
TOWNSHIP OF NORTH DUMFRIES INTEGRITY COMMISSIONER,
GUY GIORNO

Citation: Deutschmann v. Rolleman, 2023 ONMIC 4

Date: December 31, 2023

REASONS FOR DECISION

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CONTEXT

1. Among their responsibilities, 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*. At the end of such an inquiry, the Integrity Commissioner shall decide whether to apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act, and shall publish reasons for the decision. 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.

THE APPLICATION

2. 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 *Municipal Conflict of Interest Act* (MCIA) by a member of council or a member of a local board.

3. Mr. Rob Deutschmann (the Applicant) alleges that Councillor Rod Rolleman (the Respondent) contravened section 5 of the MCIA by failing to declare a pecuniary interest in relation to a matter, and failing to withdraw from discussing and from voting on the matter, at the August 16, 2023, meeting of Council.

4. The Application was received September 7. I assigned it File No. 2023-04-MCIA.

DECISION

5. 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.

6. After considering all the evidence and the submissions of the parties, I have decided that I will not apply to a judge for a determination whether Councillor Rolleman has contravened the MCIA.

7. Subsection 223.4.1 (17) of the *Municipal Act* requires me to publish written reasons for my decision. These are my reasons.

BACKGROUND

8. This inquiry arises from consideration of the 10-Year Capital Forecast at the August 16 Special Council Meeting. The Ayr Community Centre (ACC) was a topic of discussion and the subject of a Council resolution. Councillor Rolleman owns property near the ACC.

9. Mr. Deutschmann, the Applicant, alleges that Councillor Rolleman had a pecuniary interest in the discussion and vote pertaining to the ACC.

10. Councillor Rolleman, the Respondent, did not declare a pecuniary interest on August 16. Councillor Rolleman participated in decision-making and voting on the 10-Year Capital Forecast, including on the resolution affecting the ACC.

11. The August 16 Special Council Meeting was the first Council meeting of the 2024 Budget process. As is typical of such a meeting, Council was expected to provide only preliminary direction to the staff, and no decision would be final. Budget-making is a long process and this was only a first step; nonetheless, the MCI Act applies to decision-making on a first step if the decision has a potential to affect a pecuniary interest.¹

12. Two staff reports were before the meeting. Report No. FIN-17-2023 (2024 Budget Drivers and Schedule) sought Council's direction on an estimated 2024 budget increase, to provide guidance to the staff in its preparation of the draft 2024 Operating and Capital Budget. It also sought Council's approval of a proposed schedule of Council and committee meetings related to development of the 2024 Budget. Council approved the report's recommendations, including the guideline of a maximum 3.5 per cent increase in the municipal tax rate after accounting for assessment growth.

13. More than 90 per cent of the meeting² was devoted to Report FIN-18-2023 (10-Year Capital Forecast 2024-2033 - First Draft). As its title indicates, the report included the first draft of a ten-year capital forecast for the years 2024 to 2033 inclusive. Its purpose was to give Council an overview and to invite a "roundtable discussion" that would assist the staff in its on-going work on and refinement of the ten-year capital forecast as part of development of the draft 2024 Budget.

14. The capital report was long and detailed, consisting of 13 pages of text and an additional 15 pages of spreadsheets. It forecasted more than \$127 million of capital expenditure over the ten-year period. The forecast represented an increase of more than \$16 million (almost 13 per cent) since Council's last review of the capital plan in January 2023. According to the report, three projects were the most significant contributors to the

¹ *Re Greene and Borins*, 50 O.R. (2d) 513 (Div. Ct.).

² The entire meeting lasted 176 minutes. Consideration of the second report, including presentation, discussion and voting, took 160 minutes.

increase in the forecast: the partial demolition and rebuild of the Public Works Operation Centre at 1168 Greenfield Road, and two linked projects, “twinning” of the arena in the North Dumfries Community Complex (NDCC), and “adaptive re-use” of the ACC.

15. The two linked projects were the subject of most of the August 16 discussion and of the resolution subsequently adopted. That discussion and resolution are what give rise to the allegation that the MCI was breached.

16. The Township currently operates two single-pad arenas: the Ayr Farmer’s Mutual Insurance Company Arena, located in the NDCC, and the Queen Elizabeth Arena, located in the ACC. Both arenas are in Ayr, and they are less than 3 km (about a five-minute drive) apart.

17. According to a study presented to Council, in 2020 the demand for ice time was equivalent to 1.5 ice pads, estimated to grow to a need for 2.3 ice pads by 2031. The study found that the ACC could not accommodate the entirety of the increased demand, in part because its ice pad is not regulation size, it has small change rooms and a small lobby, and its ice quality is inconsistent.

18. Until the August 16 meeting, the Township had been moving in the direction of a plan to place two ice pads at the NDCC (the “twinning” project) and to re-purpose the ACC’s arena space (the “adaptive re-use” project). The projects were to be sequenced so that two ice pads would be available to the community at all times. In other words, the ACC would not be re-purposed until both pads at the NDCC were operational.

19. In 2022, the Township set aside funding to start the design phase of the NDCC twinning, a consultant was retained, and work on this phase began. The original target was for construction to be complete in 2025.

20. By the time of the August 16 Special Council Meeting, the estimated costs of both the NDCC twinning and the ACC adaptive re-use had significantly increased, by \$4.8 million and \$3.3 million, respectively.³ In addition, the 2023 federal and provincial budgets provided for no grant programs under which the twinning project might be eligible; the Township had been counting on grant revenue of roughly \$6.8 million to offset the cost. Combined, the cost increases and likely absence of grant funding would mean a negative financial impact of roughly \$15 million.

³ All figures in 2023 dollars. FIN Report No. 02-2023 (January 26, 2023) had pegged the twinning construction cost at \$13.6 million. The new total estimate was \$18.4 million, including professional services and a building addition for the Ayr Centennials (Junior B). The same report listed \$2.6 million in anticipated capital expenditures related to the ACC. The new total estimate was \$5.9 million.

21. The alternative, to abandon the twinning project, would carry its own costs. The ACC's ice chiller is old and cannot be used past September 2025.⁴ Under the NDCC twin-pad plan, this would have been manageable, but if the ACC will continue to house an ice rink, then its entire ice plant and refrigeration distribution system must be removed and replaced, and other repair and rehabilitation will be necessary. The staff report estimated that an estimated capital expenditure of more than \$5.9 million would be needed to keep the ACC ice pad operating beyond 2025. This amount does not include the costs of any capital upgrade at the NDCC (such as a gymnasium) that might be undertaken in lieu of twin ice pads.

22. The staff report identified an additional challenge. For the NDCC twin pads to open before the ACC's old ice chiller is decommissioned in September 2025, the Township would need to issue a call for tenders in Fall 2023, and start construction on the NDCC twinning in early 2024. Yet, the availability of grant funding (currently, none) would not be known until the announcement of future years' federal and provincial budgets.

23. For more than two hours on August 16, Council Members discussed how to manage the new financial reality and to grapple with goals that seemed incompatible. Most agreed that two, regulation-size, ice pads at the NDCC would be the ideal outcome for the Township. At the same time, all favoured a fiscally-responsible plan, and the updated cost projection (including the lack of grant revenue) seemed to make twinning untenable. Most also felt that to operate just one Township ice pad was a result to be avoided.

24. Only near the very end of the lengthy discussion did a consensus emerge; it was incorporated into the following motion (C-320-23), which was moved by Councillor Wilms, seconded by Councillor Rolleman, and carried unanimously:

 THAT Council undertake the building rehabilitation and design of the new ice surface at the ACC in 2024;

 AND THAT Council direct staff to establish a reserve for a future gymnasium at the NDCC in 2028.

25. The effect of the resolution is to abandon the NDCC twinning project and to make the capital investments necessary to continue to operate the ACC ice pad for the foreseeable future. The NDCC's one ice pad will continue to operate, and construction of a gymnasium there is targeted for 2028.

⁴ The Technical Standards and Safety Authority had informed the Township that the chiller will not be recertified (and, consequently, cannot be safely or lawfully operated) beyond September 2025.

PROCESS FOLLOWED

26. The *Municipal Act* does not direct the procedure that an Integrity Commissioner must follow in handling MCIA applications. I have chosen to follow a process that ensures fairness to both the individual making the application (Applicant) and the Council Member alleged to have contravened the MCIA (Respondent).

27. This fair and balanced process begins with me issuing to both parties a Notice of Inquiry that sets out the issues. The Notice of Inquiry includes a copy of the Application for an MCIA Inquiry. The Respondent is made aware of the Applicant's name. I do, however, redact personal information such as phone numbers and email addresses.

28. The Respondent has an opportunity to respond. The Applicant receives the Respondent's Response and is given an opportunity to reply. I may accept supplementary communications and submissions from the parties, generally on the condition that parties get to see each other's communications with me. I do this in the interest of transparency and fairness.

29. I typically set deadlines for the submission of a Response and a Reply, but give reasonable extensions when requested.

30. I received the Application on September 7 and issued the Notice of Inquiry on September 15.

31. In the Notice of Inquiry, I informed the parties that I would be considering whether Councillor Rolleman contravened section 5 of the MCIA. The Notice identified the following two issues: Does Councillor Rolleman have a direct or indirect pecuniary interest, including a deemed pecuniary interest, in the ACC development? If so, did Councillor Rolleman disclose the interest and take the steps required by section 5 of the MCIA?

32. Councillor Rolleman responded to the Application on September 21. Mr. Deutschmann replied on September 28. Councillor Rolleman provided a sur-reply on November 15. I received additional submissions from Mr. Deutschmann on November 26, and from Councillor Rolleman on November 20 and November 27.

33. I conducted interviews of the Applicant and the Respondent. During his interview, Councillor Rolleman was accompanied by legal counsel, Mr. Ron Craigen. I interviewed witnesses, including Mr. Andrew McNeeley, the Township's Chief Administrative Officer, and Mr. Tyson Hirschberger, a real estate broker with Planet Realty Inc., in Guelph. (The evidence from each witness interview was used in this inquiry and in the parallel inquiry involving a different Respondent: 2023 ONMIC 5.) I also considered a letter from Mr. Hirschberger and continued his interview by email. I reviewed documentary evidence, including maps, diagrams, minutes and reports. I also watched and listened to the entire

recording of the August 16 Special Council Meeting. Finally, I read and considered relevant jurisprudence.

34. In making my decision, I have taken into account all the submissions of the parties and all of the evidence obtained during the inquiry.

POSITIONS OF THE PARTIES

Respondent's Position

35. Councillor Rolleman's position is that he did not have any pecuniary interest in the matter before Council. Alternatively, any pecuniary interest is an interest in common with electors generally,⁵ and any interest would be so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence him.⁶

36. Councillor Rolleman acknowledges that he owns and resides in a house in the same neighbourhood as the ACC. The home was built in the 1840s. He and his family have lived in it since 1992. He notes that the ACC was built during the 1950s, and its arena (the Queen Elizabeth Arena) was replaced during the 1970s using provincial government funding.

37. He explains that he did not declare a conflict of interest on August 16 because the ACC was going to continue as a municipal community asset. In his view, whether it is to be used as a gymnasium or as an ice surface does not represent a substantive change in use; the community programming spaces and community hall rentals would also continue.

38. Councillor Rolleman submits the following (citations in the footnotes of this subsection are to cases relied on by the Respondent):

39. The Applicant has the burden of proof, but has failed to adduce any genuine evidence to establish a pecuniary interest in the participation and vote to pursue the maintenance and rehabilitation work required at the ACC, a pre-existing recreation facility.

40. The jurisprudence makes it clear that the work of municipal councillors would be wholly ineffective if disqualification could result from mere conjecture and speculation rather than from inferences based upon facts.⁷ There must be an actual conflict and the pecuniary interest established must be definable and real rather than hypothetical. The court must consider whether it is probable that the matter before Council will affect the

⁵ MCIA, clause 4(j).

⁶ MCIA, clause 4(k).

⁷ *Jafine v. Mortson* (1999), 43 O.R. (3d) 81.

financial interests of the member. Hypotheticals and speculation do not provide a useful foundation to determine the existence of a definable pecuniary interest, nor the probability that a member's financial interests will be affected.⁸

41. The ACC is not a new development. It is an existing facility that has been in place since the 1950s, predating by decades the purchase of the Councillor's home in 1992. To the extent that it can be asserted that the existence of the ACC as a community amenity could add some undefined value to homes in the vicinity, that undefined value was already in place and baked into the value of the Councillor's home before purchase.

42. The matter before Council in August did not concern some new development altering the character of the neighbourhood in some fashion that could add some new definable value to homes in the general vicinity. The matter before Council was how best to maintain and preserve the usefulness of existing recreation facilities in the context of planned capital projects that have been impacted by rising costs estimates and uncertain funding.

43. There was no development opportunity for the Councillor, no expropriation of his property, no rapid transit passing by the Councillor's home and no change in the character of his neighbourhood. The motion on which he voted was directed toward necessary maintenance of an existing facility so that it could continue its usefulness as an ice rink for the foreseeable future. His actions were a proper discharge of his responsibilities as a Council Member and did not create any type of pecuniary interest or benefit that would require disqualification.

44. Alternatively, any interest would be an interest in common with electors generally. The phrase "electors generally" does not mean all electors. It means those electors in the area in question who are "affected" by the matter.⁹ If the alleged pecuniary interest is characterized as a rise in property values in the vicinity of the ACC or as access to a recreational facility, then all affected property owners in the vicinity or all persons classed as recreation users would be affected in the same way as the Councillor.

45. The Councillor derived no personal economic value or benefit from his actions. Instead, he advanced the interests of all constituents by ensuring that the existing ice surface is maintained despite the original forecasted plan being negatively impacted by rising costs and uncertainty of available grant funding. In doing so, he acted as a prudent manager of a municipal asset, for the benefit of all constituents. He did not serve any personal economic interests and no such benefit was obtained.

⁸ *Lorello v. Meffe*, 2010 ONSC 1334 (CanLII); *Yorke et al v. Harris*, 2020 ONSC 7361 (CanLII).

⁹ *Tuchenhagen v. Mondoux*, 107 O.R.(3d) 675, 2011 ONSC 5398 (CanLII), at paras. 42-43, citing *Re Ennismore Township*, [1996] O.J. No. 167.

46. In the further alternative, any interest is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the Councillor in his deliberations. According to the Court of Appeal in *Ferri v. Ontario (Attorney General)*,¹⁰ the test to be applied asks, “[w]ould a reasonable elector, being apprised of all of 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?”¹¹

47. In *Craig v. Ontario*,¹² the Court observed that the terms “remote” and “insignificant” meant, respectively, “having very little connection with or relationship to” and “lacking in importance.” Given that the alleged pecuniary interest in this matter cannot be adequately described, it is impossible to imagine how a reasonable elector could conclude that it is more likely than not to influence the Councillor’s actions and vote.

48. Further, some of the circumstances that would need to be considered would include: a) the information in the staff report identifying the funding challenges and the need to maintain two usable ice surfaces while confronting the issues impacting the original plan to build a second ice surface at the NDCC; b) the fact that it was known to the Mayor and Council Members, the CAO, and staff members in attendance that Councillor Rolleman’s residence was in the vicinity of the ACC and no one voiced any concern regarding his participation; c) the fact that maintenance of the ACC was necessary in the circumstances and of benefit to the entire community; d) the fact that he has served the community as a Council Member for almost ten years without a record of ethical breaches; e) the fact that if there was any prospect of some lift in property values (which the Councillor denies existed) it would be negligible as it has not been quantified and, in any event, it would impact other property owners in the vicinity in the same fashion; and f) when a similar complaint was raised by the Applicant in 2016, Councillor Rolleman sought legal advice and was advised that he did not have a conflict regarding day-to-day, general matters concerning the ACC and should use his discretion if a future matter appeared to involve a substantive change of use. (On a subsequent occasion, the Councillor did declare a pecuniary interest, as it appeared that the discussion might contemplate closing the ACC and he considered that this would be a substantive change of use leading to some form of development. In total, the Councillor declared pecuniary interests on 12 occasions between November 2014 and September 2023.)

49. If there was any real prospect of an actual pecuniary interest, then it was exceedingly remote and insignificant. The thought that there could possibly be some impact on the value of the Councillor’s property as a result of his actions in connection with this matter never entered his mind. He was focussed completely on doing the right thing and making the best decision that he could to benefit the entire community.

¹⁰ 2015 ONCA 683.

¹¹ See also *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at paras 63-79.

¹² 2013 ONSC 5349 (CanLII).

50. The surface area of Ayr is 5.76 square kilometres or 2.2 square miles. Much of this area is comprised of outlying farm and rural properties beyond the main residential population centre. The vast majority of the village residents reside within 1 kilometre of the ACC. All residents of Ayr reside less than 2 kilometres from it. Based on an average walking speed, most residents are within a 10-minute walk of the ACC, and virtually all residents are within a 20-minute walk of the facility. A cyclist or driver would obviously reach the ACC much faster than a pedestrian.

51. To the extent that renovation or maintenance work at the ACC would actually have some sort of definable impact on real estate properties in the vicinity sufficient to constitute a pecuniary interest, such an interest would be an interest in common with the residents generally in the vicinity given the ready and immediate access available.

52. Councillor Rolleman also addressed the letter of Mr. Tyson Hirschberger, on which the Applicant relies. He states that the letter lacks any factual basis or data in support of its conclusion. There is no statement of assumptions made, no description of any research conducted or comparable circumstances relied upon to demonstrate how the opinion was formed. More importantly the letter fails to identify any actual or definable pecuniary interest that exists. On its face the letter is simply a bald speculation and contains numerous vague hypotheses (about vehicular and pedestrian traffic, decommissioning the building, allowing the facility to deteriorate, and exploring alternate uses such as housing) that have no bearing on the action taken.

Applicant's Position

53. Mr. Deutschmann submits the following (citations in the footnotes of this subsection are to cases relied on by the Applicant):

54. Councillor Rolleman's description of the comprehensive discussions surrounding the ACC and connection with the NDCC, and consideration of various options, clearly identify the very issues that are relevant to declaring a conflict of interest by a councillor where such a conflict exists. The purpose of the MCIA is to ensure that councillors do not engage in discussions on matters before council that may have, or appear to have, some impact on their pecuniary interests, either direct or indirect.

55. According to Justice Holland, in *Greene v. Borins*:¹³

The question which must be asked and answered is: "Does the matter to be voted upon have a potential to affect the pecuniary interest of the municipal councillor?"

It is of no consequence, in my opinion, what the nature of the effect might be – for his betterment or otherwise – as long as it may be seen by the public to affect that pecuniary interest.

¹³ 1985 CanLII 2137 (ON SC).

Nor is it of any consequence how the vote was cast, the outcome of the vote, or the motive of the municipal official. The very purpose of the statute is to prohibit any vote by one who has a pecuniary interest in the matter to be considered and voted upon. It is only by strict observance of this prohibition that public confidence will be maintained.

56. The test for a pecuniary interest is a balance of probabilities.¹⁴

57. Councillor Rolleman lives close to the ACC. From the western front corner of the ACC building, to Councillor Rolleman's front door, the distance is 85 m. From the parking lot on the west side of the ACC, to the rear of his property, the distance is less than 85 m.

58. The location of Councillor Rolleman's property brings it within proximity of the ACC where the work proposed for the ACC would have an impact on Councillor Rolleman's pecuniary interest.

59. Councillor Rolleman's pecuniary interest is direct and arises as a result of ownership of property within the immediate vicinity of the ACC and the potential impact that any changes to the ACC may have on that property, whether positive or negative.

60. The interest of the Councillor Rolleman is not remote or speculative. The cost of proposed renovations to the ACC is considerable, and it would be difficult to say that a municipal building receiving significant investment will not have impact on the value of properties, positive or negative, in the area of the ACC. Councillor Rolleman's property is well within the area where property values will be impacted.

61. As noted in *Lorello v. Meffe*,¹⁵ integrity in the discharge of one's public duty is paramount. When a question of private interest arises, the court will not weigh its extent nor amount when determining the issue. The fact that an amount involved is "trifling" does not make a difference. A breach does not change because its extent is small.

62. In *Tuchenhagen v. Mondoux*, the Court noted the MCIA concerns transparency and the certainty that decisions are made by people who will not be influenced by any pecuniary interest in the matter at hand:¹⁶

The MCIA is important legislation. It seeks to uphold a fundamental premise of our governmental regime. Those who are elected and, as a result, take part in the decision-making processes of government, should act, and be seen to act, in the public interest. This is not about acting dishonestly or for personal gain; it concerns transparency and the certainty that decisions are made by people who will not be influenced by any personal pecuniary interest in the matter at hand. It invokes the

¹⁴ *Lorello v. Meffe*, 2010 ONSC 4532 (CanLII), at paras. 63, 65; also, Robert M. Forbes, Armand G.R. Conant, Roger G. Conant, *Protecting the Local Official: Municipal Conflict of Interest, Plus: What it Means, What it Says: A Handbook*, 1997.

¹⁵ Note 14.

¹⁶ 2011 ONSC 5398 (CanLII), at para. 25.

issue of whether we can be confident in the actions and decisions of those we elect to govern. The suggestion of a conflict runs to the core of the process of governmental decision-making. It challenges the integrity of the process.

63. The above passage speaks to the point raised by Councillor Rolleman about whether he is acting in the best interests of the community. Compliance with the MCIA is “not about acting dishonestly or for personal gain.” The MCIA applies to all situations where a councillor has or is deemed to have a direct or indirect pecuniary interest. There is no need to find corruption on the part of the councillor. A councillor is in contravention of the MCIA where the councillor fails to “honour the standard of conduct prescribed by the statute, then, regardless of his good faith or propriety of his motive.”¹⁷

64. There is a suggestion by Councillor Rolleman that the work to be done at the ACC has been finally determined by the Township. This is not the case. Renovation and re-purposing of the ACC are not the only potential uses of the ACC and its lands. Other potential uses could be made of the ACC land: for example, residential development. Those decisions may still be considered as no final plan has been determined.

65. If Councillor Rolleman is suggesting that a final plan has been determined by Council, then his participation in consideration of that final plan was a conflict. The different potential uses (the one that was chosen and the ones not chosen) would have differing impacts on Councillor Rolleman’s pecuniary interest. Councillor Rolleman’s particular interest brings him into conflict in Council’s ongoing discussions and consideration of the ACC.

66. In his Response to the Application, Councillor Rolleman does recognize that there are other potential uses for the ACC for which he might have to declare a conflict. He acknowledges that a substantive change in the ACC would result in a conflict. In fact, any substantial renovation of the ACC that maintains its existing use, or that re-purposes to non-ice recreational activities, is a substantial change. The final use of the ACC has not been established. The municipality is still considering the ten-year capital plan, of which discussion of the ACC is a significant matter. Further, Councillor Rolleman’s continued participation has the potential to restrict the discussion of other uses, such as housing, parking or parkland.

67. *Tuchenhagen v. Mondoux* dealt with a councillor’s interest in purchasing a property and interest to view the property. The councillor’s interest was considered to arise when he emailed staff expressing interest in the property. The councillor had not bid on the property. Regardless, this was considered sufficient to raise a pecuniary interest. There were issues which there could be “meaningful discussions” and there was the “prospect of some decisions being made.”¹⁸

¹⁷ *Ibid.*, para. 27.

¹⁸ *Ibid.*, at paras. 48-50.

68. In *Re Jackson and Wall*, a municipal council was dealing with a proposal to construct a new arterial road to relieve traffic, and the respondent, who resided on the existing street, was found to have an interest in the matter.¹⁹

69. In this matter, Councillor Rolleman directly and indirectly, personally and through his spouse, has interests in properties that are beside or in the immediate vicinity of the ACC. The staff report (Report FIN-18-2023) presented options for renovations to the ACC ranging in estimated cost from \$5.9 million to \$8.1 million.

70. Councillor Rolleman's interest is more direct than the interest considered in *Yorke v. Harris*.²⁰

71. *Craig v. Ontario*²¹ is also distinguishable. Mayor Craig's son owned a townhome near a potential light rail stop in Cambridge. The Region was determining and building a light rail transit system for Kitchener and Waterloo. While there were discussions of a future stage 2 to Cambridge, it was anticipated that any work on that extension would be 10 to 15 years out. Any "land uplift" would not have been shared with Mayor Craig. Further, the Mayor acted appropriately in declaring a conflict immediately when the deemed pecuniary interest came into existence. In contrast, Councillor Rolleman would be directly impacted by any impact on the value of his property by work contemplated for the ACC. There is a proposal for a significant investment in the ACC.

72. Councillor Rolleman discusses the changing circumstances involving the potential uses for the ACC. It is for this very purpose that the MCIA is relevant. Councillor Rolleman, by virtue of ownership of his residence, had a direct pecuniary interest in these discussions and any votes.

73. Councillor Rolleman notes that he made the best decision for the benefit of the entire community. No one is suggesting that Councillor Rolleman has ever acted in other any way. However, as the court noted in *Tuchenhagen v. Mondoux*, the issue is not whether a councillor has acted because of an improper motive or lack of good faith.²²

74. The fact that no other Council Member or staff member raised any concerns about Councillor Rolleman's participation in discussions and votes regarding the ACC is not a relevant consideration. The decision to declare a conflict is personal to each Member.

75. Councillor Rolleman has a conflict of interest in the matters before the municipality dealing with the ACC and he should declare such a conflict in future discussions and conduct himself as required by the MCIA. Further, given that future uses of ACC and

¹⁹ 1978 CanLII 1714 (ON SC).

²⁰ Note 8.

²¹ Note 12.

²² Note 16, at para. 28.

future uses considered for the NDCC are intertwined, Councillor Rolleman should declare a conflict and not participate in any Council discussion that deals with either the ACC or the NDCC.

76. This matter does not fall under any MCIA exception.

77. The interest of Councillor Rolleman cannot properly be described as an interest in common with other ratepayers. This is not a community interest but is a particular interest of the Councillor. While he may have an interest in common with electors regarding recreational space and amenities in the community, his ownership of property immediately adjacent to, or in the immediate vicinity of, the ACC, provides him with an interest that is not in common with electors. His pecuniary interest, and the impact to his property, are not shared by others in the community whose properties are farther from the ACC. Councillor Rolleman's interest is particular to him. The decisions and actions with respect to the ACC will have a more significant impact on his pecuniary interest than others in the community.

78. In *Tuchenhagen v. Mondoux*, the Court rejected a narrow interpretation of the common interest exception.²³

79. In *Jafine v. Mortson*,²⁴ the respondent did not have "an interest in common with electors generally" because his interest was immediate, particular, and distinct from the public interest.

80. Councillor Rolleman does not benefit from the interest-in-common exemption. There may be a commonality of interest based on access to recreational opportunities, but that is not the consideration. The issue that has to be considered is the financial impact or pecuniary interest, positive or negative. His impact is not the same as this impact on those owning properties located in other parts of Ayr or North Dumfries. This impact is not the same as a decision about property tax rates.

81. *Ferri v. Ontario*²⁵ was very different. It involved a matter of indirect pecuniary interest, arising through the councillor's son's employment. The son worked for a law firm that was involved an appeal of the municipality's Official Plan. Ferri received no benefit from his son's compensation and Ferri's compensation and employment did not depend on the outcome of the appeal of the Official Plan or any decision of council respecting these matters. Councillor Rolleman's matter involves a direct pecuniary interest given that he owns his home near the ACC.

²³ Note 16, at paras. 40-43.

²⁴ Note 7.

²⁵ Note 10.

82. Mr. Deutschmann submitted a letter from Mr. Hirschberger, real estate broker. I discuss Mr. Hirschberger's evidence under the next heading.

FINDINGS OF FACT

83. In making my determination, I rely on the facts in the Background section of this report, and in this Findings of Fact section.

84. Findings of fact are made based on the standard of the balance of probabilities. The findings are based on interviews of the parties and witnesses, and consideration of the other evidence.

85. The NDCC's arena was opened in 2011. The current ACC arena was completed in 1977.

86. The ACC was significantly renovated in 2013. Alterations and enhancements included a lift, barrier-free access, washroom renovations, a new HVAC system and upgraded lighting.

87. According to Google Maps, walking distance from Councillor Rolleman's house to the ACC is 140 m. (This is different from the Applicant's measurement because Mr. Deutschmann used straight-line distance.)

88. Township By-law Number 971-87, as amended by By-law Number 3129-20, designates Councillor Rolleman's house as of cultural heritage value under section 29 of the *Ontario Heritage Act*. Schedule A to By-law Number 3129-20 states that the house was likely built between 1847 and 1852.

89. Because the house has been designated, its alteration or demolition is subject to restrictions. One effect of the 2020 amendment to the designation was to extend the alteration and demolition restriction from "exterior elevations of the house" to the entire house.

90. On August 16, Councillor Rolleman did not declare a pecuniary interest. He participated actively in the discussion and voted.

91. The ACC has multiple current uses beyond hockey and skating. It is home to Ayr Community Theatre, the Ayr Pipe Band, and the Ayr-Paris Band. It is used for fitness classes. It hosts community events, such as tonight's Ayr 200 New Year's Eve Celebration. Its hall is used for weddings, banquets, charity events, and rentals.

92. The Township has not proposed or considered closing the ACC or changing its status from that of a municipal facility in active use.

93. In the staff report on the ten-year plan, and during Council's entire discussion on August 16, closing the ACC was never suggested or mentioned. The discussion was on how, not whether, the ACC would be used.

94. Multiple interviewees confirmed that, because of the need to transport gear, driving is almost always the preferred method of travel to hockey practices and games. I find as a fact that, for hockey players and their families, walking distance to an arena is a virtually irrelevant consideration.

95. Ayr's settlement area is very small. Driving access to the ACC (and to the NDCC, for that matter) is roughly equivalent no matter where in the settlement one lives.

96. To the extent that motive is relevant, I accept and I find that on August 16 any possible impact on the value of Councillor's Rolleman's never entered his mind, and that he was focussed completely on doing the right thing and making the best decision he could to benefit the entire community.

97. Mr. Tyson Hirschberger has expertise in real estate. He has at least ten years experience as a broker in southwestern Ontario and is the Immediate Past President of the Guelph & District Association of Realtors. The Applicant invited him to provide evidence on the assumption that Mr. Hirschberger is geographically close enough to provide a relevant perspective while, at the same time, possessing no ties to North Dumfries municipal politics or business.

98. The relevant portion of Mr. Hirschberger's letter reads as follows:

I'm aware that Council is currently contemplating large-scale renovations to both the North Dumfries Community Complex and the Ayr Community Centre. In the short-term, large scale renovations can create additional traffic, noise pollution, inconvenience and uncertainty – each of which can have an impact on surrounding neighbourhoods, prospective future residents and, most of all, existing residents and businesses. These would be exacerbated should someone have an inclination to sell or purchase a nearby property while the construction is underway as prospective buyers would be subject to the above. Impacts are felt to a greater magnitude in the immediate vicinity of the amenity, and would lessen in a non-linear fashion the further from the amenity a property resides.

In the long-term, one would reasonably expect these decisions to have a material impact on the values of nearby properties. Depending on the course chosen, the value of properties in the immediate vicinity of the Ayr Community Centre could be positively impacted by a wholesale remediation. At the same time, a decision to decommission the building, downgrade its current function, or remove it altogether is likely to have an adverse effect on the surrounding real estate – as the utility of the space for the benefit of the public stands to be diminished. Adjacent businesses would also expect to see impacts to value from factors such as vehicular and pedestrian traffic in various scenarios.

Exploring alternative uses for the property, ie. housing, could be part of Council's discussions, and would also have positive or negative impacts on surrounding values, depending on the type of housing established. It's also important to consider that taking no action and allowing the ACC to languish and deteriorate, or seeing the facilities continue to provide sub-optimal recreational facilities would also negatively impact surrounding homes at either or both facilities.

99. The Applicant also submitted to me a September 27 email from Mr. Hirschberger in which the latter commented on an aerial image showing the proximity of the Respondent's house to the ACC. Mr. Hirschberger wrote:

Further to my letter dated September 20, 2023, I would suggest that the value of property located as near to the community recreation facility as the one shown in the attached diagram would be impacted by the improvement or degradation of said recreation facility.

100. In addition to reviewing Mr. Hirschberger's letter and email, I interviewed him on November 13, and followed up a few weeks later with additional questions, to which he replied on December 11. I found Mr. Hirschberger to be a knowledgeable and credible witness, and I have taken his comments into account.

101. During the interview, Mr. Hirschberger explained that allowing a facility to "languish" will have a likely impact on the value of nearby properties, particularly those within hearing distance or "line of sight" – that is, neighbours who can see an eyesore or hear noise. On the other hand, the perceived difference between alternate public uses of a facility – I asked specifically about an ice rink versus a community centre not including an arena – is more subjective. It is "hard to put a dollar value" on the impact.

102. In response to an email follow-up question, Mr. Hirschberger stated that the impact on value of proximity to an ice rink would "be minor relative to, for example, the condition of the house, level of finish, size, etc."

ISSUES AND ANALYSIS

103. I have considered the following issues:

- A. On August 16, did Councillor Rolleman have a direct or indirect pecuniary interest, including a deemed pecuniary interest, in the matter considered by Council?
- B. If so, was he exempt from disclosing the interest and taking the steps required by section 5 of the MCIA?
- C. Should I make an application to a judge under section 8 of the MCIA?

104. Issue A is worded somewhat differently than in the Notice of Inquiry, but not in a manner that causes prejudice to either party. The Notice of Inquiry referred to “the ACC development.” I have replaced it with “the matter considered by Council” to follow more closely the wording of the MCI A.

105. Issue B is also worded differently than in the Notice of Inquiry. It is accepted by everyone that Councillor Rolleman did not disclose an interest and did not withdraw from discussion, decision-making and voting. Both parties made submissions on the issue as I have framed it above: Did an exception apply?

A. *Did Councillor Rolleman have a direct or indirect pecuniary interest, including a deemed pecuniary interest, in the matter considered by Council?*

106. I agree with Mr. Deutschmann that the question is the one formulated by the Court in *Re Greene and Borins*: “Does the matter to be voted upon have a potential to affect the pecuniary interest of the municipal councillor?”²⁶

107. I agree with Mr. Deutschmann that this question must be answered on the basis of the balance of probabilities.²⁷

108. I also agree that the direction of the impact on a Council Member is irrelevant to whether a pecuniary interest exists. The impact may be positive or negative,²⁸ what counts is that the Council Member possesses a pecuniary interest in the matter.

109. I agree with Mr. Deutschmann on the irrelevance of the fact that nobody raised any concerns about Councillor Rolleman’s participation. The MCI A obligation to declare a pecuniary interest and to withdraw from decision-making falls on the member. It does not matter whether someone else has flagged the issue for the member, nor does it matter whether participants in a meeting agree that the pecuniary interest does not require the member’s recusal.

110. I only partly agree that the extent or amount of a pecuniary interest is irrelevant under the MCI A. The size of the interest is irrelevant to whether a pecuniary interest exists. However, once a pecuniary interest is found to exist, its size is relevant under clause 4(k), which exempts, “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.”

111. Finally, I only partly agree that that MCI A restrictions apply, in the words of the Divisional Court in *Tuchenhagen v. Mondoux*, “regardless of [the member’s] good faith or

²⁶ 50 O.R. (2d) 513, at 522.

²⁷ *City of Elliot Lake (Integrity Commissioner) v. Patrie*, 2023 ONSC 223 (CanLII), at para. 21.

²⁸ *Cooper et al. v. Wiancko et al.*, 2018 ONSC 342 (CanLII), at para. 63.

propriety of [the member's] motive." As I explain under the next heading, there are two schools of thought on whether motive is relevant. *Tuchenhagen v. Mondoux* is associated with one school of thought, but in *Ferri v. Ontario* the Court of Appeal embraced the other.

112. I approach the question of whether Councillor Rolleman had a pecuniary interest in the matter before Council on August 16 based on the standard of a pecuniary interest that is real and present, and not speculative and remote. In the words used by Ontario Courts, that standard is an interest that is actual,²⁹ definable,³⁰ and real.³¹ A pecuniary interest does not arise from speculation based on hypothetical circumstances.³²

113. A pecuniary interest must have crystalized by the time the matter is considered by Council or committee.³³ The matter before Council must be such that, "the member could experience an immediate, in the sense of close, non-deviated or traceable[,] financial or economic impact, positive or negative."³⁴ Possible and potential future happenings do not amount to a pecuniary interest.³⁵

114. Under the MCIA, a "pecuniary interest" means a financial, monetary or economic interest."³⁶ In a case such as this, the pecuniary interest is property value. The assumption underlying both parties' submissions is that the issue is whether the matter before Council had the potential to affect the value of Councillor Rolleman's property.

115. The ACC is an actively-used municipal facility. I have found there was never any consideration or suggestion that it would cease to be actively used. Council's determination related to the nature of the use, and the municipal investments that might be required to support alternative uses.

116. I agree that, if the ACC were to languish, or to be sold, demolished, or converted to housing, then such an occurrence – which, I stress, is completely hypothetical – might well affect nearby properties' values. The evidence of Mr. Hirschberger confirms this. Yet, the present case involves none of these hypotheticals. Further, a hypothetical situation does not give rise to an MCIA pecuniary interest.³⁷

²⁹ *Bowers v. Delegarde*, 2005 CanLII 4439 (Ont. S.C.), at para. 78; *Darnley v. Thompson*, 2016 ONSC 7466 (CanLII), at para 59; *Rivett v. Braid*, 2018 ONSC 352 (CanLII), at para. 51.

³⁰ *Lorello v. Meffe*, 2010 ONSC 1976, at para. 59; *Darnley v. Thompson*, at para. 59.

³¹ *Methuku v. Barrow*, 2014 ONSC 5277 (CanLII), at paras. 43, 48; *Lorello v. Meffe*, at para. 59; *Darnley v. Thompson*, at para. 59.

³² *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 57; *Darnley v. Thompson*, at para. 63.

³³ *Darnley v. Thompson*, at para. 59.

³⁴ *Cooper v. Wiancko*, at para. 63.

³⁵ *Bowers v. Delegarde*, at paras. 76, 78; *Rivett v. Braid*, at para. 51.

³⁶ *Ferri v. Ontario (Attorney General)*, at para. 9.

³⁷ *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 57; *Darnley v. Thompson*, at para. 63.

117. This case involves a community facility that will remain in active use with – potentially – different activities taking place inside. On a balance of probabilities, I am not satisfied that such different uses will affect property value, even of a property located as close to the ACC as Councillor Rolleman’s. The interviews I conducted and the Council deliberations that I observed both confirm that the choice between an ice rink and a gymnasium is a matter of subjective preference. I accept that it is “hard to put a dollar value” on subjective preference. Consequently, it is not possible for me to find the existence of a pecuniary interest – certainly not an interest that meets the standard set by the jurisprudence: actual, definable, real, and “an immediate, in the sense of close, non-deviated or traceable[,] financial or economic impact, positive or negative.”

118. I understand that Council was considering multi-million-dollar projects at the ACC and NDCC. The relevant pecuniary interest, however, is that of the Council Member, not the Township. No matter how much the Township spends, or is thinking of spending, MCIA obligations kick in only when a Council Member has a pecuniary interest. The argument that investing millions in the ACC will inevitably affect nearby property values is, I note respectfully, speculative. An MCIA pecuniary interest cannot be grounded in speculation.

B. If so, was Councillor Rolleman exempt from disclosing the interest and taking the steps required by section 5 of the MCIA?

119. Yes. If I am wrong in concluding that Councillor Rolleman did not have a pecuniary interest, then I believe that, by virtue of clause 4(k) of the MCIA, the interest was exempt from disclosure and recusal.

120. I do not believe that the clause 4(j) exception – an interest in common with electors generally – would apply. If I were wrong on Issue A (existence of pecuniary interest), then this would mean that a property value impact did exist. In that case, nearby property owners would not be in the same position as electors generally.

121. On the other hand, assuming I am wrong on Issue A, the Court of Appeal decision in *Ferri* compels a conclusion that clause 4(k) applies.

122. 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 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.

123. It should be noted that section 4 does not negate the existence of a pecuniary interest. Section 4 merely provides that the pecuniary interest does not need to be declared and that the Member does not need to withdraw from decision-making, voting and attempting to influence others.

124. The test, under clause 4(k), of what can be reasonably regarded as likely to influence, is based on the standard of a reasonable elector fully apprised of all the circumstances.³⁸

125. Under clause 4(k), the amount or extent of a pecuniary interest does matter. If the interest is so insignificant – for example, so small – that it cannot reasonably be regarded as likely to influence the Council Member, then sections 5 and 5.2 of the MCIA do not apply.

126. Any impact on nearby properties' values would, as Mr. Hirschberger stated, "be minor relative to, for example, the condition of the house, level of finish, size, etc." It also might be "hard to put a dollar value" on such impact.

127. In my view, such an impact would be an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the Council Member.

128. In Councillor Rolleman's particular case, I note that he owns a designated heritage home subject to legal restrictions on alteration and demolition. Those restrictions, too, affect his property value, and further diminish the relative significance of any impact on property value of what happens inside the ACC.

129. In the above paragraphs, I have considered only the nature of the pecuniary interest to determine whether it is remote and insignificant. In my view, that is the extent of clause 4(k).

130. In *Ferri v. Ontario*, the Court of Appeal went farther, and embraced a line of cases in which judges have considered not just the nature of a pecuniary interest but also surrounding factors such as a Council Member's length of service and whether a Council Member was motivated by good faith or private gain.

131. The orthodox view of conflict of interest, exemplified by *Moll v. Fisher*³⁹ and *Tuchenhagen v. Mondoux*,⁴⁰ is that propriety of motive and the presence of good faith are not relevant to the existence of conflict. According to this view, a conflict of interest exists regardless of whether personal gain is preferred over private interest.⁴¹ Conflict of interest

³⁸ *Ferri v. Ontario*, at para. 16.

³⁹ (1979), 23 O.R. (2d) 609 (Div. Ct.) at 612.

⁴⁰ (2011), 107 O.R. (3d) 675 (Div. Ct.) at 686, para. 28.

⁴¹ *Cox v. College of Optometrists of Ontario* (1988), 65 O.R. (2d) 461 (Div. Ct.) at 469.

“is not about acting dishonestly or for personal gain.”⁴² The suggestion that a conflict of interest only arises when a private interest actually interferes with decision-making in the public interest is, as the Federal Court of Appeal has observed, to confuse conflict of interest with corruption.⁴³

132. In *Ferri v. Ontario*, the Ontario Court of Appeal appears to have embraced a different school of thought and line of cases. It held that several subjective factors must also be considered in determining whether the pecuniary interest of a Member is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the Member.⁴⁴ These subjective considerations include, among other factors: a Council Member’s length of faithful service, whether the Member is acting in bad faith or good faith, whether the Member is motivated by a potential pecuniary benefit, and whether the matter before Council is of major public interest to constituents.⁴⁵

133. Regardless of my own views, it is not my place, as a municipal integrity commissioner, to ignore the interpretation of the Ontario Court of Appeal that public-mindedness and unselfish motives may be sufficient to obviate a conflict of interest. I have already found that any possible impact on the value of Councillor’s Rolleman’s property never entered his mind, and that he was focussed completely on doing the right thing and making the best decision he could to benefit the entire community. Further, he has a long record of service to the Township. Consequently, on the basis of *Ferri v. Ontario*, I must find that his pecuniary interest, if it one existed, is of a remote and insignificant nature as described in clause 4(k). The interest did not need to be declared, and Councillor Rolleman did not need to withdraw from debate, voting, or influencing others.

C. *Should I make an application to a judge?*

134. No. The *Municipal Act* leaves this decision to the Integrity Commissioner, based on what the Integrity Commissioner feels is appropriate. Having found that no pecuniary interest exists, I should not commence a Court application.

135. Even if I am wrong about the existence of a pecuniary interest, I feel that the Court of Appeal decision in *Ferri v. Ontario* governs the application of clause 4(k). It would be irresponsible to commence a Court application that advances an argument contrary to *Ferri*.

136. Consequently, I do not consider it appropriate for me to apply to a judge for a determination as to whether Councillor Rolleman contravened section 5 of the MCIA.

⁴² *Tuchenhagen v. Mondoux*, at 686, para. 25.

⁴³ *Democracy Watch v. Campbell*, 2009 FCA 79, at para. 51.

⁴⁴ In this respect, the Court of Appeal was applying the reasoning of the Divisional Court in *Amaral v. Kennedy*, [2012] O.J. No. 3766, and of Justice D.A. Broad in *Craig v. Ontario*, 2013 ONSC 5349.

⁴⁵ *Ferri v. Ontario*, at para. 21.

DECISION

137. I will not apply to a judge under section 8 of the MCI A for a determination as to whether Councillor Rod Rolleman contravened the MCI A on August 16, 2023.

138. This decision is limited to the August 16, Special Council Meeting. The assessment of a conflict of interest must be made on a case-by-case basis. Just because the August 16 staff report, discussion and vote did not engage a pecuniary interest does not mean that a subsequent matter before Council or a committee – perhaps different in some material respect – will be similarly treated. An Integrity Commissioner is always available to give confidential advice to a Council Member prior to a meeting.

PUBLICATION

139. 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 Township to make public and by posting on the free, online CanLII database as decision 2023 ONMIC 4.

140. 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.



Guy Giorno
Integrity Commissioner
Township of North Dumfries

December 31, 2023