

Amended this 23rd Day of September 2022

Pursuant to Rules 26.03 (1) and 26.02 (a)

Harsha
Goordyal

Digitally signed by
Harsha Goordyal
Date: 2022.09.23
15:30:55 -0400'

Court File No.: DC-22-144-JR

FORM 68A

Courts of Justice Act

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL
REVIEW

BETWEEN:

HAROLD JONKER

Applicant

-and-

THE TOWNSHIP OF WEST LINCOLN

Respondent

**FRESH AS AMENDED NOTICE OF APPLICATION TO DIVISIONAL COURT FOR
JUDICIAL REVIEW TO THE RESPONDENT**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard

- In person
- By telephone
- conference By
video
conference

at the following location: Hamilton Courthouse, 45 Main St. E. on _____, at 10 a.m. or as soon after that time as the application can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: August 18, 2022

Issued by
Registrar
Address of court office

TO: THE TOWNSHIP OF WEST LINCOLN
318 Canborough
St., Smithville,
ON L0R 2A0

AND TO: THE INTEGRITY COMMISSIONER OF THE TOWNSHIP OF WEST LINCOLN
John Mascarin
Aird & Berlis LLP
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

AND TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office – Civil
720 Bay Street
8th Floor
Toronto, ON M7A 2S9

APPLICATION

1. The applicant makes application for:

- 1) A Judicial Review of the Respondent's July 18, 2022, decision to denounce the impugned actions of the Applicant and sanctioning the Applicant (the "**Decision**") pursuant to Sections 4.1(g) and 7.1 of the Code of Conduct for Members of Council and Local Board Members (the "**Code**");
- 2) A Judicial Review of the Integrity Commissioner's report to the Respondent dated July 12, 2022 and presented to on July 18, 2022 (the "**Report**");
- 3) A Declaration that the Decision violated the principles of natural justice and therefore the Decision is of no force or effect;
- 4) A Declaration that the Decision and Report are ultra vires the authority of the Respondent and therefore are of no force and effect;
- 5) A Declaration that the Decision and Report are invalid due to errors in law, jurisdiction, fact or mixed fact and law;
- 6) A Declaration that the Decision unreasonably and unjustifiably infringes sections 2(a)(b)(c) and (d) of the Canadian Charter of Rights and Freedoms (the "**Charter**");
- 7) Disclosure from the Respondent, all of the information relied upon by Respondents in creating the Report and in forming the Decision that the Applicant violated the Code of Conduct, pursuant to Section 10 of the Judicial Review Procedures Act, RSO 1990, c J.1;
- 8) An order of certiorari quashing and setting aside the Report and Decision;
- 9) An order prohibiting the Respondent from issuing subsequent Decisions on substantially similar or identical grounds;
- 10) An Order that the Applicant be reimbursed his lost remuneration and the cost of monetary penalties paid pursuant to the Decision;
- 11) If necessary, an interim and interlocutory injunction:
 - a. enjoining the Respondent from exercising any powers under Code against the Applicant; and
 - b. An order prohibiting the Respondent from issuing subsequent Decisions on substantially similar or identical grounds until the final disposition of this Application;
- 12) An order, if necessary, extending time of making an application for judicial review;

- 13) the costs of this Application; and
- 14) Such further and other relief as counsel may advise and this Honourable Court may permit.

2 The grounds for the application are:

Background

- 1) The Applicant, Harold Jonker, is owner and operator of a trucking business, and an elected part-time councillor of the Township of West Lincoln, in the Province of Ontario, where he also resides.
- 2) The Respondent, the Township of West Lincoln, is a municipality in the Province of Ontario.
- 3) On January 15, 2022, the Government of Canada imposed restrictions on cross-border trucking for Canadian truckers who had not received two-doses of approved Covid-19 vaccines;
- 4) The Applicant was among those negatively affected by the cross-border travel restrictions;
- 5) In response to the cross-border restrictions, truck drivers from across Canada began a convoy toward Ottawa as a demonstration of political protest against the cross-border restrictions and other government restrictions on liberty related to Covid-19 (the “**Demonstration**”).
- 6) On or about January 28th, 2022, many protestors converged in Ottawa and surrounding area.
- 7) The Applicant joined the protest as a “Route Captain” for the Niagara convoy route arriving in Ottawa on or about January 28, 2021.
- 8) The Applicant parked his truck outside of downtown Ottawa and engaged in lawful and peaceful protest.
- 9) While in Ottawa, some demonstrators gave out beverages, snacks and meals to participants in the Demonstration, including the Applicant.
- 10) On February 14, 2021, the Canadian government declared a public order emergency under the *Emergencies Act*, which it claimed was meant to end “disruptions, border blockades, and the occupation of Ottawa’s downtown core”.
- 11) The emergency declaration did not deem it illegal to protest against government Covid-19 mandates.
- 12) The Applicant departed for West Lincoln on February 21, 2022.

- 13) Several councillors of the Township of West Lincoln were openly opposed to the Demonstration and to protests against Covid-19 related government mandates.
- 14) After the Demonstration, councillors for the Township of West Lincoln brought a motion seeking to commence an investigation against the Applicant for his participation pursuant to the Code, but the motion was unsuccessful.
- 15) Nonetheless, on or about February 28, 2022, a complaint was made against the Applicant which alleged that his participation breached numerous provisions of the Code.
- 16) The Applicant has not been provided with a copy of the complaint.

The Investigation, Report and Decision

- 17) The Integrity Commissioner for the Respondent investigated the allegations contained in the complaint, culminating in the July 12, 2022, Report.
- 18) The Report ultimately found that the Applicant breached Section 4.1(g) and 7.1 of the Code.
- 19) Section 4.1(g) of the Code requires West Lincoln councillors to “recognize that...they owe a duty of loyalty to the residents of the Township”.
- 20) The Report claimed that, *inter alia*, the Demonstration was “unlawful”, that the Applicant participated in “illegal activity”, and that this resulted in a contravention of Section 4.1(g) of the Code.
- 21) Section 7.2 of the Code prohibits a West Lincoln councillor from accepting a gift “connected directly or indirectly with the performance of his or her duties.”
- 22) The Report claimed that, *inter alia*:
 - 1) the Applicant’s participation in the Demonstration was connected to the performance of his duties as a councilor of West Lincoln; and
 - 2) that the Applicant’s acceptance of free food and alleged acceptance of free gasoline while demonstrating was a violation of Section 7.1 of the Code
- 23) The Report recommended that the Respondent reprimand the Applicant, impose a suspension of his remuneration equal to thirty days, and make the Applicant repay the monetary value of any food and fuel received by him and “his contingent of supporters”.
- 24) The Report was presented by the Integrity Commissioner to the Respondent’s council meeting on July 18, 2022.
- 25) Prior to the Report being accepted by the Respondent, the Integrity Commissioner advised

the Respondent's councillors that they could not "second guess or question" the conclusions of the Report.

- 26) The Integrity Commissioner also claimed at the meeting that the Demonstration was illegal and unlawful, and alleged that the Applicant "refused to answer" his questions during the investigation.
- 27) The Respondent accepted the Report, adopted its recommendation, and issued the Decision at the council meeting of July 18th, 2022.

The Violations of Natural Justice and the Charter

- 28) The Decision is *ultra vires* the Respondent as it was made for an improper purpose, and in bad faith in furtherance of an ulterior motive to discourage lawful protest and punish political dissent.
- 29) In making the Decision, the Respondent erred in law, jurisdiction, fact and mixed fact and law, which errors merit judicial review of the Decision, including but not limited to:
 - 1) Abusing and fettering its discretion and authority by giving weight to irrelevant factors;
 - 2) Failing to give any or adequate consideration to highly relevant factors including the constitutional and common law right to peacefully protest;
 - 3) Failing to provide the Applicant a fair opportunity to respond to the allegations made against him;
 - 4) Exercising discretion unreasonably and with ulterior and improper motives;
 - 5) Abusing discretionary authority by making a decision influenced by bias, bad faith and with a closed state of mind;
 - 6) Exercising its discretion in the absence of necessary evidence or on the basis of insufficient evidence;
 - 7) Failing to adequately balance the Charter values and rights of the Applicant with his duties under the Code;
 - 8) Erroneously interpreted the relevant statutes, regulations and policies; and
 - 9) Failing to follow the Respondents own policies and procedures or, in the alternative, such rules are abusive and *ultra vires* the enabling Act.

- 30) In tendering the Report to the Respondent, making the conclusions and recommendations in the Report, the Integrity Commissioner erred in law, jurisdiction, fact and mixed/fact and law, which errors merit judicial review of the Report, including but not limited to:
- 1) Investigating and making findings with respect to alleged violations of Provincial and Federal laws;
 - 2) Finding that the Applicant and unnamed associates engaged in unlawful conduct;
 - 3) Finding that participation in the Demonstration was unlawful;
 - 4) Finding that the Demonstration itself was an unlawful protest as a result of various government declarations of emergency;
 - 5) Finding that a Court had determined that the Demonstration was unlawful;
 - 6) Taking into account irrelevant considerations, such as the fact that Ottawa Police arrested unspecified individuals during the Demonstration;
 - 7) Failing to give any or adequate consideration to highly relevant factors, including the Applicant's *Charter* rights,
 - 8) Finding that the Applicant refused to answer questions; and
 - 9) Finding that the Applicant received gifts in connection with his duties as a Councilor
- 31) The Integrity Commissioner's investigation, recommendations and conclusions in the Report are unreasonable and breached the duty of procedural fairness due to the Applicant.
- 32) The Integrity Commissioner demonstrated bias against the Applicant through the investigative process and Report by making prejudicial findings against him without evidence, and taking into consideration public perceptions or opinions about the legality of the Demonstration.
- 33) s. 4 of the *Judicial Review Procedure Act*, RSO 1990, c J.1.
- 34) s. 101 of the *Courts of Justice Act*, RSO 1990.
- 35) Rule 1.05, 2.03, 3.02, 40.01 and 40.02 of the *Rules of Civil Procedure*.
- 36) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3 The following documentary evidence will be used at the hearing of the application:

- 1) The Affidavit of the Applicant, Harold Jonker, to be sworn;
- 2) Such further and other documentary evidence as counsel may advise and the Honourable Court may permit.

August 18, 2022

Jorge Pineda (63505B)

[REDACTED]

Samuel Bachand
(Quebec Bar member #301580-7, appearing
herein under a LSO temporary practice
permit)

[REDACTED]

Solicitors for the Applicant

HAROLD JONKER

and

THE TOWNSHIP OF WEST LINCOLN

Applicant

Respondent

Court File No.: DC-22-144-JR

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**FRESH AS AMENDED NOTICE OF
APPLICATION
(JUDICIAL REVIEW)**

Jorge Pineda (63505B)

[REDACTED]

**Samuel Bachand
(Quebec Bar member #301580-7, appearing
herein under a LSO temporary practice permit)**

[REDACTED]

Counsels for the Applicant