

DECISION OF THE INTEGRITY COMMISSIONER

TOWNSHIP OF BRUDENELL LYNDOKH AND RAGLAN

ALLEGATION: CONTRAVENTION OF THE *MUNICIPAL CONFLICT OF INTEREST ACT*

BY: COUNCILLOR ANDREA BUDARICK



*Office of the Integrity
Commissioner*

Prepared By:

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I. EXECUTIVE SUMMARY

1. These reasons relate to an inquiry pursuant to section 223.4.1 of the *Municipal Act, 2001*, (the “*Municipal Act*”) about Andrea Emma Budarick (“Councillor Budarick”), an elected member of the Township Council (“Council”) for the Township of Brudenell, Lyndoch and Raglan (“BLR”).
2. The Applicant alleged that Councillor Budarick contravened sections 5, 5.1, and 5.1(2) of the *Municipal Conflict of Interest Act* (the “*MCIA*”) by participating in a Council meeting and entering into discussions, after declaring a pecuniary interest, about Service Charges that residents, including her son Gary Budarick, received from the BLR Fire Department for breaching a municipal fire ban.
3. Fees levied against Gary Budarick by BLR totaled \$1,666.75 which were later reduced by Council to \$365.00 after complaints by or on behalf of Mr. Budarick were made to the Fire Safety Commission and the Office of the Ontario Fire Marshall.
4. The findings of our inquiry are that Councillor Budarick did contravene sections 5 and 5.2 of the *MCIA*. We find that Councillor Budarick did verbally declare a pecuniary interest before the Council meeting that took place on September 4, 2019 and filed a written declaration of her interest pursuant to section 5.1 of the *MCIA*. However, instead of recusing herself from the meeting after declaring a pecuniary interest, Councillor Budarick participated in the discussions with the Fire Department representative.
5. We also find that Councillor Budarick contravened section 5(2) of the *MCIA* by remaining at the closed session Council meeting on October 8, 2019, when it is mandatory for a member to leave the closed meeting when they have declared a pecuniary interest.
6. Further, we find that Councillor Budarick contravened section 5.2 of the *MCIA* by attempting to influence the decision of Council regarding the Service Charges when she participated in the September 4, 2019, meeting of Council. At this meeting, Councillor Budarick did question the Fire Department Representative:

Darren Nesbitt: Now, d, did you partake in the discussions that night?

Andrea Budarick: Again the discussions I attempted to partake in were the ones pertaining to the properties that weren't my son's.

Darren Nesbitt: Okay.

Andrea Budarick: And, and questioning the process of the fire department. Like, what happens when you arrive? What did you do at that particular specific incident?

In fact, um, I would ask a very specific question and- because I made it clear that I declared a conflict in my son's issue, that I was not there to discuss my son's issue. But then I did have questions about the other incidents. Um, and, and I found myself- the gentleman who was there on behalf of the fire department that night, 'cause our fire chief was away in a meeting, um, I, I found him reverting back to my son's case all the time and in fact, I, I know like at least one if not more occasions I said, okay, w, wait a minute here, I'm not, I'm not asking about my son's incident, let's make this very clear, I've asked that uh, for a, a, these other incidences and if you wish to discuss my son's incident, then I need to leave room, what do I need to do, I do not want to be in- you know, in violation, I, I, I tried to make an effort to, to be respectful of that, but it, it, it was certainly- it got to the point actually that Mr. Schneider made it very clear that no, no, no, her intention was to (unintelligible 14:00) the meeting and make it all about my son and, it...that, that wasn't it at all.¹

7. Of significance is that all of the Service Charges levied by the BLR Fire Department during this fire ban incident were debated as one matter. To be clear, the individual infractions were not itemized on the Agenda nor were they separated and considered independently. Councillor Budarick admitted to participating in this discussion. She ought to have known that her participation was improper after she had declared a pecuniary interest and further, that her participation would influence Council when they were deciding on the matter affecting her son.
8. Additionally, Councillor Budarick assisted her son in making an appeal to the Fire Safety Commission for the express purpose of seeking an order for BLR to reduce the Service Charges. Councillor Budarick expressly identified herself as a BLR Councillor in email correspondence to the Commission. The Commission dismissed the appeal citing that they did not have jurisdiction to address the request.
9. Because we have found that Councillor Budarick contravened the *MCIA* and that such contravention was ongoing, intentional and occurred before, during and after the October 8, 2019 special Council meeting, we will be applying to a Judge of the Ontario Superior Court of Justice under section 8 of the *MCIA* for a determination of whether Councillor Budarick contravened the *MCIA* and, if so, a decision as to the penalty to be imposed.

¹ Transcript of Andrea Budarick as recorded December 19, 2019

II. LEGISLATIVE FRAMEWORK

10. 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 *MCIA* by a member of Council or a member of a local board.

11. Sections 5, 5.1 and 5.2 of the *MCIA* provide as follows:

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 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).*

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s.5 (2).

...

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 his 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.*

12. When an application is submitted alleging that a member of Council has contravened sections 5, 5.1 or 5.2 of the *MCIA*, we may then conduct an inquiry. Upon completion of the inquiry, we may apply to a Judge under section 8 of the *MCIA* for a determination as to whether the member has contravened sections 5, 5.1 or 5.2 of the *MCIA*. We must publish reasons as to whether we intend to apply to a Judge under section 8 of the *MCIA*. These are those reasons.

III. THE APPLICATION

13. On November 19, 2019, Expertise for Municipalities (hereinafter “E4m”), as Integrity Commissioner received an application for inquiry (hereinafter the “Application”) with respect to Councillor Budarick. The Applicant is an elector as defined by the *MCIA* and was therefore entitled to make an application for an inquiry pursuant to 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. In that the Application was made within forty-two (42) days of the subject Council meeting, we find that the Application was brought within the timelines set by the *MCIA*.
14. The Applicant alleged that Councillor Budarick contravened sections 5, 5.1 and 5.2 of the *MCIA* when Councillor Budarick participated in Council meeting discussions regarding her son’s bill for cost recovery Service Charges from the Municipality’s Fire Department as a result of having a fire during a fire ban. The allegation was that Councillor Budarick had a deemed pecuniary interest in this issue pursuant to section 3 of the *MCIA*.

IV. THE INQUIRY PROCESS

15. Upon receipt of the Application, we reviewed the complaint and determined that there were sufficient grounds to conduct an inquiry into the matter.
16. During the inquiry, we interviewed the Applicant and Councillor Budarick. We reviewed meeting minutes/recordings of meetings [as applicable and available] and queried the Municipal Clerk regarding the registry of written declarations of pecuniary interest.
17. The conclusions we arrived at with respect to this matter are based upon the balance of probabilities standard. Balance of probabilities is a civil burden of proof, meaning that sufficient evidence exists to support a determination that an event or action “more likely than not” [50.1%] took place.
18. As required, assessments of credibility have been made. These assessments are based on:
 - whether or not the individual had first-hand knowledge of the situation,
 - whether or not the individual had an opportunity to observe the events,
 - whether or not the individual may have bias or other motive,
 - the individual’s ability to clearly describe events,

- consistency within the story,
- the attitude of the individual as they were participating,
- any admission of dishonesty².

19. We did not find Councillor Budarick credible in this investigation. She attempted to minimize or justify her actions by using excuses and denying full understanding of her obligations as a member of Council under the *MCI/A*. She went to great lengths to explain to the investigator how she had attempted to get advice, yet her behaviour does not demonstrate an individual acting with an abundance of caution. A person with her professional credentials clearly ought to have followed the rule of the law. We also find her evidence to be self serving and biased.

Andrea Budarick: I'd have to dig out the emails. I can certainly forward to them if you like. Because the one that's being accused- I was frustrated. Why am I not hearing back? And ultimately, I wound up emailing Paul Cassan, the lawyer, directly 'cause he had done the presentation at North Algona Wilberforce and I'm like, why am I not hearing back, like... and it, and, and- you know, I'm the mother. I mean, I, I- you know, something's going wrong with your son, it, it's, it's, it's difficult. You know like um was I impressed with the whole situation even from a mother's standpoint? Of course not! (laughs) You know, like-

Darren Nesbitt: Yeah.

Andrea Budarick: And in the same sentence too, I never thought that I had an, an uh, an opportunity as, as mom to explain the efforts I did take as a councillor who was the mother to make sure that he was compliant and I (unintelligible 24:46) but I do take this very, very seriously and, I, I tried to make those efforts. So, in (unintelligible 24:53) emails back and forth- in fact, I even emailed Bruce Beakley to ask Bruce for advice on how to proceed. Because I didn't know what to do and I wasn't hearing from back from- I thought I had emailed the correct person, but Paul Cassan actually forwarded my email to E4m and then it was still another good span of time before I heard back from them.

Darren Nesbitt: Okay. So, are you, are d- would it, would your email have gone out before the September the 4th meeting?

² *Farnya v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. *Alberta (Department of Children and Youth Services) v. A.U.P.A.* (2009), 185 LAC (4th) 176 (Alta.Arb.)

Andrea Budarick:

Well, I, I confirm- I definitely did it uh before September 4th. I, I'm pretty positive so yeah but honestly I'd, I'd have to check the dates because initially I, I accepted that it was going to happen from having read the by-law because that, that they were some mechanisms-there were some there that Council had left and confirmed these tickets. So I, I just assumed that, that Junior or- would be able to speak the tickets and it would have been done. You know, we- when I declared on September 4th, that somehow that could have been resolved there or shortly after because Junior hadn't even received the ticket yet.

Timeline

February 25, 2019 – Councillor Budarick receives training from E4m and Wishart Municipal Law Group which included the *MCIA* and Councillor obligations as well as ability to get advice;

August 16, 2019 – Gary Budarick has a fire contrary to the fir ban necessitating a response from BLR Fire Department;

September 4, 2019 – Council meeting: review and approval Service Charges to be levied;

September 29, 2019 – Appeal is submitted by Gary Budarick to the Fire Safety Commission;

September 29, 2019 - A complaint is filed on behalf of Mr. Budarick by Mr. McCloskey to the Office of the Ontario Fire Marshall after a discussion with Councillor Budarick [as reported in the Valley Gazette November 6, 2019];

October 8, 2019 - Special Closed Meeting of Council. Councillor Budarick declares but does not leave meeting and participates in debate;

October 15, 2019 – Mr. Beakley was engaged to carry out internal investigation regarding the Fire Chief;

October 16, 2019 – Email from Councillor Budarick to Paul Cassan at Wishart Law [after participation in Council meetings];

October 21, 2019 – Email from Councillor Budarick to E4m;

October 30, 2019 – Closed meeting whereat Mr. Beakley presented the results of an Internal Investigation re: Fire Chief [Councillor Budarick was asked to leave the meeting as she was in conflict];

November 6, 2019 - E4m provides advice to Councillor Budarick

Andrea Budarick:

And, and questioning the process of the fire department. Like, what happens when you arrive? What did you do at that particular specific incident? In fact, um, I would ask a very specific question and- because I made it clear that I declared a conflict in my son's issue, that I was not there to discuss my son's issue. But then I did have questions about the other incidents. Um, and, and I found myself- the gentleman who was there on behalf of the fire department that night, 'cause our fire chief was away in a meeting, um, I, I found him reverting back to my son's case all the time and in fact, I, I know like at least one if not more occasions I said, okay, w, wait a minute here, I'm not, I'm not asking about my son's incident, let's make this very clear, I've asked that uh, for a, a, these other incidences and if you wish to discuss my son's incident, then I need to leave room, what do I need to do, I do not want to be in- you know, in violation, I, I, I tried to make an effort to, to be respectful of that, but it, it, it was certainly- it got to the point actually that Mr. Schneider made it very clear that no, no, no, her intention was to (unintelligible 14:00) the meeting and make it all about my son and, it...that, that wasn't it at all. [sic]⁴

25. Of significance is that the Service Charges levied by the BLR Fire Department were debated as one matter. To be clear, the individual infractions were not itemized on the Agenda nor were they separated and considered independently. Councillor Budarick admitted to participating in this discussion.
26. On October 8, 2019, a special closed session Council meeting took place. The only item on the Agenda was a Notice of Case Conference from the Fire Safety Commission where Councillor Budarick's son had filed an appeal of the Service Charges levied against him. Councillor Budarick, again, declared a pecuniary interest but remained at the meeting and actively participated in the conversation. In fact, she seconded the motion to leave closed session.
27. On October 16, 2019, after both of the above-mentioned meetings had occurred, Councillor Budarick attempted to contact the Municipality's legal counsel for advice about whether or not she should declare a pecuniary interest and leave the meeting. The proper source of advice for a Councillor with respect to their obligations pursuant to the MCIA is the Municipality's Integrity Commissioner. Councillor Budarick's request for advice was then sent to the Integrity Commissioner on October 21, 2019.
28. Councillor Budarick contacted the Fire Safety Commission via email on October 8, 2019, identifying herself as a BLR Councillor, paralegal and mother to Gary Budarick.

⁴ Transcript of Andrea Budarick as recorded December 19, 2019

Councillor Budarick stated that she had already declared a conflict with Council. Councillor Budarick's email also stated that she informed her son on what to inquire about and how to proceed and asked the Fire Safety Commission to provide her with their formal process and rules. This is a breach of section 5.2 of the *MCI*A.

29. Councillor Budarick also facilitated a connection between her son and Mr. Mike McCloskey [a former BLR firefighter] which resulted in Mr. McCloskey submitting a complaint to the Office of the Ontario Fire Marshall (OFM) regarding the Fire Chief. The OFM notified BLR that the allegations were outside of the jurisdiction of their office and would more properly be dealt with as an internal human resource matter. Upon learning this, BLR contracted Mr. Bruce Beakley, a human resources expert with the County of Renfrew to undertake the investigation. Mr. Beakley's report on the matter was heard by Council at their meeting on October 30, 2019 during the closed portion. Councillor Budarick signed a written declaration of pecuniary interest with respect to the matter. It was reported that Mr. Beakley asked Councillor Budarick to remove herself from the meeting because she had a pecuniary interest in the matter.
30. Subsequent to the report, Council reduced the Service Charge for Gary Budarick to \$365.00 thereby further affecting his personal financial interest in the matter.
31. Councillor Budarick is a licensed and self-proclaimed non-practicing paralegal. With training as a paralegal, it is reasonable to assume that Councillor Budarick had specialized knowledge about how to read and research applicable legislation. Therefore, it would be reasonable to assume that Councillor Budarick was able to read and interpret the *MCI*A and know when it would be appropriate for her to declare a conflict [which she has done on a number of occasions for matters related to her personal work plus nine (9) times related to the matter involving her son] and that she is to leave the closed meeting once she has done so.
32. Councillor Budarick and Clerk Michelle Mantifel also attended a training session conducted by E4m and Wishart Law Municipal Group on February 25, 2019 [which was video recorded, and a copy provided to Ms. Mantifel along with the PowerPoint presentation] regarding the *MCI*A and when to declare a pecuniary interest. Additionally, Councillor Budarick was given a card that is used as a training tool on how to analyze when you have a pecuniary interest in a matter and how to contact the IC for advice that was prepared by E4m and Wishart Municipal Law Group.
33. Councillor Budarick claimed that she was confused after returning from this training session when Ms. Mantifel taught the rest of Council about their *MCI*A obligations. Councillor Budarick claimed that the presentations were not exactly the same. However, it is noted that Councillor Budarick was at the E4m/Wishart training session, was at the training provided by Clerk Mantifel and, as a paralegal would be familiar with, and able to interpret, the legislation herself. Her assertion that she was confused is self serving and is not accepted.

VI. THE ISSUE

34. We considered:

- a. Whether Councillor Budarick had a pecuniary interest in the discussions regarding the Service Charges from the Fire Department as a result of having a fire during a fire ban;
- b. Whether Councillor Budarick had a duty to vacate the meeting after declaring a pecuniary interest;
- c. Whether Councillor Budarick knew or ought to have known not to participate in the discussions during Council meetings;
- d. Whether Councillor Budarick attempted before, during or after the October 8, 2019 meeting to influence the discussions surrounding her son's Service Charge;
- e. Whether Councillor Budarick got advice after the meetings and if she was informed that she had a conflict and how to go about it; and
- f. Whether to make a Court Application for breach of the *MCIA*.

VII. THE OPINION

35. The first issue we analyzed was whether Councillor Budarick had a "pecuniary interest" in the discussions before Council. "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 interest.
36. In essence, the Courts look at whether a financial interest exists and whether it is direct (personal to Councillor Budarick), deemed or indirect.
37. The matter before Council on September 4, 2019 was a discussion about Service Charges levied against residents of BLR including Councillor Budarick's son during a recent municipal fire ban. On October 8, 2019, a special closed Council meeting was held to discuss litigation or potential litigation regarding the Fire Department Service Charges. We find that Councillor Budarick had a deemed pecuniary interest in both of these matters.
38. Councillor Budarick's son received a significant bill for cost recovery Service Charges from the BLR Fire Department for contravening a municipal fire ban. He then filed an appeal with the Fire Safety Commission as well as a complaint to the OFM [made on his behalf by Mr. McCloskey]. We conclude that Councillor Budarick has a deemed interest in matters which have a pecuniary impact on her son.
39. The *MCIA* requires that once a pecuniary interest is declared, the Councillor must file a written statement of the interest and the general nature thereof with the Clerk as soon as

possible. Councillor Budarick did prepare such a written statement at or after the September 4, 2019 or the October 8, 2019 meetings.⁵

40. Section 5(2) of the *MCIA* states that when the meeting is closed to the public, and the member declares a pecuniary interest, they must leave the meeting while the matter is under consideration. During the October 8, 2019 closed session meeting, Councillor Budarick declared a conflict but did not leave the meeting. Further, she continued to discuss the Service Charges given to other residents, claiming she was not there on behalf of her son.
41. Councillor Budarick is a licensed paralegal who reported that she does not actively practice law at present. Notwithstanding that she is not practicing, we find that with this level of education and professional licence, Councillor Budarick knew or ought to have known how to interpret legislation and if necessary to look into relevant case law regarding conflicts of interest, how to identify them, when to declare them and when it is mandatory to leave the meeting. Councillor Budarick also attended a training session with Wishart Law Firm regarding the *MCIA* and was further trained by the Municipality's Clerk. This should have given her further insight into conflicts of interest. Further, regardless of education and training, the *MCIA* binds and guides members of Council. Her knowledge, skill and training simply exacerbates her breach.
42. Councillor Budarick questioned the Fire Department representative on behalf of her son at the September 4, 2019 Council meeting. Councillor Budarick also contacted the Fire Safety Commission on October 8, 2019 on behalf of her son and identified herself as his mother, a paralegal⁶ and a BLR Councillor. The *MCIA* states that a member shall not attempt to influence any decisions regarding a matter where a member has a prohibited pecuniary interest. She ought to have known that her participation was improper after she had declared a pecuniary interest and further, that her participation would influence Council when they were considering the matter.
43. The *MCIA* prohibits Councillors who have a pecuniary interest from participating in the discussions or attempting to influence in any way before, during or after the meeting.
44. Notwithstanding that she was trained to seek advice from the Integrity Commissioner, Councillor Budarick emailed Wishart Municipal Law Group on October 16, 2019 [after she participated in the meetings] asking for advice about whether or not she can stay in the meeting and discuss on behalf of her son if she declares a conflict. She was informed by Wishart Municipal Law Group that they are not the Integrity Commissioner and that was something that had to be answered by the Integrity Commissioner. Councillor Budarick's questions were sent to the Integrity Commissioner on October 21, 2019. She was informed on November 6, 2019, that she had a pecuniary interest and that she had to declare that interest, that she could not participate in the discussions, and that she had to leave the closed meeting. Councillor Budarick sought this advice

⁵⁵ In reviewing the written declarations, we noted they were each dated the day of the meeting in question. We did not confirm with the Municipal Clerk when these were filed with her office.

⁶ Of interest is that this seems to contradict her assertions that she is a non-practicing paralegal.

only *after* she had participated in two (2) meetings about the Service Charge issued to her son, actively influenced the Fire Safety Commission and facilitated a complaint to the OFM.

45. Sections 223.4.1(15), (16) and (17) of the *Municipal Act* allows the Integrity Commissioner to apply to a judge under section 8 of the *MCIA*, if he or she deems it appropriate, for a determination as to whether the member has contravened sections 5, 5.1 or 5.2 of the *MCIA*.

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

46. 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.⁷ The Integrity Commissioner must publish written reasons for the decision whether or not to apply.⁸

Completion

(15) Upon completion of the inquiry, the Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the Municipal Conflict of Interest Act, for a determination as to whether the member has contravened sections 5, 5.1 or 5.2 of that Act. 2017, c. 10, Sched. 1, s. 21.

Notice to applicant re decision not to apply to Judge

(16) The Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge. 2017, c. 10, Sched. 1, s. 21.

Reasons after inquiry

(17) After deciding whether or not to apply to a judge, the Commissioner shall publish written reasons for the decision. 2017, c. 10, Sched. 1, s. 21

47. 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)*.⁹

⁷ *Municipal Act, 2001*, S.O. 2001, c.25 as am. s. 223.4.1(15)

⁸ *Ibid*, s. 223.4.1 (17)

⁹ *Ibid*, s. 223.3(1)

48. 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.¹⁰
49. 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.
50. 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.
51. 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*

¹⁰ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, s.8.

the practice of a profession, in community associations, and otherwise.

52. 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.”¹¹

53. 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. 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.*¹²

54. 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.

¹¹ *Moll v. Fisher* (1979), 8 M.P.L.R. 266 (Ont. Div. Ct.).

¹² *Anderson, D. v. Meadows*, 2020 ONMIC 2 (Giorno)

55. 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.
56. 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.
57. Because we have found that Councillor Budarick contravened the *MCIA* and that such contravention was ongoing and intentional, we will be applying to a Judge of the Ontario Superior Court of Justice under section 8 of the *MCIA* for a determination of whether Councillor Budarick contravened the *MCIA* in participating in the September 4, 2019 and October 8, 2019 special closed meeting of Council and, if so, a decision as to the penalty to be imposed.

IX. CONCLUSION

58. It is our opinion that Councillor Budarick did have a pecuniary interest in the matters before Council on September 4, 2019 and October 8, 2019. We have found that Councillor Budarick contravened the *MCIA* and that such contravention was ongoing, intentional and occurred before, during and after the October 8, 2019 special meeting of Council. We will be applying to a Judge of the Ontario Superior Court of Justice under section 8 of the *MCIA* for a determination of whether Councillor Budarick contravened the *MCIA* and, if so, a decision as to the penalty to be imposed.

DATED November 3, 2020