

This information was released to the public on
April 23, 2024.

CLOSED COUNCIL MEETING
MONDAY, APRIL 22, 2024

Second Opinion of Ethics Commissioner Investigation Report – Complaint Mo323

That Council authorize public disclosure of the second opinion of the Ethics Commissioner Investigation Report for Complaint Mo323 to the Ethics Commissioner and to the public subject to Councillor Stutt's consent of the timing and method of disclosure for each disclosure.

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April 23, 2024.

APPENDIX "I"



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April 16, 2024

File No.: SURR 007

VIA EMAIL: Jennifer.Ficocelli@surrey.ca

City Clerk and Director Legislative Services
City of Surrey
13450 – 104 Avenue
Surrey, B.C. V3T 1V8

Attention: Jennifer Ficocelli

Dear Madame Clerk:

RE: Request for a Conflict Opinion on Councillor Rob Stutt

Further to the direction of Mayor and Council, the City has requested a second opinion on the report of the Ethics Commissioner with respect to his finding that Councillor Stutt was in a conflict of interest. I have reviewed such report and various legal authorities to draw an opinion. This opinion has considered the following documents in coming to a conclusion:

1. Letter re: Request for a Second Opinion – dated March 14, 2024;
2. Report of the City of Surrey Ethics Commissioner – dated June 7, 2023 including excerpts of the position taken by Councillor Stutt's legal counsel (the "**Report**"); and
3. *City of Surrey Council Code of Conduct Bylaw, 2020*, No. 20020 (the "**Bylaw**").

Executive Summary

This opinion agrees with the Report's conclusion that there was no pecuniary interest on Councillor Stutt voting on the motion of November 14th, 2022 determining whether to transition police services from the RCMP to the Surrey Police Service (the "**Motion**"). This opinion further concludes that there was no other personal interest that gave a rise to a conflict of interest. As such, I have concluded that Councillor Stutt was not in a conflict of interest when he voted on the Motion.

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Legal Analysis

Conclusions in Report

I concur with and affirm a number of the Report's conclusions as follows:

1. Councillor Stutt did not have a direct or indirect pecuniary interest;
2. Councillor Stutt did not have a conflict with Family Member #2 being a member of CUPE Local 402; and
3. Councillor Stutt acted in good faith with the intention of fulfilling a promise he made to voters during the election to maintain the services of the RCMP.

The Report recognized the difficulty in arriving at a conclusion that Councillor Stutt was in a conflict of interest. In particular, the Commissioner stated:

“There are relatively few cases in Canada concerning the circumstances in which a non-pecuniary personal interest in a matter will give rise to a conflict of interest...”

And further:

“I must admit that I have struggled with this question and do not come to the following decision easily, particularly given the significance of and controversy surrounding the policing issue in Surrey. Others may well disagree with me...”

Page 13 & 14 of the Report

Background

The Report provides a comprehensive factual background. The source of conflict in the Report relates to Councillor Stutt's Family Member #1 working for the Surrey detachment of the RCMP. The following facts are relevant:

1. Councillor Stutt was elected in 2022 on the Surrey Connect slate with a mandate to stop the transition from the RCMP to the Surrey Police Service (the “SPS”);
2. On November 14, 2022, City Council had an open meeting with options to either maintain the RCMP as the police of jurisdiction or continue the transition to the SPS;
3. Councillor Stutt voted in favour of the Motion to maintain the RCMP which was carried on a 5-4 majority vote of Council;
4. At the time of the November 14, 2022 meeting, Family Member #1 was a member of the Surrey detachment of the RCMP; and
5. Family Member #1 had sought a transfer to another RCMP unit in April 2022 but the Surrey detachment refused to release Family Member #1.

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Issue – Was there another, personal interest giving rise to the conflict of interest?

The above question was highlighted in the Report to determine whether Councillor Stutt was in conflict. I agree with the framing of this question. It should also be noted that the Report made no findings with respect to s. 32 of the Bylaw against Councillor Stutt. As such, the conflict relating to Family Member #1 is the only issue of review in this opinion.

The Report provides a comprehensive review of the case law authority on conflicts. As the Report notes, there is little case law specific to the facts in this case.

In *L'Abbé v. Blind River (Village)* (1904), 7 O.L.R. 230 (Div. Ct.), the common law outlines there may be a “substantial interest” that is not pecuniary where there is a likelihood of bias. Within this context, the Report appears to categorize Family Member #1’s position in the RCMP as a substantial interest for Councillor Stutt.

In *Watson v. Burnaby (City)* 1994 Carswell BC 772 the court outlined that in order to be disqualified from voting due to a conflict, there must be a “substantial interest”. There are a number of areas where the court suggests a “substantial interest”. What is not a substantial interest however are interests which are “remote or of little consequence”. Those interests are not disqualifying.

Both the Report and legal counsel to Councillor Stutt referred to Mr. Justice Rogers’ decision in *Fairbrass v. Hansma* (2009 BCSC 878) where the court held:

“I agree that conflict of interest legislation needs to be interpreted in a way that will give effect to its purpose and intent. That purpose and intent is to preserve the integrity of the political system in this Province, and to ensure that elected officials operate in the public's interest rather than in their own.” [emphasis added]

Given that there are few cases in Canada where a non-pecuniary personal interest will give rise to a conflict of interest, there are some takeaways in applying the facts in these circumstances:

1. If Family Member #1 had been transferred out of the Surrey detachment prior to the Motion, there would be no conflict. While Family Member #1 has since been transferred, the City and Councillor Stutt have been placed in this position due to the transfer delays by the RCMP;
2. There was no benefit accruing to Councillor Stutt or Family Member #1 as a result of Councillor Stutt’s vote on the Motion. Councillor Stutt’s vote had an inconsequential impact to Family Member #1’s employment which was similar to Family Member #2’s employment within the City; and
3. There was no substantial interest that gave rise to a personal interest to warrant a conflict. Rather, interests were “remote or of little consequence” at best.

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Councillor Stutt made a promise to his constituents to stop the transition to SPS. Any interests that may give rise to a potential conflict were not of a substantial interest. This in my view was the intent of the reasoning in *Fairbrass* where elected officials should operate in the “public’s interest rather than in their own.”

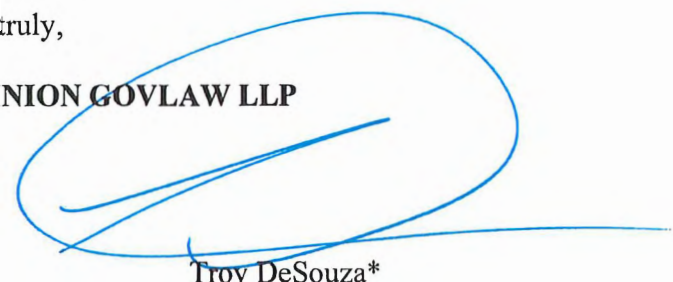
Conclusion

The Report provided considerable space for another conclusion to find that there was no conflict of interest. This opinion supports that other conclusion. As such, there was no conflict and Councillor Stutt acted within his public mandate and duty as an elected official of the City.

Yours truly,

DOMINION GOVLAW LLP

Per:



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