

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

Complaint #5

REPORT AUTHOR: Paul S. Heayn, Municipal Consultant, Dryden, Ontario

July 10, 2022

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 and the Municipal Conflict of Interest Act

2. BACKGROUND

I received a complaint under the Fort Frances Code of Conduct on February 17, 2022 from a person that wishes to remain anonymous. Attached to the complaint were eleven (11) enclosures that included newspaper articles, council minutes, and council correspondence and MFIPPA productions.

This is the list of the eleven (11) documents enclosed:

1. Affidavit of the Requester, dated February 11, 2022
2. October 27, 2021 article from the Times;
3. October 28, 2021 email from Mayor Caul to all members of Council;
4. November 8, 2021 memo to Council (from item 7.1 of this date's meeting);
5. November 8, 2021 Council meeting Minutes;
6. November 8, 2021 meeting audio recording;
7. November 8, 2021 meeting audio recording;
8. January 5, 2022 letter from Peter Howie to Mayor and Council;
9. January 10, 2022 Council meeting agenda;
10. MFIPPA 2021-05 productions (containing Mayor Caul's emails about the leaked memo and motivations for doing so);
11. MFIPPA 2021-07 productions (indicating no other member of Council transmitted lawyer-client privileged material to a member of the public)

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 and Sections 5.1 & 5.2 of the Municipal Conflict of Interest Act.

The Requester (anonymous) contends that by leaking the confidential information, the Mayor is in violation of section 3.1, 10.1, 10.2, 10.3, 10.4, 11.1 and 16.2 of the Code of Conduct and sections 4.11 and 7.7 of the procedural bylaw (which is incorporated into the Code of Conduct).

The Council Code of Conduct

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

3.1 DEFINITIONS (a list of definitions are outlined for the Fort Frances Council Code of Conduct.

10.1 No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office, in any form including, but not limited to, written notes, reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so.

10.2 No Member shall use Confidential Information for personal or private gain or benefit, or to disadvantage any other person or body.

10.3 Unless required by law, no Member shall disclose the substance of deliberations of meetings held in-camera and that are authorized to be held in-camera under the Municipal Act, 2001 or any other legislation unless or until Council discloses such information at a meeting that is open to the public or otherwise releases such information to the public.

10.4 Without limiting the generality of the foregoing, no Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information: a) Information concerning litigation, negotiation or personnel or labour matters; b) Information the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence); c) Price schedules in any contract, tender or proposal document while such remains Confidential Information; d) Information deemed to be "personal information" under the Municipal Freedom of Information and Protection of Privacy Act; and e) Any other information or statistical data required by law not to be released.

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.

16.2 The following policies govern the conduct of Members:

Procedural By-Law 34/95

By-Law to Establish Boards/Committees of Council 53/16

Media Communication Policy 1.1

Social Media Conduct Policy 3.27

Use of Corporate Resources in Election Periods Policy 1.17

Workplace Harassment Policy 5.34.1

Workplace Violence Policy 5.34

Council/Staff Relations Policy TB

Procedural By-law

The Mayor violated the following three (3) sections:

4.11 Confidential Matters

Members are to ensure that confidential matters disclosed to them during meetings closed to the public, are kept confidential. No member, officer or employee of the Corporation shall disclose the content of the matter or substance of the deliberations of a Closed Meeting, unless expressly authorized to do so by Council as required by law or to respond or make disclosures to the extent necessary in respect of any legal proceeding or requirement. Any Member, who contravenes the confidentiality clause, may be subject to penalties in accordance with the previously adopted "Code of Conduct" by-law

7.7 Code of Ethics – Confidentiality

7.7.1 In-Camera subjects – public interest

Upon completion of any "In-Camera" council meetings, the decisions of the Council with respect to any of the items listed within Section 239 (2) of the Municipal Act, 2001; and direction to municipal Administration in accordance therewith, shall then be reported publicly by Council, to the extent that the Municipal Act, 2001 and the public interest permits.

7.7.2 Council Response – In-Camera enquiries

The response of Council Members to enquiries about any matter dealt with during an "In-Camera" closed meeting, prior to it being reported publicly, shall be "This matter is still under advisement" "no comment", or words to that effect.

a) Release of Information

The release of any information about matters dealt with by Council at a closed meeting shall be by the Mayor or her/his delegate only upon direction of the majority of Council.

b) Members – expressing personal position

Notwithstanding Section 7.7.2 (b), unless council by vote determines otherwise, upon the public disclosure of any report discussed at an "In-Camera" meeting, (closed to the public), any individual Member may express their own personal position on the item, but shall not refer to or discuss the specific positions or opinions (written or verbal) of other Members or of municipal administration or staff.

c) No public release – documents

Agendas or any items thereon for consideration by Council at a meeting closed to the public shall not be released to the public.

d) Obligation – confidentiality

It is the obligation of each Member of Council to keep information confidential and this obligation continues even after the Member ceases to be an elected Member of Council

The Municipal Conflict of Interest Act, 2001

By failing to declare an interest, continuing to participate in and chair the consideration of item 7.1 and influencing the disposition of item 7.1 on November 8, 2021, the Mayor violated sections 5, 5.1, and 5.2 of the MCIA. It is noted that the Mayor's interest is pecuniary because the proposed resolution to seek an investigation could have led to pecuniary sanction or other costs for the Mayor if it was discovered she had leaked the material.

By failing to declare an interest and continuing to participate in and chair the consideration of item 7.1 on November 8, 2021, the Mayor breached her common law conflict of interest and fiduciary duties to the municipality and the public.

The Mayor Caul contravened the following two(2) sections:

Duty of Member

When present at meeting at which matter considered

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s. 5 (2).

The Workplace Harassment Policy

By making remarks during the November 8, 2021 meeting which suggested that a member of administration was responsible for the leaked confidential document when she knew she herself was responsible, the Mayor breached the Town's workplace harassment policy, which defines workplace harassment as "vexatious conduct against a worker in a workplace, that is known or ought reasonably to be known to be unwelcome" It is the Requester's understanding that verbal accusations intended to harm the professionalism of staff, made by the person who is responsible for the acts in question, falls within the definition of workplace harassment.

Staff/Council Relationship Policy

By suggesting to both the press and Town Council that other staff or advisors were responsible for leaking the Legal Opinion, Mayor Caul has impugned the integrity and professionalism of the municipal staff, and acted contrary to the council/staff relations policy which states that "Members of Council, Officers and Staff shall work together to foster working relationships that are respectful of each other's Intelligence and professional duties."

The Criminal Code of Canada

Further, the Requester drew my attention to section 122 of the Criminal Code of Canada which concerns breach of trust by a public official and states that, "every official who, in connection with the duties of their office, commits fraud or a breach of trust" may be found guilty of a criminal offence. My obligation under section 8.1 of the Integrity Commissioner Inquiry Protocol states:

8.1 Referral of matter by Integrity Commissioner

If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of the Criminal Code of Canada or any other Act, the Integrity Commissioner shall immediately refer to the matter to the appropriate authorities and suspend the inquiry until any resulting investigation, including, but not limited to, police investigations and/or the charges have been finally disposed of, and shall report the suspension to Council. Contravention of any other Act includes, but not limited to, contravention of the Occupational Health and Safety Act.

4. INVESTIGATIVE PROCESS

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

Interviews were conducted with 1) Mayor June Caul and 2) the Requester through his/her Solicitor. No interviews were conducted with any of the Councillors as this issue is very well known by the Town Councillors who have already dealt with the issue of the leaked document on January 10th, 2022. I determined that because of the familiarity of this issue and the fact the Council has already dealt with this matter that it would be counterproductive to have them state their opinions on this issue now but instead have Council revisit this issue when they deal with this report and give Council the opportunity at that time to reflect on their original punishment handed to Mayor Caul on January 10th, 2022 that was characterized as "relatively 'light' approach to this misconduct" in the Requester's 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.

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 Conflict of Interest Act, the Municipal Act, Council/Staff Relations Policy, the Workplace Harassment Policy, the Procedural By-law and the Criminal Code of Canada.

A copy of the complaint was sent to Mayor Caul. I asked the Respondent to zero in on the main points of the Complaint against her and to learn any information she formulated in her defense. Mayor Caul sent me a three (3) page document entitled “History of Mill Closure (2014 – 2022) see **Appendix A**. A second inquiry was sent to Mayor Caul asking her to answer several questions regarding the complaint entitled Questions for Mayor Caul – see **Appendix B**.

A Draft Report was sent to Mayor Caul prior to sending Mayor Caul the list of questions (Appendix B).

Once I had received Mayor Caul’s responses to this Complaint, I sent the Draft Report and Mayor Caul’s responses (Appendix A and Appendix B) to the Requester. The Requester prepared some comments which they wished to be included in my final report and those comments are entitled – Appendix C. The comments are specific to Mayor Caul’s statements in the Appendix A. Aside from the comments in Appendix C, the requester had no further comments on my Draft Report.

5. RESPONDENT INTERVIEW

After Mayor Caul was sent the complaint (sent on February 24, 2022 and again on May 18, 2022) she was asked to comment on the allegations contained in the complaint and on May 30, 2022 Mayor Caul sent me the three page document – “History of Mill Closure (2014-2022) – Appendix A.

Then on May 31, 2022 I sent Mayor Caul a list of questions and she replied to them on June 6, 2022 – Appendix B.

NOTE:

There was a considerable delay in completing this investigation in order to provide an opportunity of both legal parties to come to an understanding or consensus that would avoid an investigation and a report to Council because Council has already dealt with this issue at their January 10th, 2022 meeting. The Requester’s legal counsel advised me on March 28, 2022 that the legal parties were “continuing to negotiate” and on April 27th, 2022 the Requester’s legal counsel advised that “I have discussed this matter with our client in more detail and my client is not prepared to withdraw the complaint filed with your office. We trust the alleged contraventions by Mayor Caul will be investigated according to the procedure in the Fort Frances Code of Conduct and the Municipal Conflict of Interest Act.”

6. SUMMARY OF FINDINGS

COUNCIL CODE OF CONDUCT

SECTION 3.1 – Unsubstantiated.

Definitions cannot be violated.

SECTION 10.1 – Substantiated.

Mayor Caul admitted to the release of the Gowling WLG (Canada)LLP document to a member of the Public.

SECTION 10.2 – Substantiated.

Mayor Caul disadvantaged the Council of Fort Frances by releasing confidential information to a member of the public.

SECTION 10.3 – Substantiated.

Mayor Caul disclosed private and privileged information available only to the Council of Fort Frances to a member of the public.

SECTION 10.4 – Substantiated.

Mayor Caul in providing the Gowling WLG (Canada)LLP document to a member of the Public disclosed confidential information without the lawful authority to do so.

SECTION 11.1 – Substantiated.

Mayor Caul permitted the use of confidential municipal information (the Gowling WLG (Canada)LLP document) by a member of the public.

THE PROCEDURAL BY-LAW

SECTION 4.11 Confidential Matters – Substantiated

Mayor Caul did not ensure that confidential matters disclosed to her during a meeting closed to the public, were kept confidential.

SECTION 7.7.1 Code of Ethics (public interest) – Substantiated

Upon completion of the “In-Camera” council meeting, it is the duty and the decision of Council as to whether or not information is to be reported publicly. Mayor Caul took it upon herself to release the Gowling WLG (Canada)LLP document to a member of the public.

SECTION 7.7.2 Council Response In-Camera Enquiries – Substantiated

The release of information about matters dealt with by Council at a closed meeting shall be by the Mayor or her delegate only upon the direction of the majority of Council. Mayor Caul did not have the direction by Council to release the Gowling WLG (Canada)LLP document.

THE MUNICIPAL CONFLICT OF INTEREST ACT

SECTION 5.1 & 5.2 Pecuniary Interest - Substantiated

By failing to declare an interest, continuing to participate in and chair the consideration of item 7.1 and influencing the disposition of item 7.1 on November 8, 2021, the Mayor violated sections 5, 5.1, and 5.2 of the MCIA. It is noted that the Mayor’s interest is pecuniary because the proposed resolution to seek

an investigation could have led to pecuniary sanction or other costs for the Mayor if it was discovered she had leaked the material.

By failing to declare an interest and continuing to participate in and chair the consideration of item 7.1 on November 8, 2021, the Mayor breached her common law conflict of interest and fiduciary duties to the municipality and the public.

THE WORKPLACE HARRASSMENT POLICY

Vexatious Conduct – Substantiated

The Mayor has been frustrated by the transfer of the Sustainable Forest License (SFL) after the Resolute Mill closed and while complete and factual information has always been available to her, she has insisted on listening to a member of the public that has continually cast suspicion on the process and the final transfer of the forest license and wood rights given to that corporation. In listening to that private citizen's views, Mayor Caul became conflicted as to whether the transfer of the SFL was complying with the conditions of the Crown Forest Sustainability Act (CFSA). The Mayor felt the agreement was not in the best interest of the community as they could not move substantially forward in the efforts to replace that industry and bring back the employment the community previously enjoyed. In focusing her efforts on the private citizen she willingly ignored the expertise of her own staff that were at the meetings, talked to the parties, sought legal advice and knew the facts. Mayor Caul's indicating to the public through the media and other means that there was something unsavoury about the SFL transfer and that she was somehow, not getting the complete picture, was vexatious and troubling to some of the Town's staff that held meetings to answer questions and keep Council up-to-date along the way.

STAFF/COUNCIL RELATIONSHIP POLICY

Mayor Caul Impugned the Integrity and Professionalism of the Municipal Staff – Substantiated

Part of the comments Mayor Caul that were reported in the Fort Frances Times News was "There are several others who were privy to this information as well. So we cannot just assume it was one of our members of Council".

Part of the Staff/Council Relationship Policy Section 7 states:

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.

BREACH OF TRUST:

The most serious allegation outlined in this report is the allegation that Mayor Caul is guilty of "Breach of Trust" under the Criminal Code of Canada. The Requester reminds me as the Integrity Commissioner of my obligations under Section 8.1 of the Integrity Commissioner Inquiry Protocol, which states:

If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of the Criminal Code of Canada or any other Act, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting investigation, including, but not limited to, police investigations and/or the charges have been finally disposed of, and shall report the suspension to Council. Contravention of any other Act includes, but is not limited to, contravention of the Occupational Health and Safety Act.

BREACH OF TRUST – THE CRIMINAL CODE:

Breach of Trust/Fraud by Official: Section 122 The breach of trust provision in section 122 of the Criminal Code provides: - 16 - 122.

Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Section 122 punishes fraud and breach of trust by persons who hold an office, or are appointed to discharge a public duty.

The essential elements of the s. 122 offence are:

- *The defendant was an "official" within the meaning of s. 118;*
- *The act was committed in the general context of the carrying out of the defendant's duties; and*
- *The act constituted a fraud or breach of trust.*

MY RESEARCH ON HOW I SHOULD EVALUATE IF BREACH OF TRUST APPLIES IN THIS CASE:

My research found the following relevant information regarding Mayors and Council members and how the Breach of Trust Section 122 of the Criminal Code of Canada applies:

Municipal councillors are officials within the meaning of section 118. Section 118 defines an "official" as a person who, (a) holds an office, or (b) is appointed or elected to discharge a public duty. An elected municipal official may be convicted under this section.

Elements of Breach of Trust The leading decision on the elements of the breach of trust offence is the 2006 decision of the Supreme Court in R. v. Boulanger.

The Court held that "public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit.

FIVE ELEMENTS THAT MUST BE PROVEN BEYOND A REASONABLE DOUBT IN ORDER TO CONVICT

In R. v. Boulanger, the Supreme Court held that in order to convict an individual of the offence of breach of a public trust by a public officer, **five elements must be proven beyond a reasonable doubt.**

They are:

1. The accused was an official; 4 R v. Lippé (1996), 111 C.C.C. (3d) 187 (Que. C.A.); R. v. Perreault (1992), 75 C.C.C. (3d) 425 (Que. C.A.), leave to appeal to S.C.C. refused (1993) 77 C.C.C. (3d) vi 5 R. v. Sheets (1971), 1 C.C.C. (2d) 508 (S.C.C.) 6 R. v. Boulanger, 2006 SCC 32, [2006] 2 S.C.R. 49 7 Boulanger, at para. 52 8 Boulanger, at para. 58 - 17 –
2. The accused was acting in connection with the duties of his or her office;
3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. The accused acted with the intention to use his or her public office **for a purpose other than the public good**, for example, for a dishonest, partial, corrupt, or oppressive purpose. (emphasis added)

The Court noted that "partiality" denotes an unfair bias in favour of one thing, compared to another (para. 65).

With respect to item #5, the Court held that reflects a central concern: "that public officials, entrusted with duties for the benefit of the public, carry out those duties honestly and for the benefit of the public, and that they not abuse their offices for corrupt or improper purposes".

7. CONCLUSIONS

COUNCIL CODE OF CONDUCT

The Code of Conduct Sections 10.1, 10.2, 10.3, 10.4 and 11.1 were violated. The code is very easy to read and interpret by individual Councillors. Continuously making sure each councillor is familiar with the Code is common sense. Had Mayor Caul remembered even the basic principles of the Code should have easily stopped Mayor Caul from providing confidential documents to the public without Council's consent. The language is plain and simple: "No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office. OR "No Member shall disclose the substance of deliberations of meetings held in-camera and that are authorized to be held in-camera".

It is my opinion that Mayor Caul has an overwhelming desire to help the public understand how the Resolute Forest Products Mill closure and subsequent Sustainable Forest License transfer has progress to the point of the Mill being razed and the SFL being retained by a Mill. Obviously, that has gotten her into trouble with the Town's policies and provincial and federal statutes. I am of the opinion and understanding that after four (and now five) complaints against Mayor Caul, her focus is on "helping people" and has a genuine care for her community.

THE PROCEDURAL BY-LAW

Mayor Caul did not ensure that confidential matters disclosed to her during a meeting closed to the public, were kept confidential. She took it upon herself to release the Gowling WLG (Canada)LLP document to a member of the public even though she believed that document "was indeed useless to our cause". The release of the document on June 22, 2021 was well after the controversy concerning the 2017 renewed license and releasing this document to a member of the public who was well known to be relentless in pursuing any perceived malfeasance during the transfer of the Sustainable Forest License (SFL) to the Boundary Waters Forest Corporation, could cause problems for Council and the desire to move forward. If put before Council the question of the release of the document to the public, Council could have agreed to a press release themselves that stated clearly their knowledge of the SFL transfer and that their moving on from the issue. That would have 1) not violated the Procedural By-Law and 2) legitimized the Council's understanding of all the issues regarding not only the SFL transfer process but the forest audit issues as well. Mayor Caul could have taken the lead and provided good reasons for Council to do this instead of handing over a confidential document to this member of the public that was not informed of all aspects of the SFL transfer and related processes. The Mayor caused Council to lose control of the issue.

THE MUNICIPAL CONFLICT OF INTEREST ACT

Section 5.1 and 5.2 were violated on two occasions – October 28th and November 8th, 2022 when she failed to declare a conflict of interest. However, I will not be applying to a judge to have this conflict of interest allegation or a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act.

My reasons are that any elector or a person demonstrably acting in the public interest could have and had plenty of time to apply to a judge to have the allegation of contravening the Conflict of Interest Act especially in the months of November 2021, December 2021 and January 2022.

In addition, Mayor Caul, in several statements and comments over several months showed she was confused about the document that had been leaked and could have been a legitimate defense that she committed the contravention through inadvertence or by reason of an error in judgment made in good faith. Although I cannot presume that a judge would find this defense plausible, I consider it a valid argument.

THE WORKPLACE HARRASSMENT POLICY

Mayor Caul's indicating to the public through the media and other means that there was something unsavoury about the SFL transfer and that she was somehow, not getting the complete picture, was vexatious and troubling to some of the Town's staff that held meetings to answer questions and keep Council up-to-date along the way. I agree that the Mayor breached the Town's workplace harassment policy, which defines workplace harassment as "vexatious conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome".

STAFF/COUNCIL RELATIONSHIP POLICY

By the Mayor indicating in the local newspaper that "there are several others who were privy to this information as well and we cannot just assume it was one of our members of Council", truly goes against the doctrine of Respect Above all Else as section 7 states, especially Mayor Caul knowing that she had sent the private document to a member of the public.

BREACH OF TRUST:

This is the most serious of allegations against the Mayor in this anonymous complaint and it bears repeating what Section 122 of the Criminal Code says:

Breach of Trust/Fraud by Official: Section 122 The breach of trust provision in section 122 of the Criminal Code provides: - 16 - 122.

Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. Section 122 punishes fraud and breach of trust by persons who hold an office, or are appointed to discharge a public duty.

The essential elements of the s. 122 offence are:

- *The defendant was an "official" within the meaning of s. 118;*
- *The act was committed in the general context of the carrying out of the defendant's duties;*
- and*
- *The act constituted a fraud or breach of trust.*

On the face of it and reading Section 122, it appears that the leaking of this confidential document fits all of the elements of that section: The Mayor is an 'official'; the leak was

committed by the Mayor in the context of carrying out her duties as Mayor; and finally it was indeed a breach of trust.

However, one has to read further as to how this section is interpreted by the courts and the 2006 decision of the Supreme Court v. Boulanger case is a clear example. That court decision established five (5) elements in considering whether or not a Breach of Trust action can be successful. The fifth element is the sticking point for me in deciding not to hand over this complaint to the OPP to investigate in the context of Section 122 of the Criminal Code. That fifth element - *The accused acted with the intention to use his or her public office **for a purpose other than the public good**, for example, for a dishonest, partial, corrupt, or oppressive purpose. (emphasis added) The Court noted that "partiality" denotes an unfair bias in favour of one thing, compared to another (para. 65).*

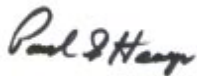
As stated previously, I do not believe that Mayor Caul released this document to harm the Municipality but was hoping to clear up some misconceptions that became the subject of many articles in the local newspaper. In Mayor Caul's words: the member of the public *"continued the plight relentlessly, I finally gave the person a copy of the 2019 draft investigation report from Gowling WLG (which was indeed useless to our cause) to show him the ad hoc committee had felt here was no further reason to investigate"*.

8. RECOMMENDATIONS

The Council of the Town of Fort Frances is well aware at this point that the release of the confidential document was indeed a surprise and a major act of breach of many of the sections of the Code and other policies of the Municipality. On January 10th, 2022 Mayor Caul confessed to releasing this document to a member of the public, declared a conflict of interest and removed herself from the deliberations of the Council discussions on her actions. Council dealt the punishment that required Mayor Caul to issue a personal apology to Council for her actions and a public apology as well. The Mayor has done just that.

It is my recommendation that Council review this complaint and the results of my investigation and consider if they wish to hand down any further punishment after reading the complaint and my investigation. This is a chance for Council to give a sober second thought to the Mayor's action and provide either further punishment or file this report as received.

Respectfully,



Paul S. Heayn,
Integrity Commissioner for the Town of Fort Frances
41 Clearwater Cres.
Dryden, On P8N 3H8

Enclosures:

Appendix A – Mayor Caul - History of Mill Closure
Appendix B – Questions for Mayor Caul
Appendix C – Requester's Comments