

Expertise for Municipalities (E4m)
Non-Profit Association
1894 LASALLE BLVD. SUDBURY, ON, P3A 2A4

Integrity Commissioner
for the Municipality of Calvin



INQUIRY REPORT/DECISION

ALLEGATION: CONTRAVENTION OF THE
MUNICIPALITY OF CALVIN CODE OF
CONDUCT

BY: **MAYOR IAN PENNELL**

I. REQUEST FOR INQUIRY

- [1] On June 25, 2021, Expertise for Municipalities (“E4m”) as Integrity Commissioner received a formal request for inquiry (hereinafter the “Request”) that alleged Ian Pennell (“Mayor Pennell”), a member of Council for the Municipality of Calvin, contravened the Municipality of Calvin Code of Conduct (“Code of Conduct”) when he attempted to deceive Council as he sought reimbursement for a telephone expense.
- [2] The Requestor alleged that Mayor Pennell contravened section 7.11 – (*Use of Municipal Property, Services and Other Resources*), of the Code of Conduct.
- [3] The Requestor more specifically, alleged that during the May 12, and June 9, 2021, Council meetings, Mayor Pennell attempted to deceive Council by submitting personal telephone expenses as vehicle expenses. And further the Requestor stated, “*I believe the incident is a serious breach of conduct and perhaps criminal*”.

II. FINDINGS/CONCLUSION

- [4] The Requestor in this matter made a very serious allegation that Mayor Pennell’s actions were fraudulent and “*perhaps criminal*” when he submitted an expense claim to be reimbursed for long distance charges. Then when interviewed by the Investigator, the Requestor failed to provide sufficient evidence to support, and in fact, contradicted the assertions made when requesting the inquiry.
- [5] We do not find that Mayor Pennell’s actions in requesting reimbursement for expenses incurred for attending electronic Council meetings are in any way inappropriate, nor do we find his actions contrary to the Code of Conduct for the expense to be included on the only form the Municipality used for Members of Council to seek reimbursement for out-of-pocket expenses.
- [6] We do, however, find the Requestor’s intentions questionable and are highly concerned that while the Requestor reported his complaint was in no way retaliatory, we question the motives to make such allegations in the first place.
- [7] This matter is dismissed.

III. INQUIRY PROCESS

- [8] Upon receipt of the Request, we completed an initial review of the Requestor's submission. Allegations of deceit and fraudulent submission of expenses for reimbursement are serious allegations and could be subject to a police investigation. If an Integrity Commissioner finds such a potential contravention of law, they must stop their inquiry and refer the matter to the police.
- [9] In this circumstance, after we conducted our initial review, as is outlined in the Integrity Commissioner Inquiry Protocol we conducted a preliminary review and the matter was assigned to Gil Hughes (the "Investigator"), an investigator with Investigative Solutions Network ("ISN") as an agent of the Integrity Commissioner for this purpose and to further review and consider the allegations.
- [10] The Investigator interviewed the Requestor, the Clerk-Treasurer and Mayor Pennell. Additionally, the Investigator reviewed pertinent municipal records related to the matter.
- [11] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Municipality's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:
- Whether or not the individual has firsthand knowledge of the situation
 - Whether or not the individual had an opportunity to observe the events
 - Whether or not the individual may have bias or other motive
 - The individual's ability to clearly describe events
 - Consistency within the story
 - The attitude of the individual as they are participating
 - Any admission of dishonesty¹
- [12] The Investigator reported that the Requestor waited a year to report an issue they submitted was "*is a serious breach of conduct and perhaps criminal*" and that had been properly addressed during two Council meetings. During an interview with the Investigator, the Requestor made it very clear that he was lacking commitment to his complaint, therefore essentially undermining the matter he wanted investigated. The Requestor was not considered a credible witness on this matter.

¹ *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11. Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009), 185 LAC (4th) 176 (Alta.Arb.)

IV. FINDINGS OF FACT

- [13] The Requestor alleged that Mayor Pennell on May 12 and June 9, 2021, “deceived council by attempting to pass his phone expenses off as vehicle expenses and by *dividing the bill into two to appear less conspicuous.*” (note: the meetings in question were May 12 and June 9, 2020 and not 2021 as submitted by the Requestor).

Reference: Request for Inquiry dated June 25, 2021

- [14] The Requestor further provided:

At the may 9th meeting Our Worship, Mayor Pennell submitted a “vehicle expense “ of \$245.20 on the Expense report of may 06th. The expense was questioned by a few councillors. The Mayor got loud and stated that he would declare a conflict of interest to appease Councillor Omstead who was insisting on an explanation.

At that time, I assumed it was probably mileage cost for an out of town meeting.

On June 9, another mysterious vehicle expense of \$194.80 appeared from Mayor Pennell on the June 4th expense report.

At this meeting, after more questioning, it was finally revealed that the vehicle expense was actually a long-distance telephone charge which the mayor had received due to signing in with the wrong number for a zoom meeting. Thus he had received a nearly \$400 bill in long-distance charges.

Council was understanding and passed the report. (sic)

Reference: Request for Inquiry dated June 25, 2021

- [15] When interviewed by the Investigator, the Requestor was unsure whether their allegations against Mayor Pennell were a breach of the Code of Conduct and had remorse regarding the cost of an investigation to the taxpayers. The Requestor said that although they did not agree with the Mayor’s decision, they believed Mayor Pennell was an honest man. The Requestor added that any result of the investigation would have been light and meaningless.

Reference: Interview of Requestor

- [16] The Requestor stated that they took issue with the two telephone expenses (\$194.80 and \$245.20) that were submitted as vehicle expenses. Even though they had no doubt that Mayor Pennell’s telephone bill expenses were legitimate and were satisfied with the explanation but advised that they would have preferred that it had been done during the initial challenge by Councillor Olmstead on May 12, 2020.

Reference: Interview of Requestor

[17] On one hand, the Requestor thought the telephone expense might have been a filing error, but on the other hand, he believed it should have been disclosed during the first meeting.

Reference: Interview of Requestor

[18] Mayor Pennell confirmed with the Investigator that the two (2) long distance bills valued at \$245.20 and \$194.80, resulted from mistakenly connecting to what he thought were toll free numbers during Council-related Zoom meetings from his home. Mayor Pennell recalled the telephone bill being astronomical and was divided into two parts because the second portion of the bill fell outside of the first billing period. He advised the bills were submitted to the Clerk-Treasurer, as phone bills, not vehicle expenses, and his wife changed their long-distance plan in order to enable unlimited long distance calling for \$35.00 per month to make sure it didn't happen again.

Reference: Interview of Mayor Pennell

[19] The Clerk/Treasurer confirmed that Mayor Pennell had submitted the phone bills for reimbursement. That the charges were included on the Mayor's expense form and that unfortunately, the form at the time, was only set up to capture vehicle/travel expenses and not other miscellaneous expenses a member of Council might incur.

Reference: Interview of the Clerk/Treasurer

[20] The matter was brought to Council on both occasions and put to a vote, which was subsequently passed.

Reference: Interview of the Clerk/Treasurer
Interview of Mayor Pennell

[21] At the May 12, 2020, Council meeting, Mayor Pennell made the following Declaration of Conflict of Interest: Mayor Pennell declared a conflict of interest on Agenda Item No. 10 – Accounts Approval Report, Reason: *“Made declaration to ease concern of Councillor Olmstead – regarding an expense submitted by me.”*

Reference: Interview of the Clerk/Treasurer

[22] Members of Council are required to declare pecuniary interest in accordance with the *Municipal Conflict of Interest Act (“MCIA”)*.

[23] “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”, it also does not matter the quantum of the interest.

“Pecuniary Interest” is not defined in the [*Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50], but it has been held to be a financial, monetary or economic interest; and is not to be narrowly defined².

A pecuniary Interest [as used in s. 5(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50] is a particular kind of interest. In *Edmonton (City) v. Purves* (1982), [18 M.P.L.R. 221](#)... (Q.B.), at p. 232 [M.P.L.R.] Moshansky J. turns to the Shorter Oxford English Dictionary definition of “pecuniary” as “of, belonging to, or having relation to money.”

[24] Section 4 of the *MCIA* provides certain situations in which a Member does not need to declare a pecuniary interest. In this circumstance, section 4 (i) would apply which states:
(i) *in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;*

[25] The Mayor did not need to make a declaration in this circumstance.

V. ANALYSIS

[26] The Requestor waited a full year to bring forward a matter they claimed to “.. *believe the incident is a serious breach of conduct and perhaps criminal*’. And further the Requestor submitted that in no way was his complaint retaliatory in nature, but thought it was an issue that should be addressed, even at this late date.

[27] The Requestor alleged to believe Mayor Pennell’s long distance telephone bills were falsely submitted as vehicle expenses in an attempt to cover up his claim for personal phone bills. And further reported that the matter had been considered and approved by Council resolution.

[28] It is clear, that this matter had already been addressed by Council and the Clerk-Treasurer sufficiently explained the use of the expense form and that it was not an attempt to deceive Council.

Dated: September 30, 2021

² *Mondoux v. Tuchenhagen* (2011), 284 O.A.C. 324, [2001] O.J. No. 4801, 88 M.P.L.R. (4th) 234, 2011 CarswellOnt 11438, 2011 ONSC 5398, 107 O.R. (3d) 675 (Ont. Div. Ct) at para. 31, Lederer J. (Gordon J. concurring).