

KEEPING CURRENT

November 29, 2021

City Councillor gets burned for municipal conflict of interest over a matter involving a fire

By Stephen Thiele

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

Stephen Thiele
Partner
416.865.6651
sthiele@grllp.com

Municipal councillors and local board members are obligated to avoid participating in matters where their economic self-interest may be in conflict with their public duty. In Ontario, this obligation is codified in the [Municipal Conflict of Interest Act](#) (the "MCIA"). A councillor or board member who acts in contravention of the MCIA can be severely punished, including having their elected seat declared vacant.

This is what happened to Township of Brudenell, Lyndoch and Raglan ("BLR") councillor Andrea Budarick in [Corporation of the Township of Brudenell, Lyndoch and Raglan \(Integrity Commissioner\) v. Budarick, 2021 ONSC 7635 \(CanLII\)](#).

Councillor Budarick's conflict of interest troubles arose out of a fire on one of her children's properties.

On August 7, 2019, BLR's Fire Chief advised the municipal council that he had declared a total fire ban in BLR. While warnings had been given to those who did not comply with the ban, under BLR

policy, the Fire Chief had determined that a service charge would be levied against property owners where the ban was not complied with.

Less than two weeks later, the BLR Fire Department responded to an open fire call at a property owned by one of Councillor Budarick's children, Gary. Gary had previously been warned about the fire ban.

On September 4, 2019, a group of invoices, including one that was to be given to Gary in the amount of \$1,666.75, was presented to BLR Council for review and approval. Councillor Budarick admitted that she had a direct conflict with the invoice that was to be given to her son. However, she also advised BLR Council that she would be representing him. Councillor Budarick was a licensed, but not practising, paralegal.

At this Council meeting, Councillor Budarick questioned the Fire Chief's representative about the Fire Department's finances and funding activities. Questions were also raised

about other subjects, including how the service charges were calculated, how many trucks were dispatched, the types of fires involved, who got warnings, how the warnings were communicated, and how the fire ban was communicated.

The invoice to Gary was dated the next day and he appealed the invoice to the Fire Safety Commission.

On October 8, 2019, Councillor Budarick wrote to the Commission to seek information on process and procedure in connection with Gary's appeal. On the same day, BLR Council held a special meeting to deal specifically with the invoice given to Gary.

Councillor Budarick again declared a conflict of interest on the grounds that she had a "pecuniary interest" in the matter. However, when BLR Council moved into a closed session to consider the invoice, Councillor Budarick did not leave the meeting.

Under [section 5\(1\)](#) of the MCIA, a member at a meeting must disclose whether he or she has a direct, indirect or deemed pecuniary interest in any matter under consideration thereat and shall not take part in the discussion of, or vote on any question in respect of the matter. As well, the member cannot attempt in any way, whether before, during or after the meeting, to influence the voting on the question.

[Section 5.2](#) of the MCIA also provides that a member shall not use his or her position in any way to attempt to influence any decision or recommendation that results from the consideration of a matter where the member has a pecuniary interest.

On October 30, 2019, another special meeting

was held by the BLR Councillor to consider the invoice that had been given to Gary. Councillor Budarick again declared a conflict of interest, but seconded the motion for council to go into a closed session. The Councillor then left the meeting when advised by an investigator for the Integrity Commissioner that if a Councillor declares a conflict of interest, the person declaring the conflict has to leave.

At this meeting, the amount of the invoice given to Gary was reduced by 78 percent.

An elector complained about Councillor Budarick's participation in the matter involving her son's property and the Integrity Commissioner for BLR commenced an investigation. The Integrity Commissioner concluded that Councillor Budarick actively influenced decisions of Council before, during and after meetings that dealt with the invoice given to her son and breached the MCIA.

The Integrity Commissioner subsequently commenced an application for a judicial determination as to whether Councillor Budarick contravened the MCIA. While the Integrity Commissioner argued, among other things, that the Councillor had breached the MCIA by participating in the discussion about the service charges and that she attempted to influence Council to the benefit of Gary by undermining the manner in which the Fire Department conducted its affairs, Councillor Budarick submitted that she had properly identified and disclosed her conflict, that she did not discuss the invoice to Gary at the Council meetings held on September 4 and October 8, and that she left the Council meeting on October 30 when it went into a closed session. Councillor Budarick also denied that she attempted to influence the voting on the invoice.



In its [Reasons for Decision](#), the Ontario Superior Court of Justice found that the Integrity Commissioner proved on a balance of probabilities that Councillor Budarick had contravened the MCIA.

Even though the Councillor had declared a conflict of interest at the various meetings, she clearly participated in discussions where the “matter under consideration” involved a pecuniary interest.

The Court found that at the September 4, 2019 meeting, the Councillor was not free to conduct a wide-ranging examination of the Fire Department’s practices and policies as she had done. The Fire Department’s practices and procedures were not on the agenda of the meeting. In the circumstances, the Court ruled that Councillor Budarick’s “questions and comments were designed and intended to denigrate the Fire Department’s practices, to create doubt regarding service charges and to obtain information for the purpose of enhancing her son’s ability to challenge or reduce the invoice he received.”

The Court further held that the Councillor’s conduct was intentional.

Based on these findings, the Court was then obligated to consider the penalty that should be imposed against the Councillor. In considering the severity of the penalty, the Court noted that both mitigating and aggravating factors had to be considered.

The mitigating factors here were the relatively modest amount involved, the fact that the Councillor had recognized that a conflict existed, and the fact that the Councillor co-operated in the investigation.

The aggravating factors were that the Councillor did not recuse herself from the discussions, that the Councillor had subordinated her public duties to a desire to assist Gary, that there was a 78% reduction in the service charge levied against Gary, and that the Councillor failed to seek timely advice from the Integrity Commissioner.

In the circumstances, the Court concluded that the Councillor was to be removed from office for the remaining term of Council. The most severe penalty of preventing the Councillor from seeking re-election was not imposed. The Court reasoned that the invoice issue could be dealt with by the electorate in the next election. In the Court’s view, “...the electorate should be permitted to choose who is going to represent them.”

This case provides a warning to all municipal councillors and board members about participating in matters that involve a pecuniary conflict of interest. Legislation governing conflict of interest and the integrity of politicians is designed to uphold a high standard of integrity, transparency and accountability in their conduct. This standard will be taken seriously by our courts, and where it is not met a politician will be punished accordingly. Politicians are therefore wise to carefully consider conflicts of interest and where there is doubt to consult with their respective Integrity Commissioner.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact the Chair of our dispute resolution group, **Stephen Thiele**, at 416.865.6651 or via email at sthiele@grllp.com.

(This newsletter is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP.)