
**Municipal Code of Conduct Inquiry for the Corporation of the
Township of Emo**

Report prepared for Emo Township Council

DATE

January 30, 2021

Code of Conduct Complaint relating to Section 5 of the
Municipal Conflict of Interest Act against Mayor McQuaker

Complaint filed by - Citizen of EMO

Inquiry conducted by:

Darrell Matson

6356 Townline Road

Thunder Bay, Ontario

P7G- 2G8

Appointed Integrity Commissioner for the Corporation of the Township of EMO.

File 3-2020

Final

BACKGROUND

In 2016 the Ontario government introduced Bill 68 - Modernizing Ontario's Municipal Legislation Act. Bill 68 contained a number of amendments to the *Municipal Act, 2001*, S.O. 2001, c. 25 (MA), the *Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50* (MCIA) the *Municipal Elections Act, 1996*, and various other Acts. These changes imposed new and important obligations on municipalities. The Bill received Royal Assent on May 30th, 2017. It is important to note that the changes to the Acts came into force over a period of time. Some of the changes included:

- Requiring municipalities to establish codes of conduct for members of municipal council and certain local boards, which could include rules that guide the ethical conduct of those members;
- Requiring municipalities to give the public and municipal councillors access to an integrity commissioner, with broadened powers to investigate conflict of interest complaints and provide advice to councillors;
- Providing for a wider range of penalties for contraventions of the *MCIA*;
- Updating the definition of "meeting" in the MA;
- Requiring municipalities to maintain a register recording all declarations of interest submitted by members of their councils; and
- Setting out how municipalities may allow for electronic participation by council, local board and committee members at meetings that are open to the public. Participants would not be counted towards quorum and members would not be able to participate electronically in meetings that are closed to the public. (Note this was later amended to first allow full participation during the COVID 19 provincial emergency, and again, later, to allow municipalities to choose whether or not to continue to allow full electronic participation.)

The code of conduct for members of council, and its local boards, sets out behaviors that members of council are expected to abide by and follow in support of the good governance of the municipality, and more particularly the confidence of the public in their local government.

The Municipal Conflict of Interest Act (“MCIA”) as referenced in the code of conduct sets out a framework for when participation in local government decision-making is appropriate. The overall goal is to protect the public interest by prohibiting any member from having any involvement in any matter being considered by Council or local board if the member has a pecuniary (financial) interest in the matter.

MANDATE

As the result of an application filed by a citizen of the Township of Emo on July 15, 2020, I was retained to conduct an inquiry into the alleged contravention of the Emo Code of Conduct and/or the Municipal Conflict of Interest Act (“MCIA”). The allegation is that Section 5 of the MCIA has been violated.

By-law 2018-28 Schedule “A”, being a by-law to establish a Code of Conduct for Members of Council provides for the authority to conduct the inquiry.

I have been appointed as one of the Integrity Commissioners for Emo pursuant to section 223.3 (1) of the Municipal Act (“MA”).

The inquiry was conducted in accordance with Emo Policy I-01 – Integrity Commissioner Investigation Procedure.

Prior to commencing the inquiry, a content review of the application was conducted in accordance with the Emo Policy 1-01 and Emo Code of Conduct – By-law 2018-28 Schedule “A”. It was concluded that the application (complaint document) was complete and within the jurisdiction of the Integrity Commissioner.

ALLEGATIONS

The complainant, a citizen of Emo, filed an application on July 15, 2020, alleging that Mayor McQuaker contravened Section 5 of the MCI Act. The application and the associated affidavit state the following:

- that the complainant has reasonable and probable grounds to believe that Harold McQuaker has contravened section 5 of the Municipal Conflict of Interest Act; and
- that review of the Township of Emo council meeting minutes shows that, at the October 29, 2019 meeting, there was a petition by a citizen of Emo to have a private culvert connected to an existing town culvert on a municipal drainage system; and
- that there was a follow up discussion by council on the November 1, 2019 meeting agenda; and
- that there was a second petition to council, by the same citizen, for the culvert connection, considered at the February 11, 2020 meeting; and
- that approval by council to allow the citizen to connect to the municipal culvert in question, occurred at the June 9, 2020, council meeting;

Subsequently, it came to the complainant's attention that, on July 4, 2020, Harold McQuaker Ent. Ltd. had undertaken the finishing work of the install of the private culvert to the municipal culvert for the Emo citizen.

PURPOSE OF THE INQUIRY & RELEVANT LEGISLATION

The MCIA sets out a framework for when participation in local government decision-making by elected officials is appropriate. The overall goal is to protect the public interest by prohibiting any member of a Municipal Council from having any involvement in any matter being considered by that Council or Local Board if the member has a pecuniary interest (commonly referred to as a “financial interest”) in the matter. The obligation is on the member to comply with MCIA.

The term “Pecuniary Interest” is not defined in the MCIA. The courts have interpreted it to mean a financial interest, or an interest related to, or involving, money. The amount of the interest, or whether the interest is positive or negative is not a consideration in determining if a pecuniary interest exists.

It is important to note that Section 3 of the MCIA deems the pecuniary interests of certain relatives of an elected official to be deemed to also be the interests of the elected official. The relatives in question are the elected official’s parents, spouse and children.

The purpose of this inquiry is to determine if Mayor McQuaker had a pecuniary interest in the circumstances associated with a request by a citizen of Emo (referred to as the “Deputant”) to connect a private culvert to one owned by the Township. The permission for the connection of the culvert required approval by Emo Township Council. If there is found to be an interest, then the subsequent enquiry involves whether or not Mayor McQuaker complied with Subsection 5(1), and Sections 5.1 and 5.2 of the MCIA.

Subsection 5(1) of the MCIA reads:

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.

Section 5.1 of the MCIA reads:

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.

Section 5.2 of the MCIA reads:

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.

The relevant Code of Conduct excerpts are not reproduced as they mirror the above requirements of the MCIA.

INVESTIGATION APPROACH

The investigation was conducted in accordance with EMO Policy I-01 – Integrity Commissioner Investigation Procedure.

In order to determine if a violation(s) of the MCIA and the associated portions of the Code of Conduct did occur, the following were obtained and reviewed:

1. the application,
2. the response to the allegations from the respondent, Mayor McQuaker,
3. written request to make a deputation at the October 29, 2019 council meeting,
4. written request to make a deputation at the February 11, 2020 council meeting,
5. the Emo Township meeting minutes of council meetings held on October 29, 2019, November 1, 2019, November 12, 2019, February 11, 2020, June 9, 2020 and June 23, 2020,
6. Public Works report to council considered at its meeting held on June 9, 2020,
7. the audio file recorded via “ZOOM”, of the June 9, 2020 meeting referenced in #5 above;
8. a letter from Township Administration to the Deputant, dated November 1, 2019; and
9. a letter from Township Administration to the Deputant, dated June 17, 2020.

Any of the information that was in dispute or required clarification resulted in the development of clarifying questions and a list of persons (witnesses) that needed to be interviewed.

Typically, witnesses would be interviewed in person, however, with the current pandemic restrictions in place, interviews were conducted via a confidential e-mail that contained a list of questions with a follow-up by telephone if required. The e-mail correspondence makes up “witness statements” for the various witnesses who were interviewed.

Information obtained from Township Records

On October 29, 2019, a Township of Emo Regular meeting of Council was convened. A deputation was provided by a resident of the Township of Emo. The Deputant (James Rousseau) discussed his proposal for the installation of a culvert on private property with a connection to a Township of Emo culvert. The meeting minutes do not record any discussion on the Deputant's proposal. All Members of Council were present. No declarations of pecuniary interest were recorded.

On November 1, 2019, a special meeting of Township Council was convened to discuss the Deputant's proposal to connect to the municipal culvert. The meeting minutes do not record any discussion on the request to connect to a culvert. All Members of Council were present (one member via electronic participation). No declarations of pecuniary interest were recorded.

On November 12, 2019, a Township of Emo Regular meeting of Council was convened. The meeting minutes do not record any discussion of the Deputant's proposal. One member of Council was absent. No declarations of pecuniary interest were recorded.

The meeting minutes of the meetings held on October 29, 2019 and November 1st, 2019 were adopted as circulated. No errors or omissions from either the October 29, 2019 Regular Council Meeting or the November 1, 2019 Special Council Meeting minutes were recorded. The meeting minutes reflect no "business arising" from either the October 29, 2019 Regular Council Meeting or the November 1, 2019 Special Council Meeting minutes.

On February 11, 2020 (pre COVID-19 pandemic restrictions), a Township of Emo Regular Meeting of Council was convened. A second deputation was provided by Mr. James Rousseau in regard to his request for installation and connection to the Township of Emo culvert. The meeting minutes do not record any discussion on the

request to connect to a culvert. All Members of Council were present (one member via electronic participation). No declarations of pecuniary interest were recorded.

On June 9, 2020 (post COVID-19 pandemic restrictions), a Township of Emo Regular meeting of Council was convened by electronic participation via Zoom. All Members of Council were present. No declarations of pecuniary interest were recorded.

The Emo Public Works Superintendent attended the June 9, 2020 meeting and provided a written report in support of the connection of the culvert located on private property to the Township of Emo culvert.

On June 9, 2020, Township Council adopted the following resolution:

BE IT RESOLVED that we hereby approve property owner James Rousseau to connect culvert located on his property at 294 Front Street to Emo municipal culvert on west end of Front Street.

On June 23, 2020, a Township of Emo Regular meeting of Council was convened by electronic participation via Zoom. Township Council adopted as circulated the June 9, 2020 Regular Council Meeting Minutes. No Errors or Omissions from the June 9, 2020 Regular Council Meeting minutes were noted and there was no business arising from the June 9, 2020 Regular Council Meeting.

Facts Determined from Zoom audio recordings

Due to the provincial restrictions in place (Covid 19 pandemic), the Emo Township Council meeting held on June 9, 2020 was conducted via electronic means using the Zoom meeting platform. The Zoom application is a web-based video conferencing service that can be used to meet virtually with others either by video, audio or both. The virtual meetings can also be recorded to be viewed or listened to at a later date.

The Audio recording obtained for the Township of Emo Regular meeting of Council for June 9, 2020, is not complete and does not record the entire session of the Township Council meetings. As this was new technology and a new way of conducting meetings of this nature, problems were experienced by the participants and at times the Zoom administrator did not commence recording at the beginning of the meeting.

The June 9, 2020 Emo Municipal Council audio recording captures the following mid-way through a discussion on an item on the agenda. Mayor McQuaker states:

“we discussed the culvert installation as per Jason’s recommendations and we have that moved and seconded already so we will move on to Number 3, Road allowance by-law parallel to highway 602”.

Based upon the review of the remainder of the audio recording, Township Council did not return to this item.

Witnesses confirm the statement in quotations above directly relate to the installation of the culvert.

Facts Determined from the Respondent, Complainant and Witnesses.

On October 29, 2019, the Deputant attended a council meeting to discuss a culvert he intended to place on his property. He was requesting permission from the township of Emo to connect the private culvert to a culvert owned by the township of Emo.

The Deputant advises that, from the outset of his request, he intended to, and in fact, ultimately did, perform as much of the installation, grading and landscaping work as possible himself. He owns some small excavation equipment. Once the project was approved by Council, he would need to engage a contractor for those portions of the work that he could not undertake on his own.

Mayor McQuaker acknowledges that he met with the Deputant prior to October 29, 2019, as the Deputant wanted some direction on what would be required by the

township to make a connection to a township-owned culvert. Mayor McQuaker provided instruction to the Deputant on council procedures (i.e., submitting an application to appear before council), and provided some advice on the work that would be involved in the event that the township was in support of the culvert connection.

Discussion took place between the Deputant and some members of Council, including Mayor McQuaker, in regard to the work associated with the installation and connection of the private culvert to the Emo Township culvert.

Although not reflected in the minutes of the meeting, the outcome of the discussion resulted in Emo Administration being directed to advise the Deputant that an agreement between the parties would be required. In a letter dated November 1, 2019, Administration advised the Deputant that Council agreed to this request with the condition an agreement would need to be entered to with conditions for future maintenance of the culvert. Once the agreement had been developed and agreed upon, it would have to be registered on title at the Deputant's expense. A site plan would also have to be submitted to illustrate the Deputant's plans.

The Deputant had not retained a contractor to perform any part of the installation work at this time as the connection to the Emo Culvert had not been approved by Emo Township Council.

Witnesses in attendance at the meeting, other than the Deputant, state that they were not aware if the Deputant had a contractor available, and that there was no discussion on who would perform the work.

Council discussed the request to connect the culvert, including concerns raised by staff and members of council at a special council meeting held on November 1, 2019. Mayor McQuaker participated in the discussions.

Mayor McQuaker stated during the course of discussion that he would be working on the project with the Deputant.

The Deputant, who was not in attendance at the November 1st meeting, advises that he had not retained a contractor to perform the installation work at that time as the connection to the Emo Culvert had not been approved by Emo Township Council.

Witnesses in attendance at the November 1st, 2019 meeting state that they were not aware if the Deputant had a contractor available. Witnesses confirm they heard Mayor McQuaker's statement that he would be assisting the Deputant with the work.

Permission to proceed with the culvert connection to the township of Emo culvert was not provided at this meeting. It remained to be seen whether or not the Deputant would meet the conditions set out in Administration's November 1, 2019 letter to him.

Based upon a Councillor's witness statement, the Councillor suggested to Mayor McQuaker, after the meeting, that the Mayor should consider whether or not he is in a conflict-of-interest position relating to the request for the culvert connection, considering Harold McQuaker Ent. Ltd. would be performing the installation of the culvert. This witness indicates that they expressly advised Mayor McQuaker that if businesses owned by his son were involved, the conflict would continue to exist.

At the regular council meeting held on November 12, 2019, Mayor McQuaker apologized to council and made a statement that he should have declared a conflict regarding prior discussions at council on the culvert installation issue. He stated that he would not be involved in the work associated with the installation of the culverts.

Mayor McQuaker also recommended that the CAO/Clerk-Treasurer contact the Integrity Commissioner or the Municipal lawyer and request they provided a refresher course to council on the MCIA.

Council accepted the Mayor's apology and agreed that a refresher on the MCIA would be appropriate.

Mayor McQuaker acknowledges that he continued to participate in the discussions related to the culvert connection as he has knowledge and experience in this type of work and members of council look to him for his advice on these types of issues. Once

he had clarified that he would have no role in the contract services required for the work, he was satisfied he would not be in a conflict position.

The Deputant spoke to council again at its regular meeting held on February 11, 2020. He elaborated on his plan to connect to the Emo township culvert, citing safety and landscaping advantages.

Discussion took place in regard to the requirement to have the Deputant's connection to the township culvert registered on the title to the property. Liability, operations and maintenance/replacement were also topics of discussion.

Mayor McQuaker participated in the discussions

The outcome of the discussion resulted in further investigation being required, including a report from the Public Works Superintendent.

The Deputant advised that he still did not have a contractor retained to perform the installation work. He would not be retaining a contractor until council approved the project.

Witnesses who were in attendance at the meeting, other than the Deputant, state that they were not aware if the Deputant had a contractor available, and that was no discussion on who would perform the work.

Permission to proceed with the culvert connection to the township of Emo culvert was not provided at this meeting.

The next time the matter was discussed was at council's regular meeting held on June 9, 2020. This meeting was held via Zoom.

The Public Works Superintendent attended and provided a report in support of the private culvert being connected to the Township of Emo culvert.

Discussions took place in regard to the outstanding issues previously discussed.

All members of council were present. No declarations of interest were made. Mayor McQuaker participated in the discussions.

The Deputant confirms, once again, as of the date of this meeting, he did not have a contractor retained, as he continued to be seeking approval.

Witnesses in attendance at the meeting, other than the Deputant, state that they were not aware if the Deputant had a contractor available, and that there was no discussion on who would perform the work.

It was at this meeting that a motion to proceed with the culvert installation received a mover and a seconder and was carried.

The minutes of the June 9, 2020 meeting were approved at the June 23, 2020 regular council meeting. Witnesses present at the meeting state that they do not recall any discussion regarding the culvert installation proposal, or the resolution approving it, during the approval of the June 9, 2020 meeting minutes.

A letter dated June 17, 2020 was sent to the deputant. The letter, via the approved resolution provided permission to the deputant to proceed. The letter also stated that the project is under the direction of the Public Works Superintendent and the Public Works Superintendent must be contacted prior to the start of the project.

The Deputant states that, after he obtained a letter outlining the council's approval, he sought quotes from local contractors capable of performing the excavation, culvert installation and connection work.

The deputant received two verbal quotes. He retained "Shane McQuaker Trucking". He did not request a quote from "Harold McQuaker Ent. Ltd.". Shane McQuaker is the son of Mayor Harold McQuaker

The total value of the work performed by Shane McQuaker Trucking was approximately \$1200.00. The work was performed on or around the weeks of June 29 to July 5, 2020.

During the course of the project, Shane McQuaker Trucking did utilize some equipment owned by Harold McQuaker Enterprise, however no rental fees were paid to Harold McQuaker Enterprise, as father and son often share equipment.

During the course of the project, some additional fill material was delivered to the work site by a Harold McQuaker Enterprise dump truck. The fill delivered was excess fill from an excavation taking place in proximity to the culvert work site. This dump truck was operated by Dale McQuaker, who is also a son of Mayor Harold McQuaker. Instruction to deliver the excess fill to the culvert site was provided by Shane McQuaker.

A witness states that, while travelling through the township on July 4, 2020, they passed by the culvert worksite, and observed Mayor McQuaker's backhoe machine being operated at the culvert installation site, moving earth to cover the culverts that had been installed there. The operator of that piece of equipment was Mayor McQuaker's son, Dale McQuaker. When they passed by again, just 15 minutes later, the piece of machinery had been loaded on a trailer and was being removed from the property. This witness drove past the truck and trailer moving the backhoe, and observed that the driver of that truck was Mayor McQuaker. Mayor McQuaker acknowledges moving the truck and trailer from the site as the equipment was required elsewhere. Harold McQuaker Ent. Ltd. did not receive any compensation for the removal of his equipment from Shane McQuaker Trucking or the homeowner.

ANALYSIS

In order to determine if there was a contravention of Subsection 5(1), and Sections 5.1 and 5.2 of the MCI, and the associated sections of the Code of Conduct, the following questions were reviewed.

1. Did the Mayor have a pecuniary interest in the matter being considered?
2. If there is NO pecuniary interest, the matter can be considered by the Mayor.
3. If there is a pecuniary interest, do the exemptions apply as per section 4 of the MCI? (If there is an exemption, the matter can be considered and voted upon by the Mayor, and no disclosure is required.)

4. IF there is NO exemption, did the Mayor disclose the interest and its general nature at the meeting and prior to the vote?
5. IF there is NO exemption, either before or after the meeting, was there any attempt in any way to influence the vote?
6. IF there is NO exemption, after the meeting, was the necessary written declaration completed and submitted to the Clerk?

Turning to the first question in the analysis chain:

Does Mayor McQuaker have a pecuniary interest in the matter before township council?

The relevant facts found in the investigation, which are outlined in more detail earlier in this report, are:

1. The Mayor discussed the matter with the Deputant prior to his first appearance before Council, to provide general instruction and information relating to the Deputant's desire to connect a private culvert to a municipal culvert. The Mayor participated in council deliberations with respect to the Deputant's proposal, including discussions relating to the ultimate approval of the project in June, 2020.
2. Neither the Mayor's business, nor any business owned by a relative of the Mayor, was retained to undertake work for the Deputant until after the project was approved by Council (June, 2020). At that time, a business owned by one of the Mayor's sons was retained. The value of the contract (not the profit associated with it) was approximately \$1200.00.
3. In November, 2019, the Mayor publicly stated that, as he was working with (and/or intending to work with) the Deputant on the project, he should have declared an interest in the matter prior to Council discussions. (It is noted that the Deputant's witness statement that he (the deputant) had not at this time retained a contractor, so the Mayor may have been mistaken in terms of any

commitments.) Mayor McQuaker also apologized for participating in prior discussions, and stated he would not, in fact, be doing any work for the Deputant associated with the project, should it be approved. Accordingly, he continued to participate in discussions relating to the matter.

The MCIA is clear that pecuniary interests of “children” are also owned by the elected official parent. Therefore, the pecuniary interests of Shane and/or Dale McQuaker are deemed to be those of Mayor McQuaker.

Case law is clear that a pecuniary interest arises when the interest “crystallizes” (Tuchenhagen v. Mondoux (2011 ONSC 5398 (Divisional Court) CanLii)). This means that whether or not the council had commenced or concluded its discussions relating to the project, if Mayor McQuaker (or his son(s)) had any intention of working on the project at some point, the pecuniary interest had “crystallized”.

Case law is also clear that the interest cannot be “speculative” or “hypothetical” (Gammie v. Turner (2013 ONSC 4563 CanLii)). There must be a “real issue of actual conflict or, at least, a reasonable assumption that conflict will occur” (Yorke et. a. v. Harris, 2020 ONSC 731 CanLii, at paragraph 47)). That case, the decision for which was released in December of 2020, goes on to say that the pecuniary interest must be “probable” (paragraph 48).

Although Mayor McQuaker was not personally intending to work with the Deputant (once he correctly recognized that a pecuniary interest would result), there is no evidence that a commitment had been made that no businesses owned by one or more of his sons would work with the Deputant on the project, should it be approved. In fact, a business owned by a son of the Mayor did submit a quotation and was ultimately awarded the contract.

Hindsight is 20-20, but I must examine the matter from the point of view of the timelines as they unfolded. When council discussed this matter, was it merely speculative or hypothetical that a business in which the Mayor had a deemed

pecuniary interest would end up obtaining work as a result of the council's decision?
Or could that outcome have been "probable"?

In a small-town setting, with a relatively small project and very few available contractors capable of performing the work required, I have to conclude that the ultimate outcome was more "probable" than "hypothetical".

Accordingly, I conclude that Mayor McQuaker, through his son's business, had a pecuniary interest in the proposal by the Deputant.

The second question in the analysis chain is moot, since the answer to the first question is that there is, indeed, a pecuniary interest involved.

I now turn to the third question in the analysis chain.

If there is a pecuniary interest, do the exemptions apply as per section 4 of the MCIA?

Eleven exemptions are articulated in Section 4 of the MCIA. If any one or more of them apply, then the elected official need not declare a pecuniary interest in the relevant matter, and can participate in debate and consideration of the matter. Most of the exemptions are very fact-specific (i.e., public utility use, owning certain land, etc.). Two of them are more general in nature. These are in paragraphs (j) (involving interests that are in common with the general electorate) and (k) (involving interests that are either too "remote" or too "insignificant" to be likely to influence the member's decision-making).

As this matter involves specific business interests that are not in "common" with the rest of the electorate, the exemption in paragraph (j) does not apply. This leads to a consideration of the exemption in paragraph (k).

Was Mayor McQuaker's pecuniary interest (through his son's business) in the culvert project either so "remote" or so "insignificant" that it cannot reasonably be regarded as likely to have influenced him?

The MCIA states that, in determining whether (k) applies, consideration must be given to the question placed before a reasonable elector, apprised of all the circumstances

Case law analysis relating to the exemption in paragraph 4(k) outline the question to be asked as follows:

Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor's action and decision on the question? (Re Mel Lastman & Queen in Right of Ontario [2000] OJ No. 269 (CanLii), at paragraph 14)

Most cases dealing with this section of the MCI A analyze "remote" and "insignificant" together, using this test. A decision from the Saskatchewan Court of Queen's Bench, however, states that "remote" relates to the "directness" of the financial benefit, while "insignificant" relates to its size or amount (Kruse v. Santer, 2015 SKQB 376, CanLii).

In the Lastman case, the court found that the Mayor's son's partnership in a law firm engaged by the City was a deemed pecuniary interest, but was considered to be remote (and thus falling within the exemption in 4(k) of the MCI A), since the Mayor himself gained no financial benefit from his son's work. A reasonable elector would not see the son's position with the law firm as influencing the Mayor's decision-making. Similar rulings (relating to deemed pecuniary interests due to employment of children) were more recently made by the Ontario Superior Court (Amaral v. Kennedy, 2012 ONSC 1334, CanLii) and by the Ontario Court of Appeal (Ferri v. Ontario, 2015 ONCA 683, CanLii).

The above cases, following the Saskatchewan guideline, were decided upon "remoteness". Although there is a deemed pecuniary interest based on relationship, the interest is too remote from the elected official to be considered as an influencing factor.

Very few cases actually examine the amount of a financial benefit, and whether or not the amount results in "insignificance", however, an Ontario General Division Court case from 1991 determined that a \$300 profit was not to be considered "insignificant" (Mino v. D'Arcey, 1991 ONSC 7293, CanLii). In any event, the actual amount of profit earned by Shane McQuaker Trucking in this case was not disclosed, and cannot be analyzed.)

Based on the foregoing, I conclude that Mayor McQuaker's pecuniary interest (derived through his son's company) was sufficiently remote that it did not influence his decision-making. Accordingly, the exemption in paragraph 4(k) of the MCIA applies, and it was not necessary for Mayor McQuaker to make declarations of interest and refrain from participation in the matter under Section 5 of the MCIA.

Having concluded that the exemption applies, questions 4, 5 and 6 in the analysis chain become moot and need not be reviewed.

Recommendations

Having concluded that Mayor McQuaker's pecuniary interest in the matter before the council was too remote to have influenced his decision-making, no recommendations flow as a result of this investigation.

I commend council for its decision to have a refresher course on the MCIA.

Respectfully Submitted



Darrell Matson

Appointed Integrity Commission for the Corporation of the Township of Emo

LEGISLATION, POLICIES and DOCUMENTS Relied Upon

Municipal Act, 2001, S.O. 2001, c. 25 – E-Laws

Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 - E-Laws

Municipal Conflict of Interest Act Complaint Form and Affidavit as filed by the Complainant. – Confidential document

Complaint response by the Respondent. – Confidential document

Corporation of the Township of Emo documents, on file with the City Clerk:

- Minutes of City Council October 29, 2019, November 1, 2019, November 12, 2019, February 12, 2010, and June 9, 2020
- BY-LAW 2018-26 – A By-Law to establish a Code of conduct for Members of Council and the associated Schedules;
- BY-LAW 2018-28 – A By-Law to establish a Code of conduct for Members of Council and the associated Schedules;
- BY-LAW 2019-04 – A Procedural By-Law to govern the calling, place and proceedings of meetings of the Municipal Council for the Township of EMO as amended;
- BY-LAW 2004-20 – Being a By-Law to establish a Procurement By-Law for the Township of EMO as amended;

- BY-LAW 2019-08 – A By-Law to appoint persons as Integrity Commissioners and to authorize the execution of agreements with appointees and the associated schedules;
- Policy I-01 - Integrity Commissioner – Investigation Procedure (Schedule 3 to By-Law No. 2019-08) & (Schedule A to By-Law No. 2019-09);
- Agreement between the Corporation of the Township of EMO and Darrell Matson (Schedule B to By-Law 2019-08);

Witness statements for those interviewed – Confidential document

Training materials for the current City Council regarding conflict of interest - on file with EMO City Clerk

Training materials for the current City Council and Mayor regarding Emo code of conduct - on file with EMO City Clerk

Role of a Municipal Councillor, Councillor Liability and Municipal Conflict of Interest presentation prepared for The Corporation of the Township of Emo by Allan D. McKittrick of McKittrick's, Barristers and Solicitors Thunder Bay - on file with EMO City Clerk

Case law:

- Tuchenhausen v. Mondoux (2011 ONSC 5398 (Divisional Court) CanLii)
- Gammie v. Turner (2013 ONSC 4563 CanLii)
- Yorke et. a. v. Harris (2020 ONSC 731 CanLii)
- Mel Lastman & Queen in Right of Ontario [2000] OJ No. 269 (CanLii)

- Kruse v. Santer (2015 SKQB 376, CanLii)
- Amaral v. Kennedy (2012 ONSC 1334, CanLii)
- Ferri v. Ontario (2015 ONCA 683, CanLii)
- Mino v. D'Arcey (1991 ONGD 7293, CanLii).