

Report of the Integrity Commissioner
To the Township of Morley Council

Regarding Allegations of Violation of the Municipal Conflict of Interest
Act, Against Reeve Telford Advent

Rosalie A Evans
Integrity Commissioner
Township of Morley
June 23, 2023

BACKGROUND

A complaint was submitted on January 20, 2023, by Mr. Bruce Nielson (through his solicitor, Douglas Judson), resident of the Township of Nipigon, against Reeve Telford Advent, Councillor Jamie Beal, and Councillor Paul Brown.

There were several allegations of wrongdoing in the complaint. Most of the allegations centered around violations of the Township's Code of Conduct for Councillors. These were investigated and reported on by Integrity Commissioner Patrick Giles. Mr. Giles declined to report on the Municipal Conflict of Interest Act allegations, and this Integrity Commissioner was engaged to investigate and report solely on those matters.

Reeve Advent, Councillor Beal and Councillor Brown had been appointed to the Township's "Roads Committee" after the municipal election in October 2022.

Mr. Giles' report, previously submitted to the Township, had concluded that the "Roads Committee" created by Council, consisted of three appointed Council members (out of a total council composition of 5 members). Accordingly, whenever the Roads Committee met, there was, technically (although not, apparently, recognized by the Township) a meeting of the Council, because the Roads Committee consisted of a quorum of the Township Council. As a result, all of the Roads Committee meetings were held in violation of the Township's procedural by-law. No notice was provided to the public; no clerk was present; and no minutes were taken or published.

Whether or not the Council of the Township and/or the staff of the Township understood or appreciated that these meetings were, technically and at law, meetings of the Council, the meetings were, in fact, held contrary to law, whenever all three members were in attendance. There should have been public notice; there should have been a clerk recording meetings, with minutes published, etc.

This Integrity Commissioner's role is to investigate the allegations of violation of the MCIA that are outlined in the complaint.

It is noted that, prior to the October, 2022 municipal election, the five members of the Township Council were:

- Reeve Heyens
- Councillor Armstrong
- Councillor Vandenbrand
- Councillor Jolicouer
- Councillor McCormick.

After the election, and after they had been sworn in to office, the five members of the Township Council were:

Reeve Advent
Councillor Brown
Councillor Beal
Councillor McCormick
Councillor Armstrong

A majority of the Council had changed after the 2022 election. Only 2 of the 5 prior Council members were returned to office.

The events outlined in the complaint took place shortly after the new Council members took office.

LEGAL FRAMEWORK/JURISDICTION

Rosalie Evans has been appointed as an Integrity Commissioner for the Township of Morley. As such, under the authority of Section 223.4.1 of the Municipal Act, 2001 (S.O. 2001, c. 25, as amended), she has authority to investigate and report to Council on allegations of violations of the MCIA.

As noted, another Integrity Commissioner has investigated the allegations of breach of the Council Code of Conduct. Mr. Giles determined that, the Township having established a committee of Council that was comprised of a quorum of Council, the Township's procedural by-law was violated when the committee met without notice and without a clerk in attendance, and without minutes being taken/published. His report is inconclusive on any other alleged violations of the Council Code of Conduct.

The remaining issue within the submitted complaint document that falls within the Integrity Commissioner's jurisdiction is that of an alleged violation of the MCIA.

COMPLAINT

The complaint is 22 pages in length. As noted, it is largely concerned with Code of Conduct violations. The information cited to support the Municipal Conflict of Interest Act allegations are found in paragraph 28 of the complaint, which reads as follows:

28...the Complainant learned that Reeve Advent had continued his interference with the work of administration – and specifically of the Public Works Superintendent. He learned that Reeve Advent had called Brad Brennan (see footnote 1) and asking (sic) him to plow snow in the North Branch area of the municipality. Mr. Brennan owns a logging company, and he informed the Reeve that he had never run a grader before. Mr. Brennan also told Reeve Advent that he was not interested in being on anyone's payroll. Reeve Advent offered to have the municipality pay his logging company \$30 per hour and put it through the municipal books as a truck rental.

Allegations relating to the breach of the Municipal Conflict of Interest Act are found in paragraphs 75 through 78 of the complaint, which read as follows:

75. In addition to the above *Code of Conduct* violations, the Complainant flags for the Commissioner that the actions of the Reeve call for investigation and possible sanctions under the *MClA*. The *MClA* prohibits a member from engaging in any matter through a meeting of council in which they have a pecuniary interest.

76. It is apparent that the December 14, 2022 confrontation with the Complainant was a meeting, within the meaning of section 238 of the *Act*. Immediately after this meeting, the Reeve set about contacting third parties and making arrangements to remunerate them from the municipality (which he has no authority to do).

77. By personally cutting deals with contractors on behalf of the municipality and then making efforts to conceal the nature of the goods and services purchased, the Reeve was using his public office to create a personal pecuniary relationship between himself and Mr. Brennan.

78. The Complainant urges the Commissioner to investigate these serious concerns and to commence the necessary proceedings in the Ontario Superior Court of Justice as necessary.

PROCESS

This Integrity Commissioner was engaged for this matter on April 26, 2023. She requested and received from the Township's Clerk, Ms. Teresa Desserre, relevant documents for review. Received were the complaint document, and Mr. Giles' report (dated March 28, 2023), as well as contact information for the three council members named in the complaint, and the private citizen also referenced.

This Integrity Commissioner interviewed (by telephone) the Complainant's solicitor, Mr. Judson, the Reeve, Telford Advent, and the private citizen involved, Mr. Brad Brennan. She also had email exchanges with the Township's clerk, Teresa Desserre. After these discussions, she determined it was not necessary to contact the other two named respondents, Councillors Beal and Brown, in order to make her conclusions.

EVIDENCE

Interview with Mr. Judson:

Mr. Judson confirmed the Integrity Commissioner's understanding that the factual MCIA allegations were in paragraph 28 of the complaint, and that the details were in paragraphs 75 through 78 of the complaint.

The fact that the MCIA applies to actions at council meetings (or attempting to influence council meeting decisions "behind the scenes") was discussed. Mr. Judson pointed out that the decision to contact Mr. Brennan may have been made by the Roads Committee, rather than by any one individual member of that Committee (i.e. Reeve Advent), and, as such, may have stemmed from a meeting of Council (due to quorum being present). In such circumstances, the MCIA would apply.

The Integrity Commissioner asked Mr. Judson what evidence he was relying on to allege a pecuniary interest between Mr. Brennan and Reeve Advent (or either of the other two Respondents). He advised that he did not have that evidence, and understood that the Integrity Commissioner's investigation should determine whether or not any such evidence existed. The allegation is that Mr. Brennan and Reeve Advent either work together or in competition with one another.

Interview with Reeve Advent:

Reeve Advent advised that he is not in business; he is retired. He does, however, do occasional carpentry work for people. He does not own any commercial enterprises. None of his family members have any monetary connection to Mr. Brennan.

Reeve Advent advised that, at the "Roads Committee" meeting (technically a "council meeting") that took place on December 14th, 2022, with the Complainant, the Complainant was asked whether he had contacted anyone to assist with snow clearing in winter, given the large geographic size of the municipality, and the Complainant being the sole Township employee capable of undertaking this work. [Reeve Advent advised that there is a central municipal garage, but that there is another "satellite" municipal garage in which a grader is kept, together with fire response vehicles/equipment, which is approximately 20 miles from the central garage.] The Complainant (allegedly) responded that he had not contacted anyone, as he believed there was no one available.

Reeve Advent stated that, given the forecasted snow for the area, he asked the Complainant whether the Complainant would be amenable with the Reeve contacting potential persons to assist with snow clearing, particularly in the north part of the municipality (near the satellite garage). Reeve Advent said that he believed that the situation was dire, in that the forecast for the next few days involved snow, and there was at least one person employed in a medical

and/or paramedical field living in the area of the satellite garage who would need the roads cleared in order to attend to their work. He felt that the Complainant would need assistance in snow clearing.

Reeve Advent stated that the Complainant responded that the Reeve was welcome to try to find someone, as he (the Complainant) did not believe there was any such person available.

Reeve Advent advised the Integrity Commissioner that he was aware that the Clerk maintained a “list” of persons available to assist the Township in this manner; that the Complainant was aware of this “list”, but that the Reeve believed that, for some unknown reason, the Complainant had chosen not to use this list to attempt to obtain assistance. Reeve Advent also stated that this list of potential contractors available to assist the Township had been discussed at a (recognized) Council meeting at some point prior to December 14, 2022.

Reeve Advent advised the Integrity Commissioner that, of the persons on the contact list, he contacted Mr. Brennan first, because his residence was closest to the “satellite” municipal garage, which housed the grader that would be required to clear the roads in that area of the Township. Mr. Brennan stated he would assist, and he did so – but only on one occasion.

Thereafter, another person on the list, named Curtis Berg, was hired by the Township for clearing roads of snow in the area of the satellite garage, and that person remained in that position (part-time; on-call) for the balance of the 2022-2023 winter season.

Interview with Mr. Brad Brennan :

Mr. Brennan advised that he is not in business; he is retired. He does chop/sell firewood from time to time. He does not own any commercial enterprises.

He acknowledges having been contacted by the Reeve in December of 2022, and having engaged in snow clearing operations for the Township on one single occasion. He agreed to assist his community when asked to, but was not interested in any long-term commitment.

He denies that he has any commercial connections with the Reeve, or with any other members of the Township Council, or with any of their family members.

Document Review:

a) Complaint Document:

Relevant excerpts from the complaint document are cited above.

b) Report of Mr. Patrick Giles:

Most of the Code of Conduct allegations were dealt with by Mr. Giles as follows:

From my review of the Complainant Document and the discussions with the Complainant and each of the Respondents there are significant differences of opinion in what actually occurred at the meeting. Therefore, it is extremely difficult to determine what possible breaches of the Code of Conduct may have occurred.

Mr. Giles did, however, conclude that the Township's Procedural by-law had been violated because the "Roads Committee" actually constituted a quorum of Council, and, as such, its meetings were technically council meetings, but were not properly treated as such in accordance with the Procedural by-law (and Municipal Act, 2001) requirements.

c) Emails from Ms. Teresa Desserre:

Ms. Desserre was contacted for corroboration of some of the statements made by Reeve Telford (without having advised her that was the purpose of the contact).

Ms. Desserre confirmed that the Township maintains a list of "spare operators". Mr. Brennan was on the list as someone who might supply equipment; but not actually as a spare operator. Mr. Brennan did assist the Township on one occasion in December of 2022, and he was paid as a contractor; not as an employee, for this assistance.

Mr. Brennan had, historically, as a self-employed contractor, done occasional work for the Township.

Mr. Curtis Berg has been on the "spare operators" list for several years. He was, indeed, engaged by the Township as a part-time/on-call operator.

d) Weather Reports

Based on comments by Reeve Advent, weather data was obtained for Morley Township for December, 2022. This was undertaken to confirm the Reeve's statements that he was concerned about snow plowing given that a winter snow fall had been forecasted.

Data indicates that, on December 13th, 2022, there was no precipitation, and the temperature hovered between -1 and +1 degrees Celsius.

Data indicates that, on December 14th, 2022, there was snow throughout the morning, and the temperature hovered between 0 and +2 degrees Celsius.

Data indicates that, on December 15th, 2022, there was snow between 12 a.m. and early morning (ending by noon), and that the temperature hovered between -2 and 0.

e) Township Council Minutes

Given Reeve Advent's comments that the list of spare operators had previously been discussed at Council meetings, the Integrity Commissioner researched website-published minutes of Council meetings during the fall/early winter of 2022. The only references she could find to snow clearing were in the minutes of the Council meeting held on October 11th, 2022 (prior to the 2022 election), and the comments did not have any relevance to this matter. The minutes do not record discussion of any "list" of persons willing/able to assist with snow clearing.

Township Council minutes primarily (and properly) record resolutions passed by the Council, and rarely, record discussion that is not resolution-based. That is accepted practice. If the list of "spare operators" was discussed at a Council meeting, it did not relate to a resolution of Council and, as such, the minutes do not (and should not) disclose the discussion.

The Reeve on October 11th, 2022, was Reeve Heyens. The minutes of the Council meeting that date indicate that 3 of 5 Council members were present at the meeting, as was the Complainant. Snow clearing discussed related to advertising for tenders for "Senior Citizen Lane Plowing in the Village of Stratton", and hiring "Ted Heyens to do snow removal" for certain sidewalks/walkways.

These minutes also indicate that one application for "spare grader operator" was received, and that the Complainant was directed to contact the applicant.

ANALYSIS & FINDINGS

The sole issue, from an MCI perspective, is whether any of the respondents had a "pecuniary interest" in engaging Mr. Brennan to assist with road snow clearing. If they did, they were obligated to disclose the interest and not to participate in any Council debate relating to the matter.

There is no evidence to support that allegation.

Mr. Brennan is retired – he agreed to assist the Township on one occasion (at the behest of the Reeve) with snow removal. As a retiree, there is no potential business or financial connection between Mr. Brennan, the Reeve, or the other two Respondents.

Whether or not all three of the "Roads Committee" members agreed that the Reeve should approach Mr. Brennan, or whether the Reeve decided to approach him without consulting other members of Council, is irrelevant to the determination of whether the MCI was violated where there is no evidence of a pecuniary interest.

CONCLUSION

The complaint against Reeve Advent for violation of the Municipal Conflict of Interest Act is not substantiated.

While the Complainant and the named Respondents are obligated to assist the Integrity Commissioner, the individual named (Mr. Brennan, did not share such an obligation, and the Integrity Commissioner would like to thank him for his time in discussing the matter with her.

Respectfully Submitted



Rosalie A. Evans

Footnotes:

1. Mr. Brennan's name was spelled several different ways in various documents. This spelling is assumed throughout this report, with apologies if it is incorrect.

Encl. Appendix One: Relevant Excerpts from the Municipal Conflict of Interest Act

APPENDIX ONE: Relevant Excerpts from the Municipal Conflict of Interest Act

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.

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

Exception, consideration of penalty

(2.1) The following rules apply if the matter under consideration at a meeting or a part of a meeting is to consider whether to suspend the remuneration paid to the member under subsection 223.4 (5) or (6) of the *Municipal Act, 2001* or under subsection 160 (5) or (6) of the *City of Toronto Act, 2006*:

1. Despite clauses (1) (b) and (c), the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.
2. Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration.

When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1).

Written statement re disclosure

5.1 At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be.

Influence

5.2 (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 that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not

use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

Exception

(2) However, if a municipality delegates a power to suspend the remuneration paid to a member under subsection 223.4 (5) of the *Municipal Act, 2001* or subsection 160 (5) of the *City of Toronto Act, 2006* to a person or body, and the person or body is considering exercising that power with respect to a member, subsection (1) of this section does not prevent the member from attempting to influence any decision or recommendation of the person or body that results from consideration of the matter.