

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
CATHERINE COOPER, LOUISE RIVETT and LORNE CAMERON)	Self-represented
)	
Applicants)	
)	
– and –)	
)	T. Johnson and E. Davis, for the
CYNTHIA DOUGLAS, PAUL WIANCKO and KATHY KAY)	Respondents
)	
Respondents)	
)	
)	
)	HEARD: January 5, 2018

HEALEY J.:

REASONS FOR JUDGMENT

Nature of the Application

- [1] At a council meeting held on January 9, 2017, the respondents participated in the discussion of, and voted on, a resolution to give the Honey Harbour, Port Severn and District Chamber of Commerce, commonly referred to as the Southeast Georgian Bay Chamber of Commerce (“SEGBAY”), a grant of \$5,000.

- [2] The applicants allege that the respondents had a conflict of interest when they voted to approve the grant on the grounds that:
 - (i) They are members of SEGBAY, which was the recipient of the grant;

 - (ii) They are deemed to have a pecuniary interest in the matter by virtue of their membership in SEGBAY;

- (iii) They discussed and voted on a matter in which they had a pecuniary interest, which contravenes the legal obligations that the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (“*MCIA*”) imposes on them.
- [3] The respondents deny that they had a pecuniary interest when they voted to approve the grant.
- [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. If so, the applicants ask the court to order remedies for the contravention.
- [5] Specifically, the applicants seek declarations that each of the three 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. They also ask for 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 *Rivett v. Braid*, 2018 ONSC 352.

The Parties

The Applicants

- [7] The applicant Catherine Cooper is a long-term seasonal resident of the Township of Georgian Bay (the “Township”) and a ratepayer. She volunteers with a cottagers’ association as Director of Municipal Affairs, and with a planning group in the creation of a community plan, through which she has been tracking and documenting the operations of the Township for many years. She is married to Peter Cooper, who is a councillor for the Township of Georgian Bay.
- [8] The applicant Louise Rivett is a former councillor for the Township for the years 2010-2014. She is a former member of SEGBAY.
- [9] The applicant Lorne Cameron is also a long-time local resident and ratepayer of the Township. He is also a former member of SEGBAY.
- [10] Each of the applicants filed affidavits in support of this application. Additional affidavit evidence supporting the application came from Councillor Patrick Edwards, who was re-elected to Council in 2014 for his second term, and Councillor Peter Cooper, who became a member of Council in 2014.

The Respondents

- [11] The respondent Paul Wiancko was first elected as a Township councillor in 2004 and served until 2006. He was then re-elected as both a Township 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 Cynthia Douglas first began to serve as a Township councillor in December 2014 and continues to serve as a councillor to the present day. In addition to her council work, she is also a director and employee of Stonyridge Construction Inc.
- [14] Councillor Douglas first became a business member of SEGBAY in November 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.
- [15] The respondent Kathy Kay also began to serve on Council in December 2014 and continues to serve as a councillor to the present day. She too is an active member of the community and has been involved in many different organizations in the Township.
- [16] Councillor Kay obtained a social membership in SEGBAY beginning in June, 2014. Like Councillor Douglas, 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.
- [17] 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 run private members organization. It strives to develop the social, economic and environmental conditions in the Township, to help 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.
- [18] 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.
- [19] 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.

[20] SEGBAY promotes and advertises the many benefits of membership, including publishing members' names and businesses 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.

[21] 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

[22] 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 January 9, 2017 to give SEGBAY a \$5,000 grant.
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

- [23] For at least the past six years, the Township has provided a modest annual grant to SEGBAY. According to the applicants' evidence, five of the seven Council members are members of SEGBAY. The issue of the respondents' membership in SEGBAY is highly disputed.
- [24] In return for the Township providing SEGBAY with the annual grant, SEGBAY provides the Township with an annual unaudited financial statement to account for the grant monies provided.
- [25] The agenda for Council's October 12, 2016 committee of the whole meeting includes a presentation from SEGBAY asking for financial assistance. The President of SEGBAY gave a presentation outlining the projects that SEGBAY had completed in 2016, and requested that Council grant funds of \$5,000 as it had done in previous years.
- [26] The presentation material provided by SEGBAY states that the grant will go toward SEGBAY events and initiatives for 2017, such as the annual golf tournament, ongoing advertising and extra labour costs for participation in Canada 150 events, and production of the Directory and an updated map to point the way to "our" businesses, events and exhibits. The material also states that SEGBAY found it necessary to seek financial assistance from the municipalities that it serves in order to make sure it can continue to offer its services to its many small business members and foster tourism and increased economic activity in the area. The reasons it cites are "these lean economic times plus the fact that SEGBAY is a small Chamber".
- [27] None of the respondents declared a pecuniary interest in the topic at the committee of the whole meeting on October 12, 2016.
- [28] The topic of the grant was next raised at a committee of the whole meeting on December 6, 2016 when a resolution was passed that the Committee recommend to Council that a \$5,000 grant allocation for SEGBAY be incorporated into the 2017 budget. At the time that the Resolution was tabled, Councillor Douglas declared a pecuniary interest in the matter and left her seat.

- [29] At the regular council meeting on January 9, 2017, the resolution from the December 6, 2016 meeting was adopted. None of the respondents declared a pecuniary interest in the matter prior to the vote.
- [30] The \$5,000 grant that the Township provided to SEGBAY for 2017 made up approximately 7% of SEGBAY's annual budget.
- [31] The respondents explain that they did not declare a conflict of interest or otherwise disclose a pecuniary interest at the council meeting on January 9, 2017 because they believed that they did not have a pecuniary interest to declare or that if such pecuniary interest existed, that it would fall within one of the exceptions outlined in the *MCIA*, in particular s. 4(k). Councillor Douglas, the only respondent to leave the previous meeting after identifying a conflict, explains in her affidavit that she declared a pecuniary interest in the item on December 6, 2016, not because she felt that she truly had one, but because she wanted to avoid any issues, such as an application like the one presently before the court. It is her evidence that she believed that she did not have a pecuniary interest, because to the best of her knowledge, she understood that she was no longer a member of SEGBAY at the time of that meeting.
- [32] Paraphrasing the legislation, 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 the meeting of the council or local board:
- (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 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.
- [33] 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.
- [34] Section 4 of the *MCIA* provides exemptions. 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.
- [35] Based on her affidavit and testimony on cross-examination, Ms. Rivett confirmed that she believes the respondents are members in SEBGAY based on the content of the 2017 Directory, the way she interpreted the By-laws, and the inclusion of Stonyridge Construction Inc. on the SEGBAY website as of March 11, 2017.

- [36] Councillor Patrick Edwards deposes that during his current term on Council he often cautioned those members whom he believed to be members of SEGBAY, that they were breaching the *MCIA* by voting on matters to do with the organization. It is his evidence, which is not contested, that at the December 6, 2016 budget meeting of the Committee of the Whole, he quietly addressed the issue of conflict with the respondents Wiancko and Douglas when the resolution to fund SEGBAY was introduced. He cautioned them that as members, and in the case of the respondent Wiancko, as a Director, of SEGBAY, they should recuse themselves from the discussion and not vote on the issue. As reflected in the minutes of that meeting, Councillor Douglas did recuse herself. Councillor Edwards continued to speak with Councillor Wiancko, cautioning him that there were legal cases that dealt with pecuniary interests. This caused Councillor Wiancko to respond with words to the effect of, "I don't care about your cases, I have my own".
- [37] Councillor Edwards states that the issue of recusal on SEGBAY matters has been raised in most of the votes for grants to SEGBAY during his current term on Council; consequently, many times he has asked that a recorded vote be taken.
- [38] It is the uncontested evidence of Councillor Peter Cooper that he also spoke with the respondents about voting on the grant to SEGBAY at the January 9, 2017 council meeting, as well as on previous occasions. It is his evidence that he has publicly and repeatedly raised his concern with those Council members who were members of SEGBAY whenever the agenda contained matters to do with SEGBAY. He cautioned the respondents in January and December 2015, again in January and December 2016, and once again in January 2017, that they would be in contravention of the *MCIA* should they participate and vote in Council's consideration of funding for SEGBAY. Again, because of his concerns, he often asked the clerk to record the members' votes for matters related to SEGBAY.
- [39] More specifically, at the December 6, 2016 budget meeting of the Committee of the Whole, when the \$5,000 operations grant to SEGBAY was discussed, Councillor Cooper produced and waved a copy of the Directory. He cautioned the respondents about their participation in the discussion and vote for the funding. He again cautioned the respondents about voting for funding for SEGBAY on January 9, 2017.
- [40] Councillor Cooper believes that the respondents are members of SEGBAY because of the inclusion of their names in past years' Directories, in the 2017 Directory and in the SEGBAY newsletter distributed by email on January 27, 2017, as well as his own discussions with the respondents. Whenever he has raised the issue of a conflict with the respondents, they have never told him that they were not members of SEGBAY. Councillor Edwards also references the Directory and his conversations with the respondents as forming the basis of his belief that each of the respondents were members of SEGBAY.
- [41] The evidence regarding the respondents' membership in SEGBAY requires some careful scrutiny because it is a disputed issue.

- [42] As a Director of SEGBAY, it stands to reason that Councillor Wiancko is also a current member of SEGBAY, but his affidavit does not say so explicitly. Councillor Wiancko deposes that he ended his social membership with SEGBAY when he was elected to the Board of Directors in December 2012. His affidavit does not say that he is now a business member. However, in evidence is an email dated October 6, 2016 from SEGBAY's Manager, Marianne Braid, sending notice to SEGBAY members that individuals were being sought to fill volunteer board of director positions for the 2017 membership year. The email states that "interested applicants must be a business owner or manager whose membership with this Chamber is in good standing". Also in evidence is the list of the 2016 Board of Directors, which includes Paul Wiancko. In the 2015 Directory, in the Membership Listings under the subheading "Consulting", Paul Wiancko's name appears beside "PMW Water Works", together with a phone number and the email address pwiancko@csolve.net. The 2017 Directory provides this same information and also lists Paul Wiancko as a Director.
- [43] Stonyridge Construction Inc., the company of which Councillor Douglas is a director and employee, is listed as a member in the 2017 Directory. Also in evidence is a page from the SEGBAY website on which, as of March 11, 2017, contact and other information pertaining to Stonyridge Construction Inc. appears.
- [44] Councillor Douglas deposes that around September 15, 2016 she decided not to renew the business membership for Stonyridge Construction Inc. due to personal reasons. Around November 15, 2016, after receiving a notice for renewal from SEGBAY, she verbally confirmed with SEGBAY her intention not to renew her membership. Based on the fact that she did not pay to renew her membership, as well as her verbal confirmation that she did not plan to renew, it was her understanding that she would no longer be considered to be a SEGBAY member as of November 1, 2016. No one at SEGBAY advised her that she needed to take any further steps to end her SEGBAY membership. Since November 1, 2016, she has neither paid money to become a member, nor requested to become a member of SEGBAY.
- [45] Since then, she has been made aware of s. 12 of the SEGBAY By-laws, which requires resignation of membership to be in writing. However, her verbal indication to SEGBAY and subsequent nonpayment of dues, in her view, shows her clear intention to no longer be a member of SEGBAY after November 1, 2016.
- [46] Councillor Kay is in a similar position. She is listed as a social member in the 2017 Directory.
- [47] Her evidence is that on or about October 16, 2016, she decided not to renew her social membership with SEGBAY and did not purchase a membership for the 2016/17 membership year. On November 28, 2016 she verbally confirmed to SEGBAY her intention not to renew her membership. Like Councillor Douglas, no one in SEGBAY ever advised her that she needed to take any further steps for her SEGBAY membership to be at an end. It was only subsequently that she was made aware of s. 12 of the SEGBAY By-laws. Based on her verbal indication to SEGBAY and the fact that she did

not pay to renew her membership, it was her understanding that she would no longer be considered to be a SEGBAY member as of November 1, 2016. Since then, she has neither requested to become a member of SEGBAY nor paid any money to become a member.

- [48] The respondents' lawyer sought confirmation from SEGBAY that the memberships of Councillors Kay and Douglas had ended on November 1, 2016. In evidence is a letter from SEGBAY dated April 6, 2017 in relation to the membership status of those respondents. The letter is signed by SEGBAY's President. It confirms that neither Councillor was a paid-up member as of November 1, 2016 and states that their memberships expired as of November 1, 2016. It confirms that each respondent had personally contacted the Chamber in November to advise of her intention not to renew.
- [49] The letter also addresses the inclusion of the respondents' names in the 2017 Directory. Because the time between membership renewals and the publishing of the Directory is very short and because SEGBAY anticipates renewals, their members from the previous year are included in the Directory. The letter goes on to state that the respondents Douglas and Kay were included in error.
- [50] These respondents rely on the letter from SEGBAY dated April 6, 2017 as evidence that SEGBAY did not consider them to be members after October 31, 2016.
- [51] The applicants have no evidence that Councillors Douglas or Kay purchased memberships in SEGBAY for the membership year commencing November 1, 2016 or that those respondents did not verbally confirm to SEGBAY that they would not be renewing their membership.
- [52] Each of the respondents deposes that they did not personally benefit in any way from voting in favor of the annual SEGBAY grant. Councillor Wiancko's evidence is that he has never applied for or received any of the benefits that SEGBAY offers as he receives extended benefits as well as life insurance from his prior employer and has no need of additional benefits. Councillors Kay and Douglas also deny ever applying for or receiving any of the benefits that SEGBAY offers. Each of the respondents has always personally paid his or her own membership fees directly to SEGBAY and has never asked the Township for reimbursement of those membership fees, nor have they been so reimbursed. Finally, each of the respondents deposes that they have never received any direct monetary benefit from their membership with SEGBAY. This evidence relating to payment of dues and receipt of membership benefits is uncontroverted.
- [53] Collectively, the applicants have observed the actions of the respondents during the current term and are concerned that they vote on matters of SEGBAY without considering their positions as members of that organization. The applicants have attempted to address this issue with the Township Integrity Commissioner, the Ombudsman, and the Clerk and Chief Administrative Officer before resorting to s. 8 of the *MCIA*, which permits a judge to determine whether a member has contravened s. 5.

- [54] It is common ground that this application has been made within the time period prescribed by the *MCIA* and that the applicants have standing to bring this application.

Analysis

The Purpose of the Legislation

- [55] 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, at p. 508-509 (Div. Ct.). 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 motives, 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.

- [56] Another helpful description of the *MCIA*'s purpose is found in *Adamiak v. Callaghan*, 2014 ONSC 6656, 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.

- [57] As stated by Penny, J. in *Lorello v. Meffe*, 2010 ONSC 1976, 99 M.P.L.R. (4th) 107, at para 23, the *MCIA* “reflects the need for integrity and accountability as cornerstones of a strong local government system.”
- [58] The onus is on the applicants to prove on a balance of probabilities that the *MCIA* was breached by the respondents: *Gammie v. Turner*, 2013 ONSC 4563, 11 M.P.L.R. (5th) 117, at para. 25; *Lorello v. Meffe*, at para. 64.

Pecuniary Interest

- [59] 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, at p. 11 (O.C.J. Gen. Div.); *Bowers. v. Delegarde* (2005), 5 M.P.L.R. (4th) 157, at paras. 17, 83 (S.C.J.); *Mondoux v. Tuchenhausen*, 2011 ONSC 5398, 107 O.R. (3d) 675, at para. 31; *Gammie v. Turner*, at para. 27.
- [60] 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, at p. 269 (Ont. Div. Ct.); *Magder v. Ford*, 2013 ONSC 263, 113 O.R. (3d) 241, at para. 6 (Div. Ct.). 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.

- [61] Each conflict of interest case must largely stand on its own facts: *Greene*, at p. 269. What constitutes a sufficient pecuniary interest to trigger s. 5 of the *MCIA* will not necessarily be demarcated by a bright line. That is why the decision to exercise the obligations set out in s. 5 are characterized as a matter of personal judgment for each councillor. This is demonstrated in this case, where, on the evening of the vote by Council, two councillors

who are alleged to be SEGBAY members declared such conflict, while the respondents did not. However, where an applicant believes there is objective evidence of a pecuniary interest, direct or indirect, such that the statute has been violated, the legislation permits this court to review a councillor's exercise of discretion, regardless of the basis for his or her decision.

(i) *Did any of the respondents have a direct pecuniary interest in the vote on the matter of funding for SEGBAY?*

[62] The prohibition that s. 5 imposes extends to any matter in which the member has a direct or indirect pecuniary interest.

[63] 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 on January 9, 2017. While the grant was to benefit the collective goals of an organization of which the respondents were either current or former members, there is no evidence that the money provided by Council would be paid to them or their businesses. 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 matter of funding for SEGBAY?*

[64] The ways in which an indirect pecuniary interest can arise are set out in ss. 2-3 of the *MCIA*. Section 3 deems the interest of certain family members to be that of the member, and s. 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.

- [65] 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 organization.
- [66] The respondents argue that SEGBAY is likewise not captured by s. 2(a)(iii). They rely on *Aurora (Town) v. Ontario*, 2013 ONSC 6020, 17 M.P.L.R. (5th) 188, at paras. 30-32, and *Bowers v. Delegarde*, at para. 86, for the proposition that the word “body” in s. 2(a)(iii) must mean something other than a corporation. Given the whole 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).
- [67] 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.
- [68] 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.
- [69] 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...
- [70] Surely the interpretation found in *Gammie v. Turner* must be correct as it seems unlikely that the legislature meant to exempt members of volunteer run, 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.”
- [71] Having found that SEGBAY is a “body”, the next question is whether it had a pecuniary interest in the matter. Unquestionably, the evidence supports that SEGBAY had a pecuniary interest in securing the grant even if some of the identified uses of that grant might benefit the community beyond its own membership.
- [72] Having found that SEGBAY had a pecuniary interest in the matter, the next question is whether each of the respondents was a member of SEGBAY on January 9, 2017.
- [73] I find that each of the respondents was a member of SEGBAY on the relevant date.

- [74] Despite some gaps in his evidence on this point, as a Director for the year commencing November 1, 2016 Councillor Wiancko was a member of SEGBAY in good standing on the date in question. There is no evidence that he had resigned from that position. The 2017 Directory confirms his position on the Board. As such, he is deemed by operation of s. 2(a)(iii) to have an indirect pecuniary interest in the matter of the grant.
- [75] Councillors Douglas and Kay, by operation of SEGBAY's By-laws, were also members in good standing on the date in question. Their subjective understanding of their membership status, even when confirmed by SEGBAY's President, is not relevant to this question although it may be relevant to other aspects of this analysis. The manner in which a membership in SEGBAY is terminated is prescribed by the By-laws. The fact that its executive member disregarded that procedure at the time that she responded to respondents' counsel is unfortunate, as the By-laws make clear that it takes more than non-payment of dues and verbal communications to terminate membership. Neither of these respondents gave notice in writing as required under s. 12 of the By-laws. Further, when their dues had not been paid by three months after the due date, there is no evidence that the Board removed their names from the Roll of Members. As s. 14 provides, it is only upon such action by the Board, which action is permissive, that all privileges of membership are forfeited.
- [76] I find that Councillors Douglas and Kay remained on the Roll of Members of SEGBAY on January 9, 2017 and therefore are captured by s. 2(a)(iii) of the *MCIA*. They are deemed to have an indirect pecuniary interest in the matter of the grant.

(iii) *The Application of section 4(k)*

- [77] The respondents submit that if they are found to have an indirect pecuniary interest, that interest is one to which s. 4(k) of the *MCIA* applies, exempting them from the operation of s. 5. Section 4(k) of the *MCIA* states:

Section 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.

- [78] This provision has been interpreted in a number of cases. The test to be applied is set out in *Whiteley v. Schnurr* (1999), 4 M.P.L.R. (3d) 309, at p. 6 (S.C.J.), as follows: Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor's action and decision on the question?

- [79] The court in *Whiteley* went on to state, at pp. 6-7,

In answering the question set out in such test, such an elector might consider whether there was any present or prospective financial benefit or detriment, financial or otherwise, that could result depending on the manner in which the member disposed of the subject matter before him or her. The foregoing example is illustrative and not exhaustive; the circumstances of each case will determine what factors should be considered in determining the applicability of s. 4(k).

- [80] I have taken into account that the respondents have never received a direct monetary benefit from their membership in SEGBAY or in the case of Councillor Wiancko, from being on the Board, nor have they availed themselves of the benefits offered to members. For the reasons that follow, I find that 4(k) applies to exempt the pecuniary interests of Councillors Kay and Wiancko from s. 5, but not the pecuniary interest of Councillor Douglas that arises from the publication of SEGBAY's Directory.
- [81] Taking into account the stated reasons for which the grant was sought, the only one that potentially intersects with the respondents' interests in a significant way is that part of the funds were to be used for the production of the Directory and an updated, detailed map to point the way to the businesses owned or operated by those holding a business membership in SEGBAY.
- [82] Councillor Douglas is the Officer and employee of a business that receives the benefit of the publication and distribution of the Directory. Although I am concerned about the fact that Councillor Wiancko's name is found in the 2017 Directory beside what appears to be a business called PMW Water Works, he was not cross-examined on his affidavit evidence. Accordingly, his evidence that he is retired other than from his work as a Councillor for both the Township and the District, is unchallenged, although conflicted. Without further evidence about the existence and operation of what appears to be his business listing in the 2017 Directory within the "Consulting" category, I am not persuaded on a balance of probabilities that any business interest that he may have, would be impacted by the publication of the Directory.
- [83] How much benefit accrues to Councillor Douglas from this Directory or the fact that her company's name appears on SEGBAY's website? There is no evidence through which to fully evaluate this question other than the evidence gleaned from SEGBAY's unaudited financial statement for 2016. Brochure production costs were \$6,485 in 2016, which was the second highest expense item for SEGBAY after wages and benefits paid to its manager. Advertising and promotion costs were \$3,653. Being a business member allows Councillor Douglas to benefit from the expenditure of what are, for this organization, significant costs. It is a benefit not shared by other electors who are not members of SEGBAY. It is an advertising or promotional expense that Stoneridge Construction Inc. does not have to bear on its own in whole or in part. It is a cost that if borne by a single business on its own, could be considered significant. I find that her interest in funding these expenses was neither remote nor insignificant, and accordingly s. 4(k) does not apply in these circumstances.

[84] Applying the test set out in *Whiteley*, I find that a reasonable elector, being apprised of all the circumstances, would more likely than not regard the interest of Councillor Douglas as likely to have influenced her action and decision on the question of whether to provide the grant to SEGBAY given the purposes for which SEGBAY intended to use the grant.

[85] As the evidence does not permit the court to conclude that Councillors Kay and Wiancko are impacted by the grant in this same way, I find that their interest in providing the grant to SEGBAY is sufficiently remote to be captured by s. 4(k). Any other uses of the grant are too remote and too much aligned with the interests of the community as a whole to consider that they would be likely to influence the respondents, particularly given the goals of SEGBAY as articulated in its mission statement. It is my view that funding a golf tournament and Canada Day celebrations does not raise a conflict with the Councillors' duty to put the public's interests first. The applicants' submission that the denial of the grant would have placed SEGBAY into a deficit position is speculative as there is no evidence as to how the SEGBAY's Board may have dealt with their economic situation had the vote not carried. The applicants' assumption that dues might have been raised or levies imposed is also speculative.

(iv) *Has section 5 been contravened?*

[86] Because Councillor Douglas has been found to have an indirect pecuniary interest in the matter of the grant by virtue of s. 2(a)(iii), and because the exemption under s. 4(k) does not apply, she failed to meet her statutory obligations under s. 5 of the *MCIA* when she participated in the discussion and vote on this matter on January 9, 2017. I find that she has contravened ss. 5(1) and (2) of the *MCIA*. Unless subsection 10(2) applies, this finding requires the court to declare her seat vacant and potentially impose other sanctions available under s. 10(1) of *MCIA*.

(v) *The Application of s. 10(2)*

Section 10(2) of the *MCIA* states as follows:

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).

[87] I find that Councillor Douglas is in the position that she is in not as a result of any error in judgment, but strictly inadvertence. Although she believed in good faith that she had resigned from her membership in SEGBAY, she is in this position because she did not follow the procedure set out in the By-laws. To the extent that her continued membership results from the Board not taking the required action to remove her from the roll of

members, or from the Board including Stoneridge's name in the Directory when SEGBAY erroneously considered her to no longer be a member, the repercussions should not be laid at her feet or the feet of the electors who voted for her.

- [88] In *Campbell v. Dowdall*, at p. 17, inadvertence is said to involve “oversight, inattention, carelessness and the like.” I am not sure that Councillor Douglas’ state of mind can even be properly characterized by such descriptors; while she had not educated herself about the By-laws until more recently, she understandably looked to the organization to steer her in the right direction in the event that she had not followed the proper procedure. The fault for failing to educate its members about the requirements of the By-laws concerning resignation lies with the Board of SEGBAY.
- [89] Although the Court in *Magder v. Ford* held that wilful blindness to one’s legal obligations cannot be a good faith error in judgment within the meaning of s. 10(2), inadvertence does not rise to that level. A member may understand the legal obligations imposed by *MCIA* but still mistakenly contravene them. As a business member of SEGBAY and having never been on its Board, there is no evidence that Councillor Douglas had ever had reason to review a copy of the By-laws before the council meeting on January 9, 2017.
- [90] I find that Councillor Douglas disclosed her interest and exempted herself from the meeting on December 6, 2016 for the reasons set out in her affidavit – to avoid an application such as this, even while believing that she was no longer a member of SEGBAY. This evidence does not establish that she knew that she remained a member of SEGBAY. When she reconsidered and decided not to declare a pecuniary interest on January 9, 2017, I find that she did so out of the innocently held view that she had no potential conflict as a result of not renewing her membership in SEGBAY.
- [91] This is exactly the type of circumstance in which the court should exercise its discretion to relieve against s. 10(1). Accordingly, this court declares that Councillor Douglas is exempt from any of the penalties available under that subsection.
- [92] Going forward, however, with the release and publication of this decision, it will be unlikely that members will be able to rely upon ignorance of the contents of SEGBAY’s By-laws to save themselves from their obligations under the *MCIA* where matters captured by s. 5 of the *MCIA* come before Council or its committees.
- [93] 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.

HEALEY J.

Released: January 22, 2018