



Cunningham Swan
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November 5, 2019

Council Members – Township of Wollaston
c/o Brenda Vader, Acting Administrator/Clerk
Township of Wollaston
90 Wollaston Lake Road
Coe Hill, ON K0L 1P0

Attention: Council Members

Dear Council Members:

RE: Integrity Commissioner Complaint – Reeve Barb Shaw
Our File No: 32797-0009

This public report of our investigation is being provided to Council in accordance with section 223.6(1) of the *Municipal Act*. We note that section 223.6(3) of the *Municipal Act* requires that Council make the report public. We ask that Council place the report on the agenda for its next open session Council meeting.

We would be pleased to attend and speak to the report if that would be of assistance to Council. Please advise if our attendance is required.

Background

A complaint was submitted to the Township and received by our office on June 26, 2019. Supporting materials were provided directly to the Integrity Commissioner by the complainant following submission of the complaint to the Township. The complainant alleged that:

1. Reeve Shaw had a pecuniary interest in Council's vote on a dock licence agreement application from Bear Ridge Resort Inc. ("Bear Ridge"), thereby breaching section 5 of the *Municipal Conflict of Interest Act* ("MCI Act"). The complainant alleges that "Reeve Shaw represents Bear Ridge in her professional capacity through her consulting business"; and

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2. Reeve Shaw had a general conflict of interest and breached the Code of Conduct when Council voted to deny the complainant's request for relevant documents under the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") following the MFIPPA request in May, 2019.

During the course of the investigation, our office reformulated the complaint to add 2 further matters to be investigated:

3. Whether Reeve Shaw had a general conflict of interest under the Code of Conduct with respect to any personal relationship she may have had or continues to have with the principals of Bear Ridge; and
4. Whether Reeve Shaw attempted to obstruct the Integrity Commissioner's investigation.

The addition of these 2 matters to the investigation was communicated to the Reeve and she was given the opportunity to respond.

All findings made within this report are based on a standard of a balance of probabilities. This standard is applied in civil cases and requires the Integrity Commissioner to "scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."¹

The Integrity Commissioner has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Integrity Commissioner has been guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Integrity Commissioner the duty to independently conduct investigations in response to complaints and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough investigation in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this complaint. Council may debate the recommendations and decide upon an appropriate sanction only, the findings of this report are not subject to debate.

COMPLAINT PROCESS

Preliminary Review

The Township's Code of Conduct and the *Municipal Act* provide the Integrity Commissioner with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the investigation, our process included:

¹ *F.H. v. McDougall*, [2008] 3 SCR 41; 61; 2008 SCC 53 (SCC) at para. 61.

- Reviewing the Township's Code of Conduct;
- Providing a copy of the complaint and supporting materials to Reeve Shaw, with a request for a written response;
- Providing a copy of the Reeve's response to the complainant and requesting that the complainant provide a written response;
- Providing a copy of the complainant's response to Reeve Shaw with a request for a response; and
- Reviewing all submissions and analyzing the merit of the complaints.

After completing the preliminary review, our office determined that there was a reasonable basis to conduct an investigation.

Investigation

In conducting the investigation, our process included:

- Interviewing both the complainant and Reeve Shaw;
- Interviewing members of the public and Council that we identified as potentially relevant to the complaints; and
- Reviewing various minutes of Council, reports and materials provided by both the complainant and Reeve Shaw.

Brief Statement of Findings of the Integrity Commissioner

Pecuniary Interest – Dock License Agreement Application from Bear Ridge

Reeve Shaw's conduct disclosed in the investigation does not constitute a breach of the MCIA. No evidence was disclosed in the course of the investigation that established that Reeve Shaw had a pecuniary interest in the dock licence application by Bear Ridge before Council.

General Conflict of Interest – MFIPPA Request from Complainant

Reeve Shaw's conduct disclosed in the investigation does not constitute a breach of the Code of Conduct as it pertains to the complainant's MFIPPA request. We find that the Reeve did not participate in any vote related to the MFIPPA request made by the complainant as the Reeve was not present at that meeting.

General Conflict of Interest – Personal relationship with principals of Bear Ridge

Reeve Shaw's conduct disclosed in the investigation does not constitute a breach of the general conflict of interest provisions of the Code of Conduct. There is insufficient evidence that Reeve Shaw had any non-pecuniary personal interest in Bear Ridge or its principals. We find that a reasonable person, apprised of all of the facts, would not conclude that Reeve Shaw's

participation in the vote on the dock licence application was a conflict of interest or an abuse of her position due to any personal relationship with the principals of Bear Ridge.

Obstruction

Certain behaviour of the Reeve during the active investigation amounted to an attempt to obstruct the investigation of the Integrity Commissioner.

ANALYSIS

1. Alleged Breach of Section 5 of the MCIA (Pecuniary Interest in Dock License Agreement Application from Bear Ridge)

Findings of Fact

The findings of fact set out below are based on the documents reviewed and the detailed interviews conducted.

- Reeve Shaw owns and operates "And now...Plan B" since at least 2016, prior to being elected to Council for the Township of Wollaston.
- The website for Plan B indicates that the Reeve's position is "Director, Project Lead, Communications Consultant, Social Media Consultant, Doer of Things".
 - o The website also indicates that the business offers services for brand development (i.e. how to use social media, advertising, and marketing to earn business).
- Reeve Shaw sent correspondence to the Township between 2017 and 2018, prior to running for Council, regarding certain matters before Council that involved Bear Ridge.
- The Reeve indicated that she has not and does not work for Bear Ridge;
 - o A principal from Bear Ridge confirmed this and indicated that Bear Ridge did not direct Barb Shaw regarding issues before Council.
- The complainant indicates that because the Reeve used her professional signature on some correspondence to Council, and because of her strong activism on behalf of Bear Ridge, that she worked for them in her professional capacity.
- Some e-mails contained the Reeve's professional signature line, however all formal letters sent by the Reeve to the Township were sent from her personally, and did not reference Plan B.
 - o In addition, on several occasions the Reeve identified that her concerns were being voiced as a ratepayer. On no occasion did she indicate to the Township that she acted for or was communicating on behalf of Bear Ridge.
- No evidence was provided that the Reeve worked for Bear Ridge before or at the time the dock license application was considered by Council.
- The MCIA does not apply to conduct of members prior to their election to Council.

Relevant Legislation/Policies

Municipal Conflict of Interest Act

Indirect pecuniary interest

2 For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

When present at meeting at which matter considered

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 to 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.

Discussion

The complainant alleges that Reeve Shaw advocated in her professional capacity for the principals of Bear Ridge prior to being elected to Council. The complainant supports this allegation by indicating that the Reeve used her work e-mail coordinates on the signature

line of e-mail correspondence to the Township while advocating for the interests of Bear Ridge. As such, the complainant alleges that the Reeve had a pecuniary interest in the following agenda item at the May 21, 2019 Special Meeting of Council:

4. Items for discussion and motions

License agreement between the Township of Wollaston and Bear Ridge Resort Inc., Stranges Drywall Ltd., and N.J. Stranges Drywall and Construction Ltd.

The Reeve did not declare a conflict and voted on this item. Reeve Shaw admits that she supported Bear Ridge on different occasions in 2017 and 2018, both in written correspondence to the Township and in person at one Council meeting. However, the Reeve's position is that she did not work for and does not currently work for Bear Ridge in her professional capacity. Further, it is her position that any correspondence she sent to the Township prior to taking office that supported Bear Ridge was done as a concerned ratepayer. She stated that at the time, she felt that she was acting as an advocate for "research, data, facts and tourism" which she "did not feel should be impacted by a false narrative."

In order to have a pecuniary interest in the dock licence application, Reeve Shaw must stand to gain or lose financially from the outcome of the decision regarding the granting of said licence. As the item before Council was a matter pertaining to Bear Ridge (and not to the Reeve herself), any interest of the Reeve's in that matter could only have been indirect in nature. In *Bowers v. Delegrade*, the Court noted that the applicant has the onus of demonstrating that a pecuniary interest existed:

"If the Applicant, as is the case here, argues that the member's pecuniary interest is an indirect one, the Applicant must demonstrate that Bell Canada had a pecuniary interest in the matter."²

We find that the applicant has not met this onus. We have been presented with no evidence that Reeve Shaw had any direct or indirect financial stake in the outcome of the application. We find that the Reeve did not work for Bear Ridge at any time before or during her present term of Council. We provide this finding for information purposes, however the only element of our finding that is relevant is that the Reeve did not work for Bear Ridge at the time of the vote. Any actions taken by the Reeve prior to being elected to Council are not relevant as it pertains to allegations under the MCI A. A Member cannot be found to be subject to the MCI A prior to taking office.

We find that Reeve Shaw had no pecuniary interest under the MCI A, and as such, did not breach section 5 of the MCI A when she participated in and voted on the Bear Ridge dock license agreement application.

² *Bowers v. Delegrade*, 2005 CarswellOnt 692, at para. 14.

2. Alleged Breach of the Code of Conduct – General Conflict of Interest Provisions (MFIPPA Request)

Findings of Fact

The findings of fact set out below are based on the documents reviewed and the detailed interviews conducted.

- The complainant submitted a request for information by way of an MFIPPA request to the Township in May, 2019.
- The complainant alleged that Reeve Shaw had a general conflict of interest in this matter before Council.
- Reeve Shaw was out of the province at the time of the vote regarding the complainant's MFIPPA request and could therefore not participate.
- The Reeve did not telephone in to the meeting or participate in any way.

Relevant Legislation/Policies

The Township's Code of Conduct captures general conflicts of interest through the following provisions (we note that section A.4 is not an offence creating provision, but serves to inform remaining provisions of the Code):

A. PURPOSE OF THE CODE OF CONDUCT

"The Code of Conduct sets minimum standards for the behaviour of Council Members in the performance and discharge of official functions and duties. It has been developed to assist Council to:

.....

4. Identify and resolve situations which might involve a potential misuse of position and authority.

B. GENERAL INTEGRITY

.....

5. Members of Council shall at all times serve and be seen to serve the interests of their constituents and the Township of Wollaston in a conscientious and diligent manner and shall approach decision-making with an open mind.

Discussion

We find that the Reeve did not participate in this meeting or vote pertaining to this MFIPPA request and therefore did not breach the general conflict of interest provisions in the Code of Conduct.

3. Alleged Breach of the Code of Conduct – General Conflict of Interest Provisions (Personal Relationship with Principals of Bear Ridge)

Findings of Fact

The findings of fact set out below are based on the documents reviewed and the detailed interviews conducted:

- The complainant submitted photographs of the Reeve having dinner with the principals of Bear Ridge on two occasions and thus alleged that they had a strong personal relationship.
- The complainant further alleged that the Reeve, when running for Council, ran in a 'block' which included Councillor Morrison (owner of Bear Ridge) and that Councillor Morrison's wife was organizing that block. He provided the name of a witness that could allegedly corroborate this allegation.
 - The witness denied being aware of any such block that included the Reeve during the election.
- The complainant alleged that the Reeve lied to the Integrity Commissioner when stating she did not run a campaign in collaboration with candidates who formed a "campground" block.
 - This was not proven in evidence.
 - No witness supported the allegation that Reeve Shaw had a personal relationship with the principals of Bear Ridge.

Relevant Legislation/Policies

See #2 above re: general conflicts of interest under the Code of Conduct.

Discussion

It is common that outside of the conflicts set out in the MCIA (which are strictly financial in nature), municipalities establish what are commonly referred to as "general" conflicts of interest provisions through their Codes of Conduct. These interests are captured at the common law and are broader and capture non-financial 'real and apparent' conflicts of interest. As referenced above, we find that this broad obligation is captured through section B.5 of the Code of Conduct and as such, a member must identify and resolve such conflicts.

For an interest to be 'real or apparent' in nature, the courts have applied the "reasonably informed person" test when analyzing whether a member has an apparent conflict of interest:

"An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists."³

In addition, members must not be biased or approach council decision making with a closed mind. The test for bias in this sense is whether a member is capable of being persuaded to a different view:

In my opinion, the test that is consistent with the functions of a municipal councillor and enables him or her to carry out the political and legislative duties entrusted to the councillor is one which requires that the objectors and supporters be heard by members of council we are capable of being persuaded. The legislature could not have intended to have a hearing before a body who has already made a decision which is irreversible. The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile. Statements by individual members of council, while they may very well give rise to an appearance of bias, will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged. In this regard it is important to keep in mind that support in favour of a measure before a committee and a vote in favour will not constitute disqualifying bias in the absence of some indication that the position taken is incapable of change. The contrary conclusion would result in the disqualification of a majority of council in respect of all matters that are decided at public meetings at which objectors are entitled to be heard.⁴

For Reeve Shaw to have violated section B.5 of the Code of Conduct, she does not need to be in an actual conflict of interest, she need only be 'seen' or 'perceived' to be in conflict in accordance with the above referenced test to trigger her duty to resolve this conflict in keeping with the purposes of the Code as set out in section A.4. A reasonable person, informed of the facts relating to the dock licence application, would need to consider non-pecuniary interests.

There was no evidence presented that Reeve Shaw had a personal relationship with either of the principals of Bear Ridge that would create a reasonable perception that she was biased. Both Reeve Shaw and the principals of Bear Ridge denied that they had a personal relationship that extended beyond a casual connection. The complainant presented very limited evidence and the investigation disclosed no further evidence to establish that a relationship in fact existed at the time of the vote on the application that would create a reasonable perception of a conflict.

³ Stevens v. Canada (Commission Inquiry) 2004 FC 1746, 2004 CarswellNat4714, at para. 30.

⁴ Old St. Boniface Residents Assn. Inc. v. Winnipeg (City) 1990, 75 D.L.R. (S.C.C.) at para. 94.

When asked why she corresponded with the Municipality previously regarding Bear Ridge and spoke at public meetings in favour of Bear Ridge prior to being elected, Reeve Shaw explained that she does not like to see injustice (as she perceives it) and she felt obliged to try to assist Bear Ridge where she felt they were experiencing injustice. The Integrity Commissioner found the Reeve's statements to be credible and finds that there was no more than a casual relationship between the Reeve and the principals of Bear Ridge. There is insufficient evidence to establish a general conflict of interest in this regard. The Reeve explained her involvement and how she approached the decision, and no evidence was presented to contradict her position that she acted appropriately in the deliberation and vote on the dock licence application.

We find that the Reeve conducted herself appropriately and as such, did not breach the general conflict of interest provisions of the Code of Conduct.

Obstruction

What is unfortunate in this case, is that while we have found no breach of the MCIA or the Code of Conduct as it relates to the complaint before us, we find that our communications with the Reeve and steps she undertook during an active investigation amount to an attempt to obstruct the investigation. During the investigation, we notified the Reeve of our additional consideration of a breach of the Code of Conduct as it pertained to an attempt to obstruct the investigation and she was given an opportunity to respond to our concerns.

Relevant Legislation/Policies

Section 1.3 of the Township's Code of Conduct is relevant:

3. Council members shall respect the Code of Conduct and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone providing information to the Integrity Commissioner is prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his/her responsibilities including, but not limited to, the destruction of documents, the erasing of electronic communications, etc.

Findings of Fact

- On July 3, 2019, after a copy of the complaint was sent to the Reeve for a response, the Reeve e-mailed the Integrity Commissioner demanding that our office send a copy of the complaint to the Ontario Provincial Police and copy her on such correspondence.
- On July 4, 2019, we spoke with the Reeve regarding her concerns surrounding the e-mails provided to us as part of the complaint. We granted permission to share only those aspects of the complaint that were not confidential with the IPC and/or the OPP and the appropriate Township IT officials, if the Township wished to do so.

- Reeve Shaw sent a further e-mail to our office on July 18th again questioning whether she could follow up on e-mails provided to the Integrity Commissioner by the complainant to various parties including the IPC;
 - o We cautioned the Reeve that if she wished to forward her concerns to the IPC, that she must limit what she shares to the direction in our July 4, 2019 telephone conversation and the documents that we indicated were acceptable to share with the IPC and relevant IT officials. This limited ability to share information was directed by the Integrity Commissioner to preserve confidentiality as required by the *Municipal Act*.
- On July 25, 2019 the Reeve submitted a further response to the Integrity Commissioner that included the following statements:
 - o “[redacted] is in possession of my personal emails. These were released in a way that was not in accordance with MFIPPA. I consider these documents to be stolen property and if they continue to be used to cause me harm, I will protect myself against this harm using whatever means are available to me personally and professionally.”
 - o “[redacted] used threats to try to keep me from doing my job and [redacted] continues to use stolen documents and unethically obtained photographs to make [redacted] case. I realize that I am the one being scrutinized through this integrity investigation, but [redacted] claims and [redacted] evidence leave me questioning this process.”
- The intent of the Reeve’s actions was, in part, to have the investigation halted while other investigations proceeded;
- On September 9, 2019, the Integrity Commissioner conducted interviews in Wollaston that included the complainant, Reeve Shaw, and other persons deemed by the Integrity Commissioner to have information that was potentially relevant to the investigation;
- During the Reeve’s interview, she asked the Integrity Commissioner if he could send her a copy of all audio recordings from all witnesses interviewed;
 - o The Integrity Commissioner informed the Reeve that she may have a copy of her own audio, but not of the other witnesses interviewed by the Integrity Commissioner.
- On September 10, 2019, Reeve Shaw e-mailed the Integrity Commissioner and made the following requests:
 - o To obtain copies of the audio recordings of all interviews conducted by the Integrity Commissioner;
 - o Asked for information on what Court to attend to take steps to obtain those recordings;
 - o Asked why the Integrity Commissioner had told her he was “familiar with the area” of Wollaston – asked what his connection was to the Township.
- The Integrity Commissioner advised the Reeve again that he had deemed the audio recordings for all other witnesses to be confidential as per section 223.5 of the *Municipal Act* but that he would send her recording to her;

- o Further, the Integrity Commissioner informed the Reeve that his mother owns a cottage on the lake – which is why he is familiar with Wollaston Lake;
- On September 12, 2019, the Reeve e-mailed the Integrity Commissioner and made the following comments based on his response to her previous questions:

“I am shocked to learn you have such a long-standing relationship with the Wollaston Lake Community. Based on your past two decisions, I would have expected this information to have been clearly communicated prior to my inquiry.”

- The Reeve then stated that she had informed her Council about this and “they will take whatever steps they think are necessary.”
- Further, the Reeve stated:

“Things seem very unusual with this process. From having to negotiate your permission to release information to the OPP for an on-going investigation [redacted] to [redacted] not being required to send the complaint through the Municipal Office, as [redacted] should have been required to do – questions are raised, in my opinion.

And while you do not seem concerned with section 223.8 of the Municipal Act, agreeing to disagree does not build my confidence in the process. The section uses the word “shall,” and from the small amount of training I have received, I think this needed more attention.

I informed you that MFIPPA was contravened and you did not even discuss this with Municipal staff and when I informed you on July 4, 2019 that the emails were released in a manner that contravened MFIPPA were altered, you took no notice.”

- In addition to those comments, the Reeve asked if conversations the Integrity Commissioner had in the parking lot with a witness were also recorded. In doing so, the Reeve made the following statement “It was not a quick hello. You had a conversation with [redacted].”
- Finally, the Reeve stated that she was concerned about the process, about the “lack of protection” of her rights throughout the process.
- On September 16, 2019, the Integrity Commissioner relayed to Reeve Shaw that (among other advisements):
 - o he was satisfied that he did not have a conflict of interest due to his mother’s ownership of a cottage on Wollaston Lake; and
 - o her communications to Council and statement that Council would now “take whatever steps they think are necessary”, along with her persistent attempts to halt the investigation while the source of the e-mails provided by the

complainant were investigated, may amount to attempts to obstruct the investigation.

- In response, Reeve Shaw advised that she had asked the Clerk to remove the item alleging a conflict of interest of the Integrity Commissioner from the Council agenda. The Reeve further stated that she felt she was not attempting to obstruct the process but rather was attempting to voice her concerns.
- We interviewed Councillors Colton, Conlin, and Deputy Reeve Kruger regarding the Reeve's statement that she had informed Council about the Integrity Commissioner's alleged conflict of interest as referenced in her September 12th email.
 - o We found that the Reeve (as she admitted) had telephoned each member of Council individually to relay her concerns about the Integrity Commissioner's mother having a cottage on Wollaston Lake.
 - o These calls resulted in what we understand was a plan by Council to hold a closed session meeting to discuss the Reeve's concerns. It is the Reeve's position that she would not have taken part in such a meeting.
- On September 27, 2019 the Reeve e-mailed our office indicating she lacked knowledge and training regarding the Integrity Commissioner process and now accepted the Integrity Commissioner's interpretation of section 223.8 of the *Municipal Act* (that the investigation did not need to be halted).
- Further, the Reeve indicated that her actions of informing Council of her suspicion of the Integrity Commissioner having a conflict was her attempt to be transparent with her Council.
- On October 3, 2019, our office wrote to Reeve Shaw indicating that the audio of her interview was being sent to her via USB as we were not able to send it via e-mail due to size limitations.
- On October 4, 2019 the Integrity Commissioner wrote to Reeve Shaw to indicate that our office was expanding the scope of the investigation to include the consideration of whether the Reeve's actions throughout the process amounted to an attempt to obstruct the process and to request any written response from the Reeve prior to our final report.

Discussion

On multiple occasions, the Reeve requested that we halt the investigation as per section 223.8 of the *Municipal Act* and refer what she alleged to be illegally obtained e-mails to the Information and Privacy Commissioner and the Ontario Provincial Police for investigation. Even after we indicated to the Reeve that the Integrity Commissioner had no jurisdiction to halt an investigation while a third party was investigated for a potential data breach, we continued to receive multiple references to those e-mails through her responses to us and requests for us to halt the investigation while any investigation of that matter took place.

In *Michael Di Biase v. City of Vaughan; Integrity Commissioner of the City of Vaughan*⁵, the Court heard evidence from both sides on whether the Integrity Commissioner, after receiving copies of e-mails which the member alleged had been obtained illegally and provided to the Integrity commissioner as evidence contrary to the *Criminal Code*, ought to have halted the investigation in accordance with section 223.8 of the *Municipal Act*. The Court found that:

“The applicant’s complaint about the fact that the complainant came into possession of some of the applicant’s emails, does not engage the Code of Conduct and the Complaint Protocol.

Section 223.8 of the *Municipal Act* provides as follows:

223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council.

Contrary to the assertion in paragraph 90 of the applicant’s factum, the Integrity Commissioner had no “obligation in law” to determine if the interception of private communications was lawful. Section 223.8 mandates the Integrity Commissioner to suspend her inquiry if she determines that there are reasonable grounds to believe that the *Criminal Code* has been breached. It is clear that the Integrity Commissioner did not make such a determination and until she did, section 223.8 of the *Municipal Act* was not engaged.

Finally, the Integrity Commissioner did not know the source of the emails provided by the complainant.

If the Integrity Commissioner, upon receipt of the complaint, had immediately suspended any inquiry into the complaint and called the police to investigate the complainant, her actions would have suggested that the City of Vaughan had no genuine interest in a robust complaints process.”⁶ [emphasis added]

Similar to *Di Biase*, we did not make a determination that there were reasonable grounds to believe that an offence had been committed under MFIPPA or any other Act. More importantly, and as in *Di Biase*, we find that section 223.8 does not apply to third parties - it

⁵ *Michael Di Biase v. City of Vaughan; Integrity Commissioner of the City of Vaughan*, 2016 ONSC 5620

⁶ *Ibid*, at paras. 217-221.

applies only to members of Council, and as such, an allegation of a breach of MFIPPA by the complainant or another third party would not trigger our obligations under section 223.8.

In the *Law Society of Upper Canada v. Robert Joseph Potomski*,⁷ the Law Society Hearing Panel noted that an “obstructionist” licensee made many attempts to derail the process by making repeated arguments that were rejected many times by the panel. In *R. v. Prodromidis*⁸. It was found that obstruction of an investigation requires some type of hindrance of the investigation itself, not just the officer.

We find that Reeve Shaw’s continued references to the e-mails submitted by the complainant and requests that we hold our investigation in abeyance while that matter was investigated were unnecessarily distracting. However, we do not find that they rise to the level of obstruction or an attempt to obstruct the investigation. As referenced in her e-mail to the Integrity Commissioner, the Reeve misunderstood the language of section 223.8 of the *Municipal Act* and was preoccupied by the stress of the investigation and how the e-mails came to be in the possession of third parties. While we understand this position, we caution that an aggressive approach to having those considerations heard does not aid the Integrity Commissioner in carrying out his duties under the Act, and in other circumstances might amount to an attempt to obstruct the investigation.

Following our witness interviews, the Reeve contacted each member of Council by telephone to voice concerns she had regarding the Integrity Commissioner and the investigation. It is not acceptable to contact each member of Council separately to discuss concerns about an ongoing investigation. The appropriate method for satisfying such concerns would have been directly through the Integrity Commissioner, or through independent legal advice. It is our understanding that Council (not including the Reeve) was preparing to hold a closed session meeting to discuss what had been relayed to them by the Reeve during those calls (prior to the investigation being completed by the Integrity Commissioner) but this did not ultimately occur after the Integrity Commissioner cautioned the Reeve that this could amount to obstruction.

We find that the phone calls made to each member by the Reeve during an active investigation amounted to an attempt to obstruct the Integrity Commissioner in carrying out the investigation. By contacting the very individuals that would eventually hear and decide on any recommendations made by the Integrity Commissioner in his report, the Reeve interfered in the process and attempted to taint the credibility of the Integrity Commissioner. This action breached the Code of Conduct.

⁷ *Law Society of Upper Canada v. Robert Joseph Potomski*, 2012 ONLSHP 0001

⁸ *R. v. Prodromidis*, [2015] N.W.T.J. No. 60.

Our interviews with all members of Council re: the telephone calls from the Reeve

It is troubling to the Integrity Commissioner that when our office interviewed Councillor Conlin by phone, he stated that he could not recall whether the Reeve called or e-mailed him, nor could he recall the content of the conversation (despite the fact that the call had occurred only days earlier). Even after requesting that Councillor Conlin call us back if he at any point did recall that conversation, we did not hear from Councillor Conlin. We find that Councillor Conlin was not forthcoming and that his statement that he did not recall the nature of a conversation with the Reeve by phone that occurred only days earlier was not credible.

We note that Councillor Morrison was unreachable for two weeks as he was out of town. Even after returning from being away, he made one attempt to return our call. When we telephoned him again, that call was never returned.

We caution members that failing to cooperate or communicate when requested by the Integrity Commissioner during an open investigation could, in itself, be a breach of the Code of Conduct.

DECISION:

After careful consideration of the evidence and the findings discussed above, the Integrity Commissioner rules as follows:

1. There is no evidence to support a finding that Reeve Shaw had a pecuniary interest in the dock licence application for Bear Ridge;
2. Reeve Shaw was not present for the vote on the MFIPPA disclosure request and as such there is no breach of the general conflict of interest provisions under the Code of Conduct;
3. There is insufficient evidence to support a finding that Reeve Shaw had a non-pecuniary interest in the dock licence application for Bear Ridge and as such there can be no finding of a breach of the general conflict of interest provisions under the Code of Conduct; and
4. Reeve Shaw's telephone calls to individual members of Council regarding an alleged conflict of interest on the part of the Integrity Commissioner during an active investigation amounted to an attempt to obstruct the Integrity Commissioner in carrying out his investigation.

Recommendations:

The Integrity Commissioner is satisfied that Reeve Shaw was not deliberately attempting to obstruct the investigation and believed she was not doing anything inappropriate. Unfortunately, taking unfounded suspicions to Council did in fact undermine the investigation. Had the findings of the investigation been that a breach did occur, Council would have been

tainted by the Reeve's actions. In order to ensure the seriousness of possible obstruction is understood, the Integrity Commissioner recommends that Council impose the following sanction:

1. That the Reeve publish on the Township's website an apology for her actions which amounted to an obstruction of the investigation. The apology shall be provided to the Integrity Commissioner prior to its posting to ensure it is satisfactory.

The Integrity Commissioner further recommends that Council as a whole undertake training from a qualified professional to understand the roles and responsibilities of the Reeve and members of Council and the obligations imposed by the Code of Conduct and the Township's policies, for the reasons set out in the 'discussion' section of our findings on obstruction.

Our inquiry under the *Municipal Conflict of Interest Act* and the investigation under the Code of Conduct are now complete. For the reasons as set out in this report regarding our finding that Reeve Shaw did not breach the *Municipal Conflict of Interest Act*, the Integrity Commissioner will not be making an application to a judge under section 8 of the *Municipal Conflict of Interest Act*. Notice has been provided to the complainant of this decision in accordance with the requirements of the *Municipal Act*.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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