
CITY OF OSHAWA INTEGRITY COMMISSIONER, GUY GIORNO

Citation: Durham Flight Centre Inc. v. Marimpietri, 2019 ONMIC 18

Date: November 15, 2019

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. This inquiry involves new statutory responsibilities of Integrity Commissioners that took effect March 1, 2019.

3. 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.

4. Durham Flight Centre Inc. (the Applicant) alleges that Councillor Tito-Dante Marimpietri (the Respondent) contravened section 5 of the MCIA by failing to declare a pecuniary interest and failing to withdraw from decision making and voting in relation to a staff report on land use options for the South Field of the Oshawa Executive Airport.

5. Durham Flight Centre Inc. is a corporation. At law, corporations are “persons.” As noted, “a person demonstrably acting in the public interest” may make this type of application. Durham Flight Centre is a person and I find that it is demonstrably acting in the public interest.

6. The Application was completed when the statutory declaration required by subsection 223.4.1(6) of the *Municipal Act* was submitted May 21.

7. Upon receiving the completed Application,¹ I conducted an inquiry.

DECISION

8. 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

¹ I assigned the Application file number MCIA-2019-01.

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.

9. 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 Marimpietri has contravened section 5 of the MCIA.

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

BACKGROUND

11. The Respondent's parents own property in Northwood Business Park which is located north of Oshawa Executive Airport. The Respondent routinely declares a pecuniary interest and does not vote on matters concerning Northwood Business Park. For example, he declared conflicts in relation to Northwood Business Park at the January 25 and February 8 Council meetings.

12. As its name suggests, the South Field at Oshawa Executive Airport is on the south side of the airport, that is, the side opposite Northwood Business Park.

13. The South Field is currently owned by the City of Oshawa subject to an operating agreement with Government of Canada. Oshawa leases and licenses use of parts of the South Field to various organizations. Permitted uses under the existing municipal zoning are: (a) agricultural uses, but not new buildings, (b) museum, and (c) recreational use.

14. The South Field is not part of the airport.

15. According to the 2008-2012 Airport Business Plan, adopted by City Council in 2008, the South Field lands are no longer required for aviation services and do not need to be retained for the future development of the Oshawa Executive Airport.

16. Report DS-19-45 requested authorization to hold a public open house to present and to obtain comments from the public on: the Background Study for the South Field Master Plan, and the draft preferred land-use option for the South Field.

17. The draft preferred land-use option was to retain the existing municipal zoning. The report explains, "Maintaining the status quo at this time will ensure that the South Field does not complicate the future of the Airport and that any decision concerning the future operation of the Airport will not be jeopardized."

18. Report DS-19-45 was considered by the Development Services Committee, March 25, and City Council, April 8. On those occasions, the Respondent was present

and participated (in fact, he chairs the Development Services Committee), and he did not declare a pecuniary interest in the matter of Report DS-19-45.

19. The report's recommendation was approved and the open house was subsequently held, May 23.

20. The Applicant submits that the Respondent contravened the MCIA by failing to declare an interest in, and by participating in decision making on, Report DS-19-45. According to the Applicant, the Respondent has a pecuniary interest any matter related to the airport.

PROCESS

21. 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). This fair and balanced process includes the following elements:

- The Respondent receives notice of the Application and is given an opportunity to respond.
- The Respondent is made aware of the Applicant's name. I do, however, redact personal information such as phone numbers and email addresses.
- The Applicant receives the Respondent's Response and is given an opportunity to reply.
- I may accept supplementary communications and submissions from the parties, but 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

22. 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

APPLICANT'S POSITION

23. The Applicant submits that the Respondent has a pecuniary interest in Report DS-19-45 because his parents² own property within the lands subject to the federal *Oshawa Airport Zoning Regulations*, SOR/85-358. According to the Applicant, any City decision affecting the future of the airport relates to a pecuniary interest of owners of properties located within the federal airport zoning.

24. In the words of the Applicant's representative:

"The potential uses for the Northwood land, and thus the land values, are linked to the [federal] airport zoning designation. If the airport ceases to be viable as an airport and is shuttered, then the [federal] airport zoning would also cease to be in effect. What the South Field lands are utilized for has a direct bearing on the ongoing viability of the airport itself as these lands could be used for aviation activities such as aircraft hangars that encourage and grow the airport, or for non-aviation related activities that do nothing to support the airport operations."

25. To support its contention that the interests of owners of surrounding properties are affected by the airport's future viability, the Applicant relies on the following passage from a 2018 staff report (DS-18-120):

"Determining potential future land uses and possible ownership options for the South Field Study Area are complicated by the above timelines for the operation of the Oshawa Executive Airport. If the Airport ceases to operate as a functional airport, the lands that it currently occupies will become available for alternative uses. These lands, when considered in conjunction with the South Field Study Area lands, could provide additional opportunities that may not be considered or feasible if the South Field lands are considered in isolation."

26. In response to my specific question about whether and how Report DS-19-45 relates to a pecuniary interest of the Respondent, the Applicant replies:

"that any matter that relates to the Oshawa Executive Airport's long-term viability and health as an aviation centre has an impact on the property value, particularly when considered over a longer time frame. If the airport ceases to exist, then the land owned by the by the Respondent's family is very likely to increase significantly in value."

² The Applicant refers simply to the Respondent's family, but not all family members' interests are relevant under the MCIA. As the interests of one or both parents are covered by the MCIA, I have clarified that the Respondent's parents are the family members concerned.

RESPONDENT'S POSITION

27. The Respondent explains that he declares a pecuniary interest in matters dealing with Northwood Business Park because his parents³ own property in the area.

28. The Councillor states that he is not required to declare a pecuniary interest in Report DS-19-45 because neither he nor his relatives own property or operate a business in the South Field, and “[t]his land use option has no bearing on Northwood Business Park.”

29. Throughout this inquiry the Respondent has maintained the consistent position that Report DS-19-45 has no impact on Northwood Business Park.

ISSUES

30. I have considered the following issues:

1. Does Councillor Marimpietri have a pecuniary interest in Report DS-19-45?
2. Should I make an application to a judge?

ANALYSIS AND FINDINGS

1. DOES THE RESPONDENT HAVE A PECUNIARY INTEREST IN THE REPORT?

31. Section 3 of the MCIA provides that a pecuniary interest of a parent is deemed to be a pecuniary interest of the council member if the interest is known to the council member. The Respondent knows his parents own property in Northwood Business Park, so their pecuniary interest in that property is deemed to be his.

32. Report DS-19-45 does not directly relate to the Respondents' parents' property. It relates to land on the other side of the airport.

33. Further, Report DS-19-45 does not directly relate to the airport or to the operation of the airport. The report relates to land use south of the airport, on lands that Oshawa decided more than a decade ago are no longer required for aviation services.

34. The Applicant essentially argues a series of indirect and potential future effects: How the South Field is used could affect the viability of the airport. The lands could be put to aviation-related uses (“such as aircraft hangars that encourage and grow the airport”) or continue to be restricted to non-aviation uses (“that do nothing to support the

³ Like the Applicant, the Respondent refers generally to “family.” I have clarified that these family members are his parents, because parents are among the specific types of family members whose interests are relevant under the MCIA.

airport operations”). In turn, the future viability of Oshawa Executive Airport affects the pecuniary interests of property owners all around the airport.

35. It is clear from its arguments that the Applicant believes federal airport zoning suppresses property values in the area subject to the federal zoning regulation. The Applicant believes maintaining existing municipal zoning of the South Field will negatively affect the future viability of the airport, and ultimately (if the airport closes and the federal zoning restrictions are removed) positively affect the pecuniary interests of nearby property owners: “If the airport ceases to exist, then the land owned by the Respondent’s family is very likely to increase in value.”

36. As I have noted, however, the effects cited by the Applicant are indirect, potential and future. Report DS-19-45 does not directly, definitely or imminently cause any of these results.

37. The only specific decision contemplated by Report DS-19-45 is the holding of an open house (a consultation meeting) on a proposal to maintain the current municipal zoning of the South Field. Even if I were to accept the proposition that *consultation* on a proposal is a decision-making step toward adopting the proposal, I do not see that the proposal affects a pecuniary interest of property owners on the other side of the airport.

38. The case law is clear that a pecuniary interest must be real and present, and not speculative or remote. Words the Courts have used to characterize an MCIA pecuniary interest include actual,⁴ definable⁵ and real.⁶

39. A pecuniary interest does not arise from speculation based on hypothetical circumstances.⁷ The pecuniary interest must exist at the time the matter is considered by Council or committee.⁸ Possible and potential future happenings do not amount to a pecuniary interest.⁹

40. The Applicant itself concedes that the effects it mentions are not necessarily imminent: “[A]ny matter that relates to the Oshawa Executive Airport’s long-term viability and health as an aviation centre has an impact on property value, particularly when considered over a longer time-frame.” [emphasis added]

41. I have concluded that any interest of the Respondent’s parents (which is deemed to be an interest of the Respondent) in South Field land use is hypothetical and speculative, and not real or present. Consequently, in my view, under the MCIA the Respondent did not, and does not, have a pecuniary interest in Report DS-19-45.

⁴ *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.

⁵ *Lorello v. Meffe*, 2010 ONSC 1976, at para. 59; *Darnley v. Thompson*, at para. 59.

⁶ *Methuku v. Barrow*, 2014 ONSC 5277 (CanLII), at paras. 43, 48; *Lorello v. Meffe*, at para. 59; *Darnley v. Thompson*, at para. 59.

⁷ *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 57; *Darnley v. Thompson*, at para. 63.

⁸ *Darnley v. Thompson*, at para. 59.

⁹ *Bowers v. Delegarde*, at paras. 76, 78; *Rivett v. Braid*, at para. 51.

42. In my view the Respondent did not contravene the MCIA.

2. SHOULD I MAKE AN APPLICATION TO A JUDGE?

43. Whether to make an application to a judge is a decision that the *Municipal Act* leaves to the Integrity Commissioner, based on what the Integrity Commissioner feels is appropriate.

44. If I commenced a Court application then I would bear the onus of proving that Councillor Marimpietri breached the MCIA.¹⁰ I do not have evidence that would prove a breach.

45. In my view, the Respondent did not contravene the MCIA. I will not commence a Court application in which I argue the opposite.

46. I do not consider it appropriate for me to apply to a judge for a determination as to whether Councillor Marimpietri has contravened section 5 of the MCIA.

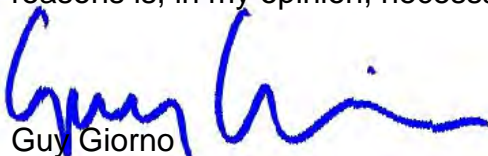
DECISION

47. I will not apply to a judge under section 5 of the MCIA for a determination as to whether Councillor Marimpietri contravened the MCIA when he failed to declare a pecuniary interest in Report DS-19-45 and participated in decision making and voting on that matter.

PUBLICATION

48. 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 City to make public and by posting on the free, online CanLII database as decision 2019 ONMIC 18.

49. 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
City of Oshawa
November 15, 2019

¹⁰ *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 25.