



**Ombudsman
Saskatchewan**

Promoting Fairness

SUMMARY OF INVESTIGATION

Investigation into the Resort Village of Candle Lake's Handling of Complaints About its Council Members

OVERVIEW

Ombudsman Saskatchewan has received over 40 complaints about the Resort Village of Candle Lake. After the current council was elected in July 2016, we received six specific allegations of council member misconduct concerning three of the five council members. All of these complaints came from either current or former council members and staff. Since Candle Lake's problems appeared to be stemming from in-fighting and conflict among council members, rather than investigate each individual complaint, we decided to investigate whether the Candle Lake council used a fair and reasonable complaint-handling process to deal with these allegations as required under *The Municipalities Act*.

We gave Candle Lake notice of our intention to investigate on February 21, 2018. We interviewed all council members and the administrator. We collected and reviewed scores of documents, including emails, newsletters, meeting agendas, minutes and bylaws. On May 19, 2019, we provided each of them our tentative findings in a draft investigation report to give them an opportunity to review them and provide us with any representations they wished to make before we finalized our investigation and determined what recommendations would be appropriate. After receiving representations from all of them except one council member, we sought further clarification from them about their submissions.

Perhaps not surprisingly since we continued to receive complaints from current council members complaining about each other and Candle Lake's staff throughout this investigation, their submissions focused on attempting to justify what we found to be improper conduct, and on casting further aspersions on each other. None of the submissions made to us by the council members whose conduct is in question showed any indication that they were willing to accept any personal responsibility for their behaviour. They either blamed one another for creating the circumstances in which we suggested their conduct had fallen short, or attempted to rationalize their behaviour by characterizing the circumstances in ways that were not supported by the evidence we gathered.

Nevertheless, all their submissions were taken into consideration in our final report and recommendations, which we provided to Candle Lake on December 4, 2019.

On January 27, 2020, Candle Lake advised us that while it agreed with some of our recommendations (it did not say which ones), some members were disappointed with some of the changes we made to the final report in response to their submissions. Despite this, we are encouraged that since reviewing our initial draft report last May, the council has amended its Code of Ethics Bylaw to implement new investigative steps, and has also

retendered the contract that we found had been improperly given to Councillor Matkowski contrary to its Purchasing Policy. Candle Lake told us it believes that because of these and other developments, some of our recommendations are redundant. We disagree.

While some of the circumstances underpinning our recommendations have evolved and Candle Lake appears to have taken steps to preemptively deal with the issues our recommendations are intended to address, it still has not effectively dealt with the six serious allegations of council member conduct that we highlight in our report. We believe this obviously acrimonious situation can be used as an opportunity for Candle Lake to ensure its council improves how it serves the public and deals with complaints about council conduct. We encourage Candle Lake to accept and implement our recommendations.

MUNICIPALITIES ARE REQUIRED TO HAVE A CODE OF ETHICS COMPLAINT HANDLING PROCESS

All municipalities are required to have a code of ethics bylaw that sets out the values and standards that council members must follow when dealing with each other, municipal employees, and the public. Council members are expected to be honest, objective, impartial, respectful, transparent, and accountable. They are not to disclose confidential information without authorization. They are to act in the best interests of their municipality, and they have a duty to act in accordance with all laws, including the municipal legislation that governs them.

To ensure council members adhere to these values and standards, *The Cities Act*, *The Municipalities Act* and *The Northern Municipalities Act, 2010* require municipalities to have a process for dealing with contraventions of the code of ethics. The process needs to be fair from the start, when a complaint is received, to the end, after the complaint has been reviewed and a decision has been made about whether the complaint is valid. The review process must be procedurally fair to both the complainant and the council member complained about. If it is found that a council member breached the code of ethics, then council needs to determine an appropriate sanction.

ALLEGED CANDLE LAKE COUNCIL MEMBER MISCONDUCT

We reviewed the way Candle Lake dealt with the following six allegations of council member misconduct:

1. That Mayor Borden Wasyluk violated the Code of Ethics by participating in decisions before the council about Sakâw Askiy Management Inc.'s plans to cut trees in the Candle Lake area, because he was on the board of directors of a company that is the sole general partner of a limited partnership that is one of Sakâw's eight shareholders.
2. That Councillor Patricia Matkowski violated the Code of Ethics by participating in the council's decision to hire the administrator because she and the administrator were friends and had business dealings.
3. That Mayor Borden Wasyluk and Councillor Patricia Matkowski violated the Code of Ethics by improperly renewing Councillor Matkowski's janitorial contract with Candle Lake.

4. That Councillor Ron Cherkewich violated the Code of Ethics by participating in matters before the council and by using confidential Candle Lake information to further the interests of his spouse and a local advocacy group called Friends of the Lake in their challenges to the validity of a discretionary use permit for a marina project.
5. That Councillor Ron Cherkewich violated the Code of Ethics by improperly distributing confidential information to the public.
6. That Councillor Ron Cherkewich violated the Code of Ethics by harassing the administrator.

OUR FINDINGS

- Candle Lake does not have a fair or consistent process for receiving, investigating and deciding whether complaints are valid, nor for sanctioning council members if they are found to have contravened the code of ethics.
- As a result, the way Candle Lake dealt with the six complaints we reviewed was not fair to the person making the complaint, not fair to the council member complained about, and ultimately, not fair to the public.
- In some cases, council members participated in the council's discussions and decisions about how to deal with the complaints about their own conduct. While council members should be given an opportunity to respond to complaints made about them, it is fundamentally unfair (and contrary to *The Municipalities Act's* rules regarding conflicts of interest) for a council member to play any role in the council's deliberations or decisions about how to handle complaints about them.
- In other cases, the council passed motions to purportedly deal with alleged contraventions even though it had not gathered enough evidence to support or refute the complaint and had not taken any reasonable steps (like an investigation) to determine whether the complaint was valid.
- With the exception of the complaint about Councillor Cherkewich harassing the administrator, there is no indication that the council took any steps to investigate any of these complaints 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.
- In the complaint about Councillor Matkowski allegedly conferring a private benefit on the administrator (i.e. an employment contract), since a reasonable person would believe that the administrator's ability to give the council objective, professional advice on how to address this complaint would be compromised by her personal interest in the outcome, she should have recused herself from any involvement - but she did not.
- 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 about Friends of the Lake and the marina project, despite his active participation, either as a party or an advisor to parties, in proceedings against the marina project.

- In the case about Councillor Cherkewich distributing confidential information to the public, some of the information he disclosed implicated the mayor and Councillor Matkowski in conflicts of interest. Rather than addressing these alleged conflicts of interest, the council convened a special meeting to suspend Councillor Cherkewich – ostensibly because he had released confidential information to the public in relation to the hiring of the position of administrator. Further, the two council members and the administrator, all of whom were personally implicated, participated in his suspension, raising a strong perception that they were all biased. The Saskatchewan Court of Queen’s Bench later ruled that the suspension was invalid.
- The council also breached its duty of procedural fairness by sanctioning Councillor Cherkewich without giving him proper notice of the allegations against him, without taking any reasonable steps to investigate their validity, without giving him a reasonable opportunity to respond to the allegations and evidence it used to support its decision, without ensuring its decision was unbiased, and without giving him any reasons.
- Candle Lake hired an independent investigator to investigate allegations of harassment made against Councillor Cherkewich. The investigator concluded that his behaviour towards the administrator “rose the level of harassment” on five occasions. However, Candle Lake has not provided us with any information indicating that it took any appropriate steps to address the investigator’s findings or to decide whether those findings meant that Councillor Cherkewich contravened Candle Lake’s Code of Ethics.

RECOMMENDATIONS

All municipal council members have a duty to govern in the best interests of their communities. They swear or affirm that they will follow the values and standards expected of council members and put their private interests or personal vendettas aside in service of their communities.

It is also 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 in-fighting among their members and are accountable to their communities if they do not. 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 complaints of council member misconduct 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 authority and the responsibility to do so.

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 have recommended 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 an employee is evidence that he contravened the Code of Ethics, and, if so, then determine what steps the council will take to address the contravention.

We encourage all municipalities to comply with legislation and to develop and follow administratively fair and effective procedures for handling code of ethics complaints.