

# INVESTIGATION REPORT

## FOR THE CITY OF ELLIOT LAKE

**CODE OF CONDUCT COMPLAINT RE:**

**COUNCILLOR PEARCE**



***Office of the Integrity  
Commissioner***

**Prepared By:**

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## PREAMBLE

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

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 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] Councillor Chris Patrie (“Councillor Patrie”) along with Ms. Tammy Van Roon (“Ms. Van Roon”), a member of the public and an appointee of Council to the Elliot Lake Residential Development Committee/Commission, requested an inquiry with respect to allegations that Councillor Ed Pearce (“Councillor Pearce”) contravened seven (7) sections of the City’s Code of Conduct, the *Municipal Conflict of Interest Act* (“MCOIA”) and further that he breached the *Real Estate Business and Brokers Act* (*REBBA*).
- [2] Ms. Van Roon requested that her name not be provided to Councillor Pearce for fear of retaliation. We are required to respect this request unless we see a reason that the complainant’s name must be published. Due to the serious nature of the allegations from Ms. Van Roon, the fact that she is a licenced real estate agent, and the fact that she has been found not to be credible, it is our finding that it is necessary for us to publish her name herein.
- [3] Councillor Patrie did not request his name be withheld from Councillor Pearce.
- [4] Ms. Van Roon submitted material regarding events/actions that transpired in 2018. The allegations stemming from these specific events/actions have not been considered except as they pertain to the allegations deemed part of this inquiry. At the time these events occurred, Ms. Van Roon was on Council and is aware that the City had in place a Code of Conduct and had appointed an Integrity Commissioner. If she was so disturbed by Councillor Pearce’s actions as she alleged, she should have lodged a request with the previous Integrity Commissioner [we believe this was Mr. Swayze at the time] for an inquiry into the matters. Ms. Van Roon did not advise us if she had submitted a complaint to the previous Integrity Commissioner.
- [5] Several of Ms. Van Roon’s allegations deal with alleged contraventions of the *MCOIA*. She was knowledgeable of these matters longer than the six (6) week timeframe set out in section 8 (2) of the *MCOIA* therefore, the Integrity Commissioner has no jurisdiction to consider these specific allegations. Should Ms. Van Roon feel strongly about these allegations she could file an application to a Judge of the Ontario Superior Court.
- [6] Both Councillor Patrie and Ms. Van Roon have alleged that Councillor Pearce contravened section 8.2 of the City’s Code of Conduct when he negotiated with a developer regarding the purchase of 151 Ontario Avenue
- [7] Ms. Van Roon also alleged Councillor Pearce breached *REBBA* when he “worked with investors” who were interested in purchasing 151 Ontario Avenue. The Integrity Commissioner does not have the jurisdiction to adjudicate this legislation. Ms. Van Roon will need to seek remedy for this matter elsewhere. However, of interest to this inquiry is the prohibition in section 4 of *REBBA* wherein an individual shall not “trade in real estate” meaning that an individual would have to earn money from their actions. If Councillor Pearce had been financially rewarded for his role in “negotiating” the purchase by the purchaser or the vendor, he may have been in contravention of section

1.2 (f) and (g) of the City's Code of Conduct. There is no evidence that Councillor Pearce was financially or otherwise rewarded for his efforts and so there appears to be no applicability of REBBA to this situation. Indeed, to suggest that Council or staff of a municipality, in the absence of a real estate broker, could never negotiate a purchase or sale of property for the municipality without offending REBBA is nonsensical. We find Ms. Van Roon's complaint in this regard to be tactical, that she knew or ought to have known it to be false and we find it is made in bad faith.

- [8] Ms. Van Roon works in the real estate field and gave evidence that the purchase of 151 Ontario Avenue should have gone through a real estate broker/agent because the actions of Councillor Pearce were that of a real estate broker. In the preliminary interview with Ms. Van Roon on this matter she stated:

***“As a realtor I’m offended by it [Councillor Pearce negotiating on behalf of the City] because he’s taking potential business away from my industry.”***

- [9] It is worthy to note that as a Council appointee to the Elliot Lake Residential Development Commission, the City's Code of Conduct and the *MCOIA* applies to Ms. Van Roon as well. There were no complaints under the *MCOIA* made against her for these actions and so we have not made a complete analysis of the pecuniary interest that she may have in these assertions.

- [10] Councillor Patrie in addition, alleged that Councillor Pearce contravened section 7.2 of the City's Code of Conduct during an in-camera meeting on December 19, 2018, when Councillor Pearce berated Councillor Patrie using abusive language. The 2018 allegation should have been reported to the Integrity Commissioner at that time [again, Mr. Swayze we believe] under the Code of Conduct that was in force at that time. The current City Code of Conduct only came into effect February 15, 2019. It is therefore impossible for Councillor Pearce to have breached this at the meeting on December 19, 2018. However, we have considered the matter only as it pertains directly to the purchase of 151 Ontario Avenue.

- [11] Councillor Pearce reported that his involvement in discussions regarding the purchase of 151 Ontario Avenue were cursory only. Further, that he was involved in two (2) meetings with the potential purchaser.

- [12] The evidence supports that Councillor Pearce participated in two (2) meetings. Both meetings were held in the presence of the CAO and the City's Economic Development Coordinator. There is no evidence to support that Councillor Pearce drafted purchase and sale agreements or any other type of agreement that bound the City to the purchase of 151 Ontario Avenue or a portion thereof. All such agreements/documents were prepared by staff and the City's legal counsel.

- [13] Councillor Pearce confirmed that he did use inappropriate language toward Councillor Patrie during the in-camera portion of the December 19, 2018, Council meeting. He advised that his statements were in retaliation to statements made by Councillor Patrie

whereby Councillor Pearce was accused of being in a conflict of interest by negotiating with the developer on the purchase of 151 Ontario Avenue.

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

The allegation that Councillor Pearce breached 8.2 of the Code of Conduct is **UNSUBSTANTIATED**.

The allegation that Councillor Pearce breached 7.2 of the Code of Conduct would be **SUBSTANTIATED** if the inappropriate behavior had occurred after the adoption of the City's Current Code of Conduct [February 15, 2019] we have no jurisdiction to, and we provide no comment on, any previous Code of Conduct.

[15] We note that Councillor Pearce cannot have offended section 7.2 of the City's Code of Conduct as it had not yet been adopted by Council. We include the finding to illustrate the extent that the purchase of 151 Ontario has caused strife with Council.

## II. LEGISLATIVE FRAMEWORK

[16] 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.

[17] 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

[18] 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 two (2) individuals alleging Councillor Pearce contravened seven (7) provisions of the City of Elliot Lake Code of Conduct. Upon initial examination of the evidence of each complainant, the scope of the inquiry was reduced to two (2) since some of the allegations predated our appointment as Integrity Commissioner and should have been addressed by the previous Integrity Commissioner for the City. The complaints were filed by Councillor Patrie and Ms. Van Roon.

[19] Ms. Van Roon filed her complaint on March 5, 2019.

[20] Councillor Patrie filed his complaint on March 14, 2019.

#### IV. THE INQUIRY PROCESS

[21] 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.

[22] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of the complaint which included reviewing the available evidence and interviewing the complainants. Subsequent to the preliminary review, it was determined that only two (2) of the allegations warranted a full investigation.

[23] A full investigation started in May and was completed September 5, 2019.

[24] The following was undertaken for the purposes of determining the facts as they pertain to the allegations:

- a. Complainant interviews – to collect additional information or confirm information provided during the initial “Preliminary Review” interview.
- b. Preparation of synopsis for the Respondent and Respondent interviews.<sup>1</sup>
- c. Witness Interviews – based on the evidence provided by the Complainants or information learned.
- d. Prepare a transcript of each interview<sup>2</sup>, review the content and synthesize the facts.
- e. Collect and review any supporting evidence [minutes, reports etc.]
- f. Analyze credibility of the Complainant, Respondent and any witnesses.

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<sup>1</sup> In some circumstances the witnesses are interviewed prior to the Respondent. This is typically done when a concern has been raised that the Respondent will attempt to bias the evidence by breaching the confidentiality of the investigation and speaking with witnesses in an attempt to author or change their evidence.

<sup>2</sup> All interviews are voice recorded and then professionally transcribed.

g. Determine on a balance of probabilities, the “truest” facts of the matter.

h. Determine if the facts represent a breach of the City’s Code of Conduct.

[25] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities.

## **Standard of Proof**

- [26] The standard of proof that is applied by the IC to these inquiries is a “balance of probabilities”. A balance of probabilities means that something is more likely than not to have occurred. It is also known as the “civil standard of proof”. It has also been stated as the event is more likely to be true than not true, and as greater than 50 percent.
- [27] During the inquiry, investigators measure the credibility of the parties and witnesses.
- [28] Assessments of credibility are not simply a “feeling” of the investigator, but are based on an analysis of the following criteria:
- 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.<sup>3</sup>
- [29] This was used as the measure of credibility for each of the parties involved in this inquiry.
- [30] 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 – Alleged Breach of Section 8.2 of the Code of Conduct***

- [31] It has been alleged that Councillor Pearce contravened section 8.2 of the City’s Code of Conduct when he negotiated with Mr. Guidoccio, a developer, who was interested to purchase a portion of 151 Ontario Avenue. Further, that this activity was “illegal” and a contravention of *REBBA*.
- [32] At a meeting of Council on December 19, 2018, Council deliberated the purchase of 151 Ontario Avenue from Mr. Nazarian [owner of the Property at the time]. The vote on the motion was tied, Councillor Cyr having declared a conflict of interest, and therefore defeated.

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<sup>3</sup> *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 (4<sup>th</sup>) 176 (Alta.Arb.)

- [33] Mr. Guidoccio is a developer and has interests in Elliot Lake. He reported meeting with economic development staff and members of Council years ago to discuss future possibilities of the construction of another retirement home or affordable apartments.
- [34] Staff confirmed meeting with Mr. Guidoccio prior to 2019.
- [35] Mr. Guidoccio stated that during a discussion with his Administrator that she advised him to contact Councillor Pearce. Mr. Guidoccio also advised that he had no previous relationship with Councillor Pearce.
- [36] A meeting was held on January 11, 2019, with Mr. Guidoccio, Mayor Marchisella, Councillor Pearce, William Elliot from ELNOS, City Chief Administrative Officer (“CAO”) Mr. Dan Gagnon and Economic Development Coordinator Ms. Ashton Vlahovich to discuss the potential purchase of 151 Ontario Avenue.
- [37] A second meeting was held on February 19, 2019 with the same individuals apart from Mr. Guidoccio. At this meeting Councillor Pearce distributed a piece of paper containing his summary notes dealing with the status of the negotiations between Mr. Guidoccio and Mr. Nazarian. A member of staff advised the parties that carrying out negotiations in this manner was illegal. This same staff person then gave a copy of Councillor Pearce’s summary notes to Councillor Patrie allegedly in his capacity as the Chairperson of the Economic Development Committee.
- [38] Councillor Patrie submitted as his evidence, a copy of Councillor Pearce’s summary notes obtained from the staff member. This summary note contains information relating to the framework of the deal between the City and Mr. Guidoccio. It is not an agreement to purchase or other such binding contract. The note is clearly an update and in no way alludes to any involvement of Councillor Pearce in the negotiations between Mr. Guidoccio and Mr. Nazarian.
- [39] The closing line of the summary notes states “***I could use some guidance here***”. It is clear that the summary note was prepared for the purposes of the meeting and for no other nefarious purpose. Councillor Pearce was looking to the others participating in the meeting to provide their thoughts and establish next steps.
- [40] Councillor Pearce stated that he did not know Mr. Guidoccio prior to this land deal.
- [41] Councillor Pearce also reported he only met with Mr. Guidoccio on one occasion and this was in the company of Mayor Marchisella, Mr. Dan Gagnon the CAO, Mr. William Elliott from ELNOS and Ms. Ashton Vlahovich the Economic Development Coordinator. It was at this meeting they discussed how Mr. Guidoccio would purchase 151 Ontario Avenue and the City would buy back a portion of the property from him for purposes of the Hub. This matter was then left for Mr. Gagnon and his staff to complete the deal with Mr. Guidoccio before it was brought to Council for approval.

[42] There is no evidence to support that Councillor Pearce engaged in staff members' work and in doing so violated the Code of Conduct in relation to 151 Ontario Avenue.

[43] There is also no evidence indicating that Councillor Pearce overstepped his role as a Councillor when he participated in discussions with Mr. Guidoccio. This includes any one-on-one discussions or by participating in meetings when Mr. Guidoccio was present.

### **Contravention of REBBA**

[44] While as Integrity Commissioner we do not have the jurisdiction to adjudicate allegations that REBBA has been contravened, the nature of the allegation is an important consideration in the analysis of all activities respecting the purchase of 151 Ontario Avenue and the credibility of the parties.

[45] Both Councillor Patrie and Ms. Van Roon reported that Councillor Pearce offended *REBBA*.

[46] Ms. Van Roon gave evidence that the purchase of 151 Ontario Avenue should have gone through a real estate broker/agent because the actions of Councillor Pearce were that of a real estate broker. In the preliminary interview with Ms. Van Roon on this matter she stated:

***“As a realtor I’m offended by it [Councillor Pearce negotiating on behalf of the City] because he’s taking potential business away from my industry.”***

[47] Ms. Van Roon works in the real estate field and as such should have a solid working understanding of this legislation. Our review of *REBBA* did not support Ms. Van Roon’s assertion. We do not find her actions to be inadvertent. It is apparent that Ms. Van Roon’s allegation is self-serving and an attempt to thwart the City’s purchase of 151 Ontario Avenue.

[48] It is also evident that Councillor Patrie alleged Councillor Pearce offended *REBBA* when he “negotiated” with Mr. Guidoccio after a discussion of the same with Ms. Van Roon.

### ***Abusive language directed at Councillor Patrie***

[49] Councillor Patrie alleged that Councillor Pearce yelled at him during the in-camera portion of the December 19<sup>th</sup>, 2018, Council meeting regarding 151 Ontario Avenue. Councillor Patrie stated Councillor Pearce called him names and swore at him. At one point, Councillor Turner said to Councillor Pearce “*enough, stop*”. Councillor Pearce was angry that Councillor Luke Cyr declared a conflict of interest. Councillor Patrie asked Councillor Pearce for an apology and Councillor Pearce declined. Then Councillor Pearce got louder and started swearing.

- [50] The CAO, Mr. Dan Gagnon, reported that he did not remember what was said in this incident. He indicated that it was a tense and uncomfortable situation but did not involve any racial slurs or similar conduct. He said, "...it wasn't a big deal...".
- [51] We interviewed a municipal staff member who was present during this exchange between Councillor Pearce and Councillor Patrie. She recalled that there were comments going back and forth between the two of them. The member of staff confirmed Councillor Patrie asked Councillor Pearce for an apology and didn't get one. Councillor Patrie then asked for a point of order at which time Councillor Turner said "*enough, let's get on with this, this is getting out of hand.*" She knew there was swearing and name calling going on. From the staff member's perspective, Councillor Pearce was more responsible for the inappropriateness than Councillor Patrie. For example, Councillor Pearce was making fun of Councillor Patrie's name. There were some swear words exchanged.
- [52] Councillor Pearce admitted to swearing at Councillor Patrie during the December 19, 2018, in-camera portion of the Council meeting. The verbatim comments, as articulated by Councillor Pearce during his interview, have not been reproduced herein. This was an in-camera discussion and it is unnecessary to report the obscenities.
- [53] Councillor Pearce indicated this went back to Councillor Patrie accusing him of being in a conflict of interest and the negotiations for 151 Ontario Avenue.

***"...I have the right to meet with and discuss the potential purchase of city land or sale of city land to a developer...not only do I have a right to do that, it's my duty...I do not negotiate...Mr. Patrie didn't like Paul Cassan's response, so he wrote an email to Mr. Cassan, where he made false and untrue statements about me..."***

## **I. THE OPINION**

- [54] Based on the evidence before us, we have applied the test set out in sections 7.2 and 8.2 of the City's Code of Conduct.

**Section 7.2 reads;**

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

Section 8.2 reads;

***"...No member shall perform, direct or attempt to undermine the duties of any staff person..."***

[55] It is clear from the evidence, including Councillor Pearce's own admissions, that he swore at Councillor Patrie. Councillor Patrie's manipulative and inappropriate conduct certainly contributed greatly to this outburst. However, Councillor Pearce's conduct cannot be justified based on what someone else has done. His conduct was offensive and improper. Unfortunately, we are unable to adjudicate this provision of the City's Code of Conduct in relation to this event. The event clearly transpired prior to us being appointed as Integrity Commissioner and moreover, the allegation is that Councillor Pearce breached a policy that was only adopted on February 15, 2019. Therefore, our remarks about this situation are solely to fully illustrate the behaviours Council members have exhibited over the purchase of 151 Ontario Avenue.

[56] We accept Councillor Pearce's assertion that his outburst was solely in relation to false information being spread by Councillor Patrie. Evidence supports that Councillor Patrie took steps to undermine the work of Council in relation to the purchase of 151 Ontario Avenue. Councillor Pearce was on the opposite side of this project from Councillor Patrie.

[57] The allegation that Councillor Pearce breached 7.2 of the Code of Conduct would be **SUBSTANTIATED** if the inappropriate behavior had occurred after the adoption of the City's Current Code of Conduct [February 15, 2019] we have no jurisdiction to, and we provide no comment on, any previous Code of Conduct.

[58] Councillor Pearce did not engage in staff members' work. There is no evidence that he did anything more than introduce a potential buyer for the property at 151 Ontario Avenue to municipal staff. It was staff and legal counsel who reviewed, negotiated and then sought Council's approval for the negotiated deal to purchase of 151 Ontario Avenue.

[59] The allegation that Councillor Pearce breached 8.2 of the Code of Conduct is **UNSUBSTANTIATED**.

#### **Overall Findings/Recommendation**

[60] Doing Staff Members' Work re: purchase of 151 Ontario Avenue. Contrary to section 8.2 of the Code of Conduct;  
UNSUBSTANTIATED

[61] Misconduct towards Councillor Chris PATRIE. Contrary to section 7.2 of the Code of Conduct;

SUBSTANTIATED - it is clear that Councillor Pearce violated 7.2 of the Code of Conduct as adopted after February 15, 2019. However, the violation alleged by Councillor Patrie occurred on December 19, 2018 which is prior to the adoption of this Code of Conduct and the appointment of E4m.

[62] In light of the fact that we have no jurisdiction to request Council to sanction Councillor Pearce, we are recommending that Council needs to have training on the City's

Procedure Bylaw and how to manage inappropriate outbursts by a Councillor or a number of Councillors.

DATED September 16, 2019