

Town of Orangeville Integrity Commissioner File 2017-01

REPORT ON COMPLAINT

The Complaint

A local resident (the Complainant) alleged that Councillor Scott Wilson was in a "complete conflict of interest" when he took part in various meetings and discussions related to the OPP contract policing issue.

The gist of the Complaint is the allegation that Councillor Wilson is not unbiased because he is employed as Chief Administrative Officer of Wellington County, Wellington County has a contract for OPP policing, and Councillor Wilson therefore has an intimate relationship with the OPP which ought to prevent him from participating in Orangeville's consideration of the OPP contract policing issue.

While the original Complaint cited ten sections of the Code, the Complainant subsequently clarified it to focus on four sections that he alleged had been contravened: sections 1.1, 4.1, 4.3 and 6.2. I considered sections 1.1, 4.3 and 6.2; I found the Complaint insufficient to support an allegation under section 4.1 and therefore did not consider it.<sup>1</sup> During the course of the investigation the Complainant raised an additional provision: section 3.1. I have considered this section too.

Legal Context

The *Municipal Conflict of Interest Act* only applies to pecuniary interests – in other words, financial interests. It covers pecuniary interests both direct and indirect, as well as pecuniary interests that a Member is deemed to possess because they belong to a parent, spouse or child of the Member.

There is no suggestion that Councillor Wilson has a financial interest in OPP policing in Orangeville. There is also no suggestion that his employer, the County of Wellington, has a financial interest in whether the Town of Orangeville switches to OPP policing. The allegation is that Councillor Wilson is close to the OPP (the Complainant uses words such as "intimate" and "friendship") and therefore is biased in their favour.

Since there is no suggestion of a financial interest, the allegation that Councillor Wilson has a conflict of interest in matters related to OPP policing in Orangeville is based on an alleged *non-pecuniary* interest.

A non-pecuniary interest is not a matter covered by the *Municipal Conflict of Interest Act* (and even if it were I currently lack jurisdiction to consider breaches of that Act).

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<sup>1</sup> In particular, I found that the Complaint was insufficient to support an allegation that Councillor Wilson attempted to usurp or to undermine the authority of Council as a whole contrary to section 4.1.

The common law rules on bias do, however, contain principles that could apply to non-pecuniary interests: the prejudgement (closed-mind) rule and the personal-interest rule.

According to the prejudgement (closed-mind) rule, a municipal council member is disqualified by reason of bias if the council member has prejudged the matter to be decided to the extent that he or she has a closed mind and is no longer capable of being persuaded.<sup>2</sup>

The personal-interest rule requires that municipal councillors refrain from dealing with matters in respect of which they have a personal interest or other interest.<sup>3</sup> A disqualifying personal interest (personal interest that leads to bias or the reasonable perception of bias) may also result from a councillor's association with a party or the councillor's personal hostility to a party.<sup>4</sup>

Does Orangeville's Code incorporate the common law prejudgement rule or the common law personal-interest rule? Has Councillor Wilson prejudged the OPP policing issue to the extent of having a closed mind? Does Councillor Wilson have a personal interest (non-pecuniary interest) in having the OPP assume responsibility for policing in Orangeville? These were central issues in this investigation.

### **Summary of Findings**

After carefully considering the evidence obtained during the course of my investigation and the submissions of the parties, I find that Councillor Wilson did not breach the Code of Conduct.

First, I find that the Code as drafted does not give me jurisdiction to apply the common law rules on prejudgement (closed-mind) and non-pecuniary conflict of interest. The only reference to these matters is in section 1 of the Code (Statements of Principle) but this reference is not backed up by an actual rule elsewhere in the Code.

In any event, I find that Councillor Wilson did not have a closed mind, had not prejudged the issue, and does not have a personal (non-pecuniary) interest in OPP policing. His employment as CAO of Wellington County, which is itself party to an agreement for OPP policing, gives him experience with the OPP, but does not create a personal interest or make him any less objective than other Council Members who have relied in part on their own experience to consider the policing issue.

Turning to the specific sections of the Code cited by the Complainant:

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<sup>2</sup> *Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 S.C.R. 1213 at 1124; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170 at 1196-1197.

<sup>3</sup> *Old St. Boniface Residents Assn. Inc.*, note 2, at 1196. See also: Hon. J. Douglas Cunningham, "Ruling on Conflict of Interest" (July 8, 2010), pp. 6-9, Appendix J, *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (2011), at 377-380.

<sup>4</sup> *Hutterian Brethren Church of Starland v. Starland (Municipal District)*, 1993 ABCA 76, at para. 36, citing Griffith & Street's *Principles of Administrative Law*, 4th ed. (1967), at 156-157.

I find that section 1.1 of the Code, the Statements of Principle, provides interpretive guidance but is not itself a section that can be contravened.

I find that Councillor Wilson did not make a statement known to be false or make a statement with the intent to mislead Council or the public. On the contrary, he is open about his employment by the County of Wellington and his role as Secretary to the County of Wellington Police Services Board,<sup>5</sup> both of which are matters of public record. I find no contravention of section 3.1 of the Code.

I find that section 4.3 of the Code, which requires Members who serve on committees and other bodies to “participate diligently ... with good faith and care,” does not encompass the alleged conflict of interest. I further find no evidence that Councillor Wilson failed to act on the OPP Costing Committee in good faith.<sup>6</sup>

I find that section 6.2 of the Code does not apply to this situation because there was no contract award under consideration. This provision covers the decision-making process as it relates to the awarding of contracts. It does not apply to entering into an agreement with a Minister of the Crown.

The fact that I have found no contravention of the Code is not a comment on the public-policy issue of whether the common law non-pecuniary conflict rule and/or the common law pre-judgement (closed-mind) rule should be addressed in the Code. Council does have the ability, if it wishes, to place in the Code language that would cover non-pecuniary conflicts and perceived non-pecuniary conflicts (that is, conflicts not already covered by the *Municipal Conflict of Interest Act*) and/or language that would cover having a closed mind. I find that Council has not placed such language in the Code and I refrain from commenting on whether it should. I also want to reiterate that I found Councillor Wilson not to have closed his mind and not to be in a non-pecuniary conflict of interest.

### **Process Followed**

In operating under the Code, I follow a process that ensures fairness to both the individual bringing a complaint (Complainant) and the Council Member responding to the complaint (Respondent). This fair and balanced process is governed by the Code’s Complaint Protocol. It includes the following elements:

- The Respondent receives notice of the Complaint and is given an opportunity to respond.
- The Complainant receives the Respondent’s Response and is given an opportunity to reply.

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<sup>5</sup> Beyond his compensation as CAO of the County, Mr. Wilson receives no additional compensation to serve as Secretary of the County’s Police Services Board.

<sup>6</sup> At the start of the process I found that the Complaint was not sufficient to support an allegation that Council Wilson breached the section 4.3 duty to act with care.

- More generally, the process is transparent in that the Respondent and Complainant get to see each other's communications with me.<sup>7</sup>
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a Response or Reply.
- Where appropriate I will, however, invite a Complainant to clarify a Complaint. When a Complaint has been clarified the Respondent is provided with the original document and all communications between the Complainant and me related to clarification.
- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

In this case, the Complaint was originally submitted May 15, 2017. It was further clarified in a letter, dated May 20, that I received May 23. May 23 is therefore deemed to be the official Complaint date.

Councillor Wilson was sent notice of the Complaint on June 6. I received Councillor Wilson's Response on June 14. The Complainant submitted a Reply on June 25.

The parties made additional submissions on June 27 (Respondent, written), June 28 (Respondent, voice mail message), and July 21 (Complainant, written).

The Complaint materials made reference to video records of two Council meetings.<sup>8</sup> I have watched and listened to the relevant portions of the December 7, 2015, and April 24, 2017, Council meetings, including the contributions of all Council Members, not just Councillor Wilson. I also considered the video records of the April 27 public information session and the April 3 and May 15, 2017, Council meetings.

I also wrote to both parties on July 9 to make them aware of the expected timeline for preparing this report. I did this pursuant to sections 11.7 and 12 of the Complaint Protocol. Neither party expressed concern about the timeline.

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<sup>7</sup> Occasionally, in my discretion, I may decline to share a communication where all of these factors apply: The communication is irrelevant to the investigation, I will not consider the communication, and the other party is not prejudiced by the lack of sharing.

<sup>8</sup> The links provided by the Complainant were broken, no longer functioning or incorrect. I located the video of the December 7, 2015, meeting at [www.rogerstv.com](http://www.rogerstv.com) and I obtained the video of the April 24, 2017, meeting from the Town.

### **Jurisdictional Issues**

The ten sections of the Code originally cited by the Complainant included section 2.1 and section 17.1. I informed the Complainant that neither of these sections could give rise to a complaint under the Code.

Section 2.1 reads as follows:

- 2.1 This Code of Conduct operates with and as a supplement to the existing statutes governing the conduct of members, including but not limited to:
- a) *Municipal Act*
  - b) *Municipal Conflict of Interest Act*
  - c) *Municipal Freedom of Information and Protection of Privacy Act*
  - d) *Municipal Elections Act*
  - e) *The Occupational Health and Safety Act*
  - f) *Human Rights Code*
  - g) *The Criminal Code of Canada*

Section 2.1 merely lists some of the other statutes with which Council Members must comply. It does not state that a breach of any of these laws constitutes a contravention of the Code. Therefore, section 2.1 is not a section of the Code that it is capable of being contravened.

Further, there are other enforcement mechanisms for these statutes and (apart from any language in the Code directing me to do so) I lack jurisdiction to consider breaches of them. In particular, I do not currently have jurisdiction to consider whether a Council Member contravened the *Municipal Conflict of Interest Act*. (A statutory amendment, passed by the Legislature but not yet proclaimed in effect, will give integrity commissioners a role in *Municipal Conflict of Interest Act* enforcement but that amendment does not apply to this case.)

Section 17.1 simply states that, "Members shall conduct themselves according to this Code." A Member who fails to comply with another section of the Code has contravened that other section; it would be superfluous and unnecessary to treat the failure to comply as also a contravention of section 17.1. Consequently, section 17.1, on its own, cannot be grounds for a Code complaint.

During the course of the investigation the Complainant also suggested that Councillor Wilson had acted contrary to the declaration of office,<sup>9</sup> which includes the following pledge: "I will truly, faithfully and impartially exercise this office to the best of my knowledge and ability."

The *Municipal Act* establishes consequences for failure to take the declaration but not for contravening a pledge contained in the declaration. More specifically, the *Municipal Act* does not confer on integrity commissioners the authority to determine whether

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<sup>9</sup> Subsection 232(1) of the *Municipal Act* provides that a person shall not take a seat on the council of a municipality until the person takes the declaration of office in the form established by the Minister for that purpose.

someone has contravened the declaration of office. Neither does the Code. The Code makes no reference to the declaration of office, either explicitly or implicitly. I find that I do not have jurisdiction to determine whether a Council Member has failed to live up to the declaration of office.

### **Questions Raised in the Investigation**

My investigation considered the following questions:

- A. Does the Code cover an alleged non-pecuniary conflict of interest and/or alleged bias?
- B. Is Councillor Wilson in a non-pecuniary conflict of interest and/or biased on the issue of whether the OPP should provide policing in Orangeville?
- C. Did Councillor Wilson contravene the Statements of Principle in section 1.1 of the Code?
- D. Did Councillor Wilson breach section 3.1 by making a false or misleading statement that failed to disclose that he is Secretary of the Wellington County Police Services Board?
- E. Did Councillor Wilson contravene section 4.3 of the Code by failing to participate on a committee diligently, with good faith?
- F. Did Councillor Wilson directly or indirectly attempt to influence the decision-making process as it relates to the awarding of a contract, contrary to section 6.2?

### **The Evidence**

The Town is served by its own police, the Orangeville Police Service (OPS). As in many other communities in Ontario, the question of whether to move to OPP policing is a significant issue that, understandably, attracts a great amount of public interest, attention and engagement.

Three weeks after the official Complaint date, Town Council voted 4-3 to defeat a motion to take necessary steps toward amalgamation of the OPS with the OPP.<sup>10</sup> This Complaint concerns events that occurred before that decision was taken.

Councillor Scott Wilson has been employed as Chief Administrative Officer of Wellington County for almost two decades.<sup>11</sup> In this capacity, and without additional

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<sup>10</sup> June 12, 2017, motion 3.

<sup>11</sup> Wellington County, By-law Number 4187-97, A by-law to appoint a Chief Administrative Officer/Clerk and Deputy Treasurer for The Corporation of the County of Wellington, and to repeal Bylaw Number 3820-91 (December 17, 1997).

remuneration, he also serves as Secretary of the Wellington County Police Services Board.<sup>12</sup>

Councillor Wilson started working for Wellington County long before joining Orangeville Town Council. As a successful candidate in three successive elections (2006, 2010 and 2014), Mr. Wilson was open and transparent about his employment. During the 2014 election campaign, the *Orangeville Banner* ran a profile of candidate Scott Wilson that included the information, "Occupation: CAO for Wellington County."

Since 1999, the OPP has provided policing services throughout all of Wellington County,<sup>13</sup> though the OPP served some parts of Wellington County even earlier.<sup>14</sup>

On January 20, 2014, in a 4-3 vote, Town Council resolved, "That Council request a 'costing' from the Ontario Provincial Police for policing service in the Town of Orangeville."

At that time, the OPP was under a moratorium on responding to requests for costing proposals from municipalities not currently policed by the OPP. The moratorium was imposed by the Ministry of Community Safety and Correctional Services while a new OPP billing model was under development.<sup>15</sup> Effective November 1, 2015, the Hon. Yasir Naqvi, Minister of Community Safety and Correctional Services, authorized the lifting of the moratorium.<sup>16</sup>

On December 7, 2015, on a 6-1 vote, Council resolved, "That Council confirm its wish to receive an OPP costing for police services for the Town of Orangeville."<sup>17</sup>

Three months later, the Interim CAO reported that the OPP wanted a joint Town-OPP committee to oversee and steer the costing process.<sup>18</sup> He recommended to Council that the following be the Town's representatives on this OPP Costing Committee:

- Mayor and Orangeville Police Services Board Chair
- Councillor x 1 (at the discretion of the Council)
- Town Chief Administrative Officer (CAO)
- Chief of Police or designate
- Administration support person.

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<sup>12</sup> Wellington County, By-law Number 4957-08, A by-law to appoint the County Chief Administrative Officer as the Secretary for the Wellington County Police Services Board (January 31, 2008).

<sup>13</sup> The City of Guelph, which is not part of the County, maintains its own police service.

<sup>14</sup> Immediately prior to the Wellington County municipal amalgamation and restructuring that took effect January 1, 1999, only the former Towns of Fergus, Harriston and Palmerston maintained their own municipal police services.

<sup>15</sup> Ontario Provincial Police, Municipal Policing Bureau, "Information Manual for the OPP Contract Proposal Process," version 4 (June 7, 2017), at 6.

<sup>16</sup> Stephen Beckett, Assistant Deputy Minister, Public Safety Division, Minister of Community Safety and Correctional Services, "Ontario Provincial Police (OPP) Costing Moratorium" (February 2, 2016), Memorandum16-0009.

<sup>17</sup> December 7, 2015, Resolution 8.

<sup>18</sup> "OPP Costing Committee," Report # GA-2016-03 (March 7, 2016).

The Town's representatives on the joint committee would become known as the "Town OPP Costing Committee" or simply "OPP Costing Committee."<sup>19</sup>

Council unanimously approved the proposed OPP Costing Committee structure and appointed Councillor Wilson as a committee member.<sup>20</sup>

The Town OPP Costing Committee, including Councillor Wilson, met with OPP representatives, April 11, 2016. The meeting lasted approximately one hour. The only reference in the minutes to Councillor Wilson's comments is the following:

Councillor Wilson advocates for a fair process. He wants to know the costs and if any efficiencies can be provided by OPP.

His position at the meeting appears to have been similar to that of the Mayor, which was recorded by the minutes as follows:

Mayor Williams stated he is pleased with the timelines discussed in the meeting and that cost is the most important item.

The OPP costing proposal was presented February 13, 2017.<sup>21</sup> A motion to refer the OPP proposal to the Town staff for review and analysis and to have staff cooperate with the OPP in hosting of a public information session in late April was defeated on a 2-4 vote.<sup>22</sup> Council then resolved to request a presentation from OPS at the April 3 meeting.<sup>23</sup>

The OPP's Feb. 13 costing proposal did not include details of the new billing model. Its intention was to present on the billing model at a later date. The motion which was defeated would have called on the OPP, "to present its [*sic*] new billing model to Orangeville Town Council before the end of April, 2017."<sup>24,25</sup> Once the motion was defeated, the status of an OPP presentation on the new billing model became uncertain.

Council voted March 6 to direct the staff to present an analysis of the OPP costing and to schedule a public information meeting during the week of April 24 "to provide information and an opportunity for the public to ask questions."<sup>26</sup>

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<sup>19</sup> See "Minutes of Initial Meeting of the OPP Costing Proposal for Town of Orangeville held on April 11, 2016 at 9:30 a.m. in the Lower Boardroom, Municipal Offices, 87 Broadway," attendance list, p. 1.

<sup>20</sup> March 7, 2016, Resolution 20.

<sup>21</sup> Ontario Provincial Police, Municipal Policing Bureau, Sgt. K. Hummel, "The Town of Orangeville Contract Policing Proposal" (February 13, 2017).

<sup>22</sup> February 13, 2017, Motion 4. Councillor Wilson voted "Yes." The motion contained seven clauses; most of them were related to analysis of the OPP costing model.

<sup>23</sup> February 13, 2017, Resolution 4. Carried 6-0.

<sup>24</sup> February 13, 2017, Motion 4, clause 4.

<sup>25</sup> As will be discussed at page 12, below, the word "its," suggesting that this was *the OPP's* model, was not quite accurate.

<sup>26</sup> March 6, 2017, Resolution 21. Carried on a 3-2 vote. Councillor Wilson voted "Yes."



On April 3, the Town's CAO and the Town's Treasurer presented the staff's analysis of the OPP costing proposal. Council referred the analysis to the Town's auditors for review and comment.<sup>27</sup>

At the same meeting, Council considered five staff options for a public information session.<sup>28</sup> A motion to hold the public information session as part of the April 24 regular Council meeting was defeated on a tie vote.<sup>29</sup> Council then resolved to hold a structured public information session in the Orangeville District Secondary School cafeteria, April 27.<sup>30</sup>

The Town's auditors (BDO) presented their review of the staff's OPP costing analysis on April 24. The President of the Orangeville Police Association spoke as a delegation. There were no substantive decisions on police costing taken that day, just a resolution to amend the agenda in respect of items related to the OPP costing<sup>31</sup> and a resolution to receive various reports and correspondence.<sup>32</sup> There was, however, extensive discussion about the OPP costing.

Three days later, April 27, the Town held a Policing Services Public Information Session at ODSS. Because the Complainant relies on the structure of this session, and what he says took place there, I will review it in some detail.

According to the Complainant, the April 27 information session was one "in which the public was to ask questions and no Orangeville council members [were] to speak at all in any way to anyone about policing."

The evidence supports the first but not the second half of the Complainant's description. A purpose of the session was for the public to ask questions. There is no evidence, however, of Council approving a restriction as broad as, "no Orangeville council members [were] to speak at all in any way to anyone about policing."

The first Council decision concerning the information session was the March 6 resolution, the relevant part of which read as follows:<sup>33</sup>

And that staff schedule a date for a public information meeting to be held during the week of April 24th to provide information and an opportunity for the public to ask questions.

The resolution placed no restrictions on Council Members' participation.

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<sup>27</sup> April 3, 2017, Resolution 14.

<sup>28</sup> "Policing Public Information Session," Report # GA-2017-01 (April 3, 2017). Options 1, 1a, 1b, 2 and 3 proposed different approaches. A sixth option (option 4) was to cancel the session.

<sup>29</sup> April 3, 2017, Motion 15. Defeated on a 3-3 vote. Councillor Wilson voted "No."

<sup>30</sup> April 3, 2017, Resolution 16. Carried on a 4-2 vote. Councillor Wilson voted "Yes."

<sup>31</sup> April 24, 2017, Resolution 2.

<sup>32</sup> April 24, 2017, Resolution 11.

<sup>33</sup> March 6, 2017, Resolution 21. See note 26.

The relevant portion of the April 3 resolution concerning the information session as the following:<sup>34</sup>

That report GA-2017-01 dated April 3, 2017 with respect to a Policing Public Information Session, be received;

...

And that staff And that Council direct staff to proceed with Option 3 (Structured Public Information Session, April 27, Orangeville District Secondary School) as outlined in this report and invite representatives from OPP and OPS to attend to answer questions.

The recorded resolution places no explicit restrictions on Council Members' participation. However, the direction to proceed with Option 3 is a reference to staff report GA-2017-01, which describes Option 3 in this manner:

A structured public information session would be chaired by a moderator, monitoring questions, determining inappropriate questions and generally facilitating the meeting. The chair would explain to the public that this is not a Council meeting and under the *Municipal Act*, Council members are not allowed to participate by asking or answering questions or making comments.

While the above passage does not appear in the minutes, the video record of the April 3 meeting shows that this text was read aloud by Mayor Williams when the motion was moved by Councillor Bradley. I find that Council Members understood this passage to be a component of what they were adopting.

This paragraph of the staff report must, however, be understood in the context of the *Municipal Act*. When one or more Council Members, regardless of location, discuss matters that would ordinarily form the basis of Council's business, then the discussion could constitute an official meeting under the *Municipal Act*,<sup>35</sup> with all the requirements that this entails. In this respect perhaps the wording of the above passage could have been clearer, consistent with the intention: Non-participation was not required by the *Municipal Act* so much as non-participation was chosen by the Town to avoid the complications of conducting an official meeting under the *Municipal Act*.

At the April 3 meeting, Mayor Williams explained the *Municipal Act* rationale to Council, saying:

I think the idea and the whole reason behind it is to listen and not to speak and to hear what the public want to say And of course regular *Municipal Act* rules would apply so we can't really talk to each other about anything that would move the –<sup>36</sup>

You know the drill.

The Clerk gave similar information in response to a question about what would happen if a quorum of Council was not present for the public information session:

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<sup>34</sup> April 3, 2017, Resolution 16. See note 30.

<sup>35</sup> *Southam Inc. v. Ottawa (City) Council* (1991), 5 O.R. (3d) 726, 1991 CanLII 7044 (Div. Ct.).

<sup>36</sup> The Mayor did not complete the sentence but was understood to be citing the principle (see *Southam Inc.*, note 35) that an official meeting includes any discussion among several council members that would move a matter along the way toward a decision.

Mayor Williams: It's technically not a Council meeting, though, because we're doing –

Clerk: That's what I was just going to say. It's not a Council meeting, period. It is a public information session for the public. That's why we were careful to say in our report Council cannot participate. If Council participated it would become a Council meeting and we'd have to change the whole format of the meeting.

The Complainant attended and participated in the April 3 meeting of Council, so he should be familiar with this background to the public information session. This context should be sufficient to address the Complainant's position on how the April 27 session was supposed to operate.

Further, I note that, even as literally worded, the staff report does not support a prohibition as sweeping as, "no Orangeville council members [were] to speak at all in any way to anyone about policing."

The Complainant was also present at the April 24 meeting of Council and asked a question about the format of the upcoming public information session. No doubt the Complainant heard Mayor Williams caution Council Members against participation in the session:

Just to further what Mr. Brennan said, Council did choose to try to make this an independent sort of event, and within the motion that was passed by Council, Members of Council are not to speak or to give their viewpoint or anything. If they're there at all they're just there to listen. Listen. Listen. Purely listen.

...

Just a reminder, though, Members of Council, the idea is not to give your viewpoint or ask questions or even answer them, but simply to listen, and to do otherwise would be contrary to the motion that we passed

These comments, which do not have the effect of modifying Council's decision, are less broad than the Complainant's characterization, which is: no speaking, at all, in any way, to anyone, about policing.

I find that Councillor Wilson did not participate in the public information session and that he did abide by Council's decision.

In any event, the Complainant does not actually claim that Councillor Wilson participated in the April 27 session. What the Complainant alleges is the following:

Mr. Wilson was present at the April 27th meeting, at the end of night after the meeting when residents of Orangeville made it clear that residents wanted to remain with Orangeville Police. Mr. Wilson made the comment of how disappointed he was at OPP's presentation and he would be speaking to them in the morning while standing at the entrance way of the cafeteria and speaking to another council member.

According to the Complainant's own evidence, this comment was made following, not during, the information session. I find that Councillor Wilson did not act contrary to the agreed parameters for the session. As I have noted, those parameters were not

required to comply with the *Municipal Act* but were merely desired in order to avoid turning the information session into an official meeting under the *Municipal Act*.

The Town's desire to avoid making the information session an official Council meeting is consistent with another finding I make, namely, that the intended audience for the April 27 information session was not the Council but the public, including both members of the public in attendance and those watching the session on Rogers TV and YouTube.

The finding that the April 27 session was not directed to Council Members is bolstered by the fact that several of them were not in attendance. According to the Minutes of the April 24 Council meeting, held three days earlier:

Deputy Mayor Maycock noted that when the date [April 27] was scheduled, he indicated that he would not be able to attend because of a previous commitment.

Mayor Williams confirmed that Council chose to make this [the information session] an independent event and that members of Council are not to speak or give their viewpoint and are only there to listen. Mayor Williams confirmed that he and Councillor Garisto would not be attending.

Councillor Wilson was absent when two motions related to OPP policing were considered at the May 8 meeting of Town Council. A motion to hold a special meeting, May 15, to receive a presentation from the OPP on the billing model and related matters and to invite the OPS to present further information, was passed.<sup>37</sup> A motion to discontinue discussions with the OPP was defeated.<sup>38</sup>

The Complainant draws a link between Councillor Wilson's April 27 comment and Council's May 8 decision to receive presentations from the OPP and OPS. He states:

Conveniently a second meeting with OPP was brought forward at the next council meeting. It was originally made clear that each police service would only have one opportunity to present itself.

I find that the facts do not support the Complainant's interpretation.

There is no evidence that "each police service would only have one opportunity to present itself." On the contrary, the idea that the OPP might come back to present the *billing model* (as opposed to its *costing proposal*) had been considered as far back as February 13. The reason was that the OPP proposal was, "intended to be a transition contract after which time the municipality will be integrated into the OPP Billing Model."<sup>39</sup> Thus, explanation of the billing model was always understood to be information relevant to Town Council's decision. What happened on May 8 was simply that Council agreed to schedule a presentation whose status had been uncertain and outstanding since defeat of the February 13 motion.

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<sup>37</sup> May 8, 2017, Resolution 25. Carried on a 5-1 vote.

<sup>38</sup> May 8, 2017, Motion 26. Defeated on a 2-4 vote.

<sup>39</sup> OPP, Proposal, note 21, at p. 3.

Further, the statement that “each police service would only have one opportunity to present itself” implies that Town Council was running a competition between the OPP and OPS. I find as a fact that this was not the case; Council was not running a competition between two bidders. Instead, I find that Council was seeking the cooperation of both the OPP and the OPS in supplying information that would help Council to make a decision in the best interests of the people of Orangeville.

For their parts, and despite how the Complainant may have perceived their roles, I find that the OPP and OPS were not competing with each other; they are both public bodies with a public-service mandate, both discharging their public duty to support the Town’s decision-making process. OPP representatives praised the work of the OPS, and vice versa. The OPP stressed that the OPP and OPS were not in competition. The OPP took no position on how Council should vote and, in fact, the OPP observed that if the Town chose not to pursue OPP policing, the result would be that, “We continue to have a great working relationship with each other.”<sup>40</sup>

I also find that the May 15 billing model presentation<sup>41</sup> did not promote the case for OPP policing in Orangeville. It was a factual overview explaining the billing model. Of critical importance is that while this is the billing model for OPP services, it is not *the OPP’s* billing model. It is *the Ontario Government’s* billing model, contained in Ontario Regulation 267/14 under the *Police Services Act*.<sup>42</sup> The regulation, that is, the billing model, was made by the Lieutenant Governor in Council, in other words, the Cabinet, not by the OPP. The OPP’s explanation of this provincial regulation and how it would operate was just that. It was not an argument in favour of OPP policing.

Finally, I find that Councillor Wilson is not responsible for the May 8 resolution to invite the OPP and the OPS to present on May 15. He was out of the country, absent from the meeting, and I find that he played no role in the resolution.

Councillor Wilson was present for the May 15 meeting. This was also the date on which the original Complaint was submitted. (It was then clarified and deemed officially received May 23.) Among other things, the Complaint challenged Councillor Wilson’s right to participate in the costing item on the May 15 agenda. “He should not be involved in police costing in Orangeville tonight ... or at all,” the Complaint reads.

Once again, at the May 15 meeting, there was substantial discussion of OPP policing including presentations, delegations and Council comments. However, apart from resolutions to receive reports and correspondence, Council made only one decision to move the process forward: It directed the CAO to prepare a report and recommendation on policing for presentation at the May 29 meeting and consideration at the June 12 meeting.<sup>43</sup>

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<sup>40</sup> Ontario Provincial Police, PowerPoint presentation (February 13, 2017), slide 35.

<sup>41</sup> Ontario Provincial Police, “Billing Model Overview” (May 2017).

<sup>42</sup> O. Reg. 267/14, Amount Payable by Municipalities under section 5.1 of the Act for Ontario Provincial Police Services.

<sup>43</sup> May 15, 2017, Resolution 2. Carried 5-2. Councillor Wilson voted “Yes.”

The CAO's report was presented May 29,<sup>44</sup> and received.<sup>45</sup> As mentioned, on June 12 the recommendation for OPP policing was rejected.

The Complainant characterizes Councillor Wilson's relationship with the OPP as intimate. This is the Complainant's description. It is not Councillor Wilson's language.

I carefully considered Councillor Wilson's comments during the December 7, 2015, meeting, when Council voted to request the OPP's costing proposal. I reproduce below his comments at three different points during that meeting:

I think it's slightly unfair to suggest that the OPP have been dragging their feet. The Province imposed a moratorium on the OPP delivering costings to municipalities, so that the Province could come up with a new costing model which better suited the new realities. The OPP are more in use than ever. Just as you've had your experience with the Orangeville Police Service, I've had tremendous experience with the OPP in the largest contract in the Province, and I can tell you that the service is exemplary, and that the costs for the municipality that I work for have gone down markedly this past year, owing to the fact that there is a new costing model which is being applied. Like you, Mr. Mayor, I get calls all the time from other jurisdictions within the Province, asking about how well does the OPP work, and I can give them great confidence that that model that is employed, with my employer, it works very well, and we have no complaints with the OPP. So those are my comments in support of my motion.

...

I'm probably the only one in the room that has been through the process of the OPP assuming responsibility for our municipality, and I can assure everyone, including the viewers at home, that the process to demonstrate that policing will be adequately provided by the new service, which would in this case be the OPP, is very rigorous. It isn't just demonstrated to Orangeville Town Council or the Police [Services] Board or the community. It has to be demonstrated to the Ontario [Civilian] Polic[e] Commission and if it is in their belief not possible for the OPP to provide adequate policing in Orangeville they won't permit it to happen. So no one need fear that we're not going to be looking at oranges and oranges or apples and pears.

...

I wish you could get over the fact that there was a year delay. To reiterate, to repeat myself, it is not the fault of the OPP. It was a provincial government decision to issue a moratorium on costings. I know the OPP would have been here delivering their costing much earlier had they not been prohibited from doing so, so I think that record now should be straight. I would 100 per cent object to a proposed delay in this costing. To say we're going to ask for it later is specious. We have been on the list to get a costing for some time. We're number three on the list and, if we don't accept this opportunity now, I don't know when we'll ever be in a line again to get a costing. There are at least five more municipalities behind us, and there are more municipalities all the time interested in getting a costing, so if we delay now it will be some time before it does get delivered. I have been waiting for some time already and I'm not prepared to wait any longer. If Members of Council don't want it, don't vote for it. It's simple, and then tomorrow the public will know who wants a costing and who doesn't.

I interpret these comments very differently than the Complainant.

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<sup>44</sup> "CAO Recommendation for Policing," Report # GA-2017-05 (May 29, 2017).

<sup>45</sup> May 29, 2017, Resolution 5. Carried on a 5-1 vote. Councillor Wilson voted "Yes."

I find that Councillor Wilson has experience with the OPP (experience that causes him to view OPP policing favourably). I find that he is very knowledgeable about the costing of OPP policing and about some of the legal issues such as Ontario Civilian Police Commission oversight. No doubt much of his knowledge was acquired as a result of his experience as a municipal CAO and as secretary of a municipal police services board. The evidence clearly reveals Councillor Wilson's knowledge and experience, but these do not constitute a relationship. Simply put, I do not find evidence that Councillor Wilson has an intimate relationship with the OPP.

I also find that Councillor Wilson was not the only one to draw on individual knowledge and experience during debate and discussion of these issues. For example, other Council Members, including the Mayor, referred to their experiences with the OPS. I find that it is reasonable and appropriate for Council Members to rely on their knowledge and experience in arriving at positions.

The Complainant also relies on Councillor Wilson's comments at the April 24 meeting. According to the video record, these were Councillor Wilson's words:

The new OPP costing model is relatively new, two or three years old. I know that the government went to great pains to establish that model so I am very confident that they're not going to be changing it soon. If they were I am sure that I would know because my employer has the largest single OPP contract in the Province, and I will say that when the new costing model was introduced we saved two million dollars a year, and we continue to save money on that costing model, service has not been reduced, the number of officers serving our area has not been reduced, and we remain quite content with both the service and the price. So, to me, speculating that a costing model that's only been in place two or three years will be changing is not a useful activity. I think we can rely on the current model and the current analysis done by our Treasurer.

The Complainant's reaction to these comments is as follows:

Mr. Wilson also states that his employer (Wellington County) has the largest OPP contract in the province and he has an intimate dealings with OPP, and he is more than confident that OPP will not change their billing model. How would he have insight into what the province will do in the future. Should he not have an unbiased opinion and not have dealings with two different counties at the same time? See attached Rogers video at 2 hours 29 minutes when he states this. LINK : <http://www.rogerstv.com/show?lid=12&rid=21&sid=2556&gid=276684>

The link is broken or incorrect but I did obtain the video from the Town. Again, while "intimate dealings" is the characterization adopted by the Complainant, I find this is not Councillor Wilson's description nor is it what the evidence discloses. I also find that, because the billing model is established by the Province, Councillor Wilson was not predicting the OPP's future behaviour but rather the Province's future behaviour. Councillor Wilson may or may not be correct in anticipating the Province's future action, but his prediction of provincial behaviour is in no way evidence of his relationship with the OPP.

Obviously the OPP is known to Councillor Wilson. For nearly two decades he has been employed as CAO of a municipality that is served by the OPP and for almost one decade he has been secretary to its police services board. Clearly this creates some

sort of relationship between Mr. Wilson and the OPP, but I find the evidence does not disclose anything beyond the relationship that exists between a supplier and its customer.<sup>46</sup> The evidence does not confirm the intimate relationship alleged by the Complainant. The evidence does not disclose a relationship that affects Councillor Wilson's objectivity or creates a reasonable perception that his objectivity is affected.

The Complaint alleges that Councillor Wilson has "friendships and interests there" because of the alleged "intimate dealings with the OPP in his county." Again, I find no evidence of friendships, no evidence of intimate dealings and no evidence that Councillor Wilson has any interest beyond that of a customer familiar with a supplier.<sup>46</sup>

The final evidence of a relationship, according to the Complainant, is Councillor Wilson's comment on April 27, after the information session had ended. In the Complainant's words:

he [Councillor Wilson] made it quite clear that he could have a discussion with the OPP about their performance at the public meeting at ODSS, because he was not satisfied with OPP's presentation.

I find that the OPP representatives who made the April 27 presentation were not those responsible for Wellington County policing and for the most part were already known to Councillor Wilson in his role as an Orangeville representative.

The lead presenter was Ms Linda Davis, a civilian contract analyst. She was joined by Staff Sergeant Liane Spong-Hooyenga (Case Manager, Municipal Policing Bureau), Staff Sergeant Nicol Randall (Dufferin Detachment Commander<sup>47</sup>) and Staff Sergeant Shawn McGladdery (Career Development Bureau).

Staff Sergeant Spong-Hooyenga, Staff Sergeant Randall and Ms Davis had all represented the OPP at the February 13, 2017, presentation to Town Council, at which Councillor Wilson was present.

Even earlier, Ms Davis and Staff Sergeant Spong-Hooyenga had attended the April 11, 2016, meeting with Councillor Wilson and Mayor Williams.

In the circumstances, I find that any comment by Councillor Wilson concerning the April 27 information meeting was not evidence of the nature or depth of his relationship with the OPP. I further find the comment did not imply that Councillor Wilson was involving, or planned to involve, his Wellington County OPP contacts in the Orangeville policing issue. In his role as an Orangeville Town Council Member, Councillor Wilson was already acquainted with the OPP's lead representatives on the Orangeville file.

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<sup>46</sup> I use the words "supplier" and "customer" only as an analogy to describe the relationship between the people on each side. I do not mean to imply the OPP municipal policing is a commercial transaction, because it clearly is not. The OPP is providing a statutory public function and the municipality is discharging its statutory responsibility to provide policing services: see sections 5, 5.1 and 10 of the *Police Services Act*.

<sup>47</sup> At the time of the April 27 meeting, Staff Sgt. Randall was interim commander, but recently she was confirmed as the new Dufferin Detachment Commander.



Also attending the April 27 meeting, but sitting in the audience, was Inspector Rob Pilon from OPP's Central Region. I note that while Dufferin County is in the OPP's Central Region, Wellington County is in its West Region. Inspector Pilon does not have responsibility for policing in Wellington County.

## **Submissions**

### ***Complainant***

Many of the Complainant's submissions have already been outlined above.

The Complainant submits that Councillor Wilson violated the "Statements of Principle" in section 1.1 of the Code, because his relationship with, and statements in support of, the OPP give rise to a conflict of interest.

The Complainant also submits that Councillor Wilson breached section 4.3 because he has a taken clear position in favour of OPP policing, and therefore cannot be an unbiased member of the Town OPP Costing Committee acting in good faith.

The Complainant also alleges a breach of section 6.1, which prohibits Council Members from attempting directly or indirectly to influence the decision-making process as it relates to the award of contracts or settlement of claims.

Toward the end of the process (July 21), the Complainant added the allegation that Councillor Wilson breached section 3.1 by not revealing his involvement in the Wellington County Police Services Board:

However he could not say he was entirely impartial as he was paid to be the OPP's police board secretary and serving on the Wellington County Police Services Board as 'Scott Wilson, Board Secretary.'

The biggest problem though is one of deceit. He was asked to reveal any relationship he had with the OPP and misled Orangeville Council by not revealing his secretary position.

... Furthermore, section 3 reads:

3. General Standards of Conduct

3.1 Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.

That was 100% broken. If you look at the video and read his reply, no dispute IMO.

The Complainant also argued that Councillor Wilson had breached a pledge made in his declaration of office. At pages 5-6, above, I have already explaining my finding that I lack jurisdiction to enforce the declaration of office.

### ***Councillor Wilson***

Councillor Wilson does not believe it is possible to breach section 1.1 as it is Statements of Principle upon which the remainder of the Code is based. In the alternative, he argues that his involvement with the OPP does not constitute a conflict of

interest as he has nothing, of a pecuniary nature or otherwise, to gain or lose as a result of Council's decision on OPP policing.

In relation to section 4.3, Councillor Wilson states that the OPP Costing Committee met once, for one hour, April 11, 2016. He advocated a fair process and wanted to know about costs and efficiencies. According to Councillor Wilson, the Committee did not meet again.

Councillor Wilson argues that section 6.2 does not apply to Council Members attempting to persuade other Council Members of what position to take on an issue. Instead, the section is intended to prevent Council Members from unduly influencing staff to award contracts or settle claims in favour of a certain individual or company. In his submission, Council is the sole decision maker with respect to any policing contract and the OPP is not a party to the decision-making process. Further, the costing results from a formula established by regulation under the *Police Services Act*.

In response to subsequent issues raised by the Complainant:

Councillor Wilson states that he was out of the country at the time of the May 8, 2017, Council meeting, when the OPP was asked to return to explain the billing model. He states that he had no previous knowledge of the motion or its request.

Councillor Wilson also states that he has never made a secret of his role as Secretary to the Wellington County Police Services Board and in fact has referred to it before Orangeville Town Council. He also states that he is not paid to be the Secretary but instead this is added responsibility that he took on as County CAO.

### **Analysis and Further Findings**

#### ***A. Does the Code cover an alleged non-pecuniary conflict of interest and/or alleged bias?***

The common law rules on prejudgement (closed-mind) bias and non-pecuniary conflict of interest are described in the "Legal Context" section, starting at page 1. In my opinion, however, I do not have jurisdiction to enforce them.

A municipal integrity commissioner's authority flows from the *Municipal Act* and the applicable municipal code of conduct. If a matter is not covered by the code then it lies outside the integrity commissioner's purview.

It might be that an integrity commissioner is able to apply common law principles in the course of interpreting a code of conduct: see the Supreme Court of Canada judgment in *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care*

*Professionals*.<sup>48</sup> However, it is clear from this precedent that the application of the common law must occur within the scope of the statutory mandate.<sup>49</sup>

I am confident that I lack jurisdiction to add a common law rule to Orangeville's Code when the Code contains no rule pertaining to a topic.

In particular, I find there is not a single rule in the Code that deals with prejudgement of decisions, a closed mind, or bias. Despite the common law principles, I have no authority under the Code to deal with these matters.

Further, the Code's only reference to conflicts of interest appears in section 1.1, "Statements of Principle." As the name indicates, section 1.1 does not contain rules. It contains statements of principle.

As a general matter, a statement of principle does not create an obligation. It merely states the principle(s) that may be used to interpret obligations created elsewhere in the law.<sup>50</sup>

As explained in *Sullivan on the Construction of Statutes*, 6<sup>th</sup> ed.:

Purpose statements may reveal the purpose of legislation either by describing the goals to be achieved or by setting out the governing principles, norms or policies. ... However, like definitions and application provisions, purpose statements do not apply directly to facts but rather give direction on how the substantive provisions of the legislation – that do apply to facts – are to be interpreted.<sup>51</sup> [emphasis added]

I find that section 1.1, the Statements of Principle, provides interpretive direction only, and it does not create rules or obligations on Council Members that can be the subject of a complaint. Thus, even though the Statements of Principle exhort Council Members to avoid "conflicts of interest, real and apparent," I find that these Statements of Principle are not enforceable rules.

Another reason that I am not prepared to treat the Statements of Principle as binding rules is that they are too general and unspecific to be treated as clear, enforceable obligations. Council Members are subject to penalties if they contravene the rules in the Code; it necessarily follows that the rules must be clear, certain and unambiguous. Council Members must be able to understand clearly the conduct that is required. In this respect I refer to the observations of Integrity Commissioner Swayze in City of Brampton Report L05 IN (May 12, 2015):

In my experience members of councils in Ontario are busy people serving their community and want certainty in the interpretation of the many rules that apply to them. A code, by definition, is a set of rules of behaviour and should not be interpreted by each councillor

<sup>48</sup> [2011] 3 S.C.R. 616.

<sup>49</sup> *Ibid.*, especially at 629, para. 45, and at 632, para 54.

<sup>50</sup> *Greater Vancouver Regional District v. British Columbia (Attorney General)*, 309 BCAC 124, 2011 BCCA 345 (CanLII), at para. 45: "Section 3(c) purports only to state a principle ... It is plain and obvious that s. 3(c) creates no legally enforceable obligation ..."

<sup>51</sup> Sullivan, R., *Sullivan on the Construction of Statutes*, 6<sup>th</sup> ed. (2014), at 454, §14.39.

according to subjective values. The rules need to be clear and where possible, capable of only one meaning. [emphasis added]

While I do not agree that being busy is relevant to interpretation of the Code, I accept and adopt Integrity Commissioner Swayze's comments about the need for clarity, certainty and lack of ambiguity in the rules.

As a final comment on an integrity commissioner's jurisdiction to introduce and to apply the common law prejudgement (closed-mind) bias rule and non-pecuniary conflict of interest rule, I note that the common law remedy is to disqualify the individual from participating in the decision. Meanwhile, some of the potential penalties provided under section 17.2 of the Code include loss of chairmanship, censure, and suspension of remuneration for up to 90 days. On the one hand, as Integrity Commissioner I do not have the authority to give effect to the common law remedy of disqualifying a Council Member. On the other hand, common law rules that carry no penalty<sup>52</sup> cannot simply be imported into the Code as new rules enforceable by penalty.

***B. Is Councillor Wilson in a non-pecuniary conflict of interest and/or biased on the issue of whether the OPP should provide policing in Orangeville?***

In the event that I am wrong about my jurisdiction to apply the prejudgement (closed-mind) bias rule and the non-pecuniary conflict of interest rule, I have proceeded to determine whether Councillor Wilson has or had a closed mind or has or had a personal (non-pecuniary) interest in OPP policing.

The test for a closed mind must be applied in the context of a municipal councillor's role. As the Divisional Court recently held in the case of a Toronto councillor:

First, Councillor Perks is a City Councillor. His primary duty is to advocate for the interests of his ward. As a result, the test for bias is significantly lower than it would be in a case before an administrative tribunal or a Court.

...

In this case, Councillor Perks is entitled to form a view about the appropriateness of the proposed variance, and he is entitled to advance his views. He is the Councillor for the ward, and it is his responsibility to represent the interests of his constituents.

As noted in *Save Richmond Farmland Society v. Richmond (Township)* 1990 CanLII 1132 (SCC), [1990] 3 S.C.R. 1213 at paragraph 24, a municipal Councillor will not be disqualified from adjudicating a matter such as this on the basis of a reasonable apprehension of bias unless he or she has prejudged the matter to be decided to the extent that he or she can no longer be persuaded to change his or her mind. In this case, there is simply no evidence that Councillor Perks had this level of bias.<sup>53</sup>

Town Council's deliberation on OPP policing did not take place at a single meeting; instead, the subject was considered over a period of years, dating at least as far back

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<sup>52</sup> Disqualification under the common law is a remedy, not a penalty.

<sup>53</sup> *Pattison Outdoor Advertising LP v. City of Toronto*, 2016 ONSC 2419 (CanLII) (Div. Ct.), at paras. 41, 44-45.

as 2014.<sup>54</sup> Therefore, in assessing whether Councillor Wilson exhibited prejudgement (closed mind) bias I have not looked at any single meeting in isolation but rather at the evolution of Council's consideration of the policing question.

I find no evidence that Councillor Wilson had prejudged the matter of OPP policing to the extent of closing his mind. On the contrary, the evidence shows that Councillor Wilson was interested in acquiring the facts necessary to support an informed decision – the hallmark of an open mind. For example, when the Town OPP Costing Committee met with the OPP, Councillor Wilson's priorities were to ensure a fair process and to obtain information about costs and potential efficiencies. This was not the position of someone whose mind was closed. For example, in December 2015, he moved (and a majority of Council agreed to request) a costing proposal; a costing proposal is not a decision to engage the OPP, merely a preparatory step. Arguing that the Town should receive costing information is in no way evidence of a closed mind.

Again, it is not objectionable for a Council Member to come to a decision with a point of view – even a strongly held point of view. As the Courts have noted on several occasions, a municipal councillor is not subject to the same standard as a judge. For example, the Ontario Divisional Court has held that:

The members of the Council are elected representatives who, in a democracy, are responsive to the concerns of their constituents, who have given them their mandate. It goes without saying that they are not Judges. The process of governing and legislating is not a judicial process; it is a political function, the ultimate sanction of which lies in the electorate. To put the matter shortly, it would manifestly be impossible for a legislative body, such as a municipal council, to govern on the basis that each decision affecting some citizens adversely had to be made judicially, as if it were a Court. To the contrary, its collective decisions are political, based on the fundamentals of responsible Government, reflecting the needs and mandates of the electorate as a whole.<sup>55</sup>

On the question of personal (in this case, non-pecuniary) interest, the Supreme Court of Canada states that the test is whether a councillor's personal or other interest in a matter being decided is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of the public duty.<sup>56</sup>

I find no evidence that Councillor Wilson had and has a personal or other interest in having the OPP serve Orangeville. His employment by Wellington County gives him experience with the OPP, but does not create a personal interest or make him any less objective than other Council Members who have relied in part on their own experience including their experience with OPS, to consider the policing issue.

The relationship between Wellington County and the OPP is analogous to the relationship between a customer and a supplier. The Alberta Court of Appeal has

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<sup>54</sup> I make no finding concerning the years prior to 2014 as it was unnecessary for me to consider any earlier period of time.

<sup>55</sup> *Re McGill and Brantford (City)* (1980), 28 O.R. (2d) 721 (Div. Ct.), at 727.

<sup>56</sup> *Old St. Boniface Residents Assn. Inc.*, note 2, at 1196.

previously held that councillor who made a purchase from a party interested in a municipal decision was not in a conflict of interest.<sup>57</sup> Councillor Wilson is not in a conflict of interest either.

Finally, I note that Orangeville, Wellington County, the OPP and OPS are all public-sector entities, all bound to uphold the public interest, all subject to legislation, and all expending taxpayer dollars. By definition none of the four ought to have a private interest. One public body (the Town), was considering which of two other public bodies (the OPP and OPS) should provide policing services. A fourth public body (Wellington County) has experience with one of the other public bodies (the OPP). Meanwhile, the Town has experience with the OPS. In this dynamic involving four public-sector entities, I fail to find that Wellington County has any private interest in Orangeville's decision. I likewise find no private interest held by Wellington County's most senior public servant, its CAO, Mr. Wilson.

***C. Did Councillor Wilson contravene the Statements of Principle in section 1.1 of the Code?***

For the reasons outlined in section A, above, I find that section 1.1 of the Code, the Statements of Principle, provides interpretive guidance but is not itself a section that can be contravened.

***D. Did Councillor Wilson breach section 3.1 by making a false or misleading statement that failed to disclose that he is Secretary of the Wellington County Police Services Board?***

I find that Councillor Wilson has been open about his employment by the County of Wellington and his role as Secretary to the County of Wellington Police Services Board. Both are matters of public record. I find no contravention of section 3.1 of the Code.

***E. Did Councillor Wilson contravene section 4.3 of the Code by failing to participate on a committee diligently, with good faith?***

I have already found that there is no enforceable conflict of interest rule in the Code, including in section 1.1, the Statements of Principle.

As I have noted, the Code's rules are enforceable by penalty. The rules must be clear, certain and unambiguous. It would be contrary to the principles of certainty and clarity to read into the words of section 4.3 ("participate diligently ... with good faith and care") a conflict-of-interest rule when section 4.3 does not actually mention conflict of interest.

I therefore find that section 4.3 does not encompass the alleged conflict of interest.

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<sup>57</sup> *Atkins v. Calgary (City)* (1994), 162 A.R. 97, 1994 ABCA 385 (CanLII), at para. 38.

I further find no evidence that Councillor Wilson failed to act on the OPP Costing Committee in good faith. I find no breach of section 4.3.

***F. Did Councillor Wilson directly or indirectly attempt to influence the decision-making process as it relates to the awarding of a contract, contrary to section 6.2?***

I have previously found that it was wrong to treat the contract policing decision as if it were a procurement competition between rival suppliers. Both the OPP and OPS are public bodies. Both were providing information to help the Town make an informed decision. They were not in competition. I find that this was not a circumstance covered by section 6.2.

Ultimately Town Council decided not to pursue OPP policing. Even if Town Council had decided to enter into an agreement for OPP policing, this decision would not have been "the award of [a] contract" within the meaning of section 6.2.

Had the transition to OPP policing occurred, the agreement would be made under subsection 10(1) of the *Police Services Act*:

The Solicitor General [now the Minister of Community Safety and Correctional Services] may enter into an agreement with the council of a municipality or jointly with the councils of two or more municipalities for the provision of police services for the municipality or municipalities by the Ontario Provincial Police.

I do not hesitate to find that an agreement with the Minister under subsection 10(1) of the *Police Services Act* is not the sort of contract contemplated by section 6.2 of the Code.

Section 6.2 of the Code does not apply to this situation.

**Recommendation**

As I find that Councillor Wilson did not contravene the Code, my only recommendation is that the findings of this report be received for information.

Respectfully submitted,



Guy Giorno  
Integrity Commissioner  
Town of Orangeville

August 29, 2017

**APPENDIX: RELEVANT PROVISIONS OF CODE OF CONDUCT**

**1. Statements of Principle**

1.1 The key principles that underline the Code of Conduct are:

- accountability, ethics and integrity are at the core of public confidence in government and in the political process;
- all members shall serve and be seen to serve their constituents in a conscientious and diligent manner, avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;
- members are expected to perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny.

...

**3. General Standards of Conduct**

3.1 Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.

...

**4. Responsibilities of Council and Members of Council**

4.1 Only Council as a whole has the authority to direct staff, approve budget, policy or processes, including the structures and procedures for committees and other such matters. Authority to act on behalf of Council, including through a committee, can only be delegated by Council or through law.

...

4.3 Members of Council when appointed to local boards, committees or other bodies as part of their duties shall make every effort to participate diligently in the activities of these bodies with good faith and care.

...

6.2 Members shall not attempt directly or indirectly to influence the decision-making process as it relates to the award of contracts or settlement of claims. This includes but is not limited to direct or indirect personal contact or interaction with the parties administering or directly involved in such processes.