or mudslinging among political rivals, or to take over a council's responsibilities when it either decides it cannot or, for whatever reason, it will not carry out its duties. Under *The Municipalities Act*, individual council members have an obligation to adhere to the values and standards expected of all municipal council members in Saskatchewan. As a council, they are required to deal with complaints about council member misconduct. Rather than do their job for them, and make findings about each alleged contravention, we decided to investigate the way the Candle Lake council was administering its code of ethics.

We believe the findings and recommendations in this report will benefit and assist all municipal councils in Saskatchewan to better understand their role (and ours). There are over 4,000 municipal council members in Saskatchewan and they all have a duty to govern in the best interests of their communities, follow the values and standards expected of council members, and put their private interests or vendettas aside in service of their communities. Next year, 2020, is a municipal election year for cities, towns, villages, resort villages, northern municipalities, and for council members representing odd-numbered divisions in rural municipalities. In our view, it is important that council members do not try to

use the Ombudsman as a sword or shield against their political adversaries or as an arbiter of their personal grievances with each other. Elected councils are responsible for handling internal fighting and rivalries among their members and are accountable to their communities if they do not.

INVESTIGATION PROCESS

We investigated whether Candle Lake's practices and processes for receiving, investigating, reviewing and deciding the outcome of these code of ethics complaints about council members were reasonable and being carried out fairly. Specifically, we investigated how Candle Lake dealt with the following six complaints of alleged council member misconduct:

1. A former council member (who is a current ratepayer) complained to the council about Mayor Borden Wasyluk participating in council's decisions regarding Sakâw Askiy Management Inc. Councillor Ron Cherkewich also made this same complaint.
2. The same former council member complained to the council about Councillor Patricia Matkowski participating in the council's decision to hire the current administrator. Two further complaints were submitted to the council about this, one from Councillor Cherkewich and another made jointly by Councillor Cherkewich and Councillor Brian Wojciechowski.
3. In various emails, Councillor Cherkewich alleged that Councillor Matkowski and Mayor Wasyluk violated the Code of Ethics by arranging to have Councillor Matkowski's janitorial contract with Candle Lake renewed without the council's approval or using a public procurement process.
4. Two people complained to us that Councillor Cherkewich used his position as a councillor to get access to confidential information which he used to support his spouse's appeal to the Saskatchewan Municipal Board to have it reverse the previous council's decision to approve a marina project. Two other people complained to us about the council contravening *The Municipalities Act* when it passed Councillor Cherkewich's motions to undo the former council's decision to approve the marina project. One person also alleged Councillor Cherkewich was in a conflict of interest by participating in the council's decisions
5. regarding the marina project because of his membership in a local advocacy group called Friends of the Lake.
6. Three people complained to us about Councillor Cherkewich emailing personal and/or confidential information to ratepayers and improperly disclosing the contents of *in camera* council discussions to the public.
7. The current administrator complained to several council members (and later to the Ombudsman) about Councillor Cherkewich harassing her.

We notified the council and the administrator of our intention to investigate and advised them how our investigation process worked.

Under *The Ombudsman Act, 2012*, if there are sufficient grounds for making a report that may adversely affect any entity or person, we give the entity or person an opportunity to review our tentative findings and conclusions before we finalize our investigation. On May 15, 2019, we provided an earlier draft of this investigation report to Candle Lake's council members and administrator, to give each of them and the council as a whole, an opportunity to review it and provide us with any representations they wished to make, before we finalized the report and determined what recommendations would be appropriate. At this time, we advised all parties that we intended to make the final report public. On June 12, 2019, we again confirmed the scope of our investigation and our investigation process under *The Ombudsman Act, 2012*.

We received initial written submissions from everyone, except Councillor Wojciechowski. We followed up with each of them again, seeking answers to specific questions raised by their initial submissions. All the submissions and other information we received were taken into consideration in finalizing this report.

We then sent everyone a copy of this final report along with our tentative recommendations to ask for their feedback again, and specifically to ask the council to advise us whether it would accept or reject our recommendations.

WHAT RULES AND PROCESSES DO MUNICIPALITIES NEED TO HAVE TO DEAL WITH CODE OF ETHICS COMPLAINTS?

Before looking at the way Candle Lake addressed specific complaints, it is important to set out what municipalities must do when they receive a complaint about council member conduct.

The Municipalities Act requires every municipal council to adopt a code of ethics bylaw that applies to all council members, which defines the standards and values that the council expects council members to comply with in their dealings with each other, employees of the municipality, and the public. The code of ethics must include the model code of ethics prescribed in *The Municipalities Regulations* and set out a process for dealing with contraventions of the code. In addition, a code of ethics may include rules regarding the censure or suspension of a council member who contravenes the code.

STANDARDS AND VALUES REQUIRED OF COUNCIL MEMBERS

The model code of ethics in *The Municipalities Regulations* outlines the basic ethical standards and values for council members. It is to be used to guide council members when fulfilling their duties as elected officials. The prescribed standards and values in the model code are as follows:

a. Honesty

Members of council shall be truthful and open in their roles as council members and as members of the communities they serve.

b. Objectivity

Members of council shall make decisions carefully, fairly and impartially.

c. Respect

Members of council shall treat every person, including other members of council, municipal employees and the public, with dignity, understanding and respect.

Members of council shall not engage in discrimination, bullying or harassment in their roles as members of council. They shall not use derogatory language towards others, shall respect the rights of other people and groups, shall treat people with courtesy and shall recognize the importance of the different roles others play in local government decision making.

d. Transparency and Accountability

Members of council shall endeavour to conduct and convey council business and all their duties in an open and transparent manner, other than those discussions that are authorized to be dealt with in a confidential manner in closed session, so that stakeholders can view the process and rationale used to reach decisions and the reasons for taking certain actions.

Members of council are responsible for the decisions that they make. This responsibility includes acts of commission and acts of omission.

e. Confidentiality

Members of council shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or authorized by council to do so. Members shall not take advantage of or obtain private benefit from information that is obtained in the course of or as a result of their official duties or position and that is not in the public domain. This includes complying with *The Local Authority Freedom of Information and Protection of Privacy Act* in their capacity as members of council of a local authority.

f. Leadership and the Public Interest

Members of council shall serve their constituents in a conscientious and diligent manner and act in the best interests of the municipality. A member shall strive, by focussing on issues important to the community and demonstrating leadership, to build and inspire the public's trust and confidence in local government.

Members of council are expected to perform their duties in a manner that will bear close public scrutiny and shall not provide the potential or opportunity for personal benefit, wrongdoing or unethical conduct.

g. Responsibility

Members of council shall act responsibly and in accordance with the Acts of the Parliament of Canada and the Legislature of Saskatchewan, including *The Municipalities Act*.

This duty includes disclosing actual or potential conflicts of interest, either financial or otherwise relating to their responsibilities as members of council, following policies and procedures of the municipality, and exercising all conferred powers strictly for the purpose for which the powers have been conferred. Every member of council is individually responsible for preventing potential and actual conflicts of interest.

PROCESS REQUIRED TO DEAL WITH CONTRAVENTIONS OF THE CODE

The Regulations do not, however, prescribe any procedures for taking complaints about alleged code of ethics violations or for investigating and addressing them. It is up to each council to develop, implement and follow its own procedural rules for dealing with alleged contraventions of the code of ethics. To help guide municipalities, the Ministry of Government Relations has published a sample Code of Ethics Bylaw. It is available on the Ministry's website. It lays out a potential complaint procedure for handling allegations of contraventions of the code:

Complaint Procedure

3. As required by clause...93.1(5)(c) of *The Municipalities Act*..., the following section details the procedure for handling contraventions of the code of ethics.
 - (a) To report an alleged contravention of the code of ethics, an individual/organization/member of council may submit the form found in Schedule A, by sending the form directly to (*insert applicable position for receiving the complaints – i.e. municipal administrator, city clerk*), by mail, e-mail, fax or courier. The complaint will then be presented to council at the next regular meeting of council in an *in camera* session.
 - (b) Upon receipt of a complaint, Council shall discuss the complaint and take all necessary steps to ensure the complaint is valid.
 - (c) All discussions surrounding alleged and substantiated contraventions of this policy shall be conducted in an *in camera* session at a meeting of council.
 - (d) If the claim is found to be substantiated, Council may, by resolution, impose an appropriate penalty detailed in 5(a) to (f) based on the severity of the contravention of the code of ethics.
 - (i) Any action taken by Council should include a time frame to complete the expected remedial action.
 - (e) Council shall inform the claimant, member of council, and any other relevant party of council's decision, which includes:

- (i) Informing the claimant and member of council that the complaint is dismissed, or
- (ii) Informing the complainant and member of council of the corrective action and/or the measures taken to ensure the behavior or activity does not continue.

CANDLE LAKE'S CODE OF ETHICS BYLAW

On December 9, 2016, Candle Lake's council read Candle Lake's Code of Ethics Bylaw for the first and second times. It included the standards and values in the prescribed code and the complaint procedures in Government Relations' sample bylaw. It established the administrator as the person to whom complaint forms may be submitted. At its February 10, 2017 meeting, the council carried a motion to add the following to the *Confidentiality* section of its code:

It is the responsibility of the member to:

- Protect confidential information;
- Only release confidential information if they have the authority to do so;
- Only use confidential information for the purpose it is intended to be used;
- Not use confidential information gained through their position as a member for the purpose of securing a private benefit for themselves or any other person;
- Not use confidential information with the intention to cause harm or detriment to the RVCL Council or any other person or body; and
- Not disclose any information with the intention to cause harm or detriment to the RVCL Council or Committee;
- Abstain from participating in any decision where there is an opportunity to further his or her private interests or the private interests of a closely connected person.

It then gave its code of ethics third and final reading.

On May 12, 2017, the council amended its code again to add the following to the *Responsibility* section:

(a) it is a requirement that Section 144 of *The Municipalities Act* to [sic] be followed whenever a council member has any conflict of interest – whether under *The Municipalities Act* [sic] or otherwise under the common law.

(b) any person – including another council member, village staff, and members of the public – who honestly believes a council member may have a conflict of interest or may have contravened the code of ethics to:
(i) address the matter directly with the council member and encourage him or her to stop or otherwise avoid the conflict of interest or contravention of the code of ethics; or (ii) make a written request to the council to address the matter.

(c) it a contravention of this Bylaw for a council member to threaten to take or to take any reprisal against a person because the person initiated the procedures in clause (b).

(d) administration must bring to the attention of Council any request made to the council to address the matter and that it is to be brought to the attention of and addressed by the council at its next regular meeting.

After reviewing a draft version of this report which we provided the council on May 15, 2019, the council amended its code of ethics again on July 12, 2019 to add the following provisions:

(c)(1) That Council will follow the recommendations of the Ombudsman. The person who is the subject of a Code of Ethics complaint has the opportunity to respond to a complaint at the *in camera* meeting, if they have not already submitted a response in writing. Following their response, that person must immediately remove themselves and abstain in any further discussion or voting on any motions related to the complaint.

(c)(2) That Council will follow the recommendations under the Ombudsman Code of Ethics Procedure Guide attached hereto as Annex 1.

The 'Ombudsman Code of Ethics Procedures Guide' referred to in the bylaw is a reference to a public education document available on our website called, *Handling Complaints Under Your Code of Ethics: A guide to dealing with alleged contraventions of a council member code of ethics*. This guide discusses some of the fundamentals of a fair complaint-handling process and encourages councils to consider certain key principles and processes when deciding how to develop its own processes. It is not a complaint-handling process itself and was never intended to be appended to a bylaw or suffice for a properly developed local complaint-handling process.

WHAT ARE THE FUNDAMENTALS OF A FAIR COMPLAINT-HANDLING PROCESS?

THE PRINCIPLES OF FAIRNESS

In our view, while the procedure for complaint handling set out in the sample code is a good start, it is not sufficiently detailed to ensure complaints are dealt with fairly from the time they are received and reviewed, through to a decision about whether a council member contravened the code of ethics and what sanction, if any, would be appropriate to impose on the council member.

Throughout the whole process, everyone involved in administering, investigating, and deciding what to do about a code of ethics complaint should practice and promote fairness. This includes, for example:

- following all related bylaws, policies, and procedures
- acting reasonably

- providing procedural fairness to everyone
- not making decisions or taking actions for improper purposes or based on irrelevant grounds
- treating people with courtesy and respect

Any code of ethics complaint-handling process needs to have the following principles of fairness enshrined in it.

Independence and Impartiality

Every person involved in handling complaints should be clearly and visibly independent from the people affected. The complainant, the council member being complained about, anyone else affected by the complaint, and the public, should be able to have confidence, knowing that no one involved in handling the complaint has any private interest in the outcome or is otherwise biased in favour of a certain result.

Everyone involved in administering, investigating, and deciding what to do about a complaint must set aside their personal views and maintain impartiality. They must avoid actual conflicts of interest but also the appearance of conflicts of interest. The council member whose conduct is in question should not be involved in any way with the complaint-handling process or the decision about how to resolve the complaint, except to provide information about the circumstances of the complaint to whomever is investigating it, and to make submissions in response to the information and analysis being used to make the decision. As well, complainants who are also fellow council members need to carefully consider whether they would also be in a conflict of interest if they participate in the process.

Confidentiality

The confidentiality of all communications, documents and other information received while dealing with a code of ethics complaint must be maintained. This includes taking all reasonable steps to safeguard the information from being divulged, whether inadvertently or intentionally. Information should only be divulged as is necessary to address the code of ethics complaint fairly and fully. After the investigative process is over, the council should carefully consider what information should be disclosed in the public interest, keeping in mind the requirements of *The Local Authority Freedom of Information and Protection of Privacy Act* and other applicable rules.

Integrity

Everyone involved in the complaint-handling process should exemplify the standards and values in the code of ethics at every stage. They should carry out their roles honourably, with integrity, and in a manner that engenders respect and confidence in them as individuals and in the municipality. Complainants, affected council members, and the public, must never have any reasonable reason to doubt their trustworthiness and integrity.

Ensuring the integrity of the complaint-handling process includes ensuring it is carried out in a competent, professional manner.

Accountability

Council members are accountable to the members of their community. This includes demonstrating that they handle complaints made about them in an appropriate manner.

PROCEDURAL STEPS

The key steps in dealing with a complaint about an alleged contravention of a code of ethics include:

1. Receiving and acknowledging the complaint
2. Notifying the affected council member and the council
3. Trying to resolve the complaint informally
4. Investigating the complaint
5. Deciding how to deal with the complaint
6. Giving reasons

1. Receiving and Acknowledging the Complaint

It should be clear who is responsible for receiving complaints: the clerk, the administrator, an integrity commissioner, a code of ethics officer, or an investigator. This person must initially assess whether the complaint meets the definition of a complaint under the code of ethics. For example, the complaint might raise several issues – one of which is an alleged contravention of the code of ethics, along with other issues that are not. The official may have to reach out to the complainant to clarify the information provided. In any event, the official should acknowledge receiving the complaint and explain how it will be dealt with. If it is not a proper complaint under the code of ethics, the official can direct the complainant to other avenues of redress or review that may be available to them.

2. Notifying the Affected Council Member and the Council

The council member who is the subject of the complaint should be notified that a complaint has been made against them.

Under *The Municipalities Act*, the council has the authority to decide how to address a proven contravention of its code of ethics by one of its own members. However, the authority to investigate a complaint may be exercised by a trusted professional, for example, an independent integrity officer. Depending on the nature of the allegations, it might not be fair to notify the council about a complaint being received until later in the complaint-handling process – for example, if the complaint was leveled by another council member, or is salacious and ends up being found to be false. This helps maintain the affected council

member's confidentiality until the allegations are investigated and confirmed true or false.

3. Trying to Resolve the Complaint Informally

Depending on the complaint, it might be reasonable to try to resolve it early and informally. The goal of early resolution is to resolve a complaint at the earliest opportunity at the most appropriate level. This might involve the complainant and the council member meeting face-to-face. For example, if the council member was disrespectful to the complainant, the complaint might be resolved if a sincere apology is offered. On the other hand, if it is alleged that the council member was abusive or participated in a council decision to further his or her private interests, or if the facts are in dispute, then informal resolution is probably not reasonable since the public's interest is at stake.

4. Investigating the Complaint

Whoever is investigating the complaint must be qualified and independent. No one interested in the complaint – particularly the council member whose behaviour has been complained about – should have any opportunity to improperly influence the investigative process. A good investigation process includes the following steps:

Investigative Step 1: Clarifying the Issues

The investigator should first clarify the issues raised by a complaint before collecting and reviewing any additional information. If an investigator is not clear about the code of ethics issues, they might not gather all the relevant information or might waste time gathering irrelevant information. If the questions are wrong, the answers will be wrong. If the investigator is clear about the issues, they can help focus witnesses on providing relevant (and not irrelevant) information and submissions.

Investigative Step 2: Fact Finding

Gathering all the relevant facts is the most important step in an investigation. If the facts are wrong or irrelevant, the conclusion or decision is very likely to be wrong or irrelevant. The investigator should gather and organize the information (evidence) into a report for the council or the party to whom the council has delegated its decision-making authority, to later review and decide whether the council member contravened the code of ethics. Here are some of the steps in the fact-gathering and fact-finding process:

Gathering information: This includes documents and other data (emails, letters, notes, photographs, videos, etc.) and information provided during interviews.

Identifying relevant information: Is the information logically connected to an issue arising from the complaint? Does it help to prove or disprove the issue? Information is relevant if it directly relates to the code of ethics issues.

Resolving conflicts or inconsistencies: Reliable information stands up to scrutiny. It often (not always) comes from credible sources. Part of dealing with inconsistent information is deciding how much weight to give information and why. Reliable information should be given more weight. For example, if several people give the same information, it is usually entitled to more weight unless there is a reason to think they are colluding. If several people have credibility issues, then giving more weight to the information of one credible person might be the best decision. As a rule, determine the facts that everyone agrees on first. Then deal with anything directly linked to the facts that everyone agrees on. Finally, deal with contradictory facts, assessing credibility and assigning weight to the information.

Investigative Step 3: Determining the Relevant Law and Policy

The rules that are relevant to a contravention of a code of ethics are found in municipal legislation, bylaws (the code of ethics itself, for example), the common law, and possibly local policies and practices. In many cases, the only relevant law is the code of ethics bylaw and relevant provisions of the municipal statute. Sometimes rules and principles set out in the common law (court cases) are relevant. Local policies or common practices might also be relevant to a code of ethics complaint. In many cases, it will be wise to get advice from a lawyer with experience in municipal law about which rules are relevant and how to interpret them.

Investigative Step 4: Applying the Law and Policy

The next step is to apply the relevant rules to the facts. This means considering which conclusions the facts support: Did the council member contravene the code of ethics? And if so, why? When applying the law and policy to the facts, it is crucially important to have sound reasons. At this stage, the conclusion that needs to be reached should be clear. If it isn't, something may have been missed in the first three steps.

Investigative Step 5: Giving an Opportunity to Comment on Findings

For a decision-making process to be fair, it is critical that the affected council member - and possibly others whose rights and interests will be affected by the decision - are given a reasonable opportunity to review the findings and preliminary conclusions and to provide contrary or alternative information for consideration. This practical step helps to ensure that the investigator has all the relevant information available before the matter is put before the ultimate decision maker for decision. It is also fundamental to a procedurally fair process.

Investigative Step 6: Finalizing the Investigation and Submitting Findings to the Decision Maker

The investigator's findings and recommendations should be presented to the decision maker in a written report that summarizes the complaint as it was received, the issues that were investigated, the evidence gathered (along with explanations about how contradictory evidence was dealt with), the relevant laws and rules, the analysis of how the laws and rules apply to the facts, the investigator's conclusions, and any recommendations to the council about how to

resolve the complaint. If the investigator rejected certain submissions or discounted them, the report should include the investigator's reasons for doing so.

5. Deciding How to Deal with the Complaint

The council should convene to discuss the contents of the report. The investigator should attend the session to answer questions. The council needs to answer this question: Did the council member contravene the code of ethics or not?

If the contents of the report contain personal information, and the council decides to discuss it *in camera*, the council needs to go back into public session to make decisions about the complaint.

If the council decides that there was a contravention of the code of ethics, they should also decide how they intend to deal with the contravention. Depending on the circumstances, the council might need to seek further advice before deciding how to deal with a founded complaint, and what would be an appropriate sanction for the council member.

In addition, the council may make other decisions intended to remedy the complaint. For example, if the complaint is about a council member voting on a decision in which he or she had a conflict of interest, the council could consider repealing the decision and voting on it again. Or if the complaint was about a council member treating a person inappropriately, the council might want to issue a formal apology on behalf of the whole council.

6. Giving Reasons

In any event, whether the complaint against the council member was founded or not, both the affected council member and the complainant should be provided with reasons for the decision. The reasons should address all relevant issues and points raised by the complainant and the affected council member. If the investigation identified a contravention of the code of ethics, the response to the complainant should explain what actions the municipality has taken or proposes to take to resolve it. What will be done and when?

Depending on the circumstances, this might be accomplished by sharing the investigation report and a copy of the resolutions based on it. Sometimes, for reasons of confidentiality, it will not be appropriate to share the entire investigation report. Instead, it might be appropriate to provide a redacted version of the report, or for the investigator to meet with an affected person to explain the results and the council's reasons for its decision. However, giving no reasons is never appropriate or reasonable. The response to the complainant should explain their right to complain to the Ombudsman if they are still dissatisfied with the outcome of their complaint and how their complaint was handled.

While we appreciate the sentiment behind the Candle Lake council's decision to enact one of our educational publications into its code of ethics, we must stress

that the publication was never intended for this use. It provides general principles and suggestions to municipalities for setting up a process that works for them. Based on the following findings, it is our view that Candle Lake needs to define in its bylaw a specific process to address how it will receive, review and handle complaints in a fair and reasonable manner.

WAS CANDLE LAKE'S PROCESS FOR RECEIVING, INVESTIGATING, REVIEWING AND DECIDING THE OUTCOME OF COMPLAINTS ABOUT COUNCIL MEMBER CONDUCT REASONABLE AND CARRIED OUT FAIRLY?

The following is a summary of the way Candle Lake dealt with the six allegations of misconduct made against its current council members, and our findings on whether it handled them using a process that was fair to the complainant, the council member, and ultimately to the public.

CONDUCT COMPLAINT 1: THAT MAYOR BORDEN WASYLUK VIOLATED CANDLE LAKE'S CODE OF ETHICS BY PARTICIPATING IN DECISIONS BEFORE THE COUNCIL ABOUT SAKÂW ASKIY MANAGEMENT INC.

Background

On August 8, 2016, Mayor Borden Wasyluk disclosed in his Public Disclosure Statement that he is on the Board of Directors of Montreal Lake Business Ventures Ltd. Montreal Lake Business Ventures Ltd. is the sole general partner of Montreal Lake Business Ventures LP, which is one of eight shareholders of Sakâw Askiy Management Inc., which manages timber harvesting and regeneration of forest land in a defined area north of Prince Albert that includes Candle Lake.

In a September 30, 2016 letter, Sakâw Askiy Management Inc. notified Candle Lake of its efforts to finalize its 2017-2022 operating plan, including seeking approval from the Canadian Forest Service of its proposed harvesting areas. It said, "If after reviewing the maps, you have additional questions, concerns, proposed areas for improvement or require further information, please contact me[.]" The letter included a list of public information sessions, one of which was scheduled for October 19, 2016 at the Candle Lake Hall. This letter was included in the agenda package for the council's October 14, 2016 meeting. The meeting minutes indicate the council made a motion (417/2016) to receive and file it.

On May 12, 2017, the council passed a motion (291/2017) to approve one council member to attend the SAKAW Public Advisory Group meeting in Prince Albert on May 31, 2017. Mayor Wasyluk told us he could not remember if he voted on this decision; however, the minutes do not indicate that he declared a conflict of interest. The mayor told us that Councillor Cherkewich wanted to attend this meeting because he was concerned about caribou and that the clearcutting would pollute the lake.

On September 12, 2017, *paNOW* published an article about Kaskew Forestry Products LP (whose sole general partner is Montreal Lake Business Ventures LP) signing an agreement with Carrier Forest Products under which Kaskew would “provide local employees, licensing and rights to harvest trees” to Carrier, which would, in turn “look after planning and operations of all projects.” The article says that Montreal Lake Business Ventures and Carrier have been in a relationship for 22 years.

On September 28, 2017, Sakâw wrote Candle Lake to give it an opportunity to review and comment on its draft operating plan. It said (in part), that the forest management licence it held gave its “shareholders access to harvest wood” and listed “Montreal Business Lake Ventures” as one of its shareholders.

The agenda for the October 13, 2017 council meeting included the September 28, 2017 letter from Sakâw in which it advised it was finalizing its 2018-2023 operating plan, outlining areas to be harvested. Sakâw asked Candle Lake for its comments about the plan as a stakeholder. The letter advised that it would be holding a meeting in Candle Lake. It also advised, “If after reviewing the plans and maps you have additional questions, concerns, proposed improvements, or require further information, please contact the appropriate Area Planner.” It then listed Carrier as the Area Planner for Montreal Lake Business Ventures.

The minutes of the October 13, 2017 council meeting show the following motions were passed: 543/2017 (to appoint council members and stakeholders to attend the Sakâw meeting), 544/2017 (to ask Sakâw to reschedule the meeting to accommodate the Candle Lake delegation), 545/2017 (to strike a delegation of council members and ratepayers to follow up on the proposed Sakâw plans), 546/2017 (to appoint Councillor Cherkewich to represent Candle Lake in discussions with Sakâw), 547/2017 (to take steps to canvas volunteers to work on the Sakâw delegations) and 548/2017 (to immediately advise Sakâw of the other motions).

The minutes indicate that Mayor Wasyluk acknowledged a potential conflict of interest, relinquished the chair to Councillor Manton and abstained before the discussion and voting on these motions.

Councillor Cherkewich told us that Mayor Wasyluk did this only after Councillor Wojciechowski questioned him about whether he had a conflict of interest. Mayor Wasyluk told us Councillor Wojciechowski asked him about him being on the board. He told us he was not sure what board he was referring to. He said that some corporate boards, because they were inexperienced, will list people as being on the board when they are not. He told us that while in the meeting, he was wondering whether Sakâw might have listed him as being on its board in error. Because of this, he said, he abstained from voting. The minutes do not indicate that Mayor Wasyluk left the room. When we asked him why, he said if he had had a clear conflict of interest, he would have left the room.

Based on the resolutions passed at the October 13, 2017 meeting, Councillor Cherkewich struck what he called the Candle Lake Watershed Group to work with Sakâw, he said, “to ensure logging and related harvesting practices and the

inevitable disturbances be scrutinized to ensure that the CL watershed that is so vital to the health and future of CL, is not harmed, compromised or disrupted by the current and proposed future harvesting, road construction, water crossings, roadways and approaches.”

On November 1, 2017, Councillor Cherkewich hand delivered a submission to the Candle Lake office:

In the Mayor’s Public Disclosure Statement, Form 1, dated Aug 8 2016, (enclosed) he states he sits on the Board of Directors of MLBV.

The RVCL in the past has received correspondence and literature from SAKAW. Most recently there is a letter Dated Sept 28 3017. It identifies MLBV as one of 8 shareholders in SAKAW. This correspondence was included in the Agenda for the Oct 13 2017 meeting.

The Mayor as Chairperson and the Administrator vet the agenda, in this case the October 13 agenda[.]...The Mayor...would therefore be alive to the conflict well in advance of the October meeting. The Chair...decided to “Receive and file” the SAKAW letter and the agenda was issued accordingly.

At that portion of the Agenda where disclosure is called for (Item 2), the Mayor sat silent. The pecuniary conflict of interest challenge was brought ...when the letter ... was up for consideration[.]

...
This challenge was issued when the Mayor participated in the discussion and was prepared to vote on motions presented by Cnlr Cherkewich to address the SAKAW correspondence. Mr. Wasyluk did not leave the room while the motions were made and the resolutions passed.

...
This request... is to obtain...records...since Aug 08 2016 wherein SAKAW or any of the other eight shareholders including MLBV came before council and whether Mr, Wasyluk complied with the provision the *Code of Ethics Bylaw...and The Municipalities Act*.

The administrator told us that she provided the council members the contact information for Sakâw so they could ask questions, as well as an email from a Sakâw representative which explained its connection to MLBV.

Two days later, on November 3, 2017, a former council member wrote to Candle Lake, making the same allegations against the mayor that Councillor Cherkewich had made. He alleged: “Mayor Wasyluk is a Director on Montreal Lake Business Adventures [sic]. MLBV is [a] share holder [sic] in a company known [as] SAKAW.” In his interview with us and again in his written submissions, Mayor Wasyluk said the former council member’s complaint was a “pure lie” because, “No company by the name of ‘Montreal Lake Adventures’ exists.” He suggested that we view the former council member’s complaint about him as a criminal matter.

The former council member asked to present his concerns at the November 10, 2017 council meeting. Mayor Wasyluk told us he believed Councillor Cherkewich coached the former council member to make the complaint against him.

The administrator initially told the former council member that his request to speak at the November 10, 2017 meeting came too late, so it could not be put on the agenda until the December meeting. She then forwarded the complaint letter to the council members advising that it could be considered a complaint under the code of ethics and dealt with accordingly. In response, on November 6, 2017, Councillor Cherkewich emailed the other council members. He said, "I do not believe The Code of Ethics Bylaw allows Council to 'deem' the correspondence... [to be] a Code complaint." He took the position that the complaints should be put on the November 10, 2017 agenda. He said:

I need to know by no later than Wednesday 11:45AM (in advance of the Friday meeting) of the intended position of my colleagues on council. I need to hear from you so as to determine if you are on side. IF I am not comfortable as to the likelihood of a majority vote (consensus) to accommodate [the former council member], I will take this matter to the next level. That is not a threat. It is simply my position in dealing with the ethical and legal reality of the situation. Our Oath of Office does not allow us the luxury of ignoring or fobbing of [the former council member]. Transparency and accountability and our credibility with the ratepayers are in issue. I will not let them down.

PS: If you want to know what I mean by the "next level" please drop me an email or a phone call.

...

I look forward to hearing from you before Wednesday 11:45AM.

Also, on November 6, 2017, Sakâw's general manager emailed the council to "confirm that Mayor Borden Wasyluk is not, and never has been, on the Board of Directors of Sakâw Askiy Management Inc."

On Wednesday, November 8, 2017, Councillor Cherkewich completed a code of ethics complaint form about Mayor Wasyluk.

The minutes of the November 10, 2017 council meeting indicate the following relevant additions were added to the agenda:

- 7.14 – Letter from [former council member] Re: Conflict of Interest
- *In camera* Agenda – 2 Complaints [from Councillor Cherkewich] under the Code of Ethics Bylaw 32 of 2016.

The former council member attended the council meeting. In a November 29, 2017 email to the Ombudsman, Councillor Cherkewich wrote this about what happened at the meeting:

[The former council member] spoke to his letter and complaints. ...Wasyluk [did not step] back from the...presentation. Wasyluk...fully participated in the presentation... including what was tantamount to vigorous "cross examination" ...of [the former council member]. In addition [the former council member] was criticized by Mr. Wasyluk for his spelling and grammar used in the letter and complaints...

Things were getting out of hand.

According to Councillor Cherkewich, Mayor Wasyluk berated and “screamed” at the former council member. However, according to the mayor, the administrator, and Councillor Matkowski, the mayor did not scream. According to Councillor Manton, the mayor was very upset. Several people told us that when the former council member was asked questions about his complaint, he was unsure how to answer them and looked to Councillor Cherkewich to answer for him. And, when Councillor Cherkewich interjected saying, ‘I believe what he is saying is...’, the mayor cut him off and insisted that the former council member answer for himself. One person told us the mayor used an angry tone. Several people told us it was mostly the conversation between the mayor and Councillor Cherkewich that was heated.

Councillor Cherkewich told us he then “made a motion in an effort to intercept and extricate council, [the former council member] and the public, from the toxic goings on.” The minutes indicate the council carried Councillor Cherkewich’s motion that the council “refer this matter to the Provincial Ombudsman for her advice and recommendation.” They do not indicate that Mayor Wasyluk declared or disclosed his conflict of interest in the discussion or left the council chamber.

The minutes indicate, however, that Councillor Cherkewich’s code of ethics complaint about Mayor Wasyluk was tabled and that the mayor abstained from voting on the tabling motion.

At the December 8, 2017 meeting, the council discussed Councillor Cherkewich’s complaint against Mayor Wasyluk *in camera*. The minutes indicate the mayor declared a conflict of interest and left the room for six minutes during the closed session. After coming out of the closed session, Councillor Cherkewich made motion 683/2017 which read in part:

The code of ethics complaint...with respect to...Mayor Wasyluk received November 8 ...be directed to the Ombudsman with the request that she conduct an investigation with a view to providing this Council her report and recommendations. This is addition [sic] to the request pursuant to resolution 602/2017 [former council member complaint] which has been previously sent to her for her advice and recommendations[.]

If the Ombudsman does not respond to the Council’s request or fails to notify Council of her intention to commence an investigation with a view to issuing a report with recommendations, within 10 working days of this Resolution, then this resolution shall constitute a request Resolution under section 397(1)(b) for the Minister to conduct an inquiry under section 397(2) into the following:

- (a) The affairs of the municipality in relation to the matters set out in the 4 complaints,*
- (b) The conduct of Mayor Wasyluk and Councillor Matkowski and without limiting the foregoing, their conduct in relation to the possible conflict of interest relating to the matters raised in the 4 complaints,
- (c) The conduct of [the administrator] in relation to the complaints relating to Councillor Matkowski and without limiting the foregoing, in relation to any breach by her of the ...Employee Code of Conduct...

*This refers to the two complaints about Mayor Wasyluk and two complaints made against Councillor Matkowski, which are reviewed later in this document.

This motion was defeated. Even though the motion involved the complaint against him, the mayor participated and voted against the motion.

Later in the meeting, Councillor Manton made motion 690/2017 “That Council did not find sufficient evidence to support complaint received under the Code of Ethics against Mayor Wasyluk from Councillor Cherkewich.” The minutes indicate that Mayor Wasyluk declared a conflict of interest, but do not indicate he left the room during any discussion or the vote. The administrator told us, however, based on advice she had been given by the Ministry of Government Relations, Mayor Wasyluk was given an opportunity to submit a response to the allegations and information being considered before he declared a conflict of interest and left the room.

The minutes indicate that Councillor Wojciechowski abstained from voting “due to advice from legal counsel.” The minutes also indicate that Councillor Cherkewich abstained from voting “because he stated the assistant administrator asked him not to.” Both Councillors Matkowski and Manton voted in favour of the motion. Initially, the minutes indicated the motion was carried. But later at the February 16, 2018 meeting, the council moved that this be changed to defeated, because both Councillor Cherkewich and Councillor Wojciechowski abstained from voting and their abstentions counted as negative votes.

On December 20, 2017, Councillor Cherkewich emailed Sakâw asking, among other things, whether it had reconsidered its cutting plan for the Candle Lake watershed area based on the concerns raised at its public meeting in Candle Lake. Getting no response, he followed up in another email on December 30, 2017, which he copied to the council. Mayor Wasyluk told us that while the council had previously passed motions to establish a committee to work with Sakâw, Councillor Cherkewich had taken his authority too far. Councillor Manton told us that the council never authorized Councillor Cherkewich to question Sakâw on these issues. She said the concerns he raised were his personal concerns, “but he presented them to Sakâw as though they were from council.”

At the January 12, 2018 council meeting, Mayor Wasyluk moved, “That Council rescind Motions: 543/2017, 545/2017, 546/2017 and 548/2017 Re: SAKAW Delegations” – motions that he had previously declared a conflict of interest in at the October 13, 2017 meeting. The motion was carried. Councillor Cherkewich characterized this as “a charge...to bump Cnclr. Cherkewich and [to] disband the group of concerned citizens and ratepayers being the Candle Lake Watershed Group.” He said, “When pressed on the propriety of the...motion being proposed by [Mayor Wasyluk], he insisted he was not in any way conflicted on the basis that he is not a member of the Board of Directors of SAKAW[.]”

On September 14, 2018, the council passed motions directing the administration to advise Sakâw that Councillor Manton would attend meetings with it to review its draft forestry plans for the Candle Lake area.

Findings

When the former council member's complaint came in by letter and not on a code of ethics complaint form, the administrator advised that it could be dealt with as a code of ethics complaint. In our view, this was good advice. We find that the former council member's letter was, in substance, a code of ethics complaint and should have been dealt with as one. Councillor Cherkewich, however, disagreed and advocated for the former council member to be heard in the open council meeting. Since he himself later levelled the exact same complaint using the code of ethics process, we find that he knew or ought to have known that the administrator's advice was reasonable.

In his submissions to us, the mayor was vehement that because the former council member used the name "Montreal Business Lake Adventures" in his complaint letter, that his complaint was invalid. We find the mayor's view to be entirely unreasonable. It is obvious that the former council member meant Montreal Business Lake Ventures, Ltd. – the company listed on the mayor's public disclosure statement. But even if it wasn't obvious, it would have been reasonable for Candle Lake to take steps to confirm what the former council member was complaining about. In no way should such a mistake have invalidated his complaint.

When the former council member's complaint was first raised at council, it had an opportunity to hear from him. Instead, members of the council – including the mayor whom the complaint was about – got into an unhelpful exchange with him and with each other. This ensured the complaint could not be resolved informally and needed to be investigated.

In our view, the council failed to ensure this complaint was investigated in a fair and competent manner.

The first matter that should have been considered was whether the mayor should have involved himself in the council's discussions – including in his role as chair of the council meeting questioning the former council member about the complaint. While a council member who has had a complaint leveled against them should be given an opportunity to submit information in response to it, it is fundamentally unfair (and contrary to *The Municipalities Act's* rules regarding conflict of interest) for the council member to play any role in the council's deliberations or decisions about it.

The council should have then accurately described for itself the issues that the complaint raised, which were:

- Did Mayor Wasyluk have a conflict of interest as described in *The Municipalities Act* in the council's decisions about how to address Sakâw Askiy Management Inc.'s requests for feedback regarding the forestry management and cut plans for the area in and around Candle Lake?
- If not, did he nevertheless have a conflict of interest under the common law? Would a reasonable person with knowledge of all the circumstances be more likely than not to believe that his ability to make decisions about Sakâw Askiy

Management Inc. would be compromised by his private interest as a member of the board of directors of Montreal Lake Business Ventures Ltd.?

Its next misstep was not ensuring a knowledgeable, neutral person gathered evidence of all the relevant circumstances. In his submissions to us, the mayor suggested that corporate records would show he was not in a conflict of interest and that the complaint against him was invalid. However, publicly available information reveals the following relationship between Montreal Lake Business Ventures Ltd. and Sakâw:

- Montreal Lake Business Ventures Ltd.'s CEO is on Sakâw's board.
- MLBV Ltd. is the sole general partner of Montreal Lake Business Ventures LP, which is one of Sakâw's 8 shareholders.
- Sakâw holds the forest management license over a 3.3-million-hectare area north of Prince Albert including all of Candle Lake.
- MLBV LP is also the sole general partner of Kaskew Forestry Products LP.
- Under a contract with Carrier Forest Products Ltd., Kaskew provides employees, licensing, and rights to harvest trees (in the sub-area that includes Candle Lake) and Carrier looks after the planning and operations of all harvesting.

Essentially, Sakâw manages MLBV Ltd's forestry interests (and community relations) in the area that includes Candle Lake. In our view, it is difficult to imagine that Sakâw's interest in making sure Candle Lake's concerns about its cut plans and other activities in the area were addressed was for anything other than its shareholders' benefit – one of whom was MLBV LP, which is owned by MLBV Ltd., the company on whose board the mayor sits.

Once the council had a good understanding of these business connections between MLBV Ltd., Sakâw and Kaskew, it would have been reasonable to expect it to arrange to interview Mayor Wasyluk about his work on MLBV Ltd.'s board. What were his responsibilities? What types of decisions did the board make under MLBV Ltd.'s bylaws and governance rules? Were any of Sakâw's, Kaskew's and Carrier's activities in the Candle Lake area – for which Sakâw was seeking Candle Lake's input – for the benefit of MLBV Ltd.?

The council should have then informed itself or obtained competent advice about whether Mayor Wasyluk's private duties and activities in connection with MLBV Ltd. conflicted with his public duties and activities as mayor and council member for Candle Lake. Would a reasonable person with knowledge of the situation believe that the mayor's responsibilities to MLBV Ltd. meant that he could not carry out his responsibility as a council member to make decisions about how to deal with Sakâw's requests in the public's interest?

Since the council did not take any of these steps to uncover this information, it was not able to accurately frame or answer the issues raised by the complaint. Therefore, we find that there was no reasonable basis for Councillor Manton's

motion that the council did not find enough evidence to support the complaint, because the council took no reasonable steps to gather any evidence.

Councillor Manton's December 8, 2017 motion that the complaint was unfounded was defeated. Therefore, the council has not yet made any decision on how to deal with this complaint. Given this, it would be reasonable to expect the council to complete a fair and reasonable inquiry into this complaint; then make a decision about whether the mayor was in a conflict of interest and, if so, what sanctions would be appropriate, and thereafter provide the former council member, Councillor Cherkewich (in his role as a complainant) and Mayor Wasyluk with reasonable reasons for whatever decisions it makes. Everyone involved in the investigative and decision-making process should ensure he or she is not also in a conflict of interest in the council's process.

CONDUCT COMPLAINT 2: THAT COUNCILLOR PATRICIA MATKOWSKI VIOLATED CANDLE LAKE'S CODE OF ETHICS BY PARTICIPATING IN THE COUNCIL'S DECISION TO HIRE THE ADMINISTRATOR

Background

When we interviewed her, Councillor Patricia Matkowski told us she has had successive contracts to provide janitorial services for the Candle Lake hall for at least the last 10 years, initially as an employee of the Parks and Recreation Board and more recently through contracts with Candle Lake. She said her first contract with Candle Lake was signed in April 2013.

The administrator told us that she had worked for and was paid by Ms. Matkowski to perform the cleaning services a few times over the years before Ms. Matkowski was on the council. At the January 15, 2016 council meeting, the former council approved a list of accounts including a December 31, 2015 payment to the then assistant administrator (now the administrator) for caretaking services.

Ms. Matkowski told us she signed a renewal of her contract on February 2, 2016, under which she was to be paid \$15,000 per year in monthly installments for a term of nearly one year, ending on December 31, 2016, which could be renewed for a further two-year term. This contract does not, however, indicate it was a renewal of an earlier contract. She was elected to council in July 2016. On August 11, 2016, she disclosed in her public disclosure statement that she had the janitorial contract with Candle Lake.

On January 13, 2017, the council passed motions (61, 62, 64, and 66/2017) noting that the then administrator was not seeking to extend her employment contract and directing the process for recruiting a new administrator.

Councillor Matkowski told us she was planning to be away for five weeks starting in February 2017. She said when she approached Candle Lake about hiring a backup, a council member and the then administrator told her that she could not subcontract her cleaning services. She submitted to us:

It was the...Administrator of the day...on her own, for reasons on the transparency and accountability, that decided to pay [the assistant administrator] for the work she done [sic] in my absents [sic]. Thinking that it would look suspicious if the check was made out to me. It would have looked like I was getting paid for a job I was not doing. Council and some ratepayers knew that I was away. It was brought to a council meeting and it was voted on to pay her (and carried). I was not at this meeting. So you see I never did pay [the assistant administrator] for doing this contract work. The Councillor's at the table that day did. So again you see there is no financial arrangement between Patricia Matkowski and [the assistant administrator.]

The former administrator told us she suggested to Ms. Matkowski that she hire a Candle Lake employee to be a back-up cleaner, and that the council approved her to pay the assistant administrator directly. The assistant administrator told us the former administrator asked her to be the back-up cleaner and directed that she be paid by Candle Lake and arranged to have a Candle Lake cheque paid to her. The assistant administrator told us she was only paid by Candle Lake a couple of times for the back-up cleaning she did. We note, however, that Councillor Matkowski's contract specifically provided that she, not Candle Lake, is responsible for any costs related to labour or subcontractors hired to fulfill the contract.

At the February 10, 2017 council meeting, the council acknowledged and approved a list of accounts, one of which was a February 3, 2017 payment of \$1,125 made to the assistant administrator for caretaking.

In June 2017, the assistant administrator became the acting administrator.

The minutes of the October 13, 2017 council meeting indicate that Councillor Matkowski declared a conflict of interest and abstained from voting on two motions; 554/2017 (about the payment of her invoice); and 555/2017:

That Patty's contract for the hall services be referred to our solicitor to be reviewed and advise of any conflict of interest with any inscope or out of scope employees when they are engaged to clean the hall in her absence and that in the meantime Ms. Matkowski be paid for her work in September....

As well, the meeting minutes indicate that the council carried two motions 568/2017 and 569/2017 to make an offer of employment to the acting administrator to become the Chief Administrative Officer for a three-year term and, if it was accepted, to have a contract drafted and signed. Mayor Wasyluk, and Councillors Matkowski and Manton voted in favour of the motions and Councillor Cherkewich voted against them. According to the minutes, Councillor Wojciechowski abstained from voting due to not understanding or being uncertain of the process.

Councillor Cherkewich told us he did not think Councillor Matkowski should have participated in the discussion or vote because, he said, she and the (now) administrator were "Facebook friends" and had a "business relationship."

Because of this, he said, she had a conflict of interest. Councillor Matkowski submitted to us that she and the administrator:

have been a part of the goings on in and around Candle Lake for years examples : Candle Lake Parks and Recreation board which over seen Community Christmas suppers, base ball games the set up of the playground at the town site play groups , youth nights and many craft days ...We were and still are volunteers in and around Candle Lake. This is what helps small communities such as our function. The fact that I voted for [her] as administrator might have something to do with, as volunteers we have our fingers on the pulse of what is happening in and around our community.

She told us that her relationship with the administrator was not a conflict of interest. When we asked why she thought Councillor Cherkewich made the allegation against her, she said, in her view, it was all about him not wanting the acting administrator to become the administrator. She said he disliked the former administrator and felt that the acting administrator had been mentored by her incorrectly. Councillor Cherkewich submitted to us:

[The] Administrator...was hired not because of her qualifications and experience, but because she was "...local..." (and a god [sic] friend and bud of Patty's?) She was the last person on the hiring short list of seven persons. She did not have her certificate when she applied for the job and should have not been on the list in the first place...The previous administrator was not a good mentor.

Other council members confirmed that the administrator was not the council's first choice for the job, but only Councillor Cherkewich alleged it was because of her supposed relationship with Councillor Matkowski. Several people told us that Councillor Cherkewich stated publicly that he would resign from his position on the council if the acting administrator was hired as the administrator, though he denied saying this.

On November 1, 2017, Councillor Cherkewich hand delivered a submission to Candle Lake concerning Councillor Matkowski:

Cnclr. Matkowski has a contract to provide maintenance and janitorial services to RVCL.

...
However, at the October 13 regular Council meeting it was indicated by Cnclr. Matkowski...that when she was away other persons serviced the Contract in her absence.

...
[I]t appears that [the] Assistant Administrator...received payment, either directly or indirectly, from the RVCL for work done under the Contract.

It is also understood that Cnclr. Matkowski stated that Council had previously approved payment(s) under the Contract to the Assistant Administrator[.]

...
What is raised by this request for information is more detail with respect to Cnclr. Matkowski[']s October 13 **disclosures** where she has or is

engaging third parties to service the contract in her absence and if **payments** were made...to persons employed or contracted by the RVCL

[emphasis in the original.]

Councillor Cherkewich also requested copies of documents showing that the assistant administrator followed the *Employee Code of Conduct*, and that Councillor Matkowski complied with the *Code of Ethics Bylaw*.

On November 3, 2017, Candle Lake's lawyer responded to the request from the acting administrator about the employee code of conduct:

Paragraph 1.05 (of the Employee Code of Conduct)...about disclosing business or financial interests...could be construed as being in actual or potential conflict with their official duties in the public interest [but] the way this paragraph is worded, you don't have to disclose...your outside work unless there is a perceived or potential conflict and I fail to see how cleaning the office in which you work, outside of your office hours, is a conflict.

I do think that the monthly payments, or however they are made, should be made to Patty and she should be responsible for paying her agents directly[.]

On November 3, 2017, the same former council member who made the allegations against the mayor, wrote Candle Lake to make allegations against Councillor Matkowski - the same allegations Councillor Cherkewich made in his submission. On November 8, 2017, Councillor Cherkewich also completed a code of ethics complaint form against Councillor Matkowski making the same allegations.

The former council member's complaint about Councillor Matkowski was - like his complaint about the mayor, discussed at the November 10, 2017 council meeting. Councillor Cherkewich told us neither Councillor Matkowski nor the acting administrator declared their conflicts of interest when it was discussed. He said they both fully participated in the council's exchange with the former council member. The minutes indicate that Councillor Cherkewich's motion to refer the former council member's complaints to the Ombudsman was carried, but not that Councillor Matkowski declared or disclosed her conflict of interest in the discussion or left the council chamber. The minutes show, however, that Councillor Cherkewich's code of ethics complaint about Councillor Matkowski was tabled and that she abstained from voting on the motion.

According to the November 10, 2017 council meeting minutes, Councillor Cherkewich's motion to receive and file a tabled report about the administrator's position was defeated. The council then passed Mayor Wasyluk's motion instructing "the Mayor and Deputy Mayor [to] sign the employment agreement with [the administrator]" - Councillors Cherkewich and Wojciechowski voted against it.

On November 15, 2017, Councillor Cherkewich filed another code of ethics complaint, this time jointly with Councillor Wojciechowski, alleging that Councillor Matkowski contravened the code of ethics at the council's October 13, 2017

meeting and its November 10, 2017 meeting because she participated in hiring the administrator while she was in a conflict of interest.

[C]ouncillor Matkowski... [and the administrator] are personal friends who socialize, are or were Facebook friends and that there is a financial business arrangement between the two in relation to the janitorial contract[.]

...

At several council meetings but particularly the October 13 and November 10 meeting there were a series of motions and resolutions with respect to the hiring of [the administrator]. The relationship between counsel Matkowski and [the administrator] was raised and neither council Matkowski nor [the] assistant administrator...declared a conflict of interest.

At the December 8, 2017 meeting, the council convened a closed session to discuss Councillor Cherkewich's November 8, 2017 code of ethics complaint against Councillor Matkowski, and his and Councillor Wojciechowski's November 15, 2017 code of ethics complaint against Councillor Matkowski. The minutes indicate Councillor Matkowski declared a conflict of interest and left the chamber for six minutes of the closed session; she told us this was when the rest of the council discussed Councillor Cherkewich's complaint against her.

After reconvening to the open session, Councillor Cherkewich made a lengthy motion (683/2017), part of which was about addressing the code of ethics complaints against Councillor Matkowski. Again, this motion was defeated with three votes against and two votes in favour. Councillor Matkowski voted against this motion, which was about the complaints made against her. Had both she and the mayor declared their conflicts of interest in this motion, it would have passed two votes to one vote.

Later in the meeting, Mayor Wasyluk made motion 691/2017 "That Council did not find sufficient evidence to support complaint received under the Code of Ethics against Councillor Matkowski from Councillor Cherkewich." Then Councillor Manton made a similar motion (692/2017) "That Council did not find sufficient evidence to support complaint received under the Code of Ethics against Councillor Matkowski from Councillor Cherkewich and Councillor Wojciechowski."

The minutes indicate that, for both motions, Councillor Matkowski declared a conflict of interest, but do not indicate she left the room during any discussion or the votes. At first, she told us that she did leave the room and that she "never stuck around for any of that discussion." But then she told us that she said to Councillor Cherkewich, "If I have to leave the room because of the conflict of interest, then you have to leave the room because you put it against me." "He said 'no,' so I said 'no,' so we both stayed."

Councillor Cherkewich abstained from voting "because he stated the assistant administrator asked him not to." The minutes also indicate that Councillor Wojciechowski abstained from voting "due to advice from legal counsel." The minutes first indicated these motions were carried, but they were later changed

to defeated because Councillor Cherkewich's and Councillor Wojciechowski's abstentions were deemed votes against the motions.

On January 12, 2018, Councillor Cherkewich made the following motions, all of which were defeated:

- To rescind motion 619/2017 which authorized the mayor and deputy mayor to sign the administrator's employment contract.
- To table the awarding of the position of administrator until the sooner of the next meeting or "Such time as there is a final determination and/or resolution of the conflict of interest issues with respect to Councillor Patty Matkowski and the [administrator.]
- That the administrator's position be re-advertised.
- That the council create a hiring committee to shortlist 5 candidates for administrator.
- The 'New Hire Committee' consist of two council members and three members of the public.

Findings

This complaint came to the attention of Candle Lake through three parties: a former council member who made his complaint in a letter; Councillor Cherkewich through correspondence and a formal code of ethics complaint; and then Councillor Cherkewich and Councillor Wojciechowski made an additional code of ethics complaint.

The administrator received and acknowledged these complaints by corresponding with the former council member about him appearing before the council, by distributing his letter to the council members, and by dealing with Councillor Cherkewich's first code of ethics complaint, and his and Wojciechowski's additional code of ethics complaint by placing them before the council.

Since the complaints were about Councillor Matkowski voting to confer a private benefit on the administrator (i.e. an employment contract) because of her relationship with Councillor Matkowski, and it also implicated the administrator in failing to disclose her outside employment, we find a reasonable person would believe that administrator's ability to give the council objective, professional advice on how to address these complaints would be compromised by her personal interest in the outcome. Even though she was not the ultimate decision maker, she was able to influence the council's decision and to influence what, if any, inquiries were made to investigate the allegation against Councillor Matkowski. We find that she should have recused herself from any involvement in how Candle Lake handled these complaints.

That said, like the complaint about the mayor's involvement with Sakâw, we note that when the former council member's complaint letter came in, the administrator advised that it should have been dealt with as a code of ethics complaint. This was good advice. Unfortunately, the council did not take it.

There is no indication that the council took any steps to investigate this complaint fairly and effectively. It did not arrange to have someone determine what the issues were, gather any facts about them, determine the relevant law or policy rules or apply the rules to the facts.

For example, there is the issue of whether the administrator was a “closely connected person” to Councillor Matkowski as defined in *The Municipalities Act*.

In our view, the council needed to arrange for a knowledgeable, unbiased person to determine the nature of the acting administrator’s business relationship with Councillor Matkowski in connection with the janitorial contract, and the nature of their personal relationship outside of work. This might have involved interviewing Councillor Matkowski, the administrator and possibly the former administrator. It would have certainly involved looking at Candle Lake’s records of payments to Councillor Matkowski and to the administrator for doing the back-up cleaning.

If the acting administrator was determined not to be a “closely connected person” under the Act, the next inquiry would have involved assessing whether, under the common law, Councillor Matkowski nevertheless should not have participated in the decision because of the nature of her private relationship with the acting administrator.

Under the common law, council members must avoid any reasonable apprehension that their private interests could in any way influence their elected responsibilities. They are not to use their office to promote private interests, whether their own or those of relatives or friends. Councillor Cherkewich and the former council member (and Councillor Wojciechowski to the extent he was involved beyond signing the code of ethics complaint form) were vehement that because the acting administrator was Councillor Matkowski’s Facebook friend and had done backup cleaning, there was actual conflict of interest – that Councillor Matkowski could not participate in the council’s decision to hire the administrator, because she favoured the administrator’s private interest in getting the position over doing what was right for Candle Lake.

We find that Candle Lake failed to properly clarify the issues raised by the complaint, gather all the relevant facts, determine the relevant rules, and apply the rules to the facts. We find that it also failed to ensure that the administrator was not herself in a conflict of interest by being involved in how it was handled.

The council attempted to address this complaint twice. The first time was when the former council member raised it at the November 10, 2017 meeting. Because the meeting devolved into an unhelpful debate, which was not supported by any objective, professional advice or properly gathered information, the council came to no sensible conclusions about whether the complaint was valid, let alone about how to resolve it. Instead, at Councillor Cherkewich’s motion, it decided to refer it to the Ombudsman. Councillor Matkowski fully participated in the council’s discussion with the former council member about the complaint leveled against her. She did not recuse herself or leave the room, which we find she should have done.

Later, at the December 8, 2017 meeting, the council convened an *in camera* session to discuss this complaint as brought by Councillor Cherkewich and the complaint brought by him and Councillor Wojciechowski. After the session, it voted on two motions to resolve the complaints. Councillor Matkowski declared her conflict of interest in the motions but did not leave the room. When we asked her why she did not leave, she said Councillor Cherkewich would not leave the room, so neither would she. After reviewing a draft of this report, she made the following submission:

I did leave the meeting when they were discussing the complaint that Ron Cherkewich put in about me. Ron did not! He was the one who put the complaint forward. I came back in after the discussion and then we had a few more issues to deal with and when the vote came up I ask if Ron was leaving also but he did not. So I stayed, why should he get a vote on his complaint ??? Is that not a conflict of interest I should have a vote also then!

He can vote in favour on a complaint then I should be able to vote against the same complaint. So how does his vote count as a yes vote if he should not have voted, because at that point it would have been defeated.

Councillor Matkowski's position appears to be that she should be able to vote in favour of her private interests at a council meeting even though she has a conflict of interest as long as she thinks another council member who is voting against her private interests also has a conflict of interest. There is no exception to the conflict of interest rules that allows a council member to stay in the room when the rest of the council votes on a matter in which she has a conflict of interest, because she believes another council member also has a conflict of interest.

In our view, Councillor Matkowski should have declared her conflict of interest, ensured she disclosed the nature of it, recused herself, not participated in any of discussions about it, and left the room.

As it happened, Councillor Cherkewich's motion to forward his own complaint to the Ombudsman was defeated. However, municipal councils must understand that they cannot meet their responsibility to develop and follow a process for dealing with contraventions of their code of ethics by simply referring complaints to the Ombudsman. *The Municipalities Act* makes it clear that this process is the council's responsibility. As a legislative oversight body and an office of last resort, the Ombudsman should generally not get involved until after a council has taken meaningful steps to carry out its legislative mandate by addressing these complaints itself. While we acknowledge that many councils, particularly those in very small communities, feel they are not equipped to effectively deal with code of ethics complaints, they nevertheless have the responsibility to do so.

After Councillor Cherkewich's motion was defeated, Mayor Wasyluk moved that the council did not find sufficient evidence to support the complaint, which was also defeated. Councillor Manton's motion that council did not find sufficient evidence to support the complaint received from Councillor Cherkewich and Councillor Wojciechowski, was also defeated. Since the council took no steps to gather any evidence relevant to these complaints, it is difficult to conclude that

these motions were based on any reasonable inquiry. Councillor Cherkewich later argued that, because the council defeated these motions, it should be interpreted as the council having decided that there was enough evidence and it should proceed to sanction Councillor Matkowski (and the administrator) accordingly. We find this to be an unreasonable interpretation.

CONDUCT COMPLAINT 3: THAT MAYOR WASYLUK AND COUNCILLOR MATKOWSKI VIOLATED CANDLE LAKE'S CODE OF ETHICS BY IMPROPERLY RENEWING COUNCILLOR MATKOWSKI'S JANITORIAL CONTRACT

Background

Bylaw 5-2006 authorized Candle Lake to establish a purchasing policy, which it did by resolution 224/2016 at the June 10, 2016 council meeting.

On December 31, 2016, Councillor Matkowski's janitorial contract with Candle Lake had expired. It contained a two-year renewal clause, but we received no verifiable information confirming that it was ever renewed. Councillor Matkowski told us this was because, "at the time of this contract coming up for renewal we had no administrator...[She] was away No contracts were brought forward to me at this time." She nevertheless continued to provide janitorial services and got paid for doing so.

On June 9, 2017, the council passed resolution (377/2017) assigning "signing authority [to the] ...Acting Administrator for...document purposes...as outlined in...the purchasing policy[.]"

The administrator told us that it was not until near the end of 2017 when she was reviewing contracts that were up for renewal that she discovered that both Councillor Matkowski's and another service provider's janitorial contracts had not been renewed.

On December 29, 2017, Councillor Matkowski signed a new two-year janitorial contract, which was signed for Candle Lake by Mayor Wasyluk and the administrator. Both the administrator and Councillor Matkowski submitted to us that this new contract was a renewal of the February 2, 2016, contract (which Councillor Matkowski said was itself a renewal of an even earlier contract) despite it not indicating that it was a renewal and despite the term of the February 2, 2016 contract having expired almost a year earlier.

On March 1, 2018, Councillor Cherkewich emailed the council members noting that Councillor Matkowski's previous janitorial contract had expired. He said:

This contract expired December 31, 2016.

It should have appeared on the Council's agenda for retendering no later than the Dec 2016 Regular Mtg. ... Instead this contract is continuing to be served by municipal Councilor Patty Matkowski. Councilor Matkowski, at the expense of the ratepayers, has been receiving the benefits of this contract for the past 14 months. **This is terribly and horribly wrong.**

The contract does provide that it could be extended by Council for up to an additional two years under certain circumstances. I cannot see where this happened. The extension never came before Council's for reconsideration. However, if it had it would have had to go to tenders- particularly since the persons servicing the contract Patty Matkowski, in August of 2016 became a council member

...
It is ethically, morally and legally incumbent upon Council, particularly in this case where the contract is held by a person who is a council member, that for the sake of transparency [sic], accountability and recourse, such a contract, more so than any other contract, should have gone up for tenders in a timely fashion

[emphasis in the original]

He attached information about the *Criminal Code* offence of breach of trust by a public officer to this email.

Not getting any response, he emailed the council again on April 6, 2018. Councillor Manton responded saying that Councillor Matkowski's contract could be renewed for a further two-year period if the work was satisfactory. She wrote: "This has been happening for more than 10 years...The breach of trust document that you sent talks about a reasonable person. Do you consider yourself reasonable???"

In response, on May 10, 2018 Councillor Cherkewich emailed over 40 people, including Councillor Matkowski and Mayor Wasyluk:

**RED FLAG ALERT - to the Ratepayer and voters of
the Resort Village of Candle Lake
from Councillor Ron Cherkewich**

...
Fellow ratepayers and voters

I write to you our [sic] of a sense of necessity and urgency.
I opened the agenda for the RVCL Regular Council meeting...rescheduled to May 14 at 5pm
On opening the May 14 Agenda the 5 motions (see below) should have been included...They were not there. This is unacceptable.

[emphasis in the original]

Among the draft motions Councillor Cherkewich was talking about was one calling for the administrator to prepare procurement documents for the janitorial contract held by Councillor Matkowski, and another to produce a statement of how much she had been paid since the previous contract expired on December 31, 2016, including whether any of the payments were made to third parties. His email continued:

I don't know who interfered but only two people are normally involved in producing the Agenda for council meetings. These are:
the Mayor as Chairperson
and
the Administrator.

...
In August of 2016 you elected a Mayor and 4 Councilors - not a bunch of despots. The Mayor is but one of 5 votes on this Council. He nor the

Administrators are entitled to “weed”, censor or selectively edit an agenda to suit their own personal interests, third party interests or service a hidden agenda.

...

[y]ou should consider phoning the Mayor and the other three Councilors right now letting them know: *This is not right!*

[emphasis in the original]

He also included the rest of the council’s home telephone numbers and cell phone numbers.

On May 11, 2018, Councillor Cherkewich sent another email to over 40 people, including Councillor Matkowski and Mayor Wasyluk, with the subject line:

RED FLAG ALERT – to the Ratepayers and voters of the RV of Candle from Councilor Ron Cherkewich – the December 31, 2017 Janitorial Contract issues – the difference between right or wrong?

[emphasis in the original]

In the email, after quoting from the council member oath of office and *The Municipalities Act*, he stated:

The issue on the table:

► **The majority view:**

Mayor Wasyluk and Councilors Manton and Matkowski are of the view it is acceptable practice and permissible in Cncl. Patty Matkowski’ case to bypass the tendering process that we have in place at the RVCL for letting contracts over \$10k.

► **The minority view:**

Councillor Brian Wojciechowski and I are of a slightly different view. Based on *The Municipalities Act*, the Code of Ethic Bylaw (COE), the Bylaws of the RVCL, including By law 5-2006 [allowing for the establishment of a purchasing policy], the RVCL Council and and [sic] Administration **over-stepped** in awarding the janitorial contract to Cncl. Matkowski

...

● **I do want to state and go on record that** I was not aware of the second contract awarded to Cncl. Matkowski until this week when it surfaced for the first time. It was disclosed to me for the first time when it was an unmarked envelope with my name “Ron” on the envelope was put in my Councilor’s basket at the RVCL.

...

● It also now appears, according to the Dpty. Mayor, this second and secret contract will be introduced to the in-camera [sic] meeting scheduled for May 14 at 5pm.

[emphasis in the original]

The following day, on Saturday, May 12, 2018, the council held a special meeting to discuss Councillor Cherkewich’s emails. He had notice of the meeting, but he did not attend it. Councillor Manton told us he was sitting outside the meeting room and chose not to come in. At the meeting, the Council passed a motion that

“the Mayor and each Councillor in attendance today have the opportunity to respond to the emails we received from Councillor Cherkewich on May 10 and May 11, 2018.” They then passed motions to suspend him from the council and all council activities and to commence court proceedings against him “based on numerous contraventions of the *Municipalities Act* and the Code of Ethics Bylaw 32 of 2016.”

The council extended its suspension of Councillor Cherkewich three times, on July 13, 2018, October 12, 2018 and October 25, 2018.

Councillor Cherkewich applied for a judicial review of the council’s decision to suspend him. In an April 24, 2019 decision, Mr. Justice Acton of the Court of Queen’s Bench quashed the council’s decision because it was not within the council’s authority to essentially remove Councillor Cherkewich from the council. Referring to the decision of the Saskatchewan Court of Appeal in *Chalmers v Blaine Lake (Rural Municipality)* (13 Sept 2018), CACV3246, the court noted that only the Lieutenant Governor in Council had this power under section 402 of *The Municipalities Act*.

Findings

While Councillor Cherkewich did not submit a formal code of ethics complaint against the mayor or Councillor Matkowski, it is obvious to us by the content and tone of his first email to the council that he was challenging the ethics of the mayor, Councillor Matkowski, and the administrator for arranging to sign the new janitorial contract without the council’s approval and without a public procurement process. Instead of acknowledging his email, no one responded to him at all. While we recognize that, by this point, Councillor Cherkewich had alienated himself from most of the council and the administrator by the manner and tone with which he chose to raise his concerns, his first email nevertheless raised important code of ethics issues.

After receiving these emails, in the spirit of trying to resolve the code of ethics allegations they raised, it was open to the council to try to address his concerns informally. When no one responded to his first attempt to raise the issue, and just one council member responded to his second attempt by essentially dismissing his concerns and calling him unreasonable for raising them, he decided to go public. While we do not condone this approach, we find that he did first attempt to have the council address his concerns in a less confrontational way. He resorted to emailing publicly after a month of being either ignored or rebuffed by other council members.

Therefore, we find that the council missed an opportunity to try to address this complaint early.

We also find the council took no reasonable steps to properly and objectively assess whether Mayor Wasyluk and Councillor Matkowski had contravened the code of ethics. Instead, it immediately convened a special meeting at which it sanctioned Councillor Cherkewich— ostensibly because *he* had contravened the code of ethics. Given that this special meeting was convened immediately after

Councillor Cherkewich went public with his complaint about the new janitorial contract, and given that Mayor Wasyluk, Councillor Matkowski and the administrator all participated in the process of sanctioning Councillor Cherkewich – all of whom were personally implicated in his complaint – there is a strong perception that they were all biased.

We are also of the view that the council breached its duty of procedural fairness by sanctioning Councillor Cherkewich – ostensibly for having contravened the code of ethics – without giving him proper notice that it intended to sanction him, without having taken any reasonable steps to investigate the validity of the allegations against him, without giving him a reasonable opportunity to respond to the allegations and any evidence it used to support its decision, without ensuring its decision was unbiased, and without giving him any reasons. However, since the council's decision to suspend him was addressed by the Court of Queen's Bench, we are not making any recommendations about it.

Regarding Councillor Cherkewich's complaint, his emails raised the issue of whether the mayor had the authority to sign a new contract with Councillor Matkowski without a resolution from the council. If Mayor Wasyluk did not have this authority, then signing it was contrary to law and therefore a contravention of the code of ethics. And since Councillor Matkowski privately benefited from what the mayor and the administrator did, we find she ought to have been particularly concerned about whether it was done legally and ethically.

Candle Lake's purchasing policy at the time established guidelines for the expenditure of municipal funds, outlined administrative procedures, and delegated authority to approve and sign contracts for the purchase of goods, services, and work. It states that the mayor, other council members, and staff must adhere to it.

Generally, the policy requires services to be purchased using competitive purchasing processes. If the value of a purchase is expected to be more than \$10,000, it is supposed to be publicly procured "on all readily available advertising mediums." The administrator may initiate purchases such as these up to \$20,000. For any purchase over this amount, the council must approve the procurement before it is tendered. However, any purchases to be 'sole sourced' – that is, made without using a competitive procurement process, must be approved by council, regardless of the value.

The policy says that the public procurement rules do not apply to "Ongoing...service contracts in force[.]" However, it also states that a contract cannot be for a term longer than three years, "with the overall vendor partnership term not [to exceed] 5 years with contract renewals." After 5 years from the point of the "initial vendor partnership, the Village business shall be taken back to market for new pricing." As well, it says all contracts over \$10,000 in value must "be reported back to Council in summary form as part of the annual reporting for Council information."

Councillor Matkowski first told us she had the janitorial contract for at least 10 years, but possibly as far back as 18 years. While she later told us that her

contract was first signed in 2013, we find that she provided janitorial services earlier than 2013 – whether it was formalized in writing or not.

Councillor Matkowski's February 2, 2016 contract was in force until December 31, 2016. With an annual cost of \$15,000, Candle Lake committed to paying \$13,726.03 over this almost 11-month initial term. The Purchasing Policy was approved in June 2016. If the assistant administrator (now the current administrator) had followed the policy, she would have reported back to the council on this contract by the end of 2016. She did not, she said because she did not realize it needed to be renewed until near the end of 2017. Instead, Candle Lake continued to pay Councillor Matkowski for performing the services without a written contract. After a year went by like this, the administrator, Mayor Wasyluk and Councillor Matkowski, who had by then become a council member in August 2016, signed a new 2-year contract on December 29, 2017. Councillor Manton and the administrator both took the view that this was appropriate since the February 2, 2016 contract included a 2-year renewal clause.

By the time this new contract was signed, even if Councillor Matkowski could be said to have been performing the janitorial services under the old contract, she had already done so for almost two years by the time the new two-year contract was signed. The new contract granted her another two-year term for a total of four years. Since this was not even contemplated by her previous contract, in our view the new contract cannot be reasonably seen as an exercise of the two-year renewal clause. The February 2, 2016 contract had expired and was not in force by the time the second contract was signed. Therefore, it would have been reasonable to apply the procurement rules in the Purchasing Policy to the second contract.

Importantly, there was no evidence that the February 2, 2016 contract was ever approved by the former council – Candle Lake could not provide us with a resolution approving it. If the 2016 contract was not approved by the council, then, the authority to exercise the renewal clause in it was not approved either. And since the Purchasing Policy says contracts over \$20,000 need to be approved by the council, the \$30,000 cost of the two-year renewal needed to be approved by the council. In other words, even if it was reasonable to consider the new contract to be a renewal of the old one, the council still needed to approve it.

As an aside, Councillor Cherkewich strongly urged us to find that the payments made to Councillor Matkowski contravened Candle Lake's Bylaw No 2-2010 – *A Bylaw to Authorize Certain Expenditures*, which generally requires expenditures to either be specifically authorized by the council or budgeted expenditures that require payment before the next council meeting. Since the janitorial services were part of the council-approved budget, and the council approved each individual payment to Councillor Matkowski, it is not clear this bylaw was contravened.

Ms. Matkowski has been given this contract since 2013 through repeated renewals without having to compete for it in a public procurement process. She

also became a council member during this time.¹ In the middle of the term of the February 2, 2016 contract, the council made the decision to adopt a Purchasing Policy. Specifically, it decided that any vendor partnership could only last 5 years, after which the services had to go back for public procurement. So even if the former council had initially approved a renewal of the February 2, 2016 contract, the council later decided that contracts like the janitorial services contract instead needed to go back to public tender every five years.

The administrator told us she and the Mayor decided that this policy rule did not apply because the February 2016 contract predated the Purchasing Policy, so contracts signed before the Purchasing Policy was in force could be renewed. We find this to be an unreasonable interpretation. There is no basis for believing the council intended its policy to only apply to brand new contracts. And even if the policy could be interpreted this way, we find it would have been reasonable to expect the Mayor to bring this issue to the council's attention and let it decide – particularly given that the contract was with a council member and it was being renewed at a time when relations among the council had become divisive if not acrimonious.

The council did not deal with this complaint at all, because again, it did not investigate it. Instead, it quickly convened a special council meeting on the heels of Councillor Cherkewich's public emails to admonish him for doing so (among other things) and to make a show of letting Mayor Wasyluk and Councillor Matkowski 'respond' to Councillor Cherkewich's comments.

CONDUCT COMPLAINT 4: THAT COUNCILLOR RON CHERKEWICH VIOLATED CANDLE LAKE'S CODE OF ETHICS BY PARTICIPATING IN MATTERS BEFORE THE COUNCIL AND BY USING CONFIDENTIAL INFORMATION TO FURTHER EITHER FRIENDS OF THE LAKE'S OR HIS SPOUSE'S PRIVATE INTERESTS

Background

On May 13, 2016, the former Candle Lake council gave first reading to Bylaw 10/2016 to amend Candle Lake's Zoning Bylaw 03/2016 to accommodate Mariners Cove Ltd.'s development of a marina off Simon Lehne Drive. Mr. Cherkewich – who was not a council member at the time – and his spouse own property near the site. A public hearing was held on June 10, 2016. Mr. Cherkewich's spouse (who said she represented 600 petitioners) was among the registered speakers opposed to the project. Immediately after the hearing, the council convened a council meeting, passed Bylaw 10/2016, and approved

¹ Several council members made submissions to us about whether it was inappropriate for Councillor Matkowski to have continued to be contracted to provide janitorial services once she became a member of the council. We chose not to look into this issue. *The Municipalities Act* prohibits council members from being employees, but not independent contractors, of their municipality. However, in no event can a council member participate in any council discussion or decision regarding the awarding of, administration of, or payment under any municipal contract to which they are a party or otherwise in which they have a private interest.

Mariners Cove's discretionary use application (Resolution 222/2016.) On June 22, 2016, Candle Lake issued a development permit to Mariners Cove Ltd. for the project.

On June 28, 2016, a group called Friends of the Lake, of which Mr. Cherkewich and his spouse were members, applied to Candle Lake for a development permit for a passive park and recreational reserve on the property on which Mariners Cove already had approval to build its project. Mr. Cherkewich told us he helped Friends of the Lake make the application; in fact, he was named as one of its proponents and his signature appears on the application form.

Candle Lake denied Friends of the Lake's application in a June 30, 2016 letter. In a hand-delivered letter dated June 30, 2016, Mr. Cherkewich asked to appear before the council at its next council meeting. In this letter, he made several allegations against the then mayor, in relation to the way the mayor dealt with the Mariners Cove development approval and asked the council to rescind all its motions relating to the approval. In this letter, he alleged:

[The mayor] should have disqualified and disassociated [him]self from the June 10, 2016 applications of...Mariner's Cove...based on what appears to be your predetermination, bias and what appears to be consistent and ongoing lobbying on [his] part in favor of [Mariner's Cove.]

...

The legitimate expectations of the citizens attending the public meeting is that the procedure to be followed and process laid down in the RVCL bylaws and the *Planning and Development Act, 2007* would be followed[.]

On July 4, 2016, Mr. Cherkewich complained to the Ombudsman about the former mayor being in favour of the project, alleging that he was guilty of 'cronyism'; that the former mayor and two other former council members were "blatantly pro-development." He told us he was "part of a larger group of citizens and ratepayers...who have collectively come together[.]" He also noted that "an application is being filed...by Friends of the Lake for a lease of this land for a passive park." We gave him detailed reasons for why we declined to investigate his complaint.

Mr. Cherkewich's spouse submitted an appeal to Candle Lake's Development Appeals Board (DAB) of the council's decision to pass Bylaw 10/2016 and to approve Mariners Cove's discretionary use application. We note that it is written in the same style and uses very similar language to the several emails and submissions written by Mr. Cherkewich that we have reviewed. Mr. Cherkewich's June 30, 2016 letter to the council is annexed to his spouse's appeal application. Candle Lake issued Mr. Cherkewich a receipt for the \$50 cash he paid to submit his spouse's appeal on her behalf.

The DAB met on July 20, 2016. According to the minutes of the meeting, it discussed two appeals of the marina development permit – one of which was Mr. Cherkewich's spouse's appeal– and agreed to seek legal advice before making its decision.

On July 21, 2016, Friends of the Lake appealed Candle Lake's decision to deny its application for a development permit for a park to the DAB.

The former administrator submitted a report to the DAB on July 22, 2016, about Councillor Cherkewich's spouse's appeal of the marina project stating that the DAB "will need to determine if the right of appeal is relevant."

In a July 25, 2016 Notice of Decision, the DAB informed Mr. Cherkewich's spouse that it had determined it did not have jurisdiction to hear her appeal of the marina project's approval. In a July 25, 2016 Notice of Decision, it also decided that it did not have jurisdiction to hear Friends of the Lake's appeal of the decision to deny it a development permit.

The current council's first meeting was on August 5, 2016. We were told that the then administrator was specifically instructed by the mayor and Councillor Cherkewich not to speak unless asked a question. Newly elected Councillor Cherkewich put forward a bylaw (20/2016) to repeal Bylaw 10/2016 and a series of other motions to, among other things, rescind the Mariners Cove discretionary use permit and to arrange for Candle Lake's legal counsel to write Mariners Cove Ltd. telling it to "immediately cease and desist from any and all activity" on the property.

Councillor Manton told us that when Bylaw No. 20/2016 was moved for third reading, she asked whether they needed to get public input on it first. She said the administrator spoke up for the first time since handing the meeting over to the mayor as chair, saying, "Councillor Manton is correct." We were told Councillor Cherkewich interrupted the administrator saying that it was a 'grey area' and that the council was within its authority to pass the bylaw. Councillor Manton told us she asked the administrator for more clarification, but the administrator seemed reluctant to say more. The council then passed the bylaw and all of Councillor Cherkewich's other motions.

We were told that in the days after this meeting, the then administrator emailed the council to advise that the passing of Bylaw 20/2016 did not follow the proper process.

On August 8, 2016, Friends of the Lake submitted an appeal to the Planning Appeals Committee (PAC) of the Saskatchewan Municipal Board, appealing the DAB's decision about Friends of the Lake's application for a development permit. The cover letter is signed by Friends of the Lake's Chairperson and initialed by Councillor Cherkewich. Also, on August 8, 2016, Councillor Cherkewich's spouse submitted an appeal to the PAC appealing the former council's decision to approve the Mariners Cove discretionary use permit.

On August 18, 2016, Councillor Cherkewich emailed the then administrator, asking for the following information:

- 1 the Mariner's Cove Service Agreement
- 2 all resolutions associated with it [sic] creations [sic] and execution
- 3 reports by Administration, legal opinions and reviews.

- 4 Please advise who prepared the Agreement i.e. is the source of wordsmithing.
- 5 Also any collaboration notes with the proponent over that agreement with administration, members of the former council etc.
- 6 If there is any correspondence, emails, memo or memos of phone conversations from/with any govt agency or ministry in relation to or pertaining to the formatting or drafting of the SA, copies of those.

I want to look at the complete file along with [ratepayer] tomorrow or early next week as [ratepayer] and I are working on a report for Council as to formatting and structuring a due diligence study and review process for consideration of council that might be employed by council going forward.

An hour later, the then administrator replied:

I certainly can. Please be aware that Committees have not been ratified yet by Council as per the Council Procedures Bylaw 6.3(d).

...

Should Council want this information, they can do it by motion tonight also. It can then be passed on to [the] Committee once ratified.

The then administrator eventually provided Councillor Cherkewich with the documents, some of which she redacted. She said Councillor Cherkewich went over the documents with the ratepayer even though, she said, the ratepayer was not properly a member of the committee (and, by implication, not eligible to receive confidential information.) She alleged to us that Councillor Cherkewich's sharing of the information with the ratepayer was both a breach of confidentiality and a conflict of interest because of Councillor Cherkewich's membership in Friends of the Lake.

At the September 9, 2016 council meeting, the council moved "That administration is to confirm [the ratepayer] and Ron Cherkewich are on an OCP [Official Community Plan] Committee" (405/2016), and "That the OCP Committee of [the ratepayer] and Ron Cherkewich have the permission of Council to access [a professional community planner] for the purposes of preparing drafts for Council consideration" (406/2016). The then administrator told us that at this meeting, Councillor Cherkewich berated her in front of the council for redacting the legal opinions from the information he had requested, which she said were about matters unrelated to the purpose for which Councillor Cherkewich said he wanted the information.

On September 12, 2016, Councillor Cherkewich emailed Candle Lake's lawyer about two appeals of the Mariner's Cove project – and Friends of the Lake's appeal of the denial of its application for a permit for a passive park. He disclosed his relationship to his spouse and his membership in Friends of the Lake. Regarding his role, he said: "My position is that although there may be in the minds of some an appearance of conflict the conflict is in the nature of a general interest and therefore is not a disqualifying situation."

On September 16, 2016, the PAC gave notice that it intended to hear two appeals of the marina project approval, one of which was Councillor Cherkewich's spouse's appeal, on November 8, 2016.

In their role as members of the OCP committee, Councillor Cherkewich and the ratepayer attended the Candle Lake office to review and to take copies of various documents.

On October 11, 2016, Councillor Cherkewich's assistant sent a submission to the PAC on behalf of his spouse. The submission included a copy of a proposal from Mariners Cove Ltd. to Candle Lake in which it discussed three potential locations for the Marina. The submission stated the following about this document:

- b. **Correspondence September 2014 of [director of Mariners Cove Ltd.]** particularly noted as being given to Mayor Quinn on September 4, 2014. This is new evidence that surfaced approx. 2 weeks ago and which has never been disclosed by the former Mayor and Council of the RVCL.

The former administrator told us this correspondence was obtained by Councillor Cherkewich from the administration in his role on the OCP Committee and was not to be made public because it contained personal information of Mariners Cove. Councillor Cherkewich told us he believed he obtained a copy of it from the mayor.

Also, on October 11, 2016, the mayor attended the Candle Lake office and told the then assistant administrator that Councillor Cherkewich wanted Candle Lake to send a letter to the SMB that it took no position with respect to the hearing(s) before the SMB. The assistant administrator contacted Candle Lake's lawyer. She said the lawyer told her it was a conflict of interest for Councillor Cherkewich to be advising the council regarding how to deal with the appeals to the SMB.

According to the then administrator, on October 14, 2016, the Council discussed and passed the following motion at the urging of Councillor Cherkewich:

467/2016 That Council send a letter through the Resort Village of Candle Lake lawyer to the Saskatchewan Municipal Appeals Board that Council has chosen to take no position at the C. Cherkewich, Tyson and Friends of the Lake appeal hearings and chooses not to send a representative on behalf of the respondent.

No conflict of interest declarations or abstentions are noted in the meeting minutes. However, they indicate Councillor Cherkewich left the room at 1:08 p.m. and returned at 1:09 p.m. He told us that he left the meeting during the vote "to keep it clean." However, he also said "I'm gonna say I don't think there was a conflict of interest because of the wording of the legislation and correct me if I am wrong. I didn't want to take any chances. There's your Caesar's wife."

Councillor Cherkewich told us the issue of his involvement was sent to Candle Lake's lawyer for an opinion. During his interview, he told us the lawyer never responded. Later, he told us in writing that a legal review of the issue was done by the lawyer – the clear implication being that it exonerated him.

On October 17, 2016, Candle Lake's lawyer emailed the administrator and all the council members except Councillor Cherkewich. She said she did not send it to him "as a result of the conflict of interest." She then gave the council advice about how it should deal with the issue of whether to send a representative to Friends of the Lake's appeal hearing before the SMB.

On October 25, 2016, Councillor Cherkewich wrote the council members about the allegations that he was in a conflict of interest in the council's decision regarding Friends of the Lake. He wrote (in part):

I will concede there might, at first glance, be a perception of conflict of interest **if** FOL was a commercial venture, However there is no private or pecuniary interest on my part...voluntarily working a prodigious amount of hours to preserve these lands **as passive park for your neighbours, your, children and your children's children.**

On October 27, 2016, an email from Councillor Cherkewich's email account notified the PAC that his spouse's appeal of the former council's decision to approve the Mariners Cove project was withdrawn. It said:

In light... of the motions (Annex 1) and bylaws motions 317/2016 and 326/2016 [*which revoke the Bylaw which purported to amend Bylaw 03 of 2011 re-designating certain lands from Resort expansion (RE) to commercial (COM)*] that issued in August, I am satisfied that the issues raised by my appeal are spent.

The motions and bylaws noted were those prepared by and advocated for by Councillor Cherkewich at his first council meeting.

At the November 18, 2016 council meeting, the then assistant administrator submitted a report in response to the council's direction to confirm Councillor Cherkewich's and [the ratepayer's] membership on the OCP committee. She concluded that the mandate of the OCP committee was unclear as she could not find any record of it ever being set up properly by the council as required by *The Municipalities Act*. She advised that it was necessary for the council to formally establish it and set out terms of reference before any actions could be taken by it. In response, the council moved (508/2016) "That the work being done by Ron Cherkewich and [the ratepayer] under motions 405/2016 and 406/2016 are hereby confirmed as work being done under the auspices of the North Central Lakeland Planning District Commission."

At the December 9, 2016 meeting, the council directed the administration "to develop a report Re: Ad hoc committee to review OCP." Council also passed motion 519/2016 which rescinded motion 508/2016. In addition, during an *in camera* session at the same meeting, Candle Lake's lawyer provided the council her opinion about Councillor Cherkewich being in a conflict of interest in the council's decisions about how to deal with Friends of the Lake's appeal due to his involvement with the group's appeal.

Councillor Cherkewich made an official submission to the SMB on behalf of Friends of the Lake on December 30, 2016, in which he presented the group's legal position as to whether the Development Appeals Board process was

procedurally fair, and whether the passive park for which Friends of the Lake applied for a permit was a permitted use under Candle Lake's Zoning Bylaw. An email from Candle Lake's lawyer to Candle Lake noted that this submission raised an issue of procedural fairness as his submission was late. The lawyer suggested the issue could be resolved by rescheduling the upcoming hearing.

The former administrator submitted the report (#174, 2016) with the agenda for the January 13, 2017 council meeting. She noted the council needed to comply with the Council Procedures Bylaw (Bylaw 02 of 2016) to set up the OCP committee – which it had asked her to confirm existed at the September 9, 2016 meeting. She provided draft terms of reference for the OCP committee for the council to consider.

On January 12, 2017, Councillor Cherkewich wrote the other council members about the bylaw and the several resolutions they passed to undo the former council's approval of the Mariners Cove project:

An Application to set aside a...bylaw must be done within 6 months of the passing of the... bylaw or such application...is statute barred. You would know if you read the Act! The developer has not so far taken any steps to put the matter before a court. ...If [the bylaws and resolutions] are wrong and not challenged within 6 months then too bad so sad.

Councillor Cherkewich proposed the following resolution (69/2017) at the January 13, 2017 council meeting, which was defeated:

Administration shall immediately prepare for Council's consideration at the February 10, 2017 meeting a report with appropriate draft Resolutions and Bylaws that will restore the [Official Community Plan] and Zoning Bylaw to the wording that existed...before passing Bylaw 15/2015 [which removed the requirement that undeveloped land be zoned Conservation District] [and] Bylaw 23/2016 [which allowed Type 1 Marinas as discretionary uses in several residential districts] [.]

Instead, the council made the following decisions:

- It rescinded motion 467/2016 (18/2017) and unanimously carried motion 19/2017 to send one member of the "Council and one member of the administration to the Saskatchewan Municipal Board Hearings of Dan Tyson and Friends of the Lake and that the administration respond to the letters from the Saskatchewan Municipal Board."
- It carried a motion that Councillor Wojciechowski and the administrator attend the SMB appeal hearings (20/2017).
- Approved the establishment of an OCP Review Committee according to terms of reference approved by the Council. (32/2017)

On January 31, 2017, the then administrator emailed Candle Lake's lawyer to follow up on an earlier legal opinion the lawyer had provided her. She asked for an opinion about what to do with the several resolutions the council passed at its first meeting. She asked, "If Bylaw 20 [/2016] is void and the resolutions could potentially place Council in litigation how do we remedy?"

Candle Lake's lawyer noted that Councillor Cherkewich had challenged her opinion about whether the six-month limitation period in section 358 of *The Municipalities Act* for the Mariners Cove developer to apply to the court to quash Bylaw 20 was applicable.

Candle Lake's lawyer gave follow-up opinions in response on February 7, 2017 and again on February 9, 2017, which stated in part:

[February 7, 2017:] I believe Bylaw No. 20 is void or voidable as the public did not receive notice as required by the Act. In my opinion, section 358(2) cannot save this bylaw....how can one complain about the passing of a bylaw within 6 months, if they have not been provided notice that the bylaw was being passed[?] If the Court allows the bylaw in its current form the court would be allowing [Candle Lake] to pass bylaws in bad faith[.]

...
[February 9, 2017:] I...believe that RVCL has breached its [sic] duty of procedural fairness to [the developer] by passing those resolutions in his absence and without his input.

...
[I]t is my opinion that RVCL needs to...[revoke] Bylaw 20 and [rescind the] resolutions pertaining to the Servicing Agreement and [the discretionary use] Development Permit. Should council wish to move forward, they should have public notice to create such a bylaw...and also to provide proper notice to [the developer.]

On April 25, 2017, the Planning Appeals Committee (PAC) of the Saskatchewan Municipal Board issued a decision in which it decided that Candle Lake had misapplied its zoning bylaw when it issued the discretionary use permit to Mariners Cove. Specifically, it found that Candle Lake contravened its zoning bylaw – first, by approving “storage buildings” which were neither a permitted nor discretionary use in the zoning district in which the marina was to be built, and second, because the plans did not include required details such as dimensioned floor plans and elevations, landscaping details, details about existing trees, and about doorways, walkways and other features. As a result, it revoked the discretionary use permit.

On September 13, 2017, the PAC heard Friends of the Lake's appeal from the Development Appeals Board's decision regarding its application for a development permit. Councillor Cherkewich and two other individuals appeared for Friends of the Lake. The then acting administrator and Mayor Wasyluk appeared for Candle Lake. The PAC rendered its decision on November 7, 2017. It found that the DAB violated the fundamental requirements of procedural fairness by determining the appeal without notice to and in the absence of Friends of the Lake. It also found, however, that Candle Lake could not have approved Friends of the Lake's application because the use it applied for was not a permitted or discretionary use in the zoning district.

Findings

Several people complained to us that Councillor Cherkewich improperly used his position as a council member to gain access to confidential Candle Lake

information for Friends of the Lake's use. None of them made a formal complaint to the council about him contravening the confidentiality provisions of the code of ethics. According to Councillor Cherkewich, some of his fellow council members did confront him about being in a conflict of interest in its decision about Friends of the Lake, which he denied.

Though no formal code of ethics complaints were ever made, by confronting Councillor Cherkewich and asking him to declare his conflict of interest, the other council members attempted to deal with the issue informally. Councillor Cherkewich rejected this. He told us:

...there was a question of me act...uh... being involved with Friends of the Lake, which were trying to preserve some greenspace...And so I was involved with them. [the mayor] says it was a conflict...I said, 'you haven't read the Act'. And so I made a point of writing it out to him and explaining why I was not in conflict of interest because it is specifically addressed in the Act...If there's a conflict of interest but its on a non-profit, then your role is, when the matter comes up, you stay in the audience and you can get up speak to it, etc. etc....I finally had to say to [Councillor] Matkowski, I mean...at that time I was a professional person and I said, you know, 'Patty', you know, 'you keep yelling conflict of interest. I said this three times to explain to you and the lawyer [for Candle Lake] doesn't have a problem with the position 'cause it was sent her and the lawyer didn't respond on it at all. I said, 'If you say that one more time, you're gonna be talking to my lawyer.'

Neither the council nor the administration took any reasonable steps to investigate Councillor Cherkewich's relationship to Friends of the Lake or to determine the validity of his explanation for continuing to participate in the council's decisions relating to Friends of the Lake and to the mariner's cove project.

CONDUCT COMPLAINT 5: THAT COUNCILLOR RON CHERKEWICH VIOLATED CANDLE LAKE'S CODE OF ETHICS BY IMPROPERLY DISTRIBUTING CONFIDENTIAL INFORMATION TO THE PUBLIC

Background

On January 1, 2017, Councillor Cherkewich sent an email to more than 50 email addresses to which he attached an internal email sent to the council members by the then assistant administrator about Candle Lake's governance model. He wrote (in part):

Dear ratepayer voter and friends of the Lake

I am copying you because I will need your support in moving at least 2 other councillors to support these motions[.]

...
MOTION # 1

The Administrator has advised the Mayor that she will not be seeking to extend her Employment Contract beyond June 4, 2017. Administration is directed to immediately embark on a search and recruitment process[.]

...
MOTION # 7

Council advise the RVCL's legal counsel...that she is at liberty to release to Councilor Ron Cherkewich all documents...passing between the RVCL and her office in relation to the letter dated June 3, 2015 from [her] to [the administrator]...wherein that letter has the following statement:

"I understand [Mariners Cove] may have raised the issue of possibly suing the RVCL for his financial losses."

...
MOTION # 8

...Administrator and the Human Resources personnel...will...provide to Councilor Ron Cherkewich all job performance reviews, evaluations, documents, notes, emails, memorandums...relating to the Administrator together with the Administrator's personnel file...and without limiting the foregoing all such job or performance reviews which would have triggered the \$3000.00 increment [to her salary in 2013.]

MOTION # 11

Administration shall produce all substantiating documents, notes, emails, memorandums and correspondence relating to the Assistant Administrator's November 03, 2016 email...wherein the Assistant Administrator...indicated ...the governance model adopted by the Resort Village of Candle Lake.

[emphasis in the original]

In a May 10, 2017 email sent to over 40 people, Councillor Cherkewich described several of Candle Lake's records in relation to a specific resident's home and business – naming him specifically, giving out his address, and attaching what Councillor Cherkewich alleged was an illegal home-based business license.

On July 10, 2017, a ratepayer filed a complaint with Candle Lake about Councillor Cherkewich alleging he violated the code of ethics:

I asked [Councillor Cherkewich] about the rumor of placing [a named third party] as administrator and he stated that the mayor and [Councillor Wojciechowski] were pushing for [the third party] and using a derogatory remark about [Councillor Matkowski] & [Councillor Manton] pushing for [the then acting administrator.]

And [Councillor Cherkewich] further stated if [the then acting administrator] got the position, he would resign his position on council.

I found this very offensive and particularly rude to speak about anyone in this manner.

Furthermore Pertaining to the endorsement of [the third party] for this position[,] our mayor should recuse himself from any voting on this matter due to the close friendship they have.

Also on July 10, 2017, Candle Lake's lawyer wrote to Councillor Cherkewich at the request of the mayor to give him written notice of concerns respecting his communications regarding Candle Lake matters. She said (in part):

I am also advised that you disseminate information you have collected in your position as councillor to members of the general public, and that

causes concern to the Mayor with respect to issues of privacy and matters that are of a confidential nature, especially due to sections 16(1) and 21 of *Local Authority Freedom of Information and Protection of Privacy*.

...

This letter is to serve as formal notice that you are being requested to cease disseminating all correspondence that is sent to you which is governed by the above legislation.

At the July 14, 2017 regular meeting, the council discussed the complaint submitted under the code of ethics in an *in camera* session. Councillor Cherkewich told us that he preferred that the complaint about him be discussed in the public session, but the rest of council refused. He also told us that his request to review a copy of the complaint was refused, and that he told the rest of the council that he could not properly address the complaint if he did not have a copy of it. He was then asked to leave the council chamber.

We also note that the minutes do not indicate that the mayor recused himself from the discussion or left the room, despite the resident's complaint including allegations about his conduct as well.

According to Councillor Cherkewich, after about 20 minutes, he was invited back into the chamber. He stated that Councillor Wojciechowski told him the council had made a motion during the *in camera* session, but that it would not be released until it was reviewed by Candle Lake's lawyer. The meeting minutes indicate that the council then carried the following motion in the public session:

442/2017 WOJCIECHOWSKI:

That Council seek legal advice prior to any decisions being made Re: Schedule "A" Complaint under the Code of Ethics Bylaw 32 of 2016 and that Mayor Wasyluk is authorized to contact legal counsel for advice on the matter.

On July 19, 2017, Councillor Cherkewich received a letter from Candle Lake's lawyer advising him that the council had passed a unanimous motion suspending him from attending council meetings in August 2017, for having released confidential information to the public in relation to the negotiating committee for the position of village administrator, which was contrary to the code of ethics, and that he was also ineligible to sit on any council committee until January 2018. On July 28, 2017, Councillor Cherkewich applied to the Court of Queen's Bench for judicial review of the council's motion to suspend him.

On August 9, 2017, Councillor Cherkewich spoke with Candle Lake's lawyer noting that there was no record of the council's decision to suspend him. On August 10, 2017, Candle Lake's lawyer emailed him to advise "that the suspension has been removed" and that he could attend the next council meeting, and to advise if he would be discontinuing his court action. Councillor Cherkewich advised that he would not be dropping the court action.

The minutes of the next council meeting on August 11, 2017, indicate that the council passed the following motion:

483/2017 MATKOWSKI:

1. That Councilor Ron Cherkewich be suspended from participating in meetings as a Council member for the month of September 2017 due to a breach of Code of Ethics Bylaw 32 of 2016.
2. That Councilor Ron Cherkewich be removed from the Finance and Budget Committee and the New Hire Committee until December 31st, 2017. UNANIMOUSLY CARRIED

On May 10, 2018, Councillor Cherkewich emailed over 40 people, including Councillor Matkowski and Mayor Wasyluk:

RED FLAG ALERT - to the Ratepayer and voters of
the Resort Village of Candle Lake
from Councillor Ron Cherkewich

...

Fellow ratepayers and voters

I write to you out of a sense of necessity and urgency.
I opened the agenda for the RVCL Regular Council meeting...rescheduled to May 14 at 5pm...
5 motions (see below) should have been included...They were not there. This is unacceptable.
I don't know who interfered but only two people are normally involved...
the Mayor as Chairperson
and
the Administrator.

...

In August of 2016 you elected a Mayor and 4 Councilors – not a bunch of despots. [The Mayor] nor the Administrator are entitled to “weed”, censor or selective edit an agenda to suit their own personal interests...

[y]ou should consider phoning the Mayor and the other three Councilors right now letting them know: *This is not right!*

[emphasis in the original.]

He included the rest of the council's home telephone numbers and cell phone numbers. Among the draft motions was one calling for the administrator to prepare procurement documents for the janitorial contract held by Councillor Matkowski, and another to produce a statement of how much she had been paid since the previous contract had expired on December 31, 2016, including whether any of the payments were made to third parties.

On May 11, 2018, Councillor Cherkewich sent another email to over 40 people alleging that the mayor and the administrator improperly renewed Councillor Matkowski's janitorial contract without complying with Candle Lake's purchasing rules. The following day, on May 12, 2018, the council passed motion 175/2018, and suspended Councillor Cherkewich from the council and all council activities immediately until August 15, 2018, and passed motion 176/2018 to commence court proceedings against him to have him removed from council on the basis that he had contravened *The Municipalities Act* and the code of ethics.

On May 30, 2018, Candle Lake's lawyer wrote to Councillor Cherkewich again as follows (in part):

I am advised that as a Councillor of the Resort Village of Candle Lake, you have breached the code of ethics bylaw by releasing confidential information to members of the public and to media (PA Now).

Mayor Wasyluk, as head of the *Local Authority and Freedom of Information and Protection of Privacy*, has requested I contact you and request that you immediately cease releasing private information to the public and refrain from such future conduct. The information you have released has been obtained by your being a member of council, examples of which relate to the copy of cheque from Mariner's Cove Marina.

Findings

Despite the administrator, Mayor Wasyluk, and Councillor Matkowski all alleging to us that Councillor Cherkewich had violated the confidentiality provisions of the code of ethics on more than one occasion by divulging confidential information in various public emails, none of them ever made a formal code of ethics complaint about it.

Further, the complaint that the council relied on to suspend Councillor Cherkewich in 2017 was from a ratepayer who did not allege that Councillor Cherkewich violated his duty to maintain the confidentiality of municipal information. The resident's complaint was about two issues – first, that Councillor Cherkewich allegedly used offensive language when referring to two of his fellow council members, and second that the mayor was in a conflict of interest in the hiring process, because he was close friends with one of the applicants.

Instead of dealing with the allegation of the mayor's conflict of interest, the council took the ratepayer's complaint as evidence that Councillor Cherkewich had divulged confidential information about the hiring process again. However, it did not give him any reasonable notice of its intention to deal with this allegation and did not give him a reasonable opportunity to respond to it.

Though several people told us that Councillor Cherkewich had been approached about not sending private information to the group of residents he routinely emailed, it was not made clear to us when this happened, what conversations were had about it, or whether Councillor Cherkewich was ever advised that if he persisted, he would be made the subject of a formal code of ethics complaint and possibly reprimanded by the council.

In this case, while the council had some evidence that was relevant to this issue (i.e. the several public emails Councillor Cherkewich sent), there is no indication that it engaged in any sort of meaningful inquiry or analysis to objectively determine whether he had violated the code of ethics or either of the Acts. It did not have, and therefore did not present him with, a proper complaint under its code of ethics, and it did not gather all the relevant information relating to the allegation against him. It did not review all the relevant legal rules and it did not

give him a reasonable opportunity to respond to the information it intended to use to make its decision to suspend him in 2018.

CONDUCT COMPLAINT 6: THAT COUNCILLOR RON CHERKEWICH VIOLATED CANDLE LAKE'S CODE OF ETHICS BY HARASSING THE ADMINISTRATOR

Background

The current administrator has worked for Candle Lake since November 2012, first as assistant administrator, then as acting administrator before being hired as the administrator in November 2017.

On November 3, 2016, Councillor Cherkewich emailed the council and senior Candle Lake staff calling for her to be reprimanded. At a special council meeting the next day, he asked that she be reprimanded because of the information she sent the Saskatchewan Municipal Board in response to its request for information about the Mariners Cove project. Though in his submissions to us he denies doing it, she and others told us Councillor Cherkewich yelled at her in the meeting.

On January 1, 2017, Councillor Cherkewich distributed his November 3, 2016 email to a large group in the Candle Lake community.

At the March 7, 2017 council meeting, Councillor Cherkewich asked for an *in camera* session to again discuss reprimanding her because of a document she submitted to the Development Appeals Board.

At the May 12, 2017 council meeting, Councillor Cherkewich made a motion (297/2017) that a report from the administrator about the Saskatchewan Municipal Board's decision regarding the Mariners Cove project be referred to the administrator "for a full and proper report as the present report is lacking information and detail." This motion was defeated.

On October 16, 2017, the acting administrator emailed Councillor Cherkewich about documents he requested from the Development Appeals Board related to a ratepayer's appeal of the discretionary use permit Candle Lake issued to Mariners Cove's for its project's second location. She said that it is within the board's discretion to release information. He responded by emailing the rest of the council on October 17, 2017:

I am deeply concerned both as member of this council and as a ratepayer at the inappropriateness, misinformed and miss [sic] aligned response from our Asst. Admn.

...

I think this matter needs to be dealt with by the employer i.e. this Council in a meeting which at some point might include the Asst. Admn. This meeting or discussion needs to take place sooner rather than later. Some of, but not all of, the concerns to be addresses [sic] are flagged below.

...

The materials forward [sic] by the Asst. Admn [to the Development Appeals Board], and from my perspective, without the council's approval (no resolution) is argumentative, speculative and in some cases misleading.

...
There are other issues raised by the Asst Admn's conduct which requires us as employers to immediately intervene....We need to deal with the lack of professionalism and lack of impartiality in the RVCL's approach to the [ratepayer's] DAB appeal.

...
Unfortunately, our Asst. Admn. mentored under the former administrator...So in some ways it was the blind leading the blind so you cannot fault the Asst. Admn. totally for these current misadventures. She knows nothing better.

According to the administrator, on October 18, 2017, Councillor Cherkewich attended a Development Appeals Board hearing during which he argued that the administrator's report to the DAB was inappropriate and argumentative. In his submissions to us, Councillor Cherkewich said that he "was there only as an observer and not representing anyone." But he also told us that he identified himself as a council member and at one point asked and got permission to address the chair. The administrator said, "He said he was very upset and that my report was not balanced[.] Councillor Cherkewich confirmed that he told the DAB that the administrator should not be or be seen to be an advocate for the developer. The administrator told us that Councillor Cherkewich told the DAB that "he would have Council deal with me[.]" She said, "This was very embarrassing to me to listen to him slam me again in a public forum with many members of the community present."

Humiliated and embarrassed, the administrator sent Councillor Cherkewich a letter on October 18, 2017 "to formally request that the negative, demeaning and harassing comments and behaviours [he had] displayed towards [her] immediately cease." She noted that he made slanderous comments about her experience, job performance and abilities, and had made negative comments about her in public as well as through emails about her abilities, job performance, judgment and character. She also said that he had bullied her by continuing to make demands for information when there was no council resolution supporting his demands. She also noted that in several documents he had threatened or asked the council to reprimand her for her performance of the duties as required by her position.

On November 21, 2017, Councillor Cherkewich emailed the council to complain about the administrator not complying with his demands for information. In it, he threatened to make a public motion about disciplining her if Mayor Wasyluk or Councillor Manton (the deputy mayor) did not address his complaint with her.

On December 2, 2017, Councillor Cherkewich sent an email to the other council members to complain about the administrator not giving him searchable Adobe Acrobat (.pdf) agendas:

I can come to no other conclusion on these facts that the acting administrator...is being contemptuous and deliberated in her rebuffing

and flouting of this simple and proper request. The conduct is particularly egregious because when the agendas and minutes **are being done up they are likely been [sic] done up in a word format and then converted to unsearchable pdf. And sent out to us!!!!**

...

I consider this a serious disciplinary issue. However the [sic] before issuing a discipline or reprimand the employee must be given a fair and reasonable opportunities [sic] to respond...In order to accommodate a fair hearing hi [sic] will be making a motion to have this matter go on the regular agenda with a view to moving in in-camera agenda, as follows:

(New) MOTION: disciplinary issue administration

The acting administrator...shall be required to account to council why she has not been accommodating the request for searchable pdf format of minutes and agendas...Failing a full and proper response Council consider disciplinary action

[emphasis in the original]

At the December 8, 2017 council meeting, Councillor Cherkewich made a lengthy motion (683/2017) (which was defeated) that the council ask the Minister of Government Relations to order an inquiry into, among other things, the conduct of the administrator in relation to her involvement with the complaints he leveled against Councillor Matkowski.

On December 15, 2017, the administrator sent an email to Mayor Wasyluk, Councillor Manton and Councillor Matkowski asking for them to do something to prevent Councillor Cherkewich's ongoing harassing behaviour. Councillor Manton spoke with the administrator and told her she would look into what could be done. She also spoke with the mayor who said he would do something about it and would discuss it with the council. The administrator told us that after she complained, a council member advised her that Councillor Cherkewich had found out about her complaint and was seeking her removal from her position for speaking out against him.

By December 20, 2017, the administrator had submitted a formal harassment complaint against Councillor Cherkewich to the Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety. In her complaint, she alleged he was demeaning, humiliating, threatening and bullying. The same day, a representative of OHS called to advise that Councillor Cherkewich had contacted him about her complaint and to ask her who would have disclosed her complaint to him. The next day, Councillor Manton spoke with the administrator about what she described as a disturbing email that Councillor Cherkewich sent regarding the administrator's harassment complaint about him. Councillor Manton questioned how he could have known about her complaint and expressed concern over the security of their email accounts.

The administrator contacted Councillor Matkowski and the mayor to ask them if they had shared her December 15, 2017 email with anyone. Councillor Matkowski confirmed that she did not share it with anyone. The mayor, who was travelling back from British Columbia at the time, said he had not yet opened her email. He provided her with his password (which he said he had not changed from the generic password all the councillors were initially issued) and authorized

her to log into his email account. She told us that her email complaint was already marked as read. When Councillor Cherkewich was confronted with how he knew about her email, the administrator told us he said “he had his sources.”

On February 27, 2018, Councillor Cherkewich sent the other council members an email with the subject line: “Special Mtg and Probationaly [sic] employee.” He wrote (in part):

2 I’m not copying the Administrator for obvious reasons one of which is her correspondence, acceded to by the Mayor, trying to intimidate me by threatening to charge me with harassment when it comes to questioning matters of discipline and quality of her performance.

4. ...In Candle Lake why is the Administrator only accountable to two persons who by the way were identified by her, not the Council, as acceptable to her. It takes 3 people on Council to pass a motion but only 2 to award an \$80+k contract!!!!!!
Hhhhhmmm...

8 In context of the Administrator taking us down the wrong paths procedurally and legally I want to remind you that the Administrator is under a statutory duty where she is to protect Council from doing actually what she is attempting to do herself!!!!

19 This is but one of several matters I have documented in anticipation of the Administrator’s probationary performance review that is pending but from which Cncl has been excluded by the foolish Agreement that was signed.

[emphasis in the original]

On March 1, 2018, Councillor Cherkewich emailed the council complaining about Councillor Matkowski’s janitorial contract being renewed. He said (in part):

I fault Council and the Administrator...It was incumbent upon the Administrator to have flagged the Janitorial Contract as expiring in December of 2016.

The Administrator, who this case is/was an employee/subcontractor on the Matkowski janitorial Contract and the rest of us on Council went to sleep on this.

By the Administrator not putting this matter before Council in a timely fashion her friend and business associate has financially benefited at the expense of the ratepayers...I’d want this to be dealt with as a disciplinary matter and an inquiry under the Employee code of Conduct Policy and therefore the Administrator should be put on notice accordingly.

He later forwarded this email to many ratepayers.

At Occupational Health and Safety's suggestion, the council hired an independent investigator to investigate the administrator's complaint. The investigation started in March 2018.

On May 10, 2018, Councillor Cherkewich sent an email to over 40 people in the community alleging that the administrator (and Mayor Wasyluk) wrongly interfered by not placing items he wanted to talk about on the regular council meeting agenda, but instead put it on what he called a "secret, in-camera [sic] agenda." He said this was "shameful." While his message was also directed at the mayor, he directed derogatory comments at the administrator, for example:

It is beyond humor that a bylaw change directed at seeing things do not fall of [sic] off the agenda, itself falls off of the agenda?

...

Are the actions of the...administrator...simply forgetfulness, laziness, incompetent or are there ulterior motives?

...

This matter also raises a significant issue with respect to the conduct of senior administration[.] ...Senior administration should be held accountable[.]...Disciplinary action may be warranted once Council has had an opportunity to review this matter so it would be appropriate to put the Administrator on notice.

This matter might also be referred to the RVCL legal council for investigation and possible prosecution of the.... Administrator[.] ...In addition, there appears to be a possible...*Employee Code of Conduct* issue raised by this scenario if it proves out.

Councillor Cherkewich sent another email to over 40 people the next day on May 11, 2018, and again made several disparaging comments about the administrator:

This an important matter involving...the moral and ethical conduct of...senior Administration. It should not be discussed in secret.

...

The events...trigger...a consideration of the Employee Code of Conduct [ECOC]. The [administrator's] relationship with Cnclr Matkowski maybe should have been disclosed by the Administrator? The Administrator is in charge of enforcement of the ECOC!

On August 30, 2018, the investigator who reviewed the administrator's complaint of harassment completed her report. She concluded that Councillor Cherkewich's behaviour towards the administrator on five occasions "rose the level of harassment [,]" on November 4, 2016, May 12, 2017, October 17, 2017, October 18, 2017 and December 8, 2017. The council has not made any decisions at a council meeting regarding the investigator's report.

Findings

After several episodes and exchanges with Councillor Cherkewich that the administrator found to be unpleasant and harassing, the administrator wrote him personally to ask asked him to quit behaving inappropriately towards her. In other words, she tried to resolve her complaints about his behaviour informally with

him. Given her feelings about his behaviour, this was a mature response on her part.

However, thereafter, Councillor Cherkewich did not change his behaviour. She then complained to the rest of the council. At this point, the council could have asked her to make formal complaint under the code of ethics, but it did not. It could have immediately hired an independent investigator to look into her allegations. Instead, she chose to make her complaint to Occupational Health and Safety. Given her status as a Candle Lake employee, it was reasonable for her to believe this was an appropriate way to have her concerns addressed. And to its credit, the council took Occupational Health and Safety's advice and hired an independent, expert investigator to look into her allegations.

Candle Lake has not provided us with any information indicating that once the investigator submitted her final report about the administrator's harassment complaint on August 30, 2018, it took any appropriate steps to address its findings that Councillor Cherkewich harassed the administrator.

CONCLUSION AND RECOMMENDATIONS

It has been four years since the Ombudsman got jurisdiction over the Saskatchewan municipal sector's administration of council member code of ethics and conflicts of interest. During that time, we have received over 1,900 complaints about municipalities, and about one third of those include allegations of council member misconduct.

The role of the Ombudsman's Office is not to handle these complaints for municipalities. It is not to step in and take over. Municipalities are required to have a process in place to deal with code of ethics complaints. If they are to be viable, municipalities need to be able to govern themselves. Our role is to encourage Candle Lake and all municipalities to be self-reliant, to comply with legislation, and to develop and follow administratively fair and effective code of ethics complaint-handling procedures. For Candle Lake, whose council members are so divisive and so often at odds with one another, it is vital that it takes immediate steps to develop, adopt and follow fair administrative processes for managing complaints alleging that its council members are contravening its code of ethics – as it is required to do under *The Municipalities Act*.

It is encouraging that, after reviewing an earlier draft of this report, Candle Lake has taken some steps towards improving its code of ethics complaint handling processes. Notably, at its October 11, 2019 meeting, the council discussed and passed a motion to appoint two independent advisors to assist with managing some outstanding code of ethics complaints.

In the spirit of helping Candle Lake to improve its complaint-handling process and ensuring it fairly and reasonably addresses the various complaints that have been leveled against its council members as it is required to do under *The Municipalities Act*, we recommend that:

1. The Resort Village of Candle Lake develop and implement a detailed written process to fairly and effectively address alleged contraventions of its Code of Ethics, including processes for receiving, acknowledging, informally resolving, investigating, deciding and providing reasons for its decisions about complaints of alleged contraventions of its Code of Ethics.
2. The Resort Village of Candle Lake use a fair and effective process to determine whether council members contravened its Code of Ethics in the following circumstances and, if so, determine how it will address each contravention:
 - (a) Mayor Borden Wasyluk's participation in the council's discussions and decisions concerning Sakâw Askiy Management Inc.'s cut plans and other business activities, and his participation in the discussions and decisions about how to address the former council member's and Councillor Cherkewich's complaints about him.
 - (b) Councillor Patricia Matkowski's participation in the council's discussions and decisions about hiring the administrator, and her participation in the discussions and decisions about how to address the former council member's, Councillor Cherkewich's, and Councillor Cherkewich's and Councillor Wojciechowski's complaints about her.
 - (c) Mayor Borden Wasyluk's and Councillor Patricia Matkowski's actions concerning the renewal of the janitorial contract.
 - (d) Councillor Cherkewich using his position as a council member to obtain information to further either Friends of the Lake's appeal of the decision to deny it a development permit, or his spouse's appeal of the decision to approve the Mariner's Cove discretionary use permit.
 - (e) Councillor Cherkewich's participation in the council's decisions about how to address the former council's zoning bylaw changes and approval of the Mariner's Cove discretionary use permit for the marina project along Simon Lehne Road, and his participation in the council's decisions about how to deal with Friends of the Lake, because he is a member of Friends of the Lake, and provided services to further Friends of the Lake's appeal to the Saskatchewan Municipal Board.
 - (f) Councillor Cherkewich's distribution of municipal information or personal information to the public.
 - (g) Mayor Wasyluk's participation in the process to hire the administrator.
3. The council of the Resort Village of Candle Lake determine whether the independent investigator's finding that Councillor Cherkewich harassed the administrator is evidence that he contravened the Code of Ethics, and, if so, then determine what steps the council will take to address the contravention.

REFERENCES

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ABOUT US

The Ombudsman is an independent officer of the Legislative Assembly of Saskatchewan. Under *The Ombudsman Act, 2012*, one of our roles is to investigate complaints about administrative actions and decisions of provincial ministries, agencies of the government, publicly-funded health entities, municipal entities, and their council members, board members, officers and employees. After an investigation, we can make recommendations to a government entity if the Ombudsman is of the opinion the government entity or officials:

- Have made a decision, an omission or a recommendation to a minister, or has acted in a way that appears to be: contrary to law; wrong, unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact; or was made or done in accordance with a law or a practice that is unreasonable, unjust, oppressive or improperly discriminatory.
- Have exercised a power, duty or function conferred or imposed on them by an Act for an improper purpose, on irrelevant grounds, or by taking into account irrelevant considerations.
- Should have given reasons for a decision, action, omission or recommendation that was the subject-matter of the investigation.

Ombudsman Saskatchewan does not advocate for the people who complain to us nor for the government entities and officials we investigate. We are neutral, impartial and independent from the government entities and officials we oversee. Our mission is to promote and protect fairness and integrity in the design and delivery of provincial and municipal government services.