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**INTERIM INTEGRITY COMMISSIONER REPORT ON
MCIA APPLICATION 2024-01**

THE CORPORATION OF THE TOWN OF COCHRANE

Aird & Berlis LLP

John George Pappas

April 4, 2024

**INTEGRITY COMMISSIONER REPORT
MCIA APPLICATION 2024-01
MAYOR PETER POLITIS**

A. INTRODUCTION

1. Aird & Berlis LLP is the interim Integrity Commissioner for The Corporation of the Town of Cochrane (the “**Town**”).
2. An application pursuant to subsection 223.4.1(2) of the *Municipal Act, 2001*¹ was filed directly with our office on March 18, 2023 (the “**Application**”), alleging that Mayor Peter Politis (the “**Mayor**”) contravened the *Municipal Conflict of Interest Act*² through his conduct at a meeting of Council held on January 30, 2024 where Council considered two reports of findings from the Town’s previous integrity commissioner.
3. For the reasons set out in this Report, the Application is time-barred under subsection 223.4.1(4) of the *Municipal Act, 2001*. Accordingly, we have determined that it is not appropriate apply to a judge under section 8 of the *MCIA* for a determination as to whether the Mayor has contravened the *MCIA*. The Report constitutes our written reasons for the decision in accordance with subsection 223.4.1(17) of the *Municipal Act, 2001*.
4. It is our view that the requirement of subsection 223.4.1(17) is satisfied by including this Report in the agenda materials for an open meeting of Council.

B. APPOINTMENT & AUTHORITY

5. Aird & Berlis LLP was appointed as interim Integrity Commissioner for the Town pursuant to subsection 223.3(1) of the *Municipal Act, 2001* on February 27, 2024 by Resolution No. 112-2024.
6. We have reviewed the Application in accordance with our authority as Integrity Commissioner as set out in section 223.4.1 of the *Municipal Act, 2001* and By-law No. 1297-2018, being the “Integrity Commissioner By-law.”

C. BACKGROUND AND ALLEGATIONS

7. The Mayor was elected to his current office in the 2022 Municipal Election. Prior to this, the Mayor served as the Town’s elected head of council for the 2010-2014 and 2014-2018 terms of Council.
8. At its regular meeting held on January 30, 2024 (the “**Meeting**”), Council considered two reports of findings from its former integrity commissioner, Mr. Harold G. Elston (the “**Former IC**”), regarding the conduct of the Mayor. The Former IC determined that the Mayor had contravened the Town’s Code of Ethics for Town Councillors Policy (the “**Code**”) on account of his behaviour toward Town staff. The Former IC recommended that Council suspend the Mayor’s remuneration for a cumulative period of 90 days.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

² *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (“**MCIA**”).

9. Upon receiving the Former IC's reports, Council voted to apply the statutory penalty of a suspension of the Mayor's remuneration for a period of 90 days.

10. The Application alleges that the Mayor's actions at the Meeting contravened several provisions of the *MCIA*, including chairing the Meeting for a period of time, voting against a delegation request in relation to the Former IC's reports, and introducing and adding to the agenda a legal opinion obtained by the Mayor in relation to the Former IC's investigation.

11. The Application was filed directly with our office on March 18, 2024. It was not accompanied by the statutory declaration required by section 223.4.1 of the *Municipal Act, 2001*. Upon our preliminary review of the Application, we identified several issues, including the timeliness of the Application. Accordingly, we wrote to the Applicant on March 19, 2024 to explain these deficiencies and to provide an opportunity to address the same.

12. In their response, the Applicant confirmed that they observed the livestream of the Meeting on January 30, 2024, re-watched the video recording of the Meeting in the subsequent weeks, and in late February and early March 2024, researched the provisions of the *MCIA* along with other municipal records to ascertain whether Mayor had committed any violations of the municipal ethics framework. The Applicant also advised that during this time, they gave priority to another time-sensitive matter, which was completed before preparing the Application.

D. ANALYSIS

13. Upon our review and consideration, we have determined that the Application was not made within the statutory limitation period provided for in subsection 223.4.1(4) of the *Municipal Act, 2001* and, as such, cannot proceed.

14. Subsection 223.4.1(4) of the *Municipal Act, 2001* requires that an application to the Integrity Commissioner for an inquiry under the *MCIA* be made within six (6) weeks after the applicant became aware of the alleged contravention. This provision replicates the time limit set out in subsection 8(2) of the *MCIA*. The strict time limit is meant to protect elected officials and ensure that applications are brought forward on a timely basis.³

15. The case law interpreting the six-week limitation period provided for in the *MCIA* establishes that the "test" is a mixed-subjective assessment. The clock starts to run when the applicant has actual or constructive knowledge of the facts on which the alleged contravention of the *MCIA* is based.⁴

16. The present Application deals with matters that occurred at the meeting of Council held on Tuesday, January 30, 2024 (i.e., the Meeting). The Meeting occurred more than six weeks prior to the filing of the Application.⁵

³ *Hervey v. Morris* (2013), 9 M.P.L.R. (5th) 96 at para. 44 (Ont. S.C.J.).

⁴ *MacDonald v. Ford* (2015), 41 M.P.L.R. (5th) 175, at paras. 11, 154 (Ont. S.C.J.); see also *Methuku v. Barrow* (2014), 29 M.P.L.R. (5th) 143, at paras. 19-23 (Ont. S.C.J.).

⁵ We would also note that the Application was not filed along with the statutory declaration required under the *Municipal Act, 2001*, which means it was incomplete. The formal commencement of the Application would further exceed this statutory timeframe.

17. The Applicant's explanation for the timeliness of the Application was that although they had observed the livestream of the Meeting, they were not aware whether Mayor's actions constituted violations of the *MCIA*. They also noted that during this period of time they prioritized another time-sensitive matter.

18. In our opinion, the Applicant would have had actual or constructive knowledge of all of the facts necessary to commence the Application on the day they observed the livestream of the Meeting. On that date, the Applicant would have been aware:

- (i) that the Mayor's pecuniary interests were engaged by virtue of the Former IC's recommendation to suspend the Mayor's remuneration, and
- (ii) of the procedural steps and actions taken by the Mayor during the Meeting that the Applicant alleges constituted a violation of the Mayor's obligations under the *MCIA*.

19. We do not accept the Applicant's explanation that the timeliness is excused by reason of their need to consider and assess whether the Mayor's actions constituted a violation of the *MCIA*. In *Hervey v. Morris*, the Applicant argued that his *MCIA* Application was brought within the statutory timeframe because the six week limitation did to commence until he had,

“...knowledge of the facts alleged to constitute a contravention of the [*MCIA*] **and** an understanding that those facts are likely to constitute a breach of the [*MCIA*].”⁶
[emphasis in original]

20. Justice Gilmore rejected this argument. Although the Applicant took steps to consider the factual underpinning of his Application, and reviewed the provisions of the *MCIA* and sought a legal opinion on the potential violation, this did not have the effect of changing the date when the Applicant would have had constructive knowledge of the facts underlying the breach. Justice Gilmore held as follows:

“The wording of Section 9(1) the [*MCIA*] (*sic*) does not require the elector to have absolute certainty that a conflict existed. The only certainty would be a court's ruling on the issue. What it does require is that the elector have a reasonable subjective belief that a breach of the [*MCIA*] has occurred.”⁷

21. We are satisfied, on a preponderance of the evidence and on the basis of the case law interpreting the statutory limitation period, that the Applicant would have had actual or constructive knowledge of the facts alleged to constitute a breach of the *MCIA* on January 30, 2024. Accordingly, the Application is out of time and must be dismissed.

E. CONCLUSION

22. Subsection 223.4.1 of the *Municipal Act, 2001* provides that, upon completion of an inquiry, the Integrity Commissioner may, if the Integrity Commissioner considers it appropriate, apply to a judge under section 8 of the *MCIA* for a determination of whether the member has contravened section 5, 5.1, 5.2 or 5.3 of that statute.

⁶ *Hervey v. Morris*, *supra* note 3, at para. 21.

⁷ *Ibid.*, at para. 58.

23. For all the reasons set out above, we have determined that the Application is out of time, and must be dismissed.

24. In view of the foregoing, we will not be exercising our discretion to apply to a judge of the Ontario Superior Court of Justice under section 8 of the *MCIA* for a determination of whether the Mayor has contravened the statute.

25. We recommend that a copy of our written reasons in this report be posted by the Town on its website.

Respectfully submitted,

AIRD & BERLIS LLP



John George Pappas

Interim Integrity Commissioner for the Town of Cochrane

Dated this 4th day of April, 2024

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