

Hi Geraldine,

Can you please circulate this to Mayor Despres and the Town Council for me. On November 3<sup>rd</sup>, Councillor Murphy posed the following question to me:

*“Peter. In your opinion pertaining to Councillors Smart, Wiseman & Carey you wrote: At a meeting of Dec. 9th 2014, Council reached a unanimous conclusion that the allegations with respect to conflict of interest were without merit. Council has to consist of a quorum in order to come to this conclusion, which did not happen in this case. Council did not have a quorum to decide whether Councillors Smart, Wiseman & Carey were in an alleged conflict of interest that night, contrary to what you have been told by Mayor Despres. This conclusion was illegal according to the Act. Please get a copy of the Review Summary Report which was prepared by Mr. Byrne, Ms Evoy, and Dan Noseworthy of Mun. Affairs on Feb. 29th 2015. This Report shows a chronology of events as provided by the Town Clerk. You also stated, 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 Motion 2014-324. When Council voted on March 24-2015 They voted that those Councillors were not in a conflict of interest on the amendments and not the Town Plan. The Minutes clearly states on Dec 9th, 2014 that Council was only voting on amendments. Section 209 a. A Councillor whose possible conflict of interest is being voted on is not entitled to vote. All three Councillors in the same alleged conflict, voted on each other, when you were asked that question at our first meeting, could those Councillors vote on each other, your reply was that it would not be wise to do so. What Council has to decide now is. Were those three Councillors Wiseman, Carey, and Smart in a conflict of interest when they voted to adopt the Town Plan on July 8th 2014 just before the Commissioners Hearing in August.*

*Regards Councillor Murphy”*

The issue raised by Councillor Murphy respecting process can be resolved through a review of the provisions of the *Municipalities Act*. As we have discussed, the allegation by a member of the public that a particular councillor may be in a conflict of interest is not sufficient to engage the conflict of interest provisions of the *Municipalities Act*. The sections in the Act pertaining to conflicts of interest arise from disclosure **by councillors** of a possible conflict, or an assertion by councillors of conflict. Section 208 and 209 of the Act provide as follows:

### **Disclosure**

**208.** (1) Where a councillor has an interest described in subsection 207(1), the councillor shall

(a) state that he or she has that interest; and

(b) state the nature of the interest at the beginning of discussion on the matter in which he or she has that interest,

and that statement respecting his or her interest shall be recorded in the minutes of the council, or a committee of the council, where that statement was made at a committee meeting.

(2) Where a councillor declaring a conflict of interest under subsection (1) is the presiding officer, he or she shall vacate the chair.

(3) Where a councillor declares a conflict of interest under subsection (1) he or she shall immediately leave the meeting while the matter on which he or she has a conflict of interest is being discussed.

(4) Where one or more councillors have declared a conflict of interest under subsection (1) and there is no longer a quorum to vote on a matter, the minister may direct that the remaining councillors make a decision on the matter as if those remaining councillors constituted a quorum.

(5) Where all councillors have declared a conflict of interest under subsection (1), the minister may require that an official of his or her department prepare a report respecting the matter and where the report indicates that the councillors should proceed with making a decision, the minister may exempt the council from the application of section 207, and the councillors may vote on the matter.

[1999 cM-24 s208](#)

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### **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.

(2) A councillor whose possible conflict of interest is being voted on is not entitled to vote.

It is my understanding that at the time in question there was no disclosure of conflict by any of the Councillors noted in Councillor Murphy's email, and that Council as a whole was of the view that no Councillors were in conflict with respect to the matters then before Council. I understand that the issue of conflict was raised external to Council, and expect that the resolutions by Council with respect to the absence of conflict were in relation to external complaints. As none of the named Councillors had either disclosed a potential conflict of interest, or been subject to an allegation of conflict of interest by another Councillor, there was no requirement for any of these Councillors to abstain from the voting on these motions. Based on my understanding of the contemporaneous information, there was no conflict for any Councillors to disclose in those circumstances in any event.

This being the case, the fact that Council unanimously agreed and voted on the motions confirming that there was no conflict of interest does not in my view raise any legal or procedural issues. I understand these resolutions to be in response to concerns raised external to Council, and Council was entitled to address these concerns and vote accordingly. The requirements and process of Sections 208 and 209 noted above would not have been engaged in these circumstances, and there was no requirement for the Councillors subject to the external allegations to abstain from voting.

I hope that this response is of assistance. Please note that I am travelling today, and will have limited opportunity to address any questions arising from this response, however I will be back in the office tomorrow.

All the best,

Peter

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