

INQUIRY REPORT

FOR THE TOWN OF KIRKLAND LAKE

RE: COUNCILLOR ADAMS



*Office of the Integrity
Commissioner*

Prepared By:

Peggy Young-Lovelace
E4m Investigator/Consultant

PREAMBLE

Expertise 4 Municipalities (“E4m”) was appointed as the Integrity Commissioner for the Corporation of the Town of Kirkland Lake (the “Town”) by by-law number 19-028.

As the Integrity Commissioner, E4m is a statutory officer of the Town. The Integrity Commissioner reports to Council and is responsible for independently performing functions assigned to them by the Town. Pursuant to section 223.3(6), the Town must indemnify and save harmless the Integrity Commissioner or any person under their instructions for costs reasonably incurred by either in connection with the defence of certain proceedings.

E4m has been appointed by the Town as the Integrity Commissioner for all functions set out in section 223.3(1) of the *Municipal Act 2001*, and E4m is responsible for conducting inquiries into whether a member has contravened the Code of Conduct pursuant to section 223.4(1) or contravened sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* pursuant to section 223.4.1 (1).

The *Municipal Act, 2001*, awards the Integrity Commissioner a number of powers that the Integrity Commissioner can exercise while conducting Code of Conduct and *Municipal Conflict of Interest Act* inquiries. Specifically, subsections 223.4 (3) and 223.4.1(10) provide that “the municipality and its local boards shall give the [Integrity] Commissioner such information as the [Integrity] Commissioner believes to be necessary for an inquiry.” Moreover, subsection 223.4(4) and 223.4.1(11) provide that the Integrity Commissioner is “entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers things or property belonging to or use by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.”

In addition to the statutory requirements for an inquiry under the *Municipal Act, 2001*, Integrity Commissioner inquiries are governed by the Integrity Commissioner Inquiry Protocol which was adopted by Council. Pursuant to section 3.4 of the Integrity Commissioner Inquiry Protocol, in performing his or her duties, the Integrity Commissioner may engage outside assistance or consult with the Town’s legal counsel.

The Town’s legal counsel is employed by the Town. The *Rules of Professional Conduct* provide that notwithstanding the fact that instructions may be received from an agent for an organization, when the lawyer is employed by an organization, including a corporation, in exercising the lawyer’s duties and providing professional services, the lawyer shall act for the organization. An incorporated organization has a legal personality distinct from its members, agents, councillors or employees. As such, when the Integrity Commissioner consults with the Town’s legal counsel pursuant to section 3.4 of the Integrity Commissioner’s protocol, the Integrity Commissioner providing instructions as a statutory officer of the Town and the Town’s legal counsel is acting to ensure that the Town’s interests are served and protected.

I. EXECUTIVE SUMMARY

[1] These reasons relate to a request for an inquiry under section 223.4.1 of the *Municipal Act, 2001*, (the “*Municipal Act*”) about Patrick Adams (“Councillor Adams”), an elected member of the Council for the Corporation of the Town of Kirkland Lake (the “Town”) and specifically whether he had a prohibited Conflict of Interest.

Overview

[2] The basis of this application was that Councillor Adams submitted a notice of motion to the June 11, 2019, Council requesting a service review of the operation of Heritage North, the Town’s conference centre.

[3] The motion was heard by Council on June 18, 2019, and Councillor Adams was noted to move the motion and participated in the debate of Council. The motion was not passed as the service review had already been done. Essentially Councillor Adams’ request was for Council to direct staff to complete a service review of Heritage North and provide options for different uses of the municipally run facility.

[4] A request for inquiry was received June 27, 2019. Our investigation was completed December 18, 2019. This document is our inquiry report.

[5] Councillor Adams is a member of the Kirkland Lake Curling Club (the “Curling Club”) which provides similar services to those offered by Heritage North. Both facilities offer hall rentals for meetings, weddings and other social functions.

[6] Kirkland Lake Gold is the sponsor of the Curling Club. The name of the facility has been changed to Kirkland Lake Gold Curling Centre.

[7] Councillor Adams is employed by Kirkland Lake Gold.

[8] We find that Councillor Adams did not have a pecuniary interest under section 2 of the *Municipal Conflict of Interest Act* (hereinafter the “*MCIA*”) when he brought a notice of motion and subsequent motion requesting Council direct staff to undertake a service review of Heritage North.

[9] We do find that Councillor Adams’ action in bringing the notice of motion and the subsequent motion forward to Council did contravene the Town’s Code of Conduct.

[10] Our findings do not support that Councillor Adams acted out of malice and so we recommend no sanction in this matter. We do recommend that Councillor Adams, as well as the other members of Council receive further training on their obligations under the Code of Conduct and the *MCIA*. As well, we recommend that Council receive leadership and team building training.

II. LEGISLATIVE FRAMEWORK

[11] Under section 223.4.1(2) of the *Municipal Act*, an elector or a person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1, 5.2 of the *MCIA* by a member of council or a member of a local board.

[12] Sections 5 and 5.1 of the *MCIA* provide as follows:

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

...

Written statement re disclosure

5.1 At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be. 2017, c. 10, Sched. 3, s. 4.

[13] When a matter is referred to the Integrity Commissioner, we are required to conduct an inquiry and, upon completion of the inquiry, should we find a breach of the *MCIA* has occurred, we may apply to a judge under section 8 of the *MCIA* for a determination as to whether the member has contravened section 5, 5.1, or 5.2 of the *MCIA*. We must publish reasons as to whether we intend to apply to a judge under section 8 of the *MCIA*. These are those reasons.

III. THE REQUEST

[14] On June 27, 2019, we received an application for inquiry (hereinafter the "Application") from two electors under the *MCIA* who therefore are entitled to make an application for an inquiry under section 223.4.1 of the *Municipal Act*. The applicants declared that the

application has been made within six weeks of them becoming aware of the alleged contravention (indeed it was made nine (9) days after the event).

- [15] The Application alleges that Councillor Adams has contravened section 5.1 of the *MCI/A* when he brought a notice of motion [June 11, 2019] and motion [June 18, 2019] forward requesting Council direct staff to undertake a service review of Heritage North a Town owned/operated conference centre.

IV. THE INQUIRY PROCESS

- [16] Upon receipt of the Applications, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We completed an initial review of the complaint and determined that there were sufficient grounds to conduct an inquiry into the matter.
- [17] During the inquiry, an E4m investigator interviewed the applicants [July 10, 2019] and Councillor Adams [August 14, 2019].

V. THE FACTS

- [18] The basis for the Application is that Councillor Adams made it known on June 11, 2019, that he was bringing a motion to Council for consideration at their June 18, 2019, meeting. His motion requested that Council direct staff to “*complete a service review of Heritage North and provide options for the different uses of Heritage North*”.
- [19] The Applicants reported that Councillor Adams had a pecuniary interest and should not have brought the matter forward. They reported that Councillor Adams was a member of the Kirkland Lake Curling Club and that he was employed by Kirkland Lake Gold. Councillor Adams declared a pecuniary interest in a matter involving the Curling Club on March 5, 2019, and again on April 16, 2019. On January 29, 2019, Councillor Adams declared a conflict with a matter that his employer, Kirkland Lake Gold, had before Council [Kirkland Lake Gold Expansion Project].
- [20] It was further reported by the Applicants that they believed Councillor Adams was asking Council to sell Heritage North which in their mind financially benefited the body [the Curling Club] Councillor Adams is a member of which they felt was a contravention of the *Municipal Conflict of Interest Act*.
- [21] Heritage North is a conference centre owned and operated by the Town.
- [22] The Curling Club is separate from the Town. The Curling Club operates the KL Gold Curling Centre which has hall space (the “Hall”) for use by members and non-members for a fee.

[23] The Curling Club website states the following with respect to the Hall:

“Our hall is fully licensed with bar, perfect for Christmas parties, wedding receptions, stag and does, birthday parties and many other social events. We offer a full kitchen for use,”

[24] Kirkland Lake Gold is a major sponsor of the Curling Club [as per the Curling Club website]. The Curling Club advised that they no longer rent out the Hall. An arrangement has been made with Kirkland Lake Gold which requires the Curling Club to provide the Hall on an as needed basis and often with little to no advanced notice. This makes it problematic for the Curling Club to continue to rent the Hall for other purposes. This is relevant to this inquiry because the Curling Club has in essence ceased competing directly with the Heritage North facility.

[25] Kirkland Lake Gold did use the services of Heritage North until the company entered into an arrangement with the Curling Club.

[26] Councillor Adams prepared a report to Council dated June 16, 2019. The report outlined Council’s role pursuant to section 224 of the *Municipal Act*, provided information from the **Making Choices: A Guide to Service Delivery Review for Municipal Councillors and Senior Staff**; and proposed the following options/discussion:

“For Council to direct Staff to investigate alternative options of Heritage North including:

- Tendering out the operations of the Banquet Facility
- Moving municipal offices to Heritage North
- Sale of property
- Other income opportunities

For Council to direct staff to work with Strategy Corp to ensure an Operational Review of Heritage North is identified as a priority and have the recommendations for Heritage North be brought back for discussion once the Operational Review is complete.

[27] The report/recommendation was tabled and discussed at the June 18, 2019, meeting of Council.

[28] Councillor Adams did not disclose a pecuniary interest in the matter.

[29] Councillor Adams reported that he believes that Councillors *“have a duty as representatives of the Municipality to ensure the financial integrity [of the Municipality] and it was budget season..... so, [he] brought forward a report to Council to look at a service review of the municipality”*. When questioned, he specified Heritage North.

[30] When asked to explain why he was focused on Heritage North, Councillor Adams reported that the operation of a “banquet centre” is discretionary and while there are

other municipal facilities yielding annual deficits, he felt Heritage North does not have community benefits like a recreational facility.

- [31] Councillor Adams, when asked why the Applicants might think he had a pecuniary interest, claimed he was not sure. He further reported that he did not believe he had a conflict because *"it was so remote and so insignificant, [he] didn't believe it"*.
- [32] Council for the Corporation of the Town of Kirkland Lake approved and tendered a request for proposal (an "RFP") for a Corporate Operational Review. The review targeted all municipal operations and more importantly did not specifically exclude Heritage North. The RFP closed on March 15, 2019, and the contract was awarded to Strategy Corp.
- [33] The Operational Review of Heritage North proposed by Councillor Adams had already been contemplated by Council as per the deliverables of the RFP/contract with Strategy Corp. Of note is that Councillor Adams [in the discussion section of his report to Council] stated that staff should be directed by Council to work with Strategy Corp to ensure that Heritage North was identified as a priority.
- [34] It is clear that Councillor Adams was aware of the Operational Review being undertaken by Strategy Corp and further that Councillor Adams attempted to ensure that Heritage North was specifically considered as part of the review. The RFP generally included all municipal operations which would also include Heritage North.

VI. THE ISSUE

- [35] We considered whether Councillor Adams had a pecuniary interest when he requested Council consider an operational review of Heritage North.

VII. THE OPINION

- [36] The *MCIA* prohibits Councillors who have a pecuniary interest (direct, deemed or indirect) from attempting to influence in any way, whether before, during or after the meeting, the voting on any such question.

The primary issue we analyzed was whether Councillor Adams had a "pecuniary interest" in the matter he brought forward to Council. "Pecuniary Interest" is not defined in the *MCIA*, however the Courts have interpreted it to mean a financial interest or an interest related to or involving money. It does not matter whether the financial interest is positive or negative and when considering the existence of a "pecuniary interest", quantum also does not matter.

[37] The Courts have provided the following guidance with respect to what constitutes a “pecuniary interest”:

Pecuniary interest is not defined by the *MCIA*. Generally, it is a financial interest, an interest related to or involving money. A decision to buy, or offer to buy, property is demonstrative of a pecuniary interest.

Pecuniary interest is not defined in the *MCIA*, but it has been held to be a financial, monetary or economic interest; and it is not to be narrowly defined.

A pecuniary interest is a particular kind of interest. In *Edmonton (Town) v Purves*, Moshansky J. turns to the Shorter Oxford English Dictionary definition of “pecuniary” as “of, belonging to, or having relation to money”.

[38] In essence, the Courts look at whether a financial interest exists and whether it is direct (personal to Councillor Adams), deemed or indirect.

[39] Additionally, the Courts have stated that the pecuniary interest must have crystalized and that a Member cannot have an interest in something that might happen in the future. Justice Michael Penny in *Lorello v. Meffe* surveyed numerous *MCIA* decisions about future or contingent interests in examining whether a contingent interest constitutes a prohibited pecuniary interest pursuant to the *MCIA* and found”

“These authorities seem to establish that, in order to constitute a pecuniary interest, there must be something more than infrequent past business dealings or the possibility of future business. To have a conflict under s. 5 of the *MCIA*, there must be a pecuniary interest existing at the time of the vote. There must be an actual conflict or a reasonable assumption that the conflict will occur”.¹

[40] Based on the information before us, Councillor Adams does not have a direct pecuniary interest in the operation of Heritage North.

[41] Because he is a member of the “body”, Councillor Adams has an “indirect pecuniary interest” in any matter where the Curling Club has a pecuniary interest. Additionally, he has an indirect pecuniary interest in any matter his employer, Kirkland Lake Gold, has a pecuniary interest.²

[42] With respect to the matter before us, Councillor Adams has put a motion forward, petitioning Council, to consider undertaking an operational review of Heritage North. His request was broad in scope and focused on a study of the operation that may, or may not, cause some unknown future decision to be made by Council.

[43] Councillor Adams did not specify that he wanted Council to direct staff to study/consider the best way to close the facility or sell the facility or alter/change the services provided.

[1]

¹ *Lorello v. Meffe*, 2010 CarswellOnt 11195, 2010 ONSC 1976, 99 M.P.L.R. (4th) 107 (OntSCI) at Para 59.

² *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 s.2

He requested that Council direct staff to conduct an operational review considering closing, selling or changing services of Heritage North. To be clear, Councillor Adams did not request that Council make a decision that would directly affect the actual operation of Heritage North by either closing the operation, selling the facility and/or changing the services provided. Put differently, by the study alone, Heritage North would have no pecuniary interest in the motion.

- [44] Had Councillor Adams requested that Council close or sell or alter/change the services of Heritage North, he would have had an indirect pecuniary interest due to the fact that any of those actions would affect the pecuniary interests of the Curling Club and for Kirkland Lake Gold.
- [45] Neither the Curling Club, nor Kirkland Lake Gold have a pecuniary interest in the motion Councillor Adams put before Council at the June 18, 2019, meeting. Therefore, Councillor Adams does not have a pecuniary interest in the matter and has not contravened the *MCIA*.
- [46] Of concern, however, is the fact that Councillor Adams brought this motion forward after the Town had undertaken an RFP and contracted Strategy Corp to carry out a service review of the municipal operation which includes Heritage North.
- [47] When interviewed about their complaints, both Complainants reported being concerned with Councillor Adams' behavior. They stated that Councillor Adams brought this motion forward "out of the blue" and that he cited rules or policy that support his actions but that they believe in fact, that Councillor Adams is "breaking rules". Both Complainants reported that they believed Councillor Adams was motivated by his personal interest in the Curling Club and Kirkland Lake Gold when he brought forward the motion to have staff carry out a service review of the facility.
- [48] We find both Complainants credible. Councillor Adams did indeed bring such a motion forward [after Council already initiated such a review] which in their opinion was a breach of the *MCIA*. Their complaints while not a breach of the *MCIA*, are not frivolous or vexatious. They clearly believe that Councillor Adams did breach the *MCIA* and there is no provision in the *Municipal Act* for them to seek advice from the IC as to whether a breach of the *MCIA* has occurred prior to making a complaint.
- [49] What is clear from the complaints is that the Complainant's have concerns with Councillor Adams and how he works with the rest of Council. They both reported that as soon as the meeting had ended, where this motion was tabled, Councillor Adams made a statement to the media. It was reported that he is often quoted in the media.
- [50] Their complaints ought to have also been brought forward as code of conduct complaints.
- [51] The Code of Conduct states that "*No Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes*".

- [52] By bringing forward a motion requesting a service review of the Town's operation of Heritage North and based on the evidence of the Complainants, Councillor Adams did use his influence as a member of Council to seek a service review of Heritage North that could directly benefit/impact the Curling Club and ostensibly have a financial impact on his employer.
- [53] Regardless of the result of the service review, there could be an impact [possibly financial] for the Curling Club and Kirkland Lake Gold. One of the outcomes could be that the facility be closed and retrofitted to be an apartment complex which would benefit the Curling Club because they would not be in competition with the Town for Kirkland Lake Gold's use of their facility. Another possible outcome could be that the Town seeks an "exclusivity" agreement with Kirkland Lake Gold that is competitive with the current Curling Club deal.
- [54] Councillor Adams reported that his request was simply an action in keeping with his obligations under section 224 of the *Municipal Act*. While we find Councillor Adams reasonably credible, we are concerned that:
- a) His request appears to contemplate a future benefit to the Curling Club and possibly his employer, Kirkland Lake Gold [we considered potential outcomes, in addition to what has been mentioned, based on the list of considerations he requested be carried out in the review and determined that both parties would have a pecuniary interest in any future decision of Council arising from the study];
 - b) The timing of the request is highly suspect since he had opportunity to address the matter during the budget process and/or when the RFP terms of reference were adopted by Council [we are concerned that after the RFP was issued, Councillor Adams brought the matter forward]; and
 - c) There are other discretionary services that the Municipality offers that operate with an annual deficit and were not part of the motion put forward by Councillor Adams. When questioned about this, Councillor Adams reported that the other services have a community benefit. However, it was reported that the museum also has similar financial hardships but was not on Councillor Adams' motion.
- [55] The Code of Conduct also provides that "*Members will respect the decision-making process. Members will attempt to accurately and adequately communicate the attitudes and decisions of Council, even if they disagree with a majority decision of Council*".
- [56] Council had already voted on undertaking an RFP and entering into a contract with Strategy Corp. Councillor Adams in bringing his motion forward for the staff to work with Strategy Corp on a service review of Heritage North is redundant and does not support a previous decision of Council. In fact, Councillor Adams' motion openly focuses on a single aspect of the municipal operation and not the overall review Council was seeking.
- [57] Councillor Adams reported "*we have a duty as representatives of the Municipality to ensure the financial integrity [of the municipality] and it was budget season.*" It is evident that Councillor Adam's action, had Council approved the motion to conduct the service review of Heritage North, would have duplicated cost to the Municipality unnecessarily,

since a full operational review was already approved by Council and underway at the time Councillor Adams brought forward his motion. This demonstrates the need for Councillors to be aware of previous decisions and ongoing projects and to consider the impact of new initiatives. This is a perfect example of a situation where Councillor Adams should have sought advice from senior staff who would have been in a position to advise him of the redundancy of his motion.

- [58] We did not review the Town's policy with respect to who can speak to the media. This is not typically the role of an individual councillor, but usually falls to the Head of Council. Councillors, unless directed in a policy or by a resolution do not have the authority to speak on behalf of Council. Any member of Council speaking to the media must clearly identify that they are providing their own opinion if they have not been given direction from Council as a whole. Further, individual members of Council are required by the Code of Conduct to support the decisions that have been properly made by Council. Speaking to the media in a manner that does not support an existing Council decision is not consistent with the Code of Conduct and places them at risk of being the subject of a Code of Conduct inquiry.

VIII. CONCLUSION

- [59] It is our opinion that Councillor Adams did not have a pecuniary interest when he brought a notice of motion to request Council consider an operational review of Heritage North. As such, he was not required to complete a disclosure statement under section 5.1. of the *MCIA*. We will not be applying to a judge under section 8 of the *MCIA* for a determination as to whether Councillor Adams has contravened section 5.1 of the *MCIA*.
- [60] In our opinion Councillor Adams has acted contrary to the Town's Code of Conduct.
- [61] One of the principles of the Town's Code of Conduct states that "*Members must be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest, both real and perceived;*". A reasonable person could consider the action of Councillor Adams [in bringing forward the report and motion] is a perceived conflict and contrary to the quoted principle. It is through this lens that we conclude that Councillor Adams has contravened the Code of Conduct.
- [62] Section 6.2 of the Town's Code of Conduct requires Members to uphold/support decisions of Council even if they disagree. By bringing forward a motion to have Council direct staff to undertake a service review of Heritage North, in light of the fact Council had already directed that an RFP, and subsequent contract be entered into, for the review of the Town's overall operation, Councillor Adams has acted contrary to this provision of the code.
- [63] We do not recommend that Council sanction Councillor Adams, but rather recommend that Councillor Adams and all members of Council receive further training on their obligations under the Code of Conduct and the *MCIA*.

[64] Further we recommend that Council:

- a. Prepare a Council Term Plan;
- b. Receive leadership as well as team building training; and
- c. Review/revise their media communications policy.

DATED February 19, 2020

E4m

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**INVOICE**

INVOICE TO
 Town of Kirkland Lake
 3 Kirkland Street, P.O. Box 1757
 Kirkland Lake ON P2N 3P4

INVOICE 2025
 DATE 31/03/2020
 TERMS Due on receipt
 DUE DATE 31/03/2020

DATE	ACTIVITY	DESCRIPTION	TAX	QTY	RATE	AMOUNT
31/07/2019	IC Administration Fee	To receipt of complaint, preliminary review, file set up/long term file storage.	HST ON	1	531.25	531.25
31/03/2020	Integrity Commissioner Investigations - Conflict of Interest	In keeping with our contract and the confidential nature of investigations the following is our account for PROFESSIONAL SERVICES RENDERED up to and including the date of this invoice - includes interviews, travel time, document review etc.	HST ON	12	125.00	1,500.00
31/03/2020	IC Report Drafting		HST ON	11.75	125.00	1,468.75
31/03/2020	Disbursements	Non-Taxable Disbursements – including Travel/Accommodations,	Out of Scope	1	878.41	878.41
31/03/2020	Disbursements	Non-Taxable Disbursements – including Legal and/or Peer Review; Other Billable Third Party Costs	Out of Scope	1	1,179.44	1,179.44
	WMG Discount		HST ON	1	-175.00	-175.00
	E4m Discount		HST ON	1	-750.00	-750.00

SUBTOTAL	4,632.85
HST (ON) @ 13%	334.75
TOTAL	4,967.60
BALANCE DUE	\$4,967.60

TAX SUMMARY

RATE	TAX	NET
HST (ON) @ 13%	334.75	2,575.00