



Cunningham Swan
LAWYERS

Tony E. Fleming
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March 12, 2020

By E-MAIL: mtmacdonald@belleville.ca

Council Members – City of Belleville
c/o Matthew, MacDonald, Director of Corporate Services/Clerk
City of Belleville
169 Front Street
Belleville, Ontario K8N 2Y8

Dear Members of Council:

RE: Application for Inquiry – Municipal Conflict of Interest Act and Complaint – code of Conduct - Councillor Williams
Our file No. 20958-19

Please be advised that our investigation under the Code of conduct for this matter is now complete. We attach the report which should be placed on the agenda for the next open session meeting of Council. The process for receiving the report should be as follows:

1. Council should receive the report for information;
2. Council should not debate the findings or attempt to 'go behind' the independent findings of the Integrity Commissioner.

We have provided a copy of the report to the complainant and to the Member. This investigation is hereby closed, and no further steps will be taken by the Integrity Commissioner in this regard.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation
TEF:als
Enclosure

CUNNINGHAM, SWAN, CARTY, LITTLE & BONHAM LLP

Please Reply to the Belleville Office

May 28, 2020

Mitch Panciuk
Mayor, City of Belleville
169 Front Street
Belleville, Ontario K8N 2Y8**Via email:** mayor.panciuk@belleville.ca

Your Worship:

Re: City of Belleville re Letter from Integrity Commissioner

You have asked us for a legal opinion concerning some statements made recently in a letter from the City's Integrity Commissioner ("IC"). In arriving at this opinion, we have reviewed the letter sent to us by your office, the contract with the IC sent to us by the City's Clerk, the legislation and the case law that applies hereto.

Specifically, the statements in the letter that Council is concerned with are:

If Council finds itself in the position where it receives a report from the Integrity Commissioner, Council is performing an adjudicative function and it is required to act with a greater degree of neutrality than it normally would for other business that may come before it. It may debate the recommendations of the Integrity Commissioner only, but not the findings.

Council must avoid going "behind" the findings of the Integrity Commissioner or challenging the lines of inquiry or analysis undertaken by the Integrity Commissioner...

We note that if the Integrity Commissioner recommends a financial sanction (suspension of pay up to 90 days), then the member (even though he or she would have a resulting pecuniary interest) is entitled to attempt to influence Council's decision on that recommended financial sanction. However, the member is not entitled to participate in any other portion of the debate, must still declare a conflict at the outset of Council's consideration of the report, and may not vote.



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Council Members – City of Belleville
c/o Matthew MacDonald, Director of Corporate Services/Clerk
City of Belleville
169 Front Street
Belleville, Ontario K8N 2Y8

Dear Members of Council:

**RE: Request for Inquiry and Investigation
Municipal Conflict of Interest Act, Code of Conduct
Named member: Councillor Ryan Williams
Our file No. 20958-19**

This public report of our investigation and inquiry 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 place the report on the agenda for the next open session Council meeting.

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

At the open session meeting, Council must first receive the report for information. The only decision Council is afforded to make under the *Municipal Act* is 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 debate the merits of the report, only 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 has been 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 inquiries and investigations in response to requests for inquiry and complaints, and

Short Answer

Though the consensus in the case law and amongst ICs generally is that while best practice suggests that Councils should not debate the findings of an Integrity Commissioner, there is nothing in law that prevents a Council from doing so.

Further, pursuant to section 5(2.1) of the *Municipal Conflict of Interest Act* (cited as Section 5(2.10) in the letter from the IC), a member facing a financial sanction may take part in the discussion of the matter, make submissions to Council, and may attempt to influence the voting on any question in respect of the matter, before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.

Discussion of Council's Ability to Debate Findings

There has been a great deal of discussion in the IC community about Councils in Ontario debating the findings and the investigations of their ICs. At the provincial level, the *Members' Integrity Act, 1994* provides that the Legislative Assembly may only approve or reject the recommendation of an IC. It may not inquire further into the contravention, impose a penalty if the IC has recommended that none be imposed, or impose a penalty other than the one recommended. Though many have advocated for similar legislation at the municipal level, none has been passed to date. The rationale for this type of legislation is perhaps best summed up by Toronto's IC, Valerie Jepson, in her 2018 annual report:

I see the issue this way. City Council selects an expert, neutral person to be the Integrity Commissioner and in doing so assigns to that person the responsibility of ensuring that appropriately thorough investigations and reports are conducted and, when necessary, brought to Council. Leaving aside the expectations set by City Council, the Integrity Commissioner is bound by statutory and common law duties to be fair. Further, a large amount of discretion is statutorily granted to the Commissioner... It is plain to see that any value gained by assigning a neutral, independent, expert officer to investigate misconduct on City Council's behalf is lost when Council attempts to go behind the findings or challenge the lines of inquiry or analysis undertaken. It is also unfair to the parties and others involved and has the overall impact of undermining the accountability framework and the office of the Integrity Commissioner itself.

Despite Commissioner Jepson's thoughts on the matter, we have seen situations where a Council has concerns that an IC's report has not taken into account all of the facts or has misinterpreted some of the facts. In such cases, we note that it would be very difficult to assess the appropriateness of any penalty without questioning the IC's understanding of the matter, in order for Council to satisfy itself that the IC has appreciated the full version of events. In such cases, we believe that Council, as part of its adjudicative role,

that the Integrity Commissioner is bound by the statutory framework to undertake a thorough inquiry and investigation in an independent manner. The findings of this report represent the Integrity Commissioner’s final decision in this matter.

BACKGROUND

[001] On November 6, 2019, an application for inquiry under the *Municipal Conflict of Interest Act* (“MCIA”) and complaint under the Code of Conduct (together the “Complaint”) was received by our office for which Councillor Ryan Williams was the named member.

[002] The application under the MCIA was brought by an elector and within the prescribed time as set out in section 223.4.1 of the *Municipal Act*.

[003] There was a delay in our ability to conduct a preliminary review of the materials, as we needed to clarify some portions of the request and Complaint with the applicant/complainant (the “Complainant”). Following that clarification, we still required further information in order to complete the preliminary review. We received that information from the Complainant on November 29, 2019 following which we refined the allegations to properly categorize them within the Code of Conduct and/or the MCIA.

[004] The following is a summary of the allegations. We have set these allegations in categories A through D for ease of reporting:

Allegation (A) – Alleged Breaches of MCIA

Failing to disclose a pecuniary interest – Economic Development and Destination Marketing Meetings as they related to the Municipal Accommodation Tax (“MAT”) contrary to section 5 of the MCIA:

- i. July 4, 2019 meeting of Council – Agenda item 6: Economic Development Update – Pop up Shop/Belleville Trolley/M.A.T.;
- ii. September 5, 2019 meeting of Council – Agenda item 5: Economic and Strategic Initiatives Department – Staffing;
- iii. October 22, 2019 meeting of Council – Agenda item 8: MAT Update.

Allegation (B): Alleged Breaches of MCIA

Using his office to influence the vote through his brother, legal counsel or other members of the QAAA acting as his agents, re: MAT funding to QAAA, contrary to section 5.2(1) of the MCIA:

- i. March 11, 2019 meeting of Council – Agenda item 8.a.10: vote to establish Municipal Accommodation Tax at 4%;
- ii. June 25, 2019 meeting of Council – Agenda item 8.a.8: vote to direct staff to draft Municipal Accommodation Tax by-law;

is justified in looking further into the matter. We note that there is nothing in the contract with the IC that would preclude this further investigation.

Discussion of Member's Ability to Participate in Suspension of Remuneration

Section 223.4(5) of the *Municipal Act 2001* states that a municipality may impose either a reprimand or the suspension of a councillor's remuneration for up to 90 days if the IC reports to the municipality that, in his or her opinion, the member has contravened the code of conduct.

Section 5(1) of the *Municipal Conflict of Interest Act* ("MCIA") states that where a member has any pecuniary interest 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,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Section 5(2) states that where the meeting is not open to the public, the member must also leave the meeting while the matter is being discussed.

However, an exception is allowed in the MCIA for any discussion involving the suspension of remuneration resulting from a recommendation made by an Integrity Commissioner. In such cases, the MCIA states that:

- (2.1)1. The member may take part in the discussion of the matter, including making submissions to council and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.
- 2. In the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration.

We have underlined the language in the legislation that appears to have resulted in the difference of opinion between the IC and Council. We have not had the benefit of speaking with Belleville's IC, but believe it possible that some ICs have perhaps interpreted the phrase "the matter" to mean only the penalty itself. Under that interpretation, a member would only be able to discuss the penalty, but not the investigation that resulted in the recommended penalty. We have been unable to find any caselaw or commentary on this subject, but our interpretation of the legislation, reading the entirety of section 5 together,

- iii. October 15, 2019 meeting of Council – Agenda item 8.a.2: vote to approve giving 25% of Municipal Accommodation Tax to the Bay of Quinte Regional Marketing Board and 25% to the Quinte Accommodation and Attractions Association.

Allegation (C) – Alleged Breaches of Code of Conduct

Using influence of office to award contracts to a member of Quintevation, a body which Councillor Williams founded, contrary to section 8 of the Code of Conduct at the following meetings:

- i. February 19, 2019 meeting of the Belleville Downtown District Business Improvement area (“BDIA”) - Agenda item 6;
- ii. May 13, 2019 meeting of the Economic and Destination Development Committee (“EDDC”) – Motion to accept terms of reference.

Note: These allegations were originally submitted as alleged breaches of the MCIA. However, the MCIA does not capture pecuniary interests as they relate to business acquaintances/associates. After receiving further information and clarification from the Complainant as to the nature of these allegations, we reformulated them to fall under section 8 of the Code of Conduct.

It is a proper use of the Integrity Commissioner’s discretion to ensure that allegations fall within the appropriate provisions of the MCIA or the Code of Conduct and we may reasonably reformulate a complaint where necessary to reflect the appropriate provisions of the Code or the MCIA.¹

Allegation (D) – Alleged Breach of Code of Conduct

Using his influence of office to have staff change hotel reservations for members of Council, contrary to section 8 of the Code of Conduct:

- i. Alleged influence of staff contrary to section 8 of the Code of Conduct in changing hotel reservations for a conference to a hotel which benefited the Williams Hotels chain.

STANDARD OF PROOF

[005] All findings made within this report are based on a standard of a balance of probabilities. This standard is applied in civil cases and requires the Integrity Commissioner to “scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”²

¹ *Di Biase v. Vaughn*, 2016 ONSC 5620.

² *F.H. v. McDougall*, [2008] 3 SCR 41; 61; 2008 SCC 53 (SCC) at para. 61.

is that the words "the matter" mean more than simply the penalty and apply instead to the issue that results in the pecuniary interest (the penalty). Under this interpretation, a member would be able to participate in any aspect of the discussion concerning the member's conduct and the IC's findings, either before, during or after the meeting, and to influence the voting on the matter.

We trust that this answers your questions. Please do not hesitate to contact me if there is anything further you require.

Yours very truly,

TEMPLEMAN LLP

A handwritten signature in cursive script that reads "Suzanne Hunt".

SUZANNE E. HUNT

SEH:ha

INVESTIGATION PROCESS

Preliminary Review

[006] The City's Code of Conduct and the *Municipal Act* provide the Integrity Commissioner with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the preliminary review, our process included:

- Reviewing the relevant provisions of the Code of Conduct and the *Municipal Conflict of Interest Act*;
- Providing a copy of the Complaint and supporting materials to Councillor Williams, with a request for a written response;
- Providing a copy of the response from Councillor Williams to the Complainant with a request for a written response;
- Providing a copy of the response from the Complainant to Councillor Williams with a request for a written response; and
- Reviewing submissions and analyzing the merit of the applications.

Re: Allegations A(i) through (iii)

[007] During the course of our preliminary inquiry, we determined that we would not be proceeding with an inquiry into Allegations A(i) through (iii). We are satisfied that the member followed our previous advice concerning the MAT as it pertains to the nature of the items discussed in those instances. As such, there was no requirement for the member to declare a conflict of interest.

Re: Allegations B(i) through (iii)

[008] We note that we are issuing this report immediately after issuing a report with an allegation identical to that set out in Allegation B(iii). That allegation was in relation to the member's pecuniary interest in the matter affecting the QAAA and Councillor Williams' alleged attempt to influence Council's decision on that item. We refer Council to the findings of that report and note that the member did not breach the MCIA in that instance. We adopt those findings in respect of Allegation B(iii) and note we will not be commencing a new inquiry into that allegation and the same facts.

[009] Further to paragraph 8, we found no evidence to support a different finding for Allegation B(i) or (ii) which alleges the same breach at different Council meeting dates. We reviewed materials submitted by the Complainant and provided by the City dating back to March 2019, and have reached the same conclusion as that in our previous report regarding the member's indirect pecuniary interest in those agenda items.

[010] Witnesses that gave evidence in our first inquiry indicated that they did not receive e-mails or phone calls that left them feeling influenced by Councillor Williams' brother or father at any point when the QAAA was involved in discussions with the City.

[011] Notwithstanding our finding in paragraph 10, we found no case law to support the notion that a member could use a family member, friend or legal counsel to influence Council's vote. Councillor Williams declared a conflict of interest at each of the subject Council meetings, and there was no evidence submitted by the Complainant, the City, or witnesses that Councillor Williams attempted to influence the decision of Council. The applicant bears the burden of proving on a balance of probabilities that the Member breached the MCIA. The applicant has failed to discharge that burden in this case.

[012] Based on the foregoing, we will not be proceeding with an inquiry into Allegations B(i) through (iii).

[013] As we did not conduct a further inquiry, we will not be applying to the Court in accordance with section 8 of the MCIA and no further steps will be taken by the Integrity Commissioner in this regard.

[014] We considered it necessary to conduct an investigation (the "Investigation") into the remaining Allegations C and D under the Code of Conduct.

INVESTIGATION

[015] In conducting the Investigation, our process included:

- Reviewing various minutes of Council meetings, staff reports, and materials provided by both the Complainant and City staff;
- Interviewing Councillor Williams; and
- Interviewing witnesses that we identified as relevant to the Investigation.

BRIEF STATEMENT OF FINDINGS OF THE INTEGRITY COMMISSIONER

[016] The following is a summary of the findings of the Integrity Commissioner:

1. We found no evidence that Councillor Williams used his influence of office to secure a contract with the BDIA for a business acquaintance, and therefore found no breach of the Code of Conduct.
2. We found no evidence that Councillor Williams used his influence of office to secure a contract with the EDDC for a business acquaintance, and therefore found no breach of the Code of Conduct.

3. We found no evidence that Councillor Williams used his influence of office to influence staff into changing hotel reservations for a conference attended by members of Council, and therefore no breach of the Code of Conduct is found.

RELEVANT PROVISION OF THE CODE OF CONDUCT

[017] The following provisions of the Code of Conduct were applicable to our analysis:

Preamble:

This Code of Conduct is intended to ensure that all Members share a common basis for acceptable conduct. Formalized standards help to provide a useful reference guide and a supplement to the legislative parameters within which Members must operate. Further, this Code of Conduct will enhance public confidence that Belleville's elected representatives operate from a base of integrity, justice and courtesy.

Belleville Council's Code of Conduct is a general standard; it augments the laws that govern the behaviour of Members, and is not intended to replace personal ethics.

1. GENERAL

All Members shall serve their constituents in a conscientious and diligent manner. No Member shall use the influence of their office for any purpose other than for the exercise of his/her official duties.

[018] The specific provision governing influencing staff is as follows:

8. INFLUENCES OF STAFF

Members shall be respectful of the fact that staff work for the entire corporation and are charged with providing their services and carrying out their duties, including making recommendations that reflect their professional expertise and corporate perspective, without undue influence from any individual Member or faction of Council, Members typically will deal directly with the Chief Administrative Officer or Department Directors rather than more junior staff in the course of performing their duties.

ANALYSIS

Allegation C(i) – Using influence of office to award a temporary consulting contract to an individual who is also member of Quintevation at the February 19, 2019 meeting of the Belleville Downtown District Business Improvement Area, contrary to section 8 of the Code of Conduct

Background

[019] The minutes of the February 19, 2019 BDIA meeting indicate that Councillor Williams moved a motion to approve a proposal from a local business to provide the professional facilitation of the BDIA’s Vision and Strategic Planning. That motion passed. The total contract value for this proposal was approximately \$5,600, plus applicable taxes.

[020] The business owner conducting the work for the BDIA (the “Consultant”) is also a board member of the Belleville organization ‘Quintevation’. Quintevation is a local non-profit body which Councillor Williams founded. He was a board member prior to being elected as a member of Belleville City Council in 2018. He resigned from the Board just after being elected but before being sworn in. The Complainant submits that although Councillor Williams is no longer a member of the Quintevation board, he is still involved in the operation of Quintevation, and used his position on Council to influence the BDIA’s decision to award this contract to the Consultant.

[021] We have reviewed the minutes of the meeting, and interviewed witnesses that we considered relevant to the Investigation. Witnesses indicated that Councillor Williams provided the name of the Consultant to the BDIA as a potential lead in conducting the work required by the Board. The Chair of the BDIA indicated that:

“Ryan indicated that [Consultant] facilitated the Quintevation strategic plan and did a great job. On that basis, I interviewed [Consultant] by phone, reviewed the proposal, drafted the contract and took the contract to the Board for approval.”

[022] The Chair noted that aside from recommending the Consultant, Councillor Williams played no role in obtaining the proposal or quote, drafting the contract, or recommending the Consultant’s proposal to the Board. Further, the Chair noted that Councillor Williams did not follow up regarding his recommendation.

[023] We asked the Chair if there was pressure exerted by Councillor Williams to hire this particular Consultant. The Chair indicated that they felt no pressure.

Finding

[024] It is not a breach of section 8 of the Code of Conduct to recommend a business within the community for a particular job or contract. Members are entitled to have opinions; the line is crossed where a member follows up and takes an active role to ensure that an individual or business is hired or awarded a contract or employment position.

[025] The Consultant is a Board member for Quintevation and subsequently, a business acquaintance of Councillor Williams through Quintevation. This is not, in itself, a conflict or a 'red flag' to the Integrity Commissioner. In a previous decision of the Integrity Commissioner, we found that a phone call made by a member of Council to staff recommending an individual for an employment position with that municipality, was not in itself a breach of the Code of Conduct.

[026] We note from the evidence that Councillor Williams continues to support the initiatives of Quintevation, however we found no evidence that a line was crossed in this instance and that Councillor Williams did not use his office to actively play a role in the hiring of the Consultant. As referenced above, witnesses indicated that he was not involved following his recommendation and it was the Chair who reported back to the Board of the BDIA with their proposed contract for the work through the Consultant.

[027] We find that Councillor Williams did not breach the Code of Conduct in this instance.

Allegation C(ii) – Using influence of office to award a temporary consulting contract to an individual who is also member of Quintevation at the May 13, 2019 meeting of the City's Economic and Destination Development Committee, contrary to section 8 of the Code of Conduct

Background

[028] On May 13, 2019, Council passed a resolution to establish the new EDDC along with terms of reference for the Committee. The terms of reference included the establishment of a strategic plan for the EDDC. The Complainant alleges that Councillor Williams was an integral part of drafting the terms of reference for the Committee which is 'highly unusual' for a Councillor. We make no finding on whether this is a usual process, as this is specific to municipalities and how they wish to conduct business.

[029] At some point after the Committee and its terms of reference were established, the same Consultant as in allegation C(i) above was hired by the EDDC to create its strategic plan. The contract, in total, was valued at approximately \$12,415.88.

[030] The Complainant alleges (as in C(i)) that Councillor Williams used his influence of office to ensure that the Consultant was hired for this position given their past experience on the Quintevation Board together.

[031] We interviewed witnesses who we deemed relevant to this allegation. We found that staff received the recommendation from Councillor Williams and took the lead in obtaining a proposal from the Consultant and hiring the Consultant to complete the strategic plan. Witnesses indicate that they felt no pressure from Councillor Williams to hire the Consultant to complete this work, and that he had no additional role in the steps taken by staff to obtain the proposal and move ahead with the work following that recommendation.

[032] The Complainant noted that it appeared as though the City's procurement policy was not followed in the hiring of the Consultant for this work. The Integrity Commissioner does not have the jurisdiction to investigate this allegation given it was not the member who hired the Consultant to complete the work. The Integrity Commissioner has no jurisdiction to investigate the actions of staff.

[033] As in C(i), we find that it is not a breach of the Code of Conduct to recommend a business to complete work for the City. We further rely on our findings in C(i) regarding where the line is crossed after making such a recommendation.

[034] We find that Councillor Williams did not breach the Code of Conduct in this instance.

Allegation D – Using influence of office to have staff change hotel reservations for members of Council, contrary to section 8 of the Code of Conduct

Background

[035] The Complainant alleges that Councillor Williams' family owns several hotels in the region, with connections to many other corporate franchisees within the Province. We find this to be a fact not in dispute by the member.

[036] The Complainant alleges that in January 2019, Councillor Williams either changed the hotel reservations of some members of Council for an upcoming conference in Toronto, or pressured staff into doing so. The Complainant alleges the reservations were changed to a hotel within Councillor Williams' family's hotel chain, without the knowledge of the members. This would force those members to stay in a hotel not on the site where the conference was being held. The members were originally booked to stay on site at a hotel with rooms costing \$289.00 per room, per night.

[037] Councillor Williams' position is that he booked 3-4 rooms within the hotel chain costing \$56.00 per room, per night and let staff (who were responsible for making these arrangements) know, in case anyone was interested. He indicated that he did not stand to

benefit or receive points should one or all of the members decide to utilize the bookings. We have been provided no evidence to the contrary. Further, he states that he did not cancel any room reservations at the Sheraton and his reason for doing this was to save the City money. Upon reviewing email correspondence from Councillor Williams to staff, we verified the position of Councillor Williams.

[038] We also interviewed witnesses who we deemed relevant to this allegation. We were informed that staff changed the reservation in an effort to save costs to the municipality. Staff were not directed to make this change by Councillor Williams and did so on their own initiative. Further, when asked if pressure was felt from Councillor Williams to alter the room reservations, we were told that no pressure was felt – this was done by them to save costs only.

Finding

[039] Members were able to utilize this option, or not. Councillor Williams did not change the reservations or influence staff to do so.

[040] We find that Councillor Williams did not breach the Code of Conduct in this instance.

DECISION

[041] The Integrity Commissioner has found no evidence of a breach of the Code of Conduct in the allegations we undertook to investigate.

[042] We thank the complainant, the Member and all those involved in this investigation for their assistance in carrying out our obligations under the *Municipal Act*.

[043] Our investigation is now closed, and the Integrity Commissioner will be taking no further steps in this regard.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation
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Enclosure