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September 25, 2023

Delivered by email: clerk@southalgonquin.ca

Township of South Algonquin
7 Third Avenue, PO Box 217
Whitney, Ontario K0J 2M0

Attention: Bryan Martin, CAO/Clerk

Dear Mr. Martin:

**RE: Conflict of Interest Complaint– Report
Our File No. 35965-14**

Please be advised that our investigation under the *Municipal Conflict of Interest Act* is now complete. We attach the final report herewith and the report should now be circulated to members of the Council. We have provided a copy of the report to the member and complainants separately.

This investigation is hereby closed. If Council requires the attendance of the Integrity Commissioner when the report is dealt with by Council, please advise.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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SENT BY EMAIL TO: clerk@southalgonquin.ca

Mayor and Members of Council
c/o Bryan Martin, Clerk
Township of South Algonquin
7 Third Ave. PO Box 217
Whitney, Ontario
K0J 2M0

Dear Mr. Martin:

RE: Conflict of Interest Complaint– Report
Our File No. 335965-14

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the

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Integrity Commissioner is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

Timeline of Investigation

The key dates and events during the course of this investigation are as follows:

- Complaint Received – May 13, 2023
- Complaint sent to Member – June 22, 2023
- Response received from Member – June 29, 2023
- Response sent to Complainant – July 17, 2023
- Response received from Complainant – July 25, 2023
- Interviews with Witnesses – August 24 and August 28, 2023

Complaint Overview

The Complaint alleges that Councillor Florent breached the *Municipal Conflict of Interest Act* (the “MCLA”) and the Code of Conduct at the regular meeting of Council on March 1, 2023.

Specifically, it is alleged that Councillor Florent declared a pecuniary interest verbally and in writing but proceeded to participate in the Council discussion regarding funding for a local organization of which he is the secretary/treasurer and a snowplow operator. The funding is alleged to be used for operating expenses as well as the snowplow services provided by Councillor Florent to the organization.

Limitation Period

Section 223.4.1(4) of the *Municipal Act* requires that a Complaint under the MCLA be submitted within six weeks of the applicant becoming aware of the alleged contravention. As part of our investigation, we reviewed evidence as to when the Complainant became aware of the alleged contravention and are satisfied that the Complaint was submitted within the required timeframe.

MCLA Provisions

The Complaint engages the following provision of the MCIA:

5(1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,
...

- (b) Shall not take part in the discussion of, or vote on any question in respect of the matter;

Code of Conduct

The Complaint engages the following provisions of the Code of Conduct:

Rule No. 1
Avoidance of Conflicts of Interest

...

1. Members of Council shall not participate in the decision-making processes associated with their office when prohibited to do so by the Municipal Conflict of Interest Act.
2. Members of Council shall not participate in the decision-making processes associated with their office when they have a disqualifying interest in a matter.

“Disqualifying interest” is defined in the Code of Conduct as:

[A]n interest in a matter that, by virtue of the relationship between the Member of Council and other persons or bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member of Council could not participate impartially in the decision-making processes related to the matter.

Findings

In reaching the findings contained in this report, the Complaint and all written responses received were reviewed, interviews with relevant persons were conducted and the video of the March 1, 2023 Council Meeting was reviewed.

As is detailed below, I find that Councillor Florent breached both the *MCLA* and the Code of Conduct.

Factual Findings

The various accounts of what occurred at the March 1, 2023 Council Meeting were not in conflict. Further, video of the March 1, 2023 meeting was reviewed which confirmed the accounts of what took place at the meeting.

MCIA

In his response, Councillor Florent acknowledged that he filed notice of a pecuniary interest regarding the motion that is the subject of this Complaint and verbally disclosed his interest at the March 1, 2023 meeting. There is no evidence before us to suggest that the pecuniary interest was wrongly declared and it is our finding that Councillor Florent did have a pecuniary interest in the matter being considered at the March 1, 2023 Council Meeting.

Councillor Florent further acknowledges that he participated in the discussion on the report. During the investigation, we confirmed that Councillor Florent was advised by staff that he could speak to the matter and have considered that fact in coming to the recommendations contained in this report.

Despite being advised by staff that he could participate, however, we find that Councillor Florent did breach the *MCLA* Section 5(1)(b). The direction provided by staff was incorrect and by participating in the discussion of the matter, even though the nature of the Councillor's responses were to answer questions and provide factual clarification the Councillor breached the *MCLA*. We note that this section of the *MCLA* is clear that no participation in the discussion of a matter is permitted by a member who has a pecuniary interest in the matter being considered.

Code of Conduct

Rule 1(1)

As we have found a breach of the *MCLA* we also conclude that Councillor Florent breached Rule No. 1(1) of the Code of Conduct which requires compliance with the MCIA provisions.

Rule 1(2)

We find that the pecuniary interest of Councillor Florent is of such a nature that it would be considered by a reasonable person, fully informed of the facts, that Councillor Florent could not have participated impartially in the decision-making processes related to the matter being considered at the March 1, 2023 meeting.

As such, we find that Councillor Florent had a “disqualifying interest” within the meaning of the Code of Conduct.

As a result, we find that there was a breach of Rule 1(2) of the Code of Conduct as Councillor Florent did participate in the decision-making processes regarding the matter as outlined above, even though he did not vote.

Recommendation

Advice Provided

Relevant to our recommendation as to penalty is the advice provided to Councillor Florent by our offices on November 23, 2022 regarding the pecuniary interest that was the subject of this Complaint. In that advice, it was specifically stated that the pecuniary interest created by Councillor Florent’s involvement with the organization required him to refrain from participating in the discussion regarding the funding of the organization.

Context

A mitigating factor with respect to the recommendation as to penalty is that Councillor Florent was advised by staff that he could participate in the discussion and only had to refrain from voting as a result of the pecuniary interest. This was incorrect, but from the evidence reviewed appears to have impacted Councillor Florent’s decision to participate. Further, his inquiry of staff indicates he was sensitive to his obligations as a Councillor with respect to the conflict of interest.

Penalty

As detailed above, it is our finding that Councillor Florent did breach Section 5(1)(b) of the *MCLA*. However, we do not recommend that an application to a judge be made in this case given the context in which the comments were made, specifically that Councillor Florent did declare his interest and was advised by staff he could participate in the discussion. Further mitigation includes the fact that he appeared to provide factual information only and was not advocating in favour of the decision one way or the other.

As further detailed above, it is our finding that Councillor Florent did breach Rule 1(1) and Rule 1(2) of the Code of Conduct.

We must stress that the obligations under the Code of Conduct and the *MCLA* belong to the Councillor and that he alone is responsible for ensuring that he is acting within the bounds of the MCIA and the Code of Conduct. Further, he was provided with advice from our offices directing him to refrain from participating in the discussion of the matter. Confounding this matter is the advice given by staff at the time that appears to have confused the Councillor as to his obligation to refuse to participate in the discussion.

Given the conflicting direction given to the Councillor about his obligations and the fact that he did not vote, our recommendation that Councillor Florent issue a public apology for the error in participating in the discussion when he had declared a pecuniary interest in the matter, but that no other penalty be imposed.

The concern that must be addressed is the public's confidence in the integrity of Council's decision-making process. When a member of Council declares a conflict of interest and proceeds to participate in the discussion of the matter in which they have a conflict, public confidence in the process is undermined and uncertainty is created. As a result, a public acknowledgement of the error and apology by Councillor Florent in this circumstance is necessary.

Sincerely,

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