FORM 61A.1

Courts of Justice Act

NOTICE OF APPEAL TO THE DIVISIONAL COURT,
ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

ANDREA EMMA BUDARICK

Respondent
(Appellant)

and

THE CORPORATION OF THE TOWNSHIPS OF BRUDENELL, LYNDOCH AND RAGLAN (INTEGRITY COMISSIONER)

Applicant
(Respondent in Appeal)

NOTICE OF APPEAL

The Appellant Andrea Emma Budarick appeals to the Divisional Court from the judgment of Justice Martin James dated November 22, 2021 made in The County of Renfrew.

THE APPELLANT ASKS that the judgment be set aside and judgment be granted as follows:

1. That the Appellant did not breach the *Municipal Conflict of Interest Act*, RSO 1990, c M.50, ("*MCIA*"); or
2. That any such breach was due to error and inadvertence; and/or
3. That a lesser penalty should be substituted; and
4. Such other relief as this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

1. The Appellant is a first-term Councillor in Brudenell, Lyndoch, and Raglan ("BLR") in the Ottawa Valley. She took office on December 5, 2018.
2. The BLR Fire Department attended the property of one of the Appellant's adult sons on August 16, 2019 and subsequently issued an invoice to him as cost recovery for the Fire Department's attendance.
3. BLR Municipal Council reviewed a number of Fire Services invoices, including the one issued to the Appellant's son, at a September 4, 2019 Council meeting.
4. The Appellant declared a deemed pecuniary conflict of interest, because of her son's invoice.
5. Council's discussion of the Fire Chief's Report included several topics unrelated to her son's invoice, and about which the Appellant asked questions.
6. During the meeting, the Appellant did not speak to, vote on, or attempt to influence the outcome of the meeting with respect to her son's invoice.
7. Council met again on October 8, 2019 for a closed session.
8. Prior to the start of the meeting, the Appellant again declared her conflict of interest; however, her son's invoice was not discussed during the closed meeting.
9. Municipal Council met a third time, on October 30, 2019. The Appellant again declared a conflict of interest.
10. When the meeting moved into a closed session, and before anything related to the Fire Department invoices were discussed, the Appellant excused herself and left the meeting.
11. Also in October of 2019, the Appellant wrote to the provincial Fire Safety Commissioner to ask about how to appeal a decision of a local fire department.

12. In the fall of 2019, the Respondent Integrity Commissioner (the "IC") informed the Appellant that she would be investigating alleged violations of the *MCIA* in response to a ratepayer complaint.

13. Following the investigation, the IC filed the Application under review, pursuant to *MCIA* s. 8(4).

14. The application judge issued his decision ("the Decision") on November 22, 2021. In it, he found that the Appellant had breached the *MCIA* and ordered her seat vacated on Sunday, November 28, 2021.

15. The application judge made six (6) errors.

16. **First**, regarding the September 4, 2019 Meeting, the application judge interpreted the term "matter under consideration" in an incorrect and overly broad manner (Decision, paras 62-66).

17. Section 5(1)(b) of the *MCIA* requires that a conflicted Councillor "shall not take part in the discussion of [...] the matter."

18. The term "the matter" is not defined in the legislation, but it can only reasonably mean "the matter in which the councillor is conflicted." It is an error to find that the wording forbids a councillor from asking questions about other issues in the Fire Department. Under a correct interpretation, the Appellant's actions at the September 4, 2019 Meeting do not amount to a breach of the *MCIA*.

19. **Second**, regarding the closed sessions, the application judge incorrectly interpreted the term "shall forthwith leave" under *MCIA* s. 5(2) to mean that the Appellant was not allowed to attend in the first place (Decision, para 37).

20. The MCIA clearly contemplates that such a Councillor *can attend* the closed session *until* Council begins to discuss the conflicted matter. Otherwise, the *MCIA's* direction that "the member shall forthwith leave the meeting or the part of the meeting during

which the matter is under consideration" under s. 5(2) would be incoherent. Under a correct interpretation of this provision, the Appellant's actions at the closed sessions were not a breach of the *MCIA*.

21. **Third**, although it is not entirely clear from the Decision, it appears that the application judge improperly considered the Appellant's letter to the office of the Fire Safety Commission. The Appellant's letter was irrelevant, and the MCIA's provision about influencing a municipal decisionmaker on could not possibly apply. The Fire Safety Commission is a provincial and not a municipal body.

22. Section 5.2 of the *MCIA* forbids councillors from using their positions to attempt to influence "an officer or employee of the *municipality or local board*, or by a person or body to which the municipality or local board has delegated a power or duty" [emphasis added] about a matter in which they have a conflict.

23. Because the Fire Safety Commission is provincial body which operates under the umbrella of Tribunals Ontario, it cannot be an "officer or employee of the municipality" within the meaning of s.5.2 of the *MCIA*.

24. Even if the Fire Safety Commissioner were an officer or employee of the municipality, the Appellant did not attempt to exert influence. She simply asked him to identify the mechanism for filing appeals. There was no attempt to curry favour or influence decision making.

25. **Fourth**, the application judge improperly enlarged the scope of the IC's ability to bring an Application to court outside of the six-week time limit in cases where the matter was not first raised as a ratepayer complaint (Decision at para 72).

26. The *MCIA* contains tight deadlines for filing an Application under s. 8(2). The IC brought this Application under *MCIA* s. 8(4), which permits her to bring an Application which would otherwise be time barred under s. 8(2).

27. However, s. 8(4) is a limited exception. It only applies to an Application that follows an Integrity Commissioner's *investigation of a complaint* under s. 223.4.1 of the *Municipal Act, 2001*. The IC was therefore unable to raise as part of the court Application matters which were more than six weeks old and which were not part of a ratepayer complaint it investigated.

28. **Fifth**, the application judge erred in finding that the breach, if committed, was intentional and not an error or act of inadvertence (Decision at paras 69-70). The only evidence before the application judge with respect to the Appellant's licant's state of mind was her own affidavit. She was cross-examined, but it was never put to her that she had intentionally contravened the *MCIA*.

29. The application judge erred in failing to consider the circumstantial evidence which contradicted his conclusion. The Applicant made no attempt to hide her conflict; on the contrary, she declared it over email, in writing at the start of meetings, and orally. She sought advice from numerous sources. These actions clearly contradict the inference that the Appellant recklessly breached her obligations intentionally and knowingly. Rather, they show the Appellant was extremely concerned and took many steps to *avoid* breaching her obligations.

30. **Sixth**, in the event that the application judge properly concluded that the Appellant breached the *MCIA*, he erred in failing to properly consider a penalty lesser than removal from office, in that:

    a. This is one of the first cases applying the new penalty provisions on the *MCIA*, which came into force on March 1, 2019;

    b. The new penalty provisions are intended to introduce a spectrum of penalties, rather than solely a reprimand or removal from office, as before;

c. The application judge erred in his analysis of how the spectrum of penalties are to be considered and applied;

d. The application judge erred in his analysis of how the mitigating and aggravating factors affect the appropriate penalty;

e. The application judge appears to have considered only reprimand and removal but not lesser intermediary penalties, such as a short suspension or financial penalty; and

f. A lesser penalty rather than removal ought to have been applied in this case.

31. For these reasons, the Appellant asks that the appeal be granted.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. *Municipal Conflict of Interest Act*, RSO 1990, c M.50 at Section 11(1): "An appeal lies from any order made under section 9 to the Divisional Court in accordance with the rules of court";
2. The Order of Justice James is a final order;
3. Leave to appeal is not required; and
4. The grounds of appeal, set out above, and any other information this court deems relevant.

The appellant requests that this appeal be heard at the City of Ottawa by electronic videoconference.

TAKE NOTICE: THIS APPEAL WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of

appeal was filed with the court, unless otherwise ordered by the court.

November 24, 2021

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SUPERIOR COURT OF JUSTICE

Proceeding Commenced at

OTTAWA

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