

218/20

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TOWNSHIP OF BROCK INTEGRITY COMMISSIONER, GUY GIORNO

**Citation:** Bath-Hadden v. Pettingill (No. 1), 2020 ONMIC 3

**Date:** February 20, 2020

## REPORT ON COMPLAINT

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## THE COMPLAINT

1. Mayor Debbie Bath-Hadden (Complainant) alleges that Councillor Cria Pettingill (Respondent) contravened section 11 of the Council Code of Conduct (By-law 2843-2019-AP) through her actions in connection with a concert hosted by the Wilfrid Hall Board of Management.
2. This Complaint was submitted in parallel with an application alleging a contravention of the *Municipal Conflict of Interest Act*.<sup>1</sup> My determination in the MCIA application, 2020 ONMIC 4, is reported separately.

## SUMMARY

3. The Councillor did not benefit personally and did not use her position to benefit a friend.
4. Nonetheless, she placed herself in a situation that should never have occurred. She was the intermediary who negotiated an unwritten contract between the Hall Board and a musician. But for failure to document the terms of payment, this Complaint would never have arisen. Further, the lack of a written agreement exposed the Hall Board and the Councillor to unnecessary risk.
5. The Councillor convened and conducted a closed Hall Board meeting without notice, without following proper procedure, and without satisfying the requirements of the *Municipal Act*.
6. The Councillor cajoled the Hall Board to make a snap decision to pay extra to the musician, contrary to the Board members' inclinations and contrary to any sound decision-making principles.
7. The Councillor acknowledges she was wrong to say that the Township did not need the extra money that was paid to the musician.
8. Despite these findings, the Council Code of Conduct does not cover what occurred. Section 11 does to apply to the situation. Council may wish to revisit the Code and consider amendments to broaden it.
9. I make recommendations to prevent something like this happening in future.

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<sup>1</sup> I assigned to the Complaint file number CC-2019-02 and to the application file number MCIA-2019-01.

## BACKGROUND

10. Councillor Cria Pettingill is a member of the Wilfrid Hall Board of Management. It is traditional that the Councillor for Ward 4, where the Hall is located, be appointed to the Board.

11. The Hall Board hosted a concert, August 15. Before the show began, the musician was paid \$1200. Immediately following the performance, the Councillor convened a kitchen meeting of the Hall Board and eventually obtained agreement to pay the musician an additional \$300.

12. The Councillor's role in dealing with the musician, in dealing with the other members of the Hall Board, and in dealing with the payment, gives rise to this Complaint and to a parallel application, 2020 ONMIC 4, alleging breach of the *Municipal Conflict of Interest Act*.

## PROCESS FOLLOWED

13. In operating under the Code, I follow a process that ensures fairness to both the individual bringing a Complaint (Complainant) and the Council Member responding to the Complaint (Respondent). This fair and balanced process includes the following elements:

- The Respondent receives notice of the Complaint and is given an opportunity to respond.
- The Complainant receives the Respondent's response and is given an opportunity to reply.
- More generally, the process is transparent in that the Respondent and Complainant get to see each other's communications with me.
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a response or reply.
- Where appropriate I will, however, invite a Complainant to clarify a Complaint. When a Complaint has been clarified the Respondent is provided with the original document and the clarification.

- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

14. The Complaint was originally submitted October 4, and was clarified October 15. October 15 is the official Complaint date.

15. I interviewed both parties. I interviewed the musician and other Hall Board members. I reviewed relevant documentation, including affidavits, emails, and agendas and minutes of meetings. While not all interviews, documents and other evidence are specifically mentioned in this report, I have reviewed and considered them all, and taken everything into account in this report.

## POSITIONS OF THE PARTIES

16. In this section I am summarizing the positions of both parties. This is a summary, not the entirety, of their submissions to me. Regardless of what is summarized below, I have taken every word of their submissions into account.

17. Both parties' submissions commented on events that occurred after August 15. Many of the comments related to the minutes of a subsequent Hall Board meeting. I do not summarize below their comments related to the minutes. In my view, what happened after August 15 is only relevant if it provides evidence about what occurred on August 15.

### **POSITION OF THE COMPLAINANT (MAYOR BATH-HADDEN)**

18. The information provided to the Mayor before she filed her complaint was that the musician was a friend of Councillor Pettingill. She feels it wrong that a Council Member would try to exercise "the right or authority to relieve the Hall Board of fundraising cash dollars and disburse same to a personal friend of hers."

19. The Mayor argues that by saying, "The Township doesn't need the money," the Councillor was essentially acknowledging that Township funds were being taken. In the Mayor's words:

I truly believe this was not an honest mistake. If it was, she would not have indicated that "The Township did not need the money." She very well knew that the money was coming from Township funds. She bullied, harassed and abused her role as Councillor to exude an authority she does not possess to relieve the Hall Board of Township funds.

20. The Mayor argues that the Councillor abused her office and abused her power to influence the Hall Board members to make a decision with which they were not comfortable.

21. The Mayor alleges that what happened contravened section 11 of the Code of Conduct. Section 11 states:

Members of Council shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of their official duties to represent the public interest.

Specifically, members of Council shall not:

- Use any influence of their office for any purpose other than for their official duties;
- Act as an agent before Council or any committee, board, or commission of Council;
- Solicit, demand, or accept the services of any corporation, employee, or individual providing services to the municipality at a time in which said person or corporation is being paid by the municipality;
- Use any information gained in the execution of their office that is not available to the general public for any purpose other than for their official duties;
- Place themselves in a position of obligation to any person or organization which might benefit from special consideration or may seek preferential treatment;
- Give preferential treatment to any person or organization in which a member or members of Council have a financial interest;
- Influence any administrative or Council decision or decision-making process involving or affecting any person or organization in which a member or members of Council have a financial interest; and,
- Use corporate materials, equipment, facilities, or employees for personal gain or for any private purpose.

**POSITION OF THE RESPONDENT (COUNCILLOR PETTINGILL)**

22. Councillor Pettingill points out that the Mayor filed the Complaint without first attempting to obtain Councillor Pettingill's account of what occurred.

23. The Councillor says she suggested to other Hall Board members that she could organize a music concert, based on her experience and her connections in the music community. She has been a long-time volunteer with the Blue Skies music festival and an active participant in community choirs; last year she successfully led an effort to launch a new choir in Brock; she has previously hired musicians to play at private and public events.

24. She recalls that the Hall Board authorized her to approach a particular musician after she told the Board the musician is a friend of hers.

25. In relation to the dispute over payment for the performance, her explanation, in part, is as follows:

With events of this kind sponsored by community groups, musicians understand that they must be flexible with their fee expectations. If sales are poor, they know the full fee cannot be paid, and if the concert is a great success, they expect to share in the upside. Thus while not written down in a contract, the agreement with [the musician] was understood to contemplate a downside and an upside depending on the success of the event. ... This is the way it works in the music community. Bands and organizers count on the good faith of both sides.

26. She acknowledges that she convened and initiated the kitchen discussion among Hall Board members, and agrees that she conveyed a sense of urgency. The Councillor offers several explanations for the urgency. She says that because the musician had earlier in the evening raised the issue of payment, she felt she had “to be prompt with my suggestion [to pay the musician extra] to my fellow Hall Board members.” She also says she rushed the kitchen discussion because the Hall Board members were hosts of the evening and “it would have been impolite not to be out there and to say good night to the guests who would be departing quickly and to thank them for attending.” As a further reason for haste, she says she wanted to go back into the main part of the hall to help the band tear down the set and carry equipment to their cars.

27. The Councillor states, “I did not make my proposal in an aggressive fashion. I spoke clearly and made my points. I also was feeling the time sensitive urgency that the meeting not be long.”

28. She regrets her comment that the Township “didn’t need the money.” Her explanation is that she was responding to another Board member’s question, “Doesn’t the Township need the money?” According to Councillor Pettingill: “My comment literally meant, this is the right thing to do, we’re fulfilling our obligation to the band.”

29. The Councillor denies acting on her own. She states she was aware that the decision to pay the extra \$300 had to be a Board decision, so she took the matter to the Board and the agreement was unanimous.

30. The Councillor says that “the Board voted to pay the money to honour a deal which was flexible in spirit.” She says “being fair ensures musicians coming back.”

31. The Respondent disagrees that she contravened any part of section 11. She states that she had no financial interest, she did not use the influence of her office as a Council Member, she sought no service, she did not misuse any information, she did not place herself in a position of obligation, and she did nothing for personal gain. She explains that she participated as a Hall Board member and sought no special influence by virtue of being a Member of Council.

### **POSITION OF THE COMPLAINANT IN REPLY**

32. The Mayor notes that during this proceeding the Councillor has continued to call the musician a “friend.”

33. The Mayor states that the contract with the musician should have been in writing, that Councillor Pettingill should not have discussed payment with the musician in the absence of the rest of the Hall Board, and that the extra payment issue should have been brought to the next regularly scheduled Board meeting. The Mayor disagrees that there was any urgency that prevented the issue from being considered at a properly constituted meeting.

34. According to the Mayor:

Councillor Pettingill should never have been handling any sort of cash herself. It is not meant to be an offensive statement. In reality, [the musician] should have provided the Hall Board with a request for extra payment in writing. He also should have provided the Hall Board with a receipt acknowledging this extra payment. Councillor Pettingill has failed her responsibilities to the Township as well as the Board for not ensuring that the above took place. The Wilfrid Hall Board is not a community festival group. They are a Committee of Council and are bound by the same rules of procedure as Council and staff are.

35. The Mayor also says that the kitchen discussion advanced the business of the Hall Board outside of an official, properly constituted meeting. Among other flaws, she points out that proper notice was lacking and that it is not the Councillor’s place to convene Hall Board meetings. She observes that all Council Members should be aware that official business must not be conducted outside official meetings.

36. Because the meeting was improperly constituted, the Mayor takes the position that there was, officially, no unanimous agreement, or in fact any agreement, to pay the extra \$300.

## **FINDINGS OF FACT**

37. In early 2019, the Wilfrid Hall Board was considering options for upcoming events. Councillor Pettingill suggested a well-known musician who lives in a nearby municipality. Because she knew the musician, it was agreed that Councillor Pettingill would make contact on behalf of the Hall Board.

38. The musician was willing to perform to support a community hall, acceptable terms were reached, the ticket price was set at \$20, and a concert was scheduled for August 15.



39. I should say that the parties *thought* acceptable terms were agreed. The terms were never confirmed in writing nor were they minuted by the Hall Board. (The June 26 minutes record the ticket price but not how much the musician would be paid.) By the time of my investigation, there were at least four different recollections and understandings of what had been agreed.

40. Councillor Pettingill believed the arrangement was that the musician would be paid a minimum of \$1200, and more than that amount depending on the success of the event. She describes her understanding as being that the amount would be “flexible” and that the deal was “flexible in spirit.”

41. A few days after the event, she described her recollection of the terms in these words: “We had a loose agreement on pay. The spirit of the deal was to pay [the musician] more than the absolute minimum they could accept, which was \$1200, if we could.”

42. In contrast, some members of the Hall Board understood the terms to be \$1200 or one half of the ticket revenue, whichever was greater.

43. At least one Board member recalls the agreement as \$1200, period.

44. Meanwhile, the musician recalls that the agreement was \$1200 *plus* one half of the remainder of ticket revenue. Councillor Pettingill confirms that on August 15, prior to the event, the musician recalled from phone conversations that the deal “was that half of everything over \$1200 in sales should go to the band.”

45. Many witnesses maintain that contrary recollections could not possibly be correct. Several Hall Board members say they would *never* have agreed to \$1200 plus one-half the remainder. Conversely, the musician is equally firm that terms of \$1200 or one half (whichever was greater) would *never* have been agreed by the musician.

46. After considering the evidence, I believe both sides’ claims that they never would have accepted the opposite position on payment. The most likely explanation is, not that somebody remembers wrongly, but that the parties were never on the same page.

47. I find, on balance of probabilities, that there was never a “meeting of the minds” on payment for the performance. The parties believed different things and never realized their lack of agreement. This is an excellent reason why the Hall Board should fix terms in writing for all future concerts.

48. The musician performs regularly at venues across Canada, sometimes subject to a written contract, and sometimes on terms agreed orally. It makes no difference to the musician. The lack of a written agreement with the Wilfrid Hall Board was not the musician’s doing. I find that the musician was simply following the Board’s lead, and would gladly have signed in writing if asked.

49. I also find no improper motivation behind Councillor Pettingill's failure to ask for a written agreement. To be clear, there should have been a written contract. I simply observe that lack of a written agreement was not the result of a calculated decision by the Councillor. She simply did not think of it. I find that it was not unusual for the Hall Board to make oral agreements with musicians. This conclusion is supported by the fact that any Board member could have drawn attention to the lack of a written contract in this case, and none did.

50. The musician was paid prior to the performance. Two members of the Hall Board counted out \$1200 and Councillor Pettingill drove it to where the musician and two accompanists were eating supper between set-up and the show. Witnesses confirmed that prior payment is not uncommon. Nothing relevant to the Code of Conduct turns on this occurrence.

51. At the restaurant, the musician reminded Councillor Pettingill of the agreement (according to the musician's recollection and understanding) that payment would be \$1200 plus one-half the remainder.

52. By all accounts, the concert was a success. The Hall was almost full, attendees enjoyed themselves, and gross revenue was \$2384.

53. The incident that triggered the Complaint and this investigation occurred soon after the performance ended. Based on interviews of witnesses, I find, based on balance of probabilities, that the following occurred:

54. Most members of the Hall Board were in the kitchen. At this point, there was no meeting. Nothing of substance was being discussed. People were discussing the show, drinking refreshments and completing the clean-up. (Most of the clean-up was done by two Board members during the show.)

55. Councillor Pettingill asked one Hall Board member who was outside the kitchen to join her inside, and then closed the door. She suggested to the rest of the Board that the musician should be paid an extra \$300, which she described as "a little more." The Councillor also called her \$300 proposal a "tip" for the musician.

56. The Councillor says that she gave four reasons for a \$300 "tip." First, the musician was expecting more under the agreement.<sup>2</sup> Second, the musician was accompanied by two other performers, not one. Third, the musician's fan following was what had filled the Hall. Fourth, the additional \$300 would make the division of revenue "fair" for both sides.

57. The other Board members have a similar, but not identical, recollection of what she said. Some Board members specifically recall councillor Pettingill acknowledging

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<sup>2</sup> As I have already noted, there was no meeting of minds on terms, but the parties did not realize this.

that \$1200 was the agreed amount and arguing that extra was appropriate given the size of the crowd and the excellence of the presentation.

58. I find on balance of probabilities that, in making her case to the Board, Councillor Pettingill did not describe the amount as something owed to the musician, but as an extra amount on top of what was owed. She argued that paying the extra amount was the fair thing to do.

59. Several of the other Board members, starting with the Treasurer, expressed various forms of discomfort, if not disagreement, with the proposal. One pointed out that the request was unusual. Another asked, "Doesn't the Township need the money?" Councillor Pettingill replied that the Township did not need the money. (The Councillor says she regrets this comment and meant something different.)

60. How many times Councillor Pettingill said that Township didn't need the money is a matter of dispute. She acknowledges saying it once. Others recall her repeating the statement.

61. Councillor Pettingill (by her own admission) felt a sense of urgency that a decision had to be made quickly. She did not want the meeting to take long. Her tone and demeanour conveyed this urgency to the other Board members.

62. The other Board members felt her sense of urgency. One described the Councillor's approach as "hyper."

63. At one point the musician attempted to enter the kitchen to return an empty water glass. Councillor Pettingill quickly pushed the door back, saying the Board was having a meeting and would be finished soon.

64. The Councillor continued to press the case for a \$300 extra payment. Despite their initial reservations, eventually the other Board members acquiesced in Councillor Pettingill's position. Councillor Pettingill asked the individual members, one by one, whether they agreed with the additional \$300 payment. By her own admission, she gestured (pointed) to each member in turn. Everyone gave consent.

65. I carefully reviewed what caused members' positions to change. I find that the Board members did not feel intimidated or threatened but they did feel pressured and eventually were worn down by Councillor Pettingill's persistence. One Board member said, "She was pushing us too quick." Another said the pressure took the form of "not having time to think." Still another explained, "We all gave into her."

66. I also find that the suddenness of the discussion, coupled with the sense of urgency conveyed by Councillor Pettingill, prevented Board members from thoughtfully and carefully considering their decision.

67. As one Board member said, "It kind of caught us off guard. You go in the kitchen and next thing you know you're being confronted with this decision."

68. Another echoed: "It caught us all off guard. I did not have time to process."

69. In making the case for the extra \$300, Councillor Pettingill did not refer to her position as a Council Member. Nonetheless, I find that her status as a Council Member caused Board members to listen in a way that they would not have done for another Board member. It is also known to Board members that they are appointed by Council; they all know that a Council Member is part of the group that decides whether Board members will keep their positions.

70. While pressure was placed on the Hall Board, I find there was no physical intimidation. Councillor Pettingill was standing inside the kitchen in front of the door. However, there is a second kitchen door and it was unobstructed. Members were not physically prevented from leaving. None actually left.

71. Once everyone had accepted Councillor Pettingill's position, the Treasurer started to count out \$300. Councillor Pettingill told him to hurry up by selecting larger bills. She acknowledges that this comment may have contributed to the impression that she was being demanding.

72. Councillor Pettingill took the \$300, left the kitchen, and gave it to the musician.

73. The next day, Councillor Pettingill wrote to the Board members who were present in the kitchen:

Thanks to everyone for their role in making last night such a huge success. And thanks for going with me on adding an extra \$300 to the band's take home. These guys are really top caliber, they work very hard and as supporting the arts is what keeps this coming.

74. The \$300 payment was discussed at subsequent meetings of the Hall Board. Several members, including one who was not present at the concert, expressed reservations about what occurred. A resolution critical of the Councillor was adopted.

75. I have decided not to rely on those subsequent discussions or on the resolution. Board members are of course free to express their opinions about whether the \$300 payment was a good or a bad decision, but their opinions are not evidence of what actually took place that evening. This report is confined to the issue of whether the Code was breached on August 15.

76. September 30, more than six weeks following the concert, the Township received an online complaint from resident who is both a Hall Board member and a candidate whom Councillor Pettingill defeated in the 2018 election. This individual had not been present on August 15, but subsequently became aware of the \$300 decision and

strongly objected to it. The complaint alleged that Councillor Pettingill had used her position to intimidate and pressure Hall Board members. It also alleged that she had acted improperly by participating in a climate action protest at her “place of work,” that is, outside the Township office. (The climate action protest is not relevant to this report, but Councillor Pettingill notes for the record that she did not participate; she observed from across the street.) The online complaint asked for a reply from either the Mayor or CAO.

77. The next day, October 1, the Mayor spoke to the individual, who told her about what happened August 15. (As I have noted, the individual is a Hall Board member but was not present August 15.)

78. October 2, the Mayor spoke by telephone to three Hall Board members who were present for the kitchen discussion. Two of these Board members then summarized, in an email to the Mayor, what happened at the concert. (I have taken their email into account but also taken into account the evidence from my interviews of them, and the evidence of other witnesses.)

79. The Mayor says that on being presented with this information, she felt a responsibility to respond in a manner that would protect the interests of the Township. She filed, in parallel, this Complaint under the Code of Conduct and an application alleging contravention of the *Municipal Conflict of Interest Act*.

80. In December, three Hall Board members swore affidavits. These affidavits are not evidence of anything that occurred on August 15. Instead, they relate to what occurred at the September and October meetings of the Hall Board, when the August 15 concert was being discussed. Evidence of what was discussed months following the concert is unhelpful in determining what occurred on concert night.

81. An important issue in this case is whether the musician is a personal friend of Councillor Pettingill or merely an acquaintance. At times, including in responding to this Complaint, Councillor Pettingill has used the word “friend” to describe the musician. On the other hand, the musician described the relationship as mere acquaintance based on mutual knowledge of some of the same people.

82. The Councillor confirms that she sees the musician only at concerts and performances, that they do not socialize together, and they are not close. She explains that, “I have accumulated many such friends over three decades of volunteering in the musical community.”

83. No other witness had any knowledge of the relationship, except from hearing Councillor Pettingill use the word “friend.” There was also speculation based on the fact the Councillor was seen in a restaurant with the musician prior to the show.

84. I am mindful of the observation of federal Commissioner Mary Dawson, in the *Watson* case, that some people use the word “friend” without meaning a close bond of affection:

It is a word that is used in different ways by different people and can be used to apply to a range of relationships from the closest of life-long companions to neighbours, colleagues, acquaintances or business associates that one sees only occasionally and where there is little emotional attachment.<sup>3</sup>

85. In the result, Commissioner Dawson held that under the federal *Conflict of Interest Act* “friend” applies to:

those who have a close bond of friendship, a feeling of affection or a special kinship with the public office holder concerned. It [“friend”] does not include members of a broad social circle or business associates.<sup>4</sup>

86. I adopt Commissioner Dawson’s analysis and her definition of “friend” and apply it for purposes of this report.

87. Apart from Councillor Pettingill’s use of the word, and the fact that she showed up at the restaurant where the musician ate supper before the performance, there is no evidence of friendship between the two. Instead, the evidence indicates that the Councillor and the musician are merely acquaintances who know each other through the same circle of people. They are not close friends in any sense that would matter under the Code of Conduct.

## ISSUES AND ANALYSIS

88. I have considered the following issues:

- Stewardship of public funds, and entering into contracts
- Meetings of local boards
- Whether the Respondent contravened section 11 of the Code

### **STEWARDSHIP OF PUBLIC FUNDS, AND ENTERING INTO CONTRACTS**

89. Nobody whom I interviewed seriously disagrees that financial decision making should not occur this way.

<sup>3</sup> Canada, Conflict of Interest and Ethics Commissioner. *The Watson Report* (June 25, 2009), at p. 14.

<sup>4</sup> *Ibid.*, at p. 15.

90. The Hall Board spends public money and its revenues are public money. In spending, in decision making, and in entering into contracts, the Hall Board is not a private, community association. It is a local board of the Township. It must conduct itself with transparency, accountability and responsibility. (In this respect, I adopt the arguments of the Mayor about the obligations of the Hall Board as public body.)

91. I spoke to no one who felt that a rushed decision to pay an additional \$300 on an “urgent” basis was a process appropriate for a local board of the municipality. A hasty and last-minute spending decision, inside a kitchen, on no notice, is not transparent, accountable or responsible. It is the opposite of all three.

92. Councillor Pettingill regrets saying the Township did not need the money. Whether made once (as she recalls) or repeatedly (as others recall), this statement is incompatible with the obligation of a Council Member and a Hall Board member to protect the interests of the Township.

93. The use of the word “tip” and the suggestion that payment terms were “flexible” are also incompatible with how a local board of a municipality should spend public money. Members of the Hall Board were not deciding to throw a few extra dollars on top of a bar bill. They were deciding to disburse funds of the Township. Public spending decisions should be based on objective not subjective considerations, according to terms that are clear and certain, not discretionary and variable.

94. At law, a contract may be written or unwritten. However, the advantages of written contracts are obvious. They are easier to prove and easier to enforce, and their terms are less subject to dispute. (I note that a written contract does not necessarily mean a long contract. Some written agreements fit on one side of a page.)

95. Hall Board members appear divided on whether all future contracts should be in writing. Some feel that this incident proves the need for written agreements. Others worry that a small, volunteer-run organization cannot handle excessive bureaucracy.

96. My own view is that the Hall’s status as a local board of the Township settles the question. A municipal board, using public funds, should not contract orally.

97. The Councillor says, “As is common in the local music communities, we did not enter a written contract.” The musician, however, performs all over the country, and is accustomed to both written contracts and unwritten contracts. The musician would have entered into a written contract if the Hall Board asked.

98. From the Mayor’s perspective, this was “not a music community event but contracting services on behalf of the Municipality. At this point, Councillor Pettingill should have inquired with Township staff ... what the Township would require in the form of a contract.”

99. Making oral contracts exposes the Hall Board and the Township to uncertainty and risk. Additionally, in this case, by making herself the intermediary between two parties to an unwritten agreement, Councillor Pettingill exposed herself to personal risk.

100. Written contracts by the Hall Board should be required in all cases. In this particular instance, the lack of written agreement prevented the parties from realizing they were not of the same mind, and is ultimately responsible for all the controversy that ensued. But for the lack of a written contract, the incident would not have occurred and the Complaint would not have been filed.

101. I accept that the Councillor saw herself as just another member of the Hall Board. She made lemonade, she sold tickets, she helped with setting up and cleaning afterward ... and she happened to be the one who negotiated with the musician. Her willingness to pitch in to accomplish things does not change the fact that an unwritten contract was unwise and a rushed decision making process was improper.

### **MEETINGS OF LOCAL BOARDS**

102. Almost everybody I interviewed agreed, in hindsight, that the process was flawed.

103. The Wilfrid Hall Board of Management is a local board of the Township and is subject to the *Municipal Act*. Its meetings are subject to section 239 of the Act. With limited exceptions, meetings must be open to the public. Records of decisions must be kept.

104. The procedure was flawed. No notice was given. No agenda was circulated. No motion was moved. No proper vote occurred. No minutes were taken.

105. These procedures are not formalities. They support accountable, transparent and responsible decision making. All the other Board members described to me how the lack of process interfered with their ability to make a proper, responsible decision.

106. This is to say nothing of the Councillor's decision to impose a sense of urgency on the discussion, and her unwillingness to let up until her view prevailed. Neither is consistent with appropriate meeting procedure.

107. Under section 238 of the *Municipal Act*, any collective communication involving a quorum of members who "discuss or otherwise deal with any matter that materially advances the business or decision-making of the council, local board or committee" constitutes a meeting. Almost everyone to whom I spoke now realizes that the kitchen session was a meeting of the Board, convened without regard to the requirements of the Act.



108. Councillor Pettingill (and she acknowledges this) was entirely responsible for convening, and effectively chairing, this meeting. In the Township of Brock, as in other Ontario municipalities, Council Member orientation and training covers the *Municipal Act's* meeting requirements. A purpose of this Council education is to avoid informal meetings like the one in the kitchen, and to ensure official meetings that do occur follow proper procedure.

**WHETHER THE RESPONDENT CONTRAVENED SECTION 11 OF THE CODE**

109. The things that occurred – the lack of a written contract, the convening of a meeting outside the requirements of the *Municipal Act*, trying to force a rushed decision without notice, spending public money on a discretionary basis, ignoring motions, minutes and rules of speaking – should never have taken place, and Councillor Pettingill is responsible for all of them. That, however, is not the issue before me as Integrity Commissioner. The issue is whether Councillor Pettingill contravened section 11 or any other provision of the Council Code of Conduct.

110. As Integrity Commissioner I am limited by the Code that Council has adopted. I cannot add new requirements: see *Re Kett (No. 2)*, 2017 ONMIC 14, at para. 163. The authority to add new rules to the Code, and rewrite existing rules, rests with Council.

111. Section 11 begins with a general rule and then sets out eight specific prohibitions.

112. Seven of the specific prohibitions clearly do not apply. The Councillor did not act as agent, did not solicit or accept services for herself, did not use confidential information, did not place herself in position of obligation (as described in section 11), had no financial interest, and did not seek personal gain.

113. The remaining specific prohibition is that a Council Member may not use influence of office for any purpose other than for official duties. I do not agree with the Respondent on the use of influence of office. I find that the influence of office was used to cajole the other Board members to approve the \$300 extra payment. On the other hand, I do not agree with the Complainant that the Councillor was acting outside of official duties. She was not pursuing a personal interest; she was acting as an appointed member of the Hall Board. What occurred should never have taken place, but still it occurred in the course of official duties. Consequently, this prohibition of section 11 does not apply.

114. The general rule in section 11 is that, "Members of Council shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of their official duties to represent the public interest."

115. The limiting word in the general rule is “ethical.” While several adjectives can be used to describe what happened, “unethical” is not among them. The process to secure approval of the extra \$300 was flawed, unaccountable, opaque, and, frankly, irresponsible. It was not, however, unethical.

116. Had I found that the musician was a personal friend of the Councillor, or that the Councillor had a financial interest in the \$300 payment, section 11 would apply. However, based on the facts that I have found, I conclude that section 11 does not apply. Indeed, I conclude that no section of the Code applies.

117. Section 3 of the Council Code of Conduct states that the Code contains *minimum* standards. This context is important. Not every aspect of Council Members’ conduct is addressed by the Code. Certain conduct may fall short of what is desirable, and yet still not contravene the minimum standards in the Code.

118. I stress that this conclusion is based on the wording of the Code. It is by no means an endorsement of what occurred. The process for proper notice, open meetings, and records of decision should not have been circumvented. The absence of notice and the pressure for hasty spending approval were regrettable. A financial decision was made in a manner unbefitting the public trust. At the same time, nothing in the Code covers what occurred.

## CONTENT

119. Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

## RECOMMENDATIONS

120. My interviews with participants indicate that there is support to make the incident a “teachable moment” – a learning experience that will not be repeated. In that vein, I offer the following recommendations:

- The Wilfrid Hall Board of Management should contract only in writing. This means, for example, that it should not make oral arrangements to pay performers.
- Council should consider whether it wishes to receive refresher training in the meeting requirements of the *Municipal Act*. Council should also consider whether it should extend the training to members of local boards.

- Council Members appointed to advisory committees and local boards should respect the rules for calling and conducting meetings.
- Staff should be asked to consider whether to propose amendments to the Council Code of Conduct to address situations such as the one giving rise to this Complaint.

Respectfully submitted,



Guy Giorno  
Integrity Commissioner  
Township of Brock

February 20, 2020

