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INTEGRITY COMMISSIONER'S REPORT

April 20, 2015

Submitted to: Mayor and Council

Submitted by: Robert J. Swayze

Subject: Code of Conduct Complaint against Councillor Deb Doherty

PURPOSE

- The purpose of this report is to advise Council of the findings of the Integrity Commissioner after conducting an investigation of a complaint under the *Code of Conduct for Members of Council* and the *Complaint Protocol*. (the "Code")

RECOMMENDATION:

THAT Council receive the report dated April 20, 2015 from the Integrity Commissioner;

1. BACKGROUND

I received a complaint from Mr. Dick Hill, a resident of Collingwood, against Councillor Doherty stating that she should have declared a conflict of interest and refrained from voting in a Council meeting held on February 2, 2015 on a Development & Operations Services Standing Committee recommendation to accept an offer from Ace Cabs to take over the accessibility service of the Town at substantial savings to the Town. Councillor Doherty is employed by Corus Radio Barrie as an Advertising Account Manager and Ace Cabs is a client of her employer.

The *Municipal Conflict of Interest Act* (the "MCIA") in Section 5, requires a member of council who has a pecuniary interest, direct or indirect, in any matter before council to:

- (a) prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) not take part in the discussion of, or vote on any question in respect of the matter; and

(c) not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

The MCI A is enforced by an application to Superior Court and the judge has the power to impose the severe penalty of removing the member from council. The Act provides for a saving section that Section 5 does not apply if the indirect conflict arises “by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.”

If such a court application were made, I would not be able to entertain this complaint. However, *the Code of Conduct for Members of Council* (the “Code”) provides that members of council are required to follow and respect the “letter and spirit” of the MCI A which I interpret as authorizing me to enforce the Code while no such court application has been made.

In accordance with the Complaint Protocol, I served the complaint on Councillor Doherty and she responded through her Counsel, who argued that the relationship between the Councillor and Ace Cabs is so remote that she did not have a pecuniary interest or in the alternative that the interest was so insignificant that it could not influence her judgement in the vote. She is solely a commission sales person, has had no direct involvement with Ace Cabs and has never received any commission from that account. At no time did she have any contact with the company relating to the matter before Council and she did not in any way attempt to influence the vote by any members of Council. I also served the complainant with the legal submission and received a response from him.

2. ANALYSIS

I agree with counsel for Councillor Doherty and find that her remote relationship with Ace Cabs did not influence her vote. I am of the opinion if this complaint reached the Court, that it would make the same finding. However, the circumstances of this case enable me, in this report, to present a good example for the information of all members of Council, that a conflict should have been declared by Councillor Doherty out of an abundance of caution. The courts interpret indirect pecuniary interest very strictly. One can assume that Ace Cabs represented a pecuniary benefit to her employer, which indirectly benefits her. I have advised the Councillor to declare a conflict in the future for all clients of her employer doing any business with the Town.

Two examples of the strict attitude of the courts are as follows: The Superior Court in 2009 removed a school trustee from the board for voting on an arcane budget item when his daughter was a teacher employed by the Board.¹ In another Ontario case heard by the Court of Appeal in 2012, the Court agreed that a member of Council should be disqualified from sitting because he voted on a motion to declare a parcel of

¹ *Baillargeon v. Carroll*, 2009 4510 (ON SC)

land surplus after writing an E-mail that he “might” be interested in purchasing it.²


It is important that candidates who have a stake in the community are encouraged to run for councils in Ontario and conflicts are inevitable. All members need to be constantly vigilant to identify those which might potentially offend the MCIA and when in doubt, a conflict should be declared.

I find that Councillor Doherty did not contravene the Code for the above reasons. Notwithstanding my agreement with the Complainant that she should have declared a conflict, I must dismiss his complaint since I have found no breach of the Code.

3. EFFECT ON TOWN FINANCES

Not applicable

SIGNATURE

Prepared by: Integrity Commissioner	
	
<i>Robert Swayze</i>	
<i>Integrity Commissioner</i>	
Town of Collingwood	

² *Tuchenhagen v Mondoux*, 2011 ONSC 5398 (Div. Ct.).