
**Municipal Code of Conduct Inquiry for the Corporation of the
Township of Emo**

Recommendation Report prepared for Emo Township Council

DATE

November 18, 2020

Code of Conduct Complaint relating to Section 5 of the
Municipal Conflict of Interest Act against Mayor McQuaker

Complaints filed by - Citizen of EMO and a person demonstrably acting in the public
interest

Inquiry conducted by:
Darrell Matson
6356 Townline Road
Thunder Bay, Ontario
P7G- 2G8

Appointed Integrity Commissioner for the Corporation of the Township of EMO.

BACKGROUND

In 2016 the Ontario government introduced Bill 68 - Modernizing Ontario's Municipal Legislation Act. Bill 68 contained a number of amendments to the *Municipal Act, 2001*, S.O. 2001, c. 25 (MA), the *Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50* (MCIA) the *Municipal Elections Act, 1996*, and various other Acts. These changes imposed new and important obligations on municipalities. The Bill received Royal Assent on May 30th, 2017. It is important to note that the changes to the Acts came into force over a period of time. Some of the changes included:

- Requiring municipalities to establish codes of conduct for members of municipal council and certain local boards, which could include rules that guide the ethical conduct of those members;
- Requiring municipalities to give the public and municipal councillors access to an integrity commissioner, with broadened powers to investigate conflict of interest complaints and provide advice to councillors;
- Providing for a wider range of penalties for contraventions of the *MCIA*;
- Updating the definition of "meeting" in the MA;
- Requiring municipalities to maintain a register recording all declarations of interest submitted by members of their councils; and
- Setting out how municipalities may allow for electronic participation by council, local board and committee members at meetings that are open to the public. Participants would not be counted towards quorum and members would not be able to participate electronically in meetings that are closed to the public. (Note this was later amended to first allow full participation during the COVID 19 provincial emergency, and again, later, to allow municipalities to choose whether or not to continue to allow full electronic participation.)

The code of conduct for members of council, and its local boards, sets out behaviors that members of council are expected to abide by and follow in support of the good governance of the municipality, and more particularly the confidence of the public in their local government.

The Municipal Conflict of Interest Act (“MCIA”) as referenced in the code of conduct sets out a framework for when participation in local government decision-making is appropriate. The overall goal is to protect the public interest by prohibiting any member from having any involvement in any matter being considered by Council or local board if the member has a pecuniary (financial) interest in the matter.

MANDATE

As a result of two applications filed, firstly by a citizen of the Township of Emo on June 29, 2020, and, secondly, by a person demonstrably acting in the public interest on July 20, 2020, I was retained to conduct an inquiry into the alleged contravention of the Emo Code of Conduct specifically the Municipal Conflict of Interest Act (“MCIA”) section 5.

By-law 2018-28 Schedule “A”, being a by-law to establish a Code of Conduct for Members of Council provides for the authority to conduct the inquiry.

I have been appointed as one of the Integrity Commissioners for Emo pursuant to section 223.3 (1) of the Municipal Act (“MA”).

The inquiry was conducted in accordance with Emo Policy I-01 – Integrity Commissioner Investigation Procedure.

Prior to commencing the inquiry, a content review of the applications was conducted in accordance with the Emo Policy 1-01 and Emo Code of Conduct – By-law 2018-28 Schedule “A”. It was concluded that the application (complaint document) was complete and within the jurisdiction of the Integrity Commissioner.

ALLEGATIONS

Complainant number 1, a citizen of Emo, filed an application on June 29, 2020, alleging that Mayor McQuaker contravened Sections 5(1), 5.1 and 5.2(1) of the MCI. The application and the associated affidavit state the following:

- that at the May 26, 2020 regular council meeting, Mayor McQuaker's son won tender # 2020-02 being a tender for Crushing and Stock piling gravel [contravened 5(1)];
- that Mayor McQuaker was asked at the May 26, 2020 meeting during the discussion process (Resolution 3) from the meeting minutes by Councillor Dunn if he was involved in previous discussion leading up to the tendering development process in which Mayor McQuaker answered in the affirmative [contravened 5.2 (1)], followed by the Mayor saying that he was unsure if because the meeting was in a Zoom format if he then needed to declare a conflict of interest [contravened (5.1)]; and
- and the regular council meeting minutes of June 9, 2020 confirm that the meeting minutes from May 26, May 29, and June 3, 2020 were adopted and approved with no mention of a written statement of disclosure or otherwise from any member of council.

Complainant number 2, a person demonstrably acting in the public interest, submitted an application on July 20, 2020 after they learned that the June 9, 2020 meeting minutes of Council did not record any written disclosure or otherwise by any member of council. This complaint alleges that Mayor McQuaker contravened the MCI. In the application and in the associated affidavit, the complainant states the following:

- Section 5 of the MCI requires that a member of a municipal council disclose a pecuniary interest in a matter that is the subject of consideration of the council prior to the consideration of that item at the meeting of council. The member is not to take part in the discussion of the item or any vote in respect of the matter:

- Section 3 of the MCIA states that the pecuniary interest of any child of a member of a municipal council is deemed to be the pecuniary interest of the member
- Subsection 239(7) of the MA requires that a municipal council's minutes record all records, decisions, and other proceedings occurring at a meeting:
- Section 6 of the MCIA requires that every declaration of interest be recorded in the minutes of the municipal council;
- Conflicts of interest and nepotism by members of the Municipality's council are also concerns governed by the By-law;
- On May 12, 2020, council of the Municipality adopted a resolution to tender for the provision of crushing and gravel to the Municipality;
- On May 26, 2020 council of the Municipality made a decision in respect of a tender for crushing and gravel, awarding it to Shane McQuaker Trucking, this is reflected at resolution 3 of the published minutes of May 26, 2020;
- Shane McQuaker Trucking is owned and operated by Shane McQuaker, who is the son of Mayor McQuaker. Mayor McQuaker did not disclose any pecuniary in this item during the meeting contrary to sections 3 and 5 of the MCIA;
- In addition, it is my understanding, though I have not independently confirmed, that Shane McQuaker Trucking will utilize equipment belonging to Harold McQuaker Enterprises in order to fulfill this contract (specifically, a crusher). Mayor McQuaker is the owner and operator of Harold McQuaker Enterprises.

PURPOSE OF THE INQUIRY & RELEVANT LEGISLATION

The MCIA sets out a framework for when participation in local government decision-making by elected officials is appropriate. The overall goal is to protect the public interest by prohibiting any member of a Municipal Council from having any involvement in any matter being considered by that Council or Local Board if the member has a pecuniary interest (commonly referred to as a “financial interest”) in the matter. The obligation is on the member to comply with MCIA.

The term “Pecuniary Interest” is not defined in the MCIA. The courts have interpreted it to mean a financial interest, or an interest related to, or involving, money. The amount of the interest, or whether the interest is positive or negative is not a consideration in determining if a pecuniary interest exists.

The purpose of this inquiry is to determine if Mayor McQuaker had a pecuniary interest in the circumstances associated with the award of Tender No. 2020-02 being a Tender for Crushing and Stockpiling of approx. 5,000 cubic yards of 5/8 gravel. If there is found to be an interest, then did Mayor McQuaker comply with Subsection 5(1), and Sections 5.1 and 5.2 of the MCIA.

Subsection 5(1) of the MCIA reads:

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Section 5.1 of the MCIA reads:

5.1 At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be.

Section 5.2 of the MCIA reads:

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

The relevant Code of Conduct excerpts are not reproduced as they mirror the above requirements of the MCIA.

INVESTIGATION APPROACH

The investigation was conducted in accordance with EMO Policy I-01 – Integrity Commissioner Investigation Procedure.

In order to determine if a violation(s) of the MCIA and the associated portions of the Code of Conduct did occur, the following were obtained and reviewed:

1. the two applications,
2. the response to the allegations from the respondent, Mayor McQuaker,
3. the Emo Township meeting minutes of its meetings held on May 12, 2020, May 26, 2020, June 9, 2020, and June 23, 2020, and

4. the associated audio files recorded via “ZOOM”, of the meetings in #3 above.

Any of the information that was in dispute or required clarification resulted in the development of clarifying questions and a list of persons (witnesses) that needed to be interviewed.

Typically, witnesses would be interviewed in person, however, with the current pandemic restrictions in place, interviews were conducted via a confidential e-mail that contained a list of questions with a follow-up by telephone if required.

Information obtained from Township of Emo Regular meetings of Council

On May 12, 2020, Township Council adopted a resolution to Tender for the provision of crushing of 5000 cubic yards of 5/8 gravel, and to Tender for the provision of hauling of 3,500 cubic yard of gravel to various roads with in the Township of Emo. This resolution was a direct result of a written report presented by the Public Works Superintendent.

The Public Works Superintendent’s report appeared on the Emo Municipal Council Regular Meeting Agenda, however the resolution adopted did not appear on the meeting agenda. The resolution to Tender for the provision of crushing of 5000 cubic yards of 5/8 gravel was prepared for consideration by council just prior to, or during, the meeting of council as it was a direct result of the Public Works Superintendent’s report.

The May 12, 2020 Township of Emo Regular meeting of Council was conducted by electronic participation via Zoom. All Members of Council were present. No declarations of pecuniary interest were recorded.

On May 26,2020, Township Council adopted a resolution to award Tender No. 2020-02 being a Tender for Crushing and Stockpiling of approx. 5,000 cubic yards of 5/8 gravel to Shane McQuaker Trucking in the amount of \$42,657.50.

The May 26, 2020 Township of Emo Regular meeting of Council was conducted by electronic participation via Zoom. All Members of Council were present. No declarations of pecuniary interest were recorded. No Errors or Omissions from the May 12, 2020 Regular Council Meeting minutes were noted.

The June 9, 2020 Township of Emo Regular meeting of Council was conducted by electronic participation via Zoom. All Members of Council were present. No declarations of pecuniary interest were recorded.

On June 9, 2020, Township Council adopted as circulated the May 26, 2020 Regular Council Meeting Minutes. No Errors or Omissions from the May 26, 2020 Regular Council Meeting minutes were noted and there was no business arising from the May 26, 2020 Regular Council Meeting.

Facts Determined from the Minutes and Zoom audio recordings

Due to the provincial restrictions in place (Covid 19 pandemic), Emo Township Council meetings were being conducted via electronic means using Zoom software. The Zoom application is a web-based video conferencing service that can be used to meet virtually with others either by video, audio or both. The virtual meetings can also be recorded to be viewed or listened to at a later date.

The Audio recordings obtained for the Township of Emo Regular meetings of Council for May 12, 2020, May 26, 2020 and June 9, 2020, are not complete and do not record the entire session of the Township Council meetings. As this was new technology and a new way of conducting meetings of this nature, problems were experienced by the participants and at times the Zoom administrator did not commence recording at the beginning of the meeting

The May 26, 2020 Emo Municipal Council audio recording captures the following mid-way through a discussion on an item on the agenda.

- Councillor Shortreed seconds a resolution;
- Councillor Boven confirms that the resolution has a mover and a seconder and requests discussion;
- no discussion is recorded;
- Councillor Boven proceeds to call a vote on the resolution;
- Councillor Shortreed responds when her name is called, Councillor Dunn responds when his name is called, and Councillor Toles responds when his name is called;
- The resolution is then declared to have been approved by Councillor Boven;
- Councillor Boven states, “go ahead Mr. Mayor”.
- Mayor McQuaker states, “Thank- you. With the current rules and the difficulty, we have with the zoom meetings and what not and ahh, as I said and I can’t give it in writing as it is supposed to be but I did declare a conflict of interest. Thank you very much”.
- The Mayor then moves on to the next item on the agenda, the Tax Ratio by-law.

Based upon the review of the remainder of the audio recording, Township Council did not return to this item.

The June 9, 2020 Emo Municipal Council zoom audio does not record the “Adoption of Minutes” of the May 26, 2020 Regular Council Meeting Minutes including “Errors or Omissions” as the recording was started later in to the agenda.

Written minutes of these meetings do not reflect a declaration of pecuniary interest from any member of Council relevant to the gravel tender.

Facts Determined from the Respondent, Complainants and Witnesses.

Over the past five years or so, the Township of Emo has been in the practice of tendering for the crushing/stock piling of gravel one year followed by tendering for the

hauling the next. Each year there is discussion whether to crush gravel or not, depending on the current need for the gravel and status of the associated budget.

The crushing/stock piling and the haul/spread of gravel are always tendered separately, as the work involved require different types of equipment that not all contractors have. The tenders are always distributed to all local contractors that have the required equipment.

The crushing/stock piling and hauling of gravel does not appear on the May 12, 2020 agenda as a specific resolution to be considered by Township council, but as a discussion item contained in the Public Works Superintendent's report.

All members of council participated in the discussion on all of the items associated with the Public works Superintendent's report. There was no discussion relating to which contractors would be included on the invitation to tender list.

The resolution to tender out this work was not completely prepared in advance, as the decision of Township council was unknown.

The resolution to tender for the above services was drafted as a result of the outcome of Council's discussions.

Tender No. 2020-02, being a Tender for Crushing and Stockpiling of approx. 5,000 cubic yards of 5/8 gravel was prepared by township staff and distributed to all local contractors considered to be capable of performing the work. The completed tender documents were received and reviewed by the Emo CAO/Clerk- Treasurer and the Public Works Superintendent.

The resolution to accept Tender 2020-02 was prepared in advance, as it was to be awarded to the contractor who provided a compliant bid that included the lowest unit cost price for the work.

Once the resolution to award the work was adopted, Township council did not return to this item for any further discussion or debate.

Harold McQuaker Enterprises LTD. is owned by Mayor Harold McQuaker.

Shane McQuaker Trucking is owned by Shane McQuaker.

Shane McQuaker is the son of Mayor Harold McQuaker.

Shane McQuaker Trucking did rent a “crusher” from Harold McQuaker Enterprises Ltd for the processing of the material required for Tender 2002-02.

Harold McQuaker Enterprise LTD. did not bid on the crushing, stock piling and hauling of gravel. (Tenders 2020-02 and 2020-03)

At the time that tenders are distributed and/or advertised, Emo administration have no knowledge as to which, if any, contractors will submit a bid.

Witnesses confirm the discussions cited above as gleaned from the May 26, 2020 Zoom audio recording are directly associated with the award of Tender No. 2020-02, being a Tender for Crushing and Stockpiling of approx. 5,000 cubic yards of 5/8 gravel to Shane McQuaker Trucking in the amount of \$42,657.50

Although not heard on the recording, witnesses confirm that Mayor McQuaker started to read the resolution associated with Tender 2020-02, however Councillor Dunn stated that he believed that the Mayor had a conflict of interest on this item. The Mayor acknowledged the statement, and Councillor Boven assumed the chair at that point.

Councillor Boven is the Deputy Mayor and acts on the Mayor's behalf in the event the Mayor is not able to do so.

The declaration of the conflict of interest was not recorded in the written minutes. There was apparent confusion as to whether Mayor McQuaker's statement constituted a

declaration of a conflict of interest. In describing the incident, witnesses used terms like “don’t know”, “Mayor McQuaker did not actually declare a conflict of interest”, “not sure why this did not happen”, “this was an oversight” and “things were confusing using Zoom”.

There was no conflict of interest form filed after the meeting and therefore the minutes did not reflect the declaration.

Witnesses confirm that Mayor McQuaker at no point in time used his office to influence the outcome of the vote.

ANALYSIS

In order to determine if there was a contravention of Subsection 5(1), and Sections 5.1 and 5.2 of the MCI, and the associated sections of the Code of Conduct, the following questions were reviewed.

1. Did the Mayor have a pecuniary interest in the matter being considered?
2. If there is NO pecuniary interest, the matter can be considered by the Mayor.
3. If there is a pecuniary interest, do the exemptions apply as per section 4 of the MCI? (If there is an exemption, the matter can be considered and voted upon by the Mayor, and no disclosure is required.)
4. IF there is NO exemption, did the Mayor disclose the interest and its general nature at the meeting and prior to the vote?
5. IF there is NO exemption, either before or after the meeting, was there any attempt in any way to influence the vote?
6. IF there is NO exemption, after the meeting, was the necessary written declaration completed and submitted to the Clerk?

Turning to the first question in the analysis chain:

Does Mayor McQuaker have a pecuniary interest in the matter before township council?

Section 3 of the of the MCIA states the following:

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.

Shane McQuaker Trucking is owned and operated by Shane McQuaker, who is the son of Mayor Harold McQuaker. Mayor McQuaker’s pecuniary interest in the award of the tender, which is “indirect” due to the fact he is the parent of the owner of one of the bidders, is clear.

Accordingly, the conclusion on the first question in the analysis chain is that, yes, Mayor McQuaker has a pecuniary interest in the matter.

This makes question 2 redundant, and leads to question three:

Do any exemptions, set out in Section 4 of the MCIA, apply to Mayor McQuaker’s Pecuniary Interest?

None of the facts determined or information provided lead to a conclusion that any exemption applies.

This leads to question four:

Did Mayor McQuaker disclose his interest in the matter before Township Council?

Subsection 5(1) of the MCIA, cited earlier, requires any member with a pecuniary interest to “disclose the interest” and its “general nature” prior to the consideration of the matter.

Section 13.0 of The Corporation of the Township of Emo By-law No.2018-28, being a by-law to establish a code of conduct for members of Council, states the following:

13.1 Members have a strict obligation to avoid conflicts of interest by taking the following steps whenever a member has a direct or indirect pecuniary interest in any matter that is before Council in a meeting where the member is present.

13.1.1 Disclose the general nature of the members interest prior to any consideration of the matter in the meeting.

The minutes of the Regular meeting of the Council of the Corporation of the Township of Emo held on May 26, 2020, did not document any disclosure of interest by Mayor McQuaker.

The minutes of the Regular meeting of the Council of the Corporation of the Township of Emo held on June 9, 2020, were approved as circulated, without amendment. The May 26, 2020 minutes and the June 9, 2020 minutes did not note any errors and omissions from the May 26, 2020 meeting minutes.

The audio file for the Regular meeting of the Council of the Corporation of the Township of Emo for May 26, 2020 starts to record the meeting at the time a resolution is being seconded by a Member of Council.

This meeting was held electronically.

The Deputy Mayor was the Chair for this resolution only.

The Chair invites discussion, however there was no debate or discussion on the resolution.

The Deputy Mayor proceeds to call a vote on the resolution by calling upon each Member, by name, except for Mayor McQuaker.

The Resolution was noted as having been approved by the Deputy Mayor.

The Deputy Mayor returns the Chair to Mayor McQuaker who makes a statement emphasising that he did declare a conflict on this matter and moves on to the next item on the agenda.

Witnesses confirm the following:

- The events as recorded above were associated with the award of Tender 2020-02 to Shane McQuaker Trucking.
- Mayor McQuaker did start to read resolution No. 3 (award of Tender 2020-02), however, prior to the resolution receiving a Secunder, a Member of Council reminded Mayor McQuaker that he may have a conflict on this issue. At this point in time the Deputy Mayor assumed the chair.
- Once the vote was taken and the resolution was approved, Council did not return to this matter prior to the meeting being adjourned.

In response to the question, Mayor McQuaker verbally disclosed his interest in the matter, however, he did not disclose the nature of the interest. Although the recording makes it appear that the disclosure occurred after the vote had been taken, the wording used by the Mayor makes it appear that he is confirming a statement that he made earlier, prior to the recording having been commenced.

This leads us to question five.

Did Mayor McQuaker, either before or after the meeting, participate in the discussion or vote on the matter, or otherwise attempt in any way to influence the vote on any such question.

No evidence was produced that would substantiate any wrongdoing with respect to influencing the vote, either before or after the meeting. Mayor McQuaker did not, in fact, participate in the vote, and no discussion about the matter took place. The question is therefore answered in the negative.

This leads us to the sixth and final question.

Was the necessary written declaration completed and submitted to the Clerk?

Both Section 5.1 of the MCIA and Section 13.2 of The Corporation of the Township of Emo By-law No.2018-28, (the code of conduct for members of Council), state that members must provide the CAO/Clerk with a written declaration. The Code of Conduct provides the form to be used in this regard.

Mayor McQuaker frankly acknowledged that he did not file the statement. This question is answered in the negative.

Application to the Courts

In March of 2019, the Municipal Act was amended to allow an applicant to file a complaint and pursue a remedy by submitting an application to the municipalities Integrity Commissioner. Prior to March 2019 the only remedy was to file an application with the Courts.

Section 223.4.1 of the Municipal Act authorizes the IC to respond to applications under Sections 5, 5.1 and 5.2. of the MCIA.

223.4.1 (1) This section applies if the Commissioner conducts an inquiry under this Part in respect of an application under subsection (2)

223.4.1 (2) An elector, as defined in section 1 of the Municipal Conflict of Interest Act, or a person demonstrably acting in the public interest may apply in writing to the Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of that Act by a member of council or a member of a local board

Section 223.4.1 of the MA also authorizes the IC to bring an application before a court, whereby a judge may impose sanctions beyond those that are within the jurisdiction of the IC to recommend.

Where the IC determines that no such application to be brought, the Applicant is to be advised and reason for such decision must be published.

223.4.1 (15) Upon completion of the inquiry, the Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act

223.4.1 (16) The Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge

223.4.1 (17) After deciding whether or not to apply to a judge, the Commissioner shall publish written reasons for the decision

The sanctions a Judge may impose following a determination of a contravention of the MCIA by a member of Council are:

- A reprimand;
- Suspension of remuneration paid to the member for up to 90 days;
- Declaring the members seat vacant;
- Disqualifying the member from being a member for up to seven (7) years;
and/or
- If personal financial gain has resulted, required the member to make restitution.

An Integrity Commissioner may not impose any sanctions, rather the IC makes recommendations to the Council as to whether or not the Council should impose

sanctions. The sanctions available to Council are far more limited than those available to a judge, and include only:

- A reprimand; and/or
- Suspension of remuneration paid to the member for up to 90 days.

As an Integrity commissioner, I am charged with the responsibility to choose which route to follow. Is this case such that court time and legal expense should be incurred to seek a remedy that only the courts can impose, or, is this a case where the Integrity Commissioner should review the matter and if it is in the public interest to do so make recommendations to the Township Council as to whether or not to impose a reprimand or financial penalty?

This is a case where the facts and analysis demonstrate that Mayor McQuaker did declare an interest in the Tender Award as required by Subsection 5 (1) of the MCI A and did not in any way attempt to influence any decision or recommendation that results from consideration of the matter, however Mayor McQuaker did not verbally identify the general nature of the conflict, nor did he file a written statement of the interest and the general nature thereof.

The violations in the above paragraph do not warrant, in my opinion, sufficient egregious conduct so as to require remedies such as declaring the Mayor's seat vacant, disqualifying the Mayor from being a member for up to 7 years or requiring the Mayor to make any restitution. It is my view that these sanctions would not, in the circumstances of this inquiry, be in the public interest and, as a result, I will not pursue these sanctions by way of an application to a judge.

Based upon the finding of facts and the analysis in the preceding section, no application will be made to the courts and this report serves as a publication as to my reasons.

As required by the MCI A, the applicants have been advised that no application will be made by the Integrity Commissioner to a Judge in this matter.

Recommendations

There are extenuating circumstances associated with this Inquiry.

In March of 2020, the Province enacted Bill 187, *Municipal Emergency Act, 2020*. This legislation made changes to the quorum requirements in the Municipal Act. It authorizes every municipal council to amend its Procedure By-law after an emergency has been declared under the authority of the *Emergency Management and Civil Protection Act*. The changes allow members to electronically attend council, committee and local board meetings and be counted in quorum. The expectation is the council will continue to be transparent in its decision-making and comply with their respective Procedural By-Law and the amendments made by municipality/township provided for in Bill 187.

Township Councils now had the authority to move from their standard practice of conducting their business in Council Chambers to doing business electronically using some form of conferencing software.

Emo Township amended their Procedural by-law in accordance with Bill 187 in April of 2020.

The May 26, 2020 meeting of Township Council was fourth the meeting to be conducted by electronic means using conferencing software. There is a learning curve associated with the use of this technology. Township council meetings have to be conducted in accordance with the procedural by-law which meant some process changes would be required. The delayed started of recording, calling a vote, (show of hands may no longer be useful), deputations and moving from an open session to a closed session all required time and practise using conferencing software. Councillors, staff, and the public who attended meetings would have to adjust to compensate for the new meeting format. Remapping some of the processes would be required.

Typically, the declarations of interest forms were made available to members of council and placed on the council meeting table for easy access at the time a conflict was declared. Meeting electronically with members in different locations changed that

process. The May 26, 2020 meeting of council was the first meeting where a declaration of conflict of interest form would be required. Forms were available, however a member would have to request a form from the Clerk's office, or attend the township office to completed the form.

The minutes to the meeting do not reflect the declaration of interest. This is an error, which I attribute to the confusion associated with the electronic meetings and the fact that Mayor McQuaker did not file the appropriate written declaration as required by Section 5.1 of the MCIA.

Witnesses clearly articulated some frustration with the electronic process and when questioned why the minutes were not amended, terms like "don't know", "Mayor McQuaker did not actually declare a conflict of interest", "not sure why this did not happen", "this was an oversight and things were confusing using Zoom" were used. The witness information and the audio recording of the meetings for the purposes of this inquiry confirm that conducting business in council chambers vs. conducting business by electronic means caused some confusion for those who participated in the electronic meetings.

I find that the contravention of Section 5.1 of the MCIA and Section 13.2 of the Code of conduct was not the result of a lack of understanding on Mayor McQuaker's behalf, however the extenuating circumstance described above contributed to the Mayor not filing a written declaration. Mayor McQuaker acknowledged in his response to the allegations that he did not provide the written notice as required.

I am of the view that a minor reprimand is warranted, and I am recommending that Township Council consider supporting the following:

That the Mayor file a written declaration as required by section 5.1 of the MCIA;

That the Mayor undertake an educational refresher on the MCIA, and the MA with a focus on the changes that have occurred since the inaugural meeting of council;

That all members of Council participate in the educational refresher (optional)

And that the Township of Emo establish a registry in accordance with Section 6.1 (1) of the MCIA.

The recommendations above are not “fixed” by the Integrity Commissioner. If Township Council so desires, they can amend the recommendations to include a more severe reprimand, or a suspension of remuneration paid to Mayor McQuaker for a period of up to 90 days.

Should Township Council choose a suspension of remuneration, the Mayor may participate in the discussion of the recommendation report but must declare a conflict of interest, file the written declaration but not participate in the vote on the monetary sanctions.

Respectfully Submitted



Darrell Matson

Appointed Integrity Commission for the Corporation of the Township of Emo

LEGISLATION, POLICIES and DOCUMENTS Relied Upon

Municipal Act, 2001, S.O. 2001, c. 25 – E-Laws

Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 - E-Laws

Municipal Conflict of Interest Act Complaint Form and Affidavit as filed by the Complainants. – Confidential document

Complaint response by the Respondent. – Confidential document

Corporation of the Township of Emo documents:

On file with the City Clerk

- Minutes of City Council May 12, 2020, May 26, 2020 and June 9, 2020
- BY-LAW 2018-26 – A By-Law to establish a Code of conduct for Members of Council and the associated Schedules;
- BY-LAW 2018-28 – A By-Law to establish a Code of conduct for Members of Council and the associated Schedules;
- BY-LAW 2019-04 – A Procedural By-Law to govern the calling, place and proceedings of meetings of the Municipal Council for the Township of EMO as amended;
- BY-LAW 2004-20 – Being a By-Law to establish a Procurement By-Law for the Township of EMO as amended;

- BY-LAW 2019-08 – A By-Law to appoint persons as Integrity Commissioners and to authorize the execution of agreements with appointees and the associated schedules;
- Policy I-01 - Integrity Commissioner – Investigation Procedure (Schedule 3 to By-Law No. 2019-08) & (Schedule A to By-Law No. 2019-09);
- Agreement between the Corporation of the Township of EMO and Darrell Matson (Schedule B to By-Law 2019-08);

Interview questions and responses for those interviewed – Confidential document

Training materials for the current City Council regarding conflict of interest - on file with EMO City Clerk

Training materials for the current City Council and Mayor regarding Emo code of conduct - on file with EMO City Clerk

Role of a Municipal Councillor, Councillor Liability and Municipal Conflict of Interest presentation prepared for The Corporation of the Township of Emo by Allan D. McKittrick of McKittrick's, Barristers and Solicitors Thunder Bay - on file with EMO City Clerk