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CHAMBERS

Integrity Commissioner Office
for Niagara Region

MICHAEL L. MAYNARD

Interim Integrity Commissioner

Niagara Region

E-mail: mmaynard@adr.ca

July 30, 2021

SENT BY EMAIL TO:

Ann-Marie Norio, Clerk

Ann-marie.norio@niagararegion.ca

Re: Investigation Report
IC-13715-0521

Dear Ms. Norio:

I wish to advise that I, along with my delegated associate (Benjamin Drory), have now completed our investigation with respect to the above referenced Application, which was brought to the Office of the Integrity Commissioner for investigation under the *Municipal Conflict of Interest Act*, 1990 ("MCIA").

I am enclosing a copy of our Investigation Report.

As this matter was brought solely under the MCIA, there was no *Code* provision under consideration, and there are accordingly no *Code*-related recommendations for Council to consider.

As you will note in the Investigation Report itself, I have determined not to apply to a judge under section 8 of the MCIA. I would therefore request that, in accordance with the requirements of section 223.4.1 (17) of the *Municipal Act*, 2001, the attached Investigation Report be published by being placed on the open Council Agenda for the next meeting of Council. I would ask that you kindly please advise me when this has been done.

I can also advise that the Parties, Ms. Spanton and Councillor Gale, have been provided with a copy of this Investigation Report.

Subject to the Investigation Report being published on the open Council Agenda, this matter is now concluded, and our file will be closed accordingly.

Yours very truly,

A handwritten signature in black ink, appearing to read 'M. Maynard', followed by a long horizontal flourish.

Michael L. Maynard
Interim Integrity Commissioner, Niagara Region

Cc: Ms. Emily Spanton
Councillor Bob Gale



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C H A M B E R S

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BENJAMIN DRORY

Investigator
Office of the Integrity Commissioner
E-mail: bdrory@adr.ca

July 30, 2021

SENT BY EMAIL TO:

Emily Spanton

And To:

Regional Councillor Bob Gale

cc: Ann-Marie Norio, Regional Clerk

Re: Investigation Report – IC-13715-0521

1.0 Introduction and Delegation of Investigative Powers

1.1 – Introduction

This is our report respecting an application brought by Ms. Emily Spanton (the “Applicant”) against Regional Councillor Bob Gale (“Councillor Gale”) under the *Municipal Conflict of Interest Act*, R.S.O.1990, c. M.50 (the “MCIA”). Section 223.4.1 of the *Municipal Act, 2001* (the “Municipal Act”) allows an elector or a person demonstrably acting in the public interest to apply to the Integrity Commissioner for an inquiry concerning a member of Council’s alleged contravention of section 5, 5.1, and/or 5.2 of the MCIA.

In accordance with ss. 223.4.1(15)-(17) of the *Municipal Act*, the Integrity Commissioner may, if he or she considers it appropriate upon completion of the inquiry, apply to a judge under s. 8 of the *MCIA* for a determination as to whether the member has contravened section(s) 5, 5.1, and/or 5.2 of the *MCIA*. The Integrity Commissioner shall advise the applicant whether they will be doing so, and publish written reasons for the decision after deciding whether or not to apply to a judge.

1.2 – Delegation

Mr. Edward T. McDermott, the former Integrity Commissioner for the Region of Niagara (the “Region”), accepted that the Applicant was demonstrably acting in the public interest. Following Mr. McDermott’s retirement, Mr. Michael L. Maynard, Interim Integrity Commissioner for the Region, delegated his powers and duties to me on July 2, 2021, to investigate and prepare the report for this matter, subject to his review and approval, pursuant to section 223.3(3) of the *Municipal Act, 2001*.

1.3 – Investigative Process

The *Municipal Act* does not direct a specific procedure that an Integrity Commissioner must follow in handling *MCIA* applications. I followed a process that ensured fairness to both parties. As part of my investigation, I reviewed:

- The Applicant’s Complaint Form and Affidavit, dated May 12, 2021;
- Councillor Gale’s formal response, dated June 2, 2021;
- The Applicant’s reply, dated June 21, 2021; and
- Councillor Gale’s Supplemental Response, dated July 13, 2021.

I also interviewed the Applicant and Councillor Gale separately by telephone, researched relevant law, and reviewed the matters before Regional Council and the Corporate Services Committee (“CSC”) that the Applicant identified.

2.0 The Parties’ Positions

2.1 – Complaint

The Applicant alleges that Councillor Gale violated section 5 of the *MCIA*, which provides:

When present at meeting where matter considered

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

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

The Applicant's allegations against Councillor Gale are based upon a combination of the April 14, 2021 CSC meeting (CSC-4-2021)¹ and the April 22, 2021 Regional Council meeting.² She stated that during the Regional Council meeting, and in particular during discussion about whether to accept the minutes of the CSC meeting, Councillor Diodati asked that the Niagara Health presentation be "lifted", so that a motion could be brought for staff. She noted that Councillor Gale called a point of order³ to ask whether he should declare a conflict of interest ("COI")⁴ on the Niagara Health presentation – as he had done at the CSC meeting, because his son works for the Greater Niagara General Hospital ("GNGH") – or whether the previous COI declaration carried over. However, she stated that Councillor Gale did not in fact declare a COI at the CSC meeting, and had stated on the record that he had no conflict. She submitted that during the CSC meeting,⁵ Councillor Gale asked about the status of Hotel Dieu Shaver ("Shaver") relative to Niagara Health – because his daughter sits on the Shaver board – and after receiving clarification that Shaver was not part of Niagara Health, replied "Thank you, I have no conflict."

¹ <https://pub-niagararegion.escribemeetings.com/Meeting.aspx?Id=61596aed-75a5-4afe-9e16-304b9b9bc25f&Agenda=Agenda&lang=English>

² <https://pub-niagararegion.escribemeetings.com/Meeting.aspx?Id=63701f04-0cdd-4d3e-925a-fd05b72dd5eb&Agenda=Merged&lang=English>

³ <https://www.youtube.com/embed/BSz9EM2B6Mg>, at 1:34:30

⁴ **Note:** The MCI requires Members to disclose "pecuniary interests" in the avoidance of "conflicts of interest"; accordingly, although the term "declare a conflict" is often used interchangeably, it is technically the interest itself that is to be disclosed.

⁵ https://www.youtube.com/embed/MvdXhM_O1rE?, beginning at 7:18

The Applicant submitted that her issue was Councillor Gale failing to disclose that his son worked for Niagara Health before taking part in their presentation on the new hospital in Niagara Falls, following which Niagara Health requested financial assistance from the Region.

2.2 – Response

Councillor Gale described the complaint as frivolous and vexatious. He stated that he has a daughter who serves as a Director for the Hotel Dieu Shaver Hospital, and a son who is an employee of the Niagara Health system.

He acknowledged that section 3 of the MCIA states *“a 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 also be the pecuniary interest of the member”*. He noted that the legislation does not define “pecuniary interest”, but submitted there is case law which provides guidance, and noted some other municipalities do define “pecuniary interest” – such as the City of Toronto, which specifies:

“A member may have a pecuniary interest when the result of a matter before Council or the board could impact, either positively or negatively, the member’s finances, economic prospects or asset value.”

He acknowledged that the Region’s Code of Conduct does not define “pecuniary interest”, but the policy provides:

“Members of Council shall not use their position within the Region to gain any particular interest personal or family advantage or benefit in utilizing any service provided by the Region or in conducting any business on behalf of the Region.

(i) Members of Council shall not be involved as an official of the Region in judging, inspecting or making a decision on any matter in which they have a personal or family interest. Any Member of Council involved shall immediately declare a conflict of interest as soon as such conflict is identified.

Councillor Gale stated that the Region had been asked to assist in capital funding to replace the existing hospital in Niagara Falls, but the Region has no decision-making authority over the hospital’s operations, including labour relations, staffing, or any other employee compensation or benefits. He stated that his daughter has no pecuniary interest with the Niagara Health System (“NHS”). He

acknowledged that his son is an NHS employee, but his occupation is front-line and he has no management responsibility. He stated that his son's employment or economic prospects are not impacted by whether NHS builds a new hospital in Niagara or not, as he will remain an NHS employee regardless of whether it receives capital funding from the Region or not. Accordingly, Councillor Gale stated that his son has no pecuniary interest in the Region's funding for a new replacement hospital – and if his son and daughter have no pecuniary interest, then neither does he.

Councillor Gale acknowledged that there might be a “perceived” conflict of interest and so, in an abundance of caution, he has and would continue to provide conflict declarations on any discussions relating to the Region's capital funding decisions about replacing the Niagara Falls hospital; but he maintained that if he does not declare a conflict and participates in such discussions or decisions, neither he nor his family will be impacted financially.

Councillor Gale stated that at the April 14, 2021 CSC meeting, the NHS delivered a presentation titled “Healthier Niagara”, which reviewed a proposed model of delivering health care across Niagara Region.⁶ He said there was no decision point or associated capital funding request, nor any requested Council decision or even any motion (as typically occurs) to receive the presentation as information. Accordingly, he stated he had no real or perceived conflict.

With respect to the Applicant's statement about the April 22 Regional Council meeting (i.e., that Councillor Diodati asked to “pull” the NHS presentation from the minutes), Councillor Gale stated that not knowing Councillor Diodati's intent, he contemplated whether he needed to declare a conflict, and was concerned Councillor Diodati might discuss aspects of capital funding for a new hospital – for which he might be perceived as having a COI owing to his son's employment, and for which he has previously declared conflicts on the topic. He stated that not knowing Councillor Diodati's intent, he asked the Regional Clerk a procedural question – i.e., whether he needed to declare a COI at each meeting.

Councillor Gale concluded that the Applicant's assumptions were incorrect, in that the NHS' CSC presentation did not include a “request” for hospital care funding. He stated that he did not have a pecuniary interest in the proposed health care model in the presentation, and felt the complaint was frivolous, vexatious, and politically motivated.

⁶ <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=15588>

2.3 – Reply

The Applicant replied that Councillor Gale was first elected to office in 2014, and should be well aware of the rules by now, and said others in the video were commenting to that effect as well. She reiterated that Councillor Gale did not actually declare a conflict in the April 14 meeting, so he was either confused, or was picking and choosing when to make such declarations, which did not instill confidence in the integrity of the system. She disputed that Councillor Gale's son would not benefit from his place of employment not being permanently closed.

2.4 – Supplemental Response

Both parties made arguably provocative comments towards / about each other in the course of their written submissions, none of which I will repeat in this Report.

In a Supplemental Response, Councillor Gale took issue with some of the things the Applicant said. The Interim Integrity Commissioner and I independently communicated to Councillor Gale that there was no basis for our office to do anything about what he complained of, and I noted that the inquiry was only about the narrow issue of whether he had a pecuniary interest in NHS' April 14, 2021 CSC presentation, and would not focus on any alleged behaviour by the Applicant herself.

3.0 Relevant case law and analysis

Prior to speaking with the parties, I identified case law relevant to analyzing s. 5 of the *MCIA*.

Among the most significant cases is the Ontario Court of Appeal's decision in *Ferri v. Ontario (Attorney General)*,⁷ which identified that "pecuniary interest" is not a defined term in the *MCIA*, but that case law has established it is restricted to a financial, monetary, or economic interest, and "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".⁸

In the 2020 case *Yorke et al. v. Harris*,⁹ Justice Braid of the Ontario Superior Court of

⁷ *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683

⁸ *Ibid*, para. [9]-[10]

⁹ *Yorke et al. v. Harris*, 2020 ONSC 7361, released December 9, 2020

Justice stated that “[p]ossible 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.”¹⁰

In *Durham Flight Centre Inc. v. Marimpietri*,¹¹ Oshawa’s Integrity Commissioner wrote that the case law is clear that a pecuniary interest must be real and present, not speculative or remote. He noted a pecuniary interest does not arise from speculation based on hypothetical circumstances.¹²

It is instructive to contrast those cases against others where courts found that councillors *did* violate the MCI A.

*Costello v. Barr*¹³ concerned a vote about a proposed waste management facility where the councillor owned three adjacent parcels of land. The court looked at the impact on the market value of the lands involved, and determined that selecting a preferred location for an eventual landfill obviously impacted the market value of adjacent lands, which were decreased by being located next to a noxious land use, and by the legal restrictions on uses to which the lands could be put after the landfill was constructed.

In *Craig v. Ontario (Attorney General)*,¹⁴ the court accepted that properties within a 600-metre radius of proposed rapid transit stations would experience one-time uplifts in value, on account of increased demand for residential properties within a reasonable walking distance of transit stations. Accordingly, the regional municipality’s approval of a new rapid transit project had the potential to affect the councillor’s financial interests.

In *Jafine v. Mortson*,¹⁵ the Court held that a Mayor had a pecuniary interest in the alignment and terminus of a highway extension near agricultural lands his family owned, which were increasingly being purchased for development purposes. The highway extension, and resultant subdivision lots, made those lands inherently more valuable due to increased connectivity to the transportation network.

In sum, I find the law is clear that a “pecuniary interest”, as understood in the

¹⁰ *Ibid*, para. [47]

¹¹ *Durham Flight Centre Inc. v. Marimpietri*, 2019 ONMIC 18

¹² *Ibid*, para. [38]-[39]

¹³ *Costello v. Barr*, [1997] O.J. No. 4470 Ont. Gen. Div.)

¹⁴ *Craig v. Ontario (Ministry of the Attorney General)*, 2013 ONSC 5349

¹⁵ *Jafine v. Mortson*, 1999 CanLII 14775 (Ont. S.C.J.)

MCIA, only relates to a councillor's financial or economic interests, and its impact must be direct and immediate, not hypothetical or requiring a series of other events to happen. Through section 3 of the *MCIA*, the pecuniary interests of a councillor's direct family (i.e., parents, spouse, children) are also deemed to be the councillor's pecuniary interest.

The penalties for violating the *MCIA* can be severe. Under s. 9 of the *MCIA*, upon finding a breach of s. 5, a judge may declare a councillor's seat vacant, or disqualify them from becoming a councillor again for a period of up to seven years. Therefore, the standard for establishing a breach of the *MCIA* must appropriately be high.

To establish a breach of the *MCIA* in this case, the evidence would have to show, without conjecture or requiring a series of speculative events, that either Councillor Gale or his children stood to directly financially benefit from any votes that he participated in.

4.0 Investigation

4.1 – Review of Incident

I reviewed the minutes of the April 14, 2021 CSC meeting.¹⁶ The NHS presentation was the meeting's first item, and was not formally an "item for consideration" – it was not carried or defeated as all other items on that day's agenda were.

Councillor Redekop declared a "conflict",¹⁷ as his daughter is employed by NHS. The presentation was entitled "Niagara Health – Partnering Together for the Future South Niagara Hospital", and topics within the presentation included:

- *Building a Healthier Niagara, Together*
- *Current Service Model*
- *Future Service Model*
- *South Niagara Site Overview*
- *South Niagara Site Programs and Services*
- *South Niagara Site – Regional Benefits*
- *Regional Local Share – Commitments*

¹⁶ <https://pub-niagararegion.escribemeetings.com/FileStream.ashx?DocumentId=15954>

¹⁷ Note 5, at 7:44

Excerpts from the PowerPoint slides¹⁸ identified that the NHS' vision called for it to centralize expert care from hospitals, and expand access to local healthcare services in communities across Niagara. The future vision called for three sites – St. Catharines, South Niagara, and Welland. The final four slides noted a breakdown of anticipated contributors to the project's cost (i.e., governments, donations, and parking/retail revenue), and outlined the NHS' perception of benefits to the Region from potential investment.

The minutes of the April 14, 2021 CSC meeting became agenda item 9.4 at the April 22, 2021 Regional Council meeting. I watched the videos of both meetings.¹⁹

At the beginning of the April 14 NHS presentation, Councillor Gale asked if he had to declare a conflict, because his daughter is part of the Shaver board.²⁰ The NHS presenter confirmed that Shaver is not part of NHS – to which Councillor Gale thanked the presenter, and said he had no conflict. The presentation ran for 40 minutes; there was no vote or motion at its conclusion, and the meeting then moved on to the “Items for Consideration” portion of its agenda.

At the April 22, 2021 Regional Council meeting, the Chair moved that the minutes of the April 14, 2021 CSC meeting be received, and that the recommendations therein be approved. Councillor Diodati requested that the NHS presentation be “lifted”,²¹ and initiated a motion asking staff to attend the next CSC meeting with a report on the Region's contribution to the new hospital. Councillor Gale raised a point of order, asking if he had to declare a conflict – because he declared a conflict on the matter at the CSC meeting, because his son works at the GNGH – or whether it was taken into account that he declared a conflict on it previously.²² The Regional Clerk eventually told Councillor Gale he had to decide that on his own. Councillor Gale replied that he would declare it again; he just did not think he had to keep repeating it every time.

The CAO suggested to the Chair that a direction to staff would be best, as opposed to Councillor Diodati's motion. Councillors Steele and Sendzik then declared conflicts, as the discussion was getting into financing decisions, and they had family members working for NHS. Councillor Redekop raised a point of order,²³ asking if the NHS matter had been removed from the package by virtue of

¹⁸ Note 6, *supra*

¹⁹ Notes 3 and 5, *supra*

²⁰ Note 5, *supra*, at 7:56

²¹ Note 3, *supra*, at 1:33:07

²² Note 3, *supra*, at 1:34:38

²³ Note 3, *supra*, at 1:37:58

Councillor Diodati's request. The Regional Clerk replied that the NHS matter was just a presentation at the CSC, and no motion or recommendation had come out of it – so there was really nothing to 'lift' or vote on. Councillor Redekop asked to clarify that it was understood councillors who voted on the CSC minutes were not voting on the NHS item – which the Regional Clerk affirmed, as there had not been any motion on the NHS item. The CSC meeting minutes were then affirmed by vote.

4.2 – Interviews with Parties

I spoke with the Applicant. She said that she had never personally interacted with Regional Councillor Gale outside of politics. She opined this sort of problem undermines the integrity of the entire system – i.e., if Councillor Gale does not know if he has a conflict of interest, or whether he has declared one, then one questions what else he is not declaring. She said it's important for citizens to know that Councillor Gale knows what he's doing. She said she did not even know Councillor Gale had two children working in Niagara's health care system until he said so himself in the meetings.

The Applicant asserted that when the CSC accepted the presentation, it then went to the Region, at which point they would be talking about money. She said this was a very large expenditure for the Region, and other councillors declared conflicts, so something was not on the up-and-up, and a conversation would be appropriate about it.

The Applicant stated that the GNGH is going to close, so it was uncertain that Councillor Gale's son would continue to be employed if the hospital closed or moved to another location – which was what the NHS presentation was about. She said the language of the *MClA* is that if there is a perception of conflict of pecuniary interest, councillors are supposed to declare it. She understood a "pecuniary interest" under the *MClA* to be a financial interest, as opposed to a fiduciary duty of care. She emphasized that the perception was mostly the problem, especially respecting tens of millions of dollars – i.e., we cannot know that building the new location would not affect Councillor Gale's son's employment, and she would have declared a conflict if she worked for Niagara Health in any capacity herself.

I spoke with Councillor Gale. He stated that he had only spoken with the Applicant personally once, at the front desk of Regional Chambers about three or four years ago – he said the Applicant told him "I don't like you, but will say hi to you", and that was it. He said he had to ask who she was afterwards.

Councillor Gale stated that it is not common for presentations to be made at committees for which no motion is made, nor any decision or recommendation is requested – it has happened, but it is uncommon, and usually there is at least a motion to receive the item, but that was not the case in this instance.

Councillor Gale stated that he did not know if the Region has agreed to provide funding to Niagara Health; he did not think there had been an agreement to it, but he really did not know, because months ago he declared a conflict and left the meeting at which this may have been discussed.

Councillor Gale asserted that he did not have a direct pecuniary interest related to the NHS presentation, nor any deemed pecuniary interest through family members. He said neither he nor his family would gain financially as a consequence of hospital capital funding. He said that since his daughter sits on the Shaver Board of Directors, and his son is a front-line employee of the NHS, out of an abundance of caution he has declared conflicts at times, out of perception. But he felt that when there's a discussion about hospital programming, where Council is just being advised of the programming, and no financial decision is being discussed, he did not believe there was even a perception of COI. He reiterated that no council decision was being requested, nor was any made; there was not even a motion to receive it. He said he did not declare a COI because he did not have one, and added that he was concerned about the removal of services in Fort Erie and Port Colborne, and therefore asked a question to that effect.

He said that other examples of conversations related to the NHS where he has not declared COIs are when the Region's public health doctor (Dr. Hirji) presents his COVID updates every other Friday. He noted the Region's largest vaccination clinics are run by the NHS. Councillor Gale said he has stood up and complimented the NHS, because he thought they did a good job, but there were no discussions of capital funding or motions involved.

Councillor Gale stated that his son will always work for the hospital system, whether the Region gets a new hospital or not – he has seniority in the union, as per the collective bargaining agreement. He said his son works predominantly at the GNGH, but if it closes and moves, he would probably go with it, because of his seniority with the union – he has also worked at the Welland, St. Catharines, and Port Colborne hospitals before, so his position is flexible. Councillor Gale said his son could be moved to another hospital in a heartbeat, but he did not know all the union rules. He noted that he did not know his son's exact title, but his son does casting – i.e., during operations, doctors will turn to him and ask him to put casts on the patients. Councillor Gale stated that his son is not involved in management

or ownership of the hospital, and he does not receive any financial benefits from the hospital if it achieves any specific outcomes, nor is his salary based on any contingencies.

Councillor Gale said his daughter is on the Board of Directors at the Hotel Dieu Shaver Hospital (he believed she was Second Vice Chair), so that is why he asked if the Shaver hospital was part of the NHS, because his daughter could influence decisions at Shaver. But he said his kids are in their forties, so he does not closely follow the boards they are on. Councillor Gale said he declared a COI respecting Shaver, but he did not have to. He added he has declared so many conflicts in the past he can lose track of them – but he acknowledged it was correct that he did not declare a conflict at the April 14 CSC meeting. However, he said that was because he did not have a conflict in that case – there were no motions on the item.

Councillor Gale concluded that he felt this investigation was a waste of taxpayer money, because the Applicant never communicated her concerns to him, and just filed a complaint. He thought as a Regional Councillor he would have received a phone call, or a meeting or conversation request to discuss the matter, but that was never requested. He thought a common-sense individual would understand why he did not declare a COI, if he had been given an opportunity to explain.

5.0 Analysis and Findings

5.1 – Question(s) to be Determined

The questions to be determined in this matter are:

- a. whether Councillor Gale had a deemed pecuniary interest in the NHS Presentation of April 14, 2021; and
- b. if he had a pecuniary interest (per (a)), whether he therefore had a conflict of interest in respect of that matter.

5.2 – Findings

The Applicant's assertion that Councillor Gale improperly had a pecuniary interest which he did not declare does not meet the necessary legal tests, for two main reasons.

First, a pecuniary interest under s. 5 of the *MCIA* is fundamentally a financial or economic interest, and cannot be merely speculative or hypothetical – it needs to

be direct and obvious. I do not believe that Councillor Gale's son had a pecuniary interest in NHS' presentation – I accept Councillor Gale's submission that his son is not involved in management of the hospital, nor is his salary contingent on the hospital achieving capital funding from the Region. I also have no reason to doubt Councillor Gale's assertion that his son would remain working in the hospital system regardless of whether the NHS' desired capital funding is achieved. The Applicant's assertions are fundamentally speculative – i.e., in the nature of "it could happen", or that "we can't prove that it wouldn't be the case". But the standard of proof to establish an *MCIA* violation is much higher – it had to be clear that Councillor Gale's son would directly financially benefit as a result of Council's consideration of a matter. There is no evidence of this.

Secondly, I do not consider the NHS presentation at the April 14 CSC meeting to have actually been a "meeting where a matter was considered" – which is the basis for the entirety of section 5 of the *MCIA*. There was no decision to be made on the presentation, nor even anything as simple as a motion to receive the presentation for information. The NHS was simply providing a presentation, and no action was taken of any kind. There had to be some kind of vote or decision-making process in order for Councillor Gale to have been able to exercise any influence on the matter. Accordingly, I do not believe a COI was possible in this context – there was nothing for Councillor Gale to actually 'consider' in the first place.

6.0 Decision and Publication

6.1 – Decision

Pursuant to the above findings, the Interim Integrity Commissioner, Mr. Maynard, and I have determined that the Respondent, Councillor Gale, did not contravene section 5 of the *MCIA*.

6.2 – Application to a judge

Subsection 223.4.1 (15) of the *Municipal Act* requires that, upon completion of an inquiry under the *MCIA*, the Integrity Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the *MCIA* for a determination as to whether the Member has contravened section 5, 5.1, or 5.2 of that *Act*.

We have determined that Councillor Gale did not breach s. 5 of the *MCIA* in these circumstances, and accordingly there is no basis for the Integrity Commissioner to apply to a judge under s. 8 of the *MCIA* respecting the matter.

6.3 – Notice to Applicant

Subsection 223.4.1 (16) of the *Municipal Act* requires that the applicant be notified if an application to a judge will not be made. The Applicant, by being furnished with a copy of this Report, is so notified.

6.4 – Publication of Reasons

Subsection 223.4.1 (17) of the *Municipal Act*, requires the Integrity Commissioner to publish written reasons for such decision. This Investigation Report contains such reasons and shall be published accordingly.

Respectfully submitted by,



Benjamin Drory, Investigator

7.0 Endorsement and Issuance of Report

I, Michael L. Maynard, Interim Integrity Commissioner for Niagara Region, have reviewed the evidence, process, and results of my delegate, Mr. Drory's, Investigation and Report.

I agree with and endorse this Report in respect of Complaint IC-13715-0521, and hereby issue it to the Applicant, Respondent, and Council in conclusion of this matter.



Michael L. Maynard
Interim Integrity Commissioner, Region of Niagara