

**Cape Breton Regional Municipality**

**Council Meeting**

**ADDENDUM**

**TUESDAY, OCTOBER 10<sup>TH</sup>, 2023**

**6:00 P.M.**

Council Chambers  
2<sup>nd</sup> Floor, City Hall  
320 Esplanade, Sydney, NS

# Cape Breton Regional Municipality

## Council Meeting

Tuesday, October 10<sup>th</sup>, 2023

6:00 p.m.

### **ADDENDUM ITEM**

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8. **COUNCILLOR AGENDA REQUEST:**

**7:35 p.m.**

8.1 **Harassment Complaint and Investigation:** Councillor Earlene MacMullin, Councillor Darren Bruckschwaiger, Councillor Gordon MacDonald, and Councillor Ken Tracey

- Council Agenda Request Form (See page   3  )
- Attachment A (See page   7  )
- Attachment B (See page  10 )
- Attachment C (See page  13 )
- Attachment D (See page  15 )
- Attachment E (See page  25 )
- Attachment F (See page  27 )
- Investigation Report (See page  38 )



City Hall  
 320 Esplanade  
 Sydney, NS B1P 7B9

Item No.

**Council Agenda Request Form**

**Included on Agenda**  
 (Submitted to Municipal Clerk's Office by 4:30 pm seven days before the meeting)

**Late Item**  
 (Submitted to Municipal Clerk's Office by Noon the day before the meeting)

**Request from the Floor: (New Business)**  
 - **Announcement**  
 - **Referral**  
 - **Submit Petition**  
 - **Notice of Motion**

**Date of Council Meeting: October 10, 2023**

**Subject: Harassment Complaint and Investigation**

**Request for Discussion:**

Request for third party review of harassment complaint and investigation

**Reason:**

Councillors Earlene MacMullin, Darren Bruckshwaiger, Gordon MacDonald and Ken Tracey feel that CBRM Senior staff moved a complaint of harassment forward without access to proper process resulting in a denial of natural justice and due process. In addition, by not providing any form of appeal process and preventing public discussion due to confidentiality, those of us mentioned have been forced to endure derogatory statements, misleading commentary in the media and damage to our reputations both professionally and privately. With Director Seth providing confidential documents to the media and publicly waiving their confidentiality concerns we have been granted the opportunity to speak out on our own behalf. A small number of our concerns with supporting documentation can be found below along with the content of the emails addressed in the investigation report.

- Concern of context **NOT** meeting criteria of workplace harassment as defined by the Government of Canada. Director Seth states in an email to the Director of HR, naming the respondents but stating that it was important to note that he was not targeted directly. (Attachment A)
- Concern that the allegations were being pursued by an individual other than the respondent. Council members have brought up issues with lack of inclusion in the decision making process numerous times previous during this administration. We believe this accusation may have been pushed in an effort to redirect attentions. (Attachment B)
- Concern of being targeted because of ethnicity and therefore being treated differently due to color of our skin. The comments perceived as harassing were addressed in the report from five Council members, but the complainant only accused four of harassment. The contents of Councillor Lorne Green's comments were also included, but the decision was made by the complainant to exclude Mr. Green as a respondent. The investigator accepted the decision to exclude Mr. Green may have been related to his racial identity. (Attachment C)
- Council's only employee had the responsibility of moving the complaint forward due to the policy being developed for employees, which we feel is a conflict created by the position requirements. Employees should not have the ability to determine if a complaint against their superior is valid or not.
- No opportunity to participate in an informal complaint procedure prior to receiving the formal complaint submission and no ability to appeal. 3.2 of the policy states to attempt informal

proceedings, 3.3 is the process for pursuing a formal complaint which we received two days prior to being offered an informal solution. To date no opportunity for appeal. (Attachment D)

- Unaware we were defending ourselves against a second accusation (retaliation) added after the original complaint was filed with no revision or copy provided to them. This was only discovered when the respondents received the findings of the investigation(s).
- During the one and only short interview each of us were provided, were not made aware that this was the only time we would be heard nor were we offered or made aware of the ability to provide witnesses, yet the Complainant was provided that opportunity.
- Staff proceeded knowing that they were not fully aware of how the process would unfold, and that the policy being followed was flawed when it came to elected officials. They proceeded anyway. (Attachment E)
- Letters from various legal counsel expressing concern about issues with the investigation have gone unacknowledged to date. (attachment F)

#### **Emails addressed in investigation report:**

##### **Darren Bruchshwaiger**

###### **June 22, 2022 email sent at 6:22pm with subject line "Canada Day" (Initial email):**

Can I ask who made the decision to cancel Canada Day this year. The words I heard from a citizen was Mr. Costello said there was still too much hurt in the country and it was decided Canada Day wouldn't be mentioned. Well as said Canada Day isn't a person but I believe our nation needs to be defended and celebrated even with any of our wrongs and bruises. I hope we don't end up with a truck convoy on the Waterfront over this. If I missed a meeting where Council made this decision I apologize, however I still don't support us not celebrating this great nation.

###### **June 23, 2022 at 12:04pm with subject line "Canada Day"**

Kirk, I am still having a problem understanding the reasoning for changing the name. You say that it was decided that it would be more respectful and inclusive to the indigenous community. Can I ask you to educate me on this? I am also wondering who is the group who made this decision and does the group feel that all communities who use the Canada Day heading as the event are not being respectful and inclusive to our indigenous community? You also mention that other communities in the country are doing this. Do you know if the elected Councils were included in these decisions in these other communities or if it was just staff decisions?

Again, I love my country and believe Canada Day should be celebrated every year on July 1<sup>st</sup>.

With respect,  
Darren Bruchshwaiger

##### **Earlene MacMullin**

###### **June 22, 2022 email sent at 6:52pm with the subject line "Canada Day"**

Darren I am in 100% agreement. When was the decision made and by whose authority? Last I checked we get to chime in on this. I am really getting tired of getting beat up for things I am not a part of or consulted on. I am proud of my country even though mistakes were made July 1 is Canada Day. I can't believe something so important with so much significance was relayed to council by staff on CBC without any input or consultation of the elected members who represent the residents. I look forward to hearing how we can rectify this.

###### **June 22, 2022 email sent at 6:54pm with subject line "Canada Day"**

They weren't postponed James the CBRM are just not going to refer to it as "Canada Day" which I think is ridiculous.

**Ken Tracey****June 22, 2022 email sent at 6:44pm with the subject line "Canada Day"**

Wow, I can't believe what I am hearing. All the more reason to celebrate our national holiday. After being locked up in our homes for the past 2.5 years people need to get out in or [sic] communities and enjoy our friends/neighbors and support our businesses that have struggled for far too long. I believe it was national indigenous peoples day yesterday and deemed a huge success. My thoughts.

**Gordon MacDonald****June 22, 2022 email sent at 7:10pm with the subject line "Canada Day"**

No mention of Canada Day!

I live in Canada and I am a proud Canadian.

I'm sorry I did not hear the CBC report, but this needs to be nipped in the bud, immediately.

Mayor, I ask that an emergency public meeting of council be called, to explain that Council, had no knowledge or input in such a foolhardy decision.

We as elected officials, not having awareness of any public statements are unacceptable, in my opinion.

What an insult to our Veterans young and old.

I look forward to a reply.

Gordon MacDonald

**June 23, 2022 email sent at 8:15am with the subject line "Canada Day"**

In my email I indicated I didn't hear the cbc interview, but if it were the case, it was foolhardy, and disrespectful to veterans, if CBRM were to avoid mentioning Canada Day.

That was the intent.

If in the interview, when I get to listen to it, and hear it mentioned, we won't refer to it as Canada Day, I will stand by my statement.

I seen the poster but I didn't hear the interview so my comments were based on the initial thread.

Respectfully,

**Lorne Green****Date and time unidentified in report**

How does this happen without Councils input? I also agree with my council colleagues, decisions are being made, and we are finding out through the media, this is no way to conduct our business. Canada Day is a celebration of a great country, nation, and its people, no matter what age, gender, color, nationality, you get the picture. I also agree with Councillor Gordon MacDonald we should have a meeting to discuss this decision. What are we saying to our veterans who fought for our freedom if we can't take one day a year to celebrate our Great Country? I understand mistakes have been made in the past, I can tell you personal ones that have been made to my people. However, that doesn't mean we stop celebrating because of those mistakes. We must show we are still a unified country and proud of our nation. If at the end of the day the decision is to cancel Canada Day celebrations I will accept it. Canada Day is a national holiday that people have no problem taking the day off work with pay! Perhaps the people who made the decision to cancel Canada Day, could direct staff of CBRM to report to work on this day.

**Outcome Sought:**

Council move a motion to have the complaint and investigation, in its entirety, be reviewed to determine if we have been provided our opportunity for natural justice and due process. In addition, we ask that the CBRM solicitor oversee the designation of an independent third party with the authority to perform this review; removing any involvement from the Mayor and CAO as they were named and interviewed in the process therefore having influence on its outcome.

|  |   |
|--|---|
| <i>Councillor Earlene MacMullin</i><br><i>Councillor Darren Bruckschwaiger</i><br><i>Councillor Gordon MacDonald</i><br><i>Councillor Ken Tracey</i> | <i>District 2</i><br><i>District 10</i><br><i>District 1</i><br><i>District 9</i> |
| <i>Date:</i><br><i>October 9, 2023</i>   | <i>Received by Clerk's Department (date):</i>                                     |

Attachment A 1 of 3

## What criteria have to be met to establish whether there was harassment?

Harassment is serious. To substantiate harassment allegations, it must be demonstrated that, according to the balance of probability:

- The respondent displayed an **improper and offensive conduct** including objectionable acts, comments or displays, or acts of intimidation or threats, or acts, comments or displays in relation to a prohibited ground of discrimination under the *Canadian Human Rights Act*;
- The behaviour was **directed at** the complainant;
- The complainant was **offended or harmed**, including the feeling of being demeaned, belittled, personally humiliated or embarrassed, intimidated or threatened;
- The respondent **knew or reasonably ought to have known** that such behaviour would cause offence or harm;
- The behaviour occurred in the **workplace** or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events; and
- There was a **series of incidents or one severe incident** which had a lasting impact on the individual. Note that in the case of sexual harassment particularly, a single incident may be viewed to be more significant in circumstances when your relationship at work is one where the respondent has influence or power over you with regard to career advancement, performance review, absenteeism, day to

day management of activities, work assignments and the carrying out of progressive disciplinary measures.

In order to make a finding of harassment, **each** of the above elements must be present. If even one of these elements cannot be proven, there will not likely be a finding of harassment.

Attachment A 3 of 3

**Demetri Kachafanas**

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**From:** Deanna Evely  
**Sent:** Friday, July 22, 2022 1:25 PM  
**To:** Demetri Kachafanas  
**Subject:** Fwd: Formal Complaint

**From:** Michael Seth <mseth@cbrm.ns.ca>  
**Sent:** Friday, July 22, 2022 1:22:37 PM  
**To:** Deanna Evely <dmevely@cbrm.ns.ca>  
**Subject:** RE: Formal Complaint

Deanna,

Please see below:

[REDACTED]  
Earlene MacMullin  
[REDACTED]  
[REDACTED]

Based on the emails that I have currently. If anything additional come from the FIOPOP, I will provide that as well. It is important to note that the emails in question do not target me directly, however, it does show the lack of education, knowledge and experiences from those that participated. There should be a level of cultural competency that should be delivered for all those in a leadership role.

Wela'in (Thank you)

**Michael Seth, (he/him/his)**  
Fire Chief/Director of Fire & Emergency Services

**CONFIDENTIALITY WARNING:**  
This email contains confidential information and is intended for a specific individual and purpose. The information is a private legal communication and is legally protected. If you are not the intended recipient, or the authorized agent thereof, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reference to the contents of the information contained herein is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone (902) 563-5130 and delete this message.

**From:** Deanna Evely <dmevely@cbrm.ns.ca>  
**Sent:** Thursday, July 21, 2022 15:19  
**To:** Michael Seth <mseth@cbrm.ns.ca>  
**Subject:** Formal Complaint

Good afternoon Chief Seth,

Please accept this email as acknowledgement of receipt of your formal complaint.

anything to do with the inclusive nature of how Canada Day was being portrayed but was more to the effect of 'micromanaging'. Mr. Seth also appreciated that Mr. Green had spoken up at a Council meeting to say that CBRM is not representative of the community, and he felt that as a Black person, Mr. Green had a similar background in terms of historic trials and was able to understand Mr. Seth's perspective.

I accept that the decision to exclude Mr. Green from this Complaint may have been in part related to Mr. Green's racial identity. However, the fact that Mr. Green was not named as a Respondent to the Complaint has no substantial bearing on this investigation or its conclusion in respect of the four named Respondents.

## 2. Motivation to file Complaint

Several of the Respondents suggested to me that they felt Mr. Seth's motivation to file the Complaint may have been influenced by Mayor Amanda McDougall. After speaking to Mr. Seth, Mayor McDougall and other witnesses, there is insufficient evidence to support this allegation.

Mr. Seth told me that he thought long and hard about filing the Complaint and spoke to several people, including Mayor McDougall. He told me that this was the first time within the community that he felt unwelcome, and he felt that this was a 'global issue' that needed to be addressed.

Mayor McDougall had taken steps to reach out to him to discuss the situation shortly after the email thread was initiated, and remained very sympathetic to Mr. Seth's feelings during my interview with her. Both she and Marie Walsh advised me that they spoke to Mr. Seth prior to his filing the Complaint. Marie Walsh advised me that she wanted to ensure that Mr. Seth's decision was based on his own feelings, and not the Mayor's, and she told him "it's your decision, but it needs to be for you".

I accept that Mr. Seth's motivation to file the Complaint was genuine and that he was not unduly influenced by other parties.

## 3. Council Meeting

Mr. Seth indicated that at a Council meeting occurred shortly after the Canada Day emails were sent, in which there were some attempts to address the comments that were made, but the meeting quickly devolved into an unproductive discussion wherein the Respondents were defensive and asserted that they were "not racist". The Respondents generally did not recall this meeting or disagreed with Mr. Seth's characterization of it.

I reviewed video footage and minutes from the Council meeting dated July 12, 2022, which was the first to take place after the Canada Day emails were exchanged. In that meeting, a motion was carried to schedule a further meeting between Council the CAO, and if needed, CBRM staff and/or Municipal Affairs representative, to address issues between Council and staff regarding Canada Day, but otherwise, there was no discussion of Canada Day or "racism". I was not able to conclusively determine whether a subsequent meeting ever actually took place or not.

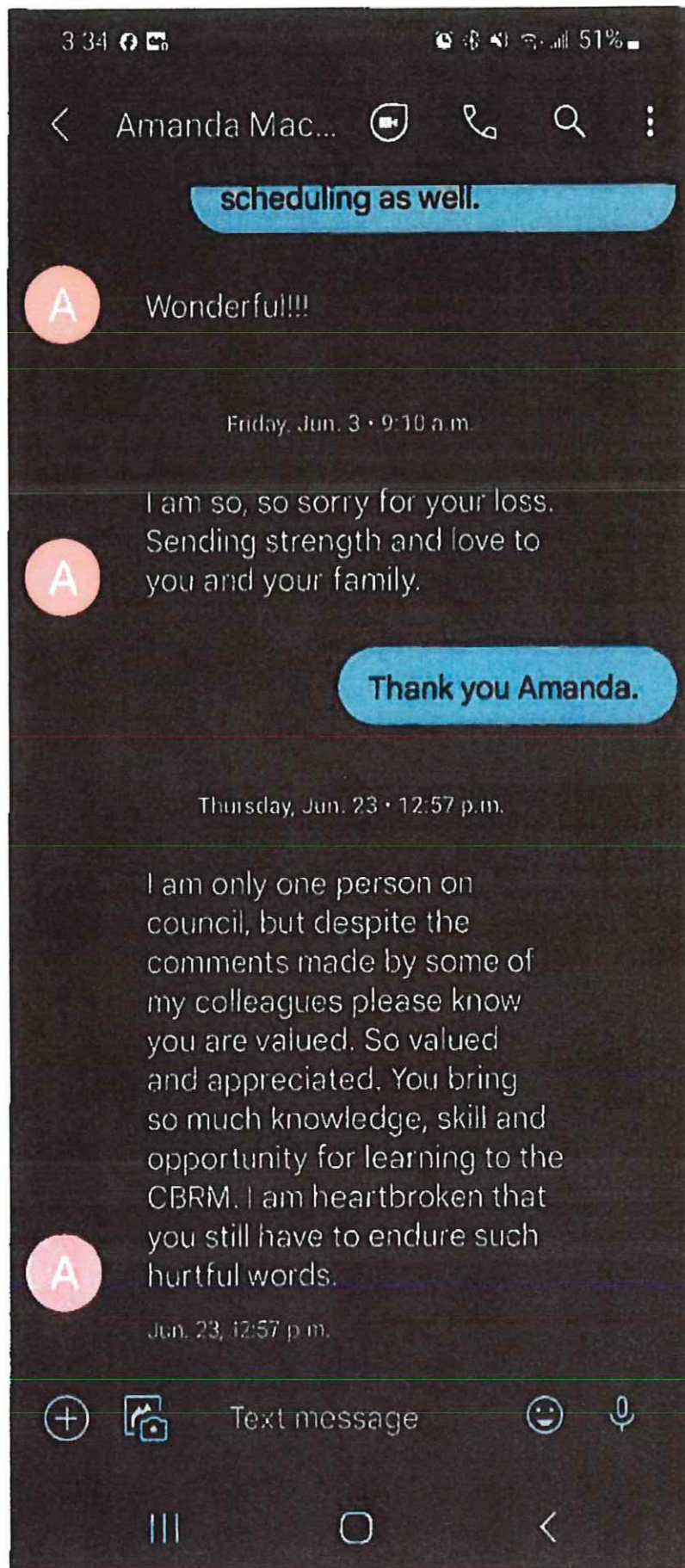
Ultimately, there is insufficient evidence to determine whether the meeting as described by Mr. Seth took place. In any event, Mr. Seth confirmed that the scope of his Complaint was limited to the substance of the emails, and did not extend to behaviour at Council meetings. Therefore, I consider the Council meeting issue to be irrelevant to this investigation.

#### 4. Operational vs Political Decisions

All of the Respondents focused on the issue of 'process' being followed in regard to consultation with Council on various issues, but both Council members and staff members seemed unclear where the line is drawn between operational decisions and political issues. For example, there was a sense of disagreement or confusion between Council and staff members as to whether the decision to change the name a) should have required Council input, b) should have been relayed to Council before the public, or c) was an operational decision that the Parks & Recreation Department was permitted to make on its own. My impression was that this confusion as to what is "operational" goes further back than the specific issue of re-naming Canada Day and is somewhat of an ongoing issue.

The distinction between operational/political matters is outside of the scope of this investigation, but it came up during interviews with many of the individuals I spoke to and seems to have contributed, to some extent, to tensions between Council members and the overall situation which led to the Complaint being filed.

Attachment B 3 of 3



Gordon MacDonald<sup>8</sup>

Mr. Seth explained that he felt it was problematic for Mr. MacDonald to "stand by what he said" after understanding that the effort by CBRM in changing the name was to be more inclusive.

Mr. MacDonald told me that he was upset that process had not been followed in deciding whether or not to re-name the event. He referenced a prior meeting that had been held in 2021 to discuss whether Canada Day celebrations should occur. He mentioned that the community had happily celebrated National Indigenous Peoples' Day not long before. He felt that the decision which had been made was disrespectful to Canada Day.

Mr. MacDonald characterized this Complaint as "frivolous", and he said he was disappointed that Mr. Seth had brought this Complaint against him without knowing his background, which included training regarding Indigenous rights. This training was taken outside of CBRM. He said he had not attended any training through CBRM regarding cultural competency, other than CBRM's policies and procedures.

e) Additional Notes

1. **Lorne Green**

Lorne Green was not named as a Respondent to this Complaint, but did send one email which was highlighted by Mr. Seth in the Complaint. This caused the Respondents to question why he was not also named. Mr. Green's email read as follows:

*How does this happen without council's input? I also agree with my council colleagues, decisions are being made, and we are finding out through the media, this is no way to conduct our business. Canada Day is a celebration of a great country, nation, and its people, no matter what age, gender, colour, nationality, you get the picture. I also agree with councillor Gordon MacDonald we should have a meeting to discuss this decision. What are we saying to our veterans who fought for our freedom if we can't take one day a year to celebrate our Great Country? I understand mistakes have been made in the pass, I can tell you of personal ones that have been made to my people. However, that doesn't mean we stop celebrating because of those mistakes. We must show that we are still a unified country and proud of our nation. If at the end of the day the decision is to cancel Canada Day celebrations I will accept it. **Canada Day is a national holiday that people have no problem taking the day off work with pay! Perhaps the people that made the decision to cancel Canada Day, could direct staff of CBRM to report to work on this day.**<sup>9</sup>*

Several of the Respondents questioned whether Mr. Green had not been named because he is Black. I asked Mr. Seth why he did not include Mr. Green as a Respondent, and he told me that when he was told he had to name specific Respondents, the four (4) named Respondents were those who came to his mind quickly. He said that he didn't think of Mr. Green in time before he provided the names. He further explained that he did not believe that the commentary had

<sup>8</sup> Words emphasized in bold were highlighted in Mr. Seth's Complaint. Words emphasized with underlining were referenced by Mr. Seth in my discussions with him.

<sup>9</sup> Words emphasized in bold are highlighted in Mr. Seth's Complaint

## Attachment C 2 of 2

anything to do with the inclusive nature of how Canada Day was being portrayed but was more to the effect of 'micromanaging'. Mr. Seth also appreciated that Mr. Green had spoken up at a Council meeting to say that CBRM is not representative of the community, and he felt that as a Black person, Mr. Green had a similar background in terms of historic trials and was able to understand Mr. Seth's perspective.

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Attachment D of 10



**CBRM**

*A Community of Communities*

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**Cape Breton Regional Municipality**

320 Esplanade  
Sydney, Nova Scotia  
B1P 7B9  
Tel: (902) 563-5777  
www.cbrm.ns.ca

July 28, 2022

Demetri Kachafanas  
Regional Solicitor  
Cape Breton Regional Municipality

**RE: Formal Harassment Complaint filed by Michael Seth, Fire Chief/Director of Fire & Emergency Services / Resolution Process**

Dear Demetri:

We acknowledge receipt of the Formal Harassment Complaint form and additional documentation filed by Director Seth via email on July 25, 2022, directed to respondents Councillor Gordon MacDonald, Deputy Mayor Earlene MacMullin, Councillor Ken Tracey, and Councillor Darren Bruckschwaiger. In addition, we acknowledge receipt of the offer of an informal resolution process dated July 27, 2022.

The formal complaint form signed and dated by Director Seth, by instruction, states an investigation will be held. After thoughtful review and consideration, we have collectively decided to continue with the formal resolution process as we respectively disagree with the allegation of verbal harassment.

Yours Sincerely,

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Councillor Gordon MacDonald - District 1 CBRM

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Deputy Mayor Earlene MacMullin – District 2 CBRM

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Councillor Ken Tracey – District 9 CBRM

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Councillor Darren Bruckschwaiger – District 10 CBRM

Copy: Deanna Evely, Director of Human Resources  
Marie Walsh, CAO

Attachment D 2 of 10

## Complaint

Demetri Kachafanas <DKachafanas@cbrm.ns.ca>

Wed 7/27/2022 12:25 PM

To: Earlene D. MacMullin <edmacmullin@cbrm.ns.ca>

Cc: Deanna Evely <dmevely@cbrm.ns.ca>; Marie J. Walsh <mjwalsh@cbrm.ns.ca>

Hello Councillor MacMullin:

With respect to the complaint filed against you and others, as you may be aware the policy contemplates informal resolution as a first step in attempting to resolve the matter. Informal Resolution is of course voluntary. Accordingly, I am reaching out to the complainant and respondents to see if there is a willingness of the parties to attempt to meet and discuss the issues in an attempt to resolve the complaint in an informal manner.

Please advise if you wish to participate in an informal resolution process at your earliest convenience.

Thank you.

Demetri Kachafanas, Q.C.  
Regional Solicitor

Attachment D 3 of 10

## Fw: Investigation report

Earlene D. MacMullin <edmacmullin@cbrm.ns.ca>

Tue 1/10/2023 2:55 PM

To: Guy LaFosse <GLaFosse@lafossemaclod.ca>

📎 1 attachments (183 KB)

Harassment Response.doc;

FYI

---

**From:** Earlene D. MacMullin <edmacmullin@cbrm.ns.ca>

**Sent:** Tuesday, January 10, 2023 2:32 PM

**To:** Demetri Kachafanas <DKachafanas@cbrm.ns.ca>; Gordon D. MacDonald <gdmacdonald@cbrm.ns.ca>; Marie J. Walsh <mjwalsh@cbrm.ns.ca>; Darren R. Bruckschwaiger <drbruckschwaiger@cbrm.ns.ca>; Kenneth B. Tracey <kbtracey@cbrm.ns.ca>

**Subject:** Re: Investigation report

My apologies, it looks like I forgot to add the attachment

---

**From:** Earlene D. MacMullin <edmacmullin@cbrm.ns.ca>

**Sent:** Tuesday, January 10, 2023 2:30 PM

**To:** Demetri Kachafanas <DKachafanas@cbrm.ns.ca>; Gordon D. MacDonald <gdmacdonald@cbrm.ns.ca>; Marie J. Walsh <mjwalsh@cbrm.ns.ca>; Darren R. Bruckschwaiger <drbruckschwaiger@cbrm.ns.ca>; Kenneth B. Tracey <kbtracey@cbrm.ns.ca>

**Subject:** Re: Investigation report

This quote of your email Demetri is false "Each of the Respondents requested a formal process as well. There was no choice with all the parties requesting a formal process but to have one."

We were provided with a 42 page "Formal" Complaint via email on July 25. As you will see below the complainant acknowledged the direction that the matter would be investigated formally by signing and dating the document which he did July 19. I even included the cover page of what we were provided where it states "Formal complaint". At no point were any of us asked to take part in anything informal until July 27 (2 days after receiving the formal one) and that email is below as well. I didn't know anything about my involvement until July 25 when you notified me formally. The policy is very clear informal is to be the first step moving on only if there is no resolution. I even called you Demetri to specifically ask if what we were presented with was a formal complaint to which you answered yes.

The email below clearly states the process contemplates informal resolution as a first step yet not one of us were reached out to by anyone prior to receiving the 42 pages accusing us formally of verbal harassment. Even though we later found out meetings about this complaint began with the complainant, Mayor, CAO, HR and another individual outside of the CBRM all the way back in June. I have attached the unsigned version of the letter we submitted where it clearly states the reason we would "stay" with the formal process is because of the instructions on the documentation we were provided, and that the formal process had already begun. I cannot stress enough that none of us

were offered the decency of any informal resolution or even a conversation prior to the complaint being filed. At this point the complaint was formally filed and emailed to us all in its entirety, on the same day I found out I was part of it. I was actually blindsided by it.

I know this isn't the normal complaint process as I do have permission to speak about the process of a complaint made by a council member regarding a senior staff member. His process was much different than this one and there certainly was no formal paperwork filed to get them all in a room. Although this is a conversation that will be had at a later date, I want it noted that the differences in the process are staggering. Just the content of the email stating the names of those accused not being addressed blows my mind. It is very difficult to read such derogatory comments about yourself and fellow colleagues from one director to another and not be permitted to defend yourself or do anything about it.

To date I have not been reached out to by anyone for supports on this, not our Mayor, not our CAO not human resources, absolutely no one. During the investigation I was not offered guidance nor even the option to bring in a single witness on my behalf, but from reading the conclusions I see the same cannot be said for the complainant. This "process" didn't even start the way the policy states it should. So to be very clear, we DID NOT "request" a formal process; we collectively agreed it was in our best interest of our professional careers and reputations to CONTINUE the formal process forced upon us.

I am really not sure how long my mental health will keep up but I will continue to defend my reputation, career and the freedom to speak as elected by my residents until there is a proper process followed or my health decides it is just too much. This entire process has been flawed from the very beginning and I will not allow it to destroy my future career opportunities or allow it to happen to any other elected official on a go forward. If there is any information you require to back up any claim I have made in this email by all means reach out and I will provide it. As mentioned, the screen shots of the original complaint showing as "formal" is below and an unsigned copy of our response to the "informal process" is attached. I hope this clears up the statement made.

Regards,  
Earlene

Demetri Kachafanas

Earlene D. MacMullin  
Deanna Evely;  
Marie J. Walsh  
Hello Councillor MacMullin:

With respect to the complaint filed against you and others, as you may be aware the policy contemplates informal resolution as a first step in attempting to resolve the matter. Informal Resolution is of course voluntary. Accordingly, I am reaching out to the complainant and respondents to see if there is a willingness of the parties to attempt to meet and discuss the issues in an attempt to resolve the complaint in an informal manner.

Please advise if you wish to participate in an informal resolution process at your earliest convenience.

Thank you.

Attachment 0 5 of 10

Demetri Kachafanas, Q.C.  
Regional Solicitor

 **CBRM - Harassment Complaint Form**

I understand that the incident(s) described above will be investigated, I will be given an opportunity to explain further, and I will be informed of the results of the investigation.

Complainant's Signature: 

Date: July 19, 2022

Attachment D 6 of 10

**Cape Breton Regional Municipality**

**Human Rights Harassment Policy & Respectful Workplace Policy**

**Formal Complaint Form**

**Instructions:**

Cape Breton Regional Municipality is committed to providing a working environment that is free of harassment and discrimination. Prior to completing this form, it is important for you to be fully aware of the specific complaint procedure in the CBRM Policies Human Rights Harassment Policy and Respectful Workplace Policy.

It is not a requirement that you use this form to file a complaint; however, if you do it will help you focus the issues in a manner that will assist in the assessment, investigation, and possible resolution of the complaint(s).

Be sure to specify the incident(s) giving rise to the complaint, the date(s) of the incident(s), names of the person(s) involved and names of those who may have witnessed the incident(s). The complaint is not limited to the space provided on this form. Feel free to add more pages and include any relevant documentation that may assist.

Please note that the information provided on this or any other form is not considered an official complaint unless it is signed by you and dated.

Upon receipt of your complaint, the Human Resource department will review it to determine if the complaint is complete, timely and raises issues covered in the policy. It is important to fully understand that the written complaint will be forwarded to the Respondent for response.

Submit the Complaint by mail:

Or in person to:

CBRM Human Resources Department  
320 Esplanade, Room 303  
Sydney, NS B1P 7B9

Human Resources Department

**From:** Demetri Kachafanas <DKachafanas@cbrm.ns.ca>  
**Sent:** Tuesday, January 10, 2023 11:15 AM  
**To:** Gordon D. MacDonald <gdmacdonald@cbrm.ns.ca>; Marie J. Walsh <mjwalsh@cbrm.ns.ca>; Earlene D. MacMullin <edmacmullin@cbrm.ns.ca>; Darren R. Bruckschwaiger <drbruckschwaiger@cbrm.ns.ca>; Kenneth B. Tracey <kbtracey@cbrm.ns.ca>  
**Subject:** RE: Investigation report

Hi Gordon

Each of the Respondents requested a formal process as well. There was no choice with all the parties requesting a formal process but to have one.

The issue is that Council has taken no action on which to appeal i.e. suspension, written reprimand, direction for training etc. As I stated in my earlier email, the only avenue I see would be to take the matter to Council and request them to direct that another investigation be undertaken because you feel this one was flawed in

some way.

Attachment D 7 of 10

I have discussed the issue with some of your legal counsel and I believe they agree with me on this. Feel free to have your legal counsel call me to discuss if they have a different opinion.

Thanks

Demetri

**From:** Gordon D. MacDonald <gdmacdonald@cbrm.ns.ca>  
**Sent:** Tuesday, January 10, 2023 9:13 AM  
**To:** Demetri Kachafanas <DKachafanas@cbrm.ns.ca>; Marie J. Walsh <mjwalsh@cbrm.ns.ca>; Earlene D. MacMullin <edmacmullin@cbrm.ns.ca>; Darren R. Bruckschwaiger <drbruckschwaiger@cbrm.ns.ca>; Kenneth B. Tracey <kbtracey@cbrm.ns.ca>  
**Subject:** Re: Investigation report

Demetri, my guess it's the first time a staff member was wanting a formal investigation and the CBRM allowed it to go forward as a formal complaint.

Now that that has happened, it's imperative that the CBRM have an avenue for us as council members to appeal or defend the context of our emails.

I've never heard of having no avenue of appeals or reviews in any complaint, whether legal or otherwise.

Looks like this is far from over.  
Until my name is cleared, I will be taking whatever steps necessary to do so, whether legally or otherwise.

This whole process has been unacceptable.

Gordon

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**From:** Demetri Kachafanas <DKachafanas@cbrm.ns.ca>  
**Sent:** Monday, January 9, 2023 9:23:00 PM  
**To:** Marie J. Walsh <mjwalsh@cbrm.ns.ca>; Earlene D. MacMullin <edmacmullin@cbrm.ns.ca>; Darren R. Bruckschwaiger <drbruckschwaiger@cbrm.ns.ca>; Gordon D. MacDonald <gdmacdonald@cbrm.ns.ca>; Kenneth B. Tracey <kbtracey@cbrm.ns.ca>  
**Subject:** RE: Investigation report

The situation before us is unique. It is the first time that a staff member has made a complaint against members of Council. Although the policy states it applies to Council members as well as staff, the CAO has no authority to force a remedy on Council members. Also, the policy does not include internal appeal procedures.

In the usual circumstances if an employee is found to have breached a policy he or she can be disciplined, forced to take training etc. That action is subject to a grievance or judicial review by the Courts.

In this case there is no action to appeal or review. No discipline or remedy is being forced upon the Respondents. If Council sanctions or censures the Respondents in this matter then a judicial review of that administrative action could be commenced by the Respondents. The only other remedy would be to have

Council direct staff to carry out another investigation if they believe this one was flawed in some way. As Council has not been apprised of the report at this time, someone would have to bring the report to Council and request a new investigation.

Demetri

**From:** Marie J. Walsh <[mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)>  
**Sent:** Monday, January 9, 2023 5:05 PM  
**To:** Earlene D. MacMullin <[edmacmullin@cbrm.ns.ca](mailto:edmacmullin@cbrm.ns.ca)>; Darren R. Bruckschwaiger <[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)>; Gordon D. MacDonald <[gdmacdonald@cbrm.ns.ca](mailto:gdmacdonald@cbrm.ns.ca)>; Kenneth B. Tracey <[kbtracey@cbrm.ns.ca](mailto:kbtracey@cbrm.ns.ca)>  
**Cc:** Demetri Kachafanas <[DKachafanas@cbrm.ns.ca](mailto:DKachafanas@cbrm.ns.ca)>  
**Subject:** RE: Investigation report

I am not aware of any avenue to appeal the findings of the report but I will defer to Demetri on this as he would be the expert in this regard. My role is simply to follow up on the recommendations, which in this case are around a communication strategy, email policies and cultural competency training. Staff will be making training available for All Council and, obviously, only those who wish to participate will attend. This is training that many staff already have and will continue to get.

Marie

**From:** Earlene D. MacMullin <[edmacmullin@cbrm.ns.ca](mailto:edmacmullin@cbrm.ns.ca)>  
**Sent:** Monday, January 9, 2023 4:10 PM  
**To:** Marie J. Walsh <[mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)>; Darren R. Bruckschwaiger <[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)>; Gordon D. MacDonald <[gdmacdonald@cbrm.ns.ca](mailto:gdmacdonald@cbrm.ns.ca)>; Kenneth B. Tracey <[kbtracey@cbrm.ns.ca](mailto:kbtracey@cbrm.ns.ca)>  
**Subject:** Re: Investigation report

The only concern I have is the avenue to appeal which we have started looking for almost a month ago. I continue to ask and have yet to receive anything other than the process sits with you. Please provide the appeal process to me in writing as soon as possible so I can bring it to my lawyer. This is all getting to be too much for me.

**From:** Marie J. Walsh <[mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)>  
**Sent:** Monday, January 9, 2023 3:26 PM  
**To:** Earlene D. MacMullin <[edmacmullin@cbrm.ns.ca](mailto:edmacmullin@cbrm.ns.ca)>; Darren R. Bruckschwaiger <[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)>; Gordon D. MacDonald <[gdmacdonald@cbrm.ns.ca](mailto:gdmacdonald@cbrm.ns.ca)>; Kenneth B. Tracey <[kbtracey@cbrm.ns.ca](mailto:kbtracey@cbrm.ns.ca)>  
**Subject:** RE: Investigation report

Good Afternoon.

As per policy, it is incumbent on Management to communicate the decision of any actions to both the complainant and the respondent which is why Michael was included. That has been my only email in regards to this investigation. As for your other concerns I would be happy to meet with you and or the group to discuss or feel free to call me.

Regards,

Marie

**From:** Earlene D. MacMullin <[edmacmullin@cbrm.ns.ca](mailto:edmacmullin@cbrm.ns.ca)>  
**Sent:** Monday, January 9, 2023 11:30 AM  
**To:** Darren R. Bruckschwaiger <[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)>; Marie J. Walsh <[mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)>; Gordon D. MacDonald <[gdmacdonald@cbrm.ns.ca](mailto:gdmacdonald@cbrm.ns.ca)>; Kenneth B. Tracey <[kbtracey@cbrm.ns.ca](mailto:kbtracey@cbrm.ns.ca)>  
**Cc:** Deanna Evely <[dmevely@cbrm.ns.ca](mailto:dmevely@cbrm.ns.ca)>  
**Subject:** Re: Investigation report

Marie,

I just reached out to my attorney as well. We will be meeting again next week so please provide the process to appeal as soon as possible so I can prepare. Like my colleagues I will not be participating in any recommendations until I am afforded the ability to appeal. I will also make note that I am not happy that the first and only correspondence to myself and fellow Council members from your office in any form since the release of the report copied the complainant. This will be added to my discussions with my legal counsel.

I look forward to hearing from you soon and request that on a go forward any correspondence in regard to this file sent to me does not include the complainant.

Regards,  
Earlene

---

**From:** Darren R. Bruckschwaiger <[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)>  
**Sent:** Monday, January 9, 2023 11:22 AM  
**To:** Earlene D. MacMullin <[edmacmullin@cbrm.ns.ca](mailto:edmacmullin@cbrm.ns.ca)>; Marie J. Walsh <[mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)>; Gordon D. MacDonald <[gdmacdonald@cbrm.ns.ca](mailto:gdmacdonald@cbrm.ns.ca)>; Kenneth B. Tracey <[kbtracey@cbrm.ns.ca](mailto:kbtracey@cbrm.ns.ca)>  
**Cc:** Deanna Evely <[dmevely@cbrm.ns.ca](mailto:dmevely@cbrm.ns.ca)>  
**Subject:** RE: Investigation report

My lawyer as well was in discussion with Demetri and is waiting to hear the process for appeal. I have many issues with the report and its findings. As for future training as a result of this complaint, my involvement will be determined at the conclusion of the appeal process.

Thank you,

**Darren Bruckschwaiger** | Councillor – District 10

Cape Breton Regional Municipality

320 Esplanade, Sydney, NS B1P 7B9 | Suite 403

Home | 902.849.2737

Cell | 902.565.4130

Fax | 902.563.5779

[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)

[www.cbrm.ns.ca](http://www.cbrm.ns.ca)

Attachment D 10 of 10



CAPE BRETON  
REGIONAL MUNICIPALITY

**From:** Earlene D. MacMullin <[edmacmullin@cbrm.ns.ca](mailto:edmacmullin@cbrm.ns.ca)>  
**Sent:** January 9, 2023 10:51 AM  
**To:** Marie J. Walsh <[mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)>; Gordon D. MacDonald <[gdmacdonald@cbrm.ns.ca](mailto:gdmacdonald@cbrm.ns.ca)>; Darren R. Bruckschwaiger <[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)>; Kenneth B. Tracey <[kbtracey@cbrm.ns.ca](mailto:kbtracey@cbrm.ns.ca)>  
**Cc:** Deanna Evely <[dmevely@cbrm.ns.ca](mailto:dmevely@cbrm.ns.ca)>  
**Subject:** Re: Investigation report

Marie, can you please provide us with the process of appeal. I have numerous issues with the report and process and have yet to be given any direction or avenue. I reached out to the solicitor and he said that he was waiting to discuss with you.

Regards,  
Earlene

---

**From:** Marie J. Walsh <[mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)>  
**Sent:** Monday, January 9, 2023 10:43 AM  
**To:** Earlene D. MacMullin <[edmacmullin@cbrm.ns.ca](mailto:edmacmullin@cbrm.ns.ca)>; Gordon D. MacDonald <[gdmacdonald@cbrm.ns.ca](mailto:gdmacdonald@cbrm.ns.ca)>; Darren R. Bruckschwaiger <[drbruckschwaiger@cbrm.ns.ca](mailto:drbruckschwaiger@cbrm.ns.ca)>; Kenneth B. Tracey <[kbtracey@cbrm.ns.ca](mailto:kbtracey@cbrm.ns.ca)>  
**Cc:** Deanna Evely <[dmevely@cbrm.ns.ca](mailto:dmevely@cbrm.ns.ca)>; Michael Seth <[mseth@cbrm.ns.ca](mailto:mseth@cbrm.ns.ca)>  
**Subject:** Investigation report

Good Morning,

In response to the recent investigation report by Stewart McKelvey I have contacted Noella Martin, K.C. Noella is a lawyer with wickwire holm and is a member of their Labor & Employment, Regulatory / Administrative, Municipal, and Litigation service areas to discuss the next steps. On her advice we will be following up on the recommendations of the report. As a result, Deanna will proceed in organizing the recommended training for all council and will be in touch with Council to inquire as to the best times for Council members to attend such training.

Regards,

Marie

**Marie J Walsh, CPA, CGA** | Chief Administrative Officer  
Cape Breton Regional Municipality  
320 Esplanade, Suite 401, Sydney, NS B1P 7B9  
902-563-7979 | 902-574-1720 | 902-563-5137



*You can now receive your CBRM Property Tax and Water Utility Bills online! Sign up today at [epost.ca](http://epost.ca).*

some way.

Attachment E 1 of 2

I have discussed the issue with some of your legal counsel and I believe they agree with me on this. Feel free to have your legal counsel call me to discuss if they have a different opinion.

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Regards,

Marie



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February 24, 2023Email: [candee@candeemccarthylaw.ca](mailto:candee@candeemccarthylaw.ca)

**Marie Walsh, CEO**  
Cape Breton Regional Municipality  
920 Esplanade  
Sydney, NS

Via Email: [mjwalsh@cbrm.ns.ca](mailto:mjwalsh@cbrm.ns.ca)**RE: Harassment Report**

I am writing on behalf of my client, Councillor Bruckschwaiger, with respect to the recent report completed by Ms. Katherine Mack of Stewart McKelvey.

I confirm that there is no appeal procedure for the findings in the complaint. As such, please accept this letter as our formal objections to the findings in the report.

I am aware that my colleague, Mr. LaFosse, addressed concerns regarding the procedure of the complaint, the process, and the policies on behalf of his client. While I echo those concerns, I will focus our letter on what we consider errors of fact and law in the report itself.

Standard of Proof

Ms. Mack refers to the standard of proof in her report as assessing whether the alleged harassment "likely occurred". The civil standard of proof is a balance of probabilities. It would have to be more likely than not to occur. The burden of proof is on the complainant to prove their complaint on that balance of probabilities.

Assuming Ms. Mack simplified the language regarding the standard of proof and applied the correct test, she erred in taking that objective test and making a subjective finding. She also did not properly apply the burden of proof.

Misleading Background Information

The report includes summarized and editorialized information that the Canada Day celebrations "as it turns out" were not "cancelled". However, the report fails to include information that the term "cancelled" was corrected early in the email stream, and it was not the cancelling of events that the councillors took issue with, it was the news release/interview by the CBRM staff person that CBRM "announced" that they would not be calling it "Canada Day" and removing any mention of "Canada" in the news release.

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f. 902.562.1291



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The report states that the term "Canada Day" was included on marketing materials, but there is no relevance to this, given that the citizen's complaint to Councillor Bruckschwaiger was not about the marketing materials it was about the CBC interview which very clearly stated, "In fact, there is no mention of Canada at all in the news release detailing the planned activities."

This incomplete information as summarized in the report would result in any uninformed reader believing that the councillors who were communicating about the CBC interview were uninformed and discussing cancelled activities in error. The report indicates that my client's email caused "confusion". There is no mention of the fact that this term was corrected/clarified within hours (that same evening), or that in that same initial email it also referred that Canada Day wouldn't be mentioned (not that no activities would be taking place). Also, no mention that other councillors responded even before it was corrected regarding the naming of the event, not the cancellation of activities. While anyone reading the report would believe the councillors were confused and thought that all celebrations were cancelled, a reading of the actual email stream very clearly shows otherwise. That should have been accurately portrayed in the summary.

The report concludes, "that was not in fact the case [that Canada Day events were cancelled] and had not been stated in the interview". Again, this would lead any uninformed reader to have a misunderstanding of the communication that took place and instead conclude (as the report leads one to conclude) that the concerns of the councillors were that Canada Day was cancelled, that this was not accurate and based on misinformation, and so all the communication that followed was due to "sky is falling" knee jerk and unreasonable reactions.

This was not the case. The "rebrand", and more so the lack of communicating the rebrand to councillors prior to CBRM making a press release with "no mention of Canada at all" was the issue and the topic of discussion in the email exchange that formed the basis of the complaint.

As such, the report begins at best with a misapprehension of the relevant facts, or at worst with an editorialized version of the facts leading up to the email exchange and does not provide an impartial or balanced summary. The report is then based on this "factual" finding of events precipitating the comments.

#### Human Rights and Harassment Policy

Ms. Mack includes the Human Rights and Harassment Policy in her report; however, she does not address several vital considerations under the policy. These include:

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- Reasonable person test

Ms. Mack does not provide any reasoning as to how she applied the reasonable person analysis, or if it was considered at all. The policy itself makes this test mandatory in its language. It is noted that Ms. Mack uses the language of "reasonable person" but provides no information as to how she considered this important legal analysis. This should be an objective test. The standard refers to a hypothetical, average person's reaction to the actual circumstances. With all respect to Mr. Seth, Ms. Mack's duty was not to analyse only his subjective feelings and interpretations, but to apply an objective legal test to the evidence (the emails complained about) in an impartial way.

- "Unwelcome, offensive" being inclusive of one another

The policy consistently refers to "unwelcome, offensive" together. Therefore, to breach the policy the behaviour must be both, unwelcome and offensive.

- The limitation in the policy that it not curtail appropriate workplace interaction

Appropriate workplace interaction includes councillors being able to discuss staff decisions that have political consequences or are political in nature. Political issues are, more often than not multiple sided and therefore opinions are always "unwelcome" and sometimes people are even offended by them. All unwelcome or perceived offensive comments are not harassing in and of themselves. There must be a more robust analysis. Under the policy, it must meet the reasonable personal test and be limited when curtailing appropriate workplace interaction. What is appropriate workplace interaction is dependant on the workplace. In this case, it includes controversial political discussions. Ms. Mack fails to address this consideration that is required under the policy. It is not even mentioned in the report.

- Mr. Seth's evidence regarding Councillor Bruckschwaiger

The Complainant, with respect to my client's emails, indicated (as reported by Ms. Mack), that he did not feel that Couns. Bruckschwaiger's June 22<sup>nd</sup> email was problematic. While Mr. Seth made comment regarding what procedure he believed the councillor should have used, that is not a basis of a harassment complaint.

Mr. Seth did find the June 23<sup>rd</sup> email from Couns. Bruckschwaiger problematic. He indicated that he "felt" that this email "pointed the finger toward the Indigenous community as to why events were not happening as expected during Canada Day." This was a subjective interpretation as this is an interpretation of the language used by Couns. Bruckschwaiger, not a literal representation of them.

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The report refers numerous times to Mr. Seth referring to a "global issue" that needs to be addressed when deciding to make this complaint.

#### Conclusion

Ms. Mack made a finding that my client ought to have known his initial email (which Mr. Seth himself stated he did not find problematic) was in violation of the harassment policy. Despite having evidence directly from the complainant that he did not find that email to be harassing to him, the report finds otherwise.

She then states that she accepts that all four Respondents offered commentary via email which amounted to a violation of the policy and outlines them in paragraph 6 of Conclusion: Was there Harassment (Discrimination)? The offensive comment she outlines from my client was, "I'm also wondering who is the group that made this decision and does the group feel that all communities who use the Canada Day heading as the event are not being respectful and inclusive to our Indigenous community?.." By group, Couns. Bruckschwaiger was referring to what staff or executive made the decision.

It is noted that this same email is referenced to the credit of Couns. Bruckschwaiger as demonstrating a willingness to learn and change his behaviour.

There is no analysis as to how this question posed by Couns. Bruckschwaiger to Mr. Durning was found to be unwelcome and offensive under the reasonable person test.

Ms. Mack does not address in her report any consideration she placed, if any, on Mr. Seth's comments regarding a "global issue" verses a specific allegation of harassment that was directed at him. Certainly, all parties would agree that a better understanding of Indigenous history is not just an issue for the CBRM or Canada, but the world. However, in the context of this very specific report, Ms. Mack's duty was to fully investigate whether there was a breach of this harassment policy by specific people.

It is accepted that Mr. Seth is sincere and there is no objection to Ms. Mack's finding in that respect. But it was incumbent on Ms. Mack to fully investigate the matter from the perspective of a hypothetical average person in Mr. Seth's position, not Mr. Seth himself.

#### Code of Conduct

There is insufficient weight given to the Code of Conduct for Elected Municipal Officials (which arguably is more relevant to the councillors as it has since come to light that the policies cannot be enforced by CBRM on councillors).

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Further, Ms. Mack makes a finding that the requirement of the Code of Conduct for councillors to have transparent and healthy debate does not extend to email. This is more than problematic, considering that the entire basis for the complaint was email. And the world is very much "online". What is a "meeting" vs. a group discussion via quick succession email? This was a debate/discussion among councillors and staff regarding a political issue. Ms. Mack mentions and dismisses the policy in her decision. She does not give it the proper weight.

Ms. Mack also did not address the core values that the Code of Conduct requires members to uphold at all times including:

- Honesty – being truthful and open; and
- Leadership – confronting challenges

How can our elected officials diligently conduct their duties if they cannot have discussions that are "unwelcome" on a very subjective test? Regardless of the particulars of this specific complaint and complainant, the standard and burden of proof, the evidentiary process and the legal tests in the report have to be applicable to all circumstances. The report completed by Ms. Mack is an extremely problematic precedent as it lacks fulsome analysis, includes an editorialized factual basis, and is subjective in its conclusions.

Without a doubt there is always room for growth and education particularly among elected officials to have a better understanding of the challenges of all facets of the community they serve. It is also important to foster an environment that is inclusive and safe. Everyone can always benefit from a deeper understanding of their use of language and how it impacts others. Councillor Bruckschwaiger has a deep respect for our Indigenous community, he believes it is important that CBRM leadership be welcoming to all members of the community and as he stated in his email, he is eager to become better educated in areas where he lacks fulsome understanding.

That said, his duty under the Code of Conduct is to confront challenges with honesty. The findings in this report, create a subjective standard that is practically impossible to meet while still maintaining the Core Values required by the Code of Conduct.

All of which is respectfully submitted this 24<sup>th</sup> day of February 2023.

**CANDEE MCARTHY LAW**

Candee J. McCarthy

CJM/sf

cc D. Kachafanas via email; client via email

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*LaFosse MacLeod*  
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Guy LaFosse, K.C.  
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January 25, 2023

VIA E-MAIL

**Mr. Demetri Kachafanas**  
Cape Breton Regional Municipality  
320 Esplanade  
Sydney, NS  
B1P 7B9

Dear Mr. Kachafanas:

**Re: Councillor Earlene MacMullin / Workplace Complaint**  
**Our File No.: 35166 – 1**

I have had an opportunity to review the report filed by the investigator in this matter with my client. Following that review, I wish to advise you that my client disagrees with the investigator's findings. However, because CBRM's human Rights and Harassment Policy (Policy) doesn't provide an appeal mechanism, my client has no recourse to address either the investigator's findings and/or the serious flaws in the Policy as it pertains to elected officials.

As a result, my client has asked me to send you this correspondence to comment on the investigation and the Policy as it purports to pertain to elected officials.

I would first like to address issues or flaws in the Policy as it pertains to elected officials.

**1. Issues with CBRM's Policy**

The only reference in the Policy to elected officials is in the paragraph entitled **The Scope** which states

"This policy applies to all CBRM employees and elected officials."

The remainder to the policy however refers to employees only and makes no other mention of elected officials. For example:

1. **Category** only refers to **Employment**. Since Elected officials are not employed by CBRM it raises issues as to why category simply refers to Employment.
2. **Purpose** the second paragraph under this subtitle states "The CBRM also recognizes that **employees** have the right to work in an environment that is free from harassment as prohibited by the NS Human Rights Act". This paragraph refers to employees only and makes no reference to

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- elected officials having the same rights as employees.
3. **Scope** the second paragraph under this subtitle states in part..."It includes harassment involving CBRM employees" Again there is no reference to elected officials.
  4. **Scope** The third paragraph dealing with the scope only references "**Harassment of employees**". Again there is no reference to elected officials.
  5. **General** The general heading of the policy states that " CBRM employees shall not be subjected to, and shall not subject another individual to, harassment, as it is defined in this policy." Again elected officials are excluded under this paragraph
  6. **Paragraph 2.3 of The Roles and Responsibilities** portion of the policy is referenced as **Employees** and states "All employees have a responsibility to refrain from harassment as defined in this Policy." Again there is no reference to elected officials.
2. **Issues with the Investigative Process:**

A formal complaint was filed by Mr. Michael Seth on July 19<sup>th</sup>, 2022 under the policy. It was after the filing of this formal complaint that my client learned for the first time that a complaint had been filed. Because this was filed as a formal complaint under **Clause 3.3** of the Policy, my client did not have an opportunity under the Policy to see if the matter could be resolved under **Clause 3.2**, being the **Informal Complaint Resolution Procedure**

**CLAUSE 3.3** provides in part that "The respondents shall be provided a full and fair opportunity to respond to the allegations contained in the complaint...." In this instance, my client was advised that she would be interviewed as part of the investigation to the formal complaint which was filed. However, she was never advised by the investigator that she could ask the investigator to interview potential witness who might have relevant information regarding the complaint that could be helpful to her.

Furthermore, during her interview my client asked the investigator if she was provided with all of the same information, including all of the emails that the investigator had. In response to that question, my client and I were informed by the investigator that my client had been provided with all of the same materials which the investigator had and would be reviewing. However, it was discovered on receipt of the investigator's report that there were at last three emails that we had not been provided with. Specifically there were two from David Delaney dated June 27<sup>th</sup> and 30<sup>th</sup>, 2022 and an email from Erika Shea dated June 28, 2022. Those emails were in the investigator's file and were never shared with my client during the interview process.

Additionally my client didn't learn until receipt of the investigator's report that the investigator had access to her emails to people outside of the CBRM organization which apparently had been obtained through a FOIPOP.

The existence of these particular emails in the investigator's report, which my client was unaware the investigator had and would be relying on, raises further questions as to how and why emails from individuals, who were neither employees nor elected officials of CBRM, were part of the materials reviewed by the investigator.

This non-disclosure raises questions as to what, **if any**, other information the investigator may have relied on that was not provided to my client during the interview process.

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The failure to disclose the existence of those emails during the investigation resulted in my client not being given full disclosure of the materials the investigator relied on to make her conclusions. By not having a full disclosure this, in my respectful opinion, amounted to a denial of natural justice and due process. Unfortunately, as previously mentioned, the Policy provides no recourse to appeal the investigator's findings which points out another short coming in the Policy.

Furthermore the investigator indicated in her report. (see paragraph 5 on page 16) that "Mr. Seth told me after filing the complaint, he felt that Council members acted in a retaliatory manner against him." The investigator dealt with this allegation of retaliation as part of Mr. Seth's complaint despite the fact that the formal complaint did not allege retaliation. Clause 4 of the Policy deals specifically with Retaliation and Clause 4.1 states that "Retaliation also constitutes a form of discrimination under the Policy, and may form the basis of a separate Complaint."

My client was not advised prior to the interview with the investigator that the investigator would also be interviewing her based on a complaint of alleged retaliation. Again this is another example of my client having been denied due process and a denial of natural justice by not being fully informed of the complaints that she was asked to be interviewed about. Despite this, my client did address this allegation in the interview. The investigator determined there indeed had not been any retaliation by my client against Mr. Seth for filing the formal complaint. However the point is that my client should have been properly informed by the investigator that an allegation of retaliation was also going to be part of the interview.

My client had the right to know the nature of all complaints being made against her before the interview was conducted. The failure to so inform my client about the complaint of retaliation before the interview does, in my respectful opinion, taint the manner in which the investigation was conducted.

In any event, I trust that these comments will be given consideration should a review of the Policy be undertaken. In any such review, it may be wise to consider whether such a policy is the best way to deal with allegations of harassment, etc. against elected officials or should a different policy or code of conduct be more appropriate.

Yours truly,

**LaFosse MacLeod**



Guy LaFosse, K.C.

GLF/ps

cc client

**From:** David Iannetti <DavidIannetti@hotmail.com>  
**Sent:** Monday, March 13, 2023 9:47:53 AM  
**To:** Demetri Kachafanas <DKachafanas@cbrm.ns.ca>  
**Cc:** Marie J. Walsh <mjwalsh@cbrm.ns.ca>; Gordon D. MacDonald <gdmacdonald@cbrm.ns.ca>  
**Subject:** Re: Harassment Complaint of Michael Seth

As you are like aware I represent the legal interests of councillor Gordon MacDonald. My client and I reviewed the written decision of Katherine Mack regarding his complaint against various again various councillor's including my client.

Needless to say my client disagrees with the finding of Ms. Mack as against him in particular. Councillor MacDonald involving a radio broadcast where he, along with councillors, first heard a story about removing any reference to Canada Day. His single e- mail simply says he was upset by the possible removal of any reference to Canada Day without there having been a full meeting of council members. This e-mail was not directed at Mr. Seth but was simply questioning the propriety of making such an important decision without the input of all counsel at a full council.

As you are aware, Councillor MacDonald has been involved for many years as a union representative and has fought for individual's rights and often for those seeking inclusivity. Mr. Macdonald would like to be heard at a meeting of full council and to have legal counsel in attendance with him.

Yours truly,

David Iannetti

Counsel for Gordon MacDonald

**David J. Iannetti**

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June 28, 2023

**VIA EMAIL: dkachafanas@cbrm.ns.ca**

**Demetri Kachafanas**  
Kachafanas Law Office  
320 Esplanade  
Sydney, NS B1P 7B9

**RE: Human Rights Complaint and Michael Seth**

---

I have now had an opportunity to review the report filed by investigator Katharine Mack of Stewart McKelvey regarding the human rights complaint filed by Fire Chief Michael Seth.

I can confirm that my client vehemently disagrees with the investigator's findings in relation to his involvement in the email chain that led to Mr. Seth's human rights complaint

It appears that CBRM's human rights and harassment policy doesn't provide an appeal mechanism so my client has asked me to write to you to express his concern with respect to the investigator's findings, and in fact the policy as it pertains to elected officials.

Ms. Mack's report attempts to read something into Councillor Tracey's email that just isn't there. Mr. Seth explains that he was hurt by a comment made by Councillor Tracy in the email chain where he notes, "I believe it was national indigenous people's day yesterday, and deemed a huge success". There was no intent on Councillor Tracey's part to distinguish between "our day, and their day" as observed by Ms. Mack in her report.

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It is inconceivable that anyone could determine that commenting on the success of an indigenous celebration, such as National Indigenous People’s Day, amounted to harassment.

On that basis, any mention of any indigenous enterprise in the emails thread concerning the supposed cancellation of Canada Day celebrations would have amounted to harassment using the test applied by Ms. Mack. That surely could not be true.

There was no mention in Ms. Mack’s report concerning Councillor Tracey’s extensive involvement in the indigenous communities of Eskasoni and Membertou and his close relationship with particularly the youth of those communities all of which were discussed at length during his interview and as such her report is deficient in that regard.

In addition, I now understand that Ms. Mack had access to emails from individuals, both within the CBRM, and outside CBRM, which were not shared with any of the councillors prior to their being interviewed. This would appear to be a denial of natural justice, as none of the councillors, including Councillor Tracey would have been aware of the case they were required to meet prior to responding to the complaint.

I was advised by Councillor Tracey prior to our retainer in this matter that your office would be receiving and processing any legal accounts for representation during the human rights investigation. I am therefore enclosing our firm’s account for legal services rendered in relation to this matter.

Please feel free to contact me. Should you have any questions or concerns.

Yours very truly,  
**SAMPSON MCPHEE**



**HARVEY M. MCPHEE, K.C.**

HMM/pa  
Enclosure  
cc. Client

www.sampsonmcphee.com



## **INVESTIGATION REPORT**

**CAPE BRETON REGIONAL MUNICIPALITY**

**Michael Seth**

**Report Prepared By:**

Katharine Mack  
STEWART MCKELVEY  
600-1741 Lower Water Street  
Halifax, NS, B3J 0J2  
Tel.: (902) 444-8806  
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Final Report Issued: November 25, 2022

## 1. SCOPE OF REVIEW

I have been retained pursuant to Cape Breton Regional Municipality's ("CBRM") Harassment Policy to investigate the complaint of harassment made by Michael Seth ("Complaint") against Councillors Darren Bruckschwaiger, Ken Tracey, Earlene MacMullin, and Gordon MacDonald. The Complaint was made on July 19, 2022.

I have reviewed the Complaint with each Respondent, and provided all respondents with an opportunity to respond as thoroughly as possible. I also spoke to other individuals with relevant information relating to the Complaint. In total, the following individuals were interviewed:

- Michael Seth (Complainant)
- Darren Bruckschwaiger (Respondent)
- Ken Tracey (Respondent)
- Earlene MacMullin (Respondent)
- Gordon MacDonald (Respondent)
- Amanda McDougall (Witness)
- Tanya Johnson-MacVicar (Witness)
- Kirk Durning (Witness)
- Marie Walsh (Witness)

All four Respondents were accompanied by legal counsel to their interviews.

I also reached out to Councillor Lorne Green to request a witness interview, but did not receive a response.

I also reviewed the following documentation and evidence:

- Copies of emails provided by Michael Seth;
- Audio recordings of media interviews; and
- Minutes and visual recordings of Council meetings.

This assessment constitutes an analysis of facts (as compiled by me) regarding allegations of offensive behaviour by several CBRM Councillors. I did not take sworn statements from the individuals I interviewed, but rather I interviewed as many people as possible and tried to resolve any conflict between different versions of events. I then reviewed those facts against the definition of harassment in the Harassment Policy to determine whether or not the alleged harassment likely occurred.

This assessment is being provided in summary form only and does not refer to all the information I gathered. However, I reviewed my notes regarding all interviews and documents in their entirety in arriving at my conclusion.

## 2. BACKGROUND

CBRM is a municipality located in Cape Breton, Nova Scotia. Cape Breton Regional Council (the "Council") is the governing body for CBRM. It is comprised of the Mayor, Amanda McDougall, and 12 elected Councillors representing the districts of CBRM:

- Gordon MacDonald
- Earlene MacMullin

- Cyril MacDonald
- Steve Gillespie
- Eldon MacDonald
- Glenn Paruch
- Steve Parsons
- James Edwards
- Ken Tracey
- Darren Bruckschwaiger
- Darren O'Quinn
- Lorne Green

The Complainant, Michael Seth, has held the role of Fire Chief & Director of Fire and Emergency Services with CBRM since November 2019.

The Council typically holds public meetings twice per month or more often if there are additional matters requiring attention. Directors and other members of CBRM and the public will often attend these Council meetings. The Mayor sets the agenda for the meetings, and acts as a spokesperson for Council, however does not have any authority over the Councillors.

The events giving rise to this Complaint began on June 22, 2022, when a staff member with CBRM's Parks and Recreation Department, Joe Costello (Program Coordinator), was interviewed on CBC Mainstreet Cape Breton Podcast regarding CBRM's upcoming plans to celebrate Canada Day.

The interviewer began the podcast by stating "Well, the CBRM has announced how it plans to celebrate July 1st this year with an event planned for Open Hearth Park. July 1st is, of course, Canada Day, but that's not what CBRM is calling this event. In fact, there is no mention of Canada at all in the news release detailing the planned activities. Instead, the July 1st celebration is being dubbed "Night of Lights"." Mr. Costello explained that this name change was done in an effort to be more inclusive to Indigenous communities, and to recognize that not everyone is ready to celebrate Canada Day yet. A transcript of the CBC Interview is attached at **Appendix "A"**.

Two constituents who heard the CBC interview reached out to Councillor Darren Bruckschwaiger, apparently expressing concerns with CBRM's decision to "re-brand" the July 1 celebrations. This prompted Mr. Bruckschwaiger to send an email to all CBRM Council and Directors at 6:22 p.m. which read as follows:

*"Can I ask who made the decision to cancel Canada Day this year. The words I heard from a citizen was Mr. Castello said there was still too much hurt in the country and it was decided Canada day wouldn't be mentioned. Well as said Canada Day isn't a person but I believe our nation needs to be defended and celebrated even with any of our wrongs and bruises. I hope we don't end up with a truck convoy on the Waterfront over this. If I missed a meeting where council made this decision I apologize, however I still don't support us not celebrating this great nation."*

What followed next was a chain of emails discussing the situation over several days, the subject of which forms this Complaint. The emails suggest, and all of the Council members I spoke to agreed, that all Council members were unaware of any decision by CBRM to 'cancel' or 're-brand'

the July 1 celebrations until receiving Mr. Bruckschwaiger's email. I understand that the CBC Interview was not immediately available online, and so emails were exchanged on the topic before the Councillors, including Mr. Bruckschwaiger, had personally heard the contents of the interview.

As it turns out, the events had not been cancelled, and in fact the term 'Canada Day' was still present in CBRM's marketing materials. However, CBRM had decided to re-brand a portion of the event by referring to it as "Night of Lights" in an attempt to be more inclusive to the broader community. Mr. Bruckschwaiger's email caused additional confusion due to his implication that the events had been 'cancelled', when that was not in fact the case and had not been stated in the interview.

Many emails were exchanged on this topic. Mr. Seth later filed Freedom of Information and Protection of Privacy ("FOIPOP") requests for access to all relevant emails, which he provided to me as part of this investigation. Copies of those emails are attached at **Appendix "C"**,<sup>1</sup> however for ease of reference, all emails sent by the Respondents have been excerpted in **Appendix "B"**.

While Mr. Seth's initial complaint referred to "various council members", he later clarified via email that his complaint was against the following individuals (the "**Respondents**"):

- Gordon MacDonald
- Earlene MacMullin
- Ken Tracey
- Darren Bruckschwaiger

Mr. Seth indicates that this is a complaint of discrimination (captured under the definition of "harassment" in CBRM's Human Rights and Harassment Policy) based on Mr. Seth's Indigenous heritage, a protected ground under the policy and provincial legislation.

### **3. CBRM POLICIES**

CBRM has two policies and procedures in relation to discrimination and harassment in the workplace: the Human Rights and Harassment Policy and the Respectful Workplace Policy. These policies apply to all CBRM employees and Council. The Human Rights and Harassment Policy ("Harassment Policy") deals with harassment related to a protected ground, while the Respectful Workplace Policy applies to other forms of harassment. CBRM also has a Code of Conduct which is applicable to elected officials.

Mr. Seth alleges that he was subjected to unwelcome comments which had a negative impact on the workforce and were related to his Indigenous heritage. Thus, I understand that this is a complaint pursuant to the Human Rights and Harassment Policy.

#### **Human Rights and Harassment Policy**

The Harassment Policy defines harassment as follows:

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<sup>1</sup> Please note that some, but not all, of emails I reviewed as part of this investigation were attached to Mr. Seth's Complaint. Additional emails were obtained later through FOIPOP requests made by Mr. Seth and were provided to me as part of this investigation. Mr. Seth's Complaint, the emails attached to that Complaint, and the emails obtained from subsequent FOIPOP requests are all attached at Appendix "C".

*Harassment is a form of discrimination, and is prohibited by the NS Human Rights Act: It is defined as behaviour that a reasonable person would find unwelcome, has a negative impact on the workplace, and is related to any of the characteristics which are listed as prohibited grounds of discrimination in the NS Human Rights Act....:*

*Harassment can, depending on the seriousness of the behaviour, consist of a single incident or a number of incidents. It can be directed at one person, or it can involve a number of individuals.*

*Behaviour does not need to be intentional in order to be considered harassment, although intention may be relevant in assessing the severity of the behaviour. Some examples of harassment include, but are not limited to:*

- *Unwelcome, offensive remarks, jokes slurs, or innuendo related to any of the Prohibited Grounds;*
- *Unwelcome, offensive behaviour related to gender identity, gender expression or perceptions of sexual orientation or gender;*
- *Displaying or distributing derogatory or offensive pictures, graffiti or other materials related to any of the Prohibited Grounds, including but not limited to racist, sexist, or homophobic materials;*
- *Refusing to interact or communicate with persons because of any of the Prohibited Grounds;*
- *Unwelcome, offensive communications related to a Prohibited Ground sent by any means, including email or other electronic transmission;*
- *Unwelcome, offensive behaviour related to a Prohibited Ground, where tolerance of the behaviour is explicitly or implicitly made a term of employment or a consideration in job-related decisions;*
- *Unwelcome, offensive behaviour related to a Prohibited Ground that creates an intimidating, hostile, offensive or poisoned workplace environment;*
- *Unwelcome, offensive comments that are sexual in nature;*
- *Unwelcome, physical contact, such as touching, patting or pinching.*

*Harassment under this Policy does not include conduct that a reasonable person would find welcome or neutral. This Policy is not intended to curtail welcome, appropriate workplace interaction. Some examples of conduct that is not harassment include, but are not limited to:*

- *Welcome, mutually consensual relationships or social invitations that do not involve inappropriate or offensive*

*behaviours, intimidation, explicit or implicit threat of retaliation, or misuse of power.*

- *The exercise of the CBRM's right to direct the workforce, including supervising, managing and giving appropriate and legitimate performance feedback, coaching, and discipline;*

...

Retaliation is prohibited under the Harassment Policy and is also considered a form of discrimination. The Policy provides:

#### *4.1 General*

*Retaliation also constitutes a form of discrimination under this Policy, and may form the basis of a separate Complaint.*

#### *4.2 Forms of Retaliation*

*Any form of retaliation or discrimination against an employee because that person initiated a Complaint of harassment, or because that person acted as a witness or otherwise participated in an investigation, may be considered a violation of this Policy. Such action may result in discipline up to and including termination of employment.*

## **4. ALLEGATIONS OF DISCRIMINATION**

Mr. Seth believes that the Respondent's emails contained inappropriate comments with racial undertones/connotations, which were harmful to him and made him feel unwelcome. He told me that prior to these events, he felt that CBRM had been "fantastic and welcoming"; however, he felt that the Respondents demonstrated a lack of awareness as to how their comments may be perceived.

Mr. Seth was particularly concerned by the fact that the issue was brought to light and discussed in a 'public forum', namely the email chain which is subject to FOIPOP requests. He felt the misunderstanding could have been quickly resolved by a call to Kirk Durning in the Parks & Recreation Department.

Mr. Seth also noted that, as far as he is aware, Council is not normally involved in organizing Canada Day. He views organizing and marketing of the event as an operational task that falls under the Parks & Recreation Department's jurisdiction. He feels there is a process in place that staff follow which should be respected. He suggested that a discussion might be beneficial to clarify what role Council plays in organizing events and prioritizing communications. However, the distinction between operational decisions and political/governance matters raised by Mr. Seth is outside of the scope of this investigation.

Mr. Seth explained that he listened to the CBC Interview only after receiving the emails. He felt that the staff member handled the interview quite well and tried to explain why they were trying to make Canada Day more inclusive – CBRM has a large Indigenous population, many of whom do not celebrate Canada Day, but the intent is for the entire community to come together. He also noted that there are many international students in CBRM who may not celebrate the day. He

did not understand from the interview that Canada Day was 'cancelled' or inappropriate, but felt the interview was about education and inclusivity.

Mr. Seth explained that his intention in filing this Complaint was not to call anyone "racist", and he understood their patriotism. However, the email thread created a feeling that he did not belong. Mr. Seth explained that he thought long and hard before filing a complaint, and he spoke to several confidants. Ultimately, he felt that this was a global issue that needed to be addressed.

Mr. Seth informed me that his goal through this process is acknowledgement that mistakes and inappropriate comments have been made, and a comprehensive plan for education and awareness for Councillors moving forward regarding cultural sensitivity and unconscious bias training. He explained that to move forwards towards a goal of truth and reconciliation, it is important to acknowledge the truth. He explained that he felt that every member of Council has their heart in the right place, but the problem is that people don't know what they don't know and it is important to acknowledge different points of view.

Mr. Seth explained that CBRM has taken some steps and initiatives to recognize Indigenous history and foster inclusion, but he would like to see more. For example, the Mayor's office has implemented a new role of L'Nu advisor which is held by Tanya Johnson-MacVicar. He feels that this role is beneficial but could go further. He would also like to see more involvement from Council. He provided an example of a Blanket Ceremony which was organized by Tanya Johnson-MacVicar in June 2022, which was attended by only two (2) councillors (Glenn Parush and Steve Gillespie).

Mr. Seth also made note of interactions he had with other Council members whom he felt understood that Indigenous people may have a different perspective and were receptive to education. He referenced Councillors Steve Gillespie and Glenn Parush in particular, as well as some of his colleagues in the Fire Service such as Gilbert MacIntyre and Chris March. He says what he is looking for from the Respondents are open-minded discussions and receptiveness to education and training.

Mr. Seth explained that his primary complaint is with the manner in which the matters raised in the email thread escalated. He says there was no direct commentary which was overtly discriminatory, but he felt there were racial undertones in the emails which were inappropriate.

Following below are the specific statements and explanations Mr. Seth provided regarding the emails sent by each Respondent and why he felt they violated the Harassment Policy. Mr. Seth highlighted particular phrases as part of his initial Complaint, and he elaborated on these statements in our discussions. Each Respondent was provided with an opportunity to respond to the allegations, and those responses follow the email summaries for each individual.

a) **Darren Bruckschwaiger**

Mr. Bruckschwaiger sent two emails as part of the email thread:

- June 22, 2022 email sent at 6:22 p.m. with subject line "Canada Day" (Initial email):

*Can I ask who made the decision to cancel Canada Day this year. The words I heard from a citizen was Mr. Castello said there was still too much hurt in the country and it was decided Canada day wouldn't be mentioned. **Well as said***

***Canada Day isn't a person but I believe our nation needs to be defended and celebrated even with any of our wrongs and bruises. I hope we don't end up with a truck convoy on the Waterfront over this. If I missed a meeting where council made this decision I apologize, however I still don't support us not celebrating this great nation.***<sup>2</sup>

Mr. Seth told me that he did not feel that this initial email sent on June 22 was particularly problematic, although he felt that Mr. Bruckschwaiger could have quickly dealt with the situation by calling Kirk Durning to clear up the misunderstanding, rather than sending a mass email.

- June 23, 2022 at 12:04 p.m. with subject line "Canada Day", in response to an email from Kirk Durning explaining that the celebrations were not cancelled, but had been partially re-branded:

***.... Kirk, I'm still having a problem understanding the reasoning for changing the name. You say it was decided that it would be more respectful and inclusive to the Indigenous community. Can I ask you to educate me on this? I'm also wondering who is the group that made this decision and does the group feel that all communities who use the Canada Day heading as the event are not being respectful and inclusive to our Indigenous community? You also mention that other communities in the Country are doing this. Do you know if the elected Councils were included in these decisions in these other communities or if it was just staff decisions?***<sup>3</sup>

*Again I love my Country and believe Canada Day should be celebrated every year on July 1<sup>st</sup>.*

*with respect,*

*Darren Bruckschwaiger*

Mr. Seth explained that he felt that this email "pointed the finger towards the Indigenous community" as to why events were not happening as expected during Canada Day.

Mr. Bruckschwaiger advised me that he chose to address the matter over email because he wanted to see what his colleagues thought and find out who made the decision. He did not think it was right to change the name, felt this was a political decision above the operational level, and was upset that this was happening without Council's knowledge.

Mr. Bruckschwaiger's counsel stressed that this was a political issue with a complicated background. She emphasized that balancing competing interests is challenging, and Council members have obligations under the Code of Conduct to have honest discussions. Mr. Bruckschwaiger pointed out that he asked for education on the decision to change the name to become more inclusive, but did not receive an explanation.

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<sup>2</sup> Words emphasized in bold are highlighted in Mr. Seth's Complaint.

<sup>3</sup> Words emphasized in bold were highlighted in Mr. Seth's Complaint. Words emphasized with underlining were referenced by Mr. Seth in my discussions with him.

b) Earlene MacMullin

Ms. MacMullin sent multiple emails over several days, in several different email chains. The particular comments in those emails that Mr. Seth referenced in the Complaint and our interview were:

- June 22, 2022 email sent at 6:52 p.m. with subject line "Canada Day":

*Darren I am in 100% agreement. When was this decision made and by whose authority? Last I checked we get to chime in on this. I'm really getting tired of getting beat up for things I'm not part of or consulted on. I am proud of my country, even though mistakes were made July 1 is Canada Day. I can't believe something so important and with so much significance was relayed to council by staff on CBC without any input or consultation of the elected members who represent the residents. I look forward to hearing how we plan to rectify this.<sup>4</sup>*

Mr. Seth perceived this comment as discounting the efforts of CBRM to be more inclusive by re-naming the event.

- June 22, 2022 email sent at 6:54 p.m. with subject line "Canada Day":

*They weren't postponed James the CBRM are **just not going to refer to it as "Canada Day" which I believe is ridiculous**.*<sup>5</sup>

Mr. Seth explained that he felt that this comment demonstrated a lack of understanding regarding those in the community that have had to deal with the fallout from residential schools, and the reasons why they may not celebrate Canada Day. He felt that the comment sent a message "this is our holiday, this is what we will do regardless of anyone's opinion".

Ms. MacMullin advised me that when she received Mr. Bruckschwaiger's initial email, she was upset that a decision with significant importance was made without Council input and relayed to members of the public without consultation. She did not think Canada Day had been cancelled, but she thought the name change was an issue because it was made without Council knowledge. She did not consider this to be an operational decision because the message in the CBC interview was that CBRM was "not ready to celebrate".

Ms. MacMullin advised me that she was primarily concerned about the process being followed. She also clarified that she considered the matter of importance to be CBRM's relationship with the Indigenous community. She told me that it bothered her that there had apparently been no consultation with Indigenous communities on the issue and that the "Night of Lights" event did not include any Indigenous content. She felt that the effort was 'tokenistic' and demonstrated a lack of respect to the Indigenous communities.

Ms. MacMullin explained that in 2020, conversations between Council members were held (she was not sure if this was done via email, meeting or otherwise) to discuss whether Canada Day

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<sup>4</sup> Words emphasized with underlining were referenced by Mr. Seth in my discussions with him.

<sup>5</sup> Words emphasized in bold are highlighted in Mr. Seth's Complaint.

celebrations should be held in light of news of residential school grave sites being uncovered. She expected the same consultation would have occurred on this occasion.

Ms. MacMullin and I also discussed some of the workshops, events and training within Indigenous communities the Council were invited to participate in. She provided credible explanations as to why each of these events did not fit within her schedule. Generally, they primarily occurred during weekdays, which interfered with her work schedule, and some events required travel which made them inaccessible to her.

Ms. MacMullin advised me that by June 30, she had been made aware through one of Mayor McDougall's emails that Mr. Seth had an issue with commentary that had been made. She called Mr. Seth to follow up on this, and asked him if she had done anything to offend him, and if so, to please point it out. She told me that he said she did nothing, but other Councillors had made offensive comments. She was not sure what else she could have done.

Mr. Seth told me that when Ms. MacMullin called him, he had not yet gone through all of the emails, and he was not aware of any issue with anything Ms. MacMullin had said. Later, upon reading the emails, the connotation came through, he said, and so he named her in the Complaint.

#### c) Ken Tracey

Ken Tracey sent three emails within the email threads I reviewed. Mr. Seth cited the following email in our interview:

- June 22, 2022 email sent at 6:44 p.m. with subject line "Canada Day":

*Wow, I can't believe what I am hearing. All the more reason to celebrate our national holiday. After being locked up in our homes for 2.5 years people need to get out in or [sic] communities and enjoy our friends/neighbors and support our businesses that have struggled far too long. I believe it was **national indigenous peoples day yesterday and deemed a hu[g]e success. My thoughts.**<sup>6</sup>*

Mr. Seth explained that he was hurt by this comment, and took it as "why are they affecting our holiday, they just had their own".

Mr. Tracey explained that he felt Council should have been 'looped in' to this discussion. He explained that being involved in the community is part of his role as Councillor, and that when he read the email, he recalled that the day prior had been Indigenous Peoples' Day, where he had observed a huge crowd. He said it was not his intent to distinguish between "our day" and "their day".

I asked Mr. Tracey about cultural training opportunities offered at CBRM, to which he responded that he would like to see more, and would participate if they fit his schedule. He was not sure if he received some of the email invitations Tanya Johnson-MacVicar had sent out regarding opportunities that had taken place over the last year.

#### d) Gordon MacDonald

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<sup>6</sup> Words emphasized in bold are highlighted in Mr. Seth's Complaint.

Gordon MacDonald sent three emails within the email threads I reviewed. Of those, Mr. Seth cited the following comments:

- June 22, 2022 email sent at 7:10 p.m. with subject line "Canada Day":

*"No mention of Canada Day!*

*I live in Canada and am a proud Canadian.*

*I'm sorry, I did not hear the CBC report, but this needs to be nipped in the bud, immediately.*

***Mayor, I ask that an emergency public meeting of council be called, to explain that council, had no knowledge or input in such a foolhardy decision.***

*We as elected officials, not having awareness of any public statements are unacceptable, in my opinion.*

*What an insult to our veterans, young and old!*

*I look forward to a reply.*

*Gordon MacDonald"*

Mr. Seth considered this email to be suggesting that the decision to be inclusive was "foolhardy". He also felt the comment about it being insulting to veterans discounted the intent behind being inclusive – to include everyone – and was attempting to make the day about veterans, when it should have been about the entire community.

- June 23, 2022 email sent at 8:15 a.m. with subject line "Canada Day":

*"In my email, I indicated I didn't hear the cbc interview, but if it were the case, it was foolhardy, and disrespectful to veterans, if CBRM were to avoid mentioning Canada Day.*

*That was the intent.*

*If in the interview, when I get to listen to it, and I hear it mentioned, we won't refer to it as Canada Day, I will stand by my statement.*

*I seen [sic] the poster, but didn't hear the interview, so my comments were based on the initial thread.*

*Respectfully,*

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<sup>7</sup> Words emphasized in bold were highlighted in Mr. Seth's Complaint. Words emphasized with underlining were referenced by Mr. Seth in my discussions with him.

*Gordon MacDonald*<sup>8</sup>

Mr. Seth explained that he felt it was problematic for Mr. MacDonald to "stand by what he said" after understanding that the effort by CBRM in changing the name was to be more inclusive.

Mr. MacDonald told me that he was upset that process had not been followed in deciding whether or not to re-name the event. He referenced a prior meeting that had been held in 2021 to discuss whether Canada Day celebrations should occur. He mentioned that the community had happily celebrated National Indigenous Peoples' Day not long before. He felt that the decision which had been made was disrespectful to Canada Day.

Mr. MacDonald characterized this Complaint as "frivolous", and he said he was disappointed that Mr. Seth had brought this Complaint against him without knowing his background, which included training regarding Indigenous rights. This training was taken outside of CBRM. He said he had not attended any training through CBRM regarding cultural competency, other than CBRM's policies and procedures.

e) Additional Notes

1. **Lorne Green**

Lorne Green was not named as a Respondent to this Complaint, but did send one email which was highlighted by Mr. Seth in the Complaint. This caused the Respondents to question why he was not also named. Mr. Green's email read as follows:

*How does this happen without council's input? I also agree with my council colleagues, decisions are being made, and we are finding out through the media, this is no way to conduct our business. Canada Day is a celebration of a great country, nation, and its people, no matter what age, gender, colour, nationality, you get the picture. I also agree with councillor Gordon MacDonald we should have a meeting to discuss this decision. What are we saying to our veterans who fought for our freedom if we can't take one day a year to celebrate our Great Country? I understand mistakes have been made in the pass, I can tell you of personal ones that have been made to my people. However, that doesn't mean we stop celebrating because of those mistakes. We must show that we are still a unified country and proud of our nation. If at the end of the day the decision is to cancel Canada Day celebrations I will accept it. **Canada Day is a national holiday that people have no problem taking the day off work with pay! Perhaps the people that made the decision to cancel Canada Day, could direct staff of CBRM to report to work on this day.***<sup>9</sup>

Several of the Respondents questioned whether Mr. Green had not been named because he is Black. I asked Mr. Seth why he did not include Mr. Green as a Respondent, and he told me that when he was told he had to name specific Respondents, the four (4) named Respondents were those who came to his mind quickly. He said that he didn't think of Mr. Green in time before he provided the names. He further explained that he did not believe that the commentary had

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<sup>8</sup> Words emphasized in bold were highlighted in Mr. Seth's Complaint. Words emphasized with underlining were referenced by Mr. Seth in my discussions with him.

<sup>9</sup> Words emphasized in bold are highlighted in Mr. Seth's Complaint.

anything to do with the inclusive nature of how Canada Day was being portrayed but was more to the effect of 'micromanaging'. Mr. Seth also appreciated that Mr. Green had spoken up at a Council meeting to say that CBRM is not representative of the community, and he felt that as a Black person, Mr. Green had a similar background in terms of historic trials and was able to understand Mr. Seth's perspective.

I accept that the decision to exclude Mr. Green from this Complaint may have been in part related to Mr. Green's racial identity. However, the fact that Mr. Green was not named as a Respondent to the Complaint has no substantial bearing on this investigation or its conclusion in respect of the four named Respondents.

## **2. Motivation to file Complaint**

Several of the Respondents suggested to me that they felt Mr. Seth's motivation to file the Complaint may have been influenced by Mayor Amanda McDougall. After speaking to Mr. Seth, Mayor McDougall and other witnesses, there is insufficient evidence to support this allegation.

Mr. Seth told me that he thought long and hard about filing the Complaint and spoke to several people, including Mayor McDougall. He told me that this was the first time within the community that he felt unwelcome, and he felt that this was a 'global issue' that needed to be addressed.

Mayor McDougall had taken steps to reach out to him to discuss the situation shortly after the email thread was initiated, and remained very sympathetic to Mr. Seth's feelings during my interview with her. Both she and Marie Walsh advised me that they spoke to Mr. Seth prior to his filing the Complaint. Marie Walsh advised me that she wanted to ensure that Mr. Seth's decision was based on his own feelings, and not the Mayor's, and she told him "it's your decision, but it needs to be for you".

I accept that Mr. Seth's motivation to file the Complaint was genuine and that he was not unduly influenced by other parties.

## **3. Council Meeting**

Mr. Seth indicated that at a Council meeting occurred shortly after the Canada Day emails were sent, in which there were some attempts to address the comments that were made, but the meeting quickly devolved into an unproductive discussion wherein the Respondents were defensive and asserted that they were "not racist". The Respondents generally did not recall this meeting or disagreed with Mr. Seth's characterization of it.

I reviewed video footage and minutes from the Council meeting dated July 12, 2022, which was the first to take place after the Canada Day emails were exchanged. In that meeting, a motion was carried to schedule a further meeting between Council the CAO, and if needed, CBRM staff and/or Municipal Affairs representative, to address issues between Council and staff regarding Canada Day, but otherwise, there was no discussion of Canada Day or "racism". I was not able to conclusively determine whether a subsequent meeting ever actually took place or not.

Ultimately, there is insufficient evidence to determine whether the meeting as described by Mr. Seth took place. In any event, Mr. Seth confirmed that the scope of his Complaint was limited to the substance of the emails, and did not extend to behaviour at Council meetings. Therefore, I consider the Council meeting issue to be irrelevant to this investigation.

#### **4. Operational vs Political Decisions**

All of the Respondents focused on the issue of 'process' being followed in regard to consultation with Council on various issues, but both Council members and staff members seemed unclear where the line is drawn between operational decisions and political issues. For example, there was a sense of disagreement or confusion between Council and staff members as to whether the decision to change the name a) should have required Council input, b) should have been relayed to Council before the public, or c) was an operational decision that the Parks & Recreation Department was permitted to make on its own. My impression was that this confusion as to what is "operational" goes further back than the specific issue of re-naming Canada Day and is somewhat of an ongoing issue.

The distinction between operational/political matters is outside of the scope of this investigation, but it came up during interviews with many of the individuals I spoke to and seems to have contributed, to some extent, to tensions between Council members and the overall situation which led to the Complaint being filed.

### CONCLUSION: WAS THERE HARASSMENT (DISCRIMINATION)?

1. I accept the evidence of all four Respondents that their comments were not intended to be offensive. However, the test under the Policy for whether a particular comment is discriminatory or constitutes harassment is not whether the individual intended offence. Rather, the question is whether viewed objectively, the individual could be expected to have caused offence.<sup>10</sup>
2. I find that Mr. Bruckschwaiger's initial email was an inflammatory and unnecessary communication. His email stated that Canada Day had been "cancelled", when he was aware that was not the case and that only a name-change had taken place. He ought to have known that this email, which also referenced his fear of a "truck convoy", would cause a reaction in those who received it, which included all Councillors and Directors. There were other avenues available to Mr. Bruckschwaiger by which he could have quickly cleared up the confusion, including making a call to a member of the Parks & Recreation Department. He ought to have known that the issue raised in his email would be divisive and that the response it invited could have become offensive to some, and should have taken greater care to confirm the beliefs contained in his email before distributing it.
3. I find that Mr. Bruckschwaiger's email amounts to behaviour which a reasonable person would find unwelcome, which had a negative impact on the workplace, relating to a protected characteristic, and his email was therefore a breach of the Harassment Policy.
4. The *Code of Conduct* references fostering "transparent and healthy debate" between Council members. The Respondents urged me to find that this permits them to discuss sensitive issues via email. I have reviewed the Code of Conduct, and I find that this protection applies to Council meetings and municipal proceedings, but it does not extend to email communication. Nevertheless, I accept that discussing various issues via email is not uncommon within the Council, and that the line between what is "operational" and "political" is not always clear.
5. I find that in responding to Mr. Bruckschwaiger's initial email, Ms. MacMullin, Mr. Tracey and Mr. MacDonald were primarily focused on the lack of consultation with Council and the fact that Council had not been informed of CBRM's decision. This is understandable given the nature of the issue, its prevalence in the media, the response from constituents, and the fact that similar discussions had taken place the year prior. Ideally, these conversations would have taken place in a Council meeting and not over email, but I accept that a meeting did not take place despite requests from Council members to schedule one.
6. However, I find that as the discussion progressed, all four Respondents included commentary over email which was unwelcome and offensive in relation to a protected ground, and therefore violated the Policy, albeit at the lower end of the spectrum. Specifically, I find that the following comments violated the Policy:
  - Email from Darren Bruckschwaiger on June 23, 2022 at 12:04pm: "...I'm also wondering who is the group that made this decision and does the group feel that

*all communities who use the Canada Day heading as the event are not being respectful and inclusive to our Indigenous community?..."*

- Emails from Earlene MacMullin on June 22, 2022 at 6:54pm: *"They weren't postponed James the CBRM are just not going to refer to it as "Canada Day" which I believe is ridiculous"*
- Email from Ken Tracey on June 22, 2022 at 6:44pm: *"I believe it was national indigenous peoples day yesterday and deemed a hu[g]e success"*
- Email from Gordon MacDonald on June 22, 2022 at 7:10 pm: *"... council, had no knowledge or input in such a foolhardy decision. ... What an insult to our veterans, young and old!..."*

7. I accept that none of the Respondents had any intention to offend, and that the discussion became heated due to a combination of misunderstanding and personal feelings. However, their comments demonstrate a lack of awareness as to how individuals from diverse groups may have perceived their comments.
8. I further accept that Ms. MacMullin reached out to Mr. Seth to ask him if she had done anything wrong, to which he responded that she had not. In doing so, she demonstrated a willingness to learn and change her behaviour. It is unfortunate that at the time of this call, an open discussion did not take place.
9. I accept that Mr. Bruckschwaiger also demonstrated a willingness to learn and change his behaviour in his email to Kirk Durning where he requested to be educated on the relationship between changing the name of the event and fostering inclusiveness. It is unfortunate that a Council meeting did not occur to discuss the issue in a more appropriate forum.

## 5. ALLEGATIONS OF RETALIATION

Mr. Seth told me that after filing the complaint, he felt that Council members acted in a retaliatory manner against him. For example, Michael's emails to Council members on the Fire Services Committee containing agenda items were ignored and went unanswered. Subsequently, he advised that several Council members – Earlene Macmullin, Darren Bruckschwaiger, Gordon MacDonald – stepped down or stepped back from the Committee because of the Complaint. He also described feeling like his interactions with some Council members had changed after he filed the Complaint and become 'cold'.

Retaliation is not defined in CBRM's Harassment Policy, Respectful Workplace Policy or the Code of Conduct. At common law, retaliation is generally defined as adverse treatment following the filing of a complaint, where the adverse treatment is related to a complaint having been filed.<sup>11</sup>

<sup>10</sup> See *Kemess Mines Ltd. v. I.U.O.E., Local 115* 2006 CarswellBC 3070 and *Trillium Health Partners and ONA (Rusu), Re* 2017 CarswellOnt 991

<sup>11</sup> See, for example, *Dixon v Sandy Lake First Nation*, 2018 CHRT 18, and *Noble v York University*, 2010 HRTO 878.

**a) Earlene MacMullin**

Ms. Earlene MacMullin advised me that at in June of 2022, she was serving as Deputy Mayor, and in that role she was mandated to be Chair of the Fire Committee. She explained that once the Complaint was reported, she advised the CAO that in light of the formal complaint, she felt unable to sit as Chair of the Committee, but she did not resign from the Committee. She further explained that her term as Deputy Mayor (and by extension, Chair of the Fire Committee) ended on October 31, 2022.

**b) Darren Bruckschwaiger**

Mr. Bruckschwaiger told me that he was on the Fire Services Committee last year, but he stepped down due to the ongoing Complaint proceedings as he "didn't want any issues to arise".

**c) Gordon MacDonald**

Mr. MacDonald said that he has remained on the Fire Committee since learning about the Complaint. Other witnesses interviewed, including Marie Walsh, confirmed that Mr. MacDonald remains on the Fire Committee.

**CONCLUSION: WAS THERE RETALIATION?**

1. I accept that Mr. MacDonald has remained on the Fire Committee without significant issue since learning that the Complaint had been filed. Therefore, I cannot find that Mr. MacDonald has engaged in retaliation under the Policy.
2. I accept that Ms. MacMullin stepped down from her role as Chair of the Fire Committee, and that Mr. Bruckschwaiger stepped down from the Fire Committee, in response to the filing of the Complaint. However, I am unable to conclude that Mr. Seth experienced any adverse treatment or effect as a result of either Ms. MacMullin or Mr. Bruckschwaiger's departure from these previous roles. Therefore, I am unable to conclude that either Ms. MacMullin or Mr. Bruckschwaiger engaged in retaliation under the Policy.

**6. CONCLUSIONS**

As indicated above:

1. I accept that Mr. Seth was genuinely motivated to file the Complaint due to his own personal feelings, and that although he consulted the Mayor before making this decision, there was no undue influence.
2. I find that the initial email sent by Mr. Bruckschwaiger was a violation of the Harassment Policy, in that he ought to have known that it would be unwelcome and have a negative impact on the workforce in relation to a protected ground.

3. Subsequently, I accept that all four Respondents offered commentary via email which amounted to a violation of the Harassment Policy, although the severity of the breach was on the lower end of the spectrum.
4. There is insufficient evidence to support a finding of retaliation against Mr. Seth in response to the filing of the Complaint. I am unable to conclude that any of the Respondents engaged in retaliation.

## **7. RECOMMENDATIONS**

As indicated, I find that there was sufficient evidence to indicate that a breach of the Policy had occurred on the part of all four Respondents, albeit at the lower end of the spectrum.

Accordingly, I considered recommendations to deal with the Respondents to potentially avoid a similar complaint in the future.

There is no question that racial tensions nationwide continue to be challenging, and Council members have a duty to engage in discussions surrounding controversial, sensitive and divisive topics. With that said, I have identified the following recommendations which CBRM may wish to consider to ameliorate the situation:

1. CBRM should review its external communication strategy to ensure that public communications by CBRM staff are aligned with CBRM's views on the topic at issue. I understand that some steps have already been taken to review these communications processes in response to the CBC interview.
2. CBRM should consider whether it may be helpful to provide training to Council members in how to address difficult or sensitive issues which impact marginalized groups.
3. CBRM should consider what forums are appropriate for political or sensitive discussions to occur (e.g. Council meetings, emails) and whether there are any additional policies and procedures which are appropriate.
4. All Council members would benefit from cultural competency training which reviews unconscious bias, cultural sensitivity, and historic references. To the extent that such training is already being offered by CBRM, CBRM should consider whether any adjustments to those training opportunities (e.g. in terms of timing and location) are appropriate to make these opportunities more accessible to Council members.

Dated at Halifax Regional Municipality, this 25 day of November, 2022.



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**Katharine Mack**

## Appendix "A" – Transcript of CBC Interview

Transcription of CBC Mainstreet Cape Breton Podcast Aired June 22, 2022, and available at this link: <https://www.cbc.ca/listen/live-radio/1-36-mainstreet-cape-breton/clip/15920955-july-1-open-hearth-park>

**Speakers:** Holly Conners and Joe Costello

**Holly [00:00 – 00:30]:** Well, the CBRM has announced how it plans to celebrate July 1<sup>st</sup> this year with an event planned for Open Hearth Park. July 1<sup>st</sup> is, of course, Canada Day, but that's not what CBRM is calling this event. In fact, there is no mention of Canada at all in the news release detailing the planned activities. Instead, the July 1<sup>st</sup> celebration is being dubbed "Night of Lights". Joe Costello is a Program Coordinator with CBRM Recreation, and we've invited him on the show today. Welcome back, Joe.

**Joe [00:31 – 00:32]:** Well, thanks for having me, Holly.

**Holly [00:33 – 00:35]:** So, why not call this a Canada Day celebration?

**Joe [00:36 – 01:50]:** Well, I think... as we did last year, um, based upon, you know, some of the hard truths that have been exposed during the pandemic regarding our Indigenous friends and neighbours, um...it's still a hard time to celebrate Canada as a ... as an institution, but we still need to celebrate each other as people and our communities and being able to come back together after, you know, it will be almost three years since we've been able to do such an event. So when we looked at this ... this year, we were really trying to find some way we could reflect the idea that we could come back together as a community and brand this as something that would, you know, be, I guess, aware of the current stake that not everyone is ready to celebrate Canada Day as an event yet.

**Holly [01:51 – 01:53]:** And by whom or what level of CBRM was that decision made?

**Joe [01:54 – 02:38]:** Well, it's something that uh.. we discussed internally here at the Recreation Department as we did last year when we presented it as "Better Together", and then we uh.. brought that forward to our leadership at the Director and Mayor level to discuss, and we all thought that it was a strong idea and, you know, I think that continuing conversation resonates with all of us, especially our First Nations communities and our Mi'kmaq communities here in the CBRM. And that, you know, they continue to be very present and part of our conversations.

**Holly [02:38 – 02:46]:** Were the First Nations communities in CBRM consulted about this event and its name?

**Joe [02:47 – 03:09]:** We do have a Mi'kmaq consultant on our um... in our Mayor's office now, Tanya MacVicar, who has been incredibly helpful with making sure that the messages we send out, as well as the way that we present ourselves is cognizant of all of our residents here in the CBRM.

**Holly [03:10 – 03:48]:** Now last year's "Better Together" event went online [*Joe agrees*]. So this is the first kind of public year of the fireworks and everyone gathered. This is not, obviously, you know, we've heard of other events, Canada Day events, being renamed just in the national news this week, you know, the Forks in Winnipeg is calling its July 1<sup>st</sup> event "A New Day", and it's even

changing the kind of marking of the day with more, you know, Indigenous performances and ceremonies for healing, no fireworks. Have you tailored at all the content of this celebration differently?

**Joe** [03:49 – 05:18]: We absolutely made an attempt to [*laughs*]. The biggest challenge we had is we were fairly late in the game um... with the event as a whole, because we were still developing what the event was going to be, and by the time we did uh.... pretty much every Indigenous performer that we contacted, actually every Indigenous performer that we contacted regarding the event, had already been booked. And that's an incredible uh... uh, you know, that's hard for us because you know that's something we certainly wanted to represent, but those Indigenous performers, its great for them because they are finally getting the due that they deserve as well as representations on stages across this country. And that's an amazing thing, because that wasn't always the way. In that regard, we are still continuing to work on ways we can support our Mi'kmaq friends and neighbours including through our multiculturalism day performances which, that day is not quite as busy for some of these performers, as well as working with the communities to see what works for this event in particular.

**Holly** [05:19 – 05:20]: Okay, so what are some of the highlights of what you have planned for Night of Lights?

**Joe** [05:21 – 06:31]: We have some amazing stuff, so we've brought it down to really making it about friends and families here in the community. We'll start off with family activities. We have lots of fun things for people of all ages. We have a velcro wall, axe throwing, bounce houses, water wars, and you can visit with the Albert Bridge alpacas which is always something people are super excited to do on cruise ship days down at the ports or heading out to Albert Bridge. We have a children's stage which is probably my favourite part of the event is seeing the kids so excited to engage with performers that are really down on their level. And then our main stage we have an amazing local performer who's a rising star in Elyse Aeryn. Gordy MacKeeman will be back with his bluegrass, kind of rockabilly set. Another local favourite, Carleton Stone, and then we'll close off the night with Crash Test Dummies, and then we'll kind of bring the night down to fireworks at 10:00 p.m.

**Holly** [06:32 – 06:36]: Alright, well thank you very much for giving us the rundown, Joe. Good luck with the event.

**Joe** [06:37 – 06:49]: Thanks Holly and for all of the Canada Day performances for both Night of Lights and community celebrations happening through you can visit [cbmcanadaday.ca](http://cbmcanadaday.ca)

**Holly** [06:50 – 06:36]: Alright great, thank you. [*Joe says thank you*]. Joe Costello is a Program Coordinator with CBRM Recreation. The Night of Lights event will happen on July 1<sup>st</sup> in Open Hearth Park and admission is free.

## Appendix "B" – Emails sent by the Respondents to the Complaint

### I. Darren Bruckschwaiger

#### 1. June 22, 2022 email sent at 6:22 p.m. with subject line "Canada Day"

- "Can I ask who made the decision to cancel Canada Day this year. The words I heard from a citizen was Mr. Castello said there was still too much hurt in the country and it was decided Canada day wouldn't be mentioned. Well as said Canada Day isn't a person but I believe our nation needs to be defended and celebrated even with any of our wrongs and bruises. I hope we don't end up with a truck convoy on the Waterfront over this. If I missed a meeting where council made this decision I apologize, however I still don't support us not celebrating this great nation.

Darren Bruckschwaiger"

#### 2. June 23, 2022 email sent at 12:04 p.m. with subject line "Canada Day"

- "Thanks for your email Kirk,

First to Council, being very upset when I heard from two residents who heard the interview, I omitted a few words. It should have said cancelling using the word Canada Day in our event. I think I cleared that up in my second sentence when I ended it by saying that Canada day wouldn't be mentioned. I know our Deputy picked that up when she responded to James. For those that didn't pick up on that, my apologies.

The messages I received from two individuals. First message sent to me- Mr. Castello said the reason for changing the name was we are still hurting as a Country yet. There's still healing to do so we just want to bring families together at the concert.

2<sup>nd</sup> message- cancelling calling it Canada day with CBRM events?????. The Interview was on CBC Mainstreet and anyone who knows the drill, that interview should be on line today for us all to hear.

Kirk, I'm still having a problem understanding the reasoning for changing the name. You say it was decided that it would be more respectful and inclusive to the Indigenous community. Can I ask you to educate me on this? I'm also wondering who is the group that made this decision and does the group feel that all communities who use the Canada Day heading as the event are not being respectful and inclusive to our Indigenous community? You also mention that other communities in the Country are doing this. Do you know if the elected Councils were included in these decisions in these other communities or if it was just staff decisions?

Again I love my Country and believe Canada Day should be celebrated every year on July 1<sup>st</sup>.

with respect,

Darren Bruckschwaiger"

**II. Earlene MacMullin**

1. June 22, 2022 email sent at 6:52 p.m. with subject line "Canada Day"

- "Darren I am in 100% agreement. When was this decision made and by whose authority? Last I checked we get to chime in on this. I'm really getting tired of getting beat up for things I'm not part of or consulted on. I am proud of my country, even though mistakes were made July 1 is Canada Day. I can't believe something so important and with so much significance was relayed to council by staff on CBC without any input or consultation of the elected members who represent the residents. I look forward to hearing how we plan to rectify this."

2. June 22, 2022 email sent at 6:54 p.m. with subject line "Canada Day"

- "They weren't postponed James the CBRM are just not going to refer to it as "Canada Day" which I believe is ridiculous"

3. June 22, 2022 email sent at 7:10 p.m. with subject line "Canada Day!"

- "Good evening Wendy and Holly,

It has just been brought to my attention that CBRM staff stated on your show something along the lines of CBRM not referring to July 1 as Canada Day. I will admit I didnt [sic] hear the interview but will hopefully have the chance to once posted. If this is in fact true I wanted to reach out to let you know that Council was never informed of this, approached for input or made aware by any means. My phone has been busy the last little while and I am not the only member currently outraged. I was hoping to shed a little light on something that must have a [sic] taken a few by surprise. We will get to the bottom of this.

Regards,

Earlene"

4. June 23, 2022 email with subject line "Email follow up"

- "Or we can come back to the issue at hand and discuss how a decision to omit Canada Day terminology from our celebrations was made without Council. That is what we want to know. I am not playing another round of how to deflect this to being some type of fault by Council.

This is what you responded to me. Do you really think I am making this up? That I haven't reached out to you numerous times on various issues such as negotiations, the waterfront agreement, vaccine policy, budget etc. This alone is disrespectful to me as a professional and this is a game I am finished playing.

Earlene.”

5. June 23, 2022 email with subject line “Email follow up”
  - “Here is the interview, staff and the Mayor made the decision. I am not happy with the interview or the note that we are not ready to celebrate our country.  
  
<https://www.cbc.ca/listen/live-radio/1-36-mainstreet-cape-breton/clip/15920955-july-1-open-hearth-park>”
6. June 23, 2022 email with subject line “Email Follow up”
  - “The interview is below. Personally I am upset that Council wasn’t part of this discussion.”
7. June 23, 2022 email with subject line “Canada Day”
  - “We were involved last year. This interview makes statements that I wholeheartedly do not agree with and am having a very [sic]”
8. June 23, 2022 email with subject line “Email follow up”
  - “I just want it clarified that a public statement made on behalf of the CBRM stating that it is still a hard time to celebrate Canada as an institution is not day-to-day operations.

I do not agree making a public statement on behalf of the CBRM stating (in part) “still a hard time to celebrate Canada as an Institution” is part of day-to-day operations. The level of offence I take with this is grand. I may only be a Municipal councillor but I am partaking in Canadian government. My son graduates from the Canadian Navy Basic on Tuesday, my brothers are both veterans as is my name’s sake and grandfather. Last year we all had a say and obviously agreed it was not a time for celebration and were in solidarity of a very large movement and in conjunction with Indigenous communities. There was no ask from any Indigenous community as far as I am aware for us to alter our celebrations or utilizing “Canada Day” in name as that would be a different conversation to which

The “night of lights” shows no statement of inclusion

The assumption that the residents of CBRM are “not ready” to celebrate our country is not accurate”

9. June 28, 2022 email sent at 10:13 a.m. with subject line “No ‘Canada Day’ CBRM sty;e” [sic]:
  - “The Interview you are referring to took place with no discussion or input of Council. I only knew of it via similar concerns to yours being brought forward. I have no issue stating that I am in full disagreement of the statements made and personally took offence although I will not speak for my colleagues. My son graduates from his basic training for the Royal Canadian Navy today and as a parent watching your

child sign on the line to offer their life for our county [sic], I can assure you my Country is worth celebrating. I was hopeful a public statement would have been provided by this time, but be assured, Council members have brought their concerns to our Mayor and CAO and are waiting on a time to discuss.

Regards,

Earlene"

10. June 30, 2022 email sent at 3:03 p.m. with subject line "CBC Interview Outcome"

- "Good afternoon all,

I see the Mayor and Deborah are on vacation until next week so that would probably answer my concern of not having a conversation regarding the CBC interview. I know the Mayor did tell us, but it slipped my mind until now. I remain concerned that it is taking so long for Council to have the opportunity to deal with the Issue and really feel this should have happened to some level by now prior to Canada Day. With that said I see we have 2 in camera meetings scheduled for the middle of the month so Marie, if you could help me out with a few things that would be great.

What date is the meeting for dealing with the employee interview and are there any other topics to be discussed on that agenda? As well, at your earliest convenience (after the long weekend obviously) I would like to be provided the correspondence and/or a written chain of events on how the decision was made and who was part of it. As noted, I have serious concerns with this process and its lack of Mayor and Council input and would like to ensure I am prepared.

I have copied all of Council and the agenda working group as this topic does encompass us all but would also like to make it clear that these questions are my own and am simply attempting to keep us all in the loop.

Regards,

Earlene"

11. June 30, 2022 email sent at 5:49 p.m. with subject line "CBC Interview Outcome"

- "Hi Marie,

As you can see below the Mayor called for the meeting and we were awaiting dates. It doesn't have to be in camera if the topic doesn't allow. I will follow up with the Mayor on her return and if she no longer wants to pursue, I will see if the majority of Council is still interested and we can call one from there. I won't speak for my colleagues but my issue is not about an employee participating in an interview, although a communication plan discussion is welcome, but the miscommunication of facts presented that the Mayor refers to. In the meantime, I look forward to hearing from Kirk.

Thanks and enjoy the long weekend,

Earlene"

12. July 7, 2022 email sent at 10:29 a.m. with subject line "Monday morning in-camera"

- "Good morning Madame Mayor,

I am just checking to see if we can get a meeting request into our schedules for the meeting on Monday morning. I have spoken with a few council members in passing who had forgotten which makes sense seeing as we are a group that if the appointment isn't in there we forget.

Thanks,

Earlene"

### III. Kenneth Tracey

1. June 22, 2022 email sent at 6:44 p.m. with subject line "Canada Day"

- "Wow,I can't believe what I am hearing. All the more reason to celebrate our national holiday. After being locked up in our homes for 2.5 years people need to get out in or [sic] communities and enjoy our friends/neighbors and support our businesses that have struggled far too long. I believe it was national indigenous peoples day yesterday and deemed a hue success. My thoughts.

Kentracey@cbrm.ca"

2. June 23, 2022 email sent at 8:44 a.m. with the subject line "Canada Day"

- "My apologies Mayor,I fully understood that Canada day was not canceled but why it is not being called Canada day had me confused, my apologies again.

Ken T."

### IV. Gordon MacDonald

1. June 22, 2022 email sent at 7:10 p.m. with subject line "Canada Day"

- "No mention of Canada Day!

I live in Canada and am a proud Canadian.

I'm sorry, I did not hear the CBC report, but this needs to be nipped in the bud, immediately.

Mayor, I ask that an emergency public meeting of council be called, to explain that council, had no knowledge or input in such a foolhardy decision.

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We as elected officials, not having awareness of any public statements are unacceptable, in my opinion.

What an insult to our veterans, young and old!

I look forward to a reply.

Gordon MacDonald"

2. June 23, 2022 email sent at 8:15 a.m. with subject line "Canada Day"

- "In my email, I indicated I didn't hear the cbc interview, but if it were the case, it was foolhardy, and disrespectful to veterans, if CBRM were to avoid mentioning Canada Day.

That was the intent.

If in the interview, when I get to listen to it, and I hear it mentioned, we won't refer to it as Canada Day, I will stand by my statement.

I seen [sic] the poster, but didn't hear the interview, so my comments were based on the initial thread.

Respectfully,

Gordon MacDonald"

3. June 27, 2022 email sent at 7:10 p.m. with subject line "No 'Canada Day' CBRM style" [sic]:

- "I can and will, speak for myself, and tell you and anyone who wants to listen, I am in full support of Canada Day, in every aspect.

I'm a proud Canadian and will celebrate with the full red and white colors of my Canadian flag.

My views are in no way reflected in this cbc broadcast, and I want that to be clear.

Best regards,

Gordon MacDonald"

**Appendix "B" – Emails provided to investigator by Michael Seth**