

Report of Investigative Findings

TO: STEPHENVILLE TOWN COUNCIL
FROM: [REDACTED], BARRISTER, SOLICITOR & NOTARY PUBLIC
DATE: MARCH 6, 2025
RE: COMPLAINTS AGAINST MAYOR TOM ROSE

Background Information:

I have been retained by the Town of Stephenville to investigate complaints that were made against current Mayor Tom Rose. There were a number of complaints in the form of emails and supporting documents/video and audio links submitted to the Town by [REDACTED] and [REDACTED] lawyer [REDACTED]. The emails set out a variety of allegations including access to information, homes built without a permit on Hillers Road and extensions of Orders issued by the Town respecting same, comments made by the Mayor concerning sale of an airport on the VOCM openline show, and conflicts of interest concerning motions for payment of expenditures for [REDACTED]. In reviewing the various complaints with [REDACTED], he agreed that the subjects of investigation be narrowed to the complaints pertaining to [REDACTED] expenditures, as the complaint respecting the VOCM openline comments had not been reported in a timely manner and the two other remaining issues could be better addressed through other legislative procedures available under the *Access to Information and a Protection of Privacy Act* and the *Urban and Rural Planning Act, 2000*. In conducting this investigation I interviewed the Complainant [REDACTED], the Respondent Mayor Tom Rose, and the employee (added for clarity) [REDACTED]. I also reviewed all commentary and documentation submitted and watched recordings of the Stephenville Town council meetings of July 20, 2023, November 23, 2023, and December 14, 2023.

The scope of my investigation was to determine whether Mayor Tom Rose acted in a conflict of interest in relation to his involvement in council decisions concerning an expense claim submitted by Mayor Rose to the Town of Stephenville.

The Complaint:

The complaint regarding the [REDACTED] expenditures alleges that Mayor Tom Rose submitted an expense statement in the amount of \$2990.00 to the Town of Stephenville for approval/reimbursement to him. The complaint says that the expense was for a Seafood dinner for 35 people and the claim was denied as it had not been previously budgeted or approved. The complaint also alleges that the Mayor attempted to mislead Town staff in his expense report by stating that he has an approved \$5000.00 business meeting budget. The complaint alleges that the Mayor spoke to the matter and voted on motions concerning it at council meetings and attempted to influence the Town to pay an invoice for his own financial benefit. The complaint also alleges that the Mayor lied and made misrepresentations concerning the expense, that the Mayor attempted to commit fraud against the

Town by claiming the hotel expenses were equivalent to the cost of the dinner, and that the Mayor [REDACTED] to submit the claim and provide kickback to the Mayor.

The Respondent's Position:

The Respondent submitted that the expenses were not his own personal expenses. They were incurred for the benefit of the Town. He stated that [REDACTED] had come to the Town to complete [REDACTED] of the Town. He advised that the Town has a \$35,000.00 business expense and travel budget that is approved annually and he provided examples of other dinners that had been paid for by the Town without any issue. One was a seafood buffet 6 months prior to [REDACTED] that all of council had attended and cost approximately \$2000.00. The other was a dinner he paid for when he visited [REDACTED] as part of the [REDACTED] initiative. That dinner was just two months prior in April 2023 in the amount of \$900.00 and it was approved for reimbursement without any issue. He advised that there were a couple of expenses that were problematic in this matter. One was hotel bills. He said when he travelled to [REDACTED], the Town of [REDACTED] paid for hotel accommodations for the Stephenville delegation and so it was expected that the Town of Stephenville would return the favour and pay the hotel accommodations of the delegation from [REDACTED] during their visit to Stephenville. The other expense was the closing dinner for the [REDACTED] event. He believes the issue arose due to some councilors not having received an invitation to the dinner. The organizer of the event decided not to invite those members of Council who did not vote in favour of the grant money for the event. He stated that the organizer of the event agreed to pay for the hotel costs and Mayor Rose agreed to pay ½ of the dinner because he was of the understanding that he had no authority to pay the hotel costs but that he could pay for the dinner. He advises that Council approved payment of the hotel bill to the event organizer in the amount of \$1600 which the event organizer then paid back to him so he is still \$1300.00 out of pocket for the dinner bill that he paid in the amount of \$2900.00.

FINDINGS:

The Town of Stephenville was involved in a [REDACTED] initiative with [REDACTED]. During July of 2023 a contingent from [REDACTED] travelled to Stephenville. The Broadcaster [REDACTED] was developing a television show called [REDACTED] featuring the Town of Stephenville. In addition to the [REDACTED] initiative, there was also a festival called [REDACTED] being hosted in the Town of Stephenville at that time and for which the Town of Stephenville had approved a small budget. Initially the flyers for [REDACTED] included advertisement of the dinner event but it was later removed from the flyer.

The expense statement submitted to the Town by Tom Rose for reimbursement dated July 13, 2023 includes a number of items from May and June 2023. Most of the items are indicated as being approved and paid on the same date (July 13, 2023) with the exception of a 35 person dinner in the amount of \$2990.00 that was not approved for payment. Submitted with the expense statement was a restaurant bill from [REDACTED] confirming that there had been a seafood dinner for 35 people that occurred on June 25, 2023 in the amount of \$2600.00 plus hst of \$390.00 totalling \$2990.00. There was also a transaction receipt showing the restaurant bill was paid in full, having been charged to a Visa card.

The expense statement submitted by Mayor Rose had a notation at the bottom stating *"Note: I have an approved 5000.00 business luncheon budget"*. In my interview with [REDACTED], [REDACTED] advised that there was no such \$5000.00 expense account and the expense for the dinner had not been pre-approved by council, as such staff could not approve that portion of the expense statement. The Town has a policy for travel reimbursement but no policy pertaining to other business expense reimbursements. As such, the expense was brought to council for approval. I have watched the videos of the public council meetings and note the following:

July 20, 2023 Meeting:

Item# 8 on the agenda was "[REDACTED]". The motion was *"Request approval to pay supplementary invoices for [REDACTED] Stephenville events in the amount of \$4550.53"*. Those invoices included the expenses for which the Mayor was seeking reimbursement. Mayor Tom Rose continued to act as chair throughout, spoke at length on the motion offering detailed explanations of the various expenses, and then voted on the motion. It was a tied vote so the motion was defeated. Mayor Rose then states *"so my cost I'm going to have to suck it up myself"*.

November 23, 2023 Meeting:

Item #9 - Rescinding the earlier motion- (#23-219) due to an invoice that had been submitted having been incorrectly assigned to the [REDACTED] event. (That invoice was the \$2990.00 invoice submitted for reimbursement by Mayor Tom Rose) There was debate as to whether or not there was a quorum due to mayor being in conflict. The mayor says *I'm not in conflict it's got nothing to do with me"*. He also stated *"I'm not in conflict. We are reassigning an expense that was in the wrong item. I'm not in a conflict"*. Council then discusses the matter of conflict but there is no motion or vote on the issue of whether or not he is in a conflict. Council brings the Motion: *"Let it be resolved that the decision of council on motion 23-219 concerning supplementary invoices for [REDACTED] events that was denied in the amount of \$4550.53 be rescinded as the invoice in the amount of \$2990.00 was incorrectly assigned to this event"*. Council, including Mayor Rose, votes and the motion is carried. Deputy mayor states *"It wasn't assigned to the [REDACTED] budget. It was a combined part of the [REDACTED] piece and the [REDACTED] of the two Cities. It definitely was assigned to the wrong number. It wasn't part of the [REDACTED] budget. It wasn't something that [REDACTED] even planned or included."* Mayor then states *"It was the closing of the [REDACTED] but this was reassigned, the vote is done, comments were made, we'll move on to the next item."*

December 14, 2023 meeting:

Agenda Item #4 motion *"Expense cheques November 2023 requesting approval to pay expense cheque listing in the amount of \$260,546.79"*. Mayor Rose declares himself to be in conflict on the expense cheque listing and moves from the table. Deputy Mayor Susan Fowlow chairs. There is an objection to item# 23 and# 49 on the cheque listing so the Deputy Mayor recalls the motion and puts forth a new motion :

"Request approval to pay the expense cheque listing in the amount of \$260,546.79 minus items 23 and 49 which we will remove for a new motion." Motion carried unanimously

Then a new motion *"Requesting approval to pay expense cheque listing items 23 & 49"*. During discussion it was clarified that the \$2990.00 portion was for the dinner [REDACTED] on June 25, 2023 and it wasn't part of the [REDACTED] budget. It was part of the [REDACTED] and the [REDACTED] of Stephenville and [REDACTED]. It had been assigned to the wrong account codes but was now corrected. Council Votes 3:3 so motion is defeated.

Mayor Rose then returns to the table and asks *"Was that for one or two of my expenses?"* Mayor tries to clarify and Deputy Mayor stops him reminding of conflict. Deputy Mayor says one of the items was for a conference that council had approved him to attend so it should have been two separate motions. Mayor Rose states *"You approve for me to go to a conference, I come back with that expense. Not approving it doesn't make sense"*.

Mayor leaves the table again. Deputy Mayor reintroduces motion to separate items #23 and 49. Motion: *"Requesting Approval to pay expense cheque listing item 23"*. There are questions regarding what it was. Mayor Rose speaks to it from his seat in the public gallery stating that it was reimbursement for his trip. He explains that he had gone to Deer Lake but his flight was cancelled. Mayor Rose states that the expense item #23 was travel and dinner for the trip as well as the MNL conference fee. Deputy Mayor reminds Mayor Rose again not to speak as he is in a conflict. There is further discussion and some confusion about differences between what the mayor just said versus information that was provided at the finance meeting. Motion to *"Defer item 23 for further discussion and clarification"*. Motion carried.

Another Motion was put forward *"Requesting approval to pay expense cheque listing item 49 as listed"*. This was in relation to the controversial seafood dinner expense. Motion is defeated. Mayor Rose returns to the table, starts to speak on the matter, is reminded again not to speak on it. He then states *"The policy of Council is when Council approves any councilor to go on a trip once that payment comes in and gets vetted through the Town Clerk and Finance that's the vetting procedure."*

APPLICABLE LEGISLATION:

The *Municipal Conduct Act SNL 2021 Ch. M-20.01* has been in effect since September 1, 2022 so was the applicable legislation throughout the time that the expense was incurred, the expense statement was submitted, and the three council meetings were held. Section 5 of the Municipal Conduct Act prescribes what a conflict of interest is for a municipal official and Section 2 provides clarification of the definitions of "private interests" and "excluded private interests":

Conflict of interest

5. {1} A municipal official has a conflict of interest where in the making, or involvement in the making, of a decision

(a) the municipal official's private interests are affected; or

(b) the municipal official is unable to act impartially on behalf of the municipality due to the municipal official's personal relationships.

(2) For the purposes of paragraph {1}{a}

(a) a decision may affect, directly or indirectly, a private interest, where the decision may result in a gain or loss to the municipal official's private interests or the private interests of a relative; and

(b) a decision does not affect, directly or indirectly, a private interest where the decision affects the municipal official or a relative of a municipal official as one of a broad class of the public.

(3) For the purposes of paragraph {1}{b} a municipal official is unable to act impartially where a reasonable person may conclude that the municipal official's personal relationship would result in favoritism or prejudice to the person to whom the municipal official has a personal relationship.

[Emphasis Added]

Definitions

2. In this Act

(r) "private interest" includes

(i) an asset, liability or financial interest,

(ii) a source of income,

{iii} a position of director or executive officer in a corporation, association or trade union, whether for profit or not for profit,

(iv) membership in a board, commission or agency of the Crown in right of Canada or a province,

(v) membership in or employment by a trade union where the trade union has entered into or is seeking to enter into a collective agreement with a council or an entity of a council, with respect to any matter related to the administration or negotiation of the collective agreement, and

(vi) a benefit or award.

but does not include an excluded private interest:

(m) "excluded private interest" means

(i) cash on hand or on deposit with a financial institution that is lawfully entitled to accept deposits,

(ii) a position of director or executive officer in a municipal entity or municipal corporation,

(iii) membership in a council committee,

(iv) purchase or ownership of a municipal debenture,

(v) fixed value securities issued by a government or municipality in Canada or an agency of a government or municipality in Canada, and

(vi) a benefit or award of a value less than an amount prescribed in the regulations:

[Emphasis Added]

The *Municipal Conduct Regulations NL Reg 59/22* came into force on the same date as the *Municipal Conduct Act* and as such were also in effect at the time of the council meetings applicable to this investigation. Section 4 of the Regulations clarifies that benefits and awards that are less than \$500.00 qualify as an excluded private interest.

Excluded private interest

4. For the purposes of subparagraph 2(m)(vi) of the Act, **a benefit or award less than \$500 is an excluded private interest.**

[Emphasis added]

Also relevant to the consideration of whether or not Mayor Rose acted in conflict of interest is section 6 of the *Municipal Conduct* which prescribes the considerations and procedures for matters brought before council where a conflict of interest may be involved:

Conflict of interest re: councillors

6. {1} Where a councillor **knows or ought reasonably to know** that the councillor has a conflict of interest in a matter before council, the councillor shall, where present,

(a) declare the conflict of interest before any consideration or discussion of the matter;

(b) disclose the general nature of the conflict of interest;

(c) **refrain from participating in any discussion relating to the matter:**

(d.J refrain from voting on any question, decision, recommendation or other action to be taken relating to the matter; and

(e) leave the room in which the meeting is held for the duration of the consideration of the matter.

(2) Notwithstanding paragraph (l)(e), **where the meeting referred to in subsection (1J is open to the public, the councillor may remain in the part of the room set aside for the general public.**

(3) **A councillor referred to in subsection (1J shall not attempt, in any way, before, during or after the meeting, to influence**

(a) the vote of other councillors; or

(b.J any policy advice provided to council regarding the matter.

(4) A declaration of conflict of interest under subsection (1) and the general nature of the conflict of interest shall be recorded in the minutes of council or a committee of council, where the declaration was made at a committee meeting.

(S.J Where a councillor is uncertain as to whether or not the councillor has a conflict of interest, the councillor shall disclose the nature of the possible conflict of interest to the council and the council may decide by a majority vote.

(6) A councillor whose possible conflict of interest is being voted on is not entitled to vote.

(7) Where the vote referred to in subsection (5) is a tied vote, the councillor shall be considered to have a conflict of interest.

(B.J Where the council determines by a majority vote under subsection (S.J that a councillor does not have a conflict of interest and a complaint is subsequently filed under this Act and it is determined that a councillor did have a conflict of interest, the council may invalidate the decision of council in which the councillor acted in a conflict of interest but shall not impose any other penalties under this Act against the councillor.

LEGAL ANALYSIS:

As stated above, a municipal councilor has a conflict of interest pursuant to section S(l)(a) and 5(2) of the *Municipal Conduct Act* where they are involved in the making of a decision in which their private interests are affected. Pursuant to sections 2(r)(i) and 2(r)(vi) of the *Municipal Conduct Act*, a private interest includes an asset, liability, financial interest, benefit, or award except that a benefit or award that is less than \$500.00 is an excluded private interest.

I accept the Mayor's evidence that the dinner was an expenditure that he incurred for the benefit of the Town as part of the Town's festivities at that time and that he had a reasonable expectation that he should be reimbursed by the Town for that expense. However, once he submitted the expense

statement to the Town and was denied reimbursement, the matter became one in which he had a private interest, as a negative decision by council would result in a financial loss to him. As such, the question of whether or not Mayor Rose would be reimbursed for the expense of the dinner in the amount of \$2990.00 is a question in which he was in a conflict of interest as it affected his private interest to avoid a financial loss. Even if the dinner were instead considered as an award or benefit it would not qualify as an excluded private interest as the amount exceeded the \$500.00 threshold prescribed in section 4 of the *Municipal Conduct Regulations*.

As such, when any motions arose during council meetings that involved a decision respecting reimbursement of the \$2990.00 dinner expense, Mayor Rose ought to have complied with section 6(1) of the *Municipal Conduct Act* by declaring a conflict of interest and following the procedure prescribed therein to leave the council table and refrain from participating in discussion or voting on the matter. Alternatively, he could have indicated to council that he was uncertain as to whether or not he was in a conflict of interest so that council could have voted on the issue of conflict of interest pursuant to section 6(5) of the *Municipal Conduct Act*.

The procedure set forth in Section 6 is triggered "*where a councillor knows or ought to know that the councillor has a conflict of interest in a matter before council*". It is clear from the Mayor's comment at the end of the motion at the July 20, 2023 meeting wherein he stated "*my cost I'm going to have to suck it up myself*", that he knew that his private interest was affected. In light of this and the clear criteria for conflict of interest set forth in section 5 of the *Municipal Conduct Act* and section 2 definitions of private interest and excluded private interest, I find that Mayor Tom Rose knew or ought to have known that he was in a conflict of interest in relation to decisions concerning reimbursement to him of the \$2990.00 dinner expenses and indeed any expenses that exceeded \$500.00.

In the July 20, 2023 meeting Mayor Rose did not declare a conflict of interest nor did he indicate that he was uncertain and ask council to vote on the issue of conflict. He proceeded to act as chair throughout, speaking and voting on the motion concerning reimbursement to him of the dinner expenses. As such, I find that Mayor Rose acted in conflict of interest at the July 20, 2023 meeting.

In the November 23, 2023 meeting, council brought forth a motion to rescind the previous motion that involved reimbursement to the Mayor from the July 20, 2023 meeting that had been defeated. The purpose stated was so that the expense could then be reassigned to the correct event/number. There was some concern expressed from councilors that the Mayor was in a conflict of interest. Mayor Rose however, insisted that he was not in a conflict of interest stating "*I'm not in conflict. We are reassigning an expense that was in the wrong item. I'm not in a conflict*". I disagree. The rescinding of the previous motion and reassignment of the expense opened the door for council to bring another motion to approve reimbursement to the Mayor, giving him the benefit of having another opportunity to avoid financial loss. That, coupled with the concerns of conflict of interest expressed by the other Councilors is indicative that the Mayor ought to have known that he was in a conflict of interest and at a minimum ought to have requested a vote from Council pursuant to section 6(5) of the *Municipal Conduct Act*. The Mayor instead proceeded to stay at the council table, speaking to the matter and voting on it. In so doing, I find that Mayor Rose acted in a conflict of interest at the November 23, 2023 meeting.

In the December 14, 2023 meeting Council brought a motion for approval of \$260,546.79 in expense cheques. Included in that amount were some expenditures of Mayor Tom Rose. The Mayor declared himself to be in conflict and left the council table. There was objection to two item numbers that were requests for reimbursement from the Mayor (one of which was the \$2990.00 dinner reimbursement). The rest of the expense cheques were approved. There was some confusion and the two contested item numbers were ultimately voted on as separate motions, one of which was deferred and the other was defeated. Unfortunately, despite declaring a conflict and leaving the council table, Mayor Rose interjected several times. He spoke to the matters for which he had declared a conflict, attempting to influence the votes of the other councillors and providing policy advice contrary to section 6(1) and 6(3) of the *Municipal Conduct Act*. For example he stated "You approve for me to go to a conference, I come back with that expense. Not approving it doesn't make sense" and "The policy of Council is when Council approves any councilor to go on a trip once that payment comes in and gets vetted through the Town Clerk and Finance that's the vetting procedure." As such, I find that Mayor Rose acted in conflict of interest at the December 14, 2023 meeting.

CONCLUSION/RECOMMENDATION

As explained in more detail above, it is my opinion that Mayor Tom Rose acted in conflict of interest at three council meetings: July 20, 2023, November 23, 2023, and December 2023. As such, it is now incumbent on Town Council to table this report at a public meeting and make a decision pursuant to section 8(10) of the *Municipal Conduct Act* to either dismiss the complaint or determine that Mayor Tom Rose acted in a conflict of interest:

8(10) Following review of the report referred to in subsection {9} the council may, by resolution,
(a) dismiss the complaint; or
(b) make a determination that the councillor or former councillor acted in a conflict of interest.

8 (11) A report referred to in subsection (9) shall be tabled at a public meeting.

In the event that Town Council makes a determination that Mayor Tom Rose acted in a conflict of interest, Town Council should then consider whether or not Mayor Rose acted through inadvertence or genuine error in judgment pursuant to section 9(2) of the *Municipal Conduct Act* in order to determine the appropriate penalty will be under that section or whether his seat on council will be vacated in accordance with section 9(1):

9. (1) Where a council determines that a councillor has acted in a conflict of interest, the council
(a) shall, by resolution, require the councillor to vacate the councillor's seat on council and declare that the councillor is not eligible to be nominated as a candidate until the nomination period for the next general election; and
(b) may, by resolution, invalidate the decision of the council in which the councillor acted in a conflict of interest.

(2) Notwithstanding subsection (1), where the council determines that a councillor acted in a conflict of interest through inadvertence or a genuine error in judgment, the council may, by resolution, allow the councillor to keep the councillor's seat on council and may do one or more of the following:

(a) reprimand the councillor;

(b) invalidate the decision of the council in which the councillor acted in a conflict of interest;

(c) require the councillor to attend training as determined by the council;

(d) suspend the councillor from council committees or other additional activities or duties for a period of no more than 3 months; and

(e) suspend the councillor from council, without remuneration, for a period of no more than 3 months.

[REDACTED]

[REDACTED]