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C H A M B E R S

Integrity Commissioner Office
for the Town of Grimsby

July 20, 2020

Sent by email to: Councillor Reginald Freake
rfreake@gmail.com

and to: Councillor John Dunstall
jdunstall@grimsby.ca

Dear Sirs,

Re: Code of Conduct Complaint (Councillor Freake against Councillor Dunstall)
Complaint Reference Number: IC-210-0320

I. THE COMPLAINT

In his complaint dated March 26, 2020, Councillor Freake makes a number of allegations against Councillor Dunstall, as follows:

1. Councillor Dunstall, in 2017, supported a bio-digester project through a company known as Grimsby Energy Inc. ("GEI"). This has turned out to be an unprofitable venture for the Town of Grimsby ("Town"). Civil law suits have been initiated by the Town. Councillor Dunstall is alleged to have fraternized with the former Mayor of the Town of Grimsby and some former directors of GEI.
2. Councillor Dunstall missed or avoided attending a Town council meeting on February 5, 2020 called to confirm the Mayor's placing of the Town CAO on administrative leave.
3. Councillor Dunstall did not attend an informal pre-inauguration meeting with the Mayor elect and other councillors where committee assignments for the newly elected Council were determined. Councillor Dunstall subsequently refused the committee assignments given to him on December 3, 2018 when Council was inaugurated.
4. Councillor Dunstall "negligently" voted in favour of a pre-written resolution on February 10, 2020, to re-instate the CAO from administrative leave and in so doing he disregarded advice provided by Town legal counsel.
5. At the Heritage Committee, the position of Chair became open. Councillor Dunstall supported Councillor Bothwell at the Committee to fill the position. When up for ratification before full Council, Councillor Dunstall "unethically" put forward his own name to be Chair and voted for himself. With the support of

other councillors, he was elected Chair of the Heritage Committee. It is alleged that his reasons for wanting to be Chair were disruptive and unprofessional.

6. Councillor Dunstall supported a motion to remove Councillor Freake as a director of the Grimsby Power Board on January 21, 2020. It is also alleged that Councillor Freake was presented with a Code of Conduct complaint against him that was malicious and erroneous and that such complaint is on file with the Integrity Commissioner.
7. Councillor Freake alleges that Councillor Dunstall breached the Code of Conduct by bringing forth a resolution regarding the conduct of the public gallery at open Council meetings.

II. THE RESPONSE

Councillor Dunstall responded to Councillor Freake's allegations, as follows:

1. Councillor Dunstall does not deny supporting the Bio-Digester project in 2017 nor his association with the former Mayor or directors of GEI. He acknowledges that he is aware civil actions have been commenced but he is not involved.
2. Councillor Dunstall acknowledges that he missed a hastily called, unscheduled meeting of Council on February 5, 2020. He further acknowledges that the meeting was re-scheduled for February 10, 2020 because no quorum was available for the meeting on February 5.

Councillor Dunstall explains his absence on February 5, due to an alarm activated on business premises which he owns and manages. He has provided documentary evidence of this occurrence which he advises required his personal attendance, causing his absence from the meeting. I have attached the document to these reasons. Several other Councillors were also apparently unavailable to attend.

3. Councillor Dunstall acknowledges that he did not attend the informal meeting prior to the inaugural meeting of Council on December 3, 2018, and that he did not know the pre-inauguration meeting was the forum for determining Committee assignments which traditionally are done at the inaugural meeting of Council. Accordingly, he agrees that he did not accept the committee assignments given to him.
4. Councillor Dunstall agrees that he voted to re-instate the CAO at the meeting of February 10, 2020 and that he listened to, but did not accept legal advice that was provided. This motion to re-instate was carried by a 5-4 vote.
5. Councillor Dunstall agrees he did not put his name forward to be Chair of the Heritage Committee at the committee meeting. He agrees that he brought his name forward at Council, having reconsidered the matter in the interim. He

acknowledges that he supported his own candidacy for the position and that a majority of Council members supported him. He denies that he sought the position to be disruptive and unprofessional, stating that he was qualified for the position given his personal re-development of the firehall building in Grimsby.

6. Councillor Dunstall acknowledges that he supported a motion to remove Councillor Freake from the Grimsby Power Board.
7. Councillor Dunstall acknowledges that he brought a motion forward to deal with the conduct of public attendees at Town of Grimsby Council meetings.

III. ANALYSIS

I have had the opportunity to review the complaint submitted, the response and to have interviewed Councillors Freake and Dunstall.

Councillor Freake relies on the General Principles section of the Code of Conduct to support his allegations against Councillor Dunstall. This section states:

“All members of Council shall observe the highest standard of ethical conduct. They are expected to act honestly, independently, impartially, with discretion and without regard to self-interest and to avoid any situation liable to give rise to a conflict of interest. They are expected to be mindful of the importance of their duties and responsibilities, to take into account the public character of their function and to conduct themselves in a way that maintains and promotes the public’s trust in the Town of Grimsby. All members shall serve their constituents in a conscientious and diligent manner. No member shall use the influence of office for any purpose other than the exercise of his or her official duties.”

With respect to allegations 1, 4, and 6, each involves a complaint with the way Councillor Dunstall voted on contentious issues. The first complaint involves his support of the bio-digester project during a previous council, in 2017. His support of this project was part of the public record going into the election in 2018. Councillor Dunstall was re-elected at that time for a second term.

Councillor Dunstall is aware of a civil action that has been commenced in which he is not involved. He does acknowledge former associations with a previous mayor and board directors. However, no evidence was presented of any breach of trust or confidential information by Councillor Dunstall.

Allegation 4 states that on February 10, 2020 Councillor Dunstall "negligently" voted to re-instate the CAO who had been placed on administrative leave. There is no evidence supporting the allegation of negligence except perhaps not following legal advice that may have been provided. Councillors, however, are expected to act independently and it should be left to the voters to decide whether Councillor Dunstall voted appropriately.

Allegation 6 again involves a complaint about how Councillor Dunstall voted. While there may have been issues with respect to the form and content of the motion to remove Councillor Freake from the Hydro Board, this difference of opinion between Councillors Freake and Dunstall does not involve a situation of dishonesty, self-interest, conflict of interest etc., as set out in the Code section above, and I find no evidence of impropriety in how Councillor Dunstall cast his vote. He voted with the majority to remove Councillor Freake from the Hydro Board.

No formal Code of Conduct complaint has been filed with the office of the Integrity Commissioner against Councillor Freake as alleged in allegation 6. I do not dispute that such a complaint was delivered to Councillor Freake by someone, but such complaint was never advanced.

Accordingly, I would dismiss the Code of Conduct complaints enumerated as numbers 1, 4 and 6. It is not for the Integrity Commissioner to question how and why a Councillor casts a vote on motions deemed to have been brought properly before Council. The Code of Conduct section cited above is general in its nature and the events described by Councillor Freake, most of which are agreed to by Councillor Dunstall, do not support allegations of dishonesty, self-interest, conflict of interest etc. as described in the Code section.

Allegation 2 involves missing the meeting of February 5, 2020. I am dismissing this complaint, given that several others missed the meeting that was hastily called with 24 hours of notice. I also rely on Councillor Dunstall's explanation for his absence which is supported by the alarm report.

In terms of the substantive decision ultimately made at the meeting on February 10, 2020, there is again no evidence of dishonesty, self-interest or conflict of interest on Councillor Dunstall's part in contravention of the Code.

Allegation 5 involves Councillor Dunstall's election as Chair of the Heritage Committee. He became Chair by putting his name forward directly to Council rather than raising his name at committee, as is the usual course, prior to Council's subsequent ratification of the committee decision. This may be political maneuvering. However, I do not find that the Code section cited above was breached nor is there any evidence that he sought the position to be disruptive and unprofessional.

With respect to allegation 3, I accept Councillor Dunstall's explanation regarding the procedure to appoint members to committee at the inaugural meeting. I do not believe he breached the Code. There is no evidence of dishonesty, self-interest or conflict of interest, contrary to the Code as cited. I also note that this allegation dates back to 2018 and no explanation was provided for the delay in advancing it.

Finally, there is allegation 7, relative to bringing a motion before Council regarding the conduct of those attending in person to watch Council meetings. Councillor Dunstall was entitled to bring such a motion forward however unnecessary or inappropriate it may have seemed to Councillor Freake. He did not breach the Code of Conduct by so doing and it was up to Council to decide whether to vote for or against this motion.

IV. CONCLUSION

For the foregoing reasons, I would dismiss each of the complaints advanced by Councillor Freake. I do not believe these complaints were frivolous or vexatious but I do believe they are a reflection of Councillor Freake's frustration as a result of the significant divide between factions on this Council. It will be left for the citizens of Grimsby to judge how their elected representatives voted on the important issues that came before this council, divided as it is.

It is not for the Integrity Commissioner to intervene and comment on how elected members vote on various issues in the absence of dishonesty, self-interest or conflict of interest. This would be an affront to our democracy.. This is not the first time, nor will it be the last, where councillors vote in coalition on contentious issues. Nevertheless, this approach has caused friction and division between Grimsby Councillors and has led to a multiplicity of Code of Conduct complaints demonstrative of the frustration experienced by those Councillors who feel their voices are not being heard. However, it will ultimately be up to the citizens of the Town of Grimsby to decide on the record and fate of the current Council.

Dated this 20th day of July, 2020



Charles A. Harnick
Integrity Commissioner, Town of Grimsby