

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

B E T W E E N:

**DAVID KIRCHER**

Applicant

and

**THE CORPORATION OF THE TOWN OF FORT FRANCES and  
THE INTEGRITY COMMISSIONER FOR FORT FRANCES**

Respondents



**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

TO THE RESPONDENTS A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard in person or by video conference at a time and place to be determined by the court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

*TAKE NOTICE: THIS APPLICATION 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 application was filed with the court, unless otherwise ordered by the court.

Date June 7, 2024 Issued by \_\_\_\_\_  
Local Registrar

Address of court office: 125 Brodie Street North  
Thunder Bay, On P7C 0A3

TO: **The Corporation of the Town of Fort Frances**  
c/o Gabrielle Lecuyer (Town Clerk)  
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Fort Frances, ON P9A 3P9  
Email: [glecuyer@fortfrances.ca](mailto:glecuyer@fortfrances.ca)  
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TO: **David G. Boghosian (per Boghosian & Allen LLP)**  
The Integrity Commissioner for Fort Frances  
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Toronto Ontario M5H 2M5  
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AND TO: **Attorney General of Ontario** (as required by subsection 9(4) of the *Judicial Review Procedure Act*)  
Crown Law Office – Civil  
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## APPLICATION

### THE APPLICANT MAKES APPLICATION FOR:

- a. An order quashing the decision and recommendations of the Integrity Commissioner for the Town of Fort Frances (the “**Integrity Commissioner**”) found in his Final Report dated May 3, 2024, and delivered to the Applicant on May 10, 2024;
- b. An order quashing the decision of the Town Council for Fort Frances (“**Council**”), rendered on May 13, 2024;
- c. Costs of this application; and
- d. Such further and other relief as counsel may advise and this Court may permit.

### THE GROUNDS FOR THE APPLICATION ARE:

#### Parties

- e. The Respondent, Fort Frances, is a town in northern Ontario with approximately 7,800 residents.
- f. The Applicant, David Kircher, was of one of the seven Town Councillors of Fort Frances from November 2022 to May 2024. He has deep roots in Fort Frances. Councillor Kircher was born and raised in Fort Frances. Prior to serving on the Council, Councillor Kircher was elected three times to serve on Fort Frances’ school board (2010-2022). Councillor Kircher also sat on Fort Frances’ Economic

Advisory Committee before the start of the pandemic. For Councillor Kircher, good governance and economic development of Fort Frances are objectives close to his heart. He took his tenure on the Council seriously to effect these objectives.

- g. The Respondent, the Integrity Commissioner (*per* David G. Boghosian), was retained by the Council to undertake an investigation of Councillor Kircher for possible Code of Conduct violations, as further described below.

### **The Code of Conduct Complaint Against Councillor Kircher**

- h. On February 13, 2024, the Council passed Council Resolution 442.
- i. Under its authority, Mayor Hallikas of Fort Frances asked the Integrity Commissioner to investigate the following Code of Conduct allegations against Councillor Kircher:
  - i. Councillor Kircher has on several occasions improperly used the Fort Frances Municipal email system. He has on several occasions sent emails to all of council that requested a decision or action that should have taken place in a council meeting;
  - ii. Councillor Kircher has shared closed meeting information by email;
  - iii. Councillor Kircher attempted to direct administration outside of a duly called meeting;
  - iv. Councillor Kircher has circumvented the Chief Administrative Officer's ("**CAO**") chain of command and had direct conversations

with staff or statutory officers (in violation of the Council and Staff relations policy);

- v. Councillor Kircher has insinuated that staff was acting in bad faith and has asked for information outside of a council meeting implying some sort of wrongdoing or failure to carry out due diligence by staff; and,
- vi. Councillor Kircher has implied that there has been a leak of information by councillors and has repeatedly accused one councillor of acting in bad faith.

### **The Integrity Commissioner's Flawed Investigative Process**

- j. On March 8, 2024, the Town Clerk (*per* Gabrielle Lecuyer) provided documents related to the complaints to the Integrity Commissioner. Among other things, these documents included email exchanges and attachments sent or received by Councillor Kircher.
- k. The Town Clerk did not provide the Integrity Commissioner with copies of emails from other councillors that raised many of the same issues alleged against Councillor Kircher, including the allegedly improper use of the municipal email system and the sending of emails in which councillors requested a decision or action that allegedly should have taken place in a council meeting.

- l. The Integrity Commissioner improperly relied upon incomplete and incorrect summaries of emails provided by the Town Clerk rather than directly reviewing and considering the emails at issue.
- m. As part of the investigation, the Integrity Commissioner exercised his discretion and elected to hear directly from sources. He interviewed Councillor John McTaggart, ACAO Travis Rob, and the Town Clerk.
- n. The Integrity Commissioner did not interview Councillor Kircher. Instead, the Integrity Commissioner emailed Councillor Kircher summaries of the emails he had reviewed with specific questions.
- o. On or about April 15, 2024 Councillor Kircher responded to the summaries and questions received from the Integrity Commissioner.
- p. On April 20, 2024, the Integrity Commissioner posed four additional questions to Councillor Kircher.
- q. Before Councillor Kircher could answer these questions and presumably based on confirmation from the Integrity Commissioner, on April 22, 2024, the Council passed a resolution as follows:

8.6 Official Notice of Intent from the Integrity Commissioner to report on the Code of Conduct Complaint for Councillor Kircher

**Recommendation:** THAT Council receives report AR-24-0570 regarding the Official Notice of Intent from the Integrity Commissioner to report on the Code of Conduct Complaint for Councillor Kircher

AND THAT Council acknowledges that the Integrity Commissioner for the Town of Fort Frances has concluded an investigation into a Code of Conduct complaint involving Councillor Kircher. An overview of the report will be presented at the May 13, 2024, Regular Council Meeting.

- r. On May 1, 2024, Councillor Kircher answered the Integrity Commissioner's additional questions.

**The Integrity Commissioner's Final Report**

- s. In his Final Report of May 3, 2024 (the "**Report**"), the Integrity Commissioner found that Councillor Kircher breached the Code of Conduct.
- t. On or about May 10, 2024, the Report was provided to Councillor Kircher.
- u. In the Report, the Integrity Commissioner, *inter alia*, made the following findings:
  - i. Councillor Kircher breached the "open meeting principle" through the use of his email to address non-confidential and confidential matters with other members of the Council;
  - ii. In corresponding with Councillor McTaggart, Councillor Kircher's email constituted abusive and bullying conduct;

- iii. Councillor Kircher directed staff to conduct activities that can only be performed at the direction of the Council—and not an individual member of the Council; and
- iv. Councillor Kircher attempted to use his status as a councillor to inappropriately influence the decision of another body (Committee of Adjustment), or at least counsel others to do so.
- v. In view of these purported breaches, the Integrity Commissioner recommended: a cumulative suspension of 55 days in pay; a public apology to Councillor McTaggart; and Fort Frances hiring a workplace facilitator to work with both Councillors McTaggart and Kircher to “restor[e] mutual trust”.

### **The Council Sanctioned Councillor Kircher**

- w. On May 13, 2024, the Council held a “Regular Council Meeting” (the “**Meeting**”).
- x. At the Meeting, the Council unanimously adopted the following resolution in the Agenda:

**Recommendation:** THAT Council receive the Report from Integrity Commissioner, David G. Boghosian dated May 3, 2024 relative to the conduct of Councillor David Kircher.

AND THAT the following sanctions be imposed:

1. Councillor Kircher’s remuneration as a councillor be suspended for a period of 55 days commencing on the date this motion is passed;
2. Councillor Kircher be formally reprimanded for his inappropriate dealings with confidential information;
3. Councillor Kircher be requested to publicly apologize to Councillor. McTaggart for his conduct toward Councillor

McTaggart as set out herein, as provided for in s. 14.1 c) v. of the Code of Conduct;

4. The Town hire a workplace facilitator to work with Councillors Kircher and McTaggart, and Council as a whole in the discretion of the facilitator, with the goal of restoring mutual trust and respect amongst Council members. A copy of the Integrity Commissioner's report shall be provided to the facilitator.

- y. Critically, at the Meeting, the following also took place:
- i. The Council asked the Integrity Commissioner to provide a summary of his Report. The Integrity Commissioner presented on the Report for roughly fifteen minutes;
  - ii. Councillor Kircher then provided his oral response to the Report;
  - iii. During and after the respective presentations of the Integrity Commissioner and Councillor Kircher, no Council member asked a single question. There was no probing from the Council whatsoever on: how the Integrity Commissioner arrived at his conclusions; why Councillor Kircher's evidence on some of the purported breaches was dismissed; or why the recommended sanctions were appropriate in the circumstances.
  - iv. The only discussion that the Council had was to make a minor modification to the Integrity Commissioner's recommendation that a workplace facilitator be appointed.

## **The Integrity Commissioner's Decision is Unreasonable**

- z. The Integrity Commissioner's Decision lacks the hallmarks of reasonableness, for reasons which include but are not limited to the following:
  - i. The Integrity Commissioner failed to account for key evidence. For example, based on perfunctory summaries of complex email threads, the Integrity Commissioner drew conclusions that were untenable in the factual circumstances and/or misinterpreted them.
  - ii. The Integrity Commissioner lacked key evidence. The Town Clerk did not provide the Integrity Commissioner with copies of emails from other councillors that raised many of the same issues alleged against Councillor Kircher, including the allegedly improper use of the municipal email system and the sending of emails in which councillors requested a decision or action that allegedly should have taken place in a council meeting. The Integrity Commissioner failed to ask for any such documents from the Town Clerk and instead appeared to place this evidentiary burden on Councillor Kircher;
  - iii. The Integrity Commissioner's conclusions lack a logical path of reasoning. The Report consists of conclusory statements. The result is that there is a lack of a line of analysis within the Report that could reasonably lead from the evidence before the Integrity Commissioner to the conclusion at which he arrived. For example, the Integrity Commissioner concluded Councillor Kircher acted in a

manner unbecoming of a member of the Council in his dealings with Councillor McTaggart because Councillor Kircher, in part, sent one email in all capital font. That was deemed to be “menacing” by the Integrity Commissioner. In coming to this conclusion, the Integrity Commissioner does not explain why font alone can make a message “menacing” (if ever) and, more critically, does not adequately account for Councillor Kircher’s express evidence on his intention and why the impugned email used all capital font (i.e., it was easier to read). In this analysis, the Integrity Commissioner failed to notice that Councillor McTaggart’s evidence was not that he in any way felt intimidated or abused by Councillor Kircher;

- iv. The Integrity Commissioner misapplied the law and/or disregarded legal constraints. In anchoring the alleged Code of Conduct breaches in activities from as far back as 2021, the Integrity Commissioner unreasonably interpreted the temporal constraints on his investigation and took jurisdiction over issues that were time-barred and/or should not have been reviewed;
- v. The Integrity Commissioner failed to grapple with and place weight on the totality of the record before him. In so doing, he relied on piecemeal evidence that is not reflective of the circumstances in Fort Frances and the governance approach at the Council. Despite Councillor Kircher’s best efforts to fill the gaps left by the Town Clerk’s summaries by providing numerous examples of his fellow

councillors engaging in precisely the sort of conduct for which he was being investigated, the Integrity Commissioner ignored the evidence and drove ahead to a seemingly preordained conclusion; and

- vi. The Integrity Commissioner failed to grapple with and place weight on the historical context that motivated much of Councillor Kircher's questions and conduct vis-à-vis his fellow councillors and the Town staff. In particular, the Integrity Commissioner ignored the evidence, and the explanations provided by Councillor Kircher, of the historical failure of the Council to defend and protect the Town's critical economic assets. It was this failure that compelled Councillor Kircher to run for the Council, and it was this failure that led Councillor Kircher to work tirelessly, including in ways that sometimes made him unpopular with his colleagues, to protect the Town's interests on behalf of its citizens.

### **The Integrity Commissioner's Process was Unfair**

aa. The Integrity Commissioner denied Councillor Kircher a fair process, for reasons that include but are not limited to the following:

- i. The Integrity Commissioner had a closed mind. Based on specious grounds at best, he drew conclusions and ascribed conduct such as the following to Councillor Kircher: a "witch hunt", a "vindictive campaign to exact retribution", a "menacing", "threatening", and "humiliating" conduct vis-à-vis other members of Council. Language

matters. The Integrity Commissioner's unbalanced and overstated presentation of his findings in and itself would give a reasonable person concerns about a closed mind. Relatedly, the fact that the Integrity Commissioner likely confirmed with the Council that his Report was "complete" before Councillor Kircher provided his evidence (as demonstrated by the April 24, 2024 resolution) further shows a closed mind. In all of the relevant circumstances, the Integrity Commissioner demonstrated a reasonable apprehension of bias that gave rise to a breach of procedural fairness;

- ii. The Integrity Commissioner failed to provide Councillor Kircher with notice of the unsubstantiated allegations made against him by the interviewees, and denied him an opportunity to respond directly to those allegations. The Integrity Commissioner accepted the untested and unchallenged allegations made against Councillor Kircher;
- iii. The Integrity Commissioner did not provide an opportunity to Councillor Kircher to be interviewed, despite interviewing other relevant actors. An interview would have allowed Councillor Kircher to know the case to meet, adduce necessary evidence, and adequately address all questions of the Integrity Commissioner.

## **The Council's Sanction is Unreasonable and Resulted from an Unfair Process**

bb. The Council's adoption of the Integrity Commissioner's Report and the recommended sanctions was unreasonable for the following non-exhaustive grounds:

- i. The Council mechanically applied its discretion and rubberstamped the Report. In so doing, the Council fettered its discretion. Instead of scrutinizing the inherent incoherency of the Report, the Council adopted it without any debate or careful consideration. For example, the Council did not ask a single question or make a single comment in relation to the Integrity Commissioner's or Councillor Kircher's submissions.
- ii. Even if the Council agreed with the findings of the Integrity Commissioner, it still had an independent duty to exercise its discretion and consider the appropriate sanction, if any, in the circumstances. The failure to engage in any serious discussion or debate about the appropriate sanction shows that the Council abdicated its independent authority and unreasonably deferred to the "recommendations" of the Integrity Commissioner; and,
- iii. In view of no debate or discussion at the Meeting, there are no indicia of reasoned decision-making that meet the threshold of transparency, intelligibility, and justification.

cc. The Meeting on the appropriate sanction did not provide a fair process to Councillor Kircher. By virtue of their complete silence, the Council did not detail why they found the Report persuasive—and in particular what more Councillor Kircher needed to address.

dd. Further, the Town Clerk provided only select documents to the Integrity Commissioner, which prevented a holistic review. Among other things, the Town Clerk did not provide the Integrity Commissioner with copies of emails from other councillors where they improperly used their municipal email account. This also amounts to a breach of procedural fairness.

ee. Sections 2 and 6 of the *Judicial Review Proceedings Act*, RSO 1990, c J.1.

ff. Rules 38 and 68 of the *Rules of Civil Procedure*, RRO 1990, Reg 194.

gg. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

hh. The Record of Proceedings containing all materials before or relied upon by (i) the Integrity Commissioner and (ii) the Council;

ii. If necessary, the affidavit of Councillor Kircher, and any exhibits thereto; and,

jj. Such further and other evidence as counsel may advise and the Court permit.

June 7, 2024

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Respondents

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

Proceeding commenced in Thunder Bay

**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

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