

Cape Breton Regional Municipality

Special Council Meeting

AGENDA

MONDAY, FEBRUARY 27TH, 2023

11:00 A.M.

Council Chambers
2nd Floor, City Hall
320 Esplanade, Sydney, NS

Cape Breton Regional Municipality

Special Council Meeting

Monday, February 27th, 2023

11:00 a.m.

AGENDA ITEMS

Land Acknowledgement

11:00 a.m.

Roll Call

1. **APPROVAL OF AGENDA:** (Motion Required)

2. **Code of Conduct for Elected Municipal Officials:**

11:05 a.m.

Deputy Mayor James Edwards (See page 3)

2.1 **Details of Complaint:**

Councillor Earlene MacMullin (See page 8)

2.2 **Response to Complaint:**

Mayor Amanda McDougall-Merrill (See page 10)

2.3 **Referral to Council Deliberation:**

Deputy Mayor James Edwards

ADJOURNMENT

CODE OF CONDUCT FOR ELECTED MUNICIPAL OFFICIALS

I. PURPOSE

The public expects the highest standards of professional conduct from Members elected to local government. The purpose of this Code is to establish guidelines for the ethical and interpersonal conduct of Members of Council ("Members"). The Council is answerable to the community through democratic processes and this Code will assist in providing for the good government of the **Cape Breton Regional Municipality**.

II. STANDARDS OF CONDUCT

Members shall uphold the law and at all times:

- (a) Seek to advance the common good of the municipality as a whole while conscientiously representing the communities they serve;
- (b) Perform the functions of office truly, faithfully and impartially to the best of their knowledge and ability in accordance with the following core values:
 - (i) **Integrity** - giving the municipality's interests absolute priority over private individual interests;
 - (ii) **Honesty** - being truthful and open;
 - (iii) **Objectivity** - making decisions based on a careful and fair analysis of the facts;
 - (iv) **Accountability** - being accountable to each other and the public for decisions taken;
 - (v) **Leadership** - confronting challenges and providing direction on the issues of the day.
- (c) Uphold this Code as a means of promoting the standards of behaviour expected of Members and enhancing the credibility and integrity of Council in the broader community.

III. COUNCIL RESPONSIBILITIES

The Council (or its designated committee) will:

- (a) review the municipality's Code of Conduct as required and make any amendments considered appropriate
- (b) review, consider or take other action concerning any violation of the Code of Conduct which is referred to Council for consideration.

Where there is any conflict between the Code of Conduct and the requirements of any statute of the provincial or federal government, provincial or federal statutes shall take precedence.

IV. MEMBER RESPONSIBILITIES

CONDUCT TO BE OBSERVED

Members are agents of the public whose primary objective is to address the needs of the citizens. As such, they're entrusted with upholding and adhering to the by-laws of the municipality as well as all applicable provincial and federal laws. As public servants, Members must observe a high standard of morality in the conduct of their official duties and faithfully fulfill the responsibilities of their offices, regardless of their personal or financial interests.

DEDICATED SERVICE

All Members should faithfully work towards developing programs to address the needs of the citizens in the course of their duties. Members should strive to perform at a level which is expected of those who work in the public's interest.

RESPECT FOR DECISION-MAKING PROCESS

All Members recognize the responsibility of the Mayor to accurately communicate the decisions of the Council, even if they disagree with such decisions, such that respect for the decision-making processes of Council is fostered.

CONDUCT AT MEETINGS

Members shall respect the chair, colleagues, staff and members of the public present during Council meetings or other proceedings of the municipality. Meetings shall provide an environment for transparent and healthy debate on matters requiring decision-making.

RELEASE OF CONFIDENTIAL INFORMATION PROHIBITED

No Member shall disclose or release to any member of the public any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by the municipality to do so. Nor shall Members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.

GIFTS AND BENEFITS

No Member shall show favouritism or bias toward any vendor, contractor or others doing business with the municipality. Members are prohibited from accepting gifts or favours from any vendor, contractor or others doing business with the municipality personally, or through a family member or friend, which could give rise to a reasonable suspicion of influence to show favour or disadvantage to any individual or organization.

USE OF PUBLIC PROPERTY

No Member shall request or permit the use of municipal-owned vehicles, equipment, materials or property for personal convenience or profit, except where such privileges are granted to the general public. Members shall ensure that the business of the municipality is conducted with efficiency and shall avoid waste, abuse and extravagance in the provision or use of municipal resources.

OBLIGATIONS TO CITIZENS

No member shall grant any special consideration, treatment, or advantage to any citizen or group of citizens beyond that which is accorded to all citizens.

INTERPERSONAL BEHAVIOUR

Members shall treat every person, including other Members, corporate employees, individuals providing services on a contract for service, and the public with dignity, understanding and respect and ensure that their work environment is free from discrimination, bullying and harassment.

COMMUNITY REPRESENTATION

Members shall observe a high standard of professionalism when representing the municipality and in their dealings with members of the broader community.

V. GOOD GOVERNANCE

Members accept that effective governance of the municipality is critical to ensuring that decisions are taken in the best interests of all stakeholders and to enable the municipality to function as a good corporate citizen.

VI. GOVERNMENT RELATIONSHIPS

Members recognize the importance of working constructively with other levels of government and organizations in Nova Scotia and beyond to achieve the goals of the municipality.

VII. CONFLICT OF INTEREST AVOIDANCE

Members are committed to making decisions impartially and in the best interests of the municipality and recognize the importance of fully observing the requirements of the *Municipal Conflict of Interest Act*, R.S.N.S. 1989, c. 299 with regard to the disclosure and avoidance of conflicts of interest.

VIII. REPORTING BREACHES

Persons who have reason to believe that this Code has been breached in any way are encouraged to bring their concerns forward. No adverse action shall be taken against any Member or municipal employee who, acting in good faith, brings forward such information.

IX. CORRECTIVE ACTION

Any reported violation of the Code will be subject to investigation by the Council. Violation of this Code by a Member may constitute a cause for corrective action. If an investigation finds a Member has breached a provision of the Code, Council may impose corrective action commensurate with the nature and severity of the breach, which may include a formal warning or reprimand to the Member.

X. COMPLIANCE WITH CODE

Members acknowledge the importance of the principles contained in this Code which will be self-regulated by Council. Councillors are required to sign a "Statement of Commitment to the Code" (Attachment A) within seven (7) days of taking the Councillors' oath pursuant to section 147 of the *Municipal Elections Act*, R.S.N.S. 1989, c. 300.

ATTACHMENT A

STATEMENT OF COMMITMENT TO COUNCILLORS' CODE OF CONDUCT

I, (Full Name) _____ declare that as a Councillor of the

Cape Breton Regional Municipality I acknowledge and support the Councillors'

Code of Conduct.

Signed: _____

Declared this _____ day of _____, 2009.

Before me:

Chief Administrative Officer/Clerk-Treasurer

Approved by Council: April 21, 2009

Amanda M. McDougall

From: Earlene D. MacMullin
Sent: January 11, 2023 8:02 PM
To: All Council
Subject: Request for Investigation
Attachments: June 28 email.png; NS Human Rights Inquiry.pdf; RHI City Funding Meeting email.pdf

Good evening Council,

I am reporting what I believe to be a breach of our Code of Conduct by Mayor McDougall under Interpersonal Behaviour. I have been made aware on Dec 12, 2022 of an email discussion received from a 3rd party to Mayor McDougall on June 28, 2022. I am also including the email response to me dated December 20, 2022 to which all of Council have already been copied as part of the original discussion.

June 28, 2022 email

In relation to the first email attachment of June 28, 2022, I believe that this conversation proves previous discussions between the Mayor, a staff member, and 3 external parties took place regarding the opinions and contributions of myself and fellow Council members to the email thread regarding Canada Day. It is also beyond a doubt that the Mayor was well aware of both the sensitivity and possible severity of the issue facing some of her colleagues as she reached out to a Human Rights Officer that same morning of the 28th. In that inquiry, the Mayor personally brought forward a complaint to the office of the NS Human Rights Officer of racial insensitivity by Council members to a staff member based on the Canada Day email thread. There would be no other way that the 3rd parties would be privy to any conversation on Canada Day or the stance of some Council members unless they had been informed privately as the discussion did not go public until our meeting on July 12, 2022. I will not speak for anyone but myself but, in my opinion, this email and proof of discussion does not show dignity on the Mayors part nor does it provide me, a member of this Council any show of understanding or respect. To be honest I feel humiliated.

RHI Meeting email

On December 20, 2022 I sent an email to Mayor and Council addressing, what I believe to be, misinformation regarding a RHI City funding meeting. My email was factual to the information I was provided as well as a recap of actual events of our meeting. I concluded that serious conversations would be required. I still believe that is the case as, once again, communication is a big issue and as an elected representative I have every right within the scope of my position to question all processes within the CBRM, Mayor and Council as do each of you. The Mayor then decided, with no additional conversation or communication outside of that one email, to accuse me, in writing, of threatening her and of having underlying undertones of conspiracy. Both accusations are completely untrue but will live forever FOIPOP ready for anyone to judge me. Once again, it is my opinion, that this email is disrespectful, unjustified and certainly shows a lack of respect to my position and duties.

You will find all supporting documentation attached along with the section of our Code of Code of Conduct pasted below for reference. Due to the time of year, I held off with my request for review until after the holidays so I would appreciate having this investigated as soon as possible.

Regards,
Earlene

INTERPERSONAL BEHAVIOUR

Members shall treat every person, including other Members, corporate employees, individuals providing services on a contract for service, and the public with dignity, understanding and respect and ensure that their work environment is free from discrimination, bullying and harassment.

Amanda M. McDougall

MAYOR, CAPE BRETON REGIONAL MUNICIPALITY

January 28th, 2023

Re: Request for Investigation (Councillor MacMullin) – Alleged Code of Conduct breach by Mayor McDougall-Merrill

INTERPERSONAL BEHAVIOUR

Members shall treat every person, including other Members, corporate employees, individuals Providing services on a contract for service, and the public with dignity, understanding and Respect and ensure that their work environment is free from discrimination, bullying and harassment.

Deputy Mayor James Edwards,

I want to express my gratitude for inviting me to provide further detail on the alleged *Code of Conduct for Elected Municipal Officials* violation that is being alleged against me and how you have taken the lead to help find resolve the issues being put forward from Councillor MacMullin. Having gone through a similar situation where a Council colleague took issue with my actions as Mayor, I appreciate the attempt to offer a forum where Council can discuss the issues as a whole and collectively find a path to resolution. My understanding is that the intent of this process is to offer an opportunity to learn and move forward from issues that arise between members of Council and allow the person who has made a mistake the opportunity to take ownership of their actions. In the situation and process undertaken last year, I took full responsibility for the hardship I caused a council colleague by my actions and fully recognize how that situation resulted in damaging the trust between myself and Council. The conclusion of that process truly served the purpose of me taking ownership of my errors made, finding resolution to the situation and most importantly, allowed Council collectively coming away from a difficult situation with resolve and hope for stronger work relationship.

The alleged breach of the *Code of Conduct for Elected Municipal Officials* that has been referenced by Councillor Earlene MacMullin against me today does not, in my opinion, meet the test of the provision cited under *Interpersonal Behavior* nor does it warrant the process being undertaken. Understanding that this is simply my own prerogative, I offer the following for consideration;



1.) Claim: Sharing of Council information to Third Party (June 28th, 2022)

Councillor MacMullin claims that an email thread I shared with 4 people outside Council was connected to the Canada Day email interactions that subsequently led to 4 members of Council to be investigated under a claim of harassment. I have included two printed copies of email threads that include subject lines **No 'Canada Day' CBRM Style** and **No bodies, no investigation to date**. The initial email thread under the subject line **No 'Canada Day' CBRM Style** was sent from David Delaney, copying a number of Council members and those in his personal circle. There was some back and forth over the dates of June 27th and 28th 2022 from Mr. Delaney, Craig MacFadgen, myself, Byron MacFadgen, Councillor Gordon MacDonald and Councillor Earlene MacMullin. The second email thread during that same time period with subject line **No bodies, no investigation to date** came from commentary in the previous email thread, but was entirely separate. All of Council were copied on this second thread and the only interactions back and forth were between Roger Taylor and myself. The content of the second thread of emails was truly disturbing to me as it eludes that the deaths of children who went through the Residential School system were being questioned as the bodies had not been exhumed and therefore could not be proven. I shared that thread with a close group of friends who I turn to for advice on how to handle many issues that arise in my role. No information including commentary from any council member or staff was shared as I know that is inappropriate. It is important to note that the group a residents in the initial emails sent by David Delaney have been writing to me since I was first elected to council, and the responses I provide them are used to populate critical editorials in the Cape Breton Post about me, so that is why I seek advise on how to handle their commentary. Again, a very common practice across all levels of politics, similar to seeking outside legal advice when dealing with council related issues. My request for advice was framed around the premise that David Delany and company had emailed council members around their discontent with the CBRM Canada Day interview that was publicly issued. None of the email threads containing any commentary or opinion of council members was shared with outside parties as cited in the claim against me

A final note on this claim, the reason Councillor MacMullin was privy to this particular email was due to a FOIPOP file related to the harassment claim I cited above. Because the words "Canada Day" were mentioned in the body of the email this email was flagged by IT and included in the FOIPOP file.

2.) Request for information from Human Rights

An email thread initiated on June 22nd, 2022 under the subject line **Canada Day** was copied to all members of Council and the entirety of the Directors list for Cape Breton Regional Municipality. In the days following the initial email a number of individuals copied on the thread reached out to me in confidence and concern as Fire Services Chief Seth being copied on a topic that is extremely sensitive for our indigenous community members in Canada. I personally felt similar concerns and knew that I did not, as cited in my email to the Nova Scotia Human Rights Commission, "have the knowledge to handle/respond such a claim". In my position of Mayor I

often reach out to subject matter experts, specifically when those issues can be connected to legislation as is with the Nova Scotia Human Rights Act in this situation. I am truly perplexed how this can be considered a violation of the *Code of Conduct for Elected Municipal Officials* and ask for more clarity on how reaching out to the Nova Scotia Human Rights Commission would constitute a breach in the *Interpersonal Behaviour* provision of the *Code of Conduct for Elected Municipal Officials*?

3.) Email interactions around RHI Meeting

This topic I take significant issue with because it really encompasses *personal* aspect of the Interpersonal Behaviour provision of the Code on behalf of both Councillor MacMullin and myself. The initial email sent on December 20th, 2022 by Councillor MacMullin to all of Council (which is included in Councillor MacMullin's request for Investigation) stated that after a conversation in the grocery store with an undisclosed person she learned that there was evidence to prove I had been working outside of the appropriate council process to assist New Dawn in getting ahead of the application process to obtaining RHI City Stream funding. This is utter hearsay and also completely untrue as I stated in my response to her (included as well in the Request to Investigate email). Mr. Deputy further to your information gathering related to this Request for Investigation, I ask that you please reach out to Director Ruus who has been a wealth of knowledge of support to groups such as New Dawn who are working incredibly hard to grow a network of supportive and affordable housing for our community. He has been an active part of many conversations and meetings I have participated in and can provide the detail and proof that all municipal practices and policies have been strictly adhered to. My office and staff have been meeting with similar groups and individuals on a regular basis providing them guidance on CBRM surplus lands (which is accessible to the public via our online portal), zoning and by-law information and helping connect entities from both the private and public sector that are necessary to growing affordable housing stock. After doing a quick search of my calendar from the past two years I put together the following list of meetings that I have been part of the included the topics of Rapid Housing Initiative, Affordable Housing, and CMHC as an example of the frequency in which these discussions and meetings are taking place considering the housing crisis the region is experiencing:

- Affordable Housing: RHI Funding across Canada, Parliamentary Secretary Adam Vaughan and MP Kelloway, November 26th, 2020
- Affordable Housing proposal – Louisbourg, CMHC options, December 8th, 2020
- Affordable Housing, Public Private partnership discussion, CBRM land, January 21st, 2021
- Provincial Housing Commission briefing on Affordable Housing, February 1st, 2021
- New Deal, Sydney mines – CMHC application and CBRM planning, April 26th, 2021
- Municipal Elected Officials Session, DMAH – Affordable Housing Report, June 9th, 2021
- Federal Departments Representatives, Infrastructure and Housing, RHI Funding, June 30th, 2021

- Elizabeth Fry (members of staff and Board, Housing options in CBRM and CMHC process, August 17th, 2021
- New Waterford Affordable Housing project represented by John Aylward and Ray Embree, CMHC application, October 27th, 2021
- Seton School project: CBRM, New Dawn, Foodbank, Dora: CMHC application, November 2, 2021
- Transition House: Potential CBRM Surplus properties or building to be considered for CMHC funding application, May 2nd, 2022
- New Dawn, senior CBRM staff: CBRM Surplus lands for RHI Project application, June 7th, 2022
- New Dawn: CBRM surplus lands, by-laws and RHI Project fund, June 14th, 2022
- CMHC: "Role of Municipalities in Affordable Housing", October 19th 2022
- New Dawn, CBRM, MP Battiste: RHI Project Funding, announcement of new city stream, November 14th, 2022

I stand by my comments made to the Councillor via email response but hope that you consider what I believe is the most important piece in my response to her:

"Earlene, the email threats of 'serious conversations' to be had and underlying tones of some sort of conspiracy are really not necessary. No one is out to harm one another or circumvent the process, this is about growing our community and helping those who most vulnerable"

At no point was I disrespectful to the Councillor, rather stern in the fact that we are wasting time on long email threads back and forth that have proven to cause incredible disruption to workflow and morale in the workplace. I use the example of the **Canada Day** email thread that has been hugely disruptive for over 6 months now and has left in it's wake an air of distrust and fear. Councillor MacMullin is indeed correct when she comments that all email correspondence of elected officials is publicly accessible which saddens me only because of the amount of time and energy that is put into unnecessary criticism of one another rather than productive discussion. I do hope that going forward the correspondence between all council and staff of the CBRM is focused on positive movement and productive conversation rather than negative banter that has unfortunately occupied more time that it should.

Before I conclude I must address an overarching flaw in the current process and the determination of procedure. What Cape Breton Regional Municipality has is a general *Code of Conduct for Elected Municipal Officials* that unfortunately lacks regulation of the code and detail around enforcement. Having reached out to other municipal units for advice and insight on their procedures it became evident that this is a common issue across the province. Procedurally and legally speaking, without an enforcement mechanism detailed in the policy itself, the Code is merely a set of guidelines because it does not establish procedures and consequences in the event that a member of council fails to adhere to the provisions contained in the code. The fact that there has been no consistent procedure to address Code of Conduct breaches since I have been on council is telling and problematic, something I hope is remedied with the Department of Municipal Affairs and Housing mandate to implement not only a new

detailed Code of Conduct for Municipal Officials and most importantly a mechanism for enforcement. Without such detail around enforcement, individual interpretation allows for frivolous use of the Code as an excuse to target members of Council. I seen it happen while serving as councillor, I was unfairly targeted in public session using the Code as the reason why I could not question a colleague publicly and have also had to use the current Code at my discretion to address issues within the current council. The problem remains, there is not enforcement detail that allows for a fair, respectful and consistent process.

With respect and gratitude,

Original Signed

Mayor Amanda M. McDougall-Merrill