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FILE: HAWK-2002

RE. Paula Assaly

### FINAL INQUIRY REPORT

December 31, 2020

#### **INTRODUCTION:**

The Integrity Commissioner received a request for an investigation dated November 19, 2020 alleging violations of the Code of Conduct of Members of Council and Local Boards (Town of Hawkesbury, Bylaw 13-2019, herein the “Code”), by the Mayor Paula Assaly.

The Commissioner undertook a preliminary analysis of the scope of the request for an investigation, as written, and of the 13 appended documents and the applicable regulations. It should be underscored that the Code incorporates by reference in sections 10.6.7 and 10.3 the provisions of the *Municipalities Act* in particular regarding the powers and duties of members of council.

The Commissioner determined that he had jurisdiction to open an investigation on the following questions:

- 1) Regarding the allegation of interference of the Mayor in administrative operations, did the Mayor exceed her authority in her relationships with employees, in particular in her role regarding the Chenail Community Center, and generally in her relations with non-management staff, in violation of paragraphs 10.2 and following of the Code?
- 2) Regarding the allegation of abusive relations with staff, what role did the Mayor play in the successive departures of the General Manager, the Clerk and the Director of recreation, what is the precise nature of the harassment which has been complained of by one of the employees, and does the communication between the Mayor and staff reflect the standard of respect required, all as stipulated in chapters 5, 10 and 11 of the Code?
- 3) Regarding the allegation of violations of the rules of confidentiality, did the mayor fail in her duties of confidentiality, without the authorization of council, in her communication with

third parties, in particular consulting firms or community organisations, to an extent prohibited by sections 8.1 and following of the Code?

As a number of persons susceptible of testifying on the facts alleged in this request for an investigation are not subject to the authority of the municipality, or are subject but could fear reprisal, the Commissioner invoked, by authority of paragraph 223.4(2) of the *Municipalities Act*, the powers which are made available to him under sections 33 and 34 of the *Public Inquiries Act* (S.O. 2009, c. 33, schedule 6)

During the course of the inquiry the Commissioner examined seven employees, four elected members of council and two of the municipality's professional consultants. With the approach of the holiday season, Mrs. Assaly declined to be available for examination and the Commissioner has therefore relied for her testimony on voluminous affidavits or briefs that she submitted before an investigator-mediator in related proceedings.

### **THE CONTEXT:**

The present inquiry has its roots in a unilateral decision taken by the municipal council, on a vote of 4 against 3, to fire three senior employees.

On June 16 2020, during a regular meeting of the committee of the whole, council declared an *in camera* session to discuss a subject added to the agenda by Mrs. Assaly without prior knowledge of either the clerk or the general manager. The mayor had a resolution adopted to terminate the employment of three of the four senior employees of the recreation department, without claiming any pertinent cause, and without any warning to the administration.

This gesture unleashed a series of events which today place the town of Hawkesbury in almost complete chaos.

It would be useful to recall a few elements of Hawkesbury's historical context.

Hawkesbury was once Ontario's industrial center in the lower Ottawa valley. The lumber mills which boomed in the 19<sup>th</sup> century gave way to the pulp and paper industry in the 20<sup>th</sup> century, but the flooding of the Ottawa river front above the new Carillon hydro dam and the closing of the CIP and Amoco plants sent Hawkesbury into a spiral of economic decline. Today, it has difficulty to reclaim its heritage as an economic center and there is a lot of discouragement and frustration as the population and many entrepreneurs strive hard to redress the situation.

Under-development in Hawkesbury has been accompanied by various government support initiatives for the less fortunate, with the side effect of segregating or ghettoizing part of the town. Stigmatisms, prejudice, animosity and resentment are some of the challenges which must be faced in order to build a community of inclusion, a community of cooperation, a community of enterprise. As in the gold rush, leaders emerge one after the other, each claiming they have

found the Eldorado, the magic solution to the town's problems.

Studies completed by Alternative RH, a human resource consulting firm, first in 2011 and then in 2018, bring to light a litany of difficulties in Hawkesbury's municipal political culture. Town councils succeed each other, remove senior management from office, and impose their solutions for under-development with varying success. According to the authors, history repeats itself every four years. The solution for these specialists is for members of council to concentrate on visions for the town's future and on strategies to bring them about, leaving to the administration the responsibility of elaborating and executing programmes and projects selected by council. Council and the administration must work hand in hand, on a consensus basis, to lay sustainable foundations for development to occur.

This is exactly what the *Municipalities Act* has stipulated, in the prescription of the roles and responsibilities of council and the roles and responsibilities of the administration: Council adjusts the town vision every four years and develops policies, bylaws and budgets to make this vision operational; the administration designs and implements programmes and services in compliance with these policies, bylaws and budgets, and the community mobilizes and develops various spheres of activity, with the aid of economic and other leaders. Each has its job to do. The law is quite formal on the separation of powers between the political and the administrative arm of government. It must be respected.

As many elected officials in Ontario have demonstrated difficulty in following this recipe, legislators have since enacted the *Municipal conflicts of interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. They have also imposed a duty to enact local codes of ethics. No need for elected officials to look for the recipe, they just have to follow the law.

A second issue identified by the consultants is the « culture of indiscretion » which reigns at the town hall. Essentially, they affirm that information and rumours of all kinds drive a highly emotional workplace environment, which detracts dramatically from a workplace which should be calm, objective and focused. They are adamant that members of council must set the tone by being much more reserved about personal information and commentary being circulated and by adopting a much more professional approach to their relations with staff.

This brief introduction serves only to recognize that Hawkesbury has been having difficulties for quite some time in its governance culture, difficulties which are rooted in a historic difficulty of elected officials to respect the exclusive role of the town administration in managing the town, and the difficulty of elected officials to assume the role of “conductor” of the municipal symphony rather than the role of “first violin”.

**A. INTERFERENCE IN ADMINISTRATION AND DISREGARD FOR MUNICIPAL POLICIES**

**Facts at issue:**

Mrs. Assaly is accused of consistently overreaching the authority and powers of the office of Mayor, interfering in the functions reserved exclusively to the administration, in violation of part 10 of the Code of Conduct and sections 224, 226.1 and 227 of the *Municipalities Act*.

A number of incidents were reported to demonstrate this general practice:

1. In January 2019, Mrs. Assaly unilaterally intervened in the process of preparing a government infrastructure grant application. She took the coordination mandate away from the administration and unilaterally requested an outside organization to prepare the application.
2. On or about June 6 2020, Mrs. Assaly interfered in contractual relations between the town and the Chenail cultural centre, unilaterally charging the Centre with responsibility for the sale of permits for boats at the town marina.
3. On June 16 2020, during its regular meeting of the committee of the whole, council declared an *in-camera* session to discuss an item placed on the agenda by Mrs. Assaly without the prior knowledge of the clerk or general manager. It was a request to dismiss the Director of recreation and two of her managers – Aquatics and Facilities. The motion did not assert any relevant motive and was not supported by any a management or legal advice.
4. The same evening of June 16, in regular council session, Mrs. Assaly had a motion adopted to appoint a replacement for the recreation manager, without the prior knowledge of the administration.
5. On July 29, 2020, Mrs. Assaly intervened by email with a consulting firm with regard to the granting of a contract.

**Applicable rules:**

Code of Conduct:

***PART 10: CONDUCT RESPECTING STAFF***

***10.1 Roles and responsibilities***

*The Chief Administrative Officer (CAO) shall take direction from and be responsible to Council of the Town, but shall not be instructed or directed by or be responsible to any individual member of the Council. The CAO shall consult with Council with respect to any*

matter of concern to the Town or to any of its local boards. Clearly defined roles, distinguishing between the concepts of “governance” and “management”, are critical to the success of a municipality. It will be reinforced at the outset that Council sets the policy for the community; it does not engage or participate in the daily operations of the Town.

## **10.2 Interaction with staff**

The Town has worked diligently at creating a positive working relationship between Council and staff. This has been successful, largely due to a mutual respect for each other's roles and responsibilities.

(...)

**10.2.2** *The role of the CAO and the directors is to direct the day-to-day management of the Town, and assign duties to the staff placed under their supervision. To encourage the efficient management of the community, individual Council and local board members are requested to be mindful of that fact and are advised of the following:*

**10.2.2.1** Council will respect and adhere to the policies set by Council, and will under no circumstance take it upon themselves to circumvent or ask staff to circumvent established policies. Only Council as a whole, at a formal meeting, has the authority to amend policies;

(...)

**10.3** The Municipal Act, 2001 sets out the roles of members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer and the Integrity Commissioner.

**10.4** Mutual respect and cooperation are required to achieve the Council's and local boards' corporate goals and implement the Council's and local boards' strategic priorities through the work of staff.

(...)

**10.6** Members of Council are expected to:

(...)

**10.6.4** Ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of Council;

(...)

**10.6.7** Carry out the duties of Council under the Municipal Act, 2001 or any other Act.

**10.7** Municipal staff is expected to:

**10.7.1** Implement Council's decisions and establish administrative practices and procedures to carry out Council's decisions;

**10.7.2** Undertake research and provide advice to Council on the policies and programs of the Town; and

**10.7.3** Carry out other duties required under the Municipal Act, 2001 or any Act and other duties assigned by the Town.

10.8 Members of Council shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from an individual member or group of members of Council.

(our emphasis)

We note that article 10.6.7 the Code stipulates that the functions of elected officials are those provided in the Municipalities Act (S.O. 2001, chap. 25). Consequently, the applicable rules encompass those of the Act.

*Municipalities Act* (S.O. 2001, chap. 25):

**PART VI  
PRACTICES AND PROCEDURES**

**MUNICIPAL ORGANIZATION AND ADMINISTRATION**

**Role of council**

**224 It is the role of council,**

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act. 2001, c. 25, s. 224; 2006, c. 32, Sched. A, s. 99.

**Role of head of council**

**225 It is the role of the head of council,**

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;
- (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act. 2001, c. 25, s. 225; 2006, c. 32, Sched. A, s. 100.

(...)

**Head of council as chief executive officer**

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

- (a) uphold and promote the purposes of the municipality;*
- (b) promote public involvement in the municipality's activities;*
- (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and*
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents. 2006, c. 32, Sched. A, s. 101.*

***Municipal administration***

***227 It is the role of the officers and employees of the municipality.***

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;*
  - (b) to undertake research and provide advice to council on the policies and programs of the municipality; and*
  - (c) to carry out other duties required under this or any Act and other duties assigned by the municipality. 2001, c. 25, s. 227.*
- (our emphasis)*

**Analysis:**

The evidence indicates that Mrs. Assaly, having evolved in a business environment, possessed a widely recognized entrepreneurial spirit. Before her election as mayor, she was involved in the development of the Chenail cultural centre (the “Chenail”), one of Hawkesbury’s non-profit organizations, where she was the president. The Chenail rents a building from the town located in Confederation Park, a building it operates for cultural purposes. Management at the Chenail has been in continuous conflict with the prior mayor and the administration of the town. Upon the arrival of Mrs. Assaly as mayor, the conflicts were perpetuated between the mayor and the director of the Recreation Department.

A significant part of Council believes that the development of the town of Hawkesbury depends on tourism. Confederation Park and its center are important levers for promoting tourism development. Responsibility for economic development and tourism was assigned to the director of the Recreation Department. An external study was contracted to assess the development potential of Confederation Park in connection with the development of the central business area. The mayor considered that the department responsible for recreation and economic development was not delivering the results she wanted.

Rather than turning toward council, to establish infrastructure development plans and incentive and partnership programmes, the roles provided for in the Act and in the Code, Mrs. Assaly took it upon herself to act alone, in violation of the Code, particularly in assigning administrative work to personal collaborators outside the municipal corporation and by personally directing front line staff. These gestures were made unilaterally without obtaining either the collaboration or the agreement of the administration.

This behaviour is explainable, in part, by the entrepreneurial spirit of Mrs. Assaly, a spirit shared

by certain members of council. Upon occasion, this spirit manifests itself without the knowledge of council:

- As an example, the municipal council previously undertook a project whereby councillors themselves became volunteers to perform the planting of flowers on the town garage property. Unfortunately, members of staff objected to the councillors' intervention because of the risk of underground utility lines or conduits in the zone chosen for the flower beds. One of the councillors insisted, with Mrs. Assaly's encouragement, against the objections of the facilities manager. To paraphrase one of the councillors: "Staff don't move fast enough. We have no choice if we want to accomplish anything."
- In January 2019, Mrs. Assaly unilaterally decided to assign the research and preparation of a government infrastructure grant application to the Chenail. Responding to complaints of interference by the Director of Recreation, Mrs. Assaly responded *«It is in the interest of the Corporation that we all work together to present an A+ grant application and there is no place for egos or childlike feelings.(...) Seeing as this was going back and forth and nowhere for months, I informed the Recreation Director to complete the part for which she was responsible on behalf of the Town, then to send the information to Le Chenail Cultural Centre, which would finish the grant application and send the final product to the CAO. (...) Instead of seeing the Mayor's attempt to assist her as something positive, she feels threatened.»*
- On or about June 5, 2020, before the dismissals of June 16, Mrs. Assaly took it upon herself to deliver boat permits to the Chenail authorizing the organization to take care of selling permits to boat owners. Responding again to complaints of interference, Mrs. Assaly responded: *"Someone had to make a practical decision on the spot (...) July 8, yes I requested that the voice mail message be changed (...) If there is anything to remember from the 2019-2020 tourism organization, is that the organization was blatantly a shame and an embarrassment for the Town of Hawkesbury and it was done deliberately to complicate matters for the consumers."*
- On June 16, 2020, during an *in-camera* session of the Committee of the Whole, Mrs. Assaly had a new motion placed on the agenda. It was a motion to order the dismissal of the Director of Recreation and two of her managers – Aquatics and Facilities, without prior notice to the clerk or the general manager. Mrs. Assaly had prepared her majority for the debate by discussing the item in advance with two allies on council and by visiting one of the "opposing" councillors at his home the day before to obtain his support for her motion. During the debate she affirmed that it was legal to dismiss the employees, even without cause and without obtaining the advice of either the general manager or a lawyer. When asked by the general manager to table the motion long enough to verify the legality and prepare a recommendation, Mrs. Assaly refused to delay the decision.
- On July 6, 2020, the recreation services manager felt it necessary to confirm in writing her understanding of Mrs. Assaly's directives given during a supervision meeting. Mrs. Assaly responded the next day contradicting eight of the thirteen points recorded in the manager's email.
- On July 22, Mrs. Assaly wrote an email to one of the town's consultants to obtain a copy of certain documents: *"(...) I am looking for that letter or document so that I can inform*



*the person responsible for cutting the grass accordingly.”*

- On July 28, 2020 Mrs. Assaly communicated with the general manager severely criticizing the drafting of a certain municipal publication, copying the employee responsible.
- When the general manager does not manage the relations with the Chenail in the way desired by the mayor, she writes on November 10, 2020 : *“Allow me to comment on your decision. (...) Your decision is such that the file is no longer the responsibility of the administration but rather, under the circumstances, the responsibility of Council.” (our translation)*

However, according to the roles and responsibilities set out in the Code of conduct and the Municipalities Act, it is clearly not the responsibility of the mayor or of councillors to become entrepreneurs and plant flowers, to assign contractual duties, to prepare grant applications, to directly manage front line employees like writers or gardeners, or to manage contractual relationships with service providers or partners.

Staff have complained that when Mrs. Assaly meets obstacles to achieving her personal objectives, rather than turning to a democratic debate at council to establish clear objectives and milestones, she works around the issues assuming powers that the municipal policies reserve for staff:

- On July 29, 2020 Mrs. Assaly writes to a consulting firm : *“All the documentation has been given to the acting general manager for the contract proposal to be approved.” (our translation)* bypassing the town’s Purchasing policy SF-P-2015-01.
- The evening of the dismissals on June 16, in regular session of council, Mrs. Assaly proposed and had adopted a motion to appoint a new staff member, without the prior knowledge or recommendation of the administration, bypassing the town’s hiring policy SRH-P-05-01.

However, one of the mayor’s first responsibilities is to maintain and promote the respect of municipal policies and bylaws. Mrs. Assaly has not always done this.

Numerous resignations by staff indicate the degree of reprobation by staff of the lack of elementary respect for the separation of powers between the council and the town administration:

- The clerk resigned on June 17 protesting the way in which council bypassed the responsibilities of the town administration when dismissing the three senior employees on June 16.
- At least four other senior employees followed in her steps invoking essentially the same motives.

Clearly, when a number of managers with considerable years of experience choose to put an end to their career with their employer, all for the same reason, one cannot ignore the magnitude of the problem.

While Mrs. Assaly's behaviour can be explained by her entrepreneurial spirit, frustrated by her perception that staff may be too slow, a perception of incompetence, we believe that it is also explained by her personal preoccupation with the Chenail's role in the town, a personal mission wrought with animosity directed toward the Recreation department and, by ricochet, toward the general manager.

- Witnesses assert that Mrs. Assaly concerns herself very little with other departments in the town or their directors, at least without such personal determination.
- On November 10 Mrs. Assaly wrote: « *I am aware that the Chenail is the subject of torment bordering on obsession for some individuals.* » (our translation). Almost all witnesses express the conviction that it is Mrs. Assaly who is most affected by such an obsession.
- In documents which she has drafted in response to allegations of harassment, Mrs. Assaly states that in her training as a lawyer she learned to focus on issues and disregard personalities. However, in these very documents she proceeds for dozens of pages to attack the competencies of the town managers and formulates derogatory judgements of their character traits.

The apparent obsession of Mrs. Assaly for the Chenail file and against staff involved in the file, seriously undermines her capacity to show the impartial and objective leadership which is required by the Code of Conduct and by the *Municipalities Act*.

We conclude that Mayor Assaly has in fact neglected her duty of respect for the town administration by repeatedly and improperly interfering in the administration's roles and responsibilities, sometimes obsessively with regard to the Chenail Cultural Center, and often in violation of the policies officially adopted by the town's council.

Mrs. Assaly is consequently in violation of Part X of the Code of Conduct and sections 225, 226.1 et 227 of the Municipal Act.

## **B. BREACH OF CONFIDENTIALITY**

### **Facts at issue:**

The request for an inquiry alleges a number of breaches of confidentiality obligations by Mrs. Assaly.

### **Applicable rules:**

Code of Conduct:

## ***PART 8: CONFIDENTIAL INFORMATION***

*8.1 Members have a duty to hold information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. They either shall not, directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council, by the local board or required by law.*

(...)

**8.6 Protection of Privacy:**

*8.6.1 Confidential information includes information in the possession of, or received in confidence by the Town that the Town is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.*

*8.6.2 No member shall disclose or release by any means to anyone, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council or local board to do so.*

*8.6.3 No member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.*

*(our emphasis)*

**Analysis:**

Mrs. Assaly intervenes in relations involving third parties and takes the initiative to communicate the position of the town:

- On July 29, 2020, Mrs. Assaly intervened by email addressed to a professional consulting firm regarding the award of a contract. *“All the documentation has been given to the acting general manager for the contract proposal to be approved.” (our translation)* We were not able to determine if this information was in fact supported by previous decisions of council.
- Testimony alleges that Mrs. Assaly intervened with another consultant to give instructions or to exercise undue pressure on his work. However, these allegations were invalidated by the third person concerned.
- There are emails which suggest that information of a strategic nature was shared by Mrs. Assaly with her close collaborators, in particular the vacancy left by the sudden departure of the town’s senior planner. However, there is no direct evidence that it was Mrs. Assaly who shared this information.
- While the town hall was closed under public health directives, Mrs. Assaly held a private meeting with the president of the Chenail cultural centre at the very time when the staff attempted to contact the president to conclude negotiations on the pending partnership agreement. However, there is no evidence of what confidential information might have been shared.

When Mrs. Assaly's communications include information protected by the Code of Conduct, there may be a breach of confidentiality obligations. In the events identified, there is no evidence that the information that was communicated was subject to the code or the statute. In other words, there is no evidence that they came from a third party, that they came from an *in-camera* session of council or that they were of a personal nature. Consequently, we cannot conclude that Mrs. Assaly has breached her duty of confidentiality. Mrs. Assaly may on occasion have shown a certain indiscretion, but for which she has apologized.

In a very specific case, there was a breach of confidential information by the identification of the employees of the recreation department who were to be fired following the *in-camera* session of June 16, 2020. In fact, while the general manager was seeking legal advice before executing council's instructions to dismiss without cause, the identity of the three employees was circulating. The employee at the source of the rumor was identified but they left their employment without divulging the source of the information.

We conclude therefore that the circumstantial and hearsay evidence obtained is insufficient to establish that Mrs. Assaly has herself divulged any confidential information which is protected by the Code of conduct or by the law.

### **C. HARASSMENT:**

#### **The facts at issue:**

The Director of human resources, who has since become the Acting General Manager, received harassment complaints directed at Mrs. Assaly by different employees. It is alleged that the employer's obligation to prevent workplace harassment is compromised by the attitude and behaviour of Mrs. Assaly. The Director attempted to have the question of harassment prevention addressed by council but without success.

#### **The applicable rules:**

*The Occupational Health and Safety Act*, O.S. 1990, chap. O.1:

##### **Definitions**

**1 (1)** *In this Act.*

(...)

"workplace harassment" means,

(a) *engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome,*

(...)

**Workplace harassment**

*(4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.*

Code of conduct:

**PART 11: HARASSMENT**

(...)

**11.4** *Without limiting the generality of the foregoing, members shall not:*

**11.4.1** *Make inappropriate comments or gestures to or about an individual where such conduct is known or ought reasonably to be known to be offensive to the person(s) to whom they are directed or are about;*

(...)

**11.4.3** *Make threats or engage in any abusive activity or course of conduct towards others;*

(...)

**11.4.6** *Refuse to converse or interact with anyone based on any ground listed in the Human Rights Code, as amended.*

**11.5** *Harassment, which occurs in the course of, or is related to, the performance of official duties by members is subject to this Code of conduct and shall be investigated by the Integrity Commissioner.*

**Analysis:**

The testimony of employees and members of council identify a large number of incidents where the behaviour of Mrs. Assaly could certainly be perceived as vexatious and sometimes threatening or intimidating.

The first person to be the object of vexatious behaviour by Mrs. Assaly is the Director of Recreation, before her dismissal in the *in-camera* council meeting of June 16 2020.

- At the Canada Day celebrations organized by the recreation department, Mrs. Assaly avoided all contact with the Director of Recreation. Mrs. Assaly has responded that she is not required to interact with staff at public events.
- Mrs. Assaly appears to have stated to the general manager that she did not wish to have any contact with the Director of recreation.
- When she received the consultants report on the development of Confederation Park, Mrs. Assaly entrusted review of the report to her outside collaborators, without involving the recreation department which initiated the study and which was responsible for the park and for tourism development.
- Witnesses from various departments agree that the recreation department was targeted by Mrs. Assaly. In the wake of the June 16 dismissals, other employees of the recreation department felt vulnerable. Much earlier, speaking to the Director, one member of council had felt it necessary to state “We will protect you”.

The general manager was the object of vexatious behaviour both before and after the departure of the Director of Recreation:

- His requests that Mrs. Assaly limit her interference in the work of employees were ignored.
- His proposal to mediate the relationship between Mrs. Assaly and the Director of Recreation was rejected.
- On December 3, 2019, Mrs. Assaly convened a meeting with the general manager, and was accompanied by two council member allies. It is said that Mrs. Assaly's words were demeaning and accusatorial and, in the presence of the two other councillors, appeared intimidating. Mrs. Assaly has responded explaining that the two members were invited because one was the deputy mayor and needs to stay abreast of the files and because the other is a potential candidate for the mayor's seat in the next election. The « political » nature of this meeting is confirmed and Mrs. Assaly did not deny the aggressive nature of the conversation.
- The request by the general manager to table the June 16 motion for dismissal while a legal opinion was obtained was ignored.
- Mrs. Assaly insinuated during a private meeting with the general manager that it was believed that he had an intimate relationship with a senior employee. The concerned parties have both denied such a relationship and the very thought that such a rumor could be started was perceived by the general manager as intimidating.

The Recreation Activity Manager was also subject to vexatious behaviour by Mrs. Assaly:

- The manager presented an interim report on the development of Pioneer Place to the annual meeting of the « Business Improvement Area » association in 2018. Mrs. Assaly humiliated the employee with public commentary stating that the report contained a multitude of errors.

Mrs. Assaly's emails often have a harsh tone and contain derogatory remarks, including toward the acting general manager:

- On July 29, 2020 Mrs. Assaly concludes an email addressed to the acting general manager stating: *"I repeat that your statements and allegations are not appropriate and all your emails will henceforth be directed to my personal lawyer."* (our translation)
- On September 11, 2020, she wrote: "Allow me to reassure you that the council does not question your work as human resources director or acting general manager. (...) I did not ask you questions (...) because of your difficulty to be impartial (...). The administration has not shown its impartiality with regard to the Recreation Director (...)." (our translation)

In conclusion, we believe that the communications between the mayor and the administration are dysfunctional at best. It is clear that the level of confidence is almost non existent, the mayor making others wrong, and the others trying to protect themselves as best they can. It is not for us to determine who is right or wrong, but we may easily conclude that a significant number of

employees feel diminished, humiliated, intimidated and sometimes threatened. The definition of harassment refers not to the intention of the respondent, but to the perception by the victim. With reactions regularly expressed by management and a number of professional employees, Mrs. Assaly could not be unaware that her behaviour was vexatious.

Is Mrs. Assaly entitled to the exception in the statute to the effect that employers have the right to manage and that management decisions otherwise valid may naturally have a vexatious effect – disciplinary measures for example? The answer is no. First, by wrongfully interfering in the administrative functions of the town she forfeited her right to invoke the management exception. It was not for the mayor to take many of the actions she has taken, vexatious or not.

More specifically however, no one feels it is fair to be dismissed without relevant cause. Nor is it acceptable to be criticized except by a supervisory manager who adopts a constructive approach and a respectful tone. Nor does anyone like to be personally insulted or humiliated in front of others, under any circumstances.

Without concluding that the *Occupational Health and Safety Act* was infringed, we have certainly found harassment under the Code of Conduct rules. This harassment extends to a significant number of employees, indeed any employee who do not appear to support her interventions. In the case of the Director of Recreation, there appeared to be a prior disposition before her election as mayor.

#### **D. ADDITIONAL VIOLATION – CONFLICT OF INTEREST, IMPARTIALITY AND DUTY NOT TO OBSTRUCT COMPLAINT PROCEDURES:**

##### **Facts at issue:**

It became apparent, during the course of this inquiry, that Mrs. Assaly intervened to influence the management of harassment complaints for which she was the object.

##### **Applicable rules:**

Regarding conflicts of interest, the Code of Conduct refers simply to the *Municipal Conflict of Interest Act* (“MCIA”). This statute is only concerned with pecuniary interests.

However, even before being subject to the Code of Conduct and the MCIA, each newly elected member of council makes a solemn Declaration of office:

1. I will truly, faithfully and impartially exercise this office to the best of my knowledge and ability.

##### **Analysis:**

The MCIA prohibits the participation by a council member in debates and votes at council on questions where they have a pecuniary interest. The statute covers interests of a pecuniary nature, not interests of a political or moral nature. In addition, it recognizes up front that loss of remuneration as a result of a complaint is a pecuniary interest but it creates an exception so that an elected official can intervene before council on the question of his code of conduct liability and the appropriateness of a suspension of salary.

On the other hand, the MCIA expresses at the outset the principles of integrity and independence – which would require that the spirit of the law be respected, beyond the specific mechanisms of disclosure and recusal.

#### **Principles**

**1.1** The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:

(...)

3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.

The spirit of the statute therefore applies to the integrity and independence of the inquiry procedure, even though a narrow exception exists for substantive questions of compliance and sanctions. In other words, the integrity of the process of handling a complaint must be guaranteed without compromise.

During the management of the two complaints for harassment against Mrs. Assaly, the administration advises the mayor that efforts to find an available investigator are proving difficult. Mrs. Assaly was informed that all potential investigators, including a certain Mr. XXX, were unavailable. Mrs. Assaly intervened by email dated September 11, 2020, as follows:

- *“The fall is very close. I have no objection to follow the wishes of council. Once again, I point out that (our lawyer) highlighted the name of Mr. XXX responsible for the inquiry of (another complaint). At the last meeting with (our lawyer) everyone agreed that the Corporation retain the services of this same investigator. Regardless of the complaints and/or possible law suits, my integrity cannot be bought by anyone. I would appreciate it if you could communicate with Mr. XXX to inquire about his earliest availability.” (our translation)*

The choice of an independent investigator is a question of process and must be treated with integrity and independence in accordance with the statute’s principles. It is apparent from this email that Mrs. Assaly feels personally at risk by these complaints and by their potential impact on her reputation, and understandably so. She interferes in the selection process for the investigator by participating in a meeting in particular with the town’s lawyer and by giving instructions to management. Her participation in the management process for these complaints does not meet the test of impartiality required by her Declaration of office and undermines the integrity of the process.



This behaviour is not an isolated case. In another complaint matter against her where the determination of the appropriate integrity commissioner was before the Council, Mrs. Assaly ignored a warning of conflict of interest issued by the integrity commissioner and remained present in the debate. She took advantage of her presence to indicate her preference for the nomination of a substitute commissioner for that specific complaint against her.

In addition, Mrs. Assaly participated in a Council vote on November 23, 2020 when approving a settlement and discharge for the departure of an employee. This agreement included an undertaking by the employee to withdraw a harassment complaint against the mayor. Mrs. Assaly clearly had a duty to abstain from voting as she could not ensure her independence and objectivity. She therefore failed in her duty of impartiality and independence.

We conclude that Mrs. Assaly has violated her Declaration of Office by exercising her council duties in a matter where she could not claim to be impartial, as prohibited of her Declaration of Office and the principles of the MCIA.

## **PENALTIES :**

### **Applicable rules:**

The Code of Conduct provides for the following sanctions, in accord with the Municipalities Act. :

#### **18.10 Penalties imposed by the Town**

**18.10.1** Council may impose any of the following penalties on a member if the Integrity Commissioner reports to the Town that, in his or her opinion, the member has breached this Code of Conduct:

**18.10.1.1** A reprimand.

**18.10.1.2** Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or local board, as the case may be for a period of up to 90 days.

**18.10.2** Council may also take the following additional actions:

**18.10.2.1** Remove the member from an ad-hoc committee, committee or board.

**18.10.2.2** Remove as chair of a committee or local board.

**18.10.2.3** Require the member to repay or reimburse the compensation received.

**18.10.2.4** Require the member to return property or reimburse for the value of it.

**18.10.2.5** Any other fair and reasonable sanction given the circumstances.

**18.10.2.6** Request a public apology to Council, the complainant, or both.

**18.10.2.7** All sanctions under this Code of conduct will be fair and in keeping with the severity of the infraction, giving due regard to the member's previous conduct.

### **Analysis:**

It is always important to provide for a penalty that is commensurate with the nature and severity of the violations.

In the present case, as the violations do not indicate any malevolent intent, nor the pursuit of personal gain, it would be ill advised in our opinion to impose any penalty of a punitive nature. It would be more appropriate to identify which sanctions could serve to correct the behaviour of Mrs. Assaly for the future and thereby give a chance to the municipality to re-establish some form of stable and enduring governance.

It is noted that Mrs. Assaly has already participated in training offered to elected officials by AMCTO on her roles and responsibilities. Mrs. Assaly has also attended training delivered by the integrity commissioner including a part on the roles and responsibilities of elected officials. We believe she must still work on developing her understanding of her role.

### **Recommendations on penalties:**

We recommend,

- 1) by authority of article 18.10.2.6, that the municipal council require that Mrs. Assaly formulate a public apology to the former Director of Recreation, the former General Manager and the current Acting General Manager for her vexatious behaviour, without qualification, explanation, justification or other commentary;
- 2) by authority of article 18.10.2.5, that the municipal council require that Mrs. Assaly obtain the services of a professional management coach, at the municipalities expense, to help her to develop leadership skills adapted to institutional governance, for a duration of at least 24 hours of coaching, spread over a minimum of 3 months. She could select her coach among a list of candidates preselected by the human resources department;
- 3) by authority of article 18.10.2.1, that the municipal council remove Mrs. Assaly from membership on the Committee of the Whole until such time as a new general manager has commenced office and until such time as she has complied with the two recommendations above. Furthermore, that the municipal council appoint an acting chair for the Committee of the Whole charged with ensuring the liaison with the acting general manager.

We believe that these penalties will restore a certain calm within the town administration and will allow the general manager and clerk a chance to re-establish a relationship of trust with the whole of municipal council, without the interference of the mayor.

**CONCLUSIONS :**

Wherefore, we conclude that Mayor Assaly has failed in her duties under the Code of Conduct on a variety of occasions and with regard to a variety of individuals, in particular by interfering in the exclusive responsibilities of the town administration, and vexatious comments and gestures repeatedly directed at various staff members. She has also failed in her duty of impartiality in the performance of her functions on various occasions.

IN our opinion, these violations have caused major damage to the integrity and stability of governance regime of the town, in particular with the massive departure of senior staff, demotivation and dysfunctional communication.

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**RECOMMENDATION :**

The undersigned recommends that this report be received by council and that its conclusions be endorsed.

The undersigned recommends that the above penalty recommendations be adopted by Council.

Respectfully submitted,

A handwritten signature in purple ink, appearing to read "John Saywell".

John Saywell, attorney  
Integrity Commissioner  
Town of Hawkesbury