

Principles *Integrity*

City of Thunder Bay Recommendation Report of the Integrity Commissioner Conflict of Interest Complaint against Councillor Aiello

August 10, 2020

Introductory Comments

[1] Principles *Integrity* was appointed the Interim Integrity Commissioner for the City of Thunder Bay on February 8, 2020. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work and which appears in every formal communication with our clients to reinforce its importance to us, is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

[2] Our efforts in concert with our clients are therefore to help establish an ethical framework through which the public perception of Council is deservedly enhanced.

[3] The City of Thunder Bay has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.

[4] Members of Council are also governed by the provisions of the *Municipal Conflict of Interest Act*. Both the *Municipal Conflict of Interest Act* (the MCI Act) and the Code of Conduct are relevant to and form the framework for the matters reviewed in this report.

[5] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to

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help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

- [6] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [7] This being our function, as Integrity Commissioner we play an important role in the administration of justice, including with respect to the oversight given members of Councils and of local boards with respect to the avoidance of conflicts of interest.
- [8] As noted later in this report, prior to March 1, 2019 a person who believed a member had breached the *Municipal Conflict of Interest Act* would have been required to apply to the courts to seek the imposition of a penalty under that Act. As of March 1st last year, Integrity Commissioners have standing to make that application on behalf of the complainant.
- [9] While there may be circumstances where integrity commissioners will seek that a penalty be applied by the courts under the *MClA*, we importantly have the jurisdiction to instead investigate such complaints as breaches of a municipal code of conduct. In doing so we balance the nature of the penalty that best serves the public interest (for example, only the courts can remove a member from office; both the courts and the integrity commissioner have the jurisdiction to address the suspension of a member's pay for up to three months¹).
- [10] The choice made by the integrity commissioner is an important one. In each case we are to decide whether the circumstances are such that it is in the public interest to incur the costs and complications of an application to the courts (and thus also burden an otherwise busy court system with another matter on the docket) or to apply administrative law principles in carrying out a review function under the code of conduct to determine whether a member has breached provisions with respect to the avoidance of conflicts.

¹ Generally speaking, the courts can impose the penalty whereas an integrity commissioner can recommend to council that the penalty be imposed

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- [11] Our role differs from other ‘adjudicators’ whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [12] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [13] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond to the allegations, and to review and provide comment on the preliminary findings

The Complaint

- [14] On February 11, 2020 we received a complaint against Councillor Aiello. The complaint asserts that the Councillor breached the *MCIA* and/or the Code of Conduct in respect to participation in the vote on a motion to reduce library funding by \$50,000 in order to add money into the Community, Youth and Cultural Fund.
- [15] The allegation is that the Councillor had a conflict of interest given his position with an organization, the Boys and Girls Club of Thunder Bay, which receives funding from the Community, Youth and Cultural Fund.

Process Followed for this Investigation

- [16] In conducting this investigation, Principles Integrity applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct and the legislative process contained in the *MCIA*.
- [17] This fair and balanced process includes the following elements:
- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
 - Notifying the Respondent of the complaint against him where proceeding on investigation, and providing adequate disclosure of the information we possessed so that he could prepare his response

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- Reviewing the Code of Conduct and the *Municipal Conflict of Interest Act*, and documentation including reports, meeting minutes, and reviewing relevant online archived meetings
- Conducting interviews of persons with information relevant to the complaint
- Providing the Respondent with the additional opportunity to review and provide responses to the Integrity Commissioner's draft Findings Report, and taking any additional response into consideration prior to finalizing and submitting our Recommendation Report

Background and Context

[18] The Respondent was first elected to Council in the 2018 Municipal Elections.

[19] He is the Executive Director of the Boys and Girls Club of Thunder Bay, a position he has held for 31 years. An important component of his job is to apply for funding from various government agencies and other organizations, to obtain operating funds to sustain delivery of the programs offered by the Boys and Girls Club.

[20] The City of Thunder Bay is just one of many organizations which provide funding to the Boys and Girls Club.

[21] The City of Thunder Bay, through its Community, Youth and Cultural Funding Program, funds about two dozen organizations in Thunder Bay which in turn offer programs and services to its citizens.

[22] The recommendation for allocations from the Community, Youth and Cultural Fund comes before Council as part of the budget package following a comprehensive review and evaluation processed through the Grant Committee.

[23] On March 30, 2020, the Boys and Girls Club was sent a letter confirming the grant approved during the 2019 budget process. The letter begins:

Congratulations! Boys & Girls Clubs of Thunder Bay has been awarded a Community, Youth & Cultural Funding Program grant in the amount of \$122,268.00 from the Sustaining Grant – Youth stream. This amount has been approved by Council, including a one-time cost of living increase totalling \$2,268.00.

The approved funding term is three (3) years. A mid-term Multi-Year Grant Report is due no later than 4:00 p.m. Friday, June 26, 2020. Payment for the remainder of the original allocation has been processed by the City's Accounts Payable office. Payment for the additional cost of living increase

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will be processed within the next four (4) weeks. Should you not receive payment within this timeframe, please do not hesitate to contact me.

- [24] The Respondent has been careful to declare a conflict of interest and recuse himself whenever decisions regarding allocations from the Community, Youth and Cultural Funding Program come before Council or its committees.
- [25] This winter, during the 2020 Budget deliberations, two organizations – Lakehead Social Planning Council (LSPC) and Evergreen – sought additional funds of approximately \$50,000 from the Community, Youth and Cultural Funding Program outside of the normal application process.
- [26] Council, in considering how to fund the additional requests, recognized during its deliberations that if an on-going source of funding were not identified to increase the Community, Youth and Cultural Fund then the recipient organizations would be in competition in future years for Funds which were essentially flat-lined.
- [27] Because the Boys and Girls Club grant allocation was for a period of three years, it would not be until the next grant application that the competition for funds might arise.
- [28] By introduction of a memorandum January 29, 2020, a motion was put forward to reduce funds in the capital budget allocated to the Library by \$50,000 and reallocate these to the Community, Youth and Cultural Fund. This amount would mean the Community, Youth and Cultural Fund would have funds sufficient in 2020 to meet all of the allocations as recommended to Council in the draft Budget, including the additional \$50,000 for Lakehead Social Planning Council and Evergreen.
- [29] All things being equal, this motion would have the effect, if passed, of ensuring the various organizations funded through the Community, Youth and Cultural Fund would not be competing next year or in future years for a smaller slice of a flat-lined fund in 2021 and beyond.
- [30] From this perspective, it is possible to see that each organization which receives funding stood to benefit by the reallocation of the \$50,000 for future years, in that it reduced the risk that their own allocations would be cut back.

Analysis and Findings

- [31] Members of Council and local boards are subject to subsections 5(1) and 5(2) of the *Municipal Conflict of Interest Act*. Those sections require that members not participate in or vote on any matter, where they have a direct, indirect or deemed pecuniary interest. Where the matter under consideration takes place in a closed session, the Act requires the member to not be present.

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[32] An indirect pecuniary interest is defined under section 2, as follows:

2. For the purposes of this Act, ***a member has an indirect pecuniary interest*** in any matter in which the council ... is concerned, if
(b) the member ... ***is in the employment of a person or body that has a pecuniary interest in the matter.***
(emphasis added)

[33] A grant to an organization is a pecuniary interest to that organization. A member of Council who is an employee of an organization has an indirect pecuniary interest in any decision regarding a grant to that organization.

[34] The decision to reallocate \$50,000 from the Library budget to the Community, Youth and Cultural Fund, to increase the base funding in the Fund, was a benefit to the organizations which are granted funds from that Fund.

[35] The fact that without a source of funding to increase the Community, Youth and Cultural Fund, competition for funding would likely be tighter beyond 2020, was noted during debate on the requests by LSPC and Evergreen.

[36] The Respondent has explained that, while he is aware that he has an interest in the distribution of grants out of the Community, Youth and Cultural Fund, he did not realize decisions to allocate money *into* the Community, Youth and Cultural Fund could give rise to an interest for him.

[37] Nevertheless, under the unique and unusual circumstances of the motion moving money into that Fund to respond to increased demand going forward, the re-allocation of \$50,000 did represent a pecuniary interest for the Boys and Girls Club as a recipient, and therefore an indirect interest to the Respondent.

[38] The Respondent argues that given the multi-year budget allocation, the pecuniary interest is remote and should therefore be excused under the *Municipal Conflict of Interest Act* provision which states:

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

(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.

[39] On January 29, 2020, during a special session of Committee of the Whole (2020 Capital and Operating Budget) the Respondent did not support a motion to

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reallocate the \$50,000 into the Community, Youth and Cultural Fund, and in fact, spoke against it, stating it didn't make sense to him.

- [40] Following a considerable discussion, the motion lost on a 6-6 tie vote with the Respondent voting in the negative.
- [41] During Council's subsequent consideration of the budget at its meeting of February 10, 2020, the motion was again brought forward, and this time it was adopted:

Amending Motion - Thunder Bay Public Library

It was requested that the following resolution as contained in the January 29, 2020 Committee of the Whole - Special Session minutes be voted on separately.

MOVED BY: Councillor Mark Bentz
SECONDED BY: Councillor Rebecca Johnson

With Respect to the Proposed 2020 Operating Budget we recommend that the capital budget of \$731,600 for the Thunder Bay Public Library be reduced by \$50,000;

AND THAT \$50,000 be reallocated to the Community, Youth and Cultural Funding Program.

CARRIED

- [42] A revote of the motion was subsequently requested, as follows:

Amending Motion - Thunder Bay Public Library - Re-Vote

It was requested that the following resolution as contained in the January 29, 2020 Committee of the Whole - Special Session minutes be voted on separately.

A recorded vote was requested on the following resolution, the results of which are as follows:

YEA	NAY
Councillor Albert Aiello	Mayor Bill Mauro
Councillor Mark Bentz	Councillor Shelby Ch'ng
Councillor Brian Hamilton	Councillor Andrew Foulds
Councillor Rebecca Johnson	Councillor Cody Fraser
Councillor Brian McKinnon	

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Councillor Aldo Ruberto	Councillor Kristen Oliver
Councillor Peng You	

MOVED BY: Councillor Mark Bentz
SECONDED BY: Councillor Rebecca Johnson

With Respect to the Proposed 2020 Operating Budget we recommend that the capital budget of \$731,600 for the Thunder Bay Public Library be reduced by \$50,000;

AND THAT \$50,000 be reallocated to the Community, Youth and Cultural Funding Program.

CARRIED

- [43] Because the decisions on Budget at Committee of the Whole are not, in fact, Council decisions until such time as Council finally passes the Budget, amendments were possible at any time.
- [44] Typically, a change in a decision on a budget recommendation would occur where Council has received additional information relating to a matter, which might prompt some members of Council to change their position on a matter.
- [45] In the course of our investigation, we inquired as to what might have prompted a call for a new vote on the \$50,000 Library reallocation into the Community, Youth and Cultural Fund.
- [46] Possible explanations were provided for the change in outcome:
- that some members were absent when the motion was voted on January 29 (which appears to be incorrect); and
 - that the Library failed to justify why the money should not be taken away from their budget.
- [47] Early in the Budget process, the Library made a presentation to Council. No additional information was requested from them at that time, nor subsequently, with respect to the \$50,000 budget reallocation.
- [48] No other reason has been provided, either by the Respondent or others, for the Respondent changing his vote to support the reallocation on February 10, 2020.
- [49] Regardless of the reason for him changing his vote between January 29 and February 10, we find that the Respondent, as Executive Director of the Boys and Girls Clubs of Thunder Bay, which receives grants from the Community, Youth and Cultural Fund, had an indirect interest in the reallocation.

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[50] We do not share the Councillor's view that the three-year allocation of grant funding (with two years remaining) causes the indirect interest to be remote, and therefore subject to the exception noted in paragraph [38]. In our view, in contemplating whether the additional applications would impact future year grants, the Boys and Girls Clubs next grant application in 2022 was not beyond the horizon.

Application of the *Municipal Conflict of Interest Act* (MCIA):

[51] The MCIA is in large part the governing legislation, and provides a statutory framework for determining when a member of municipal council (or local board) may be in a conflict of interest. The Code of Conduct supplements this statutory framework by addressing the common law concept of conflicts of interest including perceived or apparent conflicts of interest.

[52] Until recently, the only remedy available to an elector seeking a determination of whether a member of council has contravened the MCIA required an application to court.

[53] Recent amendments to the MCIA which came into force March 1, 2019 enable an applicant to pursue a remedy by making application to the municipality's Integrity Commissioner.

[54] The legislature has seen fit to provide citizens with a less costly and more expeditious remedy, by authorizing an Integrity Commissioner to respond to applications under the MCIA. It is through this mechanism that the complainant brought this allegation to our attention for review and investigation.

[55] The relevant provisions under the *Municipal Act* are as follows:

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).

(2) An elector, as defined in section 1 of the *MCIA*, 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.

[56] The purpose of the MCIA was articulated recently in 2018 decisions of the Superior Court in the cases *Rivett v. Braid* and *Cooper v. Wiancko* involving the Southeast Georgian Bay Chamber of Commerce (referenced as the SEGBAY cases) which cited the description of the MCIA purpose found in *Adamiak v. Callaghan*, as follows:

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“The *Municipal Conflict of Interest Act* is legislation enacted by the Province of Ontario to maintain transparency in municipal decision making. The purpose and objective behind the MCI Act is to ensure that elected municipal officials do not profit or seek unfair benefit because of the office they hold when called upon to vote on matters in which they may have a direct or indirect interest. The legislation provides a mechanism for any citizen ... to bring an application against the municipal councillor if there is a perceived breach of this statutory protocol.”

[57] The courts have interpreted the provisions of the MCI Act strictly. The statute has been described as “punitive in nature” and “being punitive in nature must be strictly construed”. (Re Verdun and Rupnow, 1980)

[58] The MCI Act articulates a concept of contravention ‘committed through inadvertence’, which provides a saving provision by which a court may relieve a member from the harshest penalties. While we are not contemplating punitive penalties in this case, we believe it appropriate to canvass the concept of inadvertence here.

[59] The statutory provision, being subsection 9(2) of the *Municipal Conflict of Interest Act*, relates to a matter which is brought before a judge for the imposition of a penalty. Nevertheless it serves as a guide to integrity commissioners considering conflict of interest matters under a code of conduct:

(2) In exercising his or her discretion under subsection (1) the judge may consider, among other matters, whether the member or former member,

- (a) took reasonable measures to prevent the contravention;
- (b) disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* and acted in accordance with the advice, if any, provided to the member by the Commissioner; or
- (c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.

[60] We find that it is possible that the Respondent may not have recognized the reallocation was an interest for him when he participated and voted on the motion on January 29, 2020. This could have rendered the contravention inadvertent.

[61] We note, however, that there is ample guidance provided by the Thunder Bay Code of Conduct (discussed below) which was available for the Councillor’s consideration. A finding of inadvertence should not be available when guiding information is readily at hand. That said, we recognize some extenuation in the

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circumstances, particularly since Council has not as yet received training on the Code of Conduct.

Code of Conduct

[62] As noted above, in addition to the MCIA members of Council are governed by their Code of Conduct. The Code of Conduct adopted by Council for the City of Thunder Bay requires members to avoid conflicts of interest and directs members to the prohibitions contained in the MCIA. The Code also addresses the broader common law concept of conflicts of interest, and requires members to refrain from participating in decision-making processes when they have a 'disqualifying interest' in a matter.

[63] A 'disqualifying interest' is defined in Rule No. 1 of the Code as:

“an interest in a matter that, by virtue of the relationship between the Member of Council and other persons or bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member of Council could not participate impartially in the decision-making processes related to the matter.”

[64] The Code of Conduct also provides extensive commentary to guide members in understanding their obligations under the Code. The commentary under the provision dealing with avoiding conflicts of interest encourages members to seek advice from the Integrity Commissioner regarding potential conflicts of interest.

[65] In addition, paragraphs 7 through 9 of Rule No. 1, and the associated commentary, provides specific guidance relevant to the circumstances in this matter:

7. Members of Council, while holding public office, shall not engage in an occupation or the management of a business that conflicts with their ability to diligently carry out their role as a Member of Council, and shall not in any case profit directly or indirectly from such business that does or has contracted with the City of Thunder Bay.

Commentary: Members of Council may for example teach, or run a business that does not conflict or interfere with their duties

8. Despite paragraph 7., a Member of Council may hold office or a directorship in an agency, board, commission or corporation where the Member has been appointed by City Council or by the Federal or Provincial Government.

9. Despite paragraph 7. a Member of Council may hold office or directorship in a charitable, service or other not-for-profit corporation (other than those to

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which Council appoints members) subject to the Member disclosing all material facts to the Integrity Commissioner and obtaining a written opinion from the Integrity Commissioner approving the activity, as carried out in the specified manner, which concludes that the Member does not have a conflict between his/her private interest and public duty. In circumstances where the Integrity Commissioner has given the Member a qualified opinion, the Member of Council may remedy the situation in the manner specified by the Integrity Commissioner.

Commentary

Examples of exceptions include hospital boards, charitable boards, police services boards, community foundations, the Association of Municipalities of Ontario, the Federation of Canadian Municipalities, service clubs such as the Rotary Club, Lions Club and other not-for-profit organizations. Members should exercise caution if accepting such positions if the organization could be seeking a benefit or preferential treatment from the City at any time.

The legislative obligation is set out in the Municipal Conflict of Interest (MCIA). If the Member of Council, or a family member of the Member of Council, sits on a body which has a pecuniary interest in a matter before Council (such as an application for grant, support or other contribution), that Member has a deemed pecuniary interest. The Member of Council should disclose the interest and should not participate in or vote on such matter, in compliance with the obligations of s.5, MCIA.

The Code of Conduct captures the broader common law responsibility and requires members to avoid any possible appearance of favouring organizations or groups on which the Member's family members serve. Although not strictly prohibited under the Council Code of Conduct, for the same reason that staff are precluded from serving on a board of directors of an affiliated group, it is preferable that Members of Council do not serve in such a capacity.

Family members of Members of Council are not precluded, or even discouraged, from serving on not-for-profit organizations or other bodies. However, where family members of Members of Council serve in such a capacity, the Member should declare a conflict of interest whenever there is a matter for Council consideration in which the not-for-profit organization or body has a pecuniary interest.

For this reason, the following questions may assist Members in assessing whether they should be a member of the body, or if their family member is a member of the body, when a matter may give rise to a conflict:

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Is this a corporation created to carry on municipal business on behalf of the City, or to which I am appointed because I am a Council appointee? In these cases, the Municipal Conflict of Interest Act, s.4(h), exempts Member from MCIA obligations.

If no, is this a body (a board, commission, or corporation) which seeks City resources such as space, support, funds?

If yes, the Member of Council should not serve on the board of directors.

If a family member (spouse, sibling, child) of the Council Member is a member of the body, then the Member of Council should declare a conflict of interest any time Council is considering a matter in which the body has a pecuniary interest. In this way, there is no perception that the Council Member is giving preferential consideration to the body on which the Member's family member serves.

No Application Will Be Made to Court by the Integrity Commissioner

[66] The MCIA authorizes the Integrity Commissioner to bring an application before the court, whereby a judge may impose sanctions beyond those within the jurisdiction of the Integrity Commissioner to recommend. Where the Integrity Commissioner determines that no such application is to be brought, the applicant/complainant is to be advised and reasons for such decision must be published. The relevant provisions of the MCIA are as follows:

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.

(16) The Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge.

(17) After deciding whether or not to apply to a judge, the Commissioner shall publish written reasons for the decision.

This report serves as publication of our reasons for not applying to a judge.

[67] Under the *Municipal Act*, following an investigation of a contravention by a member of council, the sanctions which an Integrity Commissioner may recommend are:

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- A reprimand
- Suspension of remuneration paid to the member for up to 90 days

[68] Under the MCIA, following a determination of contravention of the MCIA by a member of council, the sanctions which a judge may impose are:

- A reprimand
- Suspension of remuneration paid to the member for up to 90 days
- Declaring the member's seat vacant
- Disqualifying the member from being a member for up to seven years
- If personal financial gain has resulted, requiring the member to make restitution

[69] As statutory officers carrying out an administration of justice function we are charged with the responsibility to choose which route to follow. Are the circumstances such that court time and legal expense should be incurred to seek a remedy only the courts can impose, or is it a case where the integrity commissioner should review the matter and if it is in the public interest to do so, make recommendations to Council for the imposition of a recommended penalty (if any)?

[70] It is apparent that, unless removal from office is sought, or unless a member who has benefited financially is refusing to voluntarily disgorge such profits, it is not in the public interest for the Integrity Commissioner to pursue additional sanctions by way of application to a judge.

[71] It is our view that such a severe sanction is not warranted in the circumstances of this case, and therefore no such application will be pursued. As required by the legislation, we are advising the complainant that no application will be made by the Integrity Commissioner to a judge in this matter.

[72] The complainant made it clear that removal from office was not the desired outcome, but rather a daylighting of the issue and reversal of the vote on the motion.

[73] While an Integrity Commissioner's investigation and report can shed light on conduct which contravenes the Code and the MCIA, the fact a member participated in conflict of interest does not negate the decision, even where that member's vote was the deciding factor.

[74] Reversal is not automatic. In fact, participation of a member while in a conflict of interest is merely a factor which may be raised on an application to court seeking to quash a decision, and is by no means determinative.

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[75] Alternatively, a decision can be reversed by Council, or re-considered, in light of the information regarding the findings, although even a decision to re-consider the matter is wholly within Council's control.

Summary of Findings and Conclusion

[76] We find that the Respondent had a conflict of interest when he failed to declare an interest and participated in the vote on the motion to allocate \$50,000 into the Community, Youth and Cultural Fund, because he is Executive Director of an organization which receives grants from that Fund. We find that this contravened both the MCIA and the Code of Conduct.

[77] We find that the contravention was not inadvertent, in that there was clear guidance available to him under Rule No. 1 of the Code of Conduct, and he had the opportunity to reach out to the integrity commissioner for advice.

[78] To be fair to the Respondent, circumstances have been such that we have not as yet been able to train Council on the provisions of the Code, certain of which, such as Rule No. 1, are new to them. We have taken this into account in crafting our recommendations.

[79] We find that the contravention under the MCIA does not warrant an application to a judge.

[80] Other Observations:

[81] In the course of our investigation, we were made aware of the challenges which occur when the Respondent interacts with City staff on operational and funding issues in his capacity as Executive Director of the Boys and Girls Club, which is funded by the City and is also a tenant of premises leased from the City.

[82] While such interactions are simply a continuation of the relationship which pre-existed the Respondent's election to Council, staff may now perceive his inquiries and suggestions as attempts to unduly influence them in their responsibilities.

[83] At the very least it leaves administrative staff in an awkward position, in that they must negotiate, or give direction to, or interpret policies that relate to, a person they perceive to have authority over them.

[84] While the Respondent's dealings with day to day matters between a tenant and landlord, or funder and grant recipient, may be addressed with the relevant staff member, other non-routine matters, for example suggested changes from the status quo in matters which impact the Boys and Girls Club, should be addressed with the Department Head or City Manager.

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Recommendations:

- [85] We preface our recommendation with a statement of our general approach to recommending remedies when a breach of an ethical standard has occurred.
- [86] While the imposition of a penalty is sometimes required, particularly since ethical standards ‘must have teeth’ in order to encourage compliance, the most effective deterrent in some circumstances is simply a clear articulation of where a contravention has occurred coupled with recommendations for direct remedial steps to rectify the problem.
- [87] We indicate above that it is our view that Council should undertake training on the Code of Conduct. Particularly relevant to this case, the training should cover the statutory, code and common law provisions that require members to avoid conflicts of interest.
- [88] With respect to Councillor Aiello, we find in this case that there is no evidence that the Councillor’s actions were other than well-intentioned and in service of the broader public interest, and so no punitive sanctions are warranted. However both he and the municipality would be best served by:
1. Councillor Aiello receiving training specific to the avoidance of conflicts of interest between his employment and his role as an elected official;
 2. Councillor Aiello being requested to obtain a written opinion from the Integrity Commissioner advising on and approving the manner in which he interacts with City staff in his capacity as Executive Director of the Boys and Girls Club, pursuant to paragraph 9 of Rule No. 1 of the Code of Conduct
- [89] In the course of our investigation we came to understand Councillor Aiello’s frustration that his personal expertise on issues related to the Boys and Girls Club’s clients could not be shared with his colleagues on Council when discussing Council business.
- [90] The *Municipal Conflict of Interest Act* now contains principles which assist in determining the proper balance in measuring any competition between an elected official’s personal interests and their public duty:

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1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:

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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.

4. There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.

[91] And so while it is recognized that Members of Council make significant contributions to Council's deliberations as a result of the experiences they bring to the table, that contribution must be balanced against the need for impartiality, the reconciliation of potential conflicts, and the role other stakeholders play in making contributions to Council decisions.

[92] Put another way, to the extent Councillor Aiello must step back from participating in some Council matters, his declarations of interest in that regard reinforce Council's ethical framework and help to raise the public perception that Council is committed to conducting itself with integrity. A declaration of interest in no way diminishes the contributions Councillor Aiello or any other member of the City of Thunder Bay Council makes to the community through the other roles they play.

[93] All of which is respectfully submitted. We would be pleased to make ourselves available to present this report and/or respond to Council's questions concerning its contents.

Principles *Integrity*
Jeffrey A. Abrams and
Janice Atwood-Petkovski, Co-Principals