

TOWNSHIP OF McMURRICH/MONTEITH

IN THE MATTER OF A COMPLAINT against Reeve Joanne Griffiths, dated November 15, 2017, under section 223 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and By-Law # 20-2-13 of the Township of McMurrich/Monteith, being a By-Law to establish a Code of Conduct for Council.

REPORT OF THE INTEGRITY COMMISSIONER

October 23, 2018

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TOWNSHIP OF McMURRICH/MONTEITH

IN THE MATTER OF A COMPLAINT against Reeve Joanne Griffiths, dated November 15, 2017, under section 223 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and By-Law # 20-2013 of the Township of McMurrich/Monteith, being a By-Law to establish a Code of Conduct for Council.

INTRODUCTION

1. The Township of McMurrich/Monteith (the “**Township**”) adopted its Code of Conduct for Council by way of By-Law #20-2013, on September 16, 2013 (the “**Code**”). I was appointed as the Township’s Integrity Commissioner by Resolution Number 2018-58, which was passed on March 5, 2018.

2. This report deals with a complaint made by a resident of the Township on November 15, 2017, against the Township’s Reeve, Joanne Griffiths (the “**Respondent**”). The complaint is about a delegation to Council made by the Reeve, at its regular meeting on June 5, 2017 (the “**Complaint**”). I was provided with a copy of the Complaint and began my inquiry on May 7, 2018.

THE FACTS

3. In conducting this inquiry, I spoke with the Complainant on the telephone on June 18, 2018, and met with the Complainant in person on July 10, 2018. I was not able to speak or meet with the Respondent, but received her written response on June 28, 2018.

4. The facts are straightforward. Sometime in the first half of 2017, the Reeve and her spouse decided to start a “chip truck” business. They selected a site on land owned by the Township, at 17 George Street, Sprucedale, Ontario (the “**municipal property**”). In her delegation to Council, the Reeve not only presented the chip truck proposal, but asked Council to direct staff to investigate the costs involved to provide water and hydro to the municipal property.

5. It is the Reeve’s request that Council direct staff to investigate the costs of supply services to the municipal property that forms the basis for the Complaint.

6. The Minutes of the June 5, 2017, Regular Council Meeting provide an overview of the events at that meeting:

Reeve Joanne Griffiths declared a conflict as she is wishing to approach Council on an issue and left the table as Reeve. Deputy Reeve O'Halloran took the chair position. Joanne Griffiths attended this meeting to ask Council about leasing the property at 17 George Street to place a chip truck on the property. She is willing to pay for the water and hydro connections. Staff was directed to investigate costs involved in this proposal and report back to Council.

Joanne Griffiths returned to the table and took the Chair position.

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Be it resolved that Council direct staff to investigate costs and processes for the proposal to place a Chip Truck on 17 George Street, Sprucedale. Carried

7. I was curious as to whether any costs or time had actually been incurred by the Township, as a result of the request. I am told that there are no time sheets itemizing any work spent on investigating servicing the municipal property, and only a short report to Council where it is reported that the cost for hydro would be some \$1,200.00, and that there were two options for supplying water: hook up to an existing well or drill a new well, which would be in the order of \$10,000.00. The time spent by staff to pull these costs together would have been in the order of one hour.

8. For ease of reference, I will reproduce Section C. CONDUCT TO BE OBSERVED 5. Engaging in Incompatible Activity:

Engaging in Incompatible Activity

Members of Council shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of official duties in the public interest.

Without limiting the generality of the foregoing, Members of Council shall not:

- i) Use any influence of office for any purpose other than official duties;*
- ii) Act as an agent on behalf of another party, before Council or any committee, board or commission of Council;*
- iii) Solicit, demand or accept the services of any corporation, employee, or individual providing services to the municipality at a time in which said person or corporation is paid by the municipality;*
- iv) Use any information gained in the execution of office that is not available to the general public for any purpose other than for official duties;*
- v) Place themselves in a position of obligation to any person or organization which might benefit from special treatment or may seek preferential treatment;*
- vi) Give preferential treatment to any person or organization in which a Members (sic) have a financial interest;*
- vii) Influence any administrative or Council decision or decision-making process involving or affecting any person or organization in which a Member or Members of Council have a financial interest; and*
- viii) Use corporate materials, equipment, facilities or employees for personal gain or for any private purpose. The use of the computer provided by the Corporation is allowable.*

9. The Complaint relies upon the following facts in support of the allegation of breach of Section 5 of the Code:

- i) Reeve Griffiths making a proposal to Council regarding lease of municipal property at 17 George St., Sprucedale ON*

- iii) *Reeve Griffiths requested that Council investigate the cost involved to service a proposed chip truck that she wished to place on municipal property at 17 George St., Sprucedale ON; request was for water and hydro hook up*
- vi) *The Reeve asked for and received treatment that has not been granted to others, to the best of my knowledge, for research into costs for private start up businesses. This research should have been done by Reeve J. Griffiths.*
- vii) *The fact that the Reeve made this proposal to the Council she is the chair of, would have the effect of influence*
- viii) *The fact that reeve J. Griffiths requested council to investigate costs using municipal resources and personnel for a private personal purpose*

10. On June 28, 2018, I received a detailed written response from the Reeve. In her response, the Reeve makes the following points:

- a) She made her delegation as a rate payer of the Township, not as the Reeve. She has as much right to approach Council as any other rate payer of McMurrich/Monteith.
- b) The adjoining township leases land for a chip truck business. She thought that McMurrich/Monteith might be able to do the same.
- c) Council has leased property to the Senior's Friendship Club. Leasing space would not be a new endeavor for the Township.
- d) The Township is always seeking new business, and she and her former spouse had completed a business plan and hoped to attract more people and business to the Township.
- e) The request for costing was never fulfilled.
- f) She did not receive "special" treatment.

- g) She did not direct staff to investigate costing. Council would be the one to direct staff to research the costs.

11. I provided the Reeve's response to the Complainant, who responded by saying that the fact that the Reeve presented as a private citizen was not relevant. She was asking for treatment that has not been given to another private citizen. Had the request been to inquire as to the cost of leasing the municipal property, there would have been no issue.

12. In the written response of July 19, 2018, the Complainant raised two new issues:

- a) Council, as a whole, violated sections 5 (vi) (Shall not give preferential treatment to any person or organization in which a Member has a financial interest) when they passed resolution 2017-138 and authorized staff to investigate costs where a member of council had a financial interest, and section 5 (vii) (Influence any administrative or Council decision or decision-making process involving or affecting any person or organization in which a Member or Members of Council have a financial interest) because she is the Reeve this has the effect of influence since she chairs meetings and sets agendas; and
- b) The Reeve violated section D – “Interpersonal Behaviour of Members of Council” – subsection 2 vi) “Refrain from using township staff or resources for any personal use including elections”.

13. The Complainant also maintains that “the complaint procedure was not followed as per the Code of Conduct By-Law 20-2013, the formal complaint procedure of By-Law 20-2013 Code of Conduct Policy was not adhered to by the Clerk, the Reeve and Council since this complaint and all other Code of Conduct Complaints that I am aware of have been dealt with in closed session”.

ANALYSIS AND FINDINGS

Jurisdiction: Process and Timing

14. Section F. 7 of the Code requires that the [Commissioner] shall report to the Complainant and the Member, generally no later than 90 days after the making of the complaint. If the [Commissioner] finds that breach of the Code has occurred, the Commissioner shall report his or her findings to Council, including a recommendation as to penalty. If there has not been a contravention, or that a contravention occurred, but the Member took all reasonable measures to prevent it, or the contravention was trivial or committed through inadvertence or an error of judgement made in good faith, the [Commissioner] is to set this out in his or her report.

15. Section F. 8 speaks to the complaint process prior to a municipal election, and establishes two rules with respect to timing:

- a) No complaint regarding a Member who is a candidate in an election may be referred to the [Commissioner] between Nomination Day and the date of the inaugural meeting of the new Council in any year in which a regular municipal election will be held.
- b) Notwithstanding Section 7 of the Code (deliver report in 90 days), the [Commissioner] shall not make any report to Council or any other person after Nomination Day in any year in which a regular municipal election is held. Any reports would proceed after the inaugural meeting of the new Council has been held”.

16. In Ontario, the Nomination Day was July 27, 2018. The Complaint was made on November 15, 2017, well before Nomination Day. Accordingly, there was no problem in having the Complaint referred to me.

17. I must, however, consider and decide whether the prohibition against the delivery of any report to Council after Nomination Day, precludes the delivery of this report until after the inaugural meeting of the new Council has been held.

18. Presumably, the prohibition against the referral of a complaint to me or the delivery of a report by me, after Nomination Day during an election is to shield a candidate from any politically-motivated complaints and prevent the use of the Code for improper purposes.

19. Reading sections F. 8 a) and b) together, I believe it can be reasonably implied that it is only reports about a Member who is a candidate that may not be delivered until after the inaugural meeting of the new Council, but that reports on a non-candidate may be made during the election period.

20. In my view, the risk that is to be avoided by the suspension of inquiries and the delivery of reports about candidates is not present here. Nevertheless, I have determined that the better course is for me to withhold delivery of this report, until after the October 22, 2018, municipal election.

Was there a breach?

21. I venture to say that it goes without saying that any Member of Council, including the Reeve, can make inquiries about the lease of property owned by the municipality. The inquiries would, typically, be made through staff, but I see nothing wrong in the Reeve's choice to present the proposal to Council. I think it is also fair to say that in any such lease there may be a need for improvements, such as water and hydro service.

22. That said, there is clearly an important and overriding need for any Member of Council embarking on a venture that will involve municipal property to ensure that there can be no suggestion that the Member was using the influence of her or his office to advance the venture, was asking for the services of the corporation or any employee, was given preferential treatment, was attempting to influence any staff or Council decision or decision-making process, or to use Township employees or resources for personal gain or a private purpose.

23. In her pursuit of the chip truck business, it is the Reeve's request of Council to investigate some of the costs of establishing that business where I must find that the Reeve has engaged in "incompatible activity", and breached the provisions of Section 5 of the Code.

24. It is, to me, self-evident that there will be, at a minimum, a cost in the nature of staff time involved in any investigation of the type sought by the Reeve. No matter what benefits may flow from the proposed business to the community, the Township must not subsidize any part of a private venture initiated by a Member of Council.

25. I reject the Reeve's position that "I am also a ratepayer and therefore have as much right to approach council as any other ratepayer". The fact of her position gives the Reeve a decided advantage over "any other ratepayer" in, among other things, the ability to influence staff or fellow Members, to have demands met, and employees working to their advantage. It is that advantage or ability to influence that the Code seeks to eliminate.

26. The purpose of the prohibitions in Section 5 of the Code is to make it very clear that a Member of Council, by virtue of that very position, is not like any other ratepayer. To most members of staff, Council and, most importantly, the public, for all intents and purposes, her position of authority survives her move from the Council table to the Council floor.

27. The fact that she requested Council to direct staff is a not a material difference. The improper conduct is in the soliciting.

28. Furthermore, I note that the Reeve was making her proposal on behalf of herself, but also on behalf of her spouse (at the time). This brings into play section 5 ii) of the Code - the prohibition against acting as an agent on behalf of another party before Council.

29. I agree with the Complainant's submissions to me that the facts that the Township is always seeking new businesses, that the Reeve and her spouse had completed a business plan, that the Township has leased property before to the Senior's Friendship Club, and that the adjoining Township leases land for a chip truck business, are not relevant.

30. The Reeve should have known that requesting staff to research involves a cost or expense to the Township. Any expense incurred by the Township for materials, equipment, facilities or employees, for any personal gain or for any private purpose, should have been incurred by the Ms. Griffiths, not the rate payers of McMurrich-Monteith.

31. For these reasons, I find that the Reeve did engage in incompatible activity in making the request that Council investigate the costs associated with the establishment of her business and, in so doing, has breached Section 5 of the Code.

32. Although, as alleged in the Complainant's subsequent complaint, the result of the Reeve's request of Council is that Township staff or resources were used for her personal use contrary to section D. 2 vi) of the Code, my finding that the Reeve has breached section C. 5 subsumes this new complaint and makes it unnecessary for me to consider it, as to do so could be considered to be a form of double-jeopardy.

33. As for the Complainant's subsequent allegation against all Members of Council, although I believe that the provisions of the Code may accommodate a complaint and inquiry where it is alleged that one or more Members of Council have given preferential treatment to any person or organization in which [another] Member of Council has a financial interest (s. C.5 vi)), or where it is alleged that one or more Members of Council have influenced an administrative or Council decision or decision-making process involving any person or organization in which [another] Member of Council has a financial interest, I am not inclined to make any findings in regard to those section in this report. In my view, for obvious reasons, allegations of Code breaches must be made against individual Members, and not Council, as a whole.

PENALTY

34. The penalties I may recommend upon a finding of a breach of the Code, are set out in section 223.4(5) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "Act"):

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.

2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 32, Sched. A, s. 98.

35. Part E of the Code provides that, in addition to any other consequence imposed by law, Members found to have breached this Code may be subject to discipline, including return of a gift or benefit, removal from a local Board or Committee, loss of Chairmanship, censure, a reprimand, or where applicable, suspension of remuneration.

36. Section F.7 of the Code introduces a form of defence. If upon completion of my investigation I find that a contravention occurred, but that the Member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, I am to set that out in my report.

37. I do not believe that the Respondent took all reasonable measures to prevent the breach. The only way for her to have prevented the breach would have been to not make the request.

38. Further, I do not find the breach to be trivial or inadvertent. Even though the amount of staff time spent on the investigation may have been small, or even “trivial”, the breach was clear and significant. Moreover, I do not believe the Reeve made the request accidentally, unwittingly, or mistakenly, common synonyms for inadvertently. Her request was deliberate.

39. This leave me to determine whether the breach was committed through “an error of judgment made in good faith”.

40. The Supreme Court of Canada, in the case of *Lapointe v. Hôpital Le Gardeur*¹, noted that what differentiates an error of judgment from a fault is whether or not: 1) the Member’s actions depart from standard or good ethical practice; and 2) the breach proceeded from ignorance that is incompatible with the skill the public might normally expect of the Member, given the nature of the position and responsibility assigned to it, the circumstances in which the breach took place, and the Members stature as an elected official.

¹ [1992] 1 S.C.R. 351 at 363

41. Applying the test in *Lapointe*, I am unable to view her breach as an error of judgement made in good faith. The Code clearly identifies the ethical standards to be applied, and defines incompatible behaviour. The Reeve's actions were a marked departure from the Code's clear standards. A member of the public could reasonably regard the Respondent's actions as incompatible with behaviour the public would normally expect of its Reeve.

RECOMMENDATION

42. I do not believe that the Reeve's actions warrant a reprimand, or a suspension of her remuneration. On the other hand, the case does lend itself to a minor monetary sanction that will address any improper costs to the Township, incurred as a result of the breach.

43. Accordingly, it is my recommendation to Council that the Reeve be requested to reimburse the Township for the nominal amount of \$150.00, as the Township's costs in conducting the investigation.

All of which is respectfully submitted this 23rd day of October, 2018.

A handwritten signature in black ink, appearing to read 'Harold G. Elston', with a long horizontal line extending to the right.

Harold G. Elston