
CITY OF OSHAWA INTEGRITY COMMISSIONER, GUY GIORNO

Citation: Gobin v. Giberson, 2020 ONMIC 14

Date: December 7, 2020

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 Conflict 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.

2. Mr. Marty Gobin (Applicant) has applied for an inquiry into whether Councillor Derek Giberson (Respondent) contravened the *Municipal Conflict of Interest Act* by participating in the decision making in relation to a report delivered to the May 25 meeting of Oshawa City Council.

THE APPLICATION

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. The Applicant alleges that the Respondent contravened section 5 of the MCIA on May 25 by participating in decision making in relation to Report CNCL-20-76 (Licensing Payday Loan Establishments). The Application was submitted June 23, 2020.

5. Upon receiving the Application, I assigned it File No. MCIA-2020-01, and conducted an inquiry.

DECISION

6. 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.

7. After considering the submissions of the parties, conducting my own independent investigation, and reviewing all the evidence, I have decided that I will not apply to a judge for a determination whether Councillor Giberson has contravened section 5 of the MCIA.

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

BACKGROUND

9. At its May 25 meeting, Council, sitting in Committee of Whole, considered Public Report CNCL-20-76 (Licensing Payday Loan Establishments) (referred to in this decision as “Report CNCL-20-76” or “the Report”).

10. The recommendations of the Report were as follows:

1. That in accordance with Section 5.6.2 of Report CNCL-20-76, “Licensing Payday Loan Establishments”, dated May 20, 2020, the Licensing By-law 120-2005, as amended, and General Fees and Charges By-law 13-2003, as amended, be further amended to:

- establish a licensing system for payday loan establishments as generally set out in Section 5.6 of the Report
- restrict the number of payday loan establishments to 2 per ward to a maximum of 10 in the City
- prohibit new payday loan establishments in the Downtown Urban Growth Centre as defined in the Oshawa Official Plan
- establish a minimum 150 m setback from other payday loan establishments and elementary and secondary schools
- include appropriate grandfather provisions for existing establishments and that such an amending by-law be passed in a form and content acceptable to the Commissioner of Corporate Services and Legal Services; and,

2. That the notice provisions of By-law 147-2007 be waived in connection with the introduction of the licensing system for payday loan establishments and associated fees; and,

3. That Council requests the Province of Ontario to limit the annual interest rates to a reasonable amount for all payday loans; and,

4. That Council requests the Federal Government to:

- Require chartered banks and credit unions to have branches in low-income neighbourhoods which offer credit lines to low-income people at the same rates they offer to other customers;
- Work with partners such as credit unions and chartered banks, to encourage and steward the development of lower-cost financial products that can provide an alternative for users of payday loan establishments; and,

5. That this report and resolution be forwarded to Prime Minister Trudeau, Premier Ford, local Oshawa MP’s and MPP’s, the Region of Durham, all Durham municipalities, the Federation of Canadian Municipalities and the Association of Municipalities of Ontario.

11. The effect of the recommended amendments to By-laws 129-2005 and 13-2003 would be to limit the number of payday loan businesses (referred to in this Report also

as payday loan institutions and payday lending institutions) in the City and to prohibit new ones in certain wards.

12. Councillor Giberson did not declare a pecuniary interest in Report CNCL-20-76. He went on to discuss the Report, and he voted in favour of its recommendations.

13. On May 25, the date of the meeting, Councillor Giberson was an Associate Director of Pathwise Credit Union (Pathwise). On May 30, just a few days after debating and voting on Report CNCL-20-76, Councillor Giberson posted on Facebook that he had been elected as a “full director on the board of directors at the Pathwise Credit Union AGM, after a year as an associate director.”

14. The Application included exhibits to this effect, and pointed to content on the Pathwise website confirming that Councillor Giberson was listed as a “2020 Board of Director Nominee” and had been listed on the Pathwise website as an “Associate Director.”

15. These Facts are not in dispute. In his submissions, Councillor Giberson confirms the facts contained in the Application, including the chronology of events set out above, and the fact that he served as an Associate Director of Pathwise Credit Union until he was elected as a Director on May 27.

16. The Applicant notes that directors of credit unions are typically compensated for their work. Councillor Giberson confirmed that he received and receives compensation for serving as an Associate Director and now a Director of Pathwise, and that the amount does not fluctuate based on whether one serves as an Associate Director or a Director.

17. Originally opened as Auto Workers Credit Union, Pathwise rebranded as Pathwise Credit Union in 2020. Pathwise’s “Our Story” website describes itself and its vision and Mission in the following manner:

Originally Auto Workers Credit Union (AWCU), Pathwise first opened its doors on April 2, 1938, offering savings and loan services to 29 amazing members. For over 50 years, our credit union proudly supported the financial needs of auto workers and their families. As Oshawa has grown, we’ve expanded too to help strengthen the community as a whole....

Vision: All members are on their path to financial success.

Mission: We’re people helping people find their path to financial success.¹

18. Pathwise maintains two branches: one in Oshawa and one in Bowmanville.

19. Credit unions are provincially regulated and subject to the *Credit Unions and Caisses Populaires Act, 1994*.²

¹ <https://www.pathwise.ca/about/about-pathwise/our-story>

20. Payday lending institutions are also regulated and subject to a provincial licensing regime under the *Payday Loans Act* 2008 That Act defines a “payday loan” as:

an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card

21. It defines a “lender: as a “corporation, partnership, sole proprietor, association or other entity or individual that makes a payday loan to a borrower or that holds oneself out as available to make such a loan.”

PROCESS FOLLOWED

22. In receiving and investigating applications under the MCIA, I follow a process that ensures fairness to both the Applicant and the Respondent. This is a full and fair process that at the same time is efficient and reasonable taking into account the circumstances of each case.

23. The Applicant and the Respondent had equal opportunities to make submissions over the course of the inquiry.

24. The Application was made June 23. On July 7, I issued a Notice of Inquiry to both parties. Councillor Giberson responded July 13. Mr. Gobin replied July 24.

25. After reviewing the parties’ positions, I issued a delegation under subsection 223.3(3) of the *Municipal Act* to another lawyer in my office, authorizing him to conduct witness interviews.

26. On September 8, I invited both parties to address the question of whether Pathwise had/has a pecuniary (financial) interest in the payday lending decisions before Council. Councillor Giberson and Mr. Gobin provided submissions on September 14 and September 30, respectively.

27. This inquiry required several witness interviews, and the review of a substantial amount of material. Both parties made sophisticated arguments and directed me to additional material outside of their formal submissions. A key evidentiary issue was whether Pathwise had a pecuniary interest in Report CNCL-20-76.

² S.O. 1994, c. 11.

³ S.O. 2008, c. 9.

⁴ *Ibid.*, subs. 1(1)

⁵ *Ibid.*

ANALYSIS AND FINDINGS

28. I have considered the following issues:

- (A) Did Pathwise have a pecuniary interest in Report CNCL-20-76?
- (B) Did Councillor Giberson have a pecuniary interest in Report CNCL-20-76?
- (C) Should I make an application to a judge?

(A) DID PATHWISE HAVE A PECUNIARY INTEREST IN REPORT CNCL-20-76?

29. No. I conclude, on the standard of a balance of probabilities, that Pathwise did not have a real and present pecuniary interest in Report CNCL-20-76.

30. I find that the credit union movement, as a whole, has exhibited a public policy interest in the regulation of payday lending. That does not, however, mean that every particular credit union has a pecuniary interest in every particular regulatory proposal.

31. In this particular case, any interest that Pathwise could be said to have in Report CNCL-20-76 was speculative, hypothetical, and remote.

32. Both parties presented detailed arguments on this question. In the paragraphs that follow, I set out the positions of the parties and then explain my findings.

Applicant's Position

33. The Applicant cites *Ferri v. Ontario (Attorney General)*, which he says supports the proposition that a pecuniary interest under the MCI A extends beyond financial interests and may include monetary and economic interests.⁶

34. He characterizes Pathwise's interest in Report CNCL-20-72 as "economic in nature" and submits that, based on his understanding from watching Council, payday lending institutions act as competitors to deposit-taking institutions like banks and credit unions.

35. Mr. Gobin also cites academic literature that says credit unions benefit from the economies of scale associated with increased membership.⁷ The economic modelling indicates increasing returns to a credit union as a result of economies of scale, irrespective of asset size. The evidence ultimately suggests an economic advantage to "full service" institutions and discourages policy makers from implementing any

⁶ *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683, at para. 9

⁷ John D. Murray and Robert W. White, "Economies of Scale and Economies of Scope in Multiproduct Financial Institutions: A Study of British Columbia Credit Unions," *The Journal of Finance*, Vol. 38, No. 3 (June 1983), at 887-902.

restrictions on credit unions that encourage specialization in a particular package of services.⁸ This topic was the subject of further evidence provided by credit union managers over the course of the inquiry, which I discuss below.

36. The Applicant submits that, because payday lending institutions compete with other deposit-taking institutions, outlawing payday loan establishments or subjecting them to prejudicial economic regulation would lead to less competition for credit unions and increase their membership, which ultimately would provide credit unions with a corresponding economic advantage.

37. The Applicant also notes that the MCI A requirements apply whether Council's decision on a matter positively or negatively affects a pecuniary interest. The Applicant acknowledges that credit unions such as Pathwise may be negatively affected by the Report's recommendation that the federal government "Require chartered banks and credit unions to have branches in low-income neighbourhoods which offer credit lines to low-income people at the same rates they offer to other customers." He states that even this negative effect on pecuniary interest engages the MCI A's rules.

Respondent's Position

38. Councillor Giberson, the Respondent, rejects the suggestion that credit unions compete with payday lending institutions. He observes that financial institutions such as banks and credit unions typically do not locate in areas – and do not offer specific products and services – where they do not have the ability to generate sufficient revenues. In his view, the lack of nearby financial institutions is one of the reasons that payday lending institutions locate in greater concentration in lower-income areas of municipalities.

39. The Respondent argues that cheque cashing and depositing is an activity of marginal benefit to credit unions since they often make negligible – or sometimes negative – profit from the activity. According to him, this is why payday lending institutions charge considerable processing and administrative fees to cash cheques.

40. The Respondent also maintains that any pecuniary interest would be speculative or remote. He notes that the Report's recommendations were general in nature and that the specific recommendation directed to the federal government did not prescribe how the federal government must fulfill such a request. He argues that how the federal government might implement such a decision – if at all – and whether it would have negative or positive consequences for traditional financial institutions, would require considerable speculation.

⁸ *Ibid*, at 888. The evidence ultimately points to the advantage to "full service" institutions and discouraged policy makers from implementing any restrictions on credit unions that encourage specialization in a particular package of services.

41. Moreover, Councillor Giberson states that any financial advantage or disadvantage would not be visited solely upon Pathwise, but upon an entire industry of institutions. The Respondent's view is that it is difficult to know whether making a request of another level of government, like the one recommended in the Report, would have any effect on the industry as a whole. Impact on an individual credit union would be even more speculative, he says.

Further Evidence

42. The inquiry included interviews with managers of Ontario credit unions, both inside and outside the City of Oshawa, and with operators of payday lending institutions in the Province, as well as an association that represents the payday lending industry.⁹ It also considered literature from government sources, associations, and think tanks, that speaks directly to the issue of competition between payday lending institutions and traditional financial institutions such as credit unions.

Competitive Products and Services

43. Almost every individual interviewed confirmed that payday lending institutions exist to fill a void in a portion of the market that is underserved. Opinions varied on the extent to which the market is underserved, but the witnesses all acknowledged that payday lending institutions offer products and services that banks and credit unions do not provide.

44. Payday lending institutions are not monolithic. The products and services they offer may vary. Consumer Protection Ontario describes a payday loan as:

- usually a small value loan taken out for a short time, typically until your next payday;
- loaned at a retail store or online;
- an unsecured loan (you cannot put any property as collateral or guarantee for the loan, you need to provide the lender with a post-dated cheque or a pre-authorized debit); and
- usually not subject to a credit check.¹⁰

45. Many payday lending institutions also offer cheque cashing services where they cash cheques for customers for a fee. Part of the benefit of this service is that many payday lending institutions provide customers with the cash immediately because (unlike banks and credit unions) they do not apply a holding period to the cheques.

⁹ This is the Canadian Consumer Finance Association. I also interviewed a former spokesperson for an informal alliance called "Credit Unions of Ontario," but he explained that this was not a formal entity and that its advocacy campaign wrapped up years ago.

¹⁰ Consumer Protection Ontario, "Payday loan: your rights," online, <https://www.ontario.ca/page/payday-loan-your-rights>

46. Representatives from the credit union industry acknowledged that they generally do not offer products and services comparable to those provided by payday lending institutions. This is because those specific products and services are unlikely to yield sufficient revenue to justify offering them, as credit unions do not charge administrative fees on the same scale as fees associated with payday loans.

47. Meanwhile, members of the payday lending industry stated that – despite public perception of high fees and administrative costs – margins for payday lending and cheque cashing are low, and the fees and charges associated with their products are the only way they make a reasonable return on their business. Payday lenders do not profit from accepting deposits in accounts, as do traditional financial institutions.

48. At the same time, however, some witnesses indicated (and the literature confirms) that some credit unions have tried to develop social-impact products and services that offer an alternative to payday lending. According to the Canadian Credit Union Association:

Credit unions also provide members with innovation in financial literacy education, alternatives to payday lending, and social finance.

We are there when the big banks aren't. We are currently the only financial institution operating in 387 Canadian communities – offering relief from predatory and expensive payday lenders.¹¹ [emphasis added]

49. The Association's *2019-2020 Credit Union Community & Economic Impact Report* includes a section titled, "Payday lending alternatives." It states that, "[s]everal credit unions are providing Canadians with a loan option that helps them steer clear of predatory and expensive payday loans."¹²

50. Accompanying this statement is a map of Canada that shows locations where seven different credit unions appear to offer products or services that are alternatives to payday loans.¹³ Pathwise and Oshawa are not shown on the map. The two Ontario examples are Windsor Family Credit Union's "Smarter Cash" program and Momentum Credit Union's "Quick Loans."

51. A review of these products suggests that generally they are small loans to individuals, at fixed interest rates in a range similar to credit card interest rates.¹⁴ Customers are promised fast approval processes, are not required to undergo credit checks, and are provided considerable flexibility in how long they may take to repay.

¹¹ Canadian Credit Union Association, "Credit Unions Give Back," online, <https://ccua.com/about-credit-unions/credit-unions-give-back/>

¹² Canadian Credit Union Association, *2019-2020 Credit Union Community & Economic Impact Report* (March 4, 2020) at 8, online, <https://ccua.com/resources/2019-2020-community-economic-impact-report/>

¹³ *Ibid.*

¹⁴ Approximately 20% annual interest rate.

52. Several witnesses acknowledged that these types of targeted products and services do exist, but cautioned that generally they have not been successful revenue-generating tools. Representatives from both credit unions and the payday lending industry mentioned one particular loan program offered by a Vancouver-based credit union, and stated that the limited revenue generation of that product make it unlikely to be replicated elsewhere.

53. This view – that some credit unions have attempted to offer some financial products targeted to customers of payday lending institutions but they have been largely unsuccessful as a revenue-generation tool – finds support in the literature. In *The Changing Face of Payday Lending in Canada* (2019), the think-tank Cardus examined Windsor Family Credit Union’s Smarter Cash product and concluded, with respect to Ontario, that there is no indication that credit unions have made any significant inroads into the broader market with these products.

54. Despite this, the Cardus report maintains that an opportunity exists for credit unions and other institutions to offer these types of alternatives:

However, the fact that there are few credit unions and other financial institutions offering alternatives does not negate the fact that opportunity for alternatives still exists. Institutions motivated by a combination of economic and social ends may yet provide meaningful, easily accessible alternatives to members of their communities.¹⁵

55. This conclusion is consistent with the interviews of witnesses from the credit union industry. Several noted that, even though they do not presently offer these types of products, they may one day do so, as a social-impact measure to help members of the community to break from a cycle of short term credit.

56. These same witnesses did not expect this would yield significant revenues in the short term. Otherwise, they observed, credit unions would already be offering these products and services. They did acknowledge the hypothetical possibility that, having established a relationship with a new customer and offered various tools to help change the customer’s financial behaviour, a credit union could, in the longer term, after the customer has built equity and/or repaired the credit score, move the customer to higher value products, such as car loans and mortgages.

57. Several witnesses from credit unions also acknowledged that, if regulatory obligations change in future, then credit unions may start to offer low-cost products and services that act as alternatives to payday loans.

58. In summary, I find that credit unions and payday lending services offer different products and services to different types of customers that generally (but not always) represent different levels of credit risk. Most credit unions do not compete for the

¹⁵ Brian Dijkema, Cardus, *The Changing Face of Payday Lending in Canada* (June 2019), at 15.

business of the typical customers of payday lending institutions. Throughout Canada they generally have not introduced products and services to this portion of the market, an observation made by witnesses from both industries.

Current and Possible Future Regulatory Requirements

59. My inquiry considered specifically the recommendation in Report CNCL-20-76 to request that the federal government require banks and credit unions serve low-income neighbourhoods and offer credit lines to low-income customers at the same rates they offer to other customers.

60. As noted above, representatives of the credit union industry acknowledged that one reason they might in future offer low-cost products as an alternative to payday lending would be new requirements under legislation or regulation. Although it is an imperfect analogy, several witnesses likened the potential obligations to what federally-regulated banks are required to do under the *Access to Basic Banking Services Regulations*.¹⁶

61. These same witnesses noted, however, that the nature of this hypothetical, future obligation would determine whether an individual credit union were thereby advantaged or disadvantaged. For example, if a hypothetical government regulation required a credit union to offer products and services to higher risk customers (as low-income customers often are, in the witnesses' opinions) at the same rates provided to lower-risk customers, then they felt that this would likely pose financial risk to a credit union.

62. Meanwhile, witnesses from the payday lending industry speculated that traditional lending institutions such as banks and credit unions may well benefit from the presence of payday lending businesses in communities because, in their absence, the traditional financial institutions could well face increased demand, or even regulatory obligation, to provide low-cost services.

63. Several witnesses mentioned advocacy resources from the Canadian Credit Union Association that show the industry is already lobbying government in this area. Its current Strategic Plan identifies the following advocacy campaigns that are – or could be – part of the Association's government relations strategy:

Coordinated advocacy campaigns (tax fairness, red tape reduction, capital adequacy, financial literacy, one-rule payday lending)¹⁷ [emphasis added]

¹⁶ *Access to Basic Banking Services Regulations* (SOR/2003-184). The Regulations are made under the *Bank Act* (Canada) and impose a statutory obligation on banks to open retail deposit accounts, subject only to certain exceptions that allow banks to reasonably limit their risk.

¹⁷ Canadian Credit Union Association, "Strategic Plan 2019-2021"

The Particular Situation of Pathwise

64. As the current Strategic Plan of the Canadian Credit Union Association indicates, the credit union movement, as a whole, has exhibited a public policy interest in the regulation of payday lending. That does not, however, mean that every particular credit union has a pecuniary interest in every particular regulatory proposal.

65. It is also clear that some credit unions are offering some products and services that might be considered alternatives to payday lending. However, not every credit union does so.

66. Pathwise Credit Union does not presently market its products and services to the primary customer base of payday lending institutions. Like other credit unions, Pathwise markets itself to people who are most likely to become members and who require financial products and services (such as mortgages, car loans, and lines of credit) that generate revenue for the organization and its members.

67. Pathwise, like many other credit unions, does not actively market products and services to customers of payday lending institutions because, in many cases, these consumers lack the credit and financial means to access Pathwise's revenue-generating products and services, and because cheque cashing and payday lending would not be profitable activities for a credit union.

68. At the same time, Pathwise recognizes that, while it has not done so, other credit unions in the country have offered social-impact products designed to help customers "break the cycle" of short-term lending. During the inquiry, Pathwise mentioned that there are only a handful of examples and the credit unions involved have not profited from these products.

69. Pathwise has stated that it might offer similar products in the future but, if this occurred, then Pathwise would be acting for the explicit purpose of helping the community and not to generate revenue or profit. Alternatively, if new regulatory measures were to require Pathwise to offer low-cost products geared to customers of payday lending institutions, then it states it would happily meet the regulatory obligations. In either case, Pathwise would not expect to generate any profit from these activities, even if all credit unions were placed on a level playing field.

70. Did Pathwise have a pecuniary interest in Report CNCL-20-76? I approached this question 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,¹⁸ definable,¹⁹ and real.²⁰ A pecuniary interest does not arise from speculation based on hypothetical circumstances.²¹

¹⁸ *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.

71. A pecuniary interest must have crystallized by the time the matter is considered by Council or committee.²² Possible and potential future happenings do not amount to a pecuniary interest.²³

72. On the balance-of-probabilities standard, I find as a fact that Pathwise is not presently in competition with payday lenders, that Pathwise did not have a pecuniary interest in the Report's proposal to regulate payday loan establishments, and that Pathwise did not have a pecuniary interest in the recommendation to ask the Province to regulate payday loan interest rates.

73. The possibility that Pathwise might, at some future point, offer a product or service aimed at customers of payday loan businesses, is too speculative and remote to give rise to a present pecuniary interest in the regulation of payday lenders.

74. I also find as a fact that Pathwise did not have a pecuniary interest in the Report's recommendation to ask the federal government to require credit unions to maintain branches in low-income neighbourhoods and offer credit lines to low-income people at the same rates they offer to other customers. Again, any impact on Pathwise would be hypothetical.

75. Pathwise's interest in the Report was speculative and remote, and not real and present, at the time the Respondent debated and voted on the Report.

(B) DID COUNCILLOR GIBERSON HAVE A PECUNIARY INTEREST IN REPORT CNCL-20-76?

76. No.

77. According to section 2 of the MCIA: If a corporation has a pecuniary interest in a matter, then a Council Member who is a director of the corporation has an indirect pecuniary interest in the matter. If a body has a pecuniary interest in a matter, then a Council Member who is a member of the body has an indirect pecuniary interest in the matter.

78. Ontario credit unions are corporations.²⁴ They have members.²⁵

¹⁹ *Lorello v. Meffe*, 2010 ONSC 1976, at para. 59; *Darnley v. Thompson*, at para. 59.

²⁰ *Methuku v. Barrow*, 2014 ONSC 5277 (CanLII), at paras. 43, 48; *Lorello v. Meffe*, at para. 59; *Darnley v. Thompson*, at para. 59.

²¹ *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), at para. 57; *Darnley v. Thompson*, at para. 63.

²² *Darnley v. Thompson*, at para. 59.

²³ *Bowers v. Delegarde*, at paras. 76, 78; *Rivett v. Braid*, at para. 51.

²⁴ *Credit Unions and Caisses Populaires Act*, note 2, ss. 12-13, and s. 1, "credit union" definition.

²⁵ *Ibid.*, s. 28, and s. 1, "member" definition.

79. If Pathwise had a pecuniary interest in Report CNCL-20-76, then Councillor Giberson would have had an indirect pecuniary interest in the Report. I have found, however, that Pathwise did not have a pecuniary interest.

80. The Applicant argues that Councillor Giberson also possessed a pecuniary interest because the debate and vote on Report CNCL-20-76 occurred shortly before the annual meeting when Councillor Giberson stood for election, and could have influenced the outcome. I have already found that Pathwise did not have a pecuniary interest in Report CNCL-20-76. It would be speculative in the extreme to conclude that this Report – in which the credit union had no real and present pecuniary interest – would have been such a factor in the election that an annual meeting candidate possessed a pecuniary interest in the Report.

(C) SHOULD I MAKE AN APPLICATION TO A JUDGE?

81. No.

82. Having found, on the standard of a balance of probabilities, that Pathwise did not have a real and present pecuniary interest in Report CNCL-20-76, and therefore that the Respondent did not have a pecuniary interest in the matter, I have no basis to apply to a judge.

CONCLUSION

83. I will not apply to a judge under section 5 of the MCIA for a determination as to whether Councillor Derek Giberson contravened the MCIA on May 25.

84. I should add that the Application was not frivolous. The extent of the resulting inquiry shows that the Application raised a real issue requiring careful consideration.

85. Despite the result in this particular case, any Council Member should proceed with caution before taking part in decision-making and voting on a matter that might affect a corporation of which the Council Member is a director or a body of which the Council Member is a member.

PUBLICATION

86. 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 2020 ONMIC 14.

87. 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.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Guy Giorno". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping tail.

Guy Giorno
Integrity Commissioner
City of Oshawa

December 7, 2020