



Cunningham Swan

LAWYERS

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CONFIDENTIAL

May 29, 2024

SENT BY EMAIL TO: marmstrong@prescott.ca

Mayor and Council
c/o Matthew Armstrong CAO
Town of Prescott
360 Dibble Street West
Prescott, ON K0E 1T0

Dear Mr. Armstrong:

RE: Code of Conduct Complaint – Report
Our File No. 23476-46, 23476-49 and 23476-51

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.

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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 for this investigation are as follows:

- First Complaint Received – December 17, 2024
- Preliminary Review of First Complaint Conducted
- First Complaint sent to Member – January 19, 2024
- Response received from Member to First Complaint – January 23, 2024
- Second Complaint Received – January 29, 2024
- Third Complaint Received – February 6, 2023
- Preliminary Review of Second and Third Complaint Conducted
- Second and Third Complaints Sent to Member – April 10, 2024
- Member's Response sent to First Complainant – April 10, 2024
- Response received from First Complainant – April 12, 2024
- Response received from Member to Second and Third Complaint – April 17, 2024
- Interviews Conducted – April - May 2024

Complaint Overview

The Complaint was made against Councillor Lee McConnell (the "Member") who is a Member of the Town of Prescott (the "Town") Council as well as a member of the Heritage Committee.

Section 17.1 of the Code of Conduct requires that Complaints must be submitted within six (6) weeks after the alleged violation occurred or came to the attention of the Complainant.

Portions of the Complaints received contained allegations that did not meet the requirements of this section. This report refers only to those allegations that survived the time limitation and were subject to a full investigation.

The following were alleged to have occurred in breach of the Code of Conduct:

1. that the Member breached confidentiality requirements and shared information discussed in closed session (Allegation “1”);
2. that the Member asked the Heritage Committee to designate a property (the “Lands”) as a heritage property to prevent council from declaring it surplus (the “Declaration”) (Allegation “2”);
3. that the Member was doing television interviews, organizing a rally and informing the public of mistruths about the Lands (Allegation “3”);
4. that the Member spoke improperly to the media regarding the Lands (Allegation “4”);
5. that the Member emailed the Heritage Committee encouraging a meeting of the Committee to discuss the Lands (Allegation “5”); and
6. that the Member attended and participated in a Heritage Committee meeting regarding the Lands during which he disclosed information from closed session (Allegation “6”).

Code of Conduct Provisions

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

Section 3.0 – Confidentiality

3.1 Every Member must hold in strict confidence all Confidential Information acquired as a direct or indirect result of the Member’s role with the Municipality. Confidential information shall not be disclosed except when required by law, or when authorized by Council or the Chief Administrative Officer.

3.2 Every Member shall keep confidential any information:

- (a) Disclosed or discussed at a meeting of Council, Committee of the Whole, or Committee, Board meeting or part thereof, that was closed to the public.

Section 4.0 – General Conduct

4.4 Every Member shall abide by the following principles:

- (b) Members shall at all times act ethically;
- (c) Members shall perform their functions with integrity, accountability, and transparency; and
- (d) Members shall comply with all applicable legislation, by-laws, and Municipal policies, including this Code of Conduct.

Section 7.0 – Conflicts of Interest

7.3 In addition to pecuniary interests, Members must perform their duties impartially, such that an objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence.

8.0 – Communications and Media Relations

8.1 Members, when communicating with the public and media, will accurately and adequately communicate the attitudes and decisions of the Council, Board or Committee, even if a Member disagrees with a majority decision, so that there is respect for and integrity in the decision-making process.

8.2 It is not the intent of this Code of Conduct to restrict the ability of a Member to express a personal opinion on matters of general interest. In such cases, the Member must make it clear that the comment is being made in their capacity as a private citizen, and not as a representative of the Municipality. In no event should a Member express a position that is disrespectful of the decision of the majority of Council, a Board or a Committee.

Factual Findings

Findings of fact were required in order to evaluate Allegation (1) and Allegation (3) but no other factual findings were necessary in this investigation. The January 11, 2024 Heritage Committee meeting was documented via video and this video footage was reviewed as part of the investigation. We reviewed email correspondence, newspaper articles and media footage regarding the remaining allegations that detailed specifically what was said by the Member.

Allegation (1)

Our investigation was required to determine whether or not the Member breached the requirements in the Code of Conduct regarding Section 3.0 – Confidentiality.

This required a determination, on a balance of probabilities, of whether or not the Member leaked confidential information to a member of the public.

We are limited in the detail we can provide in this report regarding our findings in order to preserve the confidentiality of the information that was the subject of the Complaint.

We can confirm, however, that our investigation determined that, on a balance of probabilities, the Member did not disclose confidential information from closed session as alleged.

Allegation (3)

It was alleged that the Member “organized a rally” in opposition to the Declaration.

Our investigation did not find any evidence to indicate that the Member was an organizer of any rally or gathering in opposition of the Declaration. The evidence we received was that another member of the public organized a gathering regarding the Declaration and that the Member merely attended.

As such, we find on a balance of probabilities that the Member did not organize a rally or gathering in opposition to the Declaration. The Member did attend the rally, but attendance in and of itself is not a breach of the Code of Conduct.

Code of Conduct Findings

Section 3.0 – Confidential Information

Allegation 1

Our investigation determined on a balance of probabilities that the Member did not disclose any confidential information as alleged in Allegation (1) in breach of the Code of Conduct requirements.

Allegation 6

Allegation 6 alleged that the Member breached the Code of Conduct by making the following comments in the Heritage Committee meeting on January 11, 2024:

Obviously it wasn't a surprise to me because we had been debating this behind closed doors for some time. That's a bit of a divulsion there but don't think it's anything anyone hasn't already guessed.

...

Since we began this discussion several months ago and I know folks in the audience here are going to comment on this but I have not been in favour to put it mildly of doing what Council voted to do on the back [the Property] which is to declare it surplus.

We find that the above comments constitute a breach of the Code of Conduct provisions regarding confidentiality as they disclose information discussed in closed session. We note the closed session resolutions did not indicate the address of the property being discussed and therefore the public would not have known that the property had been previously discussed. These admissions in the Committee meeting allowed the public to know that Council had

previously discussed the matter in closed session. This was improper and constitutes a breach of Section 3.1 and 3.2(a) of the Code of Conduct.

Section 7.0 - Conflict of Interest

Pecuniary Interest in the Lands

We considered but found no evidence of any financial benefit or interest on the part of the Member regarding the Lands.

As such, the *Municipal Conflict of Interest Act* and the Code of Conduct provisions dealing with pecuniary conflicts of interest were not considered to be relevant.

Personal (Non-Pecuniary) Interest in the Lands

The Code of Conduct also addresses personal or non-pecuniary and apparent conflicts of interest.

Specifically, Section 7.3 requires that Members be impartial such that an objective, reasonable observer would conclude the Member is exercising their duties objectively.

The Member confirmed that he lives in the same neighbourhood as the Lands that are the subject of the Complaint and the allegations. As a result, we find that the Member has a personal interest in the Lands.

Exception in Section 7.4(b)

We considered Section 7.4(b) of the Code of Conduct in determining whether or not the Member breached the conflict provisions of the Code of Conduct. Specifically, we considered whether the Member is one of a broad class of persons that is affected by the interest.

We find that the Member is one of a broad class of persons that is affected by this personal interest in the Lands and therefore the Member is exempt from the conflict of interest provisions of the Code of Conduct pursuant to Section 7.4(b).

Specifically, we found that the Member's personal interest in the Lands is that of a neighbour within approximately one-block of the Lands. We reviewed maps of the area as part of our investigation and determined there are a significant number of households within an approximately one-block radius of the Lands that would have this same interest and therefore the Member is part of a broad class of persons affected by the same interest.

Conclusion

As a result of our finding that the Member benefits from the exemption listed in Section 7.4(b) of the Code of Conduct, we find no breach of the Section 7.0 Code of Conduct requirements.

Section 8.0 – Communications and Media Relations

Section 8.1 of the Code of Conduct requires Members to accurately and adequately communicate the attitudes and decisions of the Council, Board or Committee so that there is respect for and integrity in the decision-making process.

Section 8.2 of the Code of Conduct clarifies that Members are permitted to express a personal opinion on matters of general interest if they indicate they are doing so as a private citizen. However, this exception is qualified by the notation that, “in no event should a Member express a position that is disrespectful of the decision of the majority of Council, a Board or a Committee.”

These provisions of the Code of Conduct provide certain prohibitions regarding a Member’s communication with the media and the public. Specifically, these provisions prohibit communications that (a) are disrespectful of a decision of Council and (b) undermine the integrity of the decision-making process.

These provisions of the Code of Conduct do not in any way prohibit a member from communicating with the media. When communicating with the media, a member may even go so far as to express that they disagreed with a decision of Council if that was their position on the issue. However, the Member may not do so in a manner that is disrespectful of the decision or in a manner that undermines the integrity of the decision-making process.

Our investigation reviewed the requirements of these sections as they pertain to the Member’s comments identified in the Complaints that occurred (1) through the Heritage Committee and (2) in the Member’s communications with the media.

Heritage Committee Meeting – January 11, 2024

The Member attended the Heritage Committee Meeting on January 11, 2024 and participated in the discussion.

The Member towards the end of the meeting made several comments stating that the Committee could initiate the process to have the Lands declared heritage lands and that that could potentially protect the Lands from sale. Specifically, the Member made the following comments during the discussion about the Lands:

If council feels comfortable enough...to take another step in regards to this property, then that step would take time, probably in camera behind closed doors...

...

So I don't think there is a necessity to push [name] to make some kind of a...quite frankly I think he has all the information ...what I would do is contact [name] to ask him and see how he feels about it.

...

It is the duty of the heritage committee to protect the heritage properties and sometimes that is against the wishes of the property owner. In this particular case, the property owner is the Town of Prescott...if the owner of the property, we will say the Town of Prescott via Town Council, has taken a step that is opposed by a significant number of people and I think that is pretty obvious ...it is the duty of the heritage committee as an independent body to voice an opinion...

Based on the above commentary and the impact that declaring the Lands heritage would have on the Declaration and any potential future sale of the Lands by the Town, we find that the Member's intent was to undermine or challenge the purpose of the Declaration and the decision of Council.

The Member is required to maintain the respect for and the integrity of the decision-making process. We find that the Member's comments above and participation in the Heritage Committee Meeting was an attempt to undermine and challenge the Declaration and the intent of Council in making the Declaration. We find that this was inappropriate in light of the Member's obligation to maintain the respect for and the integrity of the decision-making process.

We do not find that the exception permitting personal opinions on matters of general interest is applicable. The Member's comments go beyond merely commenting in a personal capacity. The Member was using his role as a member of the Heritage Committee to undermine the integrity of the decision-making process of Council.

As such, we find that the Member breached Section 8.1 and 8.2 of the Code of Conduct

Comments to Media

It was alleged in the Complaints that the Member was communicating inappropriately with the media in breach of the Code of Conduct requirements.

We reviewed email correspondence from a reporter, a newspaper article dated December 19, 2023 and a newspaper article dated January 15, 2024. We also reviewed a news video clip where the Member noted he was a resident of the neighbourhood where the Lands were located and had lived in the area for many years where it was evident he did not support the Declaration.

Our review, however, did not find any breach of the Code of Conduct provisions with respect to the Member's communications with the media. None of the comments made by the Member rose to the level required to find a breach of the Code of Conduct provisions. We did not identify any comments that were made that were disrespectful of the decision or that undermined the integrity of the decision-making process.

The Member attending a gathering on the property or expressing that he has a personal connection to the property and disagreed with the vote of Council to declare the Lands surplus does not constitute disrespect or undermining of the integrity of the decision. This was his position on the issue which he was entitled to express.

As a result, we find no breach of Section 8.0 of the Code of Conduct with respect to the Member's comments to the media.

Recommendation

We found that the Member breached various provisions of Sections 3.0 and 8.0 of the Code of Conduct.

We find that the breaches of Section 3.0 were minor in nature as the Member only disclosed that the matters had been discussed in closed session, but not the contents of those discussions.

We find that the breaches of Section 8.0 were more serious, representing a public attempt to undermine a decision of Council through the Heritage Committee.

Our recommendation is that the penalty in this case should be sufficient to deter further breaches of this nature and ensure that no further actions are made by the Member in breach of Sections 3.0 and 8.0 of the Code of Conduct.

As such, we recommend that the Member's remuneration be suspended for a period of 15 days pursuant to Section 15.3(b) of the Code of Conduct and that the Member be removed from the Heritage Committee pursuant to Section 15.4(c) of the Code of Conduct. In our opinion it is reasonable to remove the Member from the Heritage Committee as it was in that

forum that he abused his position to undermine the decision of Council, impacting the public's trust in the Committee's ability to be impartial.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

A handwritten signature in black ink, appearing to read 'Tony E. Fleming', with several horizontal strokes underneath.

Tony E. Fleming, C.S.
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(Local Government / Land Use Planning)
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