

INVESTIGATION REPORT

FOR THE CITY OF ELLIOT LAKE

CODE OF CONDUCT COMPLAINTS RE:

MAYOR MARCHISELLA



*Office of the Integrity
Commissioner*

Prepared By:

Sean Sparling
E4m Investigator
Peggy Young-Lovelace
E4m Consultant

PREAMBLE

Expertise for Municipalities (“E4m”) was appointed as the Integrity Commissioner for the Corporation of the City of Elliot Lake (the “City”) by resolution on February 11, 2019.

As the Integrity Commissioner, E4m is a statutory officer of the City. The Integrity Commissioner reports to Council and is responsible for independently performing functions assigned to them by the City. Pursuant to section 223.3(6), the City must indemnify and save harmless the Integrity Commissioner or any person under their instructions for costs reasonably incurred by either in connection with or in the defence of certain proceedings.

E4m has been appointed by the City as the Integrity Commissioner for all functions set out in section 223.3(1) of the *Municipal Act 2001*, and E4m is responsible for conducting inquiries into whether a member has contravened the Code of Conduct pursuant to section 223.4(1) or contravened sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* pursuant to section 223.4.1 (1).

The *Municipal Act, 2001*, awards the Integrity Commissioner a number of powers that the Integrity Commissioner can exercise while conducting Code of Conduct and *Municipal Conflict of Interest Act* inquiries. Specifically, subsections 223.4 (3) and 223.4.1(10) provide that “the municipality and its local boards shall give the [Integrity] Commissioner such information as the [Integrity] Commissioner believes to be necessary for an inquiry.” Moreover, subsection 223.4(4) and 223.4.1(11) provide that the Integrity Commissioner is “entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.”

In addition to the statutory requirements for an inquiry under the *Municipal Act, 2001*, Integrity Commissioner inquiries are governed by the Integrity Commissioner Inquiry Protocol, which was adopted by Council. Pursuant to section 3.4 of the Integrity Commissioner Inquiry Protocol, in performing his or her duties, the Integrity Commissioner may engage outside assistance or consult with the City’s legal counsel.

The City’s legal counsel is employed by the City. The *Rules of Professional Conduct* provide that notwithstanding the fact that instructions may be received from an agent for an organization, when the lawyer is employed by an organization, including a corporation, in exercising the lawyer’s duties and providing professional services, the lawyer shall act for the organization. An incorporated organization has a legal personality distinct from its members, agents, councillors or employees. As such, when the Integrity Commissioner consults with the City’s legal counsel pursuant to section 3.4 of the Integrity Commissioner’s protocol, the Integrity Commissioner providing instructions as a statutory officer of the City and the City’s legal counsel is acting to ensure that the City’s interests are served and protected.

I. EXECUTIVE SUMMARY

- [1] Four (4) individuals requested an inquiry into allegations that Mayor Dan Marchisella (“Mayor Marchisella”) contravened thirty (30) provisions of the City’s Code of Conduct. Upon examination of the evidence of each Requestor, the scope of the allegations was reduced to twenty-four (24) due to duplication across complaints. This report deals with the combined allegations.
- [2] Two (2) of the Requestors have requested anonymity. We are required to respect this request unless we see a reason that the Requestor’s name must be published. We see no reason to publish the names of these two (2) individuals. However, we do believe it is pertinent to identify that one of these Requestors is a Councillor and the other Requestor is a member of the public.
- [3] Councillor Chris Patrie (“Councillor Patrie”), and Ms. Tammy Van Roon (“Ms. Van Roon”) are the other two (2) Requestors.
- [4] All complaints were received between March 8th and March 15th, 2019, and in accordance with the City’s Integrity Commissioner Inquiry Protocol were subject to a preliminary review. The review determined there was sufficient reason to warrant a full investigation of some of the allegations. The investigation commenced in May and was completed September 5, 2019.
- [5] Except for one complaint, every other complaint pertains to the negotiations for and the purchase of 151 Ontario Avenue [former Algo Mall property] (the “Property”). The complaint not related to this property purchase, is an allegation that Mayor Marchisella used his office as well as City resources to assist Corey McKenzie and his business AstroRabbit with the planning of a music event.
- [6] After the preliminary review, some of the allegations were determined not to give rise to contraventions of the City’s Code of Conduct and the scope of the investigation was further narrowed to fully review eight (8) allegations (the other sixteen (16) dismissed at the initial review stage):

Doing Staff Members’ Work

It was alleged that Mayor Marchisella involved himself in doing work that belongs to staff members. The specific allegations relate to his activities involving Mr. McKenzie [owner of AstroRabbit] and his efforts in the purchase of 151 Ontario Avenue.

Disclosure of Confidential Information

It was further alleged that Mayor Marchisella disclosed confidential information. There are two (2) specific situations that were complained of: the first is that he disclosed confidential information from a closed session of Council to Mr. Michael Thomas and the

second is that he disclosed confidential information to Mr. Levon Nazarian regarding the potential purchase of 151 Ontario Avenue.

Attendance at the Royal Canadian Legion

It was alleged that Mayor Marchisella contravened the City's Code of Conduct when he attended a meeting of the members of the local branch of the Royal Canadian Legion and spoke to them regarding offensive social media posts made by Ms. Van Roon toward City Council and more specifically about the Mayor and his integrity.

Conduct at the March 6th, 2019 Council Meeting & March 7th, 2019, Facebook Posts

It was alleged that Mayor Marchisella contravened the City's Code of Conduct in his manner of speech toward members of Council after the closed session portion of the March 6, 2019, Council meeting and further, that this behavior was continued in a subsequent social media post he made on March 7, 2019.

[7] Our findings in these matters are as follows:

Doing Staff Members' Work

The allegation that Mayor Marchisella violated section 8.2 of the Code of Conduct in relation to his work with Mr. McKenzie and his business AstroRabbit is **SUBSTANTIATED**.

The allegation that Mayor Marchisella violated 8.2 of the Code of Conduct in relation to his efforts toward the purchase of 151 Ontario Avenue is **UNSUBSTANTIATED**.

Disclosure of Confidential Information

The allegation that Mayor Marchisella violated section 10 of the Code of Conduct by disclosing confidential information to Mr. Nazarian is **SUBSTANTIATED**.

The allegation that Mayor Marchisella violated section 10 of the Code of Conduct by disclosing confidential information to Mr. Michael Thomas is **UNDETERMINED**.

Attendance at the Legion

The allegation that Mayor Marchisella violated section 13.1 of the Code of Conduct when he attended the Legion and spoke about Ms. Van Roon's conduct is **SUBSTANTIATED**.

March 6th, 2019, Council Meeting and March 7th, 2019, Facebook Post

The allegation that Mayor Marchisella violated section 7.2 of the Code of Conduct in relation to his conduct during the March 6th, 2019, Council meeting is **UNSUBSTANTIATED**.

The allegation that Mayor Marchisella violated the Social Media Policy regarding his March 7th, 2019, Facebook post is **UNSUBSTANTIATED**.

The allegation that Mayor Marchisella violated the Code of Conduct regarding his March 7^h, 2019, Facebook post is **SUBSTANTIATED**.

II. LEGISLATIVE FRAMEWORK

- [8] Under section 223.4 (1) (a) of the *Municipal Act, Council*, a member of Council or a member of the public may make a request for an inquiry to the Integrity Commissioner about whether the Member has contravened the Code of Conduct applicable to that Member.
- [9] When a matter is referred to us, we may then conduct an inquiry in accordance with the City's Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

- [10] The requests before us were properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the City of Elliot Lake. We received complaints from four (4) individuals alleging Mayor Marchisella contravened thirty (30) provisions of the City of Elliot Lake Code of Conduct. Upon initial examination of the evidence of each complainant, the scope of the allegations was reduced to twenty-four (24) due to duplication across complaints. The complaints were filed by Councillor Patrie, Ms. Van Roon, a Councillor who wished to remain anonymous as well as a member of the public who wished to remain anonymous. These complaints were filed between March 8th and March 15th, 2019.

IV. THE INQUIRY PROCESS

- [11] The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a Member has contravened the Code of Conduct that is applicable to that Member.

- [12] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint which included reviewing the available evidence, interviewing the complainants as well as Mayor Marchisella. Subsequent to the preliminary review, the number of complaints requiring investigation against Mayor Marchisella was reduced to eight (8).
- [13] The investigation of these matters involved a voice recorded interview of each complainant. The recordings were transcribed and the complaints were “crystallized” to clearly indicate the substance of the complaint. Thereafter, each respondent was provided with a written document laying out the complaint and was provided an opportunity to respond to the complaint in writing. Mayor Marchisella did respond to the complaints in writing. He was interviewed by an investigator and as new evidence came into the investigation, further emails were provided to Mayor Marchisella and email responses were provided by him. All of this collected evidence was then considered and weighed on a balance of probabilities to lead to our conclusion.
- [14] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. As required, assessments of credibility have been made. These assessments are based on:
- whether or not the individual had first-hand knowledge of the situation,
 - whether or not the individual had an opportunity to observe the events,
 - whether or not the individual may have bias or other motive,
 - the individual’s ability to clearly describe events,
 - consistency within the story,
 - the attitude of the individual as they were participating,
 - any admission of dishonesty.¹
- [15] Worthy of note, is the fact that Councillor Patrie and Ms. Van Roon were both found not to be credible. Evidence provided by them was only accepted when it could be corroborated by another credible party involved in this inquiry. When it was not corroborated, it was not accepted.

V. THE FACTS

Doing Staff Members’ Work

- [16] It has been alleged that Mayor Marchisella contravened section 8.2 of the City’s Code of Conduct when he carried out the work of municipal employees on two (2) specific occasions: He negotiated with Mr. Tony Guidoccio regarding the purchase of 151 Ontario Avenue; and he assisted Mr. McKenzie owner of AstroRabbit with the planning of a concert event. Section 8.2 of the City’s Code of Conduct states:

[1] _____
¹ *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. *Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009)*, 185 LAC (4th) 176 (Alta.Arb.)

"...No member shall perform, direct or attempt to undermine the duties of any staff person or Officer except in accordance with the Municipality's procedural by-law."

151 Ontario Avenue - Alleged contravention of Code of Conduct section 8.2

- [17] Mayor Marchisella is alleged to have negotiated with Mr. Guidoccio, a developer, for the purchase of the property at 151 Ontario Avenue. This property is the site of the former Algo Mall and was owned by Eastwood Mall Inc., operated by Mr. Nazarian. The property was being purchased for the construction of the City's Community Multiuse Hub Complex (the "Hub").
- [18] Councillor Patrie alleged that Mayor Marchisella, in a conversation, told Councillor Patrie about a potential deal whereby Mr. Guidoccio would buy the property from Mr. Nazarian and then sell a portion to the City for the Hub. There is no evidence beyond Councillor Patrie's statement to substantiate this allegation. In our analysis of credibility, we found Councillor Patrie not to be credible. There is no additional evidence to support this as fact.
- [19] A staff member reported Councillor Pearce disseminated a point form note which detailed factors required to complete the land deal with Mr. Guidoccio at a meeting that this individual was a participant. This staff member further reported that they were privy to the discussions between the Mayor, Councillor Pearce, Mr. Guidoccio and staff about the potential purchase of the Property. They were also privy to details of a subsequent meeting of staff and Mr. Elliott from ELNOS where this deal was again discussed. This staff member reported that they advised the members participating in the second meeting, that their process to purchase the Property was illegal as it appeared that it was being done by councillors and not staff members. This staff member felt they were unheard and disrespected. For this reason, the staff member stated that they gave a copy of the point form note from Councillor Pearce to Councillor Patrie [who had no reason to have been given this note]. Councillor Patrie then used this note as evidence to allege that Mayor Marchisella had breached the City's Code of Conduct.
- [20] This same staff member was not involved, nor briefed on, subsequent meetings or efforts to purchase the Property. The investigation revealed that at the very least, after the second meeting, Mr. Gagnon [the CAO] and other staff members were intimately involved in this process, contrary to Councillor Patrie's assertions.
- [21] Our investigation determined that Mayor Marchisella did not know Mr. Guidoccio prior to this land deal. Additionally, the evidence supported that Mayor Marchisella did not negotiate directly with Mr. Guidoccio and that in fact he only met with Mr. Guidoccio on one occasion. This meeting was confirmed. Furthermore, it was substantiated that the Mayor did not meet with Mr. Guidoccio alone and in fact, was in the company of Councillor Pearce, Mr. Dan Gagnon, the Chief Administrative Officer, Mr. William Elliott from ELNOS and Mrs. Ashton Vlahovich the Economic Development Coordinator. It was at this meeting that a discussion took place about how Mr. Guidoccio would purchase 151 Ontario Avenue [the Property] and the City would buy the portion they needed for the Hub from Mr. Guidoccio. This matter was then left for Mr. Gagnon and his staff to

negotiate the details of the deal (price, closing, severance, lot size etc.) before it was brought to Council for approval.

- [22] There is no concrete evidence to support that Mayor Marchisella engaged in staff members' work when he was involved in the negotiation for the purchase of the Property. In fact, the Mayor's conduct was in line with section 226.1 of the *Municipal Act* that requires him to "...*participate in and foster activities that enhance the economic, social...wellbeing of the city and its residents...*" and in line with his duties as Mayor for Elliot Lake. Therefore, on a balance of probabilities, Mayor Marchisella did not breach the City's Code of Conduct when he participated in one meeting to discuss the idea of a potential purchase with the developer/purchaser of the Property.

AstroRabbit – Alleged contravention of Code of Conduct sections 8.2,13.2 and 16

- [23] Mayor Marchisella is alleged to have contravened sections 8.2 and 13.2 of the City's Code of Conduct when he gave assistance to Mr. Corey McKenzie and Mr. McKenzie's business, AstroRabbit with the planning of a music event that was to take place in the City. Further it is alleged that Mayor Marchisella used municipal resources to benefit a single business.
- [24] AstroRabbit is a private business owned and operated by Corey McKenzie. Mr. McKenzie, in the planning stages of organizing a rock concert in Elliot Lake, sought support for the event from Council because he wanted to hold the event at the City's airport. Council requested that Mr. McKenzie provide a business plan and other required approvals. This event was expected to attract a considerable number of visitors and have a positive impact on the local economy. Mr. McKenzie then solicited Mayor Marchisella's assistance. Staff reported seeing Mr. McKenzie in Mayor Marchisella's office often.
- [25] Mayor Marchisella did not dispute the fact that he assisted Corey McKenzie and the private business, AstroRabbit extensively. He readily admitted that he assisted Mr. McKenzie with the preparation of a business plan and the navigation of some of the processes necessary for the holding of such an event, including the coordination of a meeting with City and other officials. Mayor Marchisella stated that he saw nothing wrong with his conduct.
- [26] Mayor Marchisella advised that he became involved with this specific event since the staff member who would normally be responsible to complete these tasks was unavailable. The two (2) staff members responsible for economic development were on leave.
- [27] The investigators confirmed with a staff member responsible for economic development that department staff were away from the workplace and unavailable for a period of time. The investigator was advised that one of the staff, while not officially at work, was available by email and worked extensively from home. The staff member further indicated that she felt that the Mayor's statement that no staff were available was not

justified. It was pointed out that the Mayor frequently interjected and/or essentially took over the project in a number of situations.

[28] Section 8.2 of the Code of Conduct reads;

*“...**No member shall perform**, direct or attempt to undermine **the duties of any staff**...”*
[emphasis added]

[29] It was also alleged that Mayor Marchisella, because of the nature of his relationship with Mr. McKenzie, contravened section 13.2 of the City’s Code of Conduct, which states;

“No Member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member’s private advantage, the private advantage of the Member’s parent, child, spouse, staff member, friend or associate business or otherwise or the disadvantage of others...”

It was alleged that Mayor Marchisella had a conflict of interest with respect to matters that affect the pecuniary interests of Mr. McKenzie and the business, AstroRabbit since Mr. McKenzie and/or the business, AstroRabbit made an “in-kind” contribution to an all candidates night hosted by Mayor Marchisella. Moreover, Mayor Marchisella has shown preferential treatment to Mr. McKenzie. The allegation is that Mayor Marchisella’s actions were a direct benefit to a private business and that this was done in consideration of the campaign contribution made by Mr. McKenzie and/or AstroRabbit. Mayor Marchisella reported the contribution on the election campaign financial statement – Form 4.

[30] Additionally, it has been alleged that Mayor Marchisella, through his actions, breached section 106 of the *Municipal Act*, which is also a contravention of section 16 of the City’s Code of Conduct when he provided a bonus to a single private business.

Our Analysis of the Allegations regarding AstroRabbit

[31] There is a clear line between a member of a council having initial discussions with a proponent to encourage or shape an opportunity which may have an economic benefit for the municipality as a whole and the member actually performing the work of municipal employees. Although Mayor Marchisella assisted Mr. McKenzie with a project that potentially could have a significant economic benefit for the City, Mayor Marchisella crossed the boundary of his defined Mayoral role outlined in section 226.1 of the *Municipal Act* which provides that a Head of Council may “...*participate in and foster activities that enhance the economic, social...wellbeing of the municipality and its residents...*”. This does not mean that he is statutorily permitted to do the work that would usually be the responsibility of an employee of the City. The Mayor has no

authority to overstep his role and carry out the work of staff regardless of the aptitude or availability of said staff unless sanctioned by a resolution of Council.

- [32] The evidence is clear that Mayor Marchisella was not authorized by Council and did overstep his role when he did work that should have been performed by municipal employees. The allegation that Mayor Marchisella breached section 8.2 of the Code of Conduct is **SUBSTANTIATED**.
- [33] There is no evidence to suggest that Mayor Marchisella's actions were malicious or for an inappropriate reason. Nor is there any suggestion that he benefitted personally from this work. He clearly overstepped his role as the Head of Council and did so to fill a perceived personnel void for a time sensitive project that in his opinion needed assistance immediately. However, workload management of the municipal staff team is the responsibility of the CAO and the matter should have been turned over for the CAO to deal with.
- [34] Councillor Patrie, on several occasions, alleged that Mayor Marchisella had a conflict of interest with respect to matters brought before Council dealing with the concert that Corey McKenzie of AstroRabbit planned to hold in the City. The allegation was contained in Councillor Patrie's Code of Conduct complaint and Councillor Patrie continually stressed that Mayor Marchisella had a conflict of interest. Councillor Patrie did not file a formal complaint using Schedule B of the Integrity Commissioner Inquiry Protocol, the statutory declaration, for contraventions of the *Municipal Conflict of Interest Act (MCOIA)*. Due to the serious and repeated nature of this allegation and to be thorough, we considered this matter fully in a separate report and relied on the tests of the *MCOIA* in making our determinations. The investigative findings supported a decision that Mayor Marchisella did not breach the *MCOIA*.
- [35] The City's Code of Conduct is a little more stringent than the *MCOIA* and prohibits members of Council from engaging in conduct that may in some way confer a private advantage to several specific persons which include friends and acquaintances. The *MCOIA* does not include friends and acquaintances but does consider direct, indirect and deemed pecuniary interest. So to properly consider the tenets of the City's Code of Conduct it was necessary to go beyond the statutory relationships outlined in the *MCOIA* to determine if there was a personal or financial relationship between Mayor Marchisella and Corey McKenzie or AstroRabbit. To be clear, to prove that there has been a contravention of section 13.2 of the City's Code of Conduct, we would need to establish that Mayor Marchisella had a familial or personal relationship with Corey McKenzie or that Mayor Marchisella is an employee, partner, investor, or in any way financially tied to the private business, AstroRabbit. The evidence did not support any such relationship.
- [36] Therefore, with respect to the allegation that Mayor Marchisella breached section 13.2 of the City's Code of Conduct we find the allegation is **UNSUBSTANTIATED**.
- [37] Section 16 of the City's Code of Conduct indicates that it is a contravention of the Code of Conduct if the Member fails to be compliant with specified legislation including the *Municipal Act*. It has been alleged that Mayor Marchisella is in contravention of section

106 of the *Municipal Act* which prohibits the bonusing of an individual business and reads in part as follows,

106 (1) Despite any Act, a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose;

(2) Without limiting subsection (1), the municipality shall not grant assistance by,

- (a) giving or lending any property of the municipality, including money;
- (b) guaranteeing borrowing;
- (c) leasing or selling any property of the municipality at below fair market value; or
- (d) giving a total or partial exemption from any levy, charge or fee.

[38] The *Municipal Act* does not prohibit a single member of a council from providing a bonus. In essence this section does not apply.

[39] The allegation that Mayor Marchisella contravened section 106 of the *Municipal Act* and section 16 of the City's Code of Conduct is **UNSUBSTANTIATED**.

Disclosure of Confidential Information

Closed Session of Council - Alleged contravention of Code of Conduct Various Sections

[40] Councillor Patrie alleged that Mayor Marchisella did contravene the City's Code of Conduct on various occasions when Mayor Marchisella discussed confidential matters with Mr. Mike Thomas. Councillor Patrie specifically reported that at the March 6, 2019, meeting of Council, Mayor Marchisella and Mr. Thomas were overheard by staff discussing a matter that was to be considered during the in-camera portion of that meeting. A second situation was also reported wherein Mr. Thomas had information about a matter that was to be considered during another in-camera session.

[41] Councillor Finamore was interviewed about one of these matters as Councillor Patrie cited her as a witness. Councillor Patrie stated he had heard the Mayor admit to disclosing confidential information to Mr. Thomas which was witnessed by Councillor Finamore. Ultimately Councillor Finamore's evidence was not conclusive as she was unable to fully corroborate Councillor Patrie's evidence.

[42] What Councillor Finamore did report was that she questioned Mayor Marchisella about Mr. Thomas knowing about why they were in-camera and Mayor Marchisella's response did confirm that Mr. Thomas did know why they were in the in-camera meeting but not that Mayor Marchisella told Mr. Thomas the nature of the in-camera matter.

[43] Mayor Marchisella and Mr. Thomas have denied that Mr. Thomas was privy to confidential information discussed in closed session.

- [44] A staff member who was alleged to have overheard the conversation between Mayor Marchisella and Mr. Thomas reported not personally hearing Mayor Marchisella disclose confidential information.
- [45] The nature of the allegation is such that the evidence can only be validated based on the credibility of the individual providing the evidence. Over the course of the inquiry several of the witnesses have been found not to be credible.
- [46] There is insufficient evidence to definitively conclude that on a balance of probabilities Mayor Marchisella discussed confidential material with Mr. Thomas. The allegation that Mayor Marchisella disclosed confidential closed session material to Mr. Thomas is therefore **UNDETERMINED**.

Levon Nazarian – 151 Ontario Avenue

- [47] During the inquiry, a staff member reported circumstances when they believed Mayor Marchisella disclosed confidential information he obtained as Head of Council. Section 10 of the City's Code of Conduct prohibits the disclosure of confidential information. One of the specific allegations pertained directly to the negotiations for and subsequent purchase of 151 Ontario Avenue [the Property]. This instance has been considered as part of the broader complaint regarding 151 Ontario Avenue.
- [48] Mayor Marchisella was alleged to have disclosed confidential information to Mr. Levon Nazarian pertaining to the sale/purchase of 151 Ontario Avenue [the Property]. Specifically, on December 25th, 2018, Mr. Nazarian contacted the Mayor by phone to discuss why the purchase of the Property had been rejected by Council on December 19th, 2018. During the discussion it is alleged that the Mayor told Mr. Nazarian that there was another deal in the works and if he [Nazarian] was approached by another party to purchase the property, this party was essentially a proxy for the City.
- [49] The evidence showed that originally the City was trying to purchase the property directly from Mr. Nazarian but he was only willing to sell the property to the City at a specific price. As such, disclosure of the proxy concept to Mr. Nazarian would eliminate the opportunity of the third party to negotiate a purchase of the Property at a lower price.
- [50] It was reported that by advising Mr. Nazarian of the proxy buyer, that Mayor Marchisella disadvantaged the third-party proponent as well as the City in the purchase price for the Property which elevated the sale price substantially. We did not determine if this was fact. Our concern in the matter was the breach of confidentiality [section 10 of the City's Code of Conduct] and not the financial impact to the City.
- [51] Mayor Marchisella's evidence was as follows: Mr. Nazarian called him on Christmas day after the December 19th, 2018, Council meeting in which the purchase of 151 Ontario died in a tie vote. Mr. Nazarian wanted to find out what happened at the meeting and

what the conflict of interest declared by Councillor Cyr meant. Mayor Marchisella says that he explained to Mr. Nazarian that due to a conflict of interest, Councillor Cyr could not vote. Therefore, it became a tie vote which is essentially a no vote. At that time, Mayor Marchisella stated that he told Mr. Nazarian that potentially another party may be interested. Mayor Marchisella stated that he disclosed that ELNOS may be interested in acquiring the property for downtown parking. He said that this was not confidential information but merely showing an alternative direction to be considered. Mayor Marchisella stated that he told Mr. Nazarian that for any further information he may want to call Mr. Gagnon [the City's CAO]. This was the extent of the conversation according to Mayor Marchisella.

[52] The Staff witness, however, reported to the investigator that shortly after the conversation, Mayor Marchisella admitted the fact directly to the witness that he told Levon Nazarian in the above-noted conversation that he should not "worry", that Mr. Nazarian would "hear from us", that "a third party might be reaching out to [Nazarian] to buy the land ... anyway, so then it won't be directly from us but we'll get a third party to buy it.". The witness went on to state that the disclosure of the proxy purchaser by Mayor Marchisella prejudiced the City's position because Mr. Nazarian would be aware that the third party approaching him to purchase the property would be doing so on behalf of the City.

[53] The evidence of the staff person is preferred over the evidence of Mayor Marchisella. Mayor Marchisella did verify that the conversation took place. We find that the Mayor's disclosure to the witness, very proximate in time to the conversation, was a credible admission and that it was not until after analyzing the admission that he realized the issue regarding the disclosure. Mayor Marchisella's evidence was seen as self-serving in this respect and although largely credible, we find the evidence of the staff witness more convincing and more likely than not to be true. We find, therefore, on a balance of probabilities, that Mayor Marchisella did provide confidential information to Levon Nazarian about the proxy method of the City's purchase of the Property.

[54] Section 3.1 (d) of the City's Code of Conduct clearly states that confidential information includes "...*matters pertaining to...property acquisition.*" This is exactly what Mayor Marchisella and the City were attempting to do; acquire the Property.

[55] Section 10.1 prohibits the disclosure of confidential information acquired by virtue of one's office except when required by law or authorized by Council. There is no evidence to suggest either exception applies to permit Mayor Marchisella to disclose this information. It is irrelevant who the proxy was at the time. This was confidential information received by Mayor Marchisella because of his office.

[56] The allegation that Mayor Marchisella improperly disclosed confidential information to Mr. Nazarian contrary to Section 10.1 of the Code of Conduct is **SUBSTANTIATED**.

Attendance at the Royal Canadian Legion

- [57] On April 16, 2019, Ms. Van Roon alleged that Mayor Marchisella did contravene the City's Code of Conduct when he initiated a campaign to harass and intimidate her within 'City Hall, in [her] role as a compensated volunteer and through another organization...' by contacting the president of the Royal Canadian Legion where Ms. Van Roon is the Treasurer, on April 1, 2019, complained about her and requested to speak to the membership that evening.
- [58] Mayor Marchisella responded that in late March into very early April of 2019, he attended a meeting of the members of the Royal Canadian Legion in Elliot Lake and made an address. He arranged the opportunity to make a speech by contacting the Legion President Mr. Howard Tate. Mayor Marchisella reported that he attended the meeting as a private citizen, a member of the Legion, and a veteran, not as the Mayor of Elliot Lake.
- [59] Mayor Marchisella reported being offended by social media posts made by Ms. Van Roon that openly attacked all levels of government but more specifically, the City of Elliot Lake Council and his leadership as mayor. He also reported that he was disturbed by the fact that Ms. Van Roon would make offensive statements about government and then promote an activity being held at or on behalf of the Royal Canadian Legion.
- [60] Ms. Van Roon has been appointed by Council to the Elliot Lake Residential Development Commission and is subject to the City's Code of Conduct. The social media posts made by Ms. Van Roon are a contravention of the City's Code of Conduct and the subject of a separate inquiry.
- [61] When Ms. Van Roon was interviewed as part of this inquiry, she indicated that if a council seat became vacant that she was next in line and that Mayor Marchisella was trying to discredit her so that she would not be considered to fill a vacancy.
- [62] Mayor Marchisella attended a meeting of the Royal Canadian Legion in Elliot Lake and addressed the members present. He spoke of his upbringing in Elliot Lake, his military service and that certain persons attacked his character and credibility. At the end of the speech he thanked Ms. Van Roon for her "insight" and left the Legion. This evidence is undisputed.
- [63] Also pertinent to this issue, is that prior to attending the membership meeting at the Royal Canadian Legion, Mayor Marchisella brought Ms. Van Roon's social media posts to the attention of Council as a whole and requested that they censure Ms. Van Roon for her conduct. Council decided to send Ms. Van Roon a letter advising her of her obligations to adhere to the City's Code of Conduct and newly adopted Social Media policy. Council's inaction, in the mind of Mayor Marchisella, was insufficient and he decided to confront Ms. Van Roon. He chose the Legion as the location for this confrontation as Ms. Van Roon's latest comments were made in proximity to other posts she made advertising Legion events. The Mayor was insulted as he was a veteran and member of the Legion.

- [64] Ms. Van Roon, over the course of this inquiry, has been found not credible and in most instances her evidence was overexaggerated. Evidence of other witnesses has been relied upon in this matter.
- [65] It was clear from witness evidence that Mayor Marchisella did attend a meeting, made an address to those present and thanked Ms. Van Roon *“for her insight”*. Of interest, Ms. Van Roon noted that she did not believe the majority of individuals present at the meeting knew Mayor Marchisella was speaking of her, yet she alleged he was trying to discredit her.
- [66] Mayor Marchisella did not clearly tell the Royal Canadian Legion membership present at the meeting April 1, 2019 that he was not there in his capacity as Mayor. In other words he did not separate his comments/conduct at the Legion from his office as the City’s Mayor.
- [67] Section 13.1 of the Code of Conduct reads;

“No member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.”

- [68] The allegation that Mayor Marchisella breached section 13.1 of the Code of Conduct is **SUBSTANTIATED**. This finding solely relates to the fact that he did not take steps to separate his office from his private life when he spoke at the meeting of the Royal Canadian Legion membership. Had he taken these steps, his actions would have been deemed to be a measured response to Ms. Van Roon’s comments directed at him and City Council. Ms. Van Roon’s conduct, specifically as a Council appointed Commission member, was egregiously inappropriate.

March 6th, 2019, Council Meeting & March 7th, 2019, Facebook Post

- [69] On March 6th, 2019, Mayor Marchisella called a special meeting of Council to discuss the purchase of 151 Ontario Avenue. This was a contentious issue that divided Council. The meeting moved into an in-camera session and upon return to open session, Mayor Marchisella spoke about the conduct of other members of Council. He then followed up the next day with a social media post to Facebook. The allegation is that this speech and the post were offensive and a violation of both the Code of Conduct and the newly created Social Media policy adopted by Council. The following is a summary of what was said and posted by Mayor Marchisella.
- [70] Transcript of the March 6th, 2019 Council meeting;

“Okay, motion to come out of closed session...there’s two members of council that were seated in the room, basically questioned a bit of integrity about this meeting, so I’ll read Special Meetings under by-law 9 [reads from the procedures]...all these provisions were followed and there is no breach of our procedural by-law...I will mention that I do believe a member of council has violated the Code of Conduct and that an investigation will

pursue in that direction. That being said, I'll call for motion to adjourn...meeting is now adjourned..." [sic]

[71] March 7, 2019 Facebook posts by Mayor Marchisella;

"I must make a few points about yesterday's Council meeting and am not looking for replies or online debate but after what took place by a few members of Council, I am quite disappointed and something must be said...three Councillors questioned both the ethics and integrity of myself and a majority of Council also claiming an illegal meeting was taking place, before two stood up and left chambers...comments and actions that were made may also be a violation of the Code of Conduct for some members of Council... Additionally a member of council had a long winded spew of past information but also confidential information that had been provided in a confidential memo in regard to the meeting details, this is a violation of the Code of Conduct and also a breach of confidentiality. References made by a councillor to certain laws does not make that councillor a lawyer or a legal expert...I will not be personally filing for an investigation with our integrity commissioner, but I do imagine that complaints will come forward. I know this has been a contentious issue but did not expect to see this level of grand standing or insult, we all act in the best interest of the community and the performances are not necessary. Again, I am extremely disappointed in the words and actions of some, but even more disappointed in the few that spread nasty rumours and create grand assumptions, especially when some of those have former council experience...but spreading mis-information and grand standing is not professional nor is it how to get what you want personally." [sic]

[72] Mayor Marchisella asserted that he made these comments in response to Ms. Van Roon's social media posts and a slanderous speech made by Councillor Patrie during the March 6th, 2019, special meeting of Council.

[73] We have also reviewed the City's Social Media Policy. This policy largely deals with the conduct of employees on social media and not members of Council. The only verbiage in the policy relating to Council is the means in which the City will follow individual councillors on social media and best practices during election campaigns. This policy does not apply to members of Council's conduct on social media. For this reason, it is not considered further.

[74] The Code of Conduct has the following relevant sections;

1.1 "...the public is entitled to expect the highest standards of conduct from the Members of its local government..."

1.2 (a) "...conflict and inappropriate conduct among Members...adversely affects the Municipality's reputation and is to be avoided..."

6.1 "Every Member shall conduct himself or herself properly and in a civil and respectful manner at meetings..."

7.2 "A member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member..."

- [75] Mayor Marchisella called a special meeting of Council on March 6, 2019. This was carried out in accordance with the City's Procedure Bylaw. At the time of this meeting, Councillor Patrie was out of the country and Ms. Van Roon questioned in her social media post the propriety of calling such a meeting when Councillor Patrie was not in the country.
- [76] Councillor Patrie participated in the open session of the March 6, 2019, special meeting by telephone. In accordance with the *Municipal Act*, Councillor Patrie did not participate in the in-camera portion of the meeting.
- [77] Councillor Patrie addressed Council wherein he questioned, among other things, the legality of the meeting.
- [78] Councillors Mann and Finamore left the Council Chamber refusing to participate in the in-camera session.
- [79] It is clear from the evidence that events surrounding the purchase of 151 Ontario Avenue for the Hub, were highly contentious and very divisive for Council.
- [80] It is also clear that Ms. Van Roon instigated the accusations of impropriety against the Mayor and Council by way of her own social media posts. Further, similar accusations were made by Councillor Patrie in his comments during the March 6th, 2019, open portion of the special meeting of Council.
- [81] The accusations of Ms. Van Roon and Councillor Patrie are not fact based and only served to inflame an already exasperated situation. Their conduct triggered Mayor Marchisella's response. It was in this context that Mayor Marchisella spoke in the manner he did in the March 6^h, 2019, special meeting of Council and again when he authored the Facebook post.
- [82] It is also clear the conduct of Councillors Patrie, Finamore and Mann as well as that of Ms. Van Roon was an attempt to thwart the City's purchase of 151 Ontario Avenue.
- [83] The transcript of the March 6th, 2019, special meeting does not indicate that Mayor Marchisella name called or engaged in other offensive behavior directed at other members of Council.
- [84] The March 7th, 2019 Facebook post was an elaboration of Mayor Marchisella's comments from the March 6th, 2019 meeting. On Facebook he:
- *stated a member had a long winded spew of information,*
 - *accused members of grandstanding,*
 - *accused members of spreading false information, and*
 - *accused members of being unprofessional.*

- [85] Mayor Marchisella's comments were not inaccurate. Councillors Patrie, Mann, Finamore, as well as Ms. Van Roon all behaved unprofessionally. Councillors Mann and Finamore's refusal to participate in the in-camera portion of the special meeting and walking out is accurately described as grandstanding and was a breach of their duties as a councillor. Ms. Van Roon's social media posts were offensive and Councillor Patrie's behaviour overall was inappropriate and worthy of sanction.
- [86] There is a higher standard of conduct expected of Mayor Marchisella. Both policy and common-sense dictates that he must rise above this petty political behaviour. He had a duty to set an example with his own conduct. His best course of action would have been to say nothing and file the complaints with the Integrity Commissioner. His conduct only served to lower him to the level of the other offenders and damage the overall reputation of his office, Council and the Municipality.
- [87] Section 1.1, along with the preamble of the City's Code of Conduct, state that members of Council are to behave in the "*highest standards of conduct*" this is relevant to the analysis of Mayor Marchisella's conduct.
- [88] The allegation that Mayor Marchisella violated the City's Code of Conduct because of his comments at the March 6, 2019, special meeting is **UNSUBSTANTIATED**.
- [89] The allegation that Mayor Marchisella contravened the City's Code of Conduct, specifically section 7.2, which states "Members shall not use indecent, abusive or insulting words..." because of his Facebook post of March 7, 2019, is **SUBSTANTIATED**.

VI. THE OPINION

- [90] We have stated our findings regarding the conduct of Mayor Marchisella. In summary, we find the following breaches of the Code of Conduct to be substantiated:
- I. Doing staff members' work contrary to section 8.2 of the City's Code of Conduct.
 - II. Disclosure of confidential information to Mr. Nazarian contrary to section 10.1 of the Code of Conduct.
 - III. Improper use of office – attendance at the Legion contrary to section 13.1 of the Code of Conduct.
 - IV. Conduct respecting others – Facebook post March 7th, 2019 contrary to section 7.2 of the Code of Conduct.
- [91] All other allegations made against Mayor Marchisella and reported on herein, were found to be unsubstantiated or undetermined. Other allegations were dismissed upon preliminary review and are not subject of this or another report.

VII. CONCLUSION

- [92] The focus of this inquiry pertained to allegations made regarding the conduct of Mayor Marchisella. The central issue in most of these allegations, is the purchase of 151 Ontario Avenue by the City.
- [93] Due to the divisive nature of this purchase, we feel it necessary to state our findings in relation to how this process was handled by Mayor Marchisella, municipal staff and Council. It is our view that the purchase was legal, done properly and in compliance with the applicable legislation, policies and procedures that apply to this matter. We find the dissenting members of Council were being petulant in their protestations about this purchase. In simple terms, they were not getting their way on the matter and to a great degree it was their petulance that led to these complaints.
- [94] Although we have found Mayor Marchisella in contravention of sections of the City's Code of Conduct, it is clear that the allegations against him were largely tactical. We encourage everyone to understand the backdrop against which many of these issues occurred. In other reports, we have explained how Councillor Patrie and Ms. Van Roon actively worked to subvert Council and malign Mayor Marchisella. Their efforts and misconduct were significant. This does not permit the Mayor to engage in misconduct himself; however, it is in our opinion a significant contributing factor in regard to the Mayor's conduct towards Ms. Van Roon at the Legion, and his social media post on March 7th, 2019.
- [95] As for Mayor Marchisella's conduct in regard to Mr. McKenzie and AstroRabbit, we are confident that Councillor Patrie would not have made this complaint had it not been for his active subversion and objection to the purchase of 151 Ontario Avenue. In reviewing the Mayor's conduct on this issue, we found it to be altruistic and in good faith. The Mayor has assisted several groups and/or individuals in the same manner to the benefit of the City. We caution him to accept that there is a role differentiation between Council and staff that must be respected regardless of good intention.
- [96] As for the finding of misconduct against the Mayor in relation to the release of confidential information to Mr. Nazarian, we find there are no mitigating factors present. It is inexplicable why he chose to tell Mr. Nazarian what he did as these are confidential processes.
- [97] Our summary of findings and recommendations are as follows:
1. Doing Staff Members' Work. Contrary to section 8.2 of the Municipal Code of Conduct;
 - a. In relation to the purchase of 151 Ontario Avenue;

UNSUBSTANTIATED

- b. In relation to AstroRabbit;

SUBSTANTIATED

RECOMMENDATIONS:

1. That within sixty (60) days, **all of Council receive training with respect to the Role of Council and the Role of Staff** pursuant to sections 224 and 227 of the *Municipal Act* and section 8.2 of the Municipal Code of Conduct and the Staff Council Relations Policy. It is recommended that this training be provided by or approved by the City's Integrity Commissioner, Cunningham Swan.
 2. That Council **reprimand Mayor Marchisella** for doing staff work in contravention of section 8.2 of the Code of Conduct.
2. Disclosure of Confidential Information. Contrary to section 10 of the Code of Conduct.
- a. To Mr. Michael THOMAS re: closed session of Council discussions;

UNDETERMINED

- b. To Mr. Levon NAZARIAN re: purchase of 151 Ontario Avenue;

SUBSTANTIATED

RECOMMENDATIONS:

1. This was a serious breach of confidentiality that may have resulted in the City paying significantly more than required for the property now obtained at 151 Ontario Avenue. Although we do not attribute malice to Mayor Marchisella's breach of confidentiality, we have seen that a lack of confidentiality is a serious problem with Council and staff in Elliot Lake [our belief is that this is a systemic problem Council needs to absolutely address]. Council, as the policy leaders of the Municipality must demonstrate that breaches of confidentiality are not to be tolerated and can seriously prejudice the City as occurred in this case. We recommend that **Mayor Marchisella receive both a reprimand and that his remuneration as a member of Council be suspended for the period of one (1) month.**
2. We further recommend that within sixty (60) days, **all of Council receive training with respect to requirements for**

confidentiality of in-camera information and other private information that Council will obtain in the course of their duties. Further, it is recommended that **Council consider and implement a confidentiality policy for staff and ensure that training of all staff who are privy to confidential information be developed and implemented within three (3) months.** This is an urgent issue. Release of confidential information from in-camera meetings may only occur when Council, as a whole, at a properly called meeting decides that information may be released. Single Councillors and even the Mayor do not have the authority to make this decision on Council's behalf [this includes staff]. Further, the City collects a host of confidential information which is protected by the *Municipal Freedom of Information and Privacy Protection Act (MFOIPPA)* and liability can befall the Municipality for improper disclosure. It is recommended that this training be provided by or approved by the City's current Integrity Commissioner, Cunningham Swan.

3. Misconduct – March 6th, 2019 Council Meeting. Contrary to section 7.2 of the Code of Conduct;

UNSUBSTANTIATED

4. Misconduct – March 7th, 2019 Social Media Post. Contrary to section 7.2 of the Code of Conduct;

SUBSTANTIATED

RECOMMENDATIONS:

1. Council should **reprimand Mayor Marchisella** for this conduct. The Code of Conduct requires civility in section 7.2. While it was substantiated that Ms. Van Roon made very derogatory statements about Council and Mayor Marchisella personally, the Mayor, as Head of Council is held to a higher standard of conduct and is required not to descend into the fray of “unparliamentary” language. Further, when any elected official is speaking “in a personal capacity”, it is critical that fact be clearly enunciated and announced. In public, it is simply a fact of municipal politics that one does not “take off the hat” of Mayor without doing so expressly.

5. Misconduct – Attendance at the Royal Canadian Legion. Contrary to section 13.1 of the Code of Conduct;

SUBSTANTIATED

RECOMMENDATIONS:

1. As in substantiated breach #5 above, **Council should reprimand Mayor Marchisella for this conduct.** The Code of Conduct requires civility in section 7.2. While it was substantiated that Ms. Van Roon made very derogatory statements about Council and Mayor Marchisella personally, the Mayor, as Head of Council is held to a higher standard of conduct and is required not to descend into the fray of “unparliamentary” language. Further, when any elected official is speaking “in a personal capacity”, it is critical that fact be clearly enunciated and announced. In public, it is simply a fact of municipal politics that one does not “take off the hat” of Mayor without doing so expressly.

DATED September 16, 2019