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TOWN OF DEEP RIVER INTEGRITY COMMISSIONER, GUY GIORNO

**Citation:** McGee v. McLaren, 2022 ONMIC 3

**Date:** February 28, 2022

## REPORT ON COMPLAINT

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## THE COMPLAINT

1. Mr. Ric McGee (Complainant) alleges that Councillor Robert McLaren (Respondent) contravened the Council Code of Conduct, Schedule A to By-law 54-2014, by participating in debate and voting in relation to a staff report in which he subsequently declared a pecuniary interest.

## SUMMARY

2. The allegation was filed as a Complaint under the Code of Conduct (under section 223.4 of the *Municipal Act*) and not an Application for an inquiry into an alleged breach of the *Municipal Conflict of Interest Act* (under section 223.4.1 of the *Municipal Act*.)

3. Alleged contraventions of the MCIA should be handled under the legislated procedure in section 223.4.1 of the *Municipal Act*. A violation of the MCIA is not a violation of the Code of Conduct.

4. Nonetheless, in this particular case, I do not believe that the Respondent contravened the MCIA. If this were an inquiry under section 223.4.1 of the *Municipal Act*, I would not apply to a judge for a determination that the Respondent contravened the MCIA. My opinion is that the Respondent did not have a pecuniary interest in the staff report. He was not required to declare an interest, or to withdraw from debate and voting.

5. In the course of this inquiry and reporting on it, I have identified several problematic provisions of the Council Code of Conduct, and I recommend amendments.

## BACKGROUND

6. At all relevant times, the Respondent's son was employed by the Town as a firefighter.

7. On December 5, 2019, the firehall garage door closed on the tanker, causing damage to both the door and the apparatus.<sup>1</sup>

8. Council considered a report of the incident in closed session on January 29, 2020, and then in open session adopted the following resolution:<sup>2</sup>

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<sup>1</sup> "Apparatus" or "firefighting apparatus" is the term typically applied to a vehicle customized for firefighting.

<sup>2</sup> Resolution 2020 17.

BE IT RESOLVED THAT Council approve the replacement of the Fire Hall garage door and awards the contract to replace the garage door to Pynacker Doors in the amount of \$7,804.91,

THAT funds in the amount of \$9,182.10 be allocated from the 2019 Capital Contingency account number G-130-1110-8000 for the garage door and repairs to the Fire Tanker apparatus,

THAT staff be directed to report back to Council with the actions implemented to prevent a reoccurrence of this, or a similar incident in the future, and

THAT Council directs staff to present a copy of all Town of Deep River Fire Department Standard Operating Guidelines to Council for receipt.

9. The Respondent was absent from the meeting where this resolution was considered, so he did not vote on it, and he was not present to declare a pecuniary interest. At the next Council meeting the Respondent attended (February 19), he declared a pecuniary interest in three agenda times related to the Fire Department. He did not, however, declare a pecuniary interest in the January 29 resolution.<sup>3</sup>

10. At its April 22 meeting, Council received a follow-up report titled, "Fire Hall Garage Door Incident – Corrective Action Plan Follow-up Report."<sup>4</sup>

11. The Fire Chief explained the purpose of the report as follows:

The purpose of the "Fire Hall Garage Door Incident – Corrective Action Plan" is to implement measures to prevent the reoccurrence of a similar incident. The plan addresses all the recommendations listed in the investigation report.

12. Included with the report were two new Standard Operating Guidelines of the Fire Department, both dated March 25: SOG #505 (Safe Backing of Fire Department Apparatus/Vehicles) and SOG #215 (Notification of Fire Chief – Injury/Non-Emergency Incident).

13. An earlier version of the Fire Chief's report also included various Incident Reporting Forms that named individual firefighters and described what happened from the perspectives of different employees, including the Respondent's son. When the meeting agenda was originally posted, this longer report, including the completed Incident Reporting Forms, was posted on the Town website and accessible to the public. The longer report was withdrawn, and by the time of the meeting the version of the report

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<sup>3</sup> Subsection 5(3) of the MCI A states: "Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1)."

<sup>4</sup> In quoting from documents in an inquiry report, my practice is to edit punctuation and capitalization for consistency and to correct immaterial typographical and textual errors.

considered by Council consisted of only the two-page report of the Fire Chief, the two new Standard Operating Guidelines, and two blank Incident Reporting Forms.

14. Expressing concern that the longer version of the report had been posted online, the Respondent moved to amend the agenda to have the Fire Chief's report removed. The Respondent argued that the report "breaches the Privacy Act and confidentiality and that report has no business being in the public agenda."<sup>5</sup>

15. Both the Mayor and the Reeve pointed out that the report before Council was a shorter version that did not include incident reports or the names of individual firefighters. The Respondent explained his position that the Fire Chief's report should nonetheless be removed from the agenda:

It was out for public consumption for a number of days. Once you let the toothpaste out of the tube you can't put it back in. A lot of people are aware of what this report has said in it, and by removing what you may call the contentious parts doesn't change the fact that it was there. It should never have been there.

16. The amendment was defeated on a 1-6 vote, and the Fire Chief's report remained on the agenda. The Respondent then declared a pecuniary interest in the report, "as my son is a member of the Fire Department." He did not take part in consideration of it. Without the Respondent's participation, Council voted to receive the report.<sup>6</sup>

## PROCESS FOLLOWED

17. In operating under the Code, I follow a process that ensures fairness to both the individual bringing a Complaint (Complainant) and the Council Member responding to the Complaint (Respondent). This fair and balanced process is governed by sections 10.4 and 10.5 of the Code.

18. While section 10.4 of the Code sets out a generally expected time frame, the timing of this inquiry was delayed by extenuating factors.

19. The Council meeting occurred, and the Complaint was received, during the early months of the global pandemic. The Complaint was filed with the Town on June 4.<sup>7</sup> I received it on June 15.

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<sup>5</sup> The transcript was prepared by me based on my review of the recording of the April 22, 2020, meeting, available on YouTube: [https://youtu.be/TZxG\\_-D38kl](https://youtu.be/TZxG_-D38kl)

<sup>6</sup> Resolution 2020 154: "BE IT RESOLVED THAT Report Number 2020-FD-001, 'Fire Hall Garage Door Incident - Corrective Action Plan Follow-up Report,' be received."

<sup>7</sup> This was precisely six weeks following the Council meeting. Six weeks from the date of awareness would have been the deadline for an application under section 223.4.1. of the *Municipal Act*.

20. On Tuesday, March 17, 2020, Ontario had declared a state of emergency. During the state of emergency, having regard to the impact of COVID-19 on both residents and municipal governments, I originally suspended processing of Code of Conduct complaints and paused inquiries.

21. As communities in Ontario continued to deal with the pandemic, I proceeded slowly, giving first priority to certain inquiries on the basis of urgency and next priority to inquiries that were appropriately dealt with sooner.

22. On September 14, the Province revoked Ontario Regulation 73/20, which had provided for the suspension of deadlines and limitation periods in various legal proceedings. While the regulation had not applied to code of conduct inquiries by Integrity Commissioners, its revocation was relevant to the exercise of my discretion.

23. I subsequently launched the inquiry. On September 25, I issued a Notice of Inquiry that included the Complaint, set out the issues, and explained the process. The Notice of Inquiry was sent to both parties.

24. The Notice of Inquiry contained set time frames, but it also stated, in bold: "Processing times and inquiry timing are delayed during the COVID-19 pandemic. Accommodation will be made for parties unable to meet deadlines. In turn, I ask the parties to be patient with each other and with the process during this extraordinary situation."

25. I take responsibility for any confusion caused by the references to accommodation and delay that the Notice of Inquiry contained. The Response to the Complaint was received November 24, 2021.

26. The Response was shared with the Complainant, who then submitted a Reply.

27. As all the relevant evidence was either included in the parties' submissions or available in records (including agendas, reports, meeting minutes and online recordings) of the Town, it was unnecessary for me to conduct interviews.

28. I have considered all of the submissions of the parties. In addition, I have examined all of the documentary evidence and the recording of the Council meetings.

29. This inquiry did not consider the Complainant's other allegation, namely, that the Mayor had a duty to file a complaint to the Integrity Commissioner under section 10.2 of the Code, which provides in part: "(b) All members have the duty to report a violation of this Council Code of Conduct."

30. I determined that the inquiry would not consider this allegation. Because the inquiry did not cover the allegation against her, it was unnecessary for me to include the Mayor as a second respondent.

31. One problem with section 10.2(b) is its inconsistency with Part V.1 of the *Municipal Act*. Under Part V.1, it is the Integrity Commissioner's role to determine whether the Council Code of Conduct has been contravened. Once that occurs, it is Council's role to determine any penalty. It is inconsistent with the legislative scheme to impose a positive obligation on Council Members to identify problematic conduct, to evaluate the facts and the legal obligations, and then to assess whether "a violation" has occurred.

32. It is true that an individual Council Member or, indeed, the entire Council, may refer a complaint to the Integrity Commissioner. The *Municipal Act* expressly contemplates this.<sup>8</sup> However, the right of a Member or the Council, on a case-by-case basis, to refer a matter to the Integrity Commissioner differs from a systematic obligation that Council Members be responsible for doing so in all cases.

33. Also, as a technical matter, the *Municipal Act* does not use the word "complaint." Instead, it speaks of "a request ... about whether a member of council ... has contravened the code of conduct."<sup>9</sup> The statutory language (*request about whether*) is significant. It means that someone may refer a matter to the Integrity Commissioner without being certain that a contravention has occurred. Under the Act, it is the Integrity Commissioner who, at the end of an inquiry, makes a finding about whether the Code actually was contravened.

34. The language of Code section 10.2(b) (*report a violation*) is at odds with the language of the Act. The Code language indicates a higher degree of deliberation and conclusion than merely making a request about whether the Code was violated. Indeed, section 10.2(b) implies that a Council Member must determine that the Code was violated. As I had said, this is not the role of a Council Member, or of the whole Council.

35. A further consideration is that Integrity Commissioner inquiries are confidential until reported to Council. This means that nobody else knows whether a Council Member has or has not referred a matter to the Integrity Commissioner; in other words, nobody would know whether a Member had complied with section 10.2(b) of the Code.

36. It is difficult to contemplate how someone could complain that a Council Member failed to report to the Integrity Commissioner when confidentiality prevents a complainant from knowing that this is the case. Indeed, it is hard to imagine how a complainant could satisfy section 10.4(b) of the Code – which requires reasonable and probable grounds for an allegation of contravention, and affidavit evidence in support – when confidentiality makes compliance with section 10.2(b) unknowable and makes any evidence of compliance unavailable.

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<sup>8</sup> Subsection 223.4(1): "This section applies if the Commissioner conducts an inquiry under this Part, (a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member ..."

<sup>9</sup> *Ibid.*

37. A third consideration is that the Legislature, in section 223.4 of the *Municipal Act*, deliberately enacted a request-based system. Under that section, everyone has the right to turn to the Integrity Commissioner. The implicit threshold is each individual complainant's belief that a matter is significant enough (in the eyes of the complainant) to justify Integrity Commissioner consideration.

38. Section 10.2(b) makes a subtle but significant shift in the enforcement regime. The Legislature enacted a request-based system. Section 10.2(b) supplants individual requests with an ongoing, involuntary, non-discretion obligation of all Council Members.

39. In practice, the result of provisions like section 10.2(b) is a multiplication of allegations. When an individual, as is that person's legal right, files a Code of Conduct complaint against Member A, it becomes common practice also to complain that Witness B (and/or C and D and E) breached a duty to complain separately. In my view, complaints against Council Member witnesses do not promote compliance or further the understanding of obligations under the Code. They simply multiply the allegations and the number of respondents associated with a single incident.

40. Council will be mindful of the fact that the financial impact of code of conduct complaints and integrity commissioner investigations falls entirely on the municipal tax base. Integrity commissioners and codes of conduct have been mandated by the Province without any corresponding provincial funding.

41. I recommend that section 10.2(b) of the Council Code of Conduct be repealed.

## POSITIONS OF THE PARTIES

### *Complainant's Position*

42. The position of the Complainant is quite straightforward: The Respondent declared a pecuniary interest in the Fire Chief's report. Consequently, he should not have debated or voted on a motion related to the report. In particular, he should not have attempted to remove the report from the agenda.

43. The Complainant argues that the Respondent's conduct showed "blatant disregard" for the *Municipal Conflict of Interest Act*. Subsection 5(1) of the MClA provides as follows:

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.

44. The Complainant also argues that a contravention of the MCIA is contrary to section 3.1 of the Code of Conduct, which reads as follows:

The legislated responsibilities, outlined in the *Municipal Act*, S.O. 2001, the laws of Canada, and the Province of Ontario, and all policies and by-laws of the Town of Deep River are to be adhered to and carried out by all Members. Failure to do so constitutes an offence under this policy.

45. Taken literally and isolation, section 3.1 would mean that a violation of any federal or provincial law, such as the *Firearms Act* (Canada) or the *Highway Traffic Act* (Ontario), can be investigated by the Integrity Commissioner under the Code of Conduct. As I explain below, such an interpretation is inconsistent with the *Municipal Act* and with other provisions of the Code.

46. The Complainant also submitted that the Mayor had a duty to file a complaint to the Integrity Commissioner under section 10.2 of the Code, which provides in part: “b) All members have the duty to report a violation of this Council Code of Conduct.”

47. For the reasons outlined at paragraphs 30 to 39, above, my inquiry did not consider the allegation that the Mayor or anyone else on Council was required to file a complaint over the Respondent’s involvement with the Fire Chief’s report.

### *Respondent’s Position*

48. Through legal counsel, the Respondent argues that neither the Respondent nor his son had a pecuniary interest in the Fire Chief’s report. More particularly, neither had a pecuniary interest in Council’s vote to receive the Fire Chief’s report.

49. The Respondent observes that the Fire Chief’s report did not involve financial consequences for any person. It was a follow-up report, requested by Town Council, on the narrow issue of “actions implemented to prevent a reoccurrence of this, or a similar incident in the future” – the “incident” being the closing of the garage door on a firefighting tanker, causing damage to both.

50. The Fire Chief’s report was not about the discipline or dismissal of employees, or anyone’s financial interest. Consequently, the Respondent argues, there was no pecuniary interest under the MCIA.

51. Through legal counsel, the Respondent submits that his declaration of a pecuniary interest does not mean that the Respondent actually possessed a pecuniary interest.

52. The Respondent relies on: *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683 (CanLII); *Magder v. Ford*, 2013 ONSC 263 (CanLII); *Darnley v. Thompson*, 2016 ONSC 7466 (CanLII); and *Lediard v. Clarke* (1997), 44 M.P.L.R. (2d) 82.

## FINDINGS OF FACT

53. Findings of fact appear in the Background section of this report, and below.

54. I find as a fact that the Fire Chief's report, that was before Council at the meeting, merely reported on the implementation of measures to prevent a similar incident from occurring in future.

55. I find as a fact that the report did not relate to discipline or dismissal of any employee, to anyone's employment status, to any employee's compensation, or to the terms and conditions of anyone's employment.

## ISSUES AND ANALYSIS

56. I have considered the following issues:

- A. Is a contravention of the MCIA also a contravention of the Code of Conduct?
- B. In any event, did the Respondent contravene the MCIA?
- C. Shall I report to Council?

### A. *IS A CONTRAVENTION OF THE MCIA ALSO A CONTRAVENTION OF THE CODE OF CONDUCT?*

57. No.

58. The Legislature has established a very careful and very clear statutory scheme for enforcement of the *Municipal Conflict of Interest Act*: Only a judge of the Superior Court of Justice may determine that a member or former member has contravened section 5, section 5.1, or section 5.2 of the MCIA. Only a judge of the Superior Court of Justice may impose a sanction on a member or former member who has contravened the MCIA. The member or former member who is sanctioned by the judge has an automatic right of appeal to the Divisional Court. The only role of an integrity commissioner in MCIA

enforcement is to conduct an inquiry to decide whether the integrity commissioner will apply to a judge of the Superior Court under section 8 of the MCIA. The integrity commissioner has no authority to determine whether the MCIA has been contravened. An integrity commissioner may only decide whether or not to apply to a judge and publish written reasons for the decision. A municipal council has no authority to impose sanctions for an MCIA contravention.

59. Section 223.4.1 of the *Municipal Act* establishes an Integrity Commissioner's only, and limited, role in MCIA enforcement: namely, to conduct an inquiry to decide whether the integrity commissioner will apply to a judge of the Superior Court under section 8 of the MCIA.

60. An entirely different provision, section 223.4, governs Code of Conduct inquiries.

61. Quite simply, to allow an Integrity Commissioner to enforce the MCIA under section 223.4 would be to circumvent the Legislature's carefully designed regime of MCIA enforcement.

62. I adopt and apply the analysis in *Pinto v. Anderson*, 2022 ONMIC 1 (CanLII), at paras. 70-72:

The Legislature has established two routes to enforce the MCIA, and neither involves Codes of Conduct. First, one can apply directly to the Court under section 8 of the MCIA. Second, one can apply to an Integrity Commissioner under section 223.4.1 of the *Municipal Act* and, following an inquiry, the Integrity Commissioner can decide to apply to the Court under section 8 of the MCIA for a determination (and penalty).

For more than a century in Ontario, the Court, and only the Court, possessed the authority to interpret the MCIA (and predecessor legislation dating back to s. 220 of the *Consolidated Municipal Act, 1903*), and to apply the legislation to the conduct of Council Members. There is no indication that the 2018 amendments [footnote omitted] to the MCIA and *Municipal Act* were intended to displace the sole authority of the Court to make ultimate MCIA determinations.

Indeed, the contrary is true. The Legislature clearly intends that only the Court should ultimately determine whether the MCIA [has] been contravened, and only the Court should determine the consequences (reprimand, suspension of compensation, or removal from office) of contravention.

63. Section 3.1 of the Code of Conduct, which suggests that every violation of federal and provincial law may be enforced by the Integrity Commissioner as an "offence under this policy [Code]," does not supersede the *Municipal Act* and must be read in conjunction with other sections of the Code. First, no matter how it may be worded, a municipal code of conduct cannot supplant the Legislature's conscious determination to give Integrity Commissioners a narrow and focused role in MCIA engagement. Second, despite the apparent breadth of section 3.1 of the Code, section 10.4(b) makes clear that an Integrity

Commissioner's Code of Conduct jurisdiction does not extend to "other legislation." Section 3.4 of the Code states that the Code "operates along with and as a supplement to" statutes such as the MCIA [emphasis added]. It reinforces the conclusion that the MCIA is not subsumed within the Code.

64. I have considered section 13 of the MCIA. In my view, section 13 confirms that an Integrity Commissioner's role in relation to the MCIA is limited to the process under section 223.4.1 of the *Municipal Act*.

65. Consequently, I find that an alleged contravention of the *Municipal Conflict of Interest Act* may not be pursued as an alleged contravention of a municipal code of conduct. It may be pursued by an Integrity Commissioner only in a section 223.4.1 inquiry.

66. I have nonetheless considered whether the Respondent breached the MCIA.

## ***B. IN ANY EVENT, DID THE RESPONDENT CONTRAVENE THE MCIA?***

67. In my opinion, no. Despite his declaration, the Respondent did not possess a pecuniary interest in the Fire Chief's report. He was not required to refrain from debating or voting on the report.

68. The direct or indirect pecuniary interest of a child of a Council Member is, if known to the Member, deemed to be also the pecuniary interest of the Member: MCIA, s. 3.

69. There is, however, no indication that the Respondent's son had a pecuniary interest – that is, a financial, monetary, or economic interest<sup>10</sup> – in the Report. In fact, the Fire Chief's report did not affect anyone's pecuniary interest.

70. A pecuniary interest does not arise from speculation based on hypothetical circumstances.<sup>11</sup> The pecuniary interest must exist at the time the matter is considered by Council or committee.<sup>12</sup> Possible and potential future happenings do not amount to a pecuniary interest.<sup>13</sup>

71. If a Council Member has a pecuniary interest in a staff report, then the Council Member cannot, for example, debate or vote on whether the staff report should be removed from the agenda. That was not the case. The Respondent did not possess – not even through his son did he possess – a pecuniary interest in the Fire Chief's report.

<sup>10</sup> *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683 (CanLII), at para. 9.

<sup>11</sup> *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 57; *Darnley v. Thompson*, 2016 ONSC 7466 (CanLII), at para. 63.

<sup>12</sup> *Darnley v. Thompson*, at para. 59.

<sup>13</sup> *Bowers v. Delegarde*, 2005 CanLII 4439 (Ont. S.C.), at paras. 76, 78; *Rivett v. Braid*, 2018 ONSC 352 (CanLII), at para. 51.

Even though he made a declaration of pecuniary interest, he did not possess one, and, therefore, was not prohibited from debating and voting as he did.

72. I also note that Council made no decision in relation to the Fire Chief's report, except the decision to receive it. In the MCIA case *Lediard v. Clarke* (1997), Justice Sheppard made the following comments about a motion to receive:<sup>14</sup>

In alleged breach number 3, I ask now as I asked in argument – what is the significance of a vote to receive correspondence and how does it affect anybody's pecuniary interest let alone the respondent's? No satisfactory answer was given.

73. Justice Sheppard also stressed that it is not *any interest in a topic* that requires an MCIA declaration. Only a pecuniary interest in the matter that is the subject of Council's consideration engages the MCIA. As he explained:<sup>15</sup>

Counsel for the applicant argued that, given the respondent's public opposition to the expansion of the hospital and the 1995 consent order, she must be regarded as having a pecuniary interest in any matter pertaining to the hospital which comes before council and must therefore declare her interest and refrain from voting each time. With respect, this is simply not the law. The law requires a court to find a pecuniary interest in a matter which is the subject of consideration. Each matter must be looked at and a pecuniary interest found. It is not enough to say that since she was opposed to the hospital expansion that every matter considered by council which is even remotely connected to the hospital would require that she disqualify herself.

74. In the same way, the fact that the Respondent's son was a firefighter did not require disqualification from every matter remoted connected to the Fire Department, but only those matters in which his son (or he) had a pecuniary interest.

75. If this were an inquiry under section 223.4.1 of the *Municipal Act*, I would not apply to a judge for a determination as to whether the Respondent contravened the MCIA.

76. Council or the public well may wonder whether considerations broader than pecuniary interest should apply in determining whether a Council Member whose child was involved in an incident ought to debate and vote in relation to a staff report arising from the incident. A privacy interest is not necessarily (and in this case was not) a pecuniary interest; nonetheless, one may ask whether the rules should permit a Council Member to advance an alleged privacy interest of a family member. The short answer is that the Legislature, in the *Municipal Conflict of Interest Act*, has seen fit only to address pecuniary interests. If a Council wanted to address non-pecuniary interests, then it would need to amend its code of conduct to address them.

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<sup>14</sup> *Lediard v. Clarke* (1997), 44 M.P.L.R. (2d) 82 (Ont. Gen. Div.), at para. 18.

<sup>15</sup> *Ibid.*, at para. 21.

### C. SHALL I REPORT TO COUNCIL?

77. One particular passage in the Code of Conduct suggests that I should not report to Council unless I find a contravention of the Code. Nonetheless, I believe that the *Municipal Act* requires a public report, from me to Council, regardless of the outcome.

78. Section 10.4 of the Code states, in part:

- (i) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, or recommended corrective action in open Council.
- (j) Where the complaint is dismissed, the Integrity Commissioner shall not report to Council, except as part of an annual or other periodic report.

79. In my view, this language is inconsistent with subsection 223.6(2) of the *Municipal Act*, which contemplates a report “about whether a member of council ... has contravened the applicable code of conduct.” Under the Act, a report is about whether the Code was contravened. The Act does not say the Integrity Commissioner reports only when the Code has been contravened.

80. The legislative expectation of a report is consistent with the principles of accountability and transparency that underlie Part V.1 of the *Municipal Act*.

81. The Code states that the Complainant and Respondent shall receive this report. An interpretation that the parties shall receive the report, but not the Council, whose accountability officer I am, is untenable.

82. Finally, I am making recommendations to Council and can only do so in a report.

83. According to subsection 223.6(5) of the *Municipal Act*, in a report about whether a Member has contravened the Code of Conduct, an Integrity Commissioner may disclose such matters as in the Commissioner’s opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

84. Under subsection 223.6(3) of the Act, this report shall be public.

## CONCLUSION

85. I find that the Respondent did not contravene the Code of Conduct.

86. I do not believe that the Respondent possessed a pecuniary interest under the *Municipal Conflict of Interest Act*. If this were an inquiry under section 223.4.1 of the *Municipal Act*, I would not apply to a judge for a determination as to whether the Respondent contravened the MCIA.

## RECOMMENDATIONS

87. An Integrity Commissioner does not have *Municipal Act* jurisdiction to enforce any Canadian federal law or, except as outlined above, any Ontario provincial law. In fact, this would be contrary to section 223.8 of the *Municipal Act*. I recommend that the last sentence of section 3.1 of the Code of Conduct be repealed.

88. For the reasons set out above, at paragraphs 31 to 41, I recommend the repeal of section 10.2(b). The County of Renfrew Code of Conduct does not include a provision similar to section 10.2(b).

89. As discussed above, the MCIA only addresses pecuniary interests, in the narrow circumstances identified in that Act. Council may wish to consider whether the Code of Conduct should apply more broadly, to cover the use of the Council Members' office and the influence of their office, for any purpose other than the exercise of official duties.

90. Though not currently in Deep River's Code, this is a fairly common provision in municipal codes of conduct. For example, the County of Brant is one of many municipalities employing the following or similar language:<sup>16</sup>

### **Improper Use of Influence**

No Member shall use the influence of her or his Office for any purpose other than for the lawful exercise of her or his Official Duties.

No Member shall use his or her Office or position as a Member to improperly influence the decision of another person for the Member's private advantage, or of that Member's Parent, Child, Spouse, staff member, friend, or associate (business or otherwise). No Member shall attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their Official Duties. No Member shall hold out the prospect or promise of future advantage through the Member's supposed influence within Council, in return for any action or inaction.

For the purposes of this provision "private advantage" does not include a matter: a) That is of general application; b) That affects a Member of Council, his or her Parents, Children, Spouse, staff Members, friends, or associates, business or otherwise as one of a broad class of persons; or c) That concerns the remuneration or benefits of a Member of Council as authorized by Council.

91. Deep River may wish to consider whether it should include similar language.

92. On an administrative note, section 10.4(h) and section 10.5(a) of the Code differ on whether the Integrity Commissioner or the Clerk shall send a completed inquiry report

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<sup>16</sup> County of Brant Code of Conduct for Members of Council, Local Boards and Advisory Committees, section 13, online: <https://www.brant.ca/en/county-government/resources/Code-of-Conduct.pdf>

to the parties. (I have complied with section 10.4(h).) The Town may wish to consider this inconsistency when the Code is next reviewed.

93. Section 10.5(b) contemplates that the Integrity Commissioner shall present each report in person. As a matter of efficiency, the Town may wish to consider the approach, taken by many other municipalities, in which an Integrity Commissioner report is placed directly on the agenda and, if Council decides to require an in-person presentation, is considered at a subsequent date.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Guy Giorno". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping tail.

Guy Giorno  
Integrity Commissioner  
Town of Deep River

February 28, 2022