

Councillor Froese

- a. Will not hold the position of Deputy Mayor, Chair or Vice-Chair of any Standing Committees, Third-party Boards or Advisory Committees.
- b. Sanctions in effect until August 31, 2019.

TOPIC AND PURPOSE

In early July 2018 the Mayor's Office received a complaint that the Board of the DFFH had not responded appropriately to a serious personnel matter at the DFFH. Pursuant to Bylaw No. 5530, The Elected Members Code of Ethics Bylaw, the complaint was routed to Executive Committee for adjudication. This report outlines the action taken on the complaint and the result of the adjudication process.

BACKGROUND

DFFH

The construction of a new sports and entertainment facility in Moose Jaw was the subject of significant public debate, including two referenda in 2006 and 2009. Construction on the multiplex facility began in 2009 and the facility opened in 2011.

Mosaic Place is a 210,000 square foot facility with an 8-sheet curling rink, 8 conference banquet rooms, as well as an entertainment sports bowl with 21 private suites, 132 club seats and seating for 4,465 spectators and over 5,000 spectators for events and concerts. The primary tenant is the Moose Jaw Warriors.

Yara Centre is a 120,000 square foot facility with a national size soccer turf surface, a 365-meter track and a fitness centre.

Chronology of Events

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| 2011 | Multiplex Facility opens. |
| 2013 | Bylaw 5425 adopted by Council, amending the <u>Downtown Facility and Field House Bylaw</u> and continuing it as a controlled Corporation. |
| 2015 | DFFH experiences financial challenges with significant decrease in event revenue. |
| 2016 | |
| August 31 | MNP submits Report to the City on its assessment of DFFH. MNP finds serious problems with Board and management, including underfunding and poor morale. The report makes 14 recommendations: |

Financial Analysis and Benchmarking

1. Develop a strategic plan for the DFFH.

2. Revised budget development process and operate within approved budgets
3. Develop standardized forecasting and timelines
4. Identify an appropriate and sustainable subsidy level

Governance

5. Develop a Terms of Reference for the DFFH Board
6. Pursue Board renewal
7. Provide governance training for the Board
8. Develop a risk policy and event acceptance for the DFFH
9. Rebuild relationship between the Board and City Council
10. More formalized reporting to City Council

Management & Operations

11. Strengthened HR role at DFFH
12. Review the vacancy management policy
13. Review the food service contract at Mosaic Place
14. Re-engage with all staff to build trust and support for the future

September 9 City Council responds to MNP Report. Board members are removed from the Board and a three-member board of City Council is appointed. Doug Campbell is appointed Acting General Manager to oversee operations.

November 28 Councillor Swanson, Councillor Froese and Councillor McMann are appointed as the three voting members of DFFH Board by City Council.

2017

February City Council adopts Bylaw 5530, Elected Members Code of Ethics Bylaw, based on a model bylaw provided by the Province after the RM of Sherwood inquiry.

April Doug Campbell resigns as Acting General Manager.

Board operates through 2017 without a full-time General Manager. Board becomes more operational in nature.

2018

Graham Edge is appointed General Manager (GM) of the DFFH on January 15, 2018. Within days of his arrival he receives personnel complaints from multiple employees. Mr. Edge seeks advice from the City's Human Resource Services Department, reports concerns to the Board of Directors and suggests a course of action. There is either conflicting direction or lack of support from the Board resulting in no clear path being outlined.

Over the ensuing two months there is ongoing discussion of these matters with the Board; however, these discussions occur either at meetings for which no formal notice has been provided or during portions of regular

meetings where no written reports are provided and no minutes providing direction are taken.

Councillor Froese seeks advice from the City's Human Resource Services Department who recommends an external investigation, however, that advice is not pursued by the Board.

The employees do not receive responses to their complaints.

- April 9 A short staff meeting is called and an education program is mandated for all DFFH employees to take.
- May 25 The GM is terminated from his position.
- Originals and copies of confidential files are taken from the General Manager's Office at Mosaic Place by the Board Chair. Those files are provided to the member's personal lawyer when the investigation begins in July.
- July 5 Text messages from former GM of DFFH are relayed to Mayor Tolmie about unaddressed personnel concerns.
- July 9 An in-camera meeting of the City's Executive Committee is convened to review the matter as a formal complaint under Bylaw 5530, *Elected Members Code of Ethics Bylaw*. At the outset of the meeting, a discussion on conflict of interest occurs. The three Councillors who constituted the DFFH Board in the winter of 2018 declared a conflict of interest as the complaint involved them as DFFH Board members. They recused themselves from the meeting as well as subsequent considerations of the matter. Quorum, however, was maintained through application of s.119(2) of *The Cities Act*.
- July 12 On direction from Executive Committee, the City Solicitor engages Joe Dosenberger of JD Solutions Inc. to undertake a third party investigation of the complaint. The object of the report was to obtain a determination of whether the Board had handled the personnel matter appropriately.
- July 18 Mr. Dosenberger interviews the three Council members in Moose Jaw. He also interviews other persons associated with the complaint. Personnel files which had been removed from the DFFH custody are released to Mr. Dosenberger by the Chair's personal lawyer.
- July 28 Mr. Dosenberger submits a report of his investigation to the City Solicitor. He concludes the Board had not exercised the necessary due diligence to ensure a proper investigation had occurred in a timely manner.
- August 8 Executive Committee meets to receive the Dosenberger report and review external legal advice on how to proceed. Direction is given to provide the report to the three DFFH Board members which is done that evening.

- August 13 Executive Committee is convened and each of the three Council members is afforded an opportunity to respond to the Dosenberger report.
- August 15 City Council meets and adopts a Bylaw to suspend the DFFH Board and authorizes the City Manager to manage the DFFH. A further investigation of the personnel complaints is commissioned by the City Solicitor.
- August 28 Mr. Dosenberger submits a report to the City Solicitor outlining his findings from his investigation of the personnel complaints. The findings have been communicated to those affected.

Relevant Legislation

The fiduciary duties of the DFFH Board may be ascertained from provisions of *The Cities Act*, *The Saskatchewan Employment Act* and Moose Jaw's Bylaw No. 5530, The Elected Members Code of Ethics Bylaw, and Bylaw No. 5425, The Downtown Facility and Soccer/Field-House Facility Bylaw.

Section 66.1 of *The Cities Act* requires Council to adopt a Code of Ethics Bylaw. It is an offence for a member of Council to fail to comply with the Code of Ethics Bylaw.

Code of ethics

66.1(1) A council shall, by bylaw, adopt a code of ethics that applies to all members of the council.

(2) The code of ethics must define the standards and values that the council expects members of council to comply with in their dealings with each other, employees of the municipality and the public.

(3) No member of council shall fail to comply with the municipality's code of ethics.

(4) Compliance with the code of ethics does not relieve a member of council from complying with the other requirements of this Act.

Bylaw No. 5425, the Downtown Facility and Soccer/Field-house Facility Bylaw, 2013, provides in clause 8(g) that the "Board members are subject to the requirements set out in the Code of Ethics Bylaw".

In February 2017, City Council passed Bylaw No. 5530, The Elected Members Code of Ethics Bylaw, based on the model Bylaw the Provincial Government had recommended following legislative changes on the heels of the RM of Sherwood Inquiry.

The purpose of the Bylaw is set out in Section 2.1:

"The purpose of this Code is to outline basic ethical standards and values for members of Council. It is to be used to guide members of Council respecting what their obligations are when fulfilling their duties and responsibilities as elected officials."

Section 2.4 the Code states:

"It is the responsibility of each member of Council to uphold the standards and values set out in this Code."

These standards and values are enumerated in Section 4 and include Honesty, Objectivity, Respect, Transparency and Accountability, Confidentiality, Leadership and Public Interest, and Responsibility.

The Bylaw sets out a complaint process which places the onus on Council, acting in-camera, to adjudicate any conduct complaints which are investigated and found to be substantiated. In that event Council may, by resolution, impose an appropriate penalty based on the severity of the contravention of the Code of Ethics.

Section 7.1 of the Bylaw sets out the range of potential sanctions under the heading "Remedial Action if Contravention Occurs":

"7.1 Should a member of Council breach any of the principles outlined in this Code, the possible courses of action that are available to Council include but are not limited to:

- a) An apology, either written and/or verbal, by the member of Council to the impacted individual(s), Council or the general public.*
- b) Educational training on ethical and respectful conduct.*
- c) Repayment of moneys/gifts received.*
- d) Removal of the member from Council Committees and/or bodies.*
- e) Dismissal of the member from a position of Chairperson of a committee.*
- f) Reprimand."*

DISCUSSION

The Mayor received a complaint on July 5, 2018 routed from an unidentified third party which contained information from Graham Edge, former General Manager of DFFH, alleging improper conduct by the Board. This complaint was reported to Executive Committee on July 9 and Joe Dosenberger was contracted by the City Solicitor to investigate the complaint.

Mr. Dosenberger provided a report with his findings on July 28, 2018 to the City Solicitor. That report concluded "There is a very strong prima facie case" that the complaints raised in January were valid. He also concluded that "the DFFH Board did not exercise the necessary due diligence to ensure the investigation was properly conducted and reported to them in a timely manner, but they did not consciously suppress the investigation as alleged."

The materials indicate multiple failures by and concerns with the management and governance of the DFFH, including a dysfunctional workplace and failures by both management and the Board, indicating a lack of competence.

While Mr. Edge was well-advised to engage an independent investigator, he did at least gather information from the complainants and presented those complaints to the Board.

The Board failed in its response to those complaints, failing to provide appropriate support and direction to Mr. Edge.

One reason Mr. Edge went to the Board on February 8, 2018 was because the Board Chair had made it clear that Mr. Edge was not to act on major issues without Board input. On hearing the initial concern and over the ensuing two months the Board failed to give definitive direction to Mr. Edge on how the matter was to be handled, yet did not signal a willingness to allow Mr. Edge to conclude the matter himself. As a result, the Board became responsible for discipline of all DFFH employees.

The 2016 MNP public Report had previously identified DFFH management and Board oversight as deficient:

5. Board Effectiveness

- Lack of formal training and oversight provided for the DFFH Board
- The Board and CEO have not fully understood their role, relationship, and accountability to the other
- Too much empowerment to the CEO

The MNP Report called for “Effective leadership combined with a clear plan [to] return the organization to a long-term sustainability and success.”

This was not realized with the current Board in its response to Mr. Edge's report of the complaints raised. The failure to record minutes of the meeting of February 8, 2018, as well as subsequent discussions, and resulting uncertainty about what, if any, direction was provided, shows a fundamental lack of understanding of proper meeting procedure. While this would be primarily the responsibility of the Chair, all of the Board members would be familiar with proper meeting procedure from their experience with City Council and its committees.

The action of the Chair in taking the investigation files home after Mr. Edge was terminated and then giving it to his private lawyer shows a profound misunderstanding of his role and responsibility.

Executive Committee, at its meeting on August 13, 2018, interviewed the three members of Council who were members of the DFFH Board of Directors. Before the interview, the three members had been acquainted with the complaint and the investigation report were advised that this was their opportunity to respond. Those responses varied. Councillor Froese was forthcoming. She was fully cooperative and acknowledged the failure of Board oversight in the matter.

Given the seriousness of allegations and the gravity of the sanctions under consideration, Executive Committee has retained legal advice from two external law firms regarding various aspects of this matter. The status of this matter has also been shared with provincial officials.

On review of the reports received, and considering the personal statements of elected members, Executive Committee has concluded that the three members of Council who had constituted the DFFH Board failed in their duty to deal with a serious personnel matter at the DFFH. This constituted a failure in governance. The degree of involvement and responsibility varied among the three. The mishandling of confidential files was an

aggravating circumstance in assessing accountability by the Board Chair. As a consequence, the sanctions recommended to Council are adjusted to reflect the individual responsibility of those members. In the final analysis, the citizens of Moose Jaw must have confidence that their elected members uphold, and will continue to uphold, the standards and values expected of them.

PUBLIC AND/OR STAKEHOLDER INVOLVEMENT

Not applicable to this report.

COMMUNICATION PLAN

Not applicable to this report.

STRATEGIC PLAN

Not applicable to this report.

OFFICIAL COMMUNITY PLAN

Not applicable to this report.

BYLAW OR POLICY IMPLICATIONS

Council may wish to update its Elected Members Code of Ethics Bylaw to flesh out investigatory procedures in the event of future complaints.

FINANCIAL IMPLICATIONS

JD Solutions Inc. Report #1	\$6,969.73 (include GST)
JD Solutions Inc. Report #2	\$6,832.50 (include GST)
Neil Robertson, Q.C. fees to August 31, 2018	\$6,780.00 (include GST)
Neil Robertson, Q.C. fees post August 31, 2018	(awaiting invoice)
MLT Aikins fees to September 5, 2018	(awaiting invoice)

PRIVACY IMPLICATIONS

As the subject matter of this complaint involves personnel considerations, individual details are protected by provisions of *The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP)*.

OTHER CONSIDERATIONS/IMPLICATIONS

While the failures at DFFH may relate more to the people in positions of authority than to the governance model, Council cannot ignore the fact that this is the second time that serious problems have occurred at the DFFH. With this in mind, Council has directed a review of the governance model.

