

Privileged Meeting of Council
October 28, 2015

Attending: Mayor Sebastien Despres, Councillors Kevin Smart, Rene Estrada, Ken Brinston, Albert Murphy

Guest: Mr. Peter Shea, Lawyer

Reporting: Geraldine Caul

1. The meeting was called to order at 7:00 p.m. by Mayor Sebastien Despres.
2. Legal discussion with Peter Shea – Mr. Shea gave the following presentation:

“Re: Alleged Conflict of Interest – Councillors Smart, Wiseman & Carey, Resolution 2014-324 (December 9, 2014).

We are writing to provide our opinion with respect to the referenced matter. Specifically, we have been asked to provide an opinion with respect to whether the named Councillors were in a conflict of interest when they voted on Resolution 2014-324, which was passed unanimously by Council on December 9, 2014.

We have been provided with the necessary documentation to allow us to conduct a contextual overview and analysis of the allegations of conflict of interest. Based on our understanding of the facts, while there are certain distinctions, we view the conflict of interest allegations as against all three named Councillors as being analogous in nature, in that they can be dealt with as a group for the purposes of our analysis.

In short, we are of the view that the question of whether the named Councillors were in a conflict of interest is moot, in that the issue has already been resolved.

In the period of time leading up to Resolution 2014-324, Council was aware of and considered the conflict of interest allegations that had been raised with respect to voting on this Resolution. At the meeting of December 9, 2014, Council reached the unanimous conclusion that the allegations with respect to conflict of interest were without merit.

Council subsequently determined by resolution at a privileged meeting on March 24, 2015, ratified at a regular meeting of Council on May 12, 2015, that the named Councillors were not in a conflict of interest with respect to Resolution 2014-324. These decisions of Council are final, are not subject to review, and cannot be revisited.

Our view on this issue is guided by Section 209.(1) of the *Municipalities Act*:

Decision of Council

209. (1) Where a councillor is in doubt as to whether or not he or she has a monetary interest that is a conflict of interest under section 207, he or she shall make a disclosure and the council may decide the question by majority vote and its decision on the matter is final.

By resolution as noted above, Council decided the question of conflict of interest, and by the virtue of the noted legislation, its decision is final. In our view, the several other matters which have been raised with respect to the alleged conflict of interest are irrelevant, and would be seen as extraneous by a Court should this matter be reviewed judicially. The key points are:

- 1. The Councillors in question were determined to be free of conflict with respect to the matter before Council;**
- 2. Council's decision on the conflict of interest determination is final; and**
- 3. The Councillors involved are entitled, as is their right, to rely on the decision of Council as a full defence against any allegations of conflict of interest.**

This issue, in our view, is clear from a legal perspective. The legal analysis must be conducted with a view to the contemporaneous information. There is no basis at law on which the Town Council can revisit this decision, particularly in isolation from its context.

Accordingly, we are of the view that the Town Council has no basis at law on which to revisit, reassess or impugn the voting by the named Councillors on Resolution 2014-324.

Our recommendation to Council is that any proceedings as against Councillor Smart arising from this issue be ceased, and that this issue not be pursued against Councillors Carey or Wiseman. Should Council choose to continue the proceedings as against Councillor Smart, or pursue this issue with Councillors Carey or Wiseman, we are of the view that such action would subject Council to sanction from the courts, as well as exposure to legal expenses."

- 4. Alleged conflict of interest – Dena Wiseman and Ralph Carey**
Council agreed that Mr. Peter Shea will draft a letter to Dena Wiseman and Ralph Carey advising them of the reinstatement of their seats, and Mr. Shea will discuss reimbursement of legal costs with Ms. Wiseman and Mr. Carey's Lawyer.
- 5. Alleged conflict of interest – Kevin Smart**
The Town's lawyer had no objection to Councillor Smart remaining in the room, but because there was an objection placed by a councillor, Councillor Smart was asked to leave the chamber. Councillor Smart then left the building at 7:30 p.m.

Mr. Shea concluded that the alleged conflict of interest against Councillor Smart would, in his opinion, have the same result in a Court as that of Dena Wiseman and Ralph Carey, based on the documented facts.

2015-262 Councillor Ken Brinston/Councillor Rene Estrada

Be it resolved Council adjourn at 9:30 p.m.

Motion carried unanimously