

CONFIDENTIAL

August 20, 2024

SENT BY EMAIL TO: marmstrong@prescott.ca

Mayor and Council
c/o Matthew Armstrong, CAO
Town of Prescott
360 Dibble Street West
Prescott, ON K0E 1T0

Dear Mr. Armstrong:

**RE: Code of Conduct Complaint – Report
Our File No. 23476-52**

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. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Integrity Commissioner is prepared to attend virtually at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. The only decision Council is afforded under the *Municipal Act* is to decide how the report will be made public, and whether to adopt any recommendations made by the Integrity Commissioner. Council does not have the authority to alter the findings of the report, only consider the recommendations.

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 is 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 conduct investigations in response to complaints under the Code of Conduct, and that the Integrity Commissioner is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Integrity Commissioner's final decision in this matter.

Timeline of Investigation

- Complaint received March 26, 2024
- Preliminary review April 2024
- Complaint sent to Member May 7, 2024
- Response from Member July 4, 2024
- Member's response sent to complainant July 9, 2024
- Interview with Member July 2024
- Interview with complainant August, 2024

Complaint Overview

The Complaint was made against Councillor Lee McConnell (the "Member").

The complaint related to the Member attending a Committee of Adjustment meeting. The Member is not a member of the Committee, but attended to comment on several applications before the Committee. The following actions were alleged to have breached the Code of Conduct:

- The Member commented on an application to suggest that the matter be deferred to allow Council to consider a land swap with the applicant. The Complaint alleged that the matter of a land swap had been discussed at Council in closed session;
- The Member stated that he had private conversations with the applicant about the land swap. The Complaint alleged that the concept of a land swap had been rejected by Council and that the discussion was an attempt to work against the will of Council;
- As part of the discussion the Member mentioned the future use of Town lands. The Complaint alleged that the use of certain Town lands had only been discussed in closed session;
- As part of the process, the Member sought to speak on behalf of Council. When advised by the Chair that he could not speak on behalf of Council, the Member indicated that he was then speaking as a private citizen.

Code of Conduct Provisions

The Complaint engaged the following provisions of the Code of Conduct:

3.1 Every Member must hold in strict confidence all Confidential Information

acquired as a direct or indirect result of the Member's role with the Municipality. Confidential information shall not be disclosed except when required by law, or when authorized by Council or the Chief Administrative Officer.

8.1 Members, when communicating with the public and media, will accurately and adequately communicate the attitudes and decisions of the Council, Board or Committee, even if a Member disagrees with a majority decision, so that there is respect for and integrity in the decision-making process.

8.2 It is not the intent of this Code of Conduct to restrict the ability of a Member to express a personal opinion on matters of general interest. In such cases, the Member must make it clear that the comment is being made in their capacity as a private citizen, and not as a representative of the Municipality. In no event should a Member express a position that is disrespectful of the decision of the majority of Council, a Board or a Committee.

Factual Findings

No factual findings were required in this investigation. We reviewed the recording of the Committee of Adjustment meeting at issue.

Code of Conduct Findings

Land Swap – confidential information

There is no dispute that a land swap had been raised in a closed session. We were not provided with any resolution of Council formally rejecting the idea and understand that while the matter was raised in closed session, Council decided not to bring it forward for a decision. Therefore, Council decided not to make a decision.

In the Committee of Adjustment meeting the Member did not refer to any closed session discussion and only suggested that the land swap was an idea worth pursuing. He requested a deferral to allow time for the Town to consider a land swap.

We do not find that any confidential information was disclosed by the Member.

Land Swap – private conversation

The conversation with the applicant about a land swap might be a breach of the Code of Conduct if the Member had misstated the decision of Council. We find that this was not the case. It was apparent from the meeting recording and the interview with the Member that he personally believed the land swap was appropriate, but we have no evidence that he told

the applicant or anyone else that Council had directed that the land swap be pursued. This is not a breach of the Code of Conduct.

Confidential information – Town lands

Through the investigation process it was determined that the lands in question owned by the Town and future use of those lands was not confidential. The Member's reference to the lands was not a breach of the Code of Conduct.

Speaking to Committee

The Member sought to speak to the Committee as a member of Council. When challenged he then spoke to the Committee as a private citizen. This does not create a Code of Conduct breach.

While any member of Council may speak to any Committee, we take this opportunity to remind all of Council that they must communicate accurately the decisions of Council and they should refrain from using their position to attempt to influence a Committee decision.

Recommendation

As there were no breaches of the Code of Conduct identified the complaint is dismissed.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
LSO Certified Specialist in Municipal Law
(Local Government / Land Use Planning)
Anthony Fleming Professional Corporation
TEF:ls