DATE: July 31, 2020

RE: **Formal Code of Conduct Complaint #112219- Written Reasons**

Summary:

Pursuant to section 12 of the Complaint Protocol for the Code of Ethical Conduct for Members of Council and Local Boards (the "Complaint Protocol"), upon completion of an investigation of a *Municipal Conflict of Interest Act* (the "*MCIA*") complaint, the Integrity Commissioner shall advise the Complainant whether the Commissioner will be making an application to a judge for a determination if there has been a violation of the *MCIA*. The Integrity Commissioner shall publish written reasons for her decision within 90 days of such decision. This report presents my reasons for the decision to not make an application to a judge for a determination in this matter and the findings of my investigation under the City of Vaughan Code of Ethical Conduct (the "Code") relating to the conduct of Regional Councillor Mario Ferri (the "Respondent") in connection to the Complaint which alleges that the Respondent:

1. Violated the MCIA, in particular that:
    a. the Respondent participated in discussions about the Toronto Board of Trade Golf Course when he had deemed pecuniary interest in the matter; and
    b. the Respondent failed to file a written statement of a declared interest.

2. Violated the Code under Rule 1 (a), (b), (c), (g) and (h), Rule 7 and Rule 9.

The Respondent is the Deputy Mayor and Regional Councillor of the City of Vaughan. The alleged actions of the Respondent, subject of the Complaint, date back to 2018 when approval of a development application was scheduled to go before Council. The Respondent's son is employed by Poetry Living as the General Manager of Construction, (the "Respondent's son"), but he is also listed on the HBNG Holborn Group official website as Director of Low-Rise Housing under "Our People". . Poetry Living and HBNG Holborn are part of the same family of companies. A named individual, JD, of HBNG Holborn is president of RGF Real Estate Fund.[1] The

[1] HBNG Holborn Group Official website, HBNG announces the formation of RGF Real Estate Fund L.P., a private partnership investing in the acquisition, development and management of strategic real estate assets.

Established early in 2015 the RGF Fund consists of a geographically diversified portfolio of high quality commercial and residential assets that includes shopping centres, offices, industrial buildings as well as

purchase of Toronto Board of Trade Golf Course lands (the "BOT") in Woodbridge was led by the RGF Real Estate Fund L.P [2]The Complaint alleges that the Respondent has a deemed pecuniary interest though his son's employment at Poetry Living and should have declared a conflict of interest and not participated in any discussions in accordance with s. 5 of the *Municipal Conflict of Interest Act* ("*MCIA*") in respect of matters before Vaughan's City Council on May 8 and 23, June 19 and September 27, 2018 (the "Council Meetings") concerning a discussion about the application of the tree protection by-law to the BOT owned by Clubhouse Development Inc . The Complaint also alleges that the Respondent's behaviour violated the above-noted provisions of the Code.
In respect of these allegations, I determined that I did not have jurisdiction to investigate the Code-related matters because of the six-month time limitation.

I investigated the remaining allegations and concluded that none of Clubhouse Development Inc., HBNG Holborn, or Poetry Living had a pecuniary interest in the matter before council at the Council Meetings in 2018.

The Respondent's son is employed by Poetry Living. Poetry Living is part of the family of companies under the name HBNG Holborn Group which "carries on business through its family of companies as a fully integrated development company which secures funding for the acquisition, development and maintenance of real estate assets."[3] Clubhouse Development Inc. is a partnership between JD (the principal of the HBNG Holborn Group), MM of the Muzzo Group, and CB of the Remington Group. Clubhouse Development Inc. holds title to the BOT lands. Poetry Living is the arm of the HBNG Holborn family of companies which develops low rise residential, like that previously proposed by HBNG Holborn for this site. Though Poetry Living may have a contingent pecuniary interest in, for example, a development proposal for the BOT, that is not the subject matter of ***this*** Complaint.

In respect of the particular matters before council at the Council Meetings in 2018, there was no pecuniary interest. This was not an application for development by Clubhouse Development Inc. Rather, it was a motion by an interested group in Vaughan to urge Clubhouse Development Inc. and City Council to ensure adherence to the private tree protection by-law until there was consultation with the group. Clubhouse Development Inc. did not participate in the matter. There is no evidence that adhering to the tree protection

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residential high rise and low-rise lands.

[2] Yorkregion.com, May 5, 2017, article by John Cudmore

[3] *Manzo v. Poetry Living et al.*, 2020 ONSC 1382

by-law would change Clubhouse Development Inc.'s development plans resulting in increased costs to build or reducing its profits. Any possible pecuniary interest is highly speculative.

Accordingly, I will not apply to a judge under s. 5, 5.1, and 5.2 of the *MCIA* for a determination as to whether the Respondent contravened the *MCIA* in the Council Meetings.

Complaint:

The Complaint was particularized on two Forms which were submitted on November 20, 2019:

1. Form 1 is the Code of Conduct Complaint Form/Affidavit which is used to set out allegations in respect of contraventions of the Code of Conduct ("COC Complaint");
2. Form 2 is the Code of Conduct Application for a *MCIA* investigation pursuant to section 223.3(1) of the Municipal Act, 2006 about Members of City Council and local boards ("*MCIA* Complaint").

The Complaint related to the Respondent's participation in two matters which came before council in May and June 2018[4]. The Complainant alleged that the Respondent did not

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[4] THAT Item 23, Committee of the Whole Report No. 18 be adopted and amended, as follows:
By approving the following:
That staff be directed to prepare a report on an Interim Control By-law, including a draft Interim Control By-law, for consideration at the Committee of the Whole meeting of June 5, 2018, in order to allow time for the studies referenced in this resolution as they may apply to the Board of Trade lands, including but not limited to a cultural heritage landscape evaluation, an environmental impact study, an economic analysis, a comprehensive land use analysis, health impact analysis, and a community impact assessment that engages the local community in deciding key components of the exercise, to be undertaken and completed prior to any site alteration that may occur at any location prior to re-submission of a development application.
FAILED TO CARRY UPON A RECORDED VOTE

By approving the following:
1) That the recommendation contained in the following resolution be approved:
Whereas, an application to develop a portion of the Board of Trade Golf Course lands has been withdrawn but is expected to be re-submitted at some future as yet unspecified date; and
Whereas, local residents are concerned that trees other than those identified as hazardous to the public may be removed from the site while the application is in abeyance and prior to the completion of the current consultation with golf course and nursery operators as to whether trees on such sites should be covered by the Private Property Tree Protection By-law;
It is therefore recommended:
1. That appropriate staff be directed to request the owners of the Board of Trade Golf Course to formally agree in writing to abide by the provisions of the Private Property Tree Protection By-law as a gesture of good faith toward neighbouring residents, and to do so until such time as the consultations referenced above is concluded and Council takes what action it deems appropriate in light of said consultations; and
2. That failing agreement with the above, that appropriate staff be directed to bring forward no later than the Committee of the Whole meeting of June 5, 2018, a site-specific by-law that subjects the said lands to the provisions of the Private Property Tree Protection By-law, until such time as the consultations referenced above is concluded and Council takes what action it deems appropriate in light of said consultations.
CARRIED UPON A RECORDED VOTE

AMENDMENT

disclose any interest on a Council Meeting item concerning the BOT and voted against the motion regarding the request for Council to adopt an Interim Control By-Law and the request to designate the property in question to a Cultural Heritage Landscape under the Ontario Heritage Act.

The Complaint alleges that "had the motion passed, the development in question would have been severely delayed and/or possibly canceled. Voting against the motion directly benefited the applicant and as a result, also benefited […the Respondent's] son. The Complainant alleges that the Respondent's son, works for HBNG Holborn Group and that "HBNG Holborn Group is also a prominent player with a deep involvement in the development of the BOT land development".

In the *MCIA* Complaint, the Complainant affirms that he became aware of the alleged contravention on or about October 20, 2019, after hearing from a friend that the Clubhouse Development Inc. would be re-submitting a development application. The Complainant then reviewed the Clubhouse Developments Inc. corporate structure and learned that it was an affiliate of HBNG Holborn Group. The Complaint states: "[t]he corporate structure of Clubhouse Development [Inc] shows that the officers and directors are [JD, MM, and CB]. An online search revealed that [JD] is also a partner/officer and CEO of HBNG Holborn Group. HBNG Holborn Group employs [the Respondent's] [… who] is listed as Director of Low-Rise Housing."

The Complainant affirmed that he only became aware of the link between the HBNG Holborn Group's affiliated companies working to develop the Toronto Board of Trade Golf Course on October 20th or October 21st, 2019. At that time, he determined that, in his view, the Respondent had violated the *MCIA* in respect of two votes held the previous year.

MOVED by Councillor Yeung Racco
seconded by Regional Councillor Rosati
THAT Item 23, Committee of the Whole Report No. 18 be further amended, as follows:
By approving the following:
* 2) That recommendation 1. contained in the resolution provided by Councillor Carella dated May 8, 2018, be replaced with the following amended recommendation:
*
1. That staff be directed to undertake such studies, which may include, subject to an appropriate funding source being identified and consistency with the Official Plan, a cultural heritage landscape evaluation, an environmental impact study, an economic analysis, a comprehensive land use analysis, health impact analysis, and a community impact assessment, and retain such consultants as are necessary to address the above City-wide land use planning concerns and prepare any recommended amendments to the City's land use planning policies in respect of infill developments; and
3) That the following communications be received:
C3 Mr. David Donnelly, Donnelly Law, Carlaw Avenue, Toronto, dated May 8, 2018;
C11 Mr. David Donnelly, Donnelly Law, Carlaw Avenue, Toronto, dated May 11, 2018;
C15 Mr. Mark Yarranton, KLM Planning Partners Inc., Jardin Drive, Concord, dated May 22, 2018;
C16 Dr. Laura Vecchiarelli-Federico, Keep Vaughan Green, dated May 22, 2018; and
C19 Keep Vaughan Green Board of Director, dated May 23, 2018.
CARRIED

In accordance with the amended legislation, the Complaint Protocol allows individuals who identify conduct that they believe is in contravention of the Code of Conduct or s. 5, 5.1 and 5.2 of the *MCIA* to make a complaint to the Integrity Commissioner. The Complaint Protocol provides that the complaint must be on a Complaint Form. Pursuant to s. 223.4.1 of the *Municipal Act* and s. 5 of the Complaint Protocol, *MCIA* complaints must be made within six weeks of when the Complainant became aware of the alleged contravention. The Complaint Form requires complainants under the *MCIA* to affirm the date on which they became aware of the alleged contravention.

Pursuant to s. 2 of the Complaint Protocol, complaints made pursuant to the Code of Conduct must be made within six months of the alleged misconduct.

The Respondent's Preliminary Submission: Jurisdiction of the Integrity Commissioner to Receive the Complaint:

On December 5, 2019, I provided the Respondent with Notice of receipt of a complaint naming him as Respondent, which had been received by my Office on November 22, 2019. I identified a preliminary issue about the timeliness of the Complaint and my jurisdiction to investigate. I advised the Respondent that, in addition to the Code of Conduct sections listed in the Complaint, there was also an alleged violation of Rule 6, subsections 5 and 6 of the Code of Conduct, which require a Member to comply with the requirements of the MCIA.

On December 16, 2019, I received the Respondent's reply to my December 5, 2019 request for submissions on jurisdiction. Following receipt of preliminary submissions on jurisdiction from the Respondent, I concluded that the Code Complaint was time barred by the six-month limitation period and made the decision to open an investigation into the *MCIA* Complaint only.

The Respondent challenged the Integrity Commissioner's jurisdiction to review the two parts of the Complaint on the basis that:

i. the COC Complaint is a dressed-up complaint under the *MCIA*, so it should not be considered under the Code;
ii. the *MCIA* Complaint was not brought within one or both of two-time limits: (a) six weeks of when the Complainant became aware of the alleged contravention of the *MCIA* and (b) six months of the alleged misconduct.

The COC Complaint

The Respondent stated that "[h]owever, the COC Complaint is, on its face, an allegation that [the Respondent] breached ss. 5, 5.1 and 5.2 of the *MCIA*. The COC Complaint should not be classified as an alleged breach of the Code of Conduct". Further, the Complaint sets out:

- [c]lassifying the COC Complaint as a Code of Conduct complaint under s. 223.4(1) of the *Municipal Act* would frustrate the legislature's intention that the *MCIA* be a

complete code for dealing with municipal conflicts.

- [a]n Integrity Commissioner has no corresponding authority when conducting an inquiry respect ss. 5., 5.1 or 5.2 of the *MCIA*. To the contrary, an Integrity Commissioner may only apply to judge for a determination of whether there was a contravention of the *MCIA* if he or she considers it appropriate.

Finally, the Respondent submits that it was the intention of the Ontario Legislature to give to courts exclusive jurisdiction **to enforce** the *MCIA*.

Jurisdictional Finding on the COC Complaint

In respect of the timeliness of the COC Complaint, I agree with the Respondent. I am barred from reviewing the COC Complaint insofar as the conduct subject of the allegations took place in 2018 which is more than 6 months before the date of the COC Complaint. I made the decision not investigate the COC Complaint.

The MCIA Complaint

The Respondent took the position that two-time limits applied to the *MCIA* Complaint. First, the Respondent stated that a Complainant has six weeks from the date on which he becomes aware of an alleged contravention of the *MCIA* to apply to the Integrity Commissioner for an inquiry into the alleged contravention. The Respondent submits that the Complaint "[i]s time-barred under s. 223.4.1(4) of the *Municipal Act* and cannot be investigated by the Integrity Commissioner as a breach of ss.5, 5.1 and/or 5.2 of the *MCIA*" because the Committee meeting referred to in the Complaint took place more than six months before the Complaint was submitted on November 20, 2019,.

In respect of the six week time limit, the Respondent introduced case law on "actual" versus "constructive" knowledge to confirm his position that the Complainant knew or ought to have known of the alleged breach of the *MCIA* more than six weeks before he submitted the *MCIA* Complaint.

Second, the Respondent stated that the MCIA complaint is subject to the six-month time limit.

What is the Applicable Deadline for MCIA Complaints?

My jurisdiction with respect to the investigation of *MCIA* complaints is governed by the *Municipal Act*. Section 223.4.1(4) of the *Municipal Act* provides that:

> An application may only be made within six weeks after the applicant became aware of the alleged contravention.

This provision parrots the language in s. 8(2) of the *MCIA* which governs deadlines for making an application to the court under the *MCIA*. Section 8(6) of the *MCIA* also sets out an ultimate limitation period of six years. No applications to the Court may be considered after the sixth anniversary of the date on which the alleged contravention of the *MCIA*

occurred.

Section 5 of the Complaint Protocol includes the six-week deadline set out by the legislature for *MCIA* complaints. Section 2 of the Complaint Protocol sets out that a complaint must be made within six months of the alleged misconduct; however, this six-month limit applies to Code complaints and not *MCIA* complaints which are governed by the statutory time limit.

Did the Complainant meet the six-week deadline?
On its face, in the *MCIA* Complaint, the Complainant states that he only became aware of the link between the HBNG Holborn Group's affiliated companies working to develop the BOT lands on October 20 or October 21st, 2019. The *MCIA* Complaint was made less than six weeks after this date.

During the initial analysis and throughout this investigation, I received no evidence to undermine the sworn statement of the Complainant that in October 2019, he became aware of a critical fact which linked the Respondent to an alleged pecuniary conflict of interest. The Complainant provided a reasonable explanation about why he had only recently learned of that fact; he learned of a forthcoming resubmission of a development application by Clubhouse Development Inc., the same corporation which withdrew its application in 2018. For the purpose of deciding whether to investigate, I accepted the affidavit evidence as truthful with respect to when the Complainant became aware of the alleged contravention of the *MCIA*.

The Respondent took the position that the Integrity Commissioner must apply a test of actual or constructive knowledge when considering the timeliness of the *MCIA* Complaint. However, despite describing what may be the appropriate test, the Respondent then suggests that there is a due diligence requirement and an objective standard to be applied to the Complainant – which was a deemed or presumed knowledge test. I found that, in my view, this was not the appropriate standard to be applied to s. 223.4.1(4) of the *Municipal Act*. This view is supported by the Court's decision in *MacDonald v Ford*, which concluded that information in the public domain does not satisfy the constructive knowledge test and would result in a deemed or presumed knowledge test.

There is nothing to suggest that what was within the Complainant's knowledge would have put an honest person on inquiry of these matters. This is the appropriate constructive knowledge test. The Complainant knew that Clubhouse Developments Inc. was related to JD and thus to the employer of the Respondent's son.

As a result, I made the preliminary decision on jurisdiction and timing of the Complaint and decided to proceed with an investigation of the *MCIA* Complaint.

Pursuant to section 7(1) of the Complaint Protocol, I requested that the Respondent provide me with a written reply to the substantive allegations of Complaint, on or before February 17th, 2020, which response is detailed below.

Further Submissions from the Complainant
I received two (2) emails of March 31, 2020 from the Complainant, in which they indicated that they wanted to submit supplementary information related to the non-MCIA Code complaint which formed part of the November 2019 original Complaint. I advised that I could not investigate the issues with respect to the initial Code complaint because of the time limit. The Complainant also suggested that the Respondent had violated the *MCIA* in respect of two more recent meetings touching on the Clubhouse Development Inc. matter. I determined that it was not necessary to commence a formal investigation and closed that matter as I was satisfied that the Respondent had met his obligations under section 5 of the *MCIA*.

On April 6, 2020, I gave the Respondent Notice of the supplementary submissions from the Complainant.

Issues:

The issues to be determined are:

1. Did the Respondent's son have a direct or indirect pecuniary interest in relation to the resolution voted upon at the Council Meetings resulting in the creation of a deemed pecuniary interest for the Respondent.
2. If so, was the Respondent's son's pecuniary interest known to the Respondent.
3. Did the exemption contained in s. 4(k) of the *MCIA* apply to the Respondent to exempt him from the operation of s. 5.

Section 223.4.1 of the *Municipal Act* sets out that an elector, as defined in section 1 of the *MCIA*, or a person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of the *MCIA*.

Section 12 of the Complaint Protocol for the Code of Ethical Conduct for Members of Council and Local Boards (the "Complaint Protocol"), sets outs that if, upon completion of the investigation into alleged contraventions of sections 5, 5.1 and 5.2, the Integrity Commissioner determines that on a balance of probabilities there has been a violation of the *MCIA*, or is otherwise of the opinion that it is in the City's interest for a judge to determine if there has been a violation of the *MCIA*, the Integrity Commissioner may apply to a judge for such a determination.

The *MCIA* deems the pecuniary interest, direct or indirect, of a member's child to be the pecuniary interest of the council member if that interest is known to the member. If a matter which relates to the deemed pecuniary interest comes before council, the *MCIA* requires a member to disclose such interest and to refrain from, among other things, participating before, during, or after the meeting. The *MCIA* contains exceptions whereby the requirement to disclose and refrain from participating do not apply. These exceptions include circumstances where it is determined that the interest is so remote or insignificant that it cannot be reasonably regarded to influence the member's decisions.

The Subject Lands

The Subject Lands comprise of approximately 119.7 hectares of lands owned by Clubhouse Properties Inc. with an additional 9.6 hectares owned by TRCA and leased for purposes of the golf course.[5] The Subject Lands are designated as Private Open Spaces, with the exception of the TRCA lands which are designated as Natural Areas. The policies of the Private Open Spaces designation recognize a golf course as a permitted use but also provide that: Should the Private Open Spaces cease to exist, appropriate alternate land uses shall be determined through the Official Plan amendment process and shall be subject to an area specific study.

A Pre-Application Consultation Meeting with City of Vaughan staff was held on July 12, 2017 to determine the basis for support to the Official Plan Amendment.

The Respondent's Reply to the Complaint:

On February 21, 2020, I received the Respondent's reply to the Complaint. The Respondent's reply stated that:

> […] the Integrity Commissioner does not have jurisdiction to investigate the Complaint.
>
> The issue at the center of the Complaint is whether [the Respondent] should have declared a conflict of interest under s. 5 of the *Municipal Conflict of Interest Act* ("*MCIA*") in respect of matters before Vaughan's City Council on May 8 and 23, June 19 and September 27, 2018 (the "Council Meetings") concerning the Toronto Board of Trade Golf Course (the "Golf Course").
>
> […]
>
> According to its website, HBNG Holborn Group ("HBNG Holborn") is a "fully integrated development company". HBNG Holborn's website lists the HBNG Holborn "family of companies" as follows: Kapp Infrastructure, Maystar General Contractors, Poetry Living, and Soho Innovation Lab.
>
> According to its website, Poetry Living is a construction manager for residential developments.
>
> Contrary to the allegations in the Complaint, [the Respondent's] son…does not work for HBNG Holborn and did not work for HBNG Holborn at the time of the Council Meetings. [The Respondent's son] is and was at the time of the Council Meetings in

[5] KLM Planning Partners Inc., January 2018 PLANNING JUSTIFICATION REPORT CLUBHOUSE PROPERTIES INC.

2018, the General Manager of Construction at Poetry Living.

We note that HBNG Holborn has listed [the Respondent's son] as the Director of Low-Rise Housing on its website. We have been informed that this is for marketing purposes only and that [The Respondent's son] is and was at the time of the Council Meetings in 2018, employed by Poetry Living.

[…]

In May 2017, Clubhouse Developments purchased the Golf Course in Woodbridge. There is no public information respecting ownership interests of Clubhouse Developments. News media reports state that the RGF Fund "led the purchase"

[…]

Neither Clubhouse Developments, HBNG Holborn nor Poetry Living had a pecuniary interest in the outcome of the Council meetings. In order for [the Respondent] to have a deemed pecuniary interest under section 3, it must be determined that [the Respondent's son] is employed by a party that has a pecuniary interest in the outcome of the Council Meetings.

The issues before Council at the Council Meetings concerned Clubhouse Developments agreement that the Golf Course would abide by the Tree Protection By-law directions to staff to prepare reports or studies, and the amendment, adoption or reconsideration of meeting minutes.

The complainant is therefore incorrect in stating that [the Respondent] voted against a motion "regarding the request for Council to adopt an Interest Control By-Law and the request to designate the property in question to a Cultural Heritage Landscape under the Ontario Heritage Act. [The Respondent' never voted on a motion to adopt an ICBL, or a request to designate the Golf Course a Cultural Heritage Landscape.

[…]

As stated above, a pecuniary interest must be definable and real and not simply hypothetical or speculative. The Complaint does not allege, and it is too speculative to suggest, that Clubhouse Developments financial interests would be affected by the proposed agreement to be bound by the Tree Protection By-law, which merely prevented the removal of a tree with a 20+ circumference.

It defies logic and is contrary to case law to suggest that the directions to staff to prepare reports and commission studies or the amendment, adoption and reconsideration of meeting minutes has any affect on the pecuniary interests of Clubhouse Developments. As the Court held in Rivett v Braid and Hervey v Morris, the decision for more investigation to take place does not crystallize a pecuniary

interest for the purpose of the MCIA.

Simply, the outcome of the Council Meetings cannot be linked in any way to any pecuniary outcome, other than hypothetically. This cannot support a conclusion that Clubhouse Developments had a pecuniary interest in the outcome of the Council Meetings.

In any event, [the Respondent's son] is not employed by Clubhouse Developments.

The complainant alleges that HBNG Holborn is affiliated with Clubhouse Developments because [a named individual] is an officer or director of both Clubhouse Developments and HBNG Holborn.

There is no public information respect the ownership interests of HBNG Holborn and Clubhouse Developments because they are privately owned. However, the fact that HBNG Holborn and Clubhouse Developments may share an officer/director cannot be accepted as evidence that HBNG Holborn had a pecuniary interest in the outcomes of the Council Meetings.

[…]

In any event, and most significantly, despite the marketing language on the HBNG Holborn website, [the Respondent's son] is not employed by HBNG Holborn. He is employed by Poetry Living, which has completely distinct and separate corporate personality from HBNG Holborn. Thus, even in the event that Clubhouse Developments or HBNG Holborn had a pecuniary interest in the outcome of the Council Meetings, which we deny, [The respondent's son] did not have an indirect pecuniary under s. 2(b) of the MCIA because he was/is not employed by Clubhouse Development or HBNG Holborn.

[…]

[The Respondent] has no knowledge that Poetry Living had or has any connection to Clubhouse Developments or the Development Application.

<u>Request for supplementary information from Respondent:</u>

On April 6, 2020 I requested the Respondent provide this Office with a reply to the following supplementary questions on or before April 10, 2020:

1. In his role as Vice President Construction, Poetry Living, is [the Respondent's son] a salaried employee or does his remuneration vary according to different projects?
2. In his role as Director of Low-Rise Housing, Holborn Group – Investment Management, is [the Respondent's son] a salaried employee or does his remuneration vary according to different projects?

3. Is [the Respondent's son] an officer, director, shareholder or owner of any of corporations in the Holborn "family of companies"?

On April 10, 2020, I received the Respondent's reply to my supplementary questions. In his reply, the Respondent stated:

> As a preliminary matter, I would like to make the following clarification: [the Respondent]'s response to Complaint 112219 dated February 21, 2020, states that "[the Respondent's son] is, and was at the time of the Council Meetings in 2018, the General Manager of Construction at Poetry Living."1 (the Respondent's response to the complaint dated February 21, 2020 at p. 3.)
>
> We were recently advised that [the Respondent's son's] title at Poetry Living changed from General Manager of Construction to Vice President Construction. We understand that this was a change in title alone, and that neither the substance of his work nor his compensation has changed. As a result, any reference to [the Respondent's son's] role as Vice President Construction at Poetry Living can be taken to apply to his past role as General Manager of Construction at Poetry Living.
>
> 1. In his role as Vice President Construction, Poetry Living, how is [the Respondent's son's] compensation structured? In particular, does [the Respondent's son] earn any variable compensation according to the profitability or success of Poetry Living and/or Holborn Group or their specific projects?
>
> In his role as Vice President Construction at Poetry Living, [the Respondent's son's] sole compensation is his annual salary. [The Respondent's son] does not earn any variable compensation according to, or which is contingent on, the profitability or success of Poetry Living and/or Holborn Group or their specific projects.
>
> 2. In his role as Director of Low-Rise Housing, Holborn Group – Investment Management, how is [the Respondent's son's] compensation structured? In particular, does [the Respondent's son] earn any variable compensation according to the profitability or success of Poetry Living and/or Holborn Group or their specific projects?
>
> As stated in [the Respondent's] response to Complaint 112219 dated February 21, 2020, [the Respondent's son] is not employed by the Holborn Group. Although the Holborn Group has listed [the Respondent's son] as the Director of Low-Rise Housing on its website, this is for marketing purposes only. [The Respondent's son] is, and was at the time of the Council Meetings in 2018, which are the subject of this complaint, employed by Poetry Living.

> We reiterate and emphasize that [the Respondent's son] is not employed by the Holborn Group as the Director of Low-Rise Housing nor involved, in any capacity, with Investment Management at the Holborn Group. As such, he does not receive any compensation from those roles.
>
> 3. Does [the Respondent's son] have a financial interest in the development of the Board of Trade golf course lands? If so, please explain the nature of his financial interest.
>
> [The Respondent's son] has no financial interest whatsoever in the development of the Board of Trade golf course lands.
>
> 4. Is [the Respondent's son] an officer, director, shareholder or owner of any of the corporations in the Holborn Group "family of companies"? Does he receive any compensation, dividend income, share of profits, or other financial gain from the businesses? If so, please explain the nature of his financial interest. Please include, for example, any agreement to provide him with completed units in the Holborn projects.
>
> [The Respondent's son] is neither an officer, director, shareholder nor owner of any of the corporations in the Holborn Group "family of companies", including Poetry Living. He therefore receives no compensation, dividend income, share of profits or other financial gain from these businesses, apart from his annual salary from Poetry Living.

On April 24, 2020, the Complainant provided the following comments to the Respondent's reply:

> I wish to submit the following supplemental information to your office as it relates to my MCIA application for Deputy Mayor Mario Ferri.
>
> Back in December 9, 2014, Deputy Mayor Mario Ferri declared an interest on the following item 1 because his son was employed by the applicant.
>
> ZONING BY-LAW AMENDMENT FILE Z.14.031 DRAFT PLAN OF SUBDIVISION FILE 19T-14V007 POETRY LIVING (THE VIEW) LIMITED WARD 3 - VICINITY OF MAJOR MACKENZIE DRIVE AND POETRY DRIVE
>
> The applicant in this case is Poetry Living, which is part of the Holborn Group family of companies. Holborn Group is one of the partners in the proposed Toronto Board of Trade Golf Course development, Clubhouse Developments Inc. See link below for meeting minutes of the meeting.
>
> https://www.vaughan.ca/council/minutes_agendas/Extracts/43ph1202_14ex_1.pdf

This is relevant in my opinion because it demonstrates that Deputy Mayor Mario Ferri has been fully aware that his son Michael Ferri is employed by a subsidiary of Holborn Group.

Analysis:

The Respondent denies that he had a deemed pecuniary interest at the Council Meetings in 2018 and gives the following reasons:

- his son does not and did not work for HBNG Holborn at the time of the Council meetings in 2018 and the fact that HBNG Holborn has listed the Respondent's son as the Director of Low-Rise Housing on their website was for "marketing purposes";

- Neither Clubhouse Developments, HBNG Holborn nor Poetry Living had a pecuniary interest in the outcome of the Council meetings and therefore, the Respondent's son did not have a pecuniary interest;

- Clubhouse Developments Inc purchased the BOT Golf Course and there is no public information about the ownership interests except for news reports that state that RGF Fund "led the purchase";

- The Council meetings subject of this Complaint had as their subject whether the Golf Course would abide by the Tree Protection By-law directions to Vaughan City staff to prepare reports or studies and the reconsideration of meeting minutes. Therefore, the subject of the meetings was not the Interim Control By-law or the approval of the Clubhouse Developments application. Thus, the premise of the Complaint allegations is incorrect because the Respondent did not vote against a motion "regarding the request for Council to adopt an Interim Control By-Law or a request to designate the Golf Course a Cultural Heritage Landscape";

- The outcome of the Council Meetings cannot be linked in any way to a pecuniary outcome for Clubhouse or Holborn and therefore the pecuniary interest is hypothetical

Relevant Council Meetings

At the May 23, 2018 Committee of the Whole meeting, numerous residents attended in the hopes of making deputations against the BOT development application submitted by Clubhouse Developments Inc. The application to develop a portion of the Board of Trade Golf Course lands had been withdrawn shortly before the meeting was held. However, since it was expected that the developer (as owner of the lands) would submit another application at some future date, the matter was discussed. With a view to addressing the concerns of local residents who believed that trees other than those identified as hazardous to the public may be removed from the site while the application is in abeyance and prior

to the completion of the ongoing consultation with golf course and nursery operators Council directed staff to conduct studies as to whether trees on such sites should be covered by the Private Property Tree Protection Bylaw.

Council recommended:

> 1. That appropriate staff be directed to request the owners of the Board of Trade Golf Course to formally agree in writing to abide by the provisions of the Private Property Tree Protection By-law as a gesture of good faith toward neighbouring residents, and to do so until such time as the consultations were concluded and Council takes what action it deems appropriate in light of said consultations; and
>
> 2. That failing agreement with the above, that appropriate staff be directed to bring forward no later than the Committee of the Whole meeting of June 5, 2018, a site-specific by-law that subjects the said lands to the provisions of the Private Property Tree Protection Bylaw, until such time as the consultations referenced above is concluded and Council takes what action it deems appropriate in light of said consultations.

To determine whether the Respondent had a pecuniary interest, I engaged in an analysis of what, precisely, was considered at the Council Meetings. I concluded that the substance of what was considered by council did not relate to a pecuniary interest of any particular party. The owners of the BOT were not part of the conversation. This was a matter brought to council by a group of neighbouring residents who were interested in protecting the trees on the golf course lands. While the matter scheduled to be discussed at Council may have brought a different conclusion to the Complaint before me, the scheduled matter was withdrawn by Clubhouse Developments Inc., shortly before the Council meeting.

Given that there was no direct financial impact or foregone result set out in the Council meetings subject of this Complaint, it cannot be concluded that Clubhouse Development Inc., HBNG Holborn Group, or Poetry Living had a pecuniary interest in the matter. The Resolution of Council **did not** deal with the Interim Control By-law or the approval of the BOT Golf Course development **but rather** was about the Tree Protection By-law. Specifically, it dealt with a request for a voluntary commitment from the owners of the BOT to commit to adhere to the existing Private Property Tree Protection by-law until it held consultations with neighbouring property owners. Alternatively, if the owners were not willing to do so, it sought to have staff bring a site-specific by-law for the same mandatory relief, until completion of the requested consultations.

It has been held that the pecuniary interest of the member must be a “real one” and not hypothetical.[6] Since a breach of the MCIA, carries severe penalties, it is appropriate that I

[6] *Magder v Ford*, 2013 ONSC 263 (Div. Ct)

strictly interpret the pecuniary interest threshold. I agree with the Respondent's submissions that no pecuniary interest arose in these particular Council Meetings, though I would not go so far as to agree with the Respondent's need to opine with hyperbole that the Complainant's allegation "[…] defies logic". While the reasons for the last minute withdrawal of the development application by Clubhouse Development Inc., are to my knowledge, undisclosed publicly and unknown to me, the Complainant's suggestion that participating in the discussion and voting against the motion could have directly benefited the applicant and as a result, also benefited […the Respondent's] son, is not illogical as the Respondent purports, it is just incorrect in law. In any event, I have determined that any pecuniary interest is too remote or hypothetical as this does not cause an amendment to current plans or any financial outlay to Clubhouse Development Inc., HBNG Holborn, or Poetry Living.

As a result, at the relevant Council Meetings, the Respondent could not have had a deemed pecuniary interest because there simply was no pecuniary interest. His participation in the meetings did not trigger any conflict under the MCIA.

While the agenda had listed the BOT Golf Course development application, it was withdrawn. As a result, there was no matter before council which triggered the application of the MCIA.

I concluded that the Respondent did not have a deemed pecuniary interest either directly or indirectly in the matter upon which he voted. As I stated above, the subject of the discussion and resulting motion which Council voted on was the position brought forward by an interested group in Vaughan to consider the tree protection by-law. Clubhouse Development Inc. did not participate in the matter. There is no evidence that adhering to the tree protection by-law would change Clubhouse Development Inc.'s development plans resulting in increased costs to build or reducing its profits. Any possible pecuniary interest would be highly speculative.

Because of my findings on Issue #1, I have not considered Issues #2 or #3.

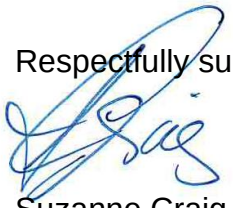
In light of my findings, I have not determined whether the Respondent has a deemed, indirect pecuniary interest through his son and son's employer in matters which relate to the financial interest of the BOT development. While I received some evidence about the relationship between Clubhouse Development Inc., HBNG Holborn, and Poetry Living, it is not necessary *for the purposes of this Complaint* to make any findings about that relationship in the context of this report. I decline to do so.

Conclusion

I have concluded that there was no pecuniary interest in the matters considered at the Council Meetings because what was being considered was the tree protection by-law. As a result, the *MCIA* provisions were not triggered for the Respondent by way of a direct or indirect deemed pecuniary interest.

Pursuant to section 12 of the Complaint Protocol, I will not apply to a judge to determine if there has been a violation of the *MCIA*, as I have determined that in my opinion there has not been a breach of s.5 of the *MCIA*.

Respectfully submitted by:



Suzanne Craig
Integrity Commissioner and Lobbyist Registrar