

Final Recommendation Report
of the Integrity Commissioner
Conflict of Interest Complaint against
Councillor Belanger

June 3, 2019

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Town of Wasaga Beach February 1, 2018 by the adoption of By-law Number 2018-14. 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 Town of Wasaga Beach 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 Town Council are also governed by the provisions of the *Municipal Conflict of Interest Act*. Both the *Municipal Conflict of Interest Act* (the MCIA) 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 education and training for members of council and outreach for members of the

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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 Town of Wasaga Beach 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* 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 *MCI/A*, 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 apply administrative law principles in carrying out a review function under the code of conduct to determine whether a member has breached provisions with respect to the avoidance of conflicts.

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

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[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 named in this Report to respond to the allegations, and to review and provide comment on our preliminary findings

The Complaint

[13] On March 25, 2019² we received a complaint against Councillor Belanger from Wasaga Beach Deputy Mayor Sylvia Bray. The complaint asserts that the Councillor breached the *MCIA* and/or the Code of Conduct in respect to two separate matters.

[14] The first violation allegedly occurred March 14, 2019 at Committee of the Whole when the Councillor participated and voted on the granting of financial support to the Stayner Granite (Curling) Club while a member of that organization.

[15] The second violation allegedly occurred March 21, 2019 when the Councillor participated in an in-camera session at which legal advice was provided regarding by-law enforcement activities against the Marlwood Golf & Country Club, while a member of that organization.

[16] It was Councillor Bray’s view that the matters warranted investigation – that she and other members of council were shocked that Councillor Belanger would participate in circumstances where he had such an ‘obvious’ interest.

Process Followed for this Investigation

² Councillor Bray’s assertions of breach of the *Municipal Conflict of Interest Act* were set out in a statutory declaration dated the same day. The filing of a statutory declaration is a necessary step in proceedings under that statute, though it was ultimately our decision that the public interest was best served by proceeding under the Code of Conduct only.

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[17] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct and the legislative process contained in the MCIA.

[18] This fair and balanced process includes the following elements:

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent of the complaint against him where proceeding on investigation, and providing adequate disclosure of the information we possessed so that he could prepare his response
- Reviewing the Code of Conduct and the *Municipal Conflict of Interest Act*, and documentation including reports, meeting minutes, and reviewing relevant online archived meetings
- Conducting interviews of persons with information relevant to the complaint
- Providing the Respondent with the additional opportunity to review and provide responses to the Integrity Commissioner's draft Findings Report, discussing that report with him, and taking any additional response into consideration prior to finalizing and submitting our Recommendation Report

Analysis of Complaints:

Background and Context:

[19] On March 14, 2019 the Coordinated Committee had before it for consideration the Director, Finance and Treasurer's Report Re: Municipal Grant Program 2019 Allocations. This was Item 6.5.4 on that Report. The report includes as Appendix A a list of organizations who have requested municipal grant support for 2019, and the amount requested. One of those organizations listed is Stayner Granite Curling Club. The amount of the grant applied for is \$5,000.

[20] At the Committee meeting, Councillor Belanger, as Chair, read into the record the declaration of interest made by Councillor George Watson who disclosed that he was a member of the Stayner Granite Curling Club and therefore recused himself from participating in the vote on the grant to that organization. Councillor Belanger did not declare an interest in the matter, and participated in the vote on the entire grant allocation.

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- [21] On March 21, 2019 the Committee of the Whole moved into closed session (in camera) to receive legal advice and an update regarding enforcement activity, including prosecution, against the Marlwood Golf and Country Club. Item 6.1 of the Closed Session Agenda is entitled Tree Cutting By-law and Marlwood Enforcement, and is noted as being in Closed Session pursuant to s.239(2)(f) of the *Municipal Act* as advice that is subject to solicitor-client privilege. The external municipal solicitor, and the private prosecutor retained by the Town attended to provide legal advice and an update on enforcement activity. Councillor Belanger did not declare an interest in the matter, remained in the meeting room during the closed session, and participated in the discussion on the matter.

Municipal Conflict of Interest Act - Indirect Pecuniary Interest

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

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

2. For the purposes of this Act, **a member has an indirect pecuniary interest** in any matter in which the council ... is concerned, if

(a) the member ...

(iii) **is a member of a body that has a pecuniary interest in the matter**

(emphasis added)

- [24] A decision to provide a grant to an organization is a pecuniary interest to that organization. If Councillor Belanger was a member of the Stayner Granite Curling Club (the Curling Club) at the time of the grant application before Committee, then Councillor Belanger, as a member of the 'body that has a pecuniary interest', had an indirect pecuniary interest in the matter. Simply put, if Councillor Belanger was a member of the Curling Club at the time of consideration of the grant application, he had an obligation to declare the interest and to recuse himself from participating and voting on that grant.

- [25] The Marlwood Golf and Country Club (the Golf Club) has been under prosecution for violation of the Tree Cutting By-law and an Order to undertake tree restoration on the property. Both a prosecution and tree restoration order expose the Golf Club to financial implications and therefore constitute a pecuniary interest to the Golf Club. If the Councillor was a member of the Golf Club at the time of the closed session legal advice and enforcement update, then he had an indirect pecuniary interest in the matter, and as such had an obligation to declare the

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interest and to recuse himself from participating in the matter. As the matter was being discussed in closed session, he would also have an obligation to leave the room, so as not to be privy to the discussion.

- [26] Councillor Belanger provided the following explanations for his decision not to declare an interest on each of these matters:
- [27] With respect to the Curling Club, the Councillor advised that while he was a member of the Curling Club for the current year, they were at the end of the season and he had already given notice to the club executive that he would not be renewing his membership for the next season. As he is not a member of the executive, nor does he participate on any committees of the Curling Club, he believes he was not in a conflict of interest.
- [28] With respect to the Golf Club, the Councillor advised that the tree cutting offence, which was the subject-matter of the closed session legal and prosecution update, had occurred some time ago. He was not a member of the Golf Club at the time of the offence, and has not been a member during the preceding five or six years. He had only just purchased a membership late last year, and as the club had not yet opened for the season, in his view the membership had not taken effect at the time of the March 21, 2019 meeting at which the matter was discussed. He advised that he had not even completed the required membership documents. As such, he believes he was not a member at the time of the meeting, and as such, believes he was not in conflict of interest.
- [29] The MCIA is the governing legislation, and provides a statutory framework for determining when a member of municipal council (or local board) may be in a conflict of interest. Until recently, the only remedy available to an elector seeking a determination of whether a member of council has contravened the MCIA required an application to court.

Recent Amendments to MCIA Allow Complaint to Integrity Commissioner

- [30] 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.
- [31] 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.
- [32] The relevant provisions under the *Municipal Act* are as follows:

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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 *MClA*, 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.

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

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

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

[35] Councillor Belanger has did not believe that he was a member of the Curling Club on March 14, 2019 when the Committee considered the grant applications which included the Curling Club as a grant applicant.

[36] The recent SEGBAY decisions are illustrative of the court’s interpretation around whether a member of an organization who intends not to renew their membership may rely on that intention in avoiding the conflict of interest obligations under the *MClA*.

[37] In *Cooper v. Wiancko*, three members of council who were members of SEGBAY participated in the vote when Council gave SEGBAY a \$5,000 grant. Two of the councillors submitted that they did not renew their memberships for the current year, did not pay their renewal fees due November 1st, 2016 and did not believe they were still members on January 9, 2017 when the grant application came before Council.

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- [38] However, the members failed to follow the SEGBAY by-laws requiring written notice of resignation. The court strictly interpreted the requirements to find that the two members who believed they were no longer members of SEGBAY were, in fact, members in good standing on the relevant date. “Their subjective understanding of their membership status, even when confirmed by SEGBAY’s President, is not relevant to this question [of membership] although it may be relevant to other aspects of this analysis.” (*Cooper v. Wiancko*, para.75)
- [39] So SEGBAY stands for the proposition that a strict interpretation of membership is appropriate.
- [40] We find that Councillor Belanger was a member of the Curling Club on March 14, 2019 at the time the grant application was considered. The fact that he did not intend to renew his membership, and that it was the end of the season, does not in our view alter this fact.
- [41] With respect to the Councillor’s membership in the Golf Club, it is his position that even though he had purchased the membership at the Rotary Club Gala late last year during a live auction, and thereby clearly expressed the intention of being a member, he had not yet completed the required documentation, and the membership ‘does not take effect until the club opens later this spring’.
- [42] In our view, the Councillor’s positions are internally inconsistent. It is inconsistent for him to believe his intention to end his membership with the Curling Club relieved him of an indirect interest as a member of that club, while his intention, and payment, to join the Golf Club did not impose on him an indirect interest as a member of that club.
- [43] A reasonable person, fully aware of the facts and circumstances, would conclude that a person who has paid the membership fee for a golf club, absent any indication that there would be a barrier³ to joining beyond the payment of the fee, would reasonably be considered a ‘member’ even though the registration paperwork has yet to be completed and even though the golf season has yet commence.
- [44] We find therefore that the Councillor was, on the facts before us, and for the purpose of determining whether he had a conflict of interest, a member of both clubs on the pivotal dates.

³ There is no indication that memberships are dependent on anything but the payment of the fee

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Code of Conduct

- [45] As noted above, in addition to the MCIA members of Council are governed by their Code of Conduct. The Code of Conduct adopted by Council for the Town of Wasaga Beach requires members to avoid conflicts of interest and directs members to the prohibitions contained in the MCIA. The Code addresses the broader common law concept of conflicts of interest, and requires members to refrain from participating in decision-making processes when they have a 'disqualifying interest' in a matter.
- [46] A 'disqualifying interest' is defined in the Code as:
- “an interest in a matter that, by virtue of the relationship between the Member of Council and other persons or bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member of Council could not participate impartially in the decision-making processes related to the matter.”⁴
- [47] The Code of Conduct also provides extensive commentary to guide members in understanding their obligations under the Code. The commentary under the provision dealing with avoiding conflicts of interest encourages members to seek advice from the Integrity Commissioner regarding potential conflicts of interest.
- [48] Having found that the Curling Club had a pecuniary interest in the matter of the \$5,000 grant under consideration by Council, we find that the respondent

⁴ The operative provisions read as follows:

1. Members of Council shall not participate in the decision-making processes associated with their office when prohibited to do so by the Municipal Conflict of Interest Act.
2. Members of Council shall not participate in the decision-making processes associated with their office when they have a disqualifying interest in a matter.
3. For greater certainty:
 - a. Members of Council shall not participate in the decision-making processes associated with their office when they have a direct, indirect or deemed pecuniary interest in a matter, except in compliance with the Municipal Conflict of Interest Act.
 - b. Members of Council shall not participate in the decision-making processes associated with their office when they have an interest that though in compliance with the Municipal Conflict of Interest Act, is nevertheless a disqualifying interest by virtue of the nature of the relationship between the Member and other persons or bodies to be affected by the decision.

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member, as a member of the Curling Club, had an indirect pecuniary interest in the matter by operation of law under the MCIA. The fact that he had decided not to renew his membership the following year did not relieve him of this interest. At the time the grant was under consideration before Committee, he was a member.

- [49] Similarly, having found that the Golf Club had a pecuniary interest in the matter of enforcement by the Town against the Golf Club for violation of the Tree Cutting By-law, we find that the respondent member, as a member of the Golf Club, had an indirect pecuniary interest in the matter by operation of law under the MCIA. The fact that he had only recently become a member, and that the club had not yet opened for the season, did not relieve him of this interest. At the time the legal update regarding prosecution of the Golf Club was provided, in closed session, he was a member.
- [50] Even if the Councillor were correct in his assertions - that his intention not to renew membership in the Curling Club or that his membership in the Golf Club had not yet taken effect – the Code of Conduct applies a common law approach to conflicts of interest. That approach, guided by common law jurisprudence, invokes the “reasonable person” test: what would a reasonably well-informed person believe about whether the member could participate impartially in a decision on the matter?
- [51] Would a reasonably well-informed person believe that the Councillor, as an outgoing member of the Curling Club, would be able to impartially consider the Curling Club’s request for a \$5,000 grant during consideration of the allocation and distribution of finite grant funds? Put another way, might a reasonable person believe the Councillor could favour the club in which he was a member?
- [52] We think that a reasonably well-informed person would believe that the Councillor might favour his own club, even if he were not intending on continuing his membership. On this basis, we find that even if the Councillor’s membership had concluded in the days just prior to the date in question (which we do not find is the case), his failure to declare a disqualifying interest represents a violation of the Code of Conduct.
- [53] Similarly, would a reasonably well-informed person believe that the Councillor, as an in-coming member of the Golf Club, be able to impartially consider the enforcement action against the Golf Club? It is not inconceivable that the financial impacts of enforcement – a fine, any appeal, a tree restoration order – would potentially impact membership through fees. Might a reasonable person believe the Councillor could favour the club in which he was a member in any instructions the Town might give, in that regard?
- [54] We think that a reasonably well-informed person would believe that the Councillor might favour his new club. On this basis, we find that even if the Councillor’s

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membership paperwork had not yet been completed on the date in question, his failure to declare a disqualifying interest represents a violation of the Code of Conduct.

- [55] We find that the Councillor's participation in both the consideration of the grant application regarding the Curling Club, and the closed session meeting at which the legal update was provided regarding the prosecution of the Golf Club, caused the Councillor to be in a conflict of interest in contravention of the MCIA and under the Code of Conduct.

No Application Will Be Made to Court By the Integrity Commissioner

- [56] 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.

- [57] 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

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

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

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- [59] 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 sanction, if any?
- [60] 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.
- [61] It is our view that no such additional sanctions are warranted in the circumstances of this case, and therefore no such application will be pursued. The Integrity Commissioner has advised the complainant/applicant, as required by the legislation, that no application will be made by the Integrity Commissioner to a judge in this matter.

Summary of Findings

- [62] We find that the Councillor had a conflict of interest when he failed to declare an interest and participated in the vote on the \$5,000 grant application by the Curling Club, because he was a member of that body. We find that this contravened both the MCIA and the Code of Conduct.
- [63] We find that the Councillor had a conflict of interest when he failed to declare an interest and participated in a closed session where a legal and prosecution update was provided regarding enforcement activity against the Golf Club, because he was a member of that body. We find that this contravened both the MCIA and the Code of Conduct.
- [64] While we do not find that these contraventions warrant an application to a judge, they do warrant a sanction.
- [65] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. This report is not simply the sum total of analysis of fact and law. Our role is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.
- [66] In our view it is in the public interest to discourage members of council from failing to recognize and understand their obligations under both the MCIA and the Code

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of Conduct. In our view, the Councillor's failure to seek advice, before deciding on his own that he was not in a conflict on either of these situations, was misguided and ill-advised.

- [67] While Integrity Commissioners are not the only source of guidance when confronted with ambiguity or a 'grey' area in interpreting members' obligations under the MCIA or the Code of Conduct, an important purpose in the new legislative framework of making an Integrity Commissioner available to municipal councillors is to encourage members to seek competent advice in a timely manner. Education and advice are equally if not more important aspects of this accountability office as investigations.
- [68] Nevertheless, the public looks to the Integrity Commissioner as a mechanism to remind members of their obligations, to provide course correction where possible, to recommend sanctions if applicable. In the matters addressed in this report, members are reminded to obtain advice if faced with facts where their membership in an organization may give rise to an indirect interest, before participating in the matter under consideration.
- [69] Following the Councillor's review of our Preliminary Findings Report, we took the opportunity to explain the appropriate interpretation of the conflict of interest obligation. In particular, it is important for Members to understand that an interest arises whenever a Member of Council has before them a matter which is of pecuniary interest to a club, association or other body in which the Member has membership.
- [70] The Member's obligation is to comply with both the MCIA and the Code of Conduct. Indeed the Code of Conduct makes this clear by incorporating as one of the operative provisions under Rule 1, Avoidance of Conflicts of Interest:

1. Members of Council shall not participate in the decision-making processes associated with their office when prohibited to do so by the Municipal Conflict of Interest Act. ...

- [71] As the Code requires, we place ourselves in the shoes of the 'Reasonable Person' in order to draw our conclusions. The reasonable person test is an objective test long understood in law. The test asks us to consider "what would a reasonable person, fully informed of the facts" believe. Our findings show that a fully informed reasonable person would conclude:

With respect to the Curling Club membership:

- That Councillor Belanger was a member of the Stayner Granite (Curling) Club on March 14, 2019. Notwithstanding his intention not to renew his membership, and the fact that he did not serve in any management capacity

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in the organization, he was a member of the organization at that time. (A reasonable person would also conclude, though it would not be necessary to do so, that the curling season in any event had not yet ended, the club calendar showing events through to the end of March).

- That even under the more strict interpretation of membership as shown in the SEGBAY decisions, a court, were it asked to determine the question of membership in an MCIA application (which is not the case here), would still find that the Councillor was a Member.
- That the Stayner Granite (Curling) Club had a pecuniary interest in the grant application involved in the March 14, 2019 decision of Council.
- That by operation of law (the MCIA), Councillor Belanger had a statutory conflict of interest when he participated in the March 14, 2019 decision of Council to grant funds to the Stayner Granite (Curling) Club while being a member of that body.

With respect to the Golf Club membership:

- That for the purpose of determining whether he had a conflict of interest, that Councillor Belanger became a member of the Marlwood Golf & Country Club when he paid to join the club in the fall, with the intention of becoming a member of the club. That having paid the amount for the membership fee in the fall, he had a membership status with the Club.
- That the Marlwood Golf & Country Club had a pecuniary interest in the by-law enforcement activities being the subject of the March 21, 2019 closed meeting of Council.
- That by operation of law (the MCIA), Councillor Belanger had a statutory conflict of interest when he participated in a closed meeting discussion on March 21, 2019 regarding by-law enforcement matters relating to the Marlwood Golf & Country Club, while being a member of that organization.

[72] Accordingly, Councillor Belanger was not in compliance with the Code of Conduct requirement to avoid conflicts of interest. He had, in both instances, a disqualifying interest and he failed to avoid the resulting conflict.

[73] It is not necessary that a matter will 'put money in the Member's pocket' for a conflict of interest to arise. This is because the MCIA defines such matters as an indirect interest of the Member. There is no requirement or expectation that there be any quantifiable financial gain traced to the Members. Citizens, observing a club member on Council who participates in such a matter, are inevitably left to wonder whether the Councillor is favouring the club in which they are a member. The rule averts this entirely.

[74] Put another way, citizens should not have to decipher whether the Councillor is somehow motivated in their position by membership in a club, association or body. The rules are in place to obligate the Councillor in such situation to step

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away – without prompting, without quantifying, and without justifying. It is a simple, effective rule to protect the public interest.

- [75] The reasonable person test is an objective test. It was not sufficient for Councillor Belanger to conclude, in his own mind, that the interests described above were not applicable to him; it was not sufficient for him to conclude that he was not affected by them when he participated in the discussions. Those subjective conclusions are insufficient to address the public interest imperative that Members of Council do their best to avoid what a reasonable person would conclude amounts to a conflict of interest.
- [76] The Code provisions and the MCIA's requirements were all matters that Council received training on. He knew that where clarification or interpretation was required, our office was available to provide advice. In the case of the Curling Club matter, he was in the chair when another member of Council made a declaration on the basis of his membership in the club. Even if the test was a subjective one, we see no basis for the Councillor's conclusion that he did not have a disqualifying interest in the matters. At the very least, if he felt compelled to participate, he should have first reached out for advice.
- [77] Further to our conversation with Councillor Belanger pertaining to our Preliminary Findings Report, we are hopeful that the Councillor's obligations and opportunities to resolve them are now recognized and better understood.

Recommendations:

- [78] The Integrity Commissioner may recommend that certain sanctions be imposed when a complaint has been sustained. The purpose of a sanction is to reinforce Council's ethical framework.
- [79] A monetary penalty, although not remedial, can serve as a deterrent.
- [80] The rules around conflicts of interest under both the MCIA and the Code are in place to protect the public interest. The rules in place obligate the Member, finding himself in such situation, to step away – without prompting, without quantifying, and without justifying. It is a simple, effective rule to protect the public interest.
- [81] In contemplating an appropriate sanction for the contraventions which arose by the Councillor's failure to recognize and disclose the two conflicts of interest, we have considered the following:

Principles *Integrity*

- For all Members of Council, seeing a matter on the Agenda that involves any club, association or other body in which they hold membership should send up a red flag
- Members of Council are in the best position to see the red flag – they know what clubs, associations and bodies in which they hold membership
- When in doubt, Members should seek advice and guidance
- With access to an Integrity Commissioner, there is no good reason not to obtain timely, reliable and binding advice
- The public should be able to rely on Members to follow the rules, seek guidance where required, and act accordingly
- Where a Member chooses to act contrary to the rules, either because they disagree with the rules, or because they choose not to seek advice, a sanction is appropriate and in the public interest

[82] With respect to our findings that Councillor Belanger was in a conflict of interest on two separate matters, contrary to both the MCIA and the Code, we recommend a 10-day suspension of pay.

[83] We therefore recommend:

1. That Council receive this report for information, and that it be posted on the Town of Wasaga Beach web site for public access;
2. That Council pass the following resolution:

That having been found to have breached the Municipal Conflict of Interest Act and the Code of Conduct for Members of the Council of the Town of Wasaga Beach, the remuneration paid by the Town to Councillor Belanger be suspended for a period of ten (10) days commencing with his next pay period.

We wish to conclude by publicly thanking those who participated in our investigation.

We will be pleased to be in attendance when this report is considered to answer any questions you may have relating to its contents.