

CANADA / JUDGMENT

Herar v. Mission (City)

2025 BCSC 1553

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2025 BCSC 1553 Herar v. Mission (City)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Herar v. Mission (City),

2025 BCSC 1553

Date: 20250812

Docket: S04884

Registry: Abbotsford

Between:

Councillor Kulwinder Singh Herar

Petitioner

And

The Council of the Corporation of the City of Mission

Respondent

Before: The Honourable Justice Caldwell

Reasons for Judgment

In Chambers

Counsel for the Petitioner:

D.M. Klassen

Counsel for the Respondent:

M.R. Voell

Place and Dates of Hearing:

Abbotsford, B.C.

February 3 & 5-7, 2025

Place and Date of Judgment:

Abbotsford, B.C.

August 12, 2025

Table of Contents

Preliminary Issues. 3

Background Chronology. 3

Legal Framework.. 9

Procedural Fairness and Natural Justice. 11

Analysis/Specific Issues Regarding Procedural Fairness and Natural Justice. 15

- [1] This petition challenges and seeks to set aside a decision or resolution of the Council of the City of Mission (the "Council") which imposed various disciplinary measures on the petitioner, Mr. Kulwinder Herar, who is one of the elected members on that Council. A related application seeks exclusion of certain affidavit materials and disclosure/production of certain documentary materials.

Preliminary Issues

- [2] The style of cause is defective. The respondent named in the petition is "The Council of the Corporation of the City of Mission", whereas the proper legal entity is "The City of Mission". Counsel for the respondent pointed this out but took no further issue with this error and the matter proceeded on the basis that counsel appeared and was representing the correct entity.
- [3] Counsel for the petitioner initially took issue with certain portions of the affidavit material provided by the respondent but, for the most part, limited his objections to issues of hearsay. I will deal with such objections and issues if and when they arise or have an impact on this decision.

Background Chronology

- [4] On September 8, 2020, the City of Mission ("Mission") adopted a Code of Responsible Conduct (the "Code" or "2020 Code") outlining, among other things, ethical and performance expectations or requirements of Council members, procedures for both informal and formal complaint processes, and possible sanctions for failure to meet such expectations or requirements. The establishment of the Code was anticipated, authorized, and, in my view, encouraged by the terms of ss. 113.1 and 113.2 of the Community Charter, S.B.C. 2003, c. 26.
- [5] On March 6, 2023, the Council for the City of Mission (the "Council" or "Mission Council") adopted a resolution proclaiming March 12-18 as Raise Your Hands Against Racism Week ("RYHARW") in Mission.
- [6] On March 14, 2023, the petitioner and his wife attended a local firehall with materials relating to the RYHARW proclamation but found it empty as the crew was on a call. They proceeded to another location, the Mission Youth Centre, and had a group picture taken with some of the youth who were present at the Centre. The photograph included and displayed the RYHARW proclamation. The petitioner and his wife ordered pizza for the youth and then left the Centre.
- [7] Shortly after the photographs were taken, concerns were expressed to the petitioner about the lack of parental consent prior to the taking of pictures. The petitioner recognized the potential problem and contacted the local newspaper to cancel the use of the photos. The photos were never published or used. The petitioner and his wife later returned to the Centre, retrieved the copy of the RYHARW proclamation which they had left there, and took some of the leftover pizza away with them.
- [8] On March 15 and 16, Mr. Mike Younie, the Chief Administrative Officer for Mission, and the petitioner spoke about and corresponded about the events at the Mission Youth Centre and possible concerns arising from those events. Nothing beyond those discussions arose at that time. Included in the e-mail correspondence were the following messages:

Younie: I don't doubt your intentions were positive. It's a great idea to promote diversity and we would have supported celebrating that proclamation and could have arranged a proper recognition event for you and the rest of Council. But it has to be done with some preparation so we can ensure kids are not being put at risk and that all of Council is included. We have discussed many times before to please go through me when approaching or contacting staff in the facilities. There is a power dynamic when a Councillor goes into a building and interacts with staff and it puts staff in a very tough situation unless they know in advance.

[]

Younie: The main recommendation from that review was to review the Code and do some training. The review has been done and we tried to present the training at the last Council meeting but Council directed us to do a rework of the Code. That is now coming back to a workshop on April 12.

[]

Petitioner: Moving forward I have a clear understanding now on this.

- [9] On March 30, 2023, the petitioner attended an IT session at City Hall for purposes of receiving a new iPad and receiving basic training regarding that device. The petitioner's wife attended at least part if not all of the session. Staff were not notified in advance that she would be attending and her attendance had not been formally approved.
- [10] At some point during the session, the petitioner's wife provided him with his "network password" in order to allow software setup to be completed. It is unclear whether the password was a secure Council password or the petitioner's personal g-mail account password. Days later, the petitioner's password to access certain Council material was changed.
- [11] Sometime later, the Mayor apparently became aware that certain people had expressed concerns about one or both of these two incidents. He had been, until that point in time, unaware of at least the first of the two incidents.
- [12] On April 11, 2023, the Mayor contacted Mr. Younie by e-mail regarding the concerns which he had received regarding the petitioner and the two events described above. The Mayor indicated to Mr. Younie that he wished to make a formal complaint regarding the petitioner's behaviour pursuant to the provisions of the 2020 Code.
- [13] Mr. Younie contacted West Coast Law to enquire about retaining a person to investigate the formal complaint if and when it was received. He then took steps required to place that matter before Council to approve such appointment.
- [14] On April 17, 2023, a Council meeting was held. The motion regarding the appointment of an investigator to investigate complaints made under the provisions of the Code of Responsible Conduct appeared as an added agenda item.
- [15] The Mayor and the petitioner attended that meeting, took part in the discussion, and voted on the motion to approve the appointment of Ms. Leanne Walsh, a lawyer, to be the Complaint Investigator for the balance of the year 2023.
- [16] Mention was made, during the meeting, of a pending complaint but no particulars were discussed as to the subject matter of the complaint, the author of the complaint, or the person against whom the complaint was made.

- [17] Following the April 17 meeting, the Mayor filed a formal complaint against the petitioner (the "Complaint"). The Complaint did not specify the sources of originally expressed concern nor did it state, with any particularity, the reasonable and probable grounds upon which the Complaint was based.
- [18] On April 28, 2023, Ms. Walsh contacted the petitioner and provided him with the Complaint and a confidentiality agreement. Until that time, the petitioner says that he did not know the nature of the formal complaint, the author of the complaint, nor that he was the person against whom the complaint was made.
- [19] The petitioner provided a formal response to the Complaint through his then counsel.
- [20] In May 2023, the Code of Responsible Conduct was revised significantly. The new Code specified certain behaviours which had not been identified in the 2020 Code. It included specific references to the taking of photographs in particular circumstances, attending municipal facilities, and sharing of passwords.
- [21] On June 8, 2023, Ms. Walsh interviewed the petitioner by teleconference regarding the allegations contained in the formal Complaint. The interview lasted approximately two-and-a-half hours. It appears that she also interviewed various other people including the Mayor and others who may have been involved in the incidents which gave rise to the Complaint.
- [22] On August 10, 2023, the Mayor, Ms. Walsh, and the petitioner met in Council chambers to discuss a possible resolution. Ms. Walsh acted as a form of mediator between the parties during that session. A joint resolution resulted (the "Joint Resolution") and was signed as accepted by the petitioner on his own behalf and by the Mayor - not in his capacity as the complainant, but expressly as Mayor and on behalf of the Council itself.
- [23] On August 21, 2023, Mr. Younie sent a confidential staff report to the Mayor and to Council members specifically regarding the Complaint. The report was provided in preparation for the scheduled Council meeting of that same date. Mr. Younie's report advised that a resolution had been reached regarding the Complaint, attached the resolution to his confidential report, and recommended that the resolution be accepted by Council.
- [24] In that report, Mr. Younie also indicated that:
- the agreement had been signed by the petitioner and "the complainant" (when in fact the document had been signed by the Mayor in his formal capacity and on behalf of the Council);
 - the Complaint Investigator was recommending that Council accept the agreement;
 - if the agreement was rejected by Council, the investigation report would be completed, provided to Council, and Council could then decide whether to proceed with a hearing for a motion for censure; and,

- if that were to occur, the petitioner would receive a minimum of two weeks' notice to prepare and would be afforded legal counsel for such appearance.
- [25] On August 21, 2023, Council met to consider, debate, and vote on the Joint Resolution. Both the Mayor and the petitioner took active part in that meeting. The Joint Resolution was unanimously rejected with both the Mayor and the petitioner participating in the vote.
- [26] On September 12, 2023, the petitioner received a redacted copy of the investigation report prepared by Ms. Walsh (the "Walsh Report"), which was to be the central document at issue in a special meeting of Council set for September 14 - two days hence - at which time the Complaint and Walsh Report would be before Council for consideration and debate. The redactions to the Walsh Report included excision of the names of the apparent original complainants.
- [27] The petitioner attended the September 14 special meeting of Council. His counsel was not available to attend.
- [28] The petitioner registered his protest of the meeting and of Council discussing the Complaint in all the circumstances, including that his legal counsel was not available on such short notice. The petitioner then left the meeting after noting that he was in a conflict of interest. It appears that the Mayor also recused himself.
- [29] According to the affidavit evidence of Mr. Younie, the Walsh Report and its findings were considered by Council at the September 14 meeting. The Council accepted those findings. The issues of censure and sanction arising from the Complaint were then set to be considered at an in-camera portion of a Council meeting set for October 13, 2023.
- [30] The petitioner received notice of that meeting and was invited to attend that meeting with legal counsel to make submissions to Council regarding censure and sanctions.
- [31] Between September 14 and late October 2023, counsel for the petitioner sought disclosure of various materials and access to possible witnesses or complainants. Counsel's pursuit was largely, if not wholly, unsuccessful.
- [32] The petitioner attended the Council meeting of October 13, 2023, and requested an adjournment as his counsel was not available. The Mayor recused himself from the meeting regarding consideration of an adjournment. The remaining members of Council granted an adjournment and a new date of November 1, 2023, was set.
- [33] On November 1, 2023, Council met to debate the issues of censure and sanction of the petitioner. The petitioner did not attend that meeting but his counsel did. The Mayor recused himself when the meeting was called to order.
- [34] Legal counsel for the City of Mission attended and met with Council during the initial part of the scheduled meeting. Following this meeting, the petitioner's lawyer, Mr. Klassen, was admitted to Council chambers.

- [35] Ms. Walsh presented a summary of her report and findings by videoconference and then immediately signed off and exited the meeting.
- [36] Mr. Klassen was then provided an opportunity to make submissions. He sought an adjournment, access to witnesses including Ms. Walsh, and disclosure of various documents. Council denied his requests.
- [37] Council voted to censure and sanction the petitioner, and approved the terms, i.e. the penalty to be imposed. No record of the discussion or reasons in respect of this decision have been provided to this Court for review.

Legal Framework

- [38] Municipal governments in British Columbia are governed by both the Local Government Act, R.S.B.C. 2015, c. 1, and the Community Charter, S.B.C. 2003, c. 26.
- [39] The Local Government Act provides, among other things, for the election of mayors and councillors in municipalities like Mission.
- [40] The Community Charter provides how municipalities are to govern themselves. Section 1(1) provides that:

Municipalities and their councils are recognized as an order of government within their jurisdiction that

- (a) is democratically elected, autonomous, responsible and accountable,
- (b) is established and continued by the will of the residents of their communities, and
- (c) provides for the municipal purposes of their communities.

- [41] Section 3 provides that:

The purposes of this Act are to provide municipalities and their councils with

- (a) a legal framework for the powers, duties and functions that are necessary to fulfill their purposes,
- (b) the authority and discretion to address existing and future community needs, and
- (c) the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.

- [42] Section 113.1 expressly requires municipal councils to consider establishing a code of conduct:

Requirement to consider code of conduct

113.1(1) Within 6 months after its first regular council meeting following a general local election, a council must decide

- (a) whether to establish a code of conduct for council members, or
- (b) if a code of conduct for council members has already been established, whether it should be reviewed.
- (2) Before making a decision under subsection (1), the council must
 - (a) consider the prescribed principles for codes of conduct,
 - (b) consider the other prescribed matters, if any, and
 - (c) comply with the prescribed requirements, if any, including requirements respecting public notice or consultation.
- (3) If the council decides, under subsection (1), not to establish a code of conduct or review an existing code of conduct, it must make available to the public, on request, a statement respecting the reasons for its decision.

Reconsideration of decision respecting code of conduct

113.2(1) If a council decides, under section 113.1, not to establish a code of conduct or review an existing code of conduct, the council must reconsider that decision before January 1 of the year of the next general local election.

- (2) In a reconsideration under subsection (1), the council must
 - (a) consider the prescribed principles for codes of conduct,
 - (b) consider the other prescribed matters, if any, and
 - (c) comply with the prescribed requirements, if any, including requirements respecting public notice or consultation.
 - (3) If the council confirms the decision that is the subject of the reconsideration, the council must make available to the public, on request, a statement respecting its reasons for confirming the decision.
- [43] Although the Council adopted a revised Code of Responsible Conduct on May 15, 2023, I will only consider the stipulations of the 2020 Code, to the extent necessary on judicial review, because that was the Code in place in Mission at the time of the March 2023 incidents which gave rise to the April 2023 Complaint.
- [44] The petitioner has brought the enforceability of the 2020 Code into question: Petition at paras. 75, 102-107. I am not persuaded that a municipal code of conduct cannot form the basis of a municipal council's decision to sanction a councillor. As noted above, the Community Charter requires municipal councils to consider the establishment of such codes, and the authorities suggest that a municipal council can regulate a councillor's conduct when it does not meet an expected standard: see *Skakun v. Prince George (City)*, 2011 BCSC 1796 at paras. 41-46. It is reasonable for that standard to be set out in a code of

conduct.

- [45] Municipal councils enjoy broad authority to control their internal processes. Here, I refer to the comments of Justice Marzari in *Dupont v. Port Coquitlam (City)*, 2021 BCSC 728 at para. 23, cited with approval in *Anderson v. Strathcona (Regional District)*, 2024 BCCA 23 at para. 38:
- [23] Sections 4 and 114 of the Community Charter provide municipalities and their councils broad authority to control their processes. Generally speaking, councillors are not subject to the ordinary reviews and disciplinary processes of traditional employment; their performance is left to be evaluated by the electors every four years at the ballot box. Problematic behaviours may nevertheless arise during the course of a councillor's term, and motions of censure have long been used by all levels of government to express disapproval of a member's conduct. In the local government context, the courts have affirmed that councils and boards are entitled to use this procedure to respond to the conduct of their members
- [46] A judicial review of the Council's decision to censure and sanction the petitioner calls for an assessment of whether that decision was a reasonable outcome of a fair and naturally just process.

Procedural Fairness and Natural Justice

- [47] It is undisputed that the petitioner was entitled to procedural fairness and natural justice when the Council considered the Complaint against him.
- [48] I note that this Court has considered and, in some cases, enforced the procedural fairness requirements set out in municipal codes of conduct: see e.g. *Paull v. Quesnel (City)*, 2025 BCSC 347 at para. 175; *Michetti v. Pouce Coupe (Village)*, 2022 BCSC 472 at paras. 40, 60. However, the fact that a municipal council has the authority to control its processes does not oust this Court's consideration of whether the implementation of a municipal code of conduct conforms with the requirements of the duty of fairness: see *Djakovic v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2010 BCSC 1279 at para. 41; *Ganitano v. Metro Vancouver Housing Corporation*, 2009 BCSC 787 at para. 54.
- [49] Justice Veenstra recently and succinctly confirmed the general principles of procedural fairness in *Paull*:
- [97] The general principles governing the required observation of procedural fairness by administrative tribunals, as well as other bodies exercising statutory powers of decision, were conveniently summarized in *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, 2021 BCCA 67 at paras. 58-61:
- [58] An administrative tribunal owes a duty of fairness whenever its decisions affect the "rights, privileges or interests of an individual": *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at 653. As the Supreme Court of Canada emphasized in *Dunsmuir v. New*

Brunswick, 2008 SCC 9, a fair process is "central to the notion of the 'just' exercise of power": at para. 90. Absent clear statutory language to the contrary, the duty of fairness exists at common law regardless of the specific procedures imposed by a tribunal's enabling statute. However, the existence of a duty of fairness does not determine its specific requirements in a given set of circumstances: *Canada (Attorney General) v. Mavi*, 2011 SCC 30 at paras. 38-39; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 21.

- [59] The duty of fairness is eminently variable, flexible and context specific: *Vavilov* at para. 77. Its specific requirements depend in each case on "the context of the particular statute and the rights affected": *Baker* at para. 22. In *Baker*, the Court outlined a non-exhaustive list of factors that guide the court's determination of the content of the duty of fairness in a given set of circumstances. As Justice L'Heureux-Dubé explained, these factors all reflect the same underlying notion, namely:
- [22] that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.
- [60] Justice L'Heureux-Dubé identified five key factors as relevant when the content of the duty of fairness is determined. The "Baker factors" are: i) the nature of the decision and the process followed in making it, including the closeness of that process to the judicial process; ii) the statutory scheme and the role of the decision within the scheme; iii) the importance of the decision to the individual affected; iv) the legitimate expectations of the person challenging the decision; and v) the procedural choices made by the tribunal itself: at paras. 23-27.
- [61] Consideration of the Baker factors assists the court in assessing whether the procedures followed by an administrative decision maker respected the duty of fairness. The underlying principle is "that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision": *Baker* at para. 28.
- [98] As noted in *Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia*, 2022 BCCA 247 at para. 71:
- [71] Where a judicial review raises an issue of procedural fairness, the standard of review is whether, in all the circumstances, the decision maker acted fairly. The Court does not owe deference to the decision maker in determining whether the process adopted conformed with the requirements of procedural fairness

- [50] Authorities also confirm that when censure, sanction, or other discipline is in issue, there exists a heightened measure of procedural fairness. The more important the decision is to the life of the affected person and the greater its impact on the person, the more stringent the procedural protections that will be mandated: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 25, 1999 CanLII 699 (S.C.C.).
- [51] In *Skakun*, Justice Crawford commented:
- [43] By my reading of the Community Charter, it is reasonable to imply council have an obligation to regulate a councillor's misconduct when there is a substantial falling away from the expected standard.
- [44] I think it reasonable to think in certain cases council need to state the standard of expected conduct, but I note this: it is a power to be exercised with great care and great discretion. Far too easily, this could turn into an abuse of process for cheap political gain, and any council that sets out in this direction must be careful in what it is doing. But I do not see any such suggestion in the situation before me.
- [47] The lawyers for Mr. Skakun and the council have already exchanged correspondence, and I have already touched on some of the process, and so I am now turning my mind to the issue of due process. I am saying that within their house, council should be able to deal with the lesser misconduct. Due process generally requires (1) fair notice, so that you know what the charge is and what the potential punishment or sanction, as it is being described here, might be, and (2) a fair hearing or a right to be heard. I should say that the court is always cautious to interfere with a process that is discretionary and, in this case, the efforts of a municipal council to deal with an in-house matter. None of which I say now, do I say council is on the wrong path, and so I can probably say at best I am making some suggestions, in light of the fact that they are moving from their legislative mandate to a quasi-judicial one where they are, to repeat myself, making an accusation against one of their fellow councillors of misconduct, and, secondly, proposing various consequences.
- [52] An affected party's right to know the case against them is at the very foundation of participatory rights. The affected party is entitled to receive some form of notice of the issues before the decision-maker so as to have a meaningful opportunity to present their case fully and fairly: *Athwal v. Johnson*, 2023 BCCA 460 at para. 28.
- [53] The *audi alteram partem* principle requires tribunals to provide those who will be affected by their decisions an opportunity to be heard. Tribunal must hear both sides of a case, and, importantly, no one may be a judge in their own cause: *A. (L.L.) v. B.(A.)*, [1995] 4 S.C.R. 536 at para. 27, 1995 CanLII 52 (S.C.C.).
- [54] The Supreme Court of Canada made the following observations in respect of natural justice in *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105 at 1113, 1980 CanLII 10 (S.C.C.):

2. As a constituent of the autonomy it enjoys, the tribunal must observe natural justice which, as Harman L.J. said, [*Ridge v. Baldwin*, at p. 850] is only "fair play in action". In any particular case, the requirements of natural justice will depend on "the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter which is being dealt with, and so forth": per Tucker L.J. in *Russell v. Duke of Norfolk*, at p. 118. To abrogate the rules of natural justice, express language or necessary implication must be found in the statutory instrument.
 3. A high standard of justice is required when the right to continue in one's profession or employment is at stake. *Abbott v. Sullivan*, at p. 198; *Russell v. Duke of Norfolk*, supra, at p. 119. A disciplinary suspension can have grave and permanent consequences upon a professional career.
 4. The tribunal must listen fairly to both sides, giving the parties to the controversy a fair opportunity "for correcting or contradicting any relevant statement prejudicial to their views". *Board of Education v. Rice*, at p. 182; *Local Government Board v. Arlidge*, supra, at pp. 133 and 141.
- [55] Where significant rights of the affected party are at stake, as is the case here, the benefit of allowing that individual to cross-examine witnesses outweighs the burden of the same. Where a party can demonstrate it is necessary to contradict something and cross-examination is the means to do so, refusing the chance to cross-examine may be a breach of procedural fairness or natural justice: *Djakovic* at paras. 47-56; *Armstrong v. Canada (Commissioner of the Royal Canadian Mounted Police) (T.D.)*, [1994] 2 F.C. 356 at para. 26, 1994 CanLII 3459 (F.C.).

Analysis/Specific Issues Regarding Procedural Fairness and Natural Justice

[56] The case before me involves the Mission Council:

- undertaking or purporting to undertake a quasi-judicial process and function,
- regarding a formal complaint,
- filed by one of its members,
- as against another of its members; and,
- which process had the potential, if not the likelihood, of exposing the petitioner to serious personal and professional consequences including censure, sanction, and damage to his reputation as an elected official.

[57] In such situations, it is clear on the various authorities, including those cited above, that due process, procedural fairness, and natural justice take on a heightened importance.

[58] Among the concerns which arise and are, in my view, of significance, are:

- the Mayor, as complainant and in his role as Mayor and member of Council, took active part in at least the early stages of the complaint process;
- despite being the complainant, the Mayor participated in the April 17 Council meeting to approve the appointment of a Complaint Investigator;
- he did so in possession of unique information, presumably unknown to some, if not all, other participants, as to the nature of the complaint, the person against whom the complaint was made, and the fact that he was personally invested in the process as he was the complainant;
- the Complaint, when formalized, failed to meet the requirements of the Code in that it failed to particularize the reasonable and probable basis for the complaint, at least in regard to the Youth Centre incident;
- the Complaint Investigator, Ms. Walsh, may have exceeded the mandate of her retainer when she acted as some form of mediator or facilitator and became involved in the August 10, 2023 resolution meeting;
- the Mayor signed the Joint Resolution "on behalf of City of Mission Council", not as the complainant, which could have been understood as a final resolution of the complaint and accepted by Council;
- the Mayor took active part in the council meeting and debate of August 21, 2023 regarding the acceptance or rejection of the proposed Joint Resolution, apparently both as the complainant and as Mayor;
- for reasons that are unclear, the Council unanimously rejected the Joint Resolution despite the fact it was signed by the Mayor and the petitioner, and recommended for adoption by Mr. Younie and Ms. Walsh;
- the petitioner was refused access, at least initially and in some cases throughout, to such basic information as the identity of persons raising complaints and the exact nature of such complaints;
- the retainer agreement with Ms. Walsh, as per the position taken by legal counsel for Mission, purported to insulate her notes and other file material from scrutiny by anyone, including the petitioner, in spite of the fact that her report could have significant repercussions on the petitioner, including the possible impact of censure, sanction, and the concomitant damage to his reputation;
- the petitioner was provided with a redacted copy of the Walsh Report only two days before the September 14, 2023 special meeting;

- Council accepted the Walsh Report at the September 14, 2023 meeting despite the petitioner's protest that his legal counsel was not available to attend on such short notice to raise concerns as to the Report or the process leading to its creation - here, Council's acceptance of the Walsh Report without submissions by the petitioner is akin to finding an accused person guilty, in the criminal context, on the basis of a report by Crown Counsel;
- without evidence of enquiry into the Walsh Report or Council's detailed consideration of same, it is impossible to determine whether Council made an independent and reasoned decision in respect of the Complaint or merely delegated the decision-making function to the Complaint Investigator and simply "rubber-stamped" her conclusions;
- as late as the November 1, 2023 meeting, Council refused to provide the petitioner with access to the Complaint Investigator, her file, or the original complainants for purposes of cross-examination or challenge; and,
- the remedial or corrective measures suggested in the Walsh Report were eclipsed by the significant punitive censure and sanctions imposed by the Council.

[59] Taken together, these factors lead me to the conclusion that the petitioner was clearly denied the procedural fairness and natural justice to which he was entitled given the nature of the investigation, the quasi-judicial nature of the process, and the significant consequences to which he was exposed and which came to be imposed on him.

[60] The resolution of Council dated November 1, 2023, is quashed and set aside in its entirety. Given this decision, it is my view that I need not make further or specific orders regarding the balance of the relief sought in the petition and the later application which was filed on March 14, 2024, save and except as to costs.

[61] The material indicates that Mission reimbursed the petitioner for certain of his legal expenses regarding this process. I am unaware of the continuing obligations of Mission in this regard and arising from local custom or legislation, but pursuant to the Supreme Court Civil Rules, I am of the view that the petitioner is entitled to his costs at Scale B.

"Caldwell J."

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