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INTEGRITY COMMISSIONER'S REPORT

August 24, 2015

Submitted to: Mayor and Council

Submitted by: Robert J. Swayze

Subject: Code of Conduct Complaint against Councillor Tim Fryer

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 August 24, 2015 from the Integrity Commissioner;

1. BACKGROUND

I received a complaint from Mr. Kevin Murray, a resident of Collingwood, regarding certain actions of Councillor Tim Fryer. He alleged that the Councillor participated in the consideration by Council of 6 items from February to May of 2015 and voted for each of them, all of which involved the interest of Dunn Capital Corporation, an active development company in Collingwood, owned by his brother-in-law, Mr. Larry Dunn. The items included selling a road allowance, zoning changes and approval of development agreements all in favour of Dunn Capital corporation. The complainant was most concerned regarding his voting for a sole sourced contract with Ace Cabs which he alleges is owned by his brother-in-law.

Councillor Fryer has openly admitted to me that he voted and participated in Council's consideration of the items. He also advised me that he has a good relationship with Mr. Dunn and his sister. He argues that he felt that he had a sufficient degree of separation from the matters since he is not on the Development and Operations Committee where most of the items were recommended after detailed discussion. He believed that he could be impartial since most of the items were recommended by staff and approved by

a unanimous vote. He also asserts that he did not attempt to influence the vote by speaking to other members of Council.

It is clear and the complainant acknowledges, that such participation at Council is not contrary to the *Municipal Conflict of Interest Act* (the "MCIA) which defines family as excluding siblings.

However, he refers to the following section of the Code:

"7. Conflicts of Interest

Members of Council will recognize their obligations to;

- o Follow and respect both the letter and spirit of the provisions of the Municipal Act and the Municipal Conflict of Interest Act, as amended from time to time."

He asserts that Councillor Fryer, in the **spirit** of the law and "in the interests of openness and transparency should have stepped away from the table during discussions and votes" involving his brother-in-law.

Council Codes of Conduct throughout the Province vary widely on the treatment of conflicts by Councillors. They range from Mississauga which directs the Integrity Commissioner to consider personal conflicts not included in the MCIA to others which prohibit the Integrity Commissioner from assuming jurisdiction over conflicts because there is a court procedure prescribed by the MCIA.

2. ANALYSIS

The MCIA has been in place for decades and contains an absolute prohibition if a spouse, parent or child is involved in a pecuniary conflict, with the potential severe penalty of being removed from Council. It is a law based on ethics which, in my opinion, should have drawn the line at least to include siblings and their family. Also, even if Councillor Fryer could be completely impartial in these matters, it would not be seen as such by the community and maintaining public trust is important for all elected officials.

A second problem for Councillor Fryer is that the Procedural By-law of the Town would have resulted in the Clerk recording a deemed negative vote against his brother-in-law if he attempted to declare a conflict not required by the MCIA. However, he had the option of leaving the meeting room which would have been recorded as absent during the vote. The Ministry of Municipal Affairs and Housing is currently reviewing the MCIA and submissions have been made to expand the family definition and to make changes which will have the effect of encouraging Councillors to declare personal conflicts by allowing them to recuse themselves.

Councillor Fryer is new on Council and I believe that he felt an obligation to participate in all matters before Council if he believed he could be impartial. I am satisfied that there was no intent to unduly benefit his brother-in-law. However, I accept the words in the Code: "spirit of the . . . Act" as requiring him to declare a conflict or at least leave the meeting room, when items involving his brother-in-law are considered by Council. He has advised me that he will do so in all future Council and committee matters and has indeed done so at the meeting of Strategic Initiatives Committee held on July 6, 2015.

I am not recommending any sanctions against Councillor Fryer.

3. EFFECT ON TOWN FINANCES

Not applicable

SIGNATURE

Prepared by: Integrity Commissioner



Robert Swayze
Integrity Commissioner

Town of Collingwood