



ADR
C H A M B E R S

Integrity Commissioner Office
for the Town of Grimsby

MICHAEL L. MAYNARD
Integrity Commissioner
Town of Grimsby
E-mail: mmaynard@adr.ca

September 24, 2021

SENT BY EMAIL TO:

Councillors Dunstall, Ritchie and Vaine

And to:

Mayor Jordan

Cc: Sarah Kim, Clerk

Re: Investigation Report
Complaint No. IC-13188-0321

Dear Mayor and Councillors:

1.0 Delegation of Powers / Appointment as Integrity Commissioner

Pursuant to a written delegation of powers dated March 26, 2021, Charles Harnick, at that time the Integrity Commissioner for the Town of Grimsby, ("Grimsby" or the "Town"), delegated to me, Michael L. Maynard ("Mr. Maynard" or "Integrity Commissioner"), certain of his powers and duties as Integrity Commissioner pursuant to section 223.3(3) of the *Municipal Act, 2001* ("*Municipal Act*") to inquire into, investigate, and prepare a report, subject to his review and approval, with respect to the Complaint (the "Complaint") described herein.

On April 19, 2021, I was appointed as Integrity Commissioner to the Town.

The following represents my Investigation Report, having commenced my investigation as Mr. Harnick's delegate and completed my investigation as Integrity Commissioner after receiving this appointment from the Town.

2.0 The Complaint

2.1 – Receipt of Complaint and Jurisdictional Issues

This Complaint ("Complaint"), filed by Councillors Dunstall, Ritchie and Vaine (the "Complainants") against Mayor Jordan (the "Respondent", "Mayor", or "Mayor Jordan"), was received on March 25, 2021. The requisite Consent and Confidentiality Agreement was sent to the Complainants on March 29, 2021. It was signed by the Complainants and returned to our office.

The Complainants cited nineteen *Code of Conduct* ("Code") sections / subsections in their Complaint:

Preamble

- Section 1.2
- Section 1.3 (b), (d), (e), (f), (g)

Purpose

- Section 2.2

Definitions

- Section 3.1 (h)

Conduct of Members

- Section 4.1 (a), (b), (c), (d)

Compliance with the Code of Conduct

- Section 5.1
- Section 5.2 (a), (b), (c)

Transparency and Openness in Decision Making

- Section 6.1 (a), (c)

Conflicts of Interest

- Section 17.1

The body of the Complaint reads as follows:

"We above the name [sic] Councillors make the following complaint against Mayor Jordan.

That Mayor Jordan is in violation of the Ontario Municipal Act, and the Town of Grimsby Code of Conduct By-Law #20-74.

Mayor Jeff Jordan failed to recuse himself and failed to declare a conflict of interest when he had several conflicts with the issue before Council including a Pecuniary interest in the outcome of the votes.

Mayor Jordan was found to be in violation of the Code of Conduct by the Integrity Commissioner for releasing information from a Closed Session to a Third Party who was part of the discussion in the Closed Session.

At subsequent meetings, the issue that Mayor Jordan was found in violation of was discussed at Council including possible financial implications for the breach. In each of these cases, Mayor Jordan failed to recuse himself from the meeting nor did he declare a conflict. Mayor Jordan even voted on the issues before Council, even though the Town Clerk advised him that he should abstain, he stated, "I still Vote, No." At another Council meeting, Councillor Sharpe asked the Mayor to recuse himself as he was in Conflict of Interest discussing the financial implications of his breach, the Mayor refused.

We ask that the Integrity Commissioner view the following Town meetings to observe these infractions by Mayor Jordan:

February 1 ,2021 -> 1:16:55 > 1:43:32

February 16, 2021 -> 2:48:08 > 2:54:43

March 1, 2021 -> 2:51:34 > 3:00:08

All votes were recorded as seen in the minutes for each meeting, in which the Mayor voted."

3.0 The Investigation Process

3.1 – Review of Statements and Evidence

The investigation into these matters involved an investigative process, as follows:

1. A review of the written submissions of the Parties:
 - a. The Complaint;
 - b. The Response;
 - c. The Reply;
 - d. The sur-Response;
2. Telephone Interviews, as follows:
 - a. With Councillor Vaine¹ on July 7, 2021;
 - b. With Mayor Jordan on July 7, 2021;
3. A review of video recordings of portions of the Committee of the Whole / Council meetings of February 16, 2021, March 1, 2021, and April 19, 2021;
4. A review of John Mascarini's legal advice letter dated April 6, 2021;
5. A review of former Integrity Commissioner Charles Harnick's Report on matter IC-11767- 1020;
6. Relevant law, including:
 - a. The *MClA*;
 - b. The *Municipal Act*;
 - c. The *Code of Conduct* and associated *Complaint Protocol* documents;
and
 - d. Relevant case law.

3.2 – Procedural Fairness

The Parties were provided with equal opportunity to make written and oral submissions, and to review and respond to the written submissions of the opposing side.

¹ All Complainants were offered the opportunity to participate in the interview, but it was determined by them that Councillor Vaine should speak on behalf of the group.

4.0 Facts and Submissions of the Parties²

4.1 –Overview of Events

Prior to recounting the Parties’ submissions, I will set the context for this matter by providing a general overview of the events referred to in this case.

This Complaint stems from certain incidents which took place in the aftermath of Integrity Commissioner matter IC-11767-1020³, in which Mayor Jordan was found to have breached in-camera confidentiality by revealing to a third-party certain information which was the subject matter of an in-camera meeting in July of the previous year. Mr. Harnick also found that the breach was “trivial and without consequence”, and accordingly did not recommend a penalty.

Further investigation at the request of Council revealed in Report CAO 21-06⁴ (“CAO 21-06”) that the Town had received an invoice from the third-party (a lawyer) to whom Mayor Jordan had communicated said confidential information. This Report appeared on the agenda of the February 16, 2021 Committee of the Whole meeting.

Based on the information presented in CAO 21-06, certain Members of Council determined that Mayor Jordan should pay back a sum of money equal to the amount billed by the third party. A motion was accordingly moved at that meeting by Councillor Sharpe, seconded by Councillor Ritchie, which in part required the Mayor to pay back \$1302.62 to the Town (the “Repayment Resolution”). The resolution, as read and adopted by Council, stated:

*“Moved by Councillor Sharpe; Seconded by Councillor Ritchie;
Resolved that Report CAO 21-06 dated February 16, 2021 be received; and
That since Mayor’s correspondence with this individual was deemed to be a breach of the Code of Conduct; and
That Mayor Jordan be required to pay the \$1,302.62 that this individual charged the Town for this correspondence; and*

² The written submissions of the Parties have been summarized / paraphrased in some places where appropriate. I also provide some limited clarifications / commentary, where appropriate.

³ Report IC-11767-1020, January 22, 2021 (“Report”), online at: [IC-11767-1020 Report \(Vaine complaint against Jordan\) \(civicweb.net\)](#)

⁴ <https://grimsby.civicweb.net/FileStorage/4A65235EAF024E308C5E14BFC633BCB2-CAO%2021-06%20Reporting%20on%20Costs%20and%20Related%20Cases%20for.pdf>

That report IC-11767-1020 be forwarded to those individuals pertaining to the directions given by Council via various resolutions from the closed session of July 13, 2020.

It would not be understating matters to say that there was some confusion around, and resulting from, the Repayment Resolution.

Following debate on the Repayment Resolution itself, there was some further discussion among Councillors about the legality of a repayment and how the Repayment Resolution had been presented. However, that discussion came to nothing insofar as formally amending the language of the resolution. Accordingly, the language as originally presented to Council by Councillor Sharpe was voted on and passed.

A further motion was passed that evening requesting a further breakdown of the \$1302.62 amount. That information was presented to Council in Report CAO 21-07⁵ ("CAO 21-07") at the Committee of the Whole meeting on March 1, 2021.

The issue of the Repayment Resolution was discussed again by Members of Council on March 1, 2021, as apparent concerns remained about whether it was properly worded. First, Councillor Bothwell initiated a resolution containing a request for information ("Councillor Bothwell's Information Request"). A question was then raised by Councillor Vaine as to whether Councillor Bothwell's motion constituted a reconsideration. The Mayor indicated that he did not believe it was, but his decision was challenged by Councillor Vaine. There was some discussion on this point, and ultimately Council voted to determine it was a reconsideration, rendering it invalid.

Later, during the Council Meeting portion of the evening, the issue of Councillor Bothwell's Information Request was revisited when Councillor Bothwell issued a clarification that she was requesting information and that such a request was not debatable ("Councillor Bothwell's Clarification"). It was then determined that the information request need not to be lifted and voted on; rather, the Clerk could simply note it in the Minutes as having been advanced.

Following this, Councillor Sharpe attempted to lift the item containing his Repayment Resolution from the Council agenda so it could be amended

⁵ https://grimsby.civicweb.net/FileStorage/BF617C370F054E48A2953045C99048B5-C11_CA0%2021-07_Breakdown%20of%20Cost.pdf

("Councillor Sharpe's Motion to Lift"), but this motion was ultimately defeated by Council, with the Mayor (and incidentally, one of the Complainants in this present matter) counted among the votes against.

As a result of Councillor Bothwell's Information Request, and a further information request made by Councillor Sharpe in a subsequent meeting (of March 22, 2021), the Town's solicitor, Mr. John Mascarin, was engaged to provide legal advice about the events of the February 16, 2021 meeting relative to the Repayment Resolution, including the procedures followed in moving, debating, and voting on that item. Mr. Mascarin provided a letter to Council dated April 6, 2021⁶, which I find neatly summarizes the events of that meeting. Mr. Mascarin's letter was placed on the public Agenda for the Committee of the Whole meeting on April 19, 2021, (approximately 3 ½ weeks after this Complaint was filed). It was also included by the Mayor in his Response to this Complaint.

I find this letter to be relevant to the matters at issue before me and will give it consideration in my analysis of this Complaint, which is set out later Report. However, to provide context respecting the above outline of events, I will summarize the most pertinent conclusions from in Mr. Mascarin's letter here:

- i. the Repayment Resolution of February 16, 2021 was, from a procedural standpoint, properly constructed and voted upon;
- ii. the ensuing discussion between several Council Members as to whether the Repayment Resolution was properly worded and/or lawful had no amending effect on the Repayment Resolution due to the timing of when that discussion occurred and the fact that a friendly amendment or motion to amend were not duly moved by any Member of Council; and,
- iii. the Repayment Resolution required something (i.e., repayment) that was not authorized by the *Municipal Act* and was therefore prohibited at law and unenforceable.

4.2 – Complaint Submissions of Councillors Dunstall, Ritchie, and Vaine

As already noted, the Complainants formed their Complaint as follows:

⁶ [B3ABE321A8AC465597DED74C42328036-Opinion - Response to Information Requests re IC R.pdf \(civicweb.net\)](#)

"We above the name [sic] Councillors make the following complaint against Mayor Jordan.

That Mavor Jordan is in violation of the Ontario Municipal Act, and the Town of Grimsby Code of Conduct By-Law #20-74.

Mayor Jeff Jordan failed to recuse himself and failed to declare a conflict of interest when he had several conflicts with the issue before Council including a Pecuniary interest in the outcome of the votes.

Mayor Jordan was found to be in violation of the Code of Conduct by the Integrity Commissioner for releasing information from a Closed Session to a Third Party who was part of the discussion in the Closed Session.

At subsequent meetings, the issue that Mayor Jordan was found in violation of was discussed at Council including possible financial implications for the breach. In each of these cases, Mayor Jordan failed to recuse himself from the meeting nor did he declare a conflict. Mayor Jordan even voted on the issues before Council, even though the Town Clerk advised him that he should abstain, he stated, "I still Vote, No." At another Council meeting, Councillor Sharpe asked the Mayor to recuse himself as he was in Conflict of Interest discussing the financial implications of his breach, the Mayor refused.

We ask that the Integrity Commissioner view the following Town meetings to observe these infractions by Mayor Jordan:

February 1 ,2021 -> 1:16:55 > 1:43:32

February 16, 2021 -> 2:48:08 > 2:54:43

March 1, 2021 -> 2:51:34 > 3:00:08

All votes were recorded as seen in the minutes for each meeting, in which the Mayor voted."

The Complainants then listed numerous sections of the *Code* and provided brief statements indicating their belief that the Mayor had violated such sections,

though without specifying which act(s) on the part of the Mayor constituted a violation of each listed section.

They also provided a list of witnesses, including, among others, themselves, another Member of Council, and several members of staff who could “[...] speak to or substantiate the above claims”. These proposed witnesses were either participants in, or witnesses to, the Council meetings in question. Those meetings are available to view via video recording. It would be an unnecessary expense to the Town for me to interview people about the facts of incidents I can review in detail for myself. Accordingly, I did not interview any third-party witnesses.

4.3 – Response of Mayor Jordan

Mayor Jordan provided a lengthy (46 page) Response, the first approximately five (5) pages of which dealt with certain preliminary issues, which I have enumerated in summary form here:

1. First, the Mayor asserted that there was a lack of specificity in the Complaint, including that the Complaint made a vague reference to a breach of the *Municipal Act* without citing any specific provisions thereof.
2. Second, he asserted that several sections of the *Code* cited by the Complainants are not matters which can give rise to a Complaint, including section 1 (Preamble); section 2 (Purpose); and section 3 (Definitions).
3. Third, the Mayor pointed out that the Complaint did not contain a statutory declaration, which is a requirement of *MCIA* Applications, and accordingly the entire matter, insofar as it was intended to be an *MCIA* Application (which the Mayor incorrectly believed it to be), was improperly filed and, by the date of his Response (April 16, 2021), the entire *MCIA* Application was accordingly out of time and statute barred per section 223.4.1 (6)⁷ of the *Municipal Act*.
4. Fourth, the Mayor pointed out that specific reference in the Complaint to an incident on February 1, 2021, was out of time even if the Application / Complaint was correctly filed (which he asserted it was not) and accordingly statute barred per section 223.4.1 (6) of the *Municipal Act*, as

⁷ See also s. 8 (2) of the *MCIA* and s. 1(a) of Grimsby’s *Conflict of Interest Complaint Protocol*.

well as section 1 (a) of Grimsby's *Conflict of Interest Complaint Protocol* ("COI Protocol"), and, to the extent the matter is a Code Complaint, Part B, section 1 (e) of the *Code of Conduct Complaint Protocol* ("Complaint Protocol").

Re: February 16, 2021 and the Repayment Resolution

The Mayor provided an overview of how the meeting unfolded.

Regarding the Repayment Resolution discussion and vote, the Mayor asserted that he did not vote on the matter as alleged. He denied stating "I still vote, no"; rather, he asserted that he stated: "I have to abstain," but added "I say no" which he claimed was "...commentary on how I would have voted on the matter".

The Mayor also stated that the Minutes do not accurately reflect his abstention, but he did not correct the Minutes as, in his view, the matter is a *nullity* anyway because the payment requirement set forth in the Repayment Resolution is not authorized at law.

In positing this argument, the Mayor relied upon the decision in *Magder v. Ford*⁸, in which the Divisional Court allowed Mr. Ford's Appeal from the Application ruling of Justice Hackland.

The issues in *Magder* arise from then-Toronto Mayor, the late Rob Ford, having voted on a resolution which reversed an earlier resolution requiring him to repay a sum of money, all of which followed a decision issued by the City of Toronto's Integrity Commissioner. The Court held that the repayment was not authorized under the City of Toronto Act ("COTA") which permitted only two measures in the event of a Code violation: (i) a reprimand; and (ii) a suspension of pay. Accordingly, Mr. Ford was found by the Divisional Court panel of justices not to have violated the MClA in respect of his vote on the resolution, despite the resolution pertaining to something which personally financially impacted him, because the initial resolution (requiring him to repay) was not authorized in law and was therefore a nullity.

The Mayor put forth the assertion that the Complaint against him involved parallel circumstances vis-à-vis a vote (and subsequent votes) on, and related to, the unauthorized Repayment Resolution. He also pointed out that Mr. Mascarini's

⁸ *Magder v. Ford* (2013), 7 M.P.L.R. (5th) 1 at para. 66 (Ont. Div. Ct.)

advice to the Town was that the Repayment Resolution was not authorized by the *Municipal Act*.

Accordingly, the Mayor asserted he did not have a pecuniary interest in the Repayment Resolution, because, as was found relative to a parallel situation in *Magder*, it was a nullity.

Re: March 1, 2021

The Mayor set out the factual details of (what he believed to be the relevant portion of) the Committee of the Whole meeting, indicating that a Report (CAO 21-07) was on the agenda, providing a breakdown of the \$1302.62 invoice (as had been requested by Council at the prior meeting following Report CAO 21-06). He indicated that Councillor Bothwell spoke first in respect of this Report, requesting a legal opinion as to whether the Repayment Resolution violated the *Municipal Act*. Her motion was seconded by Councillor Freake.

The Mayor went on to assert that the Complaint was factually incorrect in stating that Councillor Sharpe asked the Mayor to recuse himself due to a conflict of interest. The Mayor put forth that it was instead Councillor Kadwell who asked the Clerk a question about whether the Mayor chairing the meeting ran afoul of *Robert's Rules of Order*.

To this last point, the Mayor asserted that Committee of the Whole and Council meetings are governed by the Procedure Bylaw, which states that *Robert's Rules* "...may be consulted as an interpretive aid".

The Mayor then pointed out that Councillor Bothwell's motion (i.e., Councillor Bothwell's Information Request) was in any event deemed a reconsideration and did not proceed at that time.

A subsequent vote was held immediately thereafter to receive the CAO's report in which the Mayor noted he also participated.

According to the Mayor,

"As the report and motion were a continuation of the previous meeting resolutions imposing a penalty of repayment, which are nullities, I did not declare a conflict of interest at the beginning of

the item and remained silent after Councillor Kadwell's comments. I did not "refuse" as in accordance with case law, there was no conflict."

The Mayor summarized his position by calling the Complaint "problematic on several levels," and asserting that "[i]t is broadly-based, lacking in specificity and foundation, makes serious mistakes of fact and lacks information required by statute, possibly rendering the complaint incomplete."

Lastly, he summarized his position by stating:

"The decision to impose a financial penalty outside of those contemplated by the Municipal Act and the Code is ultra vires. In accordance with the decisions of Magder, there was no pecuniary interest and therefore any allegations related to the MClA or the Code should be dismissed."

4.4 – Reply of Councillors Dunstall, Ritchie, and Vaine

The Complainants' Reply was received on May 21, 2021, following several requests for a time extension by them, which I granted.

The Complainants disagreed with the Respondent's opinion on the way their Complaint was worded, noting that he had referred to it as "scatter-shot". The Complainants instead contended that Mayor Jordan "... 'cherry picked' parts of the case law and reports that suit his scenario," and asserted that they would instead be "...sticking to facts and offer[ing] our viewpoints on case law and reports brought to Council."

The Complainants stated: "The sections of the Ontario Municipal Act we allege that were violated by Mayor Jordan are ..." – and then went on to list various sections of what appears to be the *Municipal Conflict of Interest Act* ("MClA") (not the *Municipal Act*), including the "Principles" – i.e., s. 1.1; "Duty of Member" – i.e., s. 5; and "Record of Disclosure" – i.e., s. 6, provisions of that Act.

The Complainants then stated:

"As we whole heartedly felt that the infractions under the Ontario Municipal Act were obvious and have now provided the relevant

sections for Mr. Jordan, we totally disagree and oppose that this allegation should be dismissed in toto.” [emphasis added]

The Complainants then commenced addressing the Mayor’s Response paragraph-by-paragraph. As I did not enumerate every statement by the Mayor, I will similarly refrain from so doing in respect of the Complainants’ Reply. It suffices to say that the Complainants did not agree with the Mayor’s various preliminary issue assertions about the validity of their Complaint and put forth their own view that the Mayor was attempting to “...minimize the allegations against him.”

In a more direct Reply to the Mayor’s various objections to the scope and organization of the Complaint (in particular, which sections of the applicable legislation / by-laws apply), the Complainants wrote:

“It goes without saying that all sides of this complaint will rely on the expertise and experience of the Integrity Commissioner in determining what sections, if any, are applicable. That is the role in which the Integrity Commissioner has been retained.”

At this point in their Reply, the Complainants began to refute one of the Mayor’s positions, which it appears they misconstrued and need not have addressed. I summarize the issue here to provide the Parties with clarity on the matter, as it was a significant focus of their written submissions:

- The Mayor had raised the case of *Greene and Borins*⁹, pointing out that the case helped to define the applicability of the *MClA*. His point in doing so, as I read it, was to reinforce his position that the matter was an *MClA* Complaint, which he believed should be dismissed for being incomplete.
- The Complainants, on the other hand, appear to have interpreted the Mayor as advancing an altogether different point, being that the *MClA* did not apply to Mayors but only to Councillors. The Complainants took approximately three pages of their Reply to refute this point.
- The Respondent, in his Sur-Response, pointed out the apparent error in the Complainants’ interpretation of his point regarding *Greene and Borins*, and provided further explanation.

⁹ *Re Greene and Borins*, 1985 CanLII 2137 (ON SC)

I believe the Complainants misinterpreted the Respondent's intentions in raising *Green and Borins*. They pointed to a number of legal precedents wherein elected officials holding various offices had been entangled in conflict of interest issues in an apparent attempt to demonstrate that the *MClA* was equally applicable to the Mayor as it is to any other municipal politician. Among others, they cited: (i) *Moll and Fisher, et al.* (1979), 23 O.R. (2d) 609; (ii) *Bowes v. City of Toronto* (1858), 11 Moo. P.C. 463; and (iii) *Lapointe v. Messier* (1914), 49 S.C.R. 271.

In citing those cases in response to their own misapprehension about the Mayor's case, the Complainants additionally asserted that such precedents supported their own case, stating:

"We would like to respectfully request that in light of the above Court rulings that Mayor Jordan be found in violation of the MClA as he did clearly have a pecuniary interest in not only voting on the matters before Council but also directing and either preventing members from speaking up or making changes to the motion but also, it is felt that Mayor Jordan further obstructed and colluded with another member of Council to prevent the motion from being changed from what was printed to the true intent of the motion which was to suspend his pay."

I note that this is the first instance the Complainants raised the assertion in any direct manner that the Mayor violated the *MClA*. It is also the first time they advanced any specific concern about the Mayor "...preventing members from speaking up or making changes to the motion," [i.e., the Repayment Resolution]. This is also the first instance of the Complainants asserting that the Mayor "obstructed" and "colluded" in respect of the Repayment Resolution and subsequent events flowing therefrom.

The Complainants next asserted their views about the timing of their Complaint relative to the February 16 and March 1 meetings, countering the Mayor's arguments that these issues were out of time.

The Complainants revisited the issue of whether the Mayor stated "I still vote, no" in respect of the Repayment Resolution, reasserting their initial position in this respect. They further stated that, in their view, an abstention by the Mayor is not sufficient to avoid a conflict of interest, as the Town's Procedure Bylaw records an abstention as a "no" vote. Accordingly, they reasserted their view that the Mayor

voted “no” whether he abstained or not, which they believe resulted in him having a conflict of interest. They also asserted that the Mayor’s words (“I still vote, no”) “...should be seen as an attempt to influence the outcome of the vote.” I note that this is the first time the issue of “influence” (i.e., undue influence) was raised.

The Complainants disputed the Mayor’s assertion that Councillor Sharpe had not advised the Mayor that he (the Mayor) had a conflict of interest, stating:

“On two separate occasions, Councilor Sharpe and Councilor Kadwell did in fact ask him, in his role as Mayor to either recuse himself or if he felt that he should recuse himself as per Robert’s Rules of Order, neither of these incidents are, “patently false and does not reflect the record of the proceedings,” as claimed by Mayor Jordan in para. [37], of his response, they are both accurate and correct and can be verified by viewing VIMEO recording of the meetings.”

The Complainants did not direct me to any specific timestamp in the meeting videos dealing with Councillor Sharpe’s alleged comments about the Mayor needing to recuse himself.

[N.B. - I note that in conducting my own research, I did view one incident where the Mayor spoke about the previous Integrity Commissioner’s finding that his breach of confidentiality was “trivial, etc.”, at which point Councillor Sharpe asked him to step down from the Chair if he wanted to participate in the debate. The Mayor withdrew the remarks instead. I am unsure whether this is the incident to which the Complainants refer, but if it is, I do not see the relevance of it to a conflict of interest complaint, as it appears to be merely a question of procedure and whether a comment by the Mayor was possibly “out of order”.]

The Complainants then provided what they called a “Commentary Note” stating:

“It is felt and is our opinion only, that Mayor Jordan in his role as Mayor is inconsistent in his use of and picking and choosing, as indicated above, “cherry picking,” when it comes to using Robert’s Rules of Order.”

The Complainants went on to discuss the “Councillor Bothwell Information Request” portion of the March 1, 2021 meeting. In respect of this matter, they stated:

“Mayor Jordan did participate in the vote, but it may be perceived one already know [sic] how he would vote based on his actions and comments of February 16, 2021 in the Committee of the Whole meeting. Again, he is not supposed to vote as stated in the Municipal [sic] Act.”

The Complainants advanced the position that the Mayor had colluded with another Member of Council and had worked to obstruct Council process, including to obstruct the Repayment Resolution (on February 16, 2021) from being worded in such a way that it would have been lawful (i.e., that the wording be a “suspension of pay” in accordance with the *Municipal Act*).

The next part of the Reply deals with the *Magder v. Ford* decision, as raised by the Respondent. On this, the Complainants wrote as follows:

*“As stated in Mayor Jordan’s response: “In *Magder v. Ford*, we agree¹⁰ that the Justices did agree with the application Judge that Mr. Ford had a direct pecuniary interest in the motion to rescind Decision CC 52.1, as it would have relieved the Mayor of his obligation of reimbursement. Thus s. 5(1) was engaged.”*

(We therefore accept this statement as an acknowledgement by Mayor Jordan that he is in violation of the above section of the MCIA and confirms his guilt in engaging in actions that violated this section due to his pecuniary interest.)

Our allegations against the Mayor are attempting to address his violation of the MCIA due to his actions related to his obvious pecuniary interest. It appears that Mayor Jordan is trying to rely on a loophole from another case because of the penalty put forth in error and then Mayor Jordan participated further in obstructing the correction of the penalty wording.”

¹⁰ The Complainants partially misquoted the Respondent; for example, the words “we agree” did not appear in the original text they are quoting. It is unclear how or why this was misquoted.

The Complainants asserted that the Mayor's reliance on the *Magder* decision, insofar as it found the penalty imposed on Mr. Ford to be unlawful and a nullity, was problematic. They provided several reasons for this, stating:

- a) *The Town of Grimsby is not covered by the COTA, that act was created solely due to the unique nature and requirements of the City of Toronto.*
- b) *4 out of the 6 errors of law outlined in the Appeal of, Magder v. Ford, were errors within the City of Toronto Act, only 2 of the errors were based on the MCIA act and those 2 errors involved, "the respondent committed an error in judgement pursuant to s. 10(2) of the MCIA; and "in applying the wrong test under s. 4(k) of the MCIA to determine whether the amount of \$3,150 could reasonably be regarded as likely to influence the respondent's decision."*
(pg. 70, Eyes Wide Shut – Wilful Blindness & A Conflict of Fordian Proportions1, [sic] authored by John Mascarin.)¹¹

As stated above, the COTA was created specifically for the City of Toronto due to it's [sic] uniqueness and it's [sic] importance to the Capital city of the Province of Ontario. We will continue this argument in the Conclusion.

- c) *Furthermore, there would be no grounds to even consider nullifying this motion if Mayor Jordan had not influenced the friendly amendment, or the attempt to lift the resolution to include the proper wording. (Influence and Interference with due process.)*

The Complainants further summarized their concerns about the Mayor relying on *Magder* by stating:

- a) *There are other case precedence's [sic] which are more closely related and relevant to the actions used by Mayor Jordan to violate the Municipal Act. While Magder v. Ford, has some similarities, a lot of cases do and we feel that other cases are more relevant to which stare decisis applies,*

¹¹ [eyes-wide-shut---wilful-blindness-and-a-conflict-of-fordian-proportions.pdf \(airdberlis.com\)](#)

- b) *As stated above, the COTA is a very specific Act created to deal with Toronto, in the list of errors in law in the Notice of Appeal for Magder v. Ford, it is stated, “by finding the words “pecuniary interest” from s.5 of the MClA could be utilized in the City of Toronto Act, 2006 when each statute had different purposes and objectives,” (pg. 69, Eyes Wide Shut – Wilful Blindness & A Conflict of Fordian Proportions¹, [sic] authored by John Mascarin.)¹² and,*
- c) *The actions taken by Mayor Jordan and Grimsby Town Council are far different than the actions taken by Mayor Rob Ford and the Toronto City Council.*
- *Mayor Ford was cautioned that he was in conflict as was Mayor Jordan, and,*
 - *Mayor Ford and the Toronto City Council were - not told nor had they tried to correct the motion to reflect the proper penalty as Grimsby Town Council did.*

The Complainants completed their submissions by summarizing their various points which have been articulated above, including making the point that:

“At no time during the Council meetings in question, did Mayor Jordan ever mention that he was offering a defense using Magder v. Ford, nor did he mention that he was using Magder v. Ford as his defence.”

They also included several photographic files which provided timestamps of the February 16, 2021 and March 1, 2021 Committee of the Whole and Council meetings which they deemed to be relevant to their Complaint, and a description of what occurred at those points during the meetings.

4.5 – Sur-Response of Mayor Jordan

The Complainants’ Reply was provided to Mayor Jordan by way of an email dated May 27, 2021. He was advised that “[...] no further statement is required,” but was

¹² Ibid

asked to inform our office if he determined to provide one. In my view, the Mayor had already responded to the matters raised in the Complaint. However, as the Complainants had evidently raised a host of new concerns in their Reply, the Mayor opted to provide a sur-Response (of 32 pages in length) on June 7, 2021.

Portions of the sur-Response dealt with various issues, including, among others:

- i. the applicability of General Principles (and similar sections) of a Code of Conduct to the substance of a complaint, with the Mayor arguing that such preamble / General Principles sections contain unenforceable provisions;
- ii. whether this is an *MCIA* Application;
- iii. new issues raised in the Reply, including the various “influence”, “collusion” and “obstruction” allegations; and,
- iv. Councillor Sharpe’s Motion to Lift.

In addition to the above matters, the Respondent pointed out that the Complainants incorrectly cited the title of the *Municipal Act* instead of the *MCIA* in portions of their Reply.

The Respondent refuted the Complainants’ position on the *Green and Borins* decision, pointing out that they seemed to have misunderstood his point. I need not go into further detail for reasons already indicated.

The Respondent asserted that the Complainants’ position on the Repayment Resolution is internally inconsistent, stating:

Further in their reply, the complainants then discuss Rule 11.3(1) of our Procedural By-law which states:

*“11.3 Negative Vote
(1) If a Member present does not vote, the Member shall be deemed to have voted in the negative, except where the Member is prohibited from voting by statute.”*

Their inclusion of raising this and stating: “No matter whether he abstained or not, an abstention is still recorded as a [No Vote]” is

confusing. The basis of their complaint is that I should be prevented by voting by statute (the MCIA). The complainants now seem to take the position that because I abstained, I still voted on the matter. Their position now seems to be neither "here or [sic] there".

The Respondent revisited his position on the *Magder* decision and whether it is applicable to these present circumstances. In particular, the Mayor noted that:

- i. The Complainants made a transcription error in their Reply, thereby misquoting him about the applicability of the case and arguing the result of their own error; and,
- ii. The Complainants have only accepted certain portions of the decision, but have rejected others, including, "the final and most deterministic of the findings..." pointing out that the Justices ultimately determined that:

"...it is our view that Mr. Ford did not contravene s. 5(1) [of the MCIA], because the financial sanction imposed by Decision CC 52.1 was not authorized by the COTA or the Code. In other words, it was a nullity."¹³

And that:

"Given that the imposition of the financial sanction under Decision CC 52.1 was a nullity because council did not have the jurisdiction to impose such a penalty, Mr. Ford had no pecuniary interest in the matter on which he voted [...]"¹⁴

The Mayor therefore asserted that the Repayment Resolution,

"...to enact a financial sanction, the payment of \$1302.62, was not authorized by the Municipal Act, as explained in the written opinion of Town Counsel [¹⁵]. Similarly, this created a nullity and there was no pecuniary interest and therefore there can be no finding of a contravention of the MCIA."

¹³ *Supra*, at footnote 8, para 46

¹⁴ *Ibid*, at para 72

¹⁵ *Supra*, at footnote 6

The Mayor moved on to deal with the Complainants' objection to his favourable comparison of the *Municipal Act* and the *COTA* vis-à-vis *Magder*, and their subsequent argument that *Magder* was not a precedent that should be followed in the present matter (or that it should be given less weight than other precedents). Disagreeing with these assertions, the Mayor pointed out that the "Accountability and Transparency" sections of both the *Municipal Act* and the *COTA*, and in particular the sections authorizing Penalties under each, are virtually the same. Accordingly, the Mayor took the position that the principles arising from *Magder* are applicable to this present matter, writing:

"It is interesting that the complainants state 'the actions and information regarding these two cases are different and cannot even be compared' and add 'with the exception that they both voted in matters in which they held pecuniary interests'. They also stop short here and fail to mention that in both cases the penalty motion was a nullity and/or not authorized at law and therefore there can be no pecuniary interest. It would be a perversion of law to state that just because two matters have minor difference in details, that the underlying legal principles should be ignored and the notion of stare decisis would not apply.

[...]

The Complainants try to dismiss the general applicability of Magder to their complaint by citing out minute and irrelevant differences between that case and the matter at hand. For example, the fact that the Ford matter involved soliciting donations for a football charity or in this matter there was a bill from a third-party are irrelevant to the applicability of the overall findings of Magder. What is relevant to this complaint is the legal principles in Magder, namely that a penalty not authorized at law does not create a pecuniary interest and absent such interest there can be no finding of an MClA contravention."

The Mayor further noted that the Complainants' reliance on the "Eyes Wide Shut"¹⁶ paper should be considered in the context that the paper was published before the Divisional Court justices released their decision in the *Magder* Appeal

¹⁶ *Supra*, at footnote 11

(in which, as noted, it was determined that there was no MClA violation because the penalty imposed was not authorized at law and was accordingly a nullity).

The Mayor then turned his attention to the Complainants' assertion that he did not raise *Magder* during the February 16, 2021 and March 1, 2021 meetings as his rationale or defence for participating in those meetings, asserting that:

"While there is exercise of legal and statutory powers at meetings of Council, they are certainly not courts of law or are they even quasi-judicial in nature. Even if I had raised such defences, we would probably be at the same place we are now, with a complaint claiming I violated the MClA by speaking on the matter."

The Mayor pointed out that while the Complainants argued against the applicability of *Magder*, stating instead their view that "[...] other cases are more relevant to which stare decisis applies," they failed to cite any such cases. The Mayor continued:

"The written component of the complaint protocol is their only opportunity to introduce written evidence in support of their views, but instead they choose to remain silent and not offer a single citation or reference to any case to backup that particular claim."

To provide further evidence of his assertion that *Magder* is applicable outside of the confines of the COTA, the Mayor cited *Methuku v. Barrow*¹⁷,

"[...] in which the Superior Court of Justice examined whether Mayor David Barrow of Richmond Hill contravened the MClA when he voted on a motion that he "personally repay" a sum of \$10,800 to the municipality for over-expenditure of a Town account. This expense had no personal benefit to the Mayor.

[...]

*The essence of the decision and reaffirmation of *Magder* is captured at para 48:*

¹⁷ *Methuku v. Barrow*, [2014 ONSC 5277 \(CanLII\)](#) | [Methuku v. Barrow](#) | [CanLII](#)

'The respondent did not break the law because he did not have any real financial interest in the matter that was before the committee. The committee and the Town never had the authority to order restitution or repayment of the \$10,800. The motion that was put before the committee was a motion moved by one of the respondent's political rivals who is now seeking the Mayor's seat in the forthcoming political municipal election. The motion had as its sole purpose, the creation of an appearance of impropriety on the part of the respondent. The motion if approved would have been a nullity, and as such in accordance with the determination of the Divisional Court in Magder, the respondent did not contravene section 5 of the MCIA by speaking and voting on the matter.'

Much like Magder, Methuku concluded that absent a legal and "real" pecuniary interest, there simply can be no finding on an MCIA contravention. The application of Methuku to the complaint is clear, it delivers a fatal blow not only to complainants' position that Magder is only applicable to the COTA, but also to the very foundations of their complaint alleging a pecuniary interest and contravention of the MCIA."

The Mayor concluded his sur-Response by restating his position that the Complaint should be dismissed *in toto* because, in view of the decisions in *Magder* and *Methuku*, "[...] this complaint was decided by a body of jurisprudence long before the complainants even contemplated filing it."

A copy of this sur-Response was provided to the Complainants on June 8, 2021.

The Complainants were advised that "[...] no further written Reply is required, notwithstanding that you may determine to provide one."

No further written Reply was forthcoming. Accordingly, I proceeded to the Interview stage of the investigation.

4.6 – Oral Submissions of Councillor Vaine (on behalf of all three Complainants, per their collective agreement and instruction)

Councillor Vaine provided an overview of the Complaint, including several of the various new (and excluded) issues raised in the written Reply. In particular, the Councillor requested that I look into the issue of “obstruction” at the March 1, 2021 Committee of the Whole and Council meetings. For reasons already stated, I have declined jurisdiction to do so.

There is no need for me to elaborate on our discussion, as the points raised in support of the Complaint have already been detailed above.

4.7 – Oral Submissions of Mayor Jordan

In his interview, Mayor Jordan summarized his various written positions. In particular, he asserted that the matter is not a properly formed *MCI*A Application, and although it may be a *Code* complaint, the same principles he raised in his defence are applicable either way.

As before, I need not further explore the finer details of our discussion as the Mayor’s position has already been well covered in my summaries above.

5.0 Analysis and Findings

5.1 – Preliminary Issues

The Respondent raised several preliminary issues which must be considered due to the potential for such issues to be dispositive of certain matters raised by the Complainants. In addition to these, I have determined that there are several preliminary matters which must be considered for the same reason.

I will deal with each of the preliminary issues in turn, commencing with my own.

5.1.1 – Nature of the Complaint filed

Though the matters raised by the Complainants involve “conflict of interest” allegations, I note that the Complainants did not cite or refer to the *MCI*A, nor any section thereof, in their Complaint.

I further note that the Complainants stated in their initial Complaint filing that, in their view:

“[...] Mayor Jordan is in violation of the Ontario Municipal Act, and the Town of Grimsby Code of Conduct By-Law #20-74,” [emphasis added]

However, no section of the *Municipal Act* was cited in their Complaint. In any event, my jurisdiction under the *Municipal Act* is limited to matters defined under section 223.3 (1) of that Act and includes *Code of Conduct* and *MClA* matters. It was not evident which section(s) of the *Municipal Act* the Complainants believe were breached; however, they did cite numerous sections of the *Code of Conduct* (as noted above) which is established under section 223.2 (1) of the *Municipal Act*.

Accordingly, though the *Municipal Act* was cited, this matter was received and processed from the outset as a *Code of Conduct* Complaint relative to the sections of the *Code* cited by the Complainants and constrained to those events described / detailed in the Complaint affidavit.

5.1.2 – What issues were properly raised in the Complaint?

As the processing of this matter unfolded, it became apparent that there were several deficiencies in the Complaint which I believe narrow my scope.

Although the Complainants indicated in their Complaint their belief that Mayor Jordan “...failed to recuse himself and failed to declare a conflict of interest when he had several conflicts with the issue before Council including a Pecuniary interest in the outcome of the votes,” the Complainants did not provide specificity about such matters except to point me in the direction of certain timestamped sections of Committee of the Whole / Council meeting video recordings (February 1, February 16, and March 1, 2021) as evidence of their claims. They also referred vaguely to meeting Minutes of the same meetings, and though they did not indicate which votes they wanted me to review, it seemed logical that the relevant votes listed in the Minutes would correspond with the video references listed on the Complaint affidavit. Accordingly, while the Complaint affidavit was lacking in factual detail, the three video timestamps and broad reference to meeting Minutes gave the impression that, at least on the surface, there could be evidence for up to three possible “conflict of interest” breaches for me to consider. However,

this did not bear out, and the various deficiencies in the Complaint eventually became apparent.

Insofar as the first of the three referenced meetings (February 1, 2021) is concerned, it is clear that it was filed beyond the time limitation period set out in Part B, section 1(e) of the *Complaint Protocol* – a fact which the Parties on both sides acknowledged during the investigation. Accordingly, it cannot be considered. This reduces the incidents raised in the Complaint to two.

The remaining two incidents (occurring on February 16 and March 1, 2021) were filed within the proscribed time limit, and as noted, they included one video timestamp reference each. On the surface, therefore, they both appeared to be in order such that I could commence an inquiry into whether a breach occurred in those instances. I accordingly proceeded on that basis.

Later in the process, however – after the Parties had completed their written exchanges, and once I began to scrutinize the evidence more comprehensively – it became apparent that the only evidence set out in the Complaint in respect of the third meeting (March 1, 2021 at timestamp 2:51:34) was, in fact, the wrong (and therefore a totally irrelevant) portion of that meeting. In other words, the Complainant's affidavit contained no supporting evidence with respect to this aspect of their Complaint for anything occurring on March 1, 2021.

Despite the inaccurate video reference, the Respondent must have recognized that the Complainants meant to refer to a discussion which took place around 00:34:10 of the same meeting, and not the portion to which they had referred. He accordingly provided a response to 00:34:10 portion of the March 1, 2021 meeting and not the irrelevant portion advanced in evidence by the Complainants.

As the process further unfolded, the Complainants, in their Reply (submitted on May 21, 2021), raised entirely new allegations, such as [undue] “influence”, “collusion”, and “obstruction” among others) and also pointed to previously unmentioned portions of the March 1, 2021 meeting as being pertinent to their “conflict of interest” Complaint. These previously unmentioned portions include Councillor Bothwell's Information Request, Councillor Bothwell's Clarification and Councillor Sharpe's Motion to Lift, which occurred at around the 00:34:10, 3:19:00, and 3:26:30 marks of that meeting, respectively.

As a result of the manner in which this matter was filed, I was unaware of the extent of the issues the Complainants sought to bring forward until approximately two months into this process. The Respondent likewise had not been fully apprised of the extent of the issues the Complainants evidently intended to bring against him, and accordingly had not offered any specific defence or commentary in his Response regarding most of these additional, newly articulated issues.

5.1.3 – Disposition – What is before me?

In my view, the matter placed before me is, at its core, a “conflict of interest” Complaint. Subsequent attempts to attach allegations of “collusion” or “influence” or “obstruction”, or any other additional claims beyond “conflict of interest”, cannot be accepted. There was no reference to these issues in the initiating documents, and no indication that these matters were intended for inclusion. Moreover, by the time they were raised, several months had passed since the alleged actions were said to have occurred, rendering them out of time pursuant to the limitation period set out in the *Complaint Protocol*.

For clarity, the Complainant’s Reply and Interview phase of an Integrity Commissioner’s investigation are not an opportunity to proliferate issues; they are opportunities to clarify issues which were properly raised in the Complaint. As such, these belated concerns (“obstruction”, “collusion”, “interference”, etc.) are beyond my scope in this matter and are accordingly excluded from consideration.

I further believe the issues relative to the March 1, 2021 meeting were improperly filed, and I have genuine doubts about my jurisdiction to consider those matters as legitimate elements of the Complaint before me.

The *Complaint Protocol* under section B, Part 1 (b), states:

“A request for an inquiry shall set out all reasonable and probable grounds for the allegation that the Member has contravened the Council Code of Conduct and shall include a supporting affidavit that sets out the evidence in support of the complaint.” [emphasis added]

The Complainants did not comply with the underlined portion of this directive insofar as matters related to the March 1, 2021 meetings are concerned. While they provided a supporting affidavit, it did not “[...] set out the evidence in support of

the complaint,” insofar as Councillor Bothwell’s Information Request (00:34:10), Councillor Bothwell’s Clarification (3:19:00), and Councillor Sharpe’s Motion to Lift (3:26:30) are concerned. The only evidence the Complainants provided regarding the March 1, 2021 meetings was an incorrect timestamp.

Whether the Complainants intended for any of these issues to be considered from the outset is not, in my view, pertinent. The fact is, they did not raise them in a manner consistent with the requirements of the *Complaint Protocol*, which clearly establishes that a complaint is to be founded on “reasonable and probable grounds” and contain an “[...] affidavit that sets out the evidence in support of the complaint” [emphasis added].

This leaves the Repayment Resolution portion of the February 16, 2021 meeting as the only in-time issue which was properly advanced as a *Code of Conduct* matter under the *Complaint Protocol*. I consider this issue to be squarely before me.

Notwithstanding my above-noted disposition on included / excluded issues, and for the discrete reason I will now explain, I also believe it is fair for me to include the earliest of the March 1, 2021 meeting issues (i.e., Councillor Bothwell’s Information Request) in my analysis.

My rationale for including this issue (while excluding the other two March 1, 2021 issues) is that, despite it not being properly set out in the Complaint filing, the Respondent Mayor himself somehow deciphered that this issue was *intended* to be considered in the Complaint, as evidenced by the fact that he addressed it directly in his Response to the Complaint. It cannot be considered prejudicial towards him for me to consider that issue if he himself recognized and responded to it in the normal course of the process set out in the *Complaint Protocol*. Therefore, this issue is also to be included in my analysis of this case.

In other words, while my hands may be tied respecting the other March 1, 2021 issues, I believe they are unbound insofar as considering the Councillor Bothwell’s Information Request portion of the Complaint.

In summary, this Investigation and Report will consider whether the Mayor retained a conflict of interest, contrary to the *Code of Conduct*, with respect to Councillor Sharpe’s Repayment Resolution of February 16, 2021, and Councillor Bothwell’s Information Request of March 1, 2021. The balance of the issues belatedly raised by the Complainants or otherwise improperly filed cannot be

considered as they were not raised in a manner conforming to the requirements of the *Complaint Protocol*.

Respondent's Preliminary Issues

As indicated above, the Mayor also raised a number of preliminary issues.

Re: Respondent's Preliminary Issue #1 – Reference to Breach of Municipal Act

First, as I have already noted, there was no specific reference to any section of the *Municipal Act* (or indeed any other Act) contained within the Complaint. The only specific citations are from the *Code of Conduct*.

Accordingly, this matter was received and has been processed as a *Code Complaint*.

Re: Respondent's Preliminary Issue #2 – Reference to Sections 1, 2, and 3 of the Code

I find that the Mayor correctly identified that Sections 1, 2, and 3 of the *Code* do not contain enforceable provisions but rather are interpretative sections which provide the reader with a lens through which to understand the *Code* provisions that follow them.

For illustrative purposes, I note that Section 3 of the *Code* contains definitions. I would point out that one is not capable of breaching a definition. A definition is simply a description of what something means. It does not impute an obligation.

Furthermore, *General Principles* (and similar) sections of Codes of Conduct, such as those found in sections 1 and 2 of Grimsby's *Code* have been found repeatedly to be unenforceable.

In Integrity Commissioner Investigation Report IC-221-0720¹⁸, then-Niagara Region Integrity Commissioner Edward McDermott found as follows:

“While certain Codes may employ language in *General Principles* or *Scope-type* sections which do create definable, positive obligations, we find this is not the case with that part

¹⁸ <https://pub-niagararegion.escrimetings.com/filestream.ashx?DocumentId=14107>

of the “Scope of the Code” for Niagara Region which was cited by the Complainant.

In a previous published decision in a matter at the City of Niagara Falls (IC-182-0220, the Complaint of Linda Babb against Mayor Jim Diodati), the Integrity Commissioner, citing *Durham Region (Council Member) (Re), 2018 ONMIC 3*¹⁹ found that the *Purpose and Principals* section of the Niagara Falls *Code of Conduct* (in a manner akin to other similar *Codes*), was not an enforceable section, writing:

“A general underpinning principle has been found in other Integrity matters to not place a positive obligation on a Member of Council to do or refrain from doing any specific act; rather, a statement of principle provides a basic rationale and underpinning for any substantive rules in the Code that do place such positive obligations on Council Members.”²⁰

Similarly, there does not appear to be any specific, definable obligations or rules set out in sections 1, 2, or 3 of Grimsby’s *Code of Conduct*. Those sections are clearly interpretive sections, providing definitions and setting out core principles of what the *Code* itself is intended to achieve. Those sections, as written, are incapable of substantiating a Complaint because they do not impute any obligation on Members of Council. To the extent those sections are referenced as matters at issue in this Complaint, I do not believe I can consider them.

To this, I would also add section 5.1 of the *Code*, which merely defines the parameters of the *Code’s* application. I do not believe it is possible to breach that section either.

Re: Respondent’s Preliminary Issue #3 – Is this an MCIA Application?

The Mayor posited that this matter in an MCIA Application but should be dismissed because it was improperly filed and is accordingly time-barred.

¹⁹ [2018 ONMIC 3 \(CanLII\) | Durham Region \(Council Member\) \(Re\) | CanLII](#)

²⁰ [City of Niagara Falls - Document Center \(civicweb.net\)](#)

In my view, the Mayor is not entirely correct on this point. It should not be dismissed as an *MCIA* Application; rather, it was never considered to be, nor was it received or processed as such an Application in first place.

I refer to my finding above, which is that there was never an *MCIA* Application placed before me, nor did the Complaint placed before me resemble, in any way, an *MCIA* Application on its face.

For instance, nowhere in the Complainants' initial filing was there any reference to the *MCIA* (apart from a cross-reference by way of section 6.1 (c) of the *Code*), nor was there a statutory declaration indicating when the Complainants became aware of the alleged issue or what sections of the *MCIA* they believed were breached. In fact, the first time the Complainants referred to the Respondent Mayor as having breached (in their view) the *MCIA* by name was on page six of their Reply (which, as noted, was received on May 21, 2021, nearly two months after the Complaint was filed, and well out of time for making an *MCIA* Application or raising such issues). I note they also included sections of that Act elsewhere in their Reply but referred to them incorrectly as sections of the *Municipal Act*.

While the Complainants have stated, in their Reply of May 21, 2021, that their Complaint was filed within six weeks of (at least some of) the events in question, the Mayor has pointed out that the language of the *Municipal Act* requires an *MCIA* Application to contain a statutory declaration that sets out *when* the Complainants became aware of the matter(s) at issue.

In determining this issue, I note that section 223.4.1 (6) of the *Municipal Act* states:

“Content of application

(6) An application shall set out the reasons for believing that the member has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application [...].” [emphasis added]

No Application conforming to the above requirements was placed before me by the Complainants. To be clear, there was neither a reference in the Complaint to the *MCIA* (except by a peripheral reference to s. 6.1 (c) of the *Code*), nor was there any declaration of when the Complainants became aware of the matters at issue.

These requirements are not optional. The *Municipal Act* requires that an application under the *MClA* “shall” contain such information. The Complainants’ filing contained neither, though I would contend that failing to contain even one of them would cause an *MClA* Application to be rejected as incomplete. It was therefore not, on its face, an *MClA* Application. There was no indication whatsoever that it was intended to be one. If it was so intended, it was non-compliant with the basic Application requirements. It was received as a *Code of Conduct* Complaint, because that is how it was filed, and that is what it resembled.

Furthermore, I do not accept that a mere reference to s. 6.1 (c) of the *Code* implies that the matter is, on its face, also an *MClA* Application. In my view, the *MClA* and section 6.1 (c) of the *Code* do not operate as one and the same. There are very specific statutory requirements for filing an *MClA* Application which do not exist for a *Code* Complaint. The *Code* cannot operate in such a way as to override the statutory filing requirements of the *MClA*.

In accordance with all of the above, I find that this is not an *MClA* Application. It is a *Code of Conduct* Complaint, and I have proceeded with it on that basis.

Re: Issue #4 – February 1, 2021

I have already indicated my disposition on this issue. It is out of time.

By way of explanation, this Complaint was filed on March 25, 2021.

The *MClA* and both the *COI Investigation Protocol* and *Complaint Protocol* place a requirement on Applicants / Complainants to file their Applications / Complaints in a timely fashion. Specifically, they must file their respective initiating document(s) within six weeks of becoming aware of the incident giving rise to the matter(s) they wish to raise for the Integrity Commissioner’s consideration.

According to the meeting Minutes, all Complainants were present on February 1, 2021.

Six weeks from that date falls on March 15, 2021.

As such, the Complaint, insofar as it makes reference to any incident on February 1, 2021, is out of time by ten (10) days.

I also note that after Mayor Jordan raised his preliminary issue relative to this portion of the Complaint, the Respondents wrote in their Reply that, “The February 1st, 2021, date was only listed to show a pattern by Mayor Jordan.” This explanation runs contrary to the wording of the Complaint itself. Nevertheless, I have already determined that I must decline jurisdiction on this issue.

5.2 – Note on Complaint Submissions

As I have now completed the recount of the Parties’ respective written and oral submissions and have made my preliminary issue determinations, I believe it is important to provide a note to explain, in broad terms, the rationale behind the decision to exclude certain matters from consideration on the basis of how (or whether) they were filed:

In the adjudicative aspect of my role, I am not obligated (nor indeed would it proper for me) to form, support, or interpret the meaning of a complaint on behalf of a complainant. I likewise cannot provide advice to complainants (or prospective ones) on the subject matter of their complaints, just as I cannot provide advice to a responding party in regard to the content of their response to a complaint.

The *Code*-adjacent Protocols require complainants / applicants to set out the “reasonable and probable grounds” on which their complaint / application is based, and to provide evidence in support thereof. It is clearly intended for a complainant to determine the reference points of their own complaint and to put those reference points before me for consideration, together with some evidence giving their claim sufficient substance to enable me to commence an inquiry.

As noted above, in reply to the Mayor’s objections to the form and content of the Complaint, the Complainants asserted:

“It goes without saying that all sides of this complaint will rely on the expertise and experience of the Integrity Commissioner in determining what sections, if any, are applicable. That is the role in which the Integrity Commissioner has been retained.”

While I appreciate the recognition of my “expertise and experience”, I believe this is a misinterpretation of the role of the Integrity Commissioner.

I certainly do “investigate” live issues (i.e., allegations which have been properly filed with “reasonable and probable grounds” and supporting evidence, as required). “Investigate” in this sense means that I collect and interpret evidence – usually from the Complainant and Respondent, sometimes from the municipality or third parties – to aid in my own understanding of the matters at issue.

However, an allegation in a complaint lacking sufficient grounds or evidence, or an allegation first raised or articulated long after a complaint / application is filed (and particularly beyond the limitation period), is, in my view, an improperly filed allegation. It is therefore not a matter at issue and consequently not something for me to investigate.

It is not enough for a complainant to list voluminous *Code* sections and/or submit ambiguous or unsubstantiated claims in the expectation that the Integrity Commissioner will pick through them and find something that sticks.

To put it another way, the Integrity Commissioner should not be asked to find the proverbial “needle in a haystack” on behalf of a complainant, let alone be asked to first locate the farm and decide which haystack might contain the needle.

Integrity Commissioner inquiries are constrained to issues that are properly filed in the appropriate initiating document(s) and conform to the requirements set out in the applicable legislation, bylaw(s), and/or protocol(s). Complaints / applications that do not meet these basic requirements risk being dismissed (in whole or in part) on preliminary grounds.

5.3 – Matters at Issue

In accordance with all of the above, the ten (10) remaining issues to be determined are whether Mayor Jordan contravened any of the following sections of the *Code*:

- Section 4.1 (a), (b), (c), (d)
- Section 5.2 (a), (b), (c)
- Section 6.1 (a), (c)
- Section 17.1

Those sections read as follows:

4. Conduct of Members

4.1 In all respects, Members shall:

- a) Make every effort to act with good faith and care; of the Council or any committee and in accordance with the Town's Procedural²¹;
- b) Conduct themselves with integrity, courtesy and respectability at all meetings By-law or other applicable procedural rules and policies;
- c) Seek to advance the public interest with honesty and to avoid conflicts of interest and unethical behaviour;
- d) Seek to serve their constituents in a conscientious and diligent manner;

5. Compliance with the Code of Conduct

5.2 A Member shall:

- a) Observe and comply with every provision of this Code, as well as all other policies and procedures adopted or established by Council affecting the Member, acting in his or her capacity as a Member;
- b) Respect the integrity of the Code and inquiries and investigations conducted under it; and
- c) Co-operate in every way possible in securing compliance with the application and enforcement of the Code.

²¹ I note again for Members of Council that there appears to be a typographical error in the *Code* in which part of section 4.1 (a) was transposed to section 4.1 (b). Part 4.1 (a) should read: "**Make every effort to act with good faith and care;**" while section 4.1 (b) should read: "**Conduct themselves with integrity, courtesy and respectability at all meetings of the Council or any committee and in accordance with the Town's Procedural By-law or other applicable procedural rules and policies**".

6. Transparency and Openness in Decision Making

6.1 Members shall:

- a) Conduct Council business and their duties in an open and transparent manner so that the public can understand the process and rationale which has been used to reach decisions;

17. Conflicts of Interest

17.1 Members shall avoid conflicts of interest, both pecuniary and non-pecuniary. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Town and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.

These *Code* provisions will be considered in relation to whether (i) the Repayment Resolution of February 16, 2021; and/or (ii) Councillor Bothwell's Information Request of March 1, 2021, represented a *conflict of interest* on the part of Mayor Jordan.

Those are the only matters I consider to be properly before me, and my findings are accordingly constrained to those matters.

5.4 – Analysis / Findings

For the reasons I now detail, I have concluded that Mayor Jordan did not contravene any section of the *Code of Conduct* as alleged.

5.4.1 – Conflict of Interest

Much of this case turns on the question of whether the Respondent Mayor retained a conflict of interest in Councillor Sharpe's Repayment Resolution (and subsequent matters flowing therefrom). This is the overarching issue which I must consider, and I will therefore consider it first.

While the Complainants believe that the precedent set by *Magder v. Ford*²² is not the leading precedent in this case, I respectfully disagree.

The Town's Solicitor, Mr. Mascarin, delivered a Report to the Town²³, which Council received, indicating his view that the requirement of the Mayor to repay money to the Town set forth in the Repayment Resolution was not authorized by the *Municipal Act*. I agree with his interpretation, and I find that it renders invalid any objections the Complainants may have to the applicability of *Magder* to this case.

"Not authorized at law" means the same thing whether applied to matters under the *COTA* or the *Municipal Act*. It applies equally to *Magder v. Ford* as it does to *Dunstall et. al. re: Jordan*.

I find any differences between the relevant portions of the *COTA* and the *Municipal Act* to be negligible and of no impact on the interpretation of *Magder* insofar as its principles are applicable to matters before me. This is reinforced by the finding in *Methuku*, to which the provisions of the *Municipal Act*, not the *COTA*, were applicable.

Both *Magder* and *Methuku* make it clear that a resolution not authorized at law is a nullity, and furthermore that a Member of Council cannot be found to have a pecuniary conflict of interest in a nullity.

By extension, insofar as the facts of this present case are concerned, I likewise find that the Respondent could have no conflict of interest whatsoever (i.e., pecuniary or non-pecuniary) relative to the pertinent portion of the Repayment Resolution, because it is a nullity.

Black's Law Dictionary defines a "nullity" as:

*"Nothing; no proceeding; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which [has] absolutely no legal force or effect."*²⁴ [*emphasis added*]

²² *Supra* at footnote 8

²³ *Supra* at footnote 6

²⁴ [What is NULLITY? definition of NULLITY \(Black's Law Dictionary\) \(thelawdictionary.org\)](https://www.thelawdictionary.org/what-is-nullity-definition-of-nullity-black-s-law-dictionary/)

The principle regarding the effect of a nullity as espoused in both *Magder* and *Methuku* is, in my view, equally applicable to the Complaint before me. As such, I find that any and all matters flowing from the unauthorized portion of Repayment Resolution (including the unauthorized portion of the resolution itself) cannot be the source of a *Code* contravention (or, for that matter, a contravention of the *MClA* were it to be considered).

For greater clarity, the case before me leads me to the conclusion that *something cannot flow from nothing*.

As *something* cannot flow from *nothing*, a *conflict of interest* cannot flow from a *nullity*.

This means that at no time – when it was first moved, when an attempt to lift it was made, or when it was referred to in other discussions or resolutions – was the requirement to pay as set out in the Repayment Resolution a corporeal issue in which the Respondent could have retained a conflict of interest. It was never an issue because it effectively never existed at law.

Accordingly, I find that the Mayor was incapable of breaching the *Code of Conduct* relative to the unauthorized order set forth in the Repayment Resolution, as well as to any matter, substantive or procedural, flowing therefrom.

It is important to note here that, although I have excluded certain incidents which occurred on March 1, 2021 (i.e., Councillor Bothwell’s Clarification and Councillor Sharpe’s Motion to Lift), I believe the same analysis would apply to those issues if I were to include them as part of the Complaint, as they also flow from the nullity.

Having now concluded my findings on the overarching issue in this case, I will turn my attention to the specific *Code* provisions referenced by the Complainants, all of which I dismiss, as follows:

5.4.2 – Did Mayor Jordan contravene Section 4.1 (a)?

The matter before me is constrained to a claim that Mayor Jordan retained a *conflict of interest*. This subsection is, as noted above, incorrectly written (I believe as the result of a typographical error which transposed parts of the subsection to the one

immediately following it)²⁵. However, there is enough substance in the section, as written, for me to interpret the meaning and determine the question.

This section is largely inapplicable to the circumstances in question, except perhaps to the extent that a breach of the *Code* could (in certain circumstances) be interpreted as a failure to: “Make every effort to act with good faith and care”.

As I have not determined that another *Code* violation took place, I consequently do not find that Mayor Jordan contravened this section of the *Code*.

*5.4.3 – Did Mayor Jordan contravene Section 4.1 (b)*²⁶?

As above, I do not find this subsection to be directly applicable to the present matter, except perhaps to the extent that a retained conflict of interest may, in certain circumstances, represent a failure to conduct oneself with integrity and could be a failure to adhere to certain Council policies.

As with the section above, I do not find that Mayor Jordan contravened this section of the *Code*.

5.4.4 – Did Mayor Jordan contravene Section 4.1 (c)?

This section is directly applicable in a case where a finding of a conflict of interest is made.

As I have determined that the Mayor did not retain a conflict of interest relative to the matters considered herein, I do not find Mayor Jordan contravened this section of the *Code*.

5.4.5 – Did Mayor Jordan contravene Section 4.1 (d)?

No direct evidence in support of a finding under this section was ever advanced in the Complaint, except perhaps to the extent that a retained conflict of interest could possibly be seen, in certain circumstances, as a failure to “serve [...] constituents in a conscientious and diligent manner”.

²⁵ *Supra* at footnote #21

²⁶ *Ibid*

In the present circumstances, I find this section to be inapplicable to the matters at issue.

In the alternative, and for the same reasons as are applicable to the other *Code* sections already considered, I do not find that Mayor Jordan contravened this section of the *Code*.

5.4.6 – Did Mayor Jordan contravene Section 5.2 (a)?

This section is applicable to the extent a *Code* violation, or some policy violation, is determined to have occurred.

As indicated above, I have not found a *Code* violation has occurred, and accordingly I find this section to be inapplicable.

5.4.7 – Did Mayor Jordan contravene Section 5.2 (b)?

This section applies to how the *Code* is applied and guides a Member’s conduct relative to inquiries and investigations. For example, refusing to answer a question from the Integrity Commissioner or refusing to adhere to the timelines set out in the Complaint Protocol may represent infractions under this section.

I find this section to be inapplicable to the matters at issue.

5.4.8 – Did Mayor Jordan contravene Section 5.2 (c)?

This section similarly obliges Members to support the application and enforcement of the *Code*. At no time did the Mayor fail to co-operate in such manner, nor was any evidence clearly articulated otherwise.

I find this section of the *Code* to be inapplicable to the matters at issue.

5.4.9 – Did Mayor Jordan contravene Section 6.1 (a)?

The Complainants did not advance any argument in their Complaint that the Mayor failed to “[c]onduct council business and [his] duties in an open and transparent manner so that the public can understand the process and rationale which has been used to reach decisions”.

Although arguments of this nature later appeared in the Complainants' Reply of May 21, 2021 and oral evidence (e.g., the late allegations of "obstruction", "collusion", etc.), the language of their Complaint, and the evidence they provided, clearly indicated that this matter was constrained to a "conflict of interest" issue. It would be improper to expand the Complaint beyond these parameters.

I accordingly find this section to be inapplicable to the matters at issue.

5.4.10 – Did Mayor Jordan contravene Section 6.1 (c)?

This section requires Members to:

"Ensure compliance with the Municipal Act, 2001; Municipal Conflict of Interest Act; Municipal Freedom of Information and Protection of Privacy Act, and other applicable legislation regarding open meetings, accountability and transparency."

Of relevance to the matters at issue is the question of whether the Mayor was non-compliant with the *Municipal Act* and/or the *MCIA*.

The Complainants listed the *Municipal Act* alongside various *Code* provisions in their Complaint, alleging that the Mayor was non-compliant with both. However, nowhere in their Complaint did the Complainants advance an actual case of non-compliance with the *Municipal Act*. They cited no specific provisions of that Act and made no reference to any specific instances where they believe that Act was contravened by the Respondent.

Accordingly, insofar as the *Municipal Act* is referred to in this section of the *Code*, I believe it is inapplicable to the matters at issue.

I note also that this section deals with cases of non-compliance with the *MCIA*. I have already found that this is not an *MCIA* Application.

I am of the opinion that in order to determine whether a Member of Council was non-compliant with the *MCIA* pursuant to this section of the *Code*, a complete Application under the *MCIA* must first be filed and a finding rendered thereon. It

logically follows that unless a determination of non-compliance with the *MClA* has been made, there can be no finding under s. 6.1 (c) of the *Code*.

Accordingly, I find this section to be inapplicable to the matters at issue.

5.4.11 – Did Mayor Jordan contravene Section 17.1?

This section of the *Code* is perhaps the most relevant to the matters at issue. It states:

“Members shall avoid conflicts of interest, both pecuniary and non-pecuniary. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Town and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.”

For the reasons indicated above (i.e., that the issue on which the Complaint is based is a nullity), I do not believe the Mayor breached this section of the *Code*, as he did not retain a conflict of interest in any of the matters considered herein.

5.4.12 – Other Disputes of Fact

For all of the above reasons, I do not need to make factual findings on questions such as whether the Mayor voted or abstained in regard to the Repayment Resolution, or whether Councillor Sharpe really told the Mayor he had a conflict of interest. Any remaining questions of fact have been rendered redundant by the above analysis and I need not consume any more of the Town’s resources in answering them.

6.0 Conclusion and Recommendation(s)

6.1 – Conclusion and Recommendations

Pursuant to the above, I conclude that Mayor Jordan did not breach any section of the *Code of Conduct* as alleged by the Complainants.

Accordingly, I make no recommendations for Council's consideration.

Though I do not accept that the various issues which I have dismissed on a preliminary basis are before me for consideration, it is my opinion that the applicable analysis relative to the matters at issue would be equally applicable to those excluded issues were I to consider them. In other words, in the event that I am wrong about my jurisdiction, and the issues dismissed on a preliminary basis are live issues which ought to have been included as part of this Complaint, I believe the above analysis would equally apply to those issues and I would then reach the same conclusion (i.e., that there is no contravention).

Furthermore, in the event that I am wrong, and this matter is, in fact, an *MCIA* Application, I likewise believe that the same analysis as I have applied to the *Code* would also apply in respect of the *MCIA* (i.e., that no pecuniary conflict of interest can flow from a nullity) and I would then reach the same conclusion (i.e., that there is no contravention). I accordingly would / will not apply to a judge under s. 223.4.1(15) of the *Municipal Act* and s. 8 (1) of the *MCIA* for either one reason or the other.

6.2 – Matters to Remain Confidential Until Published

The Parties are hereby advised that the subject matter of this investigation and Investigation Report shall remain confidential pursuant to the provisions of the *Code of Conduct / Complaint Protocol* until this Report is published on the open Council agenda.

6.3 – Concluding Remarks

This was a complex and time-consuming investigation, which required hours of documentary and video review, consideration of numerous *Code of Conduct* sections, both *Code*-adjacent Protocols, the *Municipal Act*, the *MCIA*, and case law, as well as significant analysis of matters both substantive and procedural.

I thank the Parties for their cooperation, and for their patience as I dedicated the time and attention required to consider these voluminous and complex issues and bring this matter to a conclusion.

I would also like to thank my associate, IC Investigator Benjamin Drory, and ADR Chambers' Office of the Integrity Commissioner staff for their assistance.

I lastly want to assure Members of Council that I understand these circumstances are contentious, with a long and complex history dating back over a year and extending through numerous Council meetings and several Integrity Commissioner investigations. I hope this Report provides sufficient clarity that these matters may now be concluded.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Maynard', with a long, sweeping flourish extending to the right.

Michael L. Maynard
Integrity Commissioner for the Town of Grimsby