



# REPORT

## MEETING TYPE: Regular Council

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**TO:** Council

**FROM:** Brian MacKinnon, Manager of Corporate Services/ Municipal Clerk

**DATE:** May 16, 2018

**SUBJECT:** RP-2018-050 - Report of the Integrity Commissioner dated May 8, 2018 re: Complaint Against Environment Committee Member Mr. Michael Quince

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### TITLE:

Report of the Integrity Commissioner dated May 8, 2018 re: Complaint Against Environment Committee Member Mr. Michael Quince

### RECOMMENDATION:

THAT Council receives the May 8, 2018 Report from the Integrity Commissioner, Mr. Paul Heayn, respecting a complaint filed by Ann Mitchell respecting conduct of Environment Committee Member, Mr. Michael Quince; and further

THAT, as concluded and recommended in Mr. Heayn's report:

- Council adopts the finding that Environment Committee Member, Mr. Michael Quince, contravened the Code of Conduct, and specifically Section 6.2(i), which states: "Closed Meetings: Council and Board Members shall not disclose to any person or to the public, (i) the subject matter of the discussion or debate"; and
- Council adopts Mr. Heayn's recommendation that Mr. Quince be suspended from the Environment Committee for 90 days, and directs the Mayor to issue a letter to Mr. Quince to this effect; and
- Council adopts Mr. Heayn's recommendation that following the 90-day suspension, Council (via the Mayor) shall discuss with Mr. Quince his position on adhering to the Code of Conduct in the future, with a view that if Mr. Quince is not in favour of abiding by the Code, that Council remove him as a Member of the Environment Committee.

### PURPOSE:

The purpose of this Report is to bring forward for Council's review, consideration and action, the Integrity Commissioner's Report dated May 8, 2018, and to implement recommendations outlined therein, in accordance with the Municipality's Code of Conduct.

#### **BACKGROUND:**

Council approved [Policy No. 1-4, being a Code of Conduct](#) for Members of Municipal Council and Persons Appointed to Council Boards, Committees and Commissions on May 16, 2012. The Code of Conduct may be accessed on the Municipality's Corporate Documents Portal: Policy No. 1-4, Code of Conduct.

The Policy includes a complaint process which is open to anyone who believes that someone to whom the Code applies has breached the Code.

Ms. Ann Mitchell submitted a complaint to the Integrity Commissioner, Paul Heayn, on February 13, 2018, regarding Mr. Quince's conduct as a Member of the Environment Committee.

#### **DISCUSSION:**

In accordance with the Code of Conduct Policy, Mr. Heayn completed his investigation. The Report of his findings is attached to this staff report.

Mr. Heayn has found that Mr. Quince breached the Code of Conduct, and specifically Section 6.2(i), which states: Closed Meetings; Council and Board Members shall not disclose to any person or to the public (1) the subject matter of the discussion or debate..." when he published "Letters to the Editor" in The Sioux Lookout Bulletin, respecting subject matter that was discussed in a Closed Session Meeting of the Environment Committee on February 1, 2018.

Council, in accordance with the Policy, must receive the Report, consider the recommendations and determine whether or not to adopt those recommendations.

#### **RELATIONSHIP TO THE STRATEGIC PLAN:**

This is an administrative matter with no direct correlation to the Strategic Plan.

#### **FINANCIAL IMPLICATIONS:**

The fees for the Integrity Commissioner's investigation were not available at the time of writing this report.

#### **ATTACHMENTS:**

1. Integrity Commissioner's Report, "Report on a Code of Conduct Complaint by Ann Mitchell, CAO, Municipality of Sioux Lookout against Michael Quince, Environment Committee Member".

**SIGNATURES:**

A handwritten signature in black ink, appearing to read "Brian P. MacKinnon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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**Brian P. MacKinnon**  
Manager of Corporate Services and Municipal Clerk

A handwritten signature in black ink, appearing to read "Ben Hancharuk". The signature is bold and cursive, with a long horizontal stroke extending to the right.

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**Ben Hancharuk**  
Acting Chief Administrative Officer

**REPORT ON A CODE OF CONDUCT COMPLAINT  
BY  
ANN MITCHELL, C.A.O., MUNICIPALITY OF SIOUX LOOKOUT  
AGAINST  
MICHAEL QUINCE, ENVIRONMENT COMMITTEE MEMBER**

*REPORT AUTHOR: Paul S. Heayn, Integrity Commissioner for Municipality of Sioux Lookout*

*May 8, 2018*

## **1. INTRODUCTION**

On February 13<sup>th</sup>, 2018 I received a complaint from Ann Mitchell, C.A.O. of the Municipality of Sioux Lookout about Michael Quince, Committee Member of the Environment Committee. Her complaint specified that Micheal Quince specifically breached Sections 4.4, 6.2 and 6.5 of the Council Code of Conduct by submitting two letters to the Sioux Lookout Bulletin for publication on Jan. 31. 2018 and Feb. 7, 2018 talking about the “serious contamination occurring at the community’s town beach”.

## **2. BACKGROUND**

The Council Code of Conduct was presented to every board member that stipulated the rules of conduct for Council and Board Members required by section 223.2 of the Municipal Act. Beginning in September 2017, Brian MacKinnon, Clerk presented to all Municipal Boards, Commissions and Committees their roles, responsibilities and obligations under the Code of Conduct including other governing by-laws and legislation. This presentation was made to the Environment Committee on February 1, 2018.

At a Closed Session portion of the Environment Committee meeting on February 1, 2018, Brian MacKinnon, Clerk, at the request of the CAO, Ann Mitchell, conveyed confidential information to the Environment Committee regarding their request for information on the contamination of the Farlinger Park/Town Beach. It was made clear that the information was to remain confidential.

## **3. Summary of the Complaint**

The Complaint specifically sites the violation of Section 4.4, 6.2 and 6.5 of the Council Code of Conduct which states:

4.4 Conduct Respecting the Municipality and the Decision Making-Process:

- i) Council and Board Members shall accurately and adequately communicate the decisions of Council, or of the Board, even when he or she was not in the majority or in favour of the decision.
- ii) Council and Board Members **shall respect the decision-making process.**
- iii) Council and Board Members **shall encourage respect for the Municipality and its By-Laws and Policies.**

## 6.2 Closed Meetings:

Council and Board Members **shall not disclose to any person or to the public,**

i) **the subject matter of the discussion** or debate;

ii) details or information regarding the matter

iii) details of the discussion or debate, or

iii) **the manner in which the matter was dealt**

unless required by law to do so, or until those details are discussed in an Open Meeting or the Councillor Board Member is specifically authorized by Councillor the Board to do so.

6.5 Council and Board Members **shall not disclose to any person or to the public, internally circulated memos, reports or other information, intended for Council or Board Members and not intended for the general public.**

## 4. INVESTIGATIVE PROCESS

In order to investigate this complaint, a copy of the two letters to the editor (Sioux Lookout Bulletin) was examined.

The first letter January 31, 2018 talks about Mr. Quince's opinion that "free speech has become lost" and "the only logical alternative, in my opinion, is to engage in open discussion and public debate on the issues at hand". He goes onto say that there is a "lack of open community engagement, when council doesn't share its information". He ends the letter with "(I seem to have the town beach contamination in the back of my mind as I write this...)"

In the second letter to the editor on February 7, 2018, Michael Quince released a letter to be printed in the Sioux Lookout Bulletin that, in his opinion, raised serious concerns and read in part:

- "the Municipality's **Environment Committee** expressed its concern to the Sioux Lookout Municipal Council regarding the serious contamination occurring at the community's town beach. At the time, by not addressing the ground water/soil contamination first, (i.e. before awarding the contract to upgrade Wellington Street) it felt much like the 'cart before the horse scenario'.
- "The **Environment Committee** never received a formal reply on this concern".
- "Last summer, or there about the **Municipality received funding** to proceed with the proposed Waterfront Upgrades."

The letter goes on to express Mr. Quince's opinion about the "swath of brownish reddish mixture pock marked with small pools of a shiny, oily looking substance; the Municipal Council has spent substantial tax dollars on Design and Engineering Consultants for the proposed waterfront development without addressing the pollution first; another 'cart before the horse' scenario. The lack of a public meeting in October 2017 shows another disconnect between this present Municipal Council and the citizens.

Beginning in the Fall of 2017 and continuing into the Winter of 2017, Brian MacKinnon, Clerk presented to all boards and commissions their roles, responsibilities and obligations under the **Code of Conduct** including other governing by-laws and legislation.

On February 1, 2018, Brian MacKinnon, Clerk, at the request of the CAO, conveyed confidential information to the Environment Committee at its regular meeting in closed session, regarding their request for information on the contamination of the Farlinger Park/Town Beach.

The presentation disclosed ten (10) terminologies related to the Beach; Site history from 1987 to present; Results of the MIP Study; Beach Rehabilitation, and, next steps.

It was made clear that the information was to remain confidential.

On February 7, 2018 Mr. Quince, despite having the express knowledge that the information remains confidential, published his second letter with the Sioux Lookout Bulletin.

## 5. THE COMPLAINT

The complaint centers on whether or not Mr. Quince violated the Council Code of Conduct - Sections 4.4, 6.2 and 6.5. As a member of the Environment Committee, like Members of Council, Mr. Quince is bound by the Code. The Council Code of Conduct is made mandatory for all members of Council and Board, Commission and Committee Members by the Municipal Act, RSO 1990 Section 223.2.(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to **establish codes of conduct for members of the council of the municipality and of local boards of the municipality.** 2006, c. 32, Sched. A, s. 98.

The Council has approved a Code of Conduct by Passing By-law No. 16-12 on the 16<sup>th</sup> of May 2012

## 6. INTERVIEWS

### **Ann Mitchell, C.A.O. – The Complainant**

I asked Ann Mitchell how much is publically known about the Beach Contamination since the contamination was discovered in 1987 and she replied that the Health Unit issued a health warning in 2015 and the beach has been closed since then. The Municipality is working with the MOECC and the drinking water issues and the MOE advises that there is no drinking water issues because the intake pipe is far removed from the contamination. There was a Media release in May of 2017. Asked what was the consequences of Mr. Quince's action in publishing the letters – especially the second letter on Feb. 7, 2018 - CAO advised that the \$2million funding approval was in jeopardy and the Municipality is working with the funder to have the grant approval extended until 2019 as the remedial action to contain the contaminants will be completed in 2018. She is confident that approval will be forthcoming.

When asked if the contamination is hazardous to the public, she replied that nothing has been proven. The ground water is going through it and MOECC is happy with what is to be done this summer.

The Municipality never committed to holding the public meeting in October as the municipality was waiting on the Phase II environmental assessment to be completed by the Consultants and they needed more time and the meeting was finally held on April 5, 2018.

The C.A.O. confirmed that the leaching has stopped but the Municipality is still concerned and has asked CN when they will fix the large contaminated area and they have replied that the area is too big to completely remove all the contaminants.

The C.A.O. advised that she told Michael Quince that he could come in to talk to her about his concerns but he never did. Others have come in to discuss their concerns but Mr. Quince never did take that opportunity.

## Michael Quince

Mr. Quince stated that his motivation for publishing the letters in the Bulletin was to make people aware of the issue of contamination at the Beach and give this issue more scrutiny by the public. He stated that the Environment Committee is not getting the answer's they seek, that they have been dealing with this contamination issue a long time, well before the Wellington Street reconstruction and they were getting nowhere with a response to their questions.

Mr. Quince was emphatic that no information was taken from any closed meeting. He also advised that he had talked to Mr. MacKinnon some time ago to get clarification on whether being on the Environment Committee would stifle him in expressing publically his opinions and he was told it would not. The Committee has been trying to find out about the contamination and they were promised that there would be a public meeting but when that was held (April 5, 2018) he felt that the meeting was poorly done and there was no option to ask questions and get answers. He knows of two other people that have the credentials to ask pertinent questions and they were not happy with the outcome of that public meeting.

Mr. Quince is concerned with the types of contaminants (e.g. dioxins) and how they are measured (e.g. whether parts per million or parts per trillion) as one result may show the presents of contamination while other results will miss the existence of contaminants altogether.

I asked why he did not seek a meeting with the CAO about his questions and concerns and he replied that others have and he did not think that they received relevant information.

I asked Mr. Quince if the Code of Conduct that he signed would be a reason not to write letters to the editor about this issue even after an update about the consultants work was presented on February 1<sup>st</sup> and he replied that **he did not disclose anything that was divulged in that closed meeting** and that he was expressing his opinion as a concerned citizen.

We went over the Sections of the Council Code of Conduct that was raised by this complaint (being Sections 4.4, 6.2 and 6.5) and **Mr. Quince feels that he did not disclose anything that was provided in any Closed Meeting of the Environment Committee** and therefore did not violate the Code of Conduct.

We discussed the fact that the Provincial Legislation makes it mandatory for the Council and Board Members to adopt a Code of Conduct and that by having the Code, it restricts the information and actions that a member can provide to the public whether they agree with it or not. It is a behaviour that each Member must adhere to and is different than just being a member of the public. Members are held to that Code and the protocol and procedures that the Municipal By-laws dictate.

Again, Mr. Quince does not feel that, in his opinion his letters were not a violation of the Code because he feels **none of the information in his letters was discussed in a Closed Session of the Committee.**

Mr. Quince revealed that he will be writing additional letter(s) to the Bulletin in the near future. When asked what he hopes will be gained by this he replied that the people must be made aware of what is happening with the beach contamination, the funding for the beach redevelopment and the results of the consultants reports. He knows of two other citizens that have more experience than he, that have serious concerns with Councils actions to remedy the contamination.

I suggested to Mr. Quince that he has an opportunity as a member of the Environment Committee to have the Mayor at a Committee meeting to express their concerns and conversely, requesting Council to be put on their agenda to express the Committee's concerns. I suggested that this is a better route to go than writing letters to the Editor. He did not agree.

## 7. CONCLUSIONS

The Council Code of Conduct is clear: “6.2 Closed Meetings: Council and Board Members shall not disclose to any person or to the public,

- i) **the subject matter of the discussion** or debate;
- ii) details or information regarding the matter;
- iii) details of the discussion or debate, or
- iv) the manner in which the matter was dealt

unless required by law to do so, or until those details are discussed in Open Meeting or the Council or Board Member is specifically authorized by Council or the Board to do so.

While Section 4.4 and 6.5 are also pertinent to this complaint, I feel that Section 6.2 has the clearest message to the Members as it states that Board Members **shall not** disclose to any person or to the public, **the subject matter** of the discussion or debate.

Clearly Mr. Quince has discussed “the subject matter” and disclosed that subject matter to the public by having his comments published in the Bulletin.

Mr. Quince has stated to me that he believes his letters were expressing his opinion and not the opinion of the Environment Committee. However, I pointed out to him that he admitted circulating the letters to all members of the Environment Committee and asked for a reply. He received no reply from any member. I suggested to Mr. Quince that he took “silence” on the issue as the Committee’s consent to go ahead and publish his letters.

In addition, Mr. Quince advised that he was just expressing his opinion as a member of the public and did nothing wrong in doing so. However, the fact that he circulated his letter to the Committee and asked for feedback and the fact that his letters contain references to the Environment Committee, speaks to the fact that Mr. Quince felt that he represented the views of the Committee. (For example his letter to the editor contained: “the Municipality’s Environment Committee expressed its concern to the Sioux Lookout Municipal Council”; and, “The Environment Committee never received a formal reply on this concern” [i.e. contamination at the beach].

## 8. RECOMMENDATIONS

The Council Code of Conduct is clear and Mr. Quince as a member of the Environmental Committee is held to the strict standards that that Code demands and is clearly expressed.

Mr. Quince does not believe that the Code of Conduct restricts his actions as a member of the Environment Committee when it clearly does. Mr. Quince is steadfast in his belief that the Public needs answers and any violation of any Codes or By-laws may be needed to facilitate that notion.

Mr. Quince is caught between what he sees as his obligation as a citizen representing the public on the Environment Committee and the protocols and by-laws that such a member needs to abide by. It is obvious that Mr. Quince has made a decision to air his concerns in the form of the local paper rather than seeking remedies about his concerns in the formal processes available to him as a member of the Environment Committee.



It is my recommendation that Council suspend Mr. Quince for ninety (90) days.

It is also my recommendation that Council, after Mr. Quince's suspension – if it is given - discuss with Mr. Quince his position on adhering to the Code of Conduct in the future, with a view that if Mr. Quince is not in favour of abiding by the Code, that Council remove him from the Environment Committee.

## **9. SUMMARY**

I would like to thank Ann Mitchell, C.A.O. for her forthright explanation of the complaint and the supporting documents provided.

I would also like to thank Mr. Michael Quince in talking to me about the issue of the Beach Contamination, his frank discussion on why he turned to "letters to the editor" to get his opinions across and his beliefs in the public's right to know. Mr. Quince is passionate about Council being open and transparent, something that the Municipal Act tries to convey to all Councils in Ontario. Many times there is frustration in the minds of the public at the speed in which the wheels of government turn. However, being patient in letting the flow of information take place is paramount to allowing local Council to, in the end, get it right.