

## INVESTIGATION REPORT TO TOWN OF BANFF COUNCIL

JUNE 3, 2020

INVESTIGATOR: BARBARA MCNEIL

**FOR PUBLIC RELEASE**

### INTRODUCTION

The Town of Banff Council (the Council) requested an investigation into general allegations regarding the Mayor of Banff, Ms. Karen Sorensen. This report is organized to show the investigation request and the mandate. It outlines the process I followed and identifies the parties, witnesses interviewed, and the timelines. Relevant legislation and policies are referenced. The issues and allegations for which the complainants seek findings are listed. The evidence and my findings for each issue and allegation are provided.

### SUMMARY OF FINDINGS

1. Four council meetings and one committee meeting were referenced by the complainants. I find that at all these meetings Ms. Sorensen had either no pecuniary interest, or she properly declared an interest in accordance with MGA Sections 172 (1) (a), (b), (c), and (d).
2. I find that Ms. Sorensen was in proper accordance with Town of Banff policy and bylaws and also with MGA 172 (1) with regard to disclosing her spouse's business relationship with the Town of Banff.
3. I confirm the findings of the December 18, 2019 RCMP investigation report that the Town of Banff Employee Insurance Benefits contract was awarded properly, and that proper process for the contract renewal was followed. The RCMP investigation report provides clear explanation on the contract and renewal process.

### THE INVESTIGATION REQUEST

The Council received a letter, dated January 24, 2020, from Mr. Jamie MacVicar in which he requested that the Council conduct an internal investigation. The letter contained general allegations that the Mayor of Banff, Ms. Sorensen, had not disclosed a pecuniary interest in Council meetings where operational budgets, which included budgets for employee benefits, were voted on. The complainant alleged that Ms. Sorensen should have declared an interest because her spouse, Mr. Carsten Sorensen, provides broker services to the Town of Banff and has advised the Town regarding insurance for employee group benefits.

## **INVESTIGATION MANDATE**

On April 2, 2020 the Council provided its mandate letter and background information to me. They asked that I determine if there were grounds to conduct an investigation, and, if the complaint was not vexatious or frivolous, to conduct an investigation.

A related investigation, based on a complaint from Mr. MacVicar and others, had concluded on December 18, 2019. Staff Sergeant Michael Buxton-Carr of the Banff RCMP detachment conducted that investigation in the fall of 2019. The complainants had alleged that Ms. Sorensen and senior administration from the Town of Banff had, through their handling of the Town of Banff Employee Benefits Plan, committed fraud and breach of the public trust. The RCMP investigator found, and expressed in clear language, that the conduct of the Mayor of Banff and senior administration was consistent with Town of Banff policy and was without inappropriate influence by senior officials. No loss, risk of loss, or elements of fraud were found. The Employee Benefit Plan services was found to meet the needs of town employees without risk to taxpayers. The investigator found that the business relationship between Carsten Sorensen and the Town of Banff is based on sound business practices.

Mr. MacVicar's subsequent request to Council for an investigation raised additional questions regarding disclosure of pecuniary interest by an elected municipal Councillor. Pecuniary interest is legislated by the Municipal Government Act (the MGA). Although the RCMP investigation report stated that there was no evidence that Ms. Sorensen did not abide by the Municipal Government Act, the investigator pointed out that this Act is not enforced by peace officers. For the reason of public trust, I determined that an investigation initiated by Council should take place. In an investigation with municipal jurisdiction, pecuniary interest provisions in the MGA could be applied to the general allegations raised by the complainant.

## **INVESTIGATION PROCESS**

Municipal Code of Conduct Bylaws in Alberta describe the conduct expected from Councillors in fulfilling their duties. The bylaws also provide the process to deal with complaints relating to Councillor conduct. The Town of Banff does not yet have a Councillor Code of Conduct Bylaw. The Town of Banff Council approved the use of the Town of Canmore's Code of Conduct Bylaw investigation process for this investigation.

### **i) Parties to the investigation**

- Mr. Jamie MacVicar: the original complainant on January 24, 2020
- Mr. Barry Kelly: Mr. Kelly requested on February 18, 2020 to be included on communication regarding the original complaint. On April 23, 2020 Mr. Kelly verified with me that he was a co-complainant.
- Ms. Karen Sorensen: Mayor of the Town of Banff

## ii) Timeline

- April 14<sup>th</sup>: Council received the report determining that the investigation should proceed
- April 20<sup>th</sup>: I began the investigation process and notified Mr. Kelly and Mr. MacVicar
- April 22<sup>nd</sup>: I notified Ms. Sorensen of the investigation process
- April 22<sup>nd</sup> - May 6<sup>th</sup>: Email exchanges with Mr. Kelly and Mr. MacVicar regarding process. I verified that communication regarding the investigation would take place with Mr. Kelly.
- April 29, 2020: Mr. MacVicar authorized Mr. Kelly to speak on his behalf for this investigation
- May 7<sup>th</sup>: Interview with Mr. Kelly
- May 19<sup>th</sup>: Interview with Ms. Sorensen
- May 20<sup>th</sup> – June 3<sup>rd</sup>: Interviews with witnesses

## iii) Witnesses Interviewed

- Ms. Barbara King: Director, Human Resources. Town of Banff
- Mr. Kelly Gibson: Chief Administrative Officer (CAO), Town of Banff
- [REDACTED] Former Town of Banff Councillor, [REDACTED]
- Mr. Carsten Sorensen: Owner/Operator, CBS Financial Directions
- [REDACTED] Former Municipal Clerk, Town of Banff [REDACTED]
- Mr. Chris Hughes: Director, Corporate Services. Town of Banff
- [REDACTED] Former CAO, Town of Banff, [REDACTED]

## APPLICABLE LEGISLATION AND POLICIES

- The Alberta Municipal Government Act Division 6: Pecuniary Interest of Councillors.
- Employee Compensation and Benefits Policy (C2001) Town of Banff
- Council Remuneration Policy (C1005) Town of Banff

## ISSUES AND ALLEGATIONS RAISED BY THE COMPLAINANTS

### 1) [Declaration of Pecuniary Interest at the July 18, 2016 Council meeting](#)

The complainants point out Ms. Sorensen declared a pecuniary interest at the July 18, 2016 Council meeting. They allege that she addressed all the factors for declaration in MGA section 172(1), except (a), because she did not disclose the full nature of the

interest by stating that her spouse was a “broker for Manulife”. The complainants allege that it was a misrepresentation of the truth because Ms. Sorensen failed to add that her spouse, Carsten Sorensen, is an agent with his own company, CBS Financial Directions, which has a broker relationship with the Town for its Employee Benefits Plan, from which he would derive a benefit.

2) [No declaration of Pecuniary Interest at Council and Committee meetings on June 12, 2017, June 26, 2017, January 28, 2019, and January 27, 2020.](#)

The complainants state that during several Council meetings and one governance meeting, which all followed the July 18, 2016 meeting, Ms. Sorensen did not indicate a pecuniary interest and yet she had done so on July 18, 2016. These meetings are listed below. With regard to MGA Section 172 (5) which specifically deals with the requirement to record a Councillor’s pecuniary interest under 172 (1) or (4) in the minutes, the complainants ask for explanation of why Ms. Sorensen did not state a pecuniary interest at these meetings. Two of the meetings referenced by the complainants dealt with Council remuneration, and two meetings dealt with the Town’s annual operating budget.

*Meetings Dealing with Council Remuneration*

- June 12, 2017: Ms. Sorensen made a motion to approve Mayor and Councillor wage increases each year for four years, and to have Councillors eligible for a Town of Banff RRSP savings plan managed by CSB Agency. Ms. Sorensen voted on both motions.
- June 26, 2017: Agenda item 7.1 Council Remuneration Policy. Ms. Sorensen was involved in the process to decide on Mayor and Councillor benefits and wages for 2017.

*Meetings Dealing with the Annual Operating Budget*

- January 28, 2019: Budget and Service Review and Approval. Public Hearing and Regular Town of Banff Council Meeting. Ms. Sorensen moved that Council approve the 2019-2021 Operating Budget. Ms. Sorensen voted in the process to approve employee benefits and wages for 2019, 2020, and 2021.
- January 27, 2020: Town of Banff Regular Council Meeting. Ms. Sorensen moved and voted to approve the 2020-2022 Operating Budget which included employee benefits and wages for 2020, 2021, and 2022.

3) [Disclosure of Relationship](#)

The complainants asked that with regard to MGA subsection 172 (a), that Mayor Sorensen state how she officially disclosed her interest in relation to her husband's broker relationship with the Town of Banff.

4) [Town of Banff Employee Insurance Benefits Plan Contracting and Reviewing Process](#)

The complainants seek explanation of how the original Town of Banff Employee Insurance Benefits contract was awarded properly, and what process was followed to ensure the contract was properly renewed.

5) [Application of MGA sections 183.1 and 183.2 in this investigation](#)

The complainants seek explanation of how the MGA sections 183.1 and 183.2 apply in the circumstances of this investigation.

## **EVIDENCE AND FINDINGS**

1) [Declaration of Pecuniary Interest at the July 18, 2016 Council meeting](#)

### **Evidence**

Ms. Sorensen provided the following evidence. On July 18, 2016, Council was asked to allocate \$20,000.00 for a full external review of the Employee Benefits Contract. The report provided by administration to Council made specific mention of "the employee benefits broker", who is Ms. Sorensen's husband. Those words were key for Ms. Sorensen to declare a conflict on this agenda item. Before the meeting she sought the advice of the CAO and Municipal Clerk. Both suggested, in this instance, it was appropriate for her to declare a conflict as this report related directly to selecting and reviewing the benefits contract and the broker for the Town of Banff employee benefit plan.

When the agenda item came forward, Ms. Sorensen stated that she would be declaring a pecuniary conflict of interest in the matter because her husband, Carsten Sorensen, was a broker for Manulife, the current provider of the Town's employee benefit plan.

The Municipal Clerk recorded the statement in the minutes as, '*Mayor Sorensen declared a pecuniary conflict of interest and left the meeting at 5:53 p.m.*' The Rocky Mountain Outlook issue of September 1, 2016 reported the statement as, '*Mayor*

*Sorensen declared a pecuniary conflict of interest in the matter because her husband Carsten Sorensen is a broker for Manulife.'*

### Findings

The Municipal Government Act Section 172 (1) states that when a Councillor has a pecuniary interest in a matter before the Council, the Councillor must, if present, disclose the general nature of the interest prior to any discussion, abstain from voting, and leave the room. The evidence clearly shows that Ms. Sorensen did all these things during the July 18, 2016 Council meeting.

Ms. Sorensen was required to disclose the general nature of the interest. The Council minutes show that *'Mayor Sorensen declared a pecuniary conflict of interest and left the meeting at 5:53 p.m.'* Council minutes are not a verbatim transcript of a Council meeting. The full text of the Rocky Mountain Outlook article (September 1, 2016) provides background on the topic under discussion, identifying that the Town benefits plan was with Manulife. The article then quotes Ms. Sorensen as saying that *'her husband, Carsten Sorensen, is a broker for Manulife'*. This statement indicates sufficient disclosure of a general nature for the agenda item as required by MGA Section 172 (1) (a). I find that Ms. Sorensen disclosed her pecuniary interest properly and did not misrepresent the truth.

- 2) [No declaration of Pecuniary Interest at Council and Committee meetings on June 12, 2017, June 26, 2017, January 28, 2019, and January 27, 2020.](#)

### Evidence: Meetings dealing with Council Remuneration

The Town's [Council Remuneration Policy C1005](#), states that:

- 12.1. Council remuneration is to be reviewed during the last year of the term of each Council.
- 12.2. Council may request a committee of public members to review Council remuneration and bring forward recommendations that would be effective for the newly elected Council.

Ms. Sorensen stated that the policy was established to ensure that a current Council is not in the position of voting themselves a salary increase. Every four years a public committee is selected to review Council's remuneration and make recommendations to the existing Council for the salary of the next future Council. As only Council has the authority to approve any changes to Councillor remuneration, the timing of the process for review and approval of recommendations is intentionally scheduled several months before the next election so that the existing Council decides on the remuneration for a future Council, not for itself.

At the Oct. 24, 2016 Organization Meeting, the 2013-2017 Council approved the creation of a public committee to review Council remuneration for the next Council.

At the June 12, 2017 Governance and Finance Committee, a committee which consists entirely of all Council Members, the members heard the presentation and recommendations of the appointed Council Remuneration Review Committee. This committee had met four times prior to proposing its recommendations. The Governance and Finance Committee moved to have the report brought to the June 26, 2017 Council meeting for a motion for approval.

At the June 26, 2017 meeting, the then current Council voted on these recommendations, which would come into effect for the next newly elected Council in October 2017.

The motions and votes referred to were made and passed for the remuneration of the next Council that would be elected in October, 2017. Ms. Sorensen pointed out that she did not vote to give herself and Co-Councillors a wage increase as she would not know who would be elected in the upcoming 2017 election. The same is true for the eligibility of Council members for the RRSP benefit plan, as this would also have come into effect in October 2017. The results of the votes would affect a future Council, for which Ms Sorensen was unsure of ever being a member. Establishing Council Remuneration Committees prior to an election year is a consistent practice in other Alberta municipalities.

### Findings

Council Remuneration Policy C1005 allows Council to establish a public remuneration committee to evaluate and provide recommendations to the Governance and Finance Committee on Council remuneration. The recommendations are then reviewed and approved by Council. By following this practice prior to the next municipal election, a Council ensures an appropriate arms-length process for evaluation and recommendations of Council remuneration as the current Council would not be making decisions for its own remuneration. This is a practice in many other Alberta municipalities. The policy and process were followed correctly at the June 12, 2017 Governance and Finance Committee and at the June 26, 2017 Council meeting. I find that neither Ms. Sorensen, nor any other Council member, had a pecuniary interest in deciding on recommendations from this public committee.

### Evidence: Annual Operating Budget

Every year, Council is presented with a three year operating budget prepared by administration for Council's review and approval. These were the budgets

presented to Council on January 28, 2019, and January 27, 2020. The budget line of “wages and benefits” included health and dental benefits as well as other benefits such as a pension, RRSP contributions, EI, CPP, vacation time, and fitness benefits.

Ms. Sorensen stated that approving this budget line, as part of the total operational budget, would not have put her in conflict with a possible pecuniary interest. She, along with the other Councillors, were voting on whether staff should have these benefits. They then approved a total sum budgeted to provide these benefits to employees.

The wages and benefits line item does not identify what portion of the total budget relates to the employee health and dental benefits plan. The item also does not indicate what portion of the benefits are to be provided by Manulife. The wages and benefits budget line item does not provide direction on whether administration will use a broker or who that broker will be.

After the budgeted amount for wages and benefits was approved by Council, Town Administration was responsible for implementation of this and all other budget line items. Administration has the discretion to change the employee benefits plan or broker at any time, without the requirement for Council approval.

### Findings

One of administration’s responsibilities is to prepare an annual three-year operating budget to present to Council. One of the budget line items, “wages and benefits”, includes all benefits available to employees.

A Council responsibility is to review and approve annual budgets prepared by administration. The Council meetings on January 28, 2019 and January 27, 2020 dealt with the annual budget review and approval. I find that there is no connection between the budget line item for wages and benefits with a service provided by the employee benefits plan insurance broker. I find that there is no evidence that Ms. Sorensen had any pecuniary interest in this matter of approving the annual budget.

### 3) Disclosure of pecuniary relationship

The complainants asked that Mayor Sorensen indicate how she officially disclosed her interest in relation to her husband’s broker relationship with the Town of Banff, in relation to MGA subsection 172 (a).

## Evidence

During her service on Banff Town Council, Ms. Sorensen passed sixteen Town of Banff annual budgets. She had asked on several occasions, both in public meetings and in private conversations with the previous CAO and previous Municipal Clerks prior to Council or committee meetings, if she would be in any conflict, acknowledging that her husband, Carsten Sorensen, through his company CBS Financial Directions, was the co-broker who provided a brokerage service to the Town of Banff for its employee benefit plan. When the question was asked in public, it was explained to her and the Council that because Council is never asked their opinion on which firm to use and nor was Council ever asked to adopt a budget that would support or move away from any specific firm, that she was not in conflict. After having this explained to her several times in her early years on Council it was not something that Ms. Sorensen continued to ask again year after year, as she had repeatedly been assured that she was not in conflict.

Ms. Sorensen pointed out it is a common practice that before an item is discussed in a meeting that a Councillor double checks to ensure that they are not in conflict because of a possible personal connection. She also stated that neither a private conversation where a Councillor asks advice of the CAO or Municipal Clerk, nor a check-in with administration at a public meeting where a Councillor asks for confirmation that they are not in conflict, would be in the minutes.

Over the years, Ms. Sorensen was advised by two CAOs and three municipal clerks, whom she considers as experts in the MGA and municipal policy, that she was not in conflict when voting on the wages and benefits line of the operational budget. During five Banff Town Council terms no member of Council has ever suggested or cautioned her that they believed she was in conflict on this matter.

██████████ served as Councillor with Ms. Sorensen for two terms from ██████████. ██████████ stated that in ██████████ experience every Councillor was clearly aware that they could not vote on matters that affected them in a pecuniary way. From ██████████ perspective, the Town of Banff Council had a strong culture of caution around pecuniary interest. Councillors would consider whether they may be affected in a pecuniary way by a budget item or other matters.

In ██████████ time on Council, there were frequent discussions by Councillors about items related to possible pecuniary interest. The intention was that a Councillor could ensure that they were operating within the requirements of the MGA. It was a common practice for a Councillor to individually consider possible pecuniary interest and to ask for advice if they were unsure. ██████████ pointed out that Councillors have a duty to vote if there is no such interest.

██████████ stated that Councillors would generally prepare in advance for a Council meeting. A Councillor's prior attention to a possible concern of pecuniary interest

would not necessarily be visible to the public as the Councillor would have had advance conversations with senior management or legal advisors. ██████ said that it never had occurred to ██████ that it was improper for the mayor to vote on operational budgets.

██████████ was CAO for the Town of Banff from ██████████. One of ██████ roles as a CAO was to provide policy, legislative, and governance advice to Councillors. Councillors, including Ms. Sorensen, would often contact ██████ for advice on whether they should recuse themselves because of a potential conflict of interest on an upcoming agenda item. ██████ also pointed out that many of the Councillors in Banff, and/or their spouses, were openly known to have Banff business interests: this included Ms. Sorensen. It was a common practice amongst Councillors to not only ask for advice on their own possible interest, but to also ask for assurance from a fellow Councillor, that that Councillor would not have a potential conflict of interest on an order of business.

The Town of Banff does not have a bylaw that requires a Councillor to file a statement of disclosure.

### Findings

Ms. Sorensen's description of her attention to possible pecuniary interest and her actions to acquire advice in this regard from the CAO and municipal clerks in advance of public meetings were corroborated by ██████████ evidence of ██████ own experience with pecuniary interest matters while serving as a Councillor. It was also verified by ██████████ evidence that ██████ frequently provided this advice to all Councillors, including Ms. Sorensen. All three witnesses describe a culture in the Council of careful attention to possible conflicts of interest and to ensuring compliance with MGA Section 172 (a).

I find that Ms. Sorensen correctly sought expert advice on possible pecuniary interest when she believed that advice to be necessary, and she followed that advice appropriately. Because this advice was provided in advance of public meetings, there is no public record of the times when this advice was sought and when a declaration of pecuniary interest was considered unnecessary. There is no evidence that Ms. Sorensen did not declare a conflict of interest when she ought to have. I have already found that Ms. Sorensen had no pecuniary interest in reviewing and approving operational budgets.

Prior to the July 18, 2016 Council meeting where budget for the review of employee benefit brokerage services was to be discussed, Ms. Sorensen did seek advice on possible conflict of interest and followed that advice in accordance with the requirements of Section 172 (1) of the MGA. She publicly declared the general nature of the interest, she left the room, and did not discuss or vote on the matter.

I find that Ms. Sorensen was in proper accordance with Town of Banff policy and bylaws and with MGA 172 (1) with regard to disclosing her spouse's business relationship with the Town of Banff.

4) [Town of Banff Employee Insurance Benefits Plan Contracting and Reviewing Process](#)

The complainants seek explanation of how the original Town of Banff Employee Insurance Benefits contract was awarded properly, and what process was followed to ensure the contract was properly renewed.

**Findings**

This issue was investigated by the RCMP. I conducted interviews with senior Banff administrators, and I confirm the findings of the RCMP investigator. These findings are that the conduct of the Mayor of Banff and senior administration was consistent with Town of Banff policy and was without inappropriate influence by senior officials. The RCMP investigation found that the Employee Benefit Plan services were found to meet the needs of town employees without risk to taxpayers. The RCMP investigation found, as do I, that the business relationship between Carsten Sorensen and the Town of Banff is based on sound business practices.

I concur with the RCMP report and find that town administrators performed their duties according to their responsibilities as described in Policy C2001 Employee Compensation and Benefits. I also find that due diligence has been exercised by the practice of regularly, every three years, contracting for external reviews of the Town's Employee Benefits Plan.

5) [The Application of MGA sections 183.1 and 183.2 in this investigation](#)

The complainants asked how MGA sections 183.1 and 183.2 apply in the circumstances of this investigation.

**Evidence**

These sections of the MGA address the requirement of a Councillor to vote in Council or committee meetings unless they are required or permitted to abstain. They were referenced in the investigation mandate letter to acknowledge that if any Councillor, including the Mayor, has not declared an interest, they are required to vote. If a Councillor, including the Mayor, has declared a pecuniary

conflict of interest, the reasons for abstention must be recorded in the minutes of the meeting. The section of the MGA were referenced to emphasize that if there is no conflict of interest, the Councillor must vote.