

FORM 68A

*Courts of Justice Act*

AMENDED NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

BETWEEN:

**CYNTHIA GUERARD**

Applicant

-and-

**THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS**

-and-

**THE INTEGRITY COMMISSIONER OF THE MUNICIPALITY OF MISSISSIPPI MILLS**

Respondents

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 (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location: Ottawa ~~Hamilton~~ Courthouse, 161 Elgin St ~~45 Main St. E.~~ on \_\_\_\_\_, at 10 a.m. or as soon after that time as the application ~~motion~~ 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: SEPTEMBER 8, 2022  
AMENDED: SEPTEMBER 26, 2022

Issued by   
Registrar 161 ELGIN STREET, OTTAWA, ON K2P 2K1  
Address of court office

**TO: THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS**  
3131 OLD PERTH ROAD  
PO BOX 400 RR 2  
ALMONTE ON  
K0A 1A0

**TO: THE INTEGRITY COMMISSIONER OF THE MUNICIPALITY OF MISSISSIPPI MILLS**  
TONY FLEMING  
SMITH ROBINSON BUILDING, SUITE 300  
27 PRINCESS STREET  
KINGSTON ON  
K7L 1A3

**TO: THE ATTORNEY GENERAL OF ONTARIO**  
CROWN LAW OFFICE – CIVIL  
MCMURTRY-SCOTT BUILDING, 8<sup>TH</sup> FLOOR  
20 BAY STREET  
TORONTO ON  
M7A 2S9

## APPLICATION

### 1. The applicant makes application for:

- 1) A Judicial Review of the August 9, 2022, decision of the Respondent, the Corporation of the Municipality of Mississippi Mills (the “**Municipality**”), to sanction the Applicant, Councillor Cynthia Guerard, upon the recommendation of the Respondent, the Integrity Commissioner of the Municipality of Mississippi Mills (the “**Integrity Commissioner**”), by suspending Councillor Guerard’s pay for a period of 90 days (the “**Decision**”) for her purported breach of Sections 11(c) and 30(a) of the Code of Conduct for Members of Council and Local Boards (the “**Code**”);
- 2) A Judicial Review of the Integrity Commissioner’s report to the Municipality, dated August 2, 2022, (the “**Report**”) which concluded that Councillor Guerard breached the Municipality’s mandatory proof of Covid vaccination policy (the “**Covid Policy**”) and the Code, failed to show respect for the Covid Policy, failed to cooperate with the Integrity Commissioner’s investigation, and failed to show remorse, and which recommended that the Municipality suspend Councillor Guerard’s pay for a period of 90 days.
- 3) A Declaration that the Decision and the Report substantially and procedurally violated the principles of natural justice and therefore the Decision and the Report are of no force or effect;
- 4) A Declaration that the Decision is *ultra vires* the authority of the Respondents and therefore is of no force and effect;
- 5) A Declaration that the Decision and the Report are invalid due to errors in law, jurisdiction, fact and/or mixed fact and law;
- 6) A Declaration that the Decision and the Report unreasonably and unjustifiably infringed the Applicant’s section 7 and 8 rights as protected by the *Canadian Charter of Rights and Freedoms* (the “**Charter**”);
- 7) Disclosure from the Respondents, all of the information relied upon by the Integrity Commissioner in investigating and preparing the Report and all of the information relied upon by the Municipality in making the Decision, pursuant to Section 10 of the *Judicial Review Procedures Act*, RSO 1990, c J.1;
- 8) Disclosure from the Respondents of all communications related to the within matter between the Municipality’s Council members and staff and the Integrity Commissioner;
- 9) An order of *certiorari* quashing and setting aside the Report and the Decision;
- 10) An order prohibiting the Municipality from issuing subsequent Decisions on substantially similar or identical grounds;
- 11) An Order that the Applicant be reimbursed her lost remuneration and the cost of monetary penalties paid pursuant to the Decision;
- 12) The costs of this Application; and
- 13) Such further and other relief as counsel may advise and this Honourable Court may permit.

## 2 The grounds for the application ~~motion~~ are:

### Background

- 1) The Applicant, Councillor Guerard, is an elected Councillor of the Municipality of Mississippi Mills of Lanark County, in the Province of Ontario, where she also resides.
- 2) The Respondent, the Municipality, is an incorporated municipality in the Province of Ontario.
- 3) The Respondent, the Integrity Commissioner, was appointed as the Integrity Commissioner for the Municipality, pursuant to Part V.1 of the *Municipal Act, 2001*, in 2018 and remained in that role at all material times.
- 4) According to the Integrity Commissioner, his office received a complaint against Councillor Guerard on or about May 12, 2022, alleging that Councillor Guerard had attended Council meetings on May 3 and 17 [*sic*], 2022, without being vaccinated against Covid-19 and providing proof thereof to the Chief Administrative Officer, in violation of the Covid Policy. Councillor Guerard was not provided with the complaint.
- 5) The Integrity Commissioner conducted an investigation of the complaint, and on August 2, 2022, he tendered the Report to Council recommending that Councillor Guerard's pay be suspended for a period of 90 days.
- 6) Councillor Guerard was not interviewed during the investigation and was not provided with a draft version of the Report at any time.
- 7) On August 9, 2022, Council issued the Decision pursuant to its powers under the *Municipal Act, 2001*, accepting the Report, adopting the conclusions and recommendations of the Integrity Commissioner, and suspending the pay of Councillor Guerard for 90 days.
- 8) The Decision reprimanded and punished Councillor Guerard for maintaining that her Covid vaccination status was a private health matter protected by the *Personal Health Information Protection Act*, allegedly failing or refusing to cooperate with the investigation of the Integrity Commissioner, and supposedly demonstrating a "lack of remorse".

### The Investigation and Report

- 9) As a state actor, the Integrity Commissioner is bound by the *Charter*. The Integrity Commissioner additionally owes Councillor Guerard a duty of procedural fairness, and a process which conforms to the Code and the principles of natural justice.
- 10) The Integrity Commissioner's investigation and his recommendations and conclusions in the Report are both substantively unreasonable and breached his duty of procedural fairness towards Councillor Guerard.
- 11) The Integrity Commissioner is also the Municipality's solicitor. The Integrity Commissioner is in a conflict of interest between his fiduciary obligations to the Municipality and his role as an impartial investigator of Councillor Guerard on behalf of the Municipality.

- 12) The Integrity Commissioner has demonstrated a personal bias against Councillor Guerard through the investigative process and Report by, among other things, failing to properly recuse himself when Councillor Guerard raised the evidence of his conflict of interest, determining without evidence that Councillor Guerard failed to demonstrate remorse, and accordingly recommending the maximum penalty available, reserved for only the most serious breaches of the Code.
- 13) In accepting and investigating the complaint, tendering the Report to Council, and making the conclusions and recommendations in the Report, the Integrity Commissioner erred in law, jurisdiction, fact and/or mixed fact and law, which errors merit judicial review of the Report, including but not limited to:
- a) Acting within a conflict of interest;
  - b) Demonstrating bias against Councillor Guerard;
  - c) Undertaking a procedurally unfair investigation by, among other things, failing to interview Councillor Guerard and failing to provide a draft of the Report for her review and comment;
  - d) Recommending to Council that the Report be identified on the public Council meeting agenda and providing the report to Council without precaution to ensure its confidentiality;
  - e) Accepting a complaint for an offence before the date on which the offence allegedly took place;
  - f) Applying the Covid Policy to Councillor Guerard when it did not apply to her;
  - g) Failing to give any or adequate consideration to highly relevant factors including Councillor Guerard's *Charter* rights to privacy, bodily integrity, and right against unreasonable searches;
  - h) Breaching the following provisions of the Code:
    - i. Section 9 – treated Councillor Guerard with abuse, bullying, harassment and/or intimidation;
    - ii. Sections 11(a) and (b) – failed to act with integrity, accountability and transparency;
    - iii. Section 11(c) – violated the *Charter* rights of Councillor Guerard;
    - iv. Sections 16 and 18 – City Solicitor not to act when in a conflict of interest;
    - v. Section 53 – failed to operate independently of Council; and
    - vi. Section 56 – failed to refer to outside counsel/entity as required and continued to investigate after Councillor Guerard contended that the forced or coerced disclosure of her health information was a breach of the provisions of the *Personal Health Information Protection Act*.

*The Decision*

- 14) As a state actor, the Municipality is bound by the *Charter*. The Municipality additionally owes Councillor Guerard a duty of procedural fairness, and a process which conforms to the Code and the principles of natural justice.
- 15) In reliance on the Integrity Commissioner's conclusions and recommendations, the Municipality imposed additional punishment on Councillor Guerard for her alleged lack of remorse, resulting in Councillor Guerard receiving the "maximum penalty available", contrary to the penalty provisions set out in section 223.4(5) of the *Municipal Act, 2001* and established precedent.
- 16) In making the Decision, the Municipality erred in law, jurisdiction, fact and/or mixed fact and law, which errors merit judicial review of the Decision, including but not limited to:
  - a) Abusing and/or fettering its discretion and authority by giving weight to irrelevant factors;
  - b) Relying on the recommendation of the Integrity Commissioner, who is the Municipality's solicitor and was in a conflict of interest, was biased against Councillor Guerard, and breached the Code in investigating the complaint;
  - c) Failing to give any or adequate consideration to highly relevant factors including the *Charter* rights of Councillor Guerard to privacy, bodily integrity, and a right against unreasonable searches;
  - d) Exercising discretion unreasonably and with ulterior and improper motives;
  - e) Exercising its discretion in the absence of necessary evidence or on the basis of insufficient evidence; and
  - f) Breaching the following provisions of the Code:
    - i. Section 9 – treated Councillor Guerard with abuse, bullying, harassment and/or intimidation;
    - ii. Sections 11(a) and (b) – failed to act with integrity, accountability and transparency;
    - iii. Section 11(c) – failed to act in accordance with the *Charter* by violating the *Charter* rights of Councillor Guerard;
    - iv. Section 25 – maliciously injuring the reputation of Councillor Guerard by publicly releasing the Decision without due process;
- 17) The Applicant relies on the following:
  - a) s. 4 of the *Judicial Review Procedure Act*, RSO 1990, c J.1;
  - b) s. 101 of the *Courts of Justice Act*, RSO 1990;
  - c) Rule 1.05, 2.03, 3.02, 40.01 and 40.02 of the *Rules of Civil Procedure*;
  - d) The Code of Conduct for Members of Council and Boards;
  - e) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**The following documentary evidence will be used at the hearing of the application ~~motion~~:**

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

September 8, 2022

**Keith Pridgen (Law Society of Alberta 21620)**

[REDACTED]

**Jorge Pineda (63505B)**

[REDACTED]

**Solicitors for the  
Applicant**

**CYNTHIA GUERARD**

APPLICANT

**-and-**

**THE CORPORATION OF THE MUNICIPALITY OF  
MISSISSIPPI MILLS ET AL.**

RESPONDENTS

Court File No.: DC-22-2738-JR

**ONTARIO SUPERIOR COURT OF  
JUSTICE  
(DIVISIONAL COURT)**

At OTTAWA

**AMENDED NOTICE  
OF APPLICATION**

Keith Pridgen  
(Law Society of Alberta #21620)

Jorge Pineda  
(LSO #65305B)

Lawyers for the Applicant