# City of Mississauga Recommendation Report of the Integrity Commissioner Code Complaint against Heritage Advisory Committee Member Rick Mateljan

#### October 8, 2020

#### **Introductory Comments**

[1] Principles Integrity was appointed the Interim Integrity Commissioner for the City of Mississauga in July of 2017. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work and which appears in every formal communication with our clients to reinforce its importance to us, is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council and local boards meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

- [2] Our efforts in concert with our clients are therefore to help establish an ethical framework through which the public perception of Council is deservedly enhanced.
- [3] The Municipal Act requires that municipalities adopt a code of conduct for members of local boards, and appoint an integrity commissioner responsible for overseeing the application of the code of conduct for local board members. Members of local boards are also subject to the Municipal Conflict of Interest Act (MCIA).
- [4] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations,

- including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.
- [5] This being our function, as Integrity Commissioner we play an important role in the administration of justice, including with respect to the oversight given members of Councils and of local boards with respect to the avoidance of conflicts of interest.
- [6] Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [7] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [8] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond the allegations, and to review and provide comment on the preliminary findings

#### The Complaint

- [9] On July 8, 2020 we received a complaint against Heritage Advisory Committee member Rick Mateljan. The complaint asserts that the member breached the Code of Conduct for Local Boards in taking a retainer and acting as a heritage planning witness in a Land Planning Appeals Tribunal hearing. The hearing was in respect to the property at 1646 Dundas Street West and the Respondent acted on behalf of the developer when he provided heritage planning evidence which contradicted the position of the Heritage Advisory Committee and was in opposition of the City of Mississauga's decision on the application.
- [10] The allegation is that the member's participation constitutes an improper use of influence and represents a conflict of interest, given his role as member of the City's Heritage Advisory Committee, contrary to the Code of Conduct for Local Boards.

#### Process Followed for this Investigation

- [11] In conducting this investigation, Principles Integrity applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.
- [12] This fair and balanced process includes the following elements:

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent of the complaint against him, and providing adequate disclosure of the information we possessed so that he could prepare his response
- Reviewing the Code of Conduct for Local Boards, the relevant LPAT decision, reports, meeting minutes, and other relevant documentation, and interviews as necessary
- Providing the Respondent with the additional opportunity to review and provide responses to the Integrity Commissioner's draft Findings Report, and taking any additional response into consideration prior to finalizing and submitting our Recommendation Report
- [13] In accordance with the foregoing, on August 17, 2020 we provided the Respondent and his legal counsel with our preliminary findings and invited him to provide a response by September 3, 2020.
- [14] On September 1, 2020 the Respondent's legal counsel advised that another solicitor was being retained. We were asked for a one-month extension to respond to our draft Findings Report, which we provided.
- [15] On October 2, 2020, we received the solicitor's 85-page response (14-page submission plus attachments) which we have now reviewed.
- [16] The process of providing a draft Findings Report, seeking comments, and reflecting upon those comments prior to finalizing a report to Council is a helpful aspect of our process. In this instance it clarified for us that certain concepts were poorly understood by the Respondent, requiring clarification and additional explanation. We revisited our report with this in mind.

#### Background and Context

- [17] The Respondent Rick Mateljan is a member of the Mississauga Heritage Advisory Committee and has been since 2007.
- [18] The Respondent is an architect and a principal at SMDA, an architectural design firm in Oakville.

- [19] EV Royale is a developer who proposed a condominium project for the property at 1646 Dundas Street West in Mississauga.
- [20] In 2014, EV Royale (the developer) retained the Respondent to work on the project as the Heritage and Urban Design consultant.
- [21] In his capacity as Heritage and Urban Design Consultant for the developer, the Respondent met and worked with City staff, attended community meetings, authored a Heritage Impact and Urban Design Statement in support of the development, and presented the project at the City of Mississauga Urban Design Advisory Panel.
- [22] In September 2016 the developer filed an application with the City.
- [23] The property at 1646 Dundas Street West is listed on the Heritage Registry.
- [24] On September 5, 2017 representatives of the Erindale Village Association attended at the Heritage Advisory Committee to make a deputation to express the Erindale Village community's unanimous opposition to the proposed development, and seek the assistance and support of the Heritage Advisory Committee.
- [25] Because the property is not Designated but only Listed on the Heritage Register, the Heritage Advisory Committee does not have jurisdiction to require the developer to submit to its review process. The Heritage Advisory Committee advised the Erindale Village Association representatives that the Committee suggested that they communicate their concerns regarding preservation of the heritage character to their Ward Councillor and to Council.
- [26] The Respondent was absent from the September 5, 2017 meeting, as noted in the Minutes, and therefore no declaration of interest was made at the meeting. Notably, no declaration of interest was made at the subsequent meeting.
- [27] In November 2017, the developer appealed the City's failure to make a decision on the application to the OMB (now LPAT).
- [28] On May 18, 2018, following a series of public meetings, the planning report to the City's Planning Committee recommended approval. Despite staff's recommendation, on June 20, 2018 Council unanimously rejected approval of the development.
- [29] Citing among other reasons issues of incompatibility with the heritage character of the community, City Council directed the City Solicitor to take all necessary steps, including retaining outside counsel and planning witnesses, to represent Council's opposition to the development application at the LPAT.

- [30] The City opposed the developer's appeal of the application at the LPAT, retaining legal counsel and a Transportation Engineer, a Cultural Heritage Planner and a Land Use Planner to provide evidence at the LPAT.
- [31] The Respondent was the developer's expert witness on the issue of Heritage Conservation at the LPAT.
- [32] The LPAT held two pre-hearing conferences; heritage conservation was identified as one of the key issues.
- [33] The Respondent was presented at the LPAT as an expert on heritage matters and his qualification as such notably included his role on the City's Heritage Advisory Committee, reflected in the LPAT decision at paragraph [67]:

Mr. Mateljan is a Licensed Technologist and member of the Ontario Association of Architects and has served as a member and Vice-Chair of the Mississauga Heritage Advisory Committee since 2007. He was retained in April 2014 and prepared the Heritage Study on behalf of Erindale Inc. (the developer).

- [34] Following a two-week hearing in the fall of 2019, the LPAT issued its decision on June 12, 2020, granting approval to the developer for the development.
- [35] The LPAT relied upon the Respondent's evidence with respect to its determination that the development warrants approval, as noted at para [94] of the decision:

In consideration of the whole of the evidence, the Tribunal finds that the development of the lands in the manner proposed warrants approval. The proposal provides for the efficient use and orderly development of lands and implements the higher order planning policies established by the Province. In making these findings the Tribunal accepts and adopts the evidence and opinions of Messrs. Quarcoopome [Land Use Planning], Maria [Transportation and Engineering] and Mateljan [Heritage Architecture and Urban Design].

#### The Municipal Conflict of Interest Act (MCIA):

[36] The MCIA is in large part the governing legislation, and provides a statutory framework for determining when a member of municipal council (or local board) may be in a conflict of interest. The Code of Conduct supplements this statutory framework by addressing the common law concept of conflicts of interest including perceived or apparent conflicts of interest.

[37] The relevant provisions of the MCIA provide as follows:

#### **Duty of Member**

#### When present at meeting at which matter considered

- 5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,
- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

#### When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1).

#### Code of Conduct for Local Boards

- [38] In addition to the MCIA members of local boards are governed by their Code of Conduct. The Heritage Advisory Committee is an adjudicative board, and its members are subject to the Code of Conduct for Adjudicative Boards adopted by Mississauga City Council.
- [39] The relevant provisions of the Code of Conduct provide as follows:

#### Framework and Interpretation

**13.** The Municipal Act, 2001 is the primary piece of legislation governing municipalities however there are other statutes that govern adjudicative boards and the conduct of its members. It is intended that the Code of Conduct operate together with and as a supplement to the following legislation:

Municipal Act, 2001; Municipal Conflict of Interest Act;

**14.** In carrying out his or her responsibilities regarding this Code of Conduct, the Integrity Commissioner is not limited to looking at the pecuniary interest of the Member, and for clarity the Integrity Commissioner is specifically authorized to investigate issues of conflict in a broad and comprehensive manner.

#### **Key Principles that Underlie the Code of Conduct for Adjudicative Boards:**

**b.** Members are expected to perform their duties as a member of the adjudicative board and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

#### Rule No. 1

**a.** Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their membership on the board, and private conflicts of interest, both apparent and real. Members shall also not extend in the discharge of their official duties, preferential treatment to Family Members, organizations or groups in which they or their Family Members have a direct or indirect pecuniary interest.

#### Commentary

Members have a common understanding that in carrying out their duties as a Member of an adjudicative board, they will not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to a Family Member or an individual which is not available to every other individual.

Members are governed by the Municipal Conflict of Interest Act and in the event a complaint under the Act is filed with the Court, the provisions of that statute take precedence over any authority given to the Integrity Commissioner to receive or investigate complaints regarding alleged contraventions under the Municipal Conflict of Interest Act. It is intended that the Integrity Commissioner be empowered to investigate and rule on all conflicts of interest, whether pecuniary or non-pecuniary until Court proceedings are started under the Act.

- **b.** Members shall avoid any interest in any contract made by him/her in an official capacity and shall not contract with the adjudicative board or any agency thereof for the sale and purchase of supplies, material or equipment or for the rental thereof.
- **c.** Members, while a member of an adjudicative board, shall declare a conflict of interest, refrain from voting and not take part in any activity which may be interpreted as an attempt to influence the vote on any application or other matter before the board which is brought by or in any way supported or opposed by, a business in which the member has a direct or indirect pecuniary interest.

#### Commentary

While it is recognized that it is an advantage for some of the adjudicative boards to recruit members with expertise in a discipline related to the matters considered by the board, a member who is in any way involved with an application cannot be permitted to participate in its adjudication. <u>Any member who is connected with a business that comes to rely frequently on approval from the board should likely resign.</u> [emphasis added]

#### Rule No. 6

Improper Use of Influence:

No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties as a member of the adjudicative board.

Examples of prohibited conduct are: the use of one's status as a member of an adjudicative board to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage in the carrying out of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within the adjudicative board or at the City, in return for present actions or inaction.

#### Rule No. 7

**Business Relations:** 

7. No Member shall act as a paid agent before the adjudicative board.

#### **Analysis and Findings:**

- [40] Serving as a volunteer on a City advisory committee is a laudable activity.
- [41] It is often desirable to have professionals with some particular expertise serving on certain committees. The Heritage Advisory Committee benefits from the professional experience and insights of the Respondent.
- [42] Examples of other advisory committees that clearly benefit from the professional experience of their membership are the Urban Design Advisory Panel, and the Public Vehicle Advisory Committee.
- [43] However, despite the valuable experience and insights they bring, it is important for members of advisory committees to recognize and avoid conflicts of interest and improper use of influence.
- [44] This is brought into sharper focus where they serve on adjudicative bodies such as the Heritage Advisory Committee.

- [45] While the name of this body suggests otherwise, the role and function makes it a quasi-judicial adjudicative tribunal, and even though it makes recommendations to Council, rather than final decisions, its procedures involve hearing from applicants and other interested parties including those opposed, to render its recommendations.
- [46] The Respondent is a principal of the firm SMDA, an architectural design firm whose work includes producing Heritage Impact Studies and Heritage Architectural Drawings and Designs.
- [47] Properties which are Designated as Heritage Properties by the City under the Heritage Conservation Act are subject to the City's Heritage Planning process in order to obtain approval for any changes.
- [48] Applications under the City's Heritage Planning process are heard by the Heritage Advisory Committee.
- [49] When an application which comes before the Heritage Advisory Committee is supported by a Heritage Impact Study report or other design work authored or prepared by SMDA, and the Respondent is present at the meeting, the Respondent declares an interest and recuses himself from the meeting.
- [50] The Respondent was not present during the meeting at which the Erindale Village Association representatives spoke on September 5, 2017, and the Heritage Advisory Committee advised the Association to contact their Ward Councillor and Council to seek support, given that the property in question was not Designated but only Listed in the Register.
- [51] The Respondent recognizes that, if he had been present, he would have had an obligation to declare an interest.
- [52] During our investigation, in a cursory review of meeting minutes over the two year period 2017-2019, we note that the Respondent declared an interest in a matter before the committee on sixteen<sup>1</sup> occasions:

May 9, 2017 - items 7.2 & 7.4 July 11, 2017 - item 7.2 Nov.14, 2017 - items 7.4 & 7.5 Feb.6, 2018 - item 7.5 Mar.6, 2018 - items 7.1 & 7.2 Aug.10, 2018 - items 7.2, 7.3, 7.6 Feb.5, 2019 - item 7.3

<sup>1</sup> The Member has noted there were actually 18 such occasions but only 9 separate and distinct projects. An interest must be declared on each and every occasion the matter comes before the body.

July 2, 2019 - items 7.5, 7.6, 7.7, 8.1

[53] The Code Commentary highlights the need to avoid conflicts of interest of the type examined in this report as follows:

While it is recognized that it is an advantage for some of the adjudicative boards to recruit members with expertise in a discipline related to the matters considered by the board, a member who is in any way involved with an application cannot be permitted to participate in its adjudication. Any member who is connected with a business that comes to rely frequently on approval from the board should likely resign. [emphasis added]

- [54] The Respondent is a principal with SMDA, whose retainer is often sought out and which frequently accepts retainers from property owners whose properties are required to obtain approval from the Heritage Advisory Committee.
- [55] As a result, the work product of the Respondent's firm is often provided to the Heritage Advisory Committee in support of an approval application.
- [56] One of the obligations of members is to take all steps to avoid such conflicts of interest from arising; expressed as a key principle underlying the Code of Conduct for Adjudicative Boards, the duty of members is to arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.
- [57] We find that the Respondent has failed to implement this key principle of the Code of Conduct.
- [58] Rule 7 prohibits "acting as a paid agent before the adjudicative board". While providing the work product to support an application is not precisely "acting as an agent", it must be recognized that the purpose of the provision is to prevent undue influence by a member of an adjudicative board before the very body on which he is member.
- [59] We find that the Respondent's firm, in accepting retainers and providing the work product to property owners in the application process before the Heritage Advisory Committee is tantamount to acting as an agent before that body, and therefore we find that these retainers violate the spirit and intent of the provision.
- [60] The Meadowvale Heritage Conservation District Advisory Committee is a body comprised primarily of citizens of the district. It reports to the Heritage Advisory Committee.
- [61] At the April 4, 2017 meeting of the Meadowvale Heritage Conservation District Advisory Committee, the Respondent appeared before the committee as agent of a property owner, to present his own Heritage Impact Study Report. We see no

distinction between appearing as a paid agent before a committee which reports to the Heritage Advisory Committee, and appearing before the Heritage Advisory Committee itself. This participation is contrary to Rule 7.

- [62] When the Report of the April 4, 2017 meeting of the Meadowvale Heritage Conservation District Advisory Committee came before the Heritage Advisory Committee on May 9, 2017, the Respondent failed to declare a conflict of interest in receiving that report, although he clearly had one.
- [63] We find the decision by the Respondent to accept the retainer of EV Royale to be problematic: it must have been seen as a possibility that the retainer might ultimately involve a Heritage Study of some kind being submitted to the Heritage Advisory Committee, given that the property was on the Mississauga Register.
- [64] While there is not a rule prohibiting the Respondent from participating in the LPAT hearing in opposition to the City Council decision, provisions which apply to members of Council would prohibit such participation, and would, in fact, preclude a member from participating in litigation which opposes a City Council decision.
- [65] At the very least, one would have expected the Respondent to make inquiries as to the appropriateness of his providing evidence at the LPAT. We note that we had the opportunity to provide some training on ethical obligations under the MCIA and Code of Conduct to members of local boards on May 30 and June 25, 2019, at which we encouraged members to reach out for individual advice, should they encounter questions around avoiding conflicts of interest, among other issues.
- [66] In any event, it is clear in the LPAT decision that the LPAT attached weight to the role of the Respondent as a member of the Heritage Advisory Committee.
- [67] No doubt the Respondent's credentials qualify him to provide expert opinion on such matters at the LPAT; however, his use of this role and membership at the LPAT hearing does, in our view, reflect an improper use of influence.
- [68] An analogy might be if a member of the Committee of Adjustment were to provide evidence at a zoning appeal in opposition to Council's decision on a zoning application, and represent oneself, with the result that weight attaches to evidence because of membership on the Committee of Adjustment.
- [69] During our investigation, we noted that on one occasion the Respondent's firm accepted a retainer from the City of Mississauga to produce work on behalf of the City for work at a City-owned heritage-Designated facility, Benares Historic House, for submission to the Heritage Advisory Committee.
- [70] While not specifically addressed, we are of the view that such retainer is generally counter-indicated under the provision in Rule 1 (b) which provides:

Members shall avoid any interest in any contract made by him/her in an official capacity and shall not contract with the adjudicative board or any agency thereof for the sale and purchase of supplies, material or equipment or for the rental thereof.

- [71] Although in that instance it was a contract with the City for work to be submitted to the Heritage Advisory Committee in support of the City's application, we find that it contravenes the spirit and intent of Rule 1 (b).
- [72] We note that on at least two occasions (September 5, 2017 and October 17, 2017) when the Respondent was absent, he failed to declare an interest at the next meeting of the Heritage Advisory Committee, although that is his obligation under the MCIA, s.5(3) "Duty of Member When absent from meeting at which matter considered".
- [73] We find that in failing to declare an interest at the next meeting, the Respondent has contravened the MCIA.<sup>2</sup>

#### **Summary of Findings:**

- [74] While we do not find that the Respondent's participation as the heritage conservation witness at the LPAT represents a conflict of interest under either the MCIA or the Code of Conduct, we find that it does constitute an improper use of influence contrary to Rule 6.
- [75] We find that the Respondent has failed to implement a key principle of the Code of Conduct, that being the duty of members of local boards to arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.
- [76] We find that the fact that the Respondent was so frequently compelled to declare an interest underscores the circumstance where the member is unable to arrange their business affairs in a manner that serves the public interest. In this regard, the Commentary under Rule 1 provides excellent guidance: Any member who is connected with a business that comes to rely frequently on approval from the board should likely resign.
- [77] We find that on one occasion, the Respondent appeared as agent before the Meadowvale Heritage Conservation District Advisory Committee. We find that this undermines the prohibition in Rule 7.

<sup>&</sup>lt;sup>2</sup> While it might seem logical to some observers that declaring an interest at a previous meeting has an enduring value whenever the matter arises again, there is no such thing as a 'continuing declaration' for conflicts of interest. A declaration must be made at each meeting, and if absent, at the next meeting at which the member is present.

- [78] We find that the Respondent's firm, accepting retainers and providing the work product to property owners in the application process before the Heritage Advisory Committee is tantamount to acting as an agent before that body, and therefore we find that these retainers violate the spirit and intent of the provisions of Rule 7.
- [79] Finally, it appears that the Respondent diligently declared an interest each and every time one arose, at meetings he attended. However, he failed to declare the interest at the next meeting, when an interest arose in his absence. This constitutes a contravention of s.5(3) of the MCIA even though this was inadvertently omitted by the Respondent based on his erroneous interpretation of the requirement..

#### Recommendations and Concluding Remarks

- [80] The City of Mississauga has been a front-runner in adopting a Code of Conduct for its local boards well ahead of the legislative amendments of 2019. In 2013 Council directed development of a Code of Conduct for Local Boards, and the current Code was adopted in 2014 and has been in effect since January 1, 2015.
- [81] As such, members of Local Boards have had access to training, as well as access to an integrity commissioner for advice, guidance and clarification for the past several years. Such training was most-recently provided May 30 and June 25, 2019 at which over 40 appointees to Local Boards took the opportunity to attend.
- [82] As noted in the Code's statement of principles, it is important that members arrange their private affairs in a manner that promotes public confidence and will bear close scrutiny. It may be particularly advantageous to know that an integrity commissioner is available to assist members of Council & Local Boards, at no cost to them, to navigate the ethical rules when confronted with occasionally challenging fact situations.
- [83] An integrity commissioner may recommend that sanctions be imposed, including a reprimand, or a suspension of pay for up to 90-days. The position the Heritage Advisory Committee being unpaid, a sanction which included suspension of the Respondent's pay would be of no practical effect.
- [84] In our view, we are prepared to accept that the Respondent's activities most likely arise from a lack of appreciation for the proper interpretation of the Code and the MCIA. Therefore, we do not believe a reprimand is warranted.
- [85] While there is no doubt the Respondent offers tremendous expertise to the Heritage Advisory Committee, there will often be a balancing exercise when appointing members to such bodies: how best to ensure the public interest, and

- where, as this case, an appointee is regularly conflicted, might there be other expertise within the community who would be willing to serve.
- [86] In the circumstances, it might be appropriate that the Respondent consider relinquishing his role on the Heritage Advisory Committee.
- [87] Alternatively, we are of the view that Council should give consideration to revoking the Respondent's appointment in light of the inevitability of conflicts arising.
- [88] In the event that Mr. Mateljan does not step down, it falls within Council's jurisdiction to determine whether to revoke his appointment.
- [89] Accordingly, it is recommended:
  - 1. That Council pass the following resolution:

That having been found to have breached the Mississauga Code of Conduct for Local Boards, that Rick Mateljan consider resigning from his position on the Heritage Advisory Committee, and should it be his decision to do so, that he indicate that outcome prior to the day upon which this Recommendation Report is to be considered by Council; and

- 2. Alternatively, that Council consider revoking the appointment of Rick Mateljan to the Heritage Advisory Committee, and that he be thanked for his service to date.
- [90] We wish to conclude by publicly thanking everyone who was asked to participate in our investigation.
- [91] We will be pleased to be available at the Council meeting where this report is considered.

All of which is respectfully submitted

Principles *Integrity*Integrity Commissioner for the
City of Mississauga