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**Municipal Conflict of Interest Inquiry for the Corporation of the  
Township of Emo**

**Report prepared for Emo Township Council – For Information only**

**February 5, 2024**

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Municipal Conflict of Interest Act Allegations against :

Mayor McQuaker

Harrold Boven

Warren Toles

Inquiry conducted by:

Darrell Matson - Thunder Bay, Ontario

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

File 4-2022

**Final – February 5, 2024**

## **INTRODUCTION**

This is an information report only and is intended to comply with the Integrity Commissioner Investigation procedure, specifically **Section 12 – No Contravention - Report Process and Section 13- Termination of Investigation – Report Process.** [Reference By-Law 2019-08/2019-09]

## **MANDATE**

As the result of three Applications for Municipal Integrity Commissioner Investigations under the Municipal Conflict of Interest Act (“Applications”) dated July 11, 2022, the Integrity Commissioner (“IC”) was retained to conduct an inquiry into the alleged contraventions.

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

I have been appointed as one of the Integrity Commissioners for The Township of 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 and the Emo Code of Conduct.

Prior to commencing the inquiry, a content review of the Applications was conducted and concluded that the Applications were complete and within the jurisdiction of the IC.

## **BACKGROUND**

On July 11, 2022, the Township of Emo Clerk/CAO received 3 separate Applications with respect to an alleged violation of the Municipal Conflict of Interest Act (“MCIA”). The applications allege that Mayor McQuaker, Councillor Toles and Councillor Boven violated section 5 of the MCIA when Council considered a request for indemnification of the 3 members in the matter of a Human Rights Tribunal of Ontario (“HRTO”). The Applications allege that the 3 members of Council did not declare a conflict of interest and participated in both the discussion and the vote on the subsequent resolution on June 29, 2022.

The Applications were processed in accordance with the procedures established by the Township of Emo and forwarded to the IC for the purpose of conducting an Inquiry. As all three applications were based upon the same events only one Inquiry would be conducted.

While reviewing the Applications, the IC was informed that an Application Record (“Court Application”) was made to the Ontario Superior Court of Justice by Luke Judson against the Township of Emo and two members of Council. The Court Application requested a determination, pursuant to section 8 of the MCIA. The Court Application stated that Councillors Toles and Boven contravened section 5 of the MCIA during the meeting of the municipal council on June 29, 2022 by voting on the indemnity resolution in which they had, in fact, declared a pecuniary interest.

The Court Application was based upon the same event and particulars as the Applications submitted to the IC, except only two members of Council were named (Councillors Boven and Toles). Mayor McQuaker was not subject to the Court Application.

The name of the Complainant is not provided in this Report. Consideration was given to the expressed need for disclosure of the Complainants identity. The Complainant is advancing a concern that involves an issue of importance to some or all of the citizens of the Township rather than a private interest.

### **CHRONOLOGY of SIGNIFICANT EVENTS**

A chronology of events is provided for the purposes of adding context to the procedural issues encountered. The procedural issues relate to:

- the timing of the Application with respect to the upcoming Municipal election;
- the complainants request to restart the Inquiry after the elections;
- the submission of the Court Application to the Superior Court of Justice based upon the same events;
- the obligation of the IC to produce a report and conclude the Inquiry.

July 11, 2022

Emo CAO received 3 separate MCIA Applications with respect to an alleged violation of section 5 of the MCIA.

July 27, 2022

IC receives permission from the Clerk/CAO to proceed with an Inquiry.

July 28, 2022

Emo Township is served with the Court Application.

The Court Application is filed by Luke Judson against Harrold Boven, Warren Toles, and the Corporation of the Township of Emo.

The Court Application is filed with the ONTARIO SUPERIOR COURT OF JUSTICE (Court file CV – 22-0013).

August 2, 2022

IC receives the Court Application.

August 18, 2022

IC advises parties that the Inquiry associated with the Applications:

- would be terminated (election related) on August 19, 2022 in accordance with Section 223.4.1 of the Municipal Act;
- that another Inquiry will not commence with respect to the matter unless, within six weeks after voting day of the election, the Complainant or the member or former members whose conduct is concerned applies in writing to the (IC) for the inquiry to be carried out; and,
- that a Court Application had been made to the Ontario Superior Court of Justice to commence a legal proceeding with respect to the same events as those in the July 11, 2022 Applications and should a request be made to continue with the Inquiry the IC would determine if they had the jurisdiction to commence an inquiry.

October 24, 2022 – Municipal Election held

Harold McQuaker – acclaimed

Harrold Boven – re-elected

Warren Toles – not on election ballot

October 27, 2022

The IC receives a written request from the Complainant to continue with the Inquiry.

December 6, 2022

The IC advises parties that the Complainant requested in writing for the Inquiry to be carried out and that the Inquiry would be suspended pending the outcome of Court Applications before the Superior Court of Justice;

December 15, 2022

Justice F.B Fitzpatrick upon written consent of the parties ordered the following:

- the application against the Corporation of the Township of Emo is dismissed in its entirety;
- the application against Warren Toles is dismissed in its entirety;

- the application for the Orders sought in paragraphs 1(c)- forfeiture of seat due to the failure to file required documents and 1(d) - request to quash the Indemnity Resolution and declare the resolution defeated are dismissed against Harrold Boven;
- that the balance of the Court Application, relating to Harrold Boven only consists of the relief sought in paragraphs 1(a) – determination of a contravention of section 5 of the MCIA, 1(b) – declare seat vacant, apply sanctions and seek financial restitution, 1(e) - awarding of court costs and 1(f)- such further and other relief as the court deems just. (Court file CV-22-0013).

January 4, 2023

A proposed time table is agreed to. (Court file CV-22-0013).

January 5, 2023

A Fresh as Amended Notice of Application is filed with the Superior Court of Justice (Amended to comply with the December 15, 2022 order of the Court). (Court file CV-22-0013).

April 18, 2023

A hearing takes place before Justice B. Warkentin (Court file CV-22-0013).

December 7, 2023

Justice B. Warkentin released the decision and found no violations with respect to Section 5 of the MCIA and dismissed the application against Harrold Boven. The decision is available from the Emo Clerk or on line at Can LII (Court file CV-22-0013).

December 8, 2023

IC receives notification that the Complainant has rescinded the three (3) Applications.

December 13, 2023

The IC advises parties that in accordance with the Integrity Commissioner Investigation procedure, the IC now has an obligation to produce a report as required by Section 12- No Contravention – Report Process and/or Section 13 Termination of Investigation– Report Process.

## **IC COMMENTS ON THE PROCEDURAL ISSUES**

### **The timing of the Application with respect to the upcoming Municipal election**

As 2022 was an election year, the inquiry was terminated on August 19, 2022. The termination was done in accordance with section 223.4.1 (12) of the Municipal Act which states:

*Termination of inquiry when regular election begins*

*(12) If the Commissioner has not completed an inquiry before nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, 1996, the Commissioner shall terminate the inquiry on that day. 2017, c. 10, Sched. 1, s. 21.*

The IC terminated the Inquiry and advised the parties.

### **The Complainants request to carry out the Inquiry after the elections**

The IC received a written request on October 27, 2022 from the Complainant to carry out the Inquiry.

Another Inquiry was commenced in accordance with Section 223.4.1 (13) of the Municipal Act which states:

*(13) If an inquiry is terminated under subsection (12), the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in section 5 of the Municipal Elections Act, 1996, the person who made the application or the member or former member whose conduct is concerned applies in writing to the Commissioner for the inquiry to be carried out. 2017, c. 10, Sched. 1, s. 21.*

The IC commenced another Inquiry and advised the parties.

### **The submission of the Court Application to the Superior Court of Justice based upon the same events**

The authority to suspend the inquiries was in accordance with the Township of Emo Code of Conduct by-law 2018-28. Section 20.1.4 which reads:

*Matter Already Pending – if the Complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a Commissioner may, in his/her sole discretion, suspend an investigation pending the result of the other process.[sic]*

The IC advised the parties that the Inquiry associated with three (3) MCIA Applications would be suspended pending the outcome of Court Application before the Superior Court of Justice.

The procedural requirements to produce a report and conclude the Inquiry.

On December 7, 2023 , Justice B. Warkentin released her decision with respect to the Court Application and found no violations with respect to Section 5 of the MCIA. The decision is available on line at Can LII Judson v. Boven, 2023 ONSC Court file CV-22-0013.

With respect to the procedural reporting requirements, Section 12 - No Contravention - Report Process to the Emo Integrity Commissioner Investigation procedure states in paragraph 1:

*Where the Integrity Commissioner, after concluding his or her investigation, determines that the complaint has not been sustained, her or she will provide a written report to Council for inclusion at an upcoming Council meeting. Where the complaint involved a Committee of Council, the Clerk shall provide a copy of the Report to the Committee Chair. In all cases, the Clerk shall provide a copy of the Report to the Complainant. This Report shall be presented at a public Council meeting, and must be prepared with that in mind to protect any confidential information as required.*

On December 8, 2023, the IC receives notification that the Complainant has rescinded the Applications.

With respect to the procedural reporting requirements, Section 13 Termination of Investigation – Report Process to the Emo Integrity Commissioner Investigation procedure states the following in the 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs:

*The Complainant may not unilaterally terminate the investigation. If a request is made by a Complainant to the Clerk to terminate the investigation, the Clerk will notify the Integrity Commissioner of the request, and the Integrity Commissioner will consider that request and determine whether or not to terminate the investigation under this Section. If the request is made by the Complainant*

*directly to the Integrity Commissioner, he or she will so advise the Clerk, immediately upon receipt of the request, and will consider it and determine whether or not to terminate the investigation under this Section*

*Where the Integrity Commissioner has determined that the investigation should be terminated, he or she shall so advise the parties, in writing, including, with detail the reason for the termination. This Report shall be presented at a public Council meeting and must be prepared with that in mind to protect any confidential information as required.*

The IC reviewed the request and determined that the Inquiry would be terminated as a result of the decision of Justice B. Warkentin in Judson v. Boven ( 2023 ONSC 6915) and advised the parties that a Report will be prepared and submitted to satisfy the requirements of Sections 12 and 13 of the Integrity Commissioner Investigation procedure.

## **CONCLUSIONS**

The alleged violation of Section 5 of the MCIA against Councillor Boven as cited by the Complainant are unfounded. This conclusion is based upon the outcome of Judson v. Boven ( 2023 ONSC 6915) where Justice B. Warkentin states at paragraphs 37, 38 and 47 the following:

[37] I find that the respondent, by indicating a possible pecuniary interest both orally at the outset of the Council meeting and then by completing a written Declaration of Interest in which he identified the HRTO proceeding, was ensuring he was transparent regarding the issues before council.

[38] I do not find that because he made these declarations, he therefore should be found to have contravened the MCIA, when he participated in the discussion and vote on the issue regarding enacting the indemnity by-law to cover legal expenses, as alleged by the applicant

[47] The application is therefore dismissed with costs. If the parties are unable to agree on costs, they shall make written submission to my attention within 30 days. Submissions are limited to four pages together with their Bills of Costs.

For clarity, Harrold Boven is the Respondent referenced in paragraph 37, and Luke Judson is the Applicant referenced in paragraph 38.



As the complaint against Councillor Harrold Boven has been dismissed, the decision of Justice B. Warkentin in Judson v. Boven ( 2023 ONSC 6915) can be applied to Mayor McQuaker and Warren Toles as the alleged MCIA violation in the July 11, 2022 Applications are based upon the same events and particulars.

It is also concluded that this report is intended to comply with Sections 12 and 13 of the Integrity Commissioner Investigation procedure and File 4, 2022 is considered concluded.

No application will be made to the courts and this report serves as a publication as to the reasons.

## **RECOMMENDATIONS**

None – provided for information only

Respectfully Submitted



Darrell Matson - Appointed Integrity Commission for the Corporation of the Township of Emo