

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

B E T W E E N:

**CYNTHIA GUERARD**

Applicant

and

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

and

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

Respondents

APPLICATION UNDER Rules 14.05(2) and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and Sections 2(1) and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c J.1.

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**FRESH AS AMENDED NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

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TO THE RESPONDENT

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

THIS APPLICATION for judicial review will come on for a hearing on **TBD**, at the courthouse located at 161 Elgin St, Ottawa, Ontario. K2P 2K1.

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 this court office, 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 court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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.

Date: SEPTEMBER 8, 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

**AND TO: THE INTEGRITY COMMISSIONER OF THE MUNICIPALITY OF MISSISSIPPI MILLS**



**AND TO: THE ATTORNEY GENERAL OF ONTARIO**  
Crown Law Office – Civil  
McMurtry-Scott Building, 8th Floor 20 Bay Street  
Toronto, ON M7A 2S9

## APPLICATION

1. The applicant, Cynthia Guerard (“**Ms. Guerard**”), makes application for:
  - a. an order setting aside the decision of the Respondent, the Corporation of the Municipality of Mississippi Mills (the “**Municipality**”), to sanction Ms. Guerard, upon the recommendation of the Respondent, the Integrity Commissioner of the Municipality of Mississippi Mills (the “**Integrity Commissioner**”), by suspending Ms. 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**”);
  - b. an order setting aside the Integrity Commissioner’s report to the Municipality, dated August 2, 2022 (the “**Report**”) which makes an adverse inference against Ms. Guerard for refusing to disclose her vaccination status in the course of the Integrity Commissioner’s investigation; concluded that Ms. 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;
  - c. a declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) that the Decision and the Report unreasonably and unjustifiably infringed Ms. Guerard’s section 2(b) right to freedom of expression;
  - d. disclosure from the Respondents of all the information relied upon by the Integrity Commissioner in investigating and preparing the Report and all the

information relied upon by the Municipality in making the Decision, pursuant to section 10 of the *Judicial Review and Procedures Act*, RSO 1990, c J-1;

- e. an order that the Applicant be reimbursed her lost remuneration and the cost of monetary penalties paid pursuant to the Decision;
  - f. an Order that given the public interests engaged in this matter, no costs should be awarded for or against Ms. Guerard; and
  - g. such further and other relief as counsel may advise and this Honourable Court may permit.
2. The grounds for this application are:

#### The Parties

- a. the Applicant, Ms. Guerard, was an elected Councillor of the Municipality of Mississippi Mills of Lanark County, in the Province of Ontario, where she also resides.
- b. the Respondent (the “**Municipality**”) is an incorporated municipality in the Province of Ontario.
- c. the Respondent (the “**Integrity Commissioner**”) was appointed as the Integrity Commissioner for the Municipality, pursuant to Part V.1 of the *Municipal Act, 2001* (the “*Act*”), in 2018 and remained in that role at all material times.

#### Background

- d. on November 2, 2021, the Municipality enacted the Covid Policy which applied to employees, volunteers, and contractors of the Municipality and students in placements with the Municipality. It required them to disclose their COVID-19 vaccination status to the Municipality.

- e. during the May 17, 2022, meeting of the Municipality's Council, Council ordered Ms. Guerard to vacate the Council's chambers for allegedly breaching the Code's requirement to comply with the Covid Policy, despite the fact that she was a Councillor. Nonetheless, Ms. Guerard complied and vacated the Council chamber.
- f. during the June 7, 2022, meeting of the Municipality's Council, believing she would again be ordered to vacate the Council's chambers as at the May 17, 2022, meeting, Ms. Guerard chose to sit in the gallery of the Council's chambers which was open to the public without a requirement for proof of vaccination with the hope of simply observing the meeting.
- g. even though she sat in the gallery Council found that Ms. Guerard had again breached the Code's requirements to comply with the Covid Policy by attending the meeting and ordered Ms. Guerard to apologize. Ms. Guerard complied and apologized, yet remained in the gallery.
- h. after the June 7, 2022, Council meeting, Ms. Guerard attended all meetings of Council remotely as she believed she would be refused entrance to Council chambers.

#### Investigation and Report

- i. according to the Integrity Commissioner, his office received a complaint against Ms. Guerard on or about May 12, 2022, alleging that Ms. Guerard had attended Council meetings on May 3 and 17 [sic], 2022, without providing proof of vaccination to the Chief Administrative Officer and presuming that Ms. Guerard

was unvaccinated, in violation of the Covid Policy. Ms. Guerard was not provided with the complaint.

- j. the Integrity Commissioner conducted an investigation of the complaint, and on August 2, 2022, he tendered the Report to Council.
- k. in the Report, the Integrity Commissioner states that he asked Ms. Guerard through her counsel to confirm whether she was vaccinated against COVID-19 as of October 31, 2021 and that Ms. Guerard refused to answer. The Integrity Commissioner found that Ms. Guerard was unvaccinated based only on an adverse inference drawn from her refusal to answer whether she is vaccinated.
- l. the Integrity Commissioner found that Ms. Guerard's failure to be vaccinated constituted a breach of s. 11(c) of the Code.
- m. the Integrity Commissioner also found that Ms. Guerard's failure to submit proof of vaccination to the Chief Administrative Officer of the Municipality constituted a breach of s. 30(a) of the Code.
- n. the Integrity Commissioner found that Ms. Guerard's refusal to disclose her vaccination status in the course of the investigation constituted a refusal to cooperate which demonstrated a lack of remorse warranting the maximum available penalty. Accordingly, he recommended that Ms. Guerard's pay be suspended for a period of 90 days.
- o. Ms. Guerard was not interviewed during the investigation and was not provided with a draft version of the Report at any time.

## The Decision

- p. 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.

## The Report and the Decision Unreasonably and Unjustifiably Infringe the Applicant's Right to Freedom of Expression

- q. the Report was unreasonable because the Integrity Commissioner failed to consider Ms. Guerard's freedom of expression under s. 2(b) of the *Charter* and proportionately balance it against applicable statutory objectives. The Report's findings that Ms. Guerard breached the Code rest on the adverse inference made against Ms. Guerard for refusing to disclose her vaccination status. Ms. Guerard's refusal to state her vaccination status is protected expression which engaged her s. 2(b) right. The Integrity Commissioner's finding that Ms. Guerard's silence indicated a lack of remorse warranting the maximum available penalty further violated her right to freedom of expression. Accordingly, the Integrity Commissioner was required to attempt to proportionately balance the statutory objectives of the Covid Policy and the *Act* against Ms. Guerard's *Charter* freedom of expression. He failed to do so.
- r. the Decision, in adopting the findings and recommendations of the Integrity Commissioner, punished Ms. Guerard for her silence with respect to her vaccination status and violated her right to freedom of expression. The Council

was therefore required to consider Ms. Guerard’s right to freedom of expression and seek to proportionately balance its limitation against the objectives of the Covid Policy and the *Act*. The Council’s failure to do so renders the Decision unreasonable.

- s. the statutory objectives of the Covid Policy and the *Act* were not furthered by the findings and recommendations of the Report nor by the Decision because the Covid Policy did not require Ms. Guerard to disclose her vaccination status. Councillors were omitted from the “Purpose”, “Application”, “Policy Requirements”, and “Implementation Requirements” sections of the Covid Policy.
- t. The Applicant relies on the following:
  - i. section 2 of the *Judicial Review and Procedure Act*, RSO 1990, c J-1;
  - ii. the code of Conduct for Members of Councils and Boards;
  - iii. the Vaccination Policy – Coronavirus (COVID-19); and
  - iv. the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11.

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

- a. The Affidavit(s) of Cynthia Guerard (to be sworn); and
- b. such further and other materials as counsel may advise and this Court permit.

November 7<sup>th</sup>, 2023 (original issued September 8, 2022)



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**Hatim Kheir**

**CHARTER ADVOCATES CANADA**  
Office 513, 180 John Street  
Toronto, ON  
M5T 1X5



**Hatim Kheir (LSO#79576J)**



**Counsel 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

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**ONTARIO SUPERIOR COURT OF  
JUSTICE**

Proceeding Commenced at OTTAWA

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**Hatim Kheir (LSO#79576J)**

T. [REDACTED]  
E. [REDACTED]

**Counsel for the Applicant**