

# **A Report with respect to an Allegation of a Violation of the Town of Fort Frances Council Code of Conduct**

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*November 25, 2021*

## **1. INTRODUCTION**

The Town of Fort Frances (the Town) has appointed Paul S. Heayn, Municipal Consultant as its Integrity Commissioner for the purpose of dealing with a complaint. As Integrity Commissioner, Paul S. Heayn acts pursuant to Sections 223.1 to 223.8 of the Municipal Act 2001. This report deals with one of those investigations into a complaint referred to me by an anonymous Complainant indicating that Mayor June Caul of the Fort Frances Council had made numerous statements and unauthorized and unlawful communications and took various unauthorized and unlawful actions thereby violating the Code of Conduct for Members of Council.

## **2. BACKGROUND**

I received a complaint under the Fort Frances Code of Conduct on August 26, 2021 from a person that wishes to remain anonymous. Attached to the complaint was Schedule A that included twenty four (24) pages. Schedule A outlined the various sections of the Council Code of Conduct as well as section of other documents including the Municipal Act, the Council/Staff Relations Policy, the Fort Frances Council Procedure By-law and the Workplace Harassment Policy.

In addition to Schedule A the complaint included the following documents behind eleven (11) tabs:

1. Email from CAO, dated May 12, 2021
2. Agenda and Minutes of the Regular Meeting of Council, dated June 14, 2021
3. Agreement between the RRFDC and the Town
4. Agenda and Minutes of the Regular Meeting of Committee of the Whole, dated June 28, 2021
5. Letter from J. Caul to Executive Director of the RRFDC, dated June 29, 2021
6. Letter from J. Caul to Executive Director of the RRFDC, dated June 30, 2021
7. Letter from Executive Director of the RRFDC to J. Caul, dated July 7, 2021
8. Emails between J. Caul and Executive Director of the RRFDC, dated July 7, 2021
9. Report Prepared by the RRFDC, dated July 7, 2021 and presented July 12, 2021
10. Letter from Councillor D. Judson to Councillors, dated July 13, 2021
11. Letter from Executive Director of the RRFDC to J. Caul, dated July 15, 2021

### **3. Purpose of the Inquiry**

The purpose of the Inquiry is to determine if Mayor Caul violated the following sections of the Code of Conduct and subsequently the Municipal Act and Relevant Policies of the Town of Fort Frances.

The Requester (anonymous) contends that the following Code, Act and Policies were violated:  
**The Council Code of Conduct**

55. That Mayor Caul contravened the following twelve (12) sections:

1.2 Key statements of principle that underline this Code of Conduct are as follows:

a) Council, and its Members are the leaders of the Municipality both inside and outside its geographic boundaries. Especially in an age of social media and electronic messaging, strong positive management of the reputation of the Municipality is needed. The statements and behavior of Council affect the Municipality's reputation as a place to live and do business. Conflict and inappropriate conduct among Members, staff, officers and members of the public, adversely affects the Municipality's reputation and is to be avoided. Put differently, Council has a strong role to protect and promote the Municipality and its reputation as an excellent place to live, work and do business;

c) Members must be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest, both real and perceived;

d) Members are expected to conduct themselves and perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny;

e) Members must recognize and act upon the principle that democracy is best achieved when the operation of government is as transparent and accountable to the Public as possible;

f) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Municipal Council; 2 Code of Conduct Version 2.00 (August 6, 2018);

g) Members must not use the status of their position to inappropriately influence the decision of another individual or body. For example, to obtain a personal advantage for the Member, the Member's parents, children, spouse, staff, friends, associates, business or otherwise; or to disadvantage another party.

h) Members shall be respectful of the role of staff to provide advice with political neutrality and objectivity and without undue influence from a Member or Members.

5.1 Every Member shall observe and comply with every provision of this Code of Conduct, as well as all other policies and procedures adopted or established by Council.

6.1 Every Member shall conduct himself or herself properly and in a civil and respectful manner at meetings, and in accordance with the provisions of the Procedural By-law, this Code of Conduct, and other applicable law.

7.1 Every Member has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the Municipality's Workplace Anti-Violence, Harassment and Sexual Harassment Policy.

7.2 A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.

8.1 Under the direction of the senior administrative staff, and in accordance with the decisions of Council, staff and Officers are required to serve the municipal corporation as a whole. Every Member shall be respectful of the role of staff and Officers to provide advice based on political neutrality and objectivity and without undue influence from any Member or group of Members. Accordingly, no Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any staff person or Officer.

8.2 Members shall acknowledge and respect the fact that staff carry out directions of Council, through senior staff, including but not limited to the treasurer, clerk, director of public works, and administer the policies of the Municipality. No Member shall perform, direct or attempt to undermine the duties of any staff person or Officer except in accordance with the Municipality's procedural by-law.

8.3 Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.

8.5 No Member shall use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or improperly influencing any staff person or Officer or interfering with that person's duties, including the duty to disclose improper activity.

11.1 No Member shall use, or permit the use of, municipal equipment, land, facilities, supplies, services, staff or other resource, including any municipally-owned information, website, or funds allocated for Member expenses, for any purpose or activity other than the lawful business of the municipal corporation. No Member shall seek or acquire any personal financial gain from the use or sale of Confidential Information, or of any municipally-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copyrighted, for which property remains exclusively that of the Municipality.

13.1 No Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.

13.2 No Member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage, the private advantage of the Member's parent, child, spouse, staff member, friend or associate, business or otherwise or the disadvantage of others. No Member shall attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties. No Member shall hold out the prospect or promise of future advantage through the Member's supposed influence within Council in return for any action or inaction.

## **The Municipal Act, 2001**

63. That Mayor Caul contravened the following six (6) sections:

224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.

225 It is the role of the head of council,

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;
- (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act.

226.1 As chief executive officer of a municipality, the head of council shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality's activities;
- (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

227 It is the role of the officers and employees of the municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality.

229 A municipality may appoint a chief administrative officer who shall be responsible for,

- (a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and
- (b) performing such other duties as are assigned by the municipality.

258 The following are not eligible to be elected as a member of a council or to hold office as a member of a council:

1. Except in accordance with section 30 of the *Municipal Elections Act, 1996*,
  - i. an employee of the municipality,
  - ii. a person who is not an employee of the municipality but who is the clerk, treasurer, Integrity Commissioner, Auditor General, Ombudsman or registrar referred to in section 223.11 or an investigator referred to in subsection 239.2 (1) of the municipality, or
  - iii. a person who is not an employee of the municipality but who holds any administrative position of the municipality.
2. A judge of any court.
3. A member of the Assembly as provided in the *Legislative Assembly Act* or of the Senate or House of Commons of Canada.
4. Except in accordance with Part V of the *Public Service of Ontario Act, 2006* and any regulations made under that Part, a public servant within the meaning of that Act.

**Disqualification**

(2) A member of council of a municipality is disqualified from holding office if, at any time during the term of office of that member, he or she,

- (a) ceases to be a Canadian citizen;
- (b) is not a resident, the owner or tenant of land or the spouse of an owner or tenant of land in the municipality, in the case of a member of council of a local municipality, or in a lower-tier municipality within the upper-tier municipality, in the case of a member of council of an upper-tier municipality; or
- (c) would be prohibited under this or any other Act from voting in an election for the office of member of council of the municipality if an election was held at that time.

**The Council/Staff Relations Policy**

67. That Mayor Caul contravened the following two (2) sections:

**5.0 Clarification of Roles**

Role of the Mayor is to represent the Municipality, provide strategic direction, create policy, and provide leadership to members of Council. Role of Council (Policy Focus) is to represent the Municipality, provide strategic direction and create policy. Role of Chief Administrative Officer (Direction Focus) is to act as a liaison between Council and staff, direct implementation of Council's policies, hire and develop a team of competent Officers and Staff. Role of Officers and Staff (Implementation Focus) is to research policy and programs, give best professional advice, implement decisions of Council, fulfill statutory duties, follow direction of Chief Administrative Officer and generally see to the efficient operation of the municipal organization.

**6.0 Guiding Principles**

1. All Members are Equal - Members of Council, Officers and Staff must be treated equally and fairly and the appearance of favoritism must be avoided.
2. Chain of Command - Members of Council do not have authority to direct Staff to perform, or not perform functions or duties, the CAO is responsible for providing direction to Officers and Staff.
3. Use of Officers & Staff Time - Members of Council should use Officers and Staff time thoughtfully. Requests from Council take Officers and Staff time away from other issues or problems that may need attention. Members of Council should be discouraged from asking for Staff reports in an effort to delay a potentially unpopular decision.

4. Use of Council's Time - Officers and Staff should be mindful of Council's time and refrain from delivering lengthy presentations which may consume Council's time better served debating and considering issues. Staff presentations should be clear and concise wherever possible.
5. Representative of Community - Members of Council should, in addition to presented research and recommendations, make their own judgement and provide leadership in their decision making. Members of Council, together with Officers and Staff work collaboratively for the public good.
6. Politics vs Management - Council provides direction and establishes policy, while officers and staff research, give advice and implement Council's directives. Advice comes from Officers and Staff; policy and service delivery decisions are made by Council. Staff are not politicians and members of Council are not hired professionals.
7. Respect Above all Else - Members of Council, Officers and Staff shall work together to foster working relationships that are respectful of each other's intelligence and professional duties. We all face diverse and often unique challenges and we must be cognizant that our collective goal is to serve the best interests of the Municipality.

### **The Workplace Harassment Policy**

68. That Mayor Caul contravened the following section:

3.1 Definitions The terms defined below are referred to in this policy as "unacceptable workplace behaviour"

Workplace Harassment:

Workplace harassment is defined as a course of vexatious comment or conduct against a worker in a workplace, that is known or ought reasonably to be known to be unwelcome.

Sexual Harassment: Any unsolicited, unwelcome, disrespectful, or offensive behaviour that has an underlying sexual connotation and can be typified as:

- Behaviour that is hostile in nature, or intends to degrade an individual based on personal attributes, including: gender, sexual orientation, gender identity, gender expression, or any other relevant protected ground under human rights legislation.
- Sexual solicitation or advance made by a person in a position to confer, grant, or deny a benefit or advancement to the person, where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome;
- Reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant, or deny a benefit or advancement to the person.
- Unwelcome remarks, jokes, innuendos, propositions, or taunting about a person's body, attire, sex or sexual orientation, gender expression, or gender identity, or religion;
- Suggestive or offensive remarks; ▪ Bragging about sexual prowess;
- Offensive jokes or comments of a sexual nature about an employee;
- Unwelcome language related to gender;
- Displaying of pornographic or sexist pictures or materials; ▪ Leering (suggestive persistent staring);
- Physical contact such as touching, patting, or pinching, with an underlying sexual connotation;
- Sexual assault;
- Any actions that create a hostile, intimidating, or offensive workplace, which may include physical, verbal, written, graphic, or electronic means;

### **Bullying:**

Bullying includes unwelcome behaviours such as malicious actions and/or omissions toward one or more individuals, which a reasonable person would perceive as unwelcome. These can negatively impact our emotional wellbeing and may cause an individual to feel hurt, embarrassed, incompetent, disrespected, and/or devalued. This can lead to damaging consequences for the victim, the observers, our clients, and the organization.

Unwelcome behaviours may include subtle and/or overt acts of hostility or aggression and may include instances of both omission and/or commission. This may include:

- Gossiping or spreading rumours
- Talking down to others
- Verbally berating others
- Using a harsh tone of voice
- Acting in a way that seems “out to get” others
- Blaming others for things out of their control
- Making or implying threats regarding one’s job security
- Excessive shouting
- Repeated emotional outbursts
- Using overt or subtle intimidation tactics
- Using degrading remarks or tone of voice
- Criticizing or talking down to others in front of a group
- Using condescending and/or demeaning body language
- Social exclusion or ostracism
- Ignoring others or giving “silent treatment”
- Intentionally excluding others from conversations and/or work activities
- Differential treatment (treating some less favorably than others)
- Undermining another’s work by assigning impossible deadlines or workloads
- Excessive monitoring of work or unnecessary micromanagement
- Withholding pertinent work-related information
- Undermining the work of a co-worker or subordinate in an undue manner
- Not providing sufficient information to discharge one’s duties effectively

### **The Procedural Bylaw**

69. That Mayor Caul contravened the following seven (7) sections:

5.1 Council and Head of Council Details relating to the role of Council and the Head of Council are contained within the Municipal Act, 2001, sections 224 and 225 respectively.

5.1.1 Individual Authority – not provided No individual Council Member may direct any Member of staff to perform such duties that have not been authorized by resolution of the Council.

5.1.2 Established Policies – Members – respect Members of Council shall respect and adhere to the Policies set by the Council and under no circumstances take it upon themselves individually to circumvent established policies.

5.1.3 Council – liaison with CAO Council Members will liaise with the Chief Administrative Officer on any given matter concerning the municipality and further, it is encouraged that the Mayor be copied on said correspondence as part of the leadership role outlined in the Municipal Act, 2001.

5.1.4 Information – by Staff – Members of Council: Council Members are encouraged to request information directly from the CAO or Divisional Managers / Senior Managers when possible.

5.1.5 Questions – operational concerns – complaints Questions or issues surrounding operational concerns or complaints, excluding basic issues covered in Section 5.1.4 shall be directed to the Chief Administrative Officer, who will then direct the questions or issues to the appropriate Manager

5.2 Chief Administrative Officer, Clerk and Municipal Administration Details relating to the roles of the Chief Administrative Officer (CAO), Clerk and Municipal Administration are contained within the Municipal Act, 2001, sections 229, 228 and 227 respectively.

## **4. INVESTIGATIVE PROCESS**

This inquiry was conducted in accordance with the Fort Frances Integrity Commissioner Inquiry Protocol.

Interviews were conducted with fourteen (14) key individuals involved in this complaint. Those interviews included seven (7) senior staff and seven (7) Council members including the Mayor.

Interviews of the Council sought to get a perspective of the actions Mayor Caul is accused of that violated the Code, the Municipal Act and other Council Policies. Mayor Caul indicated she was not aware of crucial information about the SFL transfer and it was important to understand if other Councillors felt the same. Councillors were asked their opinion of Mayor Caul's implying or acting as the Town's CAO. Similarly, Senior staff were queried about details of meetings, letters, minutes and other relevant information arising from this complaint.

The Code of Conduct, the Municipal Act, Council/Staff Relations Policy, the Workplace Harassment Policy and the Procedural By-law were referenced in relationship to the various sections that the Requester alleged were violated.

The Boundary Waters Management Corporation (BWPMC) was also researched in order to gain information on the history of the enhanced Sustainable Forest License (eSFL). The reasons for these centers on fact that the transfer of the Sustainable Forest License created many questions that Mayor Caul felt were unanswered. It is significant because Mayor Caul's actions in seeking answers resulted in the Requester making this inquiry. Mayor Caul, rightly or wrongly, had questions about what the new eSFL meant for the Town and how the terms would benefit Fort Frances. More details concerning this will become apparent in the Background Information and the Respondent's interviews.

I conducted an initial review of this complaint by first combing through the Requesters allegations and documenting each one and then investigating whether or not they breached/violated the Code of Conduct, the Municipal Act, Council/Staff Relations Policy, the Workplace Harassment Policy and the Procedural By-law.

A copy of the complaint was sent to Mayor Caul. I interviewed the Respondent zeroing in on the main points of the Complaint against her and to learn any information she formulated in her defense. Once that interview was completed I commenced interviews with Senior Staff and the rest of Council. A second interview was held with Mayor Caul to further discuss the complaint with the context of my interviews with Council and Staff.

An interview with the Requester was completed after the draft report was completed. A third interview with Mayor Caul was held after sending a Draft Report to her for review for factual content and further information.



## 5. ALLEGATIONS: “EVENTS OF CONCERN” OUTLINED IN THE COMPLAINT

a. Using “personal matters about an identifiable individual to move item into Closed Session

June 14, 2021 Council Meeting item 10.1 – Licensing Update – included an individual who was placed on the ‘closed meeting’ agenda to discuss his understanding of the transfer of the Sustainable Forest License (SFL) from Resolute Forest Products Corp. to the Boundary Waters Forest Management Corp. The item was placed on the In-camera closed Council Meeting by adopting a resolution under section 239(2)(b) of the Act, which states:

239 [...] (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is, [...] (b) personal matters about an identifiable individual, including municipal or local board employees[.]

The complainant mentions that at no time did the subject matter of this agenda item pertain to “personal matters” about any individual. It is noted that the Ombudsman of Ontario and the Information and Privacy Commissioner have concluded that the “personal matters” exception under section 239(2)(b) of the Act can only be used when the discussion relates to the individual and their personal, rather than professional capacity.

b. Acting as the CAO

The Complainant outlines various times the Mayor explicitly and implicitly acted as the role of the Chief Administrative Officer.

- She ordered a report from the Boundary Waters Forest Management Corp when the ‘Guiding Principles’ of the Council/Staff Relations Policy states that “Members of Council do not have authority to direct Staff to perform, or not perform functions or duties. The CAO is responsible for providing direction to Officers and Staff.”
- Mayor Caul demanded, without authority, a member of the Rainy River Futures Development Committee to resign during a phone call.
- On June 28<sup>th</sup> Council Meeting, Mayor Caul made false accusations, claims and statements about Senior Staff of the BWFMC suggesting they withheld material information about the eSFL. Her remarks were false, meritless and defamatory.
- On June 30, Mayor Caul, in a letter to the RRFDC she raises numerous vexatious and false complaints about a Senior Staff member of the BWFMC. Mayor Caul had no direction from Council to make those comments. Personal matters should be taken to the CAO.
- In response to a letter from the Executive Director of the RRFDC July 7<sup>th</sup>, Mayor Caul claimed in an email that she was the Acting CAO of the Town saying: “I have been involved in the CAO role along with Administration since the CAO retired.” She cannot lawfully serve as CAO under the ACT.
- On July 13, Councillor Judson, chair of the Executive Development Economic Committee (EDEC) sent a letter to his fellow Councillors outlining a number of concerns about Mayor Caul acting outside of her lawful authority. No response has been made to these allegations.
- Mayor Caul failed to liaise with the CAO in respect of concerns about the eSFL or the performance of the RRFDC and directed a service provider of the Town to produce a report, at the Town’s expense, without authority to do so.

c. The CAO and the Staff:

Concerns about personnel retained or in the employment of the Town are to be raised with Council by the CAO, with whom they have a reporting relationship. This reporting and

accountability structure is pursuant to the defined role of the CAO and administration in the Act, the terms of the Town's contract with the RRFDC and the Council/Staff Relations Policy.

d. Telephone call between Mayor Caul and the Forestry Consultant:

On June 15, 2021, Mayor Caul spoke with the Forestry Consultant by telephone on the false pretense that she had direction from Council to do so or otherwise had been directed to admonish the Forestry Consultant on behalf of the corporation or its management. During the phone call, Mayor Caul accused the senior staff of the BWPMC of withholding material information from Council about the eSFL. In addition, Mayor Caul asked for the resignation of the Executive Director. At no time was Mayor Caul authorized to make this statement by Council nor was she otherwise empowered to do so under the Agreement with RRFDC, who hire and direct the staff of the BWPMC.

e. Mayor Caul's remarks at the June 28<sup>th</sup> Council Meeting:

On June 28, 2021, the same concerned citizen that appeared before Council of the Whole in-camera June 14<sup>th</sup>, appeared again in open session to discuss the status and terms of the eSFL and concerns surrounding this license transfer. During that meeting, Mayor Caul's remarks made false accusations, claims and statements contributed to the senior staff of the BWPMC.

f. Mayor Caul's letter to the RRFDC:

On June 29<sup>th</sup>, 2021 Mayor Caul issued a letter to the Executive Director of the RRFDC, demanding a formal report on various item related to the eSFL. Mayor Caul had no authority nor direction from Council to request this report. That authority lies with the CAO or the Economic Development Executive Committee (EDEC).

g. Mayor Caul's second letter to the RRFDC:

On June 30<sup>th</sup>, 2021 Mayor Caul sent a second letter to the Executive Director of the RRFDC raising numerous vexatious and false complaints about the Forestry Consultant's conduct at the June 9<sup>th</sup> Economic Development Executive Committee (EDEC) meeting. Any concerns about personal are to be handled by the CAO or the EDEC.

h. Mayor Caul's emails to the Executive Director of the RRFDC:

In a series of emails between the Executive Director of the RRFDC and Mayor Caul (July 7<sup>th</sup>), Mayor Caul claimed that she was the Acting CAO of the Town. At no time did Council delegate administration powers to the Mayor, nor can she lawfully serve as CAO under the Act.

i. Unnecessary Report Request:

At the July 12<sup>th</sup> Regular Council Meeting of the Committee of the Whole, the report requested by Mayor Caul on June 29<sup>th</sup>, the author of the report stated that the information requested and provided in the report, Council had countless prior opportunities to receive this information and furthermore, much of the information is on public record.

j. Unnecessary Cost of the Report:

During the report's presentation on July 12<sup>th</sup>, and in answer to a question from Council, the cost of providing this report resulted in a \$5,000 consulting bill for the Town.

k. Councillor Judson's Letter:

On July 13, Councillor Judson, chair of the EDEC sent a letter to his fellow Councillors outlining a number of concerns about Mayor Caul acting outside of her lawful authority. To the complainant's knowledge no response has been received.

## 6. RESPONDENT INTERVIEW

Mayor Caul stated that it is important to understand the circumstances that happened in the summer of 2021 and to put into perspective her actions and the reasons that this complaint was submitted.

### Meeting with the Town's Solicitors:

On June 25<sup>th</sup>, 2021 Mayor Caul met with the Town's solicitors at their invitation to discuss what was happening with the properties known as Seven Oaks, some property along the highway and Point Park. This is the first time that she met with Mr. Brunetta by herself although the previous Mayor has done so several times. The Chiefs of 'Agency 1' are claiming this land should be brought back into their Reserve. The Town's solicitors have been working over the past few years on trying to clear up just who owns the land. Previous correspondence to the Province has gone unanswered. The Solicitors are adamant that the Town owns the land and the solicitors convinced Mayor Caul to allow them to contact the Counsel, Crown Law Office Civil, Ontario Ministry of the Attorney General regarding this issue. This meeting was called by the solicitors in order to get permission to contact the Provincial Government's Solicitor to inquire as to whether the Town owns the parkland. Mayor Caul advised that she never makes decisions without taking it to Council. However, Mayor Caul, in the end, finally agreed that solicitor should contact the Crown Law Office immediately. The first thing Mayor Caul did at the Council Meeting June 28<sup>th</sup> was apologize saying she felt that she lied to Council when she said she does not make decisions on her own and usually brings everything to Council. In this case she did give direction to the Town's solicitors to investigate the ownership of the parklands. They have written a letter to the Minister and we received no reply and because this has been an ongoing quest for Council for many years.

Once the meeting was over, one of the Councillors asked the Clerk for the notes/minutes of this meeting as well as a copy of the contract the Town should have signed with their solicitors. The Clerk could not find a copy of a contract for solicitor legal services and Mayor Caul advised that no notes were taken at that meeting. The retired CAO also advised that he was not aware of any solicitor contract while he was employed. Despite Mayor Caul being emphatic when telling Council there were no other issues discussed, the Councillor continued on this path that she did not tell the truth to Council. The verbal and written comments back regarding this issue has resulted in that Councillor bringing legal action against the Mayor.

### The SFL and the Transfer to the Boundary Waters Forest Management Corporation (BWPMC):

Prior to the June 9<sup>th</sup> EDEC meeting, Mayor Caul had been in conversations with a private citizen and former member of the Town's Economic Development Committee. The private citizen stated the Town was not successful in bring on a new owner of the Mill but he felt that it would be a great 'trades college'. He has looked very deeply into the whole forest license and the forest audit over the last few years. He had many Letters to the Editor of the local newspaper the last few months letting people know that things have not been done properly and as a result the Mill ended up being torn down. . Mayor Caul wanted to find out what was going on as a community leader. Repap was interested in buying the mill in 2018 but they could not use the wood for anything that Resolute was using therefore Repap could not purchase the Mill based on the stipulations on the sale. This private citizen has been looking into the Sustainable Forest License (SFL) when it was the Cossroute Forest SFL and he was looking for the renewed SFL with Resolute. He could not find it. Council themselves were trying to find

out about the SFL as well so a legal firm was suggested and they asked BWFM to look into this to see if the SFL was renewed properly and that Resolute was working in good faith.

The legal firm gave a report to Council that said the SFL renewal seemed to be okay but they were referencing to 2012's renewal not the 2017 renewal. To renew the SFL (every five years) the company has to go through an audit before the Minister of Natural Resources then signs off on it. Council wanted to know about the 2017 SFL renewal. The private citizen discovered that there was no record of the 2017 audit or the 2017 SFL renewal. Mayor Caul wrote a letter to BWPMC asking for a copy of it. BWPMC was investigating a company that wanted to purchase the mill to produce biomass and Fort Frances Power Corp (FFPC) was also interested in that purchase. Resolute or Rivers Edge kept increasing the price and the biomass company walked away. The FF Power Corp had been cooperating on the potential purchase. During all these negotiations, the Mill is being razed except for the biomass building being left last because of the talks with the biomass company. The talks failed and recently the Town received a request to raze the biomass building even though that company is still working with FF Power Corp to eventually build a biomass operation.

The private citizen has been urging Council to do something about the SFL. Mayor Caul feels that questions to BWPMC were vague and when Repap wanted to buy the Mill between 2018-19, the 2017 SFL renewal should have come into effect. ***[In fact, the Licence was extended to 2032 on December 13, 2017 by an Order in Council # 2326/2017 and the licence amended February 27, 2018].***

Mayor Caul finally did get the SFL renewal from BWPMC but only to find out that it was supposed to be renewed in March of 2017 but it was late (near the end of 2017 before it was renewed). When it was signed it was never made public. As a result, at the next Economic Development Executive Committee meeting Mayor Caul asked why Council was not aware of the term of the renewal was 2032. This meant that Resolute had the wood until 2032. Mayor Caul felt that the President of the BWFM should have known this and advised Council of these facts. The result is that all of the offers to purchase the Mill, Fort Frances would never have an operating mill. The BWPMC President advised that that was correct. This whole revelation did not sit well with the Mayor and determined that Council needed to hear about this. Mayor Caul felt that the private citizen's story is different to what Council has been told up to this point. The private citizen agreed to come to Council to discuss what has happened and since the Forestry Consultant and the President's name would come up in the conversation, this portion of the Council meeting was dealt with in-camera. The Clerk approved this.

#### June 9<sup>th</sup> meeting of the Economic Development Executive Committee (EDEC):

At a June 9<sup>th</sup> meeting of the Economic Development Executive Committee (EDEC) in-camera session, members of the Fort Frances Power Corporation (FFPC) were presenting an item related to an application for a FedNor feasibility study grant for a project that was proposed by the Fort Frances Power Corporation (FFPC). The meeting was interrupted by one of the Senior Staff of the RRFDC and subsequently the meeting was terminated.

Mayor Caul and the Acting CAOs present presumed that the Senior Staff member halted discussion because of potential conflict of interest one of the members of the committee may have. After the meeting, Mayor Caul and the Acting CAO's met to discuss what went on at the EDEC meeting and to consider the next steps. It was decided that a letter should be written to the RRFDC to object to their Senior Staff member's actions at the EDEC meeting of June 9<sup>th</sup>. Mayor Caul volunteered to sign the June 30<sup>th</sup> letter to the Executive Director of the RRFDC. It must be noted that two of the Acting CAOs had handed in their resignations and on top of that, the other two Acting CAOs advised that they would not

be taking on the role of the Acting CAO beyond their existing mandate. Subsequent to that, the Retired CAO came back on July 16<sup>th</sup> and stayed until August 18<sup>th</sup> when the new CAO was hired.

#### Telephone Call with the Forestry Consultant:

On June 15<sup>th</sup> the Forestry Consultant phoned but Mayor Caul did not get to the phone in time to pick up the call. She called the number back not knowing who it was that called. It turned out that it was the Forestry Consultant so they discussed the Executive Meeting held on June 9<sup>th</sup>. The Forestry Consultant advised that she heard from the President who was of the opinion that Mayor Caul had lost faith in him because of the questions she was asking. The Forestry Consultant wanted to know what questions Mayor Caul had. The Mayor advised that she had questions and concerns for both the Forestry Consultant and the President including when the BWFM took over they were operating under the old SFL number and if so why they were not operating under the new BWFM eSFL number. Also why is Resolute still allowed to keep using wood that is now designated for Fort Frances leaving no wood available for a new company to come in and operate. The new eSFL was extended until 2032, why was Council not privy to this information. When Mayor Caul asked these questions, the Forestry Consultant raised her voice and said she had questions too. She also said that without her and the President on this file, Fort Frances would not have a place at the wood supply table. She was angry in her tone and she hung up on Mayor Caul.

This complaint says that Mayor Caul asked the Forestry Consultant to resign. Mayor Caul was emphatic that she 'never said that and never intimated in any way shape or form' that she asked her or the President to resign. The next morning on June 16<sup>th</sup> at 11:18 a.m. Mayor Caul received a call from Councillor McTaggart who advised that he got a call from the Forestry Consultant the previous afternoon who told him she thought she had just been fired. Mayor Caul says she never ever used the word fired, never said she should find another job, never said whether or not she is doing the job that she should be doing – all Mayor Caul said is that she had other questions that need to be answered.

#### The Letter to the Rainy River Futures Development Corporation (RRFDC):

Subsequently, on Wednesday, June 16<sup>th</sup> there was a meeting with the Acting CAOs about their concerns with the Forestry Consultant. They discussed what should be done about it. The Forestry Consultant should not be talking to the Mayor that way, crossing her arms and stopping a meeting that way, etc. They thought letters should be written. They had questions about the wood block. The Acting CAO for that week and the Acting CAO for the next week got together so they could be brought up to date. The two Acting CAOs both crafted the letters of June 29<sup>th</sup> and June 30<sup>th</sup>. Mayor Caul proof read the letters and then volunteered to sign them. This has been a normal thing to do – signing letters crafted by the Clerk, Councillor Judson or even the Forestry Consultant in the past. These letters were sent only to the Executive Director of the RRFDC who obviously showed them to the Forestry Consultant and then replied to Mayor Caul. Mayor Caul said that all her comments were reiterating the concerns of Staff, including those who had taken on the role of Acting CAO. *"Obviously now I wish I had told them to sign their own letter instead of shouldering that myself."*

#### The Report from RRFDC Answering Eight (8) Questions about the SFL Terms:

There was a meeting at the Rendezvous where all the stakeholders met to discuss the SFL terms. Mayor Avis at the time suggested Caul attend to observe. She cannot recall the details of that meeting.

Mayor Caul was of the opinion that the report disclosed nothing new and did not answer all the questions that she had been asking. Also, she is not sure that the report answered all the questions that the management group had asked for in the letter. It did not address the audit nor the Enhanced SFL that was archived. This was a public meeting and provided the public with information that was important to the community. As for the Mayor costing the Town \$4000 for that report, the President is being paid by the Rainy River Future Development and partly the Town of Fort Frances and other municipalities therefore there is not an 'extra' cheque cut to pay for that report. Mayor Caul reported that the private citizen is on record as saying he learned from that report so it was worth the money. Mayor Caul agrees to the fact that she did not understand that Resolute maintained their wood basket and the renewal date of 2032. The Lawyer they hired did not find out about the audit of 2017 but for some reason they were reporting the audit of 2012.

Mayor Caul disputes that she went to all the meetings with the BBWFC and the information session and the only one she attended was at the Rendezvous and did not understand the presentation.

Mayor Caul said it was a shock that Resolute had the wood rights until 2032. Even now do Resolute have to do an audit in 2032? That is still not known.

Mayor Caul did not draft up that letter to the Executive Director of the RRFDC but she volunteered to sign it and that is where she got in trouble. She says she was not trying to be the CAO only trying to find answers.

#### Acting CAO versus the Full Time CAO:

I got the sense that Mayor Caul's understanding of the powers of the "Acting CAOs" is not the same as the full time CAO. There was nothing over and above what actual CAO would have taken on. So in that sense, the Acting CAOs were just keeping up with the day to day tasks. The Acting CAOs would not be getting the emails – they would all come to the Mayor and she would decide the disposition of the subject matter to whatever staff would be best suited to deal with the subject/issue. This was different because everything I get normally as a Councillor is different than what I now would be getting – emails that would normally be in the CAO's realm.

#### Mayor Caul on Repeated Allegations that She Was Acting in the Capacity of the CAO:

There were two occasions where this has proven out: 1) In the July 7<sup>th</sup> email to the Executive Director of the RRFDC she said *"Hi. I have been involved in the CAO role along with Administration since the CAO retired so I do feel I have the authority to ask question on behalf of Council concerns."*; and 2) the July 9<sup>th</sup> email to the Clerk and Councillor Judson where she said *"I was asked by Council to act in the CAO position along with administration..."*. The Mayor advised that she realizes that she cannot legally be the Mayor and the CAO at the same time. She knows that those two times she said that she was 'acting' CAO were wrong.

Mayor Caul says that she 'stupidly' said that she was asked by Council to act in the CAO position. She does not know why she put it that way. The only thing she did was sit in on the Managers Meetings. Caul said she has to own what she said. And she stepped in for the Clerk as the Clerk had no one to stick up for her.

The RRFDC agreement paragraph 25 says that *"The CAO of the Town will be the contractor, RRFDC official contact and will report to the CAO as needed between meetings"* (meetings meaning the Economic Executive Development Committee meetings).

Mayor Caul said she did know of this reporting arrangement. She felt that we did not have a CAO of any kind because the four acting CAOs were stuck in a position that they did not know what to do when the RRFDC issues came up and nobody stepped up to do anything.

I asked Mayor Caul what was her defense of implying or acting as or indicating to people that she had the backing of the Council and that she actively participating as one of the Acting CAOs? Council was asked by the Retired CAO if they had any problems with the Mayor sitting in on the Managers Meetings but she should have worded those statements differently and could have explained that better. She was assuming that the Retired CAO meant that she take an active role in the CAO's daily activities.

## **7. BACKGROUND INFORMATION NECESSARY TO UNDERSTAND THE CONTEXT OF THIS COMPLAINT AND THE RESPONDENTS ACTIONS**

### The retirement of the CAO:

The full time CAO of the Town of Fort Frances retired at the end of May, 2021. Prior to his retirement, he designated four senior staff to take over his duties as "Acting CAOs". An eight week schedule starting June 4<sup>th</sup> to July 19<sup>th</sup>, 2021 was developed. Each week, a different Acting CAO took over at 4:30p.m on each Friday and held the position until the next Friday at 4:30p.m. The CAO held a meeting on May 12, 2021 to discuss the details of the takeover and broadcasted the schedule and the results of that meeting to all Council, Managers and Senior Staff. Each Acting CAO had the same powers as the full time CAO and if any contentious issues arose they were to contact the retired CAO and he would come in. This schedule was to last until a full time CAO was hired by Council.

However, Council asked that the retired CAO return on July 16<sup>th</sup> and he came back to work and stayed until the new CAO commenced his position on August 18<sup>th</sup>.

The reason why this topic is important to this complaint is because the Complainant accuses the Mayor of acting as the CAO.

### Seven Oaks, some property along the highway and Point Park:

The ownership of this property is in dispute and although it has less to do with this complaint, it is the subject of contention with one Councillor and the Mayor. The Mayor's meeting with the Town's Solicitors prompted emails back and forth by that one Councillor, the Clerk and the Mayor. All of Council was copied on the email thread. The reason why this topic is important is because the Complainant accuses the Mayor of acting as the CAO and part of Mayor Caul's reply in that email thread mentions: ***"I was asked by Council to act in the CAO position along with administration"***.

### Meeting of the Economic Development Executive Committee

This committee was established in early 2021 in order for Council to track the issues, developments and development initiatives related to the forest industry and other business initiatives in the Town. At the June 9<sup>th</sup> meeting, under the In-camera session, a presentation was being made by a Senior Staff member of the Fort Frances Power Corporation (FFPC) and one of the Acting CAO's that concerned a proposed grant application to FEDNOR for a feasibility study to be undertaken by the BWFMC regarding biomass. Shortly after the presentation commenced, one of the Senior staff members of the BWFMC succeeded in stopping the presentation. Sometime after the meeting Mayor Caul and some of the Acting CAOs met to discuss what happened that the presentation was stopped and as a result a letter, dated June 30<sup>th</sup>, was crafted by the CAOs and sent to Executive Director of the RRFDC – the entity whose is responsible for the Senior staff of the BWFMC. In that letter, it attempted to address the 'issue' of that Senior staff member's actions at the June 9<sup>th</sup> EDEC in-camera discussion. The main issues addressed were that the Senior staff member interrupted the presentation and texted the Chief Building Official/Municipal Planner advising him not to answer a question posed by a member of Council related to the topic of

discussion. The letter takes issue with the Senior staff member of the BWPMC directing staff not to respond to Council during a meeting of the EDEC and furthermore that Senior BWPMC staff member cannot unilaterally direct any member to declare a conflict of interest – the onus is on the member himself/herself to declare any conflict of interest they perceive that they may have.

This letter is important to the Complaint because instead of the CAO of that week signing the letter, Mayor Caul signed the letter when it clearly states in the agreement (Article 25) with the RRFC that only the CAO is to address staff issues.

#### Telephone Conversation between Mayor Caul and the Forestry Consultant of the BWPMC

On June 15<sup>th</sup> the Forestry Consultant of the BWPMC telephoned Mayor Caul to discuss matters she perceived were contentious issues of the Mayor. Mayor Caul missed the telephone call and she phoned the number back. Mayor Caul told the Forestry Consultant that she had some questions for her and the President of the BWPMC about wood rights, and whether or not Fort Frances and the Rainy River District are able to see the benefits. According to the Mayor, the Forestry Consultant became agitated, raised her voice and hung up. This conversation was addressed in the June 30<sup>th</sup> letter to the Executive Director of the RRFC complaining that *“it is simply not acceptable for a contracted consultant to behave this way towards out staff, community partners, and members of Council. Please be advised that if this conduct continues, we will be forced to look elsewhere for these services”*. This phone call is important because the Complaint contends that Mayor Caul spoke to the Forestry Consultant on the false pretense that she had direction from Council to do so. Furthermore, the Complainant contends that Mayor Caul accused the Senior Staff of the BWPMC of withholding information and went on to contend that Mayor Caul asked for the President’s resignation and would also be open to receiving the Forestry Consultants resignation as well. This telephone conversation is important to the Complaint because Mayor Caul had no authority to request any of the BWPMC to resign and therefore allegedly overstepped her authority.

#### The Closing of Resolute Forest Products Mill – a major employer of the Town of Fort Frances

In 2014, Resolute Forest Products Inc. started to close their Pulp mill situated in the downtown core of the Town. Resolute was the holder of the Sustainable Forest License issued by the Ontario Minister of Natural Resources and Forestry (MNRF). The SFL has been held by this entity for many years. The SFL covered the Crossroute and Sapawe forests. Resolute and the Ministry of Natural Resources and Forestry (MNRF) entered into negotiations to determine the conditions and terms of the SFL carrying forward after the shuttering of the Mill. The result of those negotiations saw a new enhanced Sustainable Forest License (eSFL) issued to the Boundary Waters Forest Management Corporation (BWPMC). The BWPMC was created to amalgamate the Crossroute and Sapawe forests into one ‘forest’.

The License was executed and delivered by the Ministry of Natural Resources and Forestry September 10, 2020. The term of this licence was extended by an Order in Council on December 13, 2017 and expires on the **31<sup>st</sup> day of March 2032** but may be extended in accordance with section 26(4) of the *Crown Forest Sustainability Act*.

The management of the forests was transferred to the Boundary Waters Forest Management Corporation, **prior wood commitments were not altered**. The wood directives could not be changed when the Ministry transferred the Sustainable Forest Licence from Resolute to Boundary Waters Forest. It was a condition of the negotiations that the minister’s commitments would move from one SFL to the other. That meant that Resolute had the bulk of the wood commitments and Boundary Waters Forest Management Corp. had only the surplus or excess wood allotments to entice new industry to the Town.

Since the announcement of the Mill closing, the Council of the Town of Fort Frances has been active in trying to secure a replacement mill or industry to recover the employment lost because of the closing.



Since Resolute maintained their prior wood commitments, they determined the use of the bulk of the wood harvest.

The Boundary Waters Forest Management Corp (BWPMC) has nine (9) Class A shareholders (including seven First Nations) and four (4) Class B shareholders. The shareholders are all local businesses (including Resolute) which means that BWPMC can control 'where' the wood fibre is used. The 2020 to 2030 Forest Management Plan distributes the wood fibre to the following businesses:

Norbord	23.44%
Nickel Lake Lumber	2.08%
Resolute	66.94%
Manitou FP *	2.08%
BioPower SE *	5.46%

\*Consumption rights are contingent on executing an MOA with BWPMC

This allocation means that three companies – Norbord, Nickel Lake Lumber and Resolute – claim 92.46% of the harvested wood allocations in the ten years from 2020 to 2030. It also means that only 7.54% of the wood harvest can be allocated to other businesses like Manitou and BioPower. However, BWPMC can also try and find a market for parts of the forest that have not been traditionally used like the tops, limbs and scrap timber.

The closing of the Resolute mill is important to this Complaint because the resulting actions – the establishment of a new Crown Forest (the Boundary Waters Forest); the transfer of the Sustainable Forest License – presented many challenges for the community and the Council. This is important to the Complaint because of the complex results of the eSFL and the terms of it, were not fully understood by the Mayor and some Council members. Consequently, this misunderstanding or gaps in the eSFL terms resulted in mistrust of some Senior Staff by Mayor Caul.

#### Council Meeting of June 14, 2021

Mayor Caul invited a citizen of the community, who was a retired member of the Towns Economic Development Committee, and a person who took it upon himself to research the transfer of the old SFL held by Resolute to the BWPMC. His research has been the subject of many letters to the editor in the local newspaper. It is my contention that this citizen's interest and his letters to the editor piqued the interest of Mayor Caul with information that she may not have been aware of. Part of that information was the fact that Resolute held the rights to the bulk of the wood fibre and the fact that those rights would be held to March 31, 2032. This individual was invited by Mayor Caul to make a presentation to Council scheduled for June 14, 2021. The meeting was held In-Camera (Closed Council Session) because the presenter took issue with some of the information he felt was not supplied to Council by the Staff of the BWPMC. In addition, this individual felt that the 'Forest Audit' undertaken at the end of the life of the previous SFL holder, had serious flaws. Mayor Caul wanted the rest of Council to hear, officially, the research this person had uncovered. This is important to the Complaint because this report alluded to misinformation or gaps in the information provided by Senior staff of the BWPMC to the Mayor and Council. In my opinion, the report made at this in-camera Council meeting triggered further action from Mayor Caul that resulting in allegations in the Complaint that the Mayor overstepped her authority.

#### Contentious Issues between Mayor Caul and the BWPMC

The report presented by a concerned citizen at the June 14, 2021 Council meeting left Mayor Caul questioning the information or her 'perceived' lack of information she was getting from her own Staff regarding the terms and conditions of the eSFL. Parts of the information gleaned from the report on the June 14<sup>th</sup> Council In-camera session, Mayor Caul felt it was not collaborated by any of the BWPMC Staff. As a result, on June 29<sup>th</sup>, Mayor Caul requested a formal report from the RRFDC on the Sustainable

Forest License and the BWFCM full update on eight (8) items. This request was to be received by Wednesday, July 7, 2021 and it was presented to Council by the Senior Staff of the BWFCM on July 12, 2021. The Report contained several references to four (4) dates whereby the information presented in the report was previously made available to Council. This is important to the Complaint because the July 12<sup>th</sup> report had much of the information already provided to Council on four other occasions and therefore was redundant but also cost extra to make, especially over the July 1st holiday weekend.

#### Letter of June 30<sup>th</sup> from the RRFDC to Mayor Caul

On June 30<sup>th</sup>, Mayor Caul sent a second letter to the Executive Director of the RRFDC raising complaints about the Forestry Consultants alleged misconduct during the June 9<sup>th</sup> EDEC meeting. This letter prompted a rebuttal to the Mayor's allegations made against RRFDC staff and questioning whether the Mayor was acting on her own accord or under some other authority. The letter goes on to say that under authority of Article 25 of the Service Agreement between Fort Frances and the RRFDC, the RRFDC will report to the CAO as needed between meetings. In addition, the RRFDC will report to the EDEC at each regular meeting unless otherwise specified by the committee, and will receive direction from the EDEC and Council as a whole. The letter also asked for clarification of the municipalities understanding of the reporting structure. This letter is important to the Complaint because subsequent to this letter, an email thread between the Executive Director of the RRFDC and Mayor Caul prompted Mayor Caul to justify her letters about staff issues and request for a report saying: "*I have been involved in the CAO role along with Administration since the CAO retired*".

## **8. SUMMARY OF FINDINGS**

### **a. USING "PERSONAL MATTERS" EXEMPTION MUNIC. ACT Section 239(2) TO MOVE AN ITEM INTO CLOSED SESSION - UNSUBSTANTIATED**

Mayor Caul placed an item – License Update – on the Closed Session of Council on June 14, 2021 under the exemption of the Municipal Act section 239 [...] (2)

A meeting or part of a meeting may be closed to the public if the subject matter being considered is, [...] (b) personal matters about an identifiable individual, including municipal or local board employees.

The Clerk in the case of Council, or the secretary in the case of a local board, must take this definition into account when determining whether to recommend that a matter be deliberated in closed session. It must be remembered that the exemptions stated in the Municipal Act Section 239 (2) are the exceptions and not the rule. It is the intent of the legislation that Councils hold all meetings in the public's view.

#### **Finding:**

In a ruling regarding the County of Norfolk, the Ombudsman stated that:

*Generally, information that pertains to an individual in their professional capacity will not fit within the personal matters exception. However, in some cases information about a person in their professional capacity may still fit within the exception if it reveals something personal<sup>[3]</sup> or relates to scrutiny of an individual's conduct. For example, information about an employee's job performance is considered personal information.*

Interviews of Councillors that attended the June 14<sup>th</sup> meeting revealed that two individual Senior Staff were mentioned during the presentation.

**b. ACTING AS THE CHIEF ADMINISTRATIVE OFFICER – SUBSTANTIATED**

**Finding:**

I found two occasions where Mayor Caul mentions that she is acting in the role of the CAO.

The first instance she replied in an email to one of the Councillors that ***“I was asked by Council to act in the CAO position along with administration...”***

The second instance she replied to a Senior Executive that ***“I was asked by Council to act in the CAO position along with administration”***.

Both of those occasions violated section 259 of the Municipal Act and section 5.0 of the Council/Staff Relations Policy and Article 25 of the Service Agreement between Fort Frances and the RRFDC and section 5.1.1 of the Procedural By-law

The Mayor has no role in the Administrative side of the operations. The CAO, or the Acting CAOs should be consulted and relied on to carry out their duties under the Council/Staff relations policy.

**c. THE CAO AND THE STAFF - SUBSTANTIATED**

**Finding:**

The Mayor violated the Council/Staff Relations Policy 6.0 subsection 2 and the agreement with the Rainy River Futures Development Corporation Article 25 in her letters to Executive Director on June 30<sup>th</sup> attempting to address the issue she had with the staff of the Boundary Waters Forest Management Corporation. The issue should have been addressed by the Acting CAO.

The onus is in on the Acting CAOs to do their job and perform their important roles within the policies of the municipality and the Municipal Act. Separation of the roles between the Head of Council and Staff cannot be over emphasized.

**d. TELEPHONE CALL BETWEEN MAYOR CAUL AND THE FORESTRY CONSULTANT – PARTLY SUBSTANTIATED AND PARTLY UNSUBSTANTIATED**

**Finding:**

Interview with the BWFMC Forestry Consultant:

The conversation “went poorly”. The purpose of the phone call was to answer any questions/concerns the Mayor had. The Mayor was ‘hostile’. *“The Mayor did not make sense within any context the Forestry Consultant had with the Mayor before. Mayor Caul was pointing at the President and was withholding information from Mayor Caul and Council. Mayor Caul was very concerned about our performance and implied that BWFMC had an agenda separate from the Town’s. Mayor Caul represented herself as speaking for Council.”* The Forestry Consultant said that Mayor Caul did not ask for resignations. . The Forestry Consultant asked: *“are you asking for resignations?”* ... the Mayor replied: *“We have significant concerns”*. The Forestry Consultant said: *“the Mayor did not say those words but to leave that conversation and not take the notion that the Mayor was asking you to quit would be to have to hear an entirely different conversation”*.

Mayor Caul has said she did not ask for any resignations. Mayor Caul did not seem to know the eSFL terms and the renewal date of 2032 and thinks the old SFL would just be transferred to the BWFMC and they would have full control of the wood supply and who could use it. Mayor Caul did not say what information was missing but was advised that *“all information that she needed was in those conversations and reports tables on numerous occasions that the President of the BWFMC had with Council”*. In the Forestry Consultant’s opinion, *“a year before Mayor Caul is conflating in her mind around the SFL and the Independent Audit and a year before she would have understood everything”*. The Forestry Consultant mentioned that *“Mayor Caul is a smart and lovely person”*

Interview with the President of the BWFMC:

The President advised that there is a *“lack of understanding but in all fairness this is complicated stuff”*. I asked the President if Mayor Caul expressly ask for his resignation and he replied she did not ask him nor did she suggest or imply that he resign.

There is a study/investigation going on right now to calculate the excess softwood (e.g. the slash and the tops that could be grinded up for biomass pellets) to determine other business opportunities.

Mayor Caul implied she had the blessing of Council. However, the only indication that the Mayor may have had Council’s prior approval to address these issues with the two Senior Staff, might have been indicated in the Council minutes of June 14<sup>th</sup> that made reference to the In-camera session - Section 10.1 *“Council supported Mayor Caul to move forward as directed”*. I was not able to determine what that direction was.

In her letter of June 30<sup>th</sup> to the Executive Director of the RRFDC, Mayor Caul wrote: *“Please be advised that if this conduct continues, we will be forced to look elsewhere for these services.”*

I pointed this out to the Mayor during one of our interviews and asked her how that would happen and she said that it was not Council’s option to fire the Staff – it would not happen.

Nonetheless, the Council/Staff Relations Policy and Article 25 of the Service Agreement between Fort Frances and the RRFDC was breached along with section 5.1.1 of the Procedural By-law that says: No individual Council member may direct any member of staff to perform such duties that have not been authorized by a resolution of Council. Mayor Caul is also reminded of section 8.3 of the Code that says: Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.

It is important that the Head of Council not over step the authority of Council when dealing with any of the Staff and bring into play legal actions that the Council may be forced to contend with.

**e. MAYOR CAUL’S REMARKS AT THE JUNE 28<sup>TH</sup> COUNCIL MEETING - UNSUBSTANTIATED**

**Finding:**

The minutes of the June 28<sup>th</sup> Committee of the Whole meeting contains the following regarding Mayor Caul’s remarks:

*“Mayor June Caul – A Verbal Update was provided congratulating the OPP Drug Enforcement Team on recent local drug bust, update on Naicatchewenin First Nations evacuation, various community concerns respecting the international bridge, ESFL – wood allocation, railway to Rainier, new CAO decision and finally an update on a recent webinar for mayors delivered by George Cuff.”*

A copy of the Report was obtained. All Councillors that were at that meeting, except one, did not think that the Mayor made false accusations, claims and statements contributed to the senior staff of the BWFMC.

**f. MAYOR CAUL’S LETTER TO THE RRFDC - SUBSTANTIATED**

**Finding:**

The Mayor’s letter of June 29<sup>th</sup> clearly states *“I am requesting a formal report on the Sustainable Forest License and the Boundary Water Forest Management Corporation specifically a full update on at least the following items: (she listed 8. Items).*

There is no evidence that Council or the EDEC authorized this report. This violated the Council/Staff Relations Policy Section 6.0 subsection 3. Use of Officers & Staff Time – Members of Council should use Officers and Staff time thoughtfully. Requests from Council take Officers and Staff time away from other issues or problems that may need attention. Members of Council should be discouraged from asking for Staff reports in an effort to delay potentially an unpopular decision.

Also, the Procedural By-law section 5.1.1 was violated – directing staff without a Council resolution approving the request.

Even though it will take time to obtain prior approval from Council to sanction a report like this, it is imperative that the Mayor obtain Council's approval and once Council collectively decides such a report is beneficial, they can request it.

In addition, it is important to note here that should the Mayor require information about a complicated subject such as the terms of the eSFL, she should rely on the expertise of the staff of the BWPMC. The Acting CAO can facilitate an information session which would have been a better use of Staff time.

Council Procedural By-law promotes this by saying: Council Members will liaise with the Chief Administrative Officer on any given matter concerning the municipality.

**g. MAYOR CAUL'S SECOND LETTER TO THE RRFDC: - SUBSTANTIATED**

**Finding:**

The letter makes mention that the Forestry Consultant interrupted the presenters and stopped the meeting of the EDEC of June 9<sup>th</sup> and advised the Chief Building Official/Municipal Planner to not answer a question posed by a member of Council related to the topic of discussion.

Mayor Caul and the Acting CAOs were under the impression the Forestry Consultant had the meeting interrupted because she felt there was a member of the Committee that had a conflict of interest.

Mayor Caul stated that the Forestry Consultant did not have the authority to direct staff and neither did she have the authority to make the decision that a member had a conflict of interest.

Sometime after that meeting on June 9<sup>th</sup>, the Mayor and the Acting CAOs met to discuss what happened at that meeting and crafted a letter that Mayor Caul volunteered to sign.

The Acting CAO of that week should have signed the letter.

In my interviews with the Forestry Consultant, the reason she interrupted the presentation was because of confidentiality reasons. The BWPMC were negotiating a business initiative with a company and further discussion would have brought details of that initiative out into the public realm. The discussions would have been better dealt with by Council in-camera.

I interviewed the Chair of this committee and he explained what happened. This committee is unique because there are members on it that are not members of Council – they are appointed from the community. Because that is a new practice there was some confusion from Council as to whether we can proceed in-camera with those members present. As a result of that there was some objection to proceed with that item with those individuals present. The Forestry Consultant objected to the proceedings on that basis. The question was, if those members are governed by the Code of Conduct are they entitled to be present for in-camera items. But it did not make sense that they should proceed with an in-camera item only to repeat the same discussion four days later at a Council in-camera meeting. In the meantime the Clerk was asked for clarification. If any member of the Committee had questions they should have raised a 'point of order'. It was not clear if the Forestry Consultant used those words but the Chair understood it that way.

The Mayor violated the Council/Staff Relations Policy Section 5.0 and the Service Agreement with the Rainy River Futures Development Corporation Article 25 in her letters to Executive Director on June 30<sup>th</sup> attempting to address the issue she had with the staff of the Boundary Waters Forest Management Corporation. The issue should have been addressed by the Acting CAO as stated in Council's Procedural By-law section 5.1.4 – Council members are encouraged to request information directly from the CAO.

In addition, the Acting CAO of the week could have easily asked the Chair or the Forestry Consultant about the situation before assuming anything. It would have been as simple as communicating with the applicable staff or the chair before issuing such a letter. This is emphasized in section 5.1.4 of the Procedural By-law.

#### **h. MAYOR CAUL'S EMAILS TO THE EXECUTIVE DIRECTOR OF THE RRFDC – SUBSTANTIATED**

##### **Finding:**

An email from June Caul to the Executive director of the RRFDC stated: *"I have been involved in the CAO role along with Administration since the CAO retired, so I do feel I have the authority to ask questions on behalf of Council concerns"*.

The Mayor violated the Council/Staff Relations Policy Section 5.0, section 5.1.1 of the Procedural By-law and overstepped her authority given to her by the Municipal Act. The process cannot be clearer.

#### **i. UNNECESSARY REPORT REQUEST – SUBSTANTIATED**

##### **Finding:**

In the Executive Director's report he makes mention in four (4) different sections of his report that the information requested by the Mayor has been made available to Council on October 2, 2019, January 29, 2020, September 9, 2020 and November 23, 2020.

The Mayor claims that she attended one (1) information meeting where the SFL was discussed but she had no knowledge of the extent Resolute had the bulk of the wood basket and that the eSFL's renewal date was stretched out to 2032. In my interviews with Council there were some who, like the Mayor did not know the SFL details and some that did know the commitment to Resolute's and the fact that the next renewal of the SFL would be 2032.

In addition, after Mayor Caul's first interview, I went on the BWPMC website and the SFL terms and renewal date is easy to find.

I also obtained a copy of a power point presentation of September 5, 2019 where the MPP and representatives from the Ministry of Natural Resources and Forestry gave a presentation to some Council members and Senior Staff in the Committee Room at the Civic Centre. This presentation explains the "Wood Supply and the Management" of the Boundary Waters Forest. This presentation was given right around the time of the controversy of the Mill and the wood rights. Questions were asked at that meeting about the exclusive wood rights given to the previous licensees and the Province replied that they have done their diligence on this and despite what the Act says we do have a common law duty to the existent licensee, who has made investments in managing the forests, and, the Province would be exposed to significant litigation if they did not conduct themselves and maintain some of their expectations about the license that they had.

This violated the Council/Staff Relations Policy Section 6.0 subsection 3. Use of Officers & Staff Time – Members of Council should use Officers and Staff time thoughtfully. Requests from Council take Officers and Staff time away from other issues or problems that may need attention. Members of Council should be discouraged from asking for Staff report in an effort to delay potentially unpopular decision. Again, section 5.1.1 was also violated because no Council resolution was requested.

#### **j. UNNECESSARY COAT OF THE REPORT - SUBSTANTIATED**

##### **Finding:**

Councillor Judson's letter to Council about his concerns of the Mayor acting outside of her authority he states that *"the report was generated by the RRFDC over the Canada Day long weekend. When I inquired last night (July 12<sup>th</sup>), I was informed that this generated a consultant bill of over \$4,000 for the Municipality."*

While the report was prepared by the President of the BWPMC over the Canada Day weekend, it is not clear whether this resulted in 'extra' costs to the Town or whether the Staff wages were part of their yearly salary and not 'extra'. However, the writer clearly points out that since the information had been given to Council over the last few years, there is a cost to put this report together. In addition the RRFDC consulted their solicitor as to the legality of the request and that resulted in a \$900 invoice.

This violated the Council/Staff Relations Policy Section 6.0 subsection 3. Use of Officers & Staff Time – Members of Council should use Officers and Staff time thoughtfully. Requests from Council take Officers and Staff time away from other issues or problems that may need attention. Members of Council should be discouraged from asking for Staff reports in an effort to delay potentially an unpopular decision.

#### **k. COUNCILLOR JUDSON'S LETTER - SUBSTANTIATED**

##### **Finding:**

Councillor Judson wrote a letter to Council in which he outlined four (4) concerns he had with Mayor Caul "acting outside of her authority". The letter concluded with the expectation that *"further discussion of these issues will take place, perhaps including the Special Council Meeting that has been called for July 14<sup>th</sup>"*.

At the writing of this report, no such meeting or discussion has taken place.

## **9. CONCLUSIONS**

Misinformation about **why** the presentation at the June 9th EDEC meeting about a potential grant application for a feasibility study was halted, in my view, prompted the Acting CAO staff and the Mayor to write that letter to the RRFDC Executive Director. The discussion was halted in order not to potentially violate the private negotiations with a client of the BWPMC that should not have been made public. The discussion was better suited for a Council In-camera meeting not at the EDEC meeting. Communications could have been better and avoided the confrontation with the BWPMC and the RRFDC Staff.

In my interview with the Mayor she inferred that pertinent information was missing regarding the terms of the eSFL and the renewal date. She felt that this information should have been clearly provided to Council. Her complaint about the Staff of the BWPMC focused on that "missing" information. The Mayor was concerned that while Council hoped to spearhead a replacement industry for the closed Resolute plant, their efforts were unsuccessful because Resolute had the bulk of the rights to the wood supply right up to 2032. It was clear to me that the Mayor felt Council's efforts would have been better spent on other initiatives had everyone known the full terms of the eSFL.

Interviews with Mayor Caul and the Forestry Consultant made it clear to me that both parties were not in a cordial mood during that conversation. The Mayor saying *“the Forestry Consultant raised her voice and said she had questions too and was angry in her tone and ended up hanging up on the Mayor”*. Conversely, the Forestry Consultant said *“Mayor Caul was hostile (probably a strong word to use) and she was particularly pointing at the President, has withheld significant information from her and Council and that we didn’t provide them with important information in order for Council to make decisions and this had been an ongoing problem and she used verbiage like ‘She was very concerned about our performance and implied that the Forestry Consultant and the President had an agenda separate from the Towns. I was a very uncomfortable and shocking conversation and up until this time the Mayor or the CAO had not represented any concerns of the RRFDC or any of the Consultants”*. Despite the unfriendly banter during the telephone call, the Forestry Consultant retains no animosity toward the Mayor and perceives her to be a smart and a lovely person.

I believe the fact that the Mayor was not aware of the terms of the eSFL - the bulk of the wood harvest retained by Resolute, Nickle Lumber & Norbord (92.46%) and the renewal date of 2032 – prompted the bulk of the Mayor’s actions and therefore the breaches of the Code, the Municipal Act, the Service Agreement with the RRFDC and the Procedural By-law.

In addition, the Mayor began to listen to the concerned citizen who wrote several letters to the editor of the local newspaper about how the SFL was transferred to the BWPMC and she suddenly realized that some of the information that this citizen was stating had new information and perhaps information contradictory to what Council may have been receiving from their own Staff. In speaking with the President of the BWPMC, I am quite confident that he and his staff were watching the negotiations between the Province and the Mills very closely. It was clear to the President that the transfer of the enhanced Sustainable Forest License to the BWPMC would not have happened without the terms that were negotiated. While Resolute, Nickle Lake Lumber and Norbord secured 92.46% of the wood until 2032, the benefits to the Rainy River District and the Town of Fort Frances are that the shareholders of the BWPMC controlled where the wood fibre went and any surplus fibre could be used to entice other industries to the district.

In order to keep Council informed and on top of the new initiatives at enticing new industry to the Town, the Council established the Economic Development Executive Committee (EDEC) in January 2021. The BWPMC reported on a regular basis to that Committee. However, by that time the eSFL was transferred and all of the terms were finalized. If the Mayor was seeing the efforts of the BWPMC being focused on only a small portion of the wood supply, she would have been confused as to why another major industry could not be secured and mistrusted the performance of the Forestry Consultant and the President.

In my opinion, the retirement of the CAO was a major factor in the actions taken by the Mayor. In May 2021 the CAO set up a schedule of Acting CAOs which would suffice until a new CAO was hired. It was an eight week schedule with four different Senior Staff slotted to assume the role of ‘Acting CAO’. Three of the four Acting CAOs would be candidates/applicants for the new CAO position. A Staff meeting was held and the Mayor and Deputy Mayor were invited to attend. During that meeting (there are no minutes available), it was agreed that the Mayor would receive all of the CAO’s emails and correspondence and she would direct those emails and correspondence to the Senior Staff (including the Acting CAO of the week) and Managers so that each issue would be handled by the proper department. A caveat agreed upon was that if a major issue came up the retired CAO would be contacted and he would come into the office and handle it. It is my contention that the Mayor, having



the duty to receive the retired CAO's emails and correspondence, took on what looked to be an active role in the CAO position – albeit voluntarily.

In Mayor Caul's words: *"The Acting CAOs would not be getting the emails – they would all come to the Mayor and I would decide the disposition of the subject matter to whatever staff would be best suited to deal with the subject/issue. This was different because everything I get normally as a Councillor is different than what I now would be getting – emails that would normally be in the CAO's realm. That was Doug Brown requesting that".*

Furthermore, in speaking to Mayor Caul, she was of the opinion that the 'Acting' CAO role is different than the full time CAO position. Ergo in her mind, her involvement in the Administration was obvious. But, in speaking with her, she realizes that she cannot legally be the CAO in any shape or form. Having said that, I believe her propensity to help was the overriding thing that propelled her into the CAO realm more than she should have been. Sitting back and seeing the issues arise and not taking an active role in trying to rectify them was not in her character. When I interviewed the Retired CAO, he stated that when he came back to work on July 16<sup>th</sup> (and stayed until Aug. 18<sup>th</sup> when the new CAO was hired) he could not believe how much things had changed for the worst. The Retired CAO believed that Mayor Caul was over her expertise but she was doing it in good faith just to get through the process until Council hired a new CAO.

In my opinion, the role of the Head of Council & CEO from the description in the in the Municipal Act, can be easily misunderstood. The role and responsibilities of a head of Council differ from those of a corporate chief executive officer in a meaningful way: the head of Council does not have the same powers as the CEO of a corporation. More specifically, unlike a corporate CEO, the head of Council does not have the power to commit the municipality to anything unilaterally. The head of Council becomes a trustee in the public interest when she accepts the role and that trust is in danger when imprecise analogies are drawn. Any erroneous belief that the Mayor, by virtue of being described as the "chief executive officer of the municipality", without Council's agreement or approval, underpins the lack of transparency and accountability. Council as a whole is the directing mind of the municipality – not the individual members. Council members must not seek to wield that power unilaterally or away from the Council chamber. Explicit Council authorization should be required where Council delegates its authority to a specific member of Council. Council's silence is not the same as Council's consent.

## **10. RECOMMENDATIONS**

This complaint has forced Mayor Caul to see the where she has overstepped her mandate as Head of Council. Gone are the days of 'small town' politics where Councillors paid a visit to the Town's solicitor or meet one on one with Senior Staff about an issue or meet with the road superintendent/foreman to discuss a specific project. Municipal Councils are the directors of a multimillion dollars corporation and there is a growing culture to act like one. Municipalities are creatures of the Province and recent legislation changes like the Accountability and Transparency section of the Municipal Act, are formalizing the way the corporation operates.

The head of council has a prominent and very public profile. Many citizens within your municipality will have high and often varied expectations for the head of council. The head of council must find a way to balance these expectations and special responsibilities. **Municipal decisions, however, are made by council as a whole. Generally, the head of council does not have any more power than any other member of council to make decisions on behalf of the municipality. Each member of council is equal to the other and only has one vote.** I have been told that the decision to allow the Town's solicitors to contact the Provincial solicitor at the meeting of June 25<sup>th</sup> was the only time Mayor Caul had made a fundamental decision away from the Council chamber. This being an anomaly, she apologized to Council at the June 25<sup>th</sup> Council meeting.

During the Summer of 2021, circumstances such as the CAO retiring, the efforts to replace the major employer in the Town and the Mayor and Council keeping up with the complex terms of the new Sustainable Forest Licence are all contributing factors to the Mayors actions in my view.

I also feel the Mayor was relying too much on the narrative of a concerned citizen regarding how the transition from the previous holder of the SFL to the new Boundary Waters Forest Management Corp. materialized. The subject matter is very complex and Mayor Caul should have trusted her Staff to act in the best interest of the Town. Most of the accusations submitted by the complainant are substantiated. What is not documented is the miscreant actions of Mayor Caul were done with no malice but with the best interests of the Town in mind. Whether it was a lack of experience or lack of thought, it is my opinion that Mayor Caul could have recognized that putting herself in the midst of the Administration as an active participant was wrong. She had the where withal to ask advice of the CAO, even though he was retired. He would have been extremely helpful should she have gone to him for advice on each and every major concern she had. He was a phone call away and would have been able to provide a 'readers digest' explanation of the terms and conditions of the SFL transfer. The CAO and the Head of Council normally have a close working relationship. Communications solve a myriad of problems. Mayor Caul should remember the four words that define good communications: ASK MORE, TELL MORE. A walk across the hall to the CAO's office and you will find a wealth of information about the inner workings of the Corporation and what's going on. Because the Mayor is so much in the public eye, she cannot assume things. She is expected to have the answers to Council questions and the media's inquiries.

I recommend that Mayor Caul refresh her memory on the role of the Head of Council. This can be done online by studying the Ministry of Municipal Affairs: **Ontario Municipal Council's Guide**. I am sure that Mayor Caul has been exposed to this guide in this or a previous term on Council.

I am not recommending any sanctions for Mayor Caul as a result of her actions during the summer. Council has hired a new CAO and Mayor Caul has professional expertise to help and guide her. It is imperative that she use her Staff for the knowledge and advice that they can give her.

I recommend Council receive this report for information.

Paul S. Heayn,  
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