

October 28, 2015

Privileged and Confidential

Town Council of Witless Bay
P.O. Box 130
Main Southern Shore Highway
Witless Bay, NL
A0K 4K0

Dear Mayor Despres & Town Councillors:

**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

Peter D. Shea | Partner

Direct 709 570 5334 Main 709 738 7800 Direct Fax 709 726-9172 Email pshea@coxandpalmer.com
Suite 1000 Scotia Centre 235 Water Street St. John's NL A1C 1B6

October 28, 2015

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** (Emphasis added).*

By resolution as noted above, Council decided the question of conflict of interest, and by 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 2013-324.

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 as 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.

October 28, 2015

Yours faithfully,



Peter D. Shea

PDS