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**INTEGRITY COMMISSIONER REPORT
MUNICIPAL CONFLICT OF INTEREST ACT
APPLICATION 2025-01**

**THE CORPORATION OF THE MUNICIPALITY OF
WEST ELGIN**

Aird & Berlis LLP

John Mascarin

September 19, 2025

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INTEGRITY COMMISSIONER REPORT MUNICIPAL CONFLICT OF INTEREST APPLICATION 2025-01 COUNCILLOR WILLIAM R. DENNING

A. INTRODUCTION

1. Aird & Berlis LLP is the appointed Integrity Commissioner for The Corporation of the Municipality of West Elgin (the “**Municipality**”).
2. An application made pursuant to subsection 223.4.1(2) of the *Municipal Act, 2001*¹ and was filed with the Clerk (the “**Application**”).
3. The Application arises from a meeting of Council held on August 14, 2025 (the “**Meeting**”) where it is alleged that Councillor William (Bill) R. Denning (the “**Councillor**”) contravened the *Municipal Conflict of Interest Act*² by participating in the discussion at the Meeting after declaring a non-pecuniary conflict of interest contrary to subsections 5(1)(b) and (c).
4. Subsection 223.4.1(2) of the *Municipal Act, 2001* permits an elector or a person demonstrably acting in the public interest to apply to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1, 5.2 or 5.3 of the *Municipal Conflict of Interest Act*.
5. Upon completion of an inquiry, the Integrity 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 a member has contravened the statute and the possible imposition of penalties.
6. Subsubsection 223.4.1(17) *Municipal Act, 2001* provides that the Integrity Commissioner shall publish written reasons for the decision. This Report contains our decision regarding our inquiry into the Application and is issued pursuant to the said requirements of the *Municipal Act, 2001*.
7. The requirement of publication in subsection 223.4.1(17) is, in our view, satisfied by including this report in the agenda materials for an open meeting of Council.

B. APPOINTMENT AND JURISDICTION

8. Aird & Berlis LLP was appointed as Integrity Commissioner for the Municipality pursuant to subsection 223.3(1) of the *Municipal Act, 2001* effective October 6, 2022. Council assigned to us all of the functions set out in subsection 223.3(1) of the *Municipal Act, 2001*.
9. As Integrity Commissioner we have authority to consider the application of sections 5, 5.1, 5.2 and 5.3 of the *Municipal Conflict of Interest Act* to members of Council and the Municipality’s local boards and to receive applications filed pursuant to 223.4.1 of the *Municipal Act, 2001*.

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

² *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.

C. PRELIMINARY MATTERS

(a) Standing to File Application

10. Pursuant to subsection 223.4.1(2) of the *Municipal Act, 2001*, only an “elector” or a “person demonstrably acting in the public interest” may file an application to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of the *Municipal Conflict of Interest Act*. We have confirmed that the applicant is an “elector” in the Municipality (the “Applicant”).

(b) Time Limit to File Application

11. Subsection 223.4.1(4) of the *Municipal Act, 2001* requires that an application to the Integrity Commissioner be made within six (6) weeks from the date an applicant becomes aware of the alleged contravention. This provision replicates the time limit set out in subsection 8(2) of the *Municipal Conflict of Interest Act*. The strict time limit is meant to protect elected officials and ensure that applications are brought forward on a timely basis.³ The Application was filed within the six-week period from August 14, 2025, which is date of the alleged contraventions.

D. STATUTORY PROVISIONS AT ISSUE

12. The Application contends that the Councillor contravened section 5 of the *Municipal Conflict of Interest Act*:

When present at meeting at which matter considered

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

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

13. The Application notes that the Applicant attempted to but was unable to get access to the registry of written statements of disclosure required by section 6.1 of the *Municipal Conflict of Interest Act* to ascertain whether the Councillor had filed a written statement of disclosure in accordance with section 5.1:

Written statement re disclosure

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.

³ *Hervey v. Morris*, 2013 ONSC 956, 9 M.P.L.R. (5th) 96 (Ont. S.C.J.).

E. REVIEW OF MATERIALS

14. In order to undertake our inquiry into the Application, we have reviewed the following:

- the Application;
- the agenda for the Meeting;
- the minutes of the Meeting;
- the video-recording of the Meeting;
- the Councillor's Response and Final Submissions;
- the Applicant's Reply; and
- additional information provided by the Councillor in response to questions from us.

15. We have also reviewed, considered and had recourse to such applicable jurisprudence and secondary source materials that we believe to be pertinent to the issues under consideration.

F. BACKGROUND

(a) Councillor

16. The Councillor was elected by acclamation as Ward 2 Councillor in the 2022 Municipal Election. This is his first term as a member of Council.

17. The Councillor is a Licensed Funeral Director⁴ and is listed as Ceremonialist and Owner at Denning's Ltd. on LinkedIn.

(c) Trustees of Rodney Cemetery

18. The Councillor has advised that he is currently, and was at the time of the Meeting, a director of the "Trustees of the Rodney Cemetery Company". He advised us that he holds the position of Secretary/Treasurer on behalf of this group of trustees.⁵

(d) Meeting

19. [Item 8.2.1](#) on the agenda for the Meeting on August 14, 2025 was entitled "Rodney Cemetery Ownership and Future Operations & Management".

⁴ See https://tmm.frontrunnerpro.com/runtime/184/our_staff.html

⁵ The trust entity is described in correspondence dated April 3, 2023 and forwarded to the Municipality by the Councillor as Secretary/Treasurer of the group of trustees. See page 151 of meeting agenda: <https://calendar.westelgin.net/Meetings/Detail/2023-04-13-0930-Council-Meeting/5e831183-59ac-4c6b-ad86-afe201082c1f>. The staff report at this meeting (at page 150) further describes the nature of a trust as "a legal entity with separate and distinct rights".

20. Following the start of the Meeting, the Mayor asked if any members had any disclosures of pecuniary interest and the nature thereof. The Councillor raised his hand and stated as follows:

Yes, Mr. Mayor, I have. Agenda Item 8.2.1 with regards to the Rodney Cemetery – not a pecuniary interest but perhaps a conflict of interest. I will remain silent and not be voting, but I will certainly be available for questions during that discussion.

21. A Staff Report was prepared by the Manager of Infrastructure & Development to provide Council with information related to a request by the Rodney Cemetery Company (“**RCC**”) that the Municipality “accept the ownership and operations of the Rodney Cemetery from the Rodney Cemetery Company” (the “**Staff Report**”). The Staff Report set out three recommendations, including, principally,

That West Elgin Council accepts responsibility and ownership of the Rodney cemetery

22. The Staff Report was briefly presented to Council by the Manager of Infrastructure & Development. The Mayor asked if there were any questions without a response. He then stated, “Bill is here to answer them if you got one”. Again, there were no questions but the Councillor nevertheless raised his hand and then proceeded to speak about the matter by providing details about available and previously purchased lots at the Rodney Cemetery before expansion would be required.

23. Following a question from the Deputy Mayor to staff, the motion to accept the recommendations in the Staff Report was put to a vote and was carried. The Councillor did not appear to vote on the motion.

(e) Allegation

24. The Applicant alleges that the Councillor breached section 5 of the *Municipal Conflict of Interest Act* because he had an indirect pecuniary interest arising from his membership on the Board of Trustees of RRC and that he:

- (i) failed to declare a pecuniary interest in the general nature thereof in contravention of clause 5(1)(a);
- (ii) participated in the discussion of the matter in breach of clause 5(1)(b); and
- (iii) attempted to influence the vote contrary to clause 5(1)(c).

25. The Application asserts that, at the Meeting, the Councillor:

- (i) failed to vacate his seat during the discussion of Item 8.2.1 after declaring a conflict of interest;
- (ii) made several hand and arm gestures with facial expressions; and
- (iii) made comments that appeared to sound like those that a proponent would make.

26. The Councillor's indirect pecuniary interest is alleged to arise by virtue of sub-clause 2(a)(iii) of the *Municipal Conflict of Interest Act* which provides as follows:

Indirect pecuniary interest

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

(a) the member or his or her nominee,

...

(iii) is a member of a body,

that has a pecuniary interest in the matter

27. The assertion in the Application is that the Councillor is "a member of a body" by virtue of being a Director on the Board of Trustees for RCC (its Secretary/Treasurer) and that RCC has a financial interest in the matter because it sought to transfer the responsibility and ownership of the Rodney Cemetery to the Municipality.

28. As noted above, the Applicant indicated that they sought to review the registry of written statements of disclosure to confirm whether or not the Councillor had filed his statement as required by section 5.1 of the *Municipal Conflict of Interest Act*, but was unable to access the registry when he attended at the Municipality's offices on August 25, 2025.

29. We had earlier made an inquiry with the Clerk on August 19, 2025 and had been advised that, as of that date, the Councillor had not signed nor submitted his written statement.

(f) Councillor's Response

30. The Councillor did not contest that he had failed to comply with the *Municipal Conflict of Interest Act* when he filed his Response on September 4, 2025. His Response sought to mitigate his contraventions by offering the following explanations:

- (i) he regretted that he "did not use the correct terminology during that meeting" and did not file a written statement with the Clerk, noting that the latter "omission was not intentional and resulted in not having the proper words prepared to prompt me during the meeting";
- (ii) there was no intention to influence Council's decision and that "any gestures or comments" that were made "were not intended to advocate for a particular outcome";
- (iii) he "did not intend to participate in the discussion or influence the outcome in any way"; and
- (iv) he merely sought "to assist Council in determining whether further staff research was warranted."

31. The Councillor also vowed to do better going forward. He indicated that he had re-read the statute and our written advice, that he would strive to be more cautious and deliberate in making declarations, and that he would commit to ensure future compliance.

(f) Applicant's Reply

32. The Applicant filed his Reply on September 8, 2025. The Reply contested the Councillor's assertions on several grounds, essentially finding that they were all weak and insufficient explanations for his non-compliance at the Meeting. The Applicant pointed to the fact that the Councillor had previously declared pecuniary interests with respect to Rodney Cemetery, had received training on the statute and had sought and been given written advice, all of which militated against his explanations that he was "not prepared" at the Meeting.

(g) Councillor's Final Submissions

33. In accordance with our standard practice and to accord the Councillor all due procedural fairness, we provided the Councillor with our Preliminary Report setting out our preliminary findings so that he would have a final opportunity to comment on our assessment and preliminary conclusions on the Application. The Preliminary Report was provided to the Councillor on September 11, 2025.

34. The Councillor provided his Final Submissions to us within the requested timeframe on September 17, 2025. The Councillor cited, for the first time, the exceptions in clauses 4(h) and (j) of the *Municipal Conflict of Interest Act* as relevant to his circumstances:

Exception

Where ss. 5, 5.2 and 5.3 do not apply

4 Sections 5, 5.2 and 5.3 do not apply to a pecuniary interest in any matter that a member may have,

...

- (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;

...

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

35. The exceptions set out in section 4 of the statute apply when a member has a pecuniary interest. The Councillor cited both a specific exemption [clause 4(h)] and a general exception [clause 4(j)] as applicable, noting as follows:

That they reflect my role as "the local cemetery guy" who happens to sit on council and who, at the direction of fellow trustees, helped initiate the transition of the Rodney Cemetery. I did so in the way that respects both my unique knowledge of the cemetery and my position as a councillor—providing important information so that council could move forward with clarity on behalf of all ratepayers in West Elgin.

36. The Councillor further explained that his involvement was simply to ensure a seamless transition of the Rodney Cemetery to the Municipality:

The inevitable transition of the Rodney Cemetery into the care of the Municipality of West Elgin prompted me to ensure that it happens seamlessly, with no disruption to the essential services our community relies on. It was with this duty in mind—and with a clear and defensible understanding—that I spoke honestly in council, stating I had no pecuniary (financial) interest.

It's important to understand that this transition is not optional. When trustees determine they can no longer operate the cemetery, the municipality must assume responsibility. I was not trying to influence a decision, as the outcome is non-negotiable. My goal was simply to help make the process smooth

37. The Councillor's Final Submissions noted his longstanding service to the community, and stated that the last thing he wanted was for anyone to believe that his "efforts in council that day were anything other than a passionate miswording, born from a deep desire to see the little cemetery I've cared for half my life move through this transition gently and respectfully."

G. ANALYSIS

(a) Process to Review and Consider the Applications

38. The Municipality does not specify a particular inquiry or investigation process related to applications made pursuant to section 223.4.1 of the *Municipal Act, 2001*.

39. Subsection 223.4.1(7) of the *Municipal Act, 2001* provides that in considering an application that a member has contravened the *Municipal Conflict of Interest Act*, the Integrity Commissioner "may conduct such inquiry as he or she considers necessary."

40. As such, we provided formally written notice to the Councillor of the Application and the allegations set out therein, including a redacted copy of the Application itself to him on August 27, 2025. The notice did not disclose the identity of the Applicant. The notice provided the Councillor with an opportunity to provide a response to the allegations up until 5:00 p.m. on Monday September 8, 2025.

41. The Councillor contacted us by telephone that same day and indicated he had received the notice and would seek to respond by the due date.

(b) Pecuniary Interests

42. Despite its central importance to the statute, the *Municipal Conflict of Interest Act* does not define the term "pecuniary interest". However, it is well-accepted that a "pecuniary interest" pertains to any financial interest (related to, or involves, money).⁶

43. The jurisprudence has interpreted "pecuniary interest" to include a financial, economic or monetary benefit that will be received or could potentially be received, either in cash or in an increase in the value of some asset, but can also entail the avoidance of a financial loss.

⁶ *Mondoux v. Tuchenhausen* (2011), 88 M.P.L.R. (4th) 234 at para. 31 (Ont. Div. Ct.); *Magder v. Ford* (2013), 7 M.P.L.R. (5th) 1 at para. 6 (Ont. Div. Ct.); *Cauchi v. Marai*, 2019 ONSC 497 at para. 33; *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683 at para. 9.

44. In general, the courts have held that the *Municipal Conflict of Interest Act* is to be construed broadly and consistently with its purpose and demands “high standards of those elected to public office”.⁷

45. A member’s pecuniary interest can be direct, indirect to deemed. The subject matter at issue in the Application relates to an indirect pecuniary interest of the Councillor as a member of a “body” under section 2 of the *Municipal Conflict of Interest Act*.

46. While the term “body” is not defined in the *Municipal Conflict of Interest Act*, it has been interpreted broadly by the Ontario Court of Appeal in a manner that seeks “to ensure that all possible conflicts of interest are captured by it.”⁸

47. A group of trustees with the responsibility to operate and maintain the Rodney Cemetery, in our view, constitutes a “body” within the meaning of subs-clause 2(a)(iii) of the statute.

48. An indirect pecuniary interest has been described as follows in a leading text:

Section 2 of the Act attributes to every member, as an indirect pecuniary interest, the pecuniary interest in a matter held by every described corporation, body, partner, or employer with which the member has a relationship described in the section.⁹

49. In other words, if a member is associated with a “body” that has a pecuniary interest, the member is imputed to also have the pecuniary interest.

(c) Obligations of Members

50. The statutory requirement in section 5 of the *Municipal Conflict of Interest Act* is clear that if a member is present at a meeting at which they have a pecuniary interest – direct or indirect – the member is required “to disclose the interest and the general nature thereof” prior to any consideration of the matter and then to recuse themselves from the decision-making process.

51. As noted in one of the leading decisions considering the *Municipal Conflict of Interest Act*:

The *MCIA* is important legislation. It seeks to uphold a fundamental promise of our governmental regime. Those who are elected and, as a result, take part in the decision making processes of government, should act, and be seen to act, in the public interest. This is not about acting dishonestly or for personal gain; it concerns transparency and the certainty that decisions are made by people who will not be influenced by any personal pecuniary interest in the matter at hand. It invokes the issue of whether we can be confident in the actions and decisions of those we elect to govern. The suggestion of a conflict runs to the core of the process of governmental decision making. It challenges the integrity of the process.¹⁰

⁷ *Re Moll and Fisher* (1979), 23 O.R. (2d) 609 (Div. Ct.) at 612.

⁸ *Orangeville (Town) v. Dufferin (County)*, 2010 ONCA 83, 68 M.P.L.R. (4th) 25 at para. 23.

⁹ M. Rick O’Connor and David White, *Ontario’s Municipal Conflict of Interest Act – A Handbook*, 2019 Ed. (Union: Municipal World Inc., 2019), at page 20.

¹⁰ *Mondoux v. Tuchenhausen*, *supra* note 6 at para. 25.

(c) Exceptions

52. The exceptions set out in section 4 of the *Municipal Conflict of Interest Act* recognize that in certain instances a member may have a pecuniary interest but that it is recognized and permitted.

53. As noted above, the Councillor cited a specific exception in clause 4(h) as applicable. This exception permits a member's pecuniary if it arises "by reason only of the member being a member of a board, commission, or other body as an appointee of a council."

54. The Councillor also noted that the general exception for an interest in common with electors generally in clause 4(j) of the statute was applicable. This exception applies when the member has a pecuniary interest that is shared, in general, with other electors.

55. The Ontario Divisional Court has held that, "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 *Municipal Conflict of Interest Act* applies."¹¹

56. Moreover, the Ontario courts have determined that an interest in common with electors generally may exist only when there is a significant number of electors within the geographic area, class or order.¹²

H. FINDINGS

(a) General

57. We have carefully considered the Application and the submissions of the Councillor by way of the Response and the Applicant by way of Reply, together with other information gathered during our inquiry. We have made the following findings and determinations based on our assessment of the facts and the law based on the civil standard of a balance of probabilities.

(b) Councillor having an Indirect Pecuniary Interest

58. It is our finding that the Councillor had an indirect pecuniary interest in Item 8.2.1 of the Meeting pertaining to the transfer of the operation and maintenance of the Rodney Cemetery to the Municipality.

59. His indirect pecuniary interest arises under sub-clause 2(a)(iii) of the *Municipal Conflict of Interest Act* because he is director of the board of trustees of Rodney Cemetery. The Councillor failed to comply with his obligations under subsection 5(1) of the statute by virtue of his actions at the Meeting.

(c) Exceptions Not Applicable

60. We have determined that neither of the exceptions asserted by the Councillor under clauses 4(h) and (j) of the *Municipal Conflict of Interest Act* are applicable in this case.

¹¹ *Tuchenhausen v. Mondoux*, 2011 ONSC 5398 at para. 43.

¹² *Biffis v. Sainsbury*, 2018 ONSC 3531 at para. 14 and *Re Ennismore (Township)* (1996), 31 M.P.L.R. (2d) 1 (Ont. Gen. Div.) at paras.15-19.

(i) No Appointment by Council

61. The specific exception under clause 4(h) applies where a member of council has been appointed by council to be a member of another body. That exception is not applicable in this case as the Councillor is on the board of trustees in his personal capacity and not as an appointee of Council.¹³

(ii) Not an Interest in Common with Electors Generally

62. The general exception under clause 4(i) applies where a member shares a community of interest with other electors. That exception is not applicable as the Councillor has a unique standing as a director on the board of trustees of the Rodney Cemetery that is an interest shared only with a few other individuals in the Municipality.

(d) Factors Considered

63. While the Councillor is a first-time member of Council, he ought to have been acutely aware of his statutory obligations for the following reasons:

(i) Declaration of Office

64. The Councillor swore an oath of office prior to taking his seat at Council that contains the solemn promise that he will disclose any pecuniary interest, direct or indirect, in accordance with the *Municipal Conflict of Interest Act*.

(ii) Previous Declarations

65. The Councillor had declared previous pecuniary interests on matters involving the Rodney Cemetery at two meetings of Council on April 13, 2023 and June 8, 2023 expressly noting the general nature being that he was “Secretary/Treasurer of Rodney Cemetery” and “Trustee for Rodney Cemetery”, respectively, thus indicating that he was aware of the indirect pecuniary interest obligations of the statute.

(iii) Council Training

66. The Committee of the Whole (comprising all members of Council) received a comprehensive education and training session from the Integrity Commissioner on the *Municipal Conflict of Interest Act* on January 30, 2023. Indirect pecuniary interests and memberships on other bodies were subject matters that were covered. The Councillor attended this meeting.

¹³ The Councillor’s purported reliance on this exception is surprising given that, prior to providing written advice to the Councillor at his request, we had specifically asked him whether he was appointed by Council to the board of trustees of the cemetery “because of a possible exception in s. 4 of the *Municipal Conflict of Interest Act*.” We were advised by the CAO that he was not appointed by the Council to the board of trustees.

In our written advice to the Councillor on April 2, 2025 we wrote that we “asked if you were appointed by council to the cemetery board (or membership), because there is a specific exception in s. 4 of the *Municipal Conflict of Interest Act* that applies when a member has been appointed to another entity by their council.” We then advised that since that was not the case in his circumstance, the exception would not apply.

We have also considered the fourth principle in s. 1.1 of the statute that speaks to the benefit the members bring when they have a broad range of knowledge and continue to be active in their own communities.

(iv) Written Advice to Councillor

67. On April 1, 2025, the Councillor requested written advice from us as Integrity Commissioner in accordance with subsection 223.3(2.1) of the *Municipal Act, 2001*. The Councillor disclosed that he was the Secretary/Treasurer of a group of trustees governing the Rodney Cemetery and that he was aware that Council would at some point be receiving a report and recommendation from staff on the matter of a potential transfer of responsibility respecting the cemetery. The Councillor asked:

My question is, as a councillor and as the cemetery trustee/sec/tres and rep, should I recuse myself from deliberations and/or discussion?

68. On April 2, 2025, we provided written advice to the Councillor which included an analysis and explanation of his indirect pecuniary interest under section 2 of the *Municipal Conflict of Interest Act* (and why the exception in clause 4(h) was not applicable). Our written advice included the following statements:

It is my opinion that you do have an indirect pecuniary interest in the matter of the transfer of responsibility for Rodney Cemetery to the municipality.

...

Based on the foregoing, it is my advice to you that you do have an indirect pecuniary interest in the transfer of the cemetery to the municipality and that you, therefore, must comply with your disclosure and recusal obligations under s. 5 of the *Municipal Conflict of Interest Act*.

(e) Determinations

69. In his Response, the Councillor acknowledged having previously declared pecuniary interests regarding the Rodney Cemetery and that he had sought our advice as Integrity Commissioner as recently on April 1, 2025 on the very matter that was before Council on August 14, 2025. He noted that “[t]his demonstrates my intent to comply with the Act and act transparently.” Also in his Response, the Councillor indicated that he used “imprecise language” and regretted not using “correct terminology.”

70. With respect, these are wholly inadequate excuses. As should be well known to all members, the obligations under the *Municipal Conflict of Interest Act* arise afresh each time there is a matter before Council in which a member has a pecuniary interest. A member must “comply with the Act and act transparently” in each instance.

71. The Councillor cannot rely on his past actions to exculpate his lack of compliance at the Meeting. Quite the contrary, we agree with the Applicant and view the Councillor’s previous declarations as an indication that he was cognizant of his statutory obligations (which he should have complied with at the Meeting).

72. Furthermore, the Councillor’s claim that his request for advice from the Integrity Commissioner on April 1, 2025 – on the exact subject matter that was considered by Council at the Meeting – somehow demonstrates his intent to comply with the statute when he neglected to follow the clear advice that was provided to him, simply makes no logical sense.

73. Similarly, the Councillor's attempts pass off his failure to declare his pecuniary interest and the nature thereof on Item 8.2.1 because he may have used "imprecise language" just rings hollow. The Councillor stated that he did not have a pecuniary interest "but perhaps a conflict of interest." It stretches credulity that the Councillor would not have been aware that he had a pecuniary interest given his prior declarations on the Rodney Cemetery or that he completely forgot about the written advice that he has specifically requested from and was provided by the Integrity Commissioner just a few months before the Meeting.

74. Moreover, the Councillor also indicated, "I will remain silent and not be voting, but I will certainly be available for questions during that discussion." However, when no members had any questions of the Councillor at the Meeting, he decided to still venture into the discussion and provide his comments.¹⁴ We cannot view the Councillor's participation as anything other than an attempt to influence the vote of Council.

75. Although the determination is not for the Integrity Commissioner to make, we will state that in view of the factors set out above in Paragraphs 64-68, we do not consider that the Councillor's contraventions in this case to have been committed through inadvertence¹⁵ or by reason of an error in judgment made in good faith.¹⁶

76. At law, the Councillor was not required to vacate his seat at the Meeting. There is no requirement that a member do so under the *Municipal Conflict of Interest Act*.¹⁷

77. The Application made reference to hand and arm gestures by the Councillor as signals to influence the vote at Council.¹⁸ However, we did not discern that any bodily movements by the Councillor at the Meeting were, on their own, an attempt to influence the voting of the other councillors.

78. The wording of clause 5(1)(c) of the statute is very broad and refers to "an attempt in any way...to influence the voting."¹⁹ It does not require that the Council actually be influenced but that a member be prohibited from making an attempt to influence the voting.

79. Notwithstanding his Response and statements to the contrary, we view the Councillor's statement at the Meeting as an attempt to influence the vote on Item 8.2.1 related to a request by RCC that Rodney Cemetery be transferred to the Municipality.

¹⁴ The Manager of Infrastructure & Development, as the author of the Staff Report, had already presented on the matter and had not been asked any questions by members of Council.

¹⁵ *Adamiak v. Callaghan*, 2014 ONSC 6656 at para. 67: "Inadvertence applies where the breach can be linked to an oversight of fact or law that was not recklessly committed or the result of wilfully blind conduct."

¹⁶ *Magder v. Ford*, 2013 ONSC 263, 7 M.P.L.R. (4th) 1 (Div. Ct) at para. 89: "Wilful blindness to one's legal obligations cannot be a good faith error in judgment within the meaning of s. 10(2) [now s. 9(2)(c)]."

¹⁷ Ontario is one of only two jurisdictions in Canada that does not require members who have a pecuniary interest to vacate the setting of the meeting. Subsection 5(2) of the *Municipal Conflict of Interest Act* requires members with pecuniary interests to "leave the meeting during which the matter is under consideration."

¹⁸ Body language can constitute "an attempt to influence" under s. 5(1)(c) of the *Municipal Conflict of Interest Act*: *Amaral v. Kennedy*, 2010 ONSC 5776, 96 M.P.L.R. (4th) 49 (Div. Ct.) and 2012 ONCA 517.

¹⁹ *Biffis v. Sainsbury*, 2018 ONSC 3531 at para. 22.

80. We would also be remiss if we did not note that the Final Submissions from the Councillor attempted to mischaracterize what was being considered by Council at the Meeting which was whether the Municipality would accept “responsibility and ownership of the Rodney cemetery.” In the Final Submissions that Councillor writes that:

The inevitable transition of the Rodney Cemetery into the care of the Municipality of West Elgin prompted me to ensure that it happens seamlessly, with no disruption to the essential services our community relies on.

...

It’s important to understand that this transition is not optional. When trustees determine they can no longer operate the cemetery, the municipality must assume responsibility. I was not trying to influence a decision, as the outcome is non-negotiable. My goal was simply to help make the process smooth. (emphasis added)

81. These are not correct statements. The very question put before Council was whether the Municipality would accept the transfer of the responsibility for Rodney Cemetery. The matter would not have been considered or voted upon by Council if, in the Councillor’s words, “this transition is not optional.” It was very much optional and Council did not have to assume responsibility.

82. Under the *Funeral, Burial and Cremation Services Act, 2002*,²⁰ the local municipality within whose geographic boundaries the land of a cemetery is located *may* be required to be responsible for the maintenance of a cemetery if an application is made to a judge of the Superior Court of Justice to declare the cemetery abandoned. There is a statutory process for such applications under section 101.1 of the statute – it does not just occur automatically.

I. CONCLUSIONS

83. Subsection 223.4.1(15) 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 *Municipal Conflict of Interest Act* for a determination of whether the member or members have contravened section 5, 5.1, 5.2 or 5.3 of the statute:

Completion

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, 5.2 or 5.3 of that Act.

84. Unlike an investigation report related to an alleged contravention of a code of conduct where the Integrity Commissioner reports its opinion on the matter and Council may need to make a decision on the imposition of any penalties or remedial measures/corrective actions that may be recommended, the decision-making power under section 223.4.1 of the *Municipal Act, 2001* resides solely with the Integrity Commissioner. Council is advised of the Integrity Commissioner’s decision and it receives the report for information – Council is not asked, nor is it empowered, to make a decision on whether a matter will be brought before a judge.

²⁰ *Funeral, Burial and Cremation Services Act, 2002*, S.O. 2002, c. 33.

85. We have concluded that the Councillor blatantly contravened his duty of disclosure under clause 5(1)(a) of the *Municipal Conflict of Interest Act* and his recusal obligations by participating in the discussion and attempting to influence the vote on the question before Council, contrary to clauses 5(1)(b) and (c).

86. The Councillor's intervention and involvement in Council's consideration of Item 8.2.1 at the Meeting cannot be viewed as anything other than participation in the discussion and an attempt to influence the vote at Council on the question.

87. In our view, the Councillor ought to have declared a pecuniary interest and accordingly should have filed a written statement of his pecuniary interest under section 5.1.

88. In all respects, the Councillor has demonstrated a profound misunderstanding of his obligations under the *Municipal Conflict of Interest Act* which have been made obvious by his comportment at the Meeting as well as his Response and Final Submissions in this Application.

89. Notwithstanding the foregoing, we must bear in mind that if we decide to file an application to a judge of the Ontario Superior Court of Justice pursuant to subsection 223.4.1(15) of the *Municipal Act, 2001* under section 8 of the *Municipal Conflict of Interest Act* for a determination of whether the Councillor has contravened the statute and to impose one or more penalties, it:

- will impose a financial burden upon the taxpayers of the Municipality,
- will create a disruption to the Council and to the Councillor,
- will likely be time-consuming; and
- may not ultimately result in a sanctions that some will consider commensurate with the contravention.

90. We also note that – unlike most electors who file applications such as this one – the Applicant in this case did not implore us to proceed to Court or demand that the Councillor be removed from office. Instead, the Applicant requested that the Councillor issue a public statement acknowledging his contraventions, offer a sincere apology and commit to full compliance with his ethical obligations in the future.

91. Our only power as Integrity Commissioner under section 223.4.1 of the *Municipal Act, 2001* is to make a decision where to proceed to court for a judicial determination. It is with some reluctance that we have decided to exercise our discretion to not make an application to a judge under section 8 of the *Municipal Conflict of Interest Act* for all of the reasons noted above.

92. Council has no role in this determination. Council cannot direct us to make an application to the Court nor can it seek to impose a penalty or sanction.

93. In his Response the Councillor advised us several times that he will commit to complying fully with his obligations under the *Municipal Conflict of Interest Act* in the future and he apologized for his actions and the confusion and concern they have caused.

94. We respectfully suggest that the Councillor should make a public commitment to the Council and residents of the Municipality to henceforth do much better by way of compliance with his statutory ethical responsibilities.

95. As a reminder to the Councillor and to all members of Council, the following are the first three principles enunciated in the *Municipal Conflict of Interest 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.

96. We do note that if the Applicant wishes to do so, he may make an application directly to a judge under subsection 8(3) of the *Municipal Conflict of Interest Act* within six (6) weeks of our advisement pursuant to subsection 223.4.1(16) of the *Municipal Act, 2001*.

97. As required by subsection 223.4.1(16) of the *Municipal Act, 2001*, we provided written notice to the Applicant and as well as to the Councillor that we will not be making an application to a judge.

98. We recommend that the Municipality make its registry of written statements under section 6.1 of the *Municipal Conflict of Interest Act* accessible on-line on its website.

99. We wish to thank both the Applicant and the Councillor for their courteous and prompt response to our questions and their compliance with our filing timelines. Our appreciation should also be extended to the CAO and Clerk who assisted us throughout our investigation as we researched certain matters.

100. We also recommend that a copy of our written reasons in this Report be posted by the Municipality on its website.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarin

JM/km

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