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Our File No.: 71920-0181/MSS

November 8, 2021

***Delivered via Email: "gary.sandberg@gov.ab.ca"***

Government of Alberta  
Municipal Services Division  
17<sup>th</sup> Floor Commerce Place  
10155 - 102 Street NW  
Edmonton, Alberta T5J 4L4

**Attention: Gary Sandberg, Assistant Deputy Minister**

Dear Sir:

**Re: Ministerial Authority to Remove a Councillor from Office**

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You have asked for our opinion respecting the authority of the Minister of Municipal Affairs (the "**Minister**") to dismiss a councillor. If such authority exists, you have asked us to detail the conditions under which the Minister may act.

We have provided our confidential legal opinion to you under separate cover as our legal opinion is subject to solicitor-client privilege. However, as requested, below please find a brief summary of our legal conclusions which may be released publicly.

### **SUMMARY**

While the Minister has supervisory jurisdiction over municipalities, the Minister does not have authority to summarily remove a councillor from office under the legislative scheme currently in force. Dismissal of a councillor by the Minister is an extraordinary exercise of authority that should not be pursued lightly. Exercising Ministerial authority to remove an elected official must be done in accordance with the requirements of the *Municipal Government Act* (the "**MGA**") and a high degree of procedural fairness, not simply by decree.

In order for the Minister to dismiss a sitting councillor, each of the following pre-requisites established by the MGA must be met:

1. Completion of:
  - (a) an inspection pursuant to section 571 of the MGA;
  - (b) an inquiry pursuant to section 572 of the MGA.<sup>1</sup>

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<sup>1</sup> We note that directions and dismissal may also follow a report of an official administrator under section 575.1, an investigation by the Ombudsman or an audit under section 282. These provisions have not been reviewed in detail for purposes of this opinion.

2. The Minister considers the municipality to be managed in an irregular, improper or improvident manner as a result of the inspection or inquiry.
3. The Minister issues an order directing the council, the chief administrative officer or a designated officer of the municipality to take any action that the Minister considers proper in the circumstances.
4. The Minister's order is not carried out to the satisfaction of the Minister.<sup>2</sup>
5. Following non-compliance with the Minister's order, the Minister considers the municipality to continue to be managed in an irregular, improper or improvident manner.
6. All reasonable efforts to resolve the situation have been attempted and have been unsuccessful.
7. Notice of the intended order to dismiss the councillor has been given to the municipal authority with at least 14 days to respond.

The Minister does have jurisdiction to order an inquiry or inspection into a councillor's conduct. However, that jurisdiction is established once that individual is sworn into office and is prospective in nature. Where the conduct at issue pre-dates the councillor's oath of office, and is not otherwise addressed by the legislation, the Minister is not in a position to intervene with a view to dismissing a democratically elected councillor. If the Minister decided to intervene in such circumstances, there is a strong risk that such a decision would be subject to a successful application for judicial review as an act outside of the Minister's authority.

The Minister's supervisory role must be exercised with a view to ensuring the municipal council is operational and council is able to fulfil its responsibilities under the MGA. If there are ongoing issues on a municipal council, the Minister may exercise their discretion to conduct an inspection or inquiry with a view to ensuring the regular and proper management of the municipality. Even where a councillor's conduct does fall within the Minister's jurisdiction to review, dismissal of a councillor is a last resort only to be utilized if the municipality continues to be managed in an irregular or improper manner after all reasonable attempts have been made to resolve the issues faced by the municipality and its elected council.

Yours truly,

**BROWNLEE LLP**

**PER:**



MICHAEL S. SOLOWAN  
/RLK

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<sup>2</sup> The Minister also has authority to act where an order under section 570(c) (intermunicipal disagreements) is not carried out to the satisfaction of the Minister. Again, this provision has not been reviewed for purposes of this opinion.  
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