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**INTEGRITY COMMISSIONER REPORT  
CODE OF CONDUCT COMPLAINT 2024-03  
and MCIA APPLICATION 2024-02**

**THE CORPORATION OF THE TOWNSHIP OF  
CENTRE WELLINGTON**

**Laura Dean  
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## INTEGRITY COMMISSIONER REPORT CODE OF CONDUCT COMPLAINT 2024-03 MCIA APPLICATION 2024-02

### I. INTRODUCTION

1. A complaint was filed with the Integrity Commissioner on December 9, 2024 (the “**Complaint**”) alleging that Mayor Shawn Watters (the “**Member**”) of The Corporation of the Township of Centre Wellington (the “**Township**”) contravened Sections 10 and 11 of the Township’s *Code of Conduct for Members of Council & Local Boards* (the “**Code**”).
2. A related application was also filed on the same date with the Integrity Commissioner (the “**Application**”) alleging that the Member had contravened sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* (the “**MCIA**”).<sup>1</sup> The Application was filed pursuant to subsection 223.4.1(1) of the *Municipal Act, 2001*.<sup>2</sup>

### II. APPOINTMENT & JURISDICTION

3. Aird & Berlis LLP was appointed as Integrity Commissioner for the Township pursuant to subsection 223.3(1) of the *Municipal Act, 2001* in February 2023 by By-law No. 2023-14.
4. Council adopted the Code and its Complaint Protocol (the “**Complaint Protocol**”) in August 2023.
5. As Integrity Commissioner, we are appointed to act in an independent manner on the application and enforcement of the Code and with respect to sections 5, 5.1, 5.2 and 5.3 of the MCIA.
6. The Complaint and Application provide that the Complainant/Applicant became aware of the Member’s potential pecuniary interest and alleged Code contravention on November 20, 2024. The Complaint and the Application were properly filed pursuant to Part B, Sections 5(1) and 5(3) of the Complaint Protocol and subsections 223.4(1) and 223.4.1 of the *Municipal Act, 2001*.
7. The allegations raised in the Complaint and the Application arise from the same set of facts and will be set out in greater detail below.
8. This is a report on the investigation of the Complaint made in accordance with Part B, Section 11 of the Complaint Protocol, and subsection 223.6(2) of the *Municipal Act, 2001*. This is also a report on our decision related to the inquiry of the Application pursuant to subsection 223.4.1(17) of the *Municipal Act, 2001*.

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<sup>1</sup> *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.

<sup>2</sup> *Municipal Act, 2001*, S.O. 2001, c. 25.

### III. COMPLAINT AND APPLICATION

9. Both the Application and Complaint concern a report which was considered by Council at a Council meeting held on September 30, 2024 (the “**Meeting**”). The report was identified on the Meeting agenda as Item #11.3 - Short Term Rentals in Centre Wellington Report #COR2024-53 (the “**Report**”). The Report was prepared by an external consulting firm, retained by the Township to conduct public consultation and other activities required to support the development of a licensing by-law to address the regulation of short-term rentals (“**STR**”) in the Township.

10. The Report was prepared in consultation with the Township’s STR Committee which consists primarily of Township staff. The Member is not part of the STR Committee and did not participate in the creation of the Report.

11. The allegations underpinning the Complaint and the Application are set out below.

12. The external consulting firm presented the Report at the Meeting.

13. At the Meeting, Council voted to adopt the following recommendations (the “**Recommendations**”) from the STR Committee:

*THAT the Council of the Township of Centre Wellington receive for information the Draft Short-Term Rentals in Centre Wellington Report prepared by MacLaren Municipal Consulting Inc;*

*AND staff be directed to post the document to Connect CW for any additional feedback;*

*AND THAT the report be referred to the Economic Prosperity & Growth Advisory Committee for review and comment.*

14. The Member did not declare a pecuniary interest at the outset of the Meeting nor did he recuse himself from participating in discussions or voting with respect to the Recommendations.

15. The Member is a director and part owner of the company (the “**Company**”) that runs Riverfest Elora, an annual music festival in the Township (“**Riverfest**”). Riverfest draws a large number of people to the Township each year.

16. The Complaint and Application allege that as a result of the Member’s involvement in the Company and by extension, Riverfest, he has a pecuniary interest in whether and how STRs and their owners may be regulated in the Township through a future licensing by-law.

17. The Complaint and Application further allege that the Member’s direct involvement in the Company and Riverfest “could directly impact the profitability of... future Riverfest festival business along with his partners... interests.” The Complaint and Application did not outline how a future STR licensing by-law would affect the profitability of the Company or Riverfest.

18. The Complaint and Application also allege that any Council member who is directly involved in the Township’s tourism industry, should remove themselves from any discussions before Council concerning STRs.

19. The Complaint and Application further allege that the Member has a deemed pecuniary interest in the Report and Recommendations due to a family member’s employment with the Company.

20. Based on the foregoing, the Complaint and Application allege that the Member contravened Sections 10 and 11 of the Code and sections 5, 5.1 and 5.2 of the MCIA by participating in discussions and voting on the Recommendations, and by influencing staff regarding a matter in which the Member has a pecuniary and non-pecuniary interest.

#### IV. CODE OF CONDUCT PROVISIONS AT ISSUE

21. Sections 10 and 11 of the Code provide:

##### 10.0 Improper Use of Influence

10.1 A Member shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.

10.2 A Member shall not use the status of their position to influence the decision of another person to the private advantage or non-pecuniary interest of themselves or their family, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves.

##### 11.0 Conflicts of Interest

11.1 A Member is required to comply with the requirements of the *Municipal Conflict of Interest Act* with respect to obligations relating to pecuniary interests. A contravention of the *Municipal Conflict of Interest Act* by a Member shall not constitute a breach of the Code of Conduct but may be enforced in accordance with the provisions of the statute and section 223.4.1 of the *Municipal Act, 2001*.

11.2 A Member shall also avoid any conflict of interest that is a non-pecuniary interest in order to maintain public confidence in the Township and its local boards. If a Member has a non-pecuniary interest, the Member shall declare the non-pecuniary interest and then leave the meeting at which the matter is being considered. Under no circumstance shall the Member participate in any discussion or vote on the matter or attempt to influence the voting on the matter in any way, before during or after the meeting. A Member having a non-pecuniary interest is not entitled to remain at the meeting and to abstain from voting, thus having their abstention recorded as a negative vote.

22. The Code defines “non-pecuniary interest”, and “pecuniary interest” as follows:

(o) “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;

...

(q) “pecuniary” means relating to or consisting of money or having financial, economic or monetary value;

## V. MCIA PROVISIONS AT ISSUE

23. The Application alleges that the Member contravened sections 5, 5.1 and 5.2 of the MCIA, which provide 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 to influence the voting on any such question.

...

### **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

...

### **Influence**

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

24. An “indirect” pecuniary interest is addressed in section 2 of the MCIA:

### **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,
  - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
  - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
  - (iii) is a member of a body,

that has a pecuniary interest in the matter; or

- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

## VI. MATERIALS REVIEWED

25. To undertake our investigation and prepare this Report, we have reviewed and considered the following materials:

- Complaint 2024-03;
- Application 2024-02;
- The Report;
- The Meeting minutes;
- The audio-visual recording of the Meeting; and
- The Member's written submissions in response to the Complaint and Application.

26. We have also reviewed, considered, and had recourse to such applicable jurisprudence and secondary source material, including other Integrity Commissioner reports, that we believe to be pertinent to the issues at hand.

## VII. MEMBER'S SUBMISSIONS

27. We notified the Member of the Complaint and Application and received brief submissions from the Member refuting the allegations.

## VIII. FINDINGS

28. For the reasons set out below, based on the evidence and on the civil standard of a balance of probabilities, we find that the Member has not contravened the Code or the MCIA.

### (a) No Pecuniary Interest in the Matter of the Report or Recommendations

29. While the MCIA does not define the term "pecuniary interest," it is well-accepted that a "pecuniary interest" is any financial interest related to or involving money.<sup>3</sup>

30. The jurisprudence has interpreted pecuniary interest to include a monetary benefit that will or could 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. A member's motive is irrelevant in determining whether there has been a contravention of the MCIA. The pertinent question to be asked is as follows:

Does the matter to be voted upon have the potential to affect the pecuniary interest of the municipal councillor?<sup>4</sup>

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<sup>3</sup> *Mondoux v. Tuchenhagen* (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.).

<sup>4</sup> *Greene v. Borins* (1985), 28 M.P.L.R. 251, at para. 42 (Ont. Div. Ct.).

31. A pecuniary interest may be direct, indirect (i.e. through another entity), or deemed (i.e. through a family member). Relevant to the Application is subclause 2(a)(i) of the MCIA, which provides that a member has an indirect pecuniary interest in any matter in which the council or local board is concerned, if the member is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public.

32. For a member to have a conflict under the MCIA, there must be a pecuniary interest at the time of the vote. In other words, the member must have an immediate, non-deviated or traceable financial or economic interest in the matter before council.<sup>5</sup> There is no pecuniary interest where the outcome of the vote on a matter before council does not, in and of itself, entail an immediate financial outcome for the member.<sup>6</sup>

33. We cannot conclude on a balance of probabilities that the Member has a pecuniary interest direct, indirect, or deemed, in the matter of the Report or Recommendations.

34. The Recommendations voted on at the Meeting related only to the receipt and referral of the Report. There is no evidence to suggest the Member's participation in a discussion of the Report and his vote on the Recommendations would have any direct, indirect or deemed financial implications for the Member. There was no financial interest that could have crystallized at the time of the Member's participation in discussions of the Report and his vote on the Recommendations. The matter itself did not produce any financial outcome, positive or negative, for the Member or the Company.<sup>7</sup>

35. While the Member is a part-owner of the Company, we find that there is no reasonable basis to conclude that the Report being sent for further consideration gave rise to any financial implication for the Member or the Company.

36. First, the specific vote before Council was whether to send the Report for further consideration. The vote was not for the implementation of a yet-to-be drafted future licensing by-law, which itself likely would not give rise to any pecuniary interest.

37. Second, it is unreasonable to assume that sending the Report to the Economic Prosperity & Growth Advisory Committee, of which the Member is not a part, and posting the Report on Connect CW, the Township's online engagement website, for further consideration, would give rise to any financial implications for the Member or the Company.

38. Lastly, we find the Member did not have an indirect pecuniary interest in the matter of the Report or Recommendations. The allegation rests on the assumption that the Member is a director or senior officer of a corporation which has a financial interest in the matter. We find neither the Report nor the Recommendations had the ability to affect the Company's pecuniary interests, therefore the Member's pecuniary interests were not affected.

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<sup>5</sup> *Cooper v. Wiancko* (2018), 73 M.P.L.R. (5th) 212, at para. 63 (Ont. S.C.J.).

<sup>6</sup> See e.g., *Rivett v. Braid et al.* (2018), 73 M.P.L.R. (5th) 249 (Ont. S.C.J.).

<sup>7</sup> *Lovatt v. Glenwood (Rural Municipality)*, [2003] M.J. No. 157, [2003 MBQB 100](#) at para. 19; *Mondoux v. Tuchenhagen*, 2011 ONSC 5398, 107 O.R. (3d) 375 (Div. Ct.) at para. 48; and *Lediard v. Clarke* (1997), 44 M.P.L.R. (2d) 82 (Ont. Gen. Div.), at para. 18.



39. We note the Complaint and Application also allege the Member had a deemed pecuniary interest in the Report and Recommendations as a result of a family member being employed by the Company. We dismiss this allegation on the same basis as above.

40. As a result of our finding that the Member did not have a pecuniary interest in the Report or Recommendations, the allegation that the Member contravened section 5.1 of the MCIA by failing to declare a pecuniary interest in writing, is moot.

**(b) Any Pecuniary Interest is Remote and Insignificant**

41. The MCIA recognizes a number of exceptions that serve to make a member's direct, indirect, or deemed pecuniary interests not subject to the requirements of section 5 of the statute. Section 4 of the MCIA lists eleven exceptions, one of which has relevance to our analysis of the allegations in the Application. The general exception provides as follows:

**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,

...

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

42. The exception relating to remote or insignificant interests under Clause 4(k) does not pertain to the quantum of the financial interest at issue but, rather, it applies to the immediacy and importance of the matter to the member.<sup>8</sup>

43. The applicable test to determine whether a member has an interest that is so remote or insignificant in its nature such that it cannot reasonably be regarded as likely to influence the member is set out in *Whiteley v. Schnurr*. The question to be asked is as follows:

Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor's action and decision on the question? In answering the question set out in this test, such elector might consider whether there was any present or prospective financial benefit or detriment, financial or otherwise, that could result depending on the manner in which the member disposed of the subject matter before him or her.<sup>9</sup>

44. The Ontario Court of Appeal in *Ferri v. Ontario (Attorney General)* emphasized that the analysis of whether a pecuniary interest is remote or insignificant must "focus on the proximity and significance of the councillor's pecuniary interest in the context of *all* [emphasis added] the circumstances."<sup>10</sup>

<sup>8</sup> *Magder v. Ford* (2012), 5 M.P.L.R. (5th) 1 (Ont. S.C.J.).

<sup>9</sup> *Whiteley v. Schnurr* (1999), 4 M.P.L.R. (3d) 309 at para. 10 (Ont. S.C.J.).

<sup>10</sup> *Ferri v. Ontario (Attorney General)* (2015), 40 M.P.L.R. (5th) 223 at para. 15 (Ont. C.A.).

45. In our view, even if the Member had a pecuniary interest in the Report and Recommendations, which we have determined he did not, we find the exception for pecuniary interests which are “remote or insignificant” in clause 4(k) of the MCIA would apply.

46. In our view, the factors identified in the jurisprudence that are relevant to this matter affecting the Member are as follows:

- He is an experienced council member who has served the Township since November 2022;
- He acted in good faith and was not motivated by any kind of pecuniary interest;
- He has been vigilant in the past in declaring pecuniary interests related to the Company and Riverfest, including, as noted by the Complainant, discussions regarding provincial funding for a multi-use pad at Bissel Park;
- The regulation of STRs is a matter of broad concern for residents, which is evidenced by the extensive public consultation regarding the Report, including after the Meeting.
- The vote at the Meeting was in furtherance of steps to seek additional feedback, review and comment on the Report, the results of which were yet to be determined.

47. While the Member is part of the Company, there was no matter directly or indirectly affecting the Company or Riverfest before Council for consideration, debate, or discussion. As noted in the Complaint, the Mayor has declared pecuniary interests on other occasions when he had a real, actual, or potential pecuniary interest.

48. It is our opinion that a reasonable elector, having been fully apprised of *all* the circumstances, would be more likely than to not conclude that the Member’s pecuniary interest (if one existed) was not likely to influence his actions and his decision concerning the Report and Recommendations. In our view, a reasonable elector would conclude that the impact of the Report and Recommendation (i.e. to refer the matter for further consultation) would not affect the Member’s pecuniary interests. As such, the Member would be entitled to rely on the exception for remote or insignificant interests as set out in clause 4(k) of the MCIA.

**(c) The Member’s Alleged Influence**

49. The Application alleges that the Member contravened Section 10 of the Code and section 5.2 of the MCIA by influencing decisions and recommendations of staff with respect to a matter in which he has a pecuniary interest. Specifically, it is alleged that because the Member shares office space with members of the STR Steering Committee, he would be privy to inside information concerning the Report and, in turn, be able to influence decision-making on the direction of the Report and STR regulation more broadly through private discussions.

50. We find any suggestion that the Member influenced the findings of the Report or the Recommendations to be purely speculative. There is no evidence to support that the Member attempted to influence the STR Steering Committee because of his alleged pecuniary or non-pecuniary interests.

51. Furthermore, we find the Member did not influence any persons during the Meeting. The Member hardly spoke during the discussion of the Report. He behaved in a manner consistent with his role of head of Council by listening to other Council members' comments and concerns with the Report and summarizing their statements.

52. Based on the above, we conclude the Member did not contravene Section 10 of the Code or section 5.2 of the MCIA by asserting influence over the matter of the Report and Recommendations.

**(d) The Mayor's Alleged Non-Pecuniary Conflict of Interest**

53. Section 11.2 of the Code states that members should avoid any conflicts of interest which are non-pecuniary in nature.

54. The MCIA does not deal with non-pecuniary interests, which are covered by the common law. Non-pecuniary interests are akin to the common law concept of bias which can be analyzed pursuant to the "prejudgment (closed-mind) rule" and the "personal-interest rule".

55. The prejudgment (closed-mind) rule disqualifies a member by reason of bias if the member has "prejudged the matter to be decided to the extent that he or she has a closed mind and is no longer capable of being persuaded."<sup>11</sup> There is no evidence to demonstrate that the Member had a closed mind with respect to the Report and Recommendations.

56. The personal interest rule requires that members refrain from dealing with matters in which they have a personal interest or other interest. On the question of personal interest, the Supreme Court of Canada has written that whether a member's personal or other interest in a matter being decided is "so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of public duty."<sup>12</sup>

57. As noted above, we find the Member did not have a unique personal or other interest in the Report or Recommendations beyond any interest he would have as an elected official, acting in a representative role.

58. Based on the above, we conclude the Member did not contravene Sections 10 and 11 of the Code when he discussed and voted on the Report and the Recommendations at the Meeting.

**IX. CONCLUSIONS**

59. For the reasons above, we find the Member did not contravene Sections 10 and 11 of the Code.

60. We also find the Member did not contravene sections 5 and 5.2 and that he could not have contravened section 5.1 of the MCIA in relation to his discussion of and vote on the Report and Recommendations or by influencing staff.

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<sup>11</sup> *Re Nix*, 2022 ONMIC 17 (CanLII) at [para 73](#).

<sup>12</sup> *Bush v Trist and Valley*, 2018 ONMIC 19 (CanLII) at [para 54](#), citing *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170 at 1196.

61. In accordance with subsection 223.4.1(16) of the *Municipal Act, 2001*, this Report serves as notice to the Applicant that we will not be making an application to a judge for a determination as to whether the Councillor contravened sections 5, 5.1 and 5.2 of the MCIA.

62. This Report has been prepared for and is forwarded to Council solely for the purpose of reporting. Subsections 223.4.1(17) and 223.6(2) of the *Municipal Act, 2001* provide that this Report is to be made public.

Respectfully submitted,

AIRD & BERLIS LLP



Laura Dean

Integrity Commissioner for the Township of Centre Wellington

Dated this 6th day of March, 2025

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