

# Manitoba Ombudsman

## Ombudsman Act Investigation Report

MO-02594: Rural Municipality of Harrison Park



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# MANITOBA OMBUDSMAN

**REPORT UNDER THE OMBUDSMAN ACT**

**FILE # MO-02594**

**MUNICIPALITY OF HARRISON PARK–**

**CONFLICT OF INTEREST**

## **THE COMPLAINT**

The Office of the Manitoba Ombudsman received three complaints that a council member of the Rural Municipality of Harrison Park violated The Municipal Council Conflict of Interest (MCCOI) Act by participating in council discussions and decisions on short-term rental conditional use permit applications.

## **SUMMARY OF INVESTIGATIVE FINDINGS**

Our investigation did not find evidence of maladministration. We did not find evidence to confirm a direct or indirect pecuniary conflict of interest existed. The council member subject of this complaint took reasonable steps and made good faith efforts to assess compliance with The MCCOI Act.

## **MANITOBA OMBUDSMAN ROLE**

Under the Ombudsman Act, Manitoba Ombudsman investigates complaints about administrative actions and decisions made by government departments and their employees.

Manitoba Ombudsman investigations obtain, review, and analyze relevant information to identify areas requiring administrative improvement. Our investigations take a broad view that considers the fairness and reasonableness of government actions and administrative decisions.

An administrative matter can include any practice, procedure, action, or decision that government makes as it implements or administers its laws and policies. We assess whether administrative processes and procedures are followed according to applicable legislation, regulation and/or existing policies.

To help government bodies achieve better administration, where appropriate, our reports may include recommendations for administrative improvement. Improved administrative practices can enhance the relationship between government and the public and reduce administrative complaints.

## **INVESTIGATION PROCESS**

We opened an investigation in June 2023 into the rural municipality's (RM's) response to the conflict of interest concerns reported by the complainants. The purpose of this report is to share the findings of the investigation.

### **Evidence Reviewed**

Our investigation included a review of:

- information and documentation from the complainants, the RM, and the elected official subject of the complaints,
- a video recording of a council meeting,
- public meeting minutes and recorded votes on short-term rental conditional use permit applications,
- relevant provisions of the Municipal Council Conflict of Interest Act, the Municipal Act, the RM's Code of Conduct By-Law, the RM's Procedures By-Law, By-Law 119 – Short-Term Rentals, and
- information about council member training on conflict of interest.

### **Background**

The council member subject of this complaint owns and operates a short-term rental in the municipality. They were elected to council for the first time in October 2022. One of their political priorities during the election campaign was support for short-term rentals.

Prior to the 2022 election, the then-council adopted a short-term rental regulation strategy and passed By-Law 119, known as the Short-Term Rental By-Law. By-Law 119 was introduced, debated, and adopted in public meetings in accordance with applicable legal and administrative requirements. Prior to adopting the by-law, the municipality undertook a thorough process to research and examine existing zoning by-laws and seek public input.

People wishing to operate a short-term rental must first apply to the RM for a conditional use permit under The Planning Act. Conditional use permits provide a process to modify zoning

requirements as they relate to an individual site. Following a conditional use permit approval, a short-term rental license may be issued under By-Law 119.

Between November 2022 and April 2023, council decided on approximately twenty-three conditional use permit applications, from applicants wishing to operate short-term rentals. The council member subject of this complaint participated in the conditional use permit application public hearings and decisions. They did not participate in decisions about the short-term rental regulatory strategy, which occurred prior to their election. They also did not vote on the approval of their own short-term rental, which is in keeping with subsection 17(3) of the MCCOI Act.

The complainants told us that because the council member in question owned and operated a short-term rental in the municipality, they should not participate in decisions on any short-term rental, conditional use permit applications. The complainants believed the council member's participation in these decisions violated The MCCOI Act, specifically subsection 4(1)(b)(i):

**Indirect pecuniary interest**

**4(1)** For purposes of this Act, but subject to this section, a person shall be presumed to have an indirect pecuniary interest in a matter where...(b) the person is (i) a partner of or employed by, a person, corporation, partnership, or organization who or which, or (in the case of a corporation) a subsidiary of which, has a direct pecuniary interest in the matter.

The MCCOI defines a "direct pecuniary interest" as follows:

**"direct pecuniary interest"** includes a fee, commission or other compensation paid or payable to any person for representing the interests of another person or a corporation, partnership, or organization in a matter;

In early December 2022, a delegation appeared before council raising the conflict of interest concerns specified in this complaint. At the following council meeting, on December 14, 2022, the Reeve addressed the conflict of interest concerns raised by the delegation. He stated that all council members were encouraged to seek their own legal counsel and advice and to review their compliance with The MCCOI Act.

The council member subject to this complaint responded to the allegations made against them publicly. He shared he consulted multiple lawyers, conducted research, and reviewed The MCCOI Act. He concluded he was compliant and therefore able to decide on short-term rental conditional use permit applications in an impartial manner.

The council member in question described to our office how they applied the established criteria in The Planning Act to each conditional use permit application, voted in favour of applications that met the established criteria, and voted against those that did not.

One complainant raised their concerns at the material time with municipal staff. We reviewed evidence that the Chief Administrative Officer (CAO) responded to citizen inquiries about this matter. We also confirmed that since these concerns were raised, municipal officials took steps to talk more in depth about the topic of conflict of interest. The CAO shared he now takes proactive steps to engage council about meeting agenda items in advance, so council members can assess potential conflict of interest issues. We reviewed specific examples of the application of this new practice and found evidence the CAO's approach is thorough and consistent with his responsibilities under The Municipal Act.

## **FINDINGS**

### **Was the municipality's response to the conflict of interest allegations reasonable?**

We found the council member subject of this complaint took reasonable steps and made good faith efforts to assess their compliance with The MCCOI Act. Their view was that they did not stand to gain financially by voting on the conditional use permit applications of other individuals. To our knowledge, an application to court under the MCCOI Act has not been made. However, based on the evidence presented, we agree that the council member's personal ownership of a short-term rental property did not create an indirect or direct pecuniary interest (as those terms are defined in The MCCOI Act) in the applications in question. There was no evidence that the council member stood to gain financially by voting on these applications.

The RM's Council Code of Conduct provides a broader set of rules and standards that guide council member conduct. Council members can file complaints to the CAO regarding Council Code of Conduct violations. To our knowledge, no complaint has been made under the RM's Council Code of Conduct By-Law.

The complainants took the right steps by reporting their concerns at public meetings, and in writing, to officials. We found the RM's response to the complainants' concerns about conflict of interest reasonable. Municipal officials, both elected and administrative, responded to these concerns publicly and privately in writing to the primary complainant. The CAO took reasonable and adequate steps to engage council and provide council members advice and guidance on the topic of conflict of interest. The council member heeded this advice by seeking legal advice, conducting research, and reviewing The MCCOI Act.

### **Analysis**

We considered the impact of the council member subject of this complaint's involvement on the short-term rental, conditional use permit application decisions. Our review of public meeting minutes and recorded votes on these applications found that, overall, the council

member appears to have demonstrated an open mind to the established criteria. While the council member voted in favour of most applications, in cases where there was significantly more public opposition than support for an application, they did not vote in favour. In our view, this is relevant because it demonstrates that the council member was not predisposed to voting one way or the other and that he was open to persuasion based on the merits of the application. We do not find that the council member's ownership of a short-term rental unit interfered with his duties as a public official.

Nor do we find that the council member had a personal interest in the conditional use permit application decisions beyond that of other council members who did not own short term rental units. Council members are not neutral. They are elected based on their electoral priorities and apply a political lens to their work. Prior to the council member's election in 2022, the RM of Harrison Park council decided to support short-term rentals. Despite this, they can, and must, be impartial when making administrative decisions. In our view, the council member subject of this complaint did demonstrate an ability to be impartial by applying the established criteria in the decision-making process.

Another important consideration is that the RM complied with the public hearing requirement in the conditional use permit process. Feedback from the public is a consideration for council. It appears council made good faith efforts to deny site-specific permit applications in response to public opposition, in an effort to balance the views of residents and support the tourism industry in the area.

## **CONCLUSIONS**

Our investigation did not find evidence of maladministration. We found the RM's actions and decisions to be reasonable and consistent with applicable policies and laws. We encourage the RM to continue supporting open and transparent decision-making processes on short-term rental accommodations, and to continue being responsive with residents. Doing so fosters trust and plays a vital role in promoting good governance at the local level.

This report concludes our review of this matter.

## **MANITOBA OMBUDSMAN<sup>1</sup>**

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<sup>1</sup> The authority to issue this report has been delegated to Manitoba Ombudsman's Deputy Ombudsman under subsection 14(1.1) of The Ombudsman Act due to a potential perceived conflict of interest.