



IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *Tremblett v. Northern Arm (Town)*, 2021 NLSC 98

Date: July 6, 2021

Docket: 202003G0015

BETWEEN:

MICHAEL TREMBLETT

APPLICANT

AND:

THE TOWN OF NORTHERN ARM

RESPONDENT

Before: Justice Glen L.C. Noel

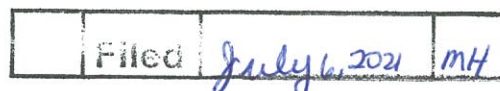
On Judicial Review From: A Decision of the Town Council of the Town of Northern Arm, Motions 19-149 and 19-151 dated the 3rd day of December, 2019.

Place of Hearing: Grand Falls-Windsor, Newfoundland and Labrador

Date of Hearing: June 16, 2021

Summary:

A municipal councillor sought judicial review of two motions of the Town Council of the Town of Northern Arm to terminate conflict of interest complaints and investigations into conflict of interest allegations against a sitting councillor and former councillors.



The Court applied the standard of reasonable review holding that Council's Decision on the motions was reasonableness. It held the conflict of interest provisions under the *Municipalities Act* did not apply to former councillors.

Costs on Column 4 were ordered.

Appearances:

Michael Tremblett Appearing on his own behalf

Giles W. Ayers Appearing on behalf of the Respondent

Authorities Cited:

CASES CONSIDERED: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2; *Butt v. Town of Carbonear*, 2018 NLSC 152; *Coombs v. Placentia (Town)*, 2018 NLSC 53; *Trimart Investments Ltd. v. Gander (Town)*, 2015 NLCA 32; *Steele v. Rendell*, 2017 NLCA 36

STATUTES CONSIDERED: *Municipalities Act, 1999*, S.N.L. 1999 c. M-24

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

TEXTS CONSIDERED: Dr. Peter G. Boswell, *Municipal Councillor's Handbook*, 2nd ed. (St. John's, Department of Municipal and Provincial Affairs, 2001)

REASONS FOR JUDGMENT

NOEL, J.:

INTRODUCTION

[1] The Applicant, Michael Tremblett, is a councillor on the Town Council of the Town of Northern Arm.

[2] He seeks judicial review of two motions of the Town Council relating to conflict of interest complaints he has made against the current Mayor (sitting as a councillor at the time of the allegation) and former councillors. He claims the motions were not in accordance with the provisions of the *Municipalities Act, 1999*, S.N.L. 1999 c. M-24, (the “*Act*”) and thus were in violation of the *Act*. The motions set aside Tremblett’s conflict of interest complaints, and the further allegation that offences had been committed under section 419 of the *Act* by a member and former members of the Town Council.

[3] The relief Tremblett is seeking is for the Court to quash the motions and order the Town Council to conduct hearings to determine if a councillor and former councillors were at the time in a conflict of interest. He asks the Court to “order the Council to proceed with the hearing of these complaints using an independent adjudicator from outside Council as a Judge.”



[4] In these reasons, I will explain why I am dismissing Tremblett’s application and ordering costs against him.

BACKGROUND

[5] The Town Council unanimously passed two motions, Motion 19-149 and Motion 19-151. The Motion 19-149 stated: “Be it resolved that the conflict of interest complaint against Fred Butler and Boyd Samson be dropped indefinitely.” Motion 19-151 stated: “Be it resolved that the Town the Town of Northern Arm cease and desist all conflict of interest charges against all former Councillors.” The motions considered together make for the decision of Council (“the Decision”).

[6] Butler is the current Mayor of the Town. He excused himself from the Mayor’s seat and left the chambers during the discussions and voting on Motion 19-149. Samson was a former councillor and did not participate in Council’s discussions.

[7] Motion 19-149 dismissed a conflict of interest complaint against Butler and Samson for voting on a motion of Council, when they were both councillors and members of the Town's Fire Department, to repay the Fire Department for expenses incurred in fighting a fire at a mink farm. Council decided to allocate the \$1,550.00 received from the mink farm's insurers to the Fire Department.

[8] Tremblett's conflict of interest complaint alleged that the Fire Department is a small group of people and the funds were to be used for their benefit only with no other members of the community at large being benefited.

[9] Motion 19-151 concerns a number of other conflict of interest complaints against former councillors, the details of which are not relevant because of my ruling that the conflict of interest provisions of the *Act* do apply to former councillors.

ISSUES

[10] The issues for determination are:

- 1) What is the nature of the Decision under review?
- 2) What is the applicable standard of review and approach to review of the Decision?
- 3) Should the Court quash the Decision and order the relief sought?

ANALYSIS

1) What is the nature of the Decision under review?

[11] Tremblett initially started the proceeding as a Notice of Appeal. There are no statutory provisions under the *Act* or otherwise allowing for an appeal of the impugned motions. With the consent of counsel for the Town, the Court allowed Tremblett's Notice of Appeal to be treated as an Originating Application for judicial review.

[12] Tremblett is contesting the merits of the Decision. He is not alleging Council denied him natural justice and/or procedural fairness. His contention is the provisions of the *Act* pertaining to conflict of interest are mandatory and Council failed in its duty to apply and enforce the *Act*. He claims that Council acted to avoid having the persons named in his complaints from having to answer to the complaints.

2) What is the applicable standard of review and proper approach to review of the Decision?

Standard of Review is Reasonableness

[13] The applicable standard of review on this judicial review is reasonableness.

[14] The Supreme Court of Canada mandates where a court is reviewing the merits of an administrative decision, such as made here by a municipality, there is a presumption that reasonableness is the applicable standard: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 10 and 23.

[15] There is no expressed legislative intent to depart from the reasonableness standard. The Decision does not give rise to constitutional questions or other general questions of law that are of central importance to the legal system as a whole.

Approach to the Reasonableness Review

[16] The approach to the reasonableness review requires the reviewing court to ask whether the Decision bears the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov* at para. 99. There was no obligation for Council to produce supporting reasons following passing of the motions. In a case predating *Vavilov*, the Supreme Court of Canada stated:

29. ... To demand that councillors who have just emerged from a heated debate on the merits of a bylaw get together to produce a coherent set of reasons is to misconceive the nature of the democratic process that prevails in the Council Chamber. ...



Catalyst Paper Corp. v. North Cowichan (District), 2012 SCC 2

[17] Where no formal reasons exist, I must look to the record as a whole to understand the Decision. Without reasons, the analysis focuses on the outcome and the process Council followed in passing the motions. This does not make the reasonable review any less robust: *Vavilov* at paras. 137 and 138.

[18] Reasonableness review accords respect for the role of administration decision makers. Courts should intervene in administrative matters “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process”: *Vavilov* at para. 13. A measure of deference has come to be accepted as appropriate, as long as the scope of Council’s exercise of authority is justified: *Vavilov* at paras. 30 and 109.

[19] The burden is on Tremblett as the party challenging the decision to show that it is unreasonable: *Vavilov* at para. 100.

3) Should the Court quash the Decision and order the relief sought?

[20] The Decision meets the reasonable standard on both the outcome and the process followed by Council in passing of the motions. There is no basis to order the relief sought.

The Record



[21] The Record confirms both the chronology of events and just how extensively Council dealt with Tremblett's complaints.

[22] The Fire Department responded to the mink farm fire on 10 January 2018, as part of the mutual agreement with the Town of Point Leamington. Butler played a key role in briefing Council on efforts to recover from the insurance company expenses the Fire Department incurred.

[23] By motion of Councillor Butler and seconded by Councillor Samson on 10 April 2018, Council voted that the monies recovered from the insurance company "be turned over to the Fire Dept." Tremblett, who was Deputy Mayor at the time, suggested it was the Town's money and voted against Motion 18-42.

[24] Tremblett continued to raise and insist that Butler and Samson were in a conflict of interest to vote on Motion 18-42. In May 2018 at a meeting of Council Tremblett voiced his objection and voted against approval of the Minutes relating to Motion 18-42. Over a year later he wrote a letter of complaint dated 22 July 2019 concerning the conduct of Councillors Butler and Samson. His letter stated, in part:

Since the monies were to be used for the benefit of a special group of whom two members of the council were part of and no other members of the community were to benefit from the monies then these councillors were in a conflict of interest situation when they took part in the discussion on the recommendation and then made the motion and seconded it, then voted in favor of the motion when it was put to a vote.

[25] The Council Minutes of 6 August 2019 reflect Tremblett (who was now the Mayor) asked for a motion to table conflict of interest complaints against former councillors. Tremblett proposed conducting a 'Natural Justice Hearing' into the complaints. He also requested an investigation under section 419 of the *Act* into former councillors who refused to investigate the complaints.

[26] At a special meeting of Council on 10 September 2019, Council voted to table Tremblett's conflict of interest complaints and the alleged non-compliance with section 419 of the *Act*.

[27] On 6 October 2019, Council received correspondence from the Fire Department, who contended that the Department does not use its funds for the personal gain of its members, but rather it uses the funds to ensure safety in the community.

[28] On 8 October 2019, Robert Fisher, a Fire Department member, wrote to the Council objecting to the conflict of interest complaint against Butler and Samson. Fisher pointed out the members of the Department did not stand to benefit for "our own financial gain". He advised that the Department was "an arm of Council" and that any funds received "are spent for the good of the community".

[29] The regular meeting of Council on 5 November 2019 generated considerable interest and focus to the conflict of interest complaints and the alleged non-compliance with section 419 of the *Act*. A resident of the Town, Robert Hannaford, attended the meeting and made a written submission and oral presentation. A delegation of members from the Fire Department presented a written Delegation Statement and Fire Chief Freake spoke on behalf of the Department.

[30] Specifically regarding complaints against Butler and Samson in their capacity as councillors and members of the Fire Department, Hannaford submitted that the Department is an administrative department of the town and its bank account is the property of the Town. He stated that if Council chose, it could close the Fire Department's bank account. Hannaford characterized the transfer of the funds as a

transfer “to a second account, owned by Council, to be used for the purpose of purchasing needed supplies for the Fire Department in its unselfish protection of the general community.”

[31] The Fire Department Delegation Statement outlined Butler and Samson were not in conflict of interest when they voted on the reimbursement expenses. The Statement noted the *Act* states that Council may establish departments and the Fire Department is considered a department within the Town Council. It observed the Fire Chief can only take office when Council votes to accept the recommendation of the Fire Department, and then the Fire Chief is legally considered to be an employee of the Town. It further noted the Council annually sets the Fire Department budget on the recommendation from the Department.

[32] The Delegation Statement and the Fire Chief requested the motion pertaining to the conflict of interest complaint against Butler and Samson be withdrawn and Tremblett apologize to the Fire Department.

[33] The Council, at its regular monthly meeting on 3 December 2019, considered and dismissed all of Tremblett’s conflict of interest complaints and alleged section 419 violations. The Minutes reflect Councillor Penney addressed Council saying the allegations against Butler and Samson as members of the Fire Department “held no merit” and the allegations “were untrue and there was no Conflict.”

[34] Deputy Mayor Norman assumed the Mayor’s seat during the discussion. He asked for a vote of who would like to take the next step, which would be a ‘Natural Justice Hearing’. No one was in favor. A vote was then taken “to drop the conflict” complaints against Butler and Samson.

The Legislation

[35] Tremblett argues the conflict of interest provisions of the *Act* are mandatory. Councillors have a duty to declare a conflict of interest. He submits the provisions

apply equally to present and former councillors, since councillors cannot escape accountability from performing statutory obligations while in office.

[36] The pertinent provisions of the *Act* stipulate:

Conflict of interest

207.(1) A councillor shall not vote on or speak to a matter before the council or a committee of the council where

(a) the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;

(b) the councillor has a monetary interest directly or indirectly in the matter;

(c) a relative of the councillor has a monetary interest in the matter; or

(d) the councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.

(2) For the purpose of subsection (1) a relative of a councillor means a father, mother, spouse, cohabiting partner, sister, brother, child, step-child, ward, mother-in-law, father-in-law, sister-in-law, or brother-in-law of the councillor.

...

(4) In order for an interest to be considered as one falling within the prohibition set out in subsection (1) it shall be an interest distinct from an interest held in common with the other citizens or classes of citizens of the municipality.

Disclosure

208.(1) Where a councillor has an interest described in subsection 207(1), the councillor shall

(a) state that he or she has that interest; and

(b) state the nature of the interest at the beginning of discussion on the matter in which he or she has that interest,

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and that statement respecting his or her interest shall be recorded in the minutes of the council, or a committee of the council, where that statement was made at a committee meeting.

(2) Where a councillor declaring a conflict of interest under subsection (1) is the presiding officer, he or she shall vacate the chair.

(3) Where a councillor declares a conflict of interest under subsection (1) he or she shall immediately leave the meeting while the matter on which he or she has a conflict of interest is being discussed.

...

Decision of council

209.(1) Where a councillor is in doubt as to whether or not he or she has a monetary interest that is a conflict of interest under section 207, he or she shall make a disclosure and the council may decide the question by majority vote and its decision on the matter is final.



(2) A councillor whose possible conflict of interest is being voted on is not entitled to vote.

[37] Section 2(1)(o) states:

2.(1) ...

(o) "monetary interest" means an interest or benefit

(i) consisting of money, exacted in money, relating to money or of which money is the object,

(ii) capable of being measured by its financial value, cost, benefit, advantage or disadvantage, or

(iii) affecting or potentially affecting a person's financial position or worth, his or her assets or asset value but does not include remuneration or a benefit to which a councillor is entitled under this Act;

[38] Section 419(1)(f) makes it an offence for “a person” to contravene the *Act*. Tremblett submits Council is obligated to investigate any complaint of conflict of interest against a councillor. Tremblett’s complaints are against former councillors, save and except Butler who is currently a councillor and the Mayor.

The Decision meets the reasonable standard

[39] The Decision meets the reasonable standard for four reasons. First, the Record supports the Council properly and fairly applied the conflict of interest provisions of the *Act* to the factual circumstances. Second, the Decision also represents the interpretation that the case law authorities from this Court have placed on the *Act* when dealing with conflict of interest involving municipal councils. Third, on judicial review, I must show respect and deference to how Council handled the complaints, unless there is good reason to justify interfering with the discretion of Council. Four, the relief Tremblett is seeking is not appropriate for the Court to order.

[40] Firstly, the Record establishes the Fire Department is an administrative department of the Town. The Department incurred expenses fighting a fire. Council voted to transfer the funds to the bank account of the Fire Department. I see nothing inappropriate about the transfer to reimburse the Department for expenses it had incurred. It was a function of proper and good governance in the accountability of funds.

[41] The overwhelming evidence before Council was that Councillors Butler and Samson, as members of the Fire Department, did not gain any personal monetary interest or benefit from the transfer. The funds were for the Department’s fire protection duties.

[42] When I asked Tremblett during the hearing to show me in the Record evidence that these two councillors had a “monetary interest” as defined by the *Act*, he could not do so. He attempted to enter new evidence not in the Record or in his filed materials of a “Surf ‘n’ Turf Night” held by the Fire Department. I would not allow him to enter such evidence because it did not form part of the Record considered by

Council, and it would be unfair to consider new evidence without the Town having an opportunity to respond.

[43] Secondly, the Decision is consistent with the judicial authorities on two grounds: (1) the interpretation of “monetary interest” and circumstances constituting conflict of interest; and (2) the conflict of interest provisions of the *Act* only apply to a sitting member of Council.

[44] Justice Stack in *Butt v. Town of Carbonear*, 2018 NLSC 152 held (at para. 98) that there must be evidence of an “appreciable” benefit “more than *de minimis*” to have a “monetary interest” as defined by the *Act*. Stack, J. (at para. 87) referred to previous circumstances where the Court has found a conflict of interest:

- a. Where the councillor votes on a motion to extend water and sewer services to the street on which he or a relative owns property (*Crane v. Upper Island Cove (Town Council)*, 1999 CanLII 19770 (NL SC), [1999] 177 Nfld. & P.E.I.R. 8, 89 ACWS (3d) 383 (Nfld. S.C.); *Gosse v. Conception Bay South*, 1996 CanLII 11552 (NL SC), [1996] 146 Nfld. & P.E.I.R. 192, 37 MPLR (2d) 146, 1996 St. J. No 2812 (Nfld. S.C.(T.D.)); and *Fewer v. Town Council for Harbour Main-Chapel's Cove-Lakeview*, 2007 NLTD 91);
- b. Where the councillor discussed at a meeting of the municipal council a fire hydrant the removal of which gave rise to a monetary interest on the part of the councillor (*Coombs v. Placentia (Town)*, 2018 NLSC 53); and
- c. Where the councillor took part in a discussion of business tax and property tax matters involving business interests of his wife (*Payne v. Cow Head (Town)*, 2001 CanLII 33790 (NL SC), [2001] 207 Nfld. & P.E.I.R. 108, 112 ACWS (3d) 959 (Nfld. S.C.)).

[45] All of the above examples were on appeals to the Court under section 410(1) for the vacating of a councillor’s seat. The circumstances of the conflicting interest, outlined in those cases do not demonstrate that Butler and Samson had a financial interest with the internal transfer of funds by Council to the Fire Department.

[46] The authorities further support the conflict of interest provisions are intended to hold sitting councillors accountable and not former councillors. It is open for a municipal council to investigate alleged conflict of interest “by a sitting member of council, even if election has intervened”: *Butt* at para. 116. Justice Chaytor found the legislature did not intend that a councillor who resigned his office, could subsequently have his office declared vacant: *Coombs v. Placentia (Town)*, 2018 NLSC 53 at para. 38.

[47] I endorse the comments of Chaytor, J. in *Coombs* at para. 39:

39. Caution must be exercised so as not to allow a municipality to utilize a professed broad and purposive interpretation of its enabling legislation so as to confer upon itself powers that are not explicitly granted by the legislature. This is particularly the case when the powers sought to be bestowed involve the making of a punitive resolution.



[48] Tremblett has not pointed me to any authority, neither am I aware of any authority that section 419(1) of the *Act* applies to former councillors. I am of the view it does not.


[49] Tremblett relies on Dr. Peter G. Boswell, *Municipal Councillor's Handbook*, 2nd ed. (St. John's, Department of Municipal and Provincial Affairs, 2001). It states (at page 36): “A councillor who fails to disclose a conflict of interest may be subject to prosecution and may be removed from council.” I make no comment on whether a sitting councillor can be prosecuted under section 419(1); however, I am satisfied the provision does not apply to former councillors.

[50] I find support for my conclusion from our Court of Appeal decision in *Trimart Investments Ltd. v. Gander (Town)*, 2015 NLCA 32 that held a municipality only has the authority conferred on it by its enabling legislation. Hoegg, J.A. stated (at para. 19):

19. ... It can only exercise powers which are explicitly authorized or found to be authorized after determining the true meaning of the legislation. If authorization

for the municipal action is not found in the statute, properly and purposively construed, then the action will be held to be ultra vires the municipality and will not be permitted.

[51] The *Act* requires councillors to disclose a conflict of interest or potential conflict in a matter before Council. Where a councillor fails to disclose a conflict of interest in a matter discussed by Council, or discusses or votes on a matter he or she has a conflict of interest, Council shall, by resolution, declare vacant “the office of an elected councillor”: *Act*, section 206(2).

[52] The legislature has expressly mandated the consequences for sitting councillors when they do not fulfill their statutory obligation to be free from conflicting interests, and that is removal from office. The *Act* “properly and purposively” interpreted does not permit prosecution of former councillors for conflict of interest allegations. 

[53] Thirdly, I must show respect and deference to an elected administrative decision making body.

[54] The manner in which Council handled the complaints was itself reasonable. A detailed discussion took place before Council over several months, and Tremblett was able to press his case for the complaints and investigation to move forward. Through the democratic process, Tremblett’s view did not prevail. Reasonable people can disagree and take opposing views. Other councilors did not want to go down the road Tremblett proposed.

[55] The Council had the discretion to reexamine prior motions of Council. It chose not to do so. I will not compel Council to revisit the Decision to move on from Tremblett’s complaints. It exercised its authority and discretion reasonably.

[56] Finally, I close out my analysis with comments on the relief Tremblett seeks. He asks the Court to set aside the motions and order a ‘Natural Justice Hearing’ into the complaints.

[57] A ‘Natural Justice Hearing’ is a judicially adopted procedure (and Guidelines recommended by the Department) to be followed by municipalities in circumstances dealing with the potential removal of a councillor from office: *Coombs*, at para. 45 and *Butt*, at para. 104. The only councillor who could be facing potential removal is Butler, all others are no longer on Council. I would be stretching the concept of the ‘Natural Justice Hearing’ to require council to hold hearings on conflict of interest complaints where there was no section 206(2) resolution before Council to vacate the seat of a councillor. I am not prepared to tread into territory without any precedent for the holding of such hearings that Tremblett contemplates.

COSTS

[58] Tremblett is ordered to pay the Town’s costs for a full day hearing on Column 4 of the Scale of Costs to Rule 55 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D. I need to explain why I am ordering costs at this level.


[59] Rules 55.04(3) and (4) guide the Court in selecting an appropriate column. White, J.A. in *Steele v. Rendell*, 2017 NLCA 36 (at para. 15) noted:

These rules assign no special priority to column 3. A judge can exercise discretion to order costs on whatever column, or combination of columns, he or she considers in the exercise of judicial discretion, is appropriate in light of the factors in Rule 55.04(4) and any other relevant considerations.

[60] In the exercise of my discretion, I consider the following factors in Rule 55.04(4) to have significance: (b) importance of the issues; (c) difficulty or novelty of the issues and (h) any other relevant matter. I will take into account another relevant consideration and that is Tremblett is self-represented.

[61] Had Tremblett prevailed, the Town as well as Mayor Butler and former councillors would have had to incur considerable time and expenses dealing with Tremblett's complaints of conflict of interest.

[62] The relief Tremblett sought was novel and not previously ordered by our Court. Tremblett's filings indicate he had engaged with Sandy Hounsell, Director of Municipal Support for the Department. Hounsell had advised Tremblett in an email on 13 January 2020, copied to the Town that based on the language and intent of the *Act* and the Court's decision in *Coombs*: "... it is my view that to pursue Conflict of interest allegations against former councillors is an unnecessary use of town resources and could expose the Town to liability." Not that Tremblett had to accept the view of Hounsell, but it goes to my consideration of costs and Tremblett's unreasonable pursuit of the matter before this Court.



[63] The Town engaged counsel and incurred costs. It is entitled not to full indemnity but partial indemnity, which is why I order Column 4 for the hearing that required a full day.

CONCLUSION

[64] On the issues identified, I have decided as follows:

- 1) Tremblett's application is a judicial review of the merits of the Decision of Council.
- 2) The applicable standard of review is reasonableness and the reasonable review approach has been applied to the Decision.
- 3) The Decision in all respects is reasonable and the relief sought denied.

ORDER

[65] Tremblett's Application is dismissed with costs awarded to the Town on Column 4 for the full day hearing.



GLEN L.C. NOEL
Justice