

October 14, 2019

Krista Power
City Clerk
City of Thunder Bay
500 Donald Street East
Thunder Bay ON. P7E 5V3

Dear Ms. Power

Re: Complaint of Breach of Ontario's Municipal Conflict of Interest Act and City of Thunder Bay Code of Conduct-Councillors McKinnon and Aiello.

Introductory Comments:

MNP was appointed the Integrity Commissioner for the City of Thunder Bay in February of 2019. The operating philosophy which guides us in our work is:

The overarching objective in appointing an Integrity Commissioner is to ensure the existence of robust and effective policies, procedures, and methods that enhance the citizen's perception that their Council and Local Boards meet established ethical standards and where they do not, there exists a review process that serves the public interest.

The City of Thunder Bay has as part of its ethical framework a Code of Conduct. It represents the standard of conduct against which all members of Council and Local Boards are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one of which is required by all Ontario municipalities, is a complaints process administered by the Integrity Commissioner.

Members of City Council and Local Boards are also governed by the provisions of the Municipal Conflict of Interest Act.

Integrity Commissioners carry out a range of functions for municipalities and local boards. They assist in the development of ethical framework by suggesting content or commentary on the code of conduct. They conduct education and training for members of council and local boards. They provide advice and guidance to members to help sort out ethical grey issues or to confirm activities that support compliance. They investigate allegations that a person(s) has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in considering the report.

The fundamental of procedural fairness require us to provide reasons for our conclusions and recommendations. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.

We assess the information fairly, in an independent and neutral manner and provide an opportunity to those involved to respond to the allegations.

The Complaint:

On June 24, 2019 a complaint was filed by Erin Beagle, a citizen of Thunder Bay with respect to a meeting held at the Boys and Girl Club on June 20, 2019. The complaint is based on the conduct of the meeting and how highly charged remarks were handled by the Councillors. The complaint further believes that Councillor Aiello is in a conflict of interest as he is the Executive Director of the Boys and Girl Club of Thunder Bay.

Ms. Beagle specifically states:

“The specific Code of Conduct rules that I believe were contravened are as follows:

1. Guiding Principles: I don't believe Councilors Aiello and McKinnon were conscientious, had integrity nor were they were impartial. I don't think their behavior bares the weight of public scrutiny and I have had many people reach out from the community, different levels of government and other not for profit agencies to tell me how shocked they were by the behavior of both councilors.

2. In the case of Councilor Aiello, I believe Rule 1, avoidance of Conflict of Interest has been violated as I believe Councilor Aiello has a disqualifying interest. I believe that the matter of the OAHS has been discussed in camera since Councilor Aiello came to office, and he has not declared a conflict yet. As well, the proposal was discussed with council more recently.

3. Rule 15 – Not undermine, work against council's decisions: The meeting held by Councilors McKinnon and Aiello was in direct conflict to the council decision made by the sitting council in October 2018 and further council and planning meetings that have been held on the matter.”

Process Followed for the Investigation:

Reviewed the complaint to determine whether it was within the scope and jurisdiction to pursue.

Reviewed the City of Thunder Bay Code of Conduct and the Municipal Conflict of Interest Act.

Interviewed Ms. Beagle.

Interviewed 6 individuals who attended the meeting.

Interviewed Councillors McKinnon and Aiello.

Findings:

The meeting that took place on June 20, 2019 at the Boys and Girls club was described as an informational meeting with respect to a proposed Transitional Housing Project on Junot Avenue

adjacent to the Boys and Girls Club. No city administrative staff were in attendance and it was not an official ward meeting. The meeting was hosted by Councillor McKinnon with Councillor Aiello in attendance as the Executive Director of the Boys and Girls Club.

Ms. Beagle stated it was hard to determine just what position Councillor Aiello was in, given that he is a Councillor and also the Executive Director of the Boys and Girls Club.

The meeting was highly charged due to the topic of the proposed transitional housing project and confusion as to who would be using the facility. No formal City information was available and no one from the Ontario Aboriginal Housing Service ("OAHS") was in attendance. I have been advised that attempts were made up to and including the afternoon of the meeting to secure information from OAHS or have a representative attend.

There is no doubt there are strong feelings on both sides of this issue. This is evident by Ms. Beagle's complaint and interview as well as those interviewed and discussions with the Councillors. It is also evident based on exchanges at the meeting, which have been described as racist. It is alleged that the Councillors did little to maintain decorum, however, there is evidence that Councillor Aiello told the audience that everyone had the right to speak. There is no information to indicate that the ground rules of the meeting were stated prior to the commencement of submissions.

In discussions with Councillors McKinnon and Aiello it is clear they are opposed to this proposed development (transitional housing) being located adjacent to the Boys and Girls Club and that was their position at the meeting. Councillor Aiello is adamant that he was acting in the position as Executive Director.

I have also confirmed that Council had previously approved the sale of the property on Junot Avenue to the OAHS subject to zoning bylaw amendments.

I then turned to the relative legislation and the City of Thunder Bay's Code of Conduct.

The Municipal Conflict of Interest Act states:

When present at meeting at which matter considered

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,

(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. R.S.O.

The City of Thunder Bay Code of Conduct under the heading Avoidance of Conflicts of Interest states:

A. Specific Rules

Rule No. 1

Avoidance of Conflicts of Interest

In this Rule:

- a. “disqualifying interest” means an 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.
 - b. “non-disqualifying interest” means an 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 participate impartially in the decision-making processes related to the matter so long as:
 - The Member of Council fully discloses the interest so as to provide transparency about the relationship; and
 - The Member of Council states why the interest does not prevent the Member from making an impartial decision on the matter.
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.
 3. For greater certainty:
 - a. Members of Council shall not participate in the decision-making processes associated with their office when they have a direct, indirect or deemed pecuniary interest in a matter, except in compliance with the Municipal Conflict of Interest Act.
 - b. Members of Council shall not participate in the decision-making processes associated with their office when they have an interest that though in compliance with the Municipal Conflict of Interest Act, is nevertheless a disqualifying interest by virtue of the nature of the relationship between the Member and other persons or bodies to be affected by the decision.

Rule No. 15

Not Undermine, Work Against Council’s Decisions:

1. Members of Council shall not actively undermine the implementation of Council’s decisions.

Commentary

The role of elected officials, once a council decision is made, is to support the implementation of that decision, not to work against its implementation, publicly or behind the scenes. Council decisions are arrived at following discussion and debate, reflecting the democratic process. Members are expected to engage in debate with their fellow council members through the democratic process of government. However, once Council has made its decision, Members must recognize that decision as the duly considered decision of the body of Council. As members of that

body of Council, individual members – those who did not agree with the decision - are not to engage in activities that seek to challenge or undermine that decision.

Members can express disagreement with Council's decisions, but it is contrary to the ethical behaviour of members of Council to actively seek to undermine, challenge or work against Council's decisions.

Conclusion:

Councillor Aiello is in contravention of Rule #1 as he has a disqualifying interest in the matter by the very definition in the Code of Conduct. Councillor Aiello is also in contravention of Rule 15 by publicly stating he is in opposition to a previous decision made by Council.

Councillor McKinnon is in contravention of Rule 15 by publicly stating that he is in opposition to a previous decision made by Council.

Recommendations:

That Councillors McKinnon and Aiello be made aware of the outcome of the investigation by Council.

Councillor Aiello should not participate in any vote dealing with this issue.

All members of Council should gain a clear understanding of the requirements of the Municipal Conflict of Interest Act and the City of Thunder Bay's Code of Conduct so as to not find themselves in a position of a breach.

I would recommend that in circumstances where it can reasonably be anticipated that there will be a highly charged atmosphere, a moderator be present to set out the ground rules of how the meeting should proceed and take the appropriate action if unacceptable behaviour occurs.

Should you have any questions, please feel free to contact the undersigned directly at 807 474-4892.

Yours very truly,

MNP LLP



Brian Tario, CFI

Partner, Forensics and Litigation Support Services

