

CITATION: City of Elliot Lake (Integrity Commissioner) v. Patrie, 2023 ONSC 223
COURT FILE NO.: 28237-19
DATE: 2023-01-09

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
CITY OF ELLIOT LAKE (INTEGRITY)
COMMISSIONER) Raivo Uukkivi, for the Applicant
)
Applicant)
)
- and -)
)
CHRIS PATRIE)
) Peter Berlingieri, for the Respondent
Respondent)
)
)
) HEARD: August 12 and 13, 2021

APPLICATION UNDER SECTION 8(1)
OF THE *MUNICIPAL CONFLICT OF INTEREST ACT*,
R.S.O. 1990, c. M.50

RASAI AH J.

REASONS FOR JUDGMENT

INTRODUCTION

[1] A notice of application was issued in which the applicant seeks a finding that the respondent violated the *Municipal Conflict of Interest Act*, R.S.O. 1990, Chapter M.50, as amended, pursuant to sections 5(1) and 5(2) of that Act, and seeks his removal from office as a member of the Elliot Lake City Council, pursuant to section 9(1) of the *Municipal Conflict of Interest Act*.

[2] The court reserved its decision, and the following are my reasons.

The Legislative Framework

[3] The Act that governs the issues before the court is the *Municipal Conflict of Interest Act*, R.S.O. 1990, Chapter M.50 (“the Act”). The 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.

OVERVIEW

- [4] The Applicant is noted as the Integrity Commissioner (“IC”).
- [5] The respondent, Christopher Patrie, (“Patrie”), a then councillor for the City of Elliot Lake (“City”), is alleged to have participated in, and/or influenced municipal decisions in which he had a financial interest. It is alleged that Patrie influenced public policy by actions inside and outside of council chamber, by attempting to dissuade fellow elected members from placing a 30 million dollar taxpayer-funded recreational infrastructure project (“Hub”) in the downtown core and lobbying for it to be located behind commercial real estate he had an interest in, namely a shopping plaza (“plaza”) owned by a corporation, the shares of which were owned by him and his wife at the material time. In addition to owning the plaza, the same corporation ran a business at the plaza known as the Elliot Lake Trading Post (“Trading Post”).
- [6] Voluminous materials were filed on this application, including affidavits, reports, bylaws, resolutions, minutes of meetings, maps, audio/video recordings, and other exhibits (see the records filed), transcripts from cross-examinations of the affiants, factums, and books of authorities. For clarity, I have reviewed the materials in coming to the conclusions I have, and just because I have not alluded to every piece of evidence filed, it should not be taken as me not having reviewed same as requested.
- [7] Several issues were raised by each party requesting the Court’s determination of same.

SUMMARY OF THE POSITION OF THE APPLICANT

- [8] The applicant alleges that Patrie engaged in actions inside and outside of the council chamber and at meetings that breached the Act; that he did this to attempt to dissuade fellow elected members from placing the Hub in the downtown core of the City in favour of another location, located near the plaza. The applicant describes the area as a “stone’s throw” away from the plaza.
- [9] The applicant alleges that from on or about November 2017 to April 2019, the respondent’s actions included threatening another member of limited means with the legal jeopardy of an ethics complaint if this member did not recuse himself from the vote to purchase downtown core property for the Hub; that the threat succeeded and that the vote failed as a direct result; that the influence was illicit; changed the course of infrastructure development of the entire community and the respondent used a resulting gap in public policy to push for the Hub to be located near the plaza. The applicant alleges that Patrie lobbied the then mayor, other councillors and even members of the public. He is also accused of pressuring City staff to prepare favourable reports for the

location near the plaza even though numerous professional reports had never considered it a viable option.

- [10] The applicant further alleges that when Patrie learned that his actions were being investigated, he threatened one of the investigators with legal action and attempted to seize upon an administrative oversight to defund, terminate and demand a refund from the IC (to avoid accountability).
- [11] The applicant submits that Patrie specializes in the “non-denial denial” and is not credible. The applicant alleges that Patrie chooses not to deny most of these allegations. In affidavits and cross-examination, the applicant argues that Patrie obfuscates, pontificates, and evades specific questions by disputing irrelevant details, raising justifications that do not amount to legal defences, and/or refers to events out of chronological order – all in the apparent hope that the issues will be sufficiently confused so that it will seem like there is an explanation for each of his actions.
- [12] The applicant states that the record establishes the allegations, and that the maximum sanction ought to be ordered.

SUMMARY OF THE POSITION OF THE RESPONDENT

- [13] Patrie states that the application arises out of a dispute between municipal politicians relating to the acquisition of property for municipal purposes. The application was facilitated by the applicant IC, a corporate integrity commissioner, Expertise for Municipalities (“E4M”), who was not lawfully appointed by the municipal council, not trained, or experienced in the handling and disposition of applications brought under the Act. This IC acted outside the boundaries of the enabling legislation, and made unsubstantiated findings in evidence, not supported in law, that Patrie had contravened the Act.
- [14] Patrie submits that there is no evidence to support the IC’s allegations that Patrie had a pecuniary interest in a matter, and/or that he was present at Council when the matter was discussed and/or that he influenced: the voting on any such questions, decisions, staff, others, or recommendations in contravention the Act. Further, he takes the position that even if the evidence establishes, he had a pecuniary interest, section 5 of the Act does not apply because his interest was an interest in common with the electors generally.
- [15] Patrie asks that the application be dismissed, but if the Court finds contravention(s) that the penalty be a reprimand.

ISSUES

- [16] The applicant framed the issues as follows:
- a. 1: Did Patrie, either on his own behalf or while acting for, by, with or through another, have a pecuniary interest, either direct or indirect in any matter that was the subject of consideration by Council? If so,

- b. 1A: In respect of his interactions with Councillor Cyr (“Cyr”) prior to the December 19, 2018 meeting of Council, did he attempt in any way whether before, during or after that meeting to influence the voting on such a question?
- c. 1B: At the council meeting of December 19, 2018, did he fail to disclose his pecuniary interest and the general nature thereof?
- d. 1C: At the council meeting of December 19, 2018, did he take part in the discussion of, or vote on any question in respect of that matter?
- e. 1D: In respect of his interactions with Mayor Marchisella (“Mayor”), Councillor Turner (“Turner”), Councillor Mann (“Mann”), Chief Administrative Officer Gagnon (“Gagnon”), or any one of them, did he attempt in any way whether before, during or after the council meeting of March 6, 2019, during which one item on the agenda was to revisit the purchase of 151 Ontario Avenue for the Hub, attempt to influence the voting on such a question?
- f. 1E: At the meeting of March 6, 2019, did he fail to disclose his pecuniary interest and the general nature thereof?
- g. 1F: At the meeting of March 6, 2019, did he take part in the discussion of revisiting the purchase of 151 Ontario Avenue for the Hub?
- h. 2: Did Patrie have a direct or indirect pecuniary interest in a matter being considered by council, and use his office in any way to attempt to influence any decision or recommendation resulting from consideration of a matter?
- i. 3: Do any of the exclusions at s. 4 of the Act apply?
- j. 4: If the answers to any of Issues 1a - 2 are “yes” and the answer to Issue 3 is “no”, are Councillor Patrie’s retributive actions towards the Integrity Commissioner aggravating factors in the exercise of the Court’s discretion pursuant to s. 9(2) of the Act?
- k. 5: If the answers to any of Issues 1a - 2 are “yes” and the answer to Issue 3 is “no”, what is the appropriate sanction for Patrie’s breaches of the Act?

[17] The respondent Patrie framed the issues as follows:

- a. 1(a): Was the applicant IC a properly appointed Integrity Commissioner by the City and thus, has standing to bring this Application?
- b. 1(b): Does the legislation retroactively empower the Integrity Commissioner to inquire into section 5(1)(c) of the Act alleged to have occurred prior to March 1, 2019?

- c. 2(a): Did Patrie have a pecuniary interest in the matter of the purchase of 151 Ontario Avenue for a Community Hub, the subject considered at the Special Meeting of Council on March 6, 2019 which he is alleged to have attended?
- d. 2(b): If so, does s. 4(j) of the Act apply to exempt Patrie from the operation of ss. 5 and 5.2 of the Act?
- e. 2(c): If not, did Patrie take reasonable measures to prevent the contravention or in the alternative commit the contravention through inadvertence or by a reason of an error in judgment made in good faith?
- f. 3: If Patrie had a pecuniary interest, did Patrie contravene ss. 5(1)(c) and 5.2(1) of the Act?

[18] Several sub-issues were raised as will be addressed in the discussion/analysis.

LEGAL PRINCIPLES

[19] The Act provides for application to a judge for a determination.

[20] The Act provides that the applicant may be an elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest.

[21] The applicant is required to prove a breach of the Act on a balance of probabilities.

[22] The duty of a member of a council is set out in s. 5 of the Act.

[23] Section 5(1) of the Act provides that 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.

[24] Exceptions are set out in s. 4 of the Act. The provision submitted as applicable by the respondent for consideration provides as follows:

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

(j) by reason of the member having a pecuniary interest which is an interest in common with electors generally...

[25] Section 4(k) of the Act provides an exception 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.

[26] The standard to be met by elected officials in avoiding conflicts of interest is very high to maintain public confidence in the administration of municipal government. This is recognized in the declaration of principles in section 1.1 of the 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.

[27] An objective standard is applied in assessing the issue of a conflict of interest and application of s. 5 of the Act; it does not deal with intention, rather the member's actions, objectively viewed. Intention is relevant to sanction: *Baillargeon v. Carroll*, 2009 CanLII 4510 (Ont. S.C.), para 77 .

[28] 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 ... I find, however, that the legal standard is the objective standard of a reasonable person in the place and circumstance of the respondent ...

[29] In *Re Moll and Fisher* (1979), 96 D.L.R.(3) 506 (Ont.Div.Ct.), Mr. Justice Robins wrote, with the concurrence of the full panel:

The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute. And I should say at once, that in so far as this case is concerned there is no suggestion that the Appellants acted out of any improper motive or lack of good faith.

This enactment, like all conflict of interest rules, is based on the moral principle, long imbedded in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are effected. Public office is a trust conferred by public authority for public purpose. And the Act, by its proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less.

[30] In the definition section of the Act,

a. "*elector*" means,

(a) in respect of a municipality, or a local board thereof, other than a school board, a person entitled to vote at a municipal election in the municipality, and ...

b. "*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.

c. "*meeting*" includes any regular, special, committee or other meeting of a council or local board, as the case may be.

d. "member" means a member of a council or of a local board.

e. "*spouse*" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

[31] Section 2 of the Act provides:

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; or
- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

[32] Section 3 of the Act provides:

For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

[33] “Pecuniary interest” is not defined in the Act. The term “pecuniary interest” has been defined in the jurisprudence as relating to a financial, monetary, or economic interest. It 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 v. Ontario*, 2015 ONCA 683, paras. 9-10.

[34] As noted in paragraph 5(1) of the Act, the pecuniary interest may be direct or indirect.

[35] In *Smith v. Adams*, an unreported judgment of McWilliam, D.C.J. (as he then was) he wrote at p. 47 in 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.

[36] 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 *Mino*, it is noted at paragraph 18 that the respondent made a profit of only about \$300.00, and the magnitude of the financial interest is irrelevant.

[37] There is no definition of the word “lobby” in the Municipal Act or the MCIA. The word “lobby” in its ordinary and popular sense which I find applies and is not confined to non-politicians by statutory interpretation rules means:

“to solicit the support of (an influential person)”; “(of members of the public) seek to influence (the members of a legislature)” or to “attempt to persuade a politician to support or oppose changes in the law”: Canadian Oxford Dictionary, 2nd ed., K. Barber, ed. (Toronto: Oxford UP), 2005.

- [38] The definition of “lobby” from the City of Toronto Municipal Code is not applicable to this case. It is a code intended to govern various lobbyist groups (consultant lobbyists, in-house lobbyists, and voluntary unpaid lobbyists, all of which are defined in the Code referred to) and to put into place a code of conduct to ensure integrity and honesty of these groups with organizations, including public office holders.

DISCUSSION/ANALYSIS

- [39] A councillor must and must be seen to act in the public interest. Transparency is promoted to ensure public confidence in decisions being made for the community. The test is objective. Intention is not a consideration in the application of s.5 of the *Act*. Neither is the value of the alleged interest. Even a low monetary valued interest can engage a contravention of the *Act*.
- [40] What may be subjectively in Patrie’s mind, namely making decisions for the public good is not a relevant consideration at the stage of determining contravention of the *Act*.
- [41] What would an objective observer understand and believe in the place and circumstances of Patrie on the facts of this case?
- [42] I find the onus is met and that an objective observer would understand and believe in the place and circumstances of Patrie on the facts of this case that he had a pecuniary interest in the matter of the location of the Hub.

History for Relocation and Expansion: The Hub

- [43] The record reflects that since 2006, the Council had been considering the issue and namely, an appropriate site for the relocation and expansion of its existing aging municipal sports and recreational facilities. Different proposals have been considered. At the material time, the matter was the Hub proposal location.
- [44] Studies and reports were prepared for council, among them, three by Colliers dated December 2016, April 2017, and July 2017 (“Colliers Reports”).

Elliot Lake

- [45] I considered that the City is 714 square km in area (279.2 square miles).
- [46] There are two commercial areas in the developed part of Elliot Lake, one near Highway 108 and one further north closer to City Hall.

- [47] The Colliers report of April of 2017, filed, described the population in 2016 as 10,741 residents with a median age of 57 and median income of \$25,288.
- [48] Patrie states that Elliot Lake has been trying to revive its economy since the 1990s and formulating plans for long term economic health.
- [49] Patrie suggests that Elliot Lake is unique in features, position and size and ought to be considered in whether the Hub would provide a particular advantage to him. Patrie however has submitted that the economy of the city was diversified after the mines closed to a retirement community and tourist destination.
- [50] As such, the City by Patrie's own evidence is to view the City as a retirement community and tourist destination in the circumstances. One of the goals of the Hub was to attract more tourists/Hub attendees to the area.

Council

- [51] The council has 7 elected members including the Mayor. The majority of the council members have full-time employment and are not full-time council members. Patrie was one of six (6) elected council members elected on a council of 7 members, including the Mayor.

Patrie's Interests and Position within Council at the Time

- [52] Patrie grew up and has lived and worked in Elliot Lake for over 45 years.
- [53] Patrie owns 50 percent of the shares of the corporation called Klover Building Inc. ("Klover"). Patrie's spouse owns the other 50 percent of the shares of Klover. Klover at the material time owned the real property and buildings of the plaza which was operating as the Elliot Lake Trading Post Plaza ("trading post"). It is located at 14 Oakland Blvd. Klover is the landlord of and leases various areas of the plaza to various businesses. Klover runs a business known as the Elliot Lake Trading Post ("Trading Post") in the plaza. Patrie and his spouse are also the officers and directors of Klover.
- [54] The business of the Trading Post includes the sale of hunting and fishing licenses and equipment including guns and ammunition. In addition, it includes the sale of tackle, bait, clothing for hunting and fishing, souvenirs, and gift ware. Patrie describes the Trading Post as a thriving retail destination for outdoor enthusiasts that attracts residents and non-residents, including seasonal cottagers.
- [55] It is not disputed that Patrie was a councillor during the relevant time frame. Patrie was first elected to council in 2006 for a four-year term. He was re-elected in 2010 for a further four-year term. He was not re-elected in 2014, however, on November 13, 2017, he was appointed to council to fill a vacancy created by a resignation of a member and he completed the term of that councillor to 2018. He was re-elected in 2018 for a four-year term.

History of Sites Considered

- [56] In addition to 151 Ontario Avenue (ultimately purchased by the City), another property was being considered during the process of consideration of locations for the Hub, namely a municipally-owned site located on Highway 108 South, north of Esten Drive (“Esten”).
- [57] Colliers was commissioned to conduct a business case study to assist in deciding on a location for the Hub (report of December 2016).
- [58] A second study (report of April of 2017) was commissioned to expand the considerations to four different sites. In the end, 151 Ontario Avenue was being presented as the most commercially viable option, with Esten as a municipally-owned alternative.
- [59] Esten would later cease to be an option and Council commissioned a third report from Colliers (report July of 2017) to compare 151 Ontario Avenue with the Centennial Arena property (“Centennial Arena”) and the existing Civic Centre property. The report presented the Civic Centre as unfeasible.
- [60] The City at the time owned a property directly north of the plaza and proceeding northward along Ski Hill Road. Patrie agrees that the Ski Hill Road property was not considered a site for consideration in the Colliers Reports.
- [61] The record reflects that the Ski Hill Road property had been considered in the past, approximately a decade or more before the events in issue, for a different proposed project known as “Destination Elliot Lake”. The Destination Elliot Lake proposal included much more than recreational facilities. It also included condominium developments and four-season tourist attractions.
- [62] The Ski Hill is located on Ski Hill Road and is half of a km east of the intersection of Oakland Blvd and Ski Hill Road. The plaza is located at 14 Oakland Blvd.
- [63] Around October of 2017, before Patrie was appointed to the vacancy he filled for the 2014-2018 term, Council was considering and/or discussing the purchase of 151 Ontario Avenue.

Hub Project

- [64] As stated, for some time, the City was planning the construction of a multipurpose sports complex to replace and augment aging recreational infrastructure.
- [65] The Hub project itself was proposed to be a multi-use building that included a hockey arena, gymnasium, multi-purpose rooms, aquatic centre and other facilities. It was ultimately proposed to be a 30 to 40 million dollar project expecting to bring 16,000 people annually to its location. The precise location for the Hub in its form as described above had been a matter before council starting on or about 2016.

- [66] The City had experienced a tragedy with the collapse of the Algo Centre Mall on or about June 23, 2012. As a result, that vacant site, namely 151 Ontario Avenue, which was in the City's downtown core, which was owned privately, was one of the potential sites being considered by council for the Hub.
- [67] The idea of a recreational complex itself in general for Elliot Lake was certainly not new, but it is clear that the Hub project was distinct from the defunct Destination Elliot Lake Project .

General Comment Regarding the Allegations

- [68] The acts complained of regarding participation in meetings and voting occur over a time frame. The acts complained of pertaining to lobbying and influencing are layered on top of the time frame regarding the participation in meetings and voting acts complained of.

The Appointment of the Integrity Commissioner

- [69] In 2017, the Council pursuant to bylaw 17-44 appointed Robert Swayze as integrity commissioner and entered a contract with Mr. Swayze.
- [70] Patrie submits that the Applicant IC, Expertise for Municipalities ("E4M") was not a properly appointed integrity commissioner by council bylaw and had no contract for services with the City of Elliot Lake when it undertook its work, and thereafter a bylaw was inappropriately retroactively passed in September 2019. Patrie raises issue with E4M's standing, the appointment of E4M retroactively, the validity of the bylaw that retroactively appointed E4M, the process undertaken/application of the Act and the qualifications of the Integrity Commissioner ("IC").
- [71] I reject the arguments of Patrie.
- [72] The record clearly reflects that Council was on or about February of 2019 contemplating changes to IC services and working on a protocol. In my view, it should not be ignored in the analysis that the clear expressions of Council at the time included that the contemplated model would include the appointment of E4M specifically. There does not seem to be any recorded disagreement on the record provided to me at that time when that was raised. Council took steps to approve and adopt a two-IC model at the very least on or about that time, again which included the discussion of appointing E4M and Cunningham Swan.
- [73] The record reflects that along the way it was noted that procedural irregularities existed with respect to appointment/contracting of the services of E4M and Cunningham Sawn. Ultimately Council attempted to resolve the irregularities, first, by the passing of a resolution by which Cunningham Swan was approved, and Mr. Swayze terminated. There was an understanding at that time that E4M was going to complete any ongoing investigations, that E4M had been retained by a letter of engagement and would be discontinued in that fashion. Thereafter, a bylaw was enacted on September 23, 2019,

Bylaw 19-49, to appoint E4M retroactive to February 11, 2019 and to terminate their services effective June 10, 2019. Patrie and two other councillors voted against same.

- [74] Bylaw 19-49 refers to it being made pursuant to s.223.1 of the *Municipal Act, 2001*, S.O. 2002, c. 25, which came into force March 1, 2019. The bylaw appoints E4M retroactively to February 11, 2019, assigns E4M the functions the functions set out by this Act, and ratifies any agreements/contracts with E4M.
- [75] I agree that it is within the power of the Council to pass bylaws to appoint integrity commissioners and they may do so: *Municipal Act*, s. 223.1. The authority exists at common law to pass bylaws retroactively. I agree that the case, *Burlington (City) v. Burlington Airpark Inc.*, 2017 ONCA 420 (CanLII) does not alter same or require a statute to permit same and is distinguishable as argued by the Applicant.
- [76] The concept of appointment of integrity commissioners is certainly not new and Patrie's own evidence refers to the history of appointment of same by the Council prior to changes to the *Municipal Act*, namely, Mr. Swayze.
- [77] There is nothing that prohibits appointments of integrity commissioners both before and certainly not after March 1, 2019.
- [78] At the time the bylaw was passed, s. 233.1 of the *Municipal Act* was in effect.
- [79] I agree that this argument presents as a technical argument being made by Patrie and further, that it is not being made in the proper forum.
- [80] Further, I agree that there is no requirement for a written services agreement for the appointment to be lawful and binding: *Municipal Act*, s. 223.1; s. 9 and s. 223.3(5). Municipalities have the rights of a natural person. A natural person may enter into oral contracts.
- [81] I considered that past actions can be confirmed through bylaws: *Jackson v Vaughn (City)* (2009), 59 MPLR 4th 55, paras. 190-191. The bylaw confirmed the retainer of E4M for the time frame that covered all their services including the investigation that led to the within application. I don't characterize the actions of Council as intending to apply the *Municipal Act* retroactively.
- [82] Bylaw 19-49 has not been invalidated. Retroactively passed bylaws are effective until such time as they are invalidated. The bylaw explicitly sets out its application is retroactive.
- [83] The time for challenging the bylaw has expired: s. 273(5) of the *Municipal Act*.
- [84] An application to quash a bylaw must include the municipality as a party, which highlights Patrie's argument as a collateral attack.

- [85] In *Madger v. Ford*, 2013 ONSC 3806 (Div. Ct.) on which Patrie relies, the situation was such where there was no authorization or other process to deal with invalidity of the decision in question. That was not the case here with respect to the bylaw enacted by council and/or the exercise of power by the IC. Patrie has objected to this bylaw since it was made September 23, 2019 and IC actions since the complaint came to his attention. He voted against the bylaw. He took no action on the validity of the bylaw. He took no action regarding actions of the IC, despite evidence of having a conversation with E4M's contact, Ms. Lovelace. He had legal counsel at the time who he was consulting. These are distinguishing facts.
- [86] This is not an application to invalidate a bylaw, or judicially review actions of the IC, and not the forum for this court to decide same.
- [87] Further, I considered case authority that in my view emphasizes that when the subject legislated upon is clearly within municipal authority (in this case, they had the power to appoint an integrity commissioner both before and after March 1, 2019) and the objection is merely to the mode in which the particular power has been exercised, and that defect can be remedied by further or different action, a by-law should not be quashed unless it is clear that the method adopted cannot be supported in any view of the matter; when a mistake had been made in perfect good faith and with an honest purpose of obeying the law, although unintentionally deviating from its strict formal observance, where the objection was wholly technical and nothing had occurred to create a suspicion of unfair dealing, and there was no reason whatever to believe that the result of the whole proceedings had been effected: *Re Butterworth and City of Ottawa*, (1918) (Ont. C.A.) 45 DLR relying on *Re Huson and Township of South Norwich* (1982), 19 A.R. 343 page 350, 351.
- [88] While I can agree that it appears that matters before this Council were dealt with clumsily, again, this bylaw has not been invalidated, and does cover a period during which the IC can be appointed pursuant to the named section which covers the complaint that resulted in this application, which was formally made after March 1, 2019, namely March 29, 2019, during which the IC was performing in accordance with the *Municipal Act* named section in effect. The Court should not interfere and defeat the general aim and object of legislation because of an immaterial error when it is not the legislative intention that non-compliance with the particular provision of the statute should render proceedings abortive: *Re Butterworth* relying on *Rex v McDevitt* (1917), 39 O.L.R. 138. 140.
- [89] Even if there had been an appropriate application to quash the bylaw, and/or the bylaw is capable of being quashed, the applicant states that s. 8 of the Act permits not only an IC to make the within application as set out herein but provides standing to a person demonstrably acting in the public interest. There is no definition regarding who this category includes. I noted that this section is much broader than the previous section. It makes common sense that as an IC, it was the task of E4M to conduct an independent investigation having regard for the public interest as mandated by the Act and could arguably on a factual basis fall within such a category. However, the integrity commissioner has its own specific category enunciated in the Act and are paid for their

services. That being said, I have rejected the argument of Patrie as to standing for reasons stated, and this is not an issue therefore that I have to decide.

The Steps of the IC

- [90] The complaint was first vetted by Peggy Lovelace (“Lovelace”) who was with E4M, the IC.
- [91] Mayor Marchisella (“the Mayor”) filed the complaint. He completed the document himself and gave it to the clerk to give to E4M. As part of the investigation into the complaint he was interviewed by Mr. Sean Sparling and Mr. Mike Kenopic. The interview was in person. There was only one interview. He was elected mayor in 2014, and this was his second term as mayor at the relevant time. Three members of council had resigned throughout the 2014 to 2018 term, and as such, he was directed to contact the individual who was next on the voter’s list to determine interest in filling the position. With respect to one of the resignations, Patrie was next on the list. He went to Patrie’s store to speak to him in person about filling the vacancy. He was interested and as a result he was brought on to fill the vacancy. The Mayor has known Patrie for several years.
- [92] Complaints that can be subject to an application are ones that are made within six weeks of the Applicant becoming aware of the alleged contravention: s. 8(2) of the Act. It can be more than six weeks after if there was an application to an IC for inquiry, the IC conducted an inquiry and completed the inquiry within the time frame permitted by the Act (namely within 180 days). The application may be made within six weeks from completion. The complaint was made March 29, 2019, investigated thereafter, and reported on by final report dated September 16, 2019. The application was filed October 16, 2019, by the IC which was within six weeks of the final report/completion of the inquiry by the IC.
- [93] Lovelace contacted and hired Investigative Solutions Networking (“ISN”), a branch run by Sean Sparling (“Sparling”), a former deputy chief of police for the Sault Ste. Marie Police Services, who had experience investigating serious crimes. Sparling described it as being close to an independent contractor relationship. He had previously done some investigations for E4M, three or four by that point. All the investigations Sparling had done for E4M have been municipal type investigations.
- [94] ISN is a large investigative company comprised mostly of retired major crime investigators. Sparling opened an ISN office in Sault Ste. Marie in August of 2019. It operates separately from E4M.
- [95] Lovelace was Sparling’s direct contact for E4M. He held the case management role and had several investigators working for him.
- [96] I do not find that the investigator lacked skills and training to investigate the complaint. In addition to his said previous employment, Sparling has a municipal manager level three certificate, the highest level, attained through training at the FBI International

Academy, and through his education and experience with the Sault Ste. Marie Police Service. The accreditation is related to municipal management governance. Sparling has a master's degree in policing and security, a large component of which was government governance and leadership in the public sector. Prior to the Patrie investigation, he had not undertaken any *Municipal Conflict of Interest Act* investigations, however, he had been involved in municipal corruption investigations related to elections. He has done several municipal investigations. At the time he was also involved in doing some *Occupational Health and Safety Act* investigations for the City.

- [97] The record of the steps reflected in the evidence do not reflect that the IC stepped outside of the boundaries of his role, which was to investigate and provide the results of the investigation regarding the complaint. The report indicates that Sparling conducted interviews regarding all complaints of several people and obtained various documents/information to attempt to corroborate all information received during the course of the investigation.
- [98] In fact, ISN/Sparling presented report that was 942 pages, four volumes. It includes hours of transcripts of interviews and some video footage.
- [99] Before Sparling was retained by E4M, he and Lovelace spoke about his background. There were also meetings. His understanding was the E4M retained independents for the larger more complex investigations and that they have 50 to 70 municipalities in their contract. As such, they stayed on the consultant side and outsourced for many of the investigations.
- [100] Sparling had another investigator assisting him with the within investigation, namely Mike Kenopic.
- [101] Sparling was not told how to do the investigation and there is no suggestion on the record that same was required. Further, he did from time to time consult Lovelace on the intricacies of the Act, while he and Mr. Kenopic conducted all the investigations.
- [102] Lovelace was kept apprised as to the status of the investigation but was not involved in the investigation or the findings.
- [103] Sparling had discussions with either Lovelace or Mr. Paul Cassan for the purpose of retaining Jason Naccarato because Sparling had conflicting positions from interviewed parties on the whether the value of the plaza property would increase, and he felt an expert was required. He was not an expert on such. Mr. Cassan was counsel for E4M at the time.
- [104] Patrie has not established a foundation that would draw a conclusion that the IC was confused as a result of dealing with multiple complaints at the time or that he neglected his training or experience during the investigation.
- [105] Sparling completed the investigative report and provided it to E4M who was viewed as ISN's client. The initial report was a draft to determine if E4M wished anything else

from ISN before finalizing the report. Nothing however changed in the final report regarding the findings. The findings remained the same. The report, the substance of it, reflects his investigation findings. Lovelace as the consultant along with counsel were involved in preparing the report, namely with respect to the format, and legalese.

- [106] There is nothing to indicate that Sparling and/or any other investigator was unduly influenced by anyone or did not act independently on these facts.
- [107] Further, I do not find that the report is flawed or replete with errors, and even if it can be said to contain some errors, those errors Patrie refers to do not rise to the level of discounting the report to having no weight and/or meaningfully affecting its credibility and/or reliability given the other evidence filed in the record, a significant portion of which is confirmatory of the facts alleged in the report. As one example, Patrie at his cross-examination of Sparling seemed to take issue with Sparling's wording that Patrie voted on the purchase of the property. There was more than one motion dealing with same. Patrie in fact voted at the December 2018 meeting on the matter concerning the purchase of 151 Ontario Avenue, and participated in the open session at the March 2019 meeting which dealt with the same matter, namely the purchase of 151 Ontario Avenue.
- [108] It is clear that Sparling attempted to go beyond simply accepting witness statements and looked for corroboration.
- [109] I agree that the fact that the retroactive bylaw terminated E4M as an IC does not mean that they were not permitted to complete work that they had already been retained to do. I agree that it would have made no sense to go back and retroactively confirm their appointment if that was intended to be the interpretation. E4M was the IC for the relevant time frame.
- [110] There was no legal authority presented that provides the E4M cannot bring the within application because certain provisions of the Act came into force a few weeks after it was appointed or because they made inquiries into past events. If the complaint is made on time, the IC can investigate: *Municipal Act*, s. 223.4.1.
- [111] By nature, investigation of complaints involves assessing past actions leading to the complaints.
- [112] The appointment of an IC is not a new concept and the role and the Act provisions/prohibitions have existed for some time to address complaints to which the Act refers. What is new is the category of applicants.
- [113] Further, s. 8(6) of the Act specifically permits applications regarding contraventions within six years of the anniversary date of the alleged contraventions. I find that the issue of category of applicants is being conflated by Patrie's argument with what is permitted be subject to application.
- [114] There is nothing meaningful on the record establishing that the IC's actions failed to comply with the new provisions of the Act which is what they would have been required

to do as and when laws change. Sparling followed a prepared integrity commissioner protocol. Sparling read the Act, read some cases on CanLII, received the E4M training index and trained his entire team on conducting E4M investigations. He also consulted Lovelace with respect to intricacies of the Act. He had discretion on how to conduct the investigation and who to interview. Sparling interviewed many people and all of the key people. He did not rely solely on witnesses that were being suggested by either the Mayor and/or E4M. He did not rely solely on witness statements of fact.

- [115] Patrie was given a written notice that he was the subject of a complaint prior to being interviewed. He was interviewed regarding the complaints he was making as complainant and as respondent to the complaint made against him. He was interviewed regarding conflict of interest and regarding code of conduct. Patrie had made his own complaint involving the 151 Ontario Avenue purchase. The questions Sparling was asking were clear and Patrie presented as voluntarily responding to the questions asked and on cross-examination indicated that everything he told Sparling was true. There is no indication of pressure or trickery or oppressive conditions during the interview which was recorded in its entirety.
- [116] In addition, any complaints as to the fairness of the investigation are not the subject of the within application either nor the forum for same.
- [117] As to Sparling's findings. Unsubstantiated or not, as to contravention of the Act, those are issues for the Court to decide. The Court has received more than Sparling's findings in evidence and has considered all the evidence.

Issuance of the Application

- [118] The application before this court was filed October 16, 2019, well after authority was established by the Act, for same to be brought by an Integrity Commissioner. The timing of when the IC was appointed and for what duration does not affect this fact.

Pecuniary Interest

- [119] A pecuniary interest is a financial interest, an interest related to or involving money.
- [120] The evidence establishes that Patrie and his spouse own interests in Klover and Klover's assets includes the plaza and the Trading Post. I am satisfied that the plaza is in very close proximity to Ski Hill Road/Oakland Blvd area property, the municipally-owned property that Patrie is alleged to have had a preference for and was lobbying for in this case for the Hub. Photographs and maps of the area were filed and marked to denote the locations of the properties in question in this case.
- [121] Mr. Jason Naccarato ("Naccarato") is the CEO of Northstar Consulting ("Northstar") and was retained to provide an asset valuation report to the Integrity Commissioner to assist in determining what if any pecuniary interest, direct or indirect, would arise for Patrie if the Hub was located in the Ski Hill Road/Oakland Blvd area on the municipally-owned property there. He was retained by Sparling.

- [122] Sparling indicated that Naccarato was involved to provide an unbiased assessment as to what positive impact if any the location of the Hub would have if placed near the plaza. Even without the Northstar report prepared by Naccarato, Sparling stated that he would still have reported Patrie as having violated the Act. The Northstar report provided a higher level of confidence of his assessment.
- [123] Naccarato's report amounts to opine that Patrie would have a money-related connection. The plaza and Trading Post would be in a zone of convenience if the Hub was placed there.
- [124] Naccarato's report was the only expert report received by the Court.
- [125] Naccarato has a mechanical engineering degree, a master's degree in business administration, and a project manager professional designation. He has also held considerable real estate holdings for several decades and held employment in the automotive sector.
- [126] The asset valuation report, dated September 4, 2019, was his first time providing a report of this nature to a municipality, but he had prepared many such reports prior for business developers, which included writing applications for provincial and federal government funding applications, part of which included business forecasting, meaning, the value of and return on the investment.
- [127] Naccarato was provided with copies of two of the Colliers Reports, background information about the file, and the address of the plaza. He reviewed the Colliers Reports for background information that he required to do his report. He then did his own research into the market, the businesses, the plaza itself, and the stakeholders that would have an impact on the report. He could not confirm whether he received the third Colliers Report of July of 2017 but agreed it was not referenced in his report. The mention of the two reports was to indicate the source of the information being referenced. The scope of his work identified reviewing two Colliers Reports. With respect to the Colliers Report of July of 2017 and 255 Highway 108 not being a recommended site, Naccarato indicated that three prospective sites had been identified to him and his analysis was based on same. I find it matters not if Naccarato had the third report, as the request was to determine what if any pecuniary interest may arise for Patrie if the Hub was placed near the plaza.
- [128] Naccarato did not consult stakeholders or citizens of Elliot Lake in preparing his report. However, Naccarato was familiar with Elliot Lake. As such, the criticism of Patrie of same, is not meaningful in fact. Further, there is no evidence that any of the other stakeholders would offer any further meaningful consideration over the ones made by Naccarato in his analysis. Naccarato's report speaks directly to the zone of convenience and what is there, in analyzing pecuniary interest. The analysis I do not find to be flawed as such.

- [129] Naccarato has opined that increased revenue would be generated by a multipurpose community hub if it was located near the plaza. Part of same would be caused by tourism, people coming into the City, which would be an important factor for retail-based tenants.
- [130] Naccarato agreed that the plaza is situated on Highway 108 coming into Elliot Lake and agreed that people coming into Elliot Lake would pass same depending on how they entered the area, however, his report refers to proximities and the proximity of the final destination to the plaza itself. In other words, yes, tourists could come in that way, namely Highway 108, and cars would have to drive past it, but once in Elliot Lake and including residents, it would depend on where they are located. This makes sense to me.
- [131] Tourism would increase the economics no matter the location of the hub, the economy as a whole, that is accepted, and accepted by all it seems. Naccarato reiterated that he agreed that a multipurpose community hub would benefit the entire community, no matter where it is located. The rising tide in people would raise the economy, but in respect of the proximity of the site, there would be greater impact to the plaza if prospective site near the plaza in his report was chosen versus the other sites.
- [132] Naccarato did not agree that expressing that 151 Ontario Avenue was the superior choice for the Hub as being outside of the scope of his report and he believed that giving the recommendation was part of the scope. Giving his recommendation as to which site would add the most value to the stakeholders is part of the report (value and return on investment).
- [133] He agreed that all three sites he considered were within a 1.5 km radius. However, he indicated that a "zone of convenience" is normally 200m, an area in which one has the ability to effectively leverage destination customers. Naccarato opined that the Ski Hill Road/Oakland Boulevard location was within the zone of convenience for the plaza. In analyzing zone of convenience, it is also a factor to consider the actual convenience, not just the metres, including the logistics and any barriers to get to the site.
- [134] On his analysis regarding existing tenants' benefits, Naccarato did not speak to Patrie. He was provided with information that the plaza was a multi-unit commercial space with multiple tenants, some general information as to what was there, and then he researched the specifics. Naccarato was not aware of the details regarding the leases in place at the plaza at the time of preparing his report. That being said, I find that Patrie's long term leases do not diminish what the objective elector views nor was it necessary for Naccarato to get into details of leases.
- [135] First, the information regarding long term leases is not public. Next, leases can and may be terminated. Next, the focus on this facet of the argument ignores the other potential pecuniary interests identified by Naccarato, which is not limited to simple increased revenue arising from Klover's leases, such as the potential increase in the value of the real property itself that it owns, and the increased traffic in the area for retail sales for the Trading Post, a retail business Klover operates. Patrie has not provided or referred to

expert evidence to the contrary, only his evidence of what he or other unqualified persons think.

- [136] It was suggested to Naccarato that “building two” in his report ought not to have been considered as it was not owned by Klover and the scope of his work was to determine the potential benefit to the plaza. He did not perform a title search of the properties. He indicated that he could not answer that without having other questions answered for him but was clear to state that even if it was excluded, it would not mean no additional value would accrue to the Klover-owned properties putting the Hub in close proximity to the plaza. It would not impact the effectiveness to earn revenue based on the plaza and its location. His analysis concerns the property’s ability to earn revenue and that would not change if “building two” was excluded. I accept this.
- [137] Further, Naccarato indicated that titles of properties are dynamic as they are transferrable and the report is to the plaza (not ownership) and the land it is on and its ability to earn revenue, the assessment of the plaza with its surroundings economically and enablers that are around. This also makes sense to me.
- [138] Patrie states that the Trading Post does not sell hockey or other sport related or confectionary items, that those are sold elsewhere in the downtown core and claims there is no room for expansion of other merchandise at the Trading Post. I do not accept this bald statement and it ignores that some of the existing merchandise would coincide with merchandise visitors to the Hub may seek. In addition, on cross-examination, Patrie did admit the Trading Post might sell and/or consider selling pool related items, such as pool noodles. The point being, the possible expansion of merchandise to coincide with the intended Hub facilities.
- [139] Sparling expressed that Patrie’s views that the Trading Post did not cater merchandise to clientele that would attend the Hub was a simplistic view of benefits to the location behind the plaza. After reviewing the evidence, I agree and did not interpret this to be a suggestion/comment outside of the scope of his work and/or that he was attempting to opine on the issues that Naccarato was retained to provide.
- [140] The Mayor was familiar with the Collier Reports. He agreed that they spoke about what the Hub would create in the sense of increased traffic and tourism for the benefit of the entire community, eco and sports tourism. An intention of the project would be to attract people from the surrounding area and beyond.
- [141] The Mayor felt the hub would be an economic driver for sports tourism, to house large sports tournaments, and provide services all under one roof, which would increase traffic. The idea was to put all sports complexes (they had three separate small ones at the time) all under one roof, meaning hockey, figure skating, basketball, curling, and the ability of hosting conferences, like trade shows. There was the potential for a new hotel as a separate project also to enable housing larger and more tournaments.

- [142] The Mayor agreed that no matter where the hub was placed in the City that it would benefit the community. The Mayor was asked about Patrie's personal benefit that he would stand to gain from the location he was supporting, and he stated he was of the opinion that if you see more traffic in a busier renewed area, you would be able to increase your rent for the plaza, and property values would increase. Patrie also had a vacant property in the area. He disagreed that Patrie used the vacant property as a snow dump and he had observed a trailer to be stored there by Patrie to run a children's Christmas store to buy their parents presents where everything was five or ten dollars, and that it was leased out for election campaigns and various other office spaces. The Mayor's schooling was in business and economics, but as with my comments concerning Patrie, he was not an expert commercial property valuator. His evidence however was helpful to provide more information regarding Patrie's interests and background on the intended goals of the Hub.
- [143] Naccarato indicated that the Trading Post would benefit because it sold snacks, drinks and souvenirs and it was all the Trading Post's inventory that was relevant for his analysis. The Northern Ontario tourism sector is diverse and includes people interested in fishing and hunting, who may wish to take advantage of that if visiting the Hub. I accept this.
- [144] Further, the proposed project is not limited to just a gym and swimming pool. It would involve an arena and ice rink which it is not unreasonable to conclude could draw more arena/ice rink related sports/events to the community, along with players, spectators and/or parents and/or coaches etc.
- [145] Naccarato agreed that those coming in may have to drive by the plaza even if it was located at 151 Ontario Avenue, but again, Patrie's criticism ignores the "zone of convenience". It also ignores bus travel and presumes solely domestic vehicle travel. It ignores foot travel in a zone of convenience. These types of travel are reasonable considerations in analyzing the interest.
- [146] Naccarato did not agree that construction would cause an economic loss and stated it would create an economic aid, including the creation of construction jobs, more people in the area. The construction would take time and these workers would be potential customers as well that would positively affect the income approach. One would have more customers with construction on the site as opposed to on vacant land. Naccarato did not agree that customers would be dissuaded from attending the restaurant if construction was going on near the plaza. That position is also not unreasonable and/or disproved by other expert evidence.
- [147] Naccarato was quite clear in stating that there are several income opportunities to the plaza that building near it brings. The income generation opportunities are vast to the existing tenant mix in respect of each of them. It is based on the ability to earn revenue for the plaza, and it has multiple ways to earn.

- [148] Again, Patrie did not file an expert report by someone qualified to contradict or to provide critique of the findings of Naccarato. Patrie has not filed evidence to the contrary, only his evidence of what he thinks and refers to evidence of what other unqualified individuals think.
- [149] Patrie did not challenge the expertise of Naccarato, only the alleged weaknesses, analysis/process, and conclusions in the report, and again, did so without a qualified expert.
- [150] Patrie did file the final report of 2009 for the Destination Elliot Lake proposal. In it, it is clarified that the focus was the base of the area to integrate with the Ski Hill itself, the Ski Hill as a co-location. The report, a report Patrie sought out, clearly articulates site development challenges with the location included but not limited to terrain and environmental concerns. In addition, it reports that the area is not serviced with water, sewer or gas which would represent costs. In fact, the location received a zero rating meaning, prohibitive and/or significantly high cost to develop. The report findings certainly do not align, in my view, with Patrie's position that 151 Ontario Avenue would cost the taxpayers more and/or waste tax dollars for the Hub development, which he referred to as his reason for not supporting the purchase. While the capital cost of 151 Ontario Avenue was assessed to be high, it was determined to be assessed as beneficial for long term goals, and it certainly was not assessed as cost prohibitive. While I appreciate funding is always an issue (whether one is going to receive same or not) that must be kept in mind with spending tax dollars, that would always be the case on the matter of the Hub, and Patrie certainly was not presenting then as though funding would never become available to support his position. He pointed out that the government often preferred a shovel ready site with funding applications. Patrie and Cyr both brought this up at Council.
- [151] The City would have to spend according to the Destination Elliot Lake Report, that Patrie filed, a significant prohibitive amount of money before the Ski Hill Road area property would ever be shovel-ready, with no water, sewer or gas service and potential environmental concerns that would have to be remediated, not to mention blasting. The query that came to my mind was... would considering development of that site to shovel-ready status not put the City in a precarious position economically, if this was Patrie's concern and/or belief of government preconditions for funding? As such, this position just did not make sense to me. Patrie at an open Council meeting after the IC's report was made public admitted that he was lobbying for this location but that anything he stated was for the benefit of the community as a whole.

Interactions with Councillor Cyr prior to the December 19, 2018 Council Meeting

Background re November 15, 2017

- [152] The events of November 15, 2017 are important to understand when the issue of pecuniary interest arose for Patrie.

- [153] The “City Hub Committee” met November 15, 2017, prior to the November 27, 2017 Council meeting. At this committee meeting, the committee decided that the Skill Hill Road/Oakland Blvd property would be submitted as potential sites for the Hub at this upcoming Council meeting.
- [154] The Mayor had been the chair of the Hub Committee. The discussion included needing a location for the government funding application as they could not apply for funding with no location. Realizing the process would take a few years, they knew they had the opportunity to change locations in the future. They just needed a location for the application to get it started. He confirmed that there were some potential environmental concerns regarding the Centennial Arena property known at the time, and that the Committee decided to suggest looking at the feasibility of the Ski Hill area.
- [155] Patrie participated in this committee meeting. He physically attended the meeting. He did not recuse himself or leave the room. He participated by going, remaining present for the entire meeting, and by his own admission at the very least agreeing with Councillor Finamore at that meeting that the Hub should go on the Ski Hill Road property.
- [156] In my view, “agreeing” does amount to supporting the idea openly at this meeting. I find Patrie’s affidavit to present as seeking to diminish his involvement at this meeting. Whether it was a diminished role, nonetheless it was still involvement.
- [157] It matters not that he did not bring up the topic and the further point is that this begins the renewed consideration of the Ski Hill Road property. Patrie at the very least was aware this suggestion would be raised before the November 27, 2017, Council meeting and that this committee’s report was going to be brought forward at the meeting.

Background re November 27, 2017 Council Meeting

- [158] At this meeting, it is true that the evidence supports that the Centennial Arena property was put forward as the proposed site for the Hub by Patrie, but I agree proper characterization of same based on the record is that this was ultimately decided for the purpose of making a funding application. Locating the Hub at the Centennial Arena property was not viewed as set as the chosen site for the proposed Hub and the vote in favour of this site was to attempt to secure funding for a Hub. It is obvious by the language used by the participants including Patrie and the Mayor, which included a statement “there is an opportunity to change sites” after the fact, and other comments to the effect that “they needed a site to put in the application”. The Centennial Arena property was presented as the “place holder”. The evidence overwhelmingly indicates that the time for the application for funding was running out and a site had to be selected for purposes of submitting the application for funding before the deadline and that it was understood that the location could be changed and reconsideration later..
- [159] The Mayor stated that both he and Patrie voted in favour of that site. They were at the deadline for putting in the application and needed to select a site for the application. There was a timeline by which an application had to be filed with the Liberal

government. Time had run out. They needed to place a location on the application. It was considered that if circumstances changed in the future that other properties could be considered and changed with further paperwork.

[160] The Centennial Arena site ultimately was not targeted despite the approved funding application. Other sites were considered before this council meeting and continued to be after.

[161] I do not accept Patrie's evidence that he believed that the selection of Centennial Arena property for the application was the final conclusively-decided location. The position is contrary to the actions he took thereafter and the discussions he had post November 27, 2017, including but not limited to his admission that he asked CAO Gagnon for a copy of the Destination Elliot Lake 2009 report. It would make no sense to do so, if a final decision had been made that the Hub would be located at the Centennial Arena site. There would have been no reason to have the other conversations he had with the various other individuals about alternative locations, some of which he admits to, that I will address later in this decision.

[162] Moreover, again, regardless of Patrie's views, it is clear that at this stage, that the Ski Hill Road property was not off the table as Centennial Arena was selected as a "place holder".

December 19, 2018 Council Meeting

[163] At this time, and at this meeting, 151 Ontario Avenue was still a location being contemplated by Council as a potential site for the Hub.

[164] At the December 19th, 2018 meeting, there was a motion to purchase 151 Ontario Avenue. The issue was put to a vote. A tie vote resulted which translated to the motion being defeated. The Mayor believed there was a tie vote because Councillor Cyr did not participate. The Mayor voted in favour. Patrie voted against the motion. At this time, the Mayor had no concerns regarding Patrie's participation in the meeting. I take no issue with this, as the Mayor's concerns developed in February of 2019 following a conversation he had with Patrie during which he states Patrie raised the idea of placing the Hub behind/near the plaza.

[165] Patrie unquestionably voted at the December 19, 2018 Council meeting against the purchase of 151 Ontario Street. Unquestionably, the intended purpose of the purchase was to locate the Hub on this said property.

[166] Patrie in his affidavit presents as still believing at this time that the selection of Centennial Arena was conclusive. This belief just did not make sense to me. Clearly there was a motion that was upcoming on the topic, and he knew that. He even by admission went to see Councillor Cyr prior to the meeting where the topic was discussed regarding his knowledge of the upcoming motion, albeit he states only because he had just participated in a conflict of interest seminar. It is just very difficult for reasons already stated to believe that he truly believed this about the Centennial Arena site or could in such circumstances given these facts.

- [167] In fact, Patrie appeared to want to remain married to his statement that the purpose of placing Centennial Arena in the funding application was because it was selected as the final site when he himself used the words “for application purposes” during the meeting. To explain why he used these words, he stated... “You’re trying to convince four people to vote with you. It’s politics. In order to get what you want, you have to convince people to do what you want them to do. You’re only one vote”. The implication is that he did not mean what he said when he used those words which is an issue for credibility.
- [168] Patrie prior to this meeting is said to have heavily implied to Councillor Cyr who was a “yes” vote for the purchase of 151 Ontario Street that Cyr had a conflict of interest because he was involved in a class action lawsuit against the former owner of the site. Cyr states that he was intimidated by Patrie into recusing himself.
- [169] Sparling states that Cyr said that everyone knew what the vote count would be in advance of the meeting and that it would carry by a margin of one, but that Patrie insisted to Cyr that he had a conflict of interest and that Cyr felt bullied and intimidated by Patrie. Patrie implied he would file a complaint if he did not declare a conflict.
- [170] Patrie’s evidence presented as contradictory in that he in his own affidavit denied the actions detailed in paragraphs 14 to 21 of the Sparling affidavit but then on cross-examination admitted that he believed Cyr had a conflict of interest, that he recommended that Cyr go and get legal advice, that he stated that he told Cyr he should go see the integrity commissioner for a ruling prior to him attending the meeting because of the said lawsuit, and that Cyr had direct and indirect pecuniary conflict of interest because he, his wife, and his daughter were all named in the lawsuit.
- [171] In his affidavit in paragraph 33 Patrie acknowledges that he knew Cyr was a party to a class action suit relating to 151 Ontario Avenue. It was a class action suit related to the former mall and the vendor was the owner of the mall at the time the event occurred that gave rise to the class action suit. He states that he also knew that Cyr was the owner of CC Bistro next to 151 Ontario Avenue at about that time. Patrie admits he spoke about the proposed purchase with his fellow councillors but denies taking the actions set out in paragraphs 14 to 21 of the Sparling affidavit under the heading Patrie manipulates vote attendance. Patrie states that any duty to disclose a conflict of interest was that of Cyr who could have sought independent legal advice from the IC or otherwise before acting. Patrie states he opposed the purchase because: 1. The decision November 27, 2017 was to select Centennial; 2. Staff was directed to proceed to seek funding for Centennial in early 2018 and; 3. As a business man he was aware of the City’s precarious economic position and it was not prudent to purchase using reserve funds.
- [172] Sparling expressed that Patrie presented in the interview with him as never introducing the conflict of interest conversation with Cyr. It was presented by him that Cyr just “all of a sudden” decided he was in a conflict of interest.
- [173] Councillor Cyr in fact declared a conflict of interest. As a result, the vote was split three-three, a tie vote translating to a loss, meaning a decisive vote resulted. Without Patrie’s

vote, the vote would have been in favour of the purchase, and the purchase of 151 Ontario Avenue would have been made then.

- [174] From 2014 to 2018, Councillor Luc Cyr, was an elected councillor, his first term. He was re-elected for the four-year term commencing 2018. He has known Patrie for 20 years. He was familiar with the Colliers Reports.
- [175] He remembered some meetings. He was present for the November 27, 2017 council meeting. Resolution 524/17 was passed at this meeting to approve the Centennial Arena site as the primary location for the hub. He was opposed to that. He was in favour of the Hub, just not the Centennial Arena site. Centennial Arena had been partially remediated. Years prior, at the front of that property, there was a gas station there. The property was never fully remediated. As a result, a full review of the land was required to ensure no further contamination, a full environmental assessment. The site in his view was not a shovel-ready site. To his knowledge, he agreed that if a site is not truly shovel-ready, it may impede obtaining funding. In addition, there was a residential area in behind, which was a negative for using this site.
- [176] Councillor Cyr states that Patrie was adamant that the Hub be constructed on the property next to his business, which he had heard from other people. In addition, Patrie had spoken against 151 Ontario Avenue on many occasions in a group setting and he was part of the group.
- [177] Councillor Cyr states that Patrie's statement that he had no conversations with Council members about the Hub after December of 2018 is not true, that he has been in every single discussion of the Hub.
- [178] Councillor Cyr states that Patrie never told him in his own words that he intended to place the Hub next to his property, no private conversation, but that Patrie has spoken about the Hub on multiple occasions, namely every meeting they have had on the Hub on the agenda, and during individual conversations that were had amongst councillors sometimes standing around talking.
- [179] Cyr believed that there was an unknown group of people/councillors trying to oppose the City taking control of 151 Ontario Avenue at all costs, despite that the people of the City were in favour of it according to the polls. Cyr was always in favour of purchasing it. He felt the community could not heal from the mall collapse until something was done with that property. The economy had been depressed since the collapse. He felt the property was a way to get the City growing again. He was on the site during the collapse.
- [180] He agreed that at the November 27, 2017 meeting that it was possible the Hub committee brought forward the idea of the ski hill site as a location for the Hub.
- [181] He remembered vaguely Patrie suggesting that Centennial Arena be named as the location for the Hub at a meeting.

- [182] For the December 2018 meeting he was not present for the agenda item, namely, to offer to purchase 151 Ontario Avenue. He had declared a conflict. He left council chambers.
- [183] Cyr stated that prior to the December 19, 2018 council meeting, Patrie stopped into his work at No Frills, either the day of or day before, he could not recall the exact date. However, he does remember that it was prior to the meeting. No other councillors had come to see him at his work before, and if they were there it was because they were shopping. Patrie told him that he was in a conflict with respect to the agenda item of purchasing 151 Ontario Avenue because Cyr was involved in a class action lawsuit related to the property – all mall employees had been placed in the suit after the mall collapse. At first it shook Cyr up a little bit because he had never thought of it in that context. His spouse had worked at the mall and was named also in the suit. So out of caution, he reached out to the IC to verify, which then was Mr. Swayze.
- [184] He stated that he was told that he was not in a conflict but out of an abundance of caution, he could declare it. Mr. Swayze left it up to Cyr to decide. He appreciated that ultimately it was his decision to decide to participate or not. He decided not to participate in the vote because he felt that the opinion he received was not clear, to err on the side of caution. He decided to play the safe card and declare a conflict. There was insufficient time for him to look into it further. It was a difficult decision to declare the conflict because he knew it would mean that a tie would result, and the motion would not pass. He felt bullied and intimidated by Patrie. Patrie made it quite clear that he was going to be challenged on it, that a report would be filed against him if he did not declare a conflict. Patrie more or less said this to him, meaning he did not remember the exact words, but Patrie informed him that the rules were changing in March, the IC rules, and that there would be a complaint against him. He said other things along the line as follows... “if you want to be a councillor for years to come...you are a good councillor, I would hate to see your reputation be affected”. Patrie made him feel very uncomfortable. Patrie never indicated that he himself would file a complaint but was letting Cyr know there would be consequences if he participated which to him was an act of bullying and intimidation.
- [185] Cyr agreed that the location of the Hub was an ongoing discussion for many years and that it was possible that Patrie a few times but not every time expressed the view that municipally-owned property be used as the location for the Hub.
- [186] He agreed that Patrie expressed a concern over spending taxpayer dollars on the purchase of lands to eventually put a Hub.
- [187] Cyr’s evidence does not conflict meaningfully with the IC report at all in my view.
- [188] I accept Cyr’s evidence and that Patrie’s actions are properly characterized as interfering with the vote concerning 151 Ontario Avenue, whether it was ultimately up to Cyr to whether to declare a conflict. His concerns were valid. I accept that he felt bullied by Patrie in the circumstances he described. It was no secret that Cyr was favouring the purchase.

- [189] If 151 Ontario Avenue was eliminated from the picture, the door remains open for other locations, and therefore the matter of 151 Ontario Avenue in such circumstances does have the potential to affect the pecuniary interests of Patrie who was at the time a proponent of an area from which he stood to gain.
- [190] The defeated motion changed the course of the progress on the Hub until such time as the issue was revisited in March of 2019.

Conversations with CAO Gagnon (“Gagnon”)

- [191] Sparling reports that Gagnon recalls Patrie attending his office sometime between December 18, 2018 and March 2019 being agitated about the prospect of the Hub being located at 151 Ontario Avenue; asking Patrie where he would prefer it; Patrie answering “where you wanted to put it ten years ago” referring to the site near the plaza
- [192] Gagnon recalled Patrie’s participation at the Hub Committee meeting in November of 2017 where he says Patrie openly spoke of his support for placement of the Hub at the site near the plaza as a guest during that meeting. Gagnon also stated that Patrie asked Gagnon to look into the viability of placing the Hub at the Ski Hill property. Gagnon was left with the impression that Patrie’s ongoing interest in the site near the plaza and insistence in investigating negotiations regarding the purchase of 151 Ontario Avenue as suggestive of a conflict of interest.
- [193] 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.
- [194] The Mayor was also told by Gagnon that Patrie had met with him in late 2018 or early 2019 to encourage Gagnon to prepare a report endorsing the location near the plaza.
- [195] At the cross-examination Patrie was played a portion of the recording of the interview with Sparling concerning conversations Patrie indicated that he had with Gagnon and other counsellors. His answer to that was to state that it was not necessarily within the time frame being investigated. He then accused counsel of trying to put a time frame on the discussions. But when I looked back into the questioning that started this line of questioning, it was in fact Patrie who put a time frame to talking to Gagnon...he stated “Yeah, I think it was before the December meeting” relating to the 151 Ontario Avenue purchase coming up. Counsel continued on stating that he did not know when he had the conversations. Then he stated that some of the conversations he had, were with councillors, years before that so, he cannot say he never had conversations with councillors. Patrie’s evidence when you read the pages of this area in the transcript presents as confusing and difficult to understand and caused me credibility concerns. But what eventually is clarified by him as counsel persisted is that he agreed he spoke to Gagnon in the fall or winter of 2018 but guaranteeing that it was long before the 151 Ontario Avenue purchase meeting. He wanted the Destination Elliot Lake report from

Gagnon to see if that was a feasible site because he did not want to spend taxpayer dollars. He stated he did not know the exact date and then his answer was that it may have been before the November 27, 2018 meeting because after that date Centennial Arena was decided on and according to Council rules they should be looking at purchasing other property for the Hub. Then Patrie stated later that he could not say that he understood that Sparling was questioning him about his most recent term on Council when these questions were asked of him, despite the recording being played for him twice and hearing Sparling state "I'm more interested in about your recent term of Council".

- [196] At the end of the day, what I could take from his 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.

December 2018 to March 2019

- [197] Prior to the March 6, 2019 council meeting, Mayor Marchisella states that on February 28, 2019 Patrie discussed with him locating the Hub behind his business rather than considering 151 Ontario Street. In this conversation, the Mayor states that Patrie disclosed having had other conversations with other councillors. The others Patrie spoke to included Councillors Mann, Turner and Pearce, and Michael Thomas.
- [198] The IC 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.
- [199] 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, 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.

- [200] 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.
- [201] Although the dates are not known, Patrie admitted to Sparling that he had discussions with Councillor Mann about locating the Hub at the Ski Hill Road property. Again, whether he said what Mann 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. Councillor Mann remembered hearing about allegations that Patrie was suggesting to councillors and staff about locating the Hub near the Plaza. Councillor Mann remembers they would have discussed Destination Elliot Lake, but he did not do so personally with Patrie. Councillor Finamore stated she had no personal discussions with Patrie but remembered that discussions around Destination Elliot Lake which re-started after the mall collapse.
- [202] The IC reports that Patrie spoke with the Mayor on or about February 28/29, 2019 to promote the site near the plaza. The Mayor had a discussion with Patrie in Thessalon prior to an Algoma District Service Administration Board ("ADSAB") meeting, in the parking lot. They were there because four members of council sit on the ADSAB. They were in the parking lot to have a cigarette following the dinner that was served prior to the commencement of the meeting itself. This was not a planned discussion. However, councillors often ask him for updated information as he met with the CAO on a regular basis, updates meaning anything that was going on in the municipality. Patrie was aware that the municipality was still looking at purchasing 151 Ontario Avenue. He had just given Patrie an update that a deal was no longer being brokered. At this point, Patrie let the mayor know that he had a better idea. He wanted to propose Oakland Boulevard as a potential location for the Hub, not to be confused with the ski hill itself. This was a separate location from the ski hill itself. The ski hill is on Mountain Road over a hill. The Oakland Boulevard area Patrie was discussing with him was a small chunk of land the City owns as a truck and trailer parking, overnight parking lot. The conversation included needing a minimum of five acres and blasting would have to be done. He agreed that it sounded ludicrous that he would be suggesting that area as a potential location for the Hub, but it had been done before in the City, meaning spending a ridiculous amount of money levelling land for a new build. His comment to Patrie was "you're suggesting that we blow up another rock to level it in". He asked Patrie if he was going to bring the idea to a public meeting. Patrie said that he would. The Mayor stated that Patrie would later bring the idea to a meeting to discuss the potential of Oakland Boulevard/Ski Hill area and started referencing an economic development study that the City had obtained related to the Destination Elliot Lake project. Destination Elliot Lake was a study related to building an all-season resort, four season eco-tourism resort at the

ski hill. Again, Whether he said what the Mayor 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.

[203] The conversation with the Mayor in Thessalon does include the Mayor stating that during a discussion regarding an update on the possible purchase of 151 Ontario Avenue that Patrie brought up the Oakland Plaza, Oakland Boulevard. He agreed that Patrie came up to him to discuss the fact that he had a new idea of where the Hub could go. This was after the Mayor let Patrie know that Mr. Guidoccio was no longer interested in negotiation of the purchase. Patrie let the Mayor know that Patrie had a "better idea". The Mayor denies that he was negotiating with Mr. Guidoccio, only gathering information that he passed on to council. The Mayor's account as outlined in the transcript contrary to that submitted does not reflect that the Mayor was trying to orchestrate the purchase. He simply was obtaining information because of Mr. Guidoccio reaching out to Councillor Pearce, all of whom advised that he need to go to council with his intentions. It was left to Mr. Guidoccio and ELNOS to work on. He met Mr. Guidoccio only once. Anytime anyone is interested in economic development it is regular to meet with the CAO, the Mayor and the economic development officer to discuss potential. He does not meet one on one with such individuals. The Mayor stated that Patrie had asked him to keep him apprised, as did "Councillor Finamore, Councillor Mann, Councillor Cyr, everybody". On reviewing all the evidence, I find that this is another example of Patrie mischaracterizing the evidence. The Mayor's evidence is not inconsistent with Mr. Sparling's evidence. There was more than one conversation between the Mayor and Patrie concerning 151 Ontario Avenue. The Mayor stated that Patrie had definitely expressed in the past that he had no interest in discussing 151 Ontario Avenue and he was keeping everyone apprised. By the time they had the conversation in Thessalon, the Mayor was advising the deal was no longer in play. Mr. Sparling stated that he did not remember if the topic of the deal was brought up by the Mayor but that it certainly was a big part of Patrie's complaint. It was fair to say that Patrie was against the purchase of 151 Ontario Avenue but at the same time was making suggestions to put it close to the plaza.

[204] Finally, Patrie is on video admitting he was lobbying for the Hub to be placed at the Ski Hill Road property.

[205] During these time frames the matter of the location of the Hub was still undecided and a matter before Council.

March 6, 2019

[206] At the March 6, 2019 meeting, which was a special meeting of Council, the agenda was to revisit the purchase of 151 Ontario Avenue. Patrie was on vacation but was part of the open portion of the meeting. All other councillors were physically present. The Mayor did not recall any audio problems with Patrie's connection but with the Eastlink feed. However, although the feed was garbled, they could all hear Patrie in the meeting itself. He heard Patrie quite clearly. He agrees that Patrie did not participate in the closed

session portion of the meeting. Patrie by his own choice did not vote on the motion to purchase 151 Ontario Avenue.

- [207] Cyr had obtained prior to the March 6, 2018 meeting a legal opinion on what if any conflict of interest he had, and it was opined that he did not have one.
- [208] Patrie did not disclose a pecuniary interest before or when he participated in the open portion of the meeting.
- [209] If 151 Ontario Avenue was eliminated from the picture, the door remains open for other locations, and therefore the matter of 151 Ontario Avenue in such circumstances does have the potential to affect the pecuniary interests of Patrie who was at the time a proponent of an area from which he stood to gain.

Ski Hill vs Oakland Blvd References

- [210] Patrie's argument included that there were inconsistencies/distinctions in the evidence pointing to the term, use of the words Ski Hill to describe the area that Patrie was alleged to be promoting. I do not find that the Mayor's description is at great odds with that of Sparling.
- [211] First, the issue is placement of the Hub near the plaza. Both the Ski Hill, Ski Hill Road and Oakland Blvd are close to the plaza.
- [212] Further, the "Ski Hill" or "Destination Elliot Lake" proposal as stated herein focused on the base as a co-location with the actual Ski Hill. In this respect 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.
- [213] The property ran from the corner of Oakland Blvd up to the Ski Hill. Patrie on cross-examination agreed that the Ski Hill Road property ran from the corner of Oakland Blvd to the Ski Hill.

Other

- [214] At the December 19th, 2018 meeting contrary to that asserted by Patrie it appears that he was presenting as if he was willing to entertain 151 Ontario Avenue under different circumstances at a later date after the motion was defeated. It was also made clear at the meeting by the Mayor that further discussion of 151 Ontario Avenue may end up continuing in the future. Yet, at the March 6, 2019 meeting Patrie presented as the issue of 151 Ontario Avenue having been already dealt with and turned down, and as such, should not even be on the agenda for that meeting and asks for it to be struck from the agenda. During this he alluded to a discussion he had with the Mayor in Thessalon shortly before that meeting.

- [215] The evidence is overwhelming and it is reasonable to conclude that Patrie was clearly thinking about the Skill Hill location as a potential location for the Hub and that the motions on 151 Ontario Avenue and consideration of 151 Ontario Avenue would have the potential of affecting where the Hub would be placed.
- [216] On cross-examination Patrie denied that he concluded that the Ski Hill Road property was the better solution for the City. A portion of the recording of his interview with Sparling was then played for him where he stated that he thought this, and then his answer presented as if he was explaining that he felt the Destination Elliot Lake project was better if they could make it work and all he was doing was asking for information. His primary concern was that he did not want to spend taxpayer dollars on purchasing a property. I found this very odd because the entire time the specs for the Hub proposal were known, that it would be a Hub only, and it was known that the Destination Elliot Lake Project was defunct. In addition, he agreed he brought up looking at the Destination Elliot Lake location to see if it was feasible because of the proposal for purchasing 151 Ontario Avenue was coming up. He himself in his evidence links his then thoughts and actions regarding the Ski Hill Road property by his own evidence with the matters before Council regarding 151 Ontario Avenue.
- [217] Patrie stated that he was not in agreement with purchasing a piece of property for the Hub when the City owned all kinds of property to put the facility on. He did not want to waste taxpayer dollars. He did not believe it prudent to purchase a million-dollar property, that the money could go to the build if a city-owned property was selected. "Everything is tied to funding, if you get it". He remarked how at the time of the cross-examination, that the City had a million-dollar parking lot that they were doing nothing with at the expense of the taxpayers as a result of purchasing 151 Ontario Avenue. While Patrie was critical about spending money on 151 Ontario Avenue, the development issues of the vacant land on Ski Hill Road that he knew of, made it an unviable option in the first place for the Destination Elliot Lake project, which included cost. A significant amount of work and/or blasting would have to occur that would cost money, just to ready the site. However, on cross-examination he presented as not being sure of that without any reports.
- [218] Patrie also stated on cross-examination on his affidavit that from the point that it was decided that Centennial Arena would be put forward in the application for funding as the location for the Hub he is not supposed to do anything but do the wishes of Council and move forward with the fact that they were putting it at the Centennial Arena. But that is not what he did.
- [219] Patrie at points in his interview with Sparling was suggesting that he thought the Hub should go on the Centennial Arena property, yet he agreed that he wanted a feasibility study to see if it could go near the Ski Hill.
- [220] I find his comments and actions and admissions presented as such that he in reality did think that the former location for Destination Elliot Lake was a better solution and was in fact still advocating for it.

- [221] While Sparling confirmed that Patrie was consistent with his views that spending tax dollars to purchase 151 Ontario Avenue was a concern for Patrie, Sparling's investigation reported that Patrie was adamant that the Hub be constructed adjacent to the plaza. Sparling used that word on the basis of the number of steps Patrie was reported as taking to make sure his thoughts were known, advocating the location be near the plaza.
- [222] Sparling expressed his assessment of Patrie was that it was not beyond him to do one thing visually, publicly, while trying to do something through the back door almost adversely.
- [223] "Nefarious grand motive" is not relevant in determining contraventions themselves although referred to in Patrie's argument under the topic of pecuniary interest.
- [224] Patrie also makes an argument that if he had a pecuniary interest in the location of the Hub, it would translate to him having a pecuniary interest in anything developed on Highway 108. I find this argument to ignore the actual development project that is being proposed and is just plain wrong in my view.
- [225] I find there is more than sufficient evidence on the record to support that Patrie (and intention does not matter at this point) contravened the Act as alleged on the totality of the evidence.

Sections 4(j) and (k) of the Act

- [226] It is acknowledged that the record reflects that there appear to have been two distinct "camps" on the issue of the purchase of 151 Ontario Avenue. It was for this reason that independent expert evidence was procured.
- [227] Patrie chose not to argue s. 4(k) as an exception.
- [228] Section 4(k) of the Act provides an exception 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.
- [229] However, I noted Patrie's position/evidence, namely that the location of the Hub near the plaza would be of no benefit and/or negative benefit to Klover's interest (his interests). This position goes against the evidence that a Hub development would have positive economic impact for the City and the surrounding region as well and his own position that his interest would align with electors generally.
- [230] I found Patrie's evidence plain disingenuous for a businessperson with the business interests he has to suggest that they never could capitalize on the opportunity of having the Hub in close proximity to the plaza or that it would be of no benefit and/or negative benefit.
- [231] Naccarato was quite clear in stating that there are a number of income opportunities to the plaza that building near it brings. The income generation opportunities are vast to the

existing tenant mix in respect of each of them. It is based on the ability to earn revenue for the plaza, and it has multiple ways. These are not remote benefits. These are not insignificant benefits.

[232] Patrie relies on s. 4(j) of the Act.

[233] Patrie felt he could talk about the Hub and where it could be located because he believed the Hub would benefit the community as a whole and asserts his interest was in common with electors generally.

[234] He also stated that he had a ruling on another matter, an event, regarding the same location of the Ski Hill that indicated he was not in a conflict of interest because the matter benefitted the community as a whole. However, he never sought an opinion on this specific matter or produced the legal opinion on the other matter which he was relying on to assert interest in common.

[235] 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 (CanLII), para. 23.

[236] Patrie contradicted himself on benefit. He stated that he already had the best visibility in all of the City but then later stated when trying to explain away the benefit to him that there were buildings between him and the ski hill that blocked the site of his building.

[237] I agree that Patrie's interests are different in kind from those in the area and the whole of the community.

[238] There are many electors who don't own property and/or businesses the size of the plaza with the interests of the plaza. Many of the members of the community are retired individuals according to his own position.

[239] There is no evidence on the record that the other businesses in the area of the Ski Hill are landlords, landowners and business owners with the same interests. There are distinctions that cannot be glossed over with general bald descriptions. Interest in common is an interest of the same kind. The Fireside restaurant is Klover's tenant. In the plaza are also the Trading Post and Shear's Haircuts, and bridge and a wooden facaded plaza owned by Klover with properties behind. The businesses/establishments which Klover has no interests in are of different kinds. Moose Lodge is there, along with Checkerboard Tire, a car wash, and uphill is the Ski Hill. In this case there is evidence of financial interest to distinguish it from the cases referred to by Patrie.

[240] As such, I find that Patrie's interests are not interests that are common to the electors generally and the s. 4(j) exception does not apply on the facts of this case.

PENALTY

[241] Section 9(1) of the Act sets out the range of penalties as follows:

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.

[242] 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:

9(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.

[243] The nature of the breach is a relevant consideration and post breach conduct can be relevant, including expressions of remorse.

[244] The applicant submits that there is no precedent case that compares factually to this case in respect of the number of contraventions and gravity.

[245] There are no cases to date dealing with interfering with votes by way of a councillor intimidating another councillor with an ethics complaint or going to municipal staff to raise their own personal interests seeking reports that would favour them, or cases involving financial windfall close to the potential magnitude the applicant asserts would be available to Patrie, or cases with of an unrepenting or untruthful public official.

- [246] The applicant states that the severity of the breaches in the case ought to be viewed as high.
- [247] The applicant points to post breach conduct as aggravating, including but not limited to what the applicant terms attempts to intimidate and/or defund the IC by threatening the IC with a lawsuit and using his position to take away the IC's investigation and abort the application.
- [248] The applicant on the same note refers to a meeting after the IC concluded its report. Patrie is recorded as requesting that there be a refund of money from the IC or suggesting same in an open Council meeting. The applicant states this demonstrates Patrie's lack of repentance or appreciation for his actions.
- [249] The applicant submits that the facts of this case support extensive lobbying in advance, participation in decision making, manipulation of both, threatened intentional misuse of the IC regime, and attempt to interfere with a councillor/vote.
- [250] The applicant provided case authority wherein councillors were removed from office related to more minor contraventions, such as a \$5,700 tax sale (4 years), and not declaring a conflict on a spouse's employment on resolutions deciding wage and salary grids for employees with who her spouse was employed (6-year disqualification ordered): *Tuchenhagen v. Mondoux*, 2001 ONSC 5398; and *Adimiak v Callaghan*, 2014 ONSC 6656, paras 12-15 respectively.
- [251] The applicant asks for a removal of the respondent from office and that Patrie be disqualified from being a member for a period of seven years.
- [252] The respondent suggests that a reprimand is the appropriate penalty. In support of that position, the respondent takes the position that he took reasonable steps to prevent the contravention, and his actions were committed through inadvertence or through an error in judgment made in good faith.
- [253] There is no suggestion that restitution is applicable in this case.
- [254] It is still a principle of law that any penalty imposed must be proportionate to the act committed and when imposed, and it should adequately meet the ends of justice on the facts of the specific case.
- [255] Removal from office, has been cited by some courts, as reserved for the most egregious of cases. The applicant states this is such a case and describes Patrie's behaviour as flagrant.
- [256] I agree there was no precedent presented to me with such a fact scenario as what existed in this case.

- [257] Patrie's position on penalty was a difficult issue to assess, namely his intentions/motives, in part caused by his confusing evidence, his positions and justifications that were difficult to reconcile with his stated intentions.
- [258] I recognize that there was evidence that Patrie communicated to others that his decisions were always made based on the betterment of the entire community, agreement that no matter where the Hub was placed, the City would benefit, and that he subjectively believed that the location near the plaza was feasible and a better location for the Hub.
- [259] That being said, on the totality of the evidence, I cannot conclude that Patrie took reasonable steps to prevent the contravention, and that his actions were committed through inadvertence or through an error in judgment made in good faith.
- [260] Patrie stated to Sparling that he had spoken to lawyers in the past as to conflicts of interest on other matters concerning the Ski Hill area near the plaza and stated that the advice was that if it doesn't affect his business, which he took the position it did not in this case, and if he was making a better decision for the community as a whole, then he is not in conflict. The problem is that this advice included a component that included contemplation of the affect on his business. I have already stated that I do not accept based on the evidence that Patrie thought in fact or could have thought that locating the Hub near the plaza would have no effect on his business, whether positive or negative. Patrie did not consider getting legal advice on this specific matter.
- [261] I find a reasonable person in the place and circumstances of Patrie as described above and my analysis on contravention, ought to have appreciated in my view that legal advice of on other unrelated matters is not simply transferrable, as conflict of interest is often very fact dependent. Further, Patrie relies on previous advice but puts no evidence in to assess what issues were specifically addressed and/or if that advice related to the specific issue that is the subject of the complaint.
- [262] In addition, relying on the fact that other councillors did not declare conflicts in my respectful view is not a factor the Court should consider considering the individual responsibility imposed on each member.
- [263] As to betterment of the community and concern for taxpayer dollars, Patrie worked to oppose the efforts of Council in relation to the purchase of 151 Ontario Avenue by his own admission, without reports to support that the location near the plaza was in fact better for the community as a whole, where there was already an existing report that assessed it as cost prohibitive, and in the face of knowledge of a professional consultant's report that 151 Ontario Avenue was viewed as the viable recommended site having regard to the communities interests, the project and finances. I acknowledge that Patrie communicated betterment of the community as behind his actions more than once and to Council and/or individual councillors as the sole basis. That does not make it so factually and/or take away from the manner he went about some of his actions, it if this was his truly his sole intention behind his decisions, his actions and what he said to others, meaning lack of demonstrations of inadvertence, simple error in judgment and/or good

faith, for example his conversation with Cyr. I also recognize and appreciate that one can truly believe that something is in the best interests of another but at the same time I am of the view that notwithstanding they can or ought to be able to appreciate that it might be in their best interests too and would affect them too. Patrie could have and ought to have in my view.

- [264] The concerns of Patrie regarding the Mayor being involved in nefarious negotiations as he characterized to purchase 151 Ontario Avenue also were not substantiated.
- [265] Patrie visited Cyr before the December 19, 2018 Council meeting and had not visited the store before to discuss Council business. He raised the issue with Cyr. This conversation changed the course of consideration of 151 Ontario Avenue and the Hub project.
- [266] The record substantiates that from on or about November 2017 to April of 2019, Patrie was repeatedly involved in expressing the Ski Hill Road property as an option for the Hub. This was not a one-time occurrence in a short duration of time and his actions were contrary to one of his positions that he believed Centennial Arena to be the conclusively decided location. If that was the case, there would be no need to consider the location close to the plaza, which he was repeatedly clearly supporting and/or taking steps to have Council consider same.
- [267] The Mayor did not agree that Patrie was in favour of 151 Ontario Avenue because it was not already a municipally-owned property and/or for financial concerns. The Mayor stated that Patrie's concern was that he "did not want to give that man [the vendor of 151 Ontario Avenue] one cent". Councillors Patrie, Finamore and Mann were all on council when the mall collapsed, and the inquiry cost the City a significant amount of money. The topic of that property had been a topic in council for over five years as a result.
- [268] While I agree that it is not Patrie's style to outright lie, the fact is that he chose to deny many events as I have set out herein, to later acknowledge parts of same in some fashion and/or answer questions in a confusing manner and/or simply with justifications as opposed to direct answers, when faced with evidence that could not be refuted, including his own statements, videos and recordings.
- [269] In considering his position on his actions and intentions, as I have written in my analysis on contravention, I found many of his positions to be irreconcilably variable, and disingenuous, including but not limited to taking the position and/or expressing the belief that there would be only negative impacts to the plaza if a Hub was located near it on the one hand but then stating a position that a Hub would benefit the community as a whole no matter where it was located and/or his interests were in common with electors generally.
- [270] In reviewing his evidence, I was reminded of a statement he made to explain his use of the words "for purpose of the application" in respect of supporting the Centennial Arena site at the meeting at which it was selected for the application for funding, namely... "You're trying to convince four people to vote with you. It's politics. In order get what

you want, you have to convince people to do what you want them to do. You're only one vote". In my view, this essentially implies that he will say things he does not mean to achieve what he wants to achieve, and his attitude is that "it's just politics". Such an attitude is concerning given the principles of the Act.

- [271] I did not place weight on some of the ways that Patrie took issue with the way the investigation was conducted and/or opposed affirming the IC's role and/or stating he would take action against the IC related to the investigation as amounting to self standing aggravating factors. It is open to a defendant to challenge actions, challenge the state, and steps in an investigatory process. In my view he has the right to question them, whether he is right or not. Further, there were some irregularities that arose and issues that were clumsily dealt with arising after fresh amendments to the Act. As such, I do not characterize the objections of Patrie to the appointment, the process, the bylaw, and his upset wanting to take legal action as being self standing aggravating factors, but the evidence I do agree is relevant in that it is indicative of lack of appreciation for his actions in this specific case, and so is involving himself in action to attempt to defund E4M or a participate in the vote on the retroactive bylaw. That being said, he was not the only one that participated in the vote who was subject to a complaint investigated by them.
- [272] There is no question given his history as a councillor, that Patrie is an experienced politician, and he ought to have recognized the need to get advice on conflict of interest and his involvement with the matter of deciding a location for the Hub.
- [273] Patrie acknowledges that he received training on the Act, the governing legislation, and his role as a member of Council, from various individuals. The record reflects that he attended training on December 4, 2018, and a copy of a video recording and sample training materials were filed. Patrie's submissions regarding his conversation with Cyr in fact highlighted the conflict of interest training form this seminar, and that it would have been "front and center" in the minds of the councillors at that time, having just completed the seminar shortly before his conversation with Cyr. This was expressed as part of his explanation for his conversation with Cyr.
- [274] In respect of inadvertence or an error in judgment, I find based on the above that Patrie was reckless and/or wilfully blind.
- [275] If you allege you made an error or acted inadvertently, one cannot rely on same in instances of recklessness or wilful blindness.
- [276] There is a responsibility, directly on the member, to determine whether they are affected by the pecuniary interest provisions. Patrie was obliged to turn his mind to conflicts and not decide them subjectively, including whether he needed to seek advice.
- [277] As soon as Patrie started contemplating the idea of the site being one close to the Plaza, that is the moment he ought to have contemplated conflict of interest and he ought to

have sought advice. The public is entitled to expect the highest standard of conduct from Patrie. He did not meet that standard.

- [278] I agree that going to a fellow councillor and suggesting a conflict of interest and ramifications to sway a vote is very serious. He wanted to sway the vote, in my view. He did not want 151 Ontario Avenue to be purchased. Choosing to have this conversation with Cyr, and what was said and how, demonstrates calculated intention and it had the result of changing the course of Council until such time as the issue of 151 Ontario Avenue was revisited. That being said, from the defeated vote to the vote passing the proposal to purchase 151 Ontario Avenue, the time was four months. I cannot conclude that Patrie's actions delayed the course longer on the basis that it this was the first vote he participated in on the matter.
- [279] I state this acknowledging that declaring conflicts and participating and/or voting and/or attempting to influence other councillors and staff on matters that relate to same is serious.
- [280] I further considered that there is no evidence that Patrie has in fact benefited financially from any of the contraventions and while stated by the applicant that the gain could have been substantial, the evidence reflects that the Council work related to this Council endeavour has been going on for years back to 2006 with no realization of the achieving the Hub in all that time. Further, there is no evidence as to how long it would take, if it ever does, to come to fruition. It would be nice to see it come to fruition for the people of Elliot Lake.
- [281] Having considered all the above, however, I cannot and do not conclude that a reprimand is in order, nor a suspension of remuneration. The facts of this case, balancing all the above considerations, on the totality of the evidence, I find supports the need for removal and disqualification.
- [282] As to how long Patrie ought to be disqualified, I accept that a distinguishing feature from the other cases may be the councillor's actual realization of gain arguably, given the above gain analysis and what resulted.
- [283] I do not make this decision lightly and understand the ramifications for Mr. Patrie with my decision.
- [284] The Province of Ontario has highlighted the importance of integrity, independence, and accountability in local government decision-making, the importance of certainty in reconciling the public duties and pecuniary interests of members, and those members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny. Patrie, in my view, fell significantly below these expectations.
- [285] I find that a period of two years of disqualification appropriate in the circumstances.

CONCLUSION

[286] I find the answers to the issues raised as follows:

a. Applicant's issues:

- i. 1, 1A, 1B, 1C, 1D, 1E, 2 to be "yes";
- ii. 3: to be "no";
- iii. 4: to have weight but not as "retributive actions" fact dependent on this case; and
- iv. 5: as set out below.

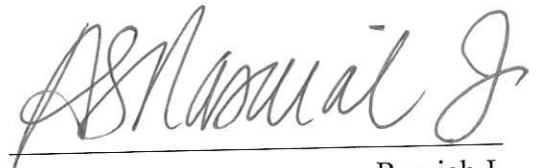
b. Respondent's issues:

- i. 1(a) and 1(b) to be "yes" qualified by my reasons;
- ii. 2(a) to be "yes";
- iii. 2(b) and 2(c) to be "no"; and
- iv. 3 to be "yes".

[287] For the reasons set out, this court finds that Mr. Chris Patrie breached sections 5(1) and (2) of the *Municipal Conflict of Interest Act*.

[288] This court finds that the appropriate penalty for this breach is removal from office and disqualification from being a member for a period of two years, pursuant to section 9(1).1 of the Act.

[289] 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. within 30 days of today's date.



Rasaiah J.

CITATION: City of Elliot Lake (Integrity
Commissioner) v. Patrie, 2023 ONSC 223

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CITY OF ELLIOT LAKE (INTEGRITY
COMMISSIONER)

- and -

CHRIS PATRIE

REASONS FOR JUDGMENT

Rasaiah J.

Released: January 9, 2023