

MUNICIPALITY OF CENTRAL MANITOULIN

EXECUTIVE SUMMARY AND SUPPLEMENTAL REMARKS: REPORT ON COMPLAINT/APPLICATION RE B. MITCHELL

EXECUTIVE SUMMARY

During the month of July 2023, the Integrity Commissioner received a Complaint/Application naming Councillor Mitchell as Respondent and alleging breaches of the Municipality's Code of Conduct and the *Municipal Conflict of Interest Act* ("MCIA"). The allegations related to a donation request received by the Municipality by a local service organization called the Central Manitoulin Lion's Club. The Complaint/Application alleged breaches of s.5 and 5.2 of the MCIA, as well as the Conflict of Interest provisions of the Code of Conduct. The Complaint/Application also posed questions in relation to the obligations of another individual and the practices of staff. However, this report does not, in the view of the Integrity Commissioner, appropriately include comment on the general obligations of those not named as a respondent and the Integrity Commissioner's authority under the *Municipal Act* does not extend to employees of the Municipality; accordingly, it is not appropriate for the Integrity Commissioner to address such matters.

Following receipt of the Complaint/Application, the Integrity Commissioner interviewed the Applicant, requested relevant documents from the Municipality, and conducted interviews with the Respondent and other relevant witnesses identified through review of the documentation or arising from the prior interviews (including members of council and municipal staff). Where appropriate, the Integrity Commissioner interviewed witnesses suggested by parties/other witnesses in order to determine the relevant facts. Following the completion of the inquiry process, the Integrity Commissioner provided a preliminary copy of the report to the Applicant and Respondent for comment. The Applicant and Respondent were invited to provide comment on this January 26, 2024 report.

The Integrity Commissioner does not find that there has been a violation of the MCIA by the Respondent, and accordingly no application to a judge will be made by the Integrity Commissioner. Similarly, to the extent applicable, no recommendations are made for Council on any penalty as no violation of the Code of Conduct is found. The Respondent was not found to have a pecuniary interest, direct or indirect, with respect to the donation request in question. Similarly, the Respondent was not found to have made improper comments during the applicable council and committee meetings or in pressuring another individual, as alleged.

SUPPLEMENTAL REMARKS

1. During the month of July 2023, the Integrity Commissioner received a Complaint/Application naming Councillor Mitchell as Respondent and alleging breaches of the Municipality's Code of Conduct and the *Municipal Conflict of Interest Act* ("MCIA"). The allegations related to a donation request received by the Municipality by a local service organization called the Central Manitoulin Lion's Club.
2. Following receipt of the Complaint/Application, the Integrity Commissioner interviewed the Applicant (as the individual will be referred to in this report and who is not a member of Council), requested relevant documents from the Municipality, and conducted interviews with the Respondent and other relevant witnesses identified through review of the documentation or arising from the prior interviews (including members of council and municipal staff). Where appropriate, the Integrity Commissioner interviewed witnesses suggested by the Respondent or other witnesses in order to determine the relevant facts.
3. Following the completion of the inquiry process described above, the Integrity Commissioner provided a preliminary copy of the report to the Applicant and Respondent for comment. The Applicant and Respondent were invited to provide comment on this January 26, 2024 report.
4. The Applicant provided comment on the report, which comment included, *inter alia*, questions about the declaration obligations of a non-respondent, questions about whether certain records were accessible during the inquiry process, and comments about the relationship between one service club and another, as well as a question as to whether a finding could be made that the Respondent had pressured another member of council with respect to a question of declaring a pecuniary interest.
5. With respect to the Applicant's comment concerning records, the Integrity Commissioner, during the scope of the inquiry process, was able to review relevant

documentation and records as it related to the meeting in question, and so no new considerations arose from this comment. Comment from the Applicant in relation to his understanding of the service clubs similarly does not alter the findings of the January 26, 2024 report, in particular paragraph 22 of same.

6. With respect to the declaration obligations of a non-respondent, the Integrity Commissioner repeats (as contained in paragraph 3 of the January 26, 2024 report), that where there is any question as to a member of council or local board's obligations under the Code of Conduct and/or the MCIA, that member of council or local board may write to the Integrity Commissioner to seek advice regarding same in a process contemplated by the *Municipal Act*, section 223.3(1). This is the most appropriate avenue to address such questions.
7. Finally, for clarity, having reviewed the relevant materials provided by the Municipality, and reviewing the remarks made by witnesses during the course of the inquiry process, the Integrity Commissioner has no basis to find that the Respondent pressured another member of council, and accordingly no such factual finding is or was made.
8. Accordingly, the feedback raised does not alter the findings of the original report. Since the Integrity Commissioner does not find that there has been a violation of the MCIA by the Respondent, no application to a judge will be made by the Integrity Commissioner. Similarly, to the extent applicable, no recommendations are made for Council on any penalty where no violation of the Code of Conduct is found. The original January 26, 2024 report is appended to this executive summary and supplemental report, which together form the Integrity Commissioner's full report provided to the Municipality.
9. It is repeated that, as the *Municipal Act* requires that after deciding whether or not to apply to a judge, the Integrity Commissioner shall publish written reasons for this decision and advise the Applicant. This report shall be published electronically through the Municipality's website, and a copy will be provided to the Applicant.

10. As with the preliminary version of the report, subsections 223.6(2) and 223.5(2.3) of the *Municipal Act* states that the Integrity Commissioner may disclose in these written reasons such information as, in the Integrity Commissioner's opinion, is necessary. All the content of these reasons is, in the opinion of the Integrity Commissioner, necessary.

11. The parties are commended for their cooperation throughout the inquiry and report processes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Zachary T. Courtemanche

Zachary Courtemanche

As provided to the Municipality, February 27, 2024

MUNICIPALITY OF CENTRAL MANITOULIN

REPORT ON COMPLAINT/APPLICATION RE: B. MITCHELL

1. During the month of July 2023, the Integrity Commissioner received a Complaint/Application naming Councillor Mitchell as Respondent and alleging breaches of the Municipality's Code of Conduct and the *Municipal Conflict of Interest Act* ("MCIA"). The allegations related to a donation request received by the Municipality by a local service organization called the Central Manitoulin Lion's Club.
2. Following receipt of the Complaint/Application, the Integrity Commissioner interviewed the Applicant (as the individual will be referred to in this report and who is not a member of Council), requested relevant documents from the Municipality, and conducted interviews with the Respondent and other relevant witnesses identified through review of the documentation or arising from the prior interviews (including members of council and municipal staff). Where appropriate, the Integrity Commissioner interviewed witnesses suggested by the Respondent or other witnesses in order to determine the relevant facts.
3. As a note, the Complaint/Application also posed the question on the obligations of another individual to declare a pecuniary interest. Upon interviewing the Applicant, the Applicant confirmed that it was not alleged that this Councillor had violated the Code of Conduct or MCIA. As the Complaint/Application process does not, in the view of the Integrity Commissioner, appropriately include comment on the general obligations of those not named as a respondent, the Integrity Commissioner does not comment on this question within the scope of this report. However, it must be noted that, where there is any question as to a member of council or local board's obligations under the Code of Conduct and/or the MCIA, that member of council or local board may write to the Integrity Commissioner to seek advice regarding same in a process contemplated by the *Municipal Act*, section 223.3(1). Where

there is such a concern, members are encouraged to write to the Integrity Commissioner for such advice.

4. Similarly, the Applicant also asked, as part of the Complaint/Application, about the actions of staff as it related to this meeting. The Integrity Commissioner's authority under the *Municipal Act* does not extend to employees of the Municipality and accordingly, it is not appropriate for the Integrity Commissioner to address matters as it relates to the conduct of staff.

THE RELEVANT PORTIONS OF THE CODE OF CONDUCT AND MCIA

5. As a first step, it must be noted that the Complaint/Application alleged breaches of s.5 and 5.2 of the *MCIA*, as well as the Conflict of Interest provisions of the Code of Conduct.
6. The Code of Conduct provides as follows with respect to this issue:

Conflict of Interest

Members of Council shall be responsible to ensure that they are familiar with the application of the Municipal Conflict of Interest Act, R.S.O. 1990, as amended. It shall be the responsibility of each member of Council, not staff, to determine whether they have a direct or indirect pecuniary interest with respect to matters arising before Council.

A member with a direct or indirect pecuniary interest, who is at a meeting where the matter in which the member has a pecuniary interest must:

- Disclose the interest and the general nature of the conflict;
- Not take part in the discussion or vote on the matter;
- Not attempt to influence the vote, before, during, or after the meeting;
- Leave the meeting while the matter is being discussed (only if the meeting is in camera); and,

- If absent from a meeting where a member's pecuniary interest is considered, disclose the interest at the next meeting attended by that member.
7. The Code of Conduct further describes a series of situations in which a member would not have a pecuniary interest, which listing largely mirrors those contained within the *MCIA*.
 8. It also bears note that the Code of Conduct language also notes that “It shall be the responsibility of each member of Council, not staff, to determine whether they have a direct or indirect pecuniary interest with respect to matters arising before Council.” In Integrity Commissioner reads this portion of the Code to mean that it is no defence, explanation, or excuse for a member of council to indicate that their failure to declare a pecuniary interest because staff did not note a potential issue for them. This portion of the language on its face is a clarifying piece indication that it is the ultimate responsibility of a member of council to raise their pecuniary interests.
 9. With respect to the *MCIA* itself, the relevant portions of the legislation’s applicable sections alleged to be violated read as follows:

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;

(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).

[. . .]

Influence

5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4.

[. . .]

10. Recent decisions in relation to the *MCIA* and Code of Conduct make clear that the intention of the Code of Conduct's conflict of interest section is not intended to create a separate process by which a complainant may bring an *MCIA* complaint without following the legislated process for same (see *Pinto v Anderson*, 2022 ONMIC 1 (CanLII)). The Integrity Commissioner is not inclined to interpret the Code of Conduct's section to allow for this. In any event, the matter in question does not appear to create the need to interpret a dichotomy on this issue.

THE FACTUAL BACKGROUND

11. Following review of the relevant documentation and interviewing the Applicant, Respondent, and relevant witnesses, it is appropriate to summarize the relevant facts as it relates to the matter.
12. As it understood, the Municipality received a request from the Central Manitoulin Lion's Club for the sponsorship of an event planned for the Canada Day weekend. As the Integrity Commissioner has found, the Central Manitoulin Lions Club is a local service club based out of Mindemoya, on Manitoulin Island. It is itself incorporated and separately constituted from other Lions Clubs, of which there are several in and around the Manitoulin Island Area.
13. The Municipality received a request for a donation via letter on June 9, 2023. In that correspondence, the Central Manitoulin Lions Club requested a sponsorship of \$5,000 to support the Homecoming Weekend/Manitoulin Ribfest event which was set to take place between June 29, 2023 and July 2, 2023.
14. The request for donation, sent to the Municipality, was referred to the Property Committee meeting of June 13, 2023 for consideration. Councillor Mitchell attended the meeting (though is not himself a member of the committee).
15. At the committee, it was proposed by motion that a sponsorship in the reduced amount of \$2,500 be recommended to council. A recorded vote took place, and the motion passed 3-2. Councillor Mitchell was not a voting member on this committee and did accordingly did not participate in this vote.
16. Following the committee meeting, the Municipality's council considered the matter at its June 22, 2023 meeting. The Respondent attended this meeting and participated in the consideration of the matter.

17. On the question of sponsoring the Ribfest event, the motion failed due to a 3-3 tie. A recorded vote was taken. Councillor Mitchell recorded a “Nay” vote.

CONSIDERATION OF VIOLATION BY THE RESPONDENT

18. A pecuniary interest has been defined by case law as relating to monetary considerations. Specifically, ***Magder v. Ford*, 2013 ONSC 263 (CanLII)** reads as follows:

[6] Case law has determined that a pecuniary interest for purposes of the MCI A is a financial or economic interest. For the MCI A to apply, the matter to be voted upon by council must have the potential to affect the pecuniary interest of the municipal councillor (*Greene and Borins (Re)* (1985), 1985 CanLII 2137 (ON SC), 50 O.R. (2d) 513, [1985] O.J. No. 2510 (Div. Ct.), at p. 8 (QL)).

19. A pecuniary interest can be direct or indirect. The *MCI A* outlines various bases for an “indirect pecuniary interest” at section 2, as follows:

Indirect pecuniary interest

2 For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) 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.

20. A deemed pecuniary interest can also occur where the circumstances in section 3 of the MCIA arise.

21. In this case, the Respondent is not a member of the Central Manitoulin Lions Club, being the entity requesting the funds. The Respondent does not participate in any requests for donations by this organization, serve on its Executive/Board, or, at any material times, work with it in a volunteer capacity, on the Homecoming Weekend/Manitoulin Ribfest event in question or otherwise.

22. The Respondent is a member of the Providence Bay/Spring Bay Lions Club. This Club, while similar in name, is separately constituted, incorporated, and/or chartered. Based on the information provided to the Integrity Commissioner during the course of the inquiry process, this other organization operates separately, does not have overlapping membership, and maintains separate financials. It was not involved in organization the Homecoming Weekend/Manitoulin Ribfest event, nor did it hold a competing event or compete for funds from the Municipality.

23. Further, the Integrity Commissioner is not aware of any competing requests for funding (successful or unsuccessful) by another organisation or body to which the Respondent was a member. In particular, there appears to be no such donation request being made at the time of the Central Manitoulin Lions Club's request, or in the immediate temporal vicinity thereof.

24. Accordingly, while it may be that different factual contexts might change this determination, as it pertains to the question of pecuniary interest, the Integrity

Commissioner is unable to find a direct or indirect pecuniary interest with respect to the vote in question by the Respondent.

25. With respect to comments made at the council and committee meetings, the Integrity Commissioner reviewed the relevant portions of the meeting deliberations and its minutes for comments by the Respondent. In general, the determination by several members of committee and council to not support this particular request seemed largely to relate to timeliness of the request and a view of the need of the requesting organisation. Comments made, by the Respondent or otherwise, appeared to be thoughtful and respectful of the process. Accordingly, the Integrity Commissioner is unable to determine that any comments made constitute a violation.

CONCLUDING REMARKS

26. Since the Integrity Commissioner does not believe that there has been a violation of the *MClA* by the Respondent, no application to a judge will be made by the Integrity Commissioner. Similarly, to the extent applicable, no recommendations are made for Council on any penalty where no violation of the Code of Conduct is found.

27. The Integrity Commissioner has considered the implications of subsection 223.8 of the *Municipal Act*, and has not found it to apply to the within matters.

28. The *Municipal Act* requires that after deciding whether or not to apply to a judge, the Integrity Commissioner shall publish written reasons for this decision and advise the Applicant. This report shall be published electronically through the Municipality's website, and a copy will be provided to the Applicant.

29. Subsections 223.6(2) and 223.5(2.3) of the *Municipal Act* states that the Integrity Commissioner may disclose in these written reasons such information as, in the

Integrity Commissioner's opinion, necessary. All the content of these reasons is, in the opinion of the Integrity Commissioner, necessary.

30. The Respondent and Applicant, should they wish to respond to the determinations in this report, ought to be permitted to do so.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Zachary T. Courtemanche

Zachary Courtemanche

January 26, 2024