CITATION: Patrie v. City of Elliot Lake (Integrity Commissioner), 2023 ONSC 7017
DIVISIONAL COURT FILE NO.: DC-23-2189
DATE: 2023/12/15

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BACKHOUSE, WILLIAMS, NIECKARZ JJ.

BETWEEN:	)	
	)	
Chris Patrie	)	Brian Duxbury and Joshua Perell, for the Appellant
	)	
Appellant	)	
	)	
– and –	)	
	)	
City of Elliot Lake (Integrity Commissioner)	)	Raivo Uukkivi and Jeremy Martin, for the Respondent
	)	
Respondent	)	
	)	
Corporation of the City of Elliot Lake	)	
	)	
Respondent	)	John Mascarin and John Pappas, for the Respondent, Corporation of Elliot Lake
	)	
	)	
	)	**HEARD**: April 12, 2023

REASONS FOR DECISION

Williams J.

Overview

[1] This is an appeal under s. 11 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (*MCIA*), from a decision in an application initiated by the Integrity Commissioner of the City of Elliot Lake.

[2] In its notice of application, the Integrity Commissioner pleaded that it had determined that Chris Patrie, an Elliot Lake city councillor at the time, violated ss. 5(1)(c) and 5.2(1) of the *MCIA*.

[3] The application judge, Rasaiah J., concluded that there was more than sufficient evidence on the record to support a finding that Mr. Patrie had contravened the *MCIA* as alleged. Under s. 9(1) of the *MCIA*, she ordered that Mr. Patrie be removed from office and disqualified from being a member[1] for two years.

[4] Mr. Patrie argues that the application judge made errors of law, fact, and mixed fact and law that warrant the intervention of this court.

[5] Mr. Patrie asks for the application judge's decision to be set aside and for the Integrity Commissioner's application to be dismissed. Alternatively, Mr. Patrie asks for the judgment to be varied and for the penalty to be reduced to a reprimand.

[6] Mr. Patrie also appeals the application judge's costs decision. Mr. Patrie submits that the application judge made errors of law when she awarded costs of $89,143.77 against him. Mr. Patrie asks this court to set aside the costs decision or to vary it in his favour.

The Parties to the Appeal

[7] The parties to the appeal are Mr. Patrie, City of Elliot Lake (Integrity Commissioner), and the Corporation of the City of Elliot Lake, which was added as a respondent by Kurke J.

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[1] Under the *MCIA*, a "member" is a member of a counsel or of a local board.

[8] A non-profit corporation, Expertise for Municipalities or "E4M" acted as the Integrity Commissioner for Elliot Lake in this case.

Background

[9] Elliot Lake is a small city in northern Ontario. In 2016, its population was 10,741.

[10] In 2017, Mr. Patrie was one of seven members of Elliot Lake's city council. The council was made up of seven members, six councillors and the mayor.

[11] Mr. Patrie had first been elected to the council in 2006. He was re-elected in 2010 for a four-year term. He was not re-elected in 2014. In November 2017, he was appointed to council to fill a vacancy resulting from the resignation of a member.

[12] Mr. Patrie was elected in 2018 for a four-year term. In October 2022, he was elected as mayor.

[13] Since at least 2009, Elliot Lake had been considering the construction of a multi-purpose sports and recreational complex. The project was referred to as "the Hub".

[14] By the summer of 2017, the city had commissioned a feasibility study and a business case study for the location of the Hub. The business case study had considered five possible sites and concluded that two were the most viable: (1) 151 Ontario Avenue, which was the location of the Algo Centre Mall which had collapsed in 2012; and (2) the location of the existing Centennial Arena. The study concluded that fewer challenges and risks were associated with the 151 Ontario site.

[15] The city owns a parcel of land on the north side of Oakland Boulevard which runs north for about half a kilometre from the intersection of Oakland Boulevard and Ski Hill Road to the city's municipal ski hill, Mount Dufour.

[16] The consulting firm which had conducted the two studies did not consider the Oakland/Ski Hill site as a realistic option for the Hub, in part because there were steep hills on the property and blasting would have been required to make the land commercially viable. The Oakland/Ski Hill

site had once been considered for a project known as “Destination Elliot Lake”, but consultants had given the property a negative assessment in 2009.

[17] The Oakland/Ski Hill site is located directly north of and across the street from Oakland Plaza, a mall owned by Klover Building Inc. Klover is a corporation owned by Mr. Patrie and his wife. Mr. Patrie also owns a business at the mall, a hunting and fishing equipment/gift store called the Trading Post.

[18] At a meeting on November 27, 2017, council considered potential sites for the Hub to decide on an application for government funding. Mr. Patrie proposed and voted for the Centennial Arena site to be put forward for the purpose of the funding application.

[19] The record shows the discussion at the time included references to the need to select a site for purposes of the funding application and to there being an opportunity to select a different site in the future. Council was not committing to build the Hub on the Centennial site at this time.

[20] At a council meeting on December 19, 2018, council was to vote on a motion to purchase the 151 Ontario site as the location for the Hub. The motion was expected to pass by one vote.

[21] Councillor Luc Cyr declared a conflict of interest and did not vote at the meeting.

[22] Mr. Patrie voted against the motion at the meeting.

[23] The result was a tie vote, which meant the motion to purchase 151 Ontario was defeated.

[24] Mr. Cyr said that Mr. Patrie visited him at work before the meeting and told him that because he (Mr. Cyr) was a member of a class action relating to the mall collapse at 151 Ontario, he should abstain from voting at the meeting. He says Mr. Patrie told him that if Mr. Cyr did vote at the meeting, someone would probably file a complaint against him. Mr. Cyr says he believed Mr. Patrie would be that someone. Mr. Cyr says he felt bullied and intimidated by Mr. Patrie.

[25] The decision on a location for the Hub was put over to a special meeting of council scheduled for March 6, 2019. A motion to purchase 151 Ontario passed. Mr. Patrie participated in the meeting, by telephone, but did not vote.

[26] On March 29, 2019, the then-mayor of Elliot Lake, Dan Marchisella, filed a complaint about Mr. Patrie with the respondent, the city's Integrity Commissioner.

[27] In his complaint, Mr. Marchisella alleged that on February 28, 2019, Mr. Patrie suggested to him that the Hub be built behind the Oakland Plaza. Mr. Marchisella stated: 1) that Mr. Patrie told him that he had already discussed the idea with another councillor, Norman Mann; 2) that another councillor, Tom Turner, later told him that Mr. Patrie had also reached out to Mr. Turner to discuss the same concept; and 2) that the city's Chief Administrative Officer (CAO), Dan Gagnon, stated that Mr. Patrie had also approached Mr. Gagnon about building the Hub behind the Oakland Plaza.

[28] In his complaint, Mr. Marchisella also stated that council had discussed the economic impact the Hub would have on Elliot Lake's business sector and in particular businesses closest to the location of the project. Mr. Marchisella explained that Mr. Patrie owned the Oakland Plaza and the largest store in the plaza, the Trading Post. In his complaint, Mr. Marchisella suggested that Mr. Patrie had worked hard against the majority of council to ensure the Hub was not located in the downtown core because he would benefit personally if the Hub were located behind the Oakland Plaza.

[29] The Integrity Commissioner retained Sean Sparling, a former Sault Ste. Marie deputy chief of police, to conduct the investigation.

[30] The Integrity Commissioner also retained a consultant, Jason Naccarato, to prepare an asset valuation change report to assist in determining whether the location of the Hub would have a pecuniary impact on the Oakland Plaza and the Trading Post.

[31] The Integrity Commissioner presented its report to council on September 19, 2019.

[32] The Integrity Commissioner concluded that Mr. Patrie had a pecuniary interest in the location of the Hub and that he had violated the *MCIA* by lobbying the mayor, councillors, and members of the public about locating the Hub at the Oakland/Ski Hill site.

[33] In accordance with s. 8 of the *MCIA*, the Integrity Commissioner then brought an application for a determination of whether Mr. Patrie had contravened the *MCIA* and, if so, for a determination of the appropriate penalty.

The Decision of the Application Judge

The appointment of the Integrity Commissioner

[34] The application judge found that Expertise for Municipalities ("E4M") had been properly appointed to act as Integrity Commissioner for Elliot Lake. She found that even though there were procedural irregularities in the appointment and contracting of the services of E4M, it was understood that E4M had been retained through a letter of engagement, that it would continue its on-going investigations and that its services would be discontinued through a letter of engagement. The application judge found that a retroactive by-law passed on September 23, 2019 appointing E4M was within the power of council.

[35] The application judge also found that there is no requirement that an appointment be in the form of a written services agreement for it to be lawful and binding.

The test to be applied for pecuniary interest

[36] The application judge held there is a high standard to be met by elected public officials in avoiding conflicts of interests to maintain public confidence in the administration of the municipal government.

[37] She found that this requires an objective assessment and that a pecuniary interest may be direct or indirect.

[38] The application judge framed the applicable question as follows: "[w]hat would an objective observer understand and believe in the place and circumstances of Patrie on the facts of this case?"

Whether Mr. Patrie contravened the *MCIA*

[39] The application judge admitted and weighed the evidence of Mr. Naccarato, which was to the effect that the Oakland/Ski Hill site was within a 200-metre "zone of convenience" for the Oakland Plaza.

[40] The application judge also accepted the evidence of Mr. Cyr, that Mr. Patrie had implied that he would file a complaint against Mr. Cyr if Mr. Cyr did not declare a conflict of interest. The application judge found that this had the effect of influencing the December 2019 vote on the 151 Ontario site and had a potential effect on the pecuniary interests of Mr. Patrie, who would benefit from the location of the Hub at the Oakland/Ski Hill site. The defeated motion changed the course of the progress on the Hub.

[41] The application judge rejected Mr. Patrie's evidence that after the November 27, 2017 council meeting, he believed that the Centennial Arena site was the final conclusively-decided site for the Hub. In rejecting Mr. Patrie's evidence, the application judge said that Mr. Patrie's position was contrary to the actions he took and the discussions he had following the meeting.

[42] The application judge found that there was more than sufficient evidence to support a conclusion that Mr. Patrie had contravened the *MCIA*.

Application of s. 4(j) of the *MCIA*

[43] The application judge rejected the argument that Mr. Patrie's interests are in common with electors generally and, in particular, found that his interests were different in kind from those in the immediate area and the whole community. In coming to this conclusion, the application judge noted that there was no evidence to suggest that other businesses in the area were "landlords, landowners and business owners with the same interests."

Penalty

[44] The application judge concluded that she could not find that Mr. Patrie took reasonable steps to prevent the contravention or that his actions were committed through inadvertence or through an error in judgment made in good faith. The application judge noted that Mr. Patrie did not receive a financial benefit.

[45] The application judge ordered removal from office and disqualification of two years.

Costs

[46] The application judge considered s. 223.4.1(18) of the *Municipal Act, 2001*, S.O. 2001, c. 25, which provides that a municipality must pay an Integrity Commissioner's legal costs for bringing an application.

[47] The application judge held that this provision does not preclude an Integrity Commissioner from receiving costs awards to offset its legal fees. The application judge reviewed a body of jurisprudence that confirmed that Integrity Commissioners have received costs awards on a percentage of a partial indemnity basis or on a partial indemnity basis. The application judge noted that the overriding principle in awarding costs is reasonableness, and the successful party is entitled to recover a reasonable allowance from the unsuccessful party.

[48] The application judge noted that the Integrity Commissioner was substantially successful on the application. She also noted that Mr. Patrie took a number of steps that were counterproductive and added to the costs of the proceeding.

[49] The application judge found that this was a complex case that involved numerous issues that required a reply from the Integrity Commissioner.

[50] The application judge found that the costs requested by the Integrity Commissioner were too high. She considered the factors under r. 57.01(1)(0.b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including the reasonable expectations of the parties and the principle of proportionality, and awarded fees of $80,000, inclusive of HST, plus $9,143.77 in disbursements.

The Jurisdiction of the Divisional Court

[51] The Divisional Court has jurisdiction to hear this appeal under s. 11 of the *MCIA*, which provides that an appeal lies from any order made under s. 9 of the *MCIA* to the Divisional Court in accordance with the rules of court.

Standard of Review

[52] The standard of review on an appeal is set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.[2] Errors of law are reviewable on the standard of correctness: *Housen*, at para. 8. Errors of fact are reviewable on a standard of palpable and overriding error: *Housen*, at para. 10. Questions of mixed fact and law lie on a spectrum: if the factual and legal aspects cannot be separated, the palpable and overriding error standard applies; if a question of law can be extricated, the correctness standard applies: *Housen*, at para. 36.

The Issues

[53] Mr. Patrie has raised the following issues on this appeal:

1. Did the Integrity Commissioner have jurisdiction to investigate Mr. Patrie and commence the application?

2. Did the application judge err in her analysis of s. 273 of the *Municipal Act*?[3]

3. What is the correct test to be applied for whether the Appellant had a direct or indirect pecuniary interest? And was the test applied correctly?

4. Did the application judge correctly apply s. 4(j) of the *Act*?

5. Did the application judge err in admitting and weighing the evidence?

6. Was there a denial of natural justice?

7. Was the penalty appropriate?

[2] It has been suggested that appellate review should not be limited but the generally accepted view is that there is no principled reason why the Divisional Court should not afford the usual deference to the "trial judge" on an appeal under s. 11 of the *MCIA*: *City of Elliot Lake v. Pearce*, 2021 ONSC 7859, 26 M.P.L.R. (6th) 109 (Div. Ct.), at para. 27. Mr. Patrie does not suggest that the generally accepted view is not the appropriate approach in this case.

[3] At the hearing of the appeal, Mr. Patrie's counsel said Mr. Patrie did not intend to pursue this issue.

8. Did the application judge commit an error of law and/or principle in her decision on costs?

Analysis

Issue #1: Did the Integrity Commission have jurisdiction to investigate Mr. Patrie and commence an application?

Mr. Patrie's position

[54] Mr. Patrie argues that, at the time it undertook its investigation into the complaint against Mr. Patrie, E4M was not a properly appointed Integrity Commissioner.

[55] Mr. Patrie also argues that the by-law that was passed in September 2019 appointing E4M as Integrity Commissioner effective February 11, 2019 was not valid.

[56] Mr. Patrie notes that the application judge found that, at the relevant time, there were clear expressions at Council that E4M would be appointed. Mr. Patrie also notes that the application judge referred to an understanding at council that, when a different Integrity Commissioner was appointed, E4M would complete ongoing investigations and that, having been retained by a letter of engagement, E4M's services would be discontinued in the same manner. Mr. Patrie argues the application judge erred by allowing "clear expressions" and "understandings" to displace the statutory requirement in s. 223.3(1.1) of the *Municipal Act,* which provides that if a municipality has not appointed an Integrity Commissioner, it shall make arrangements for services to be provided by an Integrity Commissioner of another municipality.

[57] Mr. Patrie argues that council acted without statutory authority when it failed to follow the procedure in s. 233.3(1.1) by making arrangements with the Integrity Commissioner of another municipality. He argues that the retroactive by-law passed in September 2019 cannot cure an action that was taken without statutory authority.

[58] Mr. Patrie also argues that the application judge failed to weigh certain evidence that showed that E4M was aware of the defects in its retainer and the appointment process, including an admission to this effect by a director of E4M.

The decision of the application judge

[59] The application judge considered and rejected Mr. Patrie's arguments that E4M was not properly appointed, that E4M had no contract for services with the city when it undertook its work, and that the September 2019 retroactive by-law was invalid.

Chronology of relevant events

[60] The city appointed its first Integrity Commissioner, Robert Swayze, in 2017.

[61] In early 2019, city staff anticipated an increase in the workload of the city's Integrity Commissioner, because of impending legislative changes. Staff revised the city's accountability framework and took steps to organize how Integrity Commissioner services would be delivered.

[62] The record shows that the Integrity Commissioner approval process went through several reports and votes in February and March 2019.

[63] City staff reported to council to seek directions with respect to options for Integrity Commissioner services, including contracting with more than one service provider. Staff recommended hiring two service providers and dividing their responsibilities. The recommendation was to retain E4M for conflict of interest matters and for training and advising councillors and to retain Tony Fleming, a lawyer with Cunningham Swan, for code of conduct investigations.

[64] The proposals of E4M and Mr. Fleming stated that both were acting as the Integrity Commissioner for other municipalities at the time.

[65] Council approved in principle the retention of E4M and Mr. Fleming and directed staff to take the steps necessary to formalize the decision.

[66] On February 25, 2019, staff presented to council the city's draft accountability policy framework. In its report, staff referenced council's approval of the concept of a dual Integrity Commissioner model. Council adopted the staff report and approved the draft accountability policy framework.

[67] In March 2019, council considered a further staff report which stated that E4M would be designated primary service provider for all matters and that Mr. Fleming would provide support services.

[68] Mr. Patrie argues correctly that a resolution passed on March 11, 2019 did not approve the use of primary and secondary Integrity Commissioners. However, it is evident from the record that previous resolutions did approve the model.

[69] Two months later, in May 2019, council changed course and directed that all Integrity Commissioner complaints should be forwarded to Mr. Fleming and not E4M. On June 10, 2019, the city passed a by-law which appointed Mr. Fleming as the city's only Integrity Commissioner. Staff reported to council that E4M's retainer would be discontinued in the same way it had been initiated, by letter.

[70] On September 23, 2019, council passed a by-law which formally confirmed E4M's appointment as Integrity Commissioner from February 11, 2019 to June 10, 2019.

Discussion

[71] The chronology set out above demonstrates that a resolution authorizing the dual Integrity Commissioner model was passed on February 25, 2019 and E4M's appointment was confirmed by by-law on September 23, 2019.

[72] The application judge made no error when she concluded that retroactive by-laws, such as the September 23, 2019 by-law, are lawful.

[73] Municipalities in Ontario may enact by-laws or resolutions that have retroactive effect. This means a by-law or resolution may operate as applying before it was passed. The intent that the by-law or resolution apply retroactively must be clearly shown, either through express words or necessary and direct implication: *Toronto v. Seemayer* (1982), 24 M.P.L.R. 132 (Ont. Co. Ct.), at p. 134.

[74] In this case, the city's September 23, 2019 by-law expressly stated that E4M was appointed as Integrity Commissioner "retroactive to February 11, 2019" and that any agreement or contract entered into with E4M was ratified.

[75] The city's actions were consistent with *DiBiase v. Vaughan (City)*, 2016 ONSC 5620, 55 M.P.L.R. (5th) 173 (Div. Ct.), at paras. 190-91, in which this court endorsed the retroactive appointment of an Integrity Commissioner, specifically noting that the relevant provisions in the *Municipal Act* do not preclude a municipality from doing so retroactively.

[76] Mr. Patrie's argument that the September 23, 2019 by-law is not valid because council failed to comply with s. 223.3(1.1) of the *Municipal Act* is without merit.

[77] The requirement under s. 223.3(1.1) for a municipality to make arrangements with the Integrity Commissioner of another municipality applies only if the municipality has not appointed an Integrity Commissioner of its own:

> **Provision for functions if no Commissioner appointed**
>
> (1.1) If a municipality has not appointed a Commissioner under subsection (1), the municipality shall make arrangements for all of the responsibilities set out in that subsection to be provided by a Commissioner of another municipality.

[78] Elliot Lake had appointed an Integrity Commission. In fact, on February 25, 2019, it appointed two Integrity Commissioners, E4M and Cunningham Swan. Section 223.3(1.1) was not triggered. There was no requirement for the city to reach out to the Integrity Commissioner of another municipality.

[79] Mr. Patrie's position in respect of s. 223.3(1.1) undermines his argument that E4M was not a properly appointed Integrity Commissioner. Section 223.3(1.1) requires a municipality to "make arrangements" for Integrity Commissioner services from the Integrity Commissioner of another municipality. The phrase "make arrangements" is not defined in the *Municipal Act* and does not appear elsewhere in the Act. In my view, the requirement to "make arrangements" speaks to a less formal procedure than the default municipal decision-making mechanisms of resolutions and by-laws. There can be no dispute in this case that, at the very least, Elliot Lake had made "arrangements" with E4M. There was evidence that E4M had been appointed Integrity Commissioner by 54 municipalities.

[80] I do not agree with Mr. Patrie that the application judge erred by failing to weigh evidence that representatives of E4M had concerns about defects in their retainer and the appointment process. Mr. Patrie points to concerns expressed by E4M director, Ms. Young-Lovelace, in a conversation with Elliot Lake's lawyer. He argues Ms. Young-Lovelace's concerns should be viewed as "dispositive" on the question of the validity of the appointment of E4M at the time the investigation of Mr. Patrie was initiated and carried out.

[81] In a transcript of a conversation dated October 19, 2019 between Ms. Young-Lovelace and the city's lawyer, Ms. Young-Lovelace says she is worried that the by-law passed September 23, 2019 terminated E4M's retainer as of June 10, 2019, when E4M's investigation of Mr. Patrie was not completed until September 2019. Ms. Young-Lovelace said she did not want E4M's work to be negated.

[82] The September 23, 2019 by-law said that E4M was appointed retroactively to February 11, 2019 and terminated June 10, 2019. For the following reasons, I find the city could not have intended on September 23, 2019 that E4M stop work as of June 10, 2019: (1) E4M had been providing Integrity Commissioner services to Elliot Lake since February 2019, including work after June 10, 2019; (2) the evening the by-law was passed, council considered three E4M investigation reports, including the one relating to Mr. Patrie, which was dated September 16,

2019; and (3) an Integrity Commissioner has a statutory obligation to perform the functions assigned to it by the municipality and to report to council (*Municipal Act*, s. 223.3(1)).

[83] In my view, the September 23, 2019 by-law, when read in context, must be interpreted to reflect the city's intention to confirm that E4M was retained as of February 11, 2019 and that no new Integrity Commissioner assignments would be sent to E4M after Cunningham Swan was appointed on June 10, 2019.

[84] The application judge did not err by not addressing Ms. Young-Lovelace's concerns about E4M's retainer. In my view, Ms. Young-Lovelace's concerns would not have had any bearing on the application judge's conclusion that E4M's appointment was authorized.

Conclusion with respect to Issue #1

[85] The application judge made no reviewable error of law or fact in rejecting Mr. Patrie's arguments in respect of the Integrity Commissioner's authority. The application judge correctly considered the legal principles relevant to the city's authority to pass by-laws retroactively. The application judge property rejected Mr. Patrie's arguments.

Issue #2: Did the application judge err in her analysis of s. 273 of the Municipal Act?

[86] Mr. Patrie's counsel said in his oral submissions that Mr. Patrie would not be pursuing this ground of appeal.

Issue #3: Did the application judge correctly assess whether Mr. Patrie had a direct or indirect pecuniary interest?

[87] The sections of the *MCIA* the Integrity Commissioner found Mr. Patrie to have breached are s. 5(1)(c) and s. 5.2(1). Both sections require a determination of whether a member "has any pecuniary interest, direct or indirect."

[88] Section 5(1) provides as follows:

> **When present at meeting at which matter considered**

> 5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,
>
> (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
>
> (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
>
> (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

[89] Section 5.2(1) provides as follows:

> **Influence**
>
> 5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

Mr. Patrie's position

The test for pecuniary interest

[90] Mr. Patrie argues that the Hub offered a potential community-wide benefit for Elliot Lake, regardless of where it was to be located. He argues the Hub would benefit his business, the Trading Post, all businesses in the same commercial area, and all businesses and residents.

[91] Mr. Patrie submits that Elliot Lake is not a large city and that the locations that were under consideration as potential sites for the Hub were relatively close to each other. Mr. Patrie argues that attempting to measure the potential benefit a site for the Hub (such as the Oakland/Ski Hill site) will offer a particular business (such as the Oakland Plaza and the Trading post) is not a correct approach. Mr. Patrie asserts that if this approach is endorsed, because the Hub, and similar

projects, generate a community-wide benefit, all councillors who have businesses in the city would be prevented from participating in any discussion about the location of the project because of conflict.

[92] Mr. Patrie submits that the application judge made an error of law when she chose the test to be applied to determine whether he had a pecuniary interest in the matter of the location of the Hub.

[93] Mr. Patrie argues that the correct test to be applied when considering whether a municipal councillor has a direct or indirect pecuniary interest under the *MCIA* is the following: "[W]ould a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor's action and decision on the question?" (citations omitted): *Ferri v. Ontario (Attorney General*), 2015 ONCA 683, 127 O.R. (3d) 613, at para. 16.

[94] The application judge said the test is objective, and applied the following test: "What would an objective observer understand and believe in the place and circumstances of Patrie on the facts of this case?"

[95] Mr. Patrie submits the "objective observer" of the application judge's test is not the same as a "reasonable elector", because a reasonable elector would be aware of contextual circumstances unique to Mr. Patrie and Elliot Lake. Mr. Patrie offers as an example the fact that all the proposed locations for the Hub were in close proximity to each other and to Mr. Patrie's businesses.

[96] Mr. Patrie argues that the application judge's error in law was compounded by her failure to consider all the relevant circumstances and factors in her application of the test.

The report of Jason Naccarato

[97] In concluding that Mr. Patrie had a pecuniary interest in the matter of the location of the Hub, the application judge relied in part on the report of a consultant, Jason Naccarato. Mr. Naccarato was retained by the Integrity Commissioner's investigator to provide an "asset

valuation change report" to assist in determining whether Mr. Patrie would benefit if the Hub were located on the Oakland/Ski Hill site.

[98] Mr. Patrie takes issue with Mr. Naccarato's report for several reasons.

[99] Mr. Patrie argues that Mr. Naccarato considered whether locating the Hub "next to the Oakland Plaza/Trading Post" would increase or decrease property values, foot traffic, and associated revenues. Mr. Patrie submits that it is not clear what "next to" means and that "next to" cannot refer to the area of the ski hill, which was about half a kilometre away from Mr. Patrie's businesses.

[100] Mr. Patrie argues that it was Mr. Naccarato's opinion that there is a 200-metre "zone of convenience" around a project such as the Hub, and that businesses in this zone will benefit, and that this is nothing more than a theory that the closer you are the more you benefit. Mr. Patrie argues that no expertise is required to conclude that if a business is located next to a significant complex, the business is likely to benefit to some degree. He argues the "zone of convenience" is not a meaningful criterion for measuring a councillor's conflict or how councillors deal with projects of this nature in small communities.

[101] Mr. Patrie argues that Mr. Naccarato should have considered whether Mr. Patrie's business and all other businesses in Elliot Lake would derive a benefit from the Hub. He submits that such an analysis would be important to the issue of whether any interest Mr. Patrie had was an "interest in common with electors generally" under s. 4(j) of the *MCIA*. Mr. Patrie argues Mr. Naccarato also should have considered the impact the Hub would have on other businesses in the same commercial area as Mr. Patrie's plaza.

[102] Mr. Patrie also argues there were errors in Mr. Naccarato's report that undermine his expertise and his opinions. For example, Mr. Naccarato stated that one of the sites for the Hub being considered by the city was north of Esten Drive at Highway 108 South, when that site was no longer under consideration at the time Mr. Naccarato prepared his report.

[103] Mr. Patrie argues that because the report was flawed, the application judge's treatment and weight given to this report was similarly flawed.

[104] Mr. Patrie submits that the application judge also erred by considering that he had not filed an expert's report himself. Mr. Patrie argues that he was under no obligation to file a rebuttal report and that the absence of a rebuttal report does not render Mr. Naccarato's report admissible or dictate that the opinions in the report should be given any weight.

Discussion

The test for pecuniary interest

[105] The application judge carefully canvassed the legal principles applicable to the issue of whether Mr. Patrie had a pecuniary interest in the matter of the location of the Hub.

[106] The application judge noted that s. 5(1) of the *MCIA* refers to "any pecuniary interest, direct or indirect". (The Integrity Commissioner had found that Mr. Patrie had contravened both s. 5(1)(c) and s. 5.2(1) of the *MCIA*. The words "any pecuniary interest, direct or indirect" appear in both sections.)

[107] The application judge noted that s. 4 of the *MCIA* contains exceptions to s. 5 and s. 5.2. She noted that the exception relied upon by Mr. Patrie was s. 4(j), which states that ss. 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have "by reason of the member having a pecuniary interest which is an interest in common with electors generally." (I will address this exception, and whether Mr. Patrie had a pecuniary interest in common with electors generally, below, when I consider the fourth issue raised by Mr. Patrie on the appeal.)

[108] The application judge noted that "pecuniary interest" is not defined in the *MCIA*. She noted that "pecuniary interest" has been defined in the jurisprudence as relating to a financial, monetary, or economic interest. She also noted that "pecuniary interest" is not to be "narrowly confined", however, must also not be construed so broadly that it captures almost any financial or economic interest needlessly disqualifying councillors from dealing with matters of importance: *Ferri*, at paras. 9-10.

[109] The application judge considered the principles relating to the duties of members of council listed in s. 1.1 of the *MCIA*. These principles are the following:

> 1. The importance of integrity, independence and accountability in local government decision-making.
>
> 2. The importance of certainty in reconciling the public duties and pecuniary interests of members.
>
> 3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
>
> 4. There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.

[110] The application judge determined that an objective standard is applied in assessing the issue of a conflict of interest and application of s. 5 of the *MCIA*. She noted that it is a member's actions, objectively viewed, that are relevant, and that intention is relevant only to sanction: *Baillargeon v. Carroll* (2009), 56 M.P.L.R. (4th) 161 (Ont. S.C.), at para. 77.

[111] I agree with the Integrity Commissioner that the Court of Appeal decision relied on by Mr. Patrie, *Ferri*, addressing the viewpoint of a "reasonable elector" was in relation to the exception to finding a pecuniary interest set out in s. 4(k) of the Act. The language of that provision required the court to consider whether a conflict would "reasonably be regarded" in a certain way, hence the reference in the test to the "reasonable elector".

[112] The existence of a pecuniary interest under ss. 5 and 5.2 of the *MCIA* is properly determined through the application of an objective test. The application judge, in her analysis, expressly rejected a subjective test and properly upheld the objective standard. As reproduced, above, the test applied by the application judge was: what would an objective observer understand and believe in the place and circumstances of Patrie on the facts of this case?

[113] The application judge considered that Mr. Patrie and his wife owned interests in Klover, which owned the Oakland Plaza and the Trading Post. Relying on photographs and maps that showed the locations of the properties in question, the application judge was satisfied that the plaza was in very close proximity to the Oakland/Ski Hill site. The application judge considered

Mr. Naccarato's report. She relied on Mr. Naccarato's opinion that the Oakland Plaza and the Trading Post would be in a 200-metre "zone of convenience" if the Hub were located on the Oakland/Ski Hill site, noting that she did not consider his analysis in this respect to be flawed. She accepted Mr. Naccarato's opinion that the Trading Post would benefit, because it sold snacks, drinks, and souvenirs, and because people who enjoying hunting and fishing may visit the Hub. She said that Mr. Naccarato was quite clear in stating that building close to the plaza would provide the plaza with several income opportunities.

[114] Although Mr. Patrie argued before the application judge and on this appeal that the ski hill was not close to the Oakland Plaza and the Trading Post and was at least half a kilometre away, the ski hill was not the site that was under discussion. The mayor of Elliot Lake, Dan Marchisella, said in his affidavit that Mr. Patrie had stated he thought the city "should build the Hub behind his mall property on Oakland Blvd." The application judge was not at all confused about the location and configuration of the property that was at issue and to which I have referred as the Oakland/Ski Hill site. The application judge correctly stated that the property ran from "the corner of Oakland Blvd up to the Ski Hill." She said that Mr. Patrie had admitted on cross-examination that this description was accurate. The application judge noted that Mr. Patrie's "Destination Elliot Lake" proposal, which involved the same property, had focused on the base (on Oakland Blvd.) as a co-location with the ski hill. As the application judge put it, "to suggest that two different versions of locations (the actual Ski Hill vs. Oakland Blvd.) were being interchanged in the evidence or such an interpretation should be found is a mischaracterization of the evidence."

[115] The application judge concluded that, given the place and circumstances of Mr. Patrie, on the facts of this case, an objective observer would understand and believe that Mr. Patrie had a pecuniary interest in the matter of the location of the Hub.

[116] The application judge made no error in applying the test she applied or in the manner in which she applied the test.

The report of Jason Naccarato

[117] Mr. Naccarato's report was attached to an affidavit in which he confirmed the accuracy of his analysis and adopted his conclusion. Mr. Naccarato's curriculum vitae and a signed acknowledgement of expert's duty were exhibits to Mr. Naccarato's affidavit.

[118] Mr. Naccarato was cross-examined by Mr. Patrie's lawyer.

[119] In his affidavit, Mr. Naccarato said the purpose of his report was to consider whether there was an expectation that the relocation of the Hub next to the Oakland Plaza/Trading Post would result in an increase or decrease in property values. Mr. Naccarato's conclusion was that if the Hub were built on the Oakland/Ski Hill site, it would be of significant financial benefit to the owner of Oakland Plaza and to the plaza's tenants.

[120] The application judge properly considered Mr. Naccarato's training and experience. She noted that he has a mechanical engineering degree, a Master of Business Administration, and a professional project management designation. She noted that he had not previously provided an asset valuation report to a municipality but that he had prepared many such reports in the past for business developers. The application judge also properly considered the materials Mr. Naccarato reviewed to prepare his opinion.

[121] The application judge stated that Mr. Patrie did not challenge Mr. Naccarato's expertise.

[122] The application judge was entitled to accept some, none, or all of Mr. Naccarato's evidence. While Mr. Patrie is correct that he had no obligation to file expert evidence to rebut the evidence of Mr. Naccarato, his failure to do so meant that Mr. Naccarato was the only witness qualified to give opinion evidence about the benefit Mr. Patrie would reap if the Hub were constructed at the Oakland/Ski Hill site. The application judge was very much alive to the fact that Mr. Naccarato was the only expert witness on the application: she noted that although the mayor's evidence was helpful in some respects, he was not an expert commercial property valuator; she observed that Mr. Patrie offered only evidence of what he thinks and references to what other unqualified individuals think.

[123] Mr. Patrie says that Mr. Naccarato was unclear when he said he was retained to give an opinion about whether Mr. Patrie would benefit if the Hub were built "next to" the Oakland Plaza/Trading Post. Mr. Patrie argued it was not clear what "next to" meant, and that it was certainly not a reference to the ski hill, which was half a kilometre away.

[124] It is clear from Mr. Naccarato's report that Mr. Naccarato was referring to a site that was located directly north of the Oakland Plaza and about 200 metres away it.

[125] Mr. Patrie is critical of Mr. Naccarato's opinion in respect of the 200-metre zone of convenience. I do not accept his characterization of this opinion as a simple statement that the closer you are to the Hub the more you will benefit. Mr. Naccarato offered a defined measurement of 200-metres. The zone of convenience opinion was not challenged on cross-examination, there was no evidence to the contrary and the application judge was entitled to accept it.

[126] Mr. Patrie submits that Mr. Naccarato should have included in his report opinions in respect of whether any pecuniary interest Mr. Patrie had in the matter of the location of the Hub was an interest in common with other electors. There is no reason why Mr. Patrie could not have consulted an expert to request these opinions.

[127] Mr. Patrie is correct that Mr. Naccarato referred in his report to a property at Esten Drive and Highway 108 that was no longer being considered as a site for the Hub. That this property was no longer under consideration meant that any comparisons between this site and the Oakland/Ski Hill site in Mr. Naccarato's report were not relevant to the issues on the application. The reference to the Esten Drive/Highway 108 site did not, however, undermine Mr. Naccarato's opinion about the benefits Mr. Patrie would derive if the Hub had been built on the Oakland/Ski Hill site.

[128] Although the application judge did not say so expressly, I am satisfied that she admitted Mr. Nacarrato's opinion evidence on the basis that it was relevant and necessary to assist her with the decision she was required to make under s. 5 of the *MCIA* in respect of whether Mr. Patrie would derive a direct or indirect pecuniary benefit from the location of the Hub.

[129] The application judge made no reviewable error in admitting Mr. Naccarato's evidence or in her assessment of the evidence.

Conclusion with respect to Issue #3

[130] The application judge did not err in respect of the test to be applied in determining whether Mr. Patrie had a pecuniary interest or in her application of the test, nor did she err in her treatment of Mr. Naccarato's evidence.

Issue #4: Did the application judge correctly apply s. 4(j) of the Act?

Mr. Patrie's position

[131] Mr. Patrie argues that the application judge erred in her assessment of whether he had an interest in common with electors generally under s. 4(j) of the *MCIA*. If Mr. Patrie had such an interest, ss. 5 and 5.2 of the *MCIA* would not apply to him.

[132] Mr. Patrie notes that while the *MCIA* does not include a definition of "pecuniary interest", it defines "interest in common with electors generally" in the following manner:

> "interest in common with electors generally" means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part.

[133] Mr. Patrie argues that the Hub would have benefited the entire community. Mr. Patrie says that his support for a location that was close to his business was protected by s. 4(j) of the *MCIA*, in that any interest he had was an interest in common with all the other business and property owners in the two small commercial areas of Elliot Lake.

[134] Mr. Patrie submits that his interest is the same in kind as the interest of the electors who own property in or near these two commercial areas. Mr. Patrie argues that the application judge erred in law when she concluded that his interest was not in common with electors generally and that the s. 4(j) exception does not apply to him.

[135] Mr. Patrie relies on *Ennismore (Township), Re* (1996), 31 M.P.L.R. (2d) 1 (Ont. Gen. Div.), at para. 16, in which Laforme J., as he was then, considered the definition of "electors generally" and concluded that it does not apply to "all the electors" but rather to electors "of a certain class or order."

Discussion

[136] As discussed above, the application judge relied on Mr. Naccarato's evidence and concluded that Mr. Patrie would benefit if the Hub were located on the Oakland/Ski Hill site, because the Oakland Plaza and the Trading Post were within a 200-metre "zone of convenience" in relation to the site. The application judge noted that Mr. Naccarato had said that the income generation opportunities to the existing tenant mix were "vast" and that the benefits were neither remote nor insignificant.

[137] The application judge found that, in respect of the potential location of the Hub at the Oakland/Ski Hill site, Mr. Patrie's interest was different from the interest of electors in the whole of the community and also different from the interest of electors with businesses in the Oakland Plaza.

[138] The application judge noted that it is not the nature of the interest, but the breadth of those who share the interest which defines whether s. 4(j) of the *MCIA* applies: *Tuchenhagen v. Mondoux*, 2011 ONSC 5398, 107 O.R. (3d) 675 (Div. Ct.), at para. 43, leave to appeal quashed, 2012 ONCA 567, 100 M.P.L.R. (4th) 179.

[139] In respect of electors in the whole of the community, the application judge found there are many electors who do not own property or businesses the size of the Oakland Plaza with the interests of the plaza. She noted, for example, that many of the members of the community are retired individuals according to Mr. Patrie's own position.

[140] With specific reference to electors with businesses in the Oakland Plaza, the application judge found there was no evidence on the record that the other businesses were landlords, landowners, or business owners with the same interests as Mr. Patrie. The application judge said these were distinctions that could not be glossed over with bald descriptions. She said that an interest in common is an interest of the same kind. She noted, for example, that a restaurant in the area, The Fireside, was Klover's tenant and that other businesses in the area in which Klover had no interest were of different kinds, including the Moose Lodge and a car wash.

[141] The application judge concluded that Mr. Patrie's interests were not interests in common with the electors generally and that the exception in s. 4(j) of the *MCIA* does not apply on the facts of the case. The conclusions of the application judge were available to her on the evidence.

Conclusion with respect to Issue #4

[142] The application judge did not err in her finding that Mr. Patrie's interests are not common with the electors generally and that the s. 4(j) exception does not apply.

Issue #5: Did the application judge err in admitting and weighing the evidence?

Mr. Patrie's position

Hearsay

[143] Mr. Patrie argues that the application judge erred when she relied on inadmissible hearsay evidence, contrary to r. 39.01(5) of the *Rules of Civil Procedure*.

[144] In particular, Mr. Patrie takes issue with the application judge's reliance on the affidavit of the Integrity Commissioner's investigator Sean Sparling, which includes information provided to him by the city's CAO, Dan Gagnon, and some other third parties who did not provide affidavits.

[145] Mr. Patrie also takes issue with the evidence of two councillors and the former mayor, saying that the application judge failed to note or weigh that these individuals were adverse in interest to him.

Mr. Patrie's motives, intentions, and beliefs

[146] Mr. Patrie argues that the application judge erred by relying on her own speculation about his motive, intentions, and beliefs without an evidentiary basis. Mr. Patrie argues that this speculation was not appropriate, given the legal test to be applied.

Discussion

Hearsay

[147] Although Mr. Patrie argues that the application judge improperly relied on hearsay evidence, and refers to this evidence in general terms, the purportedly inadmissible evidence in the application judge's decision is not specifically identified and Mr. Patrie does not suggest how this evidence affected the application judge's analysis or her decisions.

[148] The record supports the Integrity Commissioner's argument that there was no objection to any of the evidence at the hearing of the application. The application judge's decision makes no reference to any rulings she was required to make in respect of admissibility. Mr. Patrie does not suggest that any objections were made or that any rulings were made or requested.

[149] The evidence of the former mayor, Dan Marchisella, was before the court and his evidence was subject to cross-examination.

[150] Although the city's CAO, Mr. Gagnon, and Councillors Pearce and Thomas did not submit affidavits, the application judge acknowledged that their evidence was hearsay and connected their statements to Mr. Patrie's supporting evidence. The decision of the application judge does not support Mr. Patrie's contention that she relied on hearsay evidence of Mr. Gagnon, Councillor Pearce, or Councillor Thomas for its truth.

[151] Some illustrative excerpts from the application judge's decision follow:

> There is no affidavit of Gagnon filed and I acknowledge that. However, the interviews conducted by Sparling were recorded and Sparling states this and although Patrie does not agree that he did the foregoing, he did admit to some conversations with Gagnon and corrected some of his denials.
>
> …
>
> At the end of the day, what I could take from his [Patrie's] evidence was that Patrie at the very least admitted to asking CAO Gagnon for the report that he had prepared regarding Destination Elliot Lake, which related to locating the Hub along with other potential development at the ski hill. Contrary to that submitted, this does

have relevance and meaning, as Patrie is asking for a report on a project, the location of which is close to the plaza, and asking for it, long after that specific proposal was put to rest by Council. In my view, this lends support to the veracity of the statements attributed to Gagnon that Patrie asked Gagnon to look into the viability of placing the Hub at the Ski Hill property and I do not doubt that he did. The only purpose of such a request would be to influence voting on the matter of the location for the Hub.

The IC [Integrity Commissioner] reports that Councillor Pearce recalls Patrie stating at an Economic Development meeting that he wanted the Hub at the site near the plaza, such that the City would be required to purchase more land from him to have sufficient developable land to carry out the project and that Patrie instructed him not to tell the Mayor about his intentions. Patrie does not deny speaking in favour of this location at this meeting. Whether he said what Pearce attributed to him, at the end of the day, the purpose of expressing one's view on a topic and/or speaking in favour of it, is to put it out there for consideration, for influence. Otherwise, why even mention it if the intention is not to influence.

The IC reports that Michael Thomas stated that Patrie did not make it a secret about town that he wanted the Hub to be constructed near the plaza; at some time between January and March of 2019 at an *ad hoc* multiplex committee meeting he asked Patrie "why" and he responded "it would go great back there. It's right behind the Ski Hill and everything else, and right behind my property. It's a perfect fit". Patrie also turned to him at the Arts and Culture Advisory meeting of April 4, 2019 and stated, "that's why the Hub should go back there on that property", referring to the site near the plaza. Patrie admits participating in a discussion about locating the Hub at the Ski Hill Road property at the Arts and Culture Advisory Committee meeting to the extent that he agreed with comments in support of that policy. Again, whether he said what Thomas attributed to him (emphasis added), at the end of the day, the purpose of expressing one's view on a topic and/or speaking in favour of it, is to put it out there for consideration, for influence. Otherwise, why even mention it if the intention is not to influence.

The IC reports that Councillor Turner recalls Councillor Pearce alleging that Patrie wanted the Hub behind his business and that Patrie admitted same at a closed session; Councillor Turner also recalls Patrie lobbying him to consider re-opening "old" sites for the Hub including the site near the plaza. [Emphasis added.]

[152] The application judge was careful to identify evidence that was second-hand and to rely on Mr. Patrie's corroborating evidence.

Mr. Patrie's motives, intentions, and beliefs

[153] The application judge was permitted to assess Mr. Patrie's motives, intentions, and beliefs, and there was evidence before her that permitted her to make these assessments. On at least one occasion, the application judge said the evidence that Mr. Patrie was thinking about the Oakland/Ski Hill site as a potential location for the Hub was "overwhelming"; she went on to say that it was also reasonable to draw such a conclusion.

[154] I do not accept Mr. Patrie's argument that the application judge was speculating about his motives, intentions, and beliefs; she was drawing inferences and making findings based on the evidence.

Conclusion with respect to Issue #5

[155] The application judge neither improperly relied on hearsay evidence nor improperly speculated about Mr. Patrie's motives, intentions, and beliefs. The application judge was careful in her treatment of second-hand evidence. She was entitled to draw inferences about Mr. Patrie's motives, intentions, and beliefs from the evidence that was before her. The application judge made no reviewable errors in admitting and assessing the evidence.

Issue #6: Was there a denial of natural justice?

Mr. Patrie's position

[156] Mr. Patrie argues that delays in investigating, launching an application, hearing the application, and the resultant delay in rendering a decision amount to a denial of natural justice, and the decision should be set aside.

[157] Mr. Patrie notes that the complaint was first made by Mayor Marchisella on March 29, 2019; the application was commenced on October 16, 2019; the application was argued on August 12-13, 2021; and the decision was rendered on January 9, 2023, which amounts to almost four years of delay.

[158] In the interim, Mr. Patrie was elected mayor of Elliot Lake.

[159] Mr. Patrie argues that if the proceeding had progressed in a timelier manner, and prior to the last municipal election on October 24, 2022, he would have had the opportunity to go to the public, and the public could have decided how it felt about his conduct, rather than the court. Mr. Patrie submits he also would have had an opportunity to carefully consider whether he would run for councillor or mayor.

[160] Mr. Patrie also argues that he was inappropriately disqualified as a member of council, as by the time the decision was rendered, he was mayor, or head of council.

Discussion

[161] Mr. Patrie does not point to a statutory or jurisprudential basis for his arguments that there has been a denial of natural justice.

[162] Mr. Patrie's argument in respect of the duration of the application process does not consider the impact of the COVID-19 pandemic.

[163] The remedy in s. 9(1)(4) of the *MCIA* disqualifies a "member" from being a "member". It does not distinguish between councillors and mayors. The mayor of Elliot Lake is a "member" under the *MCIA*. I agree with the submission of the Integrity Commissioner that to suggest otherwise would be to suggest that the ethical standards in the *MCIA* apply to councillors but not to mayors.

Conclusion with respect to Issue #6

[164] There has been no denial of natural justice in this case.

Issue #7: Was the penalty appropriate?

Mr. Patrie's position

[165] Mr. Patrie argues the application judge's decision on penalty was improperly motivated by her assessment of his motives and intentions.

[166] Mr. Patrie argues that matters of conduct and the application of political pressure were not appropriate measures for conflict of interest where he received no benefit because the Oakland/Ski Hill site was never chosen.

[167] Mr. Patrie argues that disqualification from office for two years will have a chilling effect on all municipal politicians in Ontario, because of the extreme political and personal consequences. He submits that the practice of disqualifying members from office will result "in timidity in political office and reluctance by politically active and engaged individuals to stand for public office and serve their communities."

[168] Mr. Patrie's position is that if there is no finding of conflict, there should be no penalty and otherwise, the appropriate penalty is a reprimand.

Discussion

[169] The application judge carefully considered the appropriate penalty in this case, devoting 44 paragraphs of her 289-paragraph decision to the issue.

[170] The application judge considered the range of penalties in s. 9(1) of the *MCIA* and the list of factors the court may consider in making its assessment as to the appropriate penalty in s. 9(2) of the Act.

[171] The application judged noted that there were no cases on record dealing with intimidation of other councillors, the improper solicitation of municipal staff, a potential windfall of this magnitude, or an unrepenting and untruthful municipal officer.

[172] The application judge considered that the nature of the breach is a relevant consideration, and that post-breach conduct may be relevant, including expressions of remorse.

[173] The application judge noted that the Integrity Commissioner had submitted that removal from office for the maximum available disqualification period of seven years would be the appropriate penalty in this case.

[174] Referring to Mr. Patrie's meeting with Councillor Cyr, the application judge said that going to a fellow councillor and suggesting that the councillor had a conflict of interest in order to sway

a vote is very serious. She said that Mr. Patrie had wanted to sway the vote because he did not want the 151 Ontario site to be purchased. She also considered that the end result of Mr. Patrie's action was only a four-month delay in the vote to purchase 151 Ontario.

[175] The application judge considered that there was no evidence that Mr. Patrie had benefited financially from his contraventions.

[176] The application judge said that, on the totality of the evidence, she could not conclude that Mr. Patrie had taken reasonable steps to prevent the contravention, or that his actions were committed through inadvertence or through an error in judgment made in good faith.

[177] The application judge concluded that, given all of the circumstances, neither a reprimand nor a suspension of remuneration was an appropriate penalty. She concluded that, on the totality of the evidence, removal and disqualification were appropriate.

[178] In concluding that disqualification for two years was appropriate, the application judge accepted that cases which had imposed a more severe penalty had involved actual realization of gain, unlike this case.

[179] The application judge said that she did not make her decision in respect of penalty lightly, and that she understood the ramifications of the decision for Mr. Patrie. She said that the province of Ontario has highlighted the importance of integrity, independence, and accountability in local government decision-making. She said that members of municipal councils are expected to perform their duties of office with integrity and impartiality and in a manner that will bear the closest scrutiny. She said that Mr. Patrie had fallen significantly below these expectations.

[180] Decisions on the appropriate penalty are discretionary and entitled to great deference. In imposing the penalty in this case, the application judge carefully considered the evidence, the aggravating and mitigating factors, and the principles in relation to the duties of members of municipal councils endorsed by the province of Ontario and set out in the *MCIA*. The application judge made no error in principle and there is no reason to disturb her decision with respect to penalty in this case.

Conclusion with respect to Issue #7

[181] There is no basis to interfere with the application judge's conclusion that removal from office and two years' disqualification was an appropriate penalty in all of the circumstances.

Issue #8: Appeal in respect of costs

Mr. Patrie's position

[182] Mr. Patrie recognizes that costs awards are discretionary and that the standard of review is high, meaning that reviewing courts will only vary or set aside a costs award where there is an error of principle or the decision is plainly wrong.

[183] Mr. Patrie argues that (1) the application judge erred in law in her application of s. 223.4.1 of the *Municipal Act* and, (2) in the alternative, the application judge made a series of errors in law or principle in her treatment of the relevant considerations with respect to the quantum of costs.

[184] With respect to the first argument, Mr. Patrie submits that s. 223.4.1(18) of the *Municipal Act* explicitly states that the costs of the Integrity Commissioner shall be paid by the municipality.

[185] Mr. Patrie submits that if the legislature had intended the normal rules of costs to apply, this intention would have been set out in the statute, or the statute would have been silent with respect to costs. Here, he submits, the legislature clearly intended for costs to be paid by the municipality. Mr. Patrie argues it was an error of law for the application judge to find otherwise.

[186] With respect to the second argument, Mr. Patrie argues the application judge erred by failing to consider whether the amount awarded was fair and reasonable in the circumstances. Mr. Patrie argues the application judge made two mistakes in weighing the relevant factors: (1) that the proceeding was both quasi-prosecutorial and a public interest litigation and was not a "normal or conventional" civil proceeding; and (2) the means and financial circumstances of Mr. Patrie were not given adequate weight, as he is a councillor for a small Ontario municipality with limited or modest renumeration.

[187] Mr. Patrie argues the significant costs award does not adequately reflect the findings of the application judge about the nature of the proceeding, in particular the difference in resources between a publicly funded regulatory body and an elected municipal officer holder.

[188] Mr. Patrie argues he should not be disproportionately punitively penalized for defending his reputation.

Discussion

[189] I agree with the respondents' submission that s. 223.4.1(18) of the *Municipal Act* is a mandatory funding tool and not a statutory bar to recovery of costs.

[190] There is no express intention in the *Municipal Act* that displaces the normal rules for costs in civil litigation.

[191] The application was commenced in the Ontario Superior Court of Justice. The *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the *Rules of Civil Procedure* apply.

[192] Mr. Patrie has not satisfied me that the considerations that would apply to the costs of any civil proceeding should not apply in this case.

[193] Section 131(1) of the *Courts of Justice Act* provides that the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court.

[194] Although discretionary, a court must fix costs on a principled basis: *Clarington (Municipality) v. Blue Circle Canada Inc.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 40.

[195] Rule 57.01(1) of the *Rules of Civil Procedure* sets out the factors the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing, in exercising its discretion under s. 131 of the *Courts of Justice Act* to award costs. These factors include the principle of indemnity, including the experience of the lawyer involved, the hourly rate, and the hours spent. They include the complexity of the proceeding and the importance of the issues. They also include certain conduct of the parties, including conduct that may have shortened or lengthened the duration of the proceeding or that was improper, vexatious, or unnecessary.

[196] The application judge carefully considered the issue of costs. She allowed some of the applicant's requests for costs and denied others. The selection of the factors under r. 57.01(1) to be considered and the weight to be placed on those factors were in the application judge's discretion. The application judge found that Mr. Patrie made the proceeding unnecessarily complex. The application judge considered the submissions of the parties and decided the amount, in her view, Mr. Patrie should reasonably expect to pay as the unsuccessful party on the application.

Conclusion with respect to Issue #8

[197] Section 223.4.1(18) of the *Municipal Act* is not a statutory bar to recovery of costs. Mr. Patrie has failed to identify an error of law or principle in the application judge's costs decision. There is no reason to interfere with this discretionary decision of the application judge.

Disposition

[198] For these reasons, I would dismiss Mr. Patrie's appeal.

Costs of this appeal

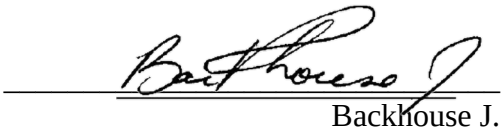
[199] Mr. Patrie and the Integrity Commissioner agreed that the loser in the appeal would pay the winner $12,000 in costs, all-inclusive.

[200] In accordance with this agreement, Mr. Patrie shall pay the Integrity Commissioner $12,000 in costs, inclusive of disbursements and HST.

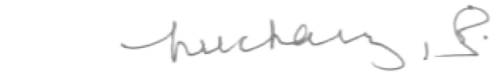
[201] The City of Elliot Lake said that it would not seek costs if successful and should not be required to pay costs if unsuccessful. Mr. Patrie said that if he was successful, he would not seek costs from the city.

[202] There shall be no costs award in favour of or against the city.

Williams J.

I agree 

Backhouse J.

I agree 

Nieckarz J.

Released: December 15, 2023

CITATION: Patrie v. City of Elliot Lake (Integrity Commissioner), 2023 ONSC 7017
DIVISIONAL COURT FILE NO.: DC-23-2189
DATE: 2023/12/15

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BACKHOUSE, WILLIAMS, NIECKARZ JJ.

BETWEEN:

Chris Patrie

Appellant

– and –

City of Elliot Lake
(Integrity Commissioner)

Respondent

REASONS FOR DECISION

Backhouse J.
Williams J.
Nieckarz J.

Released: December 15, 2023