



SUMMARY OF INVESTIGATION

TOWN OF CHOICELAND

COMPLAINT

We received a complaint that the Town of Choiceland did not follow a fair and transparent purchasing process to award two contracts, and that the town administrator was in a conflict of interest when she participated in the purchasing process that resulted in her husband's company being awarded the contract. We also investigated whether the administrator had a conflict of interest when she participated in the review of a complaint about her and her husband's conduct.

FACTS

CONTRACT #1: SIDEWALK REPLACEMENT PROJECT

The council wanted to apply to the provincial Gas Tax Fund to replace the sidewalk on one of its streets. It needed an estimate as part of the application, so asked the administrator to get one from her husband's company. She did what she was asked, and the application was approved. The administrator then contacted three contractors to ask for bids on the project, all of whom declined to bid. She did not keep records of these contacts. At a March 22, 2016 special council meeting, the council asked the administrator to request a quote from another company, and to see if her husband was willing to do the work based on his original estimate. He was. Since his quote was lower than the one from the other company, the council awarded him the contract. The project was over \$5,000.

CONTRACT #2: MUNICIPAL INSURANCE

For many years, the Town had purchased municipal insurance with the same insurer through a local broker. The Town told us it had issues with the insurer in the past, and that the premiums had increased each year, so it instructed the administrator to get quotes from other insurers. The administrator contacted two other brokers, one who did not provide municipal insurance, and another whose quote was lower than the Town was currently paying. She did not keep a written record of her contact with the insurer that did not provide municipal insurance. She did not contact the local broker to obtain a quote, because she thought it was reasonable to believe the premiums would increase again.

At its April 12, 2016 meeting, the council passed a resolution to contract with the new insurer. A delegation attended the May 20, 2016 council meeting to contest that decision. The council provided its reasons why it was changing insurers, including the cost. The local insurance broker

then offered a quote that was less than what it had charged in the previous 9 years. However, the council advised that the decision on insurance had already been made. The insurance yearly premiums were over \$5,000.

THE HANDLING OF THE COMPLAINT ABOUT THE ADMINISTRATOR'S CONDUCT AND HER HUSBAND'S CONDUCT

On June 14, 2016, a ratepayer filed a complaint with the Town, alleging that he had received threats from the administrator's husband regarding the administrator and attending the Town Office to conduct normal business, and alleging a breach of confidentiality. The ratepayer attended the regular council meeting that day and the issues raised included questions about whether the Town was following its purchasing policy.

The administrator wrote to the ratepayer on June 15, 2016, advising that her husband would attend the next council meeting to present his side of the story. According to the minutes, the administrator attended the entire July 12, 2016 meeting, including when the complaint was discussed. Thereafter, the administrator wrote to the ratepayer, advising that the council listened to her husband's account of the discussion, and felt that there was no threat of harm, nor threat of harm regarding the complainant's ability to conduct normal town business, and that there was no breach of confidentiality, and that no further investigation was required.

ISSUES AND FINDINGS

DID THE TOWN AWARD THE TWO CONTRACTS IN ACCORDANCE WITH ITS PURCHASING POLICY? DID IT DO SO FAIRLY AND REASONABLY?

The Town's *Purchasing of Goods and Services and Contract Renewals Policy* that was in force at the time was confusing and infrequently followed.

When the Town needed products or services, the administrator told us she tried to get three quotes, usually by telephone. She would provide the purchase details by telephone, or by email, and bidders would usually fax or email their quotes. The administrator said the Town tries to use local businesses if possible. She said she did not normally use a public advertising process because it was time-consuming and impractical. She said local businesses would often not see the advertisements in the local weekly newspapers.

The policy required the Town to seek quotes from local suppliers for purchases over \$100, to get written quotes if the contract was over \$1000, and to publicly advertise if the contract was over \$5,000. If a "Request for Quotation" process was used, then, in most cases, the Town had to award the contract to the bidder with the lowest tendered price.

The policy also stated that no employee shall place himself/herself in a position of obligation to a supplier.

We found that the Town did not follow its policy and did not use fair and transparent processes for awarding these contracts. In both cases, the amount of the purchase required the broadest tendering process described in the policy. While the council awarded the contracts at regular council meetings which were open to the public, the administrator did not get quotes in the manner required by the policy. No public advertising was done and records were not kept of all

the contacts made with potential bidders. In the case of the purchase of insurance, this resulted in a late (and low) bid from the broker who may not have been aware of the process until it was complete. The Town then had no way of knowing what bids would have come in had the process followed policy.

WAS THE ADMINISTRATOR IN A CONFLICT OF INTEREST, IN THAT SHE WAS INVOLVED IN A PROCESS THAT AWARDED A CONTRACT TO HER HUSBAND'S COMPANY? AND, IF SO, DID SHE TAKE THE NECESSARY STEPS TO PROPERLY ADDRESS THE CONFLICT?

Any financial gain by the administrator's husband would also be a financial gain for the administrator. A reasonable person would believe that she had a personal and private interest in the Town awarding the contract to her husband. Even if her private interest did not affect how she managed the purchasing process and had no effect on the outcome, reasonably informed ratepayers could be concerned that her ability to carry out her public duties in an unbiased way could be affected.

The Town's *Employee Code of Conduct* states that all employees must avoid situations in which their personal interest conflicts, or appears to conflict, with the interests of the municipality. Employees are also required to disclose their conflicts or potential conflicts in writing to the council, and thereafter the council is to determine the appropriate course of action to address the conflict. The administrator did not disclose her conflict.

The administrator acted on the council's instructions when she contacted her husband for the estimate to submit with the Gas Tax Fund application, and when she contacted him later to see if he would do the project for that estimate, but this did not absolve her from properly addressing her conflict of interest. There was no discussion about whether it was appropriate for her to be involved in this process given that it was her husband's company.

The requirements to avoid conflicts of interest are in place to ensure that all decisions are made, and are seen to be made, in the best interests of the community and not for personal gain.

The administrator should have brought to the council's attention her conflict of interest in soliciting, receiving or recommending any bids on municipal work from her husband's company. To ensure fairness, integrity and objectivity, and to maintain the trust of ratepayers, the administrator should have withdrawn herself from the bidding process and let the council find a reasonable solution for getting bids and awarding this job.

WAS THE ADMINISTRATOR IN A CONFLICT OF INTEREST WHEN SHE RESPONDED ON BEHALF OF THE TOWN TO THE COMPLAINT ABOUT HER AND HER HUSBAND'S CONDUCT?

The administrator should not have taken part in reviewing the complaint about her and her husband's conduct, including not participating at the council meeting when the matter was discussed and not responding on behalf of the council to the complainant.

She should have taken the steps required of her under the *Employee Code of Conduct*, and advised the council of her conflict, so the matter could be addressed without her involvement.

CONCLUSIONS AND RECOMMENDATIONS

If we determine that a process followed, or a decision made, by a municipality was unfair, the Ombudsman's role is to make recommendations to help municipalities make their administrative processes and decisions fairly.

In this case, the Town's purchasing policy sets out processes for buying goods and services. The complexity of the processes depends on the value of the goods and services. In the two purchases we looked at, the Town did not follow its processes and did not solicit the bids fairly or transparently. The results were flawed processes that were unfair to potential bidders and made it difficult for the Town to be sure of getting the best possible value.

In the case of the sidewalk replacement services, the administrator put herself in a clear conflict of interest by participating in the purchasing process, and in the review of the complaint about her and her husband. She could not be seen to be objective and it did not occur to either her or the council that this was a problem. Instead, we were told that the administrator is the only employee in the Town Office and that the council trusts her. This, however, does not negate her responsibility to declare her conflict of interest, or the council's responsibility to ensure that its policies are followed, and that all the Town's actions are done and seen to be done, in the best interests of the community.

To avoid conflict of interest issues, all council members and municipal employees should ask themselves the following questions. If they answer 'yes' to any of them, there may be a potential conflict of interest that needs to be addressed:

- Am I, or is someone close to me (i.e. a family member, a friend or business partner) likely to be directly affected (negatively or positively) by the decision, issue or situation that is being discussed or decided?
- Do I, or does someone close to me, have an interest in, or hold a position in, a company or organization that is likely to be affected?
- Am I, or is someone close to me, likely to have a financial gain or loss as a result of the decision, issue or situation that is being discussed or decided?
- Have I, or has someone close to me, received a gift (money or otherwise) from a person, company, or organization that is likely to be directly affected?
- Am I uncertain of my ability to act impartially and in the public interest?
- Could a person with knowledge of the situation reasonably perceive that my ability to carry out my public duties impartially could be influenced as a result of me or someone close to me, having a private interest in the decision, issue or situation that is being discussed or decided?

If council members or municipal employees are uncertain whether they have a conflict of interest or what to do about it, they should get advice from a trusted colleague or advisor.

We recommend that:

- 1. The Town of Choiceland review its purchasing policy to ensure it includes clear processes for purchasing goods or services, including describing when it is necessary to publicly advertise, how many quotes, proposals or tenders are required, clear processes for receiving, accepting and rejecting quotes, proposals and tenders, and ensuring every step in the purchasing process is followed and properly documented.**
- 2. The Town of Choiceland's council members and employees take steps to ensure they understand the Employee Code of Conduct and that they identify and properly address and document the conflicts of interest of employees.**

The Town of Choiceland accepted our recommendations. It reviewed and adopted a revised Purchasing Policy effective January 9, 2018. Council has also taken steps to ensure all council members and employees understand employees' obligations under the Employee Code of Conduct so that potential conflicts of interest can be dealt with and allegations are addressed in an objective way.

The file is now closed.