

SUPERIOR COURT OF JUSTICE – ONTARIO

In the matter of the Municipal Conflict of Interest Act, RSO 1990, c. M.50, as amended

RE: THE CORPORATION OF THE TOWN OF LAURENTIAN HILLS, Applicant

BEFORE: Justice Jaye Hooper

COUNSEL: J. Paul R. Cassan, for the Town of Laurentian Hills

HEARD: September 27, 2023

DECISION ON APPLICATION

[1] This is an application pursuant to section 7 (2) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 which permits a judge under certain circumstances to authorize a municipal council to vote on matters in which the members of the council would otherwise be disqualified. Without an exemption, each member of the council must declare a conflict and withdraw from decision making in matters where they might have a direct or indirect financial interest.

[2] The within order is sought because every member of this township’s council either receives remuneration or is closely related to someone who receives remuneration from the town’s major employer, Canadian Nuclear Laboratories Ltd./Laboratoires Nucleaires Canadiens Ltee. (“CNL”). There is a reasonable prospect that whenever a matter relating to the company comes before this township’s council, decision making would be paralyzed, or the members of council might face sanctions and penalties if they proceed with a vote. If the entire council had to recuse itself, there would be no quorum, and the duly elected council could not function in relation to those matters.

[3] This is not the first time the township has required such an order. In 2020, a similar application was sought. The court granted that application for the life of that council, but restricted its order to matters the township could sufficiently identify.

[4] There is now a new municipal council. They have requested a new order that is not as restricted as the one previously granted. In addition, the material before me also seeks an extension of the Order to include the Atomic Energy of Canada Limited (“AECL”). Documentation filed defines AECL’s role to act as an agent of the Government by supporting the Government’s development of nuclear policy including the setting of priorities for CNL and to oversee the performance of CNL. AECL owns the sites, facilities, assets, intellectual property and is responsible for environmental remediation and radioactive waste management. CNL is responsible for the day-to-day operations of the sites, is the employer of the workforce, and is responsible for all licences and permits.

Background Facts

[5] The Town of Laurentian Hills (the “township”) is a municipal corporation governed by the *Municipal Act, 2001*, S.O. 2001, C.25 and the *Municipal Conflict of Interest Act*, RSO 1990, C.M.50.

[6] The township’s council consists of four councillors and the Mayor. For council to hold a vote on any matter there must be quorum. Quorum is met when the majority of members of council are present and able to vote. A new council was voted in on October 24, 2022. On the record before me, I find the mayor and the four elected councillors all have a direct, deemed, or indirect pecuniary interest in CNL.

[7] Pursuant to the *Municipal Conflict of Interest Act*, if a councillor has a direct, deemed, or indirect pecuniary interest in any matter where the councillor is present at a meeting of council at which the matter is the subject of consideration, the councillor must disclose the interest and not take part in the discussion or vote on any question in respect of the matter and not attempt to influence the vote on any such question. With all of the current councillors and the Mayor having a conflict with respect to CNL, council is unable to operate effectively absent an order from the court.

[8] Earlier orders were obtained from this court to allow council to give consideration to, discuss, and vote on matters specifically outlined in those orders. Those orders expired with the election of a new council.

[9] Council meetings during which issues regarding CNL are considered occur frequently. CNL is a major employer for the township. It also uses the township’s municipal services and, from time to time, enters into contractual agreements with the township. Council therefore seeks an order of this court to allow those issues to be considered, discussed, and voted upon. It asks for an order that is more extensive than the one previously provided in 2020. To support this, more extensive affidavits have been filed on this motion than had been filed in earlier proceedings.

Law and Analysis

[10] This precise issue involving this same township council proceeded before this court in 2020: *see Re Laurentian Hills*, 2020 ONSC 794. In approving certain issues that could be discussed, the court provided the following guidance:

[31] I agree that the legislature did not intend that judges could simply exempt the town from the provisions of the Act because of hypothetical difficulties. It would strain the language of the section to simply grant an exemption so that the issue of conflict need not be considered by the members of council. On the other hand, I agree that the section should be given practical application and it is reasonable to grant an order for recurring issues or issues identified with sufficient precision. The alternative of first placing a matter on the council agenda, declaring conflicts and then coming to court each time an issue arises is neither desirable nor required.

[11] In determining whether or not to grant an order, the court set out the following test:

- a) the court must be satisfied an order is necessary to avoid the loss of quorum and the resulting paralysis of decision making.
- b) the judge must know what the issue is, whether the conflict is actual or simply apparent, the importance of the issue to the functioning of the municipality
- c) there must be some precision to the request. It will be insufficient to simply argue that an issue may arise and to ask for a blanket exemption for anything involving CNL and AECL.

[12] It is clear that there is an actual conflict between the members of the township's council, CNL. As each member of council is in a conflict, an order is necessary for quorum. Therefore (a) and (b) above are satisfied. I further find that CNL and AECL are inextricably tied together on many of the issues that are the subject matter of this motion. As a result, for those issues council is permitted to consider, discuss, and vote upon, this order includes both CNL and AECL.

[13] The only issue left to be determined is whether the requests being made of the court have sufficient precision for the court to grant permission.

Specific matters that are the subject matter of this order

[14] There are twenty matters that are presently known to council for which they have sought the court's permission to consider, discuss, and vote upon.

Emergency Preparedness

[15] I accept the evidence on the record before me that it is very difficult to plan or predict what type of emergency could happen with CNL/AECL or when that could occur in Laurentian Hills. I also accept that it is within the public interest to allow these elected officials to take steps to protect the residents of this township. I therefore am allowing council to consider, discuss, and vote upon matters that deal with emergency preparedness.

Mutual Aid Agreement between Laurentian Hills and CNL/AECL

[16] This aid agreement has been defined with sufficient specificity. I therefore grant council the ability to give consideration to, discuss, and vote on this matter.

Changes to Federal or Provincial Legislation or Regulations that require action by Laurentian Hills

[17] Although the affidavit evidence outlines a specific issue with respect to the shut down of a nuclear reactor in 2018 and the dissolution of a Committee on Nuclear Preparedness, the order sought before me seeks approval far beyond this one committee. It seeks permission to discuss any changes to federal and provincial legislation or regulations thereunder that require action by the Town of Laurentian Hills. I have no difficulty granting permission to council to consider, discuss and vote on the decommissioning of the nuclear reactor or the dissolution of the Nuclear Preparedness Committee. The order, as drafted, goes beyond this issue and is too vague.

Near Surface Nuclear Disposal Facility

[18] The former council brought a separate application seeking an order allowing it to deal with the Near Surface Nuclear Disposal Facility. That application was granted. That order should be renewed for this new council. This new order includes both CNL and AECL.

Nuclear Power Demonstration facility property and decommissioning

[19] The record before me outlines sufficient particulars to grant council permission to consider, discuss, and vote on issues related to this property and the decommissioning. That permission extends to councillors attending information sessions on decommissioning.

Sponsorship of Municipal events by CNL

[20] This order was previously granted to the former council of Laurentian Hills and will be renewed. It will also include AECL.

Donations by CNL to Laurentian Hills

[21] This order was previously granted to the former council of Laurentian Hills and will be renewed. It will also include AECL.

Acquisition or disposition of land between Laurentian Hills and CNL/AECL

[22] There are discussions that are ongoing between Laurentian Hills and CNL/AECL regarding a landfill. Council is permitted to continue considering, discussing and voting on issues related to that landfill.

[23] The order sought, however, seeks permission to discuss *any* property issues into the future. This is too broad an order. The order granted will be restricted to the landfill. Any further property issues involving CNL or AECL require a further order of this court.

Utility Services provided by Laurentian Hills to CNL/AECL

[24] CNL is connected to the Chalk River drinking water distribution system for their facilities. Because of the nature of CNL's activities, there are frequent communications involving connections to the system, testing of the system, chlorine testing, and increased usage during live firefighting exercises. It would not be in the public interest to require council to return to the court to seek permission to consider, discuss, or vote upon these issues. The order is granted for this issue and includes both AECL and CNL.

Receipt, approval, discussion, and direction arising from staff reports regarding CNL

[25] It would not be in the public interest to require council to return to the court to seek permission to consider, discuss, or vote upon any staff reports that refer to CNL or AECL, but the broad nature of this request could, potentially, overlap with other issues for which permission has not been granted by this order. I caution council to ensure that the issues being considered through staff reports are consistent with those topics for which permission has now been granted.

Road or civil infrastructure services owned or to be constructed by Laurentian Hills and used by CNL

[26] The only entrance to CNL is by Plant Road. Plant Road is owned by the township which provides all the maintenance and upkeep of this road. Winter snow operations are performed by CNL. It would not be in the public interest to require council to return to the court to seek permission to consider, discuss, or vote upon issues related to Plant Road. The order is granted for Plant Road.

[27] The evidence also indicates that the township owns a parcel of land known as Industrial Park. In the affidavit of Ms. Batten, she attests to a recent inquiry by CNL in renting space at the Industrial Park. Council is granted permission to consider, discuss, and vote upon renting industrial park land to CNL/AECL.

Licence renewals by CNL

[28] This is a request based on potential future issues. The township clerk's affidavit states:

25. CNL must renew several site licenses regularly. At times, the Town's support is requested by CNL. CNL is the Town's major employer and employs many of our residents. Council should be able to determine their support of these licenses in writing or verbally at hearings.

[29] This request lacks sufficient specificity. It is denied.

Support or non-support of CNL projects or initiatives

[30] The township submits that, absent a court order, it is unable to participate in many projects or initiatives that relate to CNL. The affidavit evidence suggests that this limitation prevents town council from properly representing the township's residents. It is further submitted that CNL is continually making positive efforts to include the Town in their initiatives.

[31] The difficulty before me is that this is, once again, an extremely broad request. It is seeking blanket approval for *any* project or initiative, no matter how large the scope. No evidence has been filed to provide context. Are these projects and/or initiatives below \$10,000? Could they form a substantial part of the township's budget?

[32] Without further detail, I am unable to approve this request.

Laurentian Hills Fire Department Reports regarding CNL

[33] The fire department has a mutual aid agreement with CNL. CNL participates in training the township's volunteer firefighters. I believe it would be in the public interest to allow council to consider, discuss and vote upon fire department reports regarding CNL.

Payment in lieu of taxes from CNL

[34] Again, this is a broad request. I do not believe it is appropriate to provide pre-authorized approval for an issue that might be of considerable importance to ratepayers in this township. I decline to grant advance permission on this issue.

Support or presence at licensing hearings and renewals

[35] The example provided in the affidavit relates to technology for small modular reactors. The township's clerk states:

29. The technology related to small modular reactors could pave the way to solving our energy crisis. This technology is supported by our federal government and the Town of Laurentian Hills and Council should have the option to show their support as well.

[36] I grant permission on the issue of the small modular reactors. I cannot give a blanket permission on all future licensing hearings. If there are licencing renewals that are upcoming, those can be identified for the court in a subsequent application.

Environmental Remediation Management Stakeholder Relations

[37] This is another advance request with the clerk's affidavit stating:

30. Much of CNL borders the Town of Laurentian Hills. We are very interested in what CNL is doing regarding environmental remediation and what affects CNL environmentally, could affect the Town. We would like to be at the table should they request input from Council regarding remediation.

[38] CNL hasn't requested input. If they do, the township can provide further specifics to the court. An advance request is denied.

Environmental Stewardship

[39] The Environmental Stewardship Council is an information sharing opportunity for open dialogue with stakeholder groups, local communities and CNL. CNL presents information about what is happening at the site, their environmental practices and so on. They provide regular updates on what projects are happening and planned and any remediation efforts. They also provide reports on progress of any decommissioning, what is happening with small modular reactors and any scientific breakthroughs. The court grants permission to council to consider, discuss, and vote upon information provided by the Environmental Stewardship Council. Councillors are also permitted to sit on this council if invited to do so.

Luncheons, ribbon cutting ceremonies, and business meetings

[40] The affidavit evidence suggests that members of the township's council have not participated in community events that involve CNL including luncheons, ribbon cuttings, and business meetings. I accept that given CNL's presence within the township, this has prevented members of the township's council from representing Laurentian Hills appropriately. Permission is granted to allow councillors to attend these events.

Issues related to the North Renfrew Landfill Operations Board for the purposes of managing and operating a landfill in Chalk River

[41] This is a recent issue before council wherein an update on the disposal of waste from CNL was unable to be discussed. It highlights the fact that not every issue can be forecasted in advance for court approval.

[42] The evidence provided on this motion supports the granting of permission to council to consider, discuss and vote upon issues related to the management and operation of the landfill at Chalk River through the North Renfrew Landfill Operations Board.

Future Issues with CNL and AECL not covered in this order

[43] Affidavit evidence has been filed setting out the inconvenience and expense to the township's ratepayers in council attempting to follow the 2020 order. For example, a further application had to be brought in 2022 for an issue not previously anticipated. That further

application cost thousands of dollars and created extensive delay. Mayor Anne Giardini's evidence included on the within application included the following passages:

I truly believe that the Council of the Town of Laurentian Hills is negatively affected by the rulings that we must declare a conflict of interest for most dealings with CNL. CNL is such a vital employer in our community and to not be able to be part of the discussion and decisions affecting our land and our people does not make sense to me...

Having to return to court over and over as matters arise is costly for a small municipality. Council has always been aware of the impact of raising property taxes, if we have to continue to apply to the court every time a new matter with CNL, that we could not predict comes up, we will have no option but to increase the tax rates. With inflation impacting everyone's lives this added cost will affect many of our ratepayers.

[44] I have no doubt these statements are true but that is an issue to take to the legislature. It is not the role of this court to ignore clear legislative provisions because they are too costly or inconvenient to apply.

[45] What is in this court's power is to provide a more streamlined approach to bringing such an application before the court in this county. As the legislation allows council to bring these applications without notice, I am allowing the current town council to bring future applications on an expedited basis before the court. I will remain seized of any future applications. Only updated material on the new issue needs to be filed. If evidence from prior hearings is to be relied upon, it should be referenced in the Notice of Application and that earlier evidence should be re-uploaded to Caselines.

Notice to Residents of Laurentian Hills

[46] Notice of this decision will be posted on the landing page of the Laurentian Hills' website. The application and my decision will also form part of the agenda at the next council meeting.

Conclusion

[47] As a result of the above, I have granted permission to council to consider, discuss, and vote on the following issues related to CNL and AECL:

1. Emergency preparedness
2. Mutual Aid Agreement between Laurentian Hills and CNL/AECL
3. The decommissioning of the nuclear reactor and/or the dissolution of the Nuclear Preparedness Committee
4. Near Surface Nuclear Disposal Facility
5. Nuclear Power Demonstration facility property and decommissioning

6. Sponsorship of Municipal Events by CNL
7. Donations by CNL to Laurentian Hills
8. The continuation of discussions between Laurentian Hills and CNL/AECL regarding the landfill
9. Utility Services provided by Laurentian Hills to CNL/AECL
10. Receipt, approval, discussion and direction arising from staff reports regarding CNL and/or AECL
11. Issues involving Plant Road
12. Inquiry by CNL into renting space in Laurentian Hills' industrial park
13. Laurentian Hills' Fire Department Reports
14. Small modular reactors
15. Environmental Stewardship Council including the ability for members of the township's council to sit on this council if requested.
16. The ability for councillors to attend township events that involve CNL and/or AECL.
17. Issues related to the North Renfrew Landfill Operations Board

[48] Any future applications for this current town council may be brought before me on an expedited basis as set out above.


Justice Jaye Hooper

Date: December 12, 2023