

October 25, 2022

Reference No. 2022-51

Via Email:
bruce.wark@bellaliant.net

Dear Mr. Wark:

Re: Town of Sackville Code of Conduct Complaint

On June 12, 2022, I received a formal complaint you, a resident of the Town, against Mayor Shawn Mesheau alleging breaches of Town's *By-Law 271, being the Code of Conduct for Members of Council* (the "Code"), New Brunswick's *Local Governance Act*, SNB 2017, c 18 (the "Act").

Mr. Wark, you alleged Mayor Mesheau failed to disclose a conflict of interest and recuse himself from discussion and decisions relating to a zoning by-law amendment which stood to benefit the developer Atlantic Industries Limited ("AIL"), a company in which his brother, Peter Mesheau, had an alleged financial interest as an officer.

Both the Town's by-laws and the Act require members of council to avoid any conflicts of interest in the exercise of their duties. Article 33 of the Code states as follows:

CONFLICT OF INTEREST AVOIDANCE 33. Members are committed to making decisions impartially and in the best interests of the Town and recognize the importance of fully observing the requirements of the Local Governance Act, with regard to the disclosure and avoidance of conflicts of interest.

By-Law No. 279 Respecting the Procedure and Organization of Council similarly requires members to observe part 8 of the Act respecting conflict of interest.

The Act prescribes several circumstances in which a member of council, including a mayor, may have a conflict of interest. This includes situations where a matter would financially benefit the member or their family associate (including a sibling), or where the member or

their family associate is a director or officer of a private corporation that would financially benefit from the matter:

89(1) Subject to subsection (2) and section 90, for the purposes of this Act a member or a senior officer has a conflict of interest if

(a) the member, senior officer or family associate

[...]

(ii) has an interest in any other matter in which the council, local board or committee is concerned that would be of financial benefit to the member, senior officer or family associate,

(b) the member, senior officer or family associate is a shareholder in or is a director or an officer of a private corporation that

[...]

(ii) has an interest in any other matter in which the council, local board or committee is concerned that would be of financial benefit to the corporation,

Section 90 of the Act carves out some exceptions to what will constitute a conflict of interest, including the following:

90 A member or a senior officer does not have a conflict of interest and does not violate section 96 by reason only that the member, senior officer, or family associate is, as the case may be,

[...]

(j) a person having any interest which is an interest in common with voters generally,

(k) a person having an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member or senior officer,

[...]

In the event a conflict of interest does arise while a member is in office, they are required to immediately file a statement disclosing the interest with the clerk (s. 91(2)). If a conflict arises during a meeting, a member is expected to immediately disclose the conflict and withdraw from the meeting during discussions and decision-making (s. 91(5)).

In July 2022, Resonance Inc. was retained by the Town as independent investigators to investigate the complaints in accordance with the Code.

Resonance found that, in preparation for its regular meeting on February 14, 2022, Council received an application for a text amendment to Zoning By-Law 244 from Andrew Fraser and Mike Wilson (CEO of AIL Group of Companies), who had interest in developing an industrial facility in an unserved area and sought to remove the requirement that all industrial development within the Town connect to municipal services. Following discussion of the application, Council moved to have the by-law amendment prepared and to host a public hearing on the matter for March 14, 2022. Following the hearing on March 14, 2022, Council gave the by-law amendment its first reading, and on April 11, 2022, the by-law was given a second and third reading and the amendment was passed. During the amendment application process, Mayor Mesheau attended all meetings respecting the proposed amendment and did not raise a conflict of interest.

Resonance determined Peter Mesheau does not now, nor has he ever, held a position within AIL that would see him directly benefit from its success (i.e., shareholder, director, or officer). As such, he did not derive any professional financial benefit from the by-law amendment. Moreover, Resonance found there was no evidence the amendment would otherwise financially benefit Peter Mesheau. Even if this were so, the Act provides a member will not be held responsible for a conflict of interest by reason of a family associate's interest unless the member knew or ought reasonably to have known of the interest (s. 89(2)). Resonance accepted Mayor Mesheau was generally unaware of the particulars of Peter Mesheau's position with AIL and was therefore not aware of any potential interest he may have had in the by-law amendment process. As such, the circumstances did not give rise to a conflict of interest and Mayor Mesheau was under no obligation to declare a conflict or remove himself from discussions or decisions relating to the amendment.

While it was unnecessary to do so, Resonance also went on to consider whether any of the exceptions under s. 90 of the Act would have applied in the circumstances. First, the by-law amendment now permits *any* prospective developer to pursue building on unserviced lots and therefore has a much broader benefit for the Town in the form of economic development. In this way, Mayor Mesheau's interest in the amendment can be seen as an "*interest in common with voters generally*" within the meaning of subsection 90(j) of the Act.

Second, while it is reasonable to assume AIL will derive a financial benefit as a result of the amendment, there is no evidence of a direct impact on Mayor Mesheau's brother. It is, therefore, also reasonable to conclude any familial interest in the amendment is "*so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member*" under subsection 90(k) of the Act.

Following receipt of the investigation report and its review by Council, Council moved to accept the report's findings and dismissed the complaints by a majority vote.

Sincerely,

A handwritten signature in black ink that reads "Andrew Black". The signature is written in a cursive, slightly slanted style.

Andrew Black
Deputy Mayor