

## Municipality of East Ferris Integrity Commissioner - David C. King

Citation: Maggie Preston- Coles v. John, O'Rourke, 2020

Date: November 16, 2020

### REASONS FOR DECISION

**Notice:** Municipal Integrity Commissioners provide investigation reports to their respective municipal council and, in most cases, make recommendations for imposition of penalty or other remedial action to the municipal Council.

**No Council decision:** Because this is an inquiry under the *Municipal Conflict of Interest Act*, the Integrity Commissioner's decision is not required to be filed with the municipal council. Neither the Municipality of East Ferris Council nor I have the authority to impose penalties. This may only be done by a judge in accordance with sections 9 & 10 of the *Municipal Conflict of Interest Act*.

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## CONTEXT

1. Municipal Integrity Commissioners in Ontario conduct inquiries into applications alleging that council members or members of local boards have contravened the *Municipal Council of Interest Act*.
2. At the end of such an inquiry, the Integrity Commissioner shall decide whether to apply to a judge under [section 8](#) of the [MCIA](#) for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act, and shall publish reasons for the decision.
3. Such decision is not subject to approval of the municipal council and does not take the form of a recommendation to council. There is, therefore, no municipal council resolution necessary to give effect to the decision.<sup>1</sup>

## THE APPLICATION

4. [Section 223.4.1](#) of the [Municipal Act](#) allows an elector or a person demonstrably acting in the public interest to apply in writing to the Integrity Commissioner for an inquiry concerning an alleged contravention of [section 5](#), [5.1](#) or [5.2](#) of the [MCIA](#) by a member of council or a member of a local board.
5. Ms. Maggie Preston-Coles (the Applicant) alleges that Mr. John O'Rourke (the Respondent) contravened [sections 5, 5.1](#) and [5.2](#) of the [MCIA](#) on March 27, 2019 by discussing, voting on, and trying to influence others on an application to approve a draft plan of subdivision, Official Plan amendment and zoning by-law for the lands described as Part of lots 11, 12 13 & 14 Concession 15, Township of East Ferris, District of Nipissing, owned by 1851477 Ontario Inc.
6. The application for a MCIA inquiry was submitted on April 20, 2020 and was deemed to be complete by me after receiving additional information from the Applicant on June 24, 2020. Despite section 8.2 of the MCIA, I decided to consider this application as the allegation was initially made know to me on May 14, 2019 during a phone conversation with the applicant, less than six weeks after the March 27<sup>th</sup> Planning Advisory Committee (PAC) where the alleged Conflict of Interest Act violation occurred.

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<sup>1</sup> This report is based on format contained in CANLII and content from Anderson v. Bays, 2020, Pinto v. Anderson, 2020, Davis v. Carter, 2020, as prepared by Integrity Commissioner Guy Giorno.

## DECISION

7. [Subsection 223.4.1\(15\)](#) of the [Municipal Act](#) states that, upon completion of an inquiry, the Integrity Commissioner may, if the Integrity Commissioner considers it appropriate, apply to a judge under [section 8](#) of the [MCIA](#) for a determination whether the Member has contravened section 5, 5.1 or 5.2 of that Act.
8. After considering the evidence and the positions of the parties, I have decided that I will not apply to a judge for a determination whether the Respondent has contravened [sections 5, 5.1](#) and [5.2](#) of the [MCIA](#).
9. [Subsection 223.4.1\(17\)](#) of the [Municipal Act](#) requires me to publish written reasons for my decision. These are my reasons:

## BACKGROUND

10. The Respondent, a citizen appointee of the Municipality of East Ferris is the Chairman of the East Ferris Planning Advisory Committee (PAC) . He has served in this capacity for several years. The Respondent also co-owns a kitchen and bath construction company with his wife identified as “The Brownstone ” in the City of North Bay.
11. The Applicant is a resident of East Ferris who lives within close proximity to a proposed 25 home subdivision. The Applicant has identified several concerns about the proposed plan of subdivision and has filed an appeal with the Local Planning Appeal Tribunal (LPAT) regarding the proposal. At this time, the appeal has not been heard by the LPAT.
12. Marcel Degagne and his son are co-owners of Degagne Carpentry, the owner of 1851477 Ontario Inc. which made application to the Township of East Ferris for a draft plan of subdivision, official plan and zoning by-law amendment to facilitate the same 25 lot plan of subdivision that the Applicant is in objection to.
13. Marcel Degagne confirms that “The Brownstone Kitchen and Bath” is not in partnership with Degagne Carpentry. The Brownstone Kitchen and Bath only serves as a subcontractor on an as required basis and is not the exclusive provider of kitchens and bathrooms in homes developed by Degagne Carpentry. Their clients determine which subcontractors they want to use.
14. The Respondent confirms that while “The Brownstone” website lists Degagne Carpentry as one of 15 “quality partners” the Brownstone has no financial ties to any of companies listed on the web site and is not the exclusive provider of kitchens and baths for Degagne Carpentry.
15. At the East Ferris PAC meeting held on March 27, 2019, a public hearing was held to receive comments on the proposed draft plan of subdivision, official Plan amendment and zoning by-law amendment for the lands described as Part of lots 11, 12 13 &14 Concession 15, Township of East Ferris, District of Nipissing owned by 1851477 Ontario Inc.

16. The meeting minutes indicate that the Respondent chaired the meeting. There were **no** disclosures of pecuniary interest by any of the committee members.

17. At the meeting, PAC members received a report from Greg Kirton, Manager of Planning and Economic Development for the Municipality of East Ferris on the proposed plan of subdivision. The conclusion was that “planning staff is of the opinion that the applicant’s proposal for a draft plan of subdivision, official plan amendment, and zoning by-law amendment is consistent with the requirements of the *Planning Act* and conforms to all applicable provincial and municipal policies. The proposal would permit the development of single detached dwellings in an appropriate pattern on appropriately sized lots for the area. Staff is of the opinion that draft approval should be given in this instance.”<sup>2</sup>

18. After hearing comments from the public regarding the proposed plan of subdivision, the meeting minutes indicate the PAC passed resolution 2019-03 recommending the application be recommended for approval (with conditions) to Council.

19. On April 9, 2019 the Municipality of East Ferris held a regular meeting of Council. The meeting minutes indicate that all members of Council were present with the exception of Deputy Mayor, Mike Voyer. The Respondent was not in attendance at this meeting. On the agenda was the PAC report regarding resolution 2019-03 recommending approval of the draft subdivision plan and the associated amendments (with conditions). Council voted on the recommendation of the PAC and the minutes show that the resolution was defeated. Following defeat of the motion, Mayor Rochefort introduced a resolution seconded by Councilor Kelly requesting a motion of reconsideration for Council motion No. 2019-90 regarding the PAC recommendation. This resolution was carried.

20. At the next regular meeting of Council held on April 23, 2019, all members of Council were in attendance. The Respondent was not in attendance at this meeting. On the agenda was a presentation by Rick Miller, agent for applicant 1851477 Ontario Inc. regarding the proposed draft plan of subdivision as well as a notice of reconsideration of the matter relating to the draft plan of subdivision files no. SB-2018-02, OPA-2018-02 and C-2018-02.

21. Council held a recorded vote on the notice of reconsideration from the Council meeting held April 9<sup>th</sup>, 2019 and unanimously passed resolution 2019-107. Council then proceeded to vote on the proposed plan of subdivision recommended by the PAC on March 27, 2019 and passed resolution 2019-108.

22. On May 14, 2019, the Applicant appeared as a delegation to Council regarding her concerns with the proposed plan of subdivision. It is during this delegation that the Applicant alleges that the entire Council contravened the Municipal Code of Conduct. This matter is the subject of a separate investigation by me. Following the meeting, the Applicant contacted me regarding the alleged Conflict of Interest Act violation.

23. Upon deeming the application to be complete, I conducted an inquiry.

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<sup>2</sup> Source: March 27, 2019 Municipality of East Ferris Planning & Development Report

## **PROCESS**

24. The Municipal Act does not direct the procedure that an Integrity Commissioner must follow in handling MCIA applications. In this instance and in light of the Covid 19 situation I have chosen to undertake the following:

(i) Review the MCIA application for completeness and request clarification/additional information from the Applicant via email.

(ii) Notify the Respondent about the MCIA application and the Applicant's name via telephone and email and provide the Applicant with the opportunity to respond to questions that I had.

(iii) Conduct a telephone interview with Marcel Gagne to obtain clarification on the ownership of Gagne Carpentry and his business relationship with "the Brownstone" owned by the Applicant.

(iv) Contact the Municipality of East Ferris Municipal Clerk and the Manager of Planning to provide information requested (meeting minutes, letters etc..) and to clarify municipal procedures.

(v) Undertake a review of legal cases related to the MCIA.

25. In making my decision, I have considered all the evidence before me.

## **SCOPE OF INQUIRY**

26. The application filed by the Applicant relies on observations at the March 27, 2019 PAC meeting; the minutes of that meeting as well as other committee and Council meetings; the Applicant's understanding of the MCIA and information posted on the Brownstone website which lists Degagne Carpentry as one of "our Quality Partners".

27. Under subsection 223.4.1(7) of the Municipal Act, whether to conduct an inquiry into an Application alleging breach of the MCIA lies within the Integrity Commissioner's discretion. I determined that I would inquire into the Respondents direct or indirect pecuniary interest in the draft plan of subdivision application to the Municipality of East Ferris by 1851477 Ontario Inc.

## POSITIONS OF THE PARTIES

### **POSITION OF THE APPLICANT (MAGGIE PRESTON-COLES)**

28. According to the Applicant:

“John O’Rourke on or about March 27th, 2019 in the Municipality of East Ferris, Province of Ontario, while acting for the Municipality of East Ferris as Chairperson of the Advisory Committee, a statutory Board under the Municipal Act, knowingly having a direct or indirect pecuniary interest in a meeting of the East Ferris Municipal Planning Advisory Board which matter was subject to consideration of the matter at the meeting, unlawfully failed to disclose the interest and general nature thereof; unlawfully took part in the discussions thereof, undertook to vote, and responded to questions; unlawfully influenced the outcome of meeting by undertaking a vote with respect to the matter and unlawfully used his standing as the Planning Board “Chairperson”, having an influence in rendered decisions or recommendations that resulted from consideration of the matter.”<sup>3</sup>

### **POSITION OF THE RESPONDENT (JOHN O’ROURKE )**

29. According to the Respondent:

“ I did not declare a conflict on this matter for many reasons:

- 1) I have lived in East Ferris for over 30 years and would have to declare a conflict on approximately 85% of all applications based on knowing the parties. In fact, the whole committee would also have to declare based on this as well .
- 2) I have been involved in this township as
  - a) Hockey Coach in Astorville
  - b) Chairman of the Parent Teachers Association for the school in Corbeil
  - c) Eleven years as a volunteer Fireman in East Ferris

So, I did not declare a conflict as I do not see that I have one here. The applicant can purchase product from any vendor they choose, and If I did declare a conflict then every application here forward would also be under a conflict. I am not the chairman of this association for financial gain.”<sup>4</sup>

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<sup>3</sup> June 24, 2020 submission by Maggie Preston-Coles

<sup>4</sup> July 17, 2020 response from John O’Rourke re: Questions from Integrity Commissioner

## ISSUES

30. I have considered the following issues:

- (i) Does the Respondent have a direct or indirect pecuniary interest in the matter of an application to the Municipality of East Ferris for a draft plan of subdivision on property owned by 1851477 Ontario Inc.
- (ii) Is the pecuniary interest remote or insignificant under clause 4(k) of the MCIA?
- (iii) Should I make an application to a judge?

## ANALYSIS AND FINDINGS

### **(1). DOES THE RESPONDENT HAVE A DIRECT OR INDIRECT PECUNIARY INTEREST IN THE MATTER OF AN APPLICATION TO THE MUNICIPALITY OF EAST FERRIS FOR A DRAFT PLAN OF SUBDIVISION ON PROPERTY OWNED BY 1851477 ONTARIO INC.**

31. Direct Interest? **Yes**

32. Indirect interest? **No**

33. While the MCIA does not define “direct” or “indirect” interests, the Courts have come to a consensus that it is restricted to a financial, monetary, or economic interest.<sup>5</sup>

34. In determining if the Respondent had a “**direct**” interest by participating in the PAC meeting without declaring a pecuniary interest, I reviewed the following legal cases:

35. In *Halton Hills (Town) v. Equity Waste Management of Canada* (1995), 30 M.P.L.R. (2d) 232 (Ont. Gen. Div.) at p. 234: Justice Belleghem commented.

“The Act is crystal-clear. It is harsh. It must be. It controls the actions of council members. They are the repositories of the citizens' highest trust. They must at once be strong in their debate to put forward their electorates' concerns; they must always have an ear to the dissent in their voters. They must not only be unshrinkingly honest they must be seen to be so -- by those who voted for them, and those who voted against them. Their role, though noble in its calling, is demanding in its execution. It is onerous in the extreme”.

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<sup>5</sup> Ontario's Municipal Conflict of Interest Act, A Handbook, 2019 edition, M. Rick O'Connor & David White

36. In *Moll v. Fisher* (1979), the intention of the [MCIA](#) is described as follows:

“The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision- making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute. . . .

This enactment, like all conflict-of-interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well- meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the Act, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less. See, also, *Ruffolo v. Jackson*, [2009] O.J. No. 1488, 59 M.P.L.R. (4th) 256 (S.C.J.), at para. 9; *Lovatt v. Glenwood (Rural Municipality)*, [2003] M.J. No. 157, [2003 MBQB 100](#), at para. [11](#); *Orangeville (Town) v. Dufferin (County)*, [2010] O.J. No. 429, [2010 ONCA 83](#), at paras. [22-26](#))

37. Based on these legal cases and the evidence contained in the background section of this inquiry, I am of the view that the Respondent had a **direct pecuniary interest** in the matter of the plan of Subdivision Application to the Municipality of East Ferris which he did not disclose.

38. The determination of an “**indirect**” pecuniary interest is set out in section 2 of the [MCIA](#):

“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. R.S.O. 1990, c. M.50, s. 2.



39. Based on the evidence provided in the background section of this inquiry neither the Respondent nor his wife (co-owners of The Brownstone Kitchen and Bath) are shareholders or directors in Degagne Carpentry or 1851477 Ontario Inc., nor are either in a legal partnership with or employed by Degagne Carpentry. As a result, I have concluded that the Respondent does not have an “indirect” pecuniary interest in the matter of the plan of Subdivision Application to the Municipality of East Ferris.

**(2). IS THE PECUNIARY INTEREST REMOTE OR INSIGNIFICANT UNDER [CLAUSE 4 \(K\) OF THE MCIA?](#)**

40. Yes.

41. [Section 4](#) of the [MCIA](#) sets out eleven exceptions to the requirement to declare a pecuniary interest and withdraw from decision-making and voting. One exception is clause (k).

“Sections 5 and 5.2 of the MICA do not apply to a pecuniary interest in any matter that a member may have, where it is determined that the interest is so remote or insignificant that it cannot be reasonably regarded to influence the member.”<sup>6</sup>

42. In *Ferri v. Ontario*, the Ontario Court of Appeal has held that, given the purpose of the [MCIA](#), “what constitutes a pecuniary interest sufficient to trigger the provisions of the [MCIA](#) is not to be narrowly confined”: *Orangeville (Town) v. Dufferin (County)*, 2010 ONCA 83, 266 O.A.C. 207, at para. 22. The competing policy imperative is that “pecuniary interest” must not be construed so broadly that it captures almost any financial or economic interest such that it risks needlessly disqualifying municipal councillors, and others captured under the ambit of the [MCIA](#), from participating in local matters of importance to their constituents. [Section 4\(k\)](#) of the [MCIA](#) operates to respond to this concern and ameliorate the potentially harsh effects of a broad definition of pecuniary interest by ensuring that pecuniary interests that are truly remote or insignificant are not caught under [s. 5](#).

43. The East Ferris Planning Advisory Committee (PAC) chaired by the Respondent is composed of five Council appointees and two elected officials from the Municipality of East Ferris Council. The Committee is appointed by Council under the authority of the Planning Act. The purpose of the (PAC) is to review planning applications and make recommendations to Council. The committee considers and makes unbiased recommendations on various planning applications after carefully reviewing all information presented and listening to concerns raised by the public. Decisions are based on the review of all pertinent information and including the Municipality’s Official Plan, Zoning By-Law, other relevant policies, and legislation.<sup>7</sup>

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<sup>6</sup> G. Giorno at par.56 *Davis v Carter*, 2020

<sup>7</sup> Source: Municipality of East Ferris – Boards and Committee Policy -adopted by Res. No. 2019-43

44. Once a recommendation has been made by the PAC to Council, it is the responsibility of Council, as elected officials, to review the recommendations by the PAC, listen to the concerns raised by the public and make a decision regarding the application.

45. Resolution No. 2019-03 recommending approval of the subdivision application (with conditions) was moved, by PAC member Frank Corbeil, and seconded by PAC member Al Herauf. The PAC Chair, called for a vote and declared the motion as being carried. There is no record of who voted in support or against the resolution nor is a record required.

46. It is uncommon for the Chair/ Mayor to vote on matters before the committee/Council unless a recorded vote has been requested or to break a tie. While the Respondent may have spoken in favour of the application during the meeting, there is no record on if and how he voted on the resolution.

47. On April 9<sup>th</sup>, 2019 during the regular meeting of the East Ferris Council, the recommendation of the planning advisory was heard. It should be noted that the Respondent was not in attendance at this meeting nor is it the practice of Committee Chairs to attend Council meetings to present Committee reports.

48. As was noted in the background section of this report, the Council resolution to approve the recommendation of the PAC was not approved, but a request to reconsider the Council motion was carried.

49. At the next regularly scheduled meeting held April 23, 2019, (which the Respondent did not attend) Council held a recorded vote to reconsider the recommendation of the PAC regarding the proposed plan of subdivision. Resolution 2019-107 was unanimously approved to reconsider the planning committee recommendation and Council subsequently passed Resolution 2019-108 approving the recommendation of the PAC together with those conditions set out in their resolution No. 2019-03 dated March 27, 2019.

50. While the plan of subdivision application has been approved by the Municipality of East Ferris Council, it is the subject of an appeal that has yet to be heard by the LPAT. The approval creation and construction of the proposed 25 lot subdivision may not occur if the appeal is upheld.

51. In light of *Ferri v. Ontario*, the following are the factors that I have taken into consideration in determining if the Respondents pecuniary interest in the proposed plan of subdivision is truly remote or insignificant:

(i) The Respondent is not in a legal partnership with Degagne Carpentry or with 1851477 Ontario Inc.

(ii) Marcel Degagne, the owner of 1851477 Ontario Inc. confirms that "The Brownstone" is not the exclusive provider of kitchens and bathrooms in homes developed and built by Degagne Carpentry.

(iii) The Respondent knowingly did not declare a pecuniary interest as he felt it was unnecessary in this instance.

(iv) There is no record of who voted in support or against the resolution during the PAC meeting held on March 27, 2019.

(v) The PAC role is to make recommendations to Council. The PAC is not the final approval authority.

(vi) The Respondent was not in attendance at either of the Council meetings where the plan of subdivision application by 1851477 Ontario Inc. was being discussed by Council, nor is there any evidence that the Respondent influenced Council's decision regarding the plan of subdivision application.

(vii) The Respondent has chaired the East Ferris (PAC) for several years and has acted in good faith.

52. Because of these factors, I find the Respondent's interest to be so remote or insignificant that it cannot be reasonably regarded to influence him.

### **(3). SHOULD I MAKE AN APPLICATION TO A JUDGE?**

53. Whether to make an application to a judge is a decision that the [Municipal Act](#) leaves to the Integrity Commissioner, based on what the Integrity Commissioner feels is appropriate.

54. I do not consider it appropriate for me to apply to a judge for a determination as to whether the Respondent has contravened the [MCIA](#).

### **CONCLUSION**

55. I will not apply to a judge under [sections 5, .5.1 and 5.2](#) of the [MCIA](#) for a determination as to whether the respondent contravened the [MCIA](#) on March 27, 2019.

### **PUBLICATION**

56. The [Municipal Act](#) requires that after deciding whether or not to apply to a judge, the Integrity Commissioner shall publish written reasons for the decision. This decision will be published by providing it to the Municipality of East Ferris to make public and by posting on the free, online CanLII database.

57. [Subsection 223.5\(2.3\)](#) of the [Municipal Act](#) states that I may disclose in these written reasons such information as in my opinion is necessary. All the content of these reasons is, in my opinion, necessary.

David C. King  
Integrity Commissioner  
Municipality of East Ferris

November 16, 2020