

CITATION: *The Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner) v. Andrea Emma Budarick*, ONSC 2021 7635

COURT FILE NO.: CV-20-78

DATE: November 22, 2021

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN: Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner) v. Andrea Emma Budarick

BEFORE: Honourable Mr. Justice Martin James

COUNSEL: J. Paul R. Cassan, Counsel for the Applicant
Angela Chaisson, Counsel for the Respondent

DATE HEARD: May 11, 2021

REASONS FOR DECISION

James J

Introduction

- [1] The Applicant in this case is the Integrity Commissioner for the Township of Brudenell, Lyndoch and Raglan (“BLR”). I will refer to the “Applicant” and the “Integrity Commissioner” interchangeably.
- [2] The Respondent, Andrea Emma Budarick, is a member of Council for BLR. She was elected as a first time Councillor in 2018. Ms. Budarick operates a catering business from her home. She is a licensed but non-practicing paralegal. She has three sons, one of whom is Gary Budarick, sometimes referred to as Junior, about whom more will be said later.
- [3] In the municipal context, the Office of the Integrity Commissioner was established in 2007 to promote transparency, integrity and accountability in municipal government operations. Now every municipality must have an independent Integrity Commissioner.

- [4] In 2019 the provincial government enacted Bill 68, entitled *Modernizing Ontario's Municipal Legislation Act*. Bill 68 expanded the powers of the Integrity Commissioner in relation to the *Municipal Conflict of Interest Act* ("MCIA"). Effective March 1, 2019 the Integrity Commissioner for each municipality was authorized to investigate a complaint from an elector or other qualified person alleging that a member of a Council or local board contravened the *MCIA* rules respecting conflicts of interest.
- [5] After completing an investigation, the Integrity Commissioner may apply to a judge for a judicial determination as to whether the member contravened the *MCIA*. If a contravention of the *Act* is proven, the judge has a range of sanctions that may be imposed.
- [6] For the reasons that follow, I have determined that the Respondent failed to comply with her obligations under the *Act*.

The Municipal Conflict of Interest Act

- [7] The *MCIA* endorses the following principles in relation to the duties of members of Council and local boards;
- a. The importance of integrity, independence and accountability in local government decision-making;
 - b. The importance of certainty in reconciling the public duties and pecuniary interests of members; and,
 - c. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
- [8] The *MCIA* prohibits members of Councils and local boards from participating in matters where their economic self-interest may be in conflict with their public duty.
- [9] A "deemed pecuniary interest" applicable to the member arises when a spouse or child of a member has a pecuniary interest in a matter under consideration.
- [10] Section 5(1) of the *Act* provides that where a member has a direct, indirect or deemed pecuniary interest in any matter and is present at a meeting at which the matter is the subject of consideration, the member shall disclose the interest and the general nature thereof, shall not take part in the discussion of, or vote on any question in respect of the matter and shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.
- [11] Section 5.2 provides that where a member has a pecuniary interest in any matter that is being considered, the member shall not use his or her position in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

- [12] Section 9(1) provides that if the judge determines that the member contravened sections 5, 5.1 or 5.2, the judge may reprimand the member, suspend the member's remuneration for up to 90 days, declare the member's seat vacant, disqualify the member from being a member for up to seven years and, where personal financial gain has occurred, require restitution to the party suffering the loss.
- [13] Section 9(2) provides that in exercising his or her discretion as to an appropriate sanction, the judge may consider whether the member took reasonable measures to prevent the contravention, disclosed the pecuniary interest and all relevant facts known to him or her in a request for advice from the Integrity Commissioner and acted in accordance with that advice or committed the contravention through inadvertence or by reason of an error in judgment made in good faith.

The Fire Ban of August, 2019 and Subsequent Events

- [14] On August 7th, 2019, the Fire Chief for BLR advised the municipal Council that he had declared total fire ban in BLR and that warnings had been given to those who were not complying with the ban.
- [15] In accordance with Township policy, the Fire Chief determined that a service charge would be levied when there was a call for service to a property where the fire ban was not being complied with.
- [16] On August 16th, 2019, the BLR Fire Department responded to a call regarding an open fire at Gary Budarick's property on Schutt Road. Five firefighters and four trucks were dispatched to the scene. He had been previously warned not to have an open fire during the fire ban.
- [17] Mr. Budarick was given an invoice for a "service charge" of \$1,666.75, presumably to partially or fully recover the costs of responding to an open fire when the fire ban was in effect.
- [18] For reasons that are not clear in the evidence, service charges levied by the BLR Fire Department are reviewed and approved by Council.
- [19] At the Council meeting held on September 4th, 2019, the service charge levied against Mr. Budarick was part of a group of invoices presented by the Fire Department Council for review and approval by Council.

[20] Jesse Snider, the Captain of Fire Hall Number 1, was present at the meeting on behalf of the Fire Chief to address any issues pertaining to the service charge invoices.

[21] The Respondent was present at the meeting and when the mayor called the meeting to order and asked for any "disclosure of interests", the Respondent stated as follows:

I have, as emailed, the item August 16, 2019 at property 2499 Schutt Road, the Fire Chief's report by Jordan Mimick (ph). As it's a direct conflict, it's my son's property and I'll be representing him.

[22] When the time came during the meeting for Mr. Snider to summarize the activities of the Fire Department for the month of August, including the topic of the invoices for service charges, the Respondent asked numerous questions (the Applicant says 66 questions in all) about the Fire Department's finances and fundraising activities. The Respondent's questions and comments contained veiled and not so veiled criticisms of the Fire Department, including criticisms of its financial practices and handling of donations.

[23] Questions by members of Council, including questions from the Respondent, got into the specifics of how the service charges were calculated, how many trucks were dispatched, the types of fires involved, who got warnings, how the warnings were communicated, how the fire ban was communicated etc.

[24] Near the end of the discussion the following exchange occurred:

ANDREA BUDARICK: Okay. So, that's my point. So, if- and that's what I'm getting at is how do- if you're not going there ¹ to buy a permit you're not going to see it is all I'm - all I'm- I went through the process. I was sincerely looking for it because I wanted to know before all of this happened and I—

JESSE SNIDER: No. From what I'm seeing here is you're trying to find any way you can to try and get information to try and lessen the charge for Junior.

ANDREA BUDARICK: I haven't raised Junior's name at all.

ANDREA BUDARICK: So —

SHELDON KELLER: Okay. Point of procedure that's it for that discussion.

IRIS KAUFFELDT: Yes, I think we should move on.

SHELDON KELLER: Council's approval to send the bills, yes or no? The charges.

ANDREA BUDARICK: Well for me—

SHELDON KELLER: Or do you want the information brought back by Jordan (the Fire Chief) before we approve the charges?

JOHN RUTLEDGE: Well, that's what one Councillor wants, isn't it?

SHELDON KELLER: Well, that's only one. There's four other people at the table.

ANDREA BUDARICK: I will not vote on Junior's but I would like to see it for the other two.

¹ This appears to be a reference to the Fire Department's section of the BLR website.

- [25] It is not clear from the transcript of the Council proceedings whether the service charge invoices were sent out or held back pending further discussion at a subsequent meeting. I note, however, that the service charge levied against Gary Budarick is dated September 5, 2019 so it would appear that the invoices were finalized the day after the September 4, 2019 meeting of Council.
- [26] Gary Budarick filed an appeal of his service charge to a provincial tribunal called the Fire Safety Commission. In these appeals, the municipality and its fire service are the Respondents and they are therefore parties to the appeal proceeding who are required to respond.
- [27] On October 8th, 2019, the Respondent wrote to the Fire Safety Commission identifying herself as a member of Council who had a conflict of interest but also had some questions.
- [28] She expressed her inquiry in the following terms:

To Fire Safety Commission,

My name is Andrea Budarick, I am in a situation where I am Gary's mother and licensed paralegal, currently not practicing and BLR councilor. I have discussed my direct conflict as a councilor and have advised Gary to inquire for process and forms to request disclosures: call to dispatch audio recordings and all the records pertaining to this occurrence: names of fireman (sic), council audio minutes from April, May, September 4th, all of 2019 for example. Neither Gary nor I am familiar with your tribunals formal process and would ask that Gary be provided those rules and applicable forms where required. Garry (sic) is away working and ask I make this general process inquiry. I look forward to your prompt response as I see the hearing is scheduled for October 21st, 2019 and disclosure would make for a prepared, effective hearing.

Thank you. Andrea Budarick.

- [29] On the same date, October 8, 2019, Council met again at a special meeting. Prior to the meeting the Respondent declared that she had a conflict of interest with the invoice for the Fire Department service charges. The declaration form completed by the Respondent for this meeting said in part, "I, Andrea declare a pecuniary interest on item Closed Meeting identified on this meeting's agenda held on Oct. 8, 2019 or a past meeting agenda held on since Sept. 4, 2019 due to (list the general nature of the conflict): direct conflict- my son's property."

- [30] The agenda for this meeting is not in evidence but it appears that the agenda related in some way to the service charge sent to Gary Budarick. The Integrity Commissioner's affidavit says that the only item on the agenda was a "Notice of Case Conference from the Fire Safety Commission" regarding the appeal by Gary Budarick against the service charge.
- [31] In an email sent on October 16, 2019 from the Respondent to Paul Cassan, the lawyer for the Applicant, the Respondent said she was given notice of a special meeting of Council "where I was told that my son's issue was the only item on the agenda."
- [32] Councillor John Rutledge, who is also a volunteer fireman for BLR, declared a conflict of interest while the meeting was underway. The matter he referenced as prompting the declaration was in "regards to the incident on Schutt Road."
- [33] The Respondent says in her affidavit that when Council went into closed session she intended to leave the meeting but the Mayor said it was unnecessary to leave given the material that he believed would be covered in the session. The Respondent remained in the closed meeting.
- [34] What was discussed during the closed session is not in evidence beyond the Respondent's comment in her affidavit that there was a general discussion regarding the rules respecting conflicts of interest and the need for further training.
- [35] The minutes of the meeting prepared afterwards contain a note that one issue regarding "litigation or a potential litigation" was discussed during the closed session.
- [36] As noted by the Respondent, there is no audio recording of the majority of the meeting but the Respondent attached what she referred to as a partial transcript of the discussion. This partial transcript of the discussion is largely indecipherable. The transcript picks up part way through a discussion, in several instances missing words are marked as "unintelligible" and the Mayor refers to "a resolution" as being unopposed without describing what the resolution was.
- [37] I conclude from this evidence that there was a special meeting of Council on October 8, 2019. The only matter on the agenda related to "her son's issue" and the Respondent declared a conflict of interest. Council went into a closed session and the Respondent remained in the meeting, contrary to the requirements of the *MCLIA* (see s. 5(2)).

- [38] There was another special meeting of Council on October 30th, 2019. The Respondent declared a pecuniary interest regarding “personal matters about an identifiable individual” and seconded the motion to go into closed session.
- [39] It is not clear what was discussed during the closed session. The Respondent attached as an exhibit to her affidavit, “a complete transcript of the audio file provided to me by Council to BLR” but it appears that the transcript is only a partial record.
- [40] The transcript discloses that Bruce Beakley, the investigator for the Integrity Commissioner, was present at the meeting. The transcript also discloses that he referred to the “*Conflict of Interest Act*” and said that if a Councillor declares a conflict of interest and the meeting goes into closed session, the person who declared the conflict has to leave, at which point it appears that the Respondent left the meeting.
- [41] The Council minutes for the October 30, 2019 meeting contain the following resolution, moved by Iris Kauffeldt and seconded by John Rutledge:
- That we the Council of the Township of Brudenell, Lyndoch and Raglan hereby reduce the service charge for burning during a total fire ban on August 16th, 2019, at 2499 Schutt Road to \$365.00.
- [42] Missing from the evidence is:
- a. The frequency with which Fire Department service charges were reduced by Council. Is discounting a common or uncommon practice?
 - b. Whether other invoices from the same group of invoices presented to Council on September 4, 2019 were discounted; and
 - c. If so, the dollar or percentage amount of any reductions which may have been allowed.
- [43] In this case, the service charge invoice for Gary Budarick was reduced from \$1,666.75 to \$365.00, a reduction of about 78%.
- [44] Peggy Young-Lovelace is a director for Expertise for Municipalities (“E4m”), a non-profit corporation acting as the Integrity Commissioner for BLR. In response to a complaint from an elector, Ms. Young-Lovelace was appointed to investigate and report on an alleged conflict of interest on the part of the Respondent.
- [45] The Integrity Commissioner’s report was delivered to Council about a year later, on November 4, 2020. Her investigation concluded that the Respondent violated s. 5 and 5.2 of the *MCIA* by participating in Council meeting discussions regarding her son’s service charge. The findings of the Integrity Commissioner were that the Respondent declared a pecuniary interest but remained at the meeting and actively took part in the discussions regarding the service charges that the Fire Department sought to recover from her son. According to the Integrity Commissioner, the Respondent actively influenced the

decisions of Council either before, during or after the meetings dealing with her son's pecuniary interest in the service charge.

- [46] On November 6, 2020, just after the release of the report that was critical of the Respondent, the Respondent wrote to Ms. Young-Lovelace stating that Ms. Young-Lovelace should have recused herself from participating in the investigation. The Respondent advised Ms. Young-Lovelace that her position was as follows:

In my capacity as Councillor I made a number of public criticisms about the need for your investigation...as well as the propriety of the fees you charged... Therefore, I believe there must be a very strong presumption of bias on your part because of my criticisms of you which should have caused you to make the decision that E4m should have played no part in any investigation of me...

- [47] By letter dated November 12, 2020 Ms. Young-Lovelace responded to the request that she recuse herself by indicating that "a suggestion that merely because you commented negatively about the Integrity Commissioner in local media does not present bias that would disqualify the Integrity Commissioner in this instance. If it were so, it would certainly frustrate the statutory scheme laid out in the *Municipal Act, 2001* as it is rare indeed for Councillors subject to an investigation to commend the Integrity Commissioner for their work." Ms. Young-Lovelace took the position that the Respondent's letter was an attempt to improperly influence the Integrity Commissioner's decision to commence a court proceeding as a follow up to the finding that the Respondent had contravened the *MCIA*.

Position of the Applicant

- [48] The Applicant says that the Respondent breached the pecuniary interest provisions of the *MCIA* by participating in the discussion about the service charges and that she attempted to influence Council to the benefit of her son by undermining the manner in which the Fire Department conducted its affairs.
- [49] The Applicant contends that it is important to determine the scope of the "matter under consideration". Should it be construed narrowly to relate only to the service charge applicable to Gary Budarick or more expansively, to include the procedure applicable to the system of imposing Fire Department invoices generally? The Applicant contends that the "matter under consideration" was broader than just the service charge levied against Gary Budarick.
- [50] The Respondent's statement to Council at the September 4, 2020 meeting that she was "representing" her son was an indication that some sort of legal process was involved and constituted an attempt to intimidate Council.

- [51] The Respondent failed to seek advice from the Integrity Commissioner as mandated by Item 6 of s. 223.3(1) of the *Municipal Act, 2001* prior to the September 4, 2019 Council meeting and instead purported to seek advice from others who are not authorized by statute and generally not qualified to provide advice and guidance to members of Council.

Position of the Respondent

- [52] The Respondent says she properly identified and disclosed her pecuniary interest in the service charge invoice sent to her son.
- [53] Her questions directed to Jesse Snider were tangential to the subject matter of the declared conflict, but unrelated to the conflict itself.
- [54] She did not discuss the invoice to her son at the Council meetings on September 4 and October 8.
- [55] She left the October 30, 2019 Council meeting when it went into a closed session after she had declared a conflict of interest, just as she was mandated to do under the *MCIA*.
- [56] She did not attempt to influence the voting on the invoice to her son.
- [57] The Respondent properly raised an apprehension of bias in relation to the Integrity Commissioner.

Discussion and Analysis

- [58] The *MCIA* imposes a high standard of integrity, transparency and accountability upon members of municipal Councils and local boards. The public has the right to expect that elected officials will be diligent in discharging the duties of their office while eschewing private or personal economic benefits.
- [59] In the case of *Moll v. Fisher* (1979) 1979 CanLII 2020 (ON SC), 23 O.R. (2d) 609 the Divisional Court considered the purpose underlying municipal conflict of interest legislation. The Court stated:

The obvious purpose of the *Act* [*Municipal Conflict of Interest Act (1972)*] is to prohibit members of Council and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the *Act* is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption

on his part or actual loss on the part of the Council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute.

This enactment, like all conflict of interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the *Act*, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less. Legislation of this nature must, it is clear, be construed broadly and in a manner consistent with its purpose ...

- [60] The Applicant has the onus of proof on a balance of probabilities to establish that the Respondent contravened the *MCIA*.
- [61] It is clear that the Respondent declared a conflict of interest at the start of the meeting on September 4, 2019. The Respondent contends that having declared a conflict, it was open to her to question the Fire Department representative about its finances, donations, practices and procedures. As she said, she never once mentioned her son's name.
- [62] In my view, this is a much too narrow framing of the "matter under consideration." Recall that the *MCIA* prohibits a member who has a pecuniary interest from participating in the discussion of the "matter under consideration". Accurately determining exactly what is the "matter under consideration" serves to inform the scope of the prohibition against participation and influence.
- [63] In my view, the matter under discussion was the service charges imposed for the breach of the fire ban. That is why Mr. Snider was at the meeting- to present the invoices for Council review and approval. The Respondent fell into error when she continued to participate in the portion of the meeting dealing with the service charges. I do not accept the suggestion that it was permissible for the Respondent to question Mr. Snider about the Fire Department's fundraising activities and practices, or who may have gotten a warning about the fire ban and who may not have, or whether the Fire Department had issued unapproved invoices in the past, etc.
- [64] The Applicant contends that the "matter under consideration" was even broader and included the procedure applicable to the system of imposing Fire Department invoices generally. I find this proposition is too widely stated, although it is clear that the questions and the discussion delved into that topic. Fireman Snider was not there to represent the Fire Department in answering questions about Fire Department policies and practices.

- [65] In *Baillargeon v. Carroll*, 56 M.P.L.R. (4th) 161 (Ont. S.C.) Mr. Carroll was a trustee on the local school board who participated in various discussions about pending budget cuts, including possible staff reductions. His daughter was a teacher employed by the Board. His position was that while he knew he had a specific conflict of interest regarding staff reductions, he could still participate in general budget discussions but not discussions of specific items that could affect his daughter's pecuniary interests. Justice Kelly had no difficulty in determining that Trustee Carroll took too restrictive a view of his obligations. Trustee Carroll's response was that if he made a mistake about what discussions he could participate in, it was an honest error and he should be entitled to invoke the error in judgment and good faith defences. Justice Kelly held that because he knew he had a conflict of interest, the error in judgment and good faith defences were not available to him. Mr. Carroll's position as a school board trustee was declared vacant.
- [66] In this case I reject the suggestion that the Respondent was free to conduct a wide-ranging examination of Fire Department practices and policies after having declared a pecuniary interest in relation to her son's fire ban service charge.
- [67] Many of the questions directed to Fireman Snider would have been much more appropriately addressed to the Fire Chief. The limited purpose for which Fireman Snider was at the meeting was to present the invoices, and perhaps more broadly to report to Council about Fire Department activities during the month of August, 2019.
- [68] I do not accept the contention that the Respondent had a duty to pursue these issues at this particular meeting of Council due to questions raised by her constituents. I am not aware of any suggestion that Fire Department practices were on the meeting agenda. If there was a legitimate concern about Fire Department activities, one would expect that there would be advance notice to the Fire Chief and a formal item placed on the meeting agenda to permit proper preparation and adequate time for the issues to be discussed.
- [69] I find it is more likely than not that the Respondent's questions and comments were designed and intended to denigrate the Fire Department's practices, to create doubt regarding service charges and to obtain information for the purpose of enhancing her son's ability to challenge or reduce the invoice he received. In coming to this conclusion, I take the following factors into account:
- a. The Respondent had received training on issues related to the *MCIA* in February, 2019. She was aware of the importance of avoiding participation in all matters where she had a pecuniary interest, yet she chose to participate in the discussion and specifically asked questions about invoicing procedures and other Fire Department activities and practices;
 - b. At the outset of the meeting, the Respondent said she would be "representing" her son;
 - c. The Respondent conducted a sort of impromptu cross-examination of the Fire Department representative after having declared a conflict of interest;
 - d. There was a critical tone to the questioning;

- e. Later, the Respondent was publicly critical of the Integrity Commissioner's investigation and accused her of bias because the independent investigation found that the Respondent had contravened the *MCIA*;
- f. The evidence indicates Gary Budarick intended to contest the service charge levied against him with the assistance of the Respondent in an appeal to the Fire Safety Commission; and,
- g. Gary Budarick's service charge was subsequently substantially reduced by Council resolution. It is not in the evidence whether other service charges were also reduced and if so, by how much.

[70] These factors lead me to conclude that the Respondent's contravention of the *MCIA* was not mere inadvertence or an error in judgment. To the contrary, I find that the Respondent intentionally used her position as a member of Council in an effort to obtain a financial advantage for her son. The manner in which the Respondent conducted herself is precisely the mischief that the *MCIA* is aimed at preventing.

[71] The legislation is intended to be construed broadly in order to achieve the purposes for which it was enacted, that is, transparency, integrity and accountability in municipal government operations. Recall that one of the overarching principles of the *Act* is that a member's conduct ought to be able to withstand the "closest scrutiny".

[72] The Respondent submits that the court action brought by the Applicant is bound by the scope of the Integrity Commissioner's original investigation, which the Respondent says was limited to the Respondent's conduct at Council. The Respondent says that the Applicant is not permitted to raise additional issues, for example, those related to the Fire Safety Commission or the Respondent's letter alleging bias on the part of the Integrity Commissioner.

[73] I do not agree.

[74] The authority cited by the Respondent to support this proposition is *R. v. Greenbaum*, [1993] 1 S.C.R. 674, a case respecting municipal powers. The *Greenbaum* case dealt with whether a municipal by-law prohibiting retail sales along a highway was authorized by the *Municipal Act*. The court concluded that the municipality was not empowered to regulate the sale of merchandise or to prosecute vendors alleged to have violated the by-law.

[75] I don't see how this case assists the Respondent in arguing that this Court is limited in some way from receiving all relevant and admissible evidence that is material to the issue of whether the *MCIA* was contravened.

[76] The Respondent says she had a reasonable basis to believe that the Applicant was biased against her. The Respondent contends that because she was publicly critical of the Integrity Commissioner's investigation, and the investigation concluded that the Respondent had contravened the *MCIA*, the Integrity Commissioner should have stepped

aside and a new person should have been brought in to conduct a fresh investigation, all at BLR's expense.

- [77] The allegation of bias was not made until November, 2020, about a year after the Integrity Commissioner was initially notified of a complaint about the Respondent's conduct and after the Integrity Commissioner had presented the results of her investigation to the members of BLR Council. Persons who claim to have a reasonable basis for believing that someone is biased are not entitled to sit back and wait until the result of the proceeding is known before making a complaint.
- [78] Public criticism of the Integrity Commissioner's work by the Respondent is not necessarily indicative of bias on the part of the Integrity Commissioner.
- [79] On the available evidentiary record, I find that there is no reasonable basis to support the Respondent's allegations of bias against the Integrity Commissioner.
- [80] The Applicant requested judicial direction regarding the interplay between sections 223.4.1(15) and 223.7 of the *Municipal Act, 2001*. Section 223.4.1(15) provides that:
- (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 or 5.2 of that Act. 2017, c. 10, Sched. 1, s. 21.
- [81] Section 223.7 provides that:
- 223.7 Neither the Commissioner nor any person acting under the instructions of the Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part. 2006, c. 32, Sched. A, s. 98.
- [82] My interpretation of these provisions is that the legislation contemplates that the Integrity Commissioner may apply to court after his or her investigation has been completed (s. 223.4.1(15)). Presumably the "applicant" would be the Integrity Commissioner. In a typical situation the Integrity Commissioner would provide affidavit evidence and be subject to cross-examination. They would be witnesses in the usual manner. I infer that Section 223.7 is not directed at a court proceeding commenced by the Integrity Commissioner after his or her investigation has been completed. Section 223.7 is directed at subsequent or other litigation brought by a third party against the Integrity Commissioner or someone acting under the authority of the Integrity Commissioner.

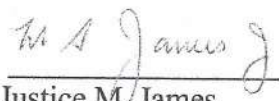
What is an Appropriate Sanction?

- [83] Having found that the Respondent contravened the conflict of interest provisions of the *MCIA*, I now turn to the issue of an appropriate sanction.
- [84] Under an earlier version of the *MCIA*, the only available sanctions were a Court order declaring the member's position vacant with the additional possibility of disqualification for up to seven years, unless the Court was satisfied that the contravention was due to inadvertence or an error in judgment.
- [85] Now the sanctions include a greater range of possibilities as outlined in paras. 12 and 13 above.
- [86] The determination of an appropriate disposition requires that all the evidence be considered. Also, both mitigating and aggravating factors ought to be taken into account. A mitigating factor is a factor that tends to lessen an otherwise appropriate sanction. An aggravating factor is one which tends to increase an otherwise appropriate sanction.
- [87] I find that the following mitigating factors are present in the circumstances of this case:
- a. The amount involved is relatively modest;
 - b. The Respondent recognized that a conflict of interest situation existed and declared that she had a deemed pecuniary interest in relation to the service charges; and,
 - c. The Respondent cooperated with the Integrity Commissioner's investigation.
- [88] I find that the following aggravating factors are present:
- a. The Respondent knew she had a conflict of interest but chose to participate in the discussion regarding Fire Department practices and the service charges;
 - b. Her public duties were subordinated to her desire to assist her son;
 - c. There was a substantial reduction in the service charge levied against Gary Budarick; and,
 - d. The Respondent failed to seek timely advice from the Integrity Commissioner, the only person who is authorized to provide advice under the *MCIA*.
- [89] Although not an aggravating factor, the facts do not enable the Respondent to obtain the mitigating benefits of an inadvertent mistake or an error in judgment.

- [90] In all the circumstances, I find that the position of the Respondent ought to be declared vacant for the remaining term of this municipal Council, effective Sunday, November 28, 2021.
- [91] The next municipal elections are scheduled to take place in October, 2022.
- [92] I am not prepared to disqualify the Respondent from seeking re-election when the current term of Council is over. I suspect that the Respondent's situation is or will become known to all electors in BLR who have an interest in municipal politics and government. In the circumstances of this case, if the Respondent chooses to stand for election in the next municipal election, it seems to me that the electorate should be permitted to choose who is going to represent them.
- [93] The Respondent maintains that she did not contravene the *MCIA* but advanced the alternate suggestion that a reprimand would be appropriate. I am of the view that such a disposition would not adequately address the intentional and deliberate nature of the Respondent's conduct.

Disposition

- [94] The Respondent's position on the BLR municipal Council is declared vacant, effective Sunday, November 28, 2021.
- [95] If the parties are unable to agree on the issue of who ought to be responsible for the costs of this proceeding, the Applicant may deliver a costs outline and draft bill of costs within 15 days and the Respondent shall have 15 days to respond. No right of reply.


Justice M. James

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