

Recommendation Report  
of the Integrity Commissioner  
Respecting Complaints against Councillor McGinn  
July 8, 2020

**Introductory Comments**

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Town of Midland February 1, 2019. 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 Midland 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* 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 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

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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 Midland 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] 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.
- [7] 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.
- [8] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondents named in this Report to respond the allegations, and where findings were made, to review and provide comment on the preliminary findings

### The Complaint

- [9] This Report responds to a complaint filed by Deputy Mayor Ross against Councillor McGinn on April 4, 2020 alleging that Councillor McGinn had participated in a closed meeting discussion while in a conflict of interest, thereby breaching the Code of Conduct.

### Process Followed for this Investigation

- [10] 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.
- [11] This fair and balanced process includes the following elements:

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- 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, conducting a virtual meeting with her, and providing her with an opportunity to respond in full to the allegation
- Reviewing the Code of Conduct and other documents
- Conducting interviews, as necessary, of persons with information relevant to the complaint
- Reviewing records, including human resources records, of the municipality
- Providing the Respondent with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report, and taking those comments into consideration prior to finalizing and submitting this Recommendation Report.

### Background and Context:

[12] On April 1, 2020 Report CAO-2020-01, *Employee Impact of COVID-19 and Possible Changes to the Weekly Schedule*, was considered by Council in closed session. The report was listed on the Council Agenda for discussion as Closed Session Item 4.1, "Essential and Non-Essential Services".

[13] The Report provided options for Council to consider with respect to cost-control measures in the face of the COVID-19 Pandemic.

[14] The options included consideration of potential for layoffs of some of the unionized employees of the Town of Midland.

[15] The Respondent acknowledged that she is in a long term permanent intimate relationship with a unionized employee of the Town of Midland, who could potentially be impacted by some of the options before Council for consideration.

### The Nature of the Respondent's Relationship with the Employee:

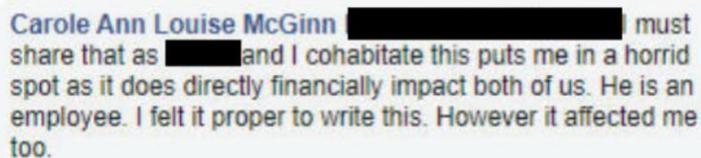
[16] The Respondent disputes our characterization of her relationship with the employee, and so we have chosen to describe it below to provide background and context. Because the relationship is a non-traditional one, and there are other parties involved, we are circumspect in the amount of detail provided.

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- [17] At issue is whether the employee is amongst the class of persons whose interests would be deemed to be the Respondent's interests under the Town's Code of Conduct (and therefore amount to a Disqualifying Interest) and under the *Municipal Conflict of Interest Act*.
- [18] Paragraph [60] of this report sets out the *Municipal Conflict of Interest Act* requirement to declare an interest that is derived from a family relationship. The Act defines "spouse" to mean a person to whom a person is married or **with whom a person is living in a conjugal relationship outside marriage**. (emphasis added)
- [19] During the course of our interview with the Respondent, we were advised that she did not live with the employee, but that he was her "life partner". For this reason, she did not consider the employee her spouse.
- [20] She advised us that he is her long-term permanent intimate partner, but not her spouse, and as such, she did not believe that she had a conflict of interest in participating in matters in which he had an interest.
- [21] We advised that in our view, a long-term "life partner" relationship would give rise to a disqualifying interest even if people did not live together.
- [22] The Respondent took the position that she and the employee were not 'spouses', as that term is understood by Revenue Canada and instead described a close, if somewhat unconventional, personal relationship. We make no finding as to whether the analysis may true for taxation purposes; in any event the analysis is not fully applicable to conflict of interest matters.
- [23] The Respondent has advised us that she is polyamorous. Whether she is involved in consensual non-monogamous intimate relationships is not germane to this report. Our findings and analysis focus only on whether the nature of the Respondent's relationship with the employee gives rise to a breach of the Code, or the *Municipal Conflict of Interest Act*, respecting her duty to avoid conflicts of interest.
- [24] The Respondent's position that she is polyamorous does not, in our view, alter our finding that her domestic partner is her spouse under both the Code and the MCIA. It may be that the Respondent is involved in other personal intimate and loving relationships which, even while not living with the person, could also give rise to an apparent conflict of interest under the Code and disqualify the Respondent from participating in a matter. In this report, however, we are concerned only with the Respondent's relationship with the employee, and not the Respondent's relationships with any other persons.

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- [25] We have been advised that it is common knowledge amongst Council and Town of Midland staff that the Respondent and the employee are life partners, and that the Respondent has been open and obvious about the relationship.
- [26] Notwithstanding the Respondent's position with us that her relationship with the employee does not amount to an interest that would disqualify her from participation, the records of Town Council indicate otherwise in that the Respondent has previously recognized and declared an interest where the employee's pecuniary interest was involved:
- [27] For example in respect of a January 23, 2020 closed session meeting, the Respondent filed this Declaration of Interest under the MCI A:  
I, Carole McGinn, declare a potential (deemed/direct/indirect) pecuniary interest on Agenda Item respecting benefits and negotiations for the following reason: my domestic partner works for the corporation of the Town of Midland
- [28] And in respect of a February 20, 2020 Council meeting, the Respondent filed a declaration reading as follows:  
I, Carole McGinn, declare a potential (deemed/direct/indirect) pecuniary interest on Agenda Item respecting Labour Relations - Negotiations for the following reason: 1. My domestic life partner is an employee of the corporation of the town of midland 2. Being employed within the bounds of the contract being negotiated
- [29] And in respect of a Special Meeting of Council on March 27, 2020 regarding "Operations – specific to wages pg51/162 -51.1000, the Respondent filed a declaration reading as follows:  
I, Carole McGinn, declare a potential (deemed/direct/indirect) pecuniary interest on Agenda Item respecting draft budget for the following reason: My domestic partner is an employee of the Town of Midland
- [30] The 'domestic partner' and 'domestic life partner' referenced in the preceding paragraphs is the employee at issue in this report.
- [31] The Respondent has also posted publicly on the nature of her relationship with the employee:



Carole Ann Louise McGinn [redacted] must share that as [redacted] and I cohabitate this puts me in a horrid spot as it does directly financially impact both of us. He is an employee. I felt it proper to write this. However it affected me too.

Like · 18h



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- [32] In the course of our investigation we had the opportunity to review employment records of the Town of Midland. Although a member of council is not an employee, for payroll and other purposes they are recorded in the same systems, using the same forms, as employees.
- [33] On the 'New Hire Employee Form' (NHEF) a person on the Town's payroll is required to provide personal information, including Address and Emergency Contact Information.
- [34] On the Respondent's NHEF (dated December 4, 2018) an address is provided, and it is indicated as her mailing address.
- [35] On the employee's most recent NHEF, the same address is provided, but it is indicated as not being his mailing address.
- [36] On the Respondent's NHEF, the employee (described as "Life Partner – (domestic partner)") is listed under Emergency Contact Information.
- [37] We have also had the opportunity to review the Respondent's form through which her Town insurance benefits could be obtained. Under section 7, 'Beneficiary Nomination', the entry begins with "By completing this section I revoke all previously nominated beneficiary nominations and make the following nomination where permitted by law." A checkmark is then entered by hand indicating that the information that follows is to identify the beneficiary for Employee Basic Life and Accidental Death Benefits (if applicable). The employee is then named, identified as 'domestic partner' under the column "Relationship to Plan Member", and the percentage allocated as the beneficiary is "100%" meaning that there are no other beneficiaries.
- [38] Though the Respondent has clarified that the employee lives with her, just not exclusively, the documentary evidence supports a finding that they live together as spouses.
- [39] Even if as a result of the polyamorous nature of their relationship the employee does not live with the Respondent at all times, we find, on a balance of probabilities, that the relationship meets the Code and *Municipal Conflict of Interest Act* definition of spouse in that they are 'living in a conjugal relationship outside marriage'.
- [40] Even if we are incorrect in that conclusion, we find, on a balance of probabilities, that the relationship amounts to a "Family Relationship" as that term is defined in the Code of Conduct, which includes not only 'spouse', but 'any person who lives with the Member on a permanent basis'. (see paragraph [54])

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- [41] The Code goes on to define a “disqualifying interest” 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” (see paragraph [54]). The definition reflects the common law approach to identifying conflicts of interest.
- [42] We are also of the view that a reasonable person, aware of the relevant facts and circumstances, would conclude that the relationship between the Respondent and the employee is such that she cannot impartially participate in the decision-making process on matters before Council which involve the employee’s pecuniary interest.
- [43] We find that she has been open about this relationship to Town staff and members of Council. In addition to the documentary evidence which supports our findings, she has appeared with the employee at Town events, and they engage in typically domestic activities such as dropping off the Respondent at Council meetings.
- [44] Accordingly, we find that where the employee has a pecuniary interest in a matter before Council, the Respondent must recognize that interest as her own.

### The Matter Giving Rise to the Conflict

- [45] At the meeting of April 1, 2020 the Respondent had the opportunity to declare an interest, and in fact, as members of Council were canvassed for declarations of conflicts of interest at the start of the Council meeting, the CAO provided a brief synopsis of the subject matter, following which members were again asked if there were any conflicts to declare regarding the subject of the closed session.
- [46] The minutes of the meeting ultimately reflected this as follows:
- 4.1.  
Essential and Non-Essential Services  
Council reviewed Confidential Staff Report CAO-2020-1 provided on desk regarding Employee Impact of COVID-19 and Possible Changes to the Weekly Schedule.
- The CAO provided clarification and responded to questions raised by members of Council.
- Following discussion, Council directed Staff to prepare the appropriate motion for consideration upon conclusion of the Closed Meeting Session.

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[47] Prior to consideration of the matter the Respondent did not declare a conflict of interest. She proceeded to participate in the closed meeting deliberations regarding Report CAO-2020-01.

[48] As noted in paragraph [26], she declared an interest on January 23, February 20 and March 27, 2020, when matters involving the pecuniary interest of the employee were before Council.

[49] The Respondent did not declare an interest on April 1, 2020 when Council had before it Closed Session Item 4.1 in which the employee had a clear pecuniary interest.

[50] The Respondent's position in response to our preliminary findings is that:

- Report CAO-2020-01 did not represent a pecuniary interest to her partner, given that it merely proposed options, and those options "did not permit council to do anything that was not provincially mandated or contractually permissible".
- Although she was 'present' during the discussion [which took place as a virtual electronic Council meeting], she did not vote on the Report. Her position is that she is entitled to be present, even when a pecuniary interest exists, until such time as the interest actually "presents itself".
- No pecuniary interest existed. The options for consideration included options whereby employees would have their workweek reduced by utilizing banked lieu and/or time, not impacting their pay. Banked lieu and vacation time do not constitute a financial impact, and therefore not a pecuniary interest.
- In addition, she pays all the bills at home.
- Her long-term intimate partner is not her "spouse". She advises that they do live together, however, he doesn't always sleep at home, nor does she, and although they are "life intimate and life sexual partners", she herself is "polyamorous, gender fluid and pansexual". They are not spouses.

[51] We have given her further comments and submissions thoughtful consideration, and although they do not alter our conclusion, we have provided additional explanation where it is apparent to us that clarification may be of assistance, including by adding a section to this report titled 'The Nature of the Respondent's Relationship with the Employee', beginning at paragraph [16].

### Conflicts of Interest

[52] The *Municipal Conflict of Interest Act* (MCIA) applies with respect to the pecuniary interests (direct, indirect and deemed) held by Members of Council. Section 3 of

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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.

The MCIA defines “spouse” to mean a person to whom a person is married or with whom a person is living in a conjugal relationship outside marriage.

[53] In addition to the MCIA definition and identification of what constitutes a conflict of interest for Members of Council, there is the Code of Conduct which captures the a broader, more robust concept of conflicts of interest which the courts have accepted.

[54] The relevant provisions of the Code of Conduct are as follows:

### General Introduction

Members of Midland Council recognize...they are held to a higher standard of behaviour and conduct.

Members recognize that ethics and integrity are at the core of public confidence in government and in the political process; that elected officials are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence, avoids the improper use of influence of their office and conflicts of interests, both apparent and real. They recognize the need to uphold both the letter and the spirit of the law including policies adopted by Council.

...

### Definitions

a. “Family” includes “child”, “parent” and “spouse” as those terms are defined in the Municipal Conflict of Interest Act (set out below for ease of reference), and also includes

- step-child and grand-child;
- siblings and step-siblings;
- aunt/uncle, niece/nephew, first cousins
- in-laws, including mother/father, sister/brother, daughter/son
- any person who lives with the Member on a permanent basis.

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“Spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside of marriage;

### C. Guiding Principles

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

#### Rule No. 1

#### Avoidance of Conflicts of Interest

In this Rule:

a. “disqualifying interest” means 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.

...

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.

...

Commentary

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*Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and private conflicts of interest, both apparent and real. Members of Council shall also not extend in the discharge of their official duties, preferential treatment to Family Members, organizations or groups in which they or their Family Members have a direct or indirect pecuniary interest.*

*Members of Council have a common understanding that in carrying out their duties as a Member of Council, they will not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to a Family Member or an individual which is not available to every other individual.*

*Members of Council may seek conflict of interest or other advice, in writing, from the Integrity Commissioner.*

*When a member, despite the existence of an interest, believes that he or she may still participate in a matter with an open mind, the public interest is best served when the Member is able to articulate the interest, and why the interest does not amount to a disqualifying conflict of interest.*

*Members must remain at arm's length when Town staff or Council is asked to consider a matter involving a Family Member or a person or organization with whom the Member has a real or apparent conflict of interest.*

### Findings and Analysis:

- [55] As noted above we find that given the nature of the relationship between the Respondent and the employee, the Respondent must recognize any pecuniary interest of the employee in a Council matter as her own.
- [56] On April 1, 2020, Report CAO-2020-01, which involved a pecuniary interest for the employee, was before Council.
- [57] During the portion of the Agenda when members declare pecuniary interests, Staff provided a brief summary of the general nature of the Report so there would be no misunderstanding that the Report dealt with matters affecting potential layoff of employees.
- [58] Despite ample opportunity to declare an interest, the Respondent chose to participate in the closed session.
- [59] The MCIA requires that Members who have either a direct, indirect or deemed pecuniary interest in a matter to not only declare the interest, but when the matter is heard in closed session, to not be present.

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[60] If the matter were heard in public, a Member may remain in the room, although they must declare an interest and recuse themselves from participating and must not vote. However, when the matter is heard in closed session, the Member MUST declare an interest before the closed session convenes, and MUST NOT remain in the room:

Municipal Conflict of Interest Act, s. 5(2)  
*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. R.S.O. 1990, c. M.50, s. 5 (2).

[61] There is an exception for members to remain in closed session in the rare circumstance their pecuniary interest relates to a proposed sanction from an integrity commissioner. There is also a requirement for a member to declare an interest at a subsequent meeting when they miss a meeting where the pecuniary interest arises.

[62] Of course, the challenge arises when the Council meeting is held virtually, electronically. Municipalities have utilized the technology to hold participants in a 'waiting room', in order to manage confidentiality where necessary.

[63] In the circumstances of the Respondent, where no interest was declared in a matter despite her previous pattern to declare based on her relationship with an employee at the Town, her remaining in closed session gives rise to speculation that the employee may overhear the information.

[64] Notwithstanding her previous declarations, and her description of the employee as her domestic partner or domestic life partner, she participated in the discussion on the matter considered in closed session on April 1, 2020.

[65] We find that, during our investigation, she deliberately downplayed the nature of their relationship.

[66] There is abundant evidence that the employee is her domestic partner, that they share an address, and that her failure to declare an interest and recuse herself from participating in the closed session on April 1 dealing with Report CAO-2020-01 constitutes a breach of conflict of interest provisions in both the MCIA and the Town of Midland Code of Conduct.

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[67] With respect to the Respondent's position in paragraph [50] that use of banked lieu and/or vacation time does not represent a financial impact, that is a misunderstanding on the part of the Respondent on which she should have sought clarity from appropriate staff. Vacation and lieu time are earned time off, in other words compensation, and have value to the employee, which amounts to a pecuniary interest to the employee.

[68] Banked time has value, and a requirement that an employee draw on their banked time in order to maintain their compensation while reducing a work week must be considered a pecuniary interest.

### Additional Matters:

[69] During our investigation, we were made aware of numerous instances of involvement by the Respondent in operational and management issues involving her partner, which in our view constitute evidence of the nature of their relationship, but would certainly constitute evidence of improper use of influence, contrary to the Code of Conduct provision and commentary regarding Avoiding Conflicts of Interest.

[70] In this regard, we caution the Respondent that in future, inappropriate interference in the operational issues of the employee's workplace might, if the subject of a complaint, constitute a violation of the Code of Conduct.

### No Application Will be Made to Court:

[71] For the foregoing reasons we find that the Respondent was in breach of her obligations under the MCIA and the Code of Conduct to declare an interest and refrain from participation in Item 4.1 considered in closed session at Council's meeting of April 1, 2020.

[72] 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.

[73] 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.

[74] 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 brought this allegation to our attention for review and investigation.

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[75] 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.

[76] The purpose of the *MCIA* 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 *MCIA* 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 *MCIA* 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.”

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

[78] 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

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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.

This report serves as publication of our reasons for not applying to a judge.

[79] 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

[80] Under the MCI, following a determination of contravention of the MCI 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

[81] 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)?

[82] 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.

[83] It is our view that such a severe sanction is not warranted in the circumstances of this case, and therefore no such application will be pursued. As required by the legislation, we are advising the complainant that no application will be made by the Integrity Commissioner to a judge in this matter.

Recommendations:

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[84] Through the course of our investigation we were taken aback to discover not only that the Respondent has recognized the interest previously, but that she deliberately downplayed his status as her domestic partner.

[85] We find that the Respondent's contravention was not the result of a misunderstanding. The Respondent's earlier declarations of interest, along with the other indicia, and her own description of the relationship, make it clear that she participated in the April 1, 2020 closed session meeting with the full understanding that the Report represented a pecuniary interest to her partner and therefore a conflict of interest under the MCIA and the Code.

[86] We are of the view that, although a court application is not warranted, a sanction is appropriate. What then is the appropriate remedy? There is little to guide the formulation of sanctions.

[87] The Municipal Act allows up to 90 days suspension of remuneration. A monetary penalty, although not remedial, can have a salutary effect and serve as a deterrent.

[88] In light of our finding that the contravention was not caused by misunderstanding or the result of inadvertence, a sanction of some consequence is appropriate.

[89] We therefore recommend:

1. That the remuneration paid to Councillor McGinn be suspended for a period of 15 days;
2. That this report be posted on the Town of Midland web site for public access.

[90] As noted above, during this investigation we were made aware of numerous instances of involvement by the Respondent in operational and management issues involving her partner, which in our view constitute evidence of the nature of their relationship, but would certainly constitute evidence of improper use of influence, contrary to the Code of Conduct provision and commentary regarding Avoiding Conflicts of Interest.

[91] We reiterate our caution to the Respondent that inappropriate interference in the operational issues of her partner's workplace might, if the subject of a complaint, constitute a violation of the Code of Conduct.

### Procedure

[92] The question has been asked, in this and other investigations, whether a respondent may participate in the discussion on a recommendation report about themselves on the basis that they have a pecuniary interest in that report. This

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issue was clarified by amendment to the legislation in March 2019: a member of council may participate in the discussion of a recommendation report about themselves even where they have a pecuniary interest, however, that member may not participate in any vote on monetary sanctions. The member is still required to file the declaration of interest otherwise required.

### Conclusion

- [93] We wish to conclude by publicly thanking the Respondent and complainant, staff and all other witnesses who participated in our investigation. We express genuine appreciation for the sharing of time, knowledge and opinions by everyone concerned.
- [94] We will be pleased to be in attendance when this report is considered to assist you in understanding its contents.