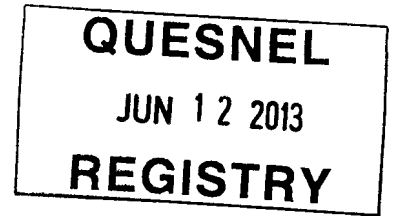


AMENDED June 12, 2013  
Original Petition filed March 21, 2013



NO: 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 ELLIOTT, and  
LAUREY – ANNE ROODENBURG

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

MARY SJOSTROM, MICHAEL CAVE, JOHN BRISCO, ED COLEMAN, SCOTT ELLIOTT,  
LAUREY – ANNE ROODENBURG, all of 410 Kinchant St, Quesnel, BC V2J 7J5

**This proceeding has been started by the petitioners for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
  - i. copies of the filed response to petition, and
  - ii. 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is: 350 Barlow Avenue, Quesnel, BC, V2J 2C2
(2) The ADDRESS FOR SERVICE of the petitioner(s) is: <b><u>3563 Manweiler Road Quesnel BC V2J 5G6</u></b> Fax number for service (if any) of the petitioner(s): <b>1-855-648-9656</b> <b><i>Email address for service (if any) of the petitioner(s): ksurcesslaw@live.com</i></b>
(3) The name and office address of the petitioner's(s') lawyer is: <b><u>Karen Surcess 3563 Manweiler Road Quesnel BC V2J 5G6</u></b>

### CLAIM OF THE PETITIONERS

#### Part 1: ORDERS SOUGHT

1. An order pursuant to s.191(1) of the *Community Charter* that each of the Respondents, in their respective roles as Councillors and Mayor, voted for a resolution authorizing an expenditure of \$170,469 paid as severance to John Steyck (the "Expenditure") contrary to the *Community Charter* and is personally liable to the City of Quesnel for that amount;
2. An order pursuant s.110 (1) (d) of the *Community Charter* that each Councillor and the Mayor who voted for the Expenditure be disqualified from office under s.191 for 3 years from the date of the vote;
3. Special costs of this proceeding, alternately ordinary costs; and
4. such further and other relief as this Honourable Court seems just.

#### Part 2: FACTUAL BASIS

1. The petitioners are all electors and taxpayers of the City of Quesnel. They all reside in Quesnel, BC.
2. The respondents and each of them are elected council members for the City.

3. On or about December 7, 2010 the City executed an employment contract whereby John Stecyk was hired for the position of City Manager. The contract:
  - a. was for a 5 year term commencing January 4, 2011,
  - b. provided that Stecyk would be paid an annual salary of \$125,000 plus other benefits,
  - c. the city could terminate the contract for just cause without notice or pay in lieu of notice, and
  - d. the employee could terminate the contract by providing 3 month's notice.
4. On June 30, 2011 Stecyk's 6 month probationary period ended. An evaluation was prepared by Jim Craven ("the company specializes in creative solutions regarding staffing and local government operations" and was involved with hiring Stecyk) prior to the ending of the probationary period. That evaluation indicated staff was not happy with Stecyk's performance. This evaluation would have provided the City with the ability to terminate his contract as Stecyk was still on probation. Jim Craven was requested to provide an additional report for Council with interviews from other employees not as closely associated with Stecyk with a more favourable evaluation.
5. On or about December 1, 2011 a performance review of Stecyk's performance was completed. The employment continued.
6. In February 2012 Meriel Wild, a 10 year employee of the City, filed a written complaint to Council alleging that she was bullied and harassed by Stecyk. She also took a leave of absence from her job with the City on the instructions of her doctor as a result of the bullying and harassment.
7. The City proceeded to investigate the Wild complaint. At a meeting held in late March or early April 2012, Councillor Coleman advised council that the Executive Committee had investigated the complaint and had found that Wild had been harassed by Stecyk.
8. In the afternoon of April 16, 2012 the Council for the City held an in-camera meeting. No notice of the meeting was given to the public. No resolution pursuant to s.90 of the *Community Charter* was made at an open meeting as required under s 92(a)(b). The meeting was held in secret.

9. At the meeting of April 16, 2012 Council resolved to terminate the contract of Stecyk for cause. Council's decision was then communicated to Stecyk.
10. In the afternoon of April 23, 2012 the Council for the City held another in-camera meeting. No notice of this meeting was given to the public. No resolution pursuant to s.90 was made at an open meeting. The meeting was held in secret.
11. From April 24th to April 30th, 2012 numerous meetings were held involving the City's Executive Committee, the Mayor, some councillors, the City's lawyer and Stecyk's lawyer to discuss Stecyk's termination.
12. On May 1, 2012 a press release was issued which stated: Council issued a press release which stated:

"Quesnel City Council has announced that it has accepted the resignation of City Manager John Stecyk effective immediately. Stecyk, who is resigning for personal reasons, came to the City in January 2011."

This does not relate to any of the terms of Stecyk's contract.

13. ~~13. The press release was false because;~~
- ~~(a) Council had not authorized such a release~~
  - ~~(b) Stecyk had not resigned for personal reasons, and~~
  - ~~(c) while the Mayor and some councillors had discussed the payment of some severance pay to Stecyk, Council had not considered the issue.~~
14. ~~In the afternoon of May 7, 2012 the 5 respondents met. No written notice was given by any council member pursuant to s.126 of the Community Charter. No notice was given to the public pursuant to s.127 (2) of the Charter. At this gathering of the 5 respondents, no resolution was made pursuant to s.90 that part of the meeting be closed to the public or why the meeting was closed.~~
15. ~~At the afternoon meeting of May 7, 2012, the 5 respondents each voted for a resolution that the City pay to Stecyk severance pay in the amount of \$170,469.~~
16. ~~The resolution of May 7, 2012 for which each of the respondents voted, qualifies as a vote for an unlawful expenditure within the meeting of s.191 of the Community Charter.~~

17. ~~No minutes exist of the meeting held in the afternoon of May 7, 2012 but the fact that the meeting occurred is recorded in the regular meeting of Council held later that day. At that later meeting the Acting Deputy Clerk references "a special closed Council meeting held immediately before this session."~~
18. On May 8, 2012 the Director of Finance for the City confirmed that the final remuneration payment to John Stecyk was \$170,469.13.
19. On May 14, 2012 Council for the City met at a regular meeting. At that meeting Kari Bolton made a recommendation to Council regarding the appointment of an interim manager. In Kari Bolton's submission to Council she referred to "the transition period following the resignation of the city manager".
20. In late May, 2012 when Meriel Wild's Doctor authorized her to resume working her employment contract with the City was terminated without cause. The City agreed to pay to her one year's wages plus other benefits.
21. In July 2012, Ken Butchard, a Quesnel citizen, filed a complaint with the City Auditor pursuant to s.172 of the Community Charter relating to the severance paid to Stecyk. On August 12, 2012 the Auditor wrote that "... our former City Manager submitted his resignation, which was accepted by Council. The final remuneration paid to him was part of the agreement Council had with him...."
22. On October 23, 2012 the Assistant Deputy Minister for Local Government responded to a request by Ken Butchard for an inquiry into the severance paid to Stecyk. He advised that he was unable to take any action. He further stated "It is the Courts that decide whether or not a council member acted contrary to a legislative requirement."
23. On December 24, 2012 Kari Bolton, the Director of Finance, advised that the final remuneration paid Stecyk was:

12 month's salary	\$131,750
Benefits 20%	26,000
Pay owing	2,831
Vacation owing	<u>9,538</u>
Total	\$170,469

### Part 3: LEGAL BASIS

1. The vote of ~~May 7, 2012~~ April 23, 2012, authorizing the expenditure of \$170,469 was contrary to the Community Charter because:
  - (a) The motion contradicted the resolution of April 16, 2012 to terminate Stecyk for cause.
  - (b) Stecyk had resigned for personal reasons and no severance monies were owed to him.
  - (c) The vote to pay severance was essentially a vote to make a gift to Stecyk, which Council had no authority to do.
  - (d) The resolution to pay Stecyk was contrary to the contract made with him.
  - ~~(e) The resolution to pay Stecyk was contrary to the City's Financial Plan for 2012 and contrary to s.173 (1) of the Community Charter.~~
  - ~~(f) The resolution was made at a gathering of Council that did not constitute a duly convened meeting of Council and proper notice had not been given.~~
  - (g) No resolution had been made pursuant to s.90 of the Community Charter.
  - (h) The issue of whether to pay Stecyk's severance was not a topic authorized by s.90 to be dealt with at a closed meeting.
2. s. 191 (1) of the *Community Charter* creates strict liability for unlawful expenditure of civic funds.
3. s.110(1) of the *Community Charter* outlines circumstances of disqualification of councillors from office.
4. *Laponte v. Larin* (1909), 42 SCR 521, p. 532.
5. If the resolution to pay severance pay was authorized, the amount paid to Stecyk exceeded the amount referenced in Stecyk's employment contract.
6. s. 287(3)(a) of the *Local Government Act*, which eliminates immunity for city officials if they have acted dishonestly.

**Part 4: MATERIAL TO BE RELIED ON**

- 1. The affidavits of Meriel Wild sworn the 13 day of March 2013 and Sylvia Battley, sworn on the 18 day of March 2013.
- 2. Affidavit # 1 of Sushil Thapar sworn June 11, 2013; and
- 3. Affidavit # 1 of Ken Butchard sworn June 11, 2013.

The petitioners estimate that the hearing of the petition will take 1 day.

DATED June 11, 2013



KAREN SURCESS

petitioner  lawyer for petitioner(s)

**To be completed by the court only:**

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition
- with the following variations and additional terms:

Date: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Signature of  Judge  Master

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,  
LAUREY – ANNE ROODENBURG

RESPONDENTS

---

Amended PETITION TO THE COURT

---

---

KAREN SURCESS  
Barrister & Solicitor  
3563 Manweiler Road  
Quesnel, British Columbia  
V2J 5G6  
250-991-2501  
ksurcesslaw@live.com