

[4] The respondent, Ed Pearce, is a duly elected member of the City Council for the City of Elliot Lake. Mr. Pearce has held his position on the Elliot Lake City Council since October 10, 2017. He originally replaced a councillor who had resigned but was subsequently elected as a City Councillor in a municipal election.

[5] The respondent, Ed Pearce, is also a director and board member of the Elliot Lake and North Shore Corporation for Business Development (ELNOS). Mr. Pearce has served in that capacity with ELNOS since November 2016. ELNOS is a non-profit business development corporation established to stimulate economic growth in the City of Elliot Lake and its surrounding communities. While the City has the right to appoint one member of Council to ELNOS' board, at all material times the respondent was a member of the ELNOS board in his own right and not as the City's appointee.

[6] As acknowledged in paragraph 27 of the respondent's factum, the facts on this application are not substantially in dispute. Accepting this, paragraphs 9 to 15 inclusive of the applicant's factum provide a useful summary of the salient facts leading up to the City Council meetings of May 13, 2019 and June 24, 2019. Accordingly, these paragraphs are repeated as follows:

9. The facts on this application are not substantially in dispute. Following the collapse of a shopping mall at Elliot Lake that made national news in 2012, a new developer constructed a mall to service the community but had difficulty attracting anchor tenants.
10. An untested retailer, Turner's Department Store ("Turner's") offered to take the 7,000 square foot space, but the landlord was concerned about its viability.
11. Because both ELNOS and the City had an interest within their mandates to see a functioning shopping mall return to operation in Elliot Lake, an arrangement was made whereby ELNOS would loan approximately \$200,000 to Turner's for inventory and the City would guarantee Turner's rent obligation for ten (10) full years by effectively agreeing to lease the space and to take Turner's on as a subtenant.
12. Turner's struggled almost immediately. The Respondent, Councillor Pearce, has a background in marketing and communications and attempted to assist Turner's on a voluntary basis with a new business plan.
13. The new business plan was unsuccessful and Turner's began to default on its rent in late 2018 and early 2019. After some degree of repayment, Turner's still accumulated approximately \$30,000 in arrears for which the City was liable as guarantor.
14. This situation was embarrassing to the City and Council, who had unwisely agreed to pledge taxpayer funds to subsidize an untested business in a huge, high-profile space for a prolonged period of time. Particularly because this was an election year, Council wanted to find some way to avoid a public expenditure to Turner's that could cause uncomfortable questions about the City's role with a failing business.

15. The Town's Chief Administrative Officer, Dan Gagnon, reached out to ELNOS, and it was decided that the arrears payment to the landlord would effectively be laundered through ELNOS, minimizing the chances that the public would become aware of the arrangement. City staff anticipated that large payments from the City to ELNOS would not attract public attention in the same way direct payments to Turner's or the landlord would.
- [7] A closed session of the City Council was held on May 13, 2019 at which time the payment of the \$30,000 by Elliot Lake to ELNOS was raised. Councillor Patrie took a position that the amount owing by the City to ELNOS should not be repaid. The respondent, Councillor Pearce, took a position on this issue and engaged in the discussion of this issue. The applicant alleges that this is where the conflict of interest arose and at this point the respondent was in violation of the provisions of the *Municipal Conflict of Interest Act*. Ultimately, a vote on the issue was deferred to the City Council meeting on June 24, 2019.
- [8] The City Council of Elliot Lake ultimately voted on the issue with the decision that ELNOS would be repaid the sum of \$30,000 owing to it.
- [9] The Integrity Commissioner investigated these events pursuant to a complaint from an elector, pursuant to section 223.4.1 of the *Municipal Act*, S.O. 2001 c. M.45. Upon concluding in its final report that the respondent, Ed Pearce, had contravened section 5(1) and (2) of the *Municipal Conflict of Interests Act*, the Integrity Commission brought the application before the Court to seek an order of the court exercising its statutory discretion as to a remedy.

The Legislative Framework

- [10] The Act that governs the issues before the court is the *Municipal Conflict of Interest Act*, R.S.O. 1990, Chapter M.50. This Act was amended in 2017 with the amendments proclaimed on March 1, 2019. The effect of the amendments pertaining to the case at bar concern the penalties that can be imposed for a contravention of the Act, as set out in section 9. This amended section gives the court more discretion with a range of penalties that include reprimand to removal from office and disqualification from office for a period of up to seven years.
- [11] The pertinent sections of the *Municipal Conflict of Interest Act* that should be considered by the court in the issues in the case at bar are the following:
- **Principles**
 - 1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:
 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. 2017, c. 10, Sched. 3, s. 1.

- **Indirect pecuniary interest**

2 For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

- (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body,

that has a pecuniary interest in the matter; ...

- **Where s. 5 does not apply**

4 Sections 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have,

- (a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
- (b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
- (c) by reason of the member purchasing or owning a debenture of the municipality or local board;
- (d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;
- (e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001* or Part IX of the *City of Toronto Act, 2006*, as the case may be, relating to local improvements;

- (f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the *Assessment Act*;
- (g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;
- (i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;
- (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
- (k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. R.S.O. 1990, c. M.50, s. 4; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (1); 2017, c. 10, Sched. 3, s. 2.

- **DUTY OF MEMBER**

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. R.S.O. 1990, c. M.50, s. 5 (1).

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s. 5 (2).

DISCUSSION/ANALYSIS

[12] The standard to be met by elected officials in avoiding conflicts of interest is very high in order to maintain public confidence in the administration of municipal government. This is recognized in the declaration of principles in section 1.1 of the *Municipal Conflict of Interest Act*, as amended, which reads as follows:

1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:

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. 2017, c. 10, Sched. 3, s. 1.

[13] An objective standard is applied in assessing the issue of a conflict of interest. As stated in paragraph 12 in *Sheehan v. Harte* (1993), 15 M.P.L.R. (2d) 311,

There is a very high standard on public officials to conduct official business in an unrepachable manner. Conflicts of interest are serious matters of principle in the conduct of municipal affairs. Consequently, the requirements of the law must be observed both as to the particular matter and also for reasons of public confidence in the administration of municipal government. In this application the evidence is strong. I accept that Councillor Harte subjectively put his mind to the issue of a conflict of interest. He in fact stated that he had no conflict. I find, however, that the legal standard is the objective standard of a reasonable person in the place and circumstance of the respondent (although the subjective standard is also met in this application).

[14] Paragraph 1, the definition section in the *Municipal Conflict of Interest Act* does not specifically define the term “pecuniary interest”. The term “pecuniary interest” has been defined in the jurisprudence. As noted in paragraph 5(1) of the Act, the pecuniary interest may be direct or indirect. In *Mino v. D’Arcey* (1991), 2 O.R. (3d) 678 (Gen. Div.), at paragraph 17, the court comments on whether the respondent in that case had a pecuniary interest. Carter J., asks the question at paragraph 17, “Is such interest pecuniary? In *Smith v. Adams*, an unreported judgment of McWilliam, D.C.J. (as he then was) he wrote at p. 47 of the transcript of his reasons dated June 28, 1987,

A pecuniary interest need not be cash, but if his overall wealth is increased and it can be related to cash, that suffices; avoiding losses can be as influential as

making gains; the magnitude of the financial interest is irrelevant in determining if such an interest exists; and, finally, the possible effect of a given manner on the member's wealth must be looked at in addition to its certain effect.

- [15] In *Mino*, it is noted at paragraph 18 that the respondent made a profit of only about \$300.00, but the magnitude of the financial interest is irrelevant.
- [16] In the case at bar there was money involved, that is the payment of \$30,000 debt owing by the City of Elliot Lake to ELNOS. The overall wealth of ELNOS is being increased by \$30,000 or, on the flip side, it is avoiding a \$30,000 loss in repayment of a debt owing to it. In my view, this meets the test of a pecuniary interest.
- [17] In order to trigger the application of the *Municipal Conflict of Interest Act*, the pecuniary interest need not be direct. The respondent does not have to directly receive the financial gain in order for it to be a pecuniary interest. As set out in section 2 of the Act, the director of a corporation that does not offer its securities to the public has the same pecuniary interest as the corporation in a matter. ELNOS is such a corporation, and the respondent is a director of the corporation. By virtue of being a director of ELNOS, Mr. Pearce has the same pecuniary interest in the matters that the ELNOS Corporation does.
- [18] Although Mr. Pearce's pecuniary interest is indirect and he is not personally gaining or losing money from the discussion about the payment of the loan to ELNOS by the City Council of Elliot Lake, he has a pecuniary interest nonetheless applying section 2(a)(i) of the Act.
- [19] The respondent argues that *Rivett v. Braid*, 2018 ONSC 352 is authority for the proposition that when the discussion is about whether or not a further investigation into the matter will occur, this decision does not amount to a matter involving a pecuniary interest and therefore a conflict of interest cannot occur. The *Rivett* case was about an audit on a corporation on which Mr. Rivett sat. It was not about the payment of money. Similarly, in *Hervy v. Morris*, 2013 ONSC 956, the subject matter of the discussion was about whether an investigation to reveal the identity of a blogger would be conducted. In both cases money issues were not discussed and a pecuniary interest was not found. The respondent submits that the May 13, 2019 meeting was not a debate about whether or not the money was owed to ELNOS, but rather a decision to review City Council minutes and investigate the matter further. The respondent submits that the actual debate and vote on the repayment of the money to ELNOS took place at the June 24, 2019 council meeting. Since the application before the court concerns an alleged undisclosed conflict of interest at the May 13, 2019 meeting, no conflict existed because there was no pecuniary interest.
- [20] Respectfully, on the facts of the case at bar, I disagree with this position. In my view, the evidence of the respondent himself clearly establishes that at the May 13, 2019 meeting of City Council, the matter of the repayment of the \$30,000 owing by the City to ELNOS was raised, discussed, debated, and that the respondent took the position that the money owing to ELNOS should be repaid. From paragraphs 69 to 79 inclusive in the affidavit of

Edmund Pearce, sworn on November 28, 2019, he clearly sets out his recollection of what transpired at the City Council meeting held on May 13, 2019. Those paragraphs read as follows:

69. It is the closed session meeting of May 13, 2019, that give rise to this application.
70. The Turners situation was again under discussion. In the course of this meeting, the issue of the repayment to ELNOS was raised as being in the 'ordinary course of business' as the City was obligated to pay rent no matter what. Councillor Patrie strongly disagreed with this and forcefully stated that the City should not repay ELNOS. He claimed that the Council had agreed with him, that there would be no more loans from ELNOS, but a review of the minutes shows that to be entirely false. He was the only councillor who had taken that position. He suggested, without any rational explanation, that the ELNOS payments had somehow weakened the City's bargaining position with Turners. He argued that the City should consider the rental payments by ELNOS on the City's behalf as "gift" to the City.
71. Once again, although he had glaring direct conflicts of interest, Mr. Patrie did not declare them and no one called him out on his conflict.
72. In my opinion, Mr. Patrie's position was a sham. ELNOS was entitled to the repayment. The original decision was within the scope the authority of the CAO to make, and council had approved its continuance despite Mr. Patrie's objections the previous December. Council was not in any position where we could legally and morally renege on our loan commitment. There is an established precedent with the City wherein ELNOS has made payments on the City's behalf for convenience sake and there has never been an issue with repayment. In fact, as noted, the City had already repaid the 2018 loan for rent to ELNOS.
73. Although at first blush it might appear that avoiding the debt would benefit the City financially and harm the financial interests of ELNOS, that would only have been illusory, and short lived. As Mr. Gagnon concedes, if ELNOS had sued to recover the money, the City would have had no legitimate defence.
74. I knew that if the City failed to repay this debt it would not have had any significant effect on the finances of ELNOS. In fact, the ability of ELNOS to absorb the loss appeared to be one of the specious reasons Mr. Patrie was advancing for his argument that the City should refuse to honour its debt to ELNOS. However, any such financial benefit to the City would be short lived as ELNOS could have taken steps to recover the debt and the City would have had to pay and possibly bear costs.
75. More importantly, any benefit to the City by briefly delaying repayment would have been grossly outweighed by the severely damaging effect on its critical relationship with ELNOS. There would have been no further

LENOS “favours” done for or on behalf of the City, and Mr. Gagnon’s credibility as CAO would have been at least severely impaired.

76. Moreover, it struck me as both immoral and unlawful for a councillor to propose that the council try to avoid paying a lawful debt.
77. I was incredulous and asked Mr. Patrie if he was serious. He said he was and that as far as he was concerned, and I paraphrase, “ELNOS is a bank. Period. They made the decision to pay on behalf of Turners because Turners was a client of ELNOS and owed ELNOS a great deal of money.” Mr. Mann did not step in and question Mr. Patrie, although he had been in favour of the arrangement at the ELNOS Board meeting when it was presented to that Board.
78. I then asked Mr. Patrie if he really wanted to “piss off” ELNOS after all that ELNOS had done, and continued to do, for the City. He was adamant that he was. I regret succumbing to Mr. Patrie’s provocation again and using coarse language, and I apologize unreservedly for doing so.
79. To my recollection, there was no further discussion on the point and Mr. Patrie’s proposal was eventually rejected not only by me, but also by all other councillors at our next meeting on June 24.

[21] On the facts as confirmed by the respondent’s own evidence, Mr. Pearce debated the issue of the payment to ELNOS and took the position that the money should be repaid to ELNOS at the May 13, 2019 Elliot Lake City Council meeting. In my view, the respondent had a pecuniary interest in the matter being discussed by virtue of his position as a board member of the ELNOS Corporation.

[22] Even though this pecuniary interest may exist, triggering the application of section 5 in the Act, section 4 of the Act provides exemptions where section 5 does not apply. The only subsection of section 4 that could be possibly in play on the facts of this case, is section 4(k) of the Act. that subsection reads that section 5 does not apply to a pecuniary interest in any manner that a member may have,

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

[23] Thirty thousand dollars is not an insignificant amount of money. In *Mino*, the sum of \$300.00 was involved. As to the amount, the court stated at paragraph 29 of that decision,

Nor can I find that the respondent’s profit of approximately \$300.00 was so insignificant as to render his interest insignificant. Three hundred dollars might well be an insignificant amount to the respondent, in the overall operations of his business; but, as Robins J. said in *Re Moll and Fisher*, the standard is an objective one. Certain rate payers of Howick Township might not consider that amount in any way insignificant, and without in any way imputing any

criminality to the matter before me but merely to assist myself in applying an objective standard, I am aware that until a few years ago, a theft of over \$200.00 was an indictable offence.

- [24] By any objective standard, the sum of \$30,000 is not an insignificant or trifling amount of money. I doubt very much that the citizens of Elliot Lake would view it to be insignificant. Mr. Pearce himself did not view it to be insignificant given the forceful and passionate position that he took with respect to the matter at the May 13, 2019 City Council meeting. In my view, section 4(k), on the facts of this case, does not provide an exemption from the application of section 5 of the Act.
- [25] Section 5 imposes an obligation on a member of City Council with a direct or indirect pecuniary interest in a matter that is being considered, to disclose the interest, not take part in the discussion, or vote on any question in respect of the matter, and not attempt in any way, whether before, during, or after the meeting to influence the voting on the matter. Where the meeting is closed and not open to the public (as in the case at bar) there is an additional requirement for the member to “forthwith leave the meeting or part of the meeting during which the matter is under consideration”.
- [26] The respondent, Ed Pearce, had an indirect pecuniary interest in the matter before the Elliot Lake City Council but he did nothing to comply with section 5 of the Act, which he was obligated to follow given his board position with ELNOS and the matter of funds owing to ELNOS and whether these funds would or would not be paid back to ELNOS. Considering this matter objectively as a reasonable person, I conclude that the respondent, Ed Pearce, breached the provisions of section 5(1) and 5(2) of the *Municipal Conflict of Interest Act*.
- [27] This breach is not excused or remedied by the fact that Mr. Pearce may have been acting in good faith at the May 13, 2019 City Council meeting. Good faith or what may or may not have influenced Mr. Pearce in his participation in the May 13, 2019 meeting does not negate his obligations under section 5 of the Act or his breach of those obligations. The good faith argument may come into play in the imposition of penalty under section 9 of the Act but does not alleviate the respondent from his contravention of the Act under section 5.
- [28] Having found that the respondent, Ed Pearce, breached section 5(1) and (2) of the *Municipal Conflict of Interest Act*, the court has the responsibility to consider the appropriate penalty to be imposed for that breach. The amendments to section 9 of the Act give the court a wide ranging discretion on penalty that did not exist before the amendments. Section 9(1) of the Act sets out the range of penalties as follows:

Power of judge

9 (1) If the judge determines that the member or former member contravened section 5, 5.1 or 5.2, the judge may do any or all of the following:

1. Reprimand the member or former member.

2. Suspend the remuneration paid to the member for a period of up to 90 days.
3. Declare the member's seat vacant.
4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.
5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be. 2017, c. 10, Sched. 3, s. 7.

[29] Section 9(2) of the Act sets out a list of factors that the court may consider in making its assessment as to the appropriate penalty. Section 9(2) of the Act reads as follows:

(2) In exercising his or her discretion under subsection (1) the judge may consider, among other matters, whether the member or former member,

(a) took reasonable measures to prevent the contravention;

(b) disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* and acted in accordance with the advice, if any, provided to the member by the Commissioner; or

(c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith. 2017, c. 10, Sched. 3, s. 7.

[30] The applicant asks for a removal of the respondent from office. The respondent requests that a reprimand is the appropriate penalty. In support of that position, the respondent takes the position that his act was one committed through inadvertence or through an error in judgment made in good faith.

[31] With respect to section 9(2)(c) of the Act, although the respondent did not receive legal advice with respect to whether he was in a conflict of interest position he did receive legal training to draw his attention to what a conflict of interest may or may not be. The respondent received this training on the *Municipal Conflict of Interest Act* from Mr. Paul Cassan, a solicitor with the Wishart Law Firm in Sault Ste. Marie, Ontario. This training took place on December 4, 2018. The video of this training, attached as Exhibit "A" to the affidavit of Sean Sparling, sworn on October 17, 2019, indicates that Mr. Pearce was instructed that if a pecuniary interest was involved that a conflict of interest exists. He was specifically told during this training that if City Council is considering a pecuniary interest involving a group that you are a member of, a conflict of interest arises. More pointedly, Mr. Pearce was told by Mr. Cassan that if financial matters involving the ELNOS Corporation come before council, Mr. Pearce will have a conflict that has to be disclosed.

- [32] In his affidavit sworn on November 28, 2019, the respondent acknowledges receiving this training from Mr. Cassan. Specifically, at paragraph 18, the respondent deposes, “I acknowledge receiving training on the Act by Paul Cassan, who is a respected expert on municipal law, on December 4, 2018. The training was very good. I was not ignorant of the Act or its requirements.”
- [33] Mr. Pearce goes on at paragraph 20(c) of his affidavit to state that “during the training, in response to a question from the Mayor, Mr. Cassan observed that the Mayor would have to declare a conflict if an issue arose that affected the Legion because he played a leadership role in the Legion; frankly, this struck me and others present as overly rigid, impractical and contrary to common sense.”
- [34] Despite the legal training he received, the respondent has his own views about what is or is not a conflict of interest and what might or might not trigger the operation of the *Municipal Conflict of Interest Act*. That is evident from the respondent’s observations at paragraph 26 of his affidavit sworn on November 28, 2019, where he states,

I do not question that the applicant provided good training to me about the Act. However, I did not and do not accept that the Act precludes me from service on both Council and the Board of ELNOS. I also do not believe that just because a matter before Council might affect ELNOS, in some way, giving rise to a theoretical conflict of interest, that this necessarily triggers the requirements of the Act. Arguably, everything that happens in Elliot Lake, and certainly anything touching on the City’s economic wellbeing, affects ELNOS in some manner or other.

- [35] Despite the training he received, Mr. Pearce was going to adopt his own views of what is or is not a conflict of interest and act accordingly. I am not persuaded that section 9(2)(c) of the Act serves to mitigate the penalty that Mr. Pearce should receive on the facts of this case.
- [36] The respondent was clearly alerted to what a conflict of interest was and in fact, the Chief Administrative Officer for the Municipality of Elliot Lake, Don Gagnon, raised the conflict of interest issue with the respondent. In an audio interview, Mr. Gagnon, on June 24, 2019, which was transcribed, Mr. Gagnon states from lines 1248 to 1270 on pages 115 and 116 of the transcript as follows:

I don’t know how relevant that is because you can’t not be a councillor either, but anyhow... So, he’s at that ELNOS. So, LENOS – uh Turners owes ELNOS a boatload of money. And Ed has a background in marketing and communications and is, you know, 70-some years old and is no slouch, so uh, he was working for a time, not for payment, but you know, volunteering his efforts to work with Turners to try to get them to turn around their business plan and get their shit together so that they could pay the bills. Um, and that may have been reported in a closed session at some point in time by Ed where Ed’s been participating actively um in any file that the City and-or related to Turners and of course there are many because now they’re closed for good. But they were circling the drain and late on payments and not making the rent. So then

the landlord comes after us saying hey, you got to empty that space, you got to pull me up. So um, so that's where I – I actually – and I told Ed this, I think you are in a conflict, you need to declare or do something because, you know, you can't be an ELNOS board member and participate actively in our closed session about Turners ELNOS type business. And, you know, especially if you're not a councillor – its one thing if you're a council rep, it's you – know, you were appointed there by council to report to council, if you're just there – I don't know.

- [37] Despite being alerted in such a manner, the respondent did not take steps to obtain a legal opinion in the matter nor did he consult with the Integrity Commissioner for advice and direction. He simply acted on his own, following his own view of what constituted a conflict of interest.
- [38] Despite these failings on the part of the respondent, it is still a principle of law that any penalty imposed must be proportionate to the act committed. The penalty sought by the applicant, Mr. Pearce's removal from office, is, in my view, reserved for the most egregious of cases. This is not that case. I agree with counsel for the respondent that on the spectrum, this would be at the absolute lowest level. Mr. Pearce offers an apology in his affidavit sworn on November 28, 2019.
- [39] In my view, the finding that the respondent was in breach of section 5(1) and (2) of the *Municipal Conflict of Interest Act* and a reprimand by the court for that breach is adequate punishment that meets the ends of justice on the facts of this case.
- [40] For the reasons set out, this court finds that Edmund Pearce breached sections 5(1) and (2) of the *Municipal Conflict of Interest Act* by failing to recuse himself from the May 13, 2019 Elliot Lake City Council meeting in which a matter in which he had an indirect pecuniary interest was being discussed and debated. This court finds that the appropriate penalty for this breach is a reprimand to Edmund Pearce, pursuant to section 9(1).1 of the Act.
- [41] If costs on the application are in issue, counsel are to submit written submissions no longer than five type written pages, excluding offers to settle and bills of costs, which are to be served and filed with the court no later than 4:00 p.m. on April 15, 2021.



Gareau J.

CITATION: Town of Elliot Lake v. Pearce, 2021 ONSC 1851

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TOWN OF ELLIOT LAKE (INTEGRITY
COMMISSIONER)

- and -

ED PEARCE

REASONS FOR JUDGMENT

Gareau J.

Released: March 11, 2021