

INTEGRITY COMMISSIONER'S REPORT

Date: December 2, 2020

Item: Application re Councillor Van Alstine for Contravention of Municipal Conflict of Interest Act

Recommendation: Be It Resolved That:

Council receive for information, the report from the Integrity Commissioner dated December 2, 2020 finding that Councillor Van Alstine has allegedly contravened the *Municipal Conflict of Interest Act* and advising that the Integrity Commissioner will be making an application to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination that Councillor Van Alstine has contravened section 5 of the statute.

Background:

Application for Inquiry

An application was submitted on November 6, 2020 alleging that Councillor Van Alstine has contravened sections 5(1) and 5.1 of the *Municipal Conflict of Interest Act* (the "Act"). The application requested that I conduct an inquiry to determine whether Councillor Van Alstine acted in contravention of the Act by voting on two reports that recommended that Council suspend compensation paid to her as a member of Council.

The application was properly filed by an elector of the Town, being Mayor Jill Beer.

On June 23, 2020, Council considered my report finding that Councillor Van Alstine contravened the Town's Code of Conduct (the "Code") where I recommended that Council impose the following sanction:

"The compensation paid to Councillor Van Alstine as a member of Council be suspended for a period of ninety (90) days commencing with the next pay period."



The Mayor chaired the meeting and asked, in accordance with standard meeting practice, whether any members had a pecuniary interest to declare. I had advised Councillor Van Alstine that she should declare a pecuniary interest but that she was not entitled to vote on the matter. She took my advice and declined to vote.

Following consideration of the matter of my report Council voted to impose the penalty.

On September 8, 2020 I presented a report to Council for information that detailed the summary dismissal of seven (7) complaints that had been filed against the Mayor and the CAO. Five (5) of the complaints were submitted by Councillor Van Alstine, four (4) of which were submitted very shortly following her receipt of an advanced copy of my Report that was presented to Council on June 23, 2020.

I determined that none of the complaints filed, including each of the five (5) submitted by Councillor Van Alstine, had any validity. My report noted that the complaints appeared to be filed in retaliation against the Mayor. I determined that Councillor Van Alstine and her three supporters on Council voted in a biased manner and with a common vendetta against the Mayor who was seen to be a supporter of Town staff that Councillor Van Alstine has continued to disparage and malign in contravention of her obligations under the Code.

On October 13, 2020, Council considered a report from Kelsey Orth of Crawford, Chondon & Partners LLP, a Human Resource Consultant respecting the conduct of Councillor Van Alstine. Council considered the following motion:

“Councillor Val Alstine be assessed a 3 month suspension of salary beginning in September 2020 to overlap 1 month with the Code of Conduct suspension and that Councillor Van Alstine receive additional councillor training.”

Councillor Van Alstine did not declare a pecuniary interest. Following consideration of the report, Councillor Van Alstine voted against the suspension of pay but Council voted to impose it.

On October 27, 2020, Council considered another report from me finding that Councillor Van Alstine had contravened the Code. I recommended that Council impose the following penalty:

“The compensation paid to Councillor Van Alstine as a member of Council be suspended in an amount equal to 60 days of such compensation, commencing with the next pay period.”

The Mayor again chaired the meeting and asked if any member had a pecuniary interest to disclose. Councillor Van Alstine did not disclose her financial interest.

There was also a motion to amend the recommendation to begin suspending Councillor Van Alstine's pay beginning in December 2020, but that motion was defeated by a vote of 4 to 3.

Councillor Van Alstine voted on both the amending motion and the main motion to impose the penalty. Council voted 4 to 3 against the penalty.

The allegation in the application is that Councillor Van Alstine contravened sections 5 and 5.1 of the Act.

In accordance with the Complaint/Application Process in Section 16 of the Code, I gave Councillor Van Alstine a copy of the application and asked for her response.

Councillor Van Alstine emailed me a copy of her response on November 27, 2020 wherein she admits that she was in error for not declaring her interest and voting on each matter. She says that in her defence, she was very emotional and distraught on both occasions. She says that where past Code complaints were considered by Council, Mayor Beer never asked for her vote, but on the motions in this application, the Mayor asked for her votes and, being very emotional and upset, she voted.

Councillor Van Alstine's response makes some concerning allegations which I will address. She alleges that there has been a conspiracy between the Mayor and the Clerk because copies of the motions she voted on were made after the Mayor's Statutory Declaration was sworn on November 6, 2020. She seems to think that these are fraudulent legal documents. She also alleges that I am now a part of this conspiracy.

At the conclusion of her response, Councillor Van Alstine invited me to make an application to a judge under section 8 of the Act.

Analysis:

Allegations of Fraud

Councillor Van Alstine's allegation of fraud seems to be based on her confusion about the copies of the electronic documents which were provided to her. She has not provided particulars about these fraud or collusion allegations. She seems to think that because the date of an electronic document is after the Mayor's statutory declaration, this somehow proves fraud. Obviously, her actions on October 27, 2020 happened before the statutory declaration of November 6, 2020, and regardless of when the electronic copies of documents were made, it does not change the fact that the Councillor's actions happened before the application was made. Councillor Van Alstine's allegations of fraud are unfounded.

The Mayor's application was made within the six (6) week time frame for making an application under the Act as set out in both section 223.4.1(4) of the *Municipal Act, 2001* and section 8(2) of the Act.

Councillor's Van Alstine has a Financial Interest

I conclude that Councillor Van Alstine had a clear, direct pecuniary interest in the motions dealing with my report as Integrity Commissioner recommending that Council impose a financial penalty on her. The motions both dealt with the suspension of her compensation paid to her as a member of Council for violating the Code as authorized under the *Municipal Act, 2001* and the Code. Obviously, the outcome of these motions would have resulted in a financial loss to Councillor Van Alstine.

The term "pecuniary interest" is not defined in the Act but it is a "financial, monetary or economic interest": *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683 (CanLII) <<http://canlii.ca/t/qli17>>. The courts have said that where an integrity commissioner's report is discussed at council, section 5(1) of the Act is engaged because council has the power to levy a financial sanction: *Magder v. Ford*, 2012 ONSC 5615 (CanLII) <<http://canlii.ca/t/ftx1q>>. Not only did my report have the potential to result in a financial sanction, but the recommendation that Council discussed and voted on actually involved a financial sanction. The recommendation to impose a penalty was defeated on a 4 to 3 vote at Council with Councillor Van Alstine voting against it.

Because there was a penalty, the Act provides for special rules under section 5(2.1):

"Exception, consideration of penalty

(2.1) The following rules apply if the matter under consideration at a meeting or a part of a meeting is to consider whether to suspend the remuneration paid to the member under subsection 223.4 (5) or (6) of the *Municipal Act, 2001* or under subsection 160 (5) or (6) of the *City of Toronto Act, 2006*:

1. Despite clauses (1) (b) and (c), the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter."

The Act allowed Councillor Van Alstine to "take part in the discussion of the matter" but under no circumstances was she allowed to "vote on any question in respect of the matter."

By failing to disclose her pecuniary interest and voting on the motions, Councillor Van Alstine clearly contravened section 5 of the Act.

I conclude that Councillor Van Alstine may not have had a pecuniary interest in the subject matter of the Report considered by Council on October 13, 2020 as that was not a report from the Integrity Commissioner recommending a statutory penalty. I am dismissing that portion of the application.

The application also alleges that Councillor Van Alstine violated section 5.1 of the Act by failing to file a written statement with the Clerk. I find that Councillor Van Alstine has not contravened this section of the Act as she did not declare any pecuniary interest (although she was required to do so) and, therefore, she did not have to file a written statement of her disclosure. I am dismissing that portion of the application.

In her response, Councillor Van Alstine did not raise any exceptions in section 4 of the Act. In any event, I am not convinced that any of the exceptions would apply to her financial interest in the penalties.

Councillor Van Alstine did indicate that she was very emotional and distraught both times when Council considered my report and that the Mayor asked for her vote. The Mayor was required to ask for her vote on the motion to amend and on the main motion because Councillor Van Alstine had not declared a pecuniary interest on all three occasions where she voted. Councillor Van Alstine appears to be pleading inadvertence. I do not believe that this excuses the Councillor from voting on two separate occasions where she had a pecuniary interest at the meeting. In any event, the defence of inadvertence is up to a judge to consider when applying a penalty.

Conclusion:

In my opinion, Councillor Van Alstine has contravened section 5 of the Act by failing to disclose her pecuniary interest in, and subsequently voting on, my recommendation that Council impose a financial penalty for her violations of the Code. There are no exceptions that apply to her pecuniary interest. Although she was permitted to make submission on and participate in the discussion respecting the penalty, she was not permitted to vote.

On this basis I have determined that I will be making an application to a judge under section 8 of the Act for a declaration that Councillor Van Alstine has contravened section 5 of the Act. It is appropriate to do so given that the Councillor has voted on two separate occasions where she had a pecuniary interest and she continues to display unethical behaviour.

A handwritten signature in blue ink, appearing to be 'RS', is written over a horizontal line.

Prepared By: Robert Swayze, Integrity Commissioner