

Expertise for Municipalities (E4m)

Non-Profit Association

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Integrity Commissioner

for the Township of Brudenell

Lyndoch and Raglan



INQUIRY REPORT/DECISION

ALLEGATION: CONTRAVENTION OF THE
MUNICIPAL CONFLICT OF INTEREST ACT

BY: COUNCILLOR TREVOR LIDTKIE

I. REQUEST FOR INQUIRY

- [1] On December 18, 2020, E4m as Integrity Commissioner received a request for an inquiry (hereinafter the "Application") with respect to Trevor Lidtkie ("Councillor Lidtkie"), an elected member of the Township Council ("Council") for the Township of Brudenell Lyndoch and Raglan ("BLR"). 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 Lidtkie contravened section 5(1) (b) and (c) of the *MCIA* when he at the December 2, 2020, Council meeting declared a pecuniary interest in a matter and then participated in the discussion and attempted to influence Council by moving a motion related to his pecuniary interest.
- [3] More specifically, that at the Council meeting on December 2, 2020, Councillor Lidtkie participated, by agent and in person, in a matter before Council dealing with his personal property taxes and the property taxes of his son.
- [4] When Mr. Rick Clements (brother-in-law of Councillor Lidtkie) participated in the meeting as a deputation before Council, he (Clements) requested a motion be tabled and debated by Council that directly related to a property tax matter that Councillor Lidtkie had declared a pecuniary interest in, that Councillor Lidtkie attempted to move the motion.

II. FINDINGS/CONCLUSION

- [5] Councillor Lidtkie, on October 7, 2020, October 14, 2020, November 4, 2020, December 2, 2020, breached section 5(1) of the Municipal Conflict of Interest Act in the following ways:
- a. On his own behalf, having a direct pecuniary interest in his personal property tax matter being debated by Council, and being present at the meeting, taking part in the discussion of the matter and attempting, during the meeting, to influence the voting on such question;
 - b. Acting through another (Mr. Clements), having a direct pecuniary interest in his personal property tax matter being debated by Council, and being present at the meeting, taking part in the discussion of the matter and attempting, during the meeting, to influence the voting on such question;
 - c. On behalf of his son, having a deemed pecuniary interest in his son's property tax matter being debated by Council, and being present at the meeting, taking part in the discussion of the matter and attempting, during the meeting, to influence the voting on such question to benefit his son;
 - d. Acting through another (Mr. Clements), having a deemed pecuniary interest in his son's property tax matter being debated by Council, and being present at the

meeting, taking part in the discussion of the matter and attempting, during the meeting, to influence the voting on such question to benefit his son.

- [6] Councillor Lidtkie, prior to and after December 2, 2020, breached section 5.2 of the Municipal Conflict of Interest Act in the following ways:
- a. On his own behalf, having a direct pecuniary interest in his personal property tax matter used his office to influence the Treasurer in an effort to deal with his property tax matter to gain a personal financial benefit;
 - b. Acting through another (Clements), having a direct pecuniary interest in his personal property tax matter, used his office to influence the Treasurer in an effort to deal with his property tax matter to gain a personal financial benefit;
 - c. On behalf of his son, having a deemed pecuniary interest in his son's property tax matter, used his office to influence the Treasurer in an effort to deal with his son's property tax matter to gain a personal financial benefit for his son;
 - d. Acting through another (Clements), having a deemed pecuniary interest in his son's property tax matter, used his office to influence the Treasurer in an effort to deal with his son's property tax matter to gain a personal financial benefit for his son.

III. INQUIRY PROCESS

- [7] Upon receipt of the Application, we completed an initial review of the statutory declaration and the accompanying material submitted by the Applicant and determined that there were sufficient grounds to conduct an inquiry into the matter.
- [8] The matter was assigned to Shawn Mahoney, an investigator with Investigative Solutions Network ("ISN") who interviewed the Applicant, five (5) witnesses, Mr. Clements and Councillor Lidtkie.
- [9] We queried the Municipal Clerk regarding the registry of written declarations of pecuniary interest and reviewed the agendas, minutes and audio recordings of Council meetings held on the following dates:
- October 7, 2020
 - October 14, 2020
 - November 4, 2020
 - December 2, 2020
 - December 30, 2020
 - January 6, 2021
 - February 3, 2021
- [10] Additionally, we reviewed media coverage of Council meetings by the Eganville Leader and the Valley Gazette.

IV. FINDINGS OF FACT

[11] The circumstances that give rise to the request for inquiry are related to a property tax matter involving Councillor Lidtkie and his son Reid Lidtkie.

[12] Councillor Lidtkie, a resident of Palmer Rapids, has fourteen (14) years of experience as a municipal Councillor. He was on Council for eleven (11) years took a break for one (1) term and has been back for three (3) years.

Reference: Interview of Trevor Lidtkie, March 4, 2021.

[13] On July 24, 2020, Councillor Lidtkie severed and sold property [house and land] from his commercial garage property to his son Reid Lidtkie. After the sale and transfer of the property, a tax bill was issued by BLR, along with a series of property tax adjustments.

Reference: Interview of Trevor Lidtkie, March 4, 2021.
Interview of Former Clerk-Treasurer,
Interview of Mr. Rick Clements,

[14] Councillor Lidtkie reported that the when the tax bill was received for his garage property the taxes were paid by his wife. Then his son received a tax bill for the severed property that Councillor Lidtkie believed amounted to taxes for the full year. A couple of days later, Councillor Lidtkie reported he received an amended tax bill indicating he owed a significant amount more in property taxes.

Reference: Interview of Trevor Lidtkie, March 4, 2021.

[15] Councillor Lidtkie asked BLR for information about how this happened because he was of the belief that when you sell a property and have lawyers looking after it, all taxes are to be free and clear, but they were not. He reported that he questioned why his son [Reid Lidtkie] owed a year's taxes when the taxes were paid in full at the time of the sale of the property. He further alleged that when "*BLR could not provide him with an answer*", the taxes owed by his son, got reverted to the garage property.

Reference: Interview of Trevor Lidtkie, March 4, 2021.

[16] Councillor Lidtkie did not recall speaking with the lawyer who handled the sale of the property. He did advise that he asked Mr. Clements for his help because he is his brother-in-law and is a Chartered Accountant.

Reference: Interview of Trevor Lidtkie, March 4, 2021.

[17] Mr. Clements confirmed that he is Councillor Lidtkie's brother-in-law and that he became involved in the matter when Reid Lidtkie approached him because Reid Lidtkie received a "*whopping tax bill*" and had been told a "*bunch of different things*" at the BLR office. Mr. Clements reported that the lawyer involved in a property sale takes the proceeds

and makes sure all the accounts are paid so that when the purchaser gets the property it is free and clear. Mr. Clements reported that he told Reid Lidtkie that Mr. Clements would go in to the BLR office and explain it all to the Clerk. On August 30, 2020, Mr. Clements said he attended the BLR office and spoke to the Deputy Clerk about Reid Lidtkie's property taxes and gave them a cheque, explained the situation, and asked if they were all clear and was advised that they were.

Reference: Interview of Rick Clements,

- [18] A few weeks later, Councillor Lidtkie encountered a problem with his property taxes and that he "was not able to get answers from BLR". Councillor Lidtkie asked if Mr. Clements could help him figure it out. Mr. Clements reported that Councillor Lidtkie provided handwritten notes from the Clerk that did not make sense to Mr. Clements.

Reference: Interview of Trevor Lidtkie, March 4, 2021.
Interview of Mr. Rick Clements,

October 7, 2020, Regular Council Meeting

- [19] On October 7, 2020, Mr. Clements attended the regular meeting of Council as a deputation to discuss concerns he had regarding administration practices, customer service and proper governance in relation to "three property taxation issues". Mr. Clements had emailed all members of Council including his brother-in-law, Councillor Lidtkie, the topics he planned to speak about prior to the meeting.

Reference: Council Meeting Agenda, October 7, 2020
Council Meeting Minutes, October 7, 2020
Council Meeting Audio Recording, October 7, 2020
Interview of Trevor Lidtkie, March 4, 2021.
Interview of Mr. Rick Clements,

- [20] No pecuniary interests were declared by any member of Council in writing either in advance of the meeting or at the meeting. Nor did any member of Council declare a pecuniary interest verbally at any time during the meeting. Councillor Lidtkie was present at this meeting.

Reference: Council Meeting Minutes, October 7, 2020
Council Meeting Audio Recording, October 7, 2020

- [21] During the deputation, apart from being connected to Councillor Lidtkie, Rick Clements did not disclose the names of the property owners who contacted him with concerns about land "*purchase and sale*" transactions in BLR. He made the following comments:

"I have taken these as a concerned taxpayer because I have been approached by other taxpayers" [7:07]

[There are] *“Two property situations and I have since been over the weekend been approached by a third tax billing issue. All revolve around circumstances with the purchase and sale of the property. For privacy reasons I will keep the names confidential, but I will say they are connected to Councillor Trevor Lidtkie and therefore he may or may not have a pecuniary interest, but I’ll let you guys decide that.”* [07:35]

“in the first case the property was acquired July 23, there is a tax bill issue for the taxpayer” [08:00]

Reference: Council Meeting Audio Recording, October 7, 2020

[22] Councillor Lidtkie remained in the Council meeting. He did not declare a pecuniary interest even after Mr. Clement’s comments.

Reference: Council Meeting Minutes, October 7, 2020
Council Meeting Audio Recording, October 7, 2020
Interview of Trevor Lidtkie, March 4, 2021.
Interview of Mr. Rick Clements,

[23] During the interview when questioned directly about the October 7, 2020, Council Meeting Councillor Lidtkie advised:

- He did not ask Mr. Clements to make the deputation.
- He was aware of who the other people were who had questions about their property taxes, but he will not reveal the names. (This is contrary to his legal requirement to provide information to the IC pursuant to section 223.4.1(10) and (11).)
- Mr. Clements is a former Councillor and did not need instructions from Councillor Lidtkie on how to make a deputation.
- He did not have any conversations with Mr. Clements about doing a deputation.
- He did not feel that the involvement of Mr. Clements would help his situation specifically.
- He reported he did not remember why he did not declare a pecuniary interest and thinks that if he did not declare it was probably because he did not realize the reason to do it.

Reference: Interview of Trevor Lidtkie, March 4, 2021.

October 14, 2020, Special Council Meeting

[24] A Special Council Meeting was called and occurred on October 14, 2020, for the express purposes of completing agenda items from the October 7, 2020, Regular meeting. Again, no pecuniary interest was declared by any member of Council, verbally or in writing. Councillor Lidtkie was present and participated in the meeting.

[25] Council began discussions regarding Payments. During the Municipal Payments portion of the agenda was an item related to property tax refund credits.

[26] Councillor Lidtkie began to question this item:

“refund credit on property taxes, how did this transpire?” [33:29]

“how did they overpay?” [34:12]

Reference: Council Meeting Audio Recording, October 14, 2020

[27] Later in the meeting, Councillor Lidtkie brings up the property tax refund:

Councillor Lidtkie: *“going back to that tax. We all know who we’re talking about.”*

Mayor Keller: *“I don’t”*

Councillor Lidtkie: *“It was my son. Obviously, there was a bill created over that amount; that there was overpayment”*

Michelle Mantifel (former Clerk-Treasurer): *“So like I said, there was a final bill created, then there was an adjustment done. And that led to there being a credit on the property and like I said, the property owner requested a cheque be cut for the credit to be returned to them.”*

Councillor Lidtkie: *“don’t take me wrong I’m not complaining about getting the money back, I don’t know why it had to be paid in the first place”*

Michelle Mantifel: *“And, and just that’s all because we’re in open session Trevor that’s that’s all I’m really comfortable saying I don’t want to say anymore and crossover any boundaries of providing information on an individual that shouldn’t be provided in an open meeting“*

Councillor Lidtkie: *“understood” [37:47]*

Reference: Council Meeting Audio Recording, October 14, 2020

[28] The payments of various municipal expenditures were discussed/debated. A resolution for the approval of the expenditures is considered and voted on. The expenditures included the tax rebate to Councillor Lidtkie’s son, Reid Lidtkie. To be clear, Councillor Lidtkie participated in the decision regarding his son’s tax rebate.

November 4, 2020, Regular Council Meeting

- [29] At the November 4, 2020, Regular Council Meeting, Mr. Clements was in attendance but not on the Meeting Agenda as a deputation. A motion was brought forward to suspend the Procedural Bylaw and permit Mr. Clements to participate at the meeting as a deputation. Councillor Lidtkie seconded the motion.

Moved by Andrea Budarick, sec., by Trevor Lidtkie

“That we the Council for the Township of Brudenell, Lyndoch and Raglan hereby suspend the Procedural By-law and add Rick Clements as a deputation.”

Carried.

Reference: Council Meeting Minutes November 4, 2020
Council Meeting Audio Recording, November 4, 2020

- [30] The Meeting Minutes reflect that Mr. Clements indicated that he was there (without advance notice to staff or Council), to get a progress report regarding the items he presented to Council at the previous meeting.
- [31] Peggy Young-Lovelace a representative of E4m, the IC for Brudenell, Lyndoch and Raglan was present at this meeting and presented a report finding Councillor Budarick in breach of the *Municipal Conflict of Interest Act*. This is the first point in time when Councillor Lidtkie began declaring his prohibited pecuniary interest regarding his and his son's tax matters.
- [32] When Mr. Clements was speaking, on the invitation of Councillor Budarick and with the permission of the Mayor, the IC advised Council that the matter that Mr. Clements was speaking of was not a Council issue and should be dealt with by staff. It was apparent to the IC that Mr. Clements and the Lidtkies did not appreciate the nuances of the property assessment system in Ontario, the process for MPAC amending the tax roll when a property is severed and a new property is created and were overtly blaming the former Clerk-Treasurer for problems they perceived when in fact she followed the process set out by the *Municipal Act*, the *Assessment Act* and the *Planning Act*. There was also a lack of appreciation that discussion of this matter in open session offended the *Municipal Freedom of Information and Protection of Privacy Act* although it was clear from her comments that the Clerk-Treasurer was concerned about this breach.
- [33] The following are comments made by Rick Clements during his deputation:

[I am] “*here as a concerned taxpayer about what’s going on*” [14:20]

“*here for a progress update on two issues.....incorrect tax bills*” [14:45]

“*I must remind people there is a pecuniary interest on behalf of Trevor Lidtkie, he is my brother-in-law. He is connected to one of these or potentially both of these cases....*” [15:06]

"I would like to hear from Council on what progress has made since last meeting when I raised this issue? [15:30]

[34] The former Clerk-Treasurer advised Council that the issue has been resolved and correspondence is ongoing with the ratepayers.

[35] Councillor Lidtkie remained in attendance and did participate in the discussion of these matters at this meeting.

December 2, 2020, Regular Council Meeting

[36] At the December 2, 2020, Regular Council Meeting Mr. Clements was again on the Meeting Agenda as a deputation. The Meeting Agenda does not describe the topic that Mr. Clements was to speak upon other than indicating that there is an email attached.

Reference: Council Meeting Agenda December 2, 2020

[37] Mr. Clements had emailed all members of Council prior to this meeting advising them of the nature of his deputation. He again intended to address Council about the Lidtkies' property tax issue.

Reference: Council Meeting Agenda December 2, 2020

[38] At the meeting, Councillor Lidtkie verbally stated and provided a written declaration that he had a pecuniary interest related to "*deputations, Rick Clements*" [3:00], without elaborating on the nature of the interest.

Reference: Council Meeting Minutes December 2, 2020
Council Meeting Audio Recording, December 2, 2020
Written Declaration of Councillor Lidtkie

[39] Councillor Lidtkie did not leave the meeting.

Reference: Council Meeting Minutes December 2, 2020

[40] Mr. Clements during his deputation reiterated his concern about property "*tax calculations*" related to the purchase and sale of property in BLR. He further alleged that administrative staff made errors and are not taking responsibility. He also expressed his outrage regarding the events at the prior Council meeting [November 4, 2020] and particularly the advice of the IC to Council.

[41] Mr. Clements then proposed his solution.

“So, I have a motion that this committee, a finance committee be established immediately to resolve these current tax issues, to review all tax calculations surrounding purchase, sales transactions severance transactions and any out of the ordinary transactions because I don’t believe this is the only case “[22:20]

Reference: Council Meeting Minutes December 2, 2020
Council Meeting Audio Recording, December 2, 2020

[42] Mr. Clements also proposed additional actions that Council should take related to what transpired at the prior meeting [related to the comments by the Integrity Commissioner] and employee discipline. Mr. Clements spoke directly to Councillor Lidtkie about this motion:

“Trevor, even though you have no financial gain in this you have a pecuniary interest in this, would you like this motion to go forward?” [24:00]

Councillor Lidtkie responds; *“If I could, I would” [24:06]*

Reference: Council Meeting Audio Recording, December 2, 2020

[43] Council did not pass a resolution related to the suggested motions made by Mr. Clements.

*“Rick Clements was in attendance to present his findings regarding a tax issue in which he is representing Councillor **Lidtkie**. Mr. Clements also proposed a motion for Council to establish a finance committee to review tax calculations surrounding purchase/sale transactions, severances and other out of the ordinary transactions. Council did not support the motion but agreed to research the suggestion.”*

Reference: Council Meeting Minutes, December 2, 2020

[44] Council did however agree to research the suggestions thereby making a decision and taking some action with respect to the Lidtkies’ property tax issues.

Reference: Council Meeting Minutes, December 2, 2020
Council Meeting Audio Recording, December 2, 2020

December 30,2020, Special Council Meeting

[45] Council convened a special closed meeting for the express purpose of considering the motion/matters put forward by Mr. Clements.

PURPOSE *The purpose of the meeting is to consider in closed session, pursuant to the Municipal Act, 2001 section 239 (2)(b) and (f), reports concerning a proposed motion submitted to Council by Mr. Clements when he attended Council as a deputation on December 2, 2020. The reports concern personal matters about an identifiable individual including municipal employees and advice that is solicitor-client privilege. Additionally, to provide education and training [section 239 (3.1)] to Council regarding their legislated obligations and the role of the Integrity Commissioner.*

Reference: Council Meeting Agenda December 30, 2020

[46] Councillor Lidtkie declared a pecuniary interest and left the meeting. He did not participate. However, the audio of the public portion of meeting captures Councillor Lidtkie responding to the Acting Clerk-Treasurer “*this kangaroo stuff has gone on long enough*”. This remark is heard by all of Council.

[47] During this open session at the beginning, Councillor Lidtkie stated:

“Other than the fact that Richard Clements is on here, is there any reason I should declare a pecuniary interest?”

Clerk Treasurer Valerie Jahn answered, “*You are the identifiable individual*”

Councillor Lidtkie responded, “*Okay, I declare*” [1:01]

Reference: Council Meeting Audio Recording, December 30, 2020

[48] Council moved to a closed session and Councillor Lidtkie was asked to leave the room.

Reference: Council Meeting Audio Recording, December 30, 2020

[49] During the closed session Council was advised by the acting Clerk-Treasurer that she had sought opinions related to the issues Mr. Clements had requested in the proposed motion on December 2, 2020. The Municipal Auditor was asked review the property tax billing issue specifically about the Lidtkie sales transactions.

Reference: Council Closed Meeting Audio Recording, December 30, 2020

[50] A letter from Mackillican & Associates Chartered Professional Accountants was read to Council. The letter was titled Lidtkie Property Tax Issue. The finding of the audit was that Municipality Administrative staff was in compliance with Ontario Municipal Regulations for the tax billing process.

Reference: Council Closed Meeting Audio Recording, December 30, 2020

- [51] The Auditor further stated that “her explanations to the Lidtkie’s in the email correspondence exchange was understandable considering the complexity of the property sale in regard to the tax billing process and the file was well organized.” The auditor was referring to the former Clerk Treasurer Michelle Mantifel.

Reference: Council Closed Meeting Audio Recording, December 30, 2020

- [52] Two other legal opinions were provided to Council surrounding Clements’ deputation.
- [53] To be clear, all of the professional opinions unanimously confirmed that BLR staff and specifically the former Clerk-Treasurer had dealt with the Lidtkies’ property tax matters correctly notwithstanding the assertions of Councillor Lidtkie and Mr. Clements.
- [54] Approximately halfway through the meeting it became apparent the closed session would continue for some time: Council decided to have Councillor Lidtkie excused for the afternoon. The closed session broke momentarily, and the audio recording captured Valerie Jahn moving out of Council chambers to the hall. She spoke to Councillor Lidtkie and let him know that he may leave as no resolution was going to occur that afternoon. The following exchange occurred between Councillor Lidtkie and the Acting Clerk-Treasurer:

Acting Clerk-Treasurer, “...*there will be a decision at the next meeting*”

Lidtkie, “*Hope you don’t mind me coming to the next meeting either*”

Acting Clerk Treasurer; “*well yah, you can come to the next meeting*”

Lidtkie;” *this kangaroo stuff has gone on long enough*”

Reference: Council Meeting Audio Recording, December 30, 2020

- [55] As it was captured on the recording, Councillor Lidtkie’s comments were heard by Council considering his and his son’s property tax issues.

January 6, 2021, Regular Council Meeting

- [56] At the regular Council meeting which occurred on January 6, 2021, Councillor Lidtkie again declared a pecuniary interest on items from the agenda, namely:

“10ii. Ricks Clements Deputation of December 2nd, 2020 – Motion of decision to respond to Mr. Clements.”

Reference: Council Meeting Minutes January 6, 2021

- [57] One of the first items of business on the January 6, 2021, agenda was the adoption of minutes from the December 6, 2020, Regular Council Meeting. Councillor Lidtkie took issue with the minutes:

"I will not adopt the minutes as there is some irregularities in them" [06:00]

Reference: Council Meeting Audio Recording, January 6, 2021

- [58] Councillor Lidtkie believed there was discrepancies in the recorded minutes. He took issue with the minutes reflecting that Rick Clements represented him. He clearly spoke on the record regarding representation:

"no, he was not representing me." [10:26]

Reference: Council Meeting Audio Recording, January 6, 2021

- [59] Councillor Lidtkie's assertion that Mr. Clements was not representing him conflicts with Mr. Clements' recorded statements to Council in the October 7, 2020, meeting.

Reference: Council Meeting Audio Recording, October 7, 2020

- [60] Clerk Treasurer Jahn wrote a wording for the amendment to reflect that *"Mr. Clements was not representing Mr. Lidtkie"* [13:40]

Reference: Council Meeting Audio Recording, January 6, 2021
Council Meeting Minutes, January 6, 2021

- [61] Councillor Lidtkie approved the minutes as amended. [27:33]

Reference: Council Meeting Audio Recording, January 6, 2021
Council Meeting Minutes, January 6, 2021

- [62] A closed session occurred during the January 6, 2021 meeting. Councillor Budarick had questions related to the December 30, 2020, closed session. Councillor Lidtkie did not participate in the closed session and left the room.

[63] When Council reconvened in open session, a motion was proposed related to Mr. Clements' deputation on December 2, 2020, surrounding the property tax issue. The following resolution was carried:

Moved by Councillor Iris Kauffeldt, seconded by Councillor John Rutledge
"Whereas a delegation appeared before Council to imply that certain property taxes were improperly calculated for lands. The said lands were severed, and as a result, adjustments were made to the final billings of tax accounts for the severed and retained lands based on the information provided from the Municipal Property Assessment Corporation after the severance occurred....."

Reference: Council Meeting Audio Recording, January 6, 2021
Council Meeting Minutes, January 6, 2021

[64] This was not a recorded vote. It is unknown if Councillor Lidtkie participated in the vote. Councillor Budarick did not verbally support the motion.

Mr. Clements as an Agent of Councillor Lidtkie

[65] Councillor Lidtkie asserted at the January 6, 2021, meeting and when interviewed as part of this inquiry that Mr. Clements was not acting on behalf of Councillor Lidtkie. At no other time did Councillor Lidtkie assert that Mr. Clements was not acting on his behalf.

[66] Mr. Clements stated that he was bringing this matter to Council as a concerned member of the public. He also indicated to Council on October 7, 2020, that he was approached both by Reid Lidtkie first and then by Councillor Lidtkie.

[67] Councillor Lidtkie and Mr. Clements both reported that Councillor Lidtkie approached Mr. Clements for assistance in understanding the property tax matter.

[68] Mr. Clements reported that he attended the municipal office to speak with them about the Lidtkie property tax issue.

[69] The information presented by Mr. Clements in his deputation to Council contained tax calculations he performed based on information he was given by Councillor Lidtkie. While Mr. Clement said tax information is confidential and he was not going to release names of the parties he made it clear that the matter pertained to Councillor Lidtkie and his son.

[70] While Councillor Lidtkie asserts that Mr. Clements was not acting on his behalf, he supported Mr. Clements at the Council meetings, seconded a motion to permit him to

appear unannounced, and by his actions gave Mr. Clements permission to share confidential personal information.

[71] We find that Mr. Clements was acting as agent for both of the Lidtkies during his presentations to Council listed above. We find that Councillor Lidtkie did nothing to dispel this appearance until the meeting on January 6, 2021, at which time he was aware of his prohibited pecuniary interest in the tax matters of himself and his son. We find his argument at that late date that Mr. Clements was not acting for him as self-serving, not credible and it is rejected. We find that Councillor Lidtkie had a motive to distance himself from Mr. Clements after it was clear staff had properly dealt with both his and his son's taxation issues. We find Councillor Lidtkie not to be credible for that reason.

Mr. Clements Assertion of Three (3) Property Owners

[72] During the depositions Mr. Clements said that he had three (3) individuals approach him. In his presentations, his calculations clearly only related to the Lidtkie properties.

[73] When interviewed as part of the inquiry, neither Mr. Clements or Councillor Lidtkie [who asserted he knew who the other party was] would provide a name of the alleged third complainant.

[74] Staff reported that the only complaint related to the calculation of property taxes after a purchase/sale, came from Councillor Lidtkie/Mr. Clements and that they were not aware of another party with concerns. Nor had the concerns about another property been brought forward to them by Mr. Clement.

[75] The investigator reported that Councillor Lidtkie only wanted to meet with the investigator in person, but that Councillor Lidtkie did volunteer to meet. His request to meet in person was intended to eliminate any misunderstandings.

[76] Initially, Councillor Lidtkie "*was cooperative but eventually became vague and hostile. Councillor Lidtkie was found to be evasive. He did not answer questions directly and would demand that any questions he did not want to answer be sent to him via email for a response. When questioned on contentious issues, he attempted to stop the interview on two occasions. He appears to not have an insight into his role and repercussions regarding following Council rules. It is a concern that he is being willfully blind. His credibility is in question*".

[77] The investigator reported the following about Mr. Clements:

He agreed to an interview with the investigator. He was interviewed over the phone. His initial responses were candid and helpful. Eventually, he lost focus on procedural issues with Council and became hostile. He hung up on the investigator one time. He does not have any insight into the role of a governing body and day to day operations. He sees the role of Council as adversarial. He did not deny a potential run for Council and has been a Councillor in the past. Some of his involvement may be an appeal to eventual voters. His responses

were self-serving and when questioned on alternative routes of resolution, he became hostile. His credibility should be considered guardedly.

- [78] We find the allegation of a third taxpayer not to be credible either when it is made by Councillor Lidtkie or by Mr. Clements. Neither gentleman would identify the alleged third party to the IC. No calculations for a third party's property tax issue were put forward by Mr. Clements. Mr. Clements spoke of "*both*" properties, referring to two, not three properties. No third property was discussed either by Councillor Lidtkie or by Mr. Clements with the Clerk-Treasurer or Council. There was no complaint received by staff from another ratepayer about property taxes as alleged by Mr. Clements.
- [79] Further, there appears to be a motive for both Mr. Clements and Councillor Lidtkie to falsely allege that a third taxpayer exists. If a third taxpayer existed, it would argue to Council that the tax issue raised by Lidtkies' affected more people than just the Lidtkies and was therefore a more pervasive problem. Also, it would suggest that there may be another affected property in which Councillor Lidtkie did not have a direct or deemed pecuniary interest.
- [80] The alleged third taxpayer is akin to the second shooter from the grassy knoll. It is a conspiracy theory not supported by the evidence and designed to confuse and expand the issue. We find that there was no third taxpayer and that Mr. Clements and Councillor Lidtkie mislead Council and the Investigators by asserting there was. We find Councillor Lidtkie and Mr. Clements not credible with respect to the allegations of a third taxpayer.

V. ANALYSIS

- [81] We considered:
- a. Whether Councillor Lidtkie had a pecuniary interest in the property tax matters, which were the subject of Mr. Clements deputations;
 - b. Whether Councillor Lidtkie influenced or attempted to influence the voting of Council before, during or after a meeting;
 - c. Whether Councillor Lidtkie properly declared his prohibited pecuniary interests;
 - d. Whether Councillor Lidtkie attempted to influence the voting of Council "through another";
Whether Councillor Lidtkie used his office to attempt to influence a matter being considered by an officer or employee of the Municipality; and
 - e. Whether to make an Application to Court for breach of the *MCIA*.

Pecuniary Interest

- [82] The *MCIA* prohibits Councillors from acting, even from influencing matters where they have a pecuniary interest “*before, during or after*” the meeting¹.
- [83] The Primary issue for analysis is whether Councillor Lidtkie had a prohibited pecuniary interest in the “*property tax*” calculations concern addressed by Mr. Clements.
- [84] “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.”

- [85] On December 2, 2020, Mr. Clements made a presentation to Council to reiterate his concerns related to the calculation of property taxes after a purchase/sale of a severed property which he had addressed with Council on multiple occasions. It is clear that Mr. Clements was speaking about property owned by Councillor Lidtkie and Reid Lidtkie, Councillor Lidtkie’s son.
- [86] Mr. Clements went so far as to advise Council that Councillor Lidtkie may have a pecuniary interest in the matter.
- [87] Section 3 of the *MCIA* states that a member is deemed to have a pecuniary interest if the matter Council is considering involves the pecuniary interests of a Councillor’s child.

Interest of certain persons deemed that of member

3 For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

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).

[88] Councillor Lidtkie has a direct and a deemed pecuniary interest with the topics that Mr. Clements presented to Council.

[89] Section 5 of the *MCI*A 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).

[90] Prior to December 2, 2020 at all times when Mr. Clements was before Council discussing this issue, Councillor Lidtkie did not declare his pecuniary interest. At the December 2, 2020 meeting, Councillor Lidtkie did declare a pecuniary interest with the deputation of Mr. Clements, but remained in the meeting and participated in the discussion.

[91] The matter considered by Council was whether or not to consider a motion Mr. Clements prepared and which he presented to Council:

A Finance Committee be established immediately to:

- *Resolve the current tax issues outlined here*
- *Review all tax calculations surrounding purchase/sale transactions, other out of the ordinary transactions*
- *Comprised of 1 external financial expert & 1 member of Council.*

[92] At the meeting Mr. Clements spoke directly to Councillor Lidtkie and reminded him of his pecuniary interest. Additionally, he asked Councillor Lidtkie to comment on the proposed motion. Councillor Lidtkie responded in support of the motion.

Before During and After Meeting

- [93] Section 5(1)(c) of the *MCIA* prohibits a member of Council on his own behalf or through another from “attempt[ing] in any way whether, before, during or after the meeting to influence the [voting] of Council.
- [94] Councillor Lidtkie and his agent, Mr. Clements, clearly participated in meetings addressing his personal tax issues as well as those of his son in the meetings on October 7, 14 and November 4, 2020. He therefore clearly attempted to influence the decision of Council before the December 2, 2020 meeting which is the subject of this complaint.
- [95] He seconded the motion to permit the delegation about his and his son’s taxes on December 2, 2020 thereby attempting to influence the decision of Council at the December 2, 2020 meeting.
- [96] While he declared conflicts after the December 2, 2020, meeting, he commented negatively for Council to hear on December 30, 2020, and was involved in amending the minutes regarding Mr. Clements role on January 6, 2021. By these actions Councillor Lidtkie attempted to influence the decision of Council after the December 2, 2020, meeting.

Declaration

- [97] Section 5.1 of the *MCIA* requires a member to file a written statement of conflict when he has a prohibited pecuniary interest.
- [98] While Councillor Lidtkie began to declare his prohibited conflict after November 4, 2020, he did not file the necessary written declarations of conflict for the meetings prior to that date where his and his son’s tax issues were before Council.
- [99] Councillor Lidtkie thereby breached section 5.1 of the *MCIA*.

Influence Through Another

- [100] The *MCIA* prohibits a Councillor from attempting to influence the voting on a question where the Councillor has a prohibited pecuniary interest “either on his...own behalf or while acting...for, by, with or through another”.
- [101] We have found that Mr. Clements was before Council representing both Lidtkies. Councillor Lidtkie, therefore, breached section 5(1) of the *MCIA* by attempting to influence Council “through another” being through the actions of Mr. Clement.

Influence of an Officer

- [102] Section 5.2 of the MCIA prohibits a member of Council from using his office to influence a matter that is being considered by an officer or employee of the Municipality.
- [103] Councillor Lidtkie used his position as a Councillor to facilitate Mr. Clements' appearance before Council to publicly criticize the work of the former Clerk-Treasurer. He also used his office in bringing the matter before Council personally in an effort to have Council affect or amend the decision of the Clerk-Treasurer regarding his taxes and his son's taxes.
- [104] It is the Treasurer's statutory duty pursuant to section 286 of the Municipal Act and others to administer the municipal property taxation system. The issue that Councillor Lidtkie and Mr. Clement brought before Council should have been dealt with by staff, by MPAC (the Municipal Property Assessment Corporation) and if necessary by the Assessment Review Board. Any other taxpayer with this type of concern, even if incorrect like Councillor Lidtkie, would be required to follow those statutory processes.
- [105] But for Councillor Lidtkie's position as an elected member, these matters would not have appeared before Council and Mr. Clement would not have been permitted to make the deputations he did.
- [106] As a result, we find that Councillor Lidtkie did use his office in an attempt to influence the decisions and actions of the Clerk-Treasurer with respect to his property taxes and those of his son in contravention of section 5.2 of the MCIA.

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

- [107] 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
- [108] 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
- [109] 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

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)

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

- [110] 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.
- [111] 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.
- [112] 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.
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.

- [113] 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,*

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

then regardless of his good faith or the propriety of his motive, he is in contravention of the statute.”⁷

[114] 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

[115] 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 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.

[116] 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.

[117] 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 not aware of any exceptional grounds upon which we are prepared to exercise the discretion not to bring an application before the courts for a determination.

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

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

[118] We will be applying to a Judge with respect to Councillor Lidtkie's aforementioned breaches of the *Municipal Conflict of Interest Act* for the following reasons:

- a. He participated in no less than five meetings on the issue of his personal property taxes and those of his son;
- b. Mr. Clements appeared before Council on behalf of both Lidtkies, multiple times, incorrectly and publicly alleging problems with the former Clerk-Treasurer's work on the Lidtkies' properties;
- c. Councillor Lidtkie was disingenuous with the investigators and with Council about Mr. Clements' role;
- d. Councillor Lidtkie was disingenuous with Council and the Investigator with respect to the alleged third taxpayer;
 - e. Councillor Lidtkie did not follow proper channels to understand what happened with his severance, the creation of a new property and the associated tax billing but rather used his position as a Councillor to improperly bring this matter before Council alleging both personally and through another (Mr. Clements), and alleging publicly, that staff had done something wrong when that was in fact not true;
- f. Councillor Lidtkie used deception in attempting to achieve a personal financial benefit and a financial benefit for his son when neither of them was entitled to same;
- g. Councillor Lidtkie was trained with respect to his obligations pursuant to the *MCI*A;
- h. Councillor Lidtkie did not seek advice from the IC with respect to what he should do with respect to his and his son's taxation matters;
- i. Councillor Lidtkie's improper actions cost the ratepayers of Brudenell, Lyndock and Raglan considerable funds in legal and accounting fees to deal with his complaint outside of the proper channels detailed in the Municipal Act and the Assessment Act. Put differently, had Councillor Lidtkie followed the proper channels that any other ratepayer would be required to follow, considerable public funds would have been saved.

DATED: June 16, 2021