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MUNICIPALITY OF NORTH PERTH INTEGRITY COMMISSIONER,  
GUY GIORNO

**Citation:** Scott v. Kellum, 2024 ONMIC 9

**Date:** July 2, 2024

## REASONS FOR DECISION

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Notice: Municipal Integrity Commissioners provide investigation reports to their respective municipal councils and, in most cases, make recommendations for imposition of penalty or other remedial action to the municipal councils. Therefore, reference should be made to the minutes of each particular municipal council to obtain information about the particular council's consideration of each report. When possible, a link to the relevant municipal council minutes is provided.

Please find below the link to the corresponding council decision.

No council decision. This is an inquiry under section 223.4.1 of the *Municipal Act* which requires the Integrity Commissioner to publish the reasons for decision directly, instead of reporting them to council.

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## CONTEXT

1. 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 MCIA 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

2. 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.

3. Mr. Ron Scott (the Applicant) alleges that Deputy Mayor Doug Kellum (the Respondent) contravened section 5 of the MCIA by failing to declare a pecuniary interest in relation to an application affecting the property at East Part Lot 22, Concession 4, Elma Ward, and failing to withdraw from voting on the application, at the December 18, 2023, meeting of Council.

## DECISION

4. 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.

5. After considering all the evidence and the submissions of the parties, I have decided that I will not apply to a judge for a determination whether Deputy Mayor Kellum has contravened the MCIA.

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

## BACKGROUND

7. This inquiry arises from voting on Zoning By-law Amendment No. 11-23 at the December 18 Regular Council Meeting. Mr. Scott, the Applicant, alleges that Deputy Mayor Kellum had a pecuniary interest in the matter.

8. Deputy Mayor Kellum did not declare a pecuniary interest, and he participated in decision-making and voting on the Zoning By-law Amendment.

9. The Zoning By-law Amendment affects a property described as East Part Lot 22, Concession 4, Elma Ward, also known as 5621 Line 81. The effect of the Amendment is to allow an auto repair business to operate on agricultural land.

10. Mr. Scott alleges that the Deputy Mayor's employer had a pecuniary interest in the Amendment because Cleland Automotive Ltd., the auto repair business that would benefit from the Amendment, was allegedly a customer of the Deputy Mayor's employer.

## PROCESS FOLLOWED

11. The *Municipal Act* does not direct the procedure that an Integrity Commissioner must follow in handling MCIA applications. I have chosen to follow a process that ensures fairness to both the individual making the application (Applicant) and the Council Member alleged to have contravened the MCIA (Respondent).

12. This fair and balanced process usually begins with me issuing to both parties a Notice of Inquiry that sets out the issues. The Notice of Inquiry includes a copy of the Application for an MCIA Inquiry. The Respondent is made aware of the Applicant's name. I do, however, redact personal information such as phone numbers and email addresses.

13. The Respondent then has an opportunity to respond. The Applicant receives the Respondent's Response and is given an opportunity to reply. I may accept supplementary communications and submissions from the parties, generally on the condition that parties get to see each other's communications with me. I do this in the interest of transparency and fairness.

14. I typically set deadlines for the submission of a Response and a Reply, but give reasonable extensions when requested.

15. On February 8, I received a Code of Conduct complaint form from Mr. Scott. The form combined allegations under the Code with an allegation under the MCIA.

16. The process for an application for an inquiry into an alleged MCIA contravention (section 223.4.1 of the *Municipal Act*) differs from the process to trigger an inquiry into an

alleged Code of Conduct contravention (section 223.4). I followed up with Mr. Scott to clarify whether he seeking an inquiry related to the Code of Conduct or the *Municipal Conflict of Interest Act*, or both.

17. On February 15, I received from Mr. Scott a formal Application for an inquiry into an alleged contravention of the MCI. I assigned it File No. 2024-01-MCI.

18. I did not immediately issue a Notice of Inquiry. Instead, the same day, that is, February 15, I issued a Notice of Pending Inquiry. In it, I informed the parties that whether to conduct an inquiry is in the discretion of the Integrity Commissioner, and I had not yet determined whether to conduct an inquiry into whether section 5 of the MCI was contravened. I invited the parties to address the following issue: Is there a connection between Deputy Mayor Kellum and Cleland Automotive Ltd. that is sufficient to warrant commencing an inquiry into whether the MCI was contravened?

19. I received feedback in writing from both parties, and additional feedback by telephone from the Applicant. Based on the feedback received, I decided to conduct a focused inquiry on two issues. I sent both parties an April 4 Notice of Inquiry in which I identified the issues as follows:

- A. Did the Respondent's employer have a pecuniary interest in the Zoning By-law Amendment? In particular:
  - i. Did the Respondent's employer do business with Cleland Automotive Ltd. and what was the extent of that business?
  - ii. Given the nature of the business between the Respondent's employer and Cleland Automotive Ltd., did the Respondent's employer have a pecuniary interest in the Zoning By-law Amendment?
- B. If the Respondent's employer had a pecuniary interest in the Zoning By-law Amendment, giving rise to a pecuniary interest of the Respondent, was that interest exempt under clause 4 (k) of the MCI? Namely, was it an interest of the Respondent which was so remote or insignificant in its nature that it could not reasonably be regarded as likely to influence the Deputy Mayor?
  - i. One factor that might be relevant to the above issue is the extent of the Respondent's involvement in the business transacted between the Respondent's employer and Cleland Automotive Ltd.

20. For ease of understanding, in the above recitation of issues, I have replaced certain proper names with descriptions of relationship. I have also replaced the numbering of issues with lettering (and roman numerals for sub-issues). Otherwise, the issues appear as they were set out in the Notice of Inquiry.

21. The questions that frame the issues are worded in the past tense. They apply to the situation that existed on December 18, 2023, the date of the Council meeting.

22. As explained in paragraph 13, I usually invite a Respondent to address the allegation and then give the Applicant a chance to reply. In this case, I determined that it would be more fair to reverse the order by asking the Applicant to provide further detail of the allegations, following which the Respondent would be able to respond. To that end, the Notice of Inquiry invited the Applicant to address the issues in the inquiry by April 15, and explained that the Deputy Mayor would then receive an opportunity to respond. The Applicant asked for an extension, which I granted. On May 2, the Applicant provided written information related to the issues. I shared this information with the Respondent on May 5, and he responded in writing on May 10.

23. I have interviewed both parties by telephone. I have also gathered further documentary information, conducted research, and interviewed the owner of Cleland Automotive Ltd.

24. In making my decision, I have taken into account all the submissions of the parties and all of the evidence obtained during the inquiry.

## **POSITIONS OF THE PARTIES**

### ***Applicant's Position***

25. Mr. Scott believes that the Respondent's employer is a supplier to Cleland Automotive Ltd. He has provided circumstantial evidence that this might be the case. He feels that the evidence justified an inquiry.

26. The Applicant also speculates that the Respondent might be responsible for the Cleland Automotive account, but does not know for sure.

27. According to the Applicant, if the Respondent's employer is a supplier to Cleland Automotive, then the Respondent's employer has a pecuniary interest in the expansion of the business of Cleland Automotive.

### ***Respondent's Position***

28. Deputy Mayor Kellum's position is that he did not have any pecuniary interest in the matter before Council.

29. He explains that he has worked for his employer for 39 years, 34 of them as an account manager. He is responsible for 86 customers, and states that Cleland Automotive is not one of them.

## FINDINGS OF FACT

30. In making my determination, I rely on the facts in the Background section of this report, and in this Findings of Fact section.

31. Findings of fact are made based on the standard of the balance of probabilities. The findings are based on interviews of the parties and witnesses, and consideration of the other evidence.

32. On December 18, Deputy Mayor Kellum did not declare a pecuniary interest. He voted on the Zoning By-law Amendment.

33. The Applicant recently saw trucks of the Respondent's employer on the property of Cleland Automotive Ltd. This was the basis on which I decided to conduct an inquiry.

34. I have confirmed with the owner of Cleland Automotive, and I find as a fact, that Cleland Automotive is not a customer of the Respondent's employer. It has not been a customer for several years. Cleland Automotive does business with a competitor of the Respondent's employer.

35. I find further that Cleland Automotive does not do business with the Respondent personally.

36. The owner explained to me trucks of the Respondent's employer were recently present on the property. In one case, a tradesperson engaged to provide services to Cleland Automotive was getting supplies delivered. In addition, a relative of the owner, unconnected to the auto repair business, has on occasion purchased from the Respondent's employer.

## ISSUES AND ANALYSIS

37. I have considered the following issues:

- A. Did the Respondent's employer have a pecuniary interest in the Zoning By-law Amendment?
- B. If the Respondent's employer had a pecuniary interest in the Zoning By-law Amendment, giving rise to a pecuniary interest of the Respondent, was that interest exempt under clause 4 (k) of the MCIA?
- C. Should I make an application to a judge under section 8 of the MCIA?

**A. Did the Respondent's employer have a pecuniary interest in the Zoning By-law Amendment?**

38. No.

39. Under the MCIA, a "pecuniary interest" means a financial, monetary or economic interest."<sup>1</sup>

40. If the Respondent's employer was a supplier to Cleland Automotive Ltd., then it is possible that the employer might have had a pecuniary interest in a Zoning By-law Amendment that would allow Cleland Automotive expand its business.

41. Further, if the Respondent's employer had a pecuniary interest in the Zoning By-law Amendment then, under clause 2 (b) of the MCIA, the Respondent also had a pecuniary interest.

42. Whether the Respondent's employer had a pecuniary interest in the Zoning By-law Amendment is not determined by whether the Respondent handled the Cleland Automotive account. The issue is whether the employer supplied the auto repair company, not whether Deputy Mayor Kellum personally was involved.

43. I agree with O'Connor and Rust-D-Eye that, "it does not matter whether the pecuniary interest is large or small (subject to the exceptions contained in section 4)"<sup>2</sup> [emphasis added]. The size of the interest is irrelevant to whether a pecuniary interest exists. However, once a pecuniary interest is found to exist, its size is relevant under clause 4 (k), reproduced below at paragraph 49.

44. The assessment of whether a pecuniary interest existed on December 18 must be based on the standard of a pecuniary interest that is real and present, and not speculative and remote. In the words used by Ontario Courts, that standard is an interest that is actual,<sup>3</sup> definable,<sup>4</sup> and real.<sup>5</sup> A pecuniary interest does not arise from speculation based on hypothetical circumstances.<sup>6</sup>

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<sup>1</sup> *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683, at para. 9.

<sup>2</sup> M. Rick O'Connor and George H. Rust-D'Eye, *Ontario's Municipal Conflict of Interest Act: A Handbook* (2007), at 15.

<sup>3</sup> *Bowers v. Delegarde*, 2005 CanLII 4439 (Ont. S.C.), at para. 78; *Darnley v. Thompson*, 2016 ONSC 7466 (CanLII), at para 59; *Rivett v. Braid*, 2018 ONSC 352 (CanLII), at para. 51.

<sup>4</sup> *Lorello v. Meffe*, 2010 ONSC 1976, at para. 59; *Darnley v. Thompson*, at para. 59.

<sup>5</sup> *Methuku v. Barrow*, 2014 ONSC 5277 (CanLII), at paras. 43, 48; *Lorello v. Meffe*, at para. 59; *Darnley v. Thompson*, at para. 59.

<sup>6</sup> *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 57; *Darnley v. Thompson*, at para. 63.



45. A pecuniary interest must have crystalized by the time the matter is considered by Council or committee.<sup>7</sup> The matter before Council must be such that, “the member could experience an immediate, in the sense of close, non-deviated or traceable[,] financial or economic impact, positive or negative.”<sup>8</sup> Possible and potential future happenings do not amount to a pecuniary interest.<sup>9</sup>

46. Because Cleland Automotive did not do business with the Respondent’s employer, I am satisfied that on December 18 the Respondent’s employer did not have a pecuniary interest in the Zoning By-law Amendment.

47. Since the employer did not have a pecuniary interest in the Zoning By-law Amendment, the Respondent, as its employee, did not have a pecuniary interest either.

**B. *If the Respondent’s employer had a pecuniary interest in the Zoning By-law Amendment, giving rise to a pecuniary interest of the Respondent, was that interest exempt under clause 4 (k) of the MCI A?***

48. The outcome of Issue A makes Issue B moot.

49. Section 4 of the MCI A sets out eleven exceptions to the requirement to declare a pecuniary interest and withdraw from decision-making and voting. One exception is clause (k).

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.

50. Because the Respondent’s employer did not have a pecuniary interest in the Zoning By-law Amendment, it cannot be said that its pecuniary interest gave rise to a pecuniary interest of the Respondent.

**C. *Should I make an application to a judge?***

51. No. The *Municipal Act* leaves this decision to the Integrity Commissioner, based on what the Integrity Commissioner feels is appropriate. Having found that no pecuniary interest exists, I should not commence a Court application.

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<sup>7</sup> *Darnley v. Thompson*, at para. 59.

<sup>8</sup> *Cooper v. Wiancko*, at para. 63.

<sup>9</sup> *Bowers v. Delegarde*, at paras. 76, 78; *Rivett v. Braid*, at para. 51.

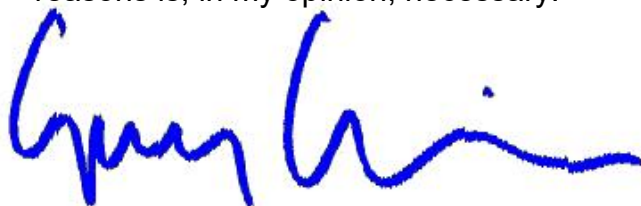
## DECISION

52. I will not apply to a judge under section 8 of the MCIA for a determination as to whether Deputy Mayor Doug Kellum contravened the MCIA on December 18, 2023.

## PUBLICATION

53. 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. This decision will be published by providing it to the Municipality to make public and by posting on the free, online CanLII database as decision 2024 ONMIC 9.

54. 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.



Guy Giorno  
Integrity Commissioner  
Municipality of North Perth

July 2, 2024