CITATION: Guerard v. The Corporation of the Municipality of Mississippi Mills, 2026 ONSC 2925
DIVISIONAL COURT FILE NO.: DC-22-2738-JR
DATE: 2026/05/29

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

NAKATSURU, O'BRIEN AND SMITH JJ.

BETWEEN:	
CYNTHIA GUERARD Applicant	Hatim Kheir, Counsel for the Applicant
– and –	
THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS AND THE INTEGRITY COMMISSIONER OF THE MUNICIPALITY OF MISSISSIPPI MILLS Respondents	David Reiter and Meghan Cowan, Counsel for the Respondents
	HEARD: November 19, 2025

REASONS FOR DECISION

SMITH J.

1. Introduction

[1] The applicant Cynthia Guerard was a township councillor of the respondent Municipality for a four-year term ending October 24, 2022. The respondent Integrity Commissioner found that Ms. Guerard had violated the Municipality's *Code of Conduct* by failing to comply with the Municipality's COVID-19 vaccination policy (the "policy" or "vaccination policy") and

recommended that the applicant should be suspended for 90 days. Council accepted both the Commissioner's conclusion of misconduct and his recommendation respecting penalty for that misconduct.

[2] The applicant seeks judicial review of both the Commissioner's findings and the penalty imposed by the Municipality (together, the "decision"). She asserts that the effect of the decision made against her has been an infringement of her constitutionally protected right to free expression. The applicant's submissions respecting freedom of expression are raised for the first time on this application. The court must therefore decide whether the issues before the Commissioner and Council affected the applicant's right to free expression and, if so, whether the Commissioner and Council considered the values underlying that right and balanced them against the relevant statutory objectives in arriving at the decision and, if so whether the decision was reasonable.

[3] For the reasons that follow, I would dismiss the application.

2. Background

2.1 Council's consideration of the Municipality's vaccination policy

[4] At a meeting of the municipal Council on November 2, 2021, which was held by videoconference, Council enacted a policy requiring all "Councillors, employees, volunteers, contractors and students completing placements to be fully vaccinated" against COVID-19. The policy also required "municipal employees, volunteers, contractors and students completing placements" to provide proof of full vaccination against COVID-19 by no later than November 30, 2021. Before voting on the policy, the applicant sought to address her colleagues on Council. As her internet connection was not working well, however, she asked the clerk to read on her behalf the statement she had prepared, which I quote here *verbatim*:

> First of all, the oath that we sign as councillors did not give any of us the authority or right to make decisions with regards to anyone else's Charter of Rights and Freedoms. Nor does it make me an employee to the municipality. I believe in due diligence, and I do not consent to the municipality taking liberty with mine or anyone else's constitutional freedoms. I will not vote in favour of this by-law and in fact I will stand with any staff member, volunteer, contractor

> or student, present or future, who feels that this is an injustice action. At this time, I will be asking for us to proceed with a recording vote.

[5] Following the applicant's statement and some other brief discussion, the policy was approved by Council by a vote of 6-1, with the applicant being the lone dissenting vote. Another councillor asked that the policy be reviewed in six months.

[6] Six months later, the Council met on May 3, 2022. Some councillors attended in person and some by videoconference. At this meeting, before discussion of the policy began, the mayor asked that the minutes reflect that the applicant, who was present in the Council chambers, was in violation of the policy. The applicant did not dispute that this was so.

[7] Discussion then ensued, beginning with consideration of a motion brought by the applicant. She noted that on October 25, 2021, she had, with knowledge of all councillors, written to the Municipality's Chief Administrative Officer (the "CAO") with a list of questions respecting the vaccination policy. Although she had been told research would be done, she said that no answers had been provided. The applicant then moved that Council refer her questions to the CAO for answers. No councillor seconded the applicant's motion, and it was therefore defeated. The CAO was then invited to comment on the issue and said that the questions which had been posed were beyond the ability of staff of Municipality to answer, but that if Council wished to authorize the expenditure of funds to retain counsel and experts to provide such answers, that could be done. He said, however, that he did not believe that to be a wise use of resources.

[8] Council then considered a motion to update the vaccination policy. Specifically, it was proposed (i) to give the CAO the authority to amend the policy as needed to keep it compliant with changing federal and provincial legislation and regulations and with health unit orders, and (ii) to recommend that all covered by the policy provide proof of having received a third dose of the then available COVID-19 vaccines by June 30, 2022.

[9] One councillor moved to amend the motion so that a third amendment to the policy could be considered. She proposed that the policy be amended so that it was recommended – not required – that councillors be vaccinated and that they provide that information to the CAO. Her motion to amend the motion was defeated by a vote of 4 to 3. During the discussion preceding that vote, for which the applicant was present, several councillors argued that members of the Council should

be subject to the same rules as those the Municipality's employees were required to follow and that they would therefore vote against the proposed amendment to the motion. Even the councillor who proposed the amendment acknowledged that she understood this argument.

[10] Discussion then returned to the original motion and its two proposed changes to the policy. It passed by a vote of 5 to 2.

[11] The applicant says that at a meeting of the Council on May 17, 2022, she was ordered by the mayor to apologize for being in violation of the vaccination policy, but she refused to do so. The mayor then ordered the applicant to leave the Council chamber, which she did.[1]

2.2 The investigation of the applicant

[12] A complaint respecting the issue of the applicant's alleged failure to comply with the policy was referred to the Municipality's Integrity Commissioner, Mr. Tony Fleming.[2] He sought to investigate the matter and asked for the applicant's response to the complaint. After hearing from the applicant's then counsel, William Hunter, in a letter dated June 3, 2022, the Commissioner set a deadline of June 22, 2022, for that response. In that same letter, the Commissioner advised that it would "likely be necessary to interview" the applicant and asked Mr. Hunter to schedule a time for such an interview at some point between July 8 and 15, 2022.

[13] On June 23, 2022, Mr. Hunter provided the applicant's submissions to the Commissioner. In those submissions it was asserted (i) that the applicant was not required to submit proof of vaccination given that she was not an employee of the Municipality; (ii) that the policy had become "null and void" when the province rescinded its mandatory vaccination requirements on March 1, 2022; and (iii) that pursuant the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sch. A. ("PHIPA"), the applicant was entitled to refuse to provide her personal medical information, including her vaccination status, to the Municipality.

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[1] I note that neither a video recording of this meeting nor minutes of it are in the record prepared for this application. There are, however, video recordings of the meetings held on November 2, 2021, and May 3, 2022.
[2] The complaint is not in the record before us.

[14] By letter dated July 6, 2022, the Integrity Commissioner wrote to Mr. Hunter and asked the applicant to confirm whether she was vaccinated on May 3 and 17, 2022, when she attended Council meetings in person. The Commissioner added that he reserved the right to invoke the powers set out in ss. 33 and 34 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sch. 6, which include the power to summons witnesses to give evidence and produce documents.

[15] On July 7, 2022, the Integrity Commissioner wrote again, explaining that he disagreed with Mr. Hunter's interpretation of PHIPA and inviting the applicant a second time to confirm her vaccination status, failing which the Commissioner would "proceed in the normal course of our investigation."

[16] On July 8, 2022, Mr. Hunter replied, saying that the Commissioner would require a search warrant to obtain the applicant's medical information and adding the following:

> Numerous cases emphasize the right to personal privacy based upon the *Charter*. One such case is *R. v. O'Connor,* [[1995] 4 S.C.R. 411]. Please see attached excerpts of that case. It is clear that an individual does not have to release any medical information save and except in limited circumstances, none of which existed after the provincial mandate was removed.

[17] Appended to Mr. Hunter's letter was a copy of paragraphs 110 to 115 of the concurring judgment of L'Heureux-Dubé J. in *O'Connor*, which paragraphs concern the idea that privacy rights are protected by s. 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

[18] The applicant did not supply confirmation of her vaccination status to the Commissioner, and the Commissioner did not seek to interview her. Instead, on August 2, 2022, he provided his investigation report to the Municipality.

2.3 The Integrity Commissioner's report

[19] After quoting at length from the Municipality's *Code of Conduct*, the Integrity Commissioner's report dealt with several preliminary objections which had been raised by the applicant, including an allegation that Mr. Fleming and his law firm stood in a conflict of interests, the applicant's argument that the policy was void because it was outside the jurisdiction of the Municipality, and the objections the applicant had made respecting the application of PHIPA. The

Commissioner was of the view that the applicant's position on each of these objections was ill-founded.

[20] The report then turned to the applicant's objections under sections 7 and 8 of the *Charter*. In this respect, the Integrity Commissioner wrote as follows:

> Finally, the Member's counsel raised the objection that the *Charter* protects personal privacy, alleging that, "It is clear that an individual does not have to release any medical information save and except in limited circumstances, none of which existed after the provincial mandate was removed". In support of this assertion, counsel cites *R v. O'Connor*.
>
> As will be discussed below, for the purposes of this investigation we accept the Member's contention that the Policy is not well drafted where it requires proof of vaccination of members. There was no dispute that the Policy does require that a member actually be vaccinated. As the Member's objection specifically pertains to providing health information, and was raised following our question regarding her vaccination status, we understand this to be an objection to the question itself.
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> The only submission made in support of this objection was a reference to the *O'Connor* case, which pertained to sections 7 and 8 of the *Charter*. These sections of the *Charter* were explicitly considered in the context of COVID-19 masking and vaccination rules in *Banas v. HMTQ*, 2022 ONSC 999. In that case, charges had been brought after a restaurant failed to impose COVID-19 restrictions as required by law. A *Charter* challenge was raised, particularly focusing on masking and proof of vaccination requirements.
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> In *Banas*, the Court did not find that masking and proof of vaccination requirements violated s. 7 or 8 of the *Charter*. With respect to s.7, the Court found that there was no evidence tendered to support claims that the regulations in question caused the harms complained of. Similarly, the Member in this matter has not provided any support for her argument under s.7 and, accordingly, this argument must fail.
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> Section 8 of the *Charter* protects against unreasonable search and seizure. Per *R. v. Finley,* 2013 SKCA 47, we agree that our question of the Member's vaccination status may constitute a "search" within the meaning of s.8. However, as the Supreme Court of Canada stated in *British Columbia Securities Commission v. Branch*, 1995 CanLII 142 (SCC), s. 8 protects reasonable expectations of privacy from an unreasonable search and seizure. The Court found that administrative and regulatory investigations will not have the same standards of reasonableness as criminal investigations, and that a "less strenuous approach" will apply.

> In the circumstances, we do not consider asking the Member her vaccination status to be an unreasonable search. The Member was not asked to provide medical information or proof of vaccinations, simply to confirm or deny that she had received a vaccination. This regulatory investigation is not captured by any cases referenced by the Member's counsel.

[21] The Commissioner's analysis of the complaint follows this passage. He acknowledged again that the policy "did not unambiguously establish that members of Council must provide proof of their vaccination status." However, the policy did clearly require councillors to be vaccinated and did expressly require the CAO to collect proof of vaccination from those covered by the policy, including from councillors. The policy also included a form for non-employees (which includes councillors) covered by the policy to use to report their vaccination status.

[22] The Commissioner concluded as follows:

> On balance, it is our interpretation that the Member was required by the policy to disclose to the CAO her vaccination status. Applying the policy would be rendered impossible if this were not the case; a circumstance that the Municipality could not have intended.
>
> It was on this basis that we asked the Member to confirm, without providing any proof, whether she is vaccinated against COVID-19. The Member refused to answer.

[23] The Commissioner wrote that the failure of the applicant to respond deprived him of information which was important to his investigation. Relying on *Attallah v. College of Physicians and Surgeons of Ontario*, 2021 ONSC 3722 (Div. Ct.), he determined that this was an appropriate case in which to draw an adverse inference against the applicant. He put the point as follows:

> If the Member was vaccinated, simply confirming this may have been sufficient to conclude that she did not breach the Policy. As she declined to do so, we must assume it is because she was not vaccinated, and her answer would have harmed her position.

[24] The applicant was therefore found to have violated s. 11(c) of the *Code of Conduct* (which requires all councillors to comply with all municipal policies) by being unvaccinated at the relevant times. Further, the applicant was found to have violated s. 30(a) of the *Code of Conduct* (which prohibits circumvention of policies) by refusing to confirm her vaccination status.

[25] The Commissioner recommended in light of these conclusions that the applicant's remuneration as a councillor be suspended for a period of 90 days, which was the maximum available penalty.

2.4 The applicant's response to the report

[26] After the delivery of the Integrity Commissioner's report but before the meeting at which Council was to consider it, on August 9, 2022, Mr. Hunter delivered written submissions to Council on behalf of the applicant. Mr. Hunter focussed those submissions on the penalty which had been recommended by the Commissioner and, in this respect, he urged three points on the councillors. First, that the Commissioner's report was tainted by conflict of interest and that the fact that the applicant had raised the issue of conflict gave rise to a reasonable apprehension of bias. Second, that the applicant had taken "all necessary steps to physically remove herself from contact" with others at Council meetings, thereby ensuring everyone's safety and demonstrating her good will. Third, Mr. Hunter argued that the maximum penalty was disproportionate in this case and should be reserved for cases involving more serious misconduct. He proposed a reprimand instead.

2.5 Council meeting of August 9, 2022

[27] The Integrity Commissioner's report was received and considered by Council on August 9, 2022. There is no videorecording or transcript of that meeting in the record before us, but the minutes reflect that the Commissioner presented the results of his report and that Council had in hand the written submissions of the applicant. A motion to accept the Commissioner's recommendation of the maximum penalty was carried and a motion to amend the penalty to one of 30 days was defeated. Although the minutes reflect that the applicant was permitted to participate in the discussion of these issues, the minutes do not show whether she in fact participated or made any submissions (other than her written submissions), nor do the minutes reflect whether any other councillor participated in any discussion of the matter.

2.6 The application

[28] Following the imposition of the penalty against the applicant, she launched this application on September 8, 2022. Her original notice of application identified the key issue as relating to ss.

7 and 8 of the *Charter*. Then, more than a year later, on November 7, 2023, having retained new counsel, the applicant filed a fresh as amended notice of application in which she alleged for the first time that the relevant *Charter* right was found in s. 2(b), not ss. 7 and 8.

3. Positions of the parties

[29] The applicant says that Council's decision to impose the penalty recommended by the Integrity Commissioner infringed her right to free expression by punishing her for exercising her right not to speak. She argues first that the respondents failed to consider her right to free expression along with related *Charter* values and therefore failed to balance the infringement of her right with the relevant statutory objectives. These failures are said to render the decision incorrect. Second, and in the alternative, the applicant says that the balancing of *Charter* values with statutory objectives was unreasonable. In either case, the applicant asks that the decision be quashed and that the court issue a declaration under s. 24(1) of the *Charter* that the decision violated her right to free expression.

[30] The respondents say that the Integrity Commissioner engaged in a meaningful balancing of the applicant's *Charter* rights informed by the relevant *Charter* values. The result of that exercise was reasonable. The Integrity Commission reasonably concluded that the applicant's refusal to abide by the policy would have rendered it unworkable, and therefore that an intrusion on her rights was justified. In the alternative, the respondents submit that it is improper for the applicant to have raised the issue of freedom of expression for the first time on judicial review.

4. Standard of Review

[31] The parties are agreed that the standard of review is (a) one of correctness respecting the determination as to whether the applicant's *Charter* rights were engaged on the facts before the Commissioner and Council and were taken into account by them in arriving at their findings and the decision to suspend her: *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22, at para. 63; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at para. 58; *Commission scolaire francophones des Territoires du Nord-Ouest v. Northwest Territories*, 2023 SCC 31, at para. 67; *Loyola High School v. Quebec*, 2015 SCC 12, at para. 39, and (b) one of reasonableness respecting all other facets of the decision, including whether the balance struck in the report was proportionate as between the applicant's

Charter rights and the relevant statutory objectives: *Doré v. Barreau du Quebec*, 2012 SCC 12, at paras. 7 – 8, 57 – 58; *Commission scolaire*, at para. 67.[3]

5. Discussion

5.1 Did the Integrity Commissioner consider and balance the applicable *Charter* values?

[32] The applicant argues that the Integrity Commissioner failed to consider her right to free expression when he drafted his report to Council. He therefore failed to engage in a proper balancing of the relevant *Charter* values against the legislative objective of the vaccination policy.

[33] The respondents – setting aside for the purposes of this argument what they say is the inherent unfairness of the applicant having raised freedom of expression *after* the Integrity Commissioner had delivered his report – say that the Commissioner's report shows that in fact he did consider all relevant *Charter* values, including those protected by s. 2(b) of the *Charter*, even if his report does not specifically refer to freedom of expression. Moreover, he balanced those values against the objectives of the *Code of Conduct* and the vaccination policy.

[34] I agree with the respondents. While he did not explicitly refer to freedom of expression (since it was not raised before him), the Commissioner did correctly identify the relevant *Charter* values that were engaged in this case, and he balanced those values against the relevant statutory objectives: the importance of compliance with the *Code of Conduct* by elected officials and the need for a workable vaccination policy. That is all that was required of the Commissioner: that he "appreciate that a *Charter* right arose from the facts …, the scope of its protection, and [that he applied] the appropriate framework of analysis": *York Region*, at para. para. 63. He therefore made no error in law and proceeded correctly. Further, as will be discussed under the next heading, the balancing engaged in by the Commissioner (and adopted by Council) was in all respects reasonable, which is the standard by which it is to be reviewed in this court: *Doré*, at paras. 7 – 8, 54 – 58; *Loyola High School,* at paras. 36 – 39.

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[3] On both issues, given that Council accepted and acted on the recommendations of the Integrity Commissioner's report, that report represents the reasons of Council and is the decision under review: *Robinson v. Pickering*, 2025 ONSC 3233 (Div. Ct.), at para. 67.

[35] At this stage, however, I note that the Commissioner was not required to refer to the applicant's right to free expression by name. It was enough that he understood both the relevant values which underpin that right and "the link between the value[s] and the matter under consideration": *Commission scolaire*, at para. 66. Sometimes, the relevant values will underpin more than one *Charter* right. In *Trinity Western University*, at para. 76, Abella J. referred to this circumstance as one of "overlapping *Charter* protections." Where two *Charter* protections overlap, for example, consideration of one may well mean consideration of both. In *Trinity Western University* itself, although the dispute between the parties had been "almost exclusively framed" as a dispute about religious freedom, that dispute also engaged other rights, including expressive rights. As the "factual matrix underpinning a *Charter* claim in respect of any of these protections [was] largely indistinguishable", the court was able to conclude that all relevant rights and freedoms had been "proportionately balanced" despite the narrower formulation of the issues by the parties: paras. 76 – 78.

[36] In my view, this case is similar in nature. Although the dispute was framed almost entirely as a dispute about the values relating to rights of autonomy, privacy and silence, those values were largely indistinguishable from the values underpinning the right to free expression as it was relevant in the context of this case. I start my discussion of this point with a consideration of the factual matrix which was before the Commissioner and Council.

[37] After receiving the complaint about the applicant's conduct, the Integrity Commissioner invited submissions from the applicant. Through her counsel, she took up that opportunity and made submissions on a variety of topics. To the extent that she invoked the *Charter*, she referred to ss. 7 and 8 and their protections of her personal privacy. When asked to supply an answer to the crucial question – whether she was vaccinated when she attended Council meetings – she declined to answer for that reason. Her counsel did not once refer to freedom of expression or the right to say nothing, as it has been styled in this court.

[38] Further, nothing in the record of Council's consideration of its vaccination policy and the applicant's conduct shows that the applicant ever voiced an objection based on freedom of expression. When the policy was first passed on November 2, 2021, she made broad reference to *Charter* rights and "constitutional freedoms" but made no effort to specify which rights and

freedoms, or *Charter* values, she was invoking. At its most specific, the applicant's prepared statement makes the complaint that Council did not have "authority or right to make decisions with regards to anyone else's [rights]." Six months later, on May 2, 2022, the applicant complained that her questions about the vaccination policy (which questions are not in the record before us) had not been answered but said nothing about freedom of expression. None of the debate in Council that day was about freedom of expression. On May 17, 2022, when ordered to apologize, she refused to do so – thereby exercising her right not to speak, or not to speak as ordered to do – but we do not have any record of that meeting before us, and none of the affidavits in evidence sheds any light on this question, so we are unable to know the applicant's reasoning for refusing to apologize. Last, the applicant's written submissions to Council on August 9, 2022, make no reference to freedom of expression.

[39] The Integrity Commissioner's reasons, then, insofar as they are to be judged for their attention to the applicant's right to freedom of expression, must be read generously since he was never given the benefit of submissions on the point by the applicant. In any case, as I have said, I am satisfied that the Commissioner did consider the relevant *Charter* values, including those underlying freedom of expression, in the context of this case.

[40] This is so given that the values engaged by ss. 7 and 8 of the *Charter* in this case are the same – or are sufficiently similar to – those protected by the right to freedom of expression. In this context, ss. 7 and 8 protect individual autonomy, personal privacy and the right to silence. The applicant's right to say nothing – as she casts her expressive right in this court, relying on *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at p. 1080 – protects the same things: individual autonomy, personal privacy and the right to silence.

[41] The applicant refers to the judgment of the Supreme Court of Canada in *Irwin Toy Ltd. v. Quebec*, [1989] 1 S.C.R. 927, where, at p. 976, Dickson C.J. wrote that the three broad values underlying free expression include "the pursuit of truth, participation in the community, [and] individual self-fulfillment and human flourishing." The applicant submits that the second and third of these values are engaged in this case. Taking the third value first, especially given that the expression in question here is silence in connection with respect to a matter relating to personal

health, self-fulfilment and human flourishing are part and parcel of individual autonomy and rights to privacy and silence, the very values the applicant raised with the Commissioner.[4]

[42] With respect to participation in the community, which Dickson C.J. further described (at p. 976) as "participation in social and political decision-making," I make two broad points. First, it was obvious to the Commissioner that he was considering an issue which had arisen in the context of political decision-making. That fact is plain on the record and could not possibly have been lost on an official whose job it is to consider the conduct of political decision-makers. That the applicant's expressive conduct occurred in a political context would have been even more evident to her fellow members of Council (themselves also political decision-makers), who were present for her objection to the policy in the first place, who were aware of her questions of the CAO and of her attempt to require him to answer those questions, and of her support for an amendment of the motion to amend the policy on the occasion of its six month review.

[43] Second, it seems to me fair to say that the applicant's amorphous invocation of the *Charter* in opposition to the creation of the policy and her later refusal to apologise were forms of political expression which, of course, attracts a high degree of protection from the courts: *B.C. Freedom of Information and Privacy Association v. British Columbia*, 2017 SCC 6, at para. 16. And although the applicant's failure to answer the Commissioner's question about her vaccination status was never described as political speech, I think it is further fair to say that such failure could be characterized as political in nature in the circumstances of this case, and would have been understood as such by the Commissioner and by Council.

[44] However, acknowledging the politically expressive nature of the applicant's refusal to answer the Commissioner's question does not fundamentally change the nature of the values at stake. The applicant's political objection to the policy in the first place – so far as her position can accurately be discerned – was to a policy that required both vaccination and proof of vaccination. I infer that her objection was that the policy interfered with personal autonomy because it forced those who work for the Municipality, for example, to submit to a medical procedure to which they

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[4] The applicant appears to concede the overlapping nature of free expression and the right to privacy in her factum, where she writes as follows: "… [the applicant's] decision related to human flourishing and self-fulfillment because it was a decision to keep a medical decision private."

might object, and that it interfered with their rights to privacy and silence because it would require them to disclose medical information about themselves. These latter concerns are the very issues raised in Mr. Hunter's letters to the Commissioner and are the very issues to which the Commissioner responded in his report to Council.

[45] The Commissioner referred specifically to the applicant's privacy interest in her own medical information, and to the sections of the *Charter* which protect the right to privacy and to silence. In addition, he referred to the judgment in *Banas v. Ontario*, 2022 ONSC 999, where Hurley J. dealt with arguments made under ss. 7 and 8 of the *Charter* in the context of an objection to masking and proof of vaccination requirements during the COVID-19 emergency. Like Hurley J., the Commissioner found that the applicant had failed to supply evidence that the Municipality's vaccination policy had caused any harm to her s. 7 and 8 rights. Importantly, although the Commissioner did not refer to it (because the applicant did not raise the issue), the judgment in *Banas* also refers to the allegation made in that case that COVID-19 regulations interfered with freedom of expression. Hurley J. wrote as follows (at paras. 27 – 29):

> Ms. Banas says she has a conscientious objection to the mask and vaccination requirements. But that does not mean the mask and vaccination requirements infringe her freedom to hold and maintain this objection.
>
> Similarly, she maintains the same freedom to hold whatever thoughts, beliefs and opinions she has about COVID-19; whether the legal requirements are good or bad; and should or should not be imposed by the government. She is also free to express these beliefs. None of the impugned provisions limit her ability to do so.
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> She can peacefully assemble and associate with people as much as she wants in and outside her restaurant. Potential customers may not care to dine at a restaurant because of the mask and vaccination requirements: that is their right in a free and democratic society.

[46] If the applicant had raised the issue of freedom of expression, the Commissioner might have referred to this passage. In any event, the Commissioner addressed these very concerns, albeit in somewhat different terms, by turning to the protections offered by s. 8 of the *Charter* and setting up the applicant's refusal to answer and her reasonable expectations of privacy against the purpose of the *Code of Conduct* and the vaccination policy.

[47] Given that I infer that the political objection to being required to reveal one's vaccination status is based on the applicant's view that such an inquiry violates her privacy rights, it cannot be said that the Commissioner did not consider the applicant's right to engage in political expression by saying nothing. Here, as the respondents write in their factum, the applicant's expressive right and her right to privacy "are two sides of the same coin." Since the question as presently framed was not put to the Commissioner, it is not surprising that his report does not grapple with the applicant's s. 2(b) right expressly, but on a full and fair reading of his report it is evident that it does deal with the core of the applicant's complaint and the values upon which it rests, even as they have been expressed well after the fact in this court.

[48] Accordingly, I would dismiss the applicant's first ground of review.

5.2 Was the balancing reasonable?

[49] I start my discussion of the reasonableness of the decision with the following direction provided in the majority opinion in *Canada v. Vavilov*, 2019 SCC 65 (at para. 91; emphasis added):

> A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.

[50] Part of the "institutional context" and the "history of the proceedings" are the submissions of the parties. In this respect, the majority opinion in *Vavilov* continues as follows under the heading "Submissions of the Parties" (at para. 127; emphasis in the original):

> The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.

[51] In this case, then, where the criticism made of the Commissioner's reasons is that they fail to address an argument which he was not asked to consider, it seems to me that the direction of the court in *Vavilov* – that a reviewing court not hold the decision-maker's reasons to the standard of perfection – is especially apt.

[52] In my view, not only did the Commissioner deal with the *Charter* values engaged by this case and balance them against the relevant statutory objectives (as I have already found), that balancing exercise was reasonable. As the Supreme Court directed in *Commission scolaire* (at para. 67), the task at this stage "involves assessing whether the exercise of discretion reflects a 'proportionate balancing' of *Charter* rights and the values underlying them, on the one hand, with the statutory objectives in respect of which the discretion was granted, on the other."

[53] Here, the Commissioner considered that the limited invasion of the applicant's privacy which his question of her represented was not unreasonable given the general importance of compliance with the *Code of Conduct*, the public health importance of compliance with the vaccination policy, and the failure of the applicant to provide evidence of any harm. In other words, the infringement of the applicant's rights was proportionate. In so concluding, the Commissioner acted reasonably, as did Council by adopting his conclusions.

[54] The Commissioner referred to the diminished expectations of privacy during regulatory investigations, relying on *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3. As the respondents argue, *Branch* makes the point that those who participate in regulated spheres of activity have diminished expectations of privacy in the context of that activity: *Branch*, at para. 57. In the sphere of activity which is at issue in this case, being a member of a municipal council, those who run for municipal office and are elected assume the obligation to be bound by the relevant municipality's code of conduct including its restrictions, if any, on speech: *Buck v. Morris*, 2015 ONSC 5632, at paras. 191 – 193.

[55] In this case, the *Code of Conduct* required the applicant to comply with the policies passed by Council. The Commissioner was charged with investigating whether the applicant had complied with the vaccination policy. In doing so, his report expressly says that he declined to ask the applicant for proof of her vaccination status. Instead, he simply asked her to confirm her

status. Moreover, the Commissioner did not invoke his power to require the applicant to submit to an interview or produce documents. In other words, the Commissioner took the least intrusive steps available to him to advance his investigation.

[56] Set against the applicant's rights were the objectives of the *Code of Conduct* and the vaccination policy. The Commissioner quoted extensively from the *Code of Conduct* and referred to the importance of both compliance with that code and the Municipality's ability to apply the vaccination policy. There is no gainsaying the importance to the public of elected officials complying with high standards of conduct,[5] and it is still a fresh memory that vaccination mandates – including the vaccination policy adopted in this case – were adopted amid a global health emergency that resulted in the deaths of millions. The policy's opening paragraphs reflect the importance of those measures during that emergency (emphasis added):

> The Municipality of Mississippi Mills is committed to workplace safety and to protecting our Councillors, employees, volunteers, contractors, students, and our clients from the hazards of COVID-19. This policy is a temporary measure to reduce the risks of the hazards of COVID-19 and may be amended as new public health directives and/or provincial or federal government legislation, regulations and/or orders are formalized. Any such directives, legislation, regulations, or orders shall take precedence until such time as this policy is amended, from time to time.
>
> The Municipality requires all Councillors, employees, volunteers, contractors and students completing placements to be fully vaccinated against the hazard of COVID-19 to support the health and safety of our workplaces and our community.
>
> […]
>
> The purpose of this policy is to mandate that all employees, volunteers, contractors and students completing placements must be fully vaccinated. The Municipality believes that vaccines create a safe working environment by

[5] In this regard I note that the Municipality's *Code of Conduct* begins with the following Purpose and Policy Statement: "The Corporation of the Municipality of Mississippi Mills is committed to achieving the highest quality of municipal administration and governance by encouraging high standards of conduct on the part of all elected officials and members of its Boards and Committees. A code of conduct aims to ensure public trust and confidence in the Municipality's decision making and operations. The public should expect the highest standards of conduct from the members they elect to local government, as well as members serving on Boards and Committees. In turn, adherence to these standards will protect and maintain the Municipality's reputation and the integrity of its decision-making process."

> reducing the likelihood of introducing the virus, and, if infected, creating illness from the transmission of the virus.

[57] I note that the policy's expression of confidence in the efficacy of vaccines against the COVID-19 virus is supported by the fact that judges may take judicial notice of that efficacy: *J.N. v. C.G.*, 2023 ONCA 77, at para. 20.

[58] In my view, bearing in mind the Commissioner's references to the relevant *Charter* values, his effort to impair the applicant's rights as minimally as possible, and his references to the importance of respect for the *Code of Conduct* and the necessity of being able to apply the vaccination policy, the Commissioner engaged in the exercise of proportionate balancing of the relevant *Charter* values against the objectives of the *Code of Conduct* and the vaccination policy. That exercise was reasonable. I would therefore dismiss this ground of review.

5.3 Were the Integrity Commissioner's conclusions reasonable?

[59] The applicant also submits, however, that the Commissioner's specific conclusions (and Council's adoption of them) were unreasonable (1) because the decision did not further the *Code of Conduct*'s purpose of ensuring compliance with municipal policies given that the policy did not require the applicant to disclose her vaccination status; and (2) because the maximum penalty recommended by the Commissioner went far beyond what was proportionate.

5.3.1 Was the applicant required to disclose her vaccination status?

[60] With respect to the first of these two arguments, I agree with the respondents' submission that the Commissioner did the following:

- Considered the text of the policy.
- Noted the apparent omission of councillors from the policy's requirement to provide proof of vaccination.
- But noted by contrast that the policy also required the CAO to collect vaccination status information from councillors and included a vaccination status form which was to be completed by non-employees which, as observed above, includes councillors.

- Noted that, as a practical matter, the application of the vaccination policy would "be rendered impossible" if councillors were not required to disclose their vaccination status to the CAO which is "a circumstance that the Municipality could not have intended."

[61] As the respondents submit, this exercise in statutory interpretation was "transparent, intelligible, and plainly justified." I agree that it was reasonable and, further, that it was reasonable for the Commissioner to conclude that the policy as drafted contained an error or ambiguity that – if it were read to exclude Council members from the requirement to provide proof of vaccination – could not have been what Council intended. Put another way, I reject the applicant's submission that the policy is unambiguous and clearly exempted councillors from having to provide their vaccination status to the CAO.

[62] In addition, I note that the very people who voted to adopt the policy on November 2, 2021, also agreed with the Commissioner's interpretation of it, given that a majority of them adopted and approved of his report on August 9, 2022. But, even before the councillors had the Commissioner's report, they signalled their understanding that the policy's requirement to provide proof of vaccination status applied to councillors.

[63] As noted above, on May 3, 2022, a motion was made that day to amend the vaccination policy so that it recommended, instead of required, that councillors be vaccinated *and* that they provide their vaccination status to the CAO. That motion, which was supported and apparently thought necessary by the applicant, was defeated because a majority of councillors were of the view that they should follow the same rules that employees were required to follow. As the respondents argue, it appears that members of Council – including the applicant – believed that the policy required them both to be vaccinated and to report their vaccination status.

[64] In all these circumstances, it cannot be said that the Commissioner's report was unreasonable insofar as it comes to the conclusion that the applicant was obliged by the policy to provide information respecting her vaccination status. It was the result of a reasonable analysis of the wording of the policy and its objectives and is supported by the apparent understanding of councillors themselves. By contrast, the interpretation urged by the applicant would require a reading of the policy that is technical in nature, which narrows the broad scope of the policy that was manifestly intended by Council (*i.e.*, that *everyone* involved in the Municipality's work should

be involved in the effort to limit the transmission of the virus), and which ignores the evidence of the intentions of the councillors when they considered the policy on November 3, 2021, May 3, 2022 and August 9, 2022.

[65] In my view, the Commissioner's analysis of the policy and his conclusion that the applicant was required to disclose her vaccination status were reasonable. I would dismiss this ground of review.

5.3.2 Was the penalty reasonable?

[66] I turn then to the applicant's argument that the penalty recommended by the Commissioner and imposed by Council was unreasonable. At the outset, I note that decisions respecting penalty represent "an exercise of discretion that must be accorded a high degree of deference" in this court: *Budarick v. Integrity Commissioner of Brudenell, Lyndoch and Raglan Townships*, 2022 ONSC 640, at para. 40.

[67] The applicant submits that the penalty imposed in this case "went far beyond what was necessary." She submits that the maximum penalty should be reserved for "the most egregious infractions, such as cases of sexual misconduct." Further, she says that the Commissioner failed to provide satisfactory reasons for his recommendation of the maximum penalty given that it rested on his conclusion – as the applicant puts in her factum – that she "failed to cooperate with the investigation, which he took to be a sign of a lack of remorse." In this respect, the applicant says that she did not fail to cooperate, she merely did not disclose her vaccination status. She notes that the Commissioner could have issued a summons to have her submit to an interview, but he never did. In any case, so the applicant argues, it is unreasonable to conclude that a failure to cooperate and a lack of remorse could justify the maximum penalty, especially when the refusal to answer the Commissioner's question was expressive conduct.

[68] The Commissioner's reasoning for recommending the maximum penalty was as follows:

> The Integrity Commissioner recommends that Council suspend the Member's remuneration for a period of 90 days. The Councillor has shown no respect for the policy and direction of Council and has failed to cooperate with the Integrity Commissioner in this investigation. While the Member's actions during the investigation were conducted through counsel, the reasons for refusing to

> cooperate were found to have no basis in law and therefore do not justify the Member's refusal to answer the question as to her vaccination status.
>
> In the absence of remorse or any indication that the Member acknowledges her actions were improper, the Integrity Commissioner is left with no alternative but to recommend the maximum penalty available in the circumstances.

[69] Contrary to the submission of the applicant, the Commissioner did not rest his conclusion solely on a lack of cooperation. It rested on his dual findings that she had failed to show any respect for the policy and the direction of Council (because "her actions were improper") *and* that she had failed to co-operate.

[70] In addition, the Commissioner did not find that the failure to co-operate was "a sign of a lack of remorse", he simply found that there was no evidence of remorse. Nor was there any indication that the applicant recognised that she had engaged in improper conduct. It bears remembering that the Commissioner's report was provided to Council in advance of the meeting at which it was to be discussed and where the applicant had a right to be heard. Therefore, it was at that time still possible that the applicant could attend the August 9, 2022, meeting, acknowledge her misconduct and apologize, and thereby express remorse. If she had, that might properly have moved Council to consider her expression of remorse as a mitigating factor that had the effect of necessitating a more lenient penalty than the one proposed by the Commissioner.

[71] Instead, the applicant filed written submissions on August 9, 2022 that alleged a reasonable apprehension of bias against the Commissioner, urged that she had conducted herself in a way that showed "good will" and "ensured the safety of everyone," and argued that she did not deserve the maximum penalty because her misconduct was "not in the same universe" as sexual misconduct.[6]

[72] The applicant's written submissions show that she and her then counsel certainly understood that her misconduct was about much more than a failure to cooperate with the Commissioner. Instead, her misconduct included her failure to be vaccinated in the context of a worldwide health emergency and her attendance at two Council meetings where she was not

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[6] In this respect, the applicant's counsel referred to the decision of this court in *Chiarelli v. City of Ottawa*, 2021 ONSC 8256 (Div. Ct.), where the maximum penalty had been imposed and was upheld in a case of sexual misconduct by a city councillor.

vaccinated and thereby put in danger the health of her fellow councillors, staff of the Municipality, and members of the public. She recognized as much when, through her counsel, she submitted to Council that her penalty should be no more than a reprimand because she had "removed herself from contact with members of council, staff and the public during [council] meetings." This was said to have "showed good will on her behalf and ensured the safety of everyone."

[73] Notably, the applicant repeats almost none of these submissions on this review. In any case, her argument that she took steps that "ensured the safety of everyone" is difficult to credit when she attended Council meetings in person, apparently unvaccinated, and left only when asked to do so.

[74] I accept the applicant's submission that she was entitled to make legal arguments in the context of the investigation into her conduct, even if (as the Commissioner concluded) those arguments were legally and/or factually baseless. However, as I have already said, the Commissioner's reference to a lack of remorse or insight on the part of the applicant was merely a reference to the absence of evidence of a mitigating factor respecting penalty. The basis for his conclusion that the maximum penalty was appropriate was that the applicant's non-compliance with the policy showed that she had no respect for it or for Council, and that her failure to answer his question respecting her vaccination status – her failure to cooperate – undermined the efficacy of the policy. In my view, these conclusions were supportable on the evidence and betray no improper reasoning.

[75] Last, I reject the applicant's submission that the maximum penalty was inappropriate on its face in this case. A 90-day suspension is not reserved for cases of sexual misconduct and has been imposed in a variety of circumstances. To cite just one example, this court recently upheld a 90-day suspension in a case involving objectionable public statements: *Robinson v. Pickering*, 2026 ONSC 451. Here, where (by her own acknowledgement) the applicant engaged in conduct which might have been dangerous to the health of others, where the applicant was reasonably found to have no respect for either the policy or Council and to have failed to cooperate with the investigation, and where there was no evidence of mitigating circumstances, it cannot be said that the penalty recommended by the Commissioner and adopted by Council was unreasonable.

[76] I would dismiss this ground of review.

6. Conclusion and costs

[77] For the foregoing reasons, I would dismiss the application.

[78] The respondents seek their partial indemnity costs in the amount of $75,000. The applicant says that she is a public interest litigant and that no costs should be awarded against her. In the alternative, the applicant submits that the costs claimed by the respondents are excessive. She proposes $7,500 instead.

[79] In my view, this is not a case in which the applicant is properly described as a public interest litigant. The matters at issue in this case relate in largest part to the applicant's personal interest in the finding that she personally breached the *Code of Conduct* and the vaccination policy. The public interest is better served by applying the normal rule that the successful party is entitled to costs: *Ramsay v. Waterloo Region District School Board*, 2023 ONSC 6508 (Div. Ct.), at para. 63.

[80] However, I agree with the applicant that the quantum of costs sought by the respondents is high. Her alternative submissions are reasonable, and I would order costs payable by the applicant to the respondent within 30 days in the amount of $7,500.00 all inclusive.

I.R. Smith J.

I agree:

Nakatsuru J.

I agree:

O'Brien J.

Released: May 29, 2026

CITATION: Guerard v. The Corporation of the Municipality of Mississippi Mills, 2026 ONSC 2925
DIVISIONAL COURT FILE NO.: DC-22-2738-JR
DATE: 2026/05/29

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

NAKATSURU, O'BRIEN AND SMITH JJ.

BETWEEN:

CYNTHIA GUERARD

Applicant

– and –

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS AND THE INTEGRITY COMMISSIONER OF THE MUNICIPALITY OF MISSISSIPPI MILLS

Respondents

REASONS FOR DECISION

Released: May 29, 2026