

CITATION: McLarty v. Hope, 2013 ONSC 6553
COURT FILE NO.: 5686/13
DATE: October 22, 2013

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: IAN MCLARTY, applicant

AND:

RANDY HOPE, respondent

BEFORE: VOGELSANG J.

COUNSEL: The applicant in person
David S. Thompson for the respondent

HEARD: October 18, 2013

ENDORSEMENT

[1] The applicant, Ian McLarty, applies for a declaration under s. 9 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 that the respondent, Randy Hope, contravened s. 5 of the *Act* by voting on a motion by the municipal council of Chatham-Kent to approve a monetary grant to St. Clair College to purchase and renovate a property in downtown Chatham.

[2] The applicant alleges that Mayor Hope was in a conflict of interest because his daughter, Melissa Hope, was employed by the owner of the property in question. In my view, the application must be dismissed as Mr. McLarty has failed to establish a basis for a finding that the conflict of interest he alleges existed triggered s. 5 of the *Act*, requiring Mr. Hope to disqualify himself. My reasons for that conclusion follow.

I

[3] Randy Hope is the mayor of Chatham-Kent, having been re-elected to that office on November 13, 2006. Mr. McLarty is a resident of Chatham-Kent who unsuccessfully ran for mayor in October 2010.

- [4] Mr. McLarty commenced this application on July 23, 2013. The sole issue is narrow and discrete; however, the application record unfortunately contains numerous other allegations, many against persons other than Mayor Hope, and refers to a large amount of evidence, much of which is unsupported or entirely extraneous to the matter in issue. Mr. Norton, the municipal solicitor, intervened before this hearing began and raised objection to statements in the applicant's material which he described as vexatious and scandalous with respect to his own conduct in this matter. I tried to assure him that I would have regard only to the allegations and evidence relevant to the issue before me. Mr. Norton then withdrew.
- [5] This matter concerns two properties located in downtown Chatham. The first is the Chatham Capitol Theatre, which is located at 238 King Street West. Next door at 240 King Street is the second property, the Capitol Theatre Annex. Chatham-Kent owns the Capitol Theatre but the theatre is currently being operated by St. Clair College. The Annex is currently owned by 1815513 Ontario Inc. ("181"), which carries on business under the registered name Apollo Property Management.
- [6] The Annex was in receivership in early 2011. On June 14, 2012, an agreement of purchase and sale was executed between the receiver and Bill Loucks acting in trust for a company to be incorporated. The total purchase price for the sale to Mr. Loucks was \$310,000.
- [7] The sale of the Annex was approved by order of Bryant J. on November 20, 2012. The order indicated that the sale of the Annex was to "Bill Loucks in Trust for a company to be incorporated."
- [8] On January 11, 2013, the Annex was sold by Mr. Loucks to 181 and 1466166 Ontario Ltd. for \$375,000. 1466166 Ontario Ltd. ("146") currently carries on business under the registered name Apollo General Contracting.
- [9] The sale of the Annex to 181 and 146 was an arms-length transaction. Mr. Loucks purchased the Annex in trust for a company he was to incorporate but he later sold the Annex in a separate transaction to 181 and 146. 181 is the effective owner of the Annex. While 181 and 146 purchased the Annex as tenants in common, 181 assumed a 99 percent share in the Annex. The sole reason for allocating a one percent share to 146 was to avoid the application of the *Planning Act*, R.S.O. 1990, c. P.13, as 181 owned property

adjacent to the Annex that would have merged with the Annex property had 181 bought the Annex by itself.

- [10] For several years, St. Clair College has been exploring the possibility of establishing an educational presence in downtown Chatham. Currently, St. Clair College is operating the Capitol Theatre. When the Annex emerged from receivership, St. Clair College expressed in interest in using the Annex to house several additional educational programs.
- [11] A report was prepared for the municipal council of Chatham-Kent outlining St. Clair College's plans, including their desire to acquire the Annex. This report called for the approval of a grant by Chatham-Kent to St. Clair College for the purpose of enabling St. Clair College to purchase and renovate the Annex. St. Clair College planned to contribute \$750,000 to this investment, and the report requested an approval of a grant of up to \$1,300,000 from Chatham-Kent to supplement these funds.

II

- [12] Mr. McLarty alleges that the issue of the proposed grant to St. Clair College put Mayor Hope in a conflict of interest because his daughter Melissa Hope was, in Mr. McLarty's words, "Manager of Operations for the Capitol Theatre Annex building owner, two numbered companies that can be traced back to Apollo General Contracting, [her] employer."
- [13] Melissa Hope is the adult daughter of Mayor Hope. She is 30 years old and has lived on her own for nearly a decade.
- [14] In fact, Melissa Hope is employed by 146, not 181.
- [15] 146 does not own the Annex as suggested by Mr. McLarty. The Annex is, for all practical purposes, owned and operated by 181. The only reason for 146's involvement in the Annex is due to the technical issues surrounding the Planning Act.
- [16] Notwithstanding her job title as Manager of Operations, Melissa Hope has no managerial, directorial or supervisory role in 146. She is the lowest ranked employee in the small office. Her duties are exclusively as a receptionist and minor administrator/clerk. She receives \$16 per hour as a wage. There is no reasonable probability of her advancement or promotion.

- [17] The matter of the proposed grant to St. Clair College was put before the municipal council at its regular meeting on June 24, 2013. Mayor Hope was present at this meeting and participated in the discussion regarding the proposed grant.
- [18] At this stage, all that was being discussed was whether Chatham-Kent's administration could enter into negotiations with St. Clair College as to the terms that would be attached to any grant, and what the scope of council's authorization to the administration in this regard would be.
- [19] A motion was put before the municipal council with respect to the grant, the only pecuniary aspect of which was as follows:

That:

- 1. Under the terms outlined in this report, Council approve a maximum \$1.3M contribution toward St. Clair College's investment in educational opportunities in downtown Chatham.
 - 2. The source of the \$1.3M to be a combination of allocations from the 2012 operating surplus and the Strategic Development Reserve, details to be approved by way of a future report.
- [20] The motion was carried by a vote of 11-7, which Mayor Hope voting in favour.
 - [21] The motion had nothing to do with either 181 or 146. Neither company was mentioned either in the motion or during the debate that preceded it.
 - [22] While the proposed grant was with respect to the purchase of the Annex by St. Clair College, the motion by no means ensured that the purchase of the Annex would occur. First of all, the motion simply authorized the Chatham-Kent administration to enter into negotiations with St. Clair College with respect to the grant on particular criteria. There was no certainty that St. Clair College would either receive any money from Chatham-Kent, or would purchase the Annex at any future time. Assuming that St. Clair College received any grant money, the purchase of the Annex would have then been a matter exclusively as between St. Clair College and 181. Chatham-Kent would have had no role in this transaction.

III

[23] The *Act* deals only with situations where members have a “pecuniary interest.” A pecuniary interest can be direct or indirect, with the latter defined in s. 2 as:

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

[24] Section 3 of the *Act* is a deeming provision that provides that where any parent, spouse or child of a member has a pecuniary interest, and the member is aware of this interest, the member is deemed to hold the interest.

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

[25] Section 5(1) of the *Act* establishes the required conduct of Mayor Hope, as a member, in a conflict of interest situation:

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.

[26] However, the application of s. 5 of the *Act* is restricted by s. 4:

4. Section 5 does not apply to a pecuniary interest in any matter that a member may have,

...

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

[27] The *Act* has been held to be a penal statute, and therefore must be strictly construed. This is particularly important in light of the consequences to the member in the event of a finding that the statute has been breached: *Alcock v. McDougald*, [2004] O.J. No. 4581 (Sup. Ct.) per G.P. Smith J. at paras. 41-42.

IV

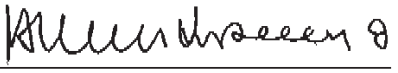
[28] I am not satisfied that Melissa Hope had any pecuniary interest in the matter with which council was concerned at the June 24, 2013 vote. Mr. McLarty bears the onus of proof on a balance of probabilities: *Gammie v. Turner*, [2013] O.J. No. 3107 (Sup. Ct.) per Price J. at para. 25. He has failed to meet that burden. The alleged breach is scrutinized at the time of the vote. See *Hazineh v. McCallion*, [2013] O.J. No. 2696 (Sup. Ct.) per Sproat J. at para. 108. At that time, council was only considering a proposed grant to the College and instructions to administration to negotiate on particular criteria. There was no certainty that St. Clair College would ever purchase the Annex

property or would ever receive any money from Chatham-Kent. To simply assume either of these results is pure speculation.

- [29] Mr. Thompson pointed out in his argument, and I agree, that even if 146 were to eventually obtain a renovation contract for the Annex, any money received would represent only a very small part of the corporation's annual receipts. There is nothing realistic or logical to support the further inference that recovery of any of that money would ultimately represent a financial benefit to Mr. Hope's daughter Melissa, a lowly paid receptionist and minor administrator employed by 146. Similarly, the vote authorizing negotiations with St. Clair College had little to do with any future sale of the Annex land by 181 or any profit which might be made in the future. To try to link the vote to a future benefit to Melissa Hope is only fanciful speculation.
- [30] Mr. McLarty pressed his view that Mr. Hope had indulged in "procedurally defective" conduct. He said his "actions were 'clearly out of the norm' and by inference would make a reasonable elector to believe her [Melissa Hope's] employment influenced the mayor's decision." I can find no basis at all in the material for that remarkable statement. Indeed, Mr. Thompson rejected any suggestion that Mr. Hope behaved abnormally as "ridiculous" and quite correctly warned that allegations of conflict of interest must not be employed as a collateral attack on council decisions with which a third party disagrees.
- [31] Notwithstanding the above, if I am wrong and there could possibly be some pecuniary advantage or interest to Melissa Hope resulting in Mr. Hope having an indirect pecuniary interest, I am quite satisfied that a reasonable elector, apprised of all the circumstances, would quickly regard that deemed pecuniary interest to be unlikely to have influenced his actions or decisions. See *Whiteley v. Schnurr*, [1999] O.J. No. 2575 (Sup. Ct.) per MacKenzie J. at para. 10. In my view, the facts in this case are almost identical to those in *Craig v. Ontario (Attorney General)*, [2013] O.J. No. 3753 (Sup. Ct.) where Broad J. emphasized the uncertainties of any eventual financial advantage to the mayor's son, that a change in the son's position might precede a future profit and the fact that any potential benefit would not be shared with the mayor.
- [32] Mr. McLarty's application is dismissed.

V

[33] Mr. Thompson and Mr. McLarty may make submissions with respect to costs in letter form addressed to me in the care of the trial coordinator. Mr. Thompson's submissions should be sent to me and Mr. McLarty within 45 days, after which Mr. McLarty will have a further 30 days to send his submissions to Mr. Thompson and to me. Mr. Thompson will have 10 days for a brief reply submission. Submissions must be brief and may be in point form.


Justice Henry Vogelsang

Date: October 22, 2013