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TOWNSHIP OF BROCK INTEGRITY COMMISSIONER, GUY GIORNO

Citation: Bath-Hadden v. Pettingill (No. 2), 2020 ONMIC 4

Date: February 20, 2020

REASONS FOR DECISION

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CONTEXT

1. Among their responsibilities, municipal Integrity Commissioners in Ontario conduct inquiries into applications alleging that council members or members of local boards have contravened the *Municipal Council of Interest Act*. At the end of such an inquiry, the Integrity Commissioner shall decide whether to apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act, and shall publish reasons for the decision. Such decision is not subject to approval of the municipal council and does not take the form of a recommendation to council. There is, therefore, no municipal council resolution necessary to give effect to the decision.

THE APPLICATION

2. This inquiry involves new statutory responsibilities of Integrity Commissioners that took effect March 1, 2019.

3. Section 223.4.1 of the *Municipal Act* allows an elector or a person demonstrably acting in the public interest to apply in writing to the Integrity Commissioner for an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* (MCIA) by a member of council or a member of a local board.

4. Mayor Debbie Bath-Hadden (Applicant) alleges that Councillor Cria Pettingill (Respondent) contravened section 5.2 of the MCIA through her actions in connection with a concert hosted by the Wilfrid Hall Board of Management.

5. This Application was submitted in parallel with a complaint alleging a contravention of the Council Code of Conduct (By-law 2843-2019-AP).¹ My report on the Code of Conduct complaint, 2020 ONMIC 3, is separate.

6. The Application was originally submitted October 4, 2019, and clarified and completed October 15.

7. Upon receiving the completed Application, I conducted an inquiry.

DECISION

8. Subsection 223.4.1(15) of the *Municipal Act* states that, upon completion of an inquiry, the Integrity Commissioner may, if the Integrity Commissioner considers it appropriate, apply to a judge under section 8 of the MCIA for a determination whether the member has contravened section 5, 5.1 or 5.2 of that Act.

¹ I assigned the Application file number MCIA-2019-01 and the complaint file number CC-2019-02.

9. After considering all the evidence and the submissions of the parties, I have decided that I will not apply to a judge for a determination whether Councillor Pettingill has contravened the MCIA.

10. Subsection 223.4.1(17) of the *Municipal Act* requires me to publish written reasons for my decision. These are my reasons.

BACKGROUND AND FINDINGS OF FACT

11. The Application relates to the Respondent's role in getting the Wilfrid Hall Board to pay an extra \$300 to a musician.

12. The facts are set out in the parallel complaint report, 2020 ONMIC 3. I will not repeat them here.

PROCESS

13. The *Municipal Act* does not direct the procedure that an Integrity Commissioner must follow in handling MCIA applications. I have chosen to follow a process that ensures fairness to both the individual making the application (Applicant) and the Council Member alleged to have contravened the MCIA (Respondent). This fair and balanced process includes the following elements:

- The Respondent receives notice of the Application and is given an opportunity to respond.
- The Respondent is made aware of the Applicant's name. I do, however, redact personal information such as phone numbers and email addresses.
- The Applicant receives the Respondent's Response and is given an opportunity to reply.
- I may accept supplementary communications and submissions from the parties, but generally on the condition that parties get to see each other's communications with me. I do this in the interest of transparency and fairness

14. I interviewed both parties as well as several witnesses. I received relevant documents. In making my decision, I have taken into account all the submissions of the parties and all of the evidence obtained during the inquiry.

POSITIONS OF THE PARTIES

APPLICANT'S POSITION

15. The Applicant's position is set out more fully in the companion report, 2020 ONMIC 3.

16. In relation to the MCIA, the Applicant submits that the Respondent influenced and took part in a decision of the Wilfrid Hall Board in a matter in which she had a personal or financial interest.

RESPONDENT'S POSITION

17. The Respondent's position is set out more fully in the companion report, 2020 ONMIC 3.

18. She states that he had no financial interest in the decision to pay the musician \$300 extra.

ISSUE

19. I have considered the following issue: Did the Respondent have a pecuniary interest in the matter?

ANALYSIS AND FINDINGS

20. The MCIA only applies to a pecuniary interest. The Divisional Court has defined pecuniary interest as follows: "Generally, it is a financial interest, an interest related to or involving money."²

21. I have found that the Respondent had no financial interest in the matter. See did not benefit personally. My findings are set out in the parallel report, 2020 ONMIC 3.

22. There also was no opportunity for the Respondent to benefit personally.

23. She had no pecuniary interest. Absent a pecuniary interest, the MCIA did not apply.

24. The MCIA does not apply to friendships. Nonetheless, I note that I also found the musician was not her friend.

² *Tuchenhagen v. Mondoux*, 2011 ONSC 5398 (CanLII) (Div.Ct.), at para. 31.

25. 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.

26. If I commenced a Court application then I would bear the onus of proving that Councillor Pettingill breached the MCI.A.³ There was no breach.

27. I do not consider it appropriate for me to apply to a judge for a determination as to whether Councillor Cria Pettingill contravened the MCI.A.

DECISION

28. I will not apply to a judge for a determination as to whether Councillor Cria Pettingill contravened the MCI.A. on August 15, 2019.

PUBLICATION

29. The *Municipal Act* requires that after deciding whether or not to apply to a judge, the Integrity Commissioner shall publish written reasons for the decision. This decision will be published by providing it to the Township to make public and by posting on the free, online CanLII database as decision 2020 ONMIC 4.

30. Subsection 223.5(2.3) of the *Municipal Act* states that I may disclose in these written reasons such information as in my opinion is necessary. All the content of these reasons is, in my opinion, necessary.



Guy Giorno
Integrity Commissioner
Township of Brock

February 20, 2020

³ *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 25.