



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:

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

RESPONDENTS

**RESPONSE TO PETITION**

THIS IS THE RESPONSE of the Respondents to the petition filed 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 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 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 petition.

**Part 4: FACTUAL BASIS**

1. The Respondents 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. On April 16, 2012, the Council resolved to present a letter to the then City Manager, Mr. Stecyk, 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").
3. 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").
4. 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.
5. On April 23, 2013, Council voted to accept the Proposal.
6. The Severance was tendered to Mr. Stecyk on or about April 30, 2012.
7. Contrary to the allegations in the Petition, Council did not pass any resolution at its Closed meeting of May 7, 2012 related to the employment of Mr. Stecyk.

**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 Affidavit of Sylvia Battley 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*. 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, 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

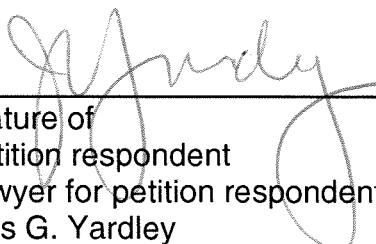
11. The Respondents ask that this Petition be dismissed, with special costs payable to the Respondents.

**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. Such further material as counsel may advise and This Honourable Court allows.

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

Dated: April 26, 2013

  
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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

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