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File No. 153039

Mr. Dan Gagnon
Chief Administrative Officer
The Corporation of the City of Elliot Lake
45 Hillside Dr. North
Elliot Lake, ON
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Dear Mr. Gagnon:

**Re: Algoma District Service Administration Board
Council Appointment & Removal Authority**

We have been asked to provide a legal opinion to The Corporation of the City of Elliot Lake (the “City”) with respect to the authority of its Council to appoint and to remove members to and from the Algoma District Service Administration Board (“ADSAB”).

BACKGROUND FACTS

The ADSAB was established pursuant to Schedule 1 of the *District Social Services Administration Boards Act*.¹ Section 2 of Schedule 1 provides that the ADSAB “shall consist of 12 members” and sets out the areas they represent and the manner of their appointment. Paragraph 6 of section 2 of Schedule 1 provides as follows:

6. Area 6 is the area of jurisdiction of The Corporation of the City of Elliot Lake and four members shall be appointed by its municipal council to represent Area 6.

Council Report DM2018-02 – “Re: Committee and Board Appointment” dated December 10, 2018 recommended the appointment of four (4) members of Council as members of the ADSAB.² Council considered the report and passed Resolution No. 440/18 to receive the report and to “adopt the recommendations for committee and board appointments as presented for members of Council.”

Resolution No. 440/18 appointed Mayor Marchisella and Councillors Cyr, Mann and Patrie as members of ADSAB.

¹ *District Social Services Administration Boards Act*, R.S.O. 1990, c. D.15.

² Section 3.1 of O. Reg. 278/98 made under the *District Social Services Administration Boards Act*, provides that “[a] member of a board who is not a member at large and who represents one or more municipalities shall be a member of a municipal council.”

As a result of a number of complaints filed against various members of Council between March and May 14, 2019, the City's Integrity Commissioner conducted a broad-ranging investigation and filed an Investigation Report which determined that, *inter alia*, Councillor Patrie had deliberately subverted his ethical obligations both under the Code of Conduct and the *Municipal Conflict of Interest Act*.³ The contraventions were found to be "pervasive and multi-faceted."

The Integrity Commissioner recommended the imposition of penalties and that remedial or corrective actions be taken, including the removal of Councillor Patrie from any municipal committees, boards or commissions (including the ADSAB).

Council considered the Investigation Report and passed Resolution No. 432/19 to endorse the Integrity Commissioner's recommendations concerning Councillor Patrie by removing him "from any and all municipal committees, boards or commissions, except those that consist of all members of council." This included Councillor Patrie's removal from the ADSAB.

We have been advised that Councillor Patrie refuses to accede to Council's decision to remove him from the ADSAB. Moreover, we also understand that ADSAB has not recognized the City's decision to remove him from the board.

ANALYSIS

(a) Council's Statutory Authority to Appoint Members to ADSAB

Council has the statutory authority pursuant to paragraph 6 of section 2 of Schedule 1 of the *District Social Services Administration Boards Act* to appoint four (4) members of Council to represent Area 6 on ADSAB.⁴ Councillor Patrie's original appointment to ADSAB existed solely because Council had the authority to appoint him as a member.

The ADSAB has no power to appoint or remove members from its board. That authority rests exclusively with the municipalities that are conferred statutory powers of appointment under section 2 of the Schedule 1 of the *District Social Services Administration Boards Act*. By statute, ADSAB must adhere to the municipalities' decisions regarding that appointment of members.

(b) Councillor Patrie's Appointment to ADSAB not Fixed

The term of Councillor Patrie's appointment to ADSAB commenced on January 1, 2019 and could not exceed four (4) years although he could be re-appointed.⁵ His term of appointment was not fixed for four (4) years (or for any other specified period). In other words, Councillor Patrie served as a member of ADSAB at the discretion of Council.

³ *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.

⁴ Subsection 3(4) of the *District Social Services Administration Boards Act* provides as follows:

Composition, etc., of board

3(4) The composition of each board and the qualifications and term of office of the members thereof shall be as prescribed by the regulations.

⁵ Subsections 4(2) and (3) of O. Reg. 278/98.

(c) Council's Statutory Authority to Remove Appointed Members

The authority of Council to appoint members to ADSAB (or to any other committees, boards or commissions) includes the power to remove members (and the power to substitute other persons as members).

The authority for Council's power to remove is found in section 77 of the *Legislation Act, 2006*,⁶ which provides, in part, as follows:

Implied powers

77 Power to appoint a person to public office includes power to,

(a) re-appoint or remove the person... (emphasis added)

Council validly exercised its power to remove Councillor Patrie from ADSAB when it passed Resolution No. 440/18. The resolution has not been legally challenged and, as such, it attracts a strong presumption of validity.⁷

(d) No Limitation on Council Authority to Remove Member

It is our opinion that there is nothing in the *District Social Services Administration Boards Act* or in O. Reg. 278/98 that derogates from or limits Council's statutory power to remove Councillor Patrie from ADSAB.

(e) ADSAB's Position re Councillor Patrie's Removal

We have been advised of, but fail to understand, the position of ADSAB in not recognizing Council's authority to remove Councillor Patrie as a member of its board. As a creature of provincial statute, ADSAB only has the powers that have been expressly or impliedly conferred upon it by statute. As noted above, we are not aware of any statutory power that would permit ADSAB to refuse to accept the City's decision to remove Councillor Patrie and to replace him with another member.

To the extent that ADSAB's position is premised on subsection 4(4) of O. Reg. 278/98, we would submit that such reliance is misplaced:

4(4) If a member who was appointed by one or more municipalities becomes ineligible to hold office as a board member, fails to attend three consecutive board meetings without the board's authorization, resigns or dies before the end of his or her term, the council or councils that appointed the member shall appoint a new member to serve for the remainder of the term

Our opinion is based on the fact that subsection 4(4) of O. Reg. 278/98 does not in any way provide the exclusive authority for the removal of a member from office.

⁶ *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F.

⁷ *Enbridge Gas Distribution Inc. v. Toronto (City)* (2012), 99 M.P.L.R. (4th) 336 (Ont. S.C.J.); *Eng v. Toronto (City)* (2012), 6 M.P.L.R. (5th) 1 (Ont. S.C.J.); *Brantford (City) v. Montour* (2013), 15 M.P.L.R. (5th) 175, 117 O.R. (3d) 241 (C.A.); and *Clublink Corporation ULC v. Oakville (Town)*, 2019 ONCA 827.

The purpose of subsection 4(4) is to provide authority for a council or councils to appoint an alternative member when the member who was originally appointed can no longer serve (due to ineligibility, failure to attend meetings, resignation or death). The intent of subsection 4(4) is to ensure that a municipality does not lose representation on a board if their original appointee is no longer capable of representing them.

Even if we are incorrect in our determination respecting the purpose and intent of subsection 4(4), it would be our view that Councillor Patrie is no longer eligible to serve on ADSAB given that he has been expressly removed by Council.

It is our opinion that the only “ineligibility” that subsection 4(4) could be speaking to would relate to a member’s appointment to a board. Unlike the *Municipal Act, 2001*, which sets out specific “eligibility” and “ineligibility” criteria for members of council,⁸ there is nothing in the *District Social Services Administration Boards Act* that addresses a board member’s eligibility.⁹

ADSAB has an obligation at law to recognize and cannot ignore the City’s valid decisions to remove Councillor Patrie from the board and to replace him by appointing another member.

CONCLUSIONS

Based on the foregoing it is our opinion that:

1. Council has express statutory authority to appoint and to remove members from ADSAB;
2. Council has passed a resolution to remove Councillor Patrie from all committees, boards and commissions, including ADSAB;
3. Council’s resolution has not been challenged and is presumed at law to be valid;
4. Council has appointed an alternate member to replace Councillor Patrie on ADSAB; and
5. ADSAB has no authority at law to disregard Council’s decision to remove Councillor Patrie.

It is our opinion that ADSAB has a positive legal obligation to recognize and give effect to the City’s decisions with respect to the appointment and removal of members to the board.

Yours truly,

AIRD & BERLIS LLP



John Mascarin

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⁸ See ss. 256, 257 and 258(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25.

⁹ The “qualifications” for board members are set out in s. 3.1 of the *District Social Services Administration Boards Act*.