

REPORT OF AN INVESTIGATION
INTO A CONFLICT OF INTEREST COMPLAINT
CONCERNING
MAYOR JUNE CAUL
OF
THE TOWN OF FORT FRANCES
ON
OCTOBER 25, 2021
AND
NOVEMBER 8, 2021

PAUL S. HEAYN, INTEGRITY COMMISSIONER
FOR THE TOWN OF FORT FRANCES
April 25, 2022

SUMMARY

A formal application pursuant to subsection 223.4.1(2) of the Municipal Act, 2001 was filed with me on December 6, 2021 by an anonymous person (the Applicant).

The Application alleges that Mayor June Caul (the “Mayor”), a member of the Town of Fort Frances Council, contravened the Municipal Conflict of Interest Act (MCIA).

The Application alleges that the Mayor contravened the MCIA by failing to disclose a pecuniary interest, participating in discussion, and voting on two (2) matters:

- 1) **On October 25, 2021** Council considered item 10.2, *“A proposed or pending acquisition or disposition of land by the municipality or local board: Property Matter”*.

The “property matter” in question pertained to a real estate transaction where Mayor Caul was a member of a club that had an interest in the transaction. The specific property was not disclosed in the public agenda, nor were the supporting documents related to this item of business published with the public agenda.

- 2) **On November 8, 2021** the regular meetings of Committee of the Whole and Council considered item 10.3 *“Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board; more specifically item 10.3 legal matter”*.

The “legal matter” in question pertained to a legal demand letter that Mayor Caul is the principal recipient of that issue.

The letter expressed concerns about quoted comments attributed to the Mayor in an issue of the Fort Frances Times. The letter states that Mayor Caul’s comments were “misleading and unfairly critical” and appears to suggest that they were defamatory. The letter appears to threaten that if the situation is not remedied, action would be taken against the Mayor.

APPOINTMENT AND AUTHORITY

The Town of Fort Frances (the Town) has appointed Paul S. Heayn, Municipal Consultant as its Integrity Commissioner for the purpose of dealing with a complaint. As Integrity Commissioner, Paul S. Heayn acts pursuant to Sections 223.4 which states:

Inquiry by Commissioner re s. 5, 5.1 or 5.2 of *Municipal Conflict of Interest Act*

223.4.1 (1) This section applies if the Commissioner conducts an inquiry under this Part in respect of an application under subsection (2). 2017, c. 10, Sched. 1, s. 21.

Application

(2) An elector, as defined in section 1 of the Municipal Conflict of Interest Act, or a person demonstrably acting in the public interest may apply in writing to the Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of that Act by a member of council or a member of a local board. 2017, c. 10, Sched. 1, s. 21.

TIMING

Section 223.4.(1)(4) of the Municipal Act, Provides that: An application may only be made within six (6) weeks after the applicant became aware of the alleged contravention. 2017, c. 10, Sched. 1, s. 21. The Application was made on December 6, 2021 for contraventions of October 25, 2021 (43 days or 6 weeks) and November 8, 2021 (29 days or 4 weeks) within the six week period. An elector, solicitor or Council had six (6) weeks after the alleged violations to apply to a judge. However, the Integrity commissioner has 180 days to complete his inquiry and has the option to apply to a judge. As of April 25th, 2022, one hundred forty one (141) days have passed.

MCIA PROVISION AT ISSUE

1. For the October 25, 2021 alleged contravention:

Section 2 of the MCIA states:

For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if:

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

2. For the November 8, 2021 alleged contravention:

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.

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

Section 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 or 5.2 of that Act. 2017, c. 10, Sched. 1, s. 21.

REVIEW OF MATERIALS AND INQUIRY

In order to undertake my inquiry into the Application and make a determination on the alleged contravention of the MCIA, I have undertaken the following steps:

- Review of Application and all materials referred to therein;
- Review of relevant MCIA reports and Court Cases related or similar to this complaint;
- Review of the Mayor's response, dated March 25, 2022, and all attachments and materials referred to therein;
- Review of the reply submissions of the Applicant, dated March 28, 2022;
- Review of relevant Council materials, including agendas, minutes, and staff reports and presentations;
- Review of the Town of Fort Frances I.C. Inquiry Protocol

BACKGROUND

1) October 25, 2021 Meeting – The Applicant Alleges:

During the closed session of Council on this date, Council considered item 10.2, "*A proposed or pending acquisition or disposition of land by the municipality or local board: Property Matter*".

The "property matter" in question pertained to a real estate transaction where Mayor Caul was a member of a club that had an interest in the transaction. The specific property was not disclosed in the public agenda, nor were the supporting documents related to this item of business published with the public agenda.

The matter under consideration for this item included whether to sell the property. The report from administration which appeared in the closed session agenda package specifically included options to sell or otherwise dispose of the property, including to "move forward with a sale of the property and be released from any operating, capital, or other requirements now and in the future."

The property was transferred to the Town during a prior term of Council by the local club. It is understood that:

- (i) the Town's agreement with the club gives the club a first right of refusal should the Town decide to sell the property and
- (ii) the property is also managed by the Town in accordance with operating restrictions set by the club. A written agreement to this effect is on file at the Town administration and has been discussed at various Council meetings.

The Applicant believes that Mayor Caul is an officer, director, and/or a member of the club.

2) November 8, 2021 Meeting: - The Applicant Alleges:

On November 8, 2021, the regular meetings of Committee of the Whole and Council was held. During the closed session of Council on this date, Council considered item 10.3, *“Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board; more specifically item 10.3 legal matter”*.

The “legal matter” in question pertained to a legal demand letter that Mayor Caul is the principal recipient of that issue. Copies of the letter went to each Council member and the CAO.

The letter dated November 3, 2021 expressed concerns about quoted comments attributed to the Mayor in the issue of the Fort Frances Times. The letter states that Mayor Caul’s comments were “misleading and unfairly critical” and appears to suggest that they were defamatory. The letter appears to threaten that if the statements were not retracted by November 12, 2021, action would be taken against the Mayor.

Based on the Applicant’s understanding of the Municipal Act, the Mayor and individual members of Council are not synonymous with Council or the Town. Likewise, the correspondence is a legal threat directed at Mayor Caul, and not the Town. It is plainly addressed to only the Mayor, and it was concerned about her comments.

Another reason this was evident to the Applicant was because of prior correspondence sent to Mayor Caul (which was also copied to members of Council). In this earlier prior letter it took issue with the Mayor’s earlier public comments which they felt impugned members of their organization, which they describe as “defamatory allegations”. Both letters pertain to the Mayor’s public comments on the same subject matter.

The comments at issue in this current demand letter are not comments which were authorized by Council nor are they consistent with or reflective of Council’s views about the organization. Council has never adopted a resolution or otherwise issued a statement casting aspersions about the organization or anyone associated with it.

To the contrary, resolution number 813, adopted by Council after the closed session meeting on November 8, 2021, states as follows:

Resolution 813: Judson-McTaggart (Added Motion called by Councillor Judson)

THAT Council of the Town of Fort Frances expresses its appreciation for and confidence in the advice and guidance it has received from ‘the subject organization’ – the advisors and consultants.

Carried. (By recorded vote: passed unanimously [Councillor Brunetta absent] Mayor voting ‘Yea’)

MATTERS ALLEGED TO GIVE RISE TO PECUNIARY INTEREST

1) October 25, 2021 Closed Session of Council

The Applicant believes that Mayor Caul is an officer, director, and/or a member of the club.

In support of these allegations, the Applicant enclosed:

- a. a copy of an article from the Fort Frances Times, dated October 10, 2018, in which Mayor Caul states that she is “a director of the local club”,
- b. a copy of her biography from the Town’s website, in which she states that she is a member of the “club”, and
- c. a copy of an article from the Toronto Star, dated February 3, 2021, which states that Mayor Caul has been a member of the “club” for eight years.

The Mayor did not declare an interest in the real estate item of business or recuse herself from the meeting during the consideration of this item. She also continued to chair the meeting during consideration of this item.

The minutes of the Regular Session of Council held on October 25, 2021. These minutes contain no indication that Mayor Caul declared an interest in item 10.2 or recused herself from the discussion on item 10.2.

2) November 8, 2021 Closed Portion of the Council of the Whole Meeting

Mayor Caul did not declare an interest in item 10.3 or recuse herself from the November 8, 2021 meeting during its consideration. The Applicant alleges that the meeting ought to have been open to Council to discuss the Town’s interest in this item and any damage caused to its relationship with the subject organization in the absence of, and without the presence, influence, and chairing of the person who has a pecuniary interest in the subject organization’s legal claims.

The minutes of November 8, 2021 contain no indication that Mayor Caul declared an interest in item 10.3 nor that she recused herself from the discussion on item 10.3.

Resolution number 813, also appears in these minutes.

Councillor Judson commented on the Mayor’s conflict in the open session of this meeting before going into the closed session, without identifying the Mayor in his remarks. He had hoped that this might have caused the Mayor to declare a conflict; however, the Mayor still failed to declare an interest prior to moving into closed session.

Once in closed session, the Mayor denied that she had a conflict. She claimed that because members of Council were “cc’d” on the demand letter, she was not in conflict. She did not specify any basis for this conclusion. She also continued to chair the meeting during consideration of this item of business – again, being a legal demand she had personally received from a third party.

The Mayor stated at the outset of Council’s discussion of this item in closed session that she was not going to say much and was going to listen to others, which the Applicant understood as a tacit acknowledgement of her interest in this item.

POSITION OF THE PARTIES

March 25, 2022 – the Mayor’s Response:

1) October 25, 2021 Closed Session of Council – Property Matter

The Respondent advised that she is a member of the club in question but “certainly do not have a pecuniary interest either for the Town’s or club’s perspective”.

Mayor Caul also advised that she was a director at “that time” and that subsequently “All directorships have been discontinued. “I really cannot fathom how I was in conflict regarding the club.”

1) November 8, 2021 Closed Portion of the Council of the Whole Meeting Item 10.3 Legal Matter

When I pointed out to the Mayor that during Council’s discussion of item 10.3 (the legal demand letter) that she did not declare a Conflict of Interest she replied that “No. There was a concern from some Councillors and the CAO and they thought it should be put on the agenda for discussion as to how to deal with it. The discussion was just for Council to decide how this should be handled. This is another item that has already been dealt with by our lawyers and I thought it was done with. The insert in the article from the newspaper that mentioned the ‘organization’ was written in by the reporter as an assumption, not said by me. I have checked with the reporter to see if I had used that name during my interview and she said ‘No’, that she assumed that’s what I meant. I did not think I needed to declare anything because of the general discussion as to how the Town and I would need to handle it. “And I do not remember Councillor Judson suggesting I declare a conflict in regard to this complaint. I do know that I never participated in that conversation”.

FINDINGS

2) October 25, 2021 Closed Session of Council – Property Matter

The Municipal Conflict of Interest Act Section 2 Applies to Mayor Caul’s membership in the ‘club’:

(2) For the purposes of this Act, a member has an **indirect pecuniary interest in any matter** in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a **director** or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a **pecuniary interest** in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.S.O. 1990, c. M.50, s. 2.

During the October 25, 2021 Closed session of Council, Mayor Caul admits that she was a Member and a director of the club. Therefore, in accordance with Section (2) above, Mayor Caul had an obligation to declare a Conflict of Interest. Mayor Caul did not declare a conflict of interest in this matter because she felt that she did not have a pecuniary interest as a Council member or as a member of the club. This is in strict contrast to the MCIA Section (2) that provides that the Mayor had an ‘indirect pecuniary

interest' simply because the club itself had a pecuniary interest in the property that was being discussed by Council.

Although Mayor Caul did not mention the 'Exceptions' listed in Subsection 4 of the Act, I examined each of the exceptions and the closest fit to Mayor Caul's situation would be exception (k) which says:

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

The Act is very clear in its purpose. The Province of Ontario endorses the following principles:

1. The importance of integrity, independence and accountability in local government decision-making.
2. The importance of certainty in reconciling the public duties and pecuniary interests of members.
3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.

I looked at some court cases where conflict of interest was dealt with in the Courts and the case of Gammie v. Turner was close to the situation where a Member of Council for Town of South Bruce Peninsula that provided a fifty thousand dollar grant (\$50,000) to the Wiarton Chamber of Commerce for the "Warton Willie Festival", a three-day festival marking Groundhog Day, and the largest winter event in Bruce County. Jim Turner was a businessman and a member of the Chamber of Commerce and a Councillor for the Town of South Bruce Peninsula.

Craig Gammie maintained that Councillor Turner had a direct pecuniary interest as a business owner in the municipality and an indirect pecuniary interest as a member of the Chamber of Commerce.

As quoted in the Gammie v. Turner case:

The MCIA is important legislation. It seeks to uphold a fundamental premise of our governmental regime. Those who are elected and, as a result, take part in the decision-making processes of government, should act, and be seen to act, in the public interest. **This is not about acting dishonestly or for personal gain; it concerns transparency and the certainty that decisions are made by people who will not be influenced by any personal pecuniary interest in the matter at hand. It invokes the issue of whether we can be confident in the actions and decisions of those we elect to govern. The suggestion of a conflict runs to the core of the process of governmental decision-making. It challenges the integrity of the process.**

The exemption like the one in s. 4(k), (pecuniary interests so remote as unlikely to affect a councillor's vote), can be regarded as involving circumstances in which an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that the pecuniary interest would not affect the councillor's ability to make an impartial decision.

There is no evidence that Mayor Caul would derive a financial benefit from the decision of Council to offer the sale of the property to the club.

I find that Mayor Caul had an indirect pecuniary interest in Item 10.2 on the Council agenda of October 25, 2021 and should have erred on the side of caution and declared a conflict. I cannot presume what a court will conclude or if exemption 4(k) would be an effective defence.

3) November 8, 2021 Closed Portion of the Council of the Whole Meeting Item 10.3 Legal Matter

Item 10.3 concerned a demand letter to Mayor Caul dated November 3, 2021 and pertained to a legal demand that Mayor Caul had personally received from the law firm, on behalf of their client. The letter was expressing concerns about quoted comments attributed to the Mayor in the Fort Frances Times. The letter states that Mayor Caul's comments were "misleading and unfairly critical" and appears to suggest that they were defamatory of the organization. The letter concluded by saying: "*We trust that you will retract these statements by November 12th, otherwise our client will consider taking further action*".

The fact that the demand letter was addressed to Mayor Caul about comments attributed to her in the local newspaper and the request for her to retract these statements by November 12th clearly indicate that this matter has a personal attachment to Mayor Caul.

Mayor Caul has a direct pecuniary interest in the Item 10.3 on the November 8th agenda and as such should have declared a conflict of interest. The fact that Mayor Caul did not name the organization accusing that agency of withholding information; she had a duty to respond to the demand letter regarding their allegations and provide a defense or clarification on their allegations rather than letting Council deal with the matter on her behalf.

CONCLUSION

I have concluded that there was **indirect pecuniary** interest in the matter considered at the Council Meeting of October 25, 2021 because the matter being discussed by Council in-camera regarding the disposition of the property and the obligation of the Town to afford the club the first right of refusal if the Town were to sell the property, and Mayor Caul simply by being a member of the Kiwanis Club (which had a pecuniary interest) therefore had an indirect pecuniary interest in the matter. Consequently, Mayor Caul should have declared a Conflict and removed herself from the meeting while the matter was discussed.

I have concluded that there was **direct pecuniary** interest in the matter considered at the Council Meeting of November 8, 2021 because the matter being discussed by Council in-camera regarding a legal demand letter was expressly concerned about quoted comments attributed to the Mayor in the Fort Frances Times. Mayor Caul should have declared a Conflict and removed herself from the meeting while the matter was discussed.

Pursuant to section 6.13 of the Inquiry Protocol, I will not apply to a judge to determine if there has been a violation of the MCIA, as I believe an elector, a Solicitor or Council themselves had six (6) weeks after the alleged violations to apply to a judge and had not. Each would have been better qualified to apply to a judge in this case to determination whether the Mayor had contravened sections 5, 5.1 or 5.2 of the MCIA .

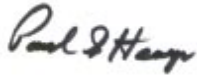
In accordance with Section 9 of the Municipal Conflict of Interest Act, the Judge has the following powers:

Power of judge

9 (1) If the judge determines that the member or former member contravened section 5, 5.1 or 5.2, the judge may do any or all of the following:

1. Reprimand the member or former member.
2. Suspend the remuneration paid to the member for a period of up to 90 days.
3. Declare the member's seat vacant.
4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.
5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be. 2017, c. 10, Sched. 3, s. 7

Respectfully submitted by:



Paul S. Heayn,
Integrity Commissioner