

Expertise for Municipalities (E4m)
Non-Profit Association
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**Integrity Commissioner
for the Town of Marathon**



INQUIRY REPORT/DECISION

**ALLEGATION: CONTRAVENTION OF THE TOWN
OF MARATHON CODE OF CONDUCT**

BY: Mayor Rick Dumas

I. REQUEST FOR INQUIRY

- [1] On July 13, 2021, Expertise for Municipalities (E4m) as Integrity Commissioner for the Town of Marathon (the “Town”) received a Request for Inquiry with respect to the Town of Marathon’s Policy – Code of Conduct Policy No. CO0002 (“Code of Conduct”) from a member of the public (the “Requestor”) who alleged that on June 2, 2021, Mr. Rick Dumas, the Mayor of the Town (the “Mayor”), attended their residence and behaved in a manner that was contradictory to the Code of Conduct.
- [2] The Requestor alleged that the Mayor violated the Code of Conduct when he, without notice, went to the Requestor’s home to address statements the Requestor made on social media. Further, that the Mayor became aggressive defending his position.
- [3] The Requestor alleged violations of the *Municipal Act* and that the Mayor’s actions were contrary to the “Respect” initiative found on the Town of Marathon’s website.
- [4] The Requestor also alleged that in some way the actions by the Town of Marathon were systemically racist when they failed to lower the provincial flag in response to the discovery of the unmarked graves of children from the residential schools.

II. FINDINGS/CONCLUSION

- [5] We find that when the Mayor attended the Requestor’s residence on June 2, 2021, the Mayor was very upset and spoke to the Requestor inappropriately to the point that the Mayor was heard yelling at the Requestor by a neighbor. These actions are contrary to the Code of Conduct - specifically the passage that requires elected officials to,

“...When addressing constituents, colleagues and staff members, members of Council will behave in a professional manner...”

The Mayor’s actions were unprofessional and not in keeping with those expected of elected officials.

- [6] Based on the evidence before us, the allegation that the Mayor violated the Code of Conduct is substantiated.
- [7] The allegation that the Mayor engaged in a systemically racist way by failing to lower the provincial flag at the Town office in response to the discovery of the graves is unsubstantiated. The Town had taken other actions to acknowledge this issue such as lowering other flags. The lowering of the provincial flag was being considered by the Town and it was subsequently lowered albeit not immediately. There is no evidence to support that failing to do this immediately was based on racism especially when they had taken other actions in recognition of the discovery of the graves.

[8] Upon finding a breach of the Code of Conduct, section 223.4(5) of the Municipal Act, 2001 permits Council to levy a penalty of either a reprimand, or a suspension of the remuneration paid to the member in respect of their services as a member of Council for a period of up to 90 days for each breach. In this circumstance, we recommend that the Mayor and Council undergo training with respect to ethical behaviour and their responsibilities under the Code of Conduct.

III. INQUIRY PROCESS

[9] Upon receipt of the Application, we completed an initial review of the request and supporting material submitted by the Requestor and determined that there were sufficient grounds to conduct an inquiry into the matter.

[10] The matter was assigned to Sean Sparling (the "Investigator"), an investigator with Investigative Solutions Network Inc. ("ISN") as an agent of the Integrity Commissioner who interviewed the Requestor, three (3) witnesses, and the Mayor.

[11] Additionally, we also reviewed, emails and other documentation such as a press release and relevant policies.

[12] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Township's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:

- Whether or not the individual has firsthand knowledge of the situation
- Whether or not the individual had an opportunity to observe the events
- Whether or not the individual may have bias or other motive
- The individual's ability to clearly describe events
- Consistency within the story
- The attitude of the individual as they are participating
- Any admission of dishonesty¹

[13] The Investigator found the Requestor, the witnesses, and Mayor Dumas to be credible.

¹ *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. *Alberta (Department of Children and Youth Services) v. A.U.P.A.* (2009), 185 LAC (4th) 176 (Alta.Arb.)

IV. FINDINGS OF FACT

The Allegations

[14] The Mayor is alleged to have:

- a. Engaged in a racist act by failing to ensure the provincial flag was lowered in response to the discovery of the unmarked graves of children from the residential schools.
- b. That the Mayor engaged in unprofessional behaviour when he attended the Requestor residence on June 2, 2021, to challenge the Requestor on her social media post alleging the racist behaviour by the Municipality in failing to lower the provincial flag.

Reference: Request for Inquiry dated July 13, 2021
Interview of the Requestor August 9, 2021

[15] After the remains of 215 children were found in unmarked graves in Kamloops British Columbia, Canadian flags were ordered to be flown at half-mast. The provincial government made the same order on May 30, 2021.

Reference: Request for Inquiry dated July 13, 2021

[16] Residents of Marathon and Biigtigong, the neighboring First Nation were angry, saddened, and frustrated that phone calls were not being returned and that questions were not being addressed by the Town and more specifically, the Mayor or the CAO. Of some concern was that the CAO was able to make the decision of when to bring flags to half-mast, as outlined in the Town of Marathon Flag Policy.

Reference: Request for Inquiry dated July 13, 2021

[17] On Wednesday, June 2, 2021, the provincial flag was finally lowered to half-mast.

Reference: Request for Inquiry dated July 13, 2021

[18] On June 2, 2021, the Requestor commented on an existing social media post regarding the provincial flag not being lowered. The comment was made in a Facebook group: Marathon Community Notice Board. This social media group is privately run and not affiliated to the Town of Marathon. The Requestor stated in the post that by not lowering the provincial flag, the actions of the Town align with the definition of modern racism. The post did not reference anyone or any particular individual. It was a general comment about the on-going systemic racism that Indigenous people endure.

Reference: Request for Inquiry dated July 13, 2021

[19] On Wednesday, June 2, 2021, at about 6:40 p.m., the Mayor attended The Requestor's residence.

[20] The Requestor and the Mayor are not friends and they do not share social circles that would even make them acquaintances. When the Mayor attended the residence, he was “...*unannounced, uninvited, angry...visibly agitated.*” The Requestor advised the Mayor that he needed to stop yelling and to lower his tone of voice or he would be asked to leave.

Reference: Request for Inquiry dated July 13, 2021

[21] It was reported that the Mayor was standing with his hands on his hips. The Requestor and the Mayor have had hard conversations in the past over issues surrounding the school board but this time the Mayor caught the Requestor off guard.

Reference: Request for Inquiry dated July 13, 2021

[22] The Mayor advised the Requestor that they [meaning the Town] were waiting for authorization to lower the flag and that he had been in contact with the Chiefs from both neighboring First Nations, Biigtigong and Pic Mobert, trying to sort it out. The Mayor stated that he understood that people wanted the flag lowered but it just was not that easy to do.

Reference: Interview of Requestor August 9, 2021

[23] The Mayor said to the Requestor that he had spoken to other people and they appreciated what he had done and told the Requestor how damaging their post was; he had worked for 15 years to build up relations and the Requestor was in danger of undoing all of his hard work by making that post.

Reference: Interview of Requestor August 9, 2021

[24] The Mayor spent most of the conversation telling the Requestor he wasn't a racist. The Requestor reported that the post was not a personal attack about the Mayor but could see how he thought it was.

Reference: Interview of Requestor August 9, 2021

[25] The Requestor reported that the Mayor was condescending, imposing and that they felt threatened. The Mayor was mostly yelling about it being people like the Requestor that take to social media when they do not have the facts and do not know what is going on; and more importantly that “*you are wrong and I am right*”. The Mayor was making the Requestor feel teeny tiny as a person and wear them down. He was trying to scare the Requestor from doing something similar again.

Reference: Interview of Requestor August 9, 2021

[26] Witnesses corroborated the Requestor's allegations that the Mayor attended the Requestor's home and was somewhat aggressive and defensive.

Reference: Interview of Requestor's Spouse August 9, 2021
Interview of Requestor's Neighbor August 9, 2021

[27] The Requestor's Spouse advised the Investigator that on June 2, 2021, they had just finished dinner when the Mayor showed up at their residence. The Requestor's Spouse answered the door and reported that the Mayor was visibly angry. They sent their children to the backyard and went out on the front steps to speak with the Mayor.

[28] It was reported that the Mayor dominated the conversation. He said he was upset and angry with the Requestor over Facebook posts that he said were "*bullshit and lies*". The Mayor was very loud as he said this and almost to the point of screaming at the Requestor. The Mayor was asked to lower his voice or he would have to leave their property.

Reference: Interview of Requestor's Spouse August 9, 2021

[29] The Mayor then allegedly took a few steps back and continued to dominate the conversation. Whenever the Requestor tried to say something, the Mayor would say, "*I'm talking, I'm talking*". The Mayor was being very dominant and very aggressive. The Requestor's Spouse reminded the Mayor a number of times that he was being inappropriate and to lower his voice.

Reference: Interview of Requestor's Spouse August 9, 2021

[30] The Requestor's Spouse advised that the Mayor said at one point that he should have taken a drive around town to calm down.

Reference: Interview of Requestor's Spouse August 9, 2021

[31] It was also reported by the Requestor's Spouse that the Mayor was accusing the Requestor of tarnishing relations with the First Nations community of Biigtigong that he'd been working so hard over the years to build. He said, posts like that just destroy it all.

Reference: Interview of Requestor's Spouse August 9, 2021

[32] The Requestor's Spouse told the Investigator that the most disturbing part is that now they can expect at any given time the Mayor can ring the doorbell and be angry at them on their front steps unannounced, and that the Mayor's actions were highly inappropriate. The Requestor's Spouse also reported that the Mayor was loud enough that their children came around the house when they heard him yelling.

Reference: Interview of Requestor's Spouse August 9, 2021

[33] The Requestor's Neighbor advised the Investigator that they heard the commotion at the Requestor's residence on June 2, 2021. They described hearing loud noises and an angry exchange of words between the Mayor and the Requestor. This witness described the Mayor as being very angry about comments that the Requestor had made online. Mayor Dumas was shouting and "*he was super upset*".

Reference: Interview of Requestor's Neighbor August 9, 2021

[34] This witness described liking Mayor Dumas very much and felt he was a nice guy and maybe he was having a bad day. The Requestor's Neighbor also expressed that the Mayor has done good things for the Town.

Reference: Interview of Requestor's Neighbor August 9, 2021

[35] The Requestor's Neighbor also expressed that in their opinion there was no reason for the Mayor to come to a person's door and scream at them in this manner.

Reference: Interview of Requestor's Neighbor August 9, 2021

[36] The Mayor reported that on Sunday (May 30, 2021), he learned that Canadian flags had been lowered at federal buildings in response to the 215 graves of residential school children found in Kamloops. He called the CAO and they agreed to discuss it on Monday (May 31, 2021) at the Emergency Control Group meeting. The Mayor didn't bring it to Council as it is the Clerk's responsibility for lowering and raising the flag.

Reference: Mayor Rick Dumas Interview August 9, 2021

[37] On Monday (May 31, 2021) in the afternoon, one of the councillors told the Mayor there were rumblings on social media that they had not lowered the flag. These comments were about the flag at the Cenotaph which belongs to the Legion and not the Municipality. The person in charge of the Cenotaph was contacted and the flag was lowered on Tuesday (June 1, 2021). Later in the same day, there were still rumblings about not lowering the flag. He spoke with the chief from the neighboring First Nation who told him the rumblings were about the Provincial flag at the Municipal office. At this point they had not received direction from the province to lower the flag. They lowered it on their own on Wednesday morning (June 2, 2021).

Reference: Mayor Rick Dumas Interview August 9, 2021

[38] The Mayor reported being told by another Councillor that an Indigenous person from Marathon was on social media complaining that they had tried to reach him regarding the flag issue but they did not get a response. This was not true. The person claiming to have tried calling Mayor Dumas did not call him. He contacted this individual who then apologized for making the comment on social media and then apologized on social media thanking Mayor Dumas for the great conversation they had.

- [39] The Mayor said he also reached out to two other persons about their comments on social media to explain the situation. One person had posted that if it had been a white person, they would have lowered the flag immediately.

Reference: Mayor Rick Dumas Interview August 9, 2021

- [40] On Wednesday evening (June 2, 2021) the Mayor was having supper and he read the post made by the Requestor equating the Municipality not lowering the provincial flag to racism. He felt he needed to speak with the Requestor as he had done with the other community members who had made social media posts on this issue. He then drove to the Requestor's residence, knocked on the door and asked to speak with the Requestor.

- [41] The Mayor reported to the Investigator the following description of his attendance at The Requestor residence.

"Was I frustrated and voice level higher than normal? Absolutely. Was I angry and mad? Absolutely not because I don't get angry. Don't get mad. I get frustrated because I'm very passionate about my community. Very, very passionate. So yes, my voice level was definitely raised no doubt about it."

Reference: Mayor Rick Dumas Interview August 9, 2021

- [42] The Mayor indicated that he did not go to the Requestor's residence to tell them to remove the post from Facebook. He went there to relay the facts of the previous three days, so they would understand what transpired.

- [43] Within three (3) to four (4) minutes of arriving at the residence, the Requestor had asked the Mayor to lower his voice and he did and calmed down from his frustration.

Reference: Mayor Rick Dumas Interview August 9, 2021

- [44] CAO Darryl Skworchinski (the "CAO") advised the Investigator that in early June 2021, a number of municipalities were lowering their flags in response to the discovery of residential school graves. There was direction from the federal government, but the provincial government didn't say anything at first. This all happened over the course of a weekend. The Mayor called the CAO Sunday night (May 30, 2021) and asked him if they could lower the flag on Monday (May 31, 2021) and they did.

Reference: Interview of Darryl Skworchinski August 9, 2021

- [45] The CAO also reported that they did not lower the flag at Veteran's Square as this flag does not belong to them. It belongs to the Legion. The Chief from Biigtigong First Nation asked the Mayor if they could have the flag lowered and the CAO called the Legion to see

if they could lower their flag for the remainder of the week and they agreed. This flag was lowered by Tuesday (June 1, 2021) at noon.

Reference: Interview of Darryl Skworchinski August 9, 2021

[46] The CAO advised that between May 30, 2021 and June 1, 2021, the social media on this blew up saying that the Town was not lowering their flags. This was not true. They lowered the provincial flag about the same time. They have a stringent flag policy. They initially didn't lower the flag as there was no directive from the province to do so. They contacted Biigtigong on Tuesday (June 1, 2021) to see if they wanted the provincial flag lowered. They did and it was lowered.

Reference: Interview of Darryl Skworchinski August 9, 2021

[47] There were a lot of conversations between the two communities at the Mayor/Chief and CAO/Band Manger level that were not public. This was going on before the Requestor's comments on Facebook. They are now in the process of erecting another flagpole that is being donated by Biigtigong which will have a flag at half-mast for the remainder of the year.

Reference: Interview of Darryl Skworchinski August 9, 2021

[48] Some of the social media posts indicated that the Town was disrespecting the First Nations. This was also not true the CAO told the Investigator. They were having ongoing conversations with the First Nation. These conversations started on Monday (May 31, 2021) and continued through the remainder of the week. They have an excellent relationship with the First Nation communities.

Reference: Interview of Darryl Skworchinski August 9, 2021

[49] The CAO reported that he did not know the Mayor was going to speak with the Requestor before it occurred. The Requestor's comments about systemic racism were not factual whatsoever, however the CAO believed the Mayor took more offence to it than the CAO did. The Mayor told him after the meeting with the Requestor, that there was a disagreement between them. The CAO indicated that the Mayor is extremely passionate and not afraid to speak his mind and likes to challenge offside comments from the public.

Reference: Interview of Darryl Skworchinski August 9, 2021

[50] The Mayor reportedly advised the CAO that he attended at the Requestor's residence, knocked on the door, and was greeted by both the Requestor and the Requestor's Spouse. The Mayor advised the CAO that his voice was raised, which could be misconstrued as yelling. He also described it as an animated conversation with no resolution.

Reference: Interview of Darryl Skworchinski August 9, 2021

- [51] The CAO said that if Mayor had asked the CAO's opinion about attending the Requestor's residence before he did it, he would probably have told him to wait twenty-four (24) hours and would likely have advised the Mayor to take a breath before doing it. The Mayor felt personally attacked and they (the Mayor and the CAO) had a right to be upset and frustrated by the Requestor's comments.

Reference: Interview of Darryl Skworchinski August 9, 2021

- [52] The social media posts reviewed during this inquiry were provided by the Requestor and were comprised of statements from a handful of contributors upset by the municipality not lowering the provincial flag. The following is the post in question made by The Requestor.

"...There is no doubt that the flag had to be lowered. Protests would have begun otherwise and rightly so. However the previous 3 day refusal (because they didn't HAVE to lower the provincial flag) is more than just sad. To me, it aligns with the definition of modern racism;

Covert or symbolic opposition to policies or practises designed to help a specific racial group, arising from negative affect towards members of that group..." (sic)

Included in the social media post by the Requestor was a link to www.oxfordreference.com as a citation for the definition of modern racism.

Reference: Request for Inquiry filed July 13, 2021

- [53] Email correspondence between the Mayor and the Chief of the local First Nation dated Friday June 4, 2021, was also reviewed. In the email, the Mayor acknowledged that the Municipality had not lowered the provincial flag immediately and apologized. He also stated that both flags would be lowered together moving forward. In response the Chief wrote,

"Miigwetch Rick. Emotions are running high. There were reports from survivors that this was the case all across Canada. It was ignored. This revelation in Kamloops just quantifies what those survivors were saying all along. Miigwetch Rick"

- [54] There is no evidence that the Mayor was directed by Council, either by resolution or policy to confront individuals who post messages on social media that are not factual or affect the reputation of the Mayor/Council and/or the Town in a bad light.

ANALYSIS

[55] We considered:

- a. Whether the Mayor attended the Requestor's residence on his own or at the request of Council;
- b. Whether the Mayor was directed by Council through a policy to respond to social media on behalf of the Town;
- c. Whether the Mayor's attendance at the Requestor's residence was a reasonable action under the circumstances;
- d. Whether the Mayor's actions/behavior at the Requestor's residence was in contravention of the Code of Conduct;
- e. Whether the Mayor engaged in a racist act by failing to ensure the provincial flag was lowered to half mast in response to the discovery of the unmarked graves of children from the residential schools.

[56] The Code of Conduct states:

Conduct for Transparent, Accountable, Good Governance and Ethics

...When addressing constituents, colleagues and staff members, members of Council will behave in a professional manner.

[57] The term "*professional*" is not defined in the policy, and we have interpreted it to mean that members of Council are expected to conduct themselves and perform their duties in office and arrange their private affairs in manner that promotes public confidence and will bear close public scrutiny. To be clear, members of Council ought to behave in a manner that cannot be criticized by the public.

[58] Additionally, the public holds the Mayor and Councillors to a higher standard because they are the elected leaders of the Town both inside and outside its geographic boundaries. The statements and behavior of the Mayor and Councillors affect the Town's reputation as a place to live and do business. Inappropriate conduct by the Mayor and Council adversely affects the Town's reputation and should be avoided. Put differently, Council has a strong role to protect and promote the Town and its reputation as an excellent place to live, work and do business.

[59] This does not mean that the Mayor (or any other member of Council) should confront an individual about a social media post in which they are expressing a personal opinion.

[60] The Town has adopted a communications policy that also deals with social media. This policy does not give authority to the Mayor to address social media posts made by others.

[61] When the Mayor attended the Requestor's residence and confronted them about their social media post, he engaged in unprofessional conduct contrary to the Code of Conduct.

- [62] The Mayor is held to a higher standard of conduct than the constituents he serves. Although he was rightfully offended by what was an accusation of racism, it was improper for him to attend the Requestor's residence and behave in the manner that he did.
- [63] The Requestor also alleged that the Town was derelict in failing to lower the provincial flag to half-mast in response to the discovery of unmarked graves of children found at the site of the former residential school in Kamloops British Columbia and equated this failure to the definition of modern racism and posted this to social media as part of the discourse involving this issue.
- [64] With respect to this allegation, the Integrity Commissioner does not have the jurisdiction to deal with matters related to staff behaviour and/or their work performance.
- [65] The actions of the Mayor with respect to this situation have been considered.
- [66] There is no evidence before us that the actions of the Mayor amounted to racism.

DATED: September 25, 2021