

September 4, 2015

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

Dear Mayor Despres & Town Councillors:

Re: **2015 01G 4205**  
***Dena Wiseman and Ralph Carey v. The Town Council of Witless Bay***

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Further to the referenced matter, we are writing to provide our opinion with respect to the referenced litigation.

It is our understanding that this litigation arises from a conversation among Councillors prior to the scheduled Town Council meeting on September 16, 2014. We understand that the snow clearing contract for the Town was discussed, as well as the specific issue of snow clearing on Pond Path. As a result of this discussion, the Town Council determined that Councillors Wiseman and Carey were in a conflict of interest, as they failed to disclose that they owned land on Pond Path, and their seats were subsequently declared vacant purportedly in accordance with the provisions of the *Municipalities Act*.

Based on our review of the documentation provided to us, and our discussion with the Town Council on September 2, 2015, we are of the view that Councillors Wiseman and Carey will in all likelihood succeed in obtaining the relief that they have requested in the referenced litigation, namely that the resolution declaring their seats vacant be overturned, and that their seats on Council be restored.

“Conflict of Interest” is a defined term in the *Municipalities Act*. Section 207 of the Act provides as follows:

***Conflict of interest***

**207.** (1) *A councillor shall not vote on or speak to a matter before the council or a committee of the council where*

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- (a) *the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;*
- (b) *the councillor has a monetary interest directly or indirectly in the matter;*
- (c) *a relative of the councillor has a monetary interest in the matter; or*
- (d) *the councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.*

As stated in the noted section, a conflict of interest occurs when i) a councillor votes, ii) a councillor speaks to a matter before the council, or iii) a councillor speaks to a matter before a committee of the council, in which that councillor has a monetary interest.

A conflict of interest may only arise in the stated specific circumstances. A councillor must either vote on a matter in which they have a monetary interest, or speak to a matter before the council or a committee of council in which they have a monetary interest. In our view, the wording “a matter before council” would only include discussions that take place within a properly constituted meeting of council, or a properly constituted meeting of a committee of council.

Based on our understanding of the incident of September 16, 2014, Councillors Wiseman and Carey did not “vote on a matter before council”, or “speak to a matter before council”, in which they had a monetary interest. It is our opinion that their discussions with other members of Council prior to the regular meeting of Council would not meet the definition of conflict of interest as set out in Section 207 above.

If there is no conflict of interest as defined in Section 207, the provisions of Section 206 of the *Municipalities Act*, which address declaring vacant the seat of a councillor who fails to advise of a conflict of interest, are not engaged. Accordingly, there is no basis on which the Town Council could have resolved to vacate the seats of Councillors Wiseman and Carey.

In our view, this analysis would in all likelihood lead to a successful appeal by Councillors Wiseman and Carey, resulting in the overturning of the resolution vacating their seats, and their reinstatement as Councillors.

If our analysis of this matter is incorrect, as discussed at our meeting of September 2, based on our understanding of the procedure followed, there are procedural fairness concerns with

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respect to how this matter was handled by Council which may lead to a successful appeal by Councillors Wiseman and Carey, irrespective of the legislative interpretation issue noted above.

It is our recommendation that the Town Council consider and resolve to approach legal counsel for Councillors Wiseman and Carey, proposing that the noted litigation be acceded to, in an attempt to resolve this matter in the most timely and cost-effective manner possible. This would see a consent order entered by the court in the referenced litigation, overturning the noted resolution and reinstating Councillors Wiseman and Carey. The issue of costs could be negotiated, or in any event limited, through taking these steps.

I would be pleased to discuss these issues further with you at your convenience.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'PDS', with a long horizontal flourish extending to the right.

Peter D. Shea

PDS