

**INVESTIGATION REPORT
Municipality of North Cowichan**

May 2, 2022

Investigation conducted by:

**Sharon Cartmill-Lane, B.A. (Hons.), M.A., LL.B.
Director, Pearlman Lindholm Law Corporation**

MUNICIPALITY OF NORTH COWICHAN
INVESTIGATION REPORT

BACKGROUND

1. On September 17, 2021, the Complainant, a member of the District of North Cowichan Council, filed a complaint (the “Complaint”) under North Cowichan’s Standards of Conduct Policy for Councillors and Committee Members (the “Standards of Conduct”). The Complaint relates to conduct by a fellow Council Member (the “Respondent”). The Complaint specifically alleges that the Respondent:

- a) Called a staff person working for a local First Nation (the “First Nation”) and allegedly stated the Complainant was “disrespectful” towards the First Nation on September 7, 2021, when the Council, meeting as Committee of the Whole (the “Meeting”) discussed the Bell McKinnon Local Area Plan (“BMLAP”) in the context of how the land uses for the Bell McKinnon Corridor would be integrated into the upcoming draft of the Official Community Plan (“OCP”); and
- b) Sent the Complainant and various other members of Council an email after the Meeting which was disrespectful, untrue and accusatory towards the Complainant.

2. The Complainant alleges that by engaging in the above-referenced conduct and commentary, the Respondent has breached or violated the Standards of Conduct.

3. Pursuant to section 10.4 of the Standards of Conduct, the Parties agreed that I be appointed as the “Third Party Investigator”.

Scope of the Investigation

4. My mandate in this matter was to conduct a full and fair preliminary assessment of the Complaint and if appropriate, proceed with a full investigation of it pursuant to the principles of

procedural fairness as well as the Standards of Conduct. I recommended a full investigation after reviewing the Complaint and the response to the Complaint and after speaking with the Complainant and Respondent (the “Parties”). In making my recommendation, I also took into consideration the fact that the Parties had referred the matter to investigation as a result of being unable (despite an attempt) to reach a resolution regarding the matter.

5. More specifically, my role as investigator was, on the basis of evidence gathered, to determine whether or not, on the balance of probabilities, a) the events alleged occurred; b) whether any of the actions or events that did occur constituted a breach of the Standards of Conduct; and c) make any recommendations as to the appropriate resolution of the Complaint.

6. The relevant portions of the Standards of Conduct are as follows:

PREAMBLE FOR COUNCIL

...

This policy does not cover every possible situation Council may face so it is important that actions are in harmony with the spirit and intent of these Standards of Conduct.

PURPOSE

To set the expectation that District of North Cowichan (“District”) Council and Committee Members adhere to these Standards of Conduct in carrying out their duties and functions.

SCOPE

This policy applies to District Council and Committee Members. This Standards of Conduct applies to all interactions of Council and Committee Members in relation to District matters whether in duly constituted meetings, interactions with Staff or the public and during their use of social media.

...

POLICY STATEMENTS

1. **Foundational Principles**

These foundational principles provide a basis for how Council and Committee Members fulfill their roles and responsibilities, including in their relationships with each other, Staff and with the public.

7. The following sections of the Standards of Conduct have been specifically referenced in the Complaint and are alleged as having been breached by the Respondent:

*1.1 **Integrity:** being honest and demonstrating strong ethical principles.*

*Council and Committee Members are expected to act with **integrity** by:*

- (a) Behaving in a manner that promotes public confidence in the District, including actively avoiding any perceptions of Conflicts of interest, improper use of office or unethical conduct.*
- (b) Being truthful, honest and open in all dealings.*
- (c) Upholding the public interest and making decisions in the best interests of the community.*
- (d) Following through on commitments, engaging in positive communication with the community and correcting errors in a timely and transparent manner.*
- (e) Acting lawfully and within the authority of the Community Charter, Local Government Act, Workers Compensation Act of B.C. and B.C. Human Rights Code.*

...

*1.3 **Respect:** having due regard for others' perspectives, wishes and rights; displaying deference to the offices of local government, and the role of local government in community decision-making.*

*Council and Committee Members are expected to act with **respect** by:*

- (a) Treating every person, including other Council or Committee Members, Staff and the public with dignity.*
- (b) Showing consideration for colleagues and Staff.*
- (c) Creating an environment of trust, including displaying awareness and sensitivity around comments and language that may be perceived as derogatory.*

- (d) *Valuing the role of diverse perspectives and debate in decision making.*
- (e) *Acting in a way that is respectful of the roles and responsibilities of the office of Mayor and Council.*
- (f) *Valuing the distinct roles and responsibilities of local government Staff and the community in local government considerations and operations, and committing to fostering a positive working relationship between Staff, the public and elected officials.*

1.4 Leadership and Collaboration: *an ability to lead, listen to, and positively influence others; coming together to create or meet a common goal through collective efforts.*

*Council and Committee Members are expected to demonstrate **leadership and collaboration** by:*

- (a) *Demonstrating behaviour that builds and inspires public trust and confidence in local government.*
- (b) *Calmly facing challenges and providing considered direction of the issues of the day, and enabling colleagues and Staff to do the same.*
- (c) *Creating space for open expression by others, taking responsibility for one's own actions and reactions and accepting the decisions of the majority.*
- (d) *Accepting that it is the equal responsibility of the Council individually and collectively to work together to achieve common goals. Committee Members must also work together individually and collectively to achieve common goals.*
- (e) *Being an active participant in ensuring these Foundational Principles and the Standards of Conduct are followed.*

...

8 Interactions with the Public and Media

8.1 *In an effort to promote respect and integrity for Council decision-making, Council and Committee Members will communicate accurately the decisions of the Council, even if they disagree with the majority decision of the Council or Committee.*

8.2 *When discussing publicly whether a Councillor or Committee Member did not support a decision, or voted against the decision, or that another Council or Committee Member did not support a decision or voted against a decision, a Council or Committee Member will refrain from making disparaging comments about other Council or Committee Members.*

INVESTIGATION PROCESS

8. The Respondent was provided with a copy of the Complaint prior to my involvement. They¹ elected to provide a written response which was provided to the Complainant with their permission. The Complainant elected to reply to the response and chose to also do so in writing. I provided this document to the Respondent with the Complainant's permission. The Complainant and the Respondent were interviewed by me at the beginning of the investigation and once again after I met with the witnesses, in order to provide their responses to contradictory or new information disclosed in the course of the investigation.

9. The Parties were each given an opportunity to put forward names of witnesses. I indicated I would take their suggested choices under advisement. I interviewed three (3) witnesses, including two (2) witnesses with whom I met twice. The fourth (4th) witness, who could reasonably be described as the "key" witness, refused to participate as discussed in greater detail below.

10. All witnesses and the Parties were advised of their right to bring an uninvolved support person to the interviews. All persons interviewed declined to have anyone accompany them and were advised that if during the course of the interview they determined they wanted to have a support person present, we could adjourn the meeting and continue once they had arranged same.

11. In response to the Provincial Health Officer requiring social distancing due to the pandemic, persons being interviewed were given the choice of meeting in person where social distancing could be implemented, or remotely (via Zoom or Microsoft Teams). My first interview with the Complainant was in person, and all remaining interviews took place via video.

¹ For the purposes of anonymity, I have elected to use the pronouns "they/them" for the Parties and all witnesses referenced herein.

12. Prior to the pandemic, courts and tribunals have accepted evidence by video and telephone.² In assessing the credibility of those who spoke to me by video, I considered the criteria courts review in accepting such evidence:

- *whether they are alone in the room from which they are testifying, which they were in every case;*
- *whether there are any sounds indicating that someone else is present or is coaching the witness;*
- *the need to give attention to the tone of voice, and pauses in speaking, as other clues as to demeanour are not available;*
- *whether it is necessary or merely preferable to be able to see the witness. If credibility is not in issue, the decision-maker may not need to see the witness (e.g. in the case of an expert witness), in which case teleconferencing may be the best option. If it is merely a matter of preference, the use of videoconferencing should be subjected to a cost/ benefit analysis.*

13. During every interview, I took handwritten notes. With the exception of one witness who would not consent to the recording of their second interview, I made an audio recording and corresponding transcript of each interview (with the consent of the interviewee) which I reviewed in the process of making my findings.

14. In addition to speaking with individuals, I reviewed numerous documents, including emails related to the allegations and the video of the Meeting.

15. All witnesses were cautioned by me about the need to maintain strict confidentiality throughout this investigation and to not disclose any information pertaining to the Complaint, our interviews or this investigation process.

² Courts have held that there is no denial of natural justice or fundamental justice in the use of video testimony and accepted telephone testimony out of necessity, where it would be difficult or impossible for them to testify otherwise.

SUMMARY OF BACKGROUND EVIDENCE

16. As set out in the Complaint and above, on September 7, 2021 Council met as Committee of the Whole, wherein they considered and debated the future of the BMLAP in the context of how the land uses for the Bell McKinnon Corridor would be integrated into the upcoming draft of the OCP. The Parties were both present for the Meeting.

17. According to the Complainant, “Earlier on the day of our meeting, Council received an email from [the Lead Referrals Coordinator] at [a local First Nation], advocating for a particular approach to the evening’s discussion. The Complaint included that email as its Appendix “A”, and the Complaint states “it is worth noting, for context, that it [the email] also included a “forward” of a blanket email sent to the subscribers of the “*One Cowichan*” email list...”.

18. I reviewed this email and note it does contain the One Cowichan email as a forward. The email clearly states it is from the Lead Referrals Coordinator “for” the “Director, Lands and Self-Governance” (who is copied on it along with others from the First Nation) and states:

[The First Nation] would like to take this opportunity to provide our support for a Focused-Growth approach to future growth and development within the North Cowichan municipal boundaries of our unceded territory. Population centers in our territory have spread uncontrolled since settler contact began, and with it diminished opportunities for Cowichan members to harvest resources and conduct their preferred lifestyle. We support service-supported contained development in designated growth centers that will lead to less vehicular traffic and fossil fuel emissions as well as preventing future developments encroaching into dwindling natural environments and threatened watersheds in our territory. [The First Nation] supports Focused-Growth in the vicinity of Bell McKinnon Road as well as in other population centers in the municipality.

19. I also reviewed the video feed of the Meeting. In it, the Respondent raised the above-referenced email, noting it had not been previously mentioned in the Meeting. The Respondent stated: "I've sat at this table for almost 10 years. I have never in my memory seen a letter come from [the First Nation] saying they didn't want us to do something if it hadn't been asked for in the

recent time - I'm not talking about 2018, I'm talking about in the last 6 months. So we got a letter signed by Councillor [G] today that basically said 'we want you to stick with the focussed areas.'

20. Later in the feed, the Complainant also discussed the email, stating:

*I can't talk about the public input we've received without also weighing in – and it's been referred to – on the email from [the Lead Referrals Coordinator] and [the Director of Lands and Self Governance] at [the First Nation]. I mean no disrespect, but that email immediately had me wondering whether this was an expression of personal opinion from [the Director of Lands and Self Governance] and the [Lead Referrals Coordinator], or whether it was a reflection of an official position taken by way of a Band Council Resolution. Apparently this issue has never come up at [the First Nation] Council; not in the current discussion that we're having. And the subject line on that email shows me that it was clearly a response to the blanket email that went out from One Cowichan; it was not a response to any referral request **we** made in the context of our current discussion.*

This is a process piece for me. And again, I mean no disrespect, but if our Director of Planning gets an email from a community group inviting some input on something, generally speaking he would go to Council for some policy direction before sending that out.

*And the fact is, we **did** refer the original Bell McKinnon Local Area Plan to [the First Nation] for comment, and there doesn't seem to have been any substantive objection to the land uses or densities in that plan when the draft plan was referred to them in 2018. [NA] was the Referrals Coordinator for [the First Nation] at that time, and she wrote - in an email to the consultant who put that plan together - "**In general, the apparent emphasis on multi-use within the Local Area Plan is a refreshing change from the big-box and single use development that has characterized the region for decades**". She did express some concerns about [the First Nation] not being adequately recognized in the plan, and the consultant wrote back and acknowledged that point, and rewrote the "Area" and "Historical Context" part of the plan to expressly acknowledge [the First Nation]'s territory."³*

21. The Meeting adjourned at 12:20 a.m. Approximately ten (10) minutes later, the Respondent sent an email to all of Council (excluding one (1) councillor) as follows:

³ All emphasized sections were bolded in the Complaint.

I have never felt so ashamed and embarrassed at the cavalier attitude towards an email that begins with [the First Nation] prefers etc – and is from the [Director of their Lands and Self Governance].

Truth and Reconciliation. I would like to see us query if our assumed understanding of that as being a few members of staff or committee, or if they had the delegated authority to do that.

A slippery slope away from true Reconciliation.

So sad that email was singled out as insignificant, and only from one person, basically calling all those named in the email liars.

22. Also subsequent to the Meeting, a letter from the First Nation was received by Council on September 10th (dated September 7th) signed by the Director of Land and Self Governance, copied to the First Nation's Chief. The letter was addressed to the Complainant and stated among other things that the First Nation supported a focused growth approach.

23. The Complaint states that on September 16th, the Complainant received a telephone call from another Councillor. The Councillor indicated that they had received a telephone call from the Lead Referrals Coordinator who stated they were contacted by the Respondent. According to the Complainant, the Councillor told them that the Lead Referrals Coordinator indicated the Respondent was “disparaging my remarks in the debate as “disrespectful” to First Nations. [The Lead Referrals Coordinator] wanted to know what I had exactly said, and whether I had indeed been disrespectful in my discussion about the email”. The Complainant also claims that the Councillor “in [their] re-telling to me – essentially informed [the Lead Referrals Coordinator] that they didn't find my comments disrespectful, and that [the First Nation] would have a full opportunity to weigh in on the draft OCP – including the Bell McKinnon Local Area Plan motion in question – in a forthcoming referral to [the First Nation]...”.

24. Also contained in the Complaint is a section entitled “Historical Context”, outlining “a context wherein [the Respondent] has shown persistent hostility, animus and disrespect to me in my role...”. I put the various examples set out therein to the Respondent and received evidence from the Respondent where the Respondent considered the Complainant to have been disrespectful to them.

25. I also asked witnesses to comment on their understanding or observations regarding how the Parties engage with each other. All agreed that the Parties' engagements appear strained. More particularly, witnesses described the Parties' interactions as "fake", having "a lot of tension between the two of them and they poke each other, back and forth" and that "there are times where it's been a bit more of a negative dynamic but there are some other members of council who maybe don't always get along 100% either".

26. This "historical" information is of limited utility. It is not part of the specific allegations forming the Complaint. While the evidence around the past issue between the Parties might imply (but is not determinative of) a motive for the Respondent to disparage the Complainant as alleged, it equally suggests a mutual animosity. In any event, it is sufficient to say that their relationship has been noticeably uneasy for a sustained period.

Telephone call to the Lead Referrals Coordinator

27. The Complaint outlines that the Respondent made disparaging remarks about the Complainant contrary to the Standards of Conduct but that the very fact the call was made is also a violation thereof. I have addressed these allegations separately as set out below.

Content of the Call

28. The Respondent confirmed they called the Lead Referrals Coordinator as they were concerned about the Complainant's commentary about the email from the Lead Referrals Coordinator. In their reply to the Complaint, the Respondent stated:

I called [the Lead Referrals Coordinator] on September 8th – out of concern for our Council government to government relationship with [the First Nation]. I was completely confident [the Director of Lands and Self Governance] had authority to write that email and POSITIVE he would not have done so without some sort of delegated authority, (one would only have to meet [the Director of Lands and Self Governance] and it would be self evident), yet it seemed that Council needed more

than my opinion. [The Lead Referrals Coordinator] confirmed I was correct. It was from [the First Nation] and [the Director of Lands and Self Governance] was writing on their behalf. [The Lead Referrals Coordinator] volunteered that it had not gone to a Band Council meeting due to the late notice of our meeting. She asked me why I was asking, and I replied truthfully that [the Complainant] felt concerned it was as a result of a mail out from One Cowichan and from [the Lead Referrals Coordinator] and [the Director of Lands and Self Governance] on their own.

29. During our interview, the Respondent described the call with the Lead Referrals Coordinator as a “causal check in”. The Respondent stated, “I now see how maybe that wasn’t the wisest thing to do”. Regarding what the Respondent said in this call, the Respondent told me, “I asked if that letter – the email from [the Lead Referrals Coordinator] and [the Director of Lands and Self Governance] was actually [the First Nation]'s position, and [they] said, yes. [The Lead Referrals Coordinator] wanted to know why I asked, which I had not thought through, but [they] would of course say that...And I said, ‘Well, [the Complainant] wondered if it might be just from you and [the Director of Lands and Self Governance] or you or [the Director of Lands and Self Governance]?’ And to me that’s not disclosing anything, it’s on the public feed for everyone to see, and believe me, many people would have already watched it, by the time I called ... because a lot of people watch live. So, I - I just have to answer truthfully, and that was the truth.”

30. I asked the Respondent if in the call they said the Complainant had been disrespectful or words to that effect. The Respondent stated “Nope. The closest that I might have come to that is, I said something like, ‘I just want to check with you so that [the First Nation] wouldn’t - if we were mistaken, [the First Nation] wouldn’t feel like we were dismissing them’ or something like that. I’m not even sure. I can’t even accurately remember. But there was no... This is [the] sad part of it to me, and I hope that [the Complainant] will have the ability to recognize that I was trying to protect [the Complainant] and council and the municipality”.

31. The Respondent had no notes of the telephone conversation in question and when asked again in our second interview about the content of the call, told me “I may have said something like ‘I just wanted to check, so that [the First Nation] didn’t feel that the municipality had

disrespected that input'.... I may have said 'I'm just calling you because I want to right this', basically; 'make sure you don't feel that you're being disrespected'."

32. The Respondent would have an obvious motivation to downplay their comments, although I am not making a finding that they did downplay them. Their memory was not firm about the conversation, telling me they did not recall what the Lead Referrals Coordinator said: "I don't even know exactly what [they] said, because it's so long ago, but that's the gist". As such, I sought to confirm the Respondent's recollection by speaking with the Lead Referrals Coordinator directly. I contacted the witness by email and then had a conversation with them. Unfortunately, they declined to participate in this process. I have no power to compel or order anyone to participate. I did not attempt to persuade or pressure them into doing so as that would be clearly inappropriate.

33. I asked the Respondent if the purpose of the call to the Lead Referrals Coordinator was as they said, then why not go directly to the Complainant the next day and express the concern that this could be taken badly, and suggest the Complainant reach out. The Respondent replied that was a fair question and that the Complainant appeared to have the opinion "...that [the first Nation] have given their opinion in 2018. And my knowledge of [the Complainant] when [the Complainant] get[s] an idea, you know, [they] don't, [they] are not very open-minded. And [the Complainant] do[es]n't actually take my calls most of the time, [they] return some within maybe a day or two. But [the Complainant] [is] not accessible to me, I think that [they] are more accessible to other councillors but, I mean it's really clear that [the Complainant] do[es]n't like me. So, I didn't feel that it would do anything. What I planned to do was report it to all of the council as I am required to at our next meeting, but unfortunately, we didn't have one."

34. I note in their written reply to the Complaint, the Respondent stated "I was pretty sure [the Complainant] would not call [the First Nation] [themselves] to see if [they] had been mistaken, and I was afraid to even try asking because [the Complainant] had refused to meet with me previously, when I asked to meet and work on letting bygones be bygones."

35. When I asked the Respondent if they actually thought the Complainant was disrespectful in the Meeting in this regard, they responded: “It’s my opinion that [their] call was a mistake and my fear was [the First Nation] would feel disrespected.”

36. The Councillor who advised the Complainant about the call between the Respondent and the Lead Referrals Coordinator appeared credible and as someone genuinely trying to remember the particulars of that conversation. That said, the Councillor had poor recall about their own conversation with the Lead Referrals Coordinator, stating “I can’t remember if [they] called me or I called [them]” and was not certain about the exact words used in the conversation.

37. I asked the Councillor whether the Land Referrals Coordinator said that the Respondent stated the Complainant had been making disparaging remarks or was disrespectful to the First Nation. The witness replied:

I think that’s what prompted the call from [the Lead Referrals Coordinator]. And like I said, I don’t know – I could have picked up the phone to phone [the Lead Referrals Coordinator] to say ‘You know, this isn’t, this is not where we’re coming from’, because you know, I’m Cowichan. I am First Nations. I know, you know, we’re all fumbling through the process of consultation and everything with local governments and whatnot, and just as much as First Nations are trying to fumble into, you know, getting, you know, making these inroads and getting it right. So I, I phoned [the Lead Referrals Coordinator] because, you know, Like I feel that the relationship would have been severed with North Cowichan. We’ve done a lot of work going inroads and having this happen is not a good thing, and you know, even if [the Complainant] was not right in what [the Complainant] said, we can’t lose focus on the work that we’re already doing and where we’re going forward. So yeah, just wanted to make sure that [the Lead Referrals Coordinator] knew that we weren’t disregarding what was in the letter and what was said.

S And why would you think [the Lead Referrals Coordinator] might think that?

Um, I think it was, like I said, I can’t remember word for word what [the Lead Referrals Coordinator] said, but [the Lead Referrals Coordinator] heard that [the Complainant] had said something or did something in the meeting about the letter, like disregarded it, and I said that’s so far from the truth.

38. The Councillor stated they had no notes or documentation to confirm their discussion and was equivocal about what was discussed. In any event, their evidence about the Respondent's alleged comments is hearsay and not determinative of the issue.

39. I do note that like the Respondent, the Councillor stated they also had concerns about how the commentary by the Complainant could be taken and wanted to reassure the First Nation. The witness told me "I wanted to let [the Lead Referrals Coordinator] know that we take the emails seriously, any input that we get from anybody, including [the First Nation]. Um, you know, [the Complainant] may not choose [their] words, uh, appropriately, I guess; it may come across as being not appropriate sometimes. Um, but it is very delicate when you're trying to talk to public and be careful about what you say. It's very touchy, and especially when you throw in First Nations into a discussion and you're, you know, responding or trying to move things forward. So, I had mentioned to [the Lead Referrals Coordinator] that, you know, that we were responding. As I had seen it, from what [the Complainant] saw as well, when we first had seen the email, we had the discussion in our meeting and what we had from that conversation is 'you guys were responding to One Cowichan. But we're not disregarding what was said in the email – it was put in as information to go forward for the OCP process and Bell McKinnon'. So, yeah."

40. When I asked the Councillor why they advised the Complainant about their conversation with the Lead Referrals Coordinator, they stated:

I don't know. It was a councillor speaking to [their leader] to say 'Hey, I've had this conversation with so-and-so, just to let you know', and part of that is because usually, councillors don't usually go outside and talk technicians to councillor, kind of comment, so I just wanted [the Complainant] to be aware that I had that conversation and also, to make [the Complainant] aware that, you know, there's, I guess part of it, I was worried. But, I just let [the Complainant] know and left it at that, and went forward.

S And you were worried about the relationship being damaged between [the First Nation] and the municipality, is that right?

Correct.

41. It was not my mandate to determine whether the Complainant's questioning of, or comments around, the email from the Lead Referrals Coordinator were in fact disrespectful.

However, I note that I received evidence which supports the Complainant's statements that the First Nation had previously provided information which indicated a different position than what was contained in the email of September 7, 2021. I also note the Complainant's evidence that the Complainant was not attempting to disregard the input from the First Nation. To the contrary, the Complainant viewed the First Nation's relationship as "valued and important". Given the way the email was received, it was necessary from a process perspective to ensure that the email containing a forward of a blanket email from another group was in fact the official position of the First Nation. In other words, the Complainant wanted to ensure that Council got it right.

Finding

42. I find the Respondent did place a call to the Lead Referrals Coordinator. I am unable to confirm what the Respondent stated in that call for several reasons. The information I received from the Complainant about the contents of this call is hearsay. I was unable to interview the Lead Referrals Coordinator. I have the Respondent's version of the conversation, however, their memory was not firm. The evidence of the Councillor was also not firm and despite being directly asked, at no time did the Councillor confirm that they were told by the Lead Referrals Coordinator that the Respondent stated that the Complainant was "disrespectful".

43. Based on the lack of reliable evidence, I am unable to confirm what the Respondent stated in the telephone call in question and cannot make a finding that the Respondent disparaged the Complainant in that call. As such, the allegation that the Respondent disparaged the Complainant in this telephone call is unsubstantiated based on the available evidence.

The Call itself

44. The Complainant also alleges that the fact that the Respondent made the call to the Lead Referrals Coordinator is in and of itself a breach of the Standards of Conduct. The Complainant states in the Complaint, "Further, the fact that this phone call was made without the knowledge of the rest of Council also belies the notion of "openness." Rather, this could clearly be seen as an

underhanded, secretive attempt to undermine both my credibility... and a majority decision of Council.”

45. While the Complainant stated the call itself was a breach of the Standards of Conduct, when I put that to them in our second interview, the Complainant was equivocal:

S If I understood you correctly, you were of the view that the very fact of the phone call being made without the knowledge of council was inappropriate, is that fair?

Yeah. That in itself, that in itself would not have precipitated a code of conduct complaint. It was the contents of that phone call that was relayed to me by [a] Councillor there, that was the problem.

46. The Complainant then added:

Procedurally I don't think it's proper for an elected official to contact staff in another organization. We should keep those lines clean in terms of, you know, politician to politician, staff to staff. So, that certainly wouldn't have been enough to precipitate the complaint by itself because, I mean, I understand sometimes those things happen. It's not about that.

47. I received evidence from witnesses that conversations with outside staff or technicians should be conducted through their counter-parts. For instance, the municipality's CAO would speak with a First Nation's CAO.

48. The Complainant told me:

You know, best practice, and I get it sometimes, I get staff from other organizations calling me and I refer them to my CAO. Best practice would be, 'sorry, but you know what? You really should deal with this on a staff to staff basis'. Again, I don't know if that's what [the Respondent] is alleging, that the phone call went the other way. Frankly, I don't care. It's not about the phone call, it's about the content. But best practice would dictate – would indicate that [the Respondent] would say, '[Lead Referrals Coordinator], you know what? You better talk to [the First Nation CAO] or [the Municipality of North Cowichan CAO]', if it's a staff matter.

49. The Respondent pointed out that there is nothing stating that a call to an outside staff person was improper. Regarding the proposition that the Complainant is actually the Council's spokesperson, the Respondent stated that "... doesn't mean that no one else can speak to anyone. Even about an issue. What it means is, when Council makes a decision about something like, you know, we are going to open a warming shelter. The only person, the official person that should talk about that is the [Complainant]."

50. Regarding the allegation the Respondent was attempting to undermine the Complainant, as set out above, the Respondent stated the call was intended to "protect" the Complainant and Council as the Respondent was worried about possible damage to the relationship with the First Nation. The Respondent also that they intended to report their discussion back to Council and was waiting for the next meeting.

Finding

51. I am unable to determine what was the "true" intention of the Respondent in making the call in question. On one hand, given the Parties' difficult relationship, the suggestion that the Respondent was seeking to protect the Complainant does not ring true. On the other hand, the Respondent's concerns about possible damage to the relationship with the First Nation is aligned with the evidence of the Councillor who advised the Complainant about the call. The Councillor told me twice in our interview they were concerned about possible damage to the relationship (see evidence above) and "just wanted to make sure that, you know, our relationship wasn't going to be severed."

52. The evidence I received indicated it is "best practice" that a Councillor not speak with an outside staff person on issues related to Council business. It is not, however, expressly prohibited. I also note the Complainant's statements that the call in and of itself was not worthy of a complaint, it was the content. As I am unable to determine what the Respondent said in the actual call and because the Lead Referrals Coordinator would not participate, I am unable to determine if the Respondent's action was actually an "underhanded, secretive attempt to undermine both [the Complainant's] credibility ... and a majority decision of Council". For the same reasons, I cannot

determine if, as a result of the call, the Complainant or the public trust and confidence in the Council were in fact undermined.

53. In these circumstances, I find this allegation unsubstantiated.

Email After Meeting

54. The Complainant submits that the email sent to them and certain other members of Council breaches section 1.3. a, c and e. As set out above, the email stated:

I have never felt so ashamed and embarrassed at the cavalier attitude towards an email that begins with [the First Nation] prefers etc – and is from the Director of their Lands and Self Governance.

Truth and Reconciliation. I would like to see us query if our assumed understanding of that as being a few members of staff or committee, or if they had the delegated authority to do that.

A slippery slope away from true Reconciliation.

So sad that email was singled out as insignificant, and only from one person, basically calling all those named in the email liars.

55. It was sent to the Complainant and the rest of Council, with the exception of one councillor.

56. The Complainant states that this email is a breach of the Standards of Conduct as it “called into question *my* integrity by accusing me of having a “*cavalier attitude*”, and of “*basically calling all those named in the emails liars.*” Neither of these things are true; my comments were purely addressed to the process involved in the generation of the email from [the Lead Referrals Coordinator/the Director of Lands and Self Governance] and the fact that [the First Nation] had previously registered no substantive objections to the Plan that was the subject of the motion on the table.”

57. The Respondent wrote in their reply to the Complaint, “Immediately after the meeting ended, frustrated by all of Council’s lack of consideration of the letter (including myself beyond my initial statement) I sent a late night email to Council that when I read it in the

[Complainant]’s complaint I got formally on September 18th, I recognized it could have been clearer and more diplomatic.”

58. As for any regret the Respondent may have regarding this email, they told me:

I mean the only thing I regret, because I didn't really read it until after the complaint was the final paragraph, even I can see that it was confusing. But I don't regret writing the letter. I mean. We've expressed – all of us in closed meetings, similar sentence. And I just regret that it landed in a way that it wasn't mean. That - I do regret that...it appears to me that [the Complainant] thought I was calling [them] a liar. When what I was saying is - that by saying that [the Director of Lands and Self Governance] and/or [the Lead Referrals Coordinator] were acting as individuals, it could appear that we were calling all of those – them and all of the people with [the First Nation's email] addresses that are part of his committee I think, but I'm not sure – also liars. Like it seemed – it just seemed like - I don't know. It just didn't seem – to me it seemed insulting and if that hadn't been said on the feed for the public to see what [the Complainant] said, I probably wouldn't have written the letter. But, I was feeling like, “Oh my God. Really? That's how we're going to leave it. And no one else is going to say anything? And as I said, I just didn't know what to say. I couldn't read the room that night. I - I – and even if I could, if I take it to that next step, I doubt very much I would have made a motion to say. ‘Well let's ask [the First Nation] if this is legitimate because honestly it would have been in ever paper and probably outside the country...”

Finding

59. I find that the email sent by the Respondent was disrespectful as alleged by the Complainant. The contents are highly inflammatory, particularly the statement that the Complainant was “basically calling all those named in the email liars”, which is untrue. The fact that email was sent to various other Council members - rather than the Respondent airing their concerns directly to the Complainant - makes it particularly inappropriate.

60. Further, it is inaccurate to say that the Complainant was taking a “cavalier” attitude towards it or that it was “singled out as insignificant”. As I indicated above, I accept that the opposite was true and in fact, the relationship with the First Nation is important to the Complainant, who sought clarification regarding how the information was received.

61. I find in sending this email the Respondent violated sections 1.3 (a), (c) and (e) of the Standards of Conduct.

62. Regarding the application of section 8.2, the Complainant references only a section of the provision: “a Council or Committee Member will refrain from making disparaging comments about other Council or Committee Members.” The beginning of the sentence is important as it sets the context, which is “When discussing publicly”. Further, I note the heading of the provision, specifically “Interactions with the Public and Media”. I do not find this section is applicable to the Respondent’s email as it was neither to the public nor the media.

63. This section would apply to the telephone call made to the Lead Referrals Coordinator however, as already stated, I am unable to confirm what the Respondent actually stated in that conversation.

RECOMMENDATIONS

64. Under section 10.7 of the Standards, as investigator I am to make recommendations as to the appropriate resolution. Under subsection vi and vii, I may recommend an apology be given and counselling or coaching.

65. The Respondent indicated previously they were prepared to provide a written apology and in fact began that process, however, they withdrew their agreement to do so when, in their view, they were being dictated to in terms of what to say and how to say it.

66. In the circumstances, I recommend that the Respondent provide a letter of apology to the Complainant in their own words that addresses the matters the Complainant has set out in the Complaint. The apology should be shared with Council, given that the inflammatory email was sent to all but one Councillor. It should be reviewed in advance by the Deputy Mayor.

67. The Respondent should also undertake to not communicate in a disrespectful and inflammatory manner with the Complainant or other members of Council. I also recommend that the Respondent attend a coaching session on respectful communication.

68. Finally, it is apparent the relationship between the Parties requires repairing, likely now more than ever. I have no evidence that their relationship has had any detrimental effects on their work on the Council. However, Council is a small group of individuals with important obligations to their community and tension between two individuals has potential to be distracting from that important work and bound to impact the environment for the entire group. As such, I suggest the Parties attend a facilitated conversation by a mutually agreeable third party to address how they will continue to work together going forward, even if their time together may be limited.