

No. QSL-S-S-15196
Quesnel Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SYLVIA BATTLE, WAYDE BATTLE, LARRY DUNN, JEAN GELINAS, JAN MCKINNEY,
WALLY MCKINNEY AND LINDA BUXTON

PETITIONERS

AND:

MARY SJOSTROM, MICHAEL CAVE, JOHN BRISCO, ED COLEMAN, SCOTT ELLIOT,
and LAUREY-ANNE ROODENBURG

RESPONDENTS

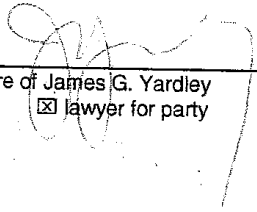
ELECTRONIC FILING STATEMENT

- I, James G. Yardley, am the lawyer acting for the Respondents, Mary Sjostrom, Michael Cave, John Brisco, Ed Coleman, Scott Elliot, and Laurey-Anne Roodenburg.
- I, [name], am the [party] and I am not represented by a lawyer.

I advise as follows:

- 1 that the attached Affidavit is being submitted for filing electronically on behalf of the Respondents, Mary Sjostrom, Michael Cave, John Brisco, Ed Coleman, Scott Elliot, and Laurey-Anne Roodenburg.
- 2 that the original paper version of the document being submitted for filing electronically appears to bear original signatures of the persons identified as the signatories and I have no reason to believe that the signatures placed on the documents are not the signatures of the identified signatories;
- 3 that the version of the document that is being submitted for filing electronically appears to be a true copy of the original paper version of the document and I have no reason to believe that it is not a true copy of the original paper version.

Dated: July 23, 2013.



 Signature of James G. Yardley
 party lawyer for party



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PETITIONERS

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MARY SJOSTROM, MICHAEL CAVE, JOHN BRISCO, ED COLEMAN, SCOTT
ELLIOT,
and LAUREY-ANNE ROODENBURG

RESPONDENTS

RESPONSE TO AMENDED PETITION

THIS IS THE RESPONSE of the Respondents to the Amended petition filed June
June 12 ~~March~~ 19, 2013

Part 1: ORDERS CONSENTED TO

The petition respondents consent to the granting of the orders set out in the
following paragraphs of Part 1 of the amended petition: NONE

Part 2: ORDERS OPPOSED

The petition respondent opposes the granting of the orders set out in paragraphs
ALL of Part 1 of the amended petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondent takes no position on the granting of the orders set out in
paragraphs NIL of Part 1 of the amended petition.

Part 4: FACTUAL BASIS

1. The Respondents Michael Cave, John Brisco, Ed Coleman, Scott Elliot
and Laurey-Anne Roodenburg are and have been, at all material times,

five of the seven members of the Municipal Council (the "Council") of the City of Quesnel (the "City").

2. Mary Siostrom is and has been, at all material times, the Mayor of the City.
3. On April 16, 2012, the Council resolved to present a letter to the then City Manager, Mr. Stecyk, advising of Council's intention to consider a resolution to terminate, without cause, Mr. Stecyk's employment with the City, subject to giving Mr. Stecyk a hearing (the "Hearing").
4. Mr. Stecyk's employment contract with the City (the "Contract") was for a fixed term beginning on January 4, 2011 and ending on December 31, 2015. Under the Contract, Mr. Stecyk was to be paid an annual salary of \$125,000, plus benefits. The Contract provided that the City could terminate Mr. Stecyk's employment without cause by paying severance equivalent to twelve month's salary plus payment in lieu of benefits (the "Severance").
5. On April 19, 2012, Mr. Stecyk provided to Council a proposal (the "Proposal") under which he would abandon any right to the Hearing and immediately resign from the position of City Manager in exchange for receipt of the Severance.
6. On April 23, 2013, Council voted to accept the Proposal.
7. The Severance was tendered to Mr. Stecyk on or about April 30, 2012.
8. Contrary to the allegations in the Petition and the Amended Petition, Council did not pass any resolution at its Closed meeting of May 7, 2012 related to the employment of Mr. Stecyk or at its Closed meeting of April 16, 2012 to terminate Mr. Stecyk's employment for cause.
9. The basis for an application in this proceeding under section 111 of the Community Charter came to the attention of the Petitioner Sylvia Battley no later than March 18, 2013.
10. The Petitioners Wayde Battley, Larry Dunn, Jean Gelinias, Jan McKinney, Walley McKinney and Linda Buxton have not filed affidavits concerning the relief sought in the petition.

Part 5: LEGAL BASIS

1. The Petitioners have sought an order under section 191(1) of the *Community Charter* S.B.C. 2003, c. 26 that the Respondents voted for an expenditure that was contrary to the *Community Charter*.

2. Specifically, the Petitioners have alleged that a vote by the Respondents on May 7, 2012, sitting as the municipal council of the City, to authorize the payment of \$170,469 to Mr. Stecyk was contrary to the *Community Charter*.
3. As a threshold matter, the Affidavit of Meriel Wild is irrelevant to the issues in this proceeding and does not require a response from the Respondents, while the Affidavits of Sylvia Battley, Kenneth Butchard, and Sushil Thapar are is replete with inadmissible hearsay, conjecture, speculation and unsupported or inaccurate allegations.
4. *Community Charter* section 191 states, in part:

191 (1) A council member who votes for a bylaw or resolution authorizing the expenditure, investment or other use of money contrary to this Act or the *Local Government Act* is personally liable to the municipality for the amount.

...

(3) In addition to any other penalty to which the person may be liable, a council member who is liable to the municipality under subsection (1) is disqualified from holding local government office for the period established by section 110 (2).
5. The Petitioners have not identified any provision of the *Community Charter* or *Local Government Act* breached by the Respondents.
6. Consideration of the predecessor to section 191 occurred in *Gook Country Estates Ltd. v City of Quesnel et al* 2006 BCSC 1382 ("*Gook*"), appeal dismissed, 2008 BCCA 407, where Mr. Justice N. Smith held that an expenditure "contrary to the Act" meant an expenditure "for a purpose that is entirely outside the power and jurisdiction of the municipality".
7. The payment of severance in employment, and the Severance in this case, is something that is clearly within the power and jurisdiction of the City, and is contemplated by section 152(1)(b) of the *Community Charter*, and was consistent with the terms of the Contract. Thus, the Severance was not an expenditure "entirely outside the power and jurisdiction of the municipality", and does not come within the scope of section 191.
- ~~8. The Petitioners allege that the decision to pay the Severance was contrary to section 173(1) of the *Community Charter*, which deals with the City's financial plan. The Petitioners have not put the City's Financial Plan into evidence, nor stated how it is that they believe the Severance is contrary to it. The Petitioners have not rebutted the presumption of regularity that the resolution was consistent with the City's financial plan. It is submitted that that there is no case for the Respondents to meet on that issue.~~

~~*Canada Mortgage and Housing Corporation v. North Vancouver (District)* (1998) 51 B.C.L.R. (3d) 351; appeal dismissed, 2000 BCCA 142, leave to S.C.C. refused 2000 CarswellBC 2338~~

9. The Petitioners argue that the decision to pay the Severance was unlawful for various procedural reasons including lack of proper notice, lack of a resolution under s. 90 of the *Community Charter*, and that the matter did not come within the scope of s. 90. Section 191 does not establish or purport to establish personal liability on Council members for procedural errors associated with an expenditure.

Gook (supra) at paras.119 and 124.

10. There is no evidence that Mr. Stecyk was going to voluntarily resign from his employment with the City unconditionally. Thus, the City faced liability for payment of the full value of the Severance. Council allowed the City and Mr. Stecyk to avoid a potentially protracted and uncertain termination process. This was determined by Council to be in the public interest, and is subject to the highest degree of deference by the Courts.

Catalyst Paper Corporation v. District of North Cowichan 2010 BCCA 199 at paras. 37- 38.

Community Charter s. ss. 1, 3, 4, 7, 8

Jack's Towing Ltd. v. Abbotsford (City) 2007 BCSC 93

11. The remedy sought of disqualification from local government elected office for violation of the *Community Charter* is statutory.
12. The basis for such an order is set out in Section 111 of the *Charter* which allows for a petition to be brought by either the local government itself or by 10 or more electors.
13. The Amended Petition has been brought by seven electors of the City. The absence of a sufficient number of electors is fatal to that part of the proceeding seeking the remedy of disqualification.
14. Further, or in the alternative, an application under Section 111 of the *Charter* may only be brought within 45 days after the alleged basis of the disqualification came to the attention of any of the electors bringing the application. The basis for the application came to the attention of the petitioner Sylvia Battley no later than when she swore her affidavit in this proceeding on March 18, 2013, which was more than 45 days before the application was brought for an order of disqualification.


- 15. The Respondents ask that this Amended Petition be dismissed, with special costs or, in the alternative, costs, payable to the Respondents.

Part 6: MATERIAL TO BE RELIED ON

- 1. Affidavit No. 1 of Scott Elliott sworn April 26, 2013
- 2. Affidavit No. 1 of Michael Cave sworn April 26, 2013
- 3. Affidavit No. 1 of Laurey-Anne Roodenburg sworn April 26, 2013
- 4. Affidavit No. 1 of Ed Coleman sworn April 26, 2013
- 5. Affidavit No. 1 of John Brisco sworn April 26, 2013
- 6. Affidavit No. 2 of John Brisco sworn July 9, 2013
- 7. Affidavit No. 1 of Mary Siostrom sworn July 22, 2013.
- 8. Affidavit No. 1 of Karilyn Bolton sworn April 26, 2013
- 9. Affidavit No. 2 of Karilyn Bolton sworn July 9, 2013
- 10. Such further material as counsel may advise and This Honourable Court allows.

The petition respondents estimate that the application will take one day.

Dated: July 22 ~~April 26~~, 2013



 Signature of
 petition respondent
 lawyer for petition respondents
 James G. Yardley

Petition respondent's address for service: Murdy & McAllister, 1155-555 Burrard St., PO Box 49059, Vancouver, B.C. V7X 1C4

Fax number address for service (if any): 604 689-9029

E-mail address for service (if any): jgy@murdymcallister.com

Name of the petition respondent's lawyer, if any: James G. Yardley



Affidavit of John Brisco #2
Sworn on July 9, 2013

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WALLY MCKINNEY AND LINDA BUXTON

PETITIONERS

AND:

MICHAEL CAVE, JOHN BRISCO, ED COLEMAN, SCOTT ELLIOT,
and LAUREY-ANNE ROODENBURG

RESPONDENTS

AFFIDAVIT

I, John Brisco, Councillor of the City of Quesnel, c/o Municipal Hall, 410 Kinchant St., Quesnel,
British Columbia, V2J 7J5, AFFIRM THAT:

1. I am a Councillor of the City of Quesnel (the "City"), and as such have personal knowledge of the facts and matters hereinafter deposed to, and swear that all such matters are true.
2. In my Affidavit sworn on April 26, 2013, the word "not" was left out of paragraph 4. It should read "In response to the Battley Affidavit, Council did not decide..." instead of "In response to the Battley Affidavit, Council did decide...".

SWORN BEFORE ME at Quesnel, British Columbia this 9 day of July, 2013.

A handwritten signature in cursive script, appearing to read "Gina Albers".

A Commissioner for taking Affidavits within
British Columbia

Gina Albers, Deputy
Corporate Administrator
Commissioner for taking
Affidavits in British Columbia
410 Kinchant Street, Quesnel, BC
V2J 7J5 250.991.7471

A large handwritten signature in cursive script, appearing to read "John Brisco".

John Brisco



Affidavit of Mary Sjostrom #1
Sworn on July 23, 2013

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WALLY MCKINNEY AND LINDA BUXTON

PETITIONERS

AND:

MARY SJOSTROM, MICHAEL CAVE, JOHN BRISCO, ED COLEMAN, SCOTT ELLIOT,
and LAUREY-ANNE ROODENBURG

RESPONDENTS

AFFIDAVIT

I, Mary Sjostrom, Mayor of the City of Quesnel, c/o Municipal Hall, 410 Kinchant St., Quesnel, British Columbia, V2J 7J5, AFFIRM THAT:

1. I am the Mayor of the City of Quesnel (the "City"), and as such have personal knowledge of the facts and matters hereinafter deposed to, and swear that all such matters are true.
2. I was elected Mayor in November 2008 and have been a member of Quesnel City Council ("Council") since December 1999. I am currently the President of the Union of British Columbia Municipalities.
3. I have read the Amended Petition in this matter, and the Affidavits of Meriel Wild sworn March 13, 2013, Sylvia Battle sworn March 18, 2013 (the "Battle Affidavit"), Keith Butchard sworn June 11, 2013, and Sushil Thapar sworn June 11, 2013.
4. John Stecyk was employed by the City as City Manager. Now shown and produced before me as Exhibit "A" to this my Affidavit is a copy of the job description for the City Manager. The position of City Manager is key to the effective operation of the City. As noted in

the job description the City Manager is responsible for the overall management of the administrative operations of the City, ensures that the policies and directions of Council are implemented, and advises and informs Council on the operations and affairs of the City. Several managers in the City report to the City Manager, and the City Manager reports to Council. Ultimately, Council depends on the City Manager and the City manager requires the confidence of the members of Council.

5. During the months leading up to April 2012, it was my belief that there was a strained environment at Quesnel City Hall surrounding Mr. Stecyk. In part this was related to complaints that had been made by the City's then Human Resources Advisor, Meriel Wild, concerning Mr. Stecyk. It was my view that this strained environment affected morale at City Hall, harmed the effective operations of the City, affected the confidence Council had in Mr. Stecyk, and created a significant distraction and burden for Council because of the amount of time and resources needed to deal with the matter. Ultimately, it resulted in consideration by myself and Council about whether Mr. Stecyk should continue to be the City Manager.

6. Council directed at its Closed Meeting of April 16, 2012 that Mr. Stecyk be advised that Council was considering terminating his employment, subject to giving him an opportunity to be heard. In response to the Battley Affidavit, while there was some discussion about whether Mr. Stecyk's employment could be terminated for cause, I did not believe that there was a basis for Mr. Stecyk's employment being terminated for cause, and Council had not made a decision at that meeting to terminate Mr. Stecyk's employment. However, it was my expectation that the majority of Council would ultimately vote to terminate Mr. Stecyk's employment on a without cause basis.

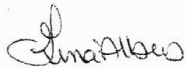
7. After Mr. Stecyk was advised of the City's position as noted above, Mr. Stecyk responded by providing the City with a proposal which would result in his departure from the City without the need for a hearing before Council. There is a confidentiality agreement between the City and Mr. Stecyk concerning his departure from the City.

8. I supported the proposal made by Mr. Stecyk, and believe that it resulted in a reasonable means of addressing the strained environment then existing at City Hall. I understood that under his contract, Mr. Stecyk would be entitled to severance if the City

terminated his position without cause. I believed that under Mr. Stecyk's proposal, he would receive the same severance as if Council terminated his position on a without cause basis.

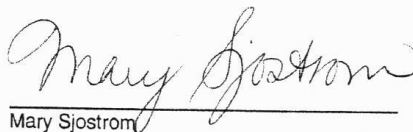
9. Ultimately, I believed that accepting Mr. Stecyk's proposal for his immediate departure from the City in exchange for paying him severance was lawful and in the best interests of the City.

SWORN BEFORE ME at the City of Quesnel)
British Columbia this 29 day of July, 2013.)



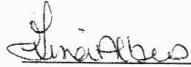
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V2J 7J5 250.991.7471



Mary Sjostrom

This is Exhibit "A" referred to in the Affidavit of Mary Sjostrom sworn before me at Quesnel, British Columbia this 2 day of July, 2013.



A Commissioner for taking Affidavits
for British Columbia

Gina Albers, Deputy
Corporate Administrator
Commissioner for taking
Affidavits in British Columbia
410 Kinchant Street, Quesnel, BC
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CITY OF QUESNEL

JOB DESCRIPTION

Job Title: City Manager
Department: Corporate Services
Classification: Exempt
Effective Date: August 2010

GENERAL ACCOUNTABILITY

Reporting to the Mayor and City Council, the City Manager is responsible for the overall management of the administrative operations of the municipality, ensures that the policies and directions of Council are implemented, and advises and informs Council on the operations and affairs of the municipality. The responsibilities of the City Manager can be further summarized as follows: a) program implementation by allocating resources to schedule and deliver internal and external services; b) management functions to establish and maintain systems and processes required for organizational effectiveness and efficiency; and c) political and technical advice to the local government.

KEY RESPONSIBILITIES

Positions reporting directly to the City Manager

- Director of Finance, responsible for finance, purchasing, information technology, corporate services and currently responsible for Development Services
- Director of Public Works, responsible for transportation, utilities, parks and solid waste, fleet and public services
- General Manager, Community Services, responsible for communications, recreation services, museum and facility management
- Director of Emergency Services, responsible for volunteer Fire Dept and Emergency Planning
- Human Resource Advisor
- Deputy Corporate Administrator
- City Planner (Union position)

The position also maintains close contact with the RCMP Staff Sgt. who is responsible for Community Police Coordinator and bylaw

POSITION DUTIES AND TASKS

The following exemplifies the type and level of accountability held by this position. The incumbent may delegate responsibility for the performance of related work without diminishing accountability for the results:

- As City Manager, provides overall direction to all employees, and is accountable for their recruitment, training, performance, discipline, termination (except where otherwise stipulated under the *Community Charter*), and for the maintenance of safe work practices.
- Ensures staff compliance with existing Council and Administrative Policies and Guidelines and coordinates the ongoing review of the organization's effectiveness with Council and staff.
- Assists Council in the preparation and approval of the Corporate Strategic Plan and prepares, in conjunction with division heads, a Corporate Business Plan for submission to Council, including the coordination of an ongoing process to establish and monitor organization priorities.
- Based on the overall Strategic Plan and Corporate Business Plan, prepares annual operating and capital budgets in conjunction with division heads, submits to Council for approval, and revises expenditures in accordance with budget and Council policies to ensure proper control of financial resources as per Council's direction.
- Recommends to Council the development and maintenance of policies and procedures for the City and ensures adherence to existing policies and legislation, and advises Council of liability exposure on policy matters.
- Key liaison between City and local First Nation Bands;
- Working with the City Planner, provides leadership and mentoring on issues such as zoning, OCP and Development Permits;
- Recommends new or amended municipal standards and bylaws to Council.
- Coordinates the Agenda preparation process by directing Corporate Services staff, approving reports and selecting items for discussion by Council.
- Reviews Council meeting agendas with the Mayor and meets regularly with the Mayor to discuss operative and other items of interest.
- Attends Council and Committees of Council to provide advice and recommendations on a wide variety of matters affecting the City.
- Meets with and lobbies all levels of government on behalf of the City. Establishes, promotes and maintains communication with a wide variety of contacts such as business and citizens groups, developers, consultants and the public. Meets with other regional managers/administrators to exchange information and promote cooperation.
- Coordinates an ongoing and targeted liaison program and acts as primary liaison with the senior staff of other organizations.
- Directs and may act as chief spokesman in negotiations of all significant contracts and agreements with the City, including construction and development of programs, land matters, purchase of material and capital items. Acts as chief liaison with labour negotiations and may participate in such negotiations.

QUALIFICATIONS

Education and Experience:

Bachelor's degree or higher in relevant discipline (eg public administration, business administration, politics, law)
Minimum 5 years experience at senior level within municipal or local government preferred.
Experience with Planning and Development
A combination of education and experience at senior level in government or private sector will be considered.

Knowledge:

Knowledge of Community Charter
Knowledge of provincial legislation (eg Freedom of Information, property laws, employment law)
Knowledge of municipal services and their delivery to taxpayers

Skills and Abilities:

Strategic management skills (vision, creative, innovative and facilitates change)
Team development skills – must promote cooperation and build consensus, inspire and motivate others
Excellent interpersonal, verbal and written communication skills
Developed negotiation and presentation skills
Organizational and problem solving skills – must be able to provide innovative solutions which will create win-win solutions for competing interests, and meet deadlines
Must be willing and able to mentor junior level staff
Conflict management skills

The incumbent must be willing to work flexible hours, attend frequent evening and occasional weekend meetings