

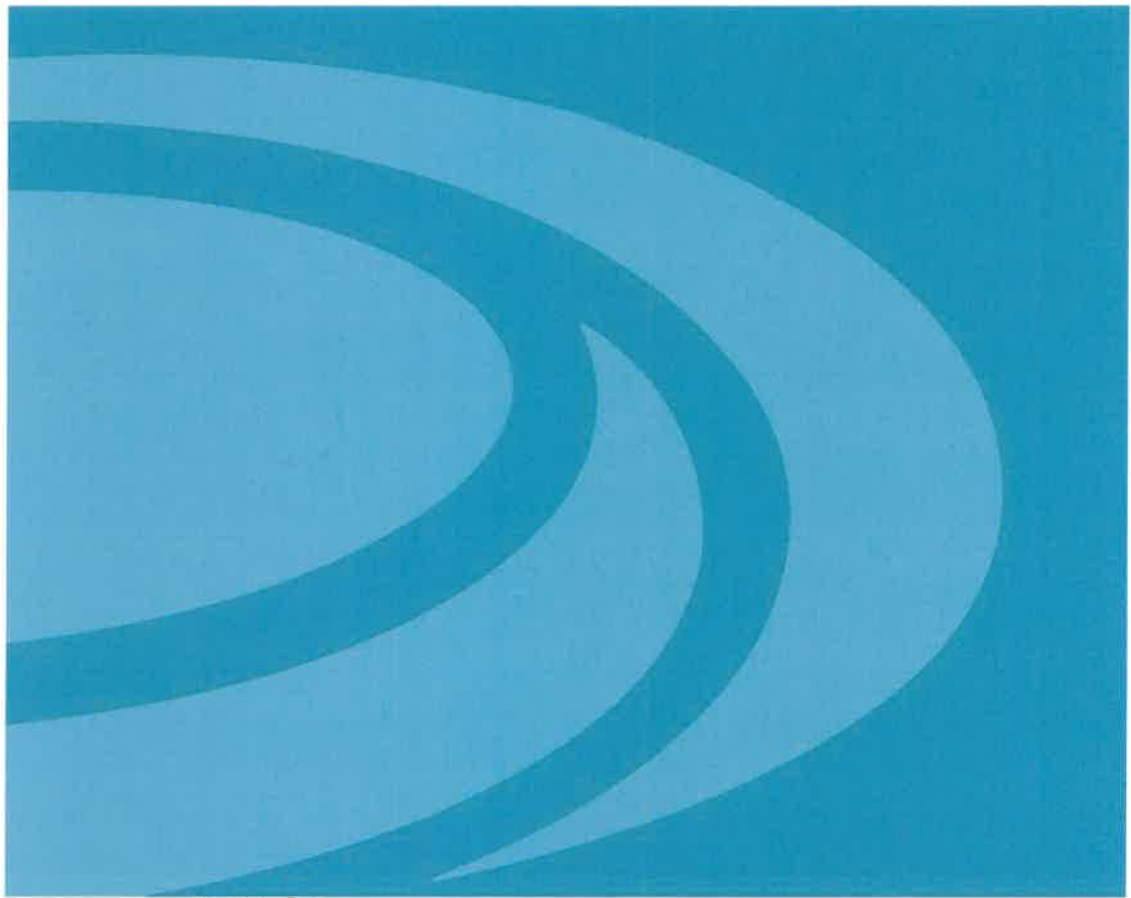


**Ombudsman  
Saskatchewan**  
*Promoting Fairness*

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## Investigation Report

**Complaint about the process used by the Town of Pilot Butte in assessing a Code of Ethics complaint against Councillor Salerno**



January 2024

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## THE COMPLAINT AND THE ISSUES

Councillor Salerno is a councillor with the Town of Pilot Butte; he contacted our office following the completion of a 3<sup>rd</sup> party investigation into a Code of Ethics (COE) violation lodged against him by the mayor, Peggy Chorney. Councillor Salerno believes the investigation was not completed in a fair manner. Specifically, that because he had not been provided a written copy of the accusations made against him, he was unable to reasonably respond during the investigation as to any specific incidents of when or how he breached the COE bylaw.

Our investigation focused on the following issues:

- Did the council have authority to remove Councillor Salerno from his committee positions and require him to attend council meetings via ZOOM prior to a COE investigation being completed?
- Did the council use an administratively fair process to review and respond to this COE complaint?
- Did the remedial actions imposed by council reflect the nature and severity of the COE violation and employ the approach of progressive measures?

## FACTS

During the Regular Council Meeting on December 12, 2022, a COE complaint was submitted by Mayor Chorney against Councillor Salerno. The mayor recused herself from the meeting for Conflict of Interest. The COE complaint was read aloud to the remaining members of council, after which Councillor Salerno recused himself for Conflict of Interest. With both the mayor and Councillor Salerno out of the room, council continued in-camera to discuss next steps. Following the in-camera session, council passed a series of resolutions on the matter:

- Resolution 2022-326: THAT Council deemed the complaint to be substantiated. Carried Unanimously.
- Resolution 2022-327: THAT The Town of Pilot Butte will engage the services of [the consultant] as a 3<sup>rd</sup> party independent investigator, as of Tuesday, December 13, 2022. Carried Unanimously.
- Resolution 2022-328: THAT the Investigation shall within 60 days clarify what the complaint is about; verify that the information provided in the complaint is relevant and accurate; provide an opportunity for all parties involved to review the preliminary findings and provide contrary and/or additional information that may be relevant; determine what sections(s) if any, of the Ethics Bylaw were

contravened; and summarize the results of the investigation into a written report. Carried Unanimously.

- Resolution 2022-329: THAT the respondent be temporarily removed from attending Committee meetings until the investigation is completed; and that the respondent attend Regular Meetings as well as Admin Meetings of Council via ZOOM in order to protect the integrity of the investigation process. Carried Unanimously.

Council relied on Bylaw No. 15-2016 A Bylaw to Establish a Code of Ethics for Members of Council (COE Bylaw) to proceed with the complaint against Councillor Salerno.

On January 25, 2023, the investigation report was completed by the consultant. The investigation focused on possible violations of the COE Bylaw, Section C. *Respect* and Section F. *Leadership and the Public Interest*. The report determined that Councillor Salerno had violated the COE Section C. *Respect*; but that there was “not enough information regarding Section F. *Leadership and the Public Interest*”.

Following receipt of the report, council added this item to the agenda for the February 27, 2023, Regular Council Meeting. The consultant attended the meeting and brought with her an updated report. The updated report determined that Councillor Salerno was in violation of both Section C and Section F of the COE Bylaw. The matter was discussed in-camera to review the investigation report and recommendations from the consultant. Both the mayor and Councillor Salerno refrained from participating in this portion of the meeting for Conflict of Interest. Following the in-camera session, council passed two resolutions on the matter.

- Resolution 2023-055, which acknowledges the receipt of a secondary code of ethics investigation report of February 27, 2023, presented by the consultant.
- Resolution 2023-056, which accepts the findings of the consultant, and that council will proceed with the recommendations 2 through 9 as discussed during the in-camera session. This resolution puts forth a series of remedial actions that Councillor Salerno must complete due to violations of both Section C and Section F of the COE Bylaw. These actions include providing a written apology to Mayor Chorney, participating in training, and other activities specific to meeting preparation and participation. Further it sets out that all council members and administration will participate in additional conflict training.

After the meeting, Administration emailed Councillor Salerno advising him that the investigation found him to be in violation of the COE Bylaw. The correspondence included a copy of the resolution passed by council that sets out the required remedial actions for Councillor Salerno to complete. An avenue of appeal was also set out, which included referring the matter to Ombudsman Saskatchewan.

Councillor Salerno indicated in response to the notice that he was unwilling to follow through with the remedial actions, specifically the apology, given he was not told what he was explicitly apologizing for.

## **ANALYSIS AND FINDINGS**

***Did the council have authority to remove Councillor Salerno from his committee positions and require him to attend council meetings via ZOOM prior to a COE investigation being completed?***

As per the COE Bylaw, the first step in having council review a COE complaint is to determine whether the complaint is valid. If the complaint is then substantiated, the council has the authority to impose remedial actions in line with the severity of the allegations. Resolution 2022-326 established that the complaint was in fact substantiated. Having met this threshold, council was able to impose penalty.

***Did the council use an administratively fair process to review and respond to this COE complaint?***

After having received and substantiated the complaint made against Councillor Salerno, council undertook to hire a 3<sup>rd</sup> party investigator to further review the allegations and make recommendations regarding potential remediation. Given the dynamics of having one member of council submit a complaint against another member of council, we found that this step was reasonable for the Town of Pilot Butte in seeking to mitigate any real or perceived bias that having completed the work internally would have had.

In terms of receiving, reviewing, and hiring an external investigator, council followed a reasonable and fair process. It also established a reasonable timeframe (60 days) for the completion of this work.

The investigation itself was undertaken by the consultant, to which Ombudsman Saskatchewan does not have direct jurisdiction. However, as the work was conducted on behalf of council for purposes that do fall under our scope and mandate, we will make some observations.

A cornerstone of administrative fairness should include having the respondent be aware of the details of the allegations made against them to sufficiently respond to these allegations. During the investigation process Councillor Salerno was not provided a written copy of the complaint(s) made against him, and though it is documented that he made this request on more than one occasion he was denied his request to receive the complaint in any form other than verbal. This decision was based on directions that the town administration and council received from the consultant.

Once the complaint was turned over to the consultant the council relied on the expertise and experience of the consultant to navigate the investigation on its behalf. While this is a sensible approach, it does not forgo council's obligation or duty to ensure due process and that bylaws are followed in seeing that work

through. We found that it was a reasonable request to provide a written copy of the allegations to Councillor Salerno during the investigation process so he could fully participate in the investigation, a fundamental aspect of procedural fairness.

Peripheral concern was raised about the potential for misuse of documentation being provided to any member of council, however there are established processes in place to address that situation should it arise. This could include further COE complaints made against any member who shares confidential information or seeking avenues through the Office of the Information and Privacy Commissioner.

We also note that the final report submitted by the consultant, which found Councillor Salerno to have been in contravention of multiple sections of the COE Bylaw, was presented in general terms and again failed to make specific reference to each of the detailed allegations. In our opinion, an investigation into detailed allegations should clearly articulate what incidents led to the findings and how this was determined; it should provide meaningful reasons for the outcomes of the final report.

***Did the remedial actions imposed by council reflect the nature and severity of the COE violation and employ the approach of progressive measures?***

During our interviews with council members and with administration, we heard that the COE concerns against Councillor Salerno had been on-going. Council was already undertaking training and seeking out communication improvements to address matters informally. When these steps failed to fully address the concerns, the mayor drafted and submitted the COE complaint against Councillor Salerno. Given the nature of the complaints made and based on the findings of the investigation report by the consultant, it was appropriate that council sought to impose remedial action and that an apology was requested from Councillor Salerno.

The recommendations passed by council addressed the COE complaints against Councillor Salerno, but also sought to improve the operations of council as a whole. While some actions were specific to Councillor Salerno, council also agreed to having all members and administration undertake additional training. We found that this was a reasonable step by council to improve on good governance strategies for the municipality.

## SUMMARY AND RECOMMENDATIONS

Our investigation concluded that the Town of Pilot Butte Council acted in good faith in proceeding with the COE complaint in the manner it did. While we did observe that parts of the process undertaken by the consultant lacked components of administrative fairness such as failing to provide a detailed response to each of the alleged contraventions and the degree to which each of the allegations were communicated, this does not negate the overall outcomes of the COE complaint and remedial actions that were imposed. Instead, it should serve as an opportunity to review the COE bylaw and the touchstones of fairness to improve any similar investigations process going forward.

It is important for all councils to understand their duties and obligations in ensuring a fair process, whether it is through work done directly or in this case indirectly by the council. Fair practice prescribes that the councillor who has received a complaint against their ethics should be provided the following: adequate notice of the complaint and disclosure of the allegations, a fair and unbiased review, and an opportunity to respond to the allegations. Councils should ensure that both they and any consultant hired to complete work on behalf of the council follow the requirements of fair administrative practices and of the established bylaws for that municipality. In this case Councillor Salerno should have been provided a copy of the allegations.

As a result of our investigation, we make the following recommendation:

1. That Council update the Code of Ethics Bylaw to clearly identify the roles and responsibilities of each party involved. The updated bylaw should include reference to:
  - a. The process for and expectations of hiring any third party to conduct investigations on behalf of council.
  - b. A clear process for when and how copies of the complaint or list of allegations is provided to both council and the council member being complained about.
  - c. Meaningful reasons for the outcomes of the investigation or complaint process.

## ABOUT US

The Ombudsman is an independent officer of the Legislative Assembly of Saskatchewan. Under *The Ombudsman Act, 2012*, one of our roles is to investigate complaints about administrative actions and decisions of provincial ministries, agencies of the government, publicly funded health entities, municipal entities, and their council members, board members, officers and employees. After an investigation, we can make recommendations to a government entity if the Ombudsman is of the opinion the government entity or officials:

- Has made a decision, an omission or a recommendation to a minister, or has acted in a way that appears to be contrary to law; wrong, unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact; or was made or done in accordance with a law or a practice that is unreasonable, unjust, oppressive or improperly discriminatory.
- Has exercised a power, duty or function conferred or imposed on them by an Act for an improper purpose, on irrelevant grounds, or by taking into account irrelevant considerations.
- Should have given reasons for a decision, action, omission or recommendation that was the subject-matter of the investigation.

Ombudsman Saskatchewan does not advocate for the people who complain to us nor for the government entities and officials we investigate. We are neutral, impartial and independent from the government entities and officials we oversee. Our mission is to promote and protect fairness and integrity in the design and delivery of provincial and municipal government services.