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Good Faith by Municipality in Passing Bylaw a Rebuttable Presumption

10868701 Canada Inc. v. City of Montréal 2025 QCCS 181

10868701 Canada Inc. ("Property Owner") owned two semi-detached duplexes in a Montréal ("City") borough that were converted into 10 units. The City later authorized by resolution an exception to urban planning regulations to allow the Property Owner's existing buildings to be transformed to accommodate 24 units. Following this authorization, but before its coming into force 7 months after adoption of the resolution, the Borough Council ("Council") adopted a notice of motion announcing its intention to pass a new bylaw applicable to the entire borough governing the use and transformation of residential buildings. The bylaw prohibited the division or subdivision of existing dwellings to preserve larger dwellings. Following the notice of motion and adoption of the bylaw, the Property Owner applied to the City for a building conversion permit to construct the 24 units authorized by the resolution. The City informed the Property Owner that it was suspending consideration of the application to subdivide the existing dwellings because the proposal contravened the borough's new bylaw, and requested the Property Owner provide revised plans that complied with the bylaw. The Property Owner filed a motion for *mandamus* to compel issuance of the building permit and damages against the City, arguing bad faith.

HELD: Motion dismissed.

DISCUSSION: The Court held that good faith in passing a bylaw is presumed, and that the Property Owner failed to rebut this presumption. The bylaw applied to the entire borough and was not specifically targeted to the Property Owner, even though it affected their project. It is up to the elected representatives of the Council to adopt regulations they deem appropriate for the community, and it is not for the courts to substitute their opinion for that of Council. Because the notice of motion preceded the coming into force of the authorization, the expansion of the Property Owner's buildings is subject to the new regulations. Further, since the application for a building

permit postdated the bylaw, the Property Owner could not legitimately argue that it had an acquired right to the building permit with the authorization. That is, the resolution is not itself a building permit and cannot replace such a permit. The property owner retained its right to build the 24 proposed dwellings but is not exempt from complying with the municipal bylaws in force at the time of the permit application. It was up to the property owner to comply with the City's requirement to provide plans that complied with the bylaw.

Canada Inc. v. City of Montreal

Court Allows Decision-Making by Council Members Notwithstanding Conflict of Interest
Re: Corporation of the Township of Georgian Bay 2025 ONSC 528

An action was commenced against the Corporation of **the Township of Georgian Bay** ("Township") and all of its council members personally. In these circumstances, the ***Municipal Conflict of Interest Act*, RSO 1990, c. M.50 ("Act")** required the affected council members to recuse and remove themselves from deliberations on issues involving the action. Accordingly, all council members declared a conflict with respect to the action and related matters. As a result, council was unable to form a quorum with respect to these matters because the Act required a minimum of two councillors to constitute a quorum. The Township brought an application for an order under the Act permitting council members to participate in decision-making relating to the action notwithstanding their declared conflict in respect of it.

HELD: Application granted.

DISCUSSION: The Act created a remedy of necessity where recusal makes it impossible to form a quorum, allowing a judge to authorize decision-making despite any conflict, to waive the application of the conflict provisions altogether, and to attach directions and conditions to the authorization responsive to the circumstances of the case. The Court observed that courts have granted relief in similar situations in a number of cases and identified the real issue in these applications to be the nature of the control that should be put in place given the conflict of interest. The Court determined that all councilors could participate in discussions and decision-making in respect of the action subject to the requirement of court approval for the settlement. The Court further ordered that if the Township Council sought to rely on the indemnification bylaw for the benefit of any council member, including the Mayor, Council must seek leave of the Court before any such indemnification occurred. The Court also suggested that council members seek independent legal advice on the issue of indemnification independent of the lawyers defending the Township or its councilors in the litigation.

Corporation of the Township of Georgian Bay

A Pleading Found to be "Frivolous" Does Not Automatically Mean it is "Vexatious"
Cummings v. Martin 2025 ONSC 1119

Following dismissal of a complaint by the former Mayor of Norfolk County to the Municipal Election Audit Committee ("MEAC") regarding financial contributions to her opponent's campaign, Warren Michael Cummings ("Cummings") filed an application in the Ontario Superior Court of Justice requesting an order that MEAC give further reasons for its decision and for the Court to review **the conduct of Norfolk County Council ("Council") in approving a certain bylaw.** The Respondents

brought a motion for a stay or dismissal of Cummings' application pursuant to a rule of civil procedure which allowed the Court to make such orders where the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the Court's process.

HELD: Application granted.

DISCUSSION: Citing *Black's Law Dictionary*'s definition of "frivolous", the Court held that if a party does not have standing to seek the relief being requested, then their pleading has no legal basis and is "frivolous" as a matter of law. Cummings' application was found to meet this legal definition of frivolous. There was no basis in law for the Court to compel MEAC to provide further reasons for their decision. Although this request could be interpreted as a request for an appeal on the basis that the reasons provided were insufficient to allow for meaningful review, because Cummings was not a party to the process arising out of the complaint made to MEAC, he did not have standing to seek a review of MEAC's decision. Regarding the conduct of Council in approving a certain bylaw, the Court may quash a bylaw in whole or in part for illegality only. The Court found that there was nothing to indicate the basis upon which Cummings believed that the bylaw in question should be quashed for illegality. Rather, the question posed by Cummings was "did the council act in a 'Good Faith Effort' to consider the will of the people." Cummings' allegation that there was a lack of public consultation does not alone support an argument that a bylaw is illegal and should therefore be quashed, nor is a bylaw illegal by virtue of Council having considered certain parties' interests over others. The Court does not have the jurisdiction to hear and determine issues relating to the conduct of a municipal council in the discharge of their official duties unless that conduct constitutes a criminal or provincial offence. The Court was careful to note that just because a claim meets the legal definition of "frivolous" does not mean that the matter is without value or merit. That is, the Court was not prepared to find that Cummings' application was vexatious.

Cummings v. Martin

Resolutions Censuring and Sanctioning Mayor Quashed for Lack of Procedural Fairness.
Paull v. Quesnel (City) 2025 BCSC 347

The Mayor's spouse purchased a book that disputed findings of the Truth and Reconciliation Commission and gave copy to a councillor's mother. This upset members of a First Nation which was a signatory to an earlier Memorandum of Understanding attesting to their and the City of Quesnell's ("City") mutual commitment to promote cooperative relationship building. Following a regional district board meeting, the Mayor showed the book to two directors and queried what public libraries would do with the book given the surrounding controversy. At a following council meeting, a councillor asked for the Mayor's resignation and Council passed a motion requesting staff prepare a report as to what censure means for Council, what sanctions Council could levy against the Mayor, and to bring it forward to an open, public meeting as soon as possible. A Report to Council ("Report") was prepared and provided to the Mayor 11 days before the meeting during which it would be introduced. The City Manager asked the Mayor if he received the Report and if he was "okay with the report coming to the 30th Regular Council meeting." The Mayor responded 3 days later with "Yes, okay to proceed with April 30 regular meeting of Council." The Report was introduced at the council meeting and resolutions were passed censuring the Mayor, sanctioning the Mayor, and directing review of his progress in three months. The Mayor brought an application for judicial review of City Council's decisions leading up to and including the resolutions.

HELD: Application granted.

DISCUSSION: The Court quashed the three resolutions on the basis that there was a lack of procedural fairness. In response to the City's argument that the Mayor waived his right to 14 days notice under the City's *Procedure Bylaw,* it is well established that waiver requires both full knowledge of rights and an unequivocal and conscious intention to abandon them. The Court held that if the City was seeking a waiver of rights under the *Procedure Bylaw*, it should have identified that the information provided to the Mayor did not meet the mandatory timelines and specifically inquired whether he would abandon his right to object to the shortened timeline. A general response that it was okay for the Report to go on the agenda does not demonstrate waiver. The Court further held that it was not clear from the Report that a motion of censure was going to be made at the April 30 meeting. Rather, it was clear to the Court that what was sought was an informational document, rather than a document setting out the allegations that would underlie a motion of censure. The Report did not meet procedural fairness requirements owed to the Mayor as it was not a clear and unambiguous document setting out the case to be met; that is, the allegations that would underlie motion of censure and sanction. Finally, the Council sanctioned the Mayor based on alleged misconduct different from the misconduct alleged in the Report.

Paull v. Quesnel

Reservation of Client's Authority to Consider Offer Means No Contract Until Client Instructs
Millet (Town) v. Tessier 2025 ABCA 97

Millet's lawyer ("M's lawyer") sent a letter to Guy Tessier's ("Tessier") lawyer ("T's lawyer"), extending a settlement offer relating to legal proceedings arising from the expropriation of Tessier's land. The offer contained terms including a confidentiality clause prohibiting disclosure to any other persons, except as required by law. T's lawyer wrote to M's lawyer requesting a "without prejudice" telephone call. In her correspondence T's lawyer indicated she had instructions from Tessier respecting an offer to settle the legal actions. The lawyers spoke and exceptions to the confidentiality clause were discussed. M's lawyer indicated the changes would likely not be an issue, but he expressly withheld his agreement pending Millet's approval. M's lawyer alleged that this discussion did not include any mention that the exceptions discussed were a condition of the acceptance of Millet's offer. An email sent by T's lawyer confirmed that Tessier wished to accept Millet's offer "subject only to the confidentiality clause allowing discussions among his children..." Days later, T's lawyer sent another email stating "Please advise if / when you have any instructions from your client." Two days later, and before Millet responded, T's lawyer advised that Tessier had instructed her to "withdraw his counter-offer." Millet brought an application to enforce what it considered a binding agreement. The applications judge dismissed the application, and an appeal to the Court of King's Bench was dismissed. The chambers judge found that the confidentiality clause was an essential term the parties had not agreed on, and accordingly, there was no enforceable agreement.

HELD: Appeal dismissed.

DISCUSSION: Millet argued that the chambers judge erred in finding the exceptions to the confidentiality clause Tessier requested were conditions of acceptance and that this critical factual finding was not supported by the evidence because it ran counter to Millet's "uncontradicted evidence to the contrary." The Court held that it was clear from the chambers judge's reasons that he considered all relevant evidence in making his decision, did not accept Millet's opinion that Tessier's request for exceptions to the confidentiality clause was "merely an inquiry", or Millet's argument that an agreement had been reached. The chambers judge was not bound to accept the

totality of Millet's evidence, even though it was uncontradicted. The Court also held that the chambers judge made no overriding and palpable error in concluding that no binding agreement was reached, as the evidentiary record and the law supported his findings. In finding the confidentiality clause was an essential term, the chambers judge noted that it was one of three terms proposed by the Town and that Tessier requested changes to it. At best, M's lawyer gave a qualified acceptance on behalf of Millet, which could not create a binding contract. Although not expressed by the chambers judge in his reasons, the Court noted that a lawyer's explicit reservation of their client's authority to decide whether an offer is accepted means that there can be no agreement until the client has provided the required instructions. This was fatal to the Town's assertion that a binding agreement was reached.

Millet v. Tessier