

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

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(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c J.1.

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**REPLY FACTUM OF THE APPLICANT**

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June 30, 2025

**CHARTER ADVOCATES CANADA**

[REDACTED]

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

[REDACTED]

**Counsel for the Applicant**

1. The Applicant, Cynthia Guerard, makes the following submissions in reply to the factum tendered by the Respondents, the Corporation of the Municipality of Mississippi Mills (the “Municipality”) and the Integrity Commissioner of the Municipality of Mississippi Mills (the “Integrity Commissioner”) (the “Respondents”) on this application for judicial review.

**A. There is no barrier to Ms. Guerard raising section 2(b) before this Court**

2. At paragraph 31 of their factum, the Respondents argue that the Integrity Commissioner and Municipality did not need to consider Ms. Guerard’s right to freedom of expression because “the law ‘does not require administrative decision-makers to conjure up every conceivable *Charter* right or value that might be affected by their decision.’”<sup>1</sup>

3. The Applicant replies that the case cited by the Respondents merely reiterates the guidance from *Commission scolaire* that administrative decision makers must consider relevant *Charter* rights and values. In *Commission scolaire*, the Supreme Court stated that:

An administrative decision maker must consider the relevant values embodied in the Charter, which act as constraints on the exercise of the powers delegated to the decision maker. I refer in this regard to the considerations identified by this Court in *Vavilov*: “. . . a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision . . .” (para. 105). In practice, it will often be evident that a value must be considered, whether because of the nature of the governing statutory scheme (at para. 108), because the parties raised the value before the administrative decision maker (at paras. 127-28), or because of the link between the value and the matter under consideration (P. Daly, “The *Doré* Duty: Fundamental Rights in Public Administration” (2023), 101 *Can. Bar Rev.* 297, at p. 309). For example, it is obvious that the development of policies and the making of decisions that are likely to have an impact on a minority language educational environment require consideration of the values underlying s. 23 of the *Charter* (p. 309). A decision cannot be unreasonable because the decision maker failed

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<sup>1</sup> Respondent’s factum at para. 31, cit’g *Sturgeon v. Canada (Attorney General)*, [2024 FC 1888](#) at para. [56](#) [*Sturgeon*].

to consider a *Charter* value that was not relevant for the purposes of its decision. However, if the decision maker takes a relevant value into account in its decision while opting to prioritize another objective, it must be concluded that the decision engages the *Charter*.

[Emphasis added]<sup>2</sup>

4. The Respondent's rely on *Sturgeon v. Canada (Attorney General)* which they argue adds a gloss to *Commission scolaire*. Essentially, the Respondent argues that because the Federal Court stated that administrative decision makers are not required "to conjure up every conceivable *Charter* right or value" that therefore the Respondents were not required to consider Ms. Guerard's freedom of expression in the case at bar.

5. However, the Federal Court's statement must be read in context. The paragraph cited by the Respondents, together with the immediately preceding paragraph, read as follows:

[55] Certain restrictions in schemes based on insurance principles, such as restrictions relating to age, gender or prior disability, may give rise to obvious human rights concerns triggering an obligation to consider *Charter* values in the interpretation of the relevant legislation: see *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)*, 1991 CanLII 12 (SCC), [1991] 2 SCR 22; *Schachter v. Canada*, 1992 CanLII 74 (SCC), [1992] 2 SCR 679. However, the denial of benefits for those whose employment is terminated for misconduct is not, on its face, of the same nature. There is no obvious *Charter* right or value, or ground of discrimination, that is triggered by such a provision.

[56] The law that flows from the *Doré/Loyola* analysis, as expressed in *Commission scolaire 2023* and *Sullivan*, does not require administrative decision-makers to conjure up every conceivable *Charter* right or value that might be affected by their decision. It would be unrealistic, as a matter of law and from a practical perspective, to impose such a burden on administrative decision-makers. Indeed, in *Sullivan* the Court of Appeal expressly stated that this obligation only arose "in some circumstances" (*Sullivan* at para 9).

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<sup>2</sup> *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at para. 66 [*Commission scolaire*].

[Emphasis added]<sup>3</sup>

6. Thus, the Federal Court’s warning against requiring decision makers to “conjure up every conceivable *Charter* right or value” was made **after** its finding that there was “no **obvious** *Charter* right or value...triggered by” the provision at issue in that case [Emphasis added].<sup>4</sup> These passages do not stand for the proposition that a decision-maker is entitled to ignore obvious *Charter* rights and values that arise in the cases and situations before them. While a decision maker is not obligated to go to extreme and absurd lengths in conducting the *Doré* analysis, he or she is nonetheless obligated to conduct the analysis where it clearly makes sense to do so. This is all that the *Sturgeon* case really stands for. As the Supreme Court held in *Doré*, “administrative decisions are *always* required to consider fundamental values.”<sup>5</sup> The Court went on to state that “administrative bodies are empowered, and indeed required, to consider *Charter* values within their scope of expertise.”<sup>6</sup> Pursuant to *Commission scolaire*, the duty of administrative decision makers to consider *Charter* values is triggered when there is a link between the value or right and the matter under consideration. *Sturgeon* does not change or limit the application of the principle in *Commission scolaire*. Rather, it merely emphasises that there must be a link present for the obligation to consider a *Charter* value or right to arise.

7. In the present matter, there is obviously a clear link between Ms. Guerard’s right to freedom of expression and the Integrity Commissioner’s investigation and conclusions because, as argued in the Applicant’s main factum, s. 2(b) of the *Charter* “necessarily entails the right to say nothing.”<sup>7</sup>

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<sup>3</sup> *Sturgeon*, *supra* note 1, at paras. 55-56.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395 at para. 35 [emphasis in original].

<sup>6</sup> *Ibid.*

<sup>7</sup> *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038 at p. 1080 [*Slaight Communications*].

8. The Respondents go on to state at paragraph 32 of their factum that administrative decision makers need only “grapple with the relevant *Charter* values through the very lens argued by the parties.”<sup>8</sup>

9. The Applicant replies that the Respondents cast the duty of administrative decision makers to consider relevant *Charter* values far too narrowly. As argued above, in *Commission scolaire*, the Supreme Court identified the presence of a link between a *Charter* value and a matter under consideration as a standalone basis to engage the duty to consider the value. The duty has been applied in the jurisprudence - *even* in situations where the applicants in those cases had not raised a particular *Charter* right or value before the administrative decision maker. For example, in *McCarthy v. Whitefish Lake First Nation #128*<sup>9</sup> the Federal Court quashed a decision of a First Nation band because it failed to consider the *Charter* rights of the applicant and to attempt to proportionately balance the limitations on that right.<sup>10</sup> The applicants did not raise the *Charter* right before the First Nation.<sup>11</sup>

10. Similarly, in *York Region District School Board v. Elementary Teachers’ Federation of Ontario*<sup>12</sup> the Supreme Court found that a labour arbitrator “failed to recognize that the teachers’ s. 8 *Charter* right applied” which is reviewable for correctness despite the arbitrator not having been “asked to consider whether s. 8 of the *Charter* had been infringed.”<sup>13</sup>

11. Both *McCarthy* and *York Region* demonstrate that an applicant need not raise an alleged *Charter* infringement before an administrative decision maker for the courts to hold the decision

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<sup>8</sup> Respondents’ factum at para. 32.

<sup>9</sup> *McCarthy v. Whitefish Lake First Nation #128*, [2023 FC 220](#).

<sup>10</sup> *Ibid.* at para. [95](#).

<sup>11</sup> *Ibid.* at paras. [23-29](#).

<sup>12</sup> *York Region District School Board v. Elementary Teachers’ Federation of Ontario*, [2024 SCC 22](#).

<sup>13</sup> *Ibid.* at paras. [18](#), [69](#).

maker to its obligation to consider relevant *Charter* values, consistent with the guidance in *Commission scolaire*.

12. The Respondents also argue at paragraph 75 of their factum that this Court “is now being asked to make a decision without the benefit of a factual record.”<sup>14</sup> They argue that the Integrity Commissioner could have made factual findings about the Applicant’s expression had the issue of freedom of expression been raised before him.

13. The Applicant provides two submissions in reply. First, as argued in the main factum and above, the Integrity Commissioner had the obligation to consider the right to freedom of expression. It is not now open to him to argue that he is prejudiced by the lack of factual findings made.

14. Second, the factual record before the Court is adequate to make the necessary findings. No additional factual findings are necessary. The record shows that the Integrity Commissioner demanded Ms. Guerard disclose her vaccination status, that Ms. Guerard declined to do so, and that the Integrity Commissioner based the justification for his findings and recommendation on Ms. Guerard’s refusal. No additional findings of fact are necessary to conclude that Ms. Guerard’s *Charter* right was limited.

**B. The Policy did not require councillors to disclose their vaccination status**

15. At paragraph 52 of their factum, the Respondents argue that the existence of “a form for non-employees to use when providing proof of vaccination” indicates “that the Policy intended that individuals other than employees must disclose their vaccination status.”<sup>15</sup> They use this fact to conclude that the Policy also applies to councillors.

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<sup>14</sup> Respondents’ factum at para. 75.

<sup>15</sup> Respondents’ factum at para. 52.

16. The Applicant replies that the mere existence of the form does *not* lend support to the notion that the Policy required councillors to disclose their vaccination status simply because there were other listed categories of non-employees on the form . Rather, a plain reading of the Policy demonstrates that the opposite is true. The Policy clearly and unambiguously states that it “applies to all existing and future Municipal employees, volunteers, contractors and students completing placements.”<sup>16</sup> The form definitely applies to “volunteers, contractors and students.” However, the Policy never states that Councillors are required to disclose their vaccination status, and there is no principle of interpretation standing for the proposition argued by the Respondents, i.e. that the mere inclusion of Councillors in the “Policy Statement” means that councillors may be read into the other operative sections of the Policy..

17. At paragraph 56 of their factum, the Respondents also argue that the debate at the May 3, 2022 meeting demonstrates that the Policy was intended to require councillors to provide proof of vaccination.<sup>17</sup>

18. The Applicant replies that it is inappropriate to try to divine the intent of the council from a brief debate at the May 3, 2022 meeting, particularly since the words of the Policy are clear and unambiguous. In reference to federal legislation, the Supreme Court held that the “primary rule of statutory interpretation is to ascertain the intention of Parliament. Where the meaning of the words used is plain and no ambiguity arises from context, then the words offer the best indicator of Parliament’s intent.”<sup>18</sup> Even where the plain meaning of the text leads to an absurdity,

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<sup>16</sup> Application Record, Tab 5C, Revised Vaccination Policy – Corona virus (COVID-19) dated May 3, 2022 at p. 97.

<sup>17</sup> Respondents’ factum at para. 56.

<sup>18</sup> *Will-Kare Paving & Contracting Ltd. v. Canada*, [2000 SCC 36](#), [2000] 1 SCR 915 at para. [54](#) [*Will-Kare*], cit’g *R. v. McIntosh*, [1995 CanLII 124 \(SCC\)](#), [1995] 1 SCR 686 at para. [18](#) [*McIntosh*].

so long as it is unambiguous, it must be given effect. Legislators have “the right to legislate illogically.”<sup>19</sup>

19. In the case at bar, the Policy is unambiguous. Councillors are not included in the “Purpose”, “Application”, or “Policy Requirements” sections of the Policy. It distorts the text of the Policy beyond reason to read in a requirement for councillors to disclose their vaccination status. In the absence of any real ambiguity in the text, the Policy “must be applied regardless of its object and purpose.”<sup>20</sup>

**C. Ms. Guerard had a right to raise defences during the Integrity Commissioner’s investigation**

20. At paragraph 62, the Respondents argue that Ms. Guerard raised “technical defences without regard for the health protection reasoning behind the Policy” to support the Integrity Commissioner’s finding that Ms. Guerard demonstrated a lack of remorse.<sup>21</sup>

21. The Applicant responds that she was within her right to make a defence to the allegations brought against her, including disputing the proper interpretation of the Policy and raising her *Charter* rights. It is inappropriate to suggest that arguments made in her defence show a lack of remorse or lack of regard for health protection. For example, an appeal panel of the Law Society of Upper Canada (as it then was) found that a hearing panel erred when it considered lack of remorse as an aggravating factor where the paralegal “honestly believed that he was innocent.”<sup>22</sup> The appeal panel cited the New Brunswick Court of Appeal’s decision in *R. v. Nash* stating that

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<sup>19</sup> *McIntosh*, *supra* note 18, at para. [41](#).

<sup>20</sup> *Will-Kare*, *supra* note 18, at para. [54](#).

<sup>21</sup> Respondents’ factum at para. 62.

<sup>22</sup> *Claude Hyman Armstrong v. Law Society of Upper Canada*, [2011 ONLSAP 1 \(CanLII\)](#) at para [27](#).

“failure to express remorse cannot be considered an aggravating factor, save in exceptional circumstances” to support its finding.<sup>23</sup>

**D. The Integrity Commissioner was required to consider section 2(b) of the Charter**

22. At paragraph 35 of their factum, the Respondents argue that the *Charter*'s protection against compelled speech applies to government requirements to “say a particular thing” but not to the Integrity Commissioner's requirement that Ms. Guerard disclose her vaccination status.<sup>24</sup> The Respondents argue that *Slaight Communications*<sup>25</sup>, *McAteer*<sup>26</sup>, and *Animal Justice*<sup>27</sup> are inapposite because they all involved situations where an individual was compelled to “say a particular thing.” The Respondents attempt to distinguish that situation from the facts of this case.

23. The Applicant replies that the principle that s. 2(b) of the *Charter* protects the “right to say nothing” enunciated in *Slaight Communications* and the test elaborated in *McAteer* are indeed applicable in this case.<sup>28</sup> While it is true that the facts *Slaight Communications* and *McAteer* are distinguishable because they involved a requirement to “say a particular thing”, the Applicant relies on them for the general principles discussed therein.

24. The Applicant argues, further, that the factual situation in *Animal Justice* is analogous. In *Animal Justice*, the Superior Court found that a disclosure requirement constituted an infringement of freedom of expression.<sup>29</sup> That case involved a regulation passed under the

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<sup>23</sup> *Ibid*, cit'g *R. v. Nash (A.W.)* (2009), [2009 NBCA 7](#) at para. [2](#).

<sup>24</sup> Respondents' Factum at para. 35.

<sup>25</sup> *Slaight Communications*, *supra* note 7.

<sup>26</sup> *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#) [*McAteer*].

<sup>27</sup> *Animal Justice et al. v A.G of Ontario*, [2024 ONSC 1753](#) [*Animal Justice*].

<sup>28</sup> *Slaight Communications*, *supra* note 7, at p. [1080](#); *McAteer*, *supra* note 26, at para. [69](#).

<sup>29</sup> *Animal Justice*, *supra* note 27, at para. [116](#).

*Security from Trespass and Protecting Food Safety Act* that created a legal protection for whistleblowers on the condition that they disclose any evidence of harm to farm animals “to a police officer or other authority as soon as reasonably practicable.”<sup>30</sup> Unlike the letter of reference or oath of allegiance in *Slaight Communications* or *McAteer*, whistleblowers were not required to “say a particular thing.”<sup>31</sup> Rather, they were required to disclose information in their possession to avail themselves of the whistleblower protections. The Superior Court held that the requirement was an infringement of s. 2(b) of the *Charter*.<sup>32</sup> The disclosure requirement in *Animal Justice* is analogous to the Integrity Commissioner’s demand that Ms. Guerard disclose her vaccination status.

25. There is no principled basis for distinguishing the regulation in *Animal Justice* as a requirement “to report particular information” and the Integrity Commissioner’s demand as “a question in the context of an administrative investigation” as the Respondents do in their factum.<sup>33</sup> The Applicant submits that the facts in *Animal Justice* are analogous; the principles discussed therein should be applied to the case at bar.

26. In a related point, at paragraphs 39-40 of their factum, the Respondents argue that the Integrity Commissioner’s treatment of ss. 7 and 8 of the *Charter* constitute the necessary *Doré* analysis with respect to the *Charter* values underlying s. 2(b) of the *Charter*.<sup>34</sup>

27. The Applicant provides two arguments in reply. First, the Respondent has not provided any authority or other principled argument in support of the proposition that an administrative decision

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<sup>30</sup> *General, O. Reg. 701/20, s. 12(1)(d)*.

<sup>31</sup> *Slaight Communications, supra* note 7, at p. 1047; *McAteer, supra* note 26, at para. 1.

<sup>32</sup> *Animal Justice, supra* note 27, at para. 116.

<sup>33</sup> Respondents’ Factum at paras. 35-36.

<sup>34</sup> Respondents’ Factum at paras. 39-40.

maker's failure to consider an infringement to a *Charter* right under *Doré* can be excused simply because the decision maker may have considered whether other *Charter* rights were infringed.

28. Second, the Integrity Commissioner did not find that either ss. 7 or 8 were infringed, and so did not conduct a *Doré* balancing analysis. With respect to s. 7, the Integrity Commissioner found that Ms. Guerard had “not provided any support for her argument under s. 7 and, accordingly, this argument must fail.”<sup>35</sup> Similarly, the Integrity Commissioner found that he did “not consider asking [Ms. Guerard] her vaccination status to be an unreasonable search.”<sup>36</sup>

29. Under the *Doré* framework, administrative decision makers must first determine that an “impugned administrative decision infringed *Charter* rights or limits the values underlying them” before they can assess whether the decision reflects a “proportionate balancing” of *Charter* rights and values with the relevant statutory objectives.<sup>37</sup> The Integrity Commissioner never crossed the first hurdle – determining that Ms. Guerard's *Charter* rights or values would be infringed. Accordingly, the Integrity Commissioner never engaged in the necessary balancing exercise.

#### **E. The Integrity Commissioner's findings constitute a reviewable decision**

30. In footnote 4 of their factum, the Respondents argue that this Court's decision in *Robinson v. Pickering (City)* holds that the report of an integrity commissioner is investigative, not adjudicative, and thus not subject to judicial review.<sup>38</sup>

31. The Applicant submits that there is a potential disagreement in the jurisprudence on this point. In *Robinson*, this Court concluded that “the **municipal council** is the real adjudicative

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<sup>35</sup> Application Record, Tab 5D, Integrity Commissioner's Report, p. 117.

<sup>36</sup> Application Record, Tab 5D, Integrity Commissioner's Report, p. 117.

<sup>37</sup> *Commission scolaire*, *supra* note 2, at para. 67 [*Commission scolaire*].

<sup>38</sup> Respondents' factum at para. 13, fn 4, cit'g *Robinson v. Pickering (City)*, [2025 ONSC 3233 \(Div. Ct.\)](#) [*Robinson*].

decision-maker” and the integrity commissioner’s report merely constitutes an “opinion” that a councillor has breached a code of conduct.<sup>39</sup> The Court found that the municipal council is not bound by the integrity commissioner’s opinion and may signal its disagreement by deciding not to impose a sanction.<sup>40</sup>

32. However, in *Jonker v. West Lincoln (The Township of)*, this Court found that “it is the **Integrity Commissioner** who is given the power to determine whether a member of Council has violated the Municipality’s code of conduct” and the “Council is bound by the Integrity Commissioner’s findings with respect to whether there has been misconduct.”<sup>41</sup> The Court dismissed Mr. Jonker’s application for judicial review on the grounds that “Council is bound by the Integrity Commissioner’s findings as to misconduct”. The Court also found that the municipal council cannot exercise its role “in such a way that would seek to set aside the Integrity Commissioner’s findings on the question as to whether misconduct had occurred” and that Mr. Jonker had challenged the municipal council’s decision in his application, not the integrity commissioner’s.<sup>42</sup>

33. There is thus an evident tension between the holdings of these two cases, above, which, if left unresolved, has the potential to cause injustice to Ms. Guerard and other councillors in similar positions: on the one hand, the Respondents suggest that the Integrity Commissioner is not an appropriate respondent. However, on the other hand, in *Jonker*, this Court found that Mr. Jonker was prevented from advancing an argument because he failed to include the integrity commissioner as a respondent.

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<sup>39</sup> *Robinson, supra* note 38, at paras. [88-90](#) [Emphasis added.]

<sup>40</sup> *Ibid.*

<sup>41</sup> *Jonker v. West Lincoln (The Township of)*, [2024 ONSC 1167 \(Div. Ct.\)](#) at para. [25](#). [Emphasis added.]

<sup>42</sup> *Ibid.* at paras. [31-33](#).

34. The Applicant submits that these two conflicting propositions may potentially be reconciled if the discussion about investigative and adjudicative roles in *Robinson* is properly contextualized. The distinction was relevant in *Robinson* because it affected the threshold for establishing that the integrity commissioner was biased.<sup>43</sup> The Court in *Robinson* did not expressly hold that the Integrity Commissioner was not a proper party to the judicial review. Further, the Court in *Robinson* relied on *Chiarelli v. City of Ottawa*, where the issue was similarly relevant to an allegation of bias on the part of the integrity commissioner.<sup>44</sup>

35. Thus, while integrity commissioners may be exercising an investigative role for the purpose of resolving allegations of bias, their findings of fact and misconduct bind a municipal council and therefore must fairly be considered to be *adjudicative* in nature. Accordingly, councillors must be able to name integrity commissioners as respondents for the purpose of challenging their conclusions on whether the code of conduct was breached.

Dated this June 30, 2025



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**Hatim Kheir**

**CHARTER ADVOCATES CANADA**

[REDACTED]

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

[REDACTED]

**Counsel for the Applicant**

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<sup>43</sup> *Robinson*, *supra* note 38, at paras. [52-53](#).

<sup>44</sup> *Chiarelli v. Ottawa (City of)*, [2021 ONSC 8256](#) at paras. [74-76](#).

## Schedule “A”

### Authorities Cited

*Animal Justice et al. v A.G of Ontario*, [2024 ONSC 1753](#)

*Chiarelli v. Ottawa (City of)*, [2021 ONSC 8256](#)

*Claude Hyman Armstrong v. Law Society of Upper Canada*, [2011 ONLSAP 1 \(CanLII\)](#)

*Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, [2023 SCC 31](#)

*Doré v. Barreau du Québec*, [2012 SCC 12](#), [2012] 1 SCR 395

*Jonker v. West Lincoln (The Township of)*, [2024 ONSC 1167 \(Div. Ct.\)](#)

*McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#)

*McCarthy v. Whitefish Lake First Nation #128*, [2023 FC 220](#)

*R. v. McIntosh*, [1995 CanLII 124 \(SCC\)](#), [1995] 1 SCR 686

*R. v. Nash (A.W.)* (2009), [2009 NBCA 7](#)

*Robinson v. Pickering (City)*, [2025 ONSC 3233 \(Div. Ct.\)](#)

*Slaight Communications Inc. v. Davidson*, [1989 CanLII 92 \(SCC\)](#), [1989] 1 S.C.R. 1038

*Sturgeon v. Canada (Attorney General)*, [2024 FC 1888](#)

*Will-Kare Paving & Contracting Ltd. v. Canada*, [2000 SCC 36](#), [2000] 1 SCR 915

*York Region District School Board v. Elementary Teachers’ Federation of Ontario*, [2024 SCC](#)

[22](#)

**Schedule “B”**

**Cited and Excerpted Legislation**

**Security from Trespass and Protecting Food Safety Act, 2020**

**ONTARIO REGULATION 701/20**

**GENERAL**

**Consolidation Period:** From September 27, 2024 to the e-Laws currency date.

Last amendment: 374/24.

*General*, O. Reg. 701/20, s. 12(1)(d)

**Exception, whistle-blowers**

12. (1) Despite sections 9 and 10, a consent to carry out an act that is otherwise prohibited under section 5 or 6 of the Act given by the owner or occupier of a farm, animal processing facility or prescribed premises or by the driver of a motor vehicle transporting farm animals to a person who gave a false statement shall not be considered to have been obtained under false pretences for the purposes of subsections 5 (6), 6 (4) and 14 (2) of the Act if,

(a) the person who gave the false statement is,

(i) an employee of the owner or occupier of the farm, animal processing facility or prescribed premises,

(ii) an employee of the owner of the motor vehicle company responsible for transporting farm animals,

(iii) an employee of the owner of the farm animals being transported by a motor vehicle company, or

(iv) the owner of a company that is allowed on the farm, animal processing facility or prescribed premises or that is allowed to accompany or have access to the motor vehicle transporting farm animals, or any employee of such a company;

(b) the false statement does not imply or express that the person possesses the qualifications necessary to do a particular task or job in a manner that would not cause harm to farm animals, harm with respect to food safety or harm to an individual, when in fact the person does not possess those qualifications;

(c) as a result of the false statement and the consent obtained from the owner or occupier or the driver, the person who gave the false statement was able to obtain information or evidence of harm to a farm animal, harm with respect to food safety or harm to an individual, of an illegal activity or of a pattern of illegal activity with respect to such harms or illegal activities, being carried out on a farm, animal processing facility or prescribed premises or in or near a motor vehicle transporting farm animals; and

(d) the person who gave the false statement discloses the information or evidence described in clause (c) to a police officer or other authority as soon as reasonably practicable after obtaining the information or evidence. O. Reg. 701/20, s. 12 (1); O. Reg. 374/24, s. 5 (1, 2).

**CYNTHIA GUERARD**

**-and-**

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

APPLICANT

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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**REPLY FACTUM OF THE APPLICANT**

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