



**COMMITTEE OF THE WHOLE MEETING  
AGENDA  
MONDAY MARCH 18, 2024 AT 6:00 P.M.  
DR. S. F. MONESTIME MUNICIPAL COUNCIL CHAMBERS  
160 WATER STREET, MATTAWA ON**

**Zoom Meeting Access: 1-647-374-4685  
Meeting ID Code: 882 6742 6958  
Passcode: 259515**

- 1. Meeting Called to Order**
- 2. Announce Electronic Participants**
- 3. Adoption of Agenda**
  - 3.1 To Adopt the agenda as presented or amended
    - That the agenda dated March 11, 2024 be adopted
- 4. Disclosures of a Conflict of Interest**
- 5. Presentations and Delegations**
  - 5.1 Guy Giorno, Integrity Commissioner – Present findings of investigation on 2023 Mattawa Voyageur Days Committee
- 6. Notice of Motions**
- 7. Standing Committee Recommendations/Reports – Motions**
- 8. Information Reports – Motions**
  - 8.1 2024 Mattawa Voyageur Days Update # 3 – Report # 24-20R
- 9. In Camera (Closed) Session**
  - 9.1 Divestiture of The Rosemount Valley Suites (Affordable Seniors Housing)  
In accordance with the Municipal Act, 2001 Section 239 (2)(c)
    - c) a proposed or pending acquisition or disposition of land by the municipality or local board
- 10. Return to Regular Session**
- 11. Motions Resulting from Closed Session**
- 12. Adjournment**
  - 12.1 Adjournment of the meeting
    - That the March 18, 2024 meeting adjourn at \_\_\_\_\_ p.m.

DATE: MONDAY MARCH 18, 2024

3.1

**THE CORPORATION TOWN OF MATTAWA**

MOVED BY: COUNCILLOR \_\_\_\_\_

SECONDED BY: COUNCILLOR \_\_\_\_\_

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**BE IT RESOLVED THAT** the meeting agenda dated Monday March 18, 2024 be adopted.

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TOWN OF MATTAWA INTEGRITY COMMISSIONER, GUY GIORNO

**Citation:** Re Voyageur Days Festival Committee, 2024 ONMIC 3

**Date:** March 13, 2024

## INQUIRY REPORT

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# THE REQUEST FOR INQUIRY

1. On October 10, 2023, Council, by resolution, asked the Integrity Commissioner to conduct an inquiry into the activities of the 2023 Mattawa Voyageur Days Committee.

## INTRODUCTION

2. The Voyageur Days Committee ended up functioning as a hands-on committee in which various committee members assumed planning and organizational roles usually performed by the staff. This occurred out of necessity, for the reasons described below. Unquestionably, if the Committee had not been hands-on, especially during its first two months, then the 2023 Festival would never have occurred.

3. The challenge faced by everyone – Committee, Council, and staff alike – was that Ontario municipal law, municipal governance, and municipal practice, are not meant to accommodate hands-on committees of Council that perform traditional staff functions. Every issue in this inquiry can be traced, directly or indirectly, to the extraordinary expectation that a committee of Council would partly substitute for the staff.

4. This inquiry was conducted against the backdrop of various tensions. The events that I reviewed shone a spotlight on the differences between Council and Committee, between Committee and staff, between Festival finances and Town finances, and between volunteers and officials.

5. While differences do exist, they must not be exaggerated. Mattawa Voyageur Days is a Town event. The Voyageur Days Committee was a Council committee. The Festival's finances, in good years and lean years, are those of the Town. Staff and Councillors are all part of the same municipal corporation, and volunteers work with them toward the same goals.

6. As Mayor Bélanger told me, "We are all on the same team. It's not 'us' and 'them.'"

7. During this inquiry, among everyone to whom I spoke, I found goodwill and a sincere desire to promote the best interests of Mattawa. It is my hope that this report will help to address tensions and to refocus attention on shared objectives.

## SUMMARY

8. Members of the Voyageur Days Festival Committee, a committee of Council, ended up discharging operational functions typically performed by the Town staff (or by contractors). They did so because staff support was unavailable and this was the only

way to ensure the 2023 Festival would proceed. Ultimately, the responsibility for pushing hands-on duties to Committee members rested collectively with the Council.

9. By its very nature, a hands-on committee of Council that assumes typical staff functions operates contrary to accepted understandings and conventions about how municipal government works. The Committee's terms of reference contemplated a staff-supported committee, not a hands-on committee whose members performed traditional staff functions. The disconnect between the terms of reference and what was actually occurring should have been reported to Council so it could be addressed. It was not.

10. The Committee should have reported to Council more regularly and in more detail. The Committee adopted few substantive resolutions. The lack of formal resolutions, leading to a lack of formal recommendations to Council, made it more difficult for Council to perform its oversight and approval functions.

11. Most Festival expenses, including contracts, were approved by the staff under delegated authority, not by the Committee.

12. Many Festival expenses and most contracts should have been subject to Council authorization under the Procurement Policy.

13. On April 4, the Committee was told that the staff was not "keeping track" of Festival expenses and was told that the Committee lacked a mandate to appoint its own member to oversee Festival expenses. The combination of these statements was a red flag. It signalled a gap in accountability for ensuring that the Festival remained within budget. Committee members should have returned to Council to resolve the gap, but they did not notice the red flag.

14. The Committee did not possess sufficient financial information, in particular, information about expenses, and it did not have sufficient involvement in incurring expenses, to ensure that the Festival remained within its \$300,000 budget. In these circumstances, I find that the Committee members cannot be faulted for exceeding the budget because they lacked sufficient control, and they were not in breach of the requirement to seek Council approval because they were unaware.

15. The booking of the band known as The Spice Queens did not involve a breach of the Code of Conduct.

16. Committee members did not improperly influence the selection of artwork and the selection of merchandise suppliers to benefit family members. Nonetheless, I recommend changes to the Code of Conduct to tighten the restrictions on using influence and on advancing the interests of family and friends.

17. No Committee member was responsible for payments to the service providers known as “yellow shirts” because decision-making occurred at the staff level. Consequently, Committee members were not responsible for the lack of documentation, the irregular method of payment (cash), and any gap in accountability related to the “yellow shirts.”

18. Committee members were not responsible for the decision to engage and to pay a booking agency to perform functions that had already been performed by a Committee member, the Clerk, and the Festival Director. Engaging the agency was problematic, not just because the function was redundant, but also because the Town’s booking agency was simultaneously the booking agency for several Voyageur Days musicians.

19. One Committee member was offered and accepted employment with this booking agency, the interest was disclosed to the Committee, and the Committee member did not directly benefit from the booking agency’s engagement by the Town. On the other hand, withdrawal from subsequent discussion concerning the booking agency ought to have occurred. I recommend changes to the Code of Conduct to address job offers and accepting employment.

20. One Committee member was paid as a casual employee of the security company hired by the Town. This interest should have been declared and it should have resulted in recusal from discussion and decision-making.

21. The Committee’s composition (half Councillors, half public members, plus the Mayor in an *ex officio* capacity) made it no less of a Council committee than any other committee of Council. In all respects, it should have been held to the same standards as other Council committees and should have been treated the same as other Council committees.

22. Appointing public members to a committee was not the primary cause of the issues that triggered this inquiry. The issues arose because a committee replaced functions traditionally performed at the staff level.

## BACKGROUND

23. Since 1998, Mattawa Voyageur Days has been the Town’s annual festival. It has been described as “one of the oldest and best outdoor music festivals in Northern Ontario,”<sup>1</sup> “a weekend-long celebration of local heritage and the Canadian music scene,”<sup>2</sup>

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<sup>1</sup> Steve Pitt, “Music and History Rocks On for Mattawa Voyageur Days” (March 29, 2016), online: <https://www.northeasternontario.com/music-and-history-rocks-on-for-mattawa-voyageur-days/>

<sup>2</sup> Mattawa Voyageur Days, Media Release, “24th Annual Mattawa Voyageur Days” (May 5, 2023), retrieved from: <https://web.archive.org/web/20230602223352/https://www.voyageurdays.ca/news>

and “a destination event with a reputation of providing outstanding curated musical acts across multiple genres.”<sup>3</sup>

24. In 2023, Mattawa Voyageur Days ran from Friday, July 28, through Sunday, July 30.

25. The Voyageur Days festival is a Town event. Its costs, liabilities and risks are borne by the Town. The revenue that is generated belongs to the Town. As is true of every Town undertaking, the festival is ultimately the responsibility of Town Council, and operationally it falls under the delegated authority of the Chief Administrative Officer (*i.e.*, CAO/Treasurer).

26. The Mattawa Voyageur Days Festival Committee was a local board of the Town, as the term “local board” is defined by subsection 1(1) and section 223.1 of the *Municipal Act*.

27. On January 9, 2023, Town Council approved the terms of reference of a six-member Voyageur Days Festival Committee, and appointed Councillors Loren Mick, Laura Ross and Garry Thibert as members. Application for the remaining three positions was opened to the general public.<sup>4</sup> On February 13, Council completed the Committee by appointing residents Ginette Dupuis, Frank Salesio, and Glenn Walker.

28. The Council representatives received no additional pay (apart from their Council compensation) for serving on the Committee. The public members were volunteers who received no compensation for the months of service they donated to the Town to make Voyageur Days succeed.

29. Mayor Raymond Bélanger is an *ex-officio* member of all committees. He attended every meeting of the Voyageur Days Committee as a non-voting member.

### **HISTORY OF THE COMMITTEE BEFORE 2023**

30. The striking of a committee responsible for Voyageur Days was not new. The significant departure from recent practice was the appointment, in 2023, of public members. For many years, the Committee consisted only of staff members and councillors – sometimes just one councillor. From 2012 through 2014, Council was represented by Councillor Nicholas Walters.<sup>5</sup> In 2015, Councillor Dexture Sarrazin was

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<sup>3</sup> Mattawa Voyageur Days, VoyageurDays.ca (June 13, 2023), retrieved from <https://www.facebook.com/MattawaVoyageurDays%2Fposts%2F749190247208429>

<sup>4</sup> Resolution Number 23-06.

<sup>5</sup> Report to Council, “Voyageur Days – Committee of Council” (Feb. 13, 2012); Report to Council, “Voyageur Days – Committee of Council” (Jan. 14, 2013); Council Regular Meeting Minutes (Feb. 10, 2014).



its representative, along with three employee members of the Committee.<sup>6</sup> The next year, Council expanded its representation on the Committee to three members.<sup>7</sup>

31. For several years, it was routine for Council to adopt a resolution recognizing Mattawa Voyageur Days “as a Town event” and “designat[ing] the organizers as a Committee of Council” that ultimately reported to Town Council.<sup>8</sup> The terms of reference always made clear that the Committee’s recommendations were subject to Council approval.

32. In those days, it was understood that the Voyageur Days Committee was required to seek Council approval before departing from its assigned budget, obligations, and restrictions. Examples of seeking approval from Council ranged from the significant (requesting a \$100,000 advance a few weeks prior to the 2014 festival<sup>9</sup>) to the relatively minor (seeking permission to hold a December 2017 committee meeting two hours earlier.<sup>10</sup>)

33. For a period of time, any profit generated by the Festival was held in a reserve, to be applied to offset any future losses. Rainy weather during both the 2013 and 2014 events led to losses that wiped out the Festival’s accumulated reserve.<sup>11</sup> In 2022, the most recent year preceding the events covered by this report, the Festival generated a profit, which again was held in “reserve” to offset any future years’ losses. Meanwhile, every year, Council approved an overall budget for the event, and advanced a certain amount of funding to allow the Committee to spend before it achieved positive cash flow. The advanced funds were typically called a “loan,” thought in reality the Town was simply transferring funds within the municipal corporation. Despite the use of words like “reserve” and “loan,” it was always understood that Mattawa Voyageur Days was spending and generating the Town’s funds, and that any profit or loss belonged to the Town.

34. The lack of separation between the Committee and the Town was described, as follows, by Councillor Sarrazin in a 2015 report to Council:

The make-up of the Mattawa Voyageur Days Committee [is] 3 municipal staff members. So in reality, this is a municipal event. This is not a private event or a for profit event so the Committee members do not financially gain from the Festival. The event was created for the community ... All assets acquired over the years are

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<sup>6</sup> Report to Council, “Voyageur Days – Committee of Council & Support” (Jan. 12, 2015).

<sup>7</sup> Council Regular Meeting Minutes (Feb. 8, 2016). Council’s representatives were to be the Mayor (*ex officio*), the Finance Committee Chair, and the Recreation, Tourism and Special Projects Committee Chair.

<sup>8</sup> Council Regular Meeting Minutes (Feb. 13, 2012); Council Regular Meeting Minutes (Jan. 14, 2013); Council Regular Meeting Minutes (Feb. 10, 2014); Council Regular Meeting Minutes (Jan. 12, 2015).

<sup>9</sup> Report to Council, “Mattawa Voyageur Days Request for Loan” (June 23, 2014).

<sup>10</sup> Report to Council, “Notice of Time Change to Voyageur Days Committee Meeting” (Dec. 11, 2017).

<sup>11</sup> Council Regular Meeting Minutes (Jan. 12, 2015); Report to Council, “Voyageur Days – Committee of Council & Support” (Jan. 12, 2015).

municipal assets – and those are approximately \$200,000.00 in value – tents, fences, sound system, trailers, bars, etc.

35. Notable in the above passage is Councillor Sarrazin's emphasis on the staff members of the Committee, not on the Council's representative. His focus on the staff reflects the fact that the Festival was no different than any other activity of the Town: overseen by Council, but implemented by the staff. Despite Council's representation on the Voyageur Days Committee, and despite the Committee's ultimate reporting relationship to Council, it was always understood that the day-to-day functioning of the Mattawa Voyageur Days Festival was a staff responsibility. Consistent with this understanding, in 2016, Council adopted new terms of reference for the Committee that expressly stated the following:

The Council representatives on the Committee shall not change or contravene in the daily operations, program and entertainment decisions of the festival. It is understood that the operations and decisions of the programming and entertainment of Mattawa Voyageur Days festival will remain that of the municipal staff as their function.<sup>12</sup>

36. The terms of reference were subsequently amended to increase the size of the committee to include four Council representatives, namely, the Mayor and three councillors, but the language quoted above, as well as the text quoted in paragraph 38 (below), remained unchanged.<sup>13</sup>

37. More generally, it was accepted that the operation and organization of the Festival were heavily dependent of the staff, reporting to the Chief Administrative Officer. The staff participated in Festival planning at the most senior level: for example, when he was CAO/Treasurer, Mr. Raymond Bélanger (now the Mayor) appears to have attended all the Committee's meetings. In addition to the CAO/Treasurer, at least one Director- or Manager-level employee participated in each meeting, accompanied by from two to four additional staff members.<sup>14</sup>

38. The centrality of the staff role was further reflected in the 2016 terms of reference, which described the Committee as "advisors between Council and the Municipal Staff that are assigned to the operation of the Voyageur Days Festival" [emphasis added].

39. In 2018, acting on the recommendation of the CAO/Treasurer, Council expressly authorized the Recreation and Facilities Manager to "proceed with the hosting of the 2019 Mattawa Voyageur Days."<sup>15</sup> By confirming the authority of a single manager (who

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<sup>12</sup> Council Regular Meeting Minutes (Feb. 8, 2016).

<sup>13</sup> Mattawa Voyageur Days Committee, Terms of Reference, appended to Meeting Agenda (Sept. 2, 2021).

<sup>14</sup> These assessments are based on an examination of the Committee's minutes from 2016 to 2021, but minutes of some meetings were not available for review.

<sup>15</sup> Council Special Meeting Minutes (Dec. 11, 2018).

reported to the CAO), Council was acknowledging the staff's operational responsibility for the event. Council adopted the same resolution in relation to the 2020 Festival,<sup>16</sup> which ultimately was cancelled due to the COVID-19 pandemic.

40. The historic involvement of senior staff members and the active engagement of the CAO/Treasurer were understandable. Mattawa Voyageur Days is not just any municipal event. It is a major municipal event in which the Town makes a very large investment. In 2021, the accounting firm Baker Tilly SNT LLP, following its operational review of the municipal corporation, commented on just how large an investment the Town makes:

Voyageur Days Festival represents a significant portion of the Town's annual operating budget.

*Opportunity for Improvement/Recommendation*

Given that the 2020 festival was cancelled due to COVID-19, this may be an opportunity to observe the effects of not holding the festival. This would provide insight to determine if the festival should continue as is, if it should be cancelled or if the operating budget should be scaled back.

Based on a historical review of financial information available, despite annual revenues related to the festival averaging roughly \$242,500 from 2017 to 2019, the festival has incurred annual losses of approximately \$52,6000, \$59,000 and \$84,200 over that same time span. In order to achieve breakeven and sustainable results related to the festival, the budget should be managed more closely as an increase in revenues is unlikely. The Town may consider sharing the costs with adjacent municipalities which are benefiting from the increased tourism. If a reduction in costs is deemed improbable, consideration should be given to the cancellation of this annual event given the significant financial impact to the Town.<sup>17</sup>

41. 2016 was illustrative of the role of the staff (under Council's oversight) in managing this significant Town project. After the Festival incurred another financial loss, Mr. Bélanger, as CAO/Treasurer, developed and presented to Council a detailed action plan to eliminate the deficit.<sup>18</sup> Council unanimously endorsed it.<sup>19</sup>

### **2023: A HANDS-ON COMMITTEE EMERGES**

42. In January 2023, Town Council adopted new terms of reference for the Committee. In the most critical respects (the relationship to Council and the relationship to the staff) the new terms of reference were similar to the previous ones.

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<sup>16</sup> Council Regular Meeting Minutes (Dec. 9, 2019).

<sup>17</sup> Baker Tilly SNT, "Detailed Operational Review: The Corporation of the Town of Mattawa" (March 1, 2021), p. 122.

<sup>18</sup> Report to Council, "Repayment of Mattawa Voyageur Days Deficit" (Nov. 14, 2016).

<sup>19</sup> Council Regular Meeting Minutes (Nov. 14, 2016).

43. The Committee was to report directly to Council. Financial decisions were to be referred to Council for final approval, as were any requests to exceed budget. The Committee was required to report to Council any significant financial risks.

44. The Chief Administrative Officer/Treasurer, the Clerk, and the Recreation and Facilities Services Manager or designate, were required to attend all meetings. The CAO/Treasurer was to provide administrative and financial advice. In 2022, the Recreation and Facilities Services Manager had been the staff member directly responsible for organizing Voyageur Days and, in 2023, the role of the Manager was particularly important: to “delegate work as needed to municipal staff.”

45. The new terms of reference did not suggest that the 2023 Committee would be organizing the Festival on its own. The 2023 terms of reference provided for a staff-supported committee, not a hands-on committee.

46. Despite the terms of reference, the Committee was forced to operate as a hands-on committee – organizing the Festival by itself – during its formative months. (As one member explained, it became, “a working committee to organize the event.”) The emergence of the Committee’s hands-on role can be attributed to several factors.

47. First, during the most critical period of organization and planning, there was no CAO, and not even an acting CAO, to guide and to support the Committee.

48. The then-CAO/Treasurer did not attend the Committee’s February and March meetings. Once the CAO/Treasurer position became vacant, it remained empty until May, at which point the positions of CAO and Treasurer were filled on an interim basis, by different people. The interim CAO did not take office until May 23. Meanwhile, an interim Treasurer was appointed effective May 9, but soon resigned; on June 6 the interim CAO also became interim Treasurer.

49. The absence of a CAO/Treasurer during February, March, April and most of May meant that the Committee was unable to access the strategic and financial advice and guidance that previous Voyageur Days Committees had received when Mr. Bélanger was CAO/Treasurer between 2015 and 2020.

50. Second, the position of Recreation and Facilities Services Manager remained vacant throughout 2023, and no staff member was named as “designate.” As mentioned, this was the staff position specifically identified in the Committee’s terms of reference. Consequently, nobody was available to perform the most critical staff organizational functions on which the Committee depended.

51. Third, as a result of absence and vacancy, the Town was severely short-staffed. As the Mayor explained to me, three full-time employees in the Town office were doing the work of five.

52. Fourth, on several occasions, the Committee was told that Town employees needed to be *invited* to perform Festival-related functions and would be free to decline.<sup>20</sup> The notion that Festival functions were optional seemed to be distinct from the short-staffing issue described in the previous paragraph. It was also expressly contrary to Council's determination that Voyageur Days work, albeit an unspecified amount, would be delegated to the staff. It should be noted that Mattawa employees would be paid for Festival-related activity as part of their regular compensation from the Town.

53. The Committee was aware that the Festival was being planned at a time when the municipality was under-staffed. At the first meeting, February 28, Councillor Ross identified the problem succinctly: "We don't have anybody to run the Festival." Councillor Thibert said:

I don't want to put any more burden on [Town employees] because they can't do anything else. ... Our staff cannot handle the burden anymore. We're short-staffed and we've got people off sick.

54. The two councillors' comments were reinforced when the Committee was told that current staff members could not be counted on to do "extra" for the Festival.

55. Despite the fact that the terms of reference provided for staff support, the Committee was extremely deferential to the assertion that staff involvement was optional and at the discretion of staff. At one meeting, the Chair, Councillor Mick, said he would, "formally ask the staff involved how much and what they would like to be involved with moving forward in organizing the festival." [emphasis added]

56. The practice of Town employees was to attend Voyageur Days Committee meetings only if and when they wanted to do. Two employees attended meetings for a while and then stopped coming. The Committee just accepted that staff participation was optional. Councillor Mick explained to me that, when one staff member decided to cease involvement in the Festival, "I didn't get involved, because as a Council member I can't tell a staff member what to do."

57. My review of the Committee's proceedings indicates that, during the critical first months, some basic and routine supports were unavailable to the Committee. On March 9, Committee members were informed that they should draft the description and notice of the Festival Director job opportunity. At the March 13 Regular Council Meeting, the Committee was reminded that its budget request should be supported by a proper written report of the Committee's activity, progress and plans; Councillor Ross ended up drafting the report herself. Typically, the drafting of reports and notices is a routine staff function performed in support of committees.

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<sup>20</sup> For example, the Committee was told this on February 28, March 9, and April 25.

58. To address the staffing challenge, Committee members discussed hiring a Festival Director<sup>21</sup> on contract. They raised the option at their very first meeting. This solution was eventually adopted, but took time; it would be two months before the newly-hired Festival Director attended a Committee meeting.<sup>22</sup>

59. Some Council members asked whether a solution might be to provide additional hours and compensation to a current, part-time Town employee. They were advised that this would not be possible or permissible, and they accepted the guidance. I find nothing wrong with asking the question. It was good-faith inquiry about how to address a legitimate challenge.

60. While the engagement of a Festival Director was a reasonable step, I disagree with any suggestion that the Committee was not entitled to staff support in the meantime. In the terms of reference, Council required the participation of the Recreation and Facilities Services Manager *or designate*, as well as the CAO-Treasurer. In the absence of the Manager, another current employee should have been designated. In the same terms of reference, Council made clear that work on behalf of the Committee would be delegated to the municipal staff. Consequently, support of the Committee and Festival should not have been characterized as “extra” or optional work; it was an ongoing role of the Town staff.

61. In my view, at the first sign of a disconnect between the January 9 terms of reference and the support actually available to the Committee, the Committee should have reported the issue to Council so it could be properly addressed. I find that the disconnect was evident as early as the February 28 and March 9 meetings. While Council was aware of the proposal and need to hire a Festival Director, this was at best a medium-term solution. In the meantime, the predicament of Committee members left without short-term support should have been remedied. As I have mentioned, all the issues covered in this report are directly or indirectly attributable to hands-on roles that were thrust upon Committee members, especially in first few months.

62. Ultimately, the responsibility for pushing hands-on duties to Committee members rested collectively with the Council. Council was aware that the Town was short-staffed, that the key post of Recreation and Facilities Services Manager was vacant, and that Council had not designated an acting CAO. Council was also aware that it had adopted terms of reference that required staff support, in particular, support from the Recreation and Facilities Services Manager or designate. Council knew, or should have known, that Committee members would be filling the gaps through their own volunteer efforts.

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<sup>21</sup> At various stages of the decision-making process, Committee members used various terms to characterize the position, including director, organizer, and manager. For consistency, this report uses “Festival Director,” which is the title on which the Town eventually settled.

<sup>22</sup> On April 6, following a recruitment process, the Committee approved the hiring of the successful candidate. The contract provided a start date of April 15. The individual’s first Committee Meeting as Festival Director was April 23.

63. Left to fill the gaps, Committee members assigned volunteer duties among themselves. They recognized that hiring a Festival Director would take time and, in any event, a Festival Director would not be able to work singlehandedly. They also acknowledged the reality of municipal “staff overload” combined with “short staffing.”

64. The hands-on responsibilities assumed by Committee members included the following: Ms Dupuis, expenses and financial reports (“treasurer”); Councillor Ross, children’s entertainment, fireworks, third-party bar operators; Mr. Salesio, entertainment, student volunteers; Councillor Thibert, wristbands; Mr. Walker, security.

65. During my interviews, some Committee members told me they were aware when they were appointed that the Committee would be a hands-on committee. Others became aware subsequently. In the words of one member:

It soon became clear... that the only reason they appointed public members is they didn’t have enough staff. So we were there to run this.

66. To be clear, many Committee members, including all the public members, welcomed a hands-on role. As Ms Dupuis explained, this is why she had volunteered: to contribute, to do something. The other two public members shared that sentiment.

67. This report is not intended to discourage volunteerism, and should not be interpreted as doing so. The public-spiritedness of the volunteer Committee members is commendable. However, boundaries are necessary. For example, hands-on dealing with suppliers placed volunteers in a difficult and unnecessary position. Operational responsibility of that nature belongs with the staff. In the Collingwood inquiry report, Justice Marrocco recommended:<sup>23</sup>

Council has a minimal role in procurements, and the separation between the role of Council and staff in procurements at the Town must be clear. ...

...

Council members must remain at arm’s length from staff and suppliers in the procurement process. Elected officials should be prohibited from involvement in the selection of the procurement process, evaluation of the bids, or selection of the successful supplier.

### **HANDS-ON COMMITTEE AND EXISTING FRAMEWORK**

68. Council committees are subject to the *Municipal Act*, and subject to all applicable Town policies and by-laws. Members of Council committees are subject to the *Municipal Conflict of Interest Act* and to the Code of Conduct.

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<sup>23</sup> Hon. Frank N. Marrocco, *Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry* (2020), Vol. 4., pp. 39-40, recommendations 161, 163.

69. There is no denying that every committee – including the Mattawa Voyageur Days Festival Committee – must comply with the law, abide by the rules, and follow proper process.

70. The challenge here was that the rules and processes never contemplated a hands-on committee. In fact, by its very nature, a hands-on committee of Council that assumes typical staff functions operates contrary to accepted understandings and conventions about how municipal government works.

71. Councillors are already aware that the traditional role of the staff includes developing advice and options prior to Council and Committee meetings and implementing afterward.

72. The staff's role is established by section 227 of the *Municipal Act*:

It is the role of the officers and employees of the municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality.

73. Staff functions identified in the *Ontario Municipal Councillor's Guide* include the following: drafting reports to be considered at meetings; conducting analysis and providing advice, including options and recommended actions; identifying implications, including financial implications; implementing decisions as effectively and professionally as possible; and notifying members immediately of any unintended or unexpected impacts of decisions.<sup>24</sup>

74. Justice Frank Marrocco, in his report on the Collingwood inquiry, recommended, "Council members should fully understand the roles of staff and never blur the distinction between their duties as elected officials and that [*sic*] of staff."<sup>25</sup>

75. The Voyageur Days Committee members were forced by circumstances to perform many traditional staff functions including: developing their own communications; writing their own reports; conducting their own analysis including identifying options and assessing financial and other implications; and implementing their own decisions.

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<sup>24</sup> Ontario, Ministry of Municipal Affairs and Housing, *Ontario Municipal Councillors' Guide*, online: <https://www.ontario.ca/document/ontario-municipal-councillors-guide/1-role-council-councillor-and-staff#section-3>

<sup>25</sup> Hon. Frank N. Marrocco, *Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry* (2020), Vol. 4., p. 12.



76. The above functions are typically performed before and after meetings. Committee meetings (and Council meetings) are part of continuum of functions. Analysis and development of options occur beforehand, and implementation occurs afterward. A municipality cannot operate based on meetings alone. Both prior preparation and follow-up implementation are essential to decision-making.

77. A hands-on, self-implementing committee does not fit easily into this model, because hands-on work and implementation usually occur outside of meetings. The existing municipal framework assumes that a committee exercises functions only during its meetings. The existing framework assumes that, prior to each meeting and following each meeting, necessary functions are performed by others – usually by the staff. When there are no “others” to handle the “before” work and “after” work, and such functions rest with the committee, the model breaks down.

78. Consider the *Municipal Conflict of Interest Act*. This Act does not contemplate that a member will discharge hands-on functions. The MCIA covers the circumstance when a matter is the subject of consideration at a meeting.<sup>26</sup> The MCIA covers the circumstance when a matter is considered by a municipal officer or employee or by a person or body exercising delegate authority.<sup>27</sup> The MCIA does not, however, address the situation in which a member directly exercises an operational function. This was not an oversight. Instead, it reflects an understanding that councillors and committee members do not perform hands-on work.

79. (In 2022, the MCIA was amended by adding section 5.3, which extends the pecuniary interest rules to the exercise of “strong mayor” powers. The amendment reinforces the point that I make above. Apart from a head of council exercising “strong mayor” powers, the MCIA does not contemplate that a Council member and or committee member will directly discharge any function.)

80. Reaching out to suppliers (for examples, musicians or local businesses) is a hands-on function. It is the type of activity that should be subject to conflict of interest rules, but the MCIA does not cover a member when the member is exercising a hands-on role such as negotiating with a band’s agent. This does not mean that the MCIA is deficient. On the contrary, the gap should cause a municipality to question the desirability of having a committee member perform hands-on work that usually belongs to the staff.

81. Consider the transparency requirements in section 239 of the *Municipal Act*. It is essential to the functioning of democracy that meetings generally be open and public, that exceptions be justified, and that all resolutions, decisions and other meeting proceedings be recorded. Only at a formal meeting may a quorum of members “discuss or otherwise deal with any matter in a way that materially advances the business or

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<sup>26</sup> *Municipal Conflict of Interest Act*, s. 5.

<sup>27</sup> *Municipal Conflict of Interest Act*, s. 5.2.

decision-making of the council, local board or committee.”<sup>28</sup> To conduct business or make decisions outside a formal meeting (for example, to do so by email exchange or through informal discussion at a social gathering) is to conduct an unopen, untransparent, unrecorded (*i.e.*, not minuted) meeting, contrary the requirements of section 239.

82. Section 239 does not contemplate a hands-on committee whose members do a significant amount of their work outside of formal meetings. In fact, section 239 was intentionally drafted to require committees to conduct all their business at official meetings (mostly open official meetings). The Act’s definition of “meeting” is so broad that it possibly impinges on hands-on work. A meeting does not need to involve discussion. Merely dealing with any matter in a way that materially advances the business of the committee is sufficient to constitute a meeting.<sup>29</sup>

83. Town employees were sometimes frustrated that Committee members seemed not to understand the requirements of section 239. Explaining the open-meeting requirement to the Committee was important and necessary. It was reasonable and appropriate for the staff to do so. At the same time, I find that the tension over section 239 was merely the symptom of an underlying problem. In my view, Committee members were not trying to disregard the *Municipal Act*. They were struggling with hands-on roles that required them to conduct business outside of meetings, even though conducting business outside of meetings is precisely what section 239 is designed to avoid.

84. Consider the usual process of reports, recommendations, motions (which when adopted become resolutions), minutes, and implementation. The process assumes that somebody else (usually the staff) will present a report and recommendation(s) to the meeting. Decision-making consists of adopting, amending, rejecting, or deferring the recommendation(s), or receiving a report for information.<sup>30</sup> The process presumes that most of the work occurs outside the Council or committee table. Work leads to reports and recommendations which come to the table for approval. The decision then leaves the table to be implemented (*i.e.*, additional work). Implementation may lead to further reports and recommendations made back to the table, and the decision-making cycle continues.

85. Obviously, what occurs at the Council or committee table must follow proper process. However, the table doesn't exist in a vacuum. Essential work is performed outside the table both before and after each meeting. What happens when the staff is unable to do the *before* and *after* work? That is precisely what happened here.

86. One option would be just to accept that the work does not get done. Here, this would have meant not holding the 2023 Festival. Another option would be to hire someone

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<sup>28</sup> *Municipal Act*, subs. 238(1), “meeting” definition.

<sup>29</sup> *Municipal Act*, subs. 238(1), “meeting” definition.

<sup>30</sup> Formal resolutions (recorded in minutes) ensure that decisions are transparent and clear. If a matter is considered by a committee, then the committee’s report and recommendation(s) next go to Council.

to do the work. Here, that did not occur until April. Had a Festival Director starting work in mid-April been the sole source of organizational support, there would have been no 2023 Festival. The third option would be for the people around the table to roll up their sleeves, fill the gap, and assume some of the work. Here, that is what committee members did.

87. Town employees were sometimes frustrated that Committee members did not submit reports in a timely fashion so they could be included in the agenda package for each meeting. Complying with the agenda deadline is important, not just to satisfy the procedure by-law, but because advance circulation of agendas and reports (and making them public) is a component of the openness that is essential to democratic government. It was reasonable and appropriate for the staff insist that Committee members meet the agenda deadline. At the same time, I find that the agenda deadline issue was just another symptom of the underlying problem. Committee members had no one but themselves to write reports, including the analysis, options and recommendations that reports typically contain. This is not usually a responsibility of members. It was an additional burden that accompanied the hands-on role that was thrust upon them.

88. Town employees sometimes felt that the Committee did not adhere closely enough to the terms of reference. As one staff member observed, Committee members “disregarded the terms of reference and did their own thing.” While I agree that it was essential to comply with the terms of reference, that observation applies to the terms of reference *in their entirety*. For example, the terms of reference also provided for a staff-supported Committee. The failure to provide the Committee with such support and the expectation that Committee volunteers would pick up work traditionally performed by the staff were non-adherent to the terms of reference. Failure to live up to the staff-support provisions of the terms of reference was no less significant than other lapses in upholding the terms.

### **COMMITTEE DECISION-MAKING**

89. As Committee Chair, Councillor Mick was patient, considerate, and fair. He encouraged all members to contribute and to express themselves. He ensured that everyone was heard. He actively solicited the views of any staff members who were present at meetings.

90. At the same time, the Committee did not follow the typical pattern of reports, recommendations, motions and resolutions described in paragraph 84, above. There was extensive discussion of a wide range of topics, but very little of it ended up being documented and confirmed in resolutions.

91. Over the course of 13 meetings, the Committee adopted 30 resolutions, 77 per cent of which were procedural (appointing chair, approving minutes, moving in/out of

closed session, setting meeting time). The Committee adopted only seven substantive resolutions, and adopted no substantive resolution after April 6.

92. Collectively, the seven substantive resolutions encompassed only a fraction of the Committee's work. For example, only two resolutions related to expenditures. The total value of spending approved under the two resolutions was only \$11,000. This meant that most of the Festival spending was not covered by Committee resolutions.

93. Several witnesses felt there should have been more reporting to Council. I agree. The terms of reference said, "the Committee shall report directly to Council." They also explicitly stated that, "Financial decisions will be referred to Council for final approval." Because the Committee was not formally making financial decisions, these decisions could not be referred to Council for final approval.

94. The ordinary practice is for committee resolutions to become the recommendations that are considered by Council. The Committee's terms of reference were clear: "Items which are recommendations to Council will require a Committee resolution."

95. The lack of formal resolutions, leading to a lack of formal recommendations to Council, made it more difficult for Council to perform its oversight and approval functions. The lack of oversight and approval is evidenced by the fact that Town Council only adopted four resolutions related to Voyageur Days.<sup>31</sup> In two of these instances, seeking a special occasion permit for the sale of alcoholic beverages<sup>32</sup> and hiring a videographer for the Festival,<sup>33</sup> Council gave approval but there were no corresponding resolutions or even mentions in the minutes of the Committee. There is no formal record of Committee decision making on these matters, even though both the special occasion permit and the videographer had been discussed and agreed by the Committee.

96. In 2010, the Ontario Ombudsman considered issues related to the procedures followed by Mattawa's Ad Hoc Heritage Committee. On the subject of committee minutes, the Ombudsman advised that a meeting record should include:<sup>34</sup>

- a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered;
- any motions, including who introduced the motion and seconders; and
- all votes taken, and all directions given.

[emphasis added]

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<sup>31</sup> The total does not include resolutions to approve the terms of reference and appoint the Committee members.

<sup>32</sup> Resolution Number 23-109, Council Special Meeting Minutes (May 3, 2024).

<sup>33</sup> Resolution Number 23-177, Council Regular Meeting Minutes (July 24, 2024).

<sup>34</sup> Ontario Ombudsman, *Investigation into whether the Town of Mattawa Council and its Ad Hoc Heritage Committee held improperly closed meetings* (December 2010), para. 58.

97. The Committee ought to have documented its proceedings in the manner recommended by the Ombudsman, both to facilitate oversight by Council and to be transparent to the public. At the same time, I find that the lack of formality in decision-making, and lack of associated records, were merely the symptom of another underlying problem. On a hands-on committee, sometimes operations and governance are not separated as they should be. When the people responsible for *doing* are also the people responsible for *deciding*, it is possible to lose sight of which function is being exercised at a given moment.

98. Another, distinct reason for the lack of resolutions and lack of formal decision making is that many matters were left to be decided by the staff under delegated authority. While the Town was short-staffed and Committee members were forced to assume hands-on roles (as detailed above), one function that *did* rest with the staff was the review, approval and execution of contracts. As noted at paragraph 92, the Committee approved by resolution only two expenditures (one of which was hiring the Festival Director). The Council (see paragraph 95) directly approved one additional spending item. All other contracting was decided by the staff under delegated authority.

### **FESTIVAL FINANCES**

99. Because Committee members did not exercise hands-on involvement in contract expenditures, they did not play a hands-on role in Festival finances. Festival revenues and expenditures were handled by Town employees and records were maintained by Town employees.

100. Leaving responsibility for financial administration with the Town staff was entirely appropriate. Indeed, it was the only acceptable approach. The Festival is a Town activity. All the Festival's financial transactions – all the expenses and all the revenue – belong to the Town. According to the *Municipal Act*, it is the Treasurer<sup>35</sup>

who is responsible for handling all of the financial affairs of the municipality on behalf of and in the manner directed by the council of the municipality, including,

- (a) collecting money payable to the municipality and issuing receipts for those payments;
- (b) depositing all money received on behalf of the municipality in a financial institution designated by the municipality;
- (c) paying all debts of the municipality and other expenditures authorized by the municipality;
- (d) maintaining accurate records and accounts of the financial affairs of the municipality;

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<sup>35</sup> *Municipal Act*, s. 286.

- (e) providing the council with such information with respect to the financial affairs of the municipality as it requires or requests ...

101. Consequently, the best, most accurate, and most up-to-date financial records of Voyageur Days were possessed by the Treasurer, Deputy Treasurer, and other Town employees. Again, I stress that this was not just appropriate, it was what the Act required.

102. This entirely appropriate, Act-mandated situation placed Ms Dupuis in an awkward spot. She was the Committee member assigned to oversee Festival finances. As explained at the meeting when she was given the role, the Committee wanted someone to keep “a running total” of revenues and expenses. The challenge was that Ms Dupuis was being asked to oversee and report on numbers that she did not possess and could not easily access.

103. For example, the Committee did not believe that the Town needed a booking agency, Ms Dupuis never budgeted for the cost of a booking agency, and Ms Dupuis never saw the Town’s contract with the booking agency.<sup>36</sup> Nonetheless, the booking agency’s fees became an expense of the Festival. (The booking agency is discussed in detail, below, at paragraphs 203 to 224.)

104. The Committee never approved the Town’s expenditure on service providers known as “yellow shirts.” While no resolution was adopted and the direction given did not appear in the minutes, the Committee felt that the payment requested by the “yellow shirts” was too high. Ultimately, payment to the “yellow shirts” was decided at the staff level. It, too, was a Festival expense. (Engagement of the “yellow shirts” is described in more detail at paragraphs 183 to 192.)

105. Other examples of Festival expenditures that the Committee did decide, not even informally, were the cost of the contract for sound equipment and the cost of electrical work to repair inadvertent damage not caused by the Festival.

106. Ms Dupuis mostly, but not always, received copies of invoices that the Town had paid.

107. Ms Dupuis nevertheless points out that, because many expenditures were decided without Committee approval or involvement, the Committee was unable to satisfy the obligation to keep within \$300,000 budget allocation.

108. All people whom I interviewed – Committee members, other councillors, and employees – understood and agreed that the Festival’s revenues and expenses belonged to the Town. Nobody should have drawn the distinction between a “Festival expense” and a “Town expense.” Every Festival expense was a Town expense.

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<sup>36</sup> There was no written contract with the booking agency. Payment was made on the basis of invoices.

109. However, the distinction was relevant under the Committee's terms of reference. The Committee was required to live in within its approved budget allowance, and to seek Council approval to exceed it. For this purpose, it did matter whether a particular expense was or was not included under the \$300,000 budget.

110. Having spoken to everyone, I find that Committee members were not claiming that Festival expenses should somehow be separate from the Town. Their concern was about being criticized for going over budget as a result of (a) an expense they did not approve, (b) an expense they could not reduce or avoid because they only learned of it after the fact, and (c) an expense they feel was not caused by organizing and operating the Festival. The Committee members feel that they cannot be faulted for exceeding the budget on this basis, and they were not in breach of the requirement to seek Council approval because they were unaware.

111. Given the Committee's limited involvement in Festival finances (despite them being hands-on in many other matters), I agree with the members' concern.

112. While it was necessary to report to Council on Festival finances, including any risk of exceeding budget, I find that this was an extraordinary situation in which neither the Committee nor the understaffed Town Hall had the capacity to do so. As I have noted, the office of Treasurer, responsible under the *Municipal Act* for making disclosure to Council, was, at various points during this period, vacant, temporarily filled, or in flux. The burdens on the remaining employees were known to Council and the Committee and have already been described in this report. On April 4, the staff explained to the Committee:

Our office is not keeping track of anything. We don't have a Finance Department to keep track of anything.

113. The assignment of Ms Dupuis to oversee Festival finances was not made by resolution, because the Committee was advised that its terms of reference did not provide for a Committee treasurer. The combination of statements – that the staff was not “keeping track” of Festival expenses and that the Committee lacked a mandate to appoint its own member to oversee Festival expenses – was a red flag. It signalled the impending issue: namely, a gap in accountability for ensuring that the Festival remained within budget. Committee members did not notice the red flag. If they had, then the appropriate step would have been to return to Council to close the gaps in actual and perceived responsibilities for Festival finances.

114. In any event, the difficulty faced by the staff is directly relevant to the amount of responsibility that ought to be attributed to the volunteer Committee. If the employees who approved and processed the expenses were unable to able to keep track of them, then Ms Dupuis, who merely was copied on what the staff had processed, could not have been expected to accomplish any more than the employees directly involved.

115. Ms Dupuis felt left on her own. The following exchange occurred when she asked how to keep track of revenues and expenses:

**Councillor Ross:** We really have to watch [our budget] so, I thought that might be – and she [Ms Dupuis] can check in with [staff] once a month just to say, “This is where I am. Am I close? Am I over?” Just so we kind of have an idea.

...

**Councillor Ross:** Just so we have some idea of what is being spent, what our parameters are.

**Ms Dupuis:** No, I can do that. I can give a report every month. I’m good. I [inaudible] reports every month at the Legion. [to staff:] Can I just ask, do you use a specific program within the Town or can I use the program I’m used to?

**Staff:** You can’t use the Town program.

**Ms Dupuis:** No, I don’t want to use the Town program.

116. I recommend that, in future, revenues and expenses of Mattawa Voyageur Days should continue to be recorded, tracked and reported by the Treasurer and Deputy Treasurer, the same as other financial activities of the Town. Further, the Treasurer and Deputy Treasurer should have exclusive responsibility for reporting to Council and to the Committee on the revenues and expenses of the Festival, including progress toward any maximum budget or spending limit. This financial information should be readily and currently available to those who are organizing Voyageur Days.

## PROCESS FOLLOWED

117. Because Integrity Commissioners make findings that can lead to penalties imposed under subsection 223.4(5) of the *Municipal Act*, we must conduct inquiries by following a fair process. Essential elements of fairness include notice of the allegations made against someone and an opportunity to respond.

118. When an inquiry is initiated by complaint, I follow a fair and balanced process that allows both the complainant and respondent to address the issues raised in the inquiry. In this case, there was no complaint and no complainant (and the request for an inquiry did not identify specific allegations), so I followed a modified process that was fair to all the Committee members. This fair process is described below.

119. The *Municipal Act* does not refer to a Code of Conduct “complaint.” The Act calls it a “request.” Specifically, the Act refers to, “a request ... about whether a member of council or of a local board has contravened the code of conduct applicable to the member.”<sup>37</sup> Where the issue involves the conduct of a local board member, the request

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<sup>37</sup> *Municipal Act*, clause 223.4(1)(a).



may be made by the Council, a member of Council, the local board, a local board member, or a member of the public.

120. At the beginning of the inquiry, I identified six issues on which I understood the referral to be based. These roughly corresponded to issues A through E, and H, in paragraph 129. During the course of interviews, I identified the additional issues that I have lettered F, G and I.

121. I met with each member of the Committee. I gave each member an opportunity to address these issues and to introduce any additional information or concern. I also told each Committee member that, if at the end of the inquiry I proposed to make adverse findings about the conduct of the individual, then I would provide a draft copy of those findings and give the member an opportunity to address them and respond.

122. In addition to the six Committee members, I interviewed 15 other witnesses, in person, by video, or by telephone. I conducted second interviews with four witnesses and one Committee member, and I followed up with email questions to multiple witnesses.

123. I watched and listened to the recordings of all the Committee meetings. Key portions of certain meetings I reviewed two, three or more times. I examined numerous documents, including contracts, emails, reports, Council and Committee minutes, social media posts, and policies. I obtained and reviewed corporate registrations and other official information about companies and other entities that were mentioned during the course of the inquiry.

124. At the end of the inquiry, I sent five of the six Committee members (everyone except Councillor Thibert) drafts of the individual sections of this report that pertained to their individual conduct. Each individual was sent only the portion relevant to that individual. I invited each to comment on and respond to the draft findings of fact.

125. All five replied. Before finalizing this report, I took into consideration the feedback that I received from them.

126. All five Committee members whose conduct is discussed below received full and fair opportunities to respond to the findings concerning them and to provide relevant information and evidence.

127. The report is based on all the information and evidence before me, all the interviews, and all the submissions made to me.

## **FINDINGS AND ANALYSIS**

128. An Integrity Commissioner may inquire into possible non-compliance with a Code of Conduct and possible non-compliance with the *Municipal Conflict of Interest Act*.

However, before an Integrity Commissioner inquires into MCIA compliance, specific conditions, enacted by the Legislature, must be present.<sup>38</sup> Those conditions are not present; consequently, this inquiry has only considered the Code of Conduct.

129. My findings are made based on the standard of the balance of probabilities.

130. I have considered the following issues under the Code of Conduct:

- A. Councillor Mick and Spice Queens.
- B. Was influence used to benefit relatives?
- C. Ms Dupuis and the Legion.
- D. Mr. Salesio and the booking agency.
- E. Mr. Walker and the security company.
- F. Were taxi vouchers misused?
- G. Free wrist bands and t-shirts.
- H. Was the Committee harassed or treated improperly?
- I. Is a different conflict standard being applied to the Committee?

131. Before addressing each issue, I will make a few general comments about (a) how the Code should be interpreted and (b) how section 8 of the Code differs from the MCIA in a material respect related to conflicts.

### **INTERPRETATION OF THE CODE**

132. Contravention of the Code of Conduct carries with it the possibility of financial penalty. In Canada, we accept as a matter of fairness that a penalty should not be imposed unless a clear, unambiguous, written rule has been contravened.<sup>39</sup> Members must be able to understand clearly and with certainty the conduct that is required.<sup>40</sup>

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<sup>38</sup> Before an Integrity Commissioner inquires into an allegation of non-compliance with the MCIA, the Integrity Commissioner must receive an application, in writing, from an elector “or a person demonstrably acting in the public interest.” The application must allege a contravention of one or more of sections 5, 5.1, 5.2 and 5.3 of the MCIA, and include reasons for believing a contravention occurred. The applicant must also provide a statutory declaration attesting to the fact that the applicant became aware of the alleged contravention not more than six weeks before the date of the application. See *Municipal Act*, s. 223.4.1. The Town is a “person” but, otherwise, none of the required conditions are present.

<sup>39</sup> *Baker v. Ryan et al.*, 2019 ONMIC 4 (CanLII), at para. 53.

<sup>40</sup> *Newman v. Brown*, 2021 ONMIC 11 (CanLII), at para. 57.

133. While I do not agree that being busy is relevant to interpretation of a Code of Conduct, I otherwise accept and adopt the following statement of Integrity Commissioner Robert Swayze about the need for clarity, certainty, and lack of ambiguity in the rules:<sup>41</sup>

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

134. Consequently, a Code of Conduct must be interpreted in a manner that is clear, unambiguous, consistent, and predictable. It must be interpreted and applied objectively, not subjectively. This is the approach taken in this report.

135. Another interpretive requirement flows from the fact that a Code of Conduct contravention can lead to penalty: If any obligation or prohibition in the Code is ambiguous or unclear, then the ambiguity or uncertainty must be resolved in favour of the member who is subject to it.<sup>42</sup>

### **DIFFERENCE BETWEEN MCIA AND THE CODE**

136. This inquiry is being conducted only under the Code, but so that the report is relevant as future guidance I am also making observations about the *Municipal Conflict of Interest Act*.<sup>43</sup>

137. Though their requirements are very different, the MCIA and section 8 of the Code deal with related concepts. The MCIA addresses what it calls a “pecuniary interest.” This means a financial, monetary or economic interest.<sup>44</sup> The term in section 8 of the Code of Conduct is “private advantage,” which certainly includes a pecuniary interest. (Additionally, “private advantage” is a more expansive term that might also encompass non-financial interests.) For ease of understanding, when this report uses the generic term “**interest**” to mean either a pecuniary interest under the MCIA or a private advantage under the Code, or both, according to the context.

138. While financial interests are covered by both the MCIA and the Code, they are covered in very different ways. The MCIA takes a straightforward approach in which disclosure and recusal obligations are triggered by overlap between the

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<sup>41</sup> *Hayes v. Miles*, City of Brampton Report L05 IN (May 12, 2015), at 4.

<sup>42</sup> *Audziss v. Santa*, 2003 CanLII 17535 (Ont. S.C.J.), at para. 58.

<sup>43</sup> While I make observations about the MCIA, I cannot find that anyone breached the MCIA. In this report, I can only find contraventions of the Code.

<sup>44</sup> *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683 (CanLII), at para. 9.

council/committee agenda and a member's pecuniary interest.<sup>45</sup> Under this approach, it is irrelevant whether the overlap positively or negatively affects the pecuniary interest,<sup>46</sup> and it is irrelevant how the member votes (or would have voted). Generally, it is also irrelevant whether the member uses or attempts to use municipal office to affect the pecuniary interest.<sup>47</sup>

139. On the other hand, mere overlap between Town business and an interest is not sufficient to result in a breach of section 8 of the Code. That section prohibits the misuse of influence to benefit oneself or one's family, friend or associate. According to its wording, section 8 is contravened only when status is used for improper influence for private advantage.

### **A. COUNCILLOR MICK AND THE SPICE QUEENS**

140. I explored concerns connected with a performance by a Spice Girls cover band named The Spice Queens. The act is described in promotional material as follows:

Let The Spice Queens drag up your life! 5 iconic Toronto drag queens come together to bring you the ultimate Spice Girls impersonation.

141. Two of the concerns raised with me do not fall under the Code of Conduct: (a) whether the fact that "Queens" meant drag queens was transparently disclosed to Committee members and Council; and (b) whether a drag show was suitable entertainment on the Sunday of Festival weekend, which traditionally, though not formally, has been allocated to family-friendly performances.

142. Councillor Mick first suggested this booking at the Committee's March 21 meeting:

I wanted to bring forward two for the Sunday. I've got a pal who does a Spice Girls tribute band as well, too, and they're just kind of touring for the winter, and I think that would be super fun as well, and they were quoted at five thousand.

143. The suitability of a drag performance was discussed at the Committee's May 23 meeting. Ms Dupuis and Mr. Walker said they were surprised to learn that The Spice

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<sup>45</sup> There five different approaches to defining or regulating a conflict of interest, not including hybrids that combine two approaches. I have classified the approaches as: overlap-based, influence-based, opportunity-based, competition- or conflict-based, and harm-based. The MCIA is an overlap-based regime.

<sup>46</sup> The impact may be positive or negative; what counts is that the Council Member possesses a pecuniary interest in the matter: *Cooper et al. v. Wiancko et al.*, 2018 ONSC 342 (CanLII), at para. 63.

<sup>47</sup> Clause 4(k) of the MCIA exempts an interest "which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member." In a 2015 case involving a member's deemed interest in the pecuniary interest of a child, the Court of Appeal held that relevant factors include a member's lack of bad faith, the member's years of faithful public service, and evidence that the member is motivated by public interest and not the interests of family: *Ferri*, note 44, at para. 17.

Queens were drag performers. Councillor Ross and Mr. Salesio stated that they were aware.

144. Whether to book a drag show at Voyageur Days is not a Code of Conduct issue. This is a matter best handled by the Committee and Council without the Integrity Commissioner's intervention.

145. Whether sufficient disclosure was made is also not an issue under the Code. Some people knew (or were able to deduce) the nature of a Spice Girls tribute named The Spice Queens; other people did not know or realize. The concern expressed was that Councillor Mick should have made a point of explaining the situation, especially to those who might be troubled or disagree. Under the Code, he was not required to do so. There is no rule in the Code of Conduct that covers the amount of explanation a member must provide.

146. Two other concerns required further examination: (c) whether Councillor Mick improperly advanced the interest of a friend; and (d) whether it was appropriate for his family restaurant to host a performance by some of The Spice Queens.

147. Councillor Mick made transparent disclosure of his connection to the band. On March 21, he described one of the band members as "a pal." On May 23, he called the person "a friend." Councillor Mick did not at any point declare a conflict of interest or withdraw from decision making.

148. As discussed earlier in this report, the fact that the Committee rarely made formal decisions (many decisions were actually made at the staff level) added murkiness to the requirement to disclose a conflict and then withdraw from decision making. Further, under the MCIA, friendship does not give rise to a disclosable pecuniary interest.

149. Section 8 of the Code of Conduct does state, in part, that one shall not use "status as a Member of Council to improperly influence the actions or decisions of staff or others to the private advantage of the member or ... friends ..."

150. Significantly, section 8 uses the word **improperly**. This indicates that not all influence is prohibited by the Code, just that which is considered improper. Relevant or analogous jurisprudence suggests that improper influence includes (non-exhaustive list) that which is unlawful,<sup>48</sup> made in bad faith or for an ulterior motive,<sup>49</sup> and based on false or misleading statements.<sup>50</sup> In the circumstances, I do not find that Councillor Mick's conduct was of that nature.

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<sup>48</sup> Mary Dawson, Conflict of Interest and Ethics Commissioner (Canada), *The Wright Report* (May 25, 2017), at 22.

<sup>49</sup> *Morton v. Canada (Fisheries and Oceans)*, 2019 FC 143 (CanLII), at para. 249.

<sup>50</sup> *Re Di Biase*, 2017 ONMIC 23 (CanLII), Integrity Commissioner Suzanne Craig.

151. As explained earlier in this report, Committee members were compelled by circumstances to play a very hands-on role in organizing the Festival. Discussion between a member and a supplier or performer (in this case, a performer) was unsurprising. Nonetheless, because a friend was involved, the preferable course of action would have been for Councillor Mick simply to refer The Spice Queens to another Committee member or to the staff, and not to have involvement in the decision to book them.

152. On Festival weekend, some Spice Queens performed at Councillor Mick's family business, a local restaurant. They appeared under their individual stage names and not as the band The Spice Queens. The owners (and some members of the board of directors) of that business are family members of Councillor Mick as defined in the Code of Conduct.<sup>51</sup> Councillor Mick also works there. Under the *Municipal Conflict of Interest Act*, a pecuniary interest of the restaurant is an indirect pecuniary interest of Councillor Mick.

153. I have reviewed the Town's contract with The Spice Queens. The Town had booked a 90-minute show. Apart from those 90 minutes, there was no restriction on what band members did during the remainder of their time in Mattawa. The contract contained no exclusivity clause. As a result, the performers were free to make arrangements with local businesses. Local businesses were free to make arrangements with them. This freedom was not altered by the fact that one councillor and Committee member possessed an interest in a particular business.

154. The restaurant has a history of hosting drag shows during Voyageur Days and at other times of the year. In 2023, all Spice Queens visited the restaurant, but they did so at different times and never under The Spice Queens name. Three of them, including Councillor Mick's friend, performed during Sunday brunch. The restaurant collected a cover charge from people who came to see them perform, with all the proceeds going to the performers. (The cover charge was not retained by the restaurant.) The cover charge was voluntary and in lieu of a tip for the performers; patrons were also free to tip the performers directly.

155. Because the restaurant did not keep the cover charge, I find that it did not have an interest in the money collected from it. On the other hand, I find that the restaurant and, by extension, Councillor Mick, did have an interest in the brunch performance. A business establishment has an interest in an initiative that reasonably is expected to bring more customers through its doors.

156. By itself, the fact of an interest is insufficient to establish a contravention of the Code (or the MCIA). For the Code and MCIA to apply, there would need to be a connection between the brunch performance and Councillor Mick's official role. For the MCIA to apply, the necessary connection would be the fact that a matter is before Council

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<sup>51</sup> The definition is discussed at paragraph 171 of this report.

or a committee, or is the subject of a matter considered by a Town officer or employee. For section 8 of the Code to apply, the necessary connection would be that that fact that one's status as a member is used to influence a decision of the staff or others.

157. The only matter, before the Committee or considered or decided by the staff, that might possibly be relevant to the restaurant's interest in the brunch performance, was the matter of inviting and booking the band as an act at the Festival. For the reasons that follow, I find that booking The Spice Queens as Voyageur Days performers did not relate to an interest of the restaurant.

158. Councillor Mick's friend had attended previous Voyageur Days, as an attendee, not as a performer. In addition, the friend had previously presented drag shows at the restaurant. The friend was already planning to attend the 2023 Festival and had already agreed to perform at the restaurant, as in some prior years.

159. Plans for a drag show at the restaurant had been made before the band was invited to perform at Voyageur Days. Since the friend was already planning to be in Mattawa that weekend, Councillor Mick came up with the idea that the entire band might perform on the Festival stage. Councillor Mick proposed his suggestion to the Committee on March 21, as described above.

160. On March 23, The Spice Queens' agent confirmed their attendance at Voyageur Days, subject to execution of a contract. Unfortunately, the band was given the wrong date. The error was noticed and corrected, and on April 10 their agent confirmed that The Spice Queens would perform on July 30.

161. The Town paid a performance fee as well as travel and accommodation costs for The Spice Queens to be present in Mattawa that weekend. I have considered the concern that the restaurant capitalized on an opportunity that only existed because the Town had paid for it. The fact that the drag performance was planned before the band was invited indicates otherwise. I find that there would likely have been a drag performance even if The Spice Queens were not been booked as a Voyageur Days act. Perhaps Councillor Mick's friend would not have been joined by two bandmates, but the brunch performance, and any advantage the restaurant derived from it, would have existed regardless of whether The Spice Queens were on the Festival lineup.

162. Section 6 of the Code prohibits a member from using municipal "services, staff or other resources" for anything other than Town business. Outside the 90 minutes they were scheduled to perform, The Spice Queens were not a municipal resource. Using them to perform at the restaurant did not contravene section 6 of the Code.

163. In the Recommendations section of this report, I recommend that the word "improperly" be removed from section 8 of the Code.

## **B. WAS INFLUENCE USED TO BENEFIT RELATIVES?**

164. A Town employee was involved in obtaining the t-shirts and other merchandise to be sold at the Festival. The process involved selecting designs and selecting suppliers.

165. Members of the public were invited to submit designs for t-shirts. Those whose designs were selected would receive no compensation. On April 13, the following message was posted on the Mattawa Voyageur Days Facebook page:

It's time to create our Mattawa Voyageur Days tshirt designs!!

If you have a creative idea please drop it in the comment section or send a message to this page!

Can't wait to see what you all come up with!

166. In addition to suggestions received from the public, the Festival Director prepared some design options (in her words, "mock ups").

167. On June 6, the responsible staff member presented design options to the Committee. Prior to the meeting, Ms Dupuis handed the staff member a proposed design and said, "I have an entry," or words to that effect. The design had been prepared by her grandchild. It was included in the design options presented to the Committee but was not selected. Ms Dupuis openly and transparently informed the committee that one of the designs had been submitted by her grandchild, and she indicated which one. She participated in the discussion of options and did not advocate for her relative's design.

168. Ms Dupuis recalls telling the Committee that, because one of the designs was her grandchild's, she would not participate in voting. In the end, there was no voting on options. The recording confirms that there was a discussion in which Ms Dupuis participated to a limited extent. As I have noted, she did not advocate on behalf of her relative.

169. In the end, three designs were selected. Two were printed on t-shirts and the other was printed on insulated can sleeves (also known as koozies or coozies).

170. It was appropriate for Ms Dupuis to mention that one of the designs has been prepared by her grandchild and appropriate not to advocate for it. It would have been better for her to place her relative's involvement on the record and then not to participate in the discussion. Nonetheless, I find that Ms Dupuis did not contravene the Code of Conduct.

171. First, under the Code of Conduct, a grandchild is not a considered a "family member." Paragraph 2 i) of the Code states: "'Family member' means as defined in the *Municipal Conflict of Interest Act*." While the text could be improved, the intention of the



Code is clear: only spouses, children and parents are family members.<sup>52</sup> (I am aware that, in 2020, Expertise for Municipalities (E4m) found that a sibling of the then-Mayor was a “family member” under the Code. The E4m report did not consider the Code’s definition of “family member” and did not even mention that a definition exists.<sup>53</sup> Given such glaring omissions, it is not a reliable interpretation of the term.)

172. Second, while the Code does not define the term “private advantage,” I doubt that having one’s design selected conferred any private advantage. The selected designers received no payment or prize. One selected designer was identified on the Mattawa Voyageur Days Facebook page,<sup>54</sup> but I find that this was not a private advantage.

173. Third, the Festival had issued a public call for designs to which everyone was free to respond. By handing her grandchild’s design directly to a staff member, I find that Ms Dupuis was accomplishing something that any member of the public could easily have accomplished directly over the Internet. In other words, she did not use her position to obtain special access. The fact that some staff members also prepared designs – not for personal benefit but to ensure a range of options was available – further confirms that there was no impropriety in passing on, to the responsible Town employee, a grandchild’s design.

174. In the Recommendations section of this report, I recommend that the definition of “family member” be expanded, and that “private advantage” be replaced with a newly-defined term, “private interest.”

175. At the June 6 meeting, the staff member informed the Committee that she had, based on price, identified a company to produce the t-shirts. Councillor Ross asked whether other local companies would be able to “get in on any of the” business. The staff member replied that it was possible to engage other local suppliers to provide coozies and other items.<sup>55</sup>

176. Following the meeting, the responsible staff member invited Councillor Ross to provide a list of the other local companies to which the Councillor was referring. Councillor Ross subsequently gave the staff member the names and contact information of between five and seven local business owners. One of them was Councillor Ross’s daughter. The

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<sup>52</sup> The MCIA does not define, or even use the term, “family member.” It does provide, in section 3, that the pecuniary interest of a spouse, child or parent of a member is deemed to be a pecuniary interest of the member. Clearly, the intention of the Code is that “family member” includes one’s spouse, child, and parent.

<sup>53</sup> *Re Backer* (December 10, 2020), online: [https://www.vmcdn.ca/files/baytoday/files/ic-decision-town-of-mattawa-\(mayor-backer\)-december-2020.pdf](https://www.vmcdn.ca/files/baytoday/files/ic-decision-town-of-mattawa-(mayor-backer)-december-2020.pdf)

<sup>54</sup> Mattawa Voyageur Days, post (June 19, 2023), online: <https://www.facebook.com/MattawaVoyageurDays%2Fposts%2F751262720334515>

<sup>55</sup> Meeting recording, 14:00 to 14:30.

staff member subsequently obtained a price quotation from everyone on the list. The staff member made the decisions about what to purchase and from which suppliers.

177. Councillor Ross's daughter was subsequently engaged by the Town to provide 20 t-shirts that were worn by student volunteers. After the supplier applied a discount of 25 per cent, the total cost to the Town was \$360.

178. The staff member was the one who decided to obtain t-shirts from the councillor's daughter. The decision did not come before the Committee.

179. There is no suggestion that the price of the t-shirts was unreasonable. No one states that the Town did not receive value from this supplier. I find that the transaction would not have occurred if the Town staff felt that the price was too high or the quality was inadequate. Councillor Ross has a long record of service to the Town and of support for the Festival. There is no indication that she was motivated by anything other than what she thought were the best interests of Mattawa Voyageur Days and Mattawa itself. I also note that Councillor Ross and her spouse were silver sponsors of the Festival. The amount that they donated exceeded the amount paid to the daughter for t-shirts.

180. I find that Councillor Ross did not contravene section 8 of the Code of Conduct. Section 8 prohibits **improperly** influencing a decision. (See paragraph 150 for a discussion of some of the factors relevant to whether conduct was improper.) Because Councillor Ross provided a full list of businesses – including, but not favouring, her relative – and because she left the decision to the staff without advocating a result, I find no evidence of improper influence.

181. Under the MCIA, the analysis would be different. Councillors must take no part in decision-making, and must not try to influence decision-making, that involves the financial interests of a spouse, child or parent. Even providing a list of suppliers that included one's child was too much involvement under the MCIA. As I have already explained, this report provides guidance on the MCIA but it makes no findings on whether the MCIA was contravened.

182. In the Recommendations section of this report, I recommend refresher training for all Council members in conflict of interest, as well as training, when they are appointed, for committee members from outside Council. I also recommend that the terms of reference for any future Voyageur Days Committee restore the old language that prohibited Council representatives from involvement in operational matters belonging to the Town staff. Finally, I recommend that section 8 of the Code be amended to prohibit any influence, not just improper influence, where the interest of oneself or one's relative or friend is involved.

183. I also examined whether any Committee members acted inappropriately in connection with the engagement of individual, on-site service providers known informally

as the “yellow shirts” because of the colour they wear while providing services. For many years, the “yellow shirts” have provided services (such as bag searches) to complement the work of the licensed security professionals.

184. On June 6, the Committee discussed a written price quotation that had been received from a representative of the “yellow shirts.” The quotation was not approved. In fact, the members who discussed the matter were of the view that the requested amount was too high. The Committee did not adopt a resolution on engaging the “yellow shirts” and it did not approve the amount. The minutes record no direction being given or that the topic was discussed.

185. It was unclear whether members of the “yellow shirts” were casual employees or were contractors providing services. The lack of clarity is directly linked to the lack of documentation. Nothing was on file except the quotation described in the previous paragraph: a handwritten piece of paper containing names, hours, amounts, and a total of \$5025.50. Payment seems to have been made in cash, from the Festival float, and apparently there was no independent mechanism to monitor the provision of services (for example, whether 18-hour days were worked). As discussed below, it is not even clear who approved the arrangements on behalf of the Town.

186. Whether these individuals were contractors or employees, the terms of their engagement should have been fully documented. If they were casual labourers, then the Hiring Policy should have been followed. If they were contractors providing services, then the Procurement Policy required that a contract of that aggregate value (more than \$5000) be subject to Council resolution and a Request for Proposal.

187. Members of the “yellow shirts” possess no formal certification or training in crowd management and security. Whether they are needed and, if so, how many of them are required, and at what cost, should be objectively determined by the Town, and then reevaluated on an annual basis. Instead, these determinations seem to have been based on the assertions made by the “yellow shirts” themselves, through their identified leader.

188. At the June 6 and June 19 meetings, Committee members were sceptical of payment to the “yellow shirts.” The Committee doubted that so many “yellow shirts” were needed. Mr. Walker told the Committee that six would be enough. Members also questioned the number of hours for which each “yellow shirt” would be paid. In Councillor Ross’s view, the numbers made no sense. Committee members also openly questioned why the “yellow shirts” would be paid when so many other people volunteered their services to the Festival without compensation.

189. Committee members never approved hiring the “yellow shirts.” After expressing concern at two consecutive meetings, the Committee left the matter in the hands of the Festival Director. They were simply informed that that the “yellow shirts” would be engaged as in previous years. Nobody is sure who told that to the Committee.

190. Ultimately, engagement of the yellow shirts was decided and executed by the staff including the Festival Director.

191. I find that the Committee and Committee members bear no responsibility for the engagement of the “yellow shirts.”

192. In the Recommendations section of this report, I recommend that the Town formally document the engagement of all service providers, both employees and contractors. I also recommend that no service provider, either employer or contractor, be paid in cash. Finally, I recommend that the Procurement Policy be amended so it is not possible to avoid the approval thresholds by splitting a contract in parts or splitting a contract among different associated suppliers or service providers.

### **C. MS DUPUIS AND THE LEGION**

193. Ms Dupuis received no compensation from the Town for her work on Voyageur Days. She estimates that she devoted more than 400 volunteer hours to the Festival and says she was never thanked.

194. Ms Dupuis is a local artist who is very active as a volunteer in the community. She was the Treasurer of Royal Canadian Legion, Branch 254, Mattawa. She was also the Treasurer of the Mattawa Historical Society, a charity which operates the Mattawa Museum.

195. From the very first meeting, Ms Dupuis made clear her capacity to contribute her time to the Festival. In her words, she was “willing and able.”

196. The people whom I interviewed had different views of why the situation arose and how it could have been prevented, but everyone recalls that in the middle of the weekend the Festival was running short of beverage alcohol. Everyone agreed that this was a grave problem.

197. This inquiry was limited to the conduct of Committee members. The Code of Conduct and the MCI A do not apply to Town employees. Consequently, it was not my place to examine why the municipal corporation was closed for business and not available to the Committee during the weekend of a major event of the municipal corporation. I simply observe that the Festival Director and the Committee had no weekend access to an authorized user of the Town’s credit card, and consequently, no way to restock the bar.

198. Ms Dupuis fashioned a solution under which Mattawa Legion 254 purchased alcohol for the use of the Town. The Legion was then reimbursed after the Festival.

199. Everyone, including Ms Dupuis, agreed that involving the Legion Branch to purchase alcohol for the Festival's use was not the ideal arrangement and did not exemplify best practice. It was a one-time, emergency response. As a result of learning from the experience of 2023, a similar situation is unlikely to occur in future.

#### **D. MR. SALESIO AND THE BOOKING AGENCY**

200. Mr. Salesio received no compensation from the Town for his work on Voyageur Days.

201. He was aware that the Town was understaffed, and he recalls the Committee "always" being told that staff did not have time to assist with particular Festival functions. He was also struck that the organizers of an event in existence since 1998 had inherited so little: "We had nothing. No contacts, no information."

202. At the Committee's first meeting, as members grappled with the challenge that nobody was assigned to run the Festival, they were also aware that they were starting later than previous years' organizers. Mr. Salesio observed that it was important to act soon to book talent; otherwise, performers might be unavailable.

203. In previous years, the Town had engaged a booking agent to recruit performers.<sup>56</sup> That individual had recently retired. Mr. Salesio offered to volunteer his time to contact potential bands and singers, and the Committee agreed. It adopted a resolution authorizing him to contact performers' agents and return with information about prices, selection, and availability.<sup>57</sup>

204. Mr. Salesio worked fast to reach out to musicians' agents and, in at least one case, a musician directly. Nine days later, he reported to the Committee with a proposed three-day lineup of available acts, including, as headliners, Elliott Brood and Blue Rodeo on Friday and Trooper on Saturday. His colleagues complimented him on making so much progress in such little time.

205. While the Festival was a team effort to which scores of people contributed, it is no exaggeration to state that the 2023 Voyageur Days would not have occurred without Mr. Salesio's early effort. When the Committee first met, planning for entertainment was four months behind, compared to the previous year, and nobody had been assigned to

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<sup>56</sup> Voyageur Days Committee, Resolution Number VDC21-04 (Nov. 4, 2021): "BE IT RESOLVED THAT the Voyageur Days Committee retain the services of First Impressions Entertainment as its booking agent for the 2022 Voyageur Days Festival."

<sup>57</sup> There may have been confusion on this point. At least one Committee member thought Mr. Salesio was authorized find a booking agent who would recruit performers on the Town's behalf. The motion adopted by the Committee confirms otherwise: "The Committee appoints member Frank Salesio to contact music agents and return to the Committee with information on pricing and band selection and availability." Resolution Number 23-VD02 (Feb. 28, 2023).

find talent. In little more than a week, Mr. Salesio prepared a preliminary lineup of performances, including prices. His work product helped demonstrate to Council the existence of a viable plan for the Festival, it was integral to the budget that Council would approve, and it ultimately was the basis of the Festival lineup.

206. The contract for each act was prepared by the band's agent, and then signed by the Town Clerk on behalf of the municipality. Typically, Mr. Salesio had already discussed key terms with the band's agent. Before signing, the Clerk reviewed the agreement and made any necessary amendments. After price, the next most significant negotiation with a performer's agent involves the performer's additional requirements, reflected in what are commonly called "riders" to the contract. (For example, Van Halen would famously request that each venue provide a bowl of M&M candies, with brown M&Ms specifically excluded.<sup>58</sup>) The assessment of whether a rider was both feasible and affordable was made by the Clerk. Often, a request that could not be accommodated directly was replaced by a cash buyout. (For example, in lieu of providing dinner for every member of a band and its crew, the Town might pay an additional amount.)

207. Later, once the Festival Director was hired, she played a role in negotiating with musicians' agents on prices and other matters.

208. A purchaser's booking agency charges the purchaser for that service, usually based on a percentage of each booking's price. I find that Mr. Salesio (who reached out to the performers through their agents to confirm dates and prices and secure the acts), the Clerk (who reviewed and signed the contracts) and the Festival Director did most, if not all, of the work that had previously been performed by the Town's contracted booking agency. This should have resulted in a significant saving to the Town.

209. Instead, after bands had already been selected<sup>59</sup> and the major terms had already been negotiated, the Town reached out hire a booking agency to represent the Town in these transactions. Engagement of a booking agency was not initiated by the Committee or Mr. Salesio. Instead, the Committee was told on several occasions that it needed to engage a booking agent to protect the Town's interests. Committee members were not told why the Town needed a booking agency, just that it did.

210. The retention of a purchaser's booking agency, after the fact, was problematic, on multiple levels. I find the following facts: First, the booking agency was being paid for functions that had already been performed by Mr. Salesio, the Clerk, and the Festival Director. Second, inserting the booking agent's name into a contract as the Town's

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<sup>58</sup> Jacob Ganz, NPR, "The Truth About Van Halen And Those Brown M&Ms" (Feb. 14, 2012).

<sup>59</sup> Technically, the Town withheld formal confirmation of bookings until after its purchaser's booking agency was identified. For all practical purposes, however, the bookings were already made: the prices were confirmed and the dates were held at both ends.

“contact” or “advance contact” gave the Town no additional protection. In short, the booking agency’s role was redundant and provided no value to the Town.

211. As Councillor Mick would later observe, the Town’s booking agency was, “the third party we were paying to broker the bands that we had already brokered.”

212. The redundancy was perplexing to the booking agency itself. In one email to the Town, an agency official wrote:

I am sorry, I am confused.

I was under the impression you had already booked the [name of band] show with another agent [*i.e.*, the band’s agent] who had sent the contract to you directly.

You want me to review that contract and advise on the rider??

213. The agency’s confusion was unsurprising. The Town may have misunderstood the role of a booking agent. A booking agent typically is not a lawyer and cannot give advice on the legal implications of contract language. A booking agent cannot determine whether rider requests (*e.g.*, queen-bed hotel rooms for performers) can be accommodated; only the purchaser knows what is feasible and locally available. A booking agent’s core function is to make bookings and negotiate fees and terms. Here, the agency was engaged in relation to bookings already made for fees already negotiated.

214. More problematic was the identity of the booking agency that was selected. The Town selected a company that was the existing booking agency for three tribute bands scheduled to perform at the Festival.<sup>60</sup> In fact, this was how the company came to the Town’s attention: Mr. Salesio had reached out to the company to inquire about performers that it represented.

215. The question of whether the Town had a booking agent was raised at the March 13 Council meeting. The next day, when Committee considered the same issue, one of the Councillors suggested the use of a company with which Mr. Salesio was already dealing:

**Councillor Ross:** So do we have an agent that is handling the bands? Because that is what the Town wants, to be secure.

**Mr. Salesio:** No. I’ve talked to several agents or agencies. But as of now I was just on an information gathering session, right. “Are they available? How much are they? OK, good. We’ll be in touch.”

**Councillor Ross:** So that’s what we need. We need to secure a reputable agent, whether it’s him [pointing to name on the list of agents whom Mr. Salesio had contacted], or whatever, because we can’t, as a committee, handle that. That needs to come from an agent to cover all of our contracts. So since you’ve already done some legwork it would be good to speak to the agent saying, “This is the legwork I’ve done previous, so would you be able to assist us with that?”

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<sup>60</sup> It represented bands whose fees were among the lowest of the performers on the main stage. It did not represent any of the headliners.

216. Mr. Salesio replied that all the agents on his list were already representing musicians and had an interest in promoting their clients. (As explained above, this was why he contacted the agents in the first place.) A staff member explained to the Committee that the role of the booking agent would be to “represent us [*i.e.*, the Town].” Discussion ended on the basis the Mr. Salesio would go back to the agents on his list. It seems that Committee members were unaware why these musicians’ agents should not be the Town’s.

217. The Committee’s discussion that afternoon, including the staff contribution, reflected the misunderstanding described in paragraphs 210 through 213, above. It was asserted, incorrectly, in my view, that a booking agent who was “independent from us” would offer some sort of protection to the Town in the event of “a change of plans.” It was also assumed that the Town could continue the scheduling of performers on its own and “run it through an agent” later, when it was time for the Town to sign contracts.

218. At the next meeting, March 21, Mr. Salesio was asked if he had obtained a booking agent. “Yes,” he replied, naming an individual from the booking agency that he and Councillor Ross has discussed during the March 14 meeting – the same booking agency representing three bands who would perform at the Festival (as well as one other band that the Committee considered but did not book). Later in the same meeting, Mr. Salesio explicitly told the Committee of the connection between these musicians and the Town’s new booking agent: “That’s their agency. That’s the agency he works at.” Nobody present voiced an objection or even questioned the selection.

219. While it seems obvious in hindsight that the Town’s Voyageur Days booking agency could not simultaneously be the booking agency for Voyageur Days musicians, I find that nobody involved – not the Committee members, including the councillors on the Committee, and not the staff members who advised the Committee of the need for an agent – identified the potential conflict of interest or the possibility of double payment (*i.e.*, payment both by the Town and by a band to secure the same performance).

220. Soon afterward, on April 4, the Town staff told the Committee the staff would take further responsibility for dealing with the booking agency – including entering into a contract between the booking agency and the Town. In response to a Committee member’s question, the staff assured the Committee that approving a contract with the booking agency was within staff authority and did not require the Committee to adopt a resolution. Consequently, the Committee never formally approved the terms of payment or any contract with the booking agency.

221. The Committee exercised diligence by inquiring about approval authority. I do not fault members for relying on the advice received. Nonetheless, according to the Procurement Policy, Council authorization should have been obtained:



For all purchases greater than \$5,000.00, a resolution shall be brought forward with due notification of possible suppliers or contractors in order for Council to authorize the purchase of goods and services or to issue a Request for Proposal (RFP) or a Request for Quotation (RFQ).

222. The booking agency's fee was comprised of four payments. The total was significantly higher than the approval threshold.

223. Utilization of the booking agency proved to be unsatisfactory for the staff, the Festival Director, and the Committee. Routing paperwork through the booking agency caused significant delay because response times were slow. The headliners' agents complained that the Town's booking agency was unresponsive; in fact, the agent representing two of the headline bands suggested the bands would not wait much longer. The Festival Director told the Committee that she had no difficulty connecting with performers' agents to resolve issues, while the Town's agency claimed to be unable to reach the same individuals. The Festival Director also spent significant amounts of time "chasing" the Town's booking agency to reply to inquiries.

224. The May 23 meeting of the Committee included a lengthy discussion of the booking agency arrangement. Committee members were uniformly dissatisfied with what they perceived as the needless cost of paying for work that had already been done.

225. The previous month (sometime in early April), Mr. Salesio was offered a job with the Town's booking agency, and he accepted. According to Mr. Salesio, the company was impressed with his initiative, shown earlier that year in tracking down performers. The company also wanted to diversify its team. Most booking agents are musicians themselves; Mr. Salesio, an occasional teacher by occupation, offered different experience and a different perspective.

226. Mr. Salesio's compensation for the part-time job is entirely success-based. He is only paid for performance contracts that are signed. Mr. Salesio was not paid by the booking agency in relation to any of the Voyageur Days performances.

227. Mr. Salesio recalls that he informed the Committee at its April 6 meeting, which was held shortly after he accepted the job. At least two other Committee members remember this disclosure, and their recollection of the time frame aligns with Mr. Salesio's. The April 6 meeting occurred mostly in closed session because the Committee was dealing with hiring of the Festival Director. The disclosure occurred either during closed session or on the margins of the closed session, because the meeting recording (which only covered open session) did not capture it.

228. The April 6 minutes do not record that Mr. Salesio disclosed he was an employee of the booking agency. His disclosure was made, but not minuted. As I noted, the disclosure occurred during the closed session or on the margin of it while the meeting was not being recorded. Additionally, the meeting agenda did not include an item related

to the booking agency, so perhaps it is unclear whether Mr. Salesio was making a disclosure about a matter being considered. Nonetheless, a member should never be discouraged from disclosing an interest. Under the MCIA, the responsibility for making disclosure rests with the member and nobody else. For what it is worth, I believe that it was not just appropriate, but essential, for Mr. Salesio to disclose to the Committee as he did on April 6.

229. I make three additional observations about the April 6 disclosure. First, the MCIA does not prescribe particular words that a member must speak. It just says: “disclose the interest and the general nature thereof.” Second, the MCIA also requires that the oral disclosure of an interest must be followed by a written statement. Third, a disclosure made during a closed meeting must be recorded in the minutes of the next open meeting.

230. When he disclosed on April 6, Committee members asked Mr. Salesio whether he was being paid by the booking agency, and he replied that he was not paid except for future performance contracts after they were signed.

231. As mentioned, during the May 23 meeting, there was significant discussion of dissatisfaction with the booking agency. By this point, Mr. Salesio had already accepted the job. In my view, Mr. Salesio should have disclosed that the matter being considered involved his employer and withdrawn from the discussion.

232. To be clear, Mr. Salesio’s position during the May 23 discussion was the same as that of other Committee members. Far from defending his employer, he argued that engaging the booking agency was redundant, wasteful and unnecessary. Nonetheless, the existence of a conflict is not determined by the position one takes at a meeting. The general rule is that member must not take part in discussion or decision-making<sup>61</sup> that relates to an employer’s interest.

233. The following additional facts provide context. First, the formal decision to engage the booking agency was made by the staff and not by the Committee. Even the idea that a booking agent was needed did not originate with the Committee or Mr. Salesio. Second, by the time of the job offer, Mr. Salesio’s role in communicating with the agency on behalf of the Festival had ended.<sup>62</sup> Third, the nature of his arrangement with the company means that Mr. Salesio did not and could not directly benefit from the money the Town paid to his employer. Fourth, Mr. Salesio sacrificed many unpaid, volunteer hours to find entertainment (and perform other functions) to make Voyageur Days a success. Had he not prepared a draft musical lineup in the first week of March, the 2023 Festival likely

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<sup>61</sup> At the May 23 meeting, there was only discussion, and no decision-making. In fact, at no time did the Committee make any decision about the booking agent.

<sup>62</sup> On April 4, Mr. Salesio was instructed to let the staff handle communication with the booking agent. According to him, the job offer was made the same month.

would not have occurred. Fifth, the public members of the Committee never received training about the MCIA and conflict of interest.

234. One of the roles of an Integrity Commissioner is to provide advice about conflict of interest and codes of conduct to members of Council committees and municipal local boards. When he received the job offer, Mr. Salesio was unaware that this advice was available to him.

235. I find that Mr. Salesio did not attempt to profit from his volunteer position on the Committee. I find that he acted in good faith. I find that he disclosed to the Committee at the first possible meeting.<sup>63</sup> Nonetheless, a reasonable observer might wonder why the booking agency offered a job to a Committee member so soon after the booking agency was hired to work for the Town. Public confidence requires that people who deal with businesses on behalf of the Town should not accept employment from those same businesses – at least not until the end of a reasonable cooling-off period.

236. Sections 8 and 9 of the Code of Conduct do not clearly address this situation. There is no evidence that Mr. Salesio used his position on the Committee to influence the booking agency to offer him employment. If it occurred, such conduct would have contravened section 8. Instead, the booking agency contacted Mr. Salesio. Section 9 of the Code prohibits a member from referring a corporation *to a third party* in exchange for personal benefit. I do not believe that Mr. Salesio referred the booking agency to the Town in exchange for a personal benefit. Further, the referral was not to a third party.

237. At the end of this report, I recommend: better training in conflict of interest including how to disclose an interest and to file a statement; making committee members and local board members aware that they can seek advice from the Integrity Commissioner; amendments to section 9 of the Code, as well as section 5 (which deals with gifts); and amendment of the Procurement Policy to prevent splitting a contract to avoid the approval threshold.

### **E. MR. WALKER AND THE SECURITY COMPANY**

238. For several years, licensed security at Mattawa Voyageur Days has been provided by a Sudbury-based company that holds an agency licence under the *Private Security and Investigative Services Act*.

239. Through this security company, Mr. Walker had been a Voyageur Days security guard on many previous occasions. He was not a regular (*i.e.*, ongoing) employee of the security company. Instead, he was a casual employee (*i.e.*, engaged when needed).

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<sup>63</sup> Disclosure of an interest is not a one-time requirement. Disclosure is required at every meeting that considers a matter in which a member has an interest.

240. Mr. Walker was a licensed security guard under the *Private Security and Investigative Services Act*.

241. Mr. Walker was a casual employee of the security company only during Voyageur Days. Apart from Voyageur Days, he did not work for the company and he was not on-call for the company.

242. Mr. Walker was a casual employee of the security company during 2023 Voyageur Days. Part of the amount the Town paid to the company covered 24 hours of Mr. Walker's services, and the company compensated him for those hours.

243. Some Committee members told me they were unaware that Mr. Walker was being paid by the security company. Some members said they knew he had worked for the company in past but not that he was working, or would be working, for it in 2023.

244. I find that Mr. Walker did disclose his connection to the security company. From April 25 forward, he was also open about the fact that he would be one of the company's security guards at the 2023 Festival. However, the disclosure could have been clearer and could have been made sooner.

245. The first substantive discussion of security occurred at the Committee's April 4 meeting. Because of his experience and knowledge of security, in particular, his experience with Voyageur Days security, others looked to Mr. Walker for guidance. Upon reaching agenda item 4.7 (Security), Councillor Mick, as Chair, invited the staff to introduce the topic, and the staff redirected the invitation to Mr. Walker, causing one Committee member jokingly to call him, "the security guy."

246. Mr. Walker accepted, saying he was:

willing to take kind of a "white helmet" on the security issue. It's the same people as last year, basically. I've been given the quote from last year, so we know what it cost us last year. I can just get in touch with [names], [and] find out, "OK give me a price. Put it in writing so we can hand it to whoever needs it."

247. The security company provided a price quotation on April 24, and Mr. Walker presented it to the Committee the following day. The quotation was for the services of six guards plus one supervisor, as well as mileage, accommodation, and meals.

248. I interviewed Mr. Walker, representatives of the security company, and several witnesses about the price quotation. I also examined emails and relevant documents. While I am satisfied that everyone spoke to me based on genuine belief, recollections differed. Where there were discrepancies, I have accepted the recollections most consistent with the documentation and the meeting recordings.

249. The security company saw Mr. Walker as the "middleman" between the company and the Town. It believed that he was "in charge" of security for 2023 Voyageur Days. It

based the price quotation on figures provided by Mr. Walker: he stated the number of guards and hours that were required, and the company generated a price quotation on that basis.

250. Mr. Walker recalled that the quotation was accepted by the committee on April 25, but a new (higher) quotation was required after the Festival Director made certain logistical changes that increased the demand for a security staff presence. His recollection was partly correct in one respect: there was discussion in Committee that *possible* changes to the footprint of areas licensed for the sale and consumption of alcohol *might* require a new security quotation. Ultimately, only one quotation was ever received, it was presented on April 25, and this was the amount the Town paid.

251. The Committee did not approve the price quotation, on April 25 or any other day. As noted above, there was discussion on April 25 about a possible reconfiguration of the beer area that might modify security needs. To permit consideration of possible changes, the Festival Director asked the Committee not to approve the quotation at that time. The Committee did not approve the quotation.

252. The security company recalls receiving the go-ahead around May 9. There was no Committee meeting between April 25 and May 23.

253. The next time the Committee discussed financial arrangements with the security company was June 6. Mr. Walker and Ms Dupuis mentioned that the deposit for security services (50 per cent of the invoice amount<sup>64</sup>) was overdue. The Festival Director promptly followed up with the Town staff and the security company to ensure the deposit was paid.

254. There was never a Committee resolution approving the quotation, and the meeting recordings contain no discussion that could be characterized as approval. All the evidence suggests that the price quotation was approved at the level of staff / Festival Director, between meetings of the Committee.

255. Apart from a brief discussion about the potential to hire policing students (see paragraph 263, below), there was no discussion by the Committee about alternatives to using the same security company as before. The Committee did not discuss whether to solicit bids from multiple suppliers. For his part, Mr. Wallace did mention that this particular company had provided Mattawa Voyageur Days security for several years.

256. I find that the value of the security contract<sup>65</sup> should have been subject to Council authorization and a competitive process under the Procurement Policy. That this did not

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<sup>64</sup> Once accepted by the Town, the quotation became the invoice.

<sup>65</sup> A legally-binding contract does not need to be a document with “contract” written on top. Offer and acceptance are sufficient to constitute a contract. In this case, acceptance of the company’s price quotation meant entering into a contract.

occur was not the responsibility of any one individual. It was, at least partly, an oversight by the Committee. I say “partly” because the Committee never actually approved the security company’s quotation. It cannot be said to have approved something, contrary to the Procurement Policy, that it did not approve at all.

257. As mentioned in paragraph 244, starting on April 25, Mr. Walker did transparently disclose his current connection to the security company and to working for the Festival.

258. On April 25, Mr. Walker disclosed to the Committee that his services were covered by the price quotation, but he was under the impression that he would be the eighth security staff member: “You’ve got six guards, plus the supervisor, plus me, so that’s eight.” (In the end, the security company provided seven licensed individuals to provide services during the Festival: six guards *including* Mr. Walker, plus a supervisor.)

259. During the same meeting, Councillor Mick explained why Mr. Wallace was chosen to look into security options: “We felt that he was the best person for this because he already had rapport with the security company, and further, if I’m not mistaken, had actually worked for them or volunteered for our Festival as well in previous years.”

260. At one point during the June 6 meeting, the Festival Director, addressing Mr. Walker, referred to the security company as “*your* security.” [emphasis added]

261. In a subsequent meeting (July 13), Mr. Walker again disclosed that he would be employed at the Festival. In reference to the security company, he told the Committee, “They are employing me for this event.” The Festival Director asked if the security company would be sending a separate invoice for Mr. Walker’s services. He replied that the company’s original invoice was “all-inclusive” – in other words, there would not be a separate invoice for Mr. Walker’s time.

262. It was clear that Committee members welcomed Mr. Walker’s experience in security. Mr. Walker explained the difference between unlicensed individuals and licensed guards, and the difference between licensed guards and the police. Mr. Walker did emphasize that certain functions required licensed and qualified security staff, as opposed to unlicensed individuals without special qualifications.

263. Mr. Walker’s advice to the Committee was based on his experience and perspective. When one Committee member asked whether students from Canadore College’s Police Foundations program could be used, Mr. Walker responded that a previous year’s attempt to do so had been unsuccessful. At another point, he suggested what he called a “slightly different” security arrangement from the previous year; his proposed modification was to place a security guard at a specific gate that in 2022 was staffed by a volunteer who ended up being “overwhelmed” by the crowds. Mr. Walker also made the Committee aware of the limitations of using unlicensed, untrained individuals in

support of security functions. Several times he explained that no more than six “yellow shirts” (one per licensed security guard) were needed to support the security staff.

264. I find that, while serving on the Committee, Mr. Walker was motivated by the best interests of Mattawa Voyageur Days and the Town. He responded to the call for applications because he believed in the Festival and because he possessed relevant experience that could be valuable to the Committee. I also find that he did not set out to become the intermediary between the security company and the Town. He was asked to obtain a quotation, and he obliged.

265. Nonetheless, because he ended up providing paid security services during the Festival, Mr. Walker had an interest in the security matters being discussed. When he first joined the Committee, his interest was speculative and hypothetical. His interest became real once he knew there was a reasonable possibility that he would be paid to work at the 2023 Festival.

266. It is said that hindsight is perfect. This report is written with the benefit of looking back on past events: an advantage that Mr. Walker and the Committee did not possess at the time. I do not believe that Mr. Walker, or anyone else, expected this situation would arise.

267. If it had been possible to anticipate this situation from the outset, then it might have been preferable to make Mr. Walker a security advisor to the Committee – someone transparently and openly connected to security company, and not paid for the advice to the Committee – as opposed to an official, appointed, Committee member.

268. Otherwise, once his interest became real, Mr. Walker ought to have disclosed the interest and withdrawn from future discussion about security. This would have been consistent with section 8 of the Code of Conduct as well as consistent with the *Municipal Conflict of Interest Act*.

269. Several facts provide important context. First, as mentioned above, one of the roles of an Integrity Commissioner is to provide advice about conflict of interest and codes of conduct to members of Council committees and municipal local boards. While he served on the Committee, Mr. Walker was unaware that this advice was available to him. Second, Mr. Walker did not use his position to increase the volume of security service provided by the company. Third, it cannot be said that Mr. Walker *personally* decided to rehire the same company as in previous years. Fourth, the Committee never adopted any resolutions concerning security or took any substantive decisions related to security. Fifth, the public members of the Committee never received training about the MCIA and conflict of interest.

270. At the end of this report, I recommend better training in conflict of interest, and making committee members and local board members aware that they can seek advice from the Integrity Commissioner.

### **F. WERE TAXI VOUCHERS MISUSED?**

271. Festival organizers had access to vouchers issued by a local taxi company. The vouchers were intended for people, such as musicians, whose transportation costs were assumed by the Town.

272. The user of a voucher was driven to a destination and provided the voucher as payment. The taxi company then invoiced the Town for the cost of the trip.

273. I inquired into whether any Committee members made personal use of the taxi vouchers. I have found that the only personal use of vouchers was made by a Town employee and the spouse and friend of a Town employee. (As I have explained, the Code of Conduct does not apply to Town employees and this inquiry does not cover the staff.) Taxi vouchers were not used by Committee members.

### **G. FREE WRISTBANDS AND T-SHIRTS**

274. I also examined the distribution of wristbands and t-shirts to Committee members and the rest of Council.

275. I find that the decision to offer the wristbands and t-shirts was made at the staff level.<sup>66</sup> The decision to make the offer to everyone on Council was not discussed by the Committee.

276. Festival volunteers are offered a t-shirt and a wristband for each day of volunteer service. In this context, extending the distribution to Committee members, including the three public members who had already volunteered months of their time, was not unreasonable.

277. I find that it is not contrary to Code of Conduct for an individual to accept free admission to a Town event where the individual is performing an official role or is volunteering. The problem is that, in this case, most Committee members did not need the wristbands to obtain access. Most of the Committee members were volunteering all weekend long and their roles gave them access to all parts of the Festival. They did not need wristbands to take in the entertainment. For them, the wristbands were largely redundant.

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<sup>66</sup> References to the “staff level” include Town employees and the Festival Director,



278. This redundancy had Code of Conduct implications. At least one member, not needing the wristband (for the reason I have explained), gave it to someone else. It is one thing for a member to obtain access to a Town event where the member will play a role. It is another thing for the member to obtain a transferable personal benefit.

279. I recommend that, in future, if Committee members and Council members are to be given access to Town events, then their method of access should be personal to them, and not be in a form (e.g., wristbands or tickets) that can be transferred to other people.

#### **H. WAS THE COMMITTEE HARASSED OR IMPROPERLY TREATED?**

280. Before Council adopted the resolution asking me to review the activities of the Committee, various members of the Committee voiced concerns about the manner in which they had been treated by the Council and some individual councillors. One Committee member described what was happening as *harassment*.

281. I interpreted the referral to me as broad enough to encompass the concerns of the Committee members.

282. One concern was that Committee members had been accused, by at least one councillor, of conflicts of interest. They believed that the conflict accusation tarred all of them, and not particular individuals.

283. This report should address at least part of that concern. In most cases where a conflict was alleged, I have found no breach of the Code. I could not make findings under the *Municipal Conflict of Interest Act*,<sup>67</sup> but I provide guidance to cover future situations. On occasion, when I observe that an individual Committee member should have withdrawn from decision-making or involvement, I do so primarily as a forward-looking caution.

284. At least one Committee member feels that an unjustified allegation of conflict of interest requires an apology. I cannot force Council collectively or any Councillor individually to apologize. I can invite Council to consider the findings in this report, to consider the volunteer service provided by Committee members in challenging circumstances, and to respond in a manner that Council believes is fair and appropriate.

285. Another concern of Committee members was that they were, in their view, unfairly accused of going over budget without Council approval. I explore this issue in paragraphs 99 to 116 (pages 19 to 22) and find that much of the Committee's concern on this point is legitimate.

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<sup>67</sup> See note 38.

286. Many Committee members, in particular, the public members, felt that they were treated disrespectfully in response to their service. They feel that their volunteer contribution was not recognized and that they were not thanked.

287. Gratitude is a subjective term. Just as some Committee members feel that their work was thankless, some Council members say that the volunteers' work was appreciated and believe that the Committee members have already been thanked. It is difficult for me to choose between these positions and assess whether expressions of thanks already made were sufficient and sincere. I can state that the Committee members, particularly the public members, gave freely of their time to make 2023 Voyageur Days a success. They were put in the very difficult situation of both being a committee of Council and being expected to perform some traditional staff functions. They are deserving of the Town's gratitude and I invite Council to take this onto account.

288. Finally, the Committee Chair, Councillor Mick, on his own behalf and on behalf of the Committee, took issue with circumstances surrounding the Committee's final report to Council. Specifically, he felt pressure on the Committee to present its final report before it was ready, and he felt it was inappropriate to be told that he must present the Committee's report from the delegation table and not from his Council seat.

289. The issue of the report's timing was resolved when the Interim CAO/Treasurer wrote Councillor Mick to say that the Committee's report would be scheduled on the Council agenda when it was ready. The CAO's solution was a reasonable one. (The Committee had originally been told that it must present its final report before the staff's financial report on the Festival was ready for Council. Given the allegation of exceeding budget without approval, it was legitimate and understandable for the Committee to determine that it could not complete its report until the final figures were in.)

290. The issue of the location from which the presentation would be delivered was resolved when the Interim CAO/Treasurer wrote to Councillor Mick to say, "you can present the report as you wish." However, because Councillor Mick described what occurred as harassment (as well as bullying), I will make a few additional observations.

291. The Code of Conduct refers to "bullying" only within the definition of "harassment." In other words, harassment under the Code incorporates bullying. Consequently, I will focus on harassment.

292. The Code of Conduct defines "harassment" as follows:

"Harassment" or "harass" involves engaging in a course of behaviour, comment or conduct, whether it occurs inside or outside the work environment, that is or ought reasonably to be known to be unwelcome.

It includes but is not limited to any behaviour, conduct or comment by a Member that is directed at or is offensive to another person:

- (i) on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the *Human Rights Code*; or
- (ii) which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.

293. Not every unwelcome comment constitutes harassment. A key element of the definition is “a course of behaviour, comment or conduct” [emphasis added]. In Canadian law pertaining to harassment, the words “a course of” are usually considered to mean a pattern of behaviour, though a single, severe incident could constitute harassment.<sup>68</sup> Directing someone to a particular seat, once, is not a course of conduct.

294. On the other hand, it is worth noting that the Voyageur Days Festival Committee is a Council committee. The percentage of public members on the Committee is irrelevant: it is a Council committee. It is subject to the *Municipal Act*. It is subject to the procedure by-law. Its members are subject to the *Municipal Conflict of Interest Act* and the Code of Conduct. Even though 50 per cent of its members are drawn from the public, the Committee is 100-per-cent subject to the same rules as other Council committees.

295. This inquiry was precipitated by questions about whether Committee members were living up to their responsibilities as members of an official committee of Council. Some councillors and some staff members felt that the Committee did not act sufficiently like a Council committee. They wanted to see the Committee act more like a Council committee and be subject to the same rules as other Council committees. They did not believe in making an exception for a committee half-composed of public members. (In that respect, they were correct.) Given that there should be no exception from the rules for a Council committee of public members, there should be no exception from the ordinary seating either. It would be inconsistent to treat the Committee as anything less than a Council committee, or to treat it as a second-tier Council committee. It is a Council committee.

### **I. IS A DIFFERENT CONFLICT STANDARD BEING APPLIED TO THE COMMITTEE?**

296. Finally, I considered the concern of several Committee members that their alleged conflicts were under scrutiny, when nothing was said about the involvement of two councillors in the Mattawa Minor Hockey Association, which annually raises money by hosting camping on Town property over the Voyageur Days weekend.

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<sup>68</sup> See the Supreme Court of Canada decision in *Honda Canada Inc. v. Keays*, [2008] 2 S.C.R. 362, 2008 SCC 39, at para. 73: “It is certainly difficult to see a course of conduct in a single incident.”

297. For many years, the Mattawa Minor Hockey Association, through volunteers, has administered, supervised and managed overnight Voyageur Days camping for tents and trailers. The Town makes Mike Rodden Arena and Mattawa Ball Field available for this purpose. The Association provides the volunteer labour and then uses the proceeds (\$100 per tent site and \$150 per trailer site) to support its activities.

298. I found no evidence that the Councillors associated with Mattawa Minor Hockey were subjected to a more favourable standard than members of the Voyageur Days Committee. Everyone is subject to the Code of Conduct and the MClA. The only difference is that the camping arrangement is of such long standing that it has not recently come to Council for decision. Should Council or a committee ever consider a matter in which the Association has a pecuniary interest, then the usual rules would apply. (In 2023, councillors made four disclosure of pecuniary interest in relation to Mattawa Minor Hockey.) Should a Town employee ever make a recommendation or decision affecting Mattawa Minor Hockey, then the restrictions on councillors in section 5.2 of the MClA would apply.

## CONCLUSION

299. Involving members of the public was not the problem. The problem was appointing a committee of Council to replace functions traditionally performed at the staff level.

## RECOMMENDATIONS

300. Council should not establish a committee of Council for the purpose, or in expectation, of replacing functions traditionally performed by the staff and/or contractors.

301. No Council member or committee member should be asked or assigned to replace a function traditionally performed by a Town employee or contractor.

302. There should be a clear separation between (a) membership on a committee that is responsible for a project or event and (b) actually performing work on the project or event. The former is ultimately the responsibility of Council to appoint and to oversee. The latter is ultimately the responsibility of the staff.

303. The position of the most senior employee of the Town who reports directly to Council and to whom all other staff members report, currently known as the position of CAO/Treasurer, should never be vacant. When there is no permanent or interim CAO/Treasurer, Council should provide for an acting CAO/Treasurer. This will ensure that there is always a single staff member to whom the rest of the staff reports and who in turn reports to Council.

304. Town projects and events should be the operational responsibility of the staff, reporting to the CAO/Treasurer. A contractor engaged to provide services related to a Town project or event should report to the CAO/Treasurer either directly or through a Town employee reporting to the CAO/Treasurer.

305. Should Council ever appoint another Voyageur Days Committee, the following language, slightly modified from the 2021 terms of reference, should be included:

Committee members, other than staff members, shall not change, or interfere with, the daily operations, program, and entertainment decisions of the Festival. It is understood that the operations, programming and entertainment decisions of the Mattawa Voyageur Days Festival will remain functions of the municipal staff.

306. Volunteers who help with Town projects and events must ultimately be supervised by, and must be the responsibility of, the staff. Even a Council member who volunteers to help should act under staff supervision and responsibility. (This recommendation does not apply to membership on committees. There should be a clear separation between participation on committees and actually performing work on projects and events. See paragraph 302.)

307. Whenever a new committee is created, the CAO/Treasurer should be responsible to ensure that the committee has appropriate operational support to discharge its responsibilities according to the committee's terms of reference.

308. A committee should report regularly to Council. One way to ensure regular reporting is automatically to place the minutes of each committee meeting, and any associated report(s), on the agenda of the next Council meeting.

309. To facilitate oversight by Council, as well as to promote transparency, a committee's minutes should include, in addition to motions and votes, a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered, and a record of all directions given. This is consistent with the advice given to the Town by the Ombudsman in 2010.

310. If a committee experiences any difficulty in discharging its mandate or complying with its terms of reference, including the situation in which a committee is of the opinion that necessary operational support to the committee is lacking, then the committee should promptly report the issue to Council.

311. To respect the statutory responsibility of the individuals holding the *Municipal Act* offices of Treasurer<sup>69</sup> and Deputy Treasurer, and to ensure consistency in reporting (*i.e.*, only one set of figures), the Treasurer and Deputy Treasurer should have exclusive responsibility for reporting to Council and to any committee on the records and accounts

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<sup>69</sup> Currently, the positions of CAO and Treasurer are combined as CAO/Treasurer, though during some periods in past the positions were separated

related to a particular Town project or event, including the revenues and expenses of the project or event, and including progress toward any maximum budget or spending limit. In the case of Voyageur Days, this financial information should be readily and currently available to those who are organizing the Festival.

312. Every declaration of interest made by a Council member or committee member during a closed meeting should be recorded in the minutes of the next meeting that is open to the public.

313. Council members, committee members and members of local boards should regularly (at least every two years) receive education and training in compliance with the *Municipal Conflict of Interest Act* and the Code of Conduct. In addition, a member who is newly elected to Council, or newly appointed to Council, a committee, or a local board, should receive such education and training as soon as possible.

314. Education and training under the MCIA should include but not be limited to: what constitutes a pecuniary interest; how to disclose an interest; how to file a written statement; the obligations to withdraw from discussion, decision-making, and voting, and to refrain from attempting to influence; other requirements of the MCIA; enforcement; the role of an Integrity Commissioner; and best practices for compliance.

315. All Council members, committee members and members of local boards should be informed and regularly reminded that the Integrity Commissioner is available to them to provide confidential advice on their obligations under the MCIA, the Code of Conduct, and any Town procedure, rule or policy governing the ethical behaviour of members.

316. The definition of “family member” in paragraph 2 i) of the Code of Conduct should be replaced with the following text that is based on language recommended by Justice Marrocco in the Collingwood inquiry:

“Family member” means any of the following:

spouse, common-law partner, and any individual with whom the individual is living as a spouse outside marriage;

parent, including a step-parent, and legal guardian;

child, including a stepchild;

grandchild;

sibling;

aunt, uncle, nephew, niece, and first cousin;

a mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law and son-in-law.

317. The definition of “Pecuniary Interest” in paragraph 2 p) of the Code of Conduct should be removed because the term is not used anywhere in the Code. It should be replaced with a new term, “Private Interest”:

“Private Interest” includes a direct or indirect pecuniary interest under the *Municipal Conflict of Interest Act*, and includes any non-pecuniary interest that a reasonable observer would believe is sufficient to influence a member’s decision-making.

318. The opening paragraph of section 5 of the Code should be amended by adding the underlined text below:

No member shall accept a gift, job offer or personal benefit

- a) from any individual or entity that does business or seeks to do business with the Town, or
- b) that is connected directly or indirectly with the performance of their duties unless authorized by one of the exceptions below.

319. Section 8 of the Code should be amended (a) to remove the word “improperly,” (b) to expand the scope to encompass any use of office to advance an interest, not just using office to influence another person, and (c) to replace “private advantage” with the concept of advancing a private interest:

No member shall

- a) use the position of Member of Council, or
- b) use the status of Member of Council to influence an action or decision of a staff member or other individual or entity

to advance a Private Interest of the member, a family member of the member, a staff member of the member, or a friend or associate (business or otherwise) of the member.

320. Section 9 of the Code should be amended to add the following sentences, adapted from a recommendation of Justice Marrocco in the Collingwood inquiry:

For one year after leaving office, a former member should not accept employment

- a) on any specific matter in which the former member was involved while serving on Council or a local board; or
- b) with any individual or entity with which the former member had direct and significant official dealings while serving on Council or a local board.

321. The Procurement Policy should be amended by adding the following:

A purchase shall not be split to avoid the above thresholds. For purposes of the thresholds, all similar or related purchases from the same supplier in the same calendar year shall be considered one purchase.

Purchasing shall not be split among suppliers to avoid the above thresholds. For purposes of the thresholds, all similar or related purchases from suppliers who are related or associated shall be considered one purchase.

Regardless of the value of a purchase,

- a) every purchase must be documented, and
- b) no supplier shall be paid in cash.

322. The engagement of all service providers, whether they are employees or contractors, should be formally documented.

323. No employee, no contractor, and no other service provider, of any kind, should be paid in cash.

324. In future, should Council members and/or committee members be given free access to a Town event in order to perform a role or official function at the event, then their method of access should be personal to them, and should not be in a form (e.g., wristbands or tickets) that can be transferred to other people.

## CONTENT

325. Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

Respectfully submitted,



Guy Giorno  
Integrity Commissioner  
Town of Mattawa

March 13, 2024





## INFORMATION REPORT

**PREPARED FOR: MAYOR BÉLANGER AND MEMBERS OF COUNCIL**

**PREPARED BY: PAUL LAPERRIERE, INTERIM CAO/TREASURER**

**TITLE: 2024 MATTAWA VOYAGEUR DAYS UPDATE # 3**

**DATE: MONDAY MARCH 18, 2024**

**REPORT NO: 24-20R**

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### **BACKGROUND**

This is update #3 in series of on-going updates on the activities/progress of Voyageur Days 2024.

### **ANALYSIS & DISCUSSION**

We are in the final stages of signed contracts with all performing artists and plan to make an announcement to Council followed by a press release very soon. There are 2 acts planned for Friday night and 3 for Saturday night.

We are also working on Events Flyer which will list all the activities of the weekend. We plan to have relatively final draft for next Council meeting.

In brief, Friday day activities will be focused at Timmins Park and Annie's Park. Children activities will be the focus at Timmins Park and will include face painting and similar activities and an assortment of inflatables. Annie's Park will feature music. New Ontario Brewery will feature Mattawa's own Voyageur Days beer. We are working with the Algonquins for them to perform an opening ceremony at the point early Friday evening.

The Legion will kick off a Saturday breakfast. Timmins Park will continue as the day before and will also include a reptile zoo in the late morning. A full animal free circus will occur at the arena in the afternoon. Annie's Park will be similar to Friday.

The Lions' Den will kick off Sunday with a pancake breakfast. Timmins Park activities resume, similar to Friday. Annie's Park will feature the dunk tank. The Legion will also put on a Bingo upstairs at the arena in the afternoon. A local talent show will held at the point Sunday afternoon along with other acts and we are working on a closing ceremony late Sunday afternoon.

The car show will go on again this year and we are hoping to bring back helicopter rides. An inflatable bullriding event is being considered for Annie's Park.

Having secured our wristband sponsor, Jp2g, wristbands have been ordered and are expected no later than March 25<sup>th</sup> at which time they will immediately go on sale. Again, tickets are for the whole weekend and will be \$70 in advance, and \$80 thereafter. We are looking to increase sales outlets including selling tickets at Town Hall.

We have a handful of sponsors and will actively approach others concurrent with the announcement of the line-up and ticket sales.

### **FINANCIAL IMPLICATIONS**

Approved budget is \$475,000. Please see attached budget.

**RELEVANT POLICY/LEGISLATION**

**RECOMMENDATIONS/RESOLUTION**

It is recommended that Council receives and accepts Voyageur Days Update #3.

**BE IT RESOLVED THAT** the Council of the Town of Mattawa receives Report # 24-20R titled 2024 Mattawa Voyageur Days Update # 3.

# VOYAGEUR DAYS

## 2024 Budget

Description	2024	2023	Comments
Bands (concerts)	235,500	161,935	Quality of the Acts
Booking fees	-	14,893	Booked directly with artists' agents
Riders	15,000	9,696	Precautionary measures
Sound	36,000	35,371	
Entertainment	50,000	38,915	In-line with this year's bookings
Port-a-John	15,000	14,351	
Accomodation	10,000	-	Got \$10K in kind in 2023.
Transportation	-	-	Included in riders
Supplies	2,000	603	
Insurance	4,000	3,942	
Legal	-	1,548	Not deemed necessary this year.
Security	9,700	6,338	
Off-duty officer		-	
Ambulance (fFirst Aid)	3,000	-	Added heath measures
Alcohol	53,600	36,093	Ran out last year
Ice	3,200	-	
Refrigerator trailer	2,500	-	
Wrist bands	2,000	-	Sponsor giving \$5,000.
Bar staff	8,000	7,859	
T-Shirts	2,500	4,649	Making use of inventory
Utilities	3,000	350	Precautionary measures
Software	-	1,500	Relying on staff expertise
Advertising	5,500	3,949	Increased advertng planned
Fireworks	-	7,500	None this year
Electrical (Museum)	-	9,253	Not required this year
Project Manager	-	10,000	Staff ran
Trailer	1,500	750	
Volunteers	1,000	821	
Bank float	-	-	
SOCAN	2,000	-	Req'd fee
Contingency	10,000	-	Just in case...
<b>Total</b>	<b>475,000</b>	<b>370,317</b>	

THE CORPORATION TOWN OF MATTAWA

MOVED BY: COUNCILLOR \_\_\_\_\_

SECONDED BY: COUNCILLOR \_\_\_\_\_

**BE IT RESOLVED THAT** this Council proceed in Camera at \_\_\_\_\_ in order to address a matter pertaining to:

- a) security of the property of the municipality or local board;
- b) personal matters about an identifiable individual, including municipal or local board employees;
- c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- d) labour relations or employee negotiations;
- e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- g) a matter in respect of which a council, board, committee or other body has authorized a meeting to be closed under another Act;
- h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

DATE: MONDAY MARCH 18, 2024

10

**THE CORPORATION TOWN OF MATTAWA**

MOVED BY COUNCILLOR \_\_\_\_\_

SECONDED BY COUNCILLOR \_\_\_\_\_

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**BE IT RESOLVED THAT** the Committee of the Whole meeting reconvene at \_\_\_\_\_ p.m.

DATE: MONDAY MARCH 18, 2024

12.1

**THE CORPORATION TOWN OF MATTAWA**

MOVED BY COUNCILLOR \_\_\_\_\_

SECONDED BY COUNCILLOR \_\_\_\_\_

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**BE IT RESOLVED THAT** the March 18, 2024 meeting adjourn at \_\_\_\_\_ p.m.