CITATION: Yorke et. al. v. Harris, 2020 ONSC 7361
COURT FILE NO.: CV-19-250
DATE: 2020-12-09

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
MICHAEL YORKE, JOEL NEVILLE and JAMES ANDRES, on their own behalf and on behalf of All Other Members of Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America	)	Scott Lemke and James Ayres, Counsel for the Applicants
- and –	)	
MICHAEL HARRIS a.k.a. MIKE HARRIS	)	Eric Davis and Trenton Johnson, Counsel for the Respondent
	)	**HEARD:** November 22, 2019; January 6 and 10, 2020; and September 8, 2020

The Honourable Justice C.D. Braid

REASONS FOR JUDGMENT

I. OVERVIEW

[1] Michael Yorke, Joel Neville and James Andres ("the applicants") are members of the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America ("the Carpenters Union").

[2] Michael Harris is an elected councillor for the Regional Municipality of Waterloo ("the Region"). His wife works for the Christian Labour Association of Canada ("CLAC").

[3] In 2019, Councillor Harris introduced a resolution to Regional Council ("the Resolution") that would support and encourage the provincial government to pass proposed amendments to the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A. The amendments would result in the Carpenters Union's exclusive bargaining rights

with the Region being terminated and would allow members of other organizations (including CLAC) to bid on the Region's construction projects.

[4] The applicants allege that Councillor Harris failed to declare a pecuniary interest in the Resolution, and that he did not refrain from voting nor encouraging others to support the Resolution, contrary to the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 ("*MCIA*").

[5] The following issues arise on this application:

A. Do the applicants have standing to bring the application?
B. Was the application brought in time?
C. Did Councillor Harris have a deemed indirect pecuniary interest in the resolution?
D. Do any of the exceptions apply?

[6] For the reasons that follow, I dismiss the application.

II. BACKGROUND

[7] The Carpenters Union and CLAC are trade unions in the Province of Ontario. In 2014, the Carpenters Union was certified by the Ontario Labour Relations Board, and became the sole and exclusive bargaining agent for all construction carpenters and carpenters' apprentices employed by the Region. During this certification process, the Region was found to be an employer in the construction industry. As a result, the Region became bound to a collective agreement with the Carpenters Union whereby it was required to exclusively contract or sub-contract with companies in a contractual relationship with the Carpenters Union to perform construction carpentry work in the industrial, commercial and institutional sectors.

[8] From 2011 to 2018, Councillor Harris was a member of the Progressive Conservative Party and the Member of Provincial Parliament for the riding of Kitchener-Conestoga. In 2013, he introduced a Private Member's Bill to amend the *Labour Relations Act* that would terminate the Carpenters Union's exclusive bargaining rights with municipalities. CLAC demonstrated its support for the Bill, but it was ultimately defeated in the Provincial Legislature.

[9] In January 2017, Sarah Harris, Councillor Harris' wife, began working at CLAC as an administrative assistant. She still worked there when the application was brought in March of 2019.

[10] In October of 2018, Councillor Harris was elected to Regional Council. He took office on December 1, 2018.

[11] In December of 2018, the provincial government introduced *Bill 66*, which contained amendments to the *Labour Relations Act* that would ensure that municipalities are not defined as construction employers. This would result in the Carpenters Union's exclusive bargaining rights with the Region being terminated and its exclusive collective agreement no longer having any effect.

[12] On January 16, 2019, Councillor Harris introduced the Resolution to Regional Council, supporting and encouraging the amendments to the *Labour Relations Act*. The Resolution included the following:

> Now Therefore Be It Resolved That the Region of Waterloo support the amendments to the Labour Relations Act to ensure municipalities are not defined as construction employers and encourage all members of the legislature to support its passage.

[13] Councillor Harris advocated for and voted on the Resolution, which was passed.

[14] The applicants argue that Councillor Harris was in a conflict of interest because of his wife's employment. They submit that he breached the *MCIA* by failing to declare a conflict of interest, by participating in the discussion and by voting on the Resolution.

[15] The respondent takes the position that he did not declare a conflict at the meeting because he never believed, and still does not believe, that the Resolution actually created a pecuniary interest.

III. *Municipal Conflict of Interest Act*

[16] The *MCIA* was enacted by the Province of Ontario to maintain transparency in municipal decision making. The purpose of 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: see *Adamiak v. Callaghan*, 2014 ONSC 6656, 35 M.P.L.R. (5th) 152.

[17] The *MCIA* permits an elector to apply to a judge for a determination of the question of whether a member of a municipal council has contravened the obligation to disclose a pecuniary interest in a matter, and to refrain from taking part in any discussion or voting on that matter.

[18] The citizen or elector who seeks to have a councillor censored under the *MCIA* bears the burden of proving that the councillor has breached the *Act* on a balance of probabilities: see *Gammie v. Turner*, 2013 ONSC 4563, 11 M.P.L.R. (5th) 177.

[19] The applicants argue that Councillor Harris breached s. 5(1) of the *MCIA* because he had an indirect pecuniary interest in the Resolution. Section 5(1) imposes an obligation on a councillor who has a direct or indirect pecuniary interest to do the following:

> (a) prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
> (b) not take part in the discussion of, or vote on any question in respect of the matter; and
> (c) not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

IV. ANALYSIS

A. Do the Applicants Have Standing to Bring the Application?

[20] The impugned conduct giving rise to the application occurred on January 16, 2019, when Regional Council passed the Resolution. Amendments to the *MCIA* were proclaimed in force on March 1, 2019. The application was issued on March 4, 2019. The parties made submissions regarding which version of the *Act* applied, namely whether it the version that was in force on January 16, 2019 (the date of the impugned conduct) or the version that was in force on March 4, 2019 (the date the application was issued).

[21] The amended *MCIA* grants standing to a broader category of persons, and permits applications to be brought by the Integrity Commissioner and persons demonstrably acting in the public interest, in addition to electors. The amended *Act*

also give the court discretion to consider lesser penalties in circumstances where a breach of the *Act* is found.

[22] With respect to the question of standing, I need not determine this issue because a representation order was made. If Mr. Yorke and Mr. Neville did not have standing at the outset of the application, this has been remedied. Moreover, because I have found that Councillor Harris has not contravened the *Act*, I need not consider which *Act* applies with respect to the available penalties.

[23] Pursuant to both versions of the *MCIA*, an elector may apply to a judge for a determination of the question of whether a member has contravened s. 5. "Elector" is defined in s. 1 of the *Act* as "a person entitled to vote at a municipal election in the municipality." The application was initially brought by Mr. Yorke, President of the Carpenters Union, and Mr. Neville, Trustee on the Executive Board of the Carpenters Union, on their own behalf and on behalf of all members of the Carpenters Union. Neither men qualify as "electors" as they do not reside in the region.

[24] Mr. Yorke and Mr. Neville stated that they brought the application on behalf of all members of the Carpenters Union. They stated that, in accordance with their own internal rules and bylaws, the Carpenters Union has the authority to commence legal proceedings on behalf of its members and has an obligation to do so when it believes an injustice may have been done to them. The court expressed concerns about whether Mr. Yorke and Mr. Neville had the authority to represent the union's members in this fashion.

[25] Partway through submissions, the application was amended to add James Andres as an applicant. Mr. Andres is a member of the Carpenters Union and resident of Waterloo. He is also an "elector" within the meaning of the *Act.* The applicants also sought a representation order pursuant to Rule 12.08 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, permitting one or more members of the trade union to bring an application on behalf of all members.

[26] In general, representative plaintiffs must typically have standing themselves. The motion for a representation order was unopposed and no submissions were made regarding the propriety of the representative applicants. The representation order was granted.

[27] In this case, Mr. Andres has standing because he is an elector and resident of the Region of Waterloo. By virtue of the representation order, the applicants also represent other members of the Carpenters Union who are electors and reside in the Region.

B. Was the Application Brought in Time?

[28] An application may only be made within six weeks after the applicant became aware of the alleged contravention: see s. 8(2) of the *MCIA*. The strict time limit in the *Act* is meant to protect elected officials and ensure that applications are brought on a timely basis: see *Hervey v. Morris,* 2013 ONSC 956, 9 M.P.L.R. (5th) 96.

[29] In this case, the application was brought more than six weeks after the impugned conduct. Mr. Lewis, corporate counsel for the Carpenters Union, provided an affidavit in support of the application. He deposed that he found out about the Resolution on January 17 or 18, 2019. However, there is no evidence of when he became aware of the fact that Councillor Harris' wife worked for CLAC. Absent that information, there is no evidence of when he had knowledge of the alleged contravention.

[30] The applicants state that they do not need to provide evidence of what was within their knowledge regarding the alleged contravention, and that the onus is always on the respondent who is raising the limitation period issue. On the other hand, the respondent states that the six-week timeline is a condition precedent to bringing the application, and that it is up to the applicants to establish that they only had knowledge within the six-week period.

[31] The six-week period is to be calculated from when the applicants personally became aware of the alleged contravention. They must have knowledge that the councillor was present at a meeting when the matter in which he has a pecuniary interest was the subject of consideration, and that the councillor either failed to disclose his interest in the matter, took part in the discussion of, voted on any question about the matter, or attempted to influence the voting on the question: see *Van Schyndel v. Harrell* (1991), 4 O.R. (3d) 474 (Gen. Div.).

[32] The respondent has the burden of establishing a contravention of the limitation period if they seek to enforce it. The respondent must be able to demonstrate, on a balance of probabilities, that the applicant had some knowledge which led him to have a reasonable subjective belief that a breach of the *MCIA* has occurred: see *Hervey v. Morris*.

[33] In *Methuku v. Barrow*, 2014 ONSC 5277, 29 M.P.L.R. (5th) 143, the applicant adduced evidence that he only became aware of the potential issue engaging the question of whether or not the respondent was in a conflict when he read an article posted online. Although the court had suspicions about that evidence, it was not satisfied that the respondent had met the onus of establishing, on a balance of probabilities, that the applicant knew of the issue which would engage s. 5 of the *MCIA* at any earlier time than when he had testified to.

[34] I agree with and adopt on the reasoning of Perell J. in *MacDonald v. Ford,* 2015 ONSC 4783, 41 M.P.L.R. (5th) 175. Section 8(2) of the *MCIA* (s. 9(1) of the former *Act*) creates a temporal condition precedent to be satisfied by the applicant. It can be labelled a limitation period but is not a conventional one that affords the respondent with a technical defence. The six-week period provided for in the *Act* considers only the subjective knowledge of the applicant, and thus there is no basis for applying the objective discovery principles in the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B. This finding comports with the court's analysis in *Hervey v. Morris* and *Methuku v. Barrow*.

[35] If the applicant had actual or constructive knowledge of the facts on which the alleged contravention of the *MCIA* is grounded more than six weeks before an application under the *Act* is issued, that application will be statute barred because it was not brought in time. An applicant should explain, in his or her application, when he or she acquired knowledge of the facts of the alleged contravention of the *Act.* Then the onus shifts to the respondent to prove that the applicant had actual or constructive knowledge at an earlier time, thus making the application untimely: see *MacDonald v. Ford.*

[36] The applicants are required to lead evidence of when they became aware of the alleged contravention. Once the applicants have satisfied that onus, the burden of establishing a contravention of the limitation period shifts to the respondent.

[37] In the case at bar, there is no evidence from the applicants as to when they acquired knowledge of the facts of the alleged contravention. Mr. Lewis (who is not an applicant) testified about when he found out about the Resolution, but did not provide evidence about when he learned of the alleged contravention. This is not evidence of when the applicants became aware of the relevant information.

[38] The applicants have not met their initial onus of demonstrating that their application is timely. They have not satisfied the temporal condition precedent of the *MCIA.* The application is therefore dismissed.

C. Did Councillor Harris Have a Deemed Indirect Pecuniary Interest in the Resolution?

[39] In the event that I am wrong about the timeliness of the application, I shall consider whether Councillor Harris has a deemed indirect pecuniary interest in the matter.

[40] Pursuant to the *MCIA*, the indirect pecuniary interest of Councillor Harris' spouse is deemed to be his pecuniary interest as well. Sarah Harris has an indirect pecuniary interest in any matter in which the council is concerned if she is in the employment of a body that has a pecuniary interest in the matter. Therefore, if the organization that employs Sarah Harris has a pecuniary interest in a matter, Councillor Harris has a deemed indirect pecuniary interest in that matter: see s. 2 and 3 of the *MCIA.*

[41] Councillor Harris brought before Council, advocated for, and voted upon a Resolution that expressed support for amendments to the *Labour Relations Act.* The amendments proposed to deem municipalities and certain other entities to be non-construction employers. The amendments had the effect of allowing the Region to contract with companies that employ non-Carpenters Union members, including members of CLAC. Councillor Harris' wife works as an administrative assistant for CLAC.

[42] The applicants have the burden of proving a pecuniary interest. In order to establish that Sarah Harris had an indirect pecuniary interest in the matter, the applicants must demonstrate that her employer, CLAC, had a pecuniary interest in the matter.

[43] For the following reasons, I find that the applicants have not demonstrated that CLAC had a pecuniary interest in the Resolution.

1. Regional Council Had No Jurisdiction or Control

[44] Since Councillor Harris and Regional Council had no jurisdiction or control with respect to whether *Bill 66* would be passed, the Resolution could not create a pecuniary interest. The following court decisions provide support for this finding:

i. *Cauchi v. Marai,* 2019 ONSC 497, 87 M.P.L.R. (5th) 318: The applicant contended that the respondents had a political interest in the outcome of a matter before the Halton Catholic District School Board. The court held that a political interest is not captured by the provisions of the *MCIA* and would not be a basis for finding that the respondent had an indirect pecuniary interest.

ii. *Magder v. Ford,* 2013 ONSC 263, 113 O.R. (3d) 241 (Div. Ct.): The court found that the imposition of a financial sanction on Mayor Ford was a nullity because it was not authorized by the City of Toronto's *Code of Conduct*. Since council did not have the jurisdiction to impose a penalty on Mayor Ford, he did not have a pecuniary interest when he voted to revoke the decision that had imposed the financial sanction.

iii. *Methuku v. Barrow*: The court found that the respondent did not contravene the *MCIA* when he voted on a motion that he repay the Town for over-expenditure of the budget, since the Town did not have the jurisdiction to order the respondent to make the repayment in the first place.

[45] The applicants acknowledge that the Resolution, on its own, did not change the law. It was provincial legislation, *Bill 66*, that removed the construction employer designation from municipalities.

[46] While Councillor Harris may have had a political interest in the passage of *Bill 66,* he did not have any control over whether the *Bill* would in fact be passed. The

Labour Relations Act is under the purview of the provincial government, and expressions of support, while politically relevant, cannot create a pecuniary interest for anyone, including Councillor Harris, the Region or CLAC.

2. The Pecuniary Interest Was Contingent on Other Things Occurring

[47] Possible future outcomes do not qualify as pecuniary interests under the *Act.* There must be a real issue of actual conflict or, at least, a reasonable assumption that conflict will occur. The pecuniary interest must be definable and real rather than hypothetical. The following cases are relevant to this issue:

i. *Bowers v. Delegarde,* 5 M.P.L.R. (4th) 157 (Ont. S.C.): The councillor was an employee of Bell Canada when he voted in and engaged in a series of meetings pertaining to the Town's high-speed internet system. The applicant alleged that, because Bell Canada was an internet service provider, it had a pecuniary interest in the Town's high-speed internet system. The court acknowledged that there was a possibility that Bell may in the future have an interest in providing internet services to the Town. However, the company's possible future plans did not qualify as a pecuniary interest under the *Act*. There must be a real issue of actual conflict or, at least, there must be a reasonable assumption that conflict will occur.

ii. *Lorello v. Meffe,* 2010 ONSC 1976, 99 M.P.L.R. (4th) 107: At issue in this case was whether the councillor had a pecuniary interest in a developer's applications before council by virtue of his previous position as an employee, shareholder, officer and director of an electrical subcontractor company that conducted business with the municipality. The company conducted business through a public bidding process, by which the developer put the construction work out to tender, received bids and awarded construction contracts to a general contractor or to the various sub-trades. The court held that, to constitute a pecuniary interest, there must be something more than infrequent past business dealings or the possibility of future business. There must be an actual conflict or a reasonable assumption that conflict will occur. The pecuniary interest must be definable and real rather than hypothetical. The court must examine whether

it is probable that the matter before council will affect the financial or monetary interests of the member. Ultimately, the court held that the potential for business was too hypothetical and contingent to qualify as a pecuniary interest at the time of the councillor's vote.

iii. *Gammie v. Turner*: The applicant alleged that the respondent councillor contravened the *MCIA* when he voted to approve a grant for a festival. As a member of the Chamber of Commerce and owner of a business and property within the Business Improvement Area ("BIA"), the applicant stated that the respondent would benefit from the grant. The court dismissed the application, finding that the grant money did not go directly to any members of the Chamber of Commerce, and further did not flow to any BIA members. The court remarked that the possibility that the respondent would benefit from the grant as a member of a local business was too speculative and hypothetical.

iv. *Rivett v. Braid et al.,* 2018 ONSC 352, 73 M.P.L.R. (5th) 249: The respondents all had a relation to the Southeast Georgian Bay Chamber of Commerce and voted to quash a resolution for the Township's accountants to examine a lease between the Township and the Chamber of Commerce. The court found that the Chamber of Commerce did not have a pecuniary interest in the matter, so the respondents did not have one either. The resolution simply required an investigative audit and there was no financial sanction or pecuniary impact that flowed from the resolution.

[48] To constitute a pecuniary interest, there must be something more than the possibility of future business. The court must consider whether it is probable that the matter before council will affect the financial or monetary interests of the member: see *Lorello v. Meffe.*

[49] The applicants state that CLAC's pecuniary interest is not too remote, and that the following examples of CLAC's public actions demonstrate that CLAC itself recognized the pecuniary benefit in the Resolution:

a) In 2013, CLAC applied to the Labour Relations Board seeking intervenor status in the Carpenters Union's application for certification. In its submissions, CLAC stated that construction projects put out to tender by municipalities in

Ontario (which are primarily publicly funded) are worth hundreds of millions of dollars per year and can *potentially* employ thousands of CLAC members [Emphasis Added];

b) In 2013, Councillor Harris brought *Bill 73: Fair and Open Tendering Act* when he was a Member of Provincial Parliament. CLAC publicly supported this *Bill*, which was ultimately defeated in the Provincial Legislature; and

c) On January 16, 2019, CLAC sent a delegation to attend the meeting of Regional Council to make submissions in support of the Resolution.

[50] I find that these events do not provide evidence that CLAC had a pecuniary interest in the Resolution. In fact, CLAC's submissions to the Labour Relations Board recognized that any pecuniary interest in municipal construction projects was contingent on other things occurring.

[51] In this case, CLAC's interest in the Resolution was too hypothetical to constitute a pecuniary interest. The following are some of the contingencies that would impact CLAC's potential pecuniary interest:

i. The Resolution did nothing more than show support for certain amendments to the *Labour Relations Act* via *Bill 66*, which had already been introduced by the Provincial Legislature.

ii. The *Bill* had to be approved by the Provincial Legislature. The Region had no jurisdiction or control over the *Bill*, including whether it would be amended or ultimately passed, as it was outside their powers.

iii. The *Bill* had an opt-out clause for the Region, which had not yet been considered by the Regional Council.

iv. If the amendments came into force, *Bill 66* would give CLAC-affiliated companies the *opportunity* to bid on more projects from municipalities, school boards, hospitals, colleges and universities. CLAC-affiliated companies would still have to go through the regular procurement process to bid on municipal construction projects.

v. Presumably, there would be an increased number of bidders for any of these projects under the open tendering process. CLAC-affiliated companies would have to be awarded the municipal projects that they bid on.

vi. As a result of completing this extra work (assuming that it was over and above other work that was ordinarily performed), the members would presumably have to pay additional union dues to CLAC. The applicants' evidence regarding how dues are collected by CLAC is somewhat speculative, since the affiant does not have direct knowledge of how CLAC operates.

[52] The applicants have led insufficient evidence of a pecuniary interest. Any interest that CLAC may have had in the Resolution was too speculative and/or hypothetical to constitute a pecuniary interest under the *Act*. Moreover, the Resolution was effectively a symbolic show of support, and the Regional Council did not in fact have any control over whether the amendments would be proclaimed into law.

[53] Since the applicants have not established that CLAC had a pecuniary interest, they have also failed to establish that Councillor Harris had a deemed indirect pecuniary interest in the outcome of the Resolution. Therefore, Councillor Harris did not breach the *MCIA*.

D. Do Any of the Exceptions Apply?

[54] I have found that the applicants were out of time and that Councillor Harris did not breach the *MCIA*. In the event that I am wrong in my prior findings, I shall consider whether any of the exceptions apply.

[55] Section 5 of the *MCIA* does not apply to a pecuniary interest that a councillor has in common with electors generally, or an interest that is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the councillor: see ss.4(j) and (k) of the *MCIA*.

4(j) – Interest in common with electors generally

[56] Pursuant to s. 4(j), interest in common with electors generally means a pecuniary interest in common with the electors within the area of jurisdiction: see s.1 of the *MCIA*.

[57] Electors generally need not encompass all electors, but it is those affected electors who are to be regarded when considering the issue of conflict of interest: see *Biffis v. Sainsbury*, 2018 ONSC 3531, 79 M.P.L.R. (5th) 49.

[58] In *Biffis v. Sainsbury,* the councillor resided in one of approximately 1,400 condominium residences that were affected by the matter before city council. The court found that the councillor's shared interest with the other residents fell within the definition of "interest in common with electors generally."

[59] In *Gammie v. Turner,* the respondent voted in favour of a grant for a local festival. No pecuniary interest was found, and the court also held that the respondent's interest in the festival grant was shared with electors generally.

[60] In *Davidson v. Christopher,* 2017 ONSC 4047, 68 M.P.L.R. (5th) 154, the respondent had a pecuniary interest in a property that would need to be acquired to permit a highway roundabout to be constructed. The respondent argued that his interest in the construction project was shared with electors generally. The court rejected this argument, noting that while there were approximately 145 other property owners in the vicinity of the construction project, they did not share the respondent's pecuniary interest.

[61] In *Greene v. Borins* (1985), 50 O.R. (2d) 513 (Div. Ct.), the court held that the respondent breached the *MCIA* when he voted in favour of a development proposal that would affect his family's property. The pecuniary interest that the respondent had was not shared with electors generally because his family's property was of physical size and location as to readily lend to redevelopment, a fact that was distinguished from the interests of individual homeowners in the area.

[62] In *Tolnai v. Downey* (2003), 40 M.P.L.R. (3d) 243 (Ont. S.C.), the respondent's alleged interest arose by virtue to his connection with the Kiwanis Club. While the court ultimately found that neither the Kiwanis Club nor the respondent had a pecuniary interest in the impugned matter, the court noted that the fact that a private club does good work does not automatically mean that its interests are necessarily shared with the municipality as a whole, or that members of the club interested in the pursuit of its particular objects have an identity of interest with electors generally.

[63] The respondent submits that he had an interest in common with electors generally. He states that all taxpayers wish to benefit from fair and open bargaining, and that they will benefit when municipal contracts become more competitive.

[64] I do not accept these submissions. To suggest that all taxpayers benefit from fair and open bidding is a political statement. Some taxpayers who are impacted by the amendments to the *Labour Relations Act* will disagree with this statement, including members of the Carpenters Union. Councillor Harris does not have an interest in common with electors with respect to the Resolution.

4(k) – Interest so remote or insignificant

[65] Even if Councillor Harris had a deemed indirect pecuniary interest in the Resolution by virtue of his wife's employment with CLAC, any interest he may have had was so remote or insignificant that it cannot reasonably be regarded as likely to have influenced him.

[66] In determining whether s. 4(k) of the *MCIA* applies, the court must consider whether a reasonable elector, apprised of all the circumstances, would 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: see *Aurora (Town) v. Ontario*, 2013 ONSC 6020, 17 M.P.L.R. (5th) 188.

[67] While s. 3 of the *Act* attributes to members the pecuniary interests of their children and/or partners, s. 4(k) requires consideration of whether the pecuniary interest of a child or partner may nevertheless be so remote or insignificant that it cannot reasonably be regarded as likely to influence the member themselves: see *Amaral v. Kennedy*, 2012 ONSC 1334, 96 M.P.L.R. (4th) 49 (Div. Ct.).

[68] The purposive interpretation of the *MCIA*, to require high standards of integrity on the part of elected members, is accomplished if the inquiry is directed to whether the interest is remote or insignificant to the member, because it is the potential influence on the member that is important: see *Amaral v. Kennedy.*

[69] The term "pecuniary interest" must not be construed so broadly that it captures almost any financial or economic interest such that it risks needlessly disqualifying municipal councillors from participating in local matters of importance to their constituents. Section 4(k) of the *MCIA* addresses this concern by ensuring that pecuniary interests that are remote or insignificant are not caught under s. 5 of the *Act*:

see *Ferri v. Ontario (Ministry of the Attorney General),* 2015 ONCA 683, 127 O.R. (3d) 613.

[70] The following cases provide examples of situations when the court found that any interest was too remote or insignificant:

i. In *Whiteley v. Schnurr* (1999), 4 M.P.L.R. (3d) 309 (Ont. S.C.) , the respondent was one of nearly 5,000 employees at the University of Guelph governed by a collective agreement. The court found that the respondent would not derive any pecuniary benefit from a University proposal because any advantages flowing from that proposal would be reaped by the University itself. The respondent's status as an employee could not reasonably be regarded as being likely to influence his vote on the proposal.

ii. In *Lastman v. Ontario* (2000), 47 O.R. (3d) 177 (S.C.), the respondent Mayor's son was a partner at a law firm who had been retained to represent the Toronto Police Services Board in a dispute involving City Council. While the Mayor had a deemed pecuniary interest by virtue of his son's employment, the court found that a reasonable elector, apprised of the circumstances, would not regard this as being likely to influence the Mayor's actions.

iii. In *Tolnai v. Downey*, the respondent councillor was a member of the Kiwanis Club who initiated and participated in a meeting where City Council decided to exempt the Kiwanis Club from the City's signage by-laws. Had the exemption not been granted, the Kiwanis Club would have had to either remove signs they had posted to advertise a Club auction or pay a $275 fine for contravening the City's by-laws. The court found that the Kiwanis Club itself would not have faced an actual pecuniary loss, as they could have simply removed the signs and avoided the fine. Moreover, notwithstanding this finding, any indirect pecuniary interest the respondent may have had would have been too remote and insignificant to influence his actions.

iv. In *Lorello v. Meffe*, the respondent was a shareholder, officer and director of an electrical subcontractor company for two years while he was a municipal councillor. He did not disclose his interest when developers' applications were discussed and voted on by council. His company had no special business

relationship with developers or general contractors, and followed the normal tendering process that did not begin until after municipal approvals had been obtained. The court found that the company's interest was too speculative to constitute a pecuniary interest, and that notwithstanding this finding, a reasonable elector, apprised of all the contingencies associated with the competitive bidding process, would not think it likely that the respondent's vote would be influenced by any possible interest the company may have had.

v. In *Amaral v. Kennedy,* the respondent trustee's sons were both teachers employed by the school board. The respondent was found not to have contravened the *MCIA* when she participated in budget matters at a board meeting. The court found that she had a deemed indirect pecuniary interest in the budget, but that the interest was too remote or insignificant to influence her.

vi. In *Aurora (Town) v. Ontario,* the Town wanted to have two councillors sit on the board of a non-share capital corporation that relied on the Town for funding. The court held that there was no pecuniary interest at stake and that no compensation nor personal benefit would flow to those councillors sitting on the board. As such, any interest was too remote or insignificant.

vii. In *Ferri v. Ontario*, a councillor had a deemed pecuniary interest by virtue of his son's employment as a municipal lawyer retained to appeal an aspect of the municipality's Official Plan. However, the councillor received no pecuniary benefit from his son's employment. As such, the court found that a reasonable elector, apprised of the circumstances, would not regard the councillor's interest as likely to influence his actions or decisions.

viii. In *Cooper et al. v. Wiancko et al.,* 2018 ONSC 342, 73 M.P.L.R. (5th) 212, the respondents had an indirect pecuniary interest in a grant made to the Chamber of Commerce, of which they were members. However, because their membership did not provide any monetary benefit, the interest was held to be too remote and insignificant.

[71] Even if I had found Councillor Harris to have a deemed indirect pecuniary interest in the Resolution, a reasonable elector apprised of the circumstances would not regard the interest as reasonably likely to affect Councillor Harris' actions or

decisions. His wife is employed as an administrative assistant with CLAC and does not stand to directly benefit from the passage of the Resolution.

[72] I am therefore of the opinion that s. 4(k) applies in this case. The respondent's interest is so remote or insignificant in nature that it cannot be reasonably regarded as likely to have influenced him. While it is indisputable that Councillor Harris had a political interest in the Resolution, there is no evidence that his wife would receive any pecuniary benefit because of her employment with CLAC.

[73] Councillor Harris has been a long-time proponent for open tendering, prior to becoming a councillor and prior to his wife becoming employed by CLAC. The Resolution and its support of the provincial government's amendments to the *Labour Relations Act* appear to be nothing more than an extension of Councillor Harris' political views, and do not implicate, in any tangible or real way, his pecuniary interests.

V. CONCLUSION

[74] For all of these reasons, the application is dismissed.

VI. COSTS

[75] In the event that the parties cannot agree as to costs, they are directed to provide written submissions. The submissions shall be no longer than two typed pages, double-spaced, in addition to any relevant Bill of Costs and written Offers to Settle. The respondent shall provide costs submissions by December 23, 2020, and the applicants shall provide any response by January 11, 2021.

[76] If submissions are not received from either party by January 11, 2021, costs shall be deemed settled. Costs submissions shall be filed by email to Kitchener.Superior.Court@ontario.ca, and marked for the attention of Justice Braid.

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Braid, J.

Released: December 9, 2020

CITATION: Yorke et. al. v. Harris, 2020 ONSC 7361
COURT FILE NO.: CV-19-250
DATE: 2020-12-09

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL YORKE, JOEL NEVILLE and JAMES ANDRES, on their own behalf and on behalf of All Other Members of Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America

- and –

MICHAEL HARRIS a.k.a. MIKE HARRIS

REASONS FOR JUDGMENT

CDB

Released: December 9, 2020