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October 12, 2023

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. 35965-18

This public report of our investigation is being provided to Council in accordance with Section 223.6(1) and 223.4.1(17) of the *Municipal Act*. We note that Section 223.6(3) of the *Municipal Act* requires that Council make the report public and Section 223.4.1(17) requires that our decision be published.

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. Publishing this report on the agenda will satisfy the requirement of Section 223.4.1(17) that the decision be “published”.

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

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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 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 – July 14, 2023
- Complaint sent to Member – July 25, 2023
- Response received from Member – August 12, 2023
- Response sent to Complainant – August 16, 2023
- Response received from Complainant – August 25, 2023
- Interviews with Witnesses – September 18, 2023

Complaint Overview

The Complaint alleges that Councillor Pigeon breached the *Municipal Conflict of Interest Act* (the “MCLA”) and the Code of Conduct at the regular meeting of Council on June 20, 2023.

Specifically, it is alleged that Councillor Pigeon did not declare a pecuniary interest and proceeded to participate in the Council discussion regarding the regulation of short term accommodation. It is alleged that Councillor Pigeon operates a property management business that is connected to the short term rental market.

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 June 20, 2023 Council Meeting was reviewed.

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

Factual Findings

The various accounts of what occurred at the June 20, 2023 Council Meeting were not in conflict. The video of the June 20, 2023 meeting confirmed the accounts of what took place at the meeting. The Councillor does not declare a conflict of interest and participates in the discussion about the regulation of short term rental accommodation.

In addition, during the meeting Councillor Pigeon left in order to speak directly with our office about whether or not he had a conflict of interest in the subject of short term rental accommodation. The Councillor received verbal advice from our office based on the facts disclosed during the brief conversation.

Generally, we are precluded from disclosing the nature of the advice given to members of council. In this case, Councillor Pigeon confirmed in his written response to the complaint (which was provided to the Complainant) that during the meeting he obtained advice from our office. The response provided by the Councillor confirmed he was advised that he has a pecuniary interest, but is confusing as to what his obligations were due to the conflict and what advice was given. Section 223.5(2.2) of the *Municipal Act* provides that where a member releases only part of the advice received, that the Integrity Commissioner may release all or part of the advice without the consent of the member.

In these circumstances it is appropriate for our office to explain that the advice given to Councillor Pigeon was that he had a pecuniary interest in the matter of the short term accommodation regulation and that he should declare that conflict and not participate in the debate or vote.

The nature of Councillor Pigeon's business is that he oversees the short term rentals for a number of local properties, including advertising for renters, booking rentals, doing cleaning and doing property maintenance for those properties.

MCIA

In his response, Councillor Pigeon acknowledged that he did not declare a pecuniary interest and participated in the debate. His justification is that because the discussion was not about a by-law and no vote was held that he could participate in the discussion. In addition, he took the position that he was prepared to "deal with any loss to his business" as a result of his support for a short term accommodation regulation. He was candid in his interview that his support for short term accommodation regulation might result in a loss of clients for his business.

Despite being advised by the Integrity Commissioner that he could not participate, the Councillor decided to ignore that advice and participate in the debate.

We find that Councillor Pigeon breached the *MCLA* Section 5(1)(b). The direction provided by the Integrity Commissioner was clear, and by failing to declare his pecuniary interest and participating in the discussion of the matter, the Councillor breached the *MCLA*. We note that the *MCLA* is clear that no participation in the discussion of a matter is permitted by a member who has a pecuniary interest. This prohibition is not conditional on a vote being taken; any attempt to participate in or influence the decision is not permitted.

Code of Conduct

Rule 1(1)

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

Rule 1(2)

We find that the pecuniary interest of Councillor Pigeon is of such a nature that it would be considered by a reasonable person, fully informed of the facts, that he could not have participated impartially at the June 20, 2023 meeting.

As such, we find that Councillor Pigeon had a “disqualifying interest” within the meaning of the Code of Conduct and therefore breached Rule 1(2) of the Code of Conduct. Participating in the “decision-making process” includes more than simply voting, it includes all debate and discussion that leads to a vote. The “process” is broader than a vote and participating in any aspect of that process is prohibited by the Code of Conduct.

Recommendation

Relevant to our recommendation as to penalty is the advice provided to Councillor Pigeon by our offices on June 20, 2023 regarding the pecuniary interest that was the subject of this Complaint. The Councillor chose to disregard our advice and that must be considered when discussing the penalty.

Penalty

As detailed above, it is our finding that Councillor Pigeon 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 as there was no vote and it is more likely than not that a Judge would not remove the Councillor from his seat in these circumstances. It is more likely that a Judge would impose a suspension of pay as an appropriate penalty, and that can also be achieved by Council under

the Code of Conduct. It is therefore our decision not to bring an application to the court under the MCIA.

The public need to be confident that all members of Council will adhere to the MCIA and the Code of Conduct to avoid furthering their personal financial interests and abusing their role as elected members of Council. Even though Councillor Pigeon stated that he was in support of short term accommodation regulation despite the fact that it might negatively impact his business, the public cannot have confidence that the Councillor will be impartial in that process. Whether the financial interest is positive or negative and whether the Councillor is “prepared to deal with the loss” or not, the public have a right to expect that decision-makers will be impartial and will make regulations based on objective factors that are in the public interest. In this case, Councillor Pigeon’s personal financial interest creates a conflict.

Given that the Councillor acknowledged that he had a conflict and received advice from the Integrity Commissioner not to participate, a financial penalty is required to ensure that all of Council understands the importance of the MCIA and the Code of Conduct and to rebuild the public’s confidence in the integrity of Council’s decision-making process.

In the circumstances, we recommend that Councillor Pigeon’s pay be suspended for 15 days.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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