

Summary re Surrey Ethics Commissioner Investigation Report – Complaint M0323

On June 7, 2023 the Ethics Commissioner delivered to the City an Investigation Report in accordance with section 73 of the *Council Code of Conduct Bylaw, 2020, No. 20020* (the “Code of Conduct”). This is a summary of the Commissioner’s Report to Mayor and Council.

The Complaint

On February 27, 2023, the Office of the Ethics Commissioner received a complaint that Councillor Rob Stutt had breached the Code of Conduct on November 14, 2022 by attending, participating, and voting at a meeting of Council at which the transition to the Surrey Police Service as the Police of Jurisdiction for the City of Surrey was under consideration. The complaint alleged that Councillor Stutt breached certain sections of the Code of Conduct including section 21 in that he had a pecuniary conflict of interest in relation to the matter under consideration, as well as another interest constituting a conflict of interest, given that one of his children (Family Member #1) was a member of the RCMP Surrey Detachment, and another of his children (Family Member #2) was an employee of the City’s RCMP Support Services (Civilian) Department. The complaint also alleged that by participating and voting at the meeting, Councillor Stutt had attempted to obtain a benefit for a family member from the City, contrary to section 32 of the Code of Conduct.

Findings

The Ethics Commissioner concluded that Councillor Stutt did not have a direct or indirect pecuniary interest in the matter under consideration at the November 14, 2022 Council meeting. In contrast to the legislation in Ontario, in British Columbia the *Community Charter* does not deem the pecuniary interests of a member of a Council member’s immediate family to be also a pecuniary interest of the Council member. In British Columbia, the courts have held that a pecuniary interest in a matter cannot be inferred from the existence of a family relationship alone. There was no indication that Councillor Stutt’s own financial interests were affected by the matter under consideration so as to give rise to a pecuniary conflict of interest. The complainant also referred to a case of the B.C. Court of Appeal which held that a pecuniary interest arises where an elected official is a director of a society that receives a financial benefit from the municipality, based on the existence of a fiduciary duty owed to the society. However, there was no indication that Councillor Stutt owed a fiduciary duty to anyone who might have benefited financially from the police transition.

Other forms of a personal interest in a matter can give rise to a conflict of interest, where a reasonably well-informed person would conclude that the interest might influence the exercise of the Council member’s duties. For that reason, members of Council must not participate in Council decisions that affect the members of their immediate families in ways that go beyond the interests those family members have in common with other members of the community, in circumstances where a reasonably well-informed person would conclude that there is a potential for bias. The Ethics Commissioner went on to consider the particular facts in this case. Well before the November 14, 2022 Council meeting, the transition of City employees to employment with the Surrey Police Board had been addressed in a Letter of Understanding between the City and CUPE Local 402, and in a Successorship Agreement between the Surrey Police Board and CUPE Local 402. Had Council decided to continue with the transition, at some point in the transition Family Member #2 would have been offered an equivalent union position with the Surrey Police Service, on the same terms and conditions as under the person’s employment with the City, including pay,

benefits and seniority. Given those circumstances, the Ethics Commissioner concluded that the matter before Council on November 14, 2022 did not have the potential to affect the employment of Family Member #2 in a substantial enough way that would give rise to a concern about improper influence or bias. However, the Ethics Commissioner found that since Family Member #1 was a serving member of the Surrey RCMP Detachment at the time of the November 14, 2022 meeting, and given the fact that a decision to continue with the police transition would have resulted in the elimination of a substantial number of policing positions within the Surrey RCMP Detachment, there was a personal interest in the matter under consideration that a reasonably well-informed person would have concluded might influence a member of Council in Councillor Stutt's position. While Family Member #1 had been pursuing a transfer from the Surrey Detachment, the Ethics Commissioner concluded that was not sufficient to overcome the perception of a potential for bias, since a transfer had not been approved at the time of the November 14, 2022 meeting. On that basis, the Ethics Commissioner concluded that Councillor Stutt had contravened section 21 of the Code of Conduct by participating in the discussion and voting on the police transition question at the November 14, 2022 Council meeting. While Councillor Stutt had acted in good faith, and had participated in the meeting with the intention of fulfilling a promise he made to voters during the 2022 City Council election, the potential for bias arising from a personal interest in a matter is determined objectively, from the point of view of a reasonably well-informed person.

Given the conclusions concerning the conflict of interest issue, the Ethics Commissioner could not find that Councillor Stutt was attempting to obtain a benefit for Family Member #2. The allegation of a benefit to Family Member #1 was largely subsumed within the complaint of a conflict of interest, and the Ethics Commissioner did not consider it necessary to make any specific findings concerning section 32 of the Code of Conduct in relation to Family Member #1.

Recommendations

The Ethics Commissioner noted in conclusion that whether a conflict of interest arises in any particular case depends on all of the relevant circumstances. Since according to Councillor Stutt Family Member #1 is no longer a member of the Surrey RCMP Detachment, that potential source of a conflict of interest in relation to future decisions of Council concerning the police transition would appear to have been eliminated. The Ethics Commissioner advised that moving forward Councillor Stutt will need to be mindful of the potential for a conflict of interest in respect of Council decisions that could affect the employment of Family Member #2. Given the findings in the report, the Ethics Commissioner made no specific recommendations as to a potential outcome or further measures Council should take in relation to the complaint.