

Memo

To: Mayor and Council
From: Logan Belanger, Municipal Clerk
Date: May 17, 2022
Subject: Integrity Commissioner Summary Re: Municipal Conflict of Interest
Complaint Re: Mayor Kidd
Attachments: Appendix 01: Summary of Costs
Appendix 02: Expertise for Municipalities(E4m) Final Report
Appendix 03: Court Order

Mayor and Council:

Expertise for Municipalities(E4m) advised that the matter related to Mayor Kidd and the Municipal Conflict of Interest Act (MCIA) complaint has concluded, and the file is now closed.

The parties agreed to resolve this matter by way of a court reprimand for Mayor Kidd pursuant to Section 9 (1).1 of the MCIA by the Superior Court of Justice in this matter. That written order was signed and delivered on April 13, 2022.

As such, the City received the final invoice from E4m, and a summary of costs related to this matter has been provided in Appendix 01. In addition, E4m provided their final report and a copy of the Court Order for our records, enclosed as Appendix 02 and Appendix 03 respectively.

Submission:

Prepared by:

Reviewed by:

Reviewed and submitted for
Council's consideration by:

"Original signed by"

"Original signed by"

"Original signed by"

Logan Belanger
Municipal Clerk

Shelly Zubycck
Director of Corporate
Services

Christopher W. Oslund
City Manager

Appendix 01: 023-2022-CS
Summary of Costs - MCIA Complaint Re: Mayor Kidd

Date	Invoice	Amount	Non-Refundable HST	Total
31-Jan-21	2147	5,882.50	103.53	5,986.03
31-Oct-21	2237	703.75	12.39	716.14
31-Jul-21	153906	1,900.51	27.61	1,928.12
31-Aug-21	154294	1,602.50	28.20	1,630.70
5-May-22	2295	4,466.25	78.61	4,544.86
Total		14,555.51	250.33	14,805.84

Breakdown of Costs

Category	Invoice	Amount	Non-Refundable HST	Total
Integrity Commissioner Costs	2147	5,882.50	103.53	5,986.03
	2237	703.75	12.39	716.14
	2295	253.86	4.47	258.33
Total		6,840.11	120.39	6,960.50
Legal & Court Related Costs	153906	1,900.51	27.61	1,928.12
	154294	1,602.50	28.20	1,630.70
	2295	4,212.39	74.14	4,286.53
Total		7,715.40	135.79	7,845.35
Total		14,555.51	265.74	14,805.84

April 25, 2022

Mayor Kidd and Council Members
City of Temiskaming Shores
325 Farr Dr, Haileybury, ON P0J 1K0

By Email To: Logan Belanger – Municipal Clerk
Chris Oslund – City Manager

RE: Final Report Mayor Kidd Proceedings

Your Worship & Members of Council

First and foremost, Expertise for Municipalities (E4m) is pleased to submit its final report of the Integrity Commissioner (“IC”) pursuant to section 223.6(1) of the *Municipal Act*, on the investigation and reprimand of Mayor Kidd, to the City of Temiskaming Shores.

Ultimately, the Superior Court of Justice (Haileybury, ON) on December 16, 2019, found that Mayor Kidd contravened Section 5.0 of the *Municipal Conflict of Interest Act*.

Final Report Assessment:

As the IC in the City of Temiskaming Shores (during the alleged breach of the *MClA* by Mayor Kidd) and many other communities in Ontario, it is our key responsibility and mandate pursuant to the *Municipal Act, 2001* to oversee and make independent determinations on alleged breaches of the *Municipal Conflict of Interest Act* by any elected member of City Council. It is a role that educates on and enforces the statutory requirement for utmost transparency and accountability to the public by our locally elected officials. The IC also upholds the codes and statutes that fall under its jurisdiction. This is a process that we take seriously and one that we undertake with great honour.

As the IC, it is not always easy or pleasant to move forward with significant findings that Council members have contravened the Act while those same Council members are also responsible for the IC’s appointment and compensation. An IC has a mandated and fiduciary duty to fearlessly undertake its work and must avoid any political influences and interference, without regard to the outcomes or any repercussions of its decisions.

In our role, as the IC for Temiskaming Shores we acknowledge and take great pride in the entire team that participated in the investigation, reviewed the case and ultimately, but not lightly, made the decision to prosecute Mayor Kidd before the courts. The decision to appear before the Superior Court of Justice was made only after considerable debate and dialogue.

The work undertaken by this IC in Temiskaming Shores on this case was a required investigation of events that took place on December 12 thru 16, 2019 regarding a breach of the MCIA. It was our role to independently analyze, review and deliberate on each of these matters and proceed with a course of action that was supported by the legislation governing our mandate. This IC fulfilled its responsibility to Council and the people of Temiskaming Shores in the most professional manner by ensuring it followed its legislative mandate.

The outcome of the court process on this case, clearly confirms that the law was breached by **Mayor Kidd** when he, as the Chair of the Temiskaming Shores Senior Housing Corporation, (TSSHC) wrote a letter on December 12, 2019, to the Council of Temiskaming Shores on behalf of TSSHC asking for an increase in the City's mortgage guarantee for TSSHC. Mayor Kidd breached the Act when he telephoned a council member to ask if he needed clarification as a member of the Corporate Services Committee, as the proposal would be discussed without him.

In our judgement, it was important to bring clarity to this case in light of the lack of jurisprudence around the application of the *Municipal Conflict of Interest Act*. As a matter of fact, a similar case in the City of Elliot Lake was the first to be considered in Superior Court after the requirement for an Integrity Commissioner was mandated to municipalities. The outcome of that court process was a reprimand for the Councillor who breached the Act, which is quite similar to the situation in Temiskaming Shores, whereby the Councillor was a member of the body (TSSHC) but did not gain personally in the matter. As such, both parties agreed to resolve this matter by way of a court reprimand for Mayor Kidd pursuant to Section 9 (1).1 of the MCIA by the Superior Court of Justice in this matter. That written order was indeed signed and delivered by Justice Wilcox on April 13, 2022.

A Final Note:

As the IC in many communities across the province with an obligation to independently investigate and when warranted, prosecute in the Court of Law, under the existing legislative mandate, we are also extremely cognizant of and sensitive to the costs for municipalities. We have warned Councils about the financial cost to the taxpayer of not following the ethical rules you set (Code of Conduct), or of breaching provincial law. You were advised that it would be prudent to establish a reserve fund to prepare for the possibility of such complaints.

To be clear, Mayors and Councils are specifically trained on their obligations under the *Municipal Conflict of Interest Act* with respect to being a member of a body such as the TSSHC, yet the Mayor chose to act in a contrary manner. We continue to make every effort to support members of Council acting in an ethical manner and in accordance with their statutory obligations. Following the provincial law, codes of conduct and ethical policies is intended to promote accountability, transparency, prevents corruption or the appearance of wrongdoing in municipalities and thereby instills ratepayer confidence in this very important level of government. It is the very reason elected officials are required to take an oath to uphold the highest standards

of public trust. It is also the very reason that the provincial government mandated the IC role.

The IC now considers the matter related to Mayor Kidd concluded and is closing its file.

-END-

Court File No.: CV-21-00000036-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceeding Commenced in Haileybury)

THE HONOURABLE

J. Wilcox

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)
)

WEDNESDAY, THE 13TH DAY

OF APRIL, 2022

BETWEEN:

THE CITY OF TEMISKAMING SHORES
(INTEGRITY COMMISSIONER)

Applicant

- and -

CARMAN KIDD

Respondent

ORDER

THIS MOTION made by the Applicant, was heard by me this day, at the Court House, 393 Main Street, Haileybury, Ontario, P0J 1K0,

UPON READING the Application Record, motion materials of the Applicant and the Respondent, filed, the Agreed Statement of Facts of the Parties, filed and upon hearing submissions of counsel, for the Applicant and the Respondent,

1. **THIS COURT FINDS THAT** the Respondent, was, at the material times, the Mayor of The City of Temiskaming Shores (the "City").
2. **THIS COURT FINDS THAT** the Respondent was, at the material times, the Chair of the Temiskaming Shores Senior Housing Corporation ("TSSHC").

3. **THIS COURT FINDS THAT** on December 12, 2019, the Respondent wrote a letter to City Council on behalf of the TSSHC seeking an increase in the City's mortgage guarantee for TSSHC, that the Respondent declared a pecuniary interest and recused himself from the Council meeting when this issue was discussed.

4. **THIS COURT FINDS THAT** on December 16, 2019, Carman Kidd breached section 5 of the *Municipal Conflict of Interest Act* (the "Act") when he telephoned Councillor Whalen asking him if he needed clarification as a member of the Corporate Services Committee of the proposal for an increase in Council's mortgage guarantee for TSSHC.

5. **THIS COURT FINDS THAT** the Respondent breached the Act believing it was not a violation as he was not personally benefitting, wanted what was best for non-profit seniors' housing for the City of Temiskaming Shores and was offering clarification of the proposal if needed before the matter would be discussed without him.

6. **THIS COURT ORDERS THAT** a reprimand of the Respondent is the appropriate penalty in this matter pursuant to section 9(1).1 of the Act and that such reprimand is hereby delivered to the Respondent.

7. **THIS COURT ORDERS THAT** the Parties will bear their own costs.

A handwritten signature in black ink, consisting of a large, stylized 'A' or 'R' shape, is written over a horizontal line.

Count File No.: CV-21-00000036-0000

THE CITY OF TEMISKAMING SHORES
(INTEGRITY COMMISSIONER)
Applicant

and CARMAN KIDD
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceedings commenced in the City
of Haileybury, Ontario)

ORDER

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DECISION OF THE INTEGRITY COMMISSIONER

CITY OF TEMISKAMING SHORES

CONFLICT OF INTEREST COMPLAINT RE:

MAYOR CARMAN KIDD

***Office of the Integrity
Commissioner***

Prepared By:

Darren Nesbitt
Investigator
Peggy Young-Lovelace
E4m Consultant



I. EXECUTIVE SUMMARY

- [1] These reasons relate to an inquiry under sections 223.4.1 and 223.2 of the *Municipal Act, 2001*, (the "*Municipal Act*") about Carman Kidd ("Mayor Kidd"), an elected member of the City Council ("Council") for the City of Temiskaming Shores ("City").
- [2] The Applicant alleged that Mayor Kidd contravened the *Municipal Conflict of Interest Act* ("*MCIA*") when the Mayor declared a pecuniary interest in a matter that Council was considering related to Temiskaming Shores Senior Housing Corporation ("TSSHC") and then attempted to influence the Applicant and other members of Council on that matter.
- [3] TSSHC is a non-profit corporation. Mayor Kidd is a Director of the TSSHC and holds the position of President. He has not been appointed to this position by Council. He is, as such, a member of a Body which will become significant further in this report.
- [4] On December 12, 2019, Mayor Kidd signed a letter addressed to Council on behalf of the TSSHC. The letter outlined that the TSSHC had requested TD Finance to increase the amount of their mortgage by \$153,265 and asked, "*Council if they will amend their resolution to increase the level of their mortgage guarantee, to cover that amount.*"¹
- [5] This letter was on the agenda for the December 17, 2019, Council Meeting.
- [6] Mayor Kidd declared a pecuniary interest in the matter and left the meeting while the request was considered by Council².
- [7] The Applicant alleged that on December 16, 2019 (the day prior to the meeting) Mayor Kidd contacted the Applicant. During the conversation, Mayor Kidd asked what the Applicant's "*intentions were for the most recent request by TSSHC*"³. The Applicant advised Mayor Kidd of the Applicant's intention not to support the request. After this statement, Mayor Kidd "*repeatedly asked [the Applicant] to support the request and tried to explain the financial calculation to support his request*".⁴
- [8] Additionally, the Applicant alleged that Mayor Kidd disclosed that he had spoken with another Councillor and believed he had been successful in convincing the other Councillor to support the request.
- [9] In the investigation, Mayor Kidd did not deny contacting the two members of Council. He reported that spoke directly with these two members as they were on the Corporate Services Committee with him.
- [10] An article in the Temiskaming Speaker [December 23, 2019] written by Diana Johnston "*Council debate – Seniors' Housing drawing interest*" reported a follow up conversation with Mayor Kidd:

¹ Letter from Temiskaming Shores Seniors Housing Corp was included in the December 17, 2019, Agenda Package.

² As recorded in the December 17, 2019 meeting minutes.

³ Applicant's written statement

⁴ Ibid

“As for the issue of conflict of interest, Kidd said he'd called Laferriere and Whalen, who are both members of the corporate services committee, to see if they had concerns.

"I guess as a private citizen, chairing this organization, I have the ability to lobby council, That's basically what I was doing, making sure they don't have any issues, trying to answer their questions, because I knew I probably wouldn't be able to answer their questions tonight" [December 17, Council Meeting]

- [11] In the same article, The Applicant noted that this was not in accordance with the City's process and that the matter should have been considered first by the Corporate Services Committee.
- [12] Mayor Kidd sought advice from the Integrity Commissioner September 24, 2019, regarding his involvement with TSSHC and his obligations under the *MCIA*. Advice was given to Mayor Kidd by the Integrity Commissioner on September 30, 2019. On two occasions in the response, Mayor Kidd was reminded that when he has a pecuniary interest, he is not able to influence the decision before, during or after the vote.
- [13] The request from the TSSHC considered by Council at their December 17, 2019, was pecuniary in nature and Mayor Kidd properly declared his indirect pecuniary interest in this matter, did not participate in the discussion or the vote. In fact, Mayor Kidd left the meeting.
- [14] Mayor Kidd ought not to have contacted the Applicant or other members of Council or a committee of Council to discuss the request.
- [15] We find that Mayor Kidd contravened section 5(1)(c) of the *MCIA* by attempting to influence the decision of Council when he signed a letter on behalf of the TSSHC requesting that Council increase the mortgage guarantee for the corporation.
- [16] Further, we find that Mayor Kidd contravened section 5(1)(c) of the *MCIA* when he attempted to influence members of Council to vote in favour of the TSSHC request considered by Council at their December 17, 2019 meeting.
- [17] Notably, had the matter been considered by the Corporate Services Committee, and had Mayor Kidd attempted to influence the decision of that Committee he would have been in contravention of section 5.2 of the *MCIA* as well.
- [18] Because we have found that Mayor Kidd contravened the *MCIA* and that such contravention was contrary to advice given to him by the Integrity Commissioner, 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 Mayor Kidd contravened the *MCIA* and, if so, a decision as to the penalty to be imposed.

II. LEGISLATIVE FRAMEWORK

[19] Under section 223.4.1(2) of the *Municipal Act*, an elector or a 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.

[20] 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 her or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4.

- [21] Part 4, sections; 22.1, 22.2 a and b of the City of Temiskaming Code of Conduct provide as follows:

*"PART 4 – VOTING & DEBATE PROCEDURES 22. CONFLICT OF INTEREST
22.1 All members have a personal obligation to comply with the Municipal Conflict of Interest Act.*

22.2 A member shall declare a conflict of interest in accordance with the Municipal Conflict of Interest Act and

(a) shall, prior to any consideration of the matter at a meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any motion 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 motion".

- [22] When an application is submitted alleging 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 written reasons as to whether we intend to apply to a Judge under section 8 of the *MCIA*. These are those reasons.

III. THE APPLICATION

- [23] On December 18, 2019, E4M as Integrity Commissioner received an application for inquiry (hereinafter the "Application") with respect to Mayor Carman Kidd. The applicant, Councillor Danny Whalen, is an elector under the *MCIA* and was therefore entitled to make an application for inquiry under section 223.4.1 of the *Municipal Act*. The applicant declared that the application was made within six weeks of the applicant becoming aware of the alleged contravention. In that the application occurs within one (1) day of the subject Council meeting and two (2) days from the date the Applicant alleged Mayor Kidd contacted him and attempted to influence his decision, we find that the application was brought within the timelines set by the *MCIA*.

IV. THE INQUIRY PROCESS

- [24] Upon receipt of the Application, we completed an initial review of the complaint and determined that there were sufficient grounds to conduct an inquiry into the matter.
- [25] The matter was assigned to Darren Nesbitt, an investigator with Investigative Solutions Network ("ISN"). ISN, an agent of the Integrity Commissioner interviewed the Applicant, the other member of Council contacted by Mayor Kidd and Mayor Kidd. The interviews were voice recorded and transcribed.
- [26] In addition, the following documents were reviewed:
- Agenda for the December 17, 2019, Council Meeting

- Letter dated December 12, 2019, from the TSSHC [part of the December 17, 2019 agenda package]
- Minutes of the December 17, 2019, Council meeting [as contained in the January 7, 2020, agenda package]
- Newspaper article dated December 23, 2019, in the Temiskaming Speaker titled “*Council debate – Seniors’ Housing drawing interest*” authored by Diana Johnston
- Integrity Commissioner Advice dated September 30, 2019

V. THE FACTS

- [27] The basis for the Application is that Mayor Kidd attempted to influence the Applicant’s vote on a matter that Council was considering at their December 17, 2019, meeting in which Mayor Kidd had a pecuniary interest as the President/Chair of the non-profit corporation making the request [TSSHC].
- [28] The Applicant reported that the TSSHC has made several presentations to City Council requesting financial and in-kind assistance from the City. Mayor Kidd acted as board chair for TSSHC on previous occasions including remaining in closed session meetings of Council after he had declared a conflict contrary to s5(2) of the MCIA.
- [29] The Applicant advised that he had previously discussed with Mayor Kidd the potential conflict of interest he was putting himself in, due to the fact that he is the Board Chair and President of the TSSHC. The Applicant’s evidence was that Mayor Kidd said that he was well aware of this but did not feel that he was in a conflict of interest position.
- [30] The Applicant stated that Mayor Kidd emailed the Integrity Commissioner on September 24, 2019 and asked for an opinion, and Integrity Commissioner confirmed with an opinion letter that Mayor Kidd was in a position of conflict of interest. This letter very clearly stated that Mayor Kidd could be seen under certain circumstances to be in a position of conflict of interest, even citing direct quotations and section numbers from the MCIA.
- [31] On December 12, 2019, Mayor Kidd signed a letter addressed to Council on behalf of the TSSHC. The letter outlined that the TSSHC requested TD Finance increase the amount of their mortgage by \$153,265 and asked, “*Council if they will amend their resolution to increase the level of their mortgage guarantee, to cover that amount.*”⁵
- [32] This letter was on the agenda for the December 17, 2019, Council Meeting.
- [33] Mayor Kidd declared a pecuniary interest in the matter and left the meeting while the request was considered by Council⁶.
- [34] On December 16, 2019, Mayor Kidd made a phone call to the Applicant and another member of Council. These calls were made under the guise of Mayor Kidd wanting to check in with his fellow “*Corporate Services Committee members*”, a committee that all

⁵ Letter from Temiskaming Shores Seniors Housing Corp was included in the December 17, 2019, Agenda Package.

⁶ As recorded in the December 17, 2019 meeting minutes.

three individuals were a part of, to see if they had any questions regarding the upcoming vote on the TSSHC matter, as Mayor Kidd would have to recuse himself at the Council meeting.

- [35] The Applicant recalled that during this telephone conversation, Mayor Kidd asked if he could count on the Applicant's support for the upcoming TSSHC request. The Applicant told Mayor Kidd that since Mayor Kidd had declared a conflict, he should not be involved in this matter. The Applicant told the investigator that Mayor Kidd stated that he did declare a conflict, but he "*needed this to go through*"⁷.
- [36] The Applicant also stated that Mayor Kidd advised that he also called another Councillor and had convinced him to support the upcoming TSSHC request.
- [37] The other member of Council confirmed with the investigator that Mayor Kidd called the night before the Council meeting and asked if the Councillor would be supporting the motion regarding the TSSHC at the Council meeting. The Councillor advised that Mayor Kidd stated he was not trying to sway the Councillor one way or the other, Mayor Kidd just wanted the Councillor to be aware of the motion. The Councillor stated that "*If I was in his shoes, I would not be having the conversation*".
- [38] The Councillor also stated that after Mayor Kidd received his opinion letter from the Integrity Commissioner, he did in fact declare he was in a conflict of interest at future Council meetings. However, at one particular meeting prior to getting this advice, Mayor Kidd vacated his position as Mayor and did not appoint a replacement. Mayor Kidd then gave a presentation as Chair of the TSSHC, which is "*against procedure*".
- [39] Mayor Kidd stated that the advice he received from the Integrity Commissioner was that as a member of a body dealing with Council, he was in a conflict but had no pecuniary interest. Mayor Kidd stated that since he received the advice, he had been declaring a conflict and leaving the meeting when issues pertaining to TSSHC were brought forward or presentations were made by the Board. It is important to note that prior to the advice from the Integrity Commissioner, Mayor Kidd did participate in discussions in both open and closed session related to the pecuniary interest of the TSSHC.
- [40] Mayor Kidd denied asking the Applicant for support prior to the December 17, 2019, Council meeting on the vote dealing with TSSHC loan guarantee. Mayor Kidd's evidence is that he called the Applicant to address any questions the Applicant might have in regard to the loan guarantee and the content of the letter. Further, that Mayor Kidd would not be in Council to answer questions during the meeting.
- [41] Mayor Kidd also disagreed that he told the Applicant that he expected Council's support as Mayor on the vote.
- [42] The Investigator noted:

"In reference to the calls to [the two members of Council], [Mayor] Kidd said that he does not see why he cannot lobby Council as the Board

⁷ Applicant's transcript

Chair, but then catches himself and says he was just asking the Councilors if they had any questions before the meeting.”

[43] The advice from the Integrity Commissioner told Mayor Kidd the following:

*“You have asked if you have a conflict of interest because of your position as President [Board Member] of TSSHC. The TSSHC is a body under the MCIA. As a “member of a body” you do have an **indirect pecuniary interest** in any matter that Council considers wherein the “body” has a pecuniary or financial interest. To be clear, this specifically pertains to the financial interest [gain or loss] of TSSHC. In the circumstances you described, Council debating a motion regarding whether to provide a loan guarantee to TSSHC would constitute a pecuniary interest for TSSHC. You would, therefore, have an **indirect pecuniary interest** in the matter and would need to declare such an interest.*

When does Your Indirect Pecuniary Interest Crystalize?

Case law shows us that there is a point in time when a pecuniary interest becomes absolute. This means that a matter Council is considering may not be in its entirety a conflict of interest as defined by the MCIA. Case law is also clear that you cannot have a pecuniary interest for something that might happen at a future date.

Justice Michael Penny in Lorello v. Meffe surveyed numerous MCIA decisions about future or contingent interests in examining whether a contingent interest constitutes a prohibited pecuniary interest pursuant to the MCOIA and found”

These authorities seem to establish that, in order to constitute a pecuniary interest, there must be something more than infrequent past business dealings or the possibility of future business. To have a conflict under s. 5 of the MCOIA, there must be a pecuniary interest existing at the time of the vote. There must be an actual conflict or a reasonable assumption that the conflict will occur.⁸

*With respect to TSSHC, there may be matters that come before Council wherein information is being exchanged but no decision is made. By this we mean, when TSSHC approaches Council to advise them of the project [construction of a 68-unit apartment complex] you would not be in a position where you have a pecuniary interest. However, the minute that TSSHC requests support from Council for the project, a financial investment or backing as a guarantor for a loan, you would then have an **indirect pecuniary interest**.”⁹*

⁸ *Lorello v. Meffe*, 2010 CarswellOnt 11195, 2010 ONSC 1976, 99 M.P.L.R. (4th) 107 (OntSCI) at Para 59.

⁹ Integrity Commissioner advice dated September 30, 2019

- [44] Additionally, Mayor Kidd was cautioned by the Integrity Commissioner on two (2) occasions in the opinion that he should not attempt to influence a decision “before, during or after the meeting” pursuant to section 5 (1)(c) of the *MCIA*.

VI. THE ISSUE

- [45] We considered:
- a. Whether Mayor Kidd had a pecuniary interest when he signed the letter requesting an increase to the loan guarantee by the City and if that letter was also an attempt to influence Council contrary to the *MCIA*;
 - b. Whether Mayor Kidd had a pecuniary interest in the vote regarding TSSHC;
 - c. Whether Mayor Kidd attempted to influence other Council member’s votes in favour of the non-profit he is the President/Board Chair of, contrary to the *MCIA*;
 - d. Whether Mayor Kidd, as a result of a breach of the *MCIA*, also violated the Town of Temiskaming Shores Code of Conduct; and
 - e. Whether to make a Court Application for breach of the *MCIA*.

VII. THE OPINION

- [46] Mayor Kidd is a duly elected member of Council and is obligated to comply with the *MCIA*.
- [47] Mayor Kidd is also the President and Board Chair of the TSSHC.
- [48] The TSSHC is developing a 68-unit housing complex for seniors. The City has passed a resolution agreeing to be a loan guarantor for the project. On December 12, 2019, Mayor Kidd wrote to Council requesting that the dollar amount of the loan guarantee be increased by \$153,265.
- [49] “*Pecuniary interest*” is not defined in the *MCIA*; however, the Courts have interpreted it to mean a financial, monetary or economic interest. A pecuniary interest is held to be “indirect” when the member [Councillor], among other things, is a director of a corporation that does not offer its securities to the public and/or a member of a “*body*”.
- [50] The meaning of the term “*body*” is not defined in the *MCIA*, but the Courts have given it a broad interpretation, to ensure that all potential conflicts of interest are captured by it. The Courts have determined that a “*body*” is to include both incorporated and/or unincorporated bodies. Members of volunteer run, non-share, not-for-profit corporations are **not** therefore exempt from the *MCIA*.
- [51] The correspondence signed by Mayor Kidd as Board Chair requested that Council amend a resolution to increase the loan guarantee for the TSSHC is financial in nature and is clearly a pecuniary interest of the “*body*”. Therefore, Mayor Kidd has an **indirect pecuniary interest** pursuant to section 2(a)(i) and 2(a)(iii) in the request before Council

and his *declaration* of such is in compliance with section 5 (1) (a) and (b) of the *MCIA*. His actions, however, are not.

- [52] The closing remarks of the letter state “*Once again, thanks for all of the Cities [sic] support towards this project, over the last couple of years. We would not have been able to proceed without your assistance*”.
- [53] We now consider 5(1)(c) that explicitly states a member “*shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question*” and whether or not Mayor Kidd is in contravention of this section of the *MCIA*.
- [54] The *MCIA* does not provide a definition of the word “*influence*” nor has the issue of influencing been interpreted in sufficient detail by the Courts as to create a test to apply when analyzing alleged breaches. However, in *Moll v. Fisher* (1979), Robbins J. with respect to the *MCIA* stated:

*“The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest.”*¹⁰

....

He goes on to say:

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

- [55] It is our opinion that the letter itself, as a direct request to Council for financial backing, is a form of influence and ought to have been signed by another board member and not Mayor Kidd.
- [56] We also analyzed whether Mayor Kidd attempted to influence other Council member’s votes in favour of TSSHC request. We accept the Applicant’s version of events. The applicant reported that Mayor Kidd (who did in fact identify himself as Mayor), did attempt to sway the Applicant to support Mayor Kidd in his position, as both Mayor and Chair of the Board for TSSHC.
- [57] The other Councillor contacted by Mayor Kidd said that Mayor Kidd should not have made phone calls to the Councillors the night before the meeting and the vote was to occur.
- [58] Most troubling to the investigator was the fact that Mayor Kidd essentially snubbed his nose at the opinion letter provided to him by the Integrity Commissioner and essentially determined that he will “do what he wants”. He also mis-stated the advice that he was

¹⁰ *Moll and Fisher* (1979), [1979 CanLII 2020 \(ON SC\)](#), 23 O.R. (2d) 609, 8 M.P.L.R. 266, 96 D.L.R. (3d) 506 (Ont. Div. Ct.), at page 612 (of O.R., 269 of M.P.L.R.)

provided to members of Council. As Mayor, Mayor Kidd should be held to the highest standard for his Councillors and citizens of Temiskaming Shores.

- [59] We, therefore, find that Mayor Kidd did breach the *MCIA* and subsequently the Temiskaming Shores Code of Conduct by attempting to influence Councillor Whalen's vote at the Council meeting regarding TSSHC.
- [60] 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?

- [61] 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.¹¹ The Integrity Commissioner must publish written reasons for the decision whether or not to apply.¹²
- [62] 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*).¹³
- [63] 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.¹⁴
- [64] 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.
- [65] 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

¹¹ *Municipal Act, 2001*, S.O. 2001, c.25 as am. s. 223.4.1(15)

¹² *Ibid*, s. 223.4.1 (17)

¹³ *Ibid*, s. 223.3(1)

¹⁴ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, s.8.

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.

[66] 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.

[67] 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.*”¹⁵

[68] 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.

¹⁵ *Moll v. Fisher* (1979), 8 M.P.L.R. 266 (Ont. Div. Ct.).

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*.¹⁶

- [69] 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.
- [70] 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.
- [71] 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.

IX. CONCLUSION

- [72] It is our opinion that Mayor Kidd did have a pecuniary interest in the vote regarding TSSHC, as he is a member of that body. We have found that Mayor Kidd did attempt to influence Councillor Whalen's vote in support of the non-profit, contravening the *MCIA* and the City of Temiskaming Shores Code of Conduct.
- [73] Because we have found that Mayor Kidd contravened the *MCIA*, we will be applying to a Judge of the Ontario Superior Court of Justice under section 8 of the *MCIA* for a

¹⁶ *Anderson, D. v. Meadows*, 2020 ONMIC 2 (Giorno)

determination of whether Mayor Kidd contravened the *MCIA* by attempting to influence other Councillors' votes in support of the TSSHC and, if so, a decision as to the penalty to be imposed.

DATED October 30, 2020

PRESENTED TO COUNCIL March 16, 2021