

Expertise for Municipalities (E4m)
Non-Profit Association
1894 LASALLE BLVD. SUDBURY, ON, P3A 2A4

Integrity Commissioner for the
Township of Chapleau



INQUIRY REPORT/DECISION

ALLEGATION: CONTRAVENTION OF THE
MUNICIPAL CONFLICT OF INTEREST ACT

BY: **COUNCILLOR LISI BERNIER**

I. REQUEST FOR INQUIRY

- [1] On April 20, 2021, E4m as Integrity Commissioner received a request for an inquiry (hereinafter the "Application") with respect to Lisi Bernier ("Councillor L. Bernier"), an elected member of the Township Council ("Council") for the Township of Chapleau. The Applicant is an elector under the *Municipal Conflict of Interest Act* (the "MCIA") and was therefore entitled to make an Application for an inquiry under section 223.4.1 of the Municipal Act. The Applicant declared that the Application was made within six (6) weeks of the applicant becoming aware of the alleged contravention.
- [2] In the application, the Applicant, alleged that Councillor L. Bernier contravened section 5(1) (a) and (b) of the *MCIA* when she initiated an agenda item to discuss a matter on which she had previously declared a Conflict of Interest and then participated in the discussion without disclosing her conflict.
- [3] More specifically, that Councillor L. Bernier petitioned the Interim CAO/Clerk (the "Clerk") to have an item added to the April 12, 2021 Council agenda related to correspondence dated March 12, 2021, to the Chapleau High School Reunion Committee circulated by the Office of the Mayor, expressing the decision of Council and the Media Release issued March 30, 2021, concerning Council's position on the event. Councillor L. Bernier had declared a Conflict on matters related to the Reunion at previous Council meetings but did not do so at the April 12, 2021, Council meeting.

II. FINDINGS/CONCLUSION

- [4] We find that Councillor L. Bernier did contravene the *MCIA*. We will not be making an application to Court with respect to our finding.
- [5] If the Applicant disagrees with our finding, they can make an application to the Court at their own expense to seek redress.

Recommendations

- [6] We further find that such contravention of the *MCIA* is also a contravention of the Code of Conduct.
- [7] Finding a breach of the Code of Conduct, section 223.4(5) of the *Municipal Act*, 2001 permits Council to levy a penalty on the Respondent of either a reprimand, or a suspension of the remuneration paid to the Respondent in respect of their services as a member of Council for a period of up to 90 days for each breach.
- [8] In this case, it is recommended that Council publicly reprimand Councillor L. Bernier for contravening the *MCIA* which has been established as an appropriate penalty by the courts in circumstances such as the ones related to Councillor L. Bernier's contravention.

III. INQUIRY PROCESS

- [9] Pursuant to section 223.4.1(2) of the *Municipal Act*, an elector or person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the *MClA* by a member of Council or a member of a local board.
- [10] Upon receipt of the Application, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of the allegations to determine if it is within the jurisdiction of the Integrity Commissioner.
- [11] We determined that the matter was properly within the jurisdiction of the Integrity Commissioner and that there were sufficient grounds to conduct an inquiry into the matter. The matter was assigned to Shawn Mahoney (the “Investigator”) who is an experienced investigator with Investigative Solutions Network (“ISN”). As agent of the Integrity Commissioner, he interviewed the Applicant, five (5) witnesses, and Councillor L. Bernier.
- [12] We reviewed the following:
- a. Agendas and Minutes of the following meetings:
 - i. January 25, 2021
 - ii. February 8, 2021
 - iii. March 8, 2021
 - iv. April 12, 2021
 - v. April 26, 2021
 - b. Request from the Committee January 8th, 2021
 - c. Letter from the Mayor to the Committee March 12th, 2021
 - d. Media Release March 30, 2021
 - e. Available Facebook Posts related to the Committee’s request
- [13] We queried the Municipal Clerk regarding the registry of written declarations of pecuniary interest and reviewed the ones submitted by Councilor L. Bernier with respect to this and other matters.

IV. FINDINGS OF FACT

- [14] The circumstances that give rise to the request for inquiry are related to Council’s decision concerning a request from the Chapleau High School 100th Reunion Committee (the “Committee”) for financial support and other support from the Township for their event. And that Councillor L. Bernier attempted to influence a decision of Council related to a matter in which she had a pecuniary interest.
- [15] A committee was formed by members of the community for the purposes of planning and holding a High School Reunion (the “Reunion”) June 30th to July 3rd, 2022. This committee is an independent body and not a committee of Council for the Township of Chapleau.

[16] Both Councillor Nicolle Schuurman and Councillor Lisi Bernier are volunteer members of this committee and employees of the school board which operates the High School. Neither of whom have been appointed by Council to sit on the Committee.

Reference: Interview of Councillor L. Bernier
Interview of Councillor N. Schuurman
Interview of Clerk

[17] On January 8, 2021, the Reunion Committee formally requested support from Council for their event. The Township has provided limited support for past High School Reunion Committees. The request included:

- Use of the Recreation Centre for the event
- Use of Township staff for registration
- Coverage under the Township's Liability Insurance
- Startup budget of \$10,000 and coverage for any financial shortfall that may occur

[18] The request was on the February 8, 2021, Council Meeting Agenda and considered at the Council Meeting. Councillors N. Schuurman and L. Bernier both declared a pecuniary interest for this agenda item.

Reference: Interview of Councillor L. Bernier
Council Meeting Agenda/Minutes February 8, 2021
Written Declaration Councillor Schuurman
Written Declaration Councillor L. Bernier

[19] Council debated the Committee's request at the February 8, 2021 Council meeting and did not feel there was sufficient information provided for Council to make a decision. They deferred the matter and requested the Committee to provide additional information. Councillors Schuurman and L. Bernier did not participate in the discussion concerning the request.

Reference: Council Meeting Agenda/Minutes February 8, 2021
Witness Interviews
Interview of CAO/Clerk

[20] At the March 8, 2021 Council Meeting the Committee's request was again considered. After the debate and prior to the vote Councillor R. Smith requested that the vote be recorded. The motion was defeated on a vote of 2 to 1. Mayor Levesque and Councillor G. Bernier did not support the request. Councillor Smith did support the request. Again, Councillors N. Schuurman and L. Bernier declared the interest and did not participate in the discussion or the vote concerning the Reunion.

Reference: Council Meeting Agenda/Minutes March 8, 2021

[21] On March 12, 2021, a letter was authored by the Mayor outlining Council's decision to the Committee.

Reference: March 12, 2021 Correspondence from the Office of the Mayor

[22] Council received a storm of criticism and verbal abuse on social media because of the decision. Facebook posts confirmed to the Mayor and Council that it was apparent that there was considerable dissent and confusion amongst constituents regarding the planning and financing of the Reunion. To address this, Mayor Levesque issued a Media Release on March 30, 2021 regarding the reasons for the decision. It was posted on the Township's website and approved social media platform.

Reference: Interview of Councillor L. Bernier
Interview of Mayor M. Levesque
Media Release "*Council Reports: Our Position on the Reunion*"

[23] On March 31, 2021 Councillor L. Bernier sent an email requesting an item be added to the April 12, 2021 Council Meeting Agenda. The email was addressed to the Interim CAO and the Mayor. Attached to the email was the March 30th Media Release concerning Council's position on the Reunion and the subject was "Addition to Agenda". The content of the email spoke of the Media Release and a request for discussion. Later that day, a second email was sent to all Council members. The subject was "Press Release". The content was an expression of Councillor L. Bernier's frustration that the Media Release was circulated, and she was not in receipt of it, nor had she agreed to its circulation.

Reference: Email from Councillor L. Bernier
Council Agenda April 12, 2021

[24] The Agenda for April 12, 2021, Council Meeting outlined two relevant items under Correspondence:

1. Office of the Mayor – Response to High School Reunion Committee
2. High School Reunion Committee

Councillor N. Schuurman declared a pecuniary interest for both items as she was a member of the Committee. Councillor L. Bernier only declared a pecuniary interest on item #2 also citing she is a member of the Committee.

Reference: Council Meeting Agenda/Minutes April 12, 2021

[25] During the April 12th, 2021 Council meeting, a discussion took place concerning correspondence related to the Reunion and Councillor L. Bernier took part in the debate. When interviewed, Councillor L. Bernier admitted that she had participated in the debate.

Reference: Interview of Councillor L. Bernier

[26] During the interview when questioned directly about the April 12th, 2021 Council Meeting Councillor L. Bernier advised:

- It was her intention to discuss the fact that the March 12, 2021 correspondence from the Mayor indicated it was copied to Members of Council but she did not receive it until it was included in the April 12, 2021 Council agenda package. The delay in receiving correspondence was the focus of her concern because she received it from the Committee before she received it as a Member of Council.
- She did not intend to discuss the content of the letter, although she acknowledges that her email may have left readers with the impression that she did wish to discuss the contents.
- She was concerned that the March 30th Media Release indicated it was a release from Council and she felt it would be more accurate to say it was from the Mayor because Council had not seen or approved it previously.

Reference: Interview of L. Bernier, July 8, 2021

[27] At the April 26, 2021 Council Meeting, Council reconsidered the request from the Committee and decided to modify their position towards the Reunion and their initial refusal to support the Committee. Council decided that they would provide some logistical support and reduced pricing on rental items creating a financial impact on the Township and a financial benefit to the Committee.

[28] Councillor L. Bernier was elected October 22, 2018, for the 2018 to 2022 term of Council commencing December 1, 2018. She is not a first time Councillor. She has served a previous term of Council between 2010 and 2014.

Reference: Township of Chapleau Election Results

[29] Councillor Bernier has received Council Orientation training and is aware of her obligations under the *MCI*A.

V. ANALYSIS

[30] We considered:

- a. Whether Councillor L. Bernier had a pecuniary interest in matters related to the High School Reunion Committee and its event;
- b. Whether Councillor L. Bernier properly declared her pecuniary interest at the April 12, 2021 Council Meeting;
- c. Whether Councillor L. Bernier influenced or attempted to influence an officer or employee of the Township when she requested a matter related to the Committee be placed on the April 12, 2021 Council Meeting Agenda;

- d. Whether Councillor L. Bernier attempted to influence the decision of Council before, during or after a meeting; and
- e. Whether to make an Application to Court for breach of the *MCIA*.

Pecuniary Interest

- [31] The *MCIA* prohibits Councillors from acting, even from influencing matters where they have a pecuniary interest “*before, during or after*” the meeting¹.
- [32] The primary issue for analysis is whether Councillor L. Bernier had a pecuniary interest in matters before Council related to the Committee she was a non-Council appointed member of and if so, was she required to declare a prohibited pecuniary interest in the matter before Council on April 12th, 2021 related to the Committee and whether her email dated March 31, 2021 requesting a matter be placed on the agenda is an act of influence before, during or after the meeting when Council had decided not to provide support to the Committee.
- [33] “Pecuniary Interest” is not defined in the *MCIA* however, the Courts have interpreted it to mean a financial interest, or an interest related to or involving money. It does not matter whether the financial interest is positive or negative and when considering the existence of a “Pecuniary Interest”, it also does not matter the quantum of the interest.

“Pecuniary Interest” is not defined in the [*Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50], but it has been held to be a financial, monetary or economic interest; and is not to be narrowly defined².

A pecuniary Interest [as used in s. 5(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50] is a particular kind of interest. In *Edmonton (City) v. Purves* (1982), [18 M.P.L.R. 221](#)... (Q.B.), at p. 232 [M.P.L.R.] Moshansky J. turns to the Shorter Oxford English Dictionary definition of “pecuniary” as “of, belonging to, or having relation to money.”

Indirect Interest

- [34] Section 2 of the *MCIA* states that a member has an indirect pecuniary interest in any matter before Council or a local board if,
- (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

¹ *Municipal Conflict of Interest Act*, R.S.O. 1990 C.M.50 s.5(1)(c).

² *Mondoux v. Tuchenhagen* (2011), 284 O.A.C. 324, [2001] O.J. No. 4801, 88 M.P.L.R. (4th) 234, 2011 CarswellOnt 11438, 2011 ONSC 5398, 107 O.R. (3d) 675 (Ont. Div. Ct) at para. 31, Lederer J. (Gordon J. concurring).

- (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body,
- that has a pecuniary interest in the matter; or
- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

- [35] The *MCIA* does not define the term “body”. It has been considered broadly by the courts and includes a group of volunteers, like the Committee, even if they are not incorporated. Councillor L. Bernier is a member of the Committee and is therefore at law, a member of the body.
- [36] Therefore, as a member of the body, Councillor L. Bernier has a pecuniary interest in any matter before Council in which the Committee has a pecuniary interest. To be clear, in the matter before us, Councillor L. Bernier has a pecuniary interest when Council considers/debates requests from the Committee that affects the finances of the Committee whether positive or negative. This would include a request for monetary support [to cover a shortfall], reduced fees [for use of Township facilities] and/or the supply of Municipal resources [coverage under the Township insurance and as employee time] from the Committee.
- [37] Councillor L. Bernier must comply with the *MCIA*. She is required by law to declare her conflict in writing and refrain from influencing Council, a Councillor, and an officer/employee of the Municipality.
- [38] Section 5 of the *MCIA* requires that when a member of Council has a pecuniary interest with a matter that Council is considering that they must disclose not only that they have a pecuniary interest in the matter, but they must also explain the general nature of the interest. Additionally, they are prohibited from taking part in the discussion or any vote on the matter or from influencing the vote.

When present at meeting at which matter considered

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Written statement re disclosure

5.1 At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be. 2017, c. 10, Sched. 3, s. 4.

Influence

5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use her or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4.

- [39] Councillor L. Bernier declared in writing, and at Council meetings, a pecuniary interest in all matters related to the Committee and the Reunion on several occasions and did not participate in discussions concerning the matter Council was considering.
- [40] Knowing that she had a prohibited pecuniary interest, prior to the April 12, 2021 Council Meeting, Councillor L. Bernier wrote (emailed) the Interim CAO/Clerk and petitioned that an item related to the Committee and more importantly, the decision that Council made regarding the request for support to the Committee, be added to the Agenda. Then she discussed the matter during the Council Meeting. More specifically, the item which had been added to the Agenda at her request related to correspondence and a media release issued by the Mayor to outline Council's decision on the request for support from the Committee for the Reunion.

Declaration and Disclosure

- [41] Section 5.1 of the *MCIA* requires a member who has a pecuniary interest to declare such interest and to file a written statement of conflict when they have a prohibited pecuniary interest. Furthermore, they must proclaim the interest at the meeting where the matter is being debated if they are present. If not present at the meeting they must declare their interest at the next.
- [42] Section 5(1)(a) of the *MCIA* requires a Member to disclose any pecuniary interest and the general nature thereof prior to any consideration of the matter at the meeting.
- [43] Councillor L. Bernier was aware that she had a prohibited pecuniary interest in the High School Reunion and declared the interest in writing and at the meeting on:
- February 8th, 2021
 - March 8th, 2021
 - April 12th, 2021 (Correspondence Item #2 only); and
 - April 26th, 2021

However, she did not disclose a pecuniary interest for the Correspondence Item #1 on April 12, 2021, which was the item added to the agenda at her request and was listed as “Office of the Mayor – Response to High School Reunion Committee”. She did not file a written statement of the interest with the Clerk at the meeting or at any time afterwards.

[44] It is clear that prior to April 12, 2021, Councillor L. Bernier knew she had a pecuniary interest when Council considered/debated matters in which the Committee had a pecuniary interest. And declared such interest. For the April 12, 2021 Meeting, Councillor L. Bernier requested correspondence and the media release be added to the Agenda. In the email she expressed her displeasure for not being privy to documents released by the Township related to the decision related to the request from the Committee without her knowledge. A matter in which she had a pecuniary interest in and ought not to have been privy to. To be clear, it would be appropriate for any Councillor who had declared a pecuniary interest to be excluded from the sharing of documents related to the issue in which they had the interest.

[45] Councillors are held to a high standard when it comes to their obligations under the *MCIA*.

Before During and After Meeting

[46] Section 5(1)(c) of the *MCIA* prohibits a member of Council on his/her own behalf or through another from “attempt[ing] in any way whether, before, during or after the meeting to influence the decision [voting] of Council.

[47] The *MCIA* does not provide a definition of the word “influence” nor has the issue of influencing been interpreted in sufficient detail by the Courts as to create a test to apply when analyzing alleged breaches. However, in *Moll v. Fisher* (1979), Robbins J. with respect to the *MCIA* stated:

“The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest.”

.....

He goes on to say:

“Legislation of this nature must, it is clear, be construed broadly and in a manner consistent with its purpose.”

[48] The *MCIA* is clear that a member is prohibited from influencing Council, a member of Council or an offer or employee of the Municipality.

[49] The Clerk is a statutory officer and is responsible to determine what does or does not go on the agenda.

- [50] Councillor L. Bernier petitioned the Clerk by email to have the Mayor's correspondence and the media release be put on the Council Meeting Agenda for the April 12, 2021 Meeting is an attempt to influence an officer of the Township. The same day, Councillor L. Bernier expressed her frustrations to all Council members in an email about her not being aware or approving of the correspondence or media release sent by the Mayor. Attached to her email was the press release issued by the Office of the Mayor. Of interest is that the Media Release was dated March 30, 2021 and Councillor L. Bernier's email to the Interim CAO/Clerk and Council was the next day.
- [51] The appropriate course of action for such matters would be that the Mayor would provide an update to Council [advise them of the letter and the media release] at the next meeting. Councillor L. Bernier did not wait to see the next meeting agenda to see if the matter would have been included.
- [52] Of additional concern is that her participation in the discussion about the item at the April 12, 2021, Council Meeting, influenced Council or at the very least the two (2) members who originally voted not to support the Reunion. Her actions in part resulted the matter to be reconsidered at the April 26, 2021 Council Meeting whereat Council changed their position towards the Reunion and approved logistical support and reduced pricing on rental items which impact the pecuniary interest of the Committee.
- [53] When interviewed, Councillor L. Bernier advised the Investigator that her request to add the matter to the Agenda was merely to highlight an administrative mistake. Councillor L. Bernier suggested that she was highlighting that items that were reported as being copied to Council were not actually occurring. This was the basis of her need to have it placed on the agenda. We find her assertion to be disingenuous. Had it been a true administrative error it ought to have been addressed with the Interim CAO/Clerk and NOT be put on a Council meeting agenda.

Summary

- [54] Councillor L. Bernier contravened the *MCIA* when she:
- a. Influenced an officer of the Township to add an item to the April 12, 2021 Council Meeting Agenda related to the Committee;
 - b. Failed to declare a pecuniary interest on April 12, 2021 related to the matter she requested be added; and
 - c. Participated in the discussion of the item on April 12, 2021 which resulted in the matter being reconsidered by Council on April 26, 2021 and their decision was changed from providing no support to the Committee for the event, to providing some support.

VI. SHOULD WE APPLY TO A JUDGE IN THIS CASE?

- [55] Upon completion of an inquiry regarding whether a member has contravened the *Municipal Conflict of Interest Act*, the *Municipal Act, 2001* provides the Integrity Commissioner with discretion about whether to apply to a Judge.³ The Integrity Commissioner must publish written reasons for the decision whether or not to apply.⁴
- [56] The section does not set out clear parameters detailing when it is appropriate to apply to a court and we could not find any judicial analysis of this section. It is our opinion that this discretion is not unfettered and must be exercised in a reasonable manner consistent with the Integrity Commissioner's statutory duty to investigate, enforce and provide advice about the *Municipal Conflict of Interest Act (MCIA)*.⁵
- [57] Notably, the Integrity Commissioner is not given the authority in either piece of legislation to decide upon, recommend or negotiate a penalty with respect to a Councillor found to have breached the *MCIA* after an inquiry. The final decision about whether there has been a breach of the *MCIA*, and the penalty is the exclusive jurisdiction of a Judge of the Ontario Superior Court of Justice.⁶
- [58] This fact is a significant and important factor in how the decision to apply to a judge should be made. That is, because the Integrity Commissioner is given broad powers of investigation but is not vested with the authority to make a final decision, the determination of whether to apply to a judge should usually be contingent on the outcome of the investigation and the conclusions of the Integrity Commissioner. Absent extraordinary circumstances, the conclusion that the *MCIA* has been breached should ordinarily result in a decision to apply to a judge. If a decision is made that there is no conflict, a court application should not be pursued.
- [59] This is an appropriate conclusion to reach in light of the direction taken by the legislature in Bill 68 to require the expenditure of municipal funds on investigations of alleged conflicts of interests, as well as a broader range of potential penalties available to be imposed by our courts. In our view, this signals that our legislature believed that there were too many conflicts that were not being pursued due to the fact that costs had to be borne by individual complainants, or that automatic removal from office upon the finding of a breach of the *MCIA* resulted in fewer conflicts being found.
- [60] We have reached this conclusion in part by having regard to the "*Principles*" section of the *MCIA* and in part by considering the purpose and intent of the *MCIA* as found by the courts. The *MCIA* has introduced principles which state:

1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:

1. The importance of integrity, independence, and accountability in local government decision-making.

³ *Municipal Act, 2001*, S.O. 2001, c.25 as am. s. 223.4.1(15)

⁴ *Ibid*, s. 223.4.1 (17)

⁵ *Ibid*, s. 223.3(1)

⁶ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, s.8.

2. The importance of certainty in reconciling the public duties and pecuniary interests of members.
3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
4. There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.

[61] The *MCIA* is designed to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. There is no need to find corruption on the part of the councillor or any actual loss on the part of the council or board. As articulated by the courts: “*So long as the member fails to honour the standard of conduct prescribed by the statute, then regardless of his good faith or the propriety of his motive, he is in contravention of the statute.*”⁷

[62] Recently, Integrity Commissioner Giorno examined this question in a reported decision not to proceed with an application to Court after he found there was no breach of the *MCIA*:

3. SHOULD I MAKE AN APPLICATION TO A JUDGE?

51. Whether to make an application to a judge is a decision that the *Municipal Act* leaves to the Integrity Commissioner, based on what the Integrity Commissioner feels is appropriate.

52. If I commenced a Court application then I would bear the onus of proving that Deputy Mayor Meadow breached the *MCIA*.⁷ I have no evidence of a breach.

53. In my view, the Respondent’s disclosure was not subject to the *MCIA*. I will not commence a Court application in which I argue the opposite.

54. I also note the costs of a Court application would be borne by the Township.

55. I do not consider it appropriate for me to apply to a judge for a determination as to whether Deputy Mayor Bob Meadows has contravened the *MCIA*.⁸

[63] We agree that the foregoing is an appropriate methodology to follow and an example of a situation where an Integrity Commissioner would reasonably decide not to apply to a

⁷ *Moll v. Fisher* (1979), 8 M.P.L.R. 266 (Ont. Div. Ct.).

⁸ *Anderson, D. v. Meadows*, 2020 ONMIC 2 (Giorno)

Judge; where the Integrity Commissioner concludes that on a balance of probabilities there is insufficient evidence of a breach of the *MCIA*. In our view, it would be inappropriate to expend further municipal resources to pursue a judicial determination after a statutory investigation has concluded there is no conflict.

- [64] The converse also follows, namely, that where a breach of the *MCIA* is found to exist, the Integrity Commissioner *should* apply to a Judge *unless* there are articulable reasons why that is not appropriate.
- [65] Articulating circumstances where it is appropriate to exercise discretion refusing to apply to a Judge despite a finding of conflict is a difficult task, but one we think should only be exercised on narrow and exceptional grounds. The independent investigatory role of the Integrity Commissioner exists to minimize the chances that court applications will become unduly politicized and to ensure that conflicts that are alleged to exist after an investigation are actually pursued in the courts. In this case, we are prepared to exercise the discretion not to bring an application before the courts for a determination.
- [66] We will not be applying to a Judge with respect to Councillor L. Bernier's aforementioned breaches of the *Municipal Conflict of Interest Act* for the following reasons:
- a. Councillor L. Bernier did not receive a personal financial benefit;
 - b. Councillor L. Bernier declared the pecuniary interest and did not participate when the matter was considered by Council on several other occasions including the April 12, 2021 Council Meeting where she declared an interest in one item but not the one she petitioned the Interim CAO/Clerk to add to the Agenda;
 - c. We do not believe it is in the best interest of the Township to pursue this matter in Court considering the most likely outcome would be a reprimand. We base this on Justice Gareau's decision in *Elliot Lake v. Pearce* when he determined that while Councillor Pearce contravened the *MCIA*, because Councillor Pearce did not receive a financial benefit personally, the most appropriate penalty is a reprimand.⁹ And this decision was upheld by the Divisional Court, more specifically, Justices Swinton, Lederer and Doyle, in their decision *City of Elliot Lake (Integrity Commissioner) v. Ed Pearce* in which they agreed that a reprimand was the appropriate penalty.¹⁰

DATED: December 31, 2021

⁹ *Town of Elliot Lake v. Pearce*, 2021 ONSC 1851

¹⁰ *City of Elliott Lake v. Pearce*, 2021 ONSC 7859