

Principles *Integrity*

Township of Ramara

Councillor David Snutch Conflict of Interest / Code of Conduct Complaint

Recommendation Report

September 16, 2019

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Township of Ramara on May 28, 2018 by the adoption of By-law Number 2018. 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 with all of our client municipalities 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] The Township of Ramara 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.
- [3] Members of Township Council are also governed by the provisions of the *Municipal Conflict of Interest Act*. Both the *Municipal Conflict of Interest Act* and the Code of Conduct are relevant to and form the framework for the matters reviewed in this report.
- [4] 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

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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 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.

- [5] 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 Township of Ramara 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.
- [6] 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.
- [7] 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* (the 'MCIA') would have been required to apply to the courts to seek the imposition of a penalty under that Act. As of March 1st, Integrity Commissioners have standing to make that application on behalf of the complainant.
- [8] While there may be circumstances where integrity commissioners will seek that a penalty be applied by the courts under the MCIA, 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).
- [9] 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

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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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.

- [10] 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.
- [11] 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.
- [12] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the Respondent in this Report to respond to the allegations, and to review and provide comment on the preliminary findings.

The Complaint

- [13] On July 23, 2019, we received a Complaint filed against Councillor Snutch. The Complaint alleges that the Councillor had a conflict of interest contrary to the MCI A when he participated on June 3, 2019 in a closed session meeting regarding billings arising from a fire at 31 Laguna Parkway, because the Councillor’s father is an owner of a unit which was affected by the fire.
- [14] The Complaint further alleges that the Councillor violated the Code of Conduct in reacting with hostility, aggression, and making dismissive and derogatory statements at a meeting on June 21, 2019.

Process Followed for the Investigation

- [15] In conducting this investigation, Principles Integrity applied the principles of procedural fairness, guided in a general sense by the complaint procedure set out under the Code of Conduct.
- [16] This fair and balanced process included 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

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- Notifying the Respondent of the Complaint and seeking his response
- Reviewing the Municipal Conflict of Interest Act and the Code of Conduct
- Reviewing other relevant documentation, Council reports, and interviewing the complainant and relevant witnesses
- Providing an opportunity to the Respondent to review and comment on the draft findings of the Integrity Commissioner.

Background

- [17] The Complainant is a representative and director of a company, Fire Marque Inc., which acts as a 'collection agency'. When the Fire Dept. of a municipality is called out to respond to a fire, the cost incurred by the Fire Dept. can often be claimed under the "loss" provisions of the applicable property insurance.
- [18] Under the terms of the contract with the municipality, the Fire Dept. forwards information regarding such call-outs to Fire Marque. Fire Marque then pursues recovery of the Fire Dept. Charges and Expenses ('call-out costs') directly from property owner's insurance company.
- [19] When insurance companies resist paying claims sought by Fire Marque, they may require 'proof of loss' - proof that the property owner is being held liable for the fire call-out costs. In such cases, Fire Marque will require the municipality to send the property owner an invoice for the call-out costs, indicating unpaid amounts will be added to the owner's property taxes.
- [20] Such letters to property owners – advising them that the outstanding amount may be added to their property taxes – are upsetting to property owners, particularly having just experienced a fire in their home.
- [21] Municipalities who contract with Fire Marque are assured, however, that the property insurance will cover the 'loss' and that no costs will need to be covered by the property owner.
- [22] It is understood between the municipality's administration and Fire Marque that the amounts claimed will never be added to the owner's property taxes. The letter to the property owner serves the sole purpose of triggering the insurance companies' obligations to cover the 'loss' arising from the fire call-out.
- [23] Funds obtained from insurance companies by Fire Marque through this collection method are provided back to the municipality, with Fire Marque retaining a 30% commission. In this way, the municipality collects its call-out costs –a formerly untapped revenue stream – and Fire Marque is compensated for its efforts of collecting on behalf of the municipality.

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[24] The collection transaction is net-neutral for the property owners who are never expected or required to pay any portion of the call-out costs.

The Facts:

[25] On February 4, 2019 a fire occurred at 32-31 Laguna Pkwy in Brechin, in the Township of Ramara. The Ramara Fire Dept. responded to the call-out.

[26] The Laguna property is a condominium and Councillor Snutch's father owns one of the units. His unit was affected by the fire.

[27] On May 27, 2019, Councillor Snutch learned that the condominium corporation had been invoiced for the fire call-out costs.

[28] The invoice, dated May 14, 2019, addressed to Simcoe Condo Corp 85 for 28-31 Laguna Pkwy was for \$26,484.30 with a Due Date of June 13, 2019. The cover letter, signed by the Fire Chief, advised:

"It is also important to note that after 30 days, if the amount of \$29,927.26 remains outstanding, then this amount, will be placed on the property tax roll as per the By-Laws and Section 398(2) of the Ontario Municipal Act."

[29] The Councillor contacted the Fire Chief, who advised that the letter was drafted by Fire Marque for the purpose of prompting insurance companies to pay, and that the Township has not impose such costs on property owners, and would not add it to their property taxes.

[30] On June 3, 2019, one item on the Committee of the Whole Agenda for closed session, Report TR19-19, dealt with additional water billings relating to 31 Laguna Pkwy arising out of the fire. The discussions arising out of this report gave rise to the discussion about the Fire Marque contract. Councillor Snutch did not declare a conflict of interest, and proceeded to participate in the closed session discussion. The Councillor used the opportunity of the discussion to share what he had learned about the Fire Marque contract, about which he believed many members of Council were generally unaware.

[31] At the conclusion of the closed session discussion, a motion was passed to terminate the contract with Fire Marque.

[32] Following the meeting, staff were directed to provide notice to Fire Marque that the Township would be terminating the contract. On June 4, 2019, the Township sent a letter to Fire Marque providing 30 days' notice of termination of the contract.

Alleged Hostile, Aggressive Conduct contrary to the Code of Conduct

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- [33] The Township of Ramara has 7 members of Council. At the beginning of the term, Council appoints members serve on the six Committees. Councillor Snutch serves on the Protective Services Committee of Council.
- [34] On June 20, 2019 Councillor Snutch was asked by the Mayor's office to participate in a meeting between town administration and representatives of Fire Marque which took place June 21, 2019.
- [35] At the meeting, Fire Marque representatives raised the issue of the Councillor's parents being impacted by the fire at Laguna Pkwy, and then attempted to persuade him of the value of their activity on behalf of the Township under their contract.
- [36] While it seems that the Councillor was short with the representatives, and abrupt in dismissing their arguments, we are unable to confirm that he was hostile or aggressive in his behaviour.
- [37] We do not find that his conduct or behaviour in the meeting contravened any of the provisions of the Code of Conduct.

Conflicts of Interest

- [38] The MCI Act applies with respect to the pecuniary interests (direct, indirect and deemed) held by Members of Council. Section 3 of the Act provides that the pecuniary interest of a parent is deemed to be the pecuniary interest of the Member:
- 3.** For the purpose of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.
- [39] The question is therefore whether the Councillor's father had a pecuniary interest in the consideration of the contract between the Township and Fire Marque.
- [40] On the face of it, the Councillor's father, as an owner of a unit in the condominium corporation receiving the letter from the Township, demanding payment for the fire call-out costs, would appear to have an obvious pecuniary interest.
- [41] The letter makes clear that any amounts not paid would be added to property taxes exposing every unit owner to the obligation to pay a share of this cost. This is a pecuniary interest.

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- [42] The Councillor, upon learning of the demand letter, was taken aback that his father, like other Laguna residents – some elderly and on fixed incomes – would receive such an unexpected demand to pay the call-out costs of the Fire Dept. – a fire that put them out of their homes.
- [43] The Councillor did not agree with billing the property owners for the call-out costs and took the letter to the Fire Chief seeking an explanation.
- [44] The Fire Chief explained to the Councillor that the letter was a requirement of Fire Marque, the sole purpose of which is to enable Fire Marque to collect from the property owners' insurance companies.
- [45] The Fire Marque contract had been entered into during the previous term of Council.
- [46] The Councillor was determined to bring the contract, and the invoice, to Council's attention.
- [47] The Councillor was advised that no property owner has ever been forced to pay such call-out costs. He was assured that the Township never would take steps to collect against the property owners.
- [48] The question therefore arises whether the property owners were actually exposed to financial impacts – a pecuniary interest - despite the demand letter.
- [49] If the Councillor's father were not actually exposed to financial impacts as a result of the invoice from the Township or the activities of Fire Marque, then no pecuniary interest would exist for the Councillor's father, and no deemed interest would exist for the Councillor.
- [50] We are assured that no municipality takes steps – other than the demand letter meant to provide 'proof of loss' to the insurance companies – to collect such fire call-out costs.
- [51] However, insurance premiums can be, and typically are, affected by the claims experienced under the policy. A claim under a property insurance policy can certainly result in an increased premium to the property owner.
- [52] Even though the Councillor understood no steps would be taken, beyond the demand letter, to require payment from the unit owners, the exposure to an increase in his father's insurance, resulting from the collection activity by Fire Marque, represents a pecuniary interest to the father, and a deemed pecuniary interest for the Councillor.

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- [53] We find that when the Committee of the Whole convened in closed session June 3, 2019 and discussed the agreement with Fire Marque, the Councillor had a conflict of interest. The actions being taken by Fire Marque, and the obligation imposed on the Township to demand payment from the Laguna Pkwy property owners, raised a pecuniary interest for the Councillor's father.
- [54] Even if there were no intention by the Township to pursue a remedy against the property owners, the fact of the demand letter revealed an ability to financially impact them, and exposure to legal liability for the Fire Dept. call-out costs. Although only a theoretical exposure, it is an exposure none-the-less.
- [55] In addition, the claim for the call-out costs to be covered by the property owner's insurance exposes the property owner to a potential increase in premiums as a result. This raises a pecuniary interest for the Councillor's father.
- [56] We find that the Councillor had a conflict of interest in dealing with the Fire Marque contract which he failed to disclose, contrary to the MCIA.
- [57] Sometimes a member of council learns of an issue because it is brought to their attention by family or friends. When this happens, it is sometimes that case that the member's view of the matter is coloured by the fact their family or friends have been personally impacted. It is for this very reason that the rules around conflicts of interest – both under the MCIA and the Code of Conduct – are in place.
- [58] The public interest demands assurance that council members' decisions are made with the public interest as the priority. For this reason, the rules are strictly interpreted to preclude members of council from participating when any pecuniary interest exists. The rules require the member to declare an interest and step away from participating.
- [59] The Councillor decided to participate in the discussion regarding Fire Marque because he was intent on bringing to the attention of his colleagues a practice which he found distasteful. He saw himself as acting in the public interest. In his view, his father would not have to pay the call-out costs, so no pecuniary interest existed.
- [60] He was not thinking about the impact on insurance premiums; his motivation was to put a stop to the practice of similar demand letters being sent to other property owners, not to impact the circumstances of his father.
- [61] We accept that the Councillor did not believe, or did not agree, that he had a conflict of interest.
- [62] To be clear, the discussion that ensued regarding Fire Marque, resulting in a termination of the contract, would not impact the circumstances of the owners of Laguna Pkwy. In addition, Township staff had advised they did not intend to collect

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the unpaid call-out costs; and Fire Marque had offered assurances to municipalities that insurance premiums do not increase as a result of having to pay claims for call-out costs paid out.

- [63] The Councillor proceeded to participate in the discussion. In the unique circumstances of this case, the Councillor believed he did not in fact have a conflict of interest, despite appearances to the contrary.
- [64] In our view, a conflict of interest exists because the very issue being discussed is the action taken by the Township – cancellation of the Fire Marque contract – arose as a direct result of concerns about the impacts on Laguna Pkwy property owners of the actions taken to collect money under the contract with Fire Marque.
- [65] For this reason, despite the Councillor’s protests that his father would not be impacted financially by the threat to add the amount to taxes (which the municipality would not follow through on), or by increased insurance premiums (which were not supposed to occur), we are of the opinion that the Councillor had a conflict of interest when he participated in the discussion to cancel the Fire Marque contract.
- [66] If nothing else, the fact that the matter arose directly out of the concerns raised as a result of the fire at the Councillor’s father’s property certainly, in our view, create the perception of a conflict of interest which is in the public interest to avoid.
- [67] A demand letter sent by the municipality to a family member of a councillor should be seen as a red flag. It should alert the councillor to declare an interest and step away, or at the very least to seek the advice of the integrity commissioner. The public should not be left wondering the councillor’s motivation, or be obliged to complain in order to seek an explanation.
- [68] In circumstances where the councillor believes no conflict of interest exists, in spite of appearances to the contrary, the councillor ought to make a transparency disclosure – a short statement explaining why, despite outward appearances, he is able to participate in the discussion. Provision for transparency disclosures are made in the form of Code of Conduct generally recommended by Principles *Integrity*. Transparency disclosures allow members of council to publicly acknowledge and explain why, despite appearances to the contrary, the member is able to participate in a matter without a conflict of interest.

Recent Amendments to MCIA Allow Complaint to Integrity Commissioner

- [69] 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.

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[70] 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/applicant brought this allegation to our attention for review and investigation. 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.

No Application Will Be Made to Court By the Integrity Commissioner

[71] 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.

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

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

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- [73] Under the MCI Act, following a determination of contravention of the MCI Act 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
- [74] 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)?
- [75] 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.
- [76] It is our view that no such sanctions are warranted in the circumstances of this case, and therefore no such application will be pursued.

Findings:

- [77] We find that the Councillor had a conflict of interest when he participated in discussion of the Fire Marque contract in the Committee of the Whole convened in closed session June 3, 2019.
- [78] We do not find that the Councillor's conduct or behaviour in the meeting of June 21, 2019 between Township officials and Fire Marque contravened any of the provisions of the Code of Conduct.
- [79] While we find the Councillor contravened the *Municipal Conflict of Interest Act* by failing to disclose a conflict and recuse himself from participation in the discussions around Fire Marque in the closed session June 3, 2019, in our view this is not an instance where any sanction is called for.
- [80] The Councillor, relying on his understanding that his father did not stand to benefit financially from either continuation or cancellation of the Fire Marque contract, failed

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to appreciate that a conflict of interest arose by virtue of his father being an owner of the very property giving rise to the discussion.

Recommendation:

[81] We therefore recommend:

1. That Council receive this report for information, and that it be posted on the Township of Ramara's web site for public access.

[82] We wish to conclude by publicly thanking the parties and everyone else who was asked to participate in our investigation. We express genuine appreciation for the sharing of time, knowledge and opinions by everyone concerned. Our task would have been much more difficult had there been a reluctance to contribute.

[83] We will be pleased to be in attendance when this report is considered to answer any questions.