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# **INTEGRITY COMMISSIONER REPORT ON MCIA APPLICATION 2023-01**

## **THE CORPORATION OF THE TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH**

**Aird & Berlis LLP**

**John Mascarin**

September 27, 2023

**TABLE OF CONTENTS**

**A. INTRODUCTION ..... 1**

**B. APPOINTMENT & AUTHORITY ..... 1**

**C. PRELIMINARY MATTERS..... 2**

**D. *MCIA* PROVISIONS AT ISSUE..... 2**

**E. REVIEW OF MATERIALS & INQUIRY ..... 3**

**F. BACKGROUND ..... 3**

**G. ANALYSIS ..... 7**

**H. FINDINGS ..... 8**

**I. CONCLUSIONS ..... 9**

**J. RECOMMENDATION ..... 10**

**INTEGRITY COMMISSIONER REPORT  
MCIA APPLICATION 2023-01  
COUNCILLOR CURTIS BLAKE**

**A. INTRODUCTION**

1. Aird & Berlis LLP is the Integrity Commissioner for The Corporation of the Township of Ashfield-Colborne-Wawanosh (the “**Township**”).
2. A formal application pursuant to subsection 223.4.1(2) of the *Municipal Act, 2001*<sup>1</sup> was filed directly with our office on August 10, 2023 (the “**Application**”).
3. The Application alleges that Councillor Curtis Blake (the “**Member**”) contravened section 5 of the *Municipal Conflict of Interest Act*<sup>2</sup> by failing to declare a pecuniary interest in, participating in discussion and voting on a matter related to the Wellington Street Construction Tender (the “**Tender**”) at a meeting of Council held on July 18, 2023.
4. The Application alleges that the Member has a pecuniary interest because the Tender relates to the approval of construction that is authorized pursuant to the Port Albert Master Servicing Plan (the “**Master Plan**”) and the Member previously declared a pecuniary interest with respect the Port Albert Roads Project.
5. Subsection 223.4.1(15) of the *Municipal Act, 2001* provides that upon completion of an inquiry, the Integrity Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the *MCIA* for a determination as to whether a member has contravened the *MCIA*.
6. Subsubsection 223.4.1(17) *Municipal Act, 2001* provides that the Integrity Commissioner shall publish written reasons for the decision. This report contains our decision regarding our inquiry into the Application and is issued pursuant to subsection 223.4.1(17) of the *Municipal Act, 2001*.
7. It is our view that the requirement of subsubsection 223.4.1(17) is satisfied by including this Report in the agenda materials for an open meeting of Council.

**B. APPOINTMENT & AUTHORITY**

8. Aird & Berlis LLP was appointed Integrity Commissioner for the Township pursuant to subsection 223.3(1) of the *Municipal Act, 2001* on December 4, 2018. We were re-appointed by By-law 16-2022 on February 15, 2022.
9. We have reviewed the Application in accordance with our authority as Integrity Commissioner and as set out in section 223.4.1 of the *Municipal Act, 2001* and the Township’s Integrity Commissioner Inquiry Protocol.

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<sup>1</sup> *Municipal Act, 2001*, S.O. 2001, c. 25.

<sup>2</sup> *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (“*MCIA*”).

## **C. PRELIMINARY MATTERS**

### **(a) Standing to File Application**

10. Pursuant to subsection 223.4.1(2) of the *Municipal Act, 2001*, only an “elector” or a “person demonstrably acting in the public interest” may file an application to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of the *MCIA*. We are satisfied that the Applicant in this matter is an elector of the Township.

### **(b) Time Limit to File Application**

11. As well, subsection 223.4.1(4) of the *Municipal Act, 2001* requires that an application to the Integrity Commissioner be made within six (6) weeks after the applicant became aware of the alleged contravention. This provision replicates the time limit set out in subsection 8(2) of the *MCIA*. The strict time limit is meant to protect elected officials and ensure that applications are brought forward on a timely basis.<sup>3</sup>

12. The Application applies to a matter dealt with by Council on July 18, 2023. As noted, the Application was filed with our office on August 10, 2023, some four (4) weeks later and thus within the six (6) week limitation period.

## **D. MCIA PROVISIONS AT ISSUE**

13. The Application alleges that the Member contravened section 5 of the *MCIA*, which provides 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.

14. Prior to taking office, every member of a municipal council must make a declaration pursuant to section 232 of the *Municipal Act, 2001* which includes, *inter alia*, the solemn promise and declaration that:

I will disclose any pecuniary interest, direct or indirect, in accordance with the *Municipal Conflict of Interest Act*.

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<sup>3</sup> *Hervey v. Morris*, 2013 ONSC 956, 9 M.P.L.R. (5th) 96 (Ont. S.C.J.).

## **E. REVIEW OF MATERIALS & INQUIRY**

15. In order to undertake our inquiry into the Application, we have reviewed the following:

- the Application and materials referred to therein, including attachments;
- the Member's initial response, dated September 4, 2023;
- the Member's subsequent additional responses providing clarification dated September 7 and 12, 2023; and
- various Council agendas and minutes, staff reports, and other materials including the Declaration of Pecuniary Interest Registry.

16. We have also reviewed, considered and had recourse to such applicable jurisprudence and secondary source materials that we believe to be pertinent to the issues at hand.

## **F. BACKGROUND**

### **(a) Member**

17. The Member was elected to his current office in the 2022 Municipal Election. He did not previously hold any elected office. He is one of two new Council members this term. Council comprises seven (7) members.

### **(b) Port Albert Master Servicing Plan**

18. The Master Plan is described as follows:

The Township of Ashfield-Colborne-Wawanosh initiated a Master Plan for Servicing the village of Port Albert in May 2018. Council adopted the Port Albert Servicing Master Plan as presented by BM Ross & Associates dated April 27, 2022 by by-law on Tuesday, June 7, 2022. The purpose of a Master Plan is to provide a system-wide approach to infrastructure planning to allow for proper drainage when development occurs within Port Albert.<sup>4</sup>

19. The Member describes the Master Plan as a "very controversial" plan which has engendered an "extreme amount of backlash" and has "unsettled community members".

### **(c) Member's Residence in Port Albert**

20. The Member resides in the Village of Port Albert, which is a community within the Municipality.

21. The Member has provided the following written admission that "my name is on partial ownership to a property located in Port Albert that will have road work performed during the progress of said plan."

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<sup>4</sup> See <https://acwtownship.ca/residents/news/port-albert-servicing-master-plan>

**(d) Allegations**

22. The Application alleges that the Member has contravened his obligations under section 5 of the *MCIA*.

23. In particular, the Application provides that at the Special Meeting of Council on February 28, 2023, the Member declared a conflict of interest in regard to Agenda Item 3, Financial Reports, specifically respecting the Port Albert Roads Project.

24. The Minutes of the Special Meeting contain the following:

**DISCLOSURE OF PECUNIARY INTEREST / POTENTIAL CONFLICT OF INTEREST**

Councillor Blake declared a conflict of interest on the Port Albert Servicing Master Plan.

25. The Member filed a Declaration of Interest statement pursuant to section 5.1 of the *MCIA* which is found in the Township's Public Disclosure Registry wherein he declared a potential pecuniary interest on the Draft Budget for the following reason:

I am a resident/homeowner of Port Albert. The servicing plan being discussed will cost myself and my fellow community members a substantial amount of money. Potentially causing some to sell/move from the area.

26. At the Meeting of Council on July 18, 2023, the Member participated and voted on Items 12.4 and 18.5 which related to the Tender which is part of the Master Plan and which, by the Member's admission, relate to the road works that will impact his residence.

27. The Minutes of the meeting on July 18, 2023 do not indicate that the Member declared a pecuniary interest in the aforementioned matters. The Member did not file a declaration of pecuniary interest with the Clerk..

28. The Application asserts that the Member declared a pecuniary interest in the Port Albert Roads Project in February, 2023. However, the Member did not disclose his pecuniary interest in the Wellington Street Construction Tender (Item 12.4) or on By-law 53-2023 to authorize the construction of the Wellington Street Improvement (Item 18.5) at the meeting in July, 2023. The allegation is that the Member's failure to do so contravened section 5 of the *MCIA*.

**(e) Member's Responses**

29. The Member was provided with an opportunity to provide a written response to the allegations. The Member provided his initial response on September 4, 2023 wherein he:

- admitted to declaring a conflict of interest on February 28, 2023;
- submitted that the Township made a number of "mistakes" with respect to the Master Plan;
- asserted that he had been verbally pressured and "borderlined harassed" to not speak with respect to the Master Plan;

- contended that he had been mistreated and disrespected by other members of Council and staff;
- asserted he was pressured by staff and other members of Council to declare the conflict of interest in February 2023; and
- researched the *MCIA* and determined that “multiple exemptions” under section 4 of the *MCIA* were applicable in this particular case.

30. The initial response also requested:

- “clarification and/or a legal binding contract” that the Member cannot openly speak to the Master Plan;
- the names of all parties who filed the Application; and
- a notice to be distributed to “all parties affected” that the Member was rescinding his declaration in February 2023 and that he would be a “full participant in all future discussions regarding the Port Albert Master Plan.”

31. We wrote to the Member on September 4, 2023, setting out all of the exceptions in section 4 of the *MCIA* and requesting that the Member identify which specific exceptions that he was seeking to rely upon and the reasons why he did not need to declare a pecuniary interest on the Tender and By-law 53-2023 in July 2023.

32. The Member responded on September 7, 2023 as follows:

As stated in my previous email, I believe I was pressured into declaring a conflict of interest. I also provided background information and concerning claims that I believe should yield further investigation. I do also believe I fall under multiple exceptions under the Municipal Conflict of Interest Act. As integrity commissioner, I understand it is your duty to further investigate the information I have provided. Furthermore, and most importantly, I do not believe there are grounds for a conflict of interest at all between myself, and the Port Albert Master Plan. I believe my interest is an interest in common with electors generally. I believe the master plan is conducting work under the drainage act and creating local improvements. I believe the master plan is creating services provided to electors and myself alike.

33. We were confused by the Member’s response which appeared, for the first time, to assert that he did “not believe there are grounds for a conflict of interest at all between myself, and the Port Albert Master Plan.” We noted that this statement conflicted with his original admission that he had a pecuniary interest in the Master Plan. We also noted that the exceptions in section 4 of the statute only apply where a member has a pecuniary interest. We asked that the Member clarify his statements and identify the specific exceptions that he sought to rely upon.

34. The Member provided the following response on September 12, 2023:

Exception (e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001* or Part IX of the *City of Toronto Act, 2006*, as the case may be, relating to local improvements;

My name is on partial ownership to a property that will become affected by work under the drainage act, and Part XII of the Municipal Act, 2001 throughout the multiple phases of the Port Albert Master Plan and infrastructure projects taking place in Port Albert. The master plan, "relating to local improvements".

Exception (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or

I believe the Port Albert Master Plan's implementation sets precedent for future infrastructure projects throughout A.C.W. It is an interest in common with electors throughout the township as a whole, not limited to Port Albert. Constant discussion and notifications of concerns from electors throughout the township have taken place. The costs of the project as a whole are being covered by all A.C.W. tax payers.

Exception (a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;

The master plan will make me a user of a public utility service supplied by the municipality of A.C.W., in like conditions to a non-council member. The public service including, but not limited to, waste water management, storm water management, public access points to storm water drainage

35. In this response, the Member no longer asserted that he did not have a conflict of interest with respect to the Master Plan. The Member clarified that he relies on the exceptions sets out in clauses 4(a), (e) and (j) of the *MCIA*, which provide as follows:

### **Exceptions**

#### **Where ss. 5, 5.2 and 5.3 do not apply**

**4** Sections 5, 5.2 and 5.3 do not apply to a pecuniary interest in any matter that a member may have,

(a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;

...

(e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001* or Part IX of the *City of Toronto Act, 2006*, as the case may be, relating to local improvements;

...

(j) by reason of the member having a pecuniary interest which is an interest in common with electors generally;



## **G. ANALYSIS**

### **(a) Pecuniary Interests**

36. Despite its central importance to the statute, the *MCIA* does not define the term "pecuniary interest." However, it is well-accepted that a "pecuniary interest" is any financial interest related to or involving money.<sup>5</sup>

37. The jurisprudence has interpreted pecuniary interest to include a monetary benefit that will be received or could be received, either in cash or in an increase in the value of some asset, but can also entail the avoidance of a financial loss. The pertinent question to be asked is as follows:

Does the matter to be voted upon have the potential to affect the pecuniary interest of the municipal councillor?<sup>6</sup>

38. While we have taken into account that the Member has asserted that he was "pressured" into declaring a pecuniary interest in February 2023, no evidence was actually proffered to support the assertion. In any event, as noted by the Ontario Superior Court the obligation to declare a pecuniary interest or not is a personal obligation of every member who takes the oath of office:

...the decision to exercise the obligations set out in s. 5 are characterized as a matter of personal judgment for each councillor.<sup>7</sup>

39. As noted above, and as expressly admitted by the Member, he resides in the area benefiting from certain road construction works and improvements that will impact his property. The Member did not disclaim he had a pecuniary interest in the matters considered and voted upon at the meeting of Council in July, 2023.

### **(b) Statutory Exceptions**

38. The *MCIA* recognizes a number of exceptions that serve to make a member's pecuniary interests not subject to the requirements of section 5 of the statute. Section 4 of the *MCIA* lists eleven exceptions, three of which have been cited and relied upon by the Member in response to the allegations in the Application.

#### **(i) Exception for a "User of a Public Service"**

39. Clause 4(a) of the *MCIA* provides an exception where the matter under consideration relates to supply of a public utility service that is provided to all ratepayers. The works authorized pursuant to the Tender and By-law 53-2023 are not provided to all ratepayers but only to those in Port Albert. This is also made clear by the fact that the levy imposed under By-law 53-2023 is a special area levy under subsection 326(4) of the *Municipal Act, 2001*. The exception under clause 4(a) is not applicable.

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<sup>5</sup> *Mondoux v. Tuchenhagen* (2011), 88 M.P.L.R. (4th) 234 at para. 31 (Ont. Div. Ct.); *Magder v. Ford* (2013), 7 M.P.L.R. (5th) 1 at para. 6 (Ont. Div. Ct.).

<sup>6</sup> *Greene v. Borins* (1985), 28 M.P.L.R. 251, at para. 42 (Ont. Div. Ct.).

<sup>7</sup> *Cooper v. Wiancko* (2018), 73 M.P.L.R. (5th) 212 (Ont. S.C.J.).

**(ii) Exception for a “Drainage Act Works or Local Improvements”**

41. The exception in clause 4(e) pertains to a matter that relates directly to work under the *Drainage Act* or to a work relating to local improvements under Part XII of the *Municipal Act, 2001*. The matters under consideration at the meeting on July 2023 did not directly pertain to works under the *Drainage Act* or to the imposition of local improvement charges. The exception is not applicable with respect to the two matters under consideration on July 18, 2023.

**(iii) Exception for “Interests in Common with Electors Generally”**

42. The exception for “interests in common” recognizes that the *MCIA* should not be an impediment to participating in decision-making where the financial interest is shared, in general, by other ratepayers in the community.

43. The exception does not necessarily require that a member have the same interest as every elector within the *entire* municipality. This is made clear in the definition of the term in section 1 of the *MCIA*:

“interest in common with electors generally” means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part;

44. The exception in clause 4(j) can be distinguished from the exception in clause 4(a) because it does not need to apply generally to all electors in the municipality by virtue of the above-noted definition.

45. The exception in clause 4(j) for an interest in common applies where a matter before Council affects the pecuniary interests of the member in the same manner as others in the municipality as a whole or those affected in a particular area. The interest may vary in degree or amount, but must be the same in kind or type.<sup>8</sup>

46. It is our opinion that the Member shares the same interest in the matters that were voted upon in the meeting on July 2023 as those electors in the Port Albert community. The Member has no different pecuniary interest in those matters than do any of the other residents in Port Albert. In our opinion, the Member shares an interest in common with a large segment of electors generally as intended by the definition and the exception in clause 4(j) of the *MCIA*.<sup>9</sup>

## **H. FINDINGS**

47. We have carefully and fully considered the Application and the responses provided by the Member. For the reasons set out below, based on a preponderance of the evidence and on a balance of probabilities, we find that the Member has not contravened section 5 of the *MCIA* when he did not declare a pecuniary interest in the Tender (Item 12.4) and in By-law 53-2023 (Item 18.5) at the meeting of Council on July 18, 2023.

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<sup>8</sup> *Ennismore (Township), Re* (1996), 31 M.P.L.R. (2d) 1 (Ont. Gen. Div.).

<sup>9</sup> *Biffis v. Sainsbury*, 2018 ONSC 3531 at para. 14. See also *Re Ennismore (Township)* at paras.15-19.

**(a) Pecuniary Interest in the Matters**

48. The Member had a pecuniary interest in both the Tender and By-law 53-2023 at the meeting on July 18, 202 and admitted that he did.

**(b) Exceptions**

49. The Member cannot rely on the exceptions set out in either clause 4(a) (user of a public service) or clause 4(e) (*Drainage Act* works or local improvements) of the *MCIA*. In our opinion, those exceptions do not apply to the aforementioned matters considered by Council.

50. The Member is, however, entitled to rely on the exception for an interest in common with electors generally as contained in clause 4(j) of the *MCIA*. For the reasons set out above, the Member has the same nature or type of interest in the aforementioned matters, to the extent any financial interest arises from his partial ownership of property, as other electors in the community of Port Albert.

**I. CONCLUSIONS**

51. Subsection 223.4.1 of the *Municipal Act, 2001* provides that, upon completion of an inquiry, the Integrity Commissioner may, if the Integrity Commissioner considers it appropriate, apply to a judge under section 8 of the *MCIA* for a determination of whether the member has contravened section 5, 5.1, 5.2 or 5.3 of that statute.<sup>10</sup>

52. Unlike a report related to an alleged contravention of the Code of Conduct where the Integrity Commissioner reports its opinion on the matter and Council may need to make a decision on the imposition of any penalties or remedial measures/corrective actions that may be recommended, the decision-making authority under section 223.4.1 of the *Municipal Act, 2001* resides solely with the Integrity Commissioner. Council is simply advised of the decision and receives the report for information.

53. For all the reasons set out above, we have determined on a balance of probabilities that the Member has not contravened section 5 of the *MCIA*, as alleged.

54. While the Member did have a pecuniary interest in the matters of the Tender and By-law 53-2023, the Member is entitled to rely on the exception in clause 4(j) of the *MCIA* and, accordingly, he was not required to declare a pecuniary interest and recuse himself from the decision-making process related to the two matters at the meeting on July 18, 2023.

55. In view of the foregoing, we will not be exercising our discretion to apply to a judge of the Ontario Superior Court of Justice under section 8 of the *MCIA* for a determination of whether the Member has contravened the *MCIA*.

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<sup>10</sup> Subsection 223.4.1(15) of the *Municipal Act, 2001* provides:

**Completion**

**223.4.1** (15) Upon completion of the inquiry, the Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the member has contravened section 5, 5.1, 5.2 or 5.3 of that Act.

56. As required by subsection 223.4.1(16) of the *Municipal Act, 2001*, we have provided notice to the applicant that we will not be making an application to a judge.

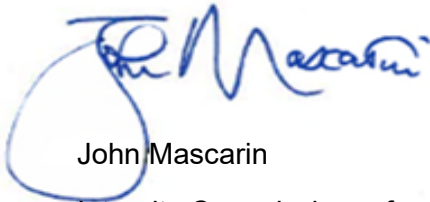
**J. RECOMMENDATION**

57. While there is no specific legislative requirement to do so, we recommend to any member of Council who declares a pecuniary interest and then decides, for whatever reason, that the pecuniary interest no longer exists or applies, that it would be prudent to make a statement to that effect, particularly in instances – such as this case – where it may not be apparent to the public that an earlier declaration on the same or similar matter is no longer applicable. Had the Member made such a statement, it might have avoided the Application and the necessity for our inquiry. On its face, the Application had merit given the Member's earlier declaration on the Port Albert Roads Project.

58. We recommend that a copy of our written reasons in this Report be posted by the Township on its website.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for the Township of Ashfield-Colborne-Wawanosh

Dated this 25<sup>th</sup> day of September, 2023