



**ADR**  
C H A M B E R S

Integrity Commissioner Office  
for the Town of Niagara-on-the-Lake

**EDWARD T. MCDERMOTT**  
Integrity Commissioner  
Town of Niagara-on-the-Lake  
Email: [integrity@adr.ca](mailto:integrity@adr.ca)

February 10, 2024

SENT BY EMAIL TO:

Mr. Scott Gauld

Councillor Maria Mavridis

**Re: Complaint Re: Alleged Conflict of Interest IC 28164-1223 (Gauld /Mavridis)**

---

Dear Mr. Gauld and Councillor Mavridis:

### **1.0 The Complaint Process**

This Complaint of a contravention of the Code of Conduct for Members of Council (the "Code") and the Municipal Conflict of Interest Act ("MCIA") was submitted to the Integrity Commissioner for the Town of Niagara-on-the-Lake (the "Town"), Edward T. McDermott (the "Integrity Commissioner" or "IC") on December 1, 2023.

The Complainant also signed and delivered a Consent and Confidentiality Agreement and (on December 12, 2023) a statutory declaration as required under section 223.4.1 (6) of the Municipal Act upon making a request for an Inquiry under the provisions of the MCIA attesting to when he first became aware of the alleged contravention of that statute.

In accordance with the Town's Complaint and Investigation Protocol, the Complaint was provided to the Councillor on December 13, 2023 together with a request for her Response thereto which was, in turn, filed with the IC on the same day. The Response

was then (on December 21, 2023) provided to the Complainant for his review and Reply if any. A Reply was then received from the Complainant which was in turn provided to the Councillor on January 4, 2024.

The parties were also offered the opportunity to participate in a personal interview by telephone to make any additional submissions they may have on the matter at issue in this Complaint.

During the course of this procedure both parties were reminded on several occasions of the obligation to keep all matters relating to the Complaint and Investigation in confidence until a public report has been delivered to Council. The parties were also counselled that all information relating to the Complaint which is not included in a public report was to remain confidential unless the IC determines it is in the public interest to disclose it. The main purpose of such restrictions is to preserve the integrity of the investigation process until the matters under investigation have been made public.

Following the exchange of the written positions of the parties I then considered what, if any, inquiries were necessary to complete the investigation and render a decision. Further steps were then taken to obtain information on the specific matter at issue as well as the progress of any consideration by Council to replace the current temporary seasonal patio program with a permanent one. In accordance with the provisions of the Code, the MCI A and the Municipal Act, I also remained available to provide advice to the Councillor on her obligations thereunder should such matters come before Council pending completion of our investigation and report.

## **2.0 The Nature of the Complaint**

### **2.1 The Complainant's Position**

The Complaint itself deals with a specific Council meeting of Tuesday, November 21, 2023 where (according to the Complainant) a discussion and vote were to be had on a Permanent Patio Program for the Town. The Complainant asserts that the Councillor was, at such meeting, obligated to declare a conflict of interest on this matter and withdraw from any further discussion of or vote on the matter. By not doing so, it is alleged that she improperly influenced the "thoughts and actions of other Councillors, media and the public" and acted in contravention of the MCI A and the Code.

The reason advanced by the Complainant for such conflict is attributable to the factual assertion that the Councillor's family and she have an interest in two restaurants

operating on Queen Street in Niagara-on-the-Lake ((1) Corks Restaurant and Wine Bar at 19 Queen Street (“Corks”) and (2) Firehall Flame at 10 Queen Street (“Firehall Flame”)). The Complainant asserts that Corks has a large restaurant patio on its property (which is not public property) and Firehall Flame has a smaller patio on public property which is licensed by the Town.

While the Complainant was not aware if the Councillor had an equity interest or employment position in either business, he believes that both are family businesses of the Councillor and any decision on a patio program by Council would impact both businesses. The fact that Ms. Mavridis is a Member of Council considering such a program would (according to the Complainant) affect the family’s businesses in which she has a direct or indirect “pecuniary” interest. By way of illustration, the Complainant hypothesizes that if Council ended up reducing competition by removing or limiting the number of outdoor patios as part of such a program or charging application or lost revenue fees for patios occupying formerly revenue producing parking spots on public property on Queen Street, then that would have the effect of reducing the number of applications and/or available patios on Queen Street. Such measures would in turn provide a resulting benefit to Corks (which does not have a patio on public property) as applications for patios on Queen Street (and potentially other areas of the Town) would thereby be reduced because of the additional “cost” or “availability” of obtaining a seasonal patio permit in the urban area.

In essence, it is the position of the Complainant that the Councillor should declare a conflict of interest and refrain from discussing or voting on all matters before Council relating to a change in the current temporary patio program where no application or encroachment or licence fee is charged for a patio permit. When the issue came before Council on **November 21, 2023**, the Councillor failed to declare a conflict of interest when (according to the Complainant) a discussion and vote were to be had on a new Permanent Patio Program for the Town.

In his Complaint the Complainant identified a number of sections in the MCIA and the Code which he believed to be relevant to a review of the matters at issue in this Complaint. For ease of reference, those sections are annexed to this Report and decision as Schedule “A”. While the Complainant did not specifically refer to it, it is also relevant to consider the provisions of section 5 (1) of the MCIA which provides as follows:

**“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 is to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

## **2.2 The Councillor's Position**

In Responding to the Complaint, Councillor Mavridis first addressed a number of factual issues which (according to the Councillor) the Complainant had mis-stated or misunderstood.

Insofar as the Complainant's assertion about the Firehall Flame's restaurant and outdoor patio (which was acquired under the Town's temporary patio program) is concerned, the Councillor advises that as of November 21, 2023, the restaurant had been permanently closed and the lease had been surrendered. In addition, the temporary patio program had expired in October 2023. Neither the Councillor nor her father (or family) had any interest in this property as of the date the Complainant has raised (i.e., the meeting of Council on November 21, 2023).

The Councillor did advise that she was employed by the restaurant business at Corks (as the Event Manager for the upstairs space) and her father owns 100% of a numbered Company that leases the property from the owner and operates Corks' business. She herself has no equitable or other financial interest in the business.

The Councillor also advises that Corks itself does not really have a patio space covered by the temporary patio program as the space at 19 Queen Street said to be for outside dining is actually a permanent room which is part of the building on the leased premises (i.e., not on public property) with a glass enclosure. The Councillor also advised during this process that the glass windows in this room can be opened in good weather to create the ambience of outdoor dining on Queen Street. The room itself was a part of the original building constructed in the early 1900's. The business is recognized as indoor space by the Town and full municipal taxes are paid on the space. The business licence issued by the Town also recognizes it as "indoor space" for the purpose of regulating the capacity of the room and the availability of washroom facilities etc. .

The Councillor accordingly makes the point that nothing dealing with a permanent or temporary seasonal patio program can affect the operation of Corks' current business at this location.

Insofar as the suggestion that her participation as an elected Member of Council in discussing and voting on the future of a patio program for the Town gives rise to a conflict of interest on her part, the Councillor does not agree with such a proposition. She points out that such a program would apply to the whole Town and not just Queen Street where her father's restaurant is located. There are already numerous patios outside Queen Street under the temporary program and the issue of maintaining a viable patio program is important to all of the residents of the Town both for personal dining and tourism revenues.

The Councillor also references section 4 (j) of the MCIA which releases Councillors from the section 5 duties including the requirement to declare a pecuniary conflict of interest (and withdraw from discussion and voting on matters before Council) where such interest is held "... **in common with electors generally**".

The Councillor submits that even if she has an indirect conflict of interest as suggested by the Complainant, the provisions of the MCIA do not apply because of this exception which is clearly applicable in this situation.

The Councillor also concludes by pointing out that she has a lot of knowledge and experience in matters of this nature and that she stood for public office in order that she could contribute to the community on issues such as this. In her view, to preclude her from doing so would significantly impede her commitment to public service.

### 3.0 Analysis and Decision

#### 3.1 The Firehall Flame Allegations

It is not contested by the Complainant that (as the Councillor has advised in this proceeding) the Firehall Flame Restaurant ceased doing business at 10 Queen Street prior to November 21, 2023. I accept the Councillor's evidence that the lease to the property has been surrendered and her father has no plans to re-enter the business at this location or under this trade name.

Accordingly, as both the business and the patio permit were no longer in existence as at the date the Complainant has identified as the time the alleged contraventions of the MClA and the Code occurred, these allegations are irrelevant to the issue before me.

The Councillor has however confirmed that her father does own a private company which carries on a restaurant business known as Corks on leased premises at 19 Queen Street in Niagara-on-the-Lake. She also acknowledges that she is employed by that business. This inquiry accordingly has been limited to the facts involving her relationship with her father's business at Corks.

### **3.2 The November 21, 2023 Meeting of Council**

The crux of this Complaint deals with the conduct of the Councillor at a meeting of Council on November 21, 2023. It is important therefore to ascertain what actually transpired at such meeting relative to the issue of a patio program for the Town as neither party was specific about what matter was actually before Council relative to this issue.

The Complainant describes this meeting as being to discuss and vote on a Permanent Patio Program for the Town and accordingly the Councillor because of her pecuniary interest outlined above (direct or indirect) should have declared her interest and refrained from discussing or voting on that issue.

The Councillor however advises that since the temporary patio program had expired in October 31, 2023, staff had initiated discussion on this matter to solicit Council's advice as to whether it wished staff to bring forward a report outlining what would be involved in converting the temporary program to a permanent one which was an issue which had been raised by staff before Council almost a year earlier.

According to the Councillor, the temporary seasonal program had originally been initiated by the Alcohol and Gaming Commission of Ontario ("AGCO") for the entire Town, not just Queen Street, and was designed (during COVID) to allow restaurants additional seating in outside public areas for the eight month period between March 1 and October 30 to improve distancing and to allow restaurants to survive as, under the directive of the Chief Medical Officer of Health, for a period of time, indoor dining had been prohibited or limited by reason of physical distancing requirements and public gathering limitations. As the program developed, food and beverage applicants who were approved by the Municipality for seasonal patios were reimbursed through COVID funding for the costs (labour and materials) to construct the temporary spaces. The normal zoning requirements were modified and some encroachments on public

property were allowed. The temporary program ended in 2021 and the Town decided to extend it one more year for 2022 and subsequently again (to October 2023) to help the businesses make up for lost revenues during COVID. Once the temporary program expired at the end of October, 2023, the Town's staff determined to ask Council for its advice on whether it wished staff to make a report to Council for its consideration in determining whether to adopt a permanent seasonal program.

The Councillor asserts that at the meeting of November 21, 2023, Council simply asked staff to formulate a report on the issue after hearing some of the feedback and potential issues raised by Councillors and bring it back before Council for its consideration. No discussion or vote was held on any patio program at this meeting and no direction was given by Council as to what the Report should contain, as it was simply referred back to the staff for a report to be forthcoming at a future date. Accordingly, the only effect of the vote taken was to direct staff to prepare a report on the issue and bring it back before Council for Council's consideration.

As the views of the Complainant and the Councillor were somewhat at odds with each other on what transpired at this meeting, I reviewed the relevant portions of the tape of such meeting as well as the applicable Agenda and Minutes. I also reviewed the recording of the meeting of the Committee of the Whole held on January 16, 2024 where the issue of what happened at the meeting of November 21, 2023 arose again. In my view the Councillor's recollection of the facts of what was brought before Council (on November 21, 2023) with respect to this matter is correct as stated above.

While it is obvious that at the meeting of January 12, 2024, there was some confusion amongst some members of Council as to what actually occurred at the meeting of November 21, 2023 on this issue, with the help of the Deputy Clerk the matter was clarified. After checking the record, the Deputy Clerk made it clear that all Council did at the November 21 meeting was to indicate it supported a seasonal patio program in the urban area and directed staff to prepare a report on a permanent seasonal patio program and report back to Council which is exactly what they did on January 16, 2024. The direction to staff did not instruct it to prepare a permanent patio program but simply to compile a report on the issue for consideration by Council.

My review of the situation confirms that the recitation of the deputy Clerk of what occurred on this issue at the meeting of November 21, 2023 is accurate and confirms the Councillor's position on this issue.

It is also relevant to note that at the meeting of January 16, 2024, the Councillor declared a conflict of interest on this matter by reason of the ongoing investigation of this

Complaint which was filed after November 21, 2023. She accordingly withdrew from the room while this matter was under discussion and voting by Council. Council itself then voted to extend the temporary patio program for one more year (to February, 2025) and directed staff to proceed to prepare a permanent program for seasonal patios (for food and drink establishments in the urban area) for future consideration by Council.

Accordingly, at the November 21, 2023 meeting there simply was no discussion or vote on the substance of any ongoing permanent seasonal patio program for the Town. The matter was simply brought forward for the advice of Council to staff as to whether it wanted to have staff submit a report on the concept and issues surrounding a permanent seasonal program and Council then referred the matter back to staff for a full report on the issue to come forward at a future date. When the matter did return to Council on January 16, 2023, Council then directed staff to prepare a permanent seasonal patio program for Council's future consideration.

### 3.3 Decision

In these circumstances, It cannot be found that the Councillor improperly participated in or voted on the matter before Council on November 21, 2023 which it is asserted by the Complainant she had a conflict of interest with.

In my view, this was simply a matter of "process", not substance and it did not involve Council making a determination on whether it would continue with the temporary program or some other vehicle to deal with the issue of seasonal patios. Council simply directed staff to prepare a Report on the issue for future consideration by Council as there were many issues to be canvassed to adopt a permanent program.

The following excerpt from a decision which I have adopted in previous cases has some relevance to this situation:

*"In Durham Flight Centre Inc. v. Marimpietri,<sup>1</sup> a corporation alleged that a councillor contravened s. 5 of the MClA by failing to withdraw from the decision-making and voting respecting a staff report on land use options for part of the local airport. Oshawa's Integrity Commissioner determined that the Applicant was essentially arguing for a series of indirect and potential future effects,<sup>2</sup> but that the staff report did not directly, definitely, or imminently cause*

---

<sup>1</sup> *Durham Flight Centre Inc. v. Marimpietri*, 2019 ONMIC 18

<sup>2</sup> *Ibid*, para. [34]



any of the alleged results.<sup>3</sup> He noted the case law is clear that a pecuniary interest must be real and present, not speculative or remote, and that words the courts have used to characterize a pecuniary interest have included “actual”, “defineable”, and “real”. He noted a pecuniary interest does not arise from speculation based on hypothetical circumstances,<sup>4</sup> and that the Applicant conceded the property value effects it was concerned about were not necessarily imminent, but focused on a “longer time-frame”.<sup>5</sup> The Integrity Commissioner concluded that the councillor did not have a pecuniary interest in the staff report. “<sup>6</sup>

It is accordingly my view that this Complaint must be dismissed on the basis that the matter before Council at that time was simply to request a full staff report on the issue, not to approve anything. Accordingly, the Councillor did not have a pecuniary or non-pecuniary interest on that issue which is what was before Council November 21, 2023 and she has not contravened the MCIA or the Code with respect to that matter. This Complaint must be dismissed on that ground alone.

### **Improper Influencing Allegations**

The Complainant also asserted (in his Reply) that the Councillor improperly used her office to influence an “officer or employee” of the municipality to whom Council had delegated a power or duty, contrary to the obligations set forth in section 5.2 (1) of the MCIA and section 10 of the Code.

For the reasons stated above and after reviewing the recording of the meeting of November 21, 2023 (which is the event the Complainant advances in support of his Complaint) I have concluded there is no evidence to support such an allegation and it is accordingly dismissed.

## **4.0 General Comments and Observations**

I recognize however, that this result may not be the end of this matter as the patio issue itself is still alive and in process. While I am not prepared to rule on events that have not yet transpired, I do think it appropriate (particularly in the context of an allegation

---

<sup>3</sup> *Ibid*, para. [36]

<sup>4</sup> *Ibid*, para. [38]-[39]

<sup>5</sup> *Ibid*, para. [40]

<sup>6</sup> *City of Niagara Falls (August 30, 2021)*  
Spanton/ Kerrio. [page 14]

of a contravention of the MCIA) that the parties to this proceeding keep the following comments and observations in mind before proceeding to yet another Complaint procedure on this issue.

#### **4.1 MCIA- Nature of a Pecuniary Interest**

I would refer the parties to a public decision I rendered involving a Councillor for the City of Niagara Falls in which I stated at follows:

“The case law is clear that a pecuniary interest under s. 5 of the *MCIA* is fundamentally a financial or economic interest, and cannot be merely speculative or hypothetical – it needs to be reasonably direct and obvious.

A “pecuniary interest” is narrower than a general “conflict of interest” envisaged in the *Code of Conduct for Members of Council*. But the penalties for violating s. 5 of the *MCIA* are also significantly more severe than for violating the *Code of Conduct* – upon finding a breach of s. 5, a judge may declare a councillor’s seat vacant, or disqualify them from becoming a councillor again for a period of up to seven years and order restitution. In short, the requirements for establishing a breach of the *MCIA* is high, and appropriately so.<sup>6</sup>

#### **4.2 Nature of Indirect Pecuniary Interest**

I would also advise the parties that had it been necessary for me to do so to determine this matter, I would have found the Councillor does not have a direct pecuniary interest in the seasonal patio issue but she would have had an indirect pecuniary interest in such a matter (under sections 2 and 3 of the *MCIA*) provided it was established that her father or the company that employs her at Corks has such a pecuniary interest in the matter.

In the absence of a comprehensive Report from Staff of what is to be placed before Council for its consideration and decision, it is not possible at this point for me to determine what will give rise to an indirect conflict of interest on the part of the Councillor under the *MCIA* if the matter comes forward in the future. It is also possible that the Councillor, after reviewing the staff Report may decide to declare and withdraw from further proceedings before Council on this matter.

---

<sup>6</sup> *City of Niagara Falls (August 30, 2021)*  
Spanton/ Kerrio. [page 16]

In either event, in the context of this case the matter has to be determined on the facts as they existed as of the date of the alleged contravention, not on hypothetical or speculative future events.

#### **4.3 MCIA-Pecuniary Interest- "Electors Generally Exception"**

The Councillor also raised the point that section 4 of the MCIA contains eleven exceptions to circumstances which may apply to relieve the Councillor from her obligations under section 5 of that statute even if the Councillor is found to have a pecuniary interest (direct or indirect) in the matter before Council. The particular exception which the Councillor relied upon in her submissions was section 4 (j) which provides as follows:

#### **EXCEPTIONS**

##### **"4. Where section 5 does not apply**

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

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

Depending on the facts and issues before Council when (and if) this matter comes forward again, the applicability of such an exception may or may not provide relief from the application of the section 5 MCIA obligations to the circumstances.

#### **4.4 Non-Pecuniary Interests Under the Code**

Quite apart from the MCIA issues, the Councillor may have to contend with an allegation she has a non-pecuniary interest in the matter before Council, as defined and prohibited in the Code as follows:

- 3.1 (h) "non-pecuniary interest" means a private or personal interest that a Member may have that is non-financial in nature and that would be considered by a reasonable person, apprised of all the circumstances, as being likely to influence the Member's decision in any matter in which the non-pecuniary interest arises, and may include, but is not limited to, an interest that arises from a relationship with a person or entity;

## 11.0 Conflicts of Interest

- 11.0 Members shall avoid conflicts of interest, both pecuniary and non-pecuniary. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Town and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner (if enabled by legislation to do so) and/or legal advice when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.”

The applicability of this provisions to the meeting of November 21, 2023 was not raised by the Complainant in the Complaint or in his Reply although he did subsequently made reference to it after the statements of position were completed. I accordingly do not believe this issue was properly before me in deciding the Complaint as filed although even if it was, I would (for the reasons stated above) have dismissed it, as I have the other allegations that the Code was contravened by the Councillor by reason of her participation in the meeting of November 21, 2023 dealing with the patio program.

### 4.5 Requests For Advice

In these circumstances, the Councillor may wish to seek the advice of the Integrity Commissioner on these issues (as she is entitled to under the Municipal Act and the Code) once the specific details of what is actually coming before Council are made known. Such requests of the IC should however be made well in advance of the Council meeting (in order to allow the IC time to provide considered advice which must under the Municipal Act be in writing) as the issues are likely to be numerous and complex.

### 5.0 Conclusion and Publication

In conclusion, I wish to emphasize that inasmuch as I am not aware of what, if any, matters might be presented in the future to Council for its consideration and determination with respect to the issue or what the reaction of the parties to this Complaint might be, in view of the time and effort expended on this matter in the current case, I believed it would be appropriate to provide these additional comments so that the parties are aware of such issues and guide posts in the event the matter is re-opened.

It is accordingly my decision that the current Complaint under the MCIA and the Code must be dismissed for the reasons stated above.

As this Report has determined that Councillor Mavridis did not breach s. 5 of the *MCIA*, there is no basis for the Integrity Commissioner to apply to a judge under s. 8 of the *MCIA* for a determination of that issue. The *Act* requires that after making a decision whether or not to apply to a judge, the Integrity Commissioner shall publish written reasons for the decision. The Integrity Commissioner will publish such decision by providing this Report to the Town Clerk to be placed on the public agenda.

Dated at Toronto, this 10th day of February, 2024.



---

Edward T. McDermott  
Integrity Commissioner,  
Town of Niagara-on-the-Lake