
ADVISORY BULLETIN REGARDING PECUNIARY INTEREST IN LAND

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Integrity Commissioner
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PURPOSE OF THIS BULLETIN

- [1] This Bulletin is intended to further assist Members of Council, Committees, and Local Boards (“Members”) in understanding their obligations regarding conflicts of pecuniary interest, as explained in the previously posted *Advisory Bulletin Regarding Conflict of Interest* (March 15, 2021), especially as it relates to pecuniary (financial) interest in land and real property.
- [2] The Integrity Commissioner is a confidential resource available for clarification and advice on conflicts of interest. Pursuant to sections 6.2.2 and 6.2.3 of the **Code of Conduct – Council, Committees and Local Boards** (hereinafter “**Code of Conduct (2020)**”), the Integrity Commissioner may provide oral and written advice to Members concerning the interpretation of, and compliance with, the **Code of Conduct (2020)** and the ***Municipal Conflict of Interest Act*** (hereinafter “**MCIA**”), as well as other ethical questions facing Members.

INTEREST IN LAND

- [3] As explained in the *Advisory Bulletin Regarding Conflict of Interest*, the meaning of “conflict of interest” in the *MCIA* includes direct, indirect, or deemed pecuniary interests. The *MCIA* is concerned with pecuniary (financial) interests only.
- [4] If a Member owns property that may either increase or decrease in value as a result of a decision by Council, a Committee, or Local Board, as the case may be, it is considered a direct pecuniary interest because it expressly has an impact on the Member’s finances, economic prospects, or property value. A direct pecuniary interest in land includes rental properties or any property owned by the Member, even if the Member does not reside on that land.

- [5] As noted, pecuniary interests can be direct or indirect (See *MCIA*, section 2(1); *Procedural By-Law*, section 9.1; and **Code of Conduct**, section 7.5.1). An indirect interest arises if the Member (or his or her nominee) (1) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public (See *MCIA*, section 2(a)(i)); (2) has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public (See *MCIA*, section 2(a)(ii)); or (3) is a Member of a body that has a pecuniary interest in the matter before Council, a Committee or Local Board, as the case may be (See *MCIA*, section 2(a)(iii)). Further, if the Member is a partner of a person or is in the employment of a person who has a pecuniary interest in the matter (See *MCIA*, section 2(b)), an indirect interest arises.
- [6] A pecuniary interest – direct or indirect -- may, also, be “deemed”. The pecuniary interest of a parent or the spouse or any child of the Member shall, if known to the Member, be deemed to be the pecuniary interest of the Member. (*MCIA*, section 3).
- [7] Therefore, a pecuniary interest in land could include situations where, for example, a Member’s father or child is an abutting owner to the subject property; a Member’s wife or child owns a farm adjacent to a subject property; a Member’s husband or child is a Director of a corporation that owns land in the subject area; a Member’s employer owns land that is part of a development proposal; or a Member’s business partner is the owner of land that the Town is considering purchasing. This list is not exhaustive but illustrates possible conflicts of interest because of a direct, an indirect or a deemed pecuniary interest.
- [8] Notices for Planning applications are regulated by the *Planning Act*. (See: *The Planning Act*: <https://www.ontario.ca/laws/statute/90p13>.) There are several different *Planning Act* applications. Each type has an associated Ontario Regulation on how to provide Notice of an application. For a zoning by-law amendment, *Ont. Reg 545/06* applies. (See: *Ont. Reg. 545/06*: <https://www.ontario.ca/laws/regulation/060545>.) Pursuant to this regulation, all property owners within 120 meters of the parcel which is the subject of the application, are to be sent Notice by mail. Various “Notice zones” exist under the *Planning Act* and its Regulations, but none is greater than 120 meters.
- [9] One might think that this “Notice zone” of 120 meters delineates the geographical area for determining a pecuniary interest. However, there is no reference in the *MCIA*, the **Code of Conduct (2020)**, or the case law, that fixes a definitive distance or zone within which a landowner would be deemed to have a pecuniary interest. Although the zone for

Notice may be helpful, the specific facts and context of each situation must be examined to determine whether there is a conflict of interest. The nature of the development, the configuration of the properties, the typography of the land, where structures are placed on the development, and the location of the entrances and exits, among other things, must be considered. **There is NO bright-line rule.**

- [10] There is one rule of thumb: the closer one's property is to the property under consideration, the more likely one is to have a pecuniary conflict; the farther away, the less the likely. Furthermore, if a Member is within the zone, it is extremely likely that they will have a pecuniary interest in the Application. However, just because the Member is outside the zone, doesn't mean the Member may not have a pecuniary interest in the Application. **The "Notice Zone" is NOT definitive nor determinative.**

Case Law

- [11] *Doug Craig v. Her Majesty the Queen in Right of Ontario*, 2013 ONSC 5349 (CanLII) is an example of a case where a Member's pecuniary interest was found to be exempt under Section 4(k) of the *MCI*A. The Mayor of Cambridge's son owned property within 600 metres of a proposed transit hub. Properties near these transit hubs were expected to become more desirable and undergo a "land value uplift." However, in this case, the judge found that the Mayor's pecuniary interest was *too remote or insignificant in its nature and, therefore, it could not reasonably be regarded as likely to influence his decisions*.

- [12] In this case, the judge looked at the following factors in making his decision:
- The potential for "land value uplift" was uncertain and might not be realized;
 - The property was likely not to be retained by the Mayor's son on a long-term basis, so any "land value uplift" would probably not be realized by him;
 - The Mayor's long and distinguished record of community service, without any breaches of ethical guidelines, policies, or laws;
 - The Mayor brought this matter before the Court to represent the interests of his constituents; and
 - The Mayor's desire to participate in the discussions, debates, and votes on the mass transit issue was not motivated by the fact his son owned property in proximity to a proposed transit station but, rather, by his longstanding interest in, and support for, public transportation.

- [13] In *Foster v. VanLeeuwen*, 2021 ONMIC 3, a decision from the Integrity Commissioner of the Township of Centre Wellington, Council considered a recommendation from the Heritage Committee to designate a bridge as heritage property. Councillor VanLeeuwen owned real estate and operated five businesses approximately half a kilometre from the bridge. The issue was whether the Councillor stood to benefit from replacing the bridge instead of designating it a heritage property because a stronger bridge would provide his customers with a more efficient route to tow their heavy equipment to and from his businesses.
- [14] The Integrity Commissioner determined that although the bridge had significance to the community, that, in itself, did not establish the presence of an interest that engaged the *MCIA*. The interest must be specific to the Member and related to or involving money. Pecuniary interest does not arise from speculation based on hypothetical circumstances; it must be real and present.
- [15] It was determined that the facts did not establish that Councillor VanLeeuwen's businesses would experience increased revenue and profits if there was no heritage designation. There was, also, no evidence to establish that the value of his home would increase if the bridge was given a heritage designation.
- [16] The Integrity Commissioner further noted that: (1) the *MCIA* does not distinguish between decisions that positively or negatively affect a Member's pecuniary interest in land; and (2) how a Member voted on a matter (i.e. for or against) is irrelevant. Similarly, the ultimate decision of Council, the Committee, or Local Board, as the case may be, is also irrelevant.
- [17] *Davis v. Carter*, 2020 ONMIC 5 (CanLII) briefly describes an example of a direct pecuniary interest in land. The Mayor declared an interest in a letter from the Downtown BIA, which requested amendments to a By-law, because the Mayor owned property within 500 feet (approx.152 meters) of the subject property.
- [18] In *Davidson v. Christopher*, 2017 ONSC 4047, the Mayor of Belleville was found to have a pecuniary interest in a matter of property acquisition. The Mayor was a shareholder and director of a company that owned vacant property, a portion of which the City of Belleville needed to acquire in order to construct a roundabout. The Mayor had previously declared an interest when the roundabout project first came before Council and, also, in a later meeting that discussed the potential land acquisition. However, a

Special Council Meeting was held regarding a possible budget increase for the project at which the Mayor failed to declare his pecuniary interest.

- [19] The judge found that the Mayor had breached Section 5(1) of the *MCIA* when he spoke to, and voted on, the matter at the Special Council Meeting. Had the roundabout been voted down in this meeting, his property would not have been acquired by the City. By casting a vote in favour of the budget, he, in essence, supported the project moving forward, which included the acquisition of his property. The judge found that a reasonable elector would, on the balance of probabilities, view the Mayor's interest as an influence on his actions and decisions.
- [20] The exemptions under Sections 4(j) and 4(k) of the *MCIA* did not apply in this case. The judge determined that the Mayor had committed an error in judgment by not declaring his interest at the Special Council Meeting. Evidence showed that the Mayor had an honest belief that the meeting did not affect his pecuniary interest since property acquisition was neither on the agenda nor discussed at the meeting. Thus, pursuant to the saving provision of Section 10(2) of the *MCIA*, the judge decided that the Mayor should not be removed from his position.
- [21] Lastly, in *Tuchenhagen v. Mondoux*, 2011 ONSC 5398 (CanLII), a Councillor in the City of Thunder Bay was found to have contravened Section 5 of the *MCIA* by not disclosing a pecuniary interest in a tax sale by the City.
- [22] When the Councillor became aware of the proposed tax sale, he sent an email asking for a copy of the advertisement for the property, stating that he might be interested in bidding on the property. He made an appointment to view the property and submitted a bid through a corporation he owned. It was not until he submitted his bid that he disclosed his pecuniary interest. He had not disclosed, at any prior meetings, his interest in making an appointment to view the property or in buying the property.
- [23] The Court found that the Councillor's pecuniary interest crystallized as soon as he became interested in making a bid for the property as he was no longer looking at the sale only from his perspective as a Council Member. He was examining the situation to see how it could advance his own private interests. The Councillor should have disclosed his interest at the meetings that took place after he became interested in the property and before he actually entered a bid on it. Neither the exemptions nor the saving provision under the

Act applied here and the Councillor was disqualified from being a Member of Council for 4 years.

ROLE OF THE INTEGRITY COMMISSIONER

- [24] The above cases demonstrate the vast range of scenarios that might bring a Member's interest in land into question and how the outcomes vary widely depending on the specific facts and circumstances of each case.
- [25] The decision to declare a conflict is the responsibility of the Member who believes they might have pecuniary interest in land or real estate. Although there is no bright line test, Members can use the factors outlined in the above noted examples to help determine whether there will be a pecuniary interest that results in a conflict.
- [26] Complaints may be brought to the Integrity Commissioner under **Complaint Protocol** which is **Appendix A** to the **Code of Conduct (2020)**. Further, an elector may petition the Integrity Commissioner to apply to a judge for a determination of whether a Member has breached the *MCI*A. The Integrity Commissioner has the discretion to either make such an application or decline to do so.

FURTHER INFORMATION

This Advisory Bulletin is intended to provide general information. To rely on the advice of the Integrity Commissioner with respect to specific situations, Members of Council must seek written advice consistent with the provisions of Section 6.2.4 and the **Complaint Protocols** of the **Code of Conduct (2020)**.

If you have any questions or wish to seek written advice on this matter, please contact:

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