CITATION: Espanola (Integrity Commissioner) v. Van Alstine, 2022 ONSC 2881
COURT FILE NO.: C-9570/20
DATE: 2022-05-12

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Robert J. Swayze In his capacity as the Integrity Commissioner of The Corporation of the Town of Espanola Applicant	)	D. Reiter and J.G. Pappas, for the Applicant
– and –	)	
	)	
Maureen Van Alstine Respondent	)	M.B. Lesage, for the Respondent
	)	
	)	**HEARD via Zoom:** April 14, 2022

DECISION ON APPLICATION

BOUCHER J.

Introduction

[1] The applicant started these proceedings because the respondent, at a municipal council meeting, voted twice on a matter in which she had a pecuniary interest, after having failed to disclose that interest. He recommends a reprimand, a declaration that the respondent's seat on council is vacant, and that she be disqualified from running for public office for two years.

[2] The respondent admits she should not have voted on the matter but believes the applicant's position on disposition is too harsh and should be reserved for the most extreme case. She asks that the penalty range from a reprimand to a suspension of pay of up to 90 days.

[3] The issue for me to determine on this application is the appropriate disposition in the circumstances.

Background

Prior involvement of the Integrity Commissioner

[4] In December 2019 the applicant received a complaint which alleged the respondent had shouted at the Town's former Manager of Financial Services. The respondent apologized for what she described as "behaviour which [the Manager of Financial Services] viewed as disrespectful and discourteous."

[5] The applicant next became involved when three complaints were received about three motions brought by the respondent on February 11, 2020. One of the motions was for a public reprimand of the Chief Administrative Officer (CAO) of the Town for failing to present a written budget within a specified time. Another was for the Town's financial statements to be changed so that they would accord with generally accepted accounting principles. In cross-examination, the respondent admitted the latter motion was not in accordance with the *Municipal Act, 2001*.

[6] In his report dated June 23, 2020, the applicant found that the respondent's public criticism and ill treatment of the CAO constituted a significant contravention of the Code of Conduct adopted by the Town's municipal council. He recommended a reprimand and a 90-day suspension of the respondent's remuneration. At the council meeting in which this recommendation was considered, the respondent was reminded by the applicant and the Mayor that she could not vote on the issue. The respondent abstained from voting (though she failed to declare her pecuniary interest) and Council unanimously adopted the applicant's recommendations and sanctioned the respondent as recommended. The respondent did not challenge the applicant's report by way of judicial review.

[7] The applicant next became involved when the respondent filed five complaints (four against the Mayor and one involving a former member of municipal council). In a report dated September 08, 2020, the applicant dismissed the complaints. In his report the applicant referenced qualitative and quantitative data in support of the CAO's job performance. He also concluded the complaints were "obviously in retaliation to the complaints dealt with in [the] June 23 report." The respondent did not challenge this report by way of judicial review.

[8] The applicant's third report addressed complaints made about the respondent's conduct. He concluded that she continued to criticize the CAO inappropriately and publicly. The applicant recommended a reprimand and a 60-day suspension of the respondent's remuneration in his report dated October 16, 2020.

[9] At the outset of the October 27, 2020, municipal council meeting during which the report and the recommendations were to be considered, the Mayor asked for a declaration of pecuniary interest from all council members. The applicant's report had been provided in advance of the meeting. Unlike when the prior recommendation was considered, neither the applicant nor the Mayor reminded the respondent that she could not vote on the matter, though the applicant had left the meeting prior to the vote taking place.

[10] An amending motion had been brought to change the start date of the recommended suspension of remuneration. The respondent voted against this motion and it was defeated 4-3. The respondent then voted against the recommended monetary sanction, and it failed to pass by a vote of 4-3. The Mayor called upon the respondent to vote on both the amended motion as well as the monetary penalty. The respondent's participation did not impact the outcome of the two votes. The respondent did not challenge this report by way of judicial review.

The within application

[11] The Mayor subsequently filed a complaint with the applicant alleging the respondent should not have voted in matters involving her pecuniary interest. The applicant conducted an inquiry and received submissions from the respondent, who alleged bias on the part of the applicant and invited him to bring an application.

[12] The applicant concluded that the respondent appeared to have contravened the *Municipal Conflict of Interest Act* (the "MCIA"). He reported this to municipal council on December 02, 2020, and thereafter started the within application.

[13] The week prior to the applicant's report on the MCIA inquiry was presented to counsel, the respondent unsuccessfully tried to bring a motion to terminate the CAO without cause, despite the earlier warnings and sanctions for bringing this type of motion in violation of the Code of Conduct. The Mayor declined to add this motion to the municipal council meeting's agenda for the December 02, 2020, meeting. The respondent brought a subsequent motion seeking the advice of experts to discuss how to terminate the CAO. Not long thereafter the CAO resigned.

[14] While this application was proceeding toward a hearing, the respondent served Notices of Constitutional Questions which challenged over one hundred sections of the *Municipal Act, 2001*. The applicant moved to strike these notices and the respondent abandoned them prior to the hearing of the motion to strike.

The Law

[15] Relevant portions of the MCIA provide as follows:

> 1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:
>
> > 1. The importance of integrity, independence and accountability in local government decision-making.
> >
> > 2. The importance of certainty in reconciling the public duties and pecuniary interests of members.
> >
> > 3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
> >
> > 4. There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.
>
> …

5(1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question

…

5(2.1) The following rules apply if the matter under consideration at a meeting or a part of a meeting is to consider whether to suspend the remuneration paid to the member under subsection 223.4 (5) or (6) of the Municipal Act, 2001 or under subsection 160 (5) or (6) of the City of Toronto Act, 2006:

1. Despite clauses (1) (b) and (c), the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.

2. Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration.

…

8(1) An elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest may apply to a judge for a determination of the question of whether,

(a) a member has contravened section 5, 5.1 or 5.2; or

(b) a former member contravened section 5, 5.1 or 5.2 while he or she was a member.

…

> 9 (1) If the judge determines that the member or former member contravened section 5, 5.1 or 5.2, the judge may do any or all of the following:
>
> 1. Reprimand the member or former member.
>
> 2. Suspend the remuneration paid to the member for a period of up to 90 days.
>
> 3. Declare the member's seat vacant.
>
> 4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.
>
> 5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.
>
> (2) In exercising his or her discretion under subsection (1) the judge may consider, among other matters, whether the member or former member,
>
> (a) took reasonable measures to prevent the contravention;
>
> (b) disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* and acted in accordance with the advice, if any, provided to the member by the Commissioner; or
>
> (c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith

The Positions of the Parties

The Applicant

[16] The applicant describes the respondent's conduct throughout as continued indifference to her responsibilities as an elected member of municipal council. He notes, for example, the respondent admitted in cross-examination that she had not read the Code of Conduct in its entirety.

[17] Another example of her continued indifference, he suggests, are the respondent's motions that gave rise to the sanction by municipal council, which motions he characterizes as frivolous and vexatious. At the outset of this hearing the parties agreed the respondent could correct her answers to two of the questions she was posed in cross-examination, subject to further cross-examination on one of the corrected answers during this hearing. The question and answer, including the corrected answer in italics, are set out below:

> Q. 235 Councillor, what we have learned today, and you have acknowledged, is that you made frivolous and vexatious motions, you brought motions violating the Code of Conduct against staff, correct?
>
> A Yes, sir. *I had intended/understood my answer to apply to the 2nd part of the question (the underlined portion), that I had brought motions which violated the Code of Conduct. I did not, at the time brought (or now) believe them to be "frivolous or vexatious" although they may in fact be incorrect from a public accounting standpoint, as Mr. Reiter took me through on examination. Regarding these motions, and as set forth in my Affidavit at paragraph 25,*
>
> > *"The first was for the Town to employ the (accounting) matching principal for the fire department and OPP transition budgets, which was seconded by Councillor Dufour. The next, also seconded by Councillor Dufour, was to reprimand CAO Townsend for allowing the Town's Chief Building Official to deliver a verbal budget request (where all other departments had submitted written requests.) Both motions carried."*

[18] In cross-examination during this hearing, the respondent acknowledged she had brought a motion to reprimand the CAO and to put it in her file. She agreed alleging a breach of fiduciary duties is serious and that it was contrary to the Code of Conduct. She denied intending to harass the CAO and testified that it would depend on the person's point of view. She further denied her actions were frivolous or vexatious.

[19] With respect to her motion regarding generally accepted accounting principles, the respondent testified at the hearing that she made an error in her presentation and that she discovered later that it was not permitted by law. She denied it was frivolous or vexatious. She testified that she was not out to hurt anyone and that she did not put it the right way. Although it was taken offensively, she did not intend it to be taken that way.

[20] The applicant further submits the actions giving rise to this application were not mere inadvertence, but rather recklessness. The respondent had extensive training in the Code of Conduct, he submits, and was aware she could contact the applicant to clarify any confusion on her part prior to the meeting. Although she described herself as being in an emotional state at the meeting, he points out she admitted in cross-examination that she did not take any steps to prepare herself prior to the meeting. She admitted in cross-examination that she had taken preparatory steps in the past but not with respect to this meeting.

[21] Another example of the indifference alleged by the applicant is her decision to start the Notices of Constitutional Questions which were abandoned in the face of his motion to strike, which the respondent admitted cost the taxpayers tens of thousands of dollars. He asks that I consider this an aggravating factor when determining the appropriate penalty.

[22] The applicant further suggests the respondent has failed to provide an adequate answer for her failure to declare her pecuniary interest and to vote improperly, other than to suggest officially induced error. He argues the latter argument must fail because she had been warned previously, had extensive training and experience and ultimately the responsibility of compliance with the MCIA rests with her alone. He points out that in cross-examination she admitted she did not turn her mind to this issue with honesty, forthrightness, and openness.

[23] The respondent's corrected answer on this point, including the corrected answer in italics, are set out below:

> Q. 18 No, I understand that, Councillor [sic]. What I'm asking – and we'll do it again because you are not answering the question, so please listen to me and I'll try to be very clear. At the moment you voted, did you know that you shouldn't be voting when you voted?
>
> A I wasn't even thinking of that then. I was simply answering the question. *After the fact when I received the sanction for conflict of interest, the full knowledge that I had voted when asked by Mayor Beer to vote sunk in. Then I realized that I had voted when I should not have voted. I was not thinking about it at the time and did not turn my mind to it at the start of the hearing.*

[24] With respect to the respondent's allegations of bias against the applicant, the latter suggests this is a collateral attack on his reports. He submits the proper forum for this to be raised is at first instance, which was not done in this case (see for example *Chiarelli v. Ottawa (City)*, 2021 ONSC 8256 (Div. Ct.) at para. 77, and *The Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner) v. Andrea Emma Budarick*, 2021 ONSC 7635 (CanLII) at para. 77.) He further argues that collateral attacks are an abuse of the court's process (see *Toronto (City) v. C.U.P.E.*, Local 79, 2003 SCC 63 (CanLII), [2003] 3 SCR 77 para. 54). He asks that I consider this an aggravating factor.

[25] Unlike in many of the cases filed for this hearing, the applicant suggests the respondent voted twice when her own direct pecuniary interest was at stake. He also submits I must consider this application in the context of the respondent's other dealings with the applicant, as set out above, including her requested motions during the applicants MCIA inquiry. The respondent must be subjected to progressive discipline, he argues, because the previous penalty did not deter her from further violations of the Code of Conduct and the MCIA.

[26] The applicant argues that nothing short of removal from office is appropriate in these circumstances. He reminds the court that public confidence requires elected officials to place their public duties ahead of their own self-interest (see *Moll v. Fisher* (1979), 8 M.P.L.R. 266 (Ont. Div. Ct.) at page 4). He submits public confidence can only be maintained by a strict observance of the MCIA's prohibition on voting when pecuniary interests are engaged (see *Greene v. Borins* 1985 CarswellOnt 666, 18 D.L.R. (4th) 260, at para. 44). Finally, he urges me to apply the same test to the respondent that applies to judges when their ability to continue in office is considered. In that regard, he suggests the respondent's conduct has manifestly undermined the trust demanded of her role.

The Respondent

[27] The respondent admits that she contravened the MCIA by failing to declare a pecuniary interest at the outset of the meeting on October 27, 2020, and by subsequently voting on the amending motion and the motion. She asks me to consider several factors which she submits mitigate against the penalty sought by the applicant.

[28] The respondent at the time of the hearing was 72 years old, with a history of public service of more than 30 years. She notes a history of problems with the CAO which were reported to the applicant and upon which he chose not to act. She points out that several other municipal councilors shared her view regarding the CAO's problematic behaviour.

[29] She further submits that although she apologized to the Manager of Financial Services, she denies yelling at her, which she says was confirmed by several Councilors.

[30] The respondent argues that both the applicant and the Mayor officially induced her into error by not telling her to refrain from voting on the motions. Although officially induced error is traditionally a defence, the respondent urges me to consider it in this context as a mitigating factor on penalty. She notes that when she was previously sanctioned by municipal council, the applicant and the Mayor told her she could not vote. In addition, the Mayor called upon her to vote on both motions at the October 27, 2020, meeting.

[31] In her affidavit sworn April 22, 2021, the respondent describes what happened at the time the voting took place. At paragraph 41 she states:

> As I was upset to again be sanctioned, I did not process that I should not vote on this motion, nor was it pointed out to me by the Mayor or IC Swayze (contrary to what had been the case in June).

[32] The respondent also submits that throughout his dealings with her, the applicant displayed a history of bias. She asks me to apply the test for reasonable apprehension of bias as set out in *R. v. Louangrath* 2014 ONSC 1471 (CanLII) at para. 2:

> The apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information…[T]hat test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker] whether consciously or unconsciously, would not decide fairly."

[33] The respondent submits that while the applicant noted he could not interfere with the municipal councilors' right to vote during a different investigation, he concluded a group of them voted in a biased way, though this was not in contravention of the Code of Conduct. She suggests his biased conclusion tainted his investigation which resulted in the within application. With respect to the applicant's argument that the issue of bias should have been raised by way of judicial review, rather than in this application, the respondent states that she did not have the resources to engage in such reviews.

[34] The respondent also argues that the Mayor, the prior Integrity Commissioner, and the applicant took too restricted of a view of the Code of Conduct, one which completely prevents any public criticism of the workings of the Town. She notes this approach leads to absurd results, such as the inability to question, for example, garbage collection at a public meeting.

[35] In determining the appropriate penalty, the respondent asks me to apply the reasoning in *City of Elliot Lake (Integrity Commissioner) v. Pearce, 2021 ONSC 1851*. In that case, the Court imposed a reprimand against a Councilor who engaged in debate on a matter in which he had a pecuniary interest.

[36] The respondent further submits that her actions cannot be characterized as reckless in these circumstances. She also denies that I can apply to her the same standard as that which applies to a sitting judge. If the legislators had intended that standard to apply to municipal councilors, she argues, they would have clearly done so.

[37] I am also asked to consider the issue of proportionality. At the October 27, 2020, meeting, Council was being asked to consider a penalty (suspension of remuneration for sixty days) which is much less severe than that which the applicant currently seeks. She argues that the penalty must be proportionate to her acts in the circumstances.

[38] These circumstances include, she submits, all relevant material evidence, including the prior problems Council had with the CAO. She argues that these problems demonstrate a pattern of concerns not limited to her involvement.

Analysis

Allegations of bias

[39] The respondent alleges bias on the part of the applicant throughout his dealings with her and other municipal councilors. His bias, she suggests, tainted the investigation that led to the within application.

[40] With respect, this argument must fail. Any concerns the respondent had in this regard should have properly been raised at first instance (*Chiarelli* at para. 77, *Brudenell* at para. 77). Raising the issue now, cloaked as a mitigating factor on penalty, is a collateral attack that is an abuse of the court's process (*Toronto v. CUPE* para. 54). This went beyond mounting a vigorous defence. I accordingly conclude it is an aggravating factor when determining the appropriate penalty.

Officially induced error

[41] I also reject the respondent's argument that the actions of the Mayor and the applicant mitigate against the penalty to be imposed. The obligation to declare a pecuniary interest at the outset of the municipal council meeting lies with the person to whom the interest applies. The Mayor indeed called upon the municipal councilors to declare such interest at the start of the October 27, 2020, meeting.

[42] The respondent's obligation to refrain from voting was unconditional. The fact the Mayor and the applicant had previously warned her not to vote, but did not do so at the October 27, 2020, meeting, is of no consequence. The respondent alone is bound by her responsibilities under the MCIA. She had extensive experience and training on her obligations. If anything, the prior warnings should have been a reminder to her of her obligations. She had only months prior been through this very same experience. She had three opportunities at the October 27, 2020, meeting to declare her pecuniary interest, yet failed to do so.

[43] The defence of officially induced error, as set out in *Mississauga (City) v. Peel Standard Condominium Corp. No. 833* [2013] O.J. 5236 at para. 233 requires the following:

> (1) that an error of law or of mixed law and fact was made;
>
> (2) that the person who committed the act considered the legal consequences of his or her actions;
>
> (3) that the advice obtained came from an appropriate official;
>
> (4) that the advice was reasonable;
>
> (5) that the advice was erroneous; and
>
> (6) that the person relied on the advice in committing the act.

[44] In the case at bar, the respondent's evidence does not establish that she considered the legal consequences of voting. In addition, I do not find the Mayor's request for a vote on the motions was advice within the meaning of this test. Even if it could be characterized as advice, the respondent's evidence is not that she relied on it, but rather that she did not process it and had not been warned to refrain from voting. The fact the Mayor called upon her for a vote does not minimize her own responsibility in these circumstances.

The Notices of Constitutional Questions

[45] I have already ordered costs against the respondent with respect to the applicant's motion to strike. To consider that step in the proceedings as an aggravating factor at this stage would, with respect, be to penalize the respondent twice for that decision. I therefore do not consider it an aggravating factor in determining the appropriate penalty.

The prohibited conduct

[46] The respondent admits she violated the MCIA by failing to disclose her pecuniary interest and by voting on the motions at the October 27, 2020, meeting. Her evidence is that she was upset about this second round of proposed sanctions against her and that she did not process that she should not vote. With respect to the failure to declare her pecuniary interest at the outset, she stated in cross-examination that she honestly has no idea why she failed to declare her interest. She also suggests her vote did not have an impact on the ultimate outcome.

[47] The respondent acknowledged the following in cross-examination:

a. that the obligation to declare a pecuniary interest is a fundamental part of serving the public;

b. That her oath of office requires her to declare pecuniary interests;

c. That she had four training sessions on conflict of interest as well as training on the Code of Conduct with the applicant;

d. That she received the Ontario Municipal Councilor's Guide which contains provisions about declarations regarding pecuniary interests; and

e. That she had previously written to the applicant to get advice on whether she was in a conflict on another matter prior to a meeting and that she could have reached out to him again in these circumstances.

[48] The respondent received the applicant's report and the agenda ahead of the meeting and did not take any steps to prepare, despite the meeting's importance to her. Despite her experience and training, and her previous experience with this very issue only four months prior, she went into the meeting without a plan to comport herself in the way the legislation requires.

[49] In the circumstances of the present case, simply forgetting to declare her pecuniary interest at the outset of the meeting, which question is raised at the beginning of all Council meetings, cannot be characterized as mere inadvertence. Nor can her explanation for voting on the motions.

[50] The fact her vote did not have an impact on the outcome is not a mitigating factor in this case. As set out in *Greene* at para. 44:

> Nor is it of any consequence how the vote was cast, the outcome of the vote, or the motive of the municipal official. The very purpose of the statute is to prohibit any vote by one who has a pecuniary interest in the matter to be considered and voted upon. It is only by strict observance of this prohibition that public confidence will be maintained.

The appropriate penalty

[51] The respondent likens her situation to that of the municipal councilor in *Pierce*. In that case, the Councilor was also a board member of an economic development corporation (ELNOS). The municipality had guaranteed a commercial tenant's rent and did not want to expose a $30,000 payment pursuant to that guarantee to public scrutiny in an election year. The municipality accordingly paid the money to ELNOS who in turn provided it to the commercial tenant. Pierce engaged in the discussions and took a position on the issue at a municipal council meeting, thus violating his conflict-of-interest obligations.

[52] The application judge in *Pierce* noted that the municipal councilor had received training on conflict of interest and was aware he could reach out to the Integrity Commissioner for advice, though he chose not to. The application judge held that removal from office should be reserved for the most egregious breaches, and that in the circumstances, which included an apology as well as an indirect pecuniary interest, a reprimand would be proportionate to the impugned act.

[53] Subject to mandatory penalties, which do not apply in this case, the imposition of a penalty is an individualized process, and is fact specific. I am mindful of the principles set out in section 1.1 as well as the factors enumerated in subsection 9(2) of the MCIA, which is not a closed list. Despite the applicant's able argument, the MCIA provides sufficient guidance to me at the penalty stage such that I need not decide whether the standard applied to remove a sitting judge applies equally to a sitting municipal councilor.

[54] Although decided prior to the 2017 amendments to the MCIA, the court in *Halton Hills (Town) v. Equity Waste Management of Canada* (1995) 30 M.P.L.R. (2d) 232 (Ont. Gen. Div.) set out the high standard the public expects of their elected officials, which applies equally to the amened Act. At para. 9 the court held:

> The Act is crystal-clear. It is harsh. It must be. It controls the actions of council members. They are the repositories of the citizens' highest trust. They must at once be strong in their debate to put forward their lectorates' concerns; they must always have an ear to the dissent in their voters. They must not only be unshirkingly honest — they must be seen to be so — by those who voted for them, and those who voted against them. Their role, though noble in its calling, is demanding in its execution. It is onerous in the extreme.

[55] The facts of the case at bar are distinguishable in many ways from those in *Pierce.* The respondent's breach of the MCIA came after a lengthy career in public service. The October 27, 2020, meeting was the second time in four months that municipal council was to consider remunerative sanctions against her for alleged violations of the Code of Conduct. Despite her experience and training, she neglected to prepare for what was surely to be a difficult meeting. That preparation could have included reaching out to the applicant for advice, as she had done in the past.

[56] As I have already explained, the actions of the respondent were not a result of inadvertence. She has previously been sanctioned by Council for breaching the Code of Conduct. She has not offered an apology for her actions at the October 27, 2020, meeting. After the meeting, she tried to bring a motion that would have dismissed the CAO without cause. Her explanation for this, being that she saw it as a way to bring the matter forward for discussion, belies her experience and training.

[57] Progressive discipline is engaged in this application. A previous reprimand and suspension of remuneration by municipal council did not deter the respondent. While the memory of that sanction was still fresh, she committed the breaches giving rise to the within application.

[58] I have considered the animosity that evidently existed between the respondent and other members of municipal council and the CAO. That the subject of the previous discipline involved this animosity is neither aggravating nor mitigating at this stage. What is important for me is that the respondent was previously sanctioned by municipal council.

[59] I have also considered the respondent's argument that the penalty being sought by the applicant in this proceeding is disproportionate to the penalty which municipal council was asked to consider at the October 27, 2020, meeting. To be clear, I have no jurisdiction in this application to interfere with Council's decision not to impose the penalty recommended by the applicant. I am determining the appropriate penalty for the respondent's actions at that meeting.

[60] A further suspension of remuneration would be inadequate. The penalty proportionate to the acts committed in these circumstances is removal from office. Anything less would ignore the guiding principles legislated by the Province of Ontario and the high trust citizens place in their elected officials.

Disposition

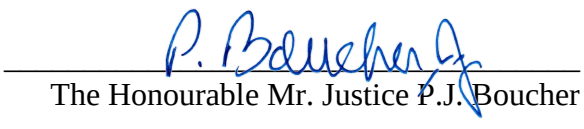
[61] For these reasons:

a. I declare the respondent has contravened section 5 of the MCIA;

b. The respondent is reprimanded; and

c. I declare the respondent's seat on the municipal council of the Corporation of the Town of Espanola vacant.

[62] If the parties are unable to agree on costs, the applicant may deliver submissions on costs of no more than three pages, double-spaced, not including a bill of costs and any offer to settle, within thirty days of the date of this decision. The respondent shall have forty-five days from the date of this decision to deliver her submissions. There will be no reply without leave.



The Honourable Mr. Justice P.J. Boucher

Released: May 12, 2022

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Applicant

– and –

Maureen Van Alstine

Respondent

DECISION ON APPLICATION

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