

DECISION OF THE INTEGRITY COMMISSIONER

MUNICIPALITY

ALLEGATION: CONTRAVENTION *MUNICIPAL CONFLICT OF
INTEREST ACT*

BY: COUNCILLOR RUTLEDGE



Prepared By:

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Director/Independent
Consultant for E4M

I. EXECUTIVE SUMMARY

- [1] These reasons relate to an inquiry under sections 223.4.1 and 223.2 of the *Municipal Act, 2001*, (the "*Municipal Act*") about John Rutledge ("Councillor Rutledge"), an elected member of the Township Council ("Council") for the Township of Brudenell Lyndoch and Raglan ("BLR").
- [2] The Application and statutory declaration were properly filed with our office.
- [3] In the application, the Applicant, alleged that Councillor Rutledge contravened sections 5(1) and 5(2) of the *Municipal Conflict of Interest Act* (the "*MCIA*"), as well as the BLR Code of Conduct, when he failed to declare a pecuniary interest in a matter that had a direct financial benefit to the Brudenell Lyndoch and Raglan Fire Department ("BLRFD").
- [4] More specifically, that on November 1, 2019, Councillor Rutledge participated in the closed portion of a special meeting of Council whereat "***issues surrounding the BLR Fire Department (BLRFD) and the report of an outside investigation into misconduct related to the Fire Chief***" after he had "***previously declared a conflict of interest on a matter discussed by BLR Council on 8 October 2019*** where, the Applicant alleged that Council met in closed session "***presumably, to discuss matters arising from the disclosure of the appeal documents to the Township by the Fire Safety Commission which occurred on 3 October 2019***".
- [5] In the Application the Applicant stated that "Councillor Rutledge participated in a meeting of BLR Council in where he, as part of Council, voted to authorize service charges to BLR property owners for the fire responses that he attended and out of which he would receive a monetary benefit". To be clear, the Applicant alleged that Councillor Rutledge had a "direct" pecuniary interest in the cost recovery charges levied by the municipality and that he participated in the decisions of Council which ultimately saw the reduction of these charges to the property owner at 2499 Schutt Road.
- [6] The Applicant further alleged that when Mr. Beakley, in advance of his presentation of findings "indicated that a Councillor who had stated a conflict involving a pecuniary interest needed to leave the Council chamber, which she did. Councillor Rutledge remained".
- [7] As a result of our inquiry, we have determined that while Councillor Rutledge is a Firefighter with the BLRFD and may as a member of that body have a pecuniary interest in matters before Council, the cost recovery charges considered by Council did not constitute a pecuniary interest for the BLRFD because the funds from the cost recovery charges go into the general municipal accounts and do not get paid to the BLRFD.
- [8] The BLRFD had no pecuniary interest pursuant to the *MCIA* and therefore neither did Councillor Rutledge as a member of that Body. The Councillor, therefore did not need to declare a pecuniary interest and could participate in the matter before Council.

[9] Additionally, Councillor Rutledge did not contravene the BLR Code of Conduct by participating in the consideration of cost recovery charges for the same reasons.

[10] We will not be making an application to the Superior Court with respect to these allegations.

II. LEGISLATIVE FRAMEWORK

[11] Pursuant to section 223.4.1(2) of the *Municipal Act*, an elector or person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the *MCIA* by a member of Council or a member of a local board.

[12] 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.

III. THE APPLICATION

- [13] On December 13, 2019, E4m as Integrity Commissioner received an application for an inquiry (hereinafter the "Application") with respect to Councillor Rutledge. The Applicant is an elector under the *MCIA* and was therefore entitled to make an Application for an inquiry under section 223.4.1 of the Municipal Act. The applicant declared that the Application was made within six (6) weeks of the applicant becoming aware of the alleged contravention.
- [14] This statutory declaration meets the timelines set by the *MCIA*.
- [15] Of note, we do have concerns regarding the veracity of the declaration. This would have been explored further had we found a breach of the *MCIA* and prior to making a decision to file an application with the Superior Court. The subject of this complaint was also discussed by Council on September 4, 2019. The Applicant was present at that meeting and would have been aware that Councillor Rutledge attended and participated at that time as well. The timing of this complaint appears to be strategic. The Applicant in this matter assisted Councillor Budarick's son with his challenge and complaint regarding the Service Charges levied against him for breaching a fire ban. The timeline of events is relevant:
- August 16, 2019 – Councillor Budarick's son Gary Budarick has a fire contrary to the fire ban. The BLRFD responds to the fire.
 - September 4, 2019 – Council meeting: review and approval Service Charges to be levied – Councillor Rutledge is in attendance;
 - September 29, 2019 - A complaint is filed by Councillor Budarick's son to the Fire Safety Commission with the assistance of the Applicant. [The material submitted by the Applicant included this information]
 - October 8, 2019 - Special Closed Meeting of Council. Councillor Rutledge declares a conflict. The minutes do not reflect that he vacated/returned to chambers.
 - October 30, 2019 – Closed meeting where Mr. Beakley presented the results of an Internal Investigation regarding the Fire Chief. The Applicant reported that a Councillor was asked to leave the closed session[it was confirmed in a separate inquiry that Councillor Budarick was asked to leave the meeting as she was in

conflict and had declared such]. Councillor Rutledge had not declared an interest and remained in the meeting;

- November 1, 2019 – Special Closed meeting whereat Council decided to reduce the cost recovery charges for Councillor Budarick’s son. Councillor Rutledge was in attendance and did not declare a pecuniary interest.
- December 12, 2019 the Applicant swears the declaration complaining of Councillor Rutledge’s alleged breach of the MCIA.

IV. THE INQUIRY PROCESS

[16] Upon receipt of the Application, we completed an initial review of the statutory declaration and the accompanying material submitted by the Applicant and determined that there were sufficient grounds to conduct an inquiry into the matter.

[17] Typically, we review any documentary evidence and then interview the Applicant, witnesses, and the Councillor. However, in this circumstance we conducted a documentary review only. We did not believe it necessary to verify facts that were already clearly documented by the Applicant, the Municipality or assess credibility of the parties.

[18] We reviewed the following:

- a. By-Law 2010-11 regarding open air burning
- b. Agendas and Minutes of the following meetings:
 - i. October 8, 2019
 - ii. November 1, 2019
 - iii. November 13, 2019
- c. Fire Department Budget 2019
- d. By-law 2002-16 regarding fees and charges
- e. Request to the Office of the Ontario Fire Marshall dated September 30, 2019
- f. BLR cost recovery invoice as submitted by the Applicant
- g. Email from the Fire Safety Commission re: Budarick v. Township of Brudenell Lyndoch and Raglan as submitted by the Applicant
- h. Madawaska Valley Current Article dated November 5, 2019 entitled *Update on complaint against BLR Fire Chief*¹ as submitted by the Applicant

V. THE FACTS

[19] Councillor Rutledge acts both as a municipal Councillor and as a Firefighter of the BLRFD. As such, Councillor Rutledge is a member of the Body that is the BLRFD and does have an indirect pecuniary interest where the Fire Department finances are concerned.

[1]

¹ <http://madvalleycurrent.com/2019/11/05/update-on-complaint-against-blr-fire-chief/>

- [20] On July 29, 2019, a level 2 fire ban was ordered by the BLRFD Fire Chief.
- [21] On August 16, 2019, the Applicant reported that a “cooking fire” [as characterized by the Applicant] was set by Gary Budarick, Councillor Budarick’s son in violation of the fire ban. The BLRFD, including Councillor Rutledge, attended the scene.
- [22] The Fire Chief issued invoices and Council authorized on September 4, 2019, for them to be distributed to a number of property owners who chose to disregard the fire ban including Gary Budarick. Cost recovery fees of \$1,666.75 were levied for that fire.
- [23] The Applicant assisted Councillor Budarick’s son in preparing/submitting an appeal to the Fire Safety Commission which was submitted on September 29, 2019. Questioned in the complaint, among other things, is Councillor Rutledge’s performance at the August 16, 2019 event.
- [24] An investigation was conducted by Mr. Beakley related to the work performance of the Fire Chief. The result of the investigation was considered by Council at a meeting on
- [25] BLR has established a by-law that permits open air burning in the municipality under specific circumstances. Section 5.0 indicates that the bylaw “*shall be administered and enforced by the Fire Chief or designee, By-law Enforcement Officer, A Police Officer or such other person as Council of the Township may designate*” [sic].
- [26] Section 7.0 outlines the penalties for such contraventions and authorizes cost recovery in certain circumstances. Further that Council has the discretion to authorize that
- [27] Included in section 7.4 is that “All fees and charges payable under this by-law are due and owing to the **Township** within thirty (30) days of the date of an invoice rendered to the person liable to pay them”. [emphasis added]
- [28] Council has not adopted any other bylaw or policy that authorizes the collection of costs related to the provision of fire protection services. No resolution or direction requires the funds to be provided to the BLFRD.
- [29] BLR has no policy directing that cost recovery fees are to be put into the BLFRD budget, operating funds, or reserve funds. As such the fees are put into the municipal general account.

VI. THE ISSUE

- [30] We considered:
- a. Whether or not matters, pecuniary in nature to the BLFRD were discussed at the meetings of Council held on October 8, November 1, and November 5, 2019.

- b. Whether or not Council debated or made decisions regarding matters related to the pecuniary interest of the BLFRD.
- c. Whether or not Councillor Rutledge had a pecuniary interest when he declared on October 8, 2019, with the matter being considered by Council.
- d. Whether Councillor Rutledge contravened the *MCIA* when he participated in the discussion/decision
- e. Whether Councillor Rutledge Contravened the BLR Code of Conduct when he voted on a matter regarding the BLRFD

VII. THE OPINION

- [31] Council discussing and authorizing invoices prepared by the Fire Chief does not in itself create a pecuniary interest for the BLRFD. For the BLRFD to have a pecuniary interest the Fire Department specifically, and not BLR generally would need to be in receipt of the monies. This is not the case. There is no policy in place directing the Treasurer to transfer funds of this nature to the BLRFD revenues. There is no specific line item in the BLRFD budget to account for these funds. Council did not pass a resolution directing these funds be given to the BLRFD.
- [32] Nor did the BLRFD have a pecuniary interest in the matter being considered by Council on October 8, 2019, when Councillor Rutledge did declare a pecuniary interest. To be clear, the matter considered in closed session was related to the cost recovery fees. Councillor Rutledge did not need to declare.
- [33] Of concern, is that Councillor Rutledge did declare a pecuniary interest in the matter before Council on October 8, 2019, after Council resumed the open session of the meeting and there is no indication in the minutes that he vacated chambers only returning for the open portion of the meeting.
- [34] In reviewing the written declaration prepared by Councillor Rutledge dated October 8, 2019, we noted that he reported "**A conflict of interest on Schutt RD**" the nature of the conflict is not clear. However, the matter considered in closed session was not pecuniary in nature to Councillor Rutledge either direct or indirect. If Councillor Rutledge had a pecuniary interest in the matter and did not recuse himself from the closed meeting, he would have been in contravention of section 5(2) of the *MCIA*.
- [35] Section 6 of the Code of Conduct requires members of Council to abide by the *MCIA*. Since Councillor Rutledge did not contravene the *MCIA* he did not contravene section 6 of the Code of Conduct.

I. CONCLUSION

- [36] With the evidence before us we are not able to support the allegation that Councillor Rutledge had a pecuniary interest as laid out by the Applicant. Therefore, we will not be taking this matter to Court.
- [37] We recommend that Council have additional training on the *MCA* specifically related to their responsibilities.
- [38] We recommend that apart from training that Council take no further action on this matter.

DATED December 28, 2020.