
TOWNSHIP OF ADJALA-TOSORONTIO INTEGRITY COMMISSIONER,
GUY GIORNO

Citation: Pinto v. Anderson, Bays, Hall-Chancey and Pita,
2022 ONMIC 14

Date: June 27, 2022

Corrected: June 29, 2022

REASONS FOR DECISION

TABLE OF CONTENTS

Context.....	3
The Application	3
Decision	3
Background	4
Process Followed.....	6
Positions of the Parties.....	7
Findings of Fact.....	8
Issues and Analysis.....	10
A. Did the Respondents have a pecuniary interest in the matter?	10
B. Should I make an application to a judge?	12
Decision	13
Publication.....	13

CONTEXT

1. These reasons for decision are to be published under subsection 223.4.1 (17) of the *Municipal Act*.
2. Among their responsibilities, municipal Integrity Commissioners in Ontario conduct inquiries into applications alleging that council members or members of local boards have contravened the *Municipal Council of Interest Act*. At the end of such an inquiry, the Integrity Commissioner shall decide whether to 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, and shall publish reasons for the decision. Such decision is not subject to approval of the municipal council and does not take the form of a recommendation to council. There is, therefore, no municipal council resolution necessary to give effect to the decision.

THE APPLICATION

3. Section 223.4.1 of the *Municipal Act* allows an elector or a person demonstrably acting in the public interest to apply in writing to the Integrity Commissioner for an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* (MCIA) by a member of council or a member of a local board.
4. Mayor Floyd Pinto (the Applicant) alleges that Councillors Scott Anderson, Annette Bays, Deborah Hall-Chancey and Jonathan Pita (the Respondents) contravened sections 5, 5.1 and 5.2 of the MCIA by voting, taking part in a discussion, failing to declare a pecuniary interest, failing to file a written statement, and failing to leave the meeting, in relation to a matter considered during an April 26 closed session of Council.
5. Four applications (one for each Respondent) were submitted May 12.
6. Upon receiving the completed applications,¹ I conducted an inquiry.

DECISION

7. Subsection 223.4.1 (15) of the *Municipal Act* states 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 whether the member has contravened section 5, 5.1 or 5.2 of that Act.

¹ I assigned to the four applications a joint file number, 2022-05-MCIA.

8. I have decided that I will not apply to a judge for a determination whether Councillors Anderson, Bays, Hall-Chancey, and Pita contravened sections 5, 5.1 and 5.2 of the MCIA.

9. Subsection 223.4.1 (17) of the *Municipal Act* requires me to publish written reasons for my decision. These are my reasons.

BACKGROUND

10. At the March 9 Regular Meeting of Council, Councillor Anderson moved, Councillor Pita seconded, and Council adopted, on a 5-2 vote, resolution RES-127-2022:

RESOLVED that whereas Council believes over the course of the 2018 to 2022 term of Council Mayor Floyd Pinto has continually and consistently made comments, exhibited negative behaviour and actions which have harmed the integrity of His Office, of Council, and of the Township of Adjala-Tosorontio;

AND WHEREAS his behaviour and actions has created a toxic and unwanted environment for Council and Staff;

AND WHEREAS his behaviour and actions is not endorsed or acceptable by Council and is contrary to the Council Code of Conduct, specifically the sections outlined below:

Section 6.2.1 f) states that Members shall, “uphold the law and conduct oneself in a positive, professional, honest, ethical and fair manner”; and,

Section 6.21 g) states that Members shall, “not make statements known to be false or make a statement with the intent to mislead Council or the public”; and,

Section 6.21 j) states that Members shall, “respect the roll [*sic*] of staff in the daily conduct of operations of the Township”; and,

Section 6.21 k) states that Members shall, “respect the office of other members”; and,

Section 6.21 l) states that Members shall, “be respectful of the Corporation in all communications with the public, media, and staff”; and,

Section 6.21 in) states that Members shall, “conduct oneself with appropriate decorum at all times in the community or when making presentations on behalf of the Township”; and,

Section 6.21 o) states that Members shall, “not engage in any form of slanderous, malicious, or demeaning communications in regards to other Members, staff, or the public”; including the comments made by the Mayor at the February 9, 2022 Council Meeting; and,

Section 6.3.2 states that “Members are expected to perform their duties and arrange their public affairs in a manner that promotes public confidence in the integrity of the Member as well as fosters respect for Council and the Corporation”; and,

Section 6.9.1 states that “Members shall not use the influence of their office for any purpose other than to exercise official duties”; and,

Section 6.15.2 states that “All Members shall accurately and adequately communicate the attitudes and decisions of Council, even if they disagree with Council’s decision, such that respect for the decision-making process of Township Council is fostered”; and,

Part of section 6.16.3 states that “...no Member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of Staff, and shall show respect for the professional capacities of the Staff of the Township”;

AND WHEREAS more recently the Mayor in his social media posts of Sunday February 6, 2022, on the Township of Adjala-Tosorontio News Facebook Group and subsequently on the Village of Everett Facebook Group, violated the aforementioned sections of the Council Code of Conduct by spreading lies and misinformation to the public, and continuing to put forward and argue his personal opinions and statements on matters that had previously been disputed by professional Engineers, Lawyers, Planners, and qualified staff members, and had been defeated in a decision of Council;

AND WHEREAS Council reserves the right under Section 6.18.5 of the Council Code of Conduct to Censure an individual Member of Council where the conduct is deemed to be unacceptable to Council (the definition of ‘censure’ being “to express severe disapproval of someone in a formal statement”);

NOW THEREFORE BE IT RESOLVED Council deems that the conduct of Mayor Floyd Pinto is and has been unacceptable and hereby Censures the Mayor for such conduct.

11. Councillors Anderson, Bays, Hall-Chancey and Pita, and Councillor Ronald O’Leary, voted in favour of the motion. Mayor Pinto and Deputy Mayor Bob Meadows voted against it.
12. On April 7, Mayor Pinto issued a Notice of Libel that identifies Mayor Pinto as the intended plaintiff and names Councillors Anderson, Bays, Hall-Chancey and Pita as the intended defendants. The Notice of Libel was served on each of the four Councillors, April 8.
13. The Notice of Libel is based on the words spoken by the four Councillors at the March 9 Council meeting. While the Notice did not mention the resolution adopted by Council, the list of alleged “Defamatory Words,” appearing on page 2 of the Notice, is consistent with the wording of the Council resolution.
14. The Notice of Libel is also based on an email by Councillor Bays that included a link to the recording of the March 9 meeting, “thereby republishing the Defamatory Words.”
15. Council met in closed session, April 26.

16. According to the minutes of the closed meeting, Council adopted the following resolution, RES-1-2022:

Resolved that Mr. Grant Ferguson, Stieber Berlach LLP be retained as legal counsel to represent Councillors Anderson, Bays, Hall-Chancey and Pita in regards to [the] Notice of Libel.

17. Mayor Pinto had declared a pecuniary interest in the matter and had left the meeting. He was not present for the vote. When Council reconvened in open session, Mayor Pinto again disclosed the pecuniary interest. He also filed a written statement under section 5.1 of the MCIA.

18. Councillors Anderson, Bays, Hall-Chancey and Pita did not declare an interest or leave the closed meeting. Each one voted in favour of the motion.

19. Councillor O'Leary moved, and Councillor Hall-Chancey seconded, the motion, which was adopted on a 5-1 vote. In addition to the four Respondents to the Application, Councillor O'Leary voted in favour. Deputy Mayor Meadows voted against.

20. On May 11, Council approved the minutes of the April 26 closed meeting.

21. On May 12, Mayor Floyd Pinto submitted four applications for inquiries into whether Councillors Anderson, Bays, Hall-Chancey and Pita had contravened the MCIA.

PROCESS FOLLOWED

22. The applications satisfy the minimum requirements of section 223.4.1 of the *Municipal Act*.² They were made by an elector. They were made within six weeks after the applicant became aware of the alleged contravention. Each application set out the reasons for believing that the member had contravened the MCIA and included a statutory declaration attesting to the fact that the applicant became aware of the alleged contravention not more than six weeks before the application date.

23. The *Municipal Act* does not direct the procedure that an Integrity Commissioner must follow in handling MCIA applications. Subsection 223.4.1 (7) states that, "The Commissioner may conduct such inquiry as he or she considers necessary." I have done so, conducting one inquiry into all four applications.

24. The Mayor's position is stated very clearly in the applications.

25. Usually, at the outset of an inquiry, I invite the Respondent(s) to address the allegation(s). In this case, I exercised my discretion to gather evidence before asking the

Respondents to address the allegations. I determined that this was a reasonable and efficient way to proceed, and fair to all the parties.

26. I interviewed witnesses and obtained relevant information and documents. (See below, under the heading Findings of Fact.) After considering the evidence, I have decided not to apply to a judge because I do not believe that the Respondents contravened the MCI.A.

27. In the circumstances, it is unnecessary to invite the Respondents to address the allegations.

POSITIONS OF THE PARTIES

Applicant's Position

28. Mayor Pinto notes that he declared a pecuniary interest in relation to his Notice of Libel and the potential litigation arising from it.

29. He states that he was surprised that, according to the April 26 minutes, each of the four Respondents took part in the discussion and voted on the motion to retain Mr. Ferguson as legal counsel. He states that he was surprised that Councillor Hall-Chancey seconded the motion.

30. The Mayor argues that each of the four Respondents had a pecuniary interest in the matter because each is named in the Notice of Libel. He submits that, as a result of the resolution, the Township will pay the Respondents' legal fees in the Mayor's potential lawsuit. He argues that each Respondent benefits financially from the resolution.

31. The Mayor observes that, if the four Respondents had declared a pecuniary interest and refrained from voting, then the motion would have failed on a 1-1 tie vote. The result of a lost motion, he argues, would have been retention by the Respondents of their own legal counsel and payment of their own legal fees.

32. He submits that each Respondent: (a) contravened clause 5(1)(a) of the MCI.A by failing, prior to consideration, to disclose the pecuniary interest and its general nature; (b) contravened clause 5(1)(b) by taking part in the discussion and by voting; (c) contravened clause 5(1)(c) by attempting to influence the voting; (d) contravened subsection 5(2) by failing to leave the closed meeting, and (e) contravened section 5.1 by failing to file a written statement.

33. Mayor Pinto submits that each Respondent contravened sections 5, 5.1 and 5.2 of the MCI.A.

Respondents' Positions

34. It is unnecessary for me to invite the Respondents to address the allegations.

FINDINGS OF FACT

35. Findings of fact are based on the evidence that I obtained and are based on the standard of the balance of probabilities.

36. The Respondents all voted on the motion to retain Mr. Ferguson. They did not disclose pecuniary interests. They did not file written statements under section 5.1 of the MCI. They did not leave the closed meeting.

37. I have assumed, for purposes of this decision, that the following of the Mayor's allegations are true: Each Respondent took part in discussion of the motion. Each Respondent attempted to influence the decision.

38. At the time of this decision, Mayor Pinto has not yet commenced an action against the four Respondents.

39. At this point, the Mayor's financial claim (his claim for damages) is unquantified. It is not necessary in a Notice of Libel to quantify the claim.

40. The Township obtains insurance from Intact Public Entities Inc. Policy #CP99653 covers, among other risks, general liability, errors and omissions, and Council Members' conflict of interest proceedings. Policy #XL1162 covers excess liability. Policy #LC00219 covers legal expenses.

41. By-law 09-31³ provides for indemnification of Council Members and employees against certain losses of liabilities that arise as a result of the exercise of their Township duties. Indemnification under this by-law is supplementary to coverage under the Intact Public Entities insurance policies. According to section 16 of the by-law:

The Township maintains many different policies of insurance for both the Township and members of Council, members of Local Boards, officers and Employees. The provisions of this By-law are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this By-law and the terms of such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

³ A By-law to Provide Indemnification for Members of Council, Local Boards and Employees with Respect to Certain Actions or Proceedings Arising from Their Duties, passed October 5, 2009.

42. Because of this section, only the insurance policies are directly relevant to the MCIA applications. Subject to the hypothetical scenario of a gap in coverage (see paragraph 55, below), By-law 09-31 is not relevant.

43. After the Notice of Libel was served, the acting CAO approached Intact Public Entities, the Township's insurer. The CAO did so without consulting the Respondents. None of the Respondents asked the CAO to do so.

44. The insurer informed the CAO that the four Respondents were insured under the Township's policies for any claims arising from the Notice of Libel.

45. Practical implications of the insurer's determination include the following: The insurer will provide and pay for the Respondents' lawyer. If Mayor Pinto commences an action and succeeds at trial, then the insurer will pay for the award to Mayor Pinto.

46. In other words, if the Mayor commences an action, then Councillors Anderson, Bays, Hall-Chancey and Pita will not be financially exposed. They will not have to pay personally any award to Mayor Pinto, and they will not have to pay legal costs. (A theoretical and hypothetical exception to this statement is considered below, at paragraph 55.)

47. The insurer selected Mr. Grant Ferguson of Stieber Berlach LLP to act as counsel for Councillors Anderson, Bays, Hall-Chancey and Pita in the Mayor's intended action. Neither the CAO nor any Council Member played any role in the selection of Mr. Ferguson, except for the April 26 resolution that I consider below.

48. Mr. Ferguson attended a portion of the April 26 closed meeting. Councillors Anderson, Bays, Hall-Chancey and Pita had not previously met Mr. Ferguson.

49. The Township is not named in the Notice of Libel. The Mayor is not threatening to sue the Township. His threat is to sue the four Respondents.

50. Consequently, the Township is not Mr. Ferguson's client. Councillors Anderson, Bays, Hall-Chancey and Pita are Mr. Ferguson's clients.

51. Even though the insurer selected him, Mr. Ferguson still needed the four individual Respondents to agree that Mr. Ferguson would act for them. He did not need the Township's agreement, because he is not representing the Township. He needed the agreement of his four clients.

52. The April 26 resolution has no impact on whether the Respondents are insured under the Township's policies. The insurer made this determination prior to April 26 and the April 26 resolution did not affect the determination.

53. Mr. Ferguson did not need Council's agreement to act for the four Respondents. All he needed was the agreement of the four Respondents. Consequently, passage of a Council resolution had no impact on his ability to act for the Respondents.

54. More particularly, the wording of the Council resolution referred to a decision that was not Council's or the Township's to make. The resolution was "that Mr. Grant Ferguson ... be retained as legal counsel to represent [the four] Councillors ..." Despite what this resolution states, Mr. Ferguson was not actually retained by the Township or by Council which exercises the powers of the Township.⁴ The only decisions material to the engagement of Mr. Ferguson were those of the insurer (which is paying) and of the four individuals (who are the clien

55. Every insurance policy has a coverage limit. In this case, the Township has also purchased insurance for excess liability. Because the Mayor's claim has not yet been quantified, it is impossible to conclude that his claim against the Respondents would exceed the policy limits. Any gap in coverage is theoretically possible, but speculative and hypothetical. In the event that liability exceeded coverage, the indemnification provisions of By-law 09-31 would kick in. Theoretically, if for some reason indemnification under the by-law would not apply, then an individual Respondent might be personally exposed to liability. Such a scenario is purely hypothetical.

ISSUES AND ANALYSIS

56. I have considered the following issues:

- A. Did the Respondents have a pecuniary interest in the matter?
- B. Should I apply to a judge?

A. DID THE RESPONDENTS HAVE A PECUNIARY INTEREST IN THE MATTER?

57. No.

58. The Divisional Court has defined pecuniary interest as follows: "Generally, it is a financial interest, an interest related to or involving money."⁵

59. The Court of Appeal states that an MCIA pecuniary interest "is restricted to a financial, monetary or economic interest."⁶

⁴ *Municipal Act*, subs. 5 (1): "The powers of a municipality shall be exercised by its council."

⁵ *Tuchenhagen v. Mondoux*, 2011 ONSC 5398 (CanLII) (Div. Ct.), at para. 31.

⁶ *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683 (CanLII), at para. 9.

60. I disagree with the Applicant's argument that the matter of Mr. Ferguson's engagement as legal counsel involved a pecuniary interest of any Respondent.

61. The insurer had already confirmed coverage of the Respondents. If the Mayor commences an action and succeeds, then the Respondents will not pay any damage award or any cost award to the Mayor. The insurer will pay. To the extent that the insurance does not cover the entire amount, the Township will pay the remainder, under By-law 09-31. Because they are insulated by the insurance coverage and by the Township's indemnification by-law, the Respondents do not have a pecuniary interest in the Mayor's threatened lawsuit.

62. I note that the April 26 Council resolution did not affect the Respondents' insurance coverage or their right to indemnification under the by-law.

63. The insurer had also confirmed that it would pay for the Respondents' lawyer. As explained in the "Findings of Fact" section of these reasons, the April 26 Council resolution had no impact on the insurer's coverage of the Respondents' legal expenses. It was a determination of the insurer, not the Council resolution, that resulted in payment of the fees of the Respondent's legal representative.

64. Consequently, the Respondents did not have a pecuniary interest in the resolution.

65. Further, the resolution purported to make a decision that was not Council's to make. The resolution purported to retain Mr. Ferguson as legal counsel for the Respondents. In fact, retaining Mr. Ferguson to act for the Respondents was not a Council decision and not a decision that required Council approval. Simply put, the resolution had no effect.

66. The Divisional Court decision in *Magder v. Ford*, 2013 ONSC 263 (CanLII), is applicable. In that case, the Court held that Mayor Rob Ford did not have a pecuniary interest in a Council decision that turned out to be a nullity.⁷ Similarly, in the present case, the Respondents had no pecuniary interest in an April 26 Council resolution that lacked any effect.

67. I have considered the theoretical possibility that, if the damage award exceeds the insurance coverage, and if for some reason indemnification under By-law 09-31 is not total, an individual Respondent might personally be liable for the remainder. This possibility would be hypothetical and speculative in any event, but is even more speculative because Mayor Pinto has yet to quantify his damages claim. As I explained in *Anderson v. Pinto*, 2020 ONMIC 11 (CanLII), and in *Petrou v. Beach*, 2019 ONMIC 11

⁷ 2013 ONSC 263 (CanLII), at para. 72: "Given that the imposition of the financial sanction under Decision CC 52.1 was a nullity because council did not have the jurisdiction to impose such a penalty, Mr. Ford had no pecuniary interest in the matter on which he voted at council on February 7, 2012 – namely, the revocation of the Decision CC 52.1."

(CanLII), a pecuniary interest does not arise from speculation based on hypothetical circumstances.⁸ The pecuniary interest must exist at the time the matter is considered by Council or committee.⁹ Possible and potential future happenings do not amount to a pecuniary interest.¹⁰

68. Finally, I have considered Mayor Pinto's observation that he (Mayor Pinto) declared a pecuniary interest in relation to his potential litigation, but the Respondents did not. In my view, the situations of Mayor Pinto and of Councillors Anderson, Bays, Hall-Chancey and Pita are very different. Whether the Mayor wins or loses his potential lawsuit, the Councillors will not be the ones who pay. They lack a pecuniary interest in the outcome. On the other hand, the lawsuit will determine whether the Mayor wins a damage award, so he does have a pecuniary interest in the outcome. The existence of his pecuniary interest does not mean that the Respondents also possess one.

B. SHOULD I MAKE AN APPLICATION TO A JUDGE?

69. No.

70. Whether to make an application to a judge is a decision that the *Municipal Act* leaves to the Integrity Commissioner, based on what the Integrity Commissioner feels is appropriate.

71. I do not believe that the Respondents contravened the MCIA. Consequently, I will not commence a Court application in which I argue the opposite.

72. I also note the costs of a Court application would be borne by the Township. Integrity Commissioners who make MCIA applications to the Superior Court of Justice are not spending their own money. In my view, this imposes on them the obligation to act with prudence and care.

73. An example of what to avoid is *City of Elliott Lake v. Pearce*, 2021 ONSC 7859 (CanLII). In that case, the Divisional Court harshly criticized an Integrity Commissioner for misreading the MCIA,¹¹ misunderstanding the law,¹² false presumption,¹³ and hyperbole.¹⁴ The Divisional Court ordered the Integrity Commissioner (whose litigation

⁸ *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 57; *Darnley v. Thompson*, 2016 ONSC 7466 (CanLII), at para. 63.

⁹ *Darnley v. Thompson*, at para. 59.

¹⁰ *Bowers v. Delegarde*, 2005 CanLII 4439 (Ont. S.C.), at paras. 76, 78; *Rivett v. Braid*, 2018 ONSC 352 (CanLII), at para. 51.

¹¹ 2021 ONSC 7859 (CanLII), at para. 45.

¹² *Ibid.*, at para. 52.

¹³ *Ibid.*, at para. 32.

¹⁴ *Ibid.*, at para. 57.

the municipality was obliged to fund) to pay the councillor's costs of \$16,000;¹⁵ in addition, the municipality had to pay for the Integrity Commissioner's lawyers.

74. In the case of Mayor Pinto's allegations against Councillors Anderson, Bays, Hall-Chancey and Pita, an Integrity Commissioner application to the Court would not be a reasonable or responsible use of the Township's resources.

DECISION

75. I will not apply to a judge under sections 5, 5.1 and 5.2 of the MCIA for a determination as to whether Councillors Anderson, Bays, Hall-Chancey, and Pita contravened the MCIA during and in relation to the April 26 closed meeting of Council.

PUBLICATION

76. The *Municipal Act* requires that after deciding whether or not to apply to a judge, the Integrity Commissioner shall publish written reasons for the decision.

77. Ordinarily, I publish a decision after an MCIA inquiry by providing it to the municipality to make public and by posting on the free, online Canadian Legal Information Institute (CanLII) database. At the time these reasons were originally issued, I was unable to obtain confirmation that CanLII would publish them. Subsequently it was confirmed that the reasons will be published on CanLII under the citation 2022 ONMIC 14.

78. Subsection 223.5 (2.3) of the *Municipal Act* states that I may disclose in these written reasons such information as in my opinion is necessary. All the content of these reasons is, in my opinion, necessary.

¹⁵ *Ibid.*, at para. 60.

79. On June 29, 2022, a corrected version of this decision was released. The corrections affect the table of contents, paragraph 10 (introductory sentence), and paragraph 11. Also, eight words were added to the beginning of paragraph 16, and one clarifying word was added to paragraph 18. Subsequently, paragraph 77 was amended to reflect CanLII publication information.



Guy Giorno
Integrity Commissioner
Township of Adjala-Tosorontio

June 27, 2022 (original)
June 29, 2022 (corrected)