or not s. 577 was contravened, failure to conduct an inquiry resulted in a miscarriage of justice with respect to him.

On the other hand, Mr. Watt forcefully argued that it was not realistic to think that the anonymous telephone calls resulted in any prejudice to Hertrich and Stewart. He contended that the acquittal of Finn and Fernandes, who were friends of the other accused, demonstrated that the telephone calls did not result in wholesale prejudice to all the accused and to the appellants Hertrich and Stewart. I accept that submission.

I am, however, unable to accept Mr. Watt's submission that the showing of actual prejudice to the appellants is essential to constitute a miscarriage of justice within s. 613(1)(*a*)(iii) of the *Code*. A miscarriage of justice within s. 613(1)(*a*)(iii) of the *Code* occurs where there is an appearance of unfairness in the trial of an accused: see *R. v. Masuda* (1953), 106 C.C.C. 122, 17 C.R. 44, 9 W.W.R. (N.S.) 375.

Although it is not strictly necessary to decide the question in view of my conclusion as to the contravention of s. 577, I have nevertheless reached the conclusion that the failure to hold an inquiry did not result in a miscarriage of justice with respect to Hertrich and Stewart. There may be cases where an apprehended loss of impartiality with respect to one accused may result in an appearance of unfairness with respect to another or others of the accused. I am satisfied, however, that this is not the case with respect to Hertrich and Stewart.

Accordingly, I would allow the appeals of all the appellants on the ground that s. 577 was contravened in relation to the incident of April 6th and would, if necessary, have allowed the appeal of Skinner on the further ground that a miscarriage of justice with respect to him occurred within s. 613(1)(*a*)(iii) of the *Code* in relation to the incident of June 6th.

In the result, therefore, I would allow the appeals of all the appellants, quash their convictions and order a new trial.

Appeal allowed; new trial ordered.

RE GRAHAM AND McCALLION*

County Court, Judicial District of Peel, Ontario, West Co. Ct. J. July 22, 1982.

Municipal law — Conflict of interest and duty — Mayor declaring conflict

*An appeal and cross-appeal from this decision to the Divisional Court were dismissed (O'Leary, Craig and White JJ.) September 30, 1982. The following was

after debate on development programme but before voting — Mayor voting on some parts of resolution, but not on part affecting her property — Act prohibiting municipal councillor from taking part in any matter in which he has pecuniary interest — Whether Act contravened — Municipal Conflict of Interest Act, R.S.O. 1980, c. 305, ss. 2(1), 5(1).

In a debate on a proposed development programme for a municipality, the mayor chaired the meeting but did not participate in the debate. After all council members had spoken, she declared a conflict of interest and duty, as she owned land in one neighborhood which was being considered for development. She then spoke in favour of the resolution and voted on the motion for three districts under consideration, but she did not vote on the part of the resolution dealing with the district in which her property was located. A motion was brought for an order that the mayor had contravened s. 2(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1980, c. 305, which provides that a member of council who has any pecuniary interest, direct or indirect, in any contract or matter before council, shall disclose his interest as soon as practicable after commencement of the meeting, and not take part in consideration of, or vote on, any question respecting that matter or attempt to influence voting.

Held, the mayor contravened s. 2(1). She had a pecuniary interest, by reason of owning property, which was affected by the resolution before council, and she could not claim the saving provision in s. 2(4), which provides that s. 2(1) is not applicable to an interest that the council member may have as a ratepayer or which he or she may have in common with all other property owners. The mayor breached s. 2(1) by her delay in declaring a conflict until after the debate, rather than at the time the resolution was moved and seconded. Furthermore, she spoke on the motion and voted on aspects of the resolution, as well as attempting to influence voting.

Section 5 of the Act requires a judge to declare vacant the seat of a member who has contravened s. 2(1) unless the judge finds that the contravention was committed through inadvertence or a *bona fide* error in judgment or the interest of the member is remote or insignificant. The contravention here was due to a *bona fide* error in judgment and, therefore, the seat should not be declared vacant.

[*Re Casson and Reed* (1975), 60 D.L.R. (3d) 455, [1975] 6 W.W.R. 431; *Re Blustein and Borough of North York*, [1967] 1 O.R. 604, 61 D.L.R. (2d) 659, distd; *Re DeVita and Coburn* (1977), 15 O.R. (2d) 769, 77 D.L.R. (3d) 311, not folld; *The Queen ex rel. Gillespie v. Wheeler*, [1979] 2 S.C.R. 650, 97 D.L.R. (3d) 605, 25 N.B.R. (2d) 209, 26 N.R. 323, *sub nom. Re Wheeler*, 9 M.P.L.R. 161 *sub nom. R. v. Wheeler, Ex p. Gillespie*; *Re Moll and Fisher et al.* (1979), 23 O.R. (2d) 609, 96 D.L.R. (3d) 506, 8 M.P.L.R. 266; *Re Edwards and Wilson et al.* (1980), 31 O.R. (2d) 442, 119 D.L.R. (3d) 129, 14 M.P.L.R. 128; *Re Verdun and Rupnow* (1980), 30 O.R. (2d) 675, 117 D.L.R. (3d) 128; *Re Wanamaker and Patterson* (1973), 37 D.L.R. (3d) 575, [1973] 5 W.W.R. 193; *Elliott v. City of St. Catharines* (1908), 18 O.L.R. 57, refd to]

endorsed on the appeal record by O'Leary J.: "For reasons given orally this day the appeal and cross-appeal are both dismissed except that the order appealed from is varied by providing for costs on the county court scale in place of costs on the Supreme Court scale. There will be no costs on the appeal and cross-appeal."

MOTION for an order that respondent had violated the *Municipal Conflict of Interest Act* (Ont.), and for an order declaring vacant the office of mayor.

John I. Laskin, for applicant.

K. McLoughlin, for respondent.

WEST CO. CT. J. (orally):—This motion has been brought by John Graham, a ratepayer of the City of Mississauga for an order determining that the respondent, Hazel McCallion, has contravened the provisions of s. 2(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1980, c. 305. He also seeks an order pursuant to s. 5(1) of the Act declaring vacant the office of mayor of the City of Mississauga. The respondent is the incumbent mayor of the city and has served on city council for several years. She is a former mayor of Streetsville and has been in municipal politics continually since 1969. The applicant is also a former mayor of Streetsville.

As a result of careful and thorough preparation and presentation by counsel, the motion was heard without the necessity of hearing further oral testimony. The court is indebted to counsel for their assistance in setting forth the issues to be determined at this time.

The relevant facts are not in dispute. The motion arises out of a meeting of council held Monday, November 2, 1981, and the events leading up to it, and also as a result of the attendance by the mayor at a meeting of the Peel Board of Education on November 24, 1981. The court was provided with a verbatim record of proceedings at both of these meetings. The matter under discussion at both meetings was a resolution of council arising out of a staff report entitled "Residential Development Program" which will be hereafter referred to as "the Report."

The Report which was prepared by the city manager and the commissioner of planning was tabled at city council on October 14, 1981. Its completion marked the culmination of six years of study. Its conclusions were supported by all of the staff persons consulted in the course of its preparation. The Report addressed two basic questions:

(1) Is it necessary to release more land for residential development?

(2) If more land is needed for residential development, how much and where?

The answer in the Report to the first question was that the city's residential inventory of lots for detached and semi-detached dwellings and townhouses should be increased. It was considered that a sufficient supply of land for apartment units was available.

In determining which lands should be released for development an evaluation was made of undeveloped planning districts in consultation with the staff of the city, the Regional Municipality of Peel, Hydro Mississauga and both the public and separate boards of education. Seven distinct planning districts, each of which was divided into neighbourhoods, were identified. A ranking of districts in order of priority was made by each of the city, the region and the school boards and a composite ranking of the districts was then prepared. Finally, the authors of the Report considered options of releasing one, two or three districts for development. The conclusion reached was that parts of three districts should receive priority. These lands were specifically designated as Central Erin Mills, Neighbourhoods 1, 2, 3, 10 and 11; Erin Mills West, Neighbourhood 1; and Hurontario, Neighbourhoods 3, 4, 5, 6 and 7.

The major specific recommendations of the Report were:

1. That secondary plans be prepared for each of the three districts named.
2. That development applications for the neighbourhoods named not be released until secondary plans were resolved and provincial legislation enacted to authorize development agreements in respect of development levies and special agreements.

It will thus be observed that the Report dealt firstly with what lands should be released for development and secondly, with the implementation of that selection.

The contents of the Report were kept secret until it was tabled on October 14, 1981. It was then read for the first time by the mayor and the nine other members of council. A special meeting of council was called for November 2nd to consider the Report. In the meantime, a number of private meetings took place amongst some of the members of council. Seven members of council, not including the mayor, did not agree with the selection of the districts and neighbourhoods contained in the Report. As a result of the private meetings a consensus was reached by those several members as to a different selection of areas. Memoranda outlining the consensus were distributed. Finally, a private meeting of council was held on Sunday, November 1st. This meeting was attended by all members of council including the mayor. The members had before them at that meeting a draft resolution

prepared by Councillor Mahoney identifying the districts and neighbourhoods to be released as determined by consensus. The selection of the specific lands to be released was not further discussed. The meeting dealt with general matters of implementation, discussed some variations to the draft resolution and concluded with a direction to Councillor Mahoney to submit a revised resolution at the meeting on November 2nd.

The consensus of the seven councillors was that instead of the selection contained in the Report, the following lands should be released for development:

Central Erin Mills, Neighbourhoods 1, 10 and 11.
East Credit, Neighbourhood 1.

Credit Valley Meadows, Neighbourhood 1.

Lisgar, Neighbourhood 1.

Hurontario, Neighbourhoods 4, 5, 6 and 7.

The staff proposals contained in the Report involved the release of 3,120.8 acres. The draft resolution involved the release of 3,799.8 acres. The effect of the draft resolution was to reduce the portion of Erin Mills Centre by approximately one-half, to eliminate completely Erin Mills West and to reduce slightly Hurontario. In place of the lands excluded the draft resolution included 410.2 acres in Lisgar, 1,103.1 acres in East Credit and 360.5 acres in Credit Valley Meadows.

The mayor did not participate in any of the discussions leading up to the reaching of the consensus. The reason for her detachment from the discussion was that she and her husband were and still are the owners of a five-acre parcel of land at 1560 Brittania Rd. W. They have owned this property since 1951 and reside in a house built on it. At the time of purchase a five-acre parcel was the minimum size lot which could be created in that particular location. The mayor recognized that she had a pecuniary interest in the matter under discussion by council. That matter was the consideration of the selection of lands for development, a selection which might include her own land. She declared this interest early in the events leading up to the completion of the Report. She consistently maintained that position up to November 1st and adamantly refused to discuss either publicly or privately the proposed selection. The property owned by the mayor and her husband is included in East Credit, Neighbourhood 1. It was excluded from the properties listed in the Report. It was included in the list contained in the resolution presented to council.

The meeting of November 2nd was attended by a large number of persons. Numerous submissions were made, most of them in support of the proposed resolution. After hearing the delegations, council proceeded with a formal debate. The meeting was chaired by the mayor and had before it Resolution 595 which had been revised in accordance with the discussions of the previous day.

Resolution 595 contained lengthy recitals outlining the pressures on the municipality to permit further development, the financial burdens which would be involved and the need for special agreements to protect the municipality against deficits both anticipated and unanticipated. The operative part of the resolution read as follows:

> Therefore be it resolved that the secondary plans for the following districts be prepared and the following neighbourhoods be released for processing of secondary plans subject to the conditions outlined in Appendix C attached to this resolution and representing the number of low, medium and high density units as outlined in Appendix D attached to this resolution.

After listing the relevant districts and neighbourhoods the resolution continued:

> And further that notwithstanding the conditions outlined in Appendix C attached hereto and prior to the adoption of the secondary plans on any of the above neighbourhoods that the Province enact the "Special Legislation" requested by the City of Mississauga on August 26th, 1981 confirming special agreements and lot levies.

All members of council other than the mayor spoke in the debate. The mayor did not at first declare her conflict of interest. When Councillor Taylor, one of two members opposed to the selection in Resolution 595, asked the mover and seconder for an explanation of the resolution, the mayor said that she did not consider it necessary. Councillor Taylor said that he did not expect his words would have any impact on the outcome of the resolution which had already been decided upon by seven members of council, but wished to draw public attention to the issue. When he later asked whether the public school board had been consulted about the proposed resolution, the mayor informed him that she was chairman and that she would answer him if she saw fit. She also said that all ten members of council had worked on the resolution, not seven members as Councillor Taylor had suggested.

After all members of council had spoken, the mayor then declared a conflict of interest in relation to East Credit, Neighbourhood 1. She continued, however, in her words, to "retract" some comments that had been made in the course of the debate. Addressing Councillor Taylor she said: "I have no biases. I'm

going to vote quite freely on it." She also expressed pride in the consultation in which council had engaged. Reference was made to the city solicitor's opinion of the need for statutory authority for development levies and special agreements. The solicitor expressed his opposition to the release of districts for processing before the legislation was enacted. He was reminded by the mayor that his function was to see that the proposed resolution was properly worded to reflect council's wishes. As he had some reservations as to the wording, a recess was called to permit him to reword the resolution. Before recessing, the mayor made some further remarks and concluded by saying: "And I would challenge you, Mr. Taylor, to join us and vote for this resolution which I think is second to none."

After the recess the mayor read the operative portion of the resolution. She did not read the lengthy recitals which preceded the operative portion. A recorded vote was held on each of the four sets of districts and neighbourhoods, East Credit and Credit Valley Meadows being taken as one. All of the votes carried with Councillor Taylor voting in opposition in all cases and Councillor Marland voting in opposition in all cases except in respect to the Hurontario district. Mayor McCallion declared a conflict of interest and did not vote in respect to the East Credit and Credit Valley Meadows districts, but voted in favour of the other three proposals.

After council completed the other items on the agenda, the mayor expressed her appreciation to the staff and the developers for their co-operation and adjourned the meeting.

On November 24, 1981, the mayor appeared before the Peel Board of Education to discuss Resolution 595 with the trustees. She said the purpose of her visit was to try and correct any misunderstanding that might exist and to give the board members an opportunity to question her as mayor. She then made a lengthy statement of the procedures followed and the reasons for the adoption of the resolution. After that she answered numerous questions from the trustees present.

Those are the relevant facts upon which this motion has been brought. It is now necessary to decide the legal issues raised by counsel. Before doing so it would be useful to outline certain general principles which have emerged from decided cases on the subject of municipal conflict of interest in Ontario. These principles were outlined by Mr. Laskin in his presentation. They are as follows:

1. In the light of the purpose of the legislation, elected municipal

officials are held to the highest standard of conduct in their dealings with the municipality. In the Supreme Court of Canada in *The Queen ex rel. Gillespie v. Wheeler*, [1979] 2 S.C.R. 650, 97 D.L.R. (3d) 605, 25 N.B.R. (2d) 209 *sub nom. Re Wheeler*, Estey J. said, at p. 666 S.C.R., pp. 618-9 D.L.R.:

> ... qualifications for the election to and the holding of high office in all levels of government are a matter of considerable importance in the functioning of the democratic community. The sanctity of these offices and the strict adherence to the conditions of occupying those offices must be safeguarded if democratic government is to perform up to design. Therefore, these enactments as they are brought before the courts in applications in *quo warranto* and otherwise, must be given their full application according to law.

2. A member's motive is irrelevant in determining whether there has been a contravention of the legislation. In the Divisional Court in *Re Moll and Fisher et al.* (1979), 23 O.R. (2d) 609, 96 D.L.R. (3d) 506, 8 M.P.L.R. 266, Robins J., as he then was, said at p. 612 O.R., pp. 508-9 D.L.R.:

> The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute.

3. If a pecuniary interest exists, the court is not to measure or weigh the extent, degree or amount of the interest for the purpose of the proscriptions of the statute, *per* Callaghan J. in *Re Edwards and Wilson et al.* (1980), 31 O.R. (2d) 442 at p. 448, 119 D.L.R. (3d) 129 at p. 135, 14 M.P.L.R. 128.

4. If a pecuniary interest exists, the member must observe all forms of proscription of activity mentioned in the legislation. It is not enough to simply declare an interest and refrain from voting, *per* Mossop Co. Ct. J. in *Re Verdun and Rupnow* (1980), 30 O.R. (2d) 675, 117 D.L.R. (3d) 128.

5. Neither the outcome of the vote nor the effect of the resolution is relevant to the issue of contravention of conflict of interest legislation: *Re Wanamaker and Patterson* (1973), 37 D.L.R. (3d) 575 at p. 583, [1973] 5 W.W.R. 193, a decision of the Alberta Supreme Court, Appellate Division.

The relevant legislation governing the conduct of elected officials in Ontario is contained in s. 2(1) of the *Municipal Conflict of Interest Act*. This subsection was first enacted in 1972 (Ont.), c. 142. It reads as follows:

2(1) Where a member of a council or of a local board, either on his own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect,

(*a*) in any contract or proposed contract with a municipality or local board, as the case may be;

(*b*) in any contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board; or

(*c*) in any other matter in which the council or local board is concerned;

and is present at a meeting, including a committee or other meeting, of the council or local board at which the contract, proposed contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclose his interest and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter, or attempt in any way to influence the voting on any such question.

Section 4 of the Act permits a motion to be brought in this court

4(1) . . . for a determination of the question of whether or not a member of a council or of a local board has contravened subsection 2(1) or (2).

The task of the court is thus to determine whether the respondent has contravened this subsection. If it is determined that she has contravened it, the court must then consider what sanctions should be imposed for this breach.

The first issue to be addressed then is whether the respondent had any pecuniary interest, direct or indirect, in Resolution 595. It is the position of counsel for the applicant that the respondent had a pecuniary interest by reason of owning property which was affected by the resolution before council. As such, it is alleged that she had a pecuniary interest in a matter in which the council was concerned as provided in s. 2(1)(*c*).

The position of counsel for the respondent is that his client was not subject to the provisions of s. 2(1) by reason of the saving provision of s. 2(4) which reads, in part, as follows:

2(4) Subsections (1) and (2) do not apply to an interest in a contract, proposed contract or other matter that the member may have,

(*a*) as a ratepayer, or as a user of any public utility service supplied to him by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members of the council or local board;

Counsel's position is that the respondent enjoyed a community of interest in the resolution along with all other property owners in the City of Mississauga. In support of this proposition he relied on the judgment of the Appellate Division of the Alberta Supreme Court in *Re Casson and Reed* (1975), 60 D.L.R. (3d) 455, [1975] 6 W.W.R. 431, and in particular the judgment of Clement J.A. at pp. 463-4 D.L.R., p. 439 W.W.R., as follows:

> I do not accede to the argument that the determination of community of interest involves a comparison of degrees of such interest as between one elector and another, that is to say between a member of council and his fellow electors, so that an elector with a greater interest does not share the common interest with one whose interest is less.

Counsel also relied on the decision of *Elliott v. City of St. Catharines* (1908), 18 O.L.R. 57 at p. 61, as follows:

> The result of these cases is that there is a consensus of opinion that where the personal or pecuniary interest of the member is that of a ratepayer, in common with other ratepayers, or . . . "where, though he is personally interested, his interest is not different from that of the community in general," the member is not disqualified.
>
> The community of interest spoken of I understand to be a community in the kind, not in the degree, of the interest.

This statement was accepted by Stark J. in *Re Blustein and Borough of North York*, [1967] 1 O.R. 604 at pp. 608-9, 61 D.L.R. (2d) 659 at pp. 663-4.

Counsel for the respondent contended that on the basis of these authorities, the fact that the mayor owned five acres of land did not put her in a different position than any other property owner in the city. He also suggested that although the mayor had declared a conflict of interest, she had done so without obtaining legal advice and had she sought such advice she would have been advised that she was not obliged to declare any interest.

Alternatively counsel contended that the interest of the mayor was common to all other members of the municipality affected by the resolution and that she was not bound by the legislation unless it could be shown that her particular interest was a special interest beyond that common to all property owners.

I must reject these propositions. In the first place, *Re Casson and Reed*, *supra*, was decided in Alberta under legislation which differs from that in Ontario. The Alberta decision involved a consideration of common interests as owners of property. The relevant legislation in Ontario exempts an interest in any matter that a member may have as a "ratepayer" in like manner and subject to the like conditions as are applicable in the case of other persons who are not members of council. A ratepayer is defined as a person entitled to vote at a municipal election. A ratepayer need not be a property owner. Further, while *Blustein* is an Ontario authority, it was decided under legislation which preceded that now in effect and differed from it.

In any event, any pecuniary interest of the respondent in this case was as a property owner and not as a ratepayer; nor was her interest common to all other property owners in the city. She was

the owner of property which was affected by the adoption of the resolution. Her interest was different from that of a property owner whose property was not so affected. In addition, her interest as the owner of a five-acre parcel differed from that of an owner of a lot incapable of any further division. It is immaterial that she had no plans for immediate development of her property. She herself recognized that she had a pecuniary interest when she earlier declared the conflict of that interest and steadfastly refused to be drawn into any discussion of the designation of the lands selected for future development. That conclusion is evident from the relevant facts of this motion and from the reading of the legislation. It is supported by the judgment of the Divisional Court in *Re Edwards and Wilson, supra*, where Callaghan J. said, at p. 450 O.R., p. 137 D.L.R.: "Once any pecuniary interest different in kind from other ratepayers is established s. 2(4)(*a*) is inoperative."

In the further alternative, counsel for the respondent contended that the actions of the respondent did not offend s. 2(1) as Resolution 595 was in two parts; what property was to be released and what policy should be followed in releasing it. He contended that the respondent's concern and involvement was limited to a consideration of the policy aspects of the resolution and only addressed that matter.

That argument must also fail. It is true that certain policy matters were referred to in the recitals to Resolution 595 and certain conditions were attached to it. Even accepting those qualifications the resolution remained a single resolution, namely, to designate lands to be released for development. In addition, the separate votes taken differentiated only between the districts and not between the selection and the policy.

I therefore find that the respondent had a pecuniary interest in Resolution 595 when it came before council on November 2, 1981, and that she was bound by the proscriptions contained in s. 2(1).

The proscriptions of the subsection are fourfold. There is an obligation on a member having a pecuniary interest in any matter in which council is concerned: first, to disclose that interest as soon as practicable after the commencement of the meeting; second, to refrain from taking any part in the consideration or discussion of the matter; third, to refrain from voting on any question with respect to the matter, and fourth, to refrain from attempting in any way to influence the voting on the matter.

Although a breach of any one of these proscriptions constitutes a contravention of s. 2(1), on the material before me I must find that the respondent has breached all of them.

In the first place she did not declare her interest as soon as practicable after the commencement of the meeting. She did not declare that interest until after the resolution had been moved, seconded and debated by all other members of council. The declaration was not made until the vote was about to be put. The fact that a conflict of interest had been declared on previous occasions or that the mayor had refused to discuss the designation of lands on earlier occasions is no answer. Her conflict of interest ought to have been declared as soon as council had Resolution 595 before it, duly moved and seconded.

As His Honour Judge Carley observed in *Re Lovekin and Rickard*, unreported, April 8, 1981, at p. 27 [summarized 9 A.C.W.S. (2d) 416]:

> In matters of conflict of interest no elected official is entitled to wait until the last nail in the horse's shoe has been driven home before recognizing his pecuniary interest, declaring it and refraining from voting.

Secondly, the respondent did not refrain from taking part in consideration or discussion of the motion. It was contended on behalf of the applicant that by simply chairing the meeting she had breached the statute. I do not think that such a conclusion necessarily follows, but by remaining as the presiding officer the mayor ran the risk that any intervention on her part, even on points of order, might be seen to be an attempt to influence the voting. In the present case, however, the mayor's involvement in the debate was more than peripheral. She decided that an explanation of the resolution was not necessary. She determined that certain questions need not be answered and finally, after having declared her interest, she expressed her intention to vote freely on the resolution and spoke in favour of it.

Thirdly, although she refrained from voting on that portion of the resolution dealing specifically with the district in which her lands are located, she voted on all other aspects of the resolution. The Act expressly prohibits voting on *any* question with respect to the matter in issue.

Finally, she did not refrain from attempting in any way to influence the voting on the matter. To the contrary, the last words spoken in the debate on the resolution before the resolution was read and the vote was taken were a challenge by the mayor to Councillor Taylor to "join us and vote for this resolution which I think is second to none".

I therefore find that the respondent has contravened s. 2(1) of the *Municipal Conflict of Interest Act.*

Before turning to the subject of sanction, I would observe that I

do not consider that the attendance of the respondent before the Peel Board of Education on November 24, 1981, was a contravention of the Act. The prohibitions contained in s. 2(1) relate to conduct at meetings of the municipal body of which the elected official is a member. They do not extend to appearances by an elected official before another local board when the matter in issue has already been resolved by the member's own council.

Having determined that a contravention has occurred, it is then necessary to consider what sanctions are appropriate. The extent of those sanctions is determined by s. 5 which reads as follows:

> 5(1) Where the judge determines that a member of council or of a local board has contravened subsection 2(1) or (2), he shall, subject to subsection (2) of this section, declare the seat of the member vacant and may disqualify him from being a member of any council and of any local board during the period thereafter of not more than seven years.
>
> (2) Where the judge determines that a member of council or of a local board has contravened subsection 2(1) or (2), if the judge finds that the contravention was committed through inadvertence or by reason of a *bona fide* error in judgment or that the interest of the member is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member, the member is not subject to having his seat declared vacant or to being disqualified as a member, as provided by subsection (1).

Thus, once a finding of a contravention has been made, the seat of the member must be declared vacant unless one of the saving factors enumerated in s. 5(2) is found. In addition, the member is subject to being disqualified from office for up to seven years.

Mr. Laskin candidly acknowledged that the courts have not imposed any additional disqualification when there has been no question of corruption. He also conceded that the circumstances in this case do not warrant such an order. He asked, however, that an order be made declaring the seat of the respondent to be vacant. He contended that there was an onus on the respondent to bring herself within the saving provisions of s. 5(2) and that she had failed to meet that onus.

In order to come within these provisions there must be a finding that the contravention was committed through inadvertence or by reason of *bona fide* error in judgment or that the interest of the member is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. It was conceded by counsel for the respondent that there could not be a finding of inadvertence on the part of the respondent. Thus, the issue is narrowed to one of whether the respondent had acted through *bona fide* error of judgment or whether her interest was remote.

On the issue of remoteness counsel for the respondent relied on the judgment in *Re DeVita and Coburn* (1977), 15 O.R. (2d) 769, 77 D.L.R. (3d) 311, in which a county court judge found that there had been no conflict of interest and no contravention of s. 2(1) because of a finding that the interest of the member was so remote as to be likely to influence his judgment and also because his interest in the matter was well known. With all deference to the learned judge, I do not consider that judgment to be good law. It is in direct conflict with the judgment in *Re Moll and Fisher et al.* (1979), 23 O.R. (2d) 609, 96 D.L.R. (3d) 506, 8 M.P.L.R. 266. A finding that a member has acted in a manner enumerated in s. 5(2) does not prevent a finding of contravention of s. 2(1). It simply excuses the member from some of the consequences of such a finding.

It cannot be said that the respondent's interest in Resolution 595 was so remote as to be unlikely to influence her judgment. The fact that she declared a conflict of interest belies that position.

That leaves for consideration whether her actions were prompted by *bona fide* error in judgment. It will be observed that in this determination the court cannot consider the effect of the respondent's actions or that her actions had no ultimate bearing on the decision reached by the majority of council; nor can the court consider the length of the unexpired term of office, nor the effect on the municipality of the removal from office of its head. The court must consider solely the actions of the respondent.

It is acknowledged on behalf of the applicant that the respondent's actions were free of corrupt intent. It also appears that the decision taken produced no immediate financial benefit to her. It was apparent to all present that the outcome of the vote was a foregone conclusion. She had previously recognized her conflict of interest and had observed what was required of her by the Act. On the day in question she made some effort to comply with the Act. Given these circumstances, I accept the position taken by her counsel that in the euphoria of the adoption of a resolution supported by a majority of council and as well by most of the competing economic interests, the mayor departed from her previous cautions and correct approach to the issue. On November 2, 1981, she committed a substantial error in judgment and contravened s. 2(1), but having regard to all of the circumstances, I find that her contravention was by reason of a *bona fide* error in judgment. As a result, by virtue of the provisions of s. 5(2), she is not subject to having her seat declared vacant.

I add, however, that had the respondent not declared an

interest and refrained from voting on the most significant portion of Resolution 595, I would have had no alternative but to declare her seat vacant. This is not to imply that any token attempt to comply with s. 2(1) will excuse a member from impeachment. The relevant circumstances in each case will determine the ultimate result.

While the motion must be dismissed, the applicant has obtained substantial success and is entitled to costs, the extent of which will be determined after hearing further submissions of counsel.

Motion dismissed.