

March 21, 2023

Council
Town of Cobalt
18 Silver Street, Box 70
Cobalt, Ontario, P0J 1C0

By Email to: sdalley@cobalt.ca

RE: Integrity Commissioner Report – Mayor Mita Gibson

Our office received requests from five members of the public to investigate a number of alleged actions of Mayor Mita Gibson with respect to a letter dated January 18, 2023, sent, without the knowledge of Council, to the Town of Cobalt Public Library Board (Paul Penna Library) and her actions when she allegedly gave direction to Library staff, who are employees of the Board.

This letter followed the Council meeting of January 17th whereat Council deferred the appointment of the Library Board for the 2022-2026 term of Council. Council deferred the decision until they had time to review and update the outdated, original 1961 By-law which established the Public Library and a subsequent By-law setting out the size of the Public Library Board.

The day after the meeting, the Mayor wrote a letter to advise the previously appointed Library Board members that their term was over, and a new establishing By-law along with Board member appointments would be forthcoming. The letter stated they should stop Board activities immediately and turn in their keys. It was also alleged that after issuing the letter, the Mayor then proceeded to give direction to Library staff about ceasing communication with Board members.

The resolution of Council did not include direction to the Mayor to take any action respecting dismissal of the Library Board or the directing of Library staff.

A Public Library is a separate corporation from the municipality. Legislatively its formation and operation are governed by the *Public Libraries Act*. A Public Library is created when an establishing By-law is adopted by Council. The Public Library must have its own Board of Directors who are appointed by the Town Council for that term of Council. The Board may include one or more members of Council based on the size of the Board. It is the responsibility of the Board to manage the operation of a library service for the Town. Historically in Cobalt, the Board continued to operate after a municipal election until such a time as a new Board was appointed by Council.

Mayor Gibson advised at a subsequent Council Meeting that she sought legal and Integrity Commissioner advice before acting. She believed her actions to be in accordance with the advice received.

Role of Integrity Commissioner

It is the responsibility of the Office of the Integrity Commissioner to determine if the actions of the Mayor constituted a violation of the Town of Cobalt Council Code of Conduct, By-law 2013-035. And to provide a report of the findings to Council.

In this circumstance, we reviewed and questioned Mayor Gibson regarding the letter signed by her and addressed to the Public Library Board.

We investigated the allegations provided by those requesting the investigation.

We reviewed the *Public Libraries Act*, the *Municipal Act* as well as the Town of Cobalt Code of Conduct.

Code of Conduct

By-law No. 2013-035 being a by-law to adopt a Code of Conduct for Council was considered and the following sections are relevant in this circumstance:

1. *“Section 2. Adherence to Legislation - Members shall be familiar with and follow the provisions of Provincial Legislation and Regulations pertinent to their duties, ...”*
2. *“Section 3. Representation” - “No Member, other than the Mayor shall purport to speak on behalf of Council unless he or she is authorized by the Council to do so.”*

Facts and Considerations

- Mita Gibson was elected as Mayor October 24, 2022. This is her first term on Council. She has no previous municipal experience and has received some council onboarding/orientation training.
- At the January 17, 2023, Council Meeting, Council was considering the appointment of members to the Public Library Board and the Mayor requested the decision be deferred until the establishing by-law could be updated. She advised Council that she had consulted with legal counsel and the Integrity Commissioner and deferring the matter was recommended. Council agreed to the deferral.
- On January 18, 2023, the Mayor with the guidance of legal counsel and Peggy Young-Lovelace, a governance and community development consultant with E4m, drafted a letter to the previously appointed Board removing the members from office.
- The Mayor took a hard copy of the letter to the Acting CEO / Librarian and asked her to circulate it by email to all Board members.
- The Mayor did not direct the Acting CEO / Librarian to have no contact with the previously appointed Board about library service matters. Nor did she direct the Acting CEO/Librarian regarding other operational matters involving the Library.
- The *Public Libraries Act* provides that the term of appointment of a library board member is for the term of the appointing council. It further provides a timeframe within which the appointment shall take place.
- Section 225 of the *Municipal Act* provides that it is the role of the head of council:
 - (a) to act as chief executive officer of the municipality;
 - (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
 - (c) to provide leadership to the council;

(c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
(d) to represent the municipality at official functions; and
(e) to carry out the duties of the head of council under this or any other Act.

- Section 226.1 of the *Municipal Act* provides that the head of council as chief executive officer shall:
 - (a) uphold and promote the purposes of the municipality;
 - (b) promote public involvement in the municipality's activities;
 - (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally, and internationally; and
 - (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.
- Section 5 of the *Municipal Act* provides that the powers of the municipality shall be exercised by their council and subsection (3) further provides that council shall exercise its powers by by-law. This means that Council as a whole must make decisions and not an individual member, including the head of council, and that decisions are formal. Today, council decisions are recorded in a by-law or a resolution.
- The Code of Conduct requires members to be aware of and to act according to legislation and regulation relevant to their duties as a member of council. Additionally, the Code of Conduct does contemplate that the Mayor is the only member of Council who may speak on behalf of Council unless permission is granted by resolution to another.
- In this circumstance the Mayor believed she was acting in good faith and with the support of Council and advice from experts when she authored the letter to the Board.
- There is a steep learning curve when elected to the position of Mayor, and more so when brand new to local government rules and regulations.

Findings

Based on the evidence before us, we find that Mayor Gibson did breach the Code of Conduct by her actions toward the Board and library personnel. Mayor Gibson acted outside the scope of her duties as described at law when she, without formal Council approval (by-law/resolution), authored a letter to the Board dismissing them from their positions and further, when she gave direction to Library staff to circulate that letter to her Board members.

A mayor's authority is set out in the *Municipal Act* and there is no provision that allows a mayor to act without the authority of Council. In this circumstance, Council agreed to defer a decision related to the appointment of Board members only. Council did not direct the Mayor to send a letter to the Board advising them that they had been dismissed. Additionally, Council did not provide direction to the Mayor to direct library employees in the absence of the Board or otherwise.

Mayor Gibson acted without the express permission of Council and outside of her role as Mayor, and while we are aware of the considerable upset her actions have caused the volunteers previously appointed to the Board, we are also cognizant of the fact that she had only held office for sixty-four (64) days at the time with no previous municipal experience. Therefore, we are recommending that Council not impose a penalty.

Moreover, it is strongly recommended additional training be provided on the procedural by-law as well as the roles and responsibilities of the head of council and councillors. Furthermore, we recommend that an updated Code of Conduct be drafted and put in place as soon as possible since the current Code of Conduct was adopted prior to the changes to the *Municipal Act* that came into effect March 1, 2019.

Respectfully,

A handwritten signature in black ink, appearing to read 'Hannigan', with a long horizontal flourish extending to the right.

Colleen Hannigan
E4m Integrity Commissioner Consultant
Municipal Governance & Planning