

Expertise for Municipalities (E4m)

Non-Profit Association

1894 LASALLE BLVD. SUDBURY, ON, P3A 2A4

Integrity Commissioner

for Coleman Township



INQUIRY REPORT/DECISION

**ALLEGATIONS: CONTRAVENTION OF THE
COLEMAN TOWNSHIP CODE OF CONDUCT
& *MUNICIPAL CONFLICT OF INTEREST ACT***

**BY: MAYOR DAN CLEROUX AND
TOWNSHIP OF COLEMAN COUNCILLORS**

I. REQUEST and APPLICATION FOR INQUIRY

- [1] On March 3, 2021, E4m as Integrity Commissioner received both a formal Request for Inquiry with respect to the Coleman Township's Code of Conduct – Bylaw 19-09 ("Code of Conduct") as well as an Application for Inquiry with respect to the *Municipal Conflict of Interest Act* ("MCIA") from a member of the public ("Applicant") who alleged that members of Council were in contravention of both of these pieces of legislation and as detailed in [2] and [3].
- [2] The Request for Inquiry (hereinafter the "Request") comprised two (2) allegations of contravention of Section 13.2 of the Code of Conduct as follows:
- a) with respect to Mayor Dan Cleroux ("Mayor Cleroux"), an elected member of Council ("Council") for Coleman Township ("Township"), the Applicant alleged that Mayor Cleroux potentially contravened the Code of Conduct by declaring a conflict of interest with respect to a closed session discussion on January 2, 2019, surrounding a lawsuit the Township was named in, and then not declaring a conflict at any future discussions related to the same lawsuit;
 - b) with respect to members of Council, it was alleged that the Mayor and Councillors placed internet towers in close proximity to their homes, and purposely excluded a specific geographic area of the Township.
- [3] The Application for Inquiry with respect to the *Municipal Conflict of Interest Act* (the "MCIA") alleged that Sections 5, 5.1 and 5.2 of the *MCIA* were contravened by Mayor Cleroux with respect to the lawsuit as described in [2a)] and by Mayor Cleroux along with Councillors Perry, Cote and Marcella with respect to the location of internet towers within the Township.
- [4] The Applicant is a member of the public and an elector under the *MCIA* and was therefore entitled to make an Application for an inquiry under sections 223.4 and 223.4.1 of the *Municipal Act*.
- [5] With respect to the allegations identified in [3] the Applicant declared that the Application was made within six (6) weeks of the Applicant becoming aware of the alleged contravention, which is a requirement of the *MCIA*.

II. FINDINGS/CONCLUSION

- [6] After conducting the preliminary review and considering the evidence before us, we will not be undertaking a full inquiry into this matter.
- [7] The evidence before us at this time does not rise to a violation of the *MCIA* by Mayor Cleroux or the other three (3) members of Council. Further, we do not find that there is sufficient evidence before us to consider this matter a breach of the Code of Conduct. This matter is therefore dismissed.

- [8] When the Integrity Commissioner conducts an inquiry into allegations that a Member of Council contravenes the *MCIA*, they must publish reasons if they will not be taking the Member to Court. We did not conduct an inquiry into this matter. Our preliminary review indicated that Mayor Cleroux did not contravene the *MCIA*, and we will not be conducting a full inquiry or taking the matter to court.
- [9] If the Applicant still feels that there has been a contravention of the *MCIA*, contrary to our finding, they can make an application to the Court at their own expense to seek redress before the Courts.

III. INQUIRY PROCESS

- [10] Upon receipt of the Request and the Application, we completed an initial review of the statutory declaration and the accompanying material submitted by the Applicant and upon finding the Application properly considered by us, we conducted a preliminary review of the allegations to determine if there were sufficient grounds to conduct a full inquiry.
- [11] The matters were assigned to Jane Martynuk (the “Investigator”), an investigator with Investigative Solutions Network (“ISN”) as an agent of the Integrity Commissioner to crystalize the complaint and to consider if a full inquiry was necessary. The Investigator interviewed the Applicant, Mayor Cleroux and a number of witnesses and considered the following bylaws, policies and other material related to the allegations in conjunction with the Code of Conduct:
1. The Corporation of the Township of Coleman By-Law No.16-35 - the proceedings of Council, the conduct of its members and the calling of meetings
 2. Special Council Meeting Minutes January 2, 2019
 3. Audio recording of Council Meeting July 13, 2020
 4. Regular Council Meeting Minutes July 13, 2020
 5. Special Council Meeting Minutes August 4, 2020
 6. Regular Council Meeting Minutes October 26, 2020
 7. Regular Council Meeting Minutes December 7, 2020
 8. Regular Council Meeting Minutes March 1, 2021
 9. Regular Council Meeting Minutes September 14, 2020
 10. Regular Council Meeting Minutes September 28, 2020
 11. Special Council Meeting Minutes October 9, 2020
 12. Regular Council Meeting Minutes October 13, 2020
 13. Regular Council Meeting Minutes October 26, 2020
 14. The Corporation of the Township of Coleman By-Law No. 20-44 - agreement with Quantum Xpress Ltd to operate a communication tower within the Township (on Township owned tower)
 15. Staff Report dated 2021-03-02 - Parolink Internet Service Plan
 16. Coleman Township Website

- [12] The Applicant provided additional information unrelated to the matter before us and it has not been recorded or considered in this report.

IV. FINDINGS OF FACT

- [13] The circumstances that gave rise to the request for inquiry are related to a declaration of a conflict of interest regarding a legal matter related to the Applicant and the selection of locations for internet communication towers that benefitted members of Council.

Declaration of Pecuniary Interest By Mayor Cleroux

- [14] At the January 2, 2019, Special Council meeting, Mayor Cleroux declared a conflict of interest with respect to an in-camera item and then did not declare a conflict at future in-camera discussions of the same topic.

Mayor Cleroux, when apprised of all of the facts, sought legal advice from his own lawyer, who advised that he did not have a pecuniary interest. Subsequently, Mayor Cleroux participated when Council considered the legal matter involving the Applicant.

Placement of Internet Service Towers

- [15] The Applicant alleged that Council in essence discriminated against a specific geographic area of the Township when it came to the placement of internet service towers. And further that the Mayor and three (3) Township Councillors had a conflict of interest with respect to the placement of the internet service towers.
- [16] The Township does not provide internet service to the public. Such service is provided by third parties.
- [17] Quantum Xpress ("Internet Contractor") a third party, was interested in locating towers within the Township that would provide improved internet access for the Township as a whole.
- [18] Council did make decisions regarding internet service in the Township, however, it was specifically related to Council approving the entering into of an agreement with the Internet Contractor to possibly locate equipment on a Township-owned tower.
- [19] Some of the locations proposed by the Internet Contractor during various briefings with Council were in the geographic areas where members of Council reside.
- [20] Council was advised by the Internet Contractor that the geographic area that was alleged to be discriminated against had significantly more challenges (topographic and others). Efforts to continue to find a suitable location for this area were supported by Council.

[21] The final decision to proceed with any tower location was a business decision made by the Internet Contractor.

V. ANALYSIS

[22] The *Municipal Act* requires that for the Integrity Commissioner to consider a matter under the *MCIA*, the individual applying must attest to the fact that they became aware of the situation in the previous six (6) weeks. The Applicant swore a declaration that they discovered the *MCIA* contraventions on March 2, 2021, and filed the application on March 11, 2021, thereby meeting the timeframe.

[23] We wish to note, we have not considered the veracity of the statutory declaration in this matter. Had the matter been referred to a full inquiry we would have first ensured the statutory declaration to be true.

[24] In the current circumstance, we only considered whether or not there was a pecuniary interest as described by the Applicant.

Code of Conduct

[25] The Code of Conduct states that *“No Member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member’s private advantage, the private advantage of the Member’s parent, child, spouse, staff member, friend or associate, business or otherwise or the disadvantage of others. No Member shall attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties. No Member shall hold out the prospect or promise of future advantage through the Member’s supposed influence within Council in return for any action or inaction.”*

Pecuniary Interest

[26] The *MCIA* prohibits Councillors from acting, even from influencing matters where they have a pecuniary interest *“before, during or after” the meeting*¹.

[27] The primary issue for analysis is whether the Mayor contravened the *MCIA*, when he participated in discussions and/or decisions or attempted to influence those decisions related to the in-camera matter and whether the Mayor and three (3) members of Council contravened the *MCIA* when they made decisions about the location of internet tower sites.

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

[28] “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.”

[29] A Member may have a **Direct Pecuniary Interest** where the matter being considered by Council affects the Member’s own finances. A Member may have an **Indirect Pecuniary Interest** where they are a shareholder of a private corporation or have a controlling interest in a public corporation (i.e., director, significant shareholder) or is a “member of a body” that has a pecuniary interest in the matter being considered by Council or the Member is a Partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. A Member may have a **Deemed Pecuniary Interest** where a matter being considered affects the finances of a Member’s parent, spouse or child [as defined by the *MCIA*].

[30] Section 5 of the *MCIA* requires that when a member of Council has a pecuniary interest with a matter that Council is considering, 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;

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).

- (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).

[31] Section 5.1 of the *MCIA* requires a member to file a written statement of conflict when he has a prohibited pecuniary interest.

[32] We also considered section 4 of the *MCIA*. Section 4 describes circumstances when a Member having a pecuniary interest is “excepted” from having to disclose the interest. More specifically, we considered section 4 (j) which states:

By reason of the member having a pecuniary interest which is an interest in common with electors generally;

[33] The *MCIA* does not define electors generally. The Courts have defined it as a subset of electors that would be affected by the matter:

[42] The meaning of the word "generally", as found in the [MCIA](#), has been addressed with greater precision [Ennismore (Township) (Re), [1996] O.J. No. 167, 31 M.P.L.R. (2d) 1 (Gen. Div.)]:

The word "generally" used in [Section 4\(j\)](#) indicates to me that the electors to be regarded, when applying the section, are to be of a certain class or order. It is apparent to me that the authorities, together with the language and intended general purpose of the [Municipal Conflict of Interest Act](#), establish that the class or order must be those electors in the area in question who are "affected" by the matter. It is those affected electors that are to be regarded when considering the issue of conflict of interest and not necessarily all the electors.³

Declaration of Pecuniary Interest By Mayor Cleroux

[34] The Applicant alleged that Mayor Cleroux contravened the *MCIA* when he declared a pecuniary interest in an in-camera legal matter and then when the matter was considered at later dates, he did not declare.

[35] Mayor Cleroux sought legal advice and acted upon that advice.

[36] The legal matter considered in closed session by Council on January 2, 2019, did not name Mayor Cleroux as a party nor did any individuals named, trigger a deemed pecuniary interest on behalf of Mayor Cleroux.

³ *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. 32, Lederer J. (Gordon J. concurring).

[37] Additionally, the evidence before us does not give rise to a contravention of the Code of Conduct by Mayor Cleroux.

Placement of Internet Service Towers

[38] The allegations of the Applicant related to the placement of the internet service towers near the residences of Councillors being a breach of the *MCIA* and the Code of Conduct are not supported by the evidence.

[39] This matter has been analyzed in accordance with the *MCIA*, applicable case law and the Code of Conduct.

[40] In this circumstance, Council made decisions within their jurisdiction that benefitted the community overall with respect to internet service. The alleged exclusion of the geographic area identified by the Applicant from improved internet service was not due to nefarious decision making by Council but rather to challenges faced by the Internet Contractor.

[41] Additionally, we were unable to find any evidence that there would be a positive or negative financial or economic benefit to the Council member, nor was there evidence that the improved internet service resulting from tower placement was a benefit to the members of Council only.

[42] The improved service was intended to be of benefit to a significant portion of the Township. We found that if there had been a financial benefit to members of Council, in this case, it would be excepted by section 4(j) of the *MCIA*. Council would not be required to comply with section 5 of the *MCIA*.

[43] Additionally, no member of Council contravened section 13.2 of the Code of Conduct with respect to the locations chosen for the internet towers. Potential locations were chosen by the Internet Contractor and Council simply had "interests in common generally" with the majority of the community as opposed to "improper use of influence" for the "member's private advantage."

[44] There are insufficient grounds to conduct a full inquiry into this matter.

Dated: September 30, 2021