

Principles *Integrity*

Town of Collingwood

Mayor Cooper Conflict of Interest Recommendation Report

May 2018

The Complaint

- [1] On March 13, 2018, Steve Berman filed a complaint regarding Mayor Cooper's participation on Staff Report C2018-01 titled "Consulting Advisory Services in the Sale of the Collingwood Regional Airport" which was before Council at the February 12, 2018 meeting.
- [2] The essence of the complaint is that Mayor Sandra Cooper, given her brother's position as Senior Vice-President of Operations and Business Development with the Clearview Aviation Business Park, had a conflict of interest in that she contravened s.7 "Improper Use of Influence" of the Collingwood Code of Conduct when she voted on the report.

Summary of Findings

- [3] We find that although Mayor Cooper attempted to avoid contravening s. 7, "Improper Use of Influence" by checking with the Director of Public Works and with her brother to ascertain whether CABP had made inquiries about the Airport property, her better course of action would have been to declare an interest and not participate.
- [4] We find that Mayor Cooper did have a conflict of interest on the matter, given her brother's business interest in the CABP, and that she should have declared an interest and recused herself from participating and voting on Staff Report C2018-001 at the February 12, 2018 meeting of Council.

Process Followed for the Investigation

- [5] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Collingwood Code of Conduct.
- [6] This fair and balanced process includes the following elements:
- Reviewing the Complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the Complaint should be restated or narrowed, where this better reflects the public interest
 - Notifying the Respondent Mayor Cooper of the Complaint and seek her response
 - Reviewing the Collingwood Code of Conduct

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- Reviewing Town of Collingwood Council meeting recordings and minutes
- Additional witnesses including the Town Clerk were interviewed
- The Respondent was given an opportunity to review and provide responses to the draft findings of the Integrity Commissioner.

Background

[7] The Mayor's brother, Paul Bonwick, is the Senior Vice-President of Operations and Business Development for the Clearview Aviation Business Park (the "CABP"). The CABP is a development company which sells and/or leases property for aviation-related businesses. The CABP is located immediately adjacent to the Collingwood Regional Airport (the "Airport").

[8] The businesses in the CABP, and those targeted as prospective clients of the CABP, rely to a large extent on the Airport for their success. The location and operation of the Airport is a significant consideration for businesses to locate in the CABP. An excerpt from CABP's webpage announcing approval of the County Official Plan Amendment, which paves the way for the CABP's development expansion, states as follows:

The Clearview Aviation Business Park is located only 110 KM north of Toronto Pearson International Airport. This exciting undertaking is the largest economic expansion of its kind planned in rural Ontario, with a forecasted buildout estimated at over \$300 million dollars. It will provide jobs to over 450 full time employees and effect 1,300 full time indirect positions in the region. This development will act as a catalyst for the long term sustainable operations of one of Ontario's best regional airport. Once the development is completed, it will contribute over \$2,000,000 in municipal taxes annually.

The uses permitted on the subject lands shall be limited to industrial and commercial uses that are related to the aviation sector. Uses permitted under this designation include, for example: aircraft sales and service; manufacturing; maintenance; shipping; storage; research establishments; commercial flight schools, including associated short-term accommodation; business offices; and, small-scale accessory uses. Short-term residential accommodation associated with a flight school shall be permitted. This accommodation is required to be for short duration stay only and may take the form of dormitories or small suites. Cooking facilities may be permitted in each suite. Communal cooking facilities or full facility cooking and dining facilities are also permitted. Short-term residential accommodation is to be appropriately serviced.

"This represents a significant and positive step forward in realizing the longstanding vision of Clearview Township to create a world class aviation economic hub beside the Collingwood Regional Airport", stated Remo Niceforo, President of Clearview Aviation Business Park.¹

¹ In quoting from documents, our practice in an investigation report, is to correct obvious spelling and typographical errors without drawing attention to the correction unless the correction is material. This report also edits punctuation and capitalization for consistency.

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- [9] The CABP depends on the Airport and its operations, in ensuring cost-effective, reliable access which are relied on by businesses locating to the CABP. The CABP has a pecuniary interest in the operation of the Airport.
- [10] Though the Airport is owned by the Town of Collingwood, it is located outside Collingwood, within Clearview. The CABP which is adjacent to the Airport is also located in Clearview. The benefits of development of the CABP (development charges, increased property assessment) will accrue to Township of Clearview. It is our understanding that the Town of Collingwood is facing the prospect of increased operational demands and upgrades at the Airport, without additional funds to pay for this. Recently, the Township of Clearview along with the Town of Wasaga Beach, discontinued their annual contributions to these operational costs, nominal though they were, adding to Collingwood's financial challenges in regard to operating the Airport.
- [11] In September 2017, the Town of Collingwood declared the Airport property to be surplus, in order to be able to pursue alternative ownership options. Staff Report CAO2017-06 to Council September 25, 2017, in support of the recommendation to declare the Airport surplus, explained the financial impacts on the Airport resulting from the CABP development, and canvassed options available to the Town to deal with the Airport. These options, at page 10-11 of the report, are identified as follows:

Option 1(a) Retain the Airport – status quo

Consistent with the legal advice and taking into account the Town's financial position and in particular the continuing detrimental impact on the Town's taxpayers, maintain the current function of the airport, but not allow access to the runways to serve any major commercial expansion as envisaged by CABP in the immediate vicinity.

This option is not considered appropriate in light of the pressure to pursue the opportunity to realize major expansion of the CRA towards a regionally focused aviation center with potentially significant economic benefit to the wider region, if successful.

Option 1(b) Retain the Airport – including seeking partnerships

Inconsistent with the legal advice and ignoring the Town's financial position, including the detrimental impact on the Town's taxpayers and future financial risk, would be to allow the development of the Airport with, or without, potential partnerships. This option is not considered appropriate based on the legal advice received (noted in this report), the existing burden on, and future risk to, the Town's taxpayers together with the Town's inability to manage and finance such a massive commercial enterprise. As noted by Mr. Mascarin, such an option is inconsistent with the Town municipal purpose.

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Option 2 – Divestiture

This option would require Council to declare the Airport surplus and divest it through a public process.

This option would have the immediate benefit of removing the Airport's operating cost burden from the Town's taxpayers and avoiding future liability for capital maintenance. Selling the Airport would also avoid exposing the Town's taxpayers to financial risk inherent in any major expansion of the airport with Town ownership/involvement. In addition to the immediate and substantial savings, it would also realize a major contribution to the Town's reserve funds. ...

This option would also allow for interest from both the private and public sectors, either individually or in combination, reflective of partnerships which they might establish. Of interest, if implemented, this option would open the opportunity for Clearview and the County to revisit their interest, potentially including partnerships as well as allow for private sectors expression of interest.

The first exploration of a potential divestiture was with the CABP who were asked on number of separate occasions if they had any interest in purchasing the Airport. They expressed no interest in purchasing the Airport, apparently preferring the Town to remain fully responsible. While CABP is proposing an aviation business park, they apparently have no interest in its ownership, management, or ongoing administration. On the basis of the information they have provided to date, their purpose would appear to be the sell-off/lease of lots adjacent to the Town's municipally-owned Airport. When the sales/leasing has been completed, the running of the CRA, presumably would be left to the Town with no continuing present or responsibility by CABP. Thus the Town would become the service provider to an 'industrial' aviation centre, assuming all of the associated costs/risks. The divestiture of the Airport would provide a second opportunity for Clearview, the County and CABP to consider their interest as a direct purchase or within a partnership.

No formal approach was made to other private sector interests however, of high significance, is the fact that a number of unsolicited expressions of interest in purchasing the Airport have been received from companies with direct experience." [emphasis added]

[12]Based on Report CAO-2017-06, Council voted to declare the Airport surplus and commence disposal of the property.

[13]We note that Mayor Cooper did not declare an interest in the matter, although her brother's company, CABP, clearly had an interest in the outcome, as explicitly referenced within the body of Report CAO-2017-06. The failure to declare an interest which, in our view so obviously exists, is noteworthy. While not the subject of this report, the lack of consistency in the Mayor's approach to matters relating to operations and disposition of the Airport (as noted below) indicates the member's analysis does not go far enough in identifying conflicts of interest.

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[14] In our review of Council minutes, we identified at least seven (7) different meetings between January 2015 and October 2016² at which the Mayor declared an interest in recognition of CABP's interest in an Airport-related issue. However, from August 2017 to February 2018, on at least four (4) occasions³, when Council has specifically been discussing the future operations and potential divestiture of the Airport, the Mayor has not declared an interest, and has participated in the discussion.

[15] We observe that during this period, the Town of Collingwood was without an Integrity Commissioner and so Members of Council, had limited access to advice regarding conflicts of interest. However, since January 1, 2018 when we were appointed as Integrity Commissioner, we have responded to requests for advice under the Code and the Municipal Conflict of Interest Act, where Members seek to avoid violations before they arise. Whereas in the past, Members of Council were left to determine on their own, in advance of meetings, whether an issue raised a conflict of interest, and often advised to 'err on the side of caution', part of the Integrity Commissioner's broader function since the legislation was amended is to provide written advice to Members of Council. In this way, Members can confidently take the appropriate steps to avoid contraventions, not unnecessarily exclude themselves from debate, and the Town can avoid investigations. We encourage this type of diligence on the part of Members of Council.

[16] In preparing to move forward with disposal of the Airport, staff worked with external legal counsel on a plan of action. An RFP was issued to obtain the services of a specialist to assist in a divestiture of this significance, with the concomitant complexities of aviation regulations, existing leases and outstanding infrastructure payback.

[17] Staff Report C2018-01 "Consulting Advisory Services in the Sale of the Collingwood Regional Airport" at Council February 12, 2018 sought Council approval to proceed with the preferred consultant, and direction to use the land acquisition reserve fund for up to \$100,000. for the project.

[18] Staff Report C2018-01 to recommended to Council on February 12, 2018 as follows:

"THAT Council receives Staff Report C218-01 entitled "Consulting Advisory Services in the Sale of the Collingwood Regional Airport"

AND THAT Council herein approve up to \$100,000.00 from the land acquisition reserve fund to retain the above noted consulting advisory services."

² January 19, May 4, November 16, 2015; January 4, January 18, February 18, October 31, 2016. Interest declared.

³ August 21, September 11, September 25, 2017; February 12, 2018. No interest declared.

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[19] It is the Mayor's participation on that report which is the subject of this report.

Conflicts of Interest

[20] In deciding whether Mayor Cooper ought to have declared an interest, and recused herself from participating in Staff Report C2018-01, the relevant provisions of the Town of Collingwood Code of Conduct are as follows:

1. Preamble

The Code of Conduct is intended to supplement and be compatible with the laws governing the conduct of Members. The key principles include:

- Members shall avoid all conflicts of interest;

This Code of Conduct is intended to provide a guideline for elected officials in exercising their policy-making role having regard to the statements and ideals as enunciated hereunder.

7. Improper Use of Influence

No Member shall use the influence of his or her office for any purpose other than for the exercise of his or her official duties.

Examples of prohibited conduct are the use of one's status as a Member to improperly influence the decision of another person to the private advantage of oneself or immediate relative, staff members, friends, or associates, business or otherwise.

Section 2 of the Code defines "immediate relative" to include brother.

[emphasis added]

[21] The *Municipal Conflict of Interest Act* ('MCIA') applies with respect to the pecuniary interests (direct, indirect and deemed) held by Members of Council. The fact that the MCIA codifies some, but not all, of the common law dealing with conflicts of interest has led to significant confusion for members of municipal councils. When municipal members were governed only by the MCIA, this issue was resolved by looking only at the MCIA. However, with the adoption of municipal codes of conduct for members of council over the past several years, the common law concept of conflicts of interest is introduced into the ethical framework for municipal members of council. When the code makes reference to conflicts of interest, that reference must be understood to encompass the broader common law concept of conflicts of interest.

[22] Put another way, common law requirements respecting the broader concept of conflicts of interest for members of municipal councils have helpfully been introduced

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in codes of conduct so that members are more readily aware of these additional obligations, beyond the MCIA.

[23] The broader common law concept requires members to avoid 'apparent' conflicts of interest, including an interest which arises because a family member, business partner or other close associate may have a pecuniary interest in a matter being decided by the member.

[24] In determining whether the Mayor was in a conflict of interest in participating on the matter, as alleged, in contravention of the Code, we must consider the broader, common law concept of interest captured by the Code.

[25] The principle underlying the court decisions regarding 'conflict of interest' is captured in the language of the 1979 decision, *Moll v. Fisher*:

All conflict of interest rules are based on the moral principle...that no man can serve two masters. ...even the most well-meaning men and women may be impaired where their personal financial interests are affected.

[26] Members of council are required to avoid apparent or perceived conflicts of interest by arranging their business affairs so as to preclude such conflicts from arising; and where this is not feasible, by disclosing and stepping away from participation in matters where there may be an apparent or perceived conflict.

[27] The objective test for apparent conflict of interest is set out below:

[An apparent conflict of interest...] "*exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.*"

(*Stevens v. Canada (Attorney General)* 2004 FC 1746)

[28] In this case, where the CABP and its planned multimillion dollar development has such an obvious interest in the issues of ownership and operation of the Collingwood Regional Airport, we are of the view that this raises an apparent interest for the Mayor.

Report was only for funding the consultant

[29] The Mayor's view is that, so long as the matter dealt only with funding for the consultant, then the Council decision did not engage or impact in any way the interests of her brother's company, CABP. We do not agree.

[30] For one thing, the Council decision to fund the Consulting Advisory Services, as recommended by Staff Report C2018-01 on February 12, 2018 was the next move towards the process of divestiture of the Airport. Any matter before Council touching upon the divestiture of the Airport has the potential to impact CABP's interests, and therefore the Mayor should disclose and recuse herself from every such matter.

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[31] It is understandable that someone might not think voting to fund the consultant could impact CABP's interest, funding of the consultant can be seen as the first in a series of steps through a lengthy process, culminating in divestiture of the Airport by the Town. Seen in this light, the decision is part of the divestiture process. The rule against conflicts of interest needs to be applied at every step.⁴

CABP had not expressed an interest in acquiring the Airport

[32] The Mayor believed that there would not be a conflict of interest unless CABP expressed an interest in the acquisition of the Airport, and since this report only dealt with funding the consultant for the divestiture process, the Mayor was able to participate.

[33] In this regard, she made inquiries of both staff and her brother, to ascertain that CABP had not expressed an interest in acquiring the Airport. Although we do not doubt the Mayor's sincerity and good intentions, we believe the Mayor should not have participated on the staff report dealing with funding of the consultant, given that it supported and was inextricably linked to the matter of the Airport divestiture. It does not matter whether the Mayor voted to support or oppose the decision. By virtue of her brother's interest in the matter, she had a conflict of interest and should not have participated.

Representing the community

[34] The Mayor's view is that she only looked at the matter – both the funding of the consultant and the decision to sell the Airport – from the perspective of the Town, and the needs and interests of the community.

[35] We have no doubt that the Mayor has the best interests of her community at heart. However, as stated in *Moll v Fisher*, even the most well-meaning decision-makers may be impaired where their personal financial interests are affected. The principle that 'members are to avoid conflicts of interest' addresses that reality.

[36] A conflict of interest which exists because of a close familial or business relationship should be treated as a disqualifying interest, and the member should disclose the interest and not participate in the matter.

Keeping an open mind

[37] There is sometimes a misconception that members can vote on a matter in which they had a "personal or private" interest, provided the interest does not cause them to have a closed mind.

⁴ *Greene v Borins*, 1985 CanLII 2137 (ONSC)

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[38] No doubt conflicts of interest can be confusing, but where a conflict of interest exists, it is not overcome by keeping an open mind. While open-mindedness is a key determination of a lack of bias, the test for conflict of interest is not a subjective test. Since a person cannot see into another person's mind, to determine whether their mind was sufficiently 'open', the objective reasonable person test must be applied.

The Concept of Bias:

[39] As noted, the test for bias is whether as a member of Council, the member is completely incapable of being persuaded of a different point of view. The courts recognize that members of bodies popularly elected, such as municipal councils, are not expected to approach all matters with disinterest and strict impartiality. Members of public office often bring with them a predisposition towards the various issues upon which council must decide. In fact, these might well be the positions for which electors supported them.

[40] The test for bias for members of municipal council requires establishing that there has been prejudice to the extent that any representations to the contrary, or in support of an alternative view, are futile. The onus on establishing bias rests with the person alleging it. However, publicly articulating a definitive position on a matter before it has been fully debated may raise questions as to whether the member is capable of being persuaded.

[41] By contrast, where the matter involves a conflict of interest, declaring oneself to be open-minded or to be considering the matter only from the perspective of the public interest does not overcome the interest; the member must declare the interest and recuse him/herself from participating in the decision.

Findings

[42] We find that although Mayor Cooper attempted to avoid contravening s. 7, "Improper Use of Influence" by checking with the Director of Public Works and with her brother to ascertain whether CABP had made inquiries about the Airport property, the better course of action would have been for her to declare an interest and not participate.

[43] We find that Mayor Cooper did have a conflict of interest in the matter, given her brother's business interest in the CABP, and that she should have declared an interest and recused herself from participating. By failing to do so, the Mayor contravened the Code of Conduct.

Conclusions and Recommendation

[44] Even though we find that the Mayor contravened the Code of Conduct by failing to declare an interest in the matter of the Staff Report C2018-01 titled "Consulting

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Advisory Services in the Sale of the Collingwood Regional Airport” before Council at the February 12, 2018 meeting, this does not appear to be a case for sanctions.

[45] We recommend that the Mayor refrain from any further participation on matters which come before Council touching on the divestiture of the airport.

[46] When declaring an interest on such matters, we recommend the Mayor clearly state that the interest arises because of her brother’s position with the Clearview Aviation Business Park which is directly adjacent to the airport.

[47] We also recommend that, in future, when Members see that there is a report on an up-coming agenda which they have reason to believe might put them in a conflict of interest, that they seek the advice of the Integrity Commissioner before the date of the meeting.