

Cunningham Swan
LAWYERS



March 5, 2018

PRIVILEGED AND CONFIDENTIAL

Mayor and Council
The United Townships of Head, Clara and Maria
15 Township Hall Road
Stonecliffe, Ontario
K0J 2K0

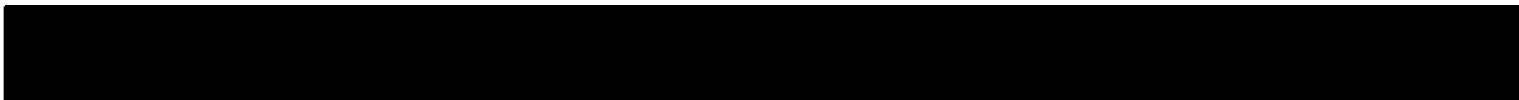
Dear Mayor and Council:

**RE: Complaints Against Mayor Reid, Councillor Chartrand and Councillor MacKay;
Report of Integrity Commissioner and Recommendations
Our File No. 29822-8**

Pursuant to the Municipal Code of Conduct for Councillors (hereinafter the "Code") we were provided with a series of complaints against Mayor Reid, Councillor Chartrand and Councillor MacKay made by Councillor Ernie Villeneuve.

There were some procedural issues associated with the appointment of our firm as Integrity Commissioners in this matter, with the final resolution of Council delegating to staff the authority to appoint an integrity commissioner. Our firm was appointed by email dated December 20, 2017. Given the holiday season, existing commitments in early January and a 2 week OMB hearing in February, our office was not able to initiate the investigation until later in January, and not able to complete this report until now.

Pursuant to section 223.6(3) of the *Municipal Act*, the Municipality must make this report available to the public.



Should Council have any questions related to the report or recommendations please advise.
Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.

TEF:kj
ENCL

REPORT OF THE INTEGRITY COMMISSIONER

INVESTIGATION RE:

Complaint of Councillor Ernie Villeneuve

Subject of Complaint:

- Mayor Reid
- Councillor Chartrand
- Councillor McKay

SUMMARY:

The complaints are primarily centred on actions of council members related to the debate and decision of Council as to whether the former rail bed should be permitted to be used as a trail for snowmobiles through the village of Stonecliffe. Councillor Villeneuve voted against the recommendation of staff to prohibit the use of the former rail bed for motorized vehicles; the remaining Council members voted in favour of the prohibition. During our interview with Councillor Villeneuve he confirmed that his concerns arose because of this issue and the vote thereon.

While complaints 1 and 2 deal with the September Council meetings which did not deal with the rail bed, it was clear from the interview that those complaints would not have been submitted but for the vote to prohibit the use of the rail bed; Councillor Villeneuve was motivated to pursue his belief that Councillor Chartrand was acting in a conflict of interest because of that vote.

While the *Municipal Act* directs that personal information be kept confidential in an Integrity Commissioner's report, it is our view that the public has been made aware of the essential parties and elements of the underlying complaint given the open session debates in this matter and the correspondence placed on the open agenda that addresses the underlying elements of the complaints. Where possible details from closed sessions have not be discussed except to provide the necessary clarity to understand the findings and recommendations in this report.

It is clear from the investigation that Councillor Villeneuve genuinely believes that Councillor Chartrand had a conflict of interest with respect to the rail bed issue. This alleged conflict arises from the fact that Councillor Chartrand obtains some employment income from the Township as a contractor, as well as receiving some income working on a contract basis for the Missing Link Snowmobile Club. In addition, Councillor's Chartrand's name appeared on a letter of opposition in April of 2017 and this raised concerns for Councillor Villeneuve. Although Councillor Chartrand lives adjacent to the rail bed in Stonecliffe, this was not cited by Councillor Villeneuve in his complaints as a source of the alleged conflict.

We find that Councillor Chartrand did not have a conflict of interest as defined in the *Municipal Conflict of Interest Act* ("MCIA"). The MCIA defines a conflict of interest as a pecuniary interest only; could the member stand to gain or lose financially as a result of their vote as a councillor? In this case we find that Councillor Chartrand's employment as a contractor for the Township and the Missing Link Snowmobile Club did not create any pecuniary interest. The Councillor's home is located near the rail bed, but is in fact further from the rail bed than it is to the "Legacy Trail" which is one option for snowmobiles if the rail bed is not used. If there were any potential for a pecuniary interest to arise (a finding that is not supported by the facts) then it is our finding that the Councillor's interest was both remote and was part of an interest in common with any resident whose property abutted the recreational trail.

However, the inquiry does not end with the MCIA; the Code of Conduct for Members of Council provides, "members of Council must be committed to performing their functions with integrity, avoiding improper use of the influence of their office, and conflicts of interest, both apparent and real" (section 1.3).

Conflict of interest is not defined in the Code. The phrase "both apparent and real" makes potentially any act subject to a conflict if any member of the public perceives that a conflict exists. This is too broadly drafted to be meaningful and it does not provide councillors with any guidance as to what behaviour is expected of them. In the circumstances, Councillor Chartrand's actions in voting on the rail bed issue could be considered by a member of the public as being a conflict of interest – the very fact that Councillor Villeneuve brought the complaint may in essence be evidence that the public perceive his actions as a conflict. In our view the fact a complaint is brought cannot, in and of itself, substantiate a conflict. If this were the case, there would be no need to conduct an investigation – this cannot be the intent of the Code.

Notwithstanding the lack of guidance, it is a generally accepted understanding that a conflict of interest arises where a person cannot act independently or without bias or influence because of a personal interest or the interest of persons close to them in the subject matter. We conducted our investigation using this more general interpretation of conflict of interest.

It is the finding of this investigation that Councillor Chartrand did not have a conflict of interest in the matter of the use of the rail bed as a trail. Based on our interview with the Councillor, it is clear that he put aside his personal views about the rail bed and considered the matter on the basis of impacts to residents who might be affected by the trail. It is clear from the fact that he permitted his name to be used on the April 24, 2017 letter to Council (before the vote) that he did have a personal view on the matter. The question is whether this personal view could be seen by an objective observer to influence his objective consideration of the matter before Council. It is apparent to this Investigation that the Councillor considered the interests of residents and formulated his position on that basis, as opposed to a personal interest.

Councillor Chartrand did however have a conflict of interest under the Code with respect to the closed session on September 15, 2017 and October 17, 2017 as those matters related to a family member – the nature of the issues discussed were such that the Councillor ought not to have participated. The Councillor did appropriately abstain from the vote in open session related to this issue on October 17, 2017, but that does not resolve the issue of his participating in the closed sessions.

We recommend no sanction be imposed on Councillor Chartrand. Councillor Chartrand's relationship with the staff member that was the subject of the September 2017 meeting was well known and it could not be said that he was using his influence improperly in the matter or overtly participating in an attempt to resolve the matter in favour of his family member. It is also relevant that he abstained from voting on that matter.

Given the extremely broad application of conflict of interest in the Code and the inability of any councillor to effectively understand what was meant by conflict of interest or guide their behaviour in the circumstances, we believe that a sanction would be misplaced. Council should turn its attention to revising the Code to make it meaningful and to providing training to councillors so that they understand their obligations.

It is also important to understand that there was no illegality associated with Councillor Chartrand's vote on the rail bed issue; the law did not require him to recuse himself from the vote and the validity of the vote is not in question.

We further find that Mayor Reid did not breach the Code.

We also find that Councillor MacKay did not breach the Code.

BACKGROUND:

The complainant is Councillor Ernie Villeneuve. Councillor Villeneuve was appointed to Council to fill a vacancy left by the resignation of a former councillor.

On October 16, 2017 Councillor Villeneuve (hereinafter the "Complainant") submitted to our office an e-mail that stated, "Good morning. My name is Ernie Villeneuve and I am a recently appointed councillor for Head Clara Maria. I would like to file a code of conduct complaint Can I submit by e-mail to you or what is the process?"

Through a series of e-mails I confirmed that it would not be necessary to submit a formal affidavit as required in the Code, unless it became necessary to revisit that issue. I did however require that the complaint be submitted in writing. On October 16, 2017 I strongly recommended (by email) that the Complainant consider an informal way to resolve any concerns. Prior to reviewing any e-mails or attachments I again requested on October 25, 2017 that the Complainant file a formal complaint so that I would not be prejudiced by reviewing any

materials in advance of receiving a complaint. The Complainant confirmed that he wished an investigation to commence.

I was subsequently provided with 19 separate complaint forms dated October 14, October 21, November 3, November 6 and November 22 relating to various incident dates. The complaints included complaints against employees of the Township as well as members of Council. This investigation will only deal with complaints against members of Council under the Code.

The complainant confirmed in his interview that all of his complaints were related to the decision of Council to prohibit motorized vehicle use of the former rail bed as it travelled through Stonecliffe. Our understanding of the issue is that for a number of years (decades) snowmobiles and ATV's have used the "legacy trail". 2016 was the first year that snowmobiles were allowed to use the former rail bed (now owned by the County) to drive through the village. Prior to the complaints, our firm provided legal advice to the Township related to liability for allowing the snowmobile club to use municipal roads, groom municipal roads and to deposit snow on municipal roads. Our firm has not provided any advice or opinions on issues related to possible nuisance impacts in villages related to trail use.

The Investigation:

To prepare for the investigation we reviewed and summarized all of the complaints. We also reviewed in detail the Code, all documents provided by the Complainant and those interviewed and listened to the audio files of the September 15 and October 17, 2017 meetings (open and closed sessions).

I interviewed the following people by telephone in order to understand the complaints and to obtain responding information:

Counselor Ernie Villeneuve
Councillor Chartrand
Mayor Reid
Councillor MacKay

ANALYSIS:

- 1. September 15, 2017 closed session of Council**
 - Subject of Complaint, Mayor Reid, Councillor Chartrand, Councillor McKay**

The written Complaint, as amended November 6, 2017, indicates that at the September 15, 2017 closed session of Council a discussion was held concerning legal advice pertaining to a complaint made by a staff member.

The Complainant confirmed in his interview that the nature of his complaint is that because Councillor Chartrand is related to the staff member who submitted the complaint that he should not have been at the meeting.

In Councillor Villeneuve's view the Mayor had a positive duty to ask members of Council if they have a conflict of interest and to ensure no member with a conflict of interest participated in the council meeting.

The Mayor disagreed that he had a duty to police members of Council in that manner.

The Complainant also believed that Councillor McKay was in breach of the Code as she is a sister in law to Councillor Chartrand. This represented an apparent conflict of interest because of the familial relationship between the councillors. It was not apparent after interviewing Councillor Villeneuve how Councillor McKay was in breach other than her failure to ensure Councillor Chartrand declared a conflict of interest. There is no legal obligation for a member of council to ensure any other member declares a conflict of interest (whether under the MCIA or the Code).

It is a well-established principle of law that the duty to disclose a conflict of interest (whether under MCIA or a conflict under a Code of Conduct) is a personal obligation of the individual councillor. No member of council has an obligation to ensure that other council members declare a conflict of interest. There is therefore no breach of the Code where the Mayor or any other councillor acts in accordance with established legal principles.

Councillor Chartrand had no pecuniary interest in this matter under the MCIA. There is no conflict of interest under the MCIA for siblings, and even if there were there were no financial consequences related to the complaint by the staff member or the vote.

However, Councillor Chartrand was related to the member of staff who brought the complaint. The staff member was seeking direction of Council to pursue the complaint. Under the Code members must avoid conflicts of interest, both real and apparent (s. 1.3).

In our view this undefined obligation is so broad as to be meaningless as a guide for council behaviour. The very fact that Councillor Villeneuve brought the complaint may in essence be evidence that the public perceive his actions as a conflict. In our view the fact a complaint is brought cannot, in and of itself, substantiate a conflict. If this were the case, there would be no need to conduct an investigation, and this cannot be the intent of the Code.

Notwithstanding the lack of guidance, it is a generally accepted understanding that a conflict of interest arises where a person cannot act independently or without bias or influence because of their personal interest or the interest of persons close to them related to the subject matter. We conducted our investigation using this more general interpretation of conflict of interest.

Using this definition, the question is whether an objective third party observer could conclude that a councillor could be influenced in his or her decision by their, in this case, family relationship with the subject matter to be decided? Given that Councillor Chartrand was related to the staff member who was seeking the direction of council to have the municipality pursue her complaint, it is reasonable for an objective third party to conclude that his judgement could be influenced by his relationship with the staff member. There is therefore a conflict of interest established for Councillor Chartrand under the Code.

2. October 17, 2017 closed session of Council

- Subject of Complaint, Mayor Reid, Councillor Chartrand, Councillor McKay

The written Complaint, as amended November 6, 2017, indicates that at a closed session of Council a discussion was held concerning legal advice pertaining to a staff member. The subject matter was relating to the same staff member and the same complaint as was discussed at the September meeting.

The complaint against Mayor Reid and Councillor McKay is the same as for the complaint related to the September 15, 2017 meeting. Our finding is the same; there is no breach of the Code by either the Mayor or Councillor McKay.

We note that in the October 17, 2017 open session Councillor Villeneuve acknowledged that the decision to declare a conflict of interest was a personal choice and that he was not asking Council to remove Councillor Chartrand's right to vote on the rail bed issue – this is inconsistent with the position taken by the Complainant in complaints 1 and 2.

We find that there is a breach of the Code by Councillor Chartrand related to this meeting for the same reasons as expressed above in complaint number 1. It is important to note that Councillor Chartrand did not attempt to hide his relationship (not that this was possible in the circumstances) nor did he vote in the open session on this matter. Based on the interview and the audio recordings of the meetings it is apparent that Councillor Chartrand was genuinely interested in making sure the municipality was making a sound decision based on objective factors. This does not eliminate the conflict, but it speaks to whether there is any need to sanction his behaviour.

3. CAO Open Session Meeting October 17, 2017

- Subject of Complaint, Councillor Chartrand

Councillor Chartrand is alleged to have made a statement in the open session of Council, with reference to Councillor Villeneuve, that he was, "a member of the Skidoo Club and a very active one. You didn't say the disclosure of pecuniary interest. I don't understand how you can have it both ways."

The Complainant alleges that the Code of Conduct for Members of Council items 1.1, 1.3 and 4.3 are breached by this behaviour. The Complainant believes that Councillor Chartrand questioned his integrity and defamed his character in public.

Section 1.1 requires that members act with high standards of conduct. Section 1.3 refers to acting with integrity, avoiding the improper influence of their office and avoiding conflicts of interest. Section 4.3 provides that, "a member shall not speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, creed, gender, intelligence, employment, sexual orientation, age, colour, marital status or disability."

None of these policies are breached in this instance. This is not a conflict of interest. The comments were not related to any of the characteristics identified in the discrimination provisions of the Code. The statement is in fact true. The fact that the Complainant's membership is not a conflict of interest under the MCI Act is not relevant. In much the same way that Councillor Villeneuve raised the issue of familial and other matters as potential conflicts of interest with respect to Councillor Chartrand's participation in the vote on the rail bed, Councillor Chartrand was entitled to raise the potential for a conflict of interest to arise for Councillor Villeneuve. Given the very broad language in the Code, Councillor Villeneuve might be considered to have a conflict of interest in this matter.

There is no evidence to suggest that Councillor Villeneuve had any actual conflict of interest under the Code because of his membership in the snowmobile club, any more than there is evidence to suggest that Councillor Chartrand had any conflict of interest because of his personal views about the rail bed and its impacts on residents. Both Councillors approached the issue from a different viewpoint, informed by their personal perspectives and within the matrix of the facts as they understood them. Both were entitled to raise the issue of a potential conflict of the other if they believed that to be a legitimate issue.

Neither breached the Code because they raised the issue. After reviewing the audio recordings it is clear that there was no breach of decorum or intemperate language or other behaviour that would rise to the level of a breach or demand a sanction.

Councillor Chartrand did not breach the Code.

4. October 17, 2017 open session council meeting - Subject of Complaint, Councillor Chartrand

At the same meeting referenced in complaint number 3 above the Complainant further alleges that Councillor Chartrand made a personal attack against him when Councillor Chartrand stated that Councillor Villeneuve's complaint about conflict of interest related to familial relations should also include himself, stating, "were you not married to [REDACTED] that would make you cousins to her [Councillor McKay] and cousins to me..."

Councillor Villeneuve stated in his interview that he had been divorced since 1992 and that his marital status was none of Council or the public's business. The Complainant believed that Councillor Chartrand was making a personal attack and trying to deflect the relevance of his own conflict of interest based on the familial relationships Councillor Chartrand had.

Councillor Chartrand's comments were not false and again the audio does not reveal that there was malice or intemperate language used in making the statement. In addition, Councillor Chartrand confirmed in his interview that it was not his intent to impugn Councillor Villeneuve's character; he believed that he was making the point that if a council member is arguing that a conflict of interest exists that "all conflicts should be on the table". As with the findings in complaint number 3 above, the raising of this issue is not contrary to the Code.

5. October 17, 2017 open session council meeting - Subject of Complaint, Mayor Reid

The Complainant alleges that the Mayor stated that he would not support the rail bed vote for the reason that he was angry with the County and fed up with snowmobiles. This is alleged to not reflect the interests of the community and show bias. It is alleged that the Mayor's mind was closed before the vote because he made this statement.

After reviewing the audio recording of the meeting, the characterization of the Mayor's comments are reasonable (not verbatim, but a reasonable characterization of the comments).

A member of a municipal council is not biased for the reason that they state how they intend to vote immediately prior to the taking of the vote on any matter. It is well settled law that a member of council is entitled to have strongly held views about matters being voted on. It is only improper for a member to have a closed mind or be unprepared to consider opposing viewpoints. This is an extremely high bar and one that is not met in this case.

On the facts as disclosed in the audio recording there is no evidence that Mayor Reid displayed any bias or was incapable of being persuaded of an alternate viewpoint. Whether the Complainant believes that the Mayor's stated reasons were reasonable or not is not the test for a closed mind. In his interview, Mayor Reid candidly admitted that he had expressed his position as part of the debate, but he was clear that he was prepared to listen to the debate and was open to being persuaded to revisit his position.

We find that there was no bias displayed and that the reasons and vote did not breach the obligations contained in the Code that all members act with integrity and to serve their constituents in a conscientious manner.

6. Letter dated April 24, 2017
- Subject of Complaint, Councillor Chartrand

The written complaint contained no details. Based on the interview with Councillor Villeneuve, we now understand the nature of the complaint to be that the April 24 letter and flyer attached is alleged to contain false information and disparaging comments about local businesses. In addition, the mere fact that the letter was endorsed (signed) by Councillor Chartrand should disqualify him from voting on the basis of a conflict of interest.

A full discussion of conflicts of interest is found above under complaint number 1. Based on that explanation, and after considering the nature of the letter, we find that there is no conflict of interest, real or apparent, disclosed by this letter. Councillor Chartrand advised that he was not involved in drafting the flyer and as such we did not consider the flyer as part of the investigation.

It is clear that Councillor Chartrand had a personal opinion about the rail bed; that is neither bias nor evidence of a conflict of interest. The Code does not specifically speak to an obligation to provide factually accurate statements in all private correspondence. There is however an obligation to act with integrity, which would include an obligation not to provide inaccurate or misleading information to Council. After our interview of both Councillor Villeneuve and Councillor Chartrand we find that the letter was not inaccurate, or any inaccuracies were a matter of nuance and viewpoint. There was no deliberate intent to mislead in the letter. There might be an argument that the endorsement of the April letter established Councillor Chartrand's position on the rail bed and that he was not prepared to be persuaded to change his mind (bias).

However, during his interview Councillor Chartrand indicated that he was initially in favour of the trail, but he was persuaded that the impact on residents was too much and this changed his mind. There is no evidence that Councillor Chartrand was biased or based his vote on any personal or other improper interests. The evidence indicates that Councillor Chartrand was prepared to consider alternatives and reconsider his position on the matter.

There is no breach of the Code by Councillor Chartrand related to the April letter.

7. October 17, 2017 open session council meeting
- Subject of Complaint, Mayor Reid

The Complainant accuses Mayor Reid of stating in the open session that Councillor Villeneuve made defamatory comments against 2 councillors. The Complainant believes that neither the letter he sent to Council nor the version of the letter that he read out in the open session were defamatory. It is the accusation that he was being defamatory that Councillor Villeneuve believes is a breach of the Code.

The Code requires that every member conduct themselves in a civil manner (s. 3.1). Section 4.1 requires that every member treat other members respectfully and without abuse or bullying. Section 4.2 prohibits using indecent, abusive or insulting words or expressions.

The discussion in open session reflected the intent of council to prevent discussion of identifiable members of council and allegations of conflicts of interest. While there may be a disagreement as to whether the letter or the revised version of the letter read in public by Councillor Villeneuve raised issues that were defamatory, the fact that the Mayor raised that issue is a proper point of order. The merit of the position is not at issue. The issue under the Code is whether the manner in which the Mayor raised the issue was disrespectful, uncivil, or amounted to abusive or bullying behaviour. A review of the audio recording does not disclose any behaviour that is offensive or contrary to the Code.

The Mayor did not breach the Code.

8. October 17, 2017

- Subject of Complaint, Councillor McKay

Councillor McKay is accused of making the same type of defamatory comments towards Councillor Villeneuve as discussed above in complaint number 7.

The audio recording does not disclose any behaviour that would constitute a breach of the Code by Councillor McKay.

It is important to note that Councillor Villeneuve sought to raise his view of what he perceived to be a conflict of interest in the public session. The obvious intent of his statements was to make public his views about whether Councillor Chartrand should be precluded from voting on the rail bed issue and perhaps identifying that his participation in closed session when the issue of the complaint made by a family member was discussed was improper. Were Councillor Villeneuve's actions defamatory? Does that behaviour constitute a breach of the Code? If so, is it a breach of the Code to seek to prevent further defamatory statements – and in so doing accuse the councillor of defamation? The answer to all of these questions is no.

The Code is not designed to prevent debate in Council. The purpose of the Code is to set expectations for council behaviour and to provide a mechanism to curb inappropriate and otherwise abusive behaviour. None of the action of councillors disclosed in the audio recordings is a breach of the Code. There was no bullying, intimidation or abusive behaviour displayed – by Councillor Villeneuve or any other member of Council.

Councillors will disagree; and sometimes disagree passionately. That is tolerated and to a certain extent expected, provided that the behaviour displayed does not degenerate into abusive, bullying or otherwise inappropriate behaviour.

Councillor McKay did not breach the Code.

9. Chartrand did not declare a conflict of interest in advance of the rail bed vote
- Subject of Complaint, Councillor Chartrand

This is the heart of the complaints.

As discussed in detail below, we find that there was no breach of the MCIA by Councillor Chartrand in voting on the rail bed issue.

10. Chartrand voted on the rail bed
- Subject of Complaint, Councillor Chartrand

If a finding of conflict were made out on the facts it would have been a breach of the MCIA for Councillor Chartrand to have voted on the rail bed issue. Given that we find there was no conflict there is obviously no breach.

It is important to note that even if there was a conflict of interest (which there was not) and even if the vote was a breach of the MCIA (which it was not) the vote would still be valid and binding on Council. A breach of the MCIA does not invalidate a vote.

11. October 17, 2017 open session council meeting
- Subject of Complaint, Mayor Reid

The allegation against Mayor Reid is that during the debate he stated that the 6 households who wrote the April 24, 2017 letter were more important to him than the 90 people who signed a petition in support of the rail bed trail (which petition was never presented to Council). The Complainant alleges that this discloses that employees of the municipality are more important than other ratepayers (based on Councillor Villeneuve's view that a number of the names on the April letter had received some payments from or were directly employed by the Township).

The Mayor candidly conceded that this is what he said (confirmed by reviewing the audio recording). The Mayor clarified his position in his interview that his view was that the households being directly affected were more important to his understanding and consideration of the issue than 90 part time residents of campgrounds who use the campground to snowmobile. He believed his obligation was to ratepayers, not visitors.

This is not bias or any other inappropriate behaviour that is prohibited by the Code.

Each member of Council will consider the facts and issues in a manner unique to that councillor – and the Code cannot dictate which facts are more important compared to any other facts. The Code is not intended to be used to punish voting behaviour or to seek retribution for the manner in which any particular councillor exercised his or her voting rights. The Code is

intended to guide council behaviour to create a civil, reasonable debate and to create a collegial atmosphere for discussing important civic issues and developing policy to direct growth and regulate the municipality.

Municipal Conflict of Interest Act:

Given the very broad, undefined use of the phrase “conflict of interest” in the Code, it is possible that the Code captures any conflict that would otherwise be subject to the *Municipal Conflict of Interest Act* (“MCIA”). In addition, the Complainant has alleged a specific MCIA conflict with respect to Councillor Chartrand. It is therefore necessary to consider the MCIA in the context of the Complaints.

Section 5(1) of the MCIA requires a member who has a “pecuniary interest, direct or indirect” in any matter under consideration by council or a local board to declare the conflict of interest, to not take part in the discussion of or vote on the matter, and to not attempt in any way to influence the voting of others on the matter.

Though the Act does not define the term “pecuniary interest”, the courts have consistently interpreted it to mean any interest that is financial in nature, irrespective of whether the matter under consideration by council would have a positive or negative impact on the financial interest of the individual councillor.

The starting point for analysis is to determine whether Councillor Chartrand had any pecuniary interest in the approval of the former rail bed as a trail for motorized vehicles. There are only two possible bases for a pecuniary interest: one, that the councillor could derive some income from the creation or use of the trail – which is alleged by the Complainant; or two, that there is some potential for the value of the Councillor’s home to be increased or decreased by the approval/use of the proposed trail – not alleged by the Complainant, but considered here.

Income Potential:

We reviewed invoices related to work that Councillor Chartrand did for the Township and in his interview the Councillor described the work that had been done for the Missing Link Snowmobile Club prior to the discussion and vote on the rail bed before Council. Councillor Chartrand confirmed that he had no reason to believe that he would receive any further work from the Missing Link Snowmobile Club related to the trail and the work he had done for the Township was not contingent on the trail being approved or not. Further, there was no evidence that any future work from the Township would be influenced by the rail bed issue. In the circumstances there is no evidence that the Councillor’s employment was affected positively or negatively by his vote on the trail.

Property Value:

We know that the Councillor expressed publicly his opposition to the trail and the basis for his opposition was perceived negative impacts on his use of his home – as well as generalized impacts to others in similar locations.

We do not have any evidence that there will be any impact on the value of the Councillor's home.

For purposes of this investigation we assumed that property value was relevant and we further assumed that there might be an impact on value, even though any impact on value has not been demonstrated. Even if we assume that there is a potential for the value of the Councillor's home to be negatively impacted, it is our opinion that there are two exceptions under the MCIA that eliminated the need for Councillor Chartrand to declare a conflict of interest.

Section 4 of the MCIA sets out a list of eleven different circumstances when a councillor who has a pecuniary interest is not required to declare a conflict and may continue to participate in council's deliberations. It is our opinion that the applicable exemptions are set out in subsection 4(j) and (k).

4. Section 5 does 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; or

(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.

An Interest in Common with Electors Generally:

This term is defined in the MCIA as follows:

"interest in common with electors generally" means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part;

We reviewed a number of court decisions that interpreted the meaning of the term more fully and provided greater clarity as to how it should be applied. The most succinct explanation was contained in the Ontario Court of Justice decision *Re: Ennismore Township* that adopted an earlier decision by the Saskatchewan Court of Queen's Bench in *Stewart vs. City of Yorkton*, which stated:

"In the case of *Stewart vs. Yorkton (City)*, it was held that an interest in common of the same kind, but different in degree, with a segment of the residents of the municipality, as opposed to all the residents of the municipality, does not disqualify the member from voting." [Our emphasis]

It is our opinion that this interpretation supports the position that the Councillor did not have a conflict of interest under the MCIA in the rail bed matter as any potential pecuniary interest in this matter was an interest of the same kind, but potentially different in degree, as all residents who will be able to see or hear the trail. Therefore, the Councillor had an interest in common with electors generally in the area in which the trail could potentially affect residents, which satisfies the exemption under the MCIA.

A Remote or Insignificant Interest:

A remote or insignificant interest is not defined in the MCIA. However, this section has been considered extensively. The most widely cited case that considers this section is an Ontario Superior Court of Justice decision in *Whitely v. Schnurr*, which stated:

On my analysis of section 4(k) in the context of the above-noted sections of the *Act*, it would be more useful to stipulate a test essentially in the terms of section 4(k). An appropriate form of words for such test would be 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?

The important point to be taken from this excerpt is that the test for whether the pecuniary interest is remote or insignificant is an objective one. The fact that it is not entirely clear whether the Councillor's property value might be affected by the proposed trail is a significant factor. In the absence of actual information that property values would be impacted, it is difficult to see how an impartial third party would consider Councillor Chartrand's pecuniary interests impacted. We must remember that the MCIA does not mandate that a councillor not have any opinion on a matter before Council; the Act is concerned only with interests that are pecuniary. In the circumstances we believe that an objective observer would consider any pecuniary interest, if in fact one exists, to be remote or insignificant.

RECOMMENDATIONS:

Notwithstanding the conclusion that there was a breach of the Code by Councillor Chartrand related to his participation (not vote) on an in-camera matter, we do not recommend that Council impose a sanction. The concept of conflict of interest is not defined in the Code and is so broadly stated that it provides no guidance to a member of Council. To sanction the councillor in the circumstances would be unfair.

The Code should be amended to better define conflict of interest and to provide guidance to members of council about what is expected.

It is readily apparent that the issue of the rail bed has divided the council and created a negative atmosphere. Polarizing issues arise in municipal politics and it is incumbent on members of Council to vote their conscience and attempt to represent the people that elected them. Councillors cannot lose sight of the fact that they act on behalf of others who have no vote.

We trust that this report will allow Council to put this issue behind them and to start fresh in an atmosphere that allows all councillors the freedom to express their views and the views of their constituents in a positive and constructive manner.