

DECISION OF THE INTEGRITY COMMISSIONER

TOWN OF IROQUOIS FALLS

ALLEGATION: CONTRAVENTION OF THE CODE OF CONDUCT

BY: COUNCILLOR JEFF MADDEN



Prepared By:

Sean Sparling
ISN Director of Investigations/
Agent of the Integrity
Commissioner

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E4m Consultant

I. EXECUTIVE SUMMARY

- [1] These reasons relate to inquiries under section 223.4(1) of the *Municipal Act, 2001*, (the "*Municipal Act*") about Jeff Madden ("Councillor Madden"), an elected member of the Town Council ("Council") for the Town of Iroquois Falls.
- [2] The Requestors in these matters alleged that Councillor Madden contravened the Town of Iroquois Falls Code of Conduct ("Code of Conduct") when he:
- a. Acted contrary to section 6.3 of the Council-Staff Relations Policy;
 - b. Was disrespectful to a municipal employee contrary to section 8 of the Code of Conduct; and
 - c. Lobbied Council on a matter in which he had a pecuniary interest.

Contact a Municipal Employee Contrary to the Council-Staff Relations Policy

- [3] It was alleged that on January 28, 2020, Councillor Madden contacted a junior level municipal employee directly by text message January 28, 2020, without going through the Clerk-Administrator, contrary to the chain of command established in the Council-Staff Relations Policy. Further, that his texts were disrespectful to the employee.
- [4] Councillor Madden did text the employee and requested details about a piece of equipment that had been recently purchased by the Municipality for the landfill.
- [5] The employee was sufficiently concerned about the exchange that it was reported to the Director of Public Works.
- [6] The equipment being discussed [by text messages] between Councillor Madden and the employee was a compactor purchased for the landfill. Council had decided to purchase a used/reconditioned unit instead of a new one due to the cost. The decision was made at their Committee of the Whole meeting on September 16, 2019. Councillor Madden was absent from this meeting. This is somewhat problematic for Council because committees of Council make *recommendations* to Council for consideration, they are not supposed to make decisions on behalf of Council. However, the resolution passed was clear direction to municipal staff and the matter was not debated at a regular Council meeting.

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- [7] It was alleged that Councillor Madden, on behalf of a group he was a member of, brought forward a request for funding to Council and participated in the decision making on a matter that he had a pecuniary interest in contravention of both the Code of Conduct and the *Municipal Conflict of Interest Act* ("MCIA").
- [8] Councillor Madden requested that a motion placed on the agenda for the March 5, 2020, meeting of Council to set aside \$50,000.00 for legal and/or consulting fees for this committee. He then participated in the vote on this matter.

- [9] The individual making the allegation was aware of the motion at the time [March 5, 2020] and did not make a formal request for inquiry within the six (6) week time limit established by the *MCIA*. As such the investigation was completed pursuant to the Code of Conduct.

Findings

Contact a Municipal Employee Contrary to the Council-Staff Relations Policy

- [10] We find that Councillor Madden contravened the Council Staff Relations Policy and the Code of Conduct when he contacted a junior level municipal employee directly and did not go through the Clerk-Administrator.
- [11] We also find that Councillor Madden did not contravene section 8 of the Code of Conduct. Texts made by Councilor Madden do not rise to the level necessary to be a contravention of section 8. While Councillor Madden caused the employee to be discomforted by the exchange of text messages, the language could be construed as offensive, but it was not disrespectful of the employee.
- [12] We further find that Councillor Madden did contravene section 7 of the Code of Conduct when he was openly critical of a decision that Council had made.

II. LEGISLATIVE FRAMEWORK

- [13] Under section 223.4(1)(a) of the *Municipal Act*, Council, a member of Council or a member of the public may make a request for an inquiry to the Integrity Commissioner about whether the member has contravened the Code of Conduct applicable to that member.
- [14] Sections 5, 5.1 and 5.2 of the *MCIA* provide as follows:

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 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. 1990, c. M.50, s.5 (1).

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s.5 (2).

...

Written statement re disclosure

5.1 At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be. 2017, c. 10, Sched. 3, s. 4.

Influence

5.2 (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 that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use her or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4.

- [15] Section 270 of the *Municipal Act* was amended on March 1, 2019, to require that municipalities adopt a policy regarding the relationship between members of council and the officers and employees of the municipality¹. Council has adopted such a policy.

Section 6.3 of the Council Staff Relations Policy states:

“Members of Council must understand they have no individual capacity to direct Staff to perform, or not perform functions or duties...Council who need to engage with Staff and Officers must do so through the Clerk-Administrator. This would include both in person, verbal, written and electronic messages.”

- [16] The *Municipal Act* requires that municipalities adopt a Code of Conduct. Section 8 of the Code of Conduct – Conduct Respecting Others requires Members to:

“treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. The Member shall be familiar with, and comply with, the Municipality’s Workplace Anti-Violence, Harassment and Sexual Harassment Policy.”

[1]

¹ Section 270(1)2.1 of the *Municipal Act*, 2001, ch.25

Further that a Member

“shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.”

And

“A Member shall not speak in a manner that is discriminatory to any individual, based on any protected grounds.

Protected grounds include: citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed, sex/pregnancy, family status, marital status, sexual orientation, gender identity, and gender expression.”

- [17] When a matter is referred to us, we may then conduct an inquiry in accordance with the Municipality’s Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

- [18] The requests before us were properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the Town of Iroquois Falls.

- [19] The Requestors in these matters alleged that Councillor Madden contravened the Code of Conduct and the *MClA* when he:

- a. Acted contrary to section 6.3 of the Council-Staff Relations Policy;
- b. Was disrespectful to a municipal employee contrary to section 7 of the Code of Conduct; and
- c. Lobbied Council on a matter in which he had a pecuniary interest.

- [20] In this inquiry, we find no reason to release the names of the Requestors.

IV. THE INQUIRY PROCESS

- [21] The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a member has contravened the Code of Conduct that is applicable to that member.

- [22] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint which resulted in the decision to conduct an inquiry into the matters.
- [23] Sean Sparling, a professional investigator with Investigative Solutions Network (ISN), was assigned as an agent of the Integrity Commissioner to carry out an investigation into the Requestors allegations. The inquiry followed the process outlined in section 5 of the Integrity Commissioner Inquiry Protocol which included reviewing the available evidence, interviewing the Requestors, witnesses and Councillor Madden.
- [24] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Township's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:
- whether or not the individual had first-hand knowledge of the situation,
 - whether or not the individual had an opportunity to observe the events
 - whether or not the individual may have bias or other motive,
 - the individual's ability to clearly describe events
 - consistency within the story
 - the attitude of the individual as they are participating
 - any admission of dishonesty²

V. THE FACTS

Contact a Municipal Employee Contrary to the Council-Staff Relations Policy

- [25] It was alleged that on January 28, 2020, Councillor Madden contacted a junior level municipal employee directly by text message on January 28, 2020, contrary to the chain of command established in the Council-Staff Relations Policy³. Further that his texts were disrespectful to the employee.
- [26] Councillor Madden did text the employee and requested details about a piece of equipment that had been recently purchased by the Municipality for the landfill. The following is a summary of the text messages:

[1]

² *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11.
Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009), 185 LAC (4th) 176 (Alta.Arb.)

³Section 6.3 *Council Staff Relations Policy*

MADDEN: Hey [name of Employee] do you happen to know what year the old compactor at the dump was?

[Employee]: ruff guess 92. I think it's the same age as the new one we got

MADDEN: Did we already get the new old one lol

[Employee]: we got it about two weeks ago

MADDEN: Fantastic asset management. 26 year old reman

[Employee]: make our newest oldest piece of equipment

MADDEN: LOL. It's still 26 years old. Asset value is nothing.

[27] The employee was sufficiently concerned about the exchange that it was reported to the Director of Public Works.

[28] The equipment being discussed by Councillor Madden was a compactor purchased for the dump. This exchanged occurred four (4) months after Council had decided to purchase a used unit instead of a new one due to the cost. Council approved the purchase on September 16, 2019.

RESOLUTION NO. 2019-286

Moved by: T. Delaurier

Seconded by: D. Cybolsky

That Council approves the submission from Marcel Equipment Ltd. for a Reconditioned CAT 816F Landfill Compactor at a cost of \$230,000.00, excluding H.S.T., and that staff is authorized to proceed with the purchase.

CARRIED

Lobby Council re: Funding for an Ad Hoc Committee

[29] It was alleged that Councillor Madden brought forward a request for funding to Council, on behalf of a group he was a member of. He did not declare a pecuniary interest and participated in the vote contravening both the Code of Conduct and the *Municipal Conflict of Interest Act* ("MCIA").

[30] At a Special Budget meeting on March 5, 2020, Councillor Madden discussed with the members of Council a committee/group that he has been meeting with needs to secure some startup funding.

[31] Councillor Madden requested that Council set aside \$50,000.00 for legal and/or consulting fees for this committee and the following resolution was passed:

RESOLUTION NO. 2020.66

Moved by: D. Cybolsky

Seconded by: T. Delaurier

Staff received the following direction: To set aside in our 2020 Draft Budget a maximum of \$50,000 amount for potential consulting or legal fees.

CARRIED

- [32] The resolution does not specifically say that the funds were to be set aside for the committee/group that Councillor Madden was to be part of. Also, Councillor Madden did not move or second the resolution in this case. However, he gave a verbal account of the request on behalf of the committee at the meeting and requested that the funds be set aside for the use of committee/group.
- [33] Councillor Madden did not provide a name, mandate or other details about the committee/group as part of the agenda or for Council to pass a more specific resolution. We rely on the evidence of the Requestor in this matter that this resolution relates to the request Councillor Madden made to Council related to the committee/group. Councillor Madden did not recall a resolution being passed but did recall bringing up the discussion of the reserve fund in an open session of Council.
- [34] The committee/group was not established by Council. Nor was Councillor Madden appointed by Council to work with/be part of the committee/group.
- [35] Councillor Madden advised the investigator that he did not think he had a conflict of interest at the time and that there was no actual money being spent and that he was acting in his role as Councillor. Councillor Madden further advised that he attended approximately three (3) meetings of the committee/group. He stated that there had been no meetings due to COVID-19 restrictions. He also told the investigator that he asked the Mayor to continue on this committee/group as Councillor Madden did not have enough time to continue to participate.
- [36] Councillor Madden did not deny putting forward the motion. He explained to the investigator that he attended several meetings with the committee/group because the Mayor was unavailable. He further advised he only attended the meetings due to his role on Council. This committee has no connection to him personally and is not something he is involved with otherwise except for Council.
- [37] Councillor Madden did not declare a pecuniary interest in the matter and submit his written declaration to the Clerk
- [38] Additionally, the minutes of the March 5, 2020, Special Meeting do not indicate that Councillor Madden declared a pecuniary interest and abstained from participation or voting on the matter.

VI. THE ISSUE

[39] We considered:

Contact a Municipal Employee Contrary to the Council-Staff Relations Policy

- a. Whether or not Councillor Madden contravened the Council Staff Relations Policy when he contacted a municipal employee by text message.
- b. Whether or not Councillor Madden's comments to the employee contravened the Code of Conduct.

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- c. Whether or not matters pecuniary in nature to the committee/group Councillor Madden was part of were discussed at the Special Meeting of Council on March 5, 2020.
- d. Whether or not Council debated or made decisions regarding matters related to the pecuniary interest of the committee/group at the March 5, 2020, Special Meeting.
- e. Whether or not Councillor Madden had a pecuniary interest when he brought forward the request to Council on March 5, 2020, to set aside funds in the municipal budget.
- f. Whether Councillor Madden contravened the *MCI/A* when he participated in the discussion/decision
- g. Whether Councillor Madden Contravened the Code of Conduct when he brought forward and voted on a financial matter regarding the committee/group.

VII. THE OPINION

Contact a Municipal Employee Contrary to the Council-Staff Relations Policy

[40] The evidence clearly supports that Councillor Madden contacted a junior level staff member contrary to the process established in the Council Staff Relations Policy.

[41] Councillor Madden's exchange with the municipal employee while not on its face disrespectful to the employee or in other ways contrary to section 8 of the Code of Conduct, the discussion did place the employee in an awkward position and the matter was reported to a supervisor.

[42] Councillor Madden was clearly disrespectful of a decision that Council had made to purchase a rebuilt piece of equipment.

[43] The Code of Conduct states:

“Members will respect the decision-making process. Members will attempt to accurately and adequately communicate the attitudes and decisions of Council, even if they disagree with a majority decision of Council.”⁴

[44] The decision to purchase the refurbished piece of equipment was made by Council on September 16, 2019. Councillor Madden was not in attendance at the meeting. He then contacted the municipal employee on January 28, 2020. Councillor Madden ought to have been aware of the decision of Council. Had he reviewed the agenda package he would have known that the matter was being considered by Council. Further, when he knew he would not be in attendance he could have written to the Mayor and/or the Clerk to provide an opinion on the matter. It is inappropriate for Councillor Madden, months after a decision is made by Council, to question a junior level employee about it and to do so in a manner undermining to Council.

[45] We find that Councillor Madden contravened the Council Staff Relations Policy and the Code of Conduct when he contacted the junior level municipal employee in this instance.

[46] We also find that Councillor Madden did not contravene section 8 of the Code of Conduct. Section 8 of the Code of Conduct requires Council to *“treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment....”*. Texts made by Councilor Madden do not rise to the level necessary to be a contravention of section 8. While Councillor Madden caused the employee to be discomforted by the exchange of text messages, the language could be construed as offensive but it was not disrespectful of the employee. Councillor Madden’s action itself in contacting the employee was disrespectful and put the employee in an awkward/difficult position. In fact, Councillor Madden has placed this employee in a position where they are now in noncompliance with the Council Staff Relations policy and at risk of discipline.

[47] The *Municipal Act* requires the adoption of a Staff-Council relations policy specifically outlining the relationship between Council and municipal employees. The policy that has been adopted by the Town requires Members of Council to respect the chain of command and not speak directly with a junior level staff person. As such, the policy and it must be adhered to by both Council and staff.

[48] We further find that Councillor Madden did contravene section 7 of the Code of Conduct by failing to respect the decision of Council when he messaged the junior municipal employee about a matter that Council had already made a decision on.

[1]

⁴ Town of Iroquois Falls Code of Conduct Section 7; item 6.2

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- [49] The *MCIA* imposes statutory burdens on municipal Councillors and board members to behave in a manner free from **pecuniary conflicts of interest**. It further promotes transparency by requiring Councillors to declare a conflict when he or she has a pecuniary interest at stake.
- [50] "*Pecuniary interest*" is not defined in the *MCIA*; however, the Courts have interpreted it to mean a financial, monetary, or economic interest. A pecuniary interest is held to be "indirect" when the member [Councillor], among other things, is a director of a corporation and/or a member of a "*body*".
- [51] The term "*body*" is also not defined in the *MCIA*. However, section 1.1 (3) of the *MCIA* states that "*Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.*"
- [52] The *MCIA* requires that alleged contraventions of the act must be submitted to the Integrity Commissioner within six (6) weeks of the individual becoming aware of the contravention.
- [53] Councillor Madden attended a Special Council meeting on March 5, 2020 whereat Council was considering the draft municipal budget and resulting property tax implications.
- [54] At this Special Meeting, a resolution was passed directing staff to add an item to the budget for potential legal/consulting fees up to a maximum amount of \$50,000. The resolution is not well written in that it did not specify clearly what the budget item was for, however the investigation confirmed that Councillor Madden spoke on the resolution indicating that the funds were to be used for and by the committee/group.
- [55] To be clear, it was reported the matter was brought forward by Councillor Madden. In his evidence to the investigator, Councillor Madden agreed that he brought the matter forward for Council's consideration but that he was not aware that he had a pecuniary interest in the matter.
- [56] This alleged breach was brought to the Integrity Commissioner more than six (6) weeks after the individual became aware of the matter.
- [57] Our opinion is that the committee/group Councillor Madden met with is a "*body*". Without a clear definition of the term "*body*" we interpret that a group of individuals who have organized, not necessarily with a corporate structure, mandate or other such governing documents, and that this group was a "*body*" when they sought funding from the municipality. A group of individuals who meet to discuss the formation of a formal organized body are as such in our express opinion "*members*" of the planning body and therefore captured under the definition of "*members of a body*" in the *MCIA*.
- [58] Therefore, Councillor Madden is a member of the committee/group and required to declare a pecuniary interest in any matter Council is considering related to the pecuniary interest

of the committee/group. In accordance with section 5 of the *MCIA*, he would need to declare his interest and the general nature thereof in writing (Section 5.2), not participate in the discussion and not influence the decision before, during and after the matter is before Council.

- [59] The committee/group Councillor Madden is a member of had a pecuniary interest in the decision made by Council on March 5, 2020 being the request for up to \$50,000 in funding for legal and other advice.
- [60] By bringing the matter forward, Councillor Madden contravened the *MCIA*. Because the matter was brought to us after the statutory six (6) week period, we will not be taking the matter to Superior Court [section 8 of the *MCIA*].
- [61] The Code of Conduct requires that “*Members must not use the status of their position to inappropriately influence the decision of another individual or body. For example, to obtain a personal advantage for the Member, the Member’s parents, children, spouse, staff, friends, associates, business or otherwise; or to disadvantage another party.*”
- [62] Councillor Madden’s action in bringing the request for funding for the committee/group, participating in the discussion and the subsequent resolution are all attempts to inappropriately influence Council for the advantage of the committee/group.
- [63] Councillor Madden contravened the Code of Conduct when he brought the request to set aside funding for legal/consultant fees for the committee/group.

VIII. CONCLUSION

- [64] With respect to the contraventions of the Staff Council Relations Policy and the Code of Conduct for contacting a municipal employee we recommend that Councillor Madden receive training on both the Staff Council Relations Policy and the Code of Conduct.
- [65] The Integrity Commissioner does not have jurisdiction to impose penalties for contraventions of the *MCIA*, only a Superior Court Judge can make the determination. We will make no recommendations related to this contravention. We will, however, remind Councillor Madden that the Integrity Commissioner can give advice regarding the *MCIA* and that in the future he should seek such advice prior to putting himself in a position of contravening the legislation. Advice is always less expensive than inquiries and court costs.
- [66] With respect to the contravention of the Code of Conduct we recommend that Councillor Madden receive training on his responsibilities under the *MCIA* and the Code of Conduct.

DATED January 30, 2021