

2018 ONSC 352  
Ontario Superior Court of Justice

RIVETT v. BRAID ET AL

2018 CarswellOnt 669, 2018 ONSC 352, 288 A.C.W.S. (3d) 574, 73 M.P.L.R. (5th) 249

**LOUISE RIVETT (Applicant) and LARRY BRAID, PAUL  
WIANCKO, KATHY KAY AND BRIAN BOCHEK (Respondents)**

Healey J.

Heard: January 5, 2018  
Judgment: January 22, 2018  
Docket: CV-17-0474-00

Counsel: Applicant, for herself  
T. Johnson, E. Davis, for Respondents

Subject: Property; Public; Municipal  
**Related Abridgment Classifications**  
Municipal law

**IV** Council members

**IV.8** Conflict of interest

**IV.8.c** Voting on measure

**Headnote**

Municipal law --- Council members — Conflict of interest — Voting on measure

At council meeting, respondents participated in discussion and voted to quash resolution for township's accountants to complete examination of current lease between township and Southeast Georgian Bay Chamber of Commerce (SEGBAY) for their occupancy of building owned by township — Respondent L was mayor of township, other respondents were township councillors and all respondents were past or present members of SEGBAY — Applicant alleged that respondents had conflict of interest when they discussed and voted on resolution — Applicant applied for relief, including declaration that respondents contravened [s. 5 of Municipal Conflict of Interest Act](#) as they had pecuniary interest in matter when they voted to quash resolution — Application dismissed — Section 5(1) of Act mandated that member who had direct or indirect pecuniary interest in any matter that was subject of consideration at meeting must disclose that interest, must not take part in discussion or vote, and must not attempt to influence voting — Prohibition in s. 5 of Act extended to any matter in which member had direct or indirect pecuniary interest — Giving "direct" its plain and ordinary meaning, it must refer to situation in which member could experience immediate, non-deviated or traceable financial impact, whether positive or negative — There was no evidence that any of respondents could experience direct effect of this nature as result of vote, and none of them had direct pecuniary interest to declare — SEGBAY was "body" as referred to in s. 2(a)(iii) of Act, which included both incorporated and unincorporated bodies — It was not likely that legislature meant to exempt members of non-share, not-for-profit corporations and boards from operation of Act — Given that there was no financial sanction, impact or foregone result set out in impugned resolution, it could not be concluded that SEGBAY had pecuniary interest in matter — Resolution simply required investigative audit, and outcome of vote by council on resolution could not be linked in any way to any pecuniary outcome, other than hypothetically — As SEGBAY did not have pecuniary interest in resolution discussed and voted on, respondents could not have deemed indirect pecuniary interest, and there was no contravention of Act when respondents voted to quash resolution [Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, s 5](#).

**Table of Authorities**

**Cases considered by Healey J.:**

*Adamiak v. Callaghan* (2014), 2014 ONSC 6656, 2014 CarswellOnt 19013, 35 M.P.L.R. (5th) 152 (Ont. S.C.J.) — considered

*Aurora (Town) v. Ontario* (2013), 2013 ONSC 6020, 2013 CarswellOnt 14905, 17 M.P.L.R. (5th) 188 (Ont. S.C.J.) — considered

*Bowers v. Delegarde* (2005), 2005 CarswellOnt 692, 5 M.P.L.R. (4th) 157 (Ont. S.C.J.) — considered

*COOPER ET AL. v. WIANCKO ET AL.* (2018), 2018 ONSC 342, 2018 CarswellOnt 676 (Ont. S.C.J.) — referred to

*Campbell v. Dowdall* (1992), 12 M.P.L.R. (2d) 27, 1992 CarswellOnt 499 (Ont. Gen. Div.) — referred to

*Gammie v. Turner* (2013), 2013 ONSC 4563, 2013 CarswellOnt 9236, 11 M.P.L.R. (5th) 177 (Ont. S.C.J.) — considered

*Greene v. Borins* (1985), 50 O.R. (2d) 513, 28 M.P.L.R. 251, 18 D.L.R. (4th) 260, 8 O.A.C. 141, 1985 CarswellOnt 666 (Ont. Div. Ct.) — considered

*Hervey v. Morris* (2013), 2013 ONSC 956, 2013 CarswellOnt 2774, 9 M.P.L.R. (5th) 96 (Ont. S.C.J.) — considered

*Lorello v. Meffe* (2010), 2010 ONSC 1976, 2010 CarswellOnt 11195, 99 M.P.L.R. (4th) 107 (Ont. S.C.J.) — considered

*Magder v. Ford* (2013), 2013 ONSC 263, 2013 CarswellOnt 387, 113 O.R. (3d) 241, 355 D.L.R. (4th) 142, 7 M.P.L.R. (5th) 1, 302 O.A.C. 333, 52 Admin. L.R. (5th) 127 (Ont. Div. Ct.) — considered

*Moll v. Fisher* (1979), 23 O.R. (2d) 609, 8 M.P.L.R. 266, 96 D.L.R. (3d) 506, 1979 CarswellOnt 575 (Ont. Div. Ct.) — considered

*Mondoux v. Tuchenhausen* (2011), 2011 ONSC 5398, 2011 CarswellOnt 11438, 88 M.P.L.R. (4th) 234, (sub nom. *Tuchenhausen v. Mondoux*) 107 O.R. (3d) 675, 284 O.A.C. 324 (Ont. Div. Ct.) — referred to

#### Statutes considered:

*Boards of Trade Act*, R.S.C. 1985, c. B-6

s. 1 — considered

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

Generally — referred to

s. 2 — considered

s. 2(a) — considered

s. 2(a)(i) — considered

s. 2(a)(ii) — considered

s. 2(a)(iii) — considered

s. 3 — considered

s. 4(k) — considered

s. 5 — considered

s. 5(1) — considered

s. 5(2) — considered

s. 10(1) — considered

s. 10(2) — considered

APPLICATION for declaration that respondents had pecuniary interest when they voted to quash resolution.

**Healey J.:**

#### Nature of the Application

1 At a council meeting held on February 13, 2017, the respondents participated in discussion about and voted to quash a resolution for the Township's accountants to complete an examination of a current lease. The lease is between the Township of Georgian Bay and the Honey Harbour, Port Severn and District Chamber of Commerce, commonly referred to as the Southeast Georgian Bay Chamber of Commerce ("SEGBAY"), for their occupancy of Bressette House. Bressette House is a Township owned facility. The Resolution asked to have the accountants answer certain questions regarding the lease, some of which focused on the payment of operating costs since the approval of the lease in December 2010.

2 The applicant alleges that the respondents had a conflict of interest when they discussed and voted on the resolution on the grounds that

- (i) They are members of SEGBAY, and its lease was the subject of the requested examination;
- (ii) They are deemed to have a pecuniary interest in the matter by virtue of their membership in SEGBAY; and
- (iii) They discussed and voted on a matter in which they had a pecuniary interest, which contravened their legal obligations under the [Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50](#) ("MCIA").

3 The respondents deny that they had a pecuniary interest when they voted to quash the resolution.

4 This application was commenced to seek a determination from the court as to whether the respondents had a pecuniary interest in the matter when they voted to quash the resolution. If so, the applicant asks the court to order remedies for the contravention.

5 Specifically, the applicant seeks declarations that each of the four respondents have contravened [s. 5 of the MCIA](#), that such contravention has resulted in personal financial gains to the respondents, and that the respondents' seats on the Township of Georgian Bay Council (the "Council") are vacant. The applicant also seeks orders disqualifying the respondents from being members of the Council for a period of seven years and compelling the respondents to make restitution of any personal gains they have received.

6 This application was heard at the same time as a companion application reported as *COOPER ET AL. v. WIANCKO ET AL.*, [2018 ONSC 342](#) (Ont. S.C.J.).

## The Parties

### *The Applicant*

7 The applicant Louise Rivett is a former councillor for the Township of Georgian Bay (the "Township") for the years 2010-2014. She is a former member of SEGBAY.

### *The Respondents*

8 The respondent Larry Braid is presently the mayor of the Township as well as a councillor for the District of Muskoka. He was first elected as mayor for the Township in October 2010. He was re-elected as mayor for a further term, being sworn in on December 1, 2014. In addition to his work as mayor, he is currently self-employed and owns Larry Braid Inc., through which he works as a handyman and maintains properties in or around the Township.

9 Mayor Braid first became a member of SEGBAY in 2003. To this day, he holds a membership with SEGBAY as a business member.

10 Mayor Braid's spouse, Marianne Braid, is employed as the manager of SEGBAY.

11 The respondent Paul Wiancko was first elected as a Township councillor in 2004 and served until 2006. He was then re-elected as a Township councillor and a District councillor in 2012 and continues to serve in those capacities to the present

day. He is an active member of the community and has been involved in many different organizations in the Township. He is currently retired other than from his work as a councillor.

12 Councillor Wiancko first became a member of SEGBAY in 2003 as a social member. He maintained his social membership with SEGBAY until about December 2012 when he was elected to the SEGBAY board of directors. He continues to fulfill that role today, which is strictly a volunteer position.

13 The respondent Kathy Kay began to serve as a Township councillor in December, 2014 and continues to serve as a councillor to the present day. Councillor Kay obtained a social membership in SEGBAY beginning in June 2014. It is her position that she was not a member of SEGBAY at the time of the impugned vote, because she did not renew her membership with SEGBAY for the current 2016/2017 membership year.

14 The respondent Brian Bocheck is a councillor for the Township. His term began on December 1, 2014 and continues to the present day. In addition to his work as councillor, he is currently the President of Northern Select Inc.

15 Councillor Bocheck first became a member of SEGBAY in July 2003. Like Councillor Kay, it is his position that he was not a member of SEGBAY at the time of the impugned vote because he did not renew his membership for the current year.

16 SEGBAY is incorporated under the federal [Boards of Trade Act, R.S.C. 1985, c. B-6, at s. 1](#). With the exception of one paid employee, it is a volunteer private members organization. It strives to develop the social, economic and environmental conditions in the Township, to help vital small businesses, and to improve tourism. Its mission statement is to promote and improve trade and commerce and the economic, civic and social welfare of the district while preserving the environment.

17 SEGBAY offers two types of memberships. An individual or business can apply for either a "social" or "business" membership. Social members have the opportunity to vote at general and annual meetings, propose new members, sit on committees, and receive the SEGBAY newsletter and SEGBAY's meeting minutes. Business members are allowed the same participation as social members. Additionally, business members can apply for health insurance, home and automobile insurance discounts, special rates for debit and credit cards, fuel purchases, discounts on UPS and registration fees for business courses and programs, and new members receive airtime on a local radio station promoting their business. Positions on the board are only available to business owners or managers whose membership with SEGBAY is in good standing.

18 The term for each membership type runs from November 1 to October 31 the following year. The renewal fees are due on November 1 regardless of the membership type.

19 SEGBAY promotes and advertises the many benefits of membership, including members' names and businesses being published in the annual Business Directory and Visitor Guide (the "Directory"). The Directory is distributed at the visitor information kiosk in Port Severn, the Cottage Life and Snowmobile shows in Toronto, and other tourist information centers in Ontario.

20 It is important to make reference to SEGBAY's By-laws, which provide as follows under "Article III — Membership":

#### Section 8:

Any reputable person, directly or indirectly engaged or interested in trade, commerce or the economic and social welfare of the District, shall be eligible for membership in the Chamber and shall, once approved, be entitled to the privileges that membership in the Chamber affords. Permanent employees of member firms in good standing shall be entitled to enjoy the same privileges. Member firms are responsible for the acts, omissions and liabilities to the Chamber and their employees.

#### Section 12:

Membership shall continue from the time of admittance until a member has resigned in accordance with the provisions of these By-laws or has been removed from the roll of members by action of the Board.

### Section 13:

Any member of the Chamber, who intends to retire therefrom or to resign his membership, may do so, at any time, upon giving to the secretary-treasurer ten days' notice in writing of such intention, and upon discharging any lawful liability which is standing upon the books of the Chamber against him at the time of such notice.

### Section 14:

The Board may remove from the roll of members the name of any new member failing to pay his annual dues within 30 days of his admission, or of any other member who fails to pay such dues within three months of the date they fall due. Upon such action by the Board, all privileges of membership shall be forfeited.

## The Issues

21 The issues to be determined on this application are

1. Whether any of the respondents had a direct or indirect pecuniary interest in relation to the resolution voted upon on February 13, 2017.
2. If so, whether [s. 4\(k\) of the MCIA](#) applies to exempt that respondent from the operation of [s. 5](#).
3. If not, whether that respondent contravened [s. 5 of the MCIA](#) through inadvertence or an error in judgment, such that [s. 10\(2\) of the MCIA](#) applies.

## The Evidence

22 SEGBAY occupies the main floor of Bressette House, a Township owned building, under a commercial lease agreement dated January 27, 2011 (the "Lease"). The Lease was signed by Mayor Braid and Susan Boonstra, Township clerk, as well as two of SEGBAY's directors.

23 Councillor Patrick Edwards, who swore an affidavit in support of the application, deposes that in January 2017 he was searching through his council materials when he came across the agenda for December 6, 2010, which was the inaugural council meeting of his first term. The agenda and minutes, attached as exhibits to his affidavit, show that there was an item on the agenda regarding SEGBAY's lease for their occupancy of Bressette House. The item included a report from the clerk with a draft lease for SEGBAY. Council agreed at that meeting that SEGBAY could occupy a portion of Bressette House, with the amount of space to be determined and included in the lease at the time of signing. The rent was established at \$100 per month. Additionally, SEGBAY would pay its portion of the operating costs of Bressette House. Council asked that the lease renew annually so that it would come back for Council's re-consideration each year. By resolution and by-law, authority was given to the mayor and clerk to execute a lease with SEGBAY with those specified terms.

24 During Councillor Edwards' tenure between 2010 and 2014, budget deliberations were held when funding requests came forward from SEGBAY, as they did every year. As he had no recollection of the lease discussions from December 6, 2010, Councillor Edwards asked staff to confirm the amount that SEGBAY paid for Bressette House. He was advised that they paid \$100 a month for rent and nothing more. He was not provided with a signed copy of the Lease at the time. Accordingly, when he found the agenda and minutes from December 6, 2010, he realized that SEGBAY, in paying only \$100 per month for rent, was paying less than what was agreed to by Council on December 6, 2010.

25 On February 13, 2017 Councillor Edwards put forward a resolution with respect to the Lease ("the Resolution"). At the time that he tabled the Resolution, he still did not have an executed copy of the Lease. The Resolution was as follows:

BE IT RESOLVED THAT the Council of the Township of Georgian Bay directs the CAO to contact BDO, the Township Auditors, to request that BDO carry out the following special project related to the rental of a portion of the Bressette House to SEGBAY in the period January 1, 2011 to December 31, 2016

- to determine what lease arrangement(s) have been in place in the period January 1, 2011 to December 31, 2016
- to advise on the rental space and % of the building occupied by SEGBAY
- to advise on what % of the "Operating costs" would be calculated if one is using [clause 1\(k\)](#) of the unsigned December 6, 2010 lease
- to advise what amount was calculated under [Clause 1\(k\)](#) for each of the years 2011-2016
- to advise what amount would have been charged to SEGBAY if the draft lease of December 6, 2010 was in effect in the period January 1, 2011 through December 31, 2016
- to report the findings to the open session of Council to be held on March 31, 2017.

26 Councillors Bocek, Kay, and Wiancko, and Mayor Braid voted against the Resolution. Councillors Edwards and Cooper voted in favour.

27 On the same day, the Chief Administrative Officer gave Councillor Edwards a signed copy of the Lease. A comparison with the draft confirmed that significant material changes had been made to the Lease that were not approved by Council. The amendments removed SEGBAY's obligation to pay their share of the operating costs of Bressette House and in turn, placed this obligation on the Township. Further, the term of the Lease was changed from a one-year term to an automatic renewal unless either party provided 60 days' notice of termination. The Lease was signed by Mayor Braid and the Township clerk.

28 Currently, five of the seven council members are alleged to be members of SEGBAY. The participation and voting by members of Council who were or are members of SEGBAY has been the subject of discussion at council and committees of council meetings for some time. Councillor Edwards' evidence is that he often cautioned members of Council whom he believed to be members of SEGBAY, that they were breaching the [MCIA](#) by voting on matters to do with SEGBAY. This included SEGBAY's annual request for funding from the Township. He had done this as recently as December 6, 2016 at a budget meeting of the Committee of the Whole when an operations grant to SEGBAY was on the agenda. His evidence is that he also observed Councillor Cooper caution the respondents about voting on the grant to SEGBAY at the January 9, 2017 council meeting.

29 Councillor Cooper deposes that he has concerns that those council members who are members of SEGBAY were breaching the [MCIA](#) when they participated and voted on matters related to SEGBAY. His evidence is that he has publicly and repeatedly raised this issue with his fellow council members whenever matters to do with SEGBAY have been on meeting agendas. He cautioned the respondents at two meetings in 2015, two meetings in 2016, and again in January, 2017, that they would be in contravention of the [MCIA](#) should they participate and vote on Council's consideration of funding for SEGBAY. Because of his concerns, he often asked the clerk to record the members' votes on matters involving SEGBAY. At a January 9, 2017 council meeting when a resolution concerning a \$5,000 grant to SEGBAY came forward, Councillors Braid and Bocek both declared a pecuniary interest and did not vote.

30 However, at the February 13, 2017 council meeting, as reflected in the minutes, all the respondents participated and voted on the Resolution involving the Lease.

31 Mayor Braid's evidence is that he did not declare a conflict of interest or otherwise disclose a pecuniary interest at the council meeting of February 13, 2017 as he did not, and still does not, believe that he had a pecuniary interest to declare. As the Resolution was not asking for money to be repaid by SEGBAY or for the Lease to be terminated, but was simply requiring an investigative audit, it was his view that SEGBAY had no pecuniary interest in the Resolution. In turn, neither did he.



32 It is his evidence that he voted against the Resolution because he did not believe it was an appropriate use of tax dollars. In his view, an audit would not confirm how or why the Lease was amended following Council's approval. In relation to the "shared costs" portion of the Resolution, he also felt that it would be a waste of time and money. It would be an impossible task to calculate hydro or water usage for that part of the building given its intermittent use. He also cited additional facility constraints that he believed would make the calculation of utility costs problematic, such as the fact there are public washrooms attached to Bressette House that use the bulk of the utilities, which were continuously open until two winters ago.

33 Similarly, Councillor Wiancko's evidence is that he did not believe that either he or SEGBAY had a pecuniary interest in the Resolution because it was not asking for money to be repaid to the Township or for the Lease be terminated. The Resolution was only asking for an investigative audit. He voted against the Resolution because he believed that an audit was not cost-effective, took up staff time, and he felt that an internal audit was sufficient.

34 Councillor Kay's position and evidence is that she did not believe that either she or SEGBAY had a pecuniary interest in the Resolution for the same reasons as the other respondents. Additionally, because she had not paid her dues to SEGBAY on November 1, 2016, her position is that under SEGBAY's By-laws, her membership would have expired on February 1, 2017, prior to the council meeting in question.

35 Councillor Bocek's position and evidence is that he did not believe that either he or SEGBAY had a pecuniary interest in the Resolution for identical reasons to that of Councillor Kay. Like her, he believes that his membership would have expired on February 1, 2017 due to his non-payment of membership dues to SEGBAY.

36 When the matter of a grant to SEGBAY was voted upon on January 9, 2017, Councillor Bocek did declare a pecuniary interest. His affidavit does not address why he did so at that time. With respect to when he learned about the By-law provision that requires resignation to be in writing, his affidavit simply states that he was "subsequently" made aware of ss. 12-14 of the SEGBAY By-laws. Read in the context of his entire affidavit, "subsequently" can be interpreted to mean sometime after November 1, 2016.

37 During cross-examination of the applicant on her affidavit, she confirmed that her evidence is that if the Resolution had passed, it could have led to further investigations that could have resulted in some sort of economic determination. In her submissions, the applicant states that the audit was simply a first step. During her cross-examination the following exchange occurred:

Q: This - this resolution, you would agree with me that it doesn't impose any obligation on SEGBAY through the wording of this Resolution?

A: Not at all.

Q: Okay. And you would agree with me that if SEGBAY just signed the lease that was presented to them - or sorry, would — Yeah, would you agree with me that in - and as far as you know, SEGBAY just signed the lease that was presented to them and has made the payments that were asked of them. Correct?

A: I assume so, yes.

Q: And you have no evidence to suggest that SEGBAY in fact made the changes to the lease, do you?

A: No, I do not.

Q: There's nothing in this Resolution asking for money to be repaid to the Township. Correct?

A: No. That's correct, yes.

Q: And there's nothing in this Resolution asking for the Township to terminate the SEGBAY lease. Correct?

A: Correct.

38 Following the defeat of the Resolution at the subsequent committee of the whole meeting on February 13, 2017, all of the respondents voted in favor of an alternate resolution that supported a review of all Township leases. The alternate resolution was ratified at a subsequent council meeting on March 13, 2017.

39 The alternate resolution provides

BE IT RESOLVED THAT Council directs the CAO to work with appropriate members of the senior team (Treasurer, Director of Operations, and others) to pull together a listing of all current leases that the Township has entered into. This listing would note the date of the lease, the term of the lease, the amount charged, and indications of fair market value, and other important details. This report will come back to CoW for discussion and for development of "policies" which may flow from the debate.

40 It is common ground that this application has been made within the time period prescribed by the *MCIA* and that the applicant has standing to bring this application.

## Analysis

### *The Purpose of the Legislation*

41 The purpose of the *MCIA* has been described throughout the case law, most frequently from the Divisional Court's decision in *Moll v. Fisher* (1979), 23 O.R. (2d) 609, 96 D.L.R. (3d) 506 (Ont. Div. Ct.), at pp. 508–509. Robins, J. stated as follows:

The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honor the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute . . .

This enactment, like all conflict-of-interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the Act, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less.

42 Another helpful description of the *MCIA*'s purpose is found in *Adamiak v. Callaghan*, 2014 ONSC 6656 (Ont. S.C.J.), at para. 31:

The *Municipal Conflict of Interest Act* is legislation enacted by the Province of Ontario to maintain transparency in municipal decision making. The purpose and objective behind the *MCIA* is to ensure that elected municipal officials do not profit or seek an unfair benefit because of the office they hold when called upon to vote on matters in which they may have a direct or indirect interest. The legislation provides a mechanism for any citizen who fits the definition of an elector to bring an application against the municipal councillor if there is a perceived breach of this statutory protocol.

43 As stated by Penny, J. in *Lorello v. Meffe*, 2010 ONSC 1976, 99 M.P.L.R. (4th) 107 (Ont. S.C.J.), at para. 23, the *MCIA* "reflects the need for integrity and accountability as cornerstones of a strong local government system."

44 The onus is on the applicant to prove on a balance of probabilities that the *MCIA* was breached by the respondents: *Gammie v. Turner* 2013 ONSC 456311 M.P.L.R. (5th) 177 (Ont. S.C.J.), at para. 25; *Lorello v. Meffe*, at para. 64.



### *The Legislative Scheme*

45 Paraphrasing, [s. 5\(1\) of the MCIA](#) mandates that a member who has a direct or indirect pecuniary interest in any matter which is the subject of consideration at a meeting of the council or local board:

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

(b) shall not take part in the discussion of, or vote on a 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.

46 [Subsection 5\(2\) of the MCIA](#) requires that in addition to compliance with the requirements of [s. 5\(1\)](#), the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

47 [Subsection 4\(k\) of the MCIA](#) provides that [s. 5](#) does not apply to a pecuniary interest in any matter that a member may have . . .

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

48 The powers of a judge upon a finding that there has been a contravention of [s. 5](#) are set out in [s. 10 of the MCIA](#), as follows:

(1) Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened [subsection 5 \(1\), \(2\) or \(3\)](#), the judge,

(a) shall, in the case of a member, declare the seat of the member vacant; and

(b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and

(c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member.

(2) Where the judge determines that a member or a former member while he or she was a member has contravened [subsection 5 \(1\), \(2\) or \(3\)](#), if the judge finds that the contravention was committed through inadvertence or by reason of an error in judgment, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1).

### *Pecuniary Interest*

49 The [MCIA](#) does not define "pecuniary interest". It has been held that a "pecuniary interest" relates to a financial or economic interest, or money in some shape or form: [Campbell v. Dowdall](#) 1992 12 M.P.L.R. (2d) 27 (Ont. Gen. Div.), at p. 11; [Bowers v. Deleгарde](#) 2005 5 M.P.L.R. (4th) 157 (Ont. S.C.J.), at paras. 17, 83; [Mondoux v. Tuchenhausen](#), 2011 ONSC 5398, 107 O.R. (3d) 675 (Ont. Div. Ct.), at para. 31; [Gammie v. Turner](#), at para. 27.

50 The Divisional Court has also stated that for the [MCIA](#) to apply, the matter to be voted upon by council must have the potential to affect the pecuniary interest of the municipal councillor: [Greene v. Borins](#) (1985), 18 D.L.R. (4th) 260 (Ont. Div. Ct.), at p. 269; [Magder v. Ford](#), 2013 ONSC 263, 113 O.R. (3d) 241 (Ont. Div. Ct.), at para. 6. In [Greene v. Borins](#), Holland J. writing for the court, at pp. 269–270 stated:

The question which must be asked and answered is: "Does the matter to be voted upon have a potential to affect the pecuniary interest of the municipal councillor?"

It is of no consequence, in my opinion, what the nature of the effect might be — for his betterment or otherwise — as long as it may be seen by the public to affect that pecuniary interest.

Nor is it of any consequence how the vote was cast, the outcome of the vote, or the motive of the municipal official. The very purpose of the statute is to prohibit *any vote* by one who has a pecuniary interest in the matter to be considered and voted upon. It is only by strict observance of this prohibition that public confidence will be maintained.

51 As stated by Power, J. in *Bowers v. Delegarde*, at paras. 76-78, possible future plans do not qualify as a pecuniary interest under the *MCIA*. There must be a real issue of actual conflict or, at least, there must be a reasonable assumption the conflict will occur. The pecuniary interest must be definable and real rather than hypothetical: *Lorello v. Meffe*, at para. 59. Speculation of a pecuniary interest based on hypothetical circumstances must be avoided: *Gammie v. Turner*, at para. 57.

*i) Did any of the respondents have a direct pecuniary interest in the subject matter of the Resolution?*

52 The prohibition imposed by s. 5 extends to any matter in which the member has a direct or indirect pecuniary interest.

53 The term "direct" is not defined in the *MCIA*. Giving the word its plain and ordinary meaning, I find that it must refer to a situation in which the member could experience an immediate, in the sense of close, non-deviated or traceable financial or economic impact, positive or negative. In this case, there is no evidence that any of the respondents could experience a direct effect of this nature as a result of the vote of February 13, 2017. Accordingly, I find that none of them had a direct pecuniary interest to declare.

*ii) Did any of the respondents have an indirect pecuniary interest in the subject matter of the Resolution?*

54 The ways in which an indirect pecuniary interest can arise are set out in ss. 2 and 3 of the *MCIA*. Section 2 defines an "indirect pecuniary interest" as follows:

For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

55 Section 3 deems the interest of certain family members to be that of the member:

For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

56 Subsections 2(a)(i) and (ii) do not apply. They refer to shareholding corporations. SEGBAY is not such an entity. It is a non-share, not-for-profit volunteer organization.

57 The respondents argue that SEGBAY is likewise not captured by subsection 2(a)(iii). They rely on *Aurora (Town) v. Ontario* 2013 ONSC 602017 M.P.L.R. (5th) 188 (Ont. S.C.J.), at paras. 30-32, and *Bowers v. Delegarde*, at para. 86, for the proposition that the word "body" in subsection (iii) must mean something other than a corporation. Given the whole of the structure of s. 2(a), the argument is that if the term "body" was meant to include corporations, s. 2(a)(iii) would make no sense or alternatively, would negate ss. 2(a)(i) and (ii).

58 I disagree with this argument and the conclusion reached in *Aurora (Town)*, that had the legislature intended the sections of the *MCIA* to cover all types of corporations, it would have done so explicitly: at para. 31.

59 The contrary interpretation of s. 2(a)(iii), and one with which I agree, is found in *Gammie v. Turner*, at paras. 28-37. Referencing statutes in which the term "body" is equated with both incorporated and/or unincorporated bodies, Price, J. reached the conclusion that, read in the context of the purposes of the *MCIA*, the word "body" in s. 2(a)(iii) includes both incorporated and unincorporated bodies.

60 To this analysis, I would add that *Black's Law Dictionary*, 9th ed. defines "corporation" as

a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it — Also termed . . . body corporate; corporate body.

61 Surely the interpretation found in *Gammie v. Turner* must be correct, as it seems unlikely that the legislature meant to exempt members of non-share, not-for-profit corporations and boards from the operation of the *MCIA*. Individuals who are directors, committee members and general members of these types of entities all have the potential to have their duties as members of public councils collide with the pecuniary interests of such organizations, placing them in the untenable position of "serving two masters."

62 Having found that SEGBAY is a "body", the next question is whether it had a pecuniary interest in the matter. It is only if SEGBAY can be shown to have a pecuniary interest in the Resolution that the provisions of s. 2 will apply.

63 It has been held that the pecuniary interest of the member must be a "real one": *Magder v. Ford*, at para. 42. Additionally, since a pecuniary interest results in a prohibition against participation in a public meeting, which if not obeyed, attracts a severe penalty, it is appropriate to strictly interpret the pecuniary interest threshold: at para. 43. In the absence of a real financial interest that has crystallized, a pecuniary interest should not be presumed, nor should the spectre of it prevent a member's participation in the matter before council: (at para. 42).

64 In my view, given that there was no financial sanction, impact or foregone result set out in the impugned Resolution, it cannot be concluded that SEGBAY had a pecuniary interest in the matter. The Resolution was not asking for money to be repaid to the Township by SEGBAY or for the lease with SEGBAY to be terminated or somehow altered. It was simply requiring an investigative audit.

65 This case is similar to the situation in *Hervey v. Morris* 2013 ONSC 9569 M.P.L.R. (5th) 96 (Ont. S.C.J.), in which the mayor of the Town of Aurora was alleged to have had a pecuniary interest in a matter under discussion in a closed session portion of a Town council meeting. It was alleged that the matter discussed involved litigation or potential litigation concerning defamation. The mayor had been the subject of disparaging social media posts. It was the position of the mayor that the topic of discussion in the closed meeting was with respect to what could be done to determine the identity of the anonymous bloggers. The commencement of a legal action for monetary damages was not discussed or contemplated at the meeting. Further, the council did not receive legal advice on how to proceed, but instead, council decided to seek an opinion from an outside counsel. The court in *Hervey v. Morris* determined that nothing had been crystallized in terms of any pecuniary interest at the subject meeting. At its best and highest, the court found that the discussions at the closed meeting related to a decision to investigate and take further steps and nothing more. No one at the meeting, including the mayor, knew what the outcome of the investigations would be.

66 In reaching that decision, the court in *Hervey v. Morris* distinguished the case of *Greene v. Borins*, in which the court found a pecuniary interest where the meeting in question was the first step in a long process that may have resulted in some financial benefit to a member of council. The respondent Borins had voted on matters relating to a land proposal without revealing his father's interest in some nearby properties. The court found that Borins' interest was not remote or insignificant. Although no zoning or use change was contemplated with respect to the land proposal at the time of the vote, the vote was on whether to grant an option to a developer to purchase the city-owned property involved in the land proposal. It was only the first step in a long process that would require the developer to exercise the options, acquire the remaining lands, and start the planning and zoning process. This process would require council to cast a number of votes in the future. As Gilmore, J. held in *Hervey*, Borins' vote in favor of the development proposal could clearly be linked to a potential benefit for him.

67 For the same reasons that existed in *Hervey*, the outcome of the vote by Council on the Resolution cannot be linked in any way to any pecuniary outcome, other than hypothetically.

68 Such conclusion is made even more obvious by the following consideration. Given that SEGBAY has been operating under a lease that was prepared and executed by duly qualified individuals back in 2011, it is unclear what, if any, remedy would be available to the Township to impose an economic result that differed from that prescribed by the Lease. The applicant has not provided any evidence of what legal or administrative remedy, if any, would be available to the Township to deal with or correct the fact that the terms of the Lease differed from those that had been approved by Council. Accordingly, any potential financial repercussions for SEGBAY that might eventually have flowed from the Resolution, if it had passed, are speculative and not grounded in any evidence before this court.

69 In light of the conclusion that SEGBAY did not have a pecuniary interest in the Resolution discussed and voted upon on February 13, 2017, the court cannot find that the respondents have a deemed indirect pecuniary interest. It is also unnecessary to determine the question of whether each respondent was a member of SEGBAY at the time of the council meeting.

70 Accordingly, there was no contravention of the *MCLA* when the respondent Councillors voted to quash the Resolution concerning the Lease.

71 For the foregoing reasons, this court orders that the application is dismissed. If the parties are not able to agree upon costs, they may make brief written submissions. The respondents' submissions are due by January 31, 2018. The applicants' submissions are due by February 7, 2018. Any reply is due by February 9, 2018. All submissions shall be submitted through the office of the judicial assistants at Barrie, to my attention.

*Application dismissed.*