



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

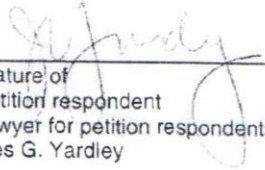
11. The Respondents ask that this Petition be dismissed, with special costs payable to the Respondents.

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



 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 Ed Coleman #1
Sworn on April 26, 2013

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

AFFIDAVIT

I, Ed Coleman, 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. I was elected to Quesnel City Council in 2011.
3. I have read the Petition in this matter, and the Affidavits of Meriel Wild sworn March 13, 2013, and Sylvia Battle sworn March 18, 2013 (the "Battle Affidavit").
4. In response to the Battle Affidavit, Council did not make a decision at the April 16, 2012 Closed Meeting to terminate Mr. Stecyk's employment with the City. Instead, Council directed that Mr. Stecyk be advised that Council was considering terminating his employment without cause, subject to giving Mr. Stecyk an opportunity to be heard.
5. On or about April 19, 2012, Mr. Stecyk provided a letter (the "Letter") to the City that contained a proposal by which Mr. Stecyk's employment with the City would end

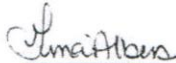
immediately. While the Letter is not attached to this Affidavit because of a release provided by the City to Mr. Stecyk to maintain confidentiality (the "Release"), the Letter is available for disclosure if so ordered by this Court.

6. In response to paragraphs 10 to 15 of the Battley Affidavit, I voted at the April 23, 2012 Closed Meeting of Council to accept Mr. Stecyk's resignation under the terms of the Letter, with some minor exceptions, including payment to Mr. Stecyk of severance pursuant to his employment contract with the City.

7. I agreed to support the proposal presented by Mr. Stecyk for the following reasons:

- I understood that if the City terminated Mr. Stecyk without cause that he would be entitled to severance;
- I expected to vote to terminate Mr. Stecyk's position as City Manager on a without cause basis;
- Under Mr. Stecyk's proposal, he would receive the same severance as if Council terminated his position on a without cause basis;
- I believed and continue to believe that it was in the best interest of the City that the matter be resolved and that accepting Mr. Stecyk's immediate resignation in exchange for paying him severance was in the best interests of the City.

SWORN BEFORE ME at Quesnel, British Columbia this 26th day of April, 2013.



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



Ed Coleman



Affidavit of John Brisco #1
Sworn on April 26, 2013

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 RODENBURG

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:

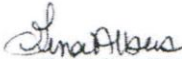
1. I am a Councillor of the City of Quesnel (the "City"), and as such have personal knowledge of the facts and matters hereinafter deposed to, and swear that all such matters are true.
2. I was elected to Quesnel City Council in 2011.
3. I have read the Petition in this matter, and the Affidavits of Meriel Wild sworn March 13, 2013, and Sylvia Battle sworn March 18, 2013 (the "Battle Affidavit").
4. In response to the Battle Affidavit, Council did decide at its April 16, 2012 Closed Meeting to terminate Mr. Stecyk's employment with the City. Instead, Council directed that Mr. Stecyk be advised that Council was considering the termination of his employment without cause, subject to giving Mr. Stecyk a hearing.
5. Mr. Stecyk provided a letter (the "Letter") to the City on or about April 19, 2012, that contained a proposal under which his position with the City would end immediately. The

Letter is not attached to this Affidavit because of a release provided by the City to Mr. Stecyk to maintain confidentiality, but is available for disclosure if so ordered by this Court.

6. I voted at the April 23, 2012 Closed Meeting of Council to accept Mr. Stecyk's resignation under the terms of the Letter, with some minor exceptions, including that Mr. Stecyk be paid severance under his employment contract with the City.

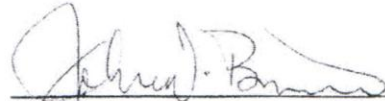
7. I agreed to support the proposal presented by Mr. Stecyk because:
- It was my belief that Mr. Stecyk worked in a strained work environment;
 - I expected that Council would terminate Mr. Stecyk's position as City Manager without cause;
 - I understood that if the City terminated Mr. Stecyk without cause that he would be entitled to severance;
 - Under Mr. Stecyk's proposal, he would receive the same severance as if Council terminated his position on a without cause basis;
 - I believed then and continue to believe that it was in the City's interest that the matter be resolved soon so that the City would have a functioning City Manager. Mr. Stecyk's immediate resignation allowing the matter to be resolved quickly.

SWORN BEFORE ME at Quesnel, British Columbia this 26 day of April, 2013.



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 7J6 250.881.7671


John Brisco



Affidavit of Scott Elliott #1
Sworn on April 26, 2013

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

AFFIDAVIT

I, Scott Elliott, 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. My name has been misspelled in the style of cause as "Scott Elliot".
3. I was elected to Quesnel City Council in 2011.
4. I have read the Petition in this matter, and the Affidavits of Meriel Wild sworn March 13, 2013, and Sylvia Battle sworn March 18, 2013 (the "Battle Affidavit").
5. In response to paragraph 7 – 9 of the Battle Affidavit, no decision was made by Council at its closed meeting of April 16, 2012 to terminate the employment of Mr. Stecyk with the City. Instead, a direction was given to advise Mr. Stecyk that Council was considering termination of Mr. Stecyk's employment on a without cause basis, but that this consideration would be subject to first giving Mr. Stecyk an opportunity to be heard.

6. On or about April 19, 2012, Mr. Stecyk provided a letter (the "Letter") to the Mayor and Council of the City that contained a proposal by which Mr. Stecyk's employment with the City would end immediately. The Letter is not attached to this Affidavit because of the terms of a release (the "Release") provided by the City to Mr. Stecyk to maintain confidentiality. A copy of the Letter is available for disclosure if so ordered by this Court.

7. In response to paragraphs 10 – 15 of the Battley Affidavit, I voted at the Closed Council meeting of April 23, 2012 to accept Mr. Stecyk's resignation under the terms set out in the Letter, with some minor exceptions. Among the terms accepted was payment to Mr. Stecyk of severance pursuant to his employment contract with the City.


8. I agreed to support the proposal presented by Mr. Stecyk for the following reasons:

- I was expecting to vote to terminate Mr. Stecyk's position as City Manager on a without cause basis;
- I understood that if the City terminated Mr. Stecyk on a without cause basis that he would be entitled to be paid severance;
- Under the proposal made by Mr. Stecyk, he would receive the same severance if Council terminated his position on a without cause basis;
- As Mr. Stecyk was offering his immediate resignation, it would allow the matter to be resolved quickly. I believed at the time and continue to believe that it was in the City's interest that the matter be resolved quickly so that everyone could move on.

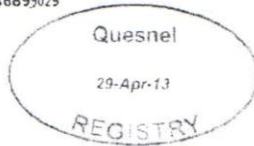
SWORN BEFORE ME at Quesnel, British Columbia this 26 day of April, 2013.

Gina Albers

A Commissioner for taking Affidavits within British Columbia


SCOTT ELLIOTT

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



Affidavit of Michael Cave #1
Sworn on April 26, 2013

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

AFFIDAVIT

I, Michael Cave, 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. I was elected to Quesnel City Council in 2011.
3. I have read the Petition in this matter, and the Affidavits of Meriel Wild sworn March 13, 2013, and Sylvia Battle sworn March 18, 2013 (the "Battle Affidavit").
4. In response to paragraphs 7 through 9 of the Battle Affidavit, Council did not make any decision at its closed meeting of April 16, 2012 to terminate the employment of Mr. Stecyk. Instead, a direction was given to advise Mr. Stecyk that Council was considering the termination of his employment without cause, but that he would first be given an opportunity to be heard.
5. On April 19, 2012, Mr. Stecyk provided a letter (the "Letter") to the Mayor and Council of the City containing a proposal by which Mr. Stecyk's employment would end

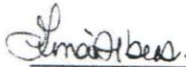
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6. In response to paragraphs 10 through 15 of the Battley Affidavit, I voted at the Closed Council meeting of April 23, 2012 to accept Mr. Stecyk's resignation on the terms in the Letter, with some minor exceptions. Among the terms accepted was payment to Mr. Stecyk of severance pursuant to his employment contract with the City.

7. I agreed to support the proposal presented by Mr. Stecyk for the following reasons:

- I was expecting to vote to terminate Mr. Stecyk's position as City Manager on a without cause basis;
- I understood that if the City terminated Mr. Stecyk on a without cause basis that he would be entitled to be paid severance;
- Under the proposal made by Mr. Stecyk, he would receive the same severance as if Council terminated his position on a without cause basis;
- Mr. Stecyk was offering his immediate resignation, which allowed the matter to be resolved soon. I believed at the time and continue to believe that it was in the City's interest that the matter be resolved.

SWORN BEFORE ME at Quesnel, British Columbia this 26th day of April, 2013.



A Commissioner for taking Affidavits within British Columbia


Michael Cave

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



Affidavit of Laurey-Anne Roodenburg #1

Sworn on April 25, 2013

No. QSL-S-S-15196
Quesnel Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SYLVIA BATTLETT, WAYDE BATTLETT, 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

AFFIDAVIT

I, Laurey-Anne Roodenburg, 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. I was elected to Quesnel City Council in 2008.
3. I have read the Petition in this matter, and the Affidavits of Meriel Wild sworn March 13, 2013, and Sylvia Battley sworn March 18, 2013 (the "Battley Affidavit").
4. In response to paragraph 7 through 9 of the Battley Affidavit, Council did not make a decision at the April 16, 2012 Closed Meeting to terminate Mr. Stecyk's employment with the City.

5. Instead, Council gave a direction that Mr. Stecyk be advised that Council was considering terminating his employment without cause, subject to giving Mr. Stecyk an opportunity to be heard.

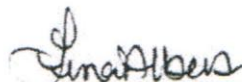
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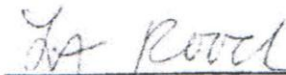
- I understood that if the City terminated Mr. Stecyk without cause that he would be entitled to severance;
- I expected to vote to terminate Mr. Stecyk's position as City Manager on a without cause basis;
- Under Mr. Stecyk's proposal, he would receive the same severance as if Council terminated his position on a without cause basis;
- I believed and continue to believe that it was in the City's interest that the matter be resolved. Mr. Stecyk offered his immediate resignation, allowing the matter to be resolved quickly.

SWORN BEFORE ME at Quesnel, British Columbia this 24 day of April, 2013.



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



Laurey-Anne Roodenburg