



**ADR**  
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January 11, 2024

SENT BY EMAIL TO:

**Mayor Frank Champion**

AND TO:

**Councillor Tony DiMarco**

**Re: Investigation Report - Complaint No. IC-26663-0923**

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Dear Mayor Champion and Councillor DiMarco:

### **1.0 – Introduction and Delegation of Investigative Powers**

This is our report respecting a Complaint brought by Mayor Frank Champion (the “Complainant”, “Mayor Champion” or “the Mayor”) against Councillor Tony DiMarco (“Respondent”, “Councillor DiMarco” or “the Councillor”) under the: (1) [Municipal Conflict of Interest Act](#), R.S.O. 1990, c. M.50 (the “MCIA”) and (2) [Council Code of Conduct of the City of Welland \(Rev. February 12, 2022\)](#) (the “Code of Conduct” or “Code”).<sup>1</sup>

Section [223.4.1\(2\)](#) of the [Municipal Act, SO 2001, c 25](#) (“Municipal Act”) allows an elector or a person demonstrably acting in the public interest to apply to the Integrity Commissioner for an inquiry concerning a member of Council’s alleged contravention of

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<sup>1</sup> The City of Welland’s website currently links to the June 2, 2020 version of the *Code of Conduct*.

section 5, 5.1, and/or 5.2 of the *MCIA*. Similarly, section [223.4\(1\)](#) of the *Municipal Act* allows Council, a Member of Council, an employee of the city, or a member of the public to request that the Integrity Commissioner conduct an inquiry about whether a member of Council has contravened the *Code of Conduct*.

Pursuant to a written delegation of powers dated September 18, 2023, Ms. Deborah Anshell ("Ms. Anshell" or the "Integrity Commissioner"), in her capacity as Integrity Commissioner for the City of Welland ("Welland" or the "City"), delegated to Jeffrey Shapiro, an Investigator in the ADR Chambers Office of the Integrity Commissioner, pursuant to section 223.3(3) of the *Municipal Act*, certain of her powers and duties as Integrity Commissioner to inquire into, investigate, and prepare a report (subject to her review and approval) with respect to the Complaint described herein.

After reviewing the matter, we conclude that there was a beach of the *MCIA* and *Code of Conduct*, but do not find it appropriate to apply to a judge for further proceedings under the *MCIA*. We do make recommendations to the Council for appropriate remedies and also express further concerns regarding additional *Code* sections that may have been violated, but regarding which we decline to make formal findings due to procedural reasons, all for the reasons set forth below.

## **2.0 - The Parties' Positions and the Relevant Code and Legislative Sections**

### *2.1 – Overview of the Complaint and Parties' Positions*

The City of Welland is in the process of developing active transportation trails (a.k.a. multiuse recreational trails), one of which is on a City owned green belt located behind and abutting Councillor DiMarco's personal residence. The Councillor maintains a shed encroaching on the green belt which would need to be removed. Mayor Campion alleges that following Council's January 2023 approval of the trail, Councillor DiMarco contacted City staff "requesting that the trail outlined on page 8 of the report be removed," despite Council's direction to proceed. The Councillor also attempted to bring forth a motion during a September 5, 2023 Council Meeting ("meeting") to effectively cancel or place the development on hold, which was a conflict of interest, and thus breached provisions of the *Code of Conduct* and *MCIA*. The Councillor submits the *MCIA* was not violated because no vote actually took place and/or his interest is "in common with electors generally", i.e. neighbors similarly affected.

The parties are in general agreement to the basic factual outline of the events, with relatively minor differences.

## 2.2 – Legislation and Code Sections Alleged to be Violated

Mayor Champion’s Complaint alleges that Councillor DiMarco violated the *Code of Conduct* and the *MClA*, and reproduced three specific sections. We have listed those below, and also additional provisions that we find are relevant.

### 2.2.1 - Portions of the MClA reproduced in the Complaint:

#### Duty of Member

##### **When present at meeting at which matter considered**

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.

### 2.2.2 - Portions of the MClA referenced in the Response:

4 Sections 5, 5.2 and 5.3 do not apply to a pecuniary interest in any matter that a member may have,

...

- (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
- (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.<sup>2</sup>

### 2.2.3 - Portions of the Code of Conduct reproduced in the Complaint:

#### **PREAMBLE**

...The *Code of Conduct* identifies the public’s expectations of Members and establishes guidelines for appropriate behavior. The key principles that underlie the *Code of Conduct* are as follows:

1. Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;

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<sup>2</sup> The Response lists section 4(j), only. We have listed 4(k) here for efficiency.

2. Members shall perform their functions with integrity, accountability, and transparency, avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;<sup>3</sup>

3. Members shall perform their duties of office in a manner that promotes public confidence and will bear close public scrutiny; and...

## **19.0 COMPLIANCE, ENFORCEMENT AND PENALTIES**

19.1 All Members shall be aware of and comply with this Code.

19.2 Members are accountable to the public through the election process. Between elections, they may become disqualified and lose their seat [...] or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act*, or [...] <sup>4</sup>

### **2.2.4 - Additional relevant portions of the Code of Conduct:**

#### **4.0 COMMUNICATIONS AND MEDIA RELATIONS**

4.1 Members will show respect for Council's decision-making process, accurately communicate the decision of Council, even if they disagree with the decision of Council...

#### **6.0 CONFLICTS OF INTEREST**

6.1 Members shall avoid conflicts of interest in accordance with the *Municipal Conflict of Interest Act*. Members are encouraged to seek guidance from the Integrity Commissioner and/or legal advisors when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, including a direct or indirect pecuniary interest.

#### **13.0 IMPROPER USE OF INFLUENCE**

13.1 No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties. Examples of prohibited conduct include the use of one's status as a Member to improperly influence the decision of another person to the private advantage of oneself, a family member, or associate (business or otherwise). This would include attempts to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties...

13.2 For the purposes of this section, "private advantage" does not include a matter:

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<sup>3</sup> The Complaint used yellow highlight, rather than underline, to emphasis this section.

<sup>4</sup> The Complaint listed different numbering which appears based on an earlier version of the *Code*.

- (a) that is of general application;
- (b) that affects a Member or her/his family member or associate as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits of a Member as authorized by Council.

### **18.0 FAILURE TO ADHERE TO COUNCIL BY-LAWS, POLICIES AND PROCEDURES**

18.1 Members shall encourage public respect for, and are required to obey the spirit and intents of, all City by-laws, policies and procedures.

### **20.0 ACTING ON ADVICE OF INTEGRITY COMMISSIONER**

20.1 Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent considerations of the conduct of the Member in the same manner as long as all the relevant facts known to the Member were disclosed to the Integrity Commissioner.

For further context, we note that *Code of Conduct* section 1.1 provides that “The *Code of Conduct* operates along with and as a supplement to the existing statutes governing the conduct of Members, including, but not limited to, the [MCIA...]. (Emphasis added.)

### **3.0 - Investigative Process and Procedure and Evidentiary Standard**

Neither the *Municipal Act* nor Welland’s procedures direct a specific procedure that an Integrity Commissioner must follow in handling MCIA and *Code of Conduct* Complaints. We followed a process that ensured procedural fairness to both parties. The process of investigation for this matter included:

- a. a review and exchange of the written submissions of the Parties, including video links referenced;
- b. an interview with Mayor Champion, the Complainant, by telephone;
- c. an interview with Councillor DiMarco, the Respondent, by telephone;
- d. a review of other relevant information, law and caselaw, as may be referenced periodically herein.

As with any civil matter in such an adjudicative process, the standard of proof to be applied in this case is the *balance of probabilities* standard. The evidence obtained from all sources has been assessed in a fair and neutral manner.

Regarding the statements of the parties and my interviews with them, I have considered accepted factors in assessing credibility such as demeanour, ability and opportunity to observe, power of recollection, interest, bias, prejudice, sincerity, inconsistency, and the

reasonableness of their statements when considered in the light of all the evidence. *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at pp. 356-8, per O'Halloran J.A. The *Faryna* court noted that "...the real test of the truth of a story of a witness...must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

The text *The Trial of an Action* (1981, Toronto, Ontario: Butterworths) at p. 77, similarly observes: "Probability is the great touch-stone of all evidence. A witness whose credibility strays from the truth will often have built into it some inherent improbability."

#### 4.0 - Evidence of the Parties

##### 4.1 - Complaint Particulars

The Complaint was submitted on an *Integrity Commissioner Formal Complaint Form/Affidavit* (the "Complaint") sworn by Mayor Campion and submitted on September 12, 2023. It incorporated an attached narrative ("Appendix 1"), with embedded pictures, maps, meeting minutes from January 2023, and the above referenced sections of the *Code of Conduct* and *MClA*. The City Clerk's email submitting the Complaint provided the referenced items, i.e. (1) Report CS-2023-01, and (2) links to recordings of the April 4<sup>5</sup> and September 5, 2023<sup>6</sup> meetings.

The Complaint alleges Councillor DiMarco has a conflict of interest with respect to Council's January 2023 approval of, and direction to move forward with, an active transportation trail project on page 8 of Staff Report CS-2023-01. The proposed trail is located behind Councillor DiMarco's residence at 36 Whiteoak Crescent, Welland. The Complaint notes that "Councillor DiMarco has items, such as a shed, that are encroaching on city property."

The Complaint alleges the background from January 2023 to the September 5, 2023 meeting where the alleged conflict took place (emphasis added):

1. **"Following the approval of this item in January 2023**, Councillor DiMarco began sending emails to staff requesting the trail outlined on page 8 of the report be removed. Staff had indicated that it could not be removed/amended, as council had provided direction to proceed."
2. **"On April 4th, 2023**, Councillor DiMarco had attempted to have council consider a notice of motion to reconsider the approved motion. The matter was not

<sup>5</sup> <https://video.isilive.ca/play/welland/2023-04-04.mp4>

<sup>6</sup> <https://video.isilive.ca/play/welland/2023-09-05.mp4>

considered, as I (Mayor Campion) had communicated he may have a potential conflict. Councillor DiMarco had advised he “spoke with the IC, but the IC doesn’t believe he has a conflict”. He decided not to move the motion to be on the safe side related to a conflict.”

3. **“On September 5, 2023,** Councillor DiMarco announced a motion to waive the rules to bring forward a motion to rescind a by-law. 2/3 Majority of Council had supported the waiving of the rules. When Councillor DiMarco stated the item to be rescinded, it was identified that it was not a by-law, but staff report CS-2023-01. Mayor Campion advised that Councillor DiMarco had a conflict related to the matter. In addition, Mayor Campion ruled the motion out of order, as staff has completed actions that council had approved in January 2023.”

The photograph shows a view of the back of the Councillor’s residence. In the foreground is a shack with some items around it, and behind it is the rear fence of the property containing the backyard, then the actual house. In other words, it shows that the shack is outside the fenced-in area of the backyard.

#### *4.1.1 - Review of the April 4, 2023 Council Meeting Video Recording*

The relevant discussion occurred near the end of the meeting, from 2:19:30 to 2:22:00 hours in the recording. At that point, the Mayor brought up that Councillor DiMarco had a Notice of Motion on the agenda. The Mayor asked the Councillor if he wanted to go through with the motion, given that the Mayor was advised by the Integrity Commissioner that there may be a conflict of interest. The Mayor clarified that the Integrity Commissioner did not say that there was a conflict but there might be one and the Mayor understood that the possible conflict should be raised to the Councillor.

Councillor DiMarco expressed that he had also talked to the Integrity Commissioner, but did not state what he was advised. He said that he felt that he did not have a conflict as “there’s no gain for me.” Nevertheless, he said “I don’t feel that I do, Mr. Mayor, have a...why, there’s no gain for me. I don’t know. Truthfully, I just, you know for information purposes, for not information purposes, just to be safe is it ok now if I declare a, a conflict of interest because I missed the beginning of the meeting with the connection issues again.”

The Mayor explained that a simpler solution to avoid the conflict would be to not move the motion. The Councillor then stated that “he would not move it.”

#### 4.1.2 - Review of the September 4, 2023 Council Meeting Video Recording

The relevant events occurred toward the beginning of the meeting from 8:00 to 27:00 minutes in the recording, with roughly five minutes of silence from 10:00 to 15:00, while the City Clerk attempted to identify the By-law under discussion.

The relevant discussion began with Councillor DiMarco asserting a motion to “waive the rules”, which was for the purpose to in-turn rescind the by-law at issue. The motion was carried, i.e. approved.

Given the approval, the Councillor then moved to rescind ‘By-law CS-2023-01’ and related items. His words were “I’d like to rescind By-law CS-2023-01; The Infrastructure Canada grant award; Community Trail Strategy Implementation, including the pre-approval of the 2023 Capital Project Community Trail Strategy Implementation–10-410-23417; and also any other items pertaining to this by-law.”<sup>7</sup>

A discussion then ensued about whether the Councillor had identified the correct item to be rescinded, beginning with the Mayor stating that the City Clerk advised that ‘By-law CS-2023-01’ was actually a Staff Report not a by-law. The Clerk added that the motion to rescind was out of order, because his motion to waive the rules was to rescind a by-law, not a report. The Mayor added that a Report cannot be rescinded. The Councillor then made some inaudible comments, but in any event, the discussion turned to identifying the correct by-law. After a five-minute pause, the Clerk identified the by-law, i.e. “a By-law to authorize entering into a contribution agreement with Infrastructure Canada for Community Trails Projects.” Although the audio is faint, it appears Councillor DiMarco agreed that was the correct by-law.

With the correct by-law identified, the Mayor stated that Councillor DiMarco has a conflict of interest in that particular item which was “discussed several times” and that the Councillor had indicated that he did have a conflict of interest in a prior Council meeting, and so “It would be illegal to bring forward a motion on which you have a conflict of interest”. Councillor DiMarco responded that he had “explained it over and over” that previously he was waiting for an opinion from his counsel, since that point, staff had visited the actual site and answered emails, and suddenly the phrase conflict of interest arose, but “no I’m not declaring [a conflict of interest], I declared it until I got official word”.<sup>8</sup>

Another councillor then raised an issue of whether the *Code of Conduct* leaves it solely up to the one potentially having the conflict to declare it and that the *Code* does not permit another elected officer to assert a conflict for another. He added that he never saw an

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<sup>7</sup> See September 5, 2023 recording, at approximately 9:00 – 10:00 minutes.

<sup>8</sup> September 5, 2023 recording, at 15:00 – 17:00 minutes.



elected official declaring a conflict for another. The Mayor disagreed asserting that it “must be declared” and that the Integrity Commissioner had already identified that it was a Conflict, and that the Councillor had acknowledged that. Thus he felt it was his duty to inform the Councillor when he was putting himself in a dangerous position.<sup>9</sup> Councillor DiMarco then again clarified that he declared a conflict of interest for that meeting “and that meeting only”. He had since spoken with the Integrity Commissioner prior to that meeting and was advised it is up to him to declare it, but then said after the fact. In any event, he requested the Mayor to “just proceed.”

The Mayor then raised a separate procedural issue with the motion to rescind the proceeding. He explained that he had received legal advice from the legal department that if action had already been taken on the project, then the by-law could not be rescinded. The Mayor then inquired of staff during the meeting, who confirmed that in fact the City has signed a contract with the federal government, had executed a contract with a consultant, and also contracted for a site survey. Thus, the Mayor concluded the by-law cannot be rescinded because the enabled project had been started, thus the Motion is out of order. He clarified that he was ruling it out of order for both reasons, i.e. the conflict and that it cannot be rescinded as action had been taken on the project.

The Councillor argued his position and instructed the Mayor to proceed. The Mayor refused restating his positions that the “Motion is out of Order”. Various back and forth ensued. The Councillor “challenged the decision...and the chair”. The City Clerk confirmed the Mayor’s position and that legal confirmed the by-law cannot be rescinded. The Councillor stated he has tried to investigate the matter with staff and been ignored. The Councillor continued, words grew heated, and ultimately the Mayor ordered the Councillor removed.

#### *4.2 - Written Response of Councillor DiMarco<sup>10</sup>*

Councillor DiMarco provided a five page response, filed by Thomas A. Richardson, C.S. In summary, it generally does not dispute the events in the Complaint, but adds a few factual details and provides legal arguments.

He summarized that the Complaint “appears to be based on an understanding that the encroachment of the DiMarco playhouse on City land, planned for future use for a trail, in some way creates a financial interest in the matter. The construction of the trail on the City-owned lands is commensurate to the DiMarco property fronting on a public street.” The Response submits that there are “no allegations contained in Appendix 1 with respect to contravention of the *Code of Conduct*”, and thus as no violation of it is made out, the Response need not address it. As for the *MCIA*, it – correctly – contends that

<sup>9</sup> September 5, 2023 recording, at 16:00 – 19:10 minutes.

<sup>10</sup> Councillor’s Response was originally due on October 2, 2023. For personal reasons, he was given extensions, and filed his Response October 19, 2023.

only a violation growing out of the September 5, 2023 meeting is timely made. Nevertheless, there is no violation because (1) the Councillor did not actually vote on a matter in which he had a conflict, and (2) the Councillor's situation is exempted from the key conflict of interest positions, by virtue of section 4(j) of the *MCIA*, because his pecuniary interest "is an interest in common with electors generally", i.e. electors abutting the municipally owned trail.

The Response added background to the photograph and trail project. The "shed" in the photo is a former playhouse for the Councillor's now grown children. The trail is to be located on a 100 feet wide strip of municipally-owned land lying to the rear of the property owned by Councillor DiMarco. There is a stream running down the middle of the 100-foot strip, leaving approximately 50 feet on the DiMarco side of the stream and another 50 feet lying on the other side of the stream. Councillor DiMarco acknowledges that the former playhouse encroaches onto the City-owned land.

The Response clarified that Councillor DiMarco did vote in the January 2023 meeting which adopted the recommendations contained in the January 17, 2023 Report CS-2023-01, and did not declare a conflict of interest. As for the September 5, 2023 meeting, "Councillor DiMarco announced a motion to waive the rules to bring forward a motion to rescind a by-law". However, "Mayor Champion advised that Councillor DiMarco had a conflict related... In addition, Mayor Champion ruled the motion out of order as staff has completed actions that Council had approved in January 2023," so that a vote did not occur.

#### 4.3 - *Written Reply of Mayor Champion*<sup>11</sup>

Mayor Champion's Reply was brief. He states, "...After reviewing Councillor DiMarco's response I feel that the complaint I submitted indicates that the Councillor did in fact have a real and apparent conflict and that he breached our *Code of Conduct* and the [*MCIA*] as outlined in the complaint."

#### 4.4 - *Interview with Mayor Champion*

Mayor Champion described the incident and background consistent with the video and Complaint. We will only list key additional information provided:

- The trail is an "active transportation trail", i.e. for biking, etc., in city-owned green space directly behind and abutting the Councillor's residence.
- The Councillor's shed encroaches on City property and needs to be removed.

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<sup>11</sup> Mayor Champion's Reply was originally due November 2, 2023. He was provided a week extension.

- He believes the trail would increase or decrease the value of the property, such as through access to a public trail or increased noise, respectively, and thus this project is a direct and apparent conflict of interest.
- He briefly outlined the legislative process. The Staff Report contains a recommended plan. In January 2023, Council voted to adopt that plan, which then enables the City Clerk to begin preparing appropriate by-laws signed by the Mayor and Clerk and essentially puts the plan into action. Based on custom and advice of legal, he understands that once contracts are signed and similar action taken, the initial by-law cannot be rescinded.
- He had advised the Councillor, possibly through the Clerk, to talk to the Integrity Commissioner for advice of whether there was a conflict.
- The Integrity Commissioner had advised that there was a conflict of interest.
- He felt that the Councillor acknowledged a conflict at a prior meeting.
- He is concerned that the Councillor is also bringing this matter up with staff to the extent that they feel harassed and it is causing a severe impact on staff.
- He feels that the Councillor should not have brought up the motion or participated in the matter.
- His concern is how this matter affects the public's impression of the City.
- He brought this Complaint in good faith. He expressed respect for the Councillor personally and professionally and that he advocates for his constituents. Yet, he is concerned that the Councillor has a conflict and is proceeding too aggressively.
- The Mayor advised he would present some sample emails.

#### *4.4.1 – Post Interview Emails Supplied by Mayor Campion*

The Mayor supplied 12 email trails from January to August 25, 2023. Many email trails include many emails addressed to Welland staff or Councillor DiMarco, or both, appearing to be from Welland residents in opposition to the project. Most trails also include Councillor DiMarco voicing his opposition to the project to both staff and/or the public. The emails also contain his attempts to have staff stop the project and also bring up the issue in Council for a vote.

#### *4.5 - Interview with Councillor DiMarco<sup>12</sup>*

Councillor DiMarco described the incident and background consistent with the video and Complaint. We will only list key additional information provided:

- He explained that behind his property there is proximally 50 feet to a drainage ditch and then 50 feet on the other side followed by residences fronting the next

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<sup>12</sup> The Councillor advised that chose to be interviewed without his counsel, who was aware of the interview.

street. Prior to this plan, he and other residents have taken care of the City property as the City equipment cannot effectively access it.

- He believes the project has little to no value to him, and if anything, might be an invitation for vandalism causing a loss. The project will use crushed limestone which he doesn't think is so useful.
- The neighbours "are up in arms" over the project, as they do not see its utility. It does not provide any particular access to inaccessible places and there are many parallel streets that can be traversed.
- He acknowledged that he has an old shed on the City property that would have to be moved. He noted that the shed used to be on his property but was moved off to the back when he made some improvements including a fence.
- He noted that he bought his house for around \$50,500 and it is now worth approximately \$700,000, so the minor change in value of the trail, perhaps \$1500 either way, is relatively negligible. He is not concerned with any change in value.
- He was less clear about the legislative process. He felt that typically a report is received for information and then would come back to Council for approval. He did not understand why that did not happen in this case.
- City staff have been out to view the project site and got access through his property. During that time there was no mention of a conflict of interest.
- He felt that when he has contacted the City's staff he was only acting on complaints of constituents. He agreed to supply some samples of such emails.
- At the April meeting, he was not sure what to do and so to be safe he declared a conflict for that meeting only.
- At the September meeting, he did not sign the conflict of interest form, but ultimately said that council should proceed and "I'll take the consequences". He acknowledged being "a bit agitated" in the meeting, which he attributed to a prior illness.
- He felt even if he had a conflict and he might lose his job, it is his duty to represent his constituents.
- He feels that the Mayor's actions were for spite, as the Mayor has had issues with him since 2006.

#### *4.5.2 – Post Interview Emails Supplied by Councillor DiMarco*

Councillor DiMarco provided three email trails. Two appear to be from neighbors showing their appreciation for his efforts opposing the project and another email to the City Clerk with his view of the project, asking her to forward it to appropriate staff and a reply email from Rob Axiak, Director of Community Services, who is a lead on this project.

#### 4.6 – *Email of the Integrity Commissioner*

The Integrity Commissioner’s April 12, 2023 email to the Councillor states:

“...I wanted to provide you with written comments after our discussion last week. We discussed the fact that Welland is building a trail, behind your property. There are some issues with respect to your contemplation of requesting that the trail not be built directly behind your property. You asked if you might have a conflict.

My view is that the trail could impact the value of your property. It’s not certain if it would enhance the value, or detract from the value, but it could certainly have an impact. In this sense, you would have a pecuniary interest.

On this basis, my advice to you was that you should declare a conflict, and not launch any further motions with respect to this issue. It’s better to err on the side of caution in this instance.

Please feel free to reach out if you would like any further information...”

#### 5.0 - Issues

The key issues raised in this matter are as follows:

1. Did Councillor DiMarco breach section 5 of the *MCIA* and/or is he exempted by section 4 of the *MCIA*?
2. Did Councillor DiMarco breach the Preamble of the *Code of Conduct*?
3. Did Councillor DiMarco section 19 of the *Code of Conduct*?
4. Did Councillor DiMarco breach section 6.0 of the *Code of Conduct*?
5. Did Councillor DiMarco breach section 13.0 of the *Code of Conduct*?
6. Did Councillor DiMarco breach any other sections the *Code of Conduct*?
7. If Councillor DiMarco breached the *MCIA and/or Code of Conduct*, what is the appropriate remedy?

## 6.0 - Analysis of the Evidence and Findings

The following section lays out our analysis of the evidence and our findings. We find that Councillor DiMarco did breach the *Code of Conduct* and *MCI*A as asserted by the Complainant. We are concerned that some of the Councillor's actions may have violated other *Code* sections, but do not make any formal findings, as expressed below.

### 6.1 - The incident

We find that the incident was as described in the Complaint, with the exact dialogue as recorded in the video and with several details added by the parties. In sum, the background of this event is that in January 2023, City Council passed a by-law which adopted the recommendations in Staff Report CS-2023-01 to develop certain active transportation trails, one of which runs through City owned green space directly behind Councillor DiMarco's residence. He voted on that by-law and did not declare a conflict.

Both parties agree that the project will have some economic impact on the Councillor's property, although neither could predict if that impact would be positive or negative. Neither quantified the range of the impact, but believed it to be relatively small, perhaps in the range of a few thousand dollars. It appears that the impact would have a similar effect on all the properties along Cedar Park Drive and White Oak Crescent that abut (i.e. back-on to) the trail, on the block between Page Dr. and First Ave, which number 39 based on the Google image provided with the Complaint. It appears there may be several additional properties affected by the continuation of the trail east of First Ave and west of Page Dr. Councillor DiMarco also has a shed on the City's green space that would need to be moved.

Based on that January 2023 approval, the City took steps to implement the project including signing a contract with the Infrastructure Canada and two consultants.

During the April 4, 2023 meeting, Councillor DiMarco sought to have Council consider a Notice of Motion to reconsider the approved motion. However, after discussion, he did not move the motion, essentially withdrawing it. During the discussion, he tentatively declared a conflict of interest for purposes of that vote.

Around the time of that meeting, the Councillor inquired of the Integrity Commissioner if the situation was a conflict. On April 12, 2023, the Integrity Commissioner provided written comments as noted above, stating, in part that,

"My view is that the trail could impact the value of your property. It's not certain if it would enhance the value, or detract from the value, but it could certainly have an impact. In this sense, you would have a pecuniary interest. On this basis, my advice to you was that you should declare a conflict, and not

launch any further motions with respect to this issue. It's better to err on the side of caution in this instance."

On July 28, 2023, in response to an inquiry by the City Clerk, the Integrity Commissioner similarly advised the Clerk that she believed the matter presented a conflict of interest for Councillor DiMarco.

The details of the September 5, 2023 meeting are as recorded in the video, which we detailed above. In summary, Councillor DiMarco asserted a motion to waive the rules to bring forward a motion to rescind a by-law, which he voted on. The motion was carried. Based on rules being waived, he then attempted to bring the corresponding motion to rescind the by-law.

After some initial confusion in identifying the correct by-law, the Councillor sought to proceed with the motion and declared that he did not have a conflict. Nevertheless, the Mayor effectively prevented the motion from going to a vote for two reasons. First, the Mayor believed that the Councillor had publicly declared a conflict and thus was prohibited from voting, and second, the motion was out of order, because the City had started to implement the by-law's recommendations as noted above. The Councillor requested the Mayor proceed on the motion. The discussion grew heated and the Mayor directed the Councillor out of the meeting.

The emails supplied by the Councillor support his position that his constituents also oppose the project and appreciate the Councillor's opposition to it. His single email trail to staff in January 2023 is respectful.

The emails supplied by the Mayor show (1) local opposition to the project and (2) the Councillor lobbying against the project to staff.

## *6.2 - Did Councillor DiMarco breach the MCIA?*

Yes. We find that Councillor DiMarco has a pecuniary interest in the matter and did attempt to take part in the discussion and influence voting, which actions violate the MCIA. We also find that his particular interest is close to, but does not fully meet an exemption listed in the MCIA, as discussed below.

### *6.2.1 - The Basic Obligation to Avoid a Conflict Under the MCIA*

As starting point, section 5(1) of the MCIA generally prohibits a council member from acting with a conflict of interest. It provides that "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...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.”<sup>13</sup>

The *MCIA* provides that the pecuniary interest may be direct or indirect, but does not actually define “pecuniary interest”. Ontario courts have defined it as “relating to a financial, monetary, or economic interest” and explained that it “is not to be narrowly confined, however, [it] must also not be construed so broadly that it captures almost any financial or economic interest needlessly disqualifying councillors from dealing with matters of importance.”<sup>14</sup>

The pecuniary interest need not be cash, and can be an increase in wealth or avoiding losses. The magnitude of the financial interest is irrelevant in determining if such an interest exists, unless insignificant, thus even a low monetary value can contravene the *MCIA*. For example, a profit of only \$300 has been found to satisfy the *MCIA*. The *reasonably possible* effect of a given manner on the member’s wealth must be looked at in addition to its *certain* effect.<sup>15</sup>

Under the *MCIA*, the standard to be met by elected officials in avoiding conflicts of interest is very high to maintain public confidence in the administration of municipal government. *MCIA*’s declaration of principles ([section 1.1](#)) includes the importance of integrity, independence, and accountability in local government decision-making, while “reconciling the public duties and pecuniary interests of members.” Thus members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny, but the *MCIA* explains “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.”<sup>16</sup>

There is no need to find actual corruption or actual loss to a council member. So long as a member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute. There is a very high standard on public officials to conduct official business in an

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<sup>13</sup> [City of Elliot Lake \(Integrity Commissioner\) v. Patrie](#), 2023 ONSC 223 (CanLII)(“*Elliot Lake*”), at [para 23](#), citing *Ferri v. Ontario*, [2015 ONCA 683](#), paras. 9-10.

<sup>14</sup> [Elliot Lake](#), 2023 ONSC 223 (CanLII), at [para 33](#).

<sup>15</sup> [Elliot Lake](#), 2023 ONSC 223 (CanLII), at [para 34-36](#), citing *Mino v. D’Arcey* (1991), [1991 CanLII 7293 \(ON SC\)](#), 2 O.R. (3d) 678 (Gen. Div.), at paragraph [17](#) and 39.

<sup>16</sup> *MCIA*, [Section 1.1](#); [Elliot Lake](#), 2023 ONSC 223 (CanLII), at [para 25](#).



unreproachable manner. Conflicts of interest are serious matters of principle in the conduct of municipal affairs. An objective standard is applied in assessing the issue of a conflict of interest and application of [s. 5](#) of the *MCIA*; it does not deal with intention, rather the member's actions, objectively viewed. Intention is only relevant to sanction.<sup>17</sup>

The penalties for violating the *MCIA* can be severe. Under s. 9 of the *MCIA*, upon finding a breach of s. 5, a judge may declare a councillor's seat vacant, or disqualify them from becoming a councillor again for a period of up to seven years. Therefore, the standard for establishing a breach of the *MCIA* must appropriately be high.

#### *6.2.2 – Did the Councillor's Actions Breach the Basic Obligation of the MCIA?*

Applying the above principles to this matter, the Councillor clearly has a pecuniary interest in the project within the meaning of the *MCIA*. Both parties agree that the trail will impact the value of his property and require the removal of the encroaching shed. While its unknown if that impact will be positive (immediate access to a park trail) or negative (increased noise, lack of privacy and vandalism), because there is relative certainty that there will be an impact, that impact qualifies as a pecuniary interest. Likewise, while the impact is also not expected to be excessive, it is significant enough to qualify. Given that the pecuniary interest and conflict are considered objectively, it is also irrelevant that the Councillor subjectively feels he is not concerned with the economic gain or loss.

The Councillor submits that s. 5 of the *MCIA* was not triggered because no vote took place on the September 5, 2023. We disagree. The Councillor did in fact bring forward a motion to waive the rules and voted on it. The ultimate purpose of that motion was to rescind the by-law enabling this project. Likewise, the *MCIA* prohibition is more than just voting. It includes "acting" at meetings and failing to disclose his interest, or taking part in the discussion in respect of the matter, or "attempt[ing] in any way whether before, during or after the meeting to influence the voting on any such question." While the second motion - to rescind the underlying by-law - was found to be out-of-order, the Councillor was attempting to influence such voting. We find it too narrow an interpretation to conclude that potentially affirmative actions in a council meeting on a matter where there is a pecuniary interest is excluded because a vote on the ultimate topic does not actually take place.

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<sup>17</sup>[Elliot Lake](#), 2023 ONSC 223 (CanLII), at para 27-29, citing *Baillargeon v. Carroll*, [2009 CanLII 4510](#) (Ont. S.C.), para [77](#)

6.2.3 – Is Councillor DeMarco’s Conflict Exempted by Virtue of having an “Interest in Common with Electors Generally” as listed in section 4(j) the MCIA?

No. The Councillor submits that even if his action in the September 5, 2023 meeting would breach section 5 of the MCIA, he is exempted from it based on section 4(j). The section provides that “Sections 5, 5.2 and 5.3 do not apply to a pecuniary interest in any matter that a member may have,...(j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; [...]”<sup>18</sup> (Emphasis added.)

The MCIA defines an “*interest in common with electors generally*” as a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part.<sup>19</sup>

In *Ennismore (Township), Re* the court noted that the onus of establishing an exemption is on the party asserting it. *Ennismore* further explained “generally” means the electors of a certain class or order in the area in question who are “affected” by the matter, and not necessarily all the electors, or even all electors in a given area. For example, if a municipal council were considering road improvements on one street within an area of several blocks, “it is only those electors affected by the road improvement who would be regarded in determining any pecuniary interest they might have with that of a member of council, and not all electors in the entire area”.<sup>20</sup> Thus, the inquiry is “does the member of council have a pecuniary interest in the matter being considered by council, and, if yes, is it different in kind, and not merely in degree, from any pecuniary interest that those electors affected by the matter have in it?”<sup>21</sup> (Emphasis added).

To illustrate, the following cases found the exception did apply:

- *Ennismore (Township), Re* found a councillor can vote on a by-law regarding a study area encompassing 337 households, despite living in the study area and being affected by the installation of a commercial water system. His ownership of

<sup>18</sup> Because Councillor DiMarco mentioned during his interview that the pecuniary interest was insignificant to him, we note section 4(k) provides an exemption for “an interest...which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.” That exemption, however, was not raised in the Response and, as stated above, MCIA requires conflicts viewed in an objective manner. Objectively, the interest is more than insignificant as discussed above.

<sup>19</sup> *Elliot Lake*, 2023 ONSC 223 (CanLII), at para 30.

<sup>20</sup> *Tuchenhagen v. Mondoux*, 2011 ONSC 5398 (CanLII), at para 42; *Ennismore (Township), Re*, 1996 CarswellOnt 154, [1996] O.J. No. 167, 31 M.P.L.R. (2d) 1, at para. 16;

<sup>21</sup> *Ennismore (Township), Re*, 1996 CarswellOnt 154, [1996] O.J. No. 167, 31 M.P.L.R. (2d) 1; See also *Elliot Lake*, 2023 ONSC 223 (CanLII), at para 235 and 239; *Tuchenhagen v. Mondoux*, 2011 ONSC 5398 (CanLII), para. 23.

a commercial establishment along with thirteen others is not different in kind to other electors, but merely degree.<sup>22</sup>

- The *Ennismore* court gave the example of road improvements on a single block.
- *Stewart v. Yorkton (City)* held that council members were not disqualified after finding that the mayor and councillors had a pecuniary interest with all other managers and businesses in the area governed by a by-law in issue, rather than all the residents of the municipality. The court noted the interests in common are the same kind, but different in degree.
- *Biffis v. Sainsbury* found a councillor's residence in one of approximately 1,400 condominium residences affected by the matter was an "interest in common with electors generally."<sup>23</sup>

In contrast, the following cases found the exception did not apply:

- *Tuchenhagen v. Mondou* held that "electors generally" cannot be taken to include only two electors.<sup>24</sup>
- *Elliot Lake* found that while the councillor was part of a neighborhood that would be effected by a 30 million dollar taxpayer-funded recreational infrastructure project, his actions inside and outside of the council chamber and at meetings had breached the *MClA* because his interest as a shopping plaza owner was distinct (i.e. different in kind) from the local residents and even the other business owners and thus not an "interest in common with electors generally."<sup>25</sup>
- *Greene v. Borins* held that a member's property that was of such a physical size and location to readily lend itself to redevelopment give rise to a pecuniary interest clearly distinguished from the interests of individual area homeowners.<sup>26</sup>
- *Davidson v. Christopher* held that the Mayor did not share a common interest with the 145 other property owners in the vicinity of the construction project because his property would need to be acquired.<sup>27</sup>

In application to this matter, Councillor DiMarco has two types of interest. The first type is being a homeowner next to a public trail. That interest is shared equally with the 39+ local neighbors affected by the trail, and thus would satisfy the exemption in section 4(j). The trail project is strikingly similar in size of the affected class to the street improvement on a block given in the *Ennismore* matter. All have the common interest of gaining access to a public trail and the loss of current green space and perhaps more noise or vandalism.

<sup>22</sup> *Ennismore (Township), Re*, 1996 CarswellOnt 154, [1996] O.J. No. 167, 31 M.P.L.R. (2d) 1.

<sup>23</sup> *York. v. Harris*, 2020 ONSC 7361 (CanLII), at [para 58](#) citing *Biffis v. Sainsbury* 2018 ONSC 3531

<sup>24</sup> *Tuchenhagen v. Mondoux*, 2011 ONSC 5398 (CanLII), at [para 43](#).

<sup>25</sup> *Elliot Lake*, 2023 ONSC 223 (CanLII),

<sup>26</sup> *Ennismore*, citing *Greene and Borins*, 1985 CanLII 2137 (ON SC), 28 M.P.L.R. 264 Div. Ct).

<sup>27</sup> *Davidson v. Christopher*, [2017 ONSC 4047](#) (CanLII) at para 22.

However, the project has a second unique impact on Councillor DiMarco, because he has to move the shed which encroaches on public property, akin to property being acquired in *Davidson* or *Greene*, above. We understand that unique impact as a difference in “kind” rather than “degree”.<sup>28</sup> Thus, the shed makes the exemption of 4(j) inapplicable because he does not share that part of his interest with electors generally.

As noted below, when considering our recommendation, we have considered that the applicability of the exemption turns on the existence of the shed which is more than insignificant but not of great value.

### 6.3 - Did the Councillor breach the Preamble, or Section 19, of the Code of Conduct?

No. The Complaint alleges that the Councillor’s actions violate the second “key principle” in the *Code’s* Preamble: “2. Members shall perform their functions with integrity, accountability, and transparency, avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;...”

Similarly, the Complaint alleges that “19.1 All Members shall be aware of and comply with this Code” and “19.2 Members...may become disqualified and lose their seat...for failing to declare a conflict of personal interest under the [MCIA]”.

With regard to both of these provisions, we are of the view, consistent with the prevailing view of Ontario Integrity Commissioners, that statements of principles and similar preamble sections to codes of conduct do not create independent, binding, enforceable rules or obligations on a member of council. Thus, the “key principle” language is not an actual duty on a Councillor, but rather an introductory statement to provide context for the *Code*. In fact, the *Code* states the key principles “under the Code...” Likewise, section 19 refers to the other “breachable” provisions in the *Code* and legislation. Thus, these are not “breachable” as standalone provisions.

However, there are other *Code* sections which directly address the facts and allegations in the Complaint.

### 6.4 - Did Councillor DiMarco breach section 6.0 of the Code of Conduct?

Yes. The *Code’s* core conflict of interest section is 6.1, which provides that “Members shall avoid conflicts of interest in accordance with the [MCIA]...” Because it states “in accordance with”, we understand that it merges the standards of conflict provisions of the MCIA and its exemptions with that of the *Code of Conduct*, so that a violation of the

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<sup>28</sup> The shed also appears to be a red-herring, as the Councillor is required to move it regardless of whether the project goes forward or not.

*MCIA* is also a *Code* violation. Thus our analysis on this point is addressed in the sections above dealing with the *MCIA*.

We note that section 9.2 of Welland's *Integrity Commissioner Procedures* (Revised February 15, 2022) provides, in part, that a Complaint should set forth the facts and "the section(s) of the Code allegedly contravened by the Member." While this Complaint did not specifically mention s. 6.0 of the *Code*, the factual and legal allegations addressed in the Complaint clearly notify the Councillor that a conflict of interest situation is being complained of, and thus the applicable *Code* provisions are at issue. Moreover, while we find above that the Preamble and section 19 are not independently breachable provisions, those sections both reference the impropriety of acting with a conflict of interest. We find that it would be an overly technical and narrow reading of the *Procedures* to disallow this Complaint when two sections of the *Code* were cited specifically mentioning conflict of interest.

We do note, however, a similar but slightly more nuanced analysis of section 13 of the *Code*, below.

#### *6.5 - Did Councillor DiMarco breach section 13.0 of the Code of Conduct?*

We find that section 13 of the *Code* is also triggered by the factual allegations of the Complaint. It deals with "improper use of influence" and is similar to section 6.0, but applies conflict of interest prohibitions to a wider circle of activities. It states in part that "13.1 No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties. Examples of prohibited conduct include the use of one's status as a Member to improperly influence the decision of another person to the private advantage of oneself..." However, s. 13.2 defines that "private advantage does not include a matter: (a) that is of general application; [or] (b) that affects a Member or her/his family member or associate as one of a broad class of persons; or..." (Emphasis added.)

Thus, 13.1 prohibits a Counsellor from acting in a way that advantages only themselves, but then section 13.2 tempers that obligation so that a Councillor can act when benefiting oneself so long its part of a broad class of persons. We find this balancing clause is similar, but more limited, to that found in *MCIA* section 4(j). The difference is that (1) the phrase "of general application" is not defined as it is in the *MCIA* and so it applies to all (or substantially all) electors, and (2) the word "broad" in "a broad class of persons" means that the interest cannot just be shared by a small group residents, such a block, as under the *MCIA*. Thus, under section 13, the Councillor would be prohibited from acting based on his home ownership interests alone, even without the shed.

However, we stop short of a formal finding of a *Code* violation because that section was not mentioned in the Complaint, and we do not believe fair notice was given by citation to the Preamble.

#### *6.6 - Did Councillor DiMarco breach any other section of the Code of Conduct?*

The Complaint alleges that following the January 2023 approval of the trail, the Councillor emailed staff opposing the implementation of the trail. Such actions, if properly detailed, could be a violation of *Code* sections 4.0 (“Members shall show respect for Council’s decision-making process...”) and 18.1 (“Members...are required to obey the spirit and intent of, all City by-laws, policies and procedures.”) However, as the details of these actions and *Code* sections were not detailed in the Complaint, we take such allegations and subsequently supplied emails as to provide background, context, and the flavor of the conflict.

### **7.0 – Decision and Publication under the MCIA**

#### *7.1 – Decision*

Pursuant to the above findings, Integrity Commissioner Anschell and I have determined that the Respondent, Councillor DiMarco, did contravene section 5 of the *MCIA*.

#### *7.2 – Application to a Judge*

Subsection 223.4.1 (15) of the *Municipal Act* requires that upon completion of an inquiry under the *MCIA*, the Integrity Commissioner may, if he or she considers it appropriate, 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 the *MCIA*.

While we have determined that Councillor DiMarco did breach s. 5 of the *MCIA*, in these circumstances, we do not find it appropriate for the Integrity Commissioner to apply to a judge under s. 8 of the *MCIA*. In coming to our conclusion, we have considered the degree of the violation and that this matter can be properly addressed by Council as a *Code* violation, as compared to the tremendous time and expense to the City caused by such an application.

#### *7.3 – Notice to Complainant*

Subsection 223.4.1 (16) of the *Municipal Act* requires that the Complainant (or “applicant” in the words of the *Act*) be notified if an application to a judge will not be made. The Complainant, by being furnished with a copy of this Report, is so notified.

#### 7.4 – Publication of Reasons

Subsection 223.4.1 (17) of the *Municipal Act*, requires the Integrity Commissioner to publish written reasons for such decision. This Investigation Report contains such reasons and shall be published accordingly.

#### 8.0 - Conclusion and Recommendation under the *Code of Conduct*.

Based on the foregoing, we have concluded that Councillor DiMarco has contravened section 6 of the *Code of Conduct*, but not the Preamble or section 19. We have found that sections 4, 13, and 18 may have been triggered by allegations of the *Code of Conduct*, but we decline to make a formal finding for procedural reasons.

It is our recommendation to Council that Councillor DiMarco be formally reprimanded for acting with a conflict of interest in his actions on September 5, 2023.

Consistent with the above, short of making a formal finding or recommendation for the reasons listed above, we nevertheless express our concern with the Councillor's email requests to staff which attempt to stall a project that has been approved by Council. Such actions could be a violation of the *Code*. Likewise, the Councillor's attitude that he will do what is right in his eyes and simply "face the consequences", violates the spirit of the *Code* and ultimately hurts the City, even if his intention is well-meaning.

#### 9.0 – Addendum Regarding the Parties' Response to the Draft Report

The Parties were provided a draft version of this report and an opportunity to respond within 10 business days. Mayor Campion advised that he had no comments. Councillor DiMarco provided a few emails and a three page response.<sup>29</sup> Most of his points do not impact the analysis of whether there was a conflict. I will address his main points:

- Nothing in this report is intended to call into question Councillor's DiMarco's character or imply that he acted with any ill-will or ill-intention. I accept his *intention* was to represent his constituents. However, even with the highest intentions, the issue is whether or not he is deemed to have a conflict of interest under the *MClA* and *Code of Conduct* which would disqualify him from acting.
- While the Councillor "felt that it was concluded that I acted SOLELY on behalf of my constituents not caring one bit of what the personal outcome or caring about my own property...", the test for a conflict under the *MClA* is not a subjective test, but an objective one. That said, we have considered his subjective intentions

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<sup>29</sup> Although the Response to the Draft Report was filed January 8, 2024, one business day after the January 5, 2025 deadline, I have accepted and considered it.

when considering the appropriate recommendation and concluded not to apply to the Superior Court for severe sanctions.

- That various staff members visited the site and even sought his opinion does not disprove whether he “proceeded illegally” or had a conflict of interest.
- While the Councillor submits that typical legislative procedure was not followed such as how the phrase “received for information” was used, such arguments do not affect the analysis of whether or not his property interest and shack encroaching on public property create a conflict.
- The Councillor argues why this project is not needed and poor legislation. Such beliefs, even if true, also do not effect whether there was a conflict.
- The Councillor reiterated points in Mr. Richardson’s submission on his behalf. We received that submission in October. His points were considered and are addressed in the draft report, and this Report.
- Whether or not the Mayor had the right to “claim a COI for someone else” is not the issue before us. It is also a red herring because the Mayor unquestionably did have the right to file a Complaint after in the manner that he did.
- Regarding the Mayor’s concern that “the Councillor is also bringing this matter up with staff”, the Councillor submits that he is “doing my job as a representative of the people who elected me...” That argument fails to consider that under the *MCIA*, if he has a conflict he is prohibited from acting on matters where he has a conflict, regardless of noble intentions.<sup>30</sup> Thus, (1) if he has a conflict then he cannot act, and (2) even when there is a no conflict, if Council has voted on a by-law, it is potentially a violation of the *Code of Conduct* for an individual councillor to communicate with staff for the purpose of defeating or opposing what Council has approved.

Accordingly, the above report remains unchanged.

Respectfully submitted by,

*Jeffrey Shapiro*

Jeffrey Shapiro  
Investigator, Office of the Integrity Commissioner

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<sup>30</sup> As the Report notes, if he did not have the shack encroaching on public property, then he might not be disqualified under the *MCIA*. Even so, it would appear that he may still be prohibited by section 13 of the *Code of Conduct* which is written slightly more broadly than the *MCIA*, as explained above.



**Endorsement and Issuance of Report**

I, Deborah Anshell, Integrity Commissioner for the City of Welland, have reviewed the evidence, process, and results of my delegate, Mr. Shapiro's, Investigation. I agree with and endorse this Report, which we have jointly prepared, in respect of this Complaint, and hereby issue it to the Complainant and Respondent in conclusion of this matter.

*Concluding Remarks*

I trust this Investigation Report provides clarity to the Parties regarding the matters at issue raised in this Complaint. Mr. Shapiro and I thank the Parties for their assistance and cooperation.

This matter is now concluded.



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Deborah Anshell  
Integrity Commissioner, City of Welland