

CANADA / JUDGMENT

Paull v. Quesnel (City)

2025 BCSC 347

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 347 Paull v. Quesnel (City)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Paull v. Quesnel (City),

2025 BCSC 347

Date: 20250303

Docket: S243540

Registry: Vancouver

In the Matter of the Local Government Act, R.S.B.C. 2015, c. 1 and

the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241

Between:

Ron Paull

Petitioner

And

The City of Quesnel

Respondent

Before: The Honourable Justice Veenstra

On judicial review from:

Resolutions of the Council for the City of Quesnel, dated April 2 and 30, 2024

(Resolutions 24-10-110, 24-13-141, 24-13-142, and 24-13-143).

Reasons for Judgment

Counsel for the Petitioner:

N. Baker

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M.R. Voell

Place and Dates of Hearing:

Vancouver, B.C.

September 26-27, 2024

Place and Date of Judgment:

Vancouver, B.C.

March 3, 2025

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Introduction

- [1] The petitioner, who is the Mayor of the City of Quesnel (the "City"), seeks judicial review of decisions made by the City's Council in April 2024 leading up to and including resolutions censuring and sanctioning him. The petitioner says that the decisions were made without proper observance of procedural fairness and are unreasonable.

Factual Background

- [2] Mayor Paull was elected Mayor of Quesnel in the fall of 2022 for a four-year term. In that election, he defeated the incumbent mayor. Prior to that, Mr. Paull had been a City councillor for some 17 years.
- [3] In his affidavit, Mayor Paull noted that he had served on Council since 2014 with Councillors Roodenburg and Elliott, and that their working relationship was difficult both during and outside of Council meetings. The respondent City did not reply to this evidence, taking the position that what is relevant on an application for judicial review is the record before the decision-making body.
- [4] Mayor Paull is married to Ms. Morton. In about January 2024, Ms. Morton purchased a book (the "Book") that disputes some of the findings of the Truth and Reconciliation Commission, particularly with respect to residential schools. The Book is controversial and is seen by Indigenous communities as being hurtful, hateful, and harmful to healing and reconciliation.
- [5] Ms. Morton says that she read the Book and, in February 2024, gave a copy of the Book to someone who she has known for many years and has discussed many current issues with. That person is the parent of another member of Council, Councillor Goulet.
- [6] The fact that this occurred became known in the community, including to members of the Lhtako Dene Nation. Someone from the Lhtako Dene Nation advised another member of Council, Councillor Roodenburg, who stopped by City Hall on March 7, 2024, and told both Mayor Paull and Ms. Bolton, the acting Chief Administrative Officer ("CAO"), that the Lhtako Dene Nation was upset.
- [7] It was common ground amongst the parties to this proceeding that the City has a long-standing and valued relationship with the Lhtako Dene Nation. A Memorandum of Understanding dated June 20, 2017 (the "MOU"), was signed by both the City and the Lhtako Dene Nation. Among other things, the MOU attests to their mutual commitment to promote

cooperative relationship building. It recognizes principles including cooperation in the exchange, development and distribution of information, collaborative actions in the development and implementation of meaningful projects of mutual interest, and an acknowledgement of the importance of good relations. Mayor Paull, who was a Councillor at the time, was one of the signatories to the MOU.

- [8] A regular meeting of Council was scheduled for March 19, 2024. In accordance with the usual practice, the agenda had been distributed several days prior. However, on the morning of March 19, the City received a letter from the Lhtako Dene Nation, which asked that it be put on the agenda for that evening's meeting. The letter noted that "a person related to a member of the City's elected" had been distributing the Book. It commented that:

The calling into question of what our Nation went through is a slap in our people's collective faces and is very hurtful to them. The Nation has a significant number of members who suffered through attendance at a Residential School and today suffer through the long-term trauma of what they went through. The book adds to that hurt.

- [9] The letter asked that:

the Mayor and Council reaffirm the terms of the [MOU]. We would also appreciate the opportunity to have some of our Elders, who experienced Residential School attendance, meet with the Mayor and Council to provide first-hand knowledge of the treatment they were subjected to and survived.

- [10] Five of the seven councillors attended that evening's meeting. At the start of the meeting, Council voted unanimously to add the Lhtako Dene Nation letter to the agenda as Item M.3. The minutes of the meeting include the following:

This letter was submitted as a late item for the March 19, 2024 Council Agenda, at the Request of Lhtako Dene Nation, in response to "a person related to a member of the City's elected", allegedly distributing a book within the community that questions the accuracy of the Truth and Reconciliation Commission findings and refutes the historical cultural genocide and abuse experienced by Indigenous children at Residential Schools.

Mayor Paull read a statement in which he stated that it was his wife (Pat Morton) who has the book and, asserted that he had not read the book. "To be honest, I have not even opened it, I looked at the cover but have no interest in looking at it". He noted that "while some will look upon this situation as a threat to their reconciliation efforts, I look at it a different way. I look at it as an opportunity for all of us, together, to understand and respect one another's views and aspirations even more deeply. As is asked by the Lhtako Dene Nation, I will be the first as leader of our Council and our City and our greater community to positively and meaningfully reaffirm our MOU [...] that is so proudly displayed over there on that wall of these chambers." Mayor Paull went on to list several City of Quesnel "accomplishments" regarding Indigenous relations and reconciliation.

As Indigenous Relations Liaison, Councillor Roodenburg expressed, "There is no excuse for this type of behavior in our community period, and I don't care that you think it's about your own opinion and having the right to voice it, it's about how this showcases our community to the rest of BC and to the world" and that "she's (Pat Morton) not respecting the fact that you are the Mayor of this community, and what she does in the community reflects not only on you, but on our Council and on our community." Councillor Roodenburg went on to say that no matter how much good work Mayor Paull states we have done, it only takes one situation like that to blow it out of the water.

When asked directly if he agreed with what his wife had been doing in the community, Mayor Paull stated "no".

[11] After further discussion Council unanimously passed three resolutions:

- a) Resolution 24-09-103, reaffirming the terms set out in the MOU;
- b) Resolution 24-09-104, directing staff to:

Work with Lhtako Dene to coordinate a Council-to-Council gathering to invite local Elders to share their Residential School experiences, to give Council a better understanding of the historical abuse of Indigenous children at Residential Schools and the generational trauma.

- c) Resolution 24-09-105, denouncing the Book and confirming that Council agrees with the findings of the Truth and Reconciliation Commission.

[12] Two days later, on March 21, 2024, Mayor Paull attended a meeting of the Cariboo Regional District committee of the whole. His evidence is that:

I attended a Cariboo Regional District committee of the whole meeting at which certain Directors raised concerns about the types of books that were available in the children's section of our public libraries.

The record indicates that the books in issue related to sexual orientation and gender identity issues.

[13] On March 22, 2024, Mayor Paull attended a Cariboo Regional District regular board meeting. The primary controversy in this matter arises with respect to what happened after the meeting had concluded. Mayor Paull's evidence is that:

I brought the Book with me to show the Book to certain Directors given the discussion we had the day before about objectionable books being made available in public libraries.

I did not refer to or attempt to show the Book at or during the [Cariboo Regional District] meeting. I merely showed the Book to two directors - Director Pinkney and Director Wagner - after the meeting and queried what public libraries would do with the Book given the controversy surrounding it. I did not express any opinion about the Book. My interactions with both Directors lasted less than a minute.

The April 2 Meeting

[14] Subsequent to the March 19, 2024 Council meeting, the City had received two further letters from Indigenous organizations, essentially expressing support for what the Lhtako Dene Nation had communicated in its March 19, 2024 letter. Those letters came from the Nazko First Nation (dated March 20, 2024) and the North Cariboo Métis Association (dated March 22, 2024). As well, the City had become aware of a news release from the British Columbia Assembly of First Nations, congratulating the City and the Lhtako Dene Nation for "leading the way on reconciliation". Those three documents, along with a press release from School District 28 (Quesnel), confirming that it had reaffirmed its commitment to the Truth and Reconciliation Commission's Calls to Action, were all assembled by City staff for inclusion in the agenda package for Council's April 2, 2024 meeting.

[15] The agenda was circulated to Councillors on the morning of March 28, 2024, which was the Thursday before the Tuesday meeting. There were various emails between the CAO (Mr. Johnson), and Councillors that afternoon. It was suggested that seats be reserved at the front of the gallery for representatives of Indigenous organizations. Mr. Johnson noted in one email that:

We put the letters from the various bands and organizations into "Unfinished Business" which precedes our regular staff reports. I expect that there will be quite a turnout for the meeting, making this change to the order helps us to deal with those items first.

I would also suggest that the question period be moved up to allow those folks that want to speak to these issues the chance to do that.

[16] I infer from the various documents that Mr. Johnson and Councillors were aware of certain information that was circulating in the community, as to which there was some level of controversy. The nature of that information is not clear, nor is the extent to which it extended beyond rumours. Early on the afternoon of April 2, 2024, Councillor Vik emailed Councillors advising that:

Good afternoon Council. After a consultation with [the CAO] and the Mayor it was agreed that to avoid any notion of a conflict, perceived or otherwise, that it be best to find an alternate to chair the meeting tonight. I have been asked to do this and have accepted, as I currently fill the role as acting mayor. Please give me a call if you have any concerns.

[17] A few minutes later, the CAO, Mr. Johnson, emailed Councillors advising that:

Hello Council, due to the large community attendance that is expected tonight, my suggestion is that we make a few changes to the meeting, as follows:

1. Defer non-essential business to a future meeting date. This includes the FSAC report, City staff reports, and the correspondence from the Prospector's car club. We could book a meeting of Council following the next Joint Planning meeting or some other date.

2. I think we should temporarily change the format of the gallery questions, given the large number of folks who may wish to speak. I suggest that individuals be allowed a question or comment, but not a lecture. For those folks who represent their own government (i.e. Indigenous Chiefs) they could be allowed to speak longer. It is the chair's job to manage this.
 3. Of course, if all hell breaks loose, it is the chairs job to clear the gallery, or to ask any troublesome individuals to vacate the premises
- [18] Point 2 is a reference to a section of the regular agenda titled "Information and Question Period", of which Part 4 is titled "Gallery Questions".
- [19] The meeting began with the adoption of the agenda, which was reorganized to defer most of the regular business. Councillor Vik, who was chairing the meeting, then asked for a motion to adopt the minutes of the March 19, 2024 meeting.
- [20] Once a motion to adopt the minutes was on the floor, Councillor Elliott asked to address the motion, and in a lengthy speech noted that in the March 19 minutes, it was recorded that Mayor Paull did not agree with what "his wife has been doing in the community", and then asserted that "it has come to our attention that Mayor Paull himself has been handing out these books to individuals" and that Mayor Paull "has lied" to Council. He also asserted that "Lhtako Dene Nation has said they will no longer conduct business with us if you are at the table". He asked Mayor Paull to resign.
- [21] Councillor Roodenburg then also addressed the motion to approve the March 19 minutes. She also accused the Mayor of having lied, and said that she was aware that the Mayor had tried to give a book to two individuals at a recent Cariboo Regional District meeting. She also called for the resignation of the Mayor.
- [22] Councillor Runge then raised a point of order, suggesting that "disputes among elected officials in public like this prior - without letting any of the other councillors know feels kind of like it was contrived", and commented on breaches of rules of procedure.
- [23] Mayor Paull then asked for an opportunity to respond to what he described as the "false allegation that I was handing out the Book". He then gave the explanation that later appeared in his affidavit and is noted above, concluding "I did not offer it. I was just using it to make a point. I have not distributed the Book to anyone."
- [24] Councillor Goulet then spoke. He said he had read the Book and that it was "not good", but then went on to say that "it's not about the Book", that he was aware that there had been a radio interview in which a representative of the Lhtako Dene Nation had said "They're looking at working with Council, but not the Mayor's office." Councillor Goulet suggested that, as a result, it was appropriate to ask the Mayor to resign.
- [25] Councillor Roodenburg then asked to speak again, stating:

We're not debating the merits of the Book. That's long gone. This is now a discussion about how the Mayor decided to act once we talked about what his wife was doing with the Book.

[26] The motion to adopt the March 19 minutes was then passed, and a member of City staff was asked to then read into the record the four items of correspondence received since the last meeting (which I have noted above). Once that was completed, the meeting moved on to "Gallery Questions". Councillor Vik, who was chairing the meeting, then invited representatives from five local Indigenous Nations to address Council.

[27] Chief Lebrun of the Lhtako Dene Nation, in the course of his speech, commented that:

we only see one step moving forward is that we can no longer work with this Mayor, and we will not work with the City of Quesnel until that issue has been resolved at some level.

[28] Chief Stump of the Nazco First Nation also stated that:

we don't have the confidence in the Mayor, we hope that the council will commit to continue working with us on reconciliation and the partnerships that we were working on together.

[29] Several other representatives of Indigenous governments and organizations spoke of the history and continuing impacts of residential schools in the Quesnel area.

[30] The meeting was then opened to members of the public at large to make comments or ask questions. Ms. Morton attempted to speak, but was interrupted by multiple points of order from Councillors Elliott, Roodenburg and Goulet, who insisted that she be limited to asking questions.

[31] Later in the meeting, one member of the public asked if there was going to have to be an election just for the Mayor's office, or for the entire Council. The CAO, Mr. Johnson, responded that Council cannot require the Mayor to step down. He explained that:

The most that the City could do, given the horrific fallout from his actions, would be to require a censure motion or other sanctions that are possible under the Community Charter. So that is an option Council still has.

[32] A few minutes later, and prior to conclusion of the "Gallery Questions" portion of the agenda, Councillor Roodenburg made a motion, seconded by Councillor Elliott, that:

requests staff to prepare a report on the matter of censure of the Mayor. In it please note what censure means for Council and what sanctions Council can levy against the Mayor and to bring it forward to an open, public meeting as soon as possible, even if it means a special meeting is needed.

[33] It is common ground that no notice had been given that this motion would be put forward at the April 2, 2024 meeting.

[34] Councillor Roodenburg explained her motion as follows:

Because of the previous disclosure of the Mayor lying to Council and to the community about his involvement in the attempted distribution of the book that his wife, Pat Morton, has circulated in the community, our community no longer has faith in the office of the Mayor. And Council needs to provide a space where we can regain the trust of our First Nations, our community as a whole, and do the work that we were elected to do instead of being sidelined by this stuff.

[35] There was no further debate on the motion, and it was carried by a vote of 6:1, with Mayor Paull voting in opposition.

After the April 2 Meeting

[36] On April 10, 2024, the Quesnel Cariboo Observer posted a story with the headline "Quesnel Mayor Ron Paull denies distributing denounced book himself". The article quoted the 100 Mile House mayor as saying that:

At a [Cariboo Regional District] board meeting a couple or few weeks earlier, Ron did have a book in his possession. As he walked past my chair at the board table, he casually asked if I was familiar with the book and did I want to read it. I responded that I have enough reading with all the material given for both the CRD and mayoral positions

The Cariboo Regional District chair also was quoted as telling the Observer that:

Mayor Paull also asked me if I was interested in reading the book as it was an interesting read. I politely declined and said I was not interested and walked away from the conversation

The article quotes Mayor Paull as saying:

What happened is we had a discussion at the regional board about some books that were in one of the local libraries there was some discussion going on about some books that were characterized as disturbing and they were about [sexual orientation and gender identity] and I had a copy of the book, just to show them what would happen if we tried to get that book into the library. I did not offer it, I was just using it as an example to make a point. I have not distributed that book to anyone.

[37] On April 17, 2024, the Lhtako Dene Nation Band Council passed a resolution. Its preamble said that Mayor Paull "has condoned the distribution of the book and has attempted to distribute the book to others", and resolved that:

The Nation will not work with mayor Ron Paull, and

The Nation prohibits mayor Ron Paull from entering Nation lands, unless he is specifically invited by the Nation

[38] The resolution was emailed to the City on April 18, 2024, and was distributed by the CAO, Mr. Johnson, to members of Council, with a note that "This resolution will be brought into the public discussion of a censure of Mayor Paull."

The April 18 Report to Council

[39] Just before 5:30 p.m. on the evening of April 18, 2024, the City Manager provided Mayor Paull with the text of a staff report to Council (the "April 18 Report" or the "Report"). The cover email stated:

Mayor, attached is the censure report that staff was directed to prepare. The intention is to bring this report to the April 30th Regular Council meeting. You will note that there are a lot of attachments which are not attached to the report yet, they will be included on the final report to Council, you should be aware of each item already, if there is any that you want us to send you please let me know.

[40] The April 18 Report was issued in the name of the CAO, Mr. Johnson. It is at the heart of the dispute underlying this proceeding. The parties do not agree whether it was a document intended to educate Council as to the censure and sanction process (i.e., what censure means for Council and what sanctions Council can levy), or whether it was actually meant to be the basis for a vote on whether or not to censure and as to the imposition of sanctions.

[41] Under the heading "Purpose", the April 18 Report began by noting that it was "in response to a direction by Council to staff to bring a report to a future Council meeting that discusses whether and how Council could sanction the Mayor for his actions in distributing/promoting" the Book. It continued to explain that:

While the Community Charter does not address the issue of how Councils can discipline their members, the courts have concluded that such a power is part of a Council's power to control its own processes. However, any such discipline will be subject to not being inconsistent with or contrary to Provincial legislation. It will also have to take into account common law requirements for procedural fairness.

In practice, sanctions typically include removal of a member from committees or bodies that represent a local government, curtailment of opportunities for the member to represent the local government, and the making of a motion of censure.

A censure motion is a tool that a Council has to express displeasure with one of its members. As a censure motion is a political tool, staff will not be making recommendations related to its use.

[42] The discussion of "Purpose" also noted the City's Oath of Office, Code of Conduct and Ethics (the "Code of Conduct"), and the MOU, copies of which were attached to the Report. Mr. Johnson, the CAO, commented in the Report that "the common themes of these documents are Respect, Integrity and Honesty and Relationship Building".

[43] The second part of the April 18 Report was headed "The Basis for a Potential Sanction". It contained two subheadings: "Jeopardizing Indigenous Relations" and "Reaction from Lhtako Dene and Nazko First Nations Chiefs". Under the first of these subheadings, the Report noted that:

The relationships between local Indigenous Nations and the City of Quesnel is very important to the City.

[44] After discussion of areas of cooperation between the City and those Nations, the Report stated:

However, the following recent events involving Mayor Paull have been cited as the basis for concern about the relationship between the City and Indigenous nations.

- The Mayor was informed by Councillor Roodenburg and Deputy CAO Bolton on March 7, 2024 that his wife was distributing the Book, and that this was upsetting for the Lhtako Dene members because of the position it expresses dismissing the traumas and atrocities of residential schools.
- On March 15, 2024, the Mayor was informed by CAO Johnson that the Lhtako Dene band leadership were very upset about the distribution of the Book by the Mayor's wife, and that they were considering sending a letter to Council.
- During the Council meeting of March 19, 2024, Mayor Paull confirmed that his wife was the person that Lhtako Dene Nation charged with distributing the book. Mayor Paull stated that he had seen the Book at his home but had not opened the Book.
- During the April 2, 2024, Council meeting it was reported, and later confirmed by the Quesnel Observer, that the Mayor himself attempted to distribute the Book at a Cariboo Regional District meeting at which he was representing the City (his attempts were declined).

(the above will be called "the Events")

[45] The April 18 Report summarized some of the concerns expressed by the Lhtako Dene and Nazko First Nations chiefs, including statements made at the April 2, 2024 Council meeting. It noted as well the April 17, 2024 resolution of the Lhtako Dene Nation Band Council (which is referenced above).

[46] The next section is headed "Potential Sanctions". It notes that:

As mentioned above, sanctions are a tool that Councils can use to discipline the actions of a member.

Council cannot remove responsibilities from a member that are assigned via the Community Charter. For example, Community Charter s. 116(2)(c) states that the Mayor is to preside at council meetings when in attendance. So Council could not remove his right to be the presiding member at council meetings.

Sanctions that could be brought against the Mayor, at the will of Council, include the following:

- Removal of Mayor travel budget (UBCM, NCLGA, others)
- Removal of the lobbying travel budget
- Removal of the Mayor from Organizations that require Council approval, including:

- o Cariboo Regional District representation
- o Northern Development Initiative Trust
- Removal of the Mayor from City Committees (except Standing Committees)

If the Mayor is removed from organizations to which he is the City representative, recommendations for his replacement will be brought to a future meeting. It is also suggested that Council reviews the role of the Mayor prior to UBCM and NCLGA attendance, if the Mayor is still planning to attend at his own expense.

[47] The next section is headed "Procedure":

The procedure by which Council can consider sanctions arises from the law of procedural fairness. In the context of Council discipline, this requires that the person against whom discipline is being considered be given reasonable advance notice of the fact that discipline is being contemplated and the information to be relied upon by Council, and an opportunity to make reasonable representations to Council in response. This report was sent to the Mayor on April 18th. Thus, should Council wish to pursue sanctions against the Mayor, it would need to indicate to staff which sanctions it would like to consider. Council could proceed in the current meeting, or take the deliberation of sanctions to a future Regular or Closed meeting of Council.

While a draft resolution of censure is attached to this report, it is to provide assistance to Council on the potential form of a resolution, and does not have to be used by Council unless it so resolves.

[48] Under the heading "Recommendation", the April 18 Report simply states:

That Council provides direction to staff regarding next steps on this issue.

[49] The final part of the main text of the April 18 Report is headed "Strategic Objective". It states:

Relationships with local Indigenous Nations are very important to the City. Staff understand that Council is concerned that the Events may cause or result in significant harm to those relationships. Should Council choose to sanction the Mayor because of his role in the Events, that may help restore relations with local Indigenous Nations.

[50] The final page of the April 18 Report set out a list of the anticipated attachments, including the April 17, 2024 Lhtako Dene Nation Band Council Band Council resolution and the April 10, 2024 Quesnel Cariboo Observer story, both of which are quoted above. The attachments also included an "example" motion of censure.

Preparation for the April 30 Meeting

- [51] On the morning of April 19, the City Manager emailed Mayor Paull to confirm that he had received the April 18 Report and asked whether he was "okay with the report coming to the 30th Regular Council meeting". The Mayor replied that he was "awaiting a call back from my counsel".
- [52] Later that afternoon, the City Manager emailed Mayor Paull the attachments to the Report, and noted that he was still waiting for confirmation that "April 30th works for you".
- [53] The following Monday, April 22, Mayor Paull responded "Yes, okay to proceed with April 30 regular meeting of Council."
- [54] The City has subsequently taken the position that this correspondence constitutes a waiver of the City's Code of Conduct requirement that there be two weeks' notice of any "hearing" with respect to allegations against a member of Council. In response to this, Mayor Paull deposed that:

I understood, based on the censure report, that Council was merely asking for Staff's advice on censure generally and the possible process if Council decided to pursue the matter. Since I didn't know that Council intended to censure and sanction me on 30 April 2024, I did not object to the lack of sufficient notice to prepare a full response, and only prepared a brief initial statement to Council and the public. My initial statement is [the April 24 Memo, discussed below.]

As stated directly in the Censure Report, the recommendation was that Council provide direction to staff on "the issue", not that the 30 April 2024 meeting was a hearing at which Council would impose sanctions. I understood that I was being given an opportunity to provide an initial statement to Council before it decided whether or not to proceed with censure proceedings, not that I was going to be censured and sanctioned at that same meeting.

Since I didn't know that Council intended to censure and sanction me on 30 April 2024, I also did not object to the fact that there was insufficient information for me to respond to the allegations, which were also very unclear. For example, I was never told who alleged that I attempted to distribute the Book or the details of what I allegedly did or said. There is also no explanation about what I am alleged to have done that damaged the City's relationship with the Lhtako Dene Nation and other communities or what actions were disrespectful.

If I had known I might be censured and sanctioned at the 30 April 2024 meeting, I would have requested further details of the allegations and some sort of explanation as to why I was being censured and sanctioned for showing the Book after a CRD meeting when other Council members acknowledged having read the Book. For example, Councillor Goulet publicly acknowledged at both the 19 March 2024 and 02 April 2024 council meetings that he had read the Book cover to cover.

In agreeing to have the Censure Report included in the 30 April 2024 agenda, I did not intend to waive my right to at least 2 weeks notice under section 17 of the Code of Conduct to prepare a response to Council's allegations against me. Again, I understood that the purpose of the meeting was to hear from staff on the process and provide direction should council decide to proceed with censure proceedings. This is also why my legal counsel was not present with me at the 30 April 2024 meeting.

Further, at no point did anyone at the City acknowledge or advise that I was entitled to at least two weeks' notice to prepare a response to allegations and possible sanctions under section 17 of the Code of Conduct or ask me if I was waiving my right to such notice. If I had been asked if I was waiving my right to two weeks' notice under the Code of Conduct I would have said no.

[55] On April 24, 2024, Mayor Paull submitted a memorandum to Council (the "April 24 Memo"), said to be in response to the April 18 Report. In this memorandum, he noted:

As I understand it, the report alleges that I "attempted to distribute" the Book at a CRD meeting at which I was representing the City.

[A]t the March 21, 2024, CRD Committee of the Whole meeting, a director raised concerns about books about sexual orientation and gender identity being available to children and youth in in our local libraries. At our CRD board meeting the next day, I brought my wife's copy of [the Book] and after the meeting, I showed it to two of my colleagues, and wondered what the CRD library would do with it.

I have written confirmation from one of those two colleagues clearly acknowledging that I raised the Book in the context of our earlier discussions about the library. In response to the other colleague claiming that I referred to the Book as a "good read", I have not read the Book and therefore could not have made that direct of a statement. I do recall, however, saying that according to the online reviews of the Book, many reviewers noted the Book as a good read. I did not have a chance to introduce the library discussion with my other colleague as she promptly informed me that she did not wish to discuss the matter further.

[56] Both the April 18 Report (with attachments) and the April 24 Memo were included in the agenda package that was circulated to Council on the morning of Friday, April 26, 2024.

The April 30 Meeting

[57] The City's CAO, Mr. Johnson, did not attend the April 30, 2024 Council meeting. At the meeting, the April 18 Report was introduced by Ms. Bolton, the Director, Corporate and Financial Services, and Deputy City Manager, who read into the record several portions of it. She concluded her introductory remarks by noting that "staff requires Council to indicate where Council would like to go".

[58] Mayor Paull then spoke. He noted that he was taking care to avoid any conflict-of-interest situation, and that he was under instructions from his legal counsel not to answer any questions, and to not take part in any vote, but rather just to read into the record the report he had circulated earlier. He then read the April 24 Memo into the record.

[59] Several of the Councillors then spoke.

[60] Councillor Goulet spoke first. He commented that the intention of a censure motion is to draw attention to "misconduct" and to formally disassociate the other members from the offending member's behaviour. He noted the letters in the package (presumably a reference to the agenda package) and the "things that have come forward in regards to what's been happening to us". He then commented about having to find a way to rebuild relationships with Indigenous communities.

[61] Councillor Roodenburg spoke next. She commented that "first of all, I think the community needs to understand: This is no longer about the Book." Rather:

It's about leadership and what hasn't transpired as a leader.

So when, you know, you talk about that you were handing out the Book - you were trying to hand the Book out. That was what the comment was. This wasn't - we weren't saying that you did hand out the Book, Mayor. So I just want that to be perfectly clear.

[62] It is worth contrasting this comment with what is set out in the April 18 Report, in describing the "Events" of which Mayor Paull was given notice (as quoted above):

the Mayor himself attempted to distribute the Book at a Cariboo Regional District meeting

[63] Councillor Roodenburg then identified various programs in which the City had agreed to work with local Indigenous Nations, and continued:

So what happens when we have a First Nations who has passed a resolution that says, we will no longer work with the Mayor; we will work with council and staff, but we will no longer work with the Mayor. If we cannot do these activities according to this contribution agreement, we don't get the money. We have to give the money back.

So when we talk about this censure motion, we need to be really cognizant of the fact that the fallout from our actions tonight will have repercussions for the next two and a half years as a council. That MOU - that will get ripped up. There's no if, ands, or buts about it. Our First Nations will not deal with us, and they will rip that MOU up if they don't see us moving forward in a meaningful fashion

[64] Councillor Elliott then spoke about the damage that has been done to relationships with the Indigenous population, then commented:

So the Mayor brought the Book to Williams Lake.

And why would you possibly do that? What - what kind of benefit do you think could happen? You took the time to go onto Amazon to get the quote "it's a good read." Whether you read it or not, I mean, there's other quotes in there about -- about the Book, so you must have read those. And I don't know how you could possibly think this was an appropriate comment or appropriate action to take with other elected officials or anyone in our community.

Yeah. When it's - when it's time and everyone has spoken, I will be moving the motion of censure that is included in the documentation.

[65] Councillor Vik spoke, acknowledging that the April 18 Report would have been difficult to author, but expressing concern that the "Procedural Fairness" section did not consider the notion of progression. He suggested that if Council was to "deliver discipline for behaviour that Council finds offensive or against its code of conduct", it should do so in a measured and progressive manner. He suggested that the report "is a foundational document for which there is more work that staff can assist us with, with undoubtedly some legal assistance".

[66] Councillor Roodenburg then spoke again. She suggested that it was Council, rather than staff, who should be looking into the structure of any sanctions. She expressed concern that there were businesses that might not want to do business with the City if First Nations were refusing to do so.

[67] The final speaker was Councillor Runge, who commented that censure is "showing our displeasure with what happened". With respect to what happened:

the events at the regional district meeting you know, originally it was just "I didn't read the Book". And then those - the two things from the two ladies you spoke to, unfortunately, shows the Book was there.

He expressed discomfort that the issue was being dealt with in open meeting, and expressed a view that sanctions should start at a low level.

[68] After those speeches, Councillor Elliott made a few further comments, noting that "We have to send out a strong message that 'this' was inappropriate", and moved the motion set out below. Once the motion was made and seconded, Mayor Paull said:

I will now vacate and come back I presume there will be a second motion, so I - I wouldn't be there for that. So maybe its appropriate that I just assign the chair over the Councillor Vik and - and let - let Council carry on with - with the business of the day.

before I go, though one question that I have for Council as a whole that - if I were to make a move to correct my - my alleged poor behaviour, what should I stop doing? And that - that may be a - a rhetorical question, because short of being married to Pat and obviously making a poor choice of taking that book to - to [Cariboo Regional District]

[69] Councillor Elliott in response suggested that Mayor Paull:

take responsibility for the pain that you've caused in our community, offer an apology, and let's try and work it - work this out so we can move forward.

At this point in time, with you not even accepting the responsibility of the poor choice of taking that book to Williams Lake, how do you expect to move forward?

[70] Mayor Paull responded, suggesting that he "did express regret that I picked the wrong book", and commented:

I saw an opportunity to take that book to Williams Lake because we had quite a spirited discussion about the sexual orientation and gender identity books on - being placed on low shelves, and that really upset me. And that - and that was my - my reaction.

it was just a spur-of-the-moment thing. And I did it. And - but, as I said, I was simply not distributing and handing the Book out to anyone.

[71] After Mayor Paull left the meeting, there was a lengthy discussion about the nature and length of sanctions. While some Councillors initially advocated for starting with minimal sanctions, with the possibility of subsequently increasing, the eventual decision was to impose the maximum available sanctions.

[72] Three resolutions were adopted. It is these resolutions that the Court is asked to quash. The first says:

WHEREAS the Oath of Office which was solemnly affirmed by Mayor Ron Paull requires him to perform the duties of Mayor respectfully, faithfully and with integrity;

AND WHEREAS the Code of Conduct and Ethics requires all Members of Council to conduct themselves with integrity, in a fair, honest, respectful and open manner;

AND WHEREAS every council member has the responsibility to consider the well-being and interests of the municipality and its community as per the Community Charter;

AND WHEREAS Mayor Paull has damaged the relationship between the City and the Lhtako Dene Nation and surrounding Indigenous communities;

NOW THEREFORE Council censures Mayor Ron Paull for his actions which are disrespectful to the history of residential schools, they are contrary to the City's goal of mutual respect, recognition and reconciliation, and have harmed the City's relationship with Indigenous bodies.

[73] The second resolution states:

THAT Quesnel City Council imposes the following sanctions on Mayor Ron Paull for his role in jeopardizing Indigenous relations with Lhtako Dene Nation and surrounding Indigenous communities:

- Removal of travel & lobbying budgets
- Removal from Organizations that require Council approval, including:

- o Cariboo Regional District representation
- o Northern Development Initiative Trust
- Removal from City Committees (except Standing Committees)
- Removal from Indigenous relations
- Required 'sincere' apology

- [74] A third resolution provided for Council to review the Mayor's progress regarding the sanctions in three months.
- [75] Neither the second nor third of these resolutions were in the agenda package, although some (but not all) of the bullet points in the second resolution were referenced in the April 18 Report.

Events After the April 30 Council Meeting

- [76] There was a Council meeting on May 21, 2024. At that time, Council took steps to fill various committee positions and other appointments from which Mayor Paull had been removed.
- [77] Although not in the materials before me, I was advised at the hearing that the three month "review" did not result in any change to the sanctions. At the time the petition was heard, the sanctions continued to be in effect.

Issues

- [78] The primary issues are whether the three resolutions passed at the April 30, 2024 meeting:
- a) Were passed with appropriate observance of principles of procedural fairness; and
 - b) Were "reasonable" as that term is used in the administrative law context.
- [79] The petitioner also challenges the resolution passed at the April 2, 2024 meeting, requesting staff to prepare a report with respect to censure. With respect to that resolution:
- a) The City says that this is not a question subject to judicial review, given the nature of the resolution.
 - b) The petitioner says that there was no notice of the resolution which is a breach of the requirements of procedural fairness.

Legal Context

Applicable Statutes and Bylaws

- [80] 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.

[81] The Local Government Act provides, among other things, that elections for the mayor and all councillors of each municipality will take place every four years on the third Saturday of October. The most recent such elections took place in October 2022.

[82] The Community Charter deals with how municipalities 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.

[83] 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.

[84] Part 5 of the Community Charter deals with "Municipal Government and Procedures". Section 114 deals with the role of a council as governing body, and includes the following provisions:

- (3) The powers, duties and functions of a municipality are to be exercised and performed by its council, except as otherwise provided under this or another Act, and a council, in exercising or performing its powers, duties and functions, is acting as the governing body of the municipality.
- (4) A council has all necessary power to do anything incidental or conducive to the exercise or performance of any power, duty or function conferred on a council or municipality by this or any other enactment.

[85] Section 124(1) requires a council to establish, by bylaw, the general procedures to be followed by council in conducting its business.

[86] The City has adopted from time to time a Council Procedure Bylaw. The Bylaw in effect as of April 2024 was Council Procedure Bylaw No. 1948, adopted in June 2023 [Procedure Bylaw].

[87] Section 15 of the Procedure Bylaw provides for an agenda to be prepared and made available to Council not later than noon on the Friday afternoon prior to each meeting. In order to facilitate that, s. 15(3) requires that any submission from the public must be received by the Corporate Officer not later than noon on the Wednesday prior to the meeting. Section 15(3) provides for the Corporate Officer, with the approval of the Mayor, to accept an item after the deadline if it is deemed time-sensitive. Section 15(5) states:

Council must not consider any matters not listed on the agenda unless a new matter for consideration is properly introduced as a late item pursuant to section 17.

[88] Section 17 sets out the process for introducing a late item:

- (1) An item of business not included on the Agenda must not be considered at a Council meeting unless introduction of the late item is approved by Council under "Approval of agenda" at the beginning of each meeting.
- (2) If the Council makes a resolution under section 17(1), information pertaining to late items must be distributed to the members and to the public in attendance at that meeting.

[89] Section 22 deals with "Motions Generally". Subsection (2) provides that:

A motion that deals with a matter that is not on the agenda of the Council meeting at which the motion is introduced may be introduced with Council's permission.

[90] Sections 34-36 deal with resolutions:

34. A resolution may be introduced at a Council meeting only if a copy of it has been delivered to each Council at least 24 hours before the Council meeting, or all Council members unanimously agree to waive this requirement.
35. A resolution introduced at a Council meeting should be printed.
36. The presiding member of a Council meeting may:
 - (1) have the corporate officer read the resolution; and
 - (2) request a motion that the resolution be introduced.

[91] As can be seen, ss. 22 and 34 provide different standards for the bringing of motions and resolutions without notice. A motion as to which no notice has been given may be introduced "with Council's permission", which presumably requires a majority vote. A resolution as to which no notice has been given may be only introduced where "all Council members unanimously agree to waive" the requirement of notice.

[92] The City has from time to time adopted a Code of Conduct and Ethics. The version in effect in March and April 2024, was adopted in October 2018.

[93] Its "Purpose and Application" are described as follows:

The residents of the City of Quesnel are entitled to have a fair, ethical and accountable municipal Council that has earned the public's full confidence by acting with respect and integrity at all times.

The purpose of this Code is to establish guidelines for the ethical and interpersonal conduct of Members of Council ("Members").

The public expects a responsive and informed local government with the highest standards of professional conduct from Members elected to it. Honesty, integrity, respect, objectivity, due diligence and accountability are some of the core ethical values reflected in this Code. Members are expected to perform their functions of office faithfully and to the best of their knowledge and ability, in accordance with these core ethical values.

[94] Section 1 requires Council to "act in the public interest by conducting its business with integrity, in a fair, honest, respectful and open manner". Similarly, section 3 requires individual Council members, in the performance of their duties, to be "fair, open, respectful and honest".

[95] Section 12, headed "Advocacy", provides that:

Members shall represent the official policies or positions of the City Council to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, Members shall explicitly state they do not represent Council or the City, nor shall they allow the inference that they do.

[96] Section 17 is headed "Compliance and Enforcement". It provides:

This Code expresses standards of ethical conduct expected for Members of Council. Members themselves have the primary responsibility to ensure these ethical standards are understood and met and that the public can continue to have full confidence in the integrity of the governance of the City.

City Council may impose sanctions on Members whose conduct does not comply with this Code, including but not limited to a motion of censure.

Specifically, before considering a sanction, Council must ensure that a member is provided with:

1. a copy of a written report setting out the alleged breach of this Code, and possible sanctions that may be considered against him or her;
2. a minimum of two weeks, or the time between two consecutive meetings, whichever is greater, to prepare a response against any allegations and possible sanctions; and an opportunity to make representations and be heard by Council.

A violation of this Code shall not be considered a basis for challenging the validity of a Council decision.

Procedural Fairness Generally

- [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
- [99] Generally speaking, an objection to a procedural error should be stated to the administrative decision-maker promptly to permit the decision-maker to make the appropriate corrections. A party who knows of a procedural problem cannot lay in the weeds and then, once the matter is under appeal or review, bring forward the complaint: *R.N.L.* at para. 72. However, this is not a hard and fast rule, but rather a matter of discretion. In exercising that discretion to allow a new substantive issue to be raised on review, the court may consider factors such as:
- a) the nature of the hearing procedure,
 - b) the nature of the procedural fairness issue,
 - c) whether the circumstances at first instance practically precluded the raising of the issue in question,
 - d) the extent to which the objecting party recognized the issue at the time of the initial proceeding,
 - e) whether a party participating in the hearing without counsel could have been reasonably expected to identify the procedural fairness issue,
 - f) whether the failure to object at the time denies the court an adequate evidentiary record, and
 - g) the prejudice to others if the issue is considered by the court;

R.N.L. at para. 74; *Athwal v. Johnson*, 2023 BCCA 460 at paras. 55-61; at *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 26.

- [100] With respect to the failure to provide the 14 days' notice required under the Code of Conduct, the City argues that Mayor Paull has not identified anything that he would have done differently if he had additional days. With respect to whether a party claiming a breach of procedural fairness has to say what it would have done differently, Mayor Paull relies on the comments of the Court of Appeal in *Pitt Polder Preservation Society v. Pitt Meadows (District)*, 2000 BCCA 415 at para. 67:
- [67] With deference, the cases to which the District has referred do not assist in determining whether the absence of evidence of prejudice is fatal to the appellant's complaint. In my respectful view, the appellant was not required to marshal evidence of what its members or other members of the public might have done had the impact reports and other relevant

documents been made available in advance of the public hearing. Such self-serving evidence would not promote an objective analysis of the requirements of procedural fairness. In my opinion, the question that ought to have been asked was whether the timing of the disclosure of the impact reports was adequate to permit members of the public to prepare an intelligent or reasoned response. In view of the far-reaching nature of the decision being made about land use in this case and the technical nature of the impact reports, I would think it unreasonable to assume that members of the public had adequate time for preparation.

Reasonableness Review

- [101] It was common ground that substantive judicial review of a decision of a municipal council is governed by the common law standard, rather than by a statutory test. Substantive review seeks to balance the court's appropriate role in safeguarding the rule of law in the context of delegated decision-making, while at the same time providing appropriate deference to administrative decision-makers. The applicable standard was restated in 2019 in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.
- [102] My attention was drawn to several key excerpts from *Vavilov*, including the following:
- [13] Reasonableness review is an approach meant to ensure that courts 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. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.
- [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.
- [68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of reasonable interpretations open to the decision maker -- perhaps limiting it to one. Conversely, where the legislature has afforded a decision maker

broad powers in general terms -- and has provided no right of appeal to a court -- the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect.

- [83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem.
- [94] The reviewing court must also read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body.
- [102] To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error" However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived"
- [103] In *Vavilov*, the Court noted that in some cases, the nature of the decision-maker will be such that formal reasons are not given. In such circumstances:
- [137] Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote: see, e.g., *Catalyst*; *Green*; *Trinity Western University*. However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para. 44. For example, as *McLachlin C.J.* noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw . . . clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the

context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli*.

- [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.
- [104] In *Yu v. Richmond (City)*, 2021 BCCA 226, Justice MacKenzie summarized the application of Vavilov principles in the context of a review of municipal decision-making with respect to building permits, at paras. 51-55:
- [51] In Vavilov, the Court explained that a reasonable decision is one based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: Vavilov at paras. 85, 99, 105. While there is no requirement to categorize types of issues that may render a decision unreasonable, two examples of such fundamental flaws include (1) a failure of rationality internal to the reasoning process, and (2) a decision that is in some respect untenable in light of the relevant factual and legal constraints: Vavilov at para. 101. Where no reasons are available, the focus will likely be on the latter type of flaw, unless the reasoning process can be determined from the record.
- [52] The Court provided, at para. 106, an overlapping, non-exhaustive list of factual and legal considerations that could constrain an administrative decision maker:
- (1) the governing statutory scheme;
 - (2) other relevant statutory or common law;
 - (3) the principles of statutory interpretation;
 - (4) the evidence before the decision maker and facts of which the decision maker may take judicial notice;
 - (5) the submissions of the parties;
 - (6) the past practices and decisions of the administrative body; and
 - (7) the potential impact of the decision on the individual to whom it applies.
- [53] While administrative decision makers may have considerable discretion in making a particular decision, the decision must ultimately comply with the language, rationale, and purview of the statutory scheme under which it is made: Vavilov at paras. 108, 110.
- [55] To summarize the applicable Vavilov principles:

- Reasonableness review is concerned with both the process of arriving at the decision and the outcome.
- The burden is on the party seeking judicial review of the decision to demonstrate that it is unreasonable.
- In circumstances where procedural fairness does not require reasons be provided, the reviewing court should review the record to attempt to discern the rationale for the decision. If it is possible to determine the rationale, the reviewing court should consider, among other potentially relevant factors, whether the reasoning is internally rational and whether it is justifiable in light of the relevant factual and legal constraints.
- If reasons are not required and it is not possible to determine the rationale for the decision from the record, the reviewing court should consider whether the outcome of the decision is defensible in light of the facts and the law.
- For questions of statutory interpretation, reviewing courts should consider whether the decision maker's interpretation is reasonable in light of the words of the provision in their context, the scheme and object of the enactment, and the intention of the legislative body. Reviewing courts should refrain from conducting a *de novo* interpretation and measuring the decision maker's interpretation against it, even when the decision maker has not provided reasons for its interpretation. Instead, the focus should be on whether the decision maker's interpretation has been shown to be unreasonable.

[105] The City relies upon the approach taken to reasonableness review in *1120732 B.C. Ltd. v. Whistler (Resort Municipality)*, 2020 BCCA 101. Whistler's council had implicitly decided that it had the statutory authority to enact a particular zoning amendment bylaw. It gave no reasons for that decision, and the record did not cast any light on the council's reasoning: at para. 84. The Court of Appeal, in light of *Vavilov*, framed the question before it as whether it was "unreasonable for council to implicitly conclude" that s. 479 of the Local Government Act authorized it to adopt the bylaw: at para. 80. The Court set out at paras. 85-87 three different ways in which it might have been reasonable for the council to conclude it had the authority to adopt the bylaw, and concluded at para. 88 that:

[88] As there were at least three ways in which the Municipality's council could have reasonably concluded that s. 479 gave it the power to adopt the Zoning Amendment Bylaw and the reasonableness of the decision to adopt the Bylaw is not being otherwise challenged, it has not been shown that the council's decision to enact the Bylaw was unreasonable. Hence, the council's decision should not be disturbed on judicial review.

[106] Mayor Paull suggests that the approach in *1120732* must be considered in light of subsequent commentary of the Court of Appeal in cases including *English v. Richmond (City)*, 2021 BCCA 442 at paras. 73-75, including the following at para. 74 with respect to *Vavilov*:

- [74] The standard remains inherently deferential. However, with the majority's recalibrated focus on "justification in administrative decision making" (at para. 2), and the importance of demonstrated consistency between the decision maker's statutory interpretation and the text, context and purpose of the governing provision and its scheme, an "inferior" interpretation is susceptible to being set aside for unreasonableness even though it may be plausible on the face of the enactment (at para. 121).

Judicial Review of Municipal Censure Motions

- [107] The parties canvassed in some depth four judgments dealing with judicial review of discipline or censure motions in the municipal context.
- [108] In *Barnett v. Cariboo Regional District*, 2009 BCSC 471, Mr. Barnett was ordered by a Cariboo Regional District resolution not to have any contact or communication with Cariboo Regional District staff, other than through the CAO, Ms. Bell. As noted at para. 37:
- [37] The petitioner submits that he was "ambushed" at the October 10, 2008, in-camera meeting when the issue of his conduct was raised without his prior notice and without his prior opportunity to investigate and respond to any allegations. Mr. Barnett also deposes that there was an element of bias in the passing of the resolution in that the Chair and Vice-Chair of the Board initiated the drafting of the Bell Report, had access to the report before the meeting, and both voted in favour of it. The petitioner raised the further possibility that other members had access to the report prior to the meeting as well. He thus contends that in passing the resolution restricting his ability to communicate directly with regional district staff, the CRD failed to observe both his right to be heard and his right to an impartial hearing.
- [109] The respondent Cariboo Regional District argued that both the CAO and other Cariboo Regional District directors had spoken to Mr. Barnett in the past about his conduct, and that the CAO had told him prior to the meeting that his conduct would be raised. As noted at paras. 39-43:
- [39] The respondent's claim that these comments constituted notice has no support in law. "Notice" has to convey some precision and be capable of appreciation by the recipient such that he or she is aware that some specific conduct will be discussed and sanctions sought. That person has to be able to come to the meeting fully prepared to answer the charges. The petitioner in this matter, however, showed up to the October 10 meeting without any information at all about his so called "misconduct".
- [40] The Bell Report, moreover, was circulated at the meeting but contained nothing specific, and rather, appears to merely bandy about words like "harassment" and "intimidation" without more. My sense of the contents, gleaned from the affidavit of Ms. Bell, is that no complaining staff was identified and no particular misconduct was spelled out. It was all very vague and seemed to conclude that Mr. Barnett was not much liked by staff and some Directors, could be abrasive and difficult to deal with, and that staff preferred not to have

contact with him.

- [41] I pause here to note that Mr. Barnett deposed that while he occasionally had "difficult differences with certain other directors", he was never given any reason to believe that his relations with staff was "less than satisfactory".
- [42] Regardless, following the distribution of the Bell Report, mere anecdotal comments regarding the conduct of the petitioner were apparently exchanged by board members, and the result was the resolution sanctioning his ability to communicate with staff. All copies of the Bell Report were then collected and Mr. Barnett was denied his request to retain a copy to permit him the ability to consult with counsel.
- [43] The fundamental problem with this approach to disciplining the petitioner is that he was never given any specifics of the complaints that might permit a reasoned and structured response. He was never given any opportunity to consult counsel or even any reasonable opportunity to study and respond to the vague allegations that upset the sensibilities of [Cariboo Regional District] staff and others. In that light, it is difficult to see how the petitioner's right to be heard was respected in any sense.
- [110] With respect to a failure to raise objections at the time:
- [47] I have already indicated, at the end of the October 10 in-camera meeting, the petitioner made a motion requesting that he be able to keep a copy of the Bell Report. The [Cariboo Regional District] asserts that the petitioner could have challenged the Chair's ruling that his motion was out of order. I take the view, however, that few people would have a working knowledge of such procedural issues. Directors rely upon staff or others (such as lawyers) familiar with the process to guide them. It is further noteworthy that although the [Cariboo Regional District] had the benefit of legal counsel at the closed meeting, there is no indication that the petitioner was offered any advice about challenging the Chair's ruling. I would not give effect to this submission.
- [111] The resolution was set aside on grounds of procedural fairness.
- [112] In *Skakun v. Prince George (City)*, 2011 BCSC 1796, Mr. Skakun, a councillor for the City of Prince George, was censured and sanctioned on the ground that in 2008, he had disclosed to the media a confidential report concerning workplace harassment within the City of Prince George's staff. Mr. Skakun admitted that he disclosed the report. He was prosecuted for breach of the Freedom of Information and Privacy Act, R.S.B.C. 1996, c. 165, and in May 2011 - nearly three years after the disclosure - he was convicted and fined \$750. As explained by Justice Crawford at para. 22:
- [22] The mayor then wrote to Mr. Skakun, putting him on notice of the motion to consider censuring him for his misconduct and proposing various sanctions, some specified, some not. The matter went before council on the 25th of July, 2011. Mr. Duncan, Mr. Skakun's lawyer, attended. Mr. Skakun excused himself. There was discussion and Mr. Duncan made proposals as to what process might take place. There were additions to the proposed

sanctions that might flow, and then council moved and resolved to go to a hearing, which would have taken place in September of this year.

[113] Mr. Skakun challenged the decision to hold a hearing to consider censuring him and possibly depriving him of some of the attributes of his office.

[114] Justice Crawford noted at paras. 27-30 that nothing in the statutes governing municipal councils expressly provides a power to censure and sanction those elected as councillors. However, he noted the general provisions of ss. 1 and 4 of the Community Charter, as well as s. 114(4) which provides that:

(4) A council has all necessary power to do anything incidental or conducive to the exercise or performance of any power, duty or function conferred on a council or municipality by this or any other enactment.

[115] At paras. 41-46, he noted:

[41] So we have a situation where Mr. Skakun's conduct is not specifically denounced in the statute. Plainly there has been a breach of s. 117 and there has been a conviction under s. 30(4), although I note that is subject to appeal, but in both instances, Mr. Skakun conceded he had divulged a confidential report.

[42] There is no disagreement then that there is no specific legislation, but can I imply it? I believe I can. That is to be found when one looks at the elements that constitute the duties of the councillor, and it would be expected that council would not sit idly by when a council member has acted contrary to their own statutory obligations. The situation is, in my view, somewhat akin to a professional's obligation, such as a doctor or a lawyer, where his misconduct may attract court process, but it also attracts his professional body's internal discipline processes. I find some comfort in the general words of Mr. Justice McKinnon in Barnett.

[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.

[46] In sum then, I find there is an implied power in council to regulate misconduct of a councillor that falls short of disqualification.

[Emphasis added.]

- [116] The parties made extensive submissions before me with respect to the judgment of Justice Marzari in *Dupont v. Port Coquitlam (City)*, 2021 BCSC 728. Councillor Dupont sought judicial review of a resolution that formally censured her for having disclosed confidential information, as well as sanctions that imposed restrictions on her access to confidential materials and removed her from certain committees and roles. The specific allegations related to in camera discussions about the potential development of a respondent-owned piece of land, which included information on the impact of that development on a specific mature cedar tree.
- [117] At an in camera meeting on April 7, 2020, the council resolved to retain an investigator to undertake an investigation with respect to potential breaches of confidentiality. An independent investigator was hired, who provided a report on May 4, 2020, concluding that the petitioner had breached confidentiality. Having considered that report, the council resolved at an in camera meeting on May 12, 2020, to consider a motion of censure and related sanctions with respect to the breaches of confidentiality. A special meeting was held for that purpose on May 27, 2020. The petitioner attended the special meeting along with her legal counsel and made submissions with respect to the allegations set out in the investigator's report. The council then went in camera to consider the matter, and adopted the resolution. Sanctions were put in place for a period of twelve months. Councillor Dupont then sought judicial review of that resolution.
- [118] Justice Marzari concluded that the council's decision was to be reviewed on the reasonableness standard, as set out in *Vavilov*. At paras. 18-20, she dismissed submissions that the council's interpretation of the duties of confidentiality set out in s. 117 of the Community Charter, as well as its authority to impose censure and sanction, were subject to a correctness review. With respect to the authority of the council to censure or sanction its members, she noted at paras. 22-24 that:
- [22] I find that the City Council's decision was not only reasonable, but was also correct in concluding that it had that authority.
- [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. This was first expressed in relation to a regional district in *Barnett v. Cariboo Regional District*, 2009 BCSC 471 [citations to paras. 21, 28 omitted].

- [24] More recently, in *Skakun v. Prince George (City)*, 2011 BCSC 1796, this Court affirmed the authority of local government councils and boards to adopt motions of censure, notably in the specific context of a breach of confidentiality. Although no censure had yet been imposed, the court was asked to consider the challenge to the council's authority in this regard. Justice Crawford found that this authority exists [citations to paras. 41-43 omitted].
- [119] With respect to determining the reasons for the decision, Justice Marzari commented at paras. 40-42:
- [40] In this case, I find that the combination of the Resolution, and the detailed investigative report and the reasoning it adopts, provides a robust set of reasons that exceed what would ordinarily be expected or required of a municipal council, even for this more adjudicative type of decision.
- [41] Far from being a terse recitation of conclusory statements as argued by Councillor Dupont, I find that the Resolution, together with the investigatory report that Council adopts, provides a transparent, intelligible, and coherent path to Council's determination that Councillor Dupont breached her duties of confidentiality pursuant to s. 117 of the Community Charter.
- [42] I disagree that *Vavilov* requires a City Council, within the body of its resolution or decisions, to describe its expertise. Expertise is presumed pursuant to *Vavilov*, and is the foundation for the reasonableness standard of review of administrative decision making. In any event, City Council can be presumed to have expertise with respect to its own processes and standards for behaviour. With respect to the legal interpretation of the Community Charter, Council is entitled to consider the investigative report and the expertise of the investigator in reaching its conclusion: see *Bui v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 168 at paras. 18, 36. I find that it has the inherent expertise to determine what is conduct unbecoming of one of its members.
- [120] Justice Marzari refused to consider procedural fairness issues, given that they were not raised in the petition and that the respondent was only alerted to them a few days in advance of the hearing. She noted as well that Councillor Dupont, who had experienced legal counsel with her at the Council meeting, did not raise any procedural fairness issues.
- [121] In *Michetti v. Pouce Coupe (Village)*, 2022 BCSC 472, resolutions passed at an October 6, 2021 meeting of council removed Mayor Michetti from all council portfolios. All portfolios were assigned to one of the other four council members. The respondent denied that it owed any duty of procedural fairness to Mayor Michetti, given that there was no motion of censure.

- [122] There was important context to those resolutions. In February 2021, Mayor Michetti had been censured and sanctioned by the council for comments she had posted on Facebook. In the weeks that followed, two council members resigned, which led to a by-election to fill the vacancies. Mayor Michetti challenged the February resolution, and in August 2021, the respondent consented to a court order that all of the February resolutions were invalid and set aside.
- [123] In September 2021, two new council members were elected. The respondent's normal practice, when new councillors were elected, was to review appointments to the 15-16 different council portfolios. The October meeting agenda included, under "New Business", a recommendation that "Council review the Council portfolios". When that agenda item was called, one of the new councillors (Councillor Veach) moved that Mayor Michetti not receive or sit on any portfolios. The motion was adopted.
- [124] Justice Fitzpatrick concluded, having reviewed the entire record, that:
- [52] I agree with Mayor Michetti that, although the motion was not described as a motion to "censure" the Mayor, the overall circumstances suggest otherwise, not unlike the "vague allegations" addressed in Barnett at para. 43. I also agree that there is no explicit basis in the record for this censure-type action against Mayor Michetti, whether based on the Code of Conduct or otherwise.
- [55] Ms. Veach's statements at the October Meeting--that she has been "clear from the beginning" that she doesn't "support [Mayor Michetti] on any of the portfolios"--clearly evidence that she holds personal and/or political views concerning Mayor Michetti. I take no issue with Ms. Veach or any other Council member, including Mayor Michetti, holding any views and/or acting on them for political purposes, as they are entitled to do so as members of a municipal council: Catalyst Paper Corp. v. North Cowichan (District), 2012 SCC 2 at para. 30. However, their actions at Council must be undertaken in a fair manner.
- [56] Ms. Veach's decision to 'spring' the Removal Motion on Mayor Michetti contravened Mayor Michetti's right to be notified of what was really allegations of misconduct against her and her right to respond to the Removal Motion. I appreciate that the reason for the lack of notice may be that Ms. Veach was just sworn in. In that event, proper notice of the Removal Motion may have been given for an ensuing Council meeting. This is particularly so if Mayor Michetti is accused of breaching the Code of Conduct, which specifically prescribes procedures to ensure fairness.
- [57] I agree with Mayor Michetti that, in the overall circumstances, Ms. Veach's Removal Motion, and the Council's adoption of it, was brought to censure and sanction Mayor Michetti, essentially in the same manner as Council has sought to do in the February Resolutions. That context heightens the need for procedural fairness.
- [125] Justice Fitzpatrick also concluded that the agenda did not provide adequate notice of the motion:

[69] Finally, I also find that the introduction of the Removal Motion took place in a manner that violated s. 14 of the Procedure Bylaw. I find that the Removal Motion could not reasonably be considered to have been inferentially, and certain not expressly, included in Item 9.1 of the October Meeting Agenda. The Agenda merely states "THAT Council review the Council portfolios and Mayor schedule"; again, nothing in the Agenda indicated that Council intended to adopt a blanket motion that the "Mayor does not receive or sit on any portfolios" and then remove her from all her portfolios and committees.

Positions of the Parties

Mayor Paull

[126] Mayor Paull's counsel submits that the Court should quash four resolutions:

- a) The April 2, 2024 resolution requesting a report from City staff with respect to censure and sanction; and
- b) The three April 30, 2024 resolutions censuring Mayor Paull and imposing sanctions.

[127] With respect to the April 2, 2024 resolution, Mayor Paull submits that the resolution was on a substantive matter, was made without notice and was made without first obtaining unanimous consent of Council, contrary to the Procedure Bylaw. He says that he was accused at the April 2, 2024 meeting of having lied to Council, without any prior notice, and that this formed the basis for the surprise resolution to obtain a report from staff with respect to censure. He says that he was, in effect, ambushed at the April 2 meeting, and that the flawed and unfair process followed at that meeting was "the springboard" for what happened at the April 30 meeting.

[128] With respect to the April 30, 2024 resolutions, Mayor Paull argues that the resolutions were procedurally unfair because:

- a) The City did not comply with provisions of the Code of Conduct that mandate a minimum of 14 days' notice of any proceedings aimed at sanctioning a member of Council - Mayor Paull disputes the City's allegation that he waived his right to such notice on April 22 when he said he was "okay to proceed with April 30 regular meeting of Council";
- b) The April 18 Report was a response to a direction to provide advice on a process and, on a proper reading, gave advice on that process - specifically, that it indicated that it was an informational document, and suggested that "should Council wish to pursue sanctions it would need to indicate to staff"; as such, it is submitted the April 18 Report failed to notify Mayor Paull that Council would be considering resolutions to censure and sanction him at the April 30 meeting;

- c) The April 18 Report failed to provide details and evidence about the alleged "attempts to distribute the Book", and in fact the "example" resolution that it attached did not even reference distribution of the Book, focusing instead on the reaction of Indigenous communities to conduct that is not set out in the resolution; and
- d) To the extent the April 18 Report reflected allegations made against Mayor Paull, Council ended up proceeding not on the allegations advanced in the April 18 Report, but rather on the basis that those allegations did not matter and Council was simply doing what was necessary to improve its relationship with local First Nations.

[129] Mayor Paull argues that the April 18 Report was required by s. 17 of the Code of Conduct to set out the alleged breach, and specify which sections of the Code of Conduct he was alleged to have contravened. He says that the law requires notice given by such a report to "convey some precision and be capable of appreciation by the recipient such that he or she is aware that some specific conduct will be discussed and sanctions sought". Mayor Paull submits that no particular misconduct was spelled out, and that the failure to provide:

- a) notice of specific misconduct,
- b) the evidentiary basis for such allegation of misconduct, and
- c) the rationale as to how the Code of Conduct was breached,

denied him a meaningful opportunity to provide a reasoned and structured response.

[130] Mayor Paull points to the process followed in Dupont, which he submits sets out an appropriate course where there is a need to determine the facts. He says that, given the dispute as to what he said about the Book after the Cariboo Regional District meeting, Council should have taken steps to ascertain what actually happened. Instead, when the meeting came and there was no basis on which to draw any conclusions as to what had actually happened, Council changed course and claimed that the Book did not matter any more - a last-minute change of course that was highly unfair.

[131] With respect to reasonableness, Mayor Paull notes that the cases require consideration of the reasons given by the decision-making body, and submits that the reasons in this case can be found in both the text of the resolutions and in the speeches given by Councillors at the April 30 meeting. He argues that the impugned resolutions suffer from two types of fatal flaws: a failure of rationality inherent to the reasoning process, and that the decisions are untenable in light of the relevant factual and legal constraints.

[132] The censure resolution itself simply copied the language provided in the "example" resolution prepared by Mr. Johnson that was attached to the April 18 Report. With respect to the "conduct" underlying the motion that lead to the censure resolution, the allegations as they are described in the example resolution appear to be that Mayor Paull:

- a) damaged the relationship between the City and the Lhtako Dene Nation and surrounding Indigenous communities;
- b) engaged in actions which are disrespectful to the history of residential schools, are contrary to the City's goal of mutual respect, recognition and reconciliation, and have harmed the City's relationship with Indigenous bodies; and
- c) played a role in jeopardizing Indigenous relations with the Lhtako Dene Nation and surrounding Indigenous communities.

[133] It was submitted that the censure resolution did not articulate a contravention of any City bylaw or policy, or any specific conduct at all. It failed to specify the "actions" in issue. Instead, the resolution focuses almost entirely on the reaction of the Lhtako Dene Nation and local Indigenous communities.

[134] Mayor Paull, through his counsel, further submits that Council itself could not, at the meeting, articulate any sort of contravention by Mayor Paull. Faced with contradictory evidence, and with no basis to resolve the conflict, Councillors instead said that "this is not about the Book anymore" and focused on the reaction of the Lhtako Dene Nation and local Indigenous communities. Thus, as submitted:

117. The City says this nevertheless justified censure because the Petitioner potentially undermined the City's relations with the Nation. But what did the Petitioner do, exactly? The City only points to Council being advised by the Nation that they would not work with the City until the "[Petitioner's] disrespectful behaviour was addressed and resolved", but does not say what "disrespectful behaviour" he allegedly engaged in.

118. It is unreasonable for Council to censure the Petitioner on the basis of the Nation's opinion that the Nation found his behaviour "disrespectful".

[135] Mayor Paull further argued that governing statutes and common law impose constraints on how and what an administrative decision-maker can lawfully decide, and the cases make clear that the purpose of the power to censure is to regulate the conduct of an elected official where there has been a "substantial falling away" from expected standards. He submits that to the extent Council treated the power as merely a "political tool" to satisfy others with whom the City deals, the resolutions are unreasonable.

The City of Quesnel

[136] The City submits that the April 2, 2024 decision to request a report from staff did not affect the rights, privileges or interests of the petitioner, and thus it is not subject to judicial review. In particular, the motion simply requested advice from staff with respect to "what censure means" and what sanctions a council might be able to consider. The City says that a council must always be able to seek procedural advice and that is all the motion does.

- [137] To the extent any duty of procedural fairness was engaged with respect to the April 2 decision, any such duty is minimal and was not breached. The City notes that the "matter" of the Book was on the agenda, and that even if Council was in fact dealing with a new matter, s. 22 of the Procedure Bylaw allows a motion to be made with Council's permission, and permission to bring the motion forward is implicit in the 6:1 vote approving it. The City submitted that s. 34 of the Procedure Bylaw, which requires unanimous consent to bring forward a resolution not in the meeting materials, did not apply to this motion.
- [138] In any event, the City said that the April 2 motion is spent given that the requested report was prepared and provided to Council. Thus, a motion to quash the April 2 motion would have no effect, and the court should not interfere in such circumstances.
- [139] With respect to the April 30, 2024 resolutions, the City made a number of submissions as to what the actual basis was for Council voting to censure and sanction Mayor Paull.
- [140] Specifically, the City argued that the censure of Mayor Paull was not a result of an allegation that he had distributed or attempted to distribute the Book. Rather, the City says that it is apparent from the April 18 Report and from the comments made at the April 30, 2024 meeting that the censure was a result of the Mayor's failure to show leadership and to be accountable. The City submits that in considering the Mayor's leadership and accountability, Council has to be able to take into account the City's relationship with local First Nations. The City says that its consideration of these factors is inherently political in nature and not amenable to review by the court.
- [141] The City says that these bases for the resolution are inherent in the "Whereas" clauses of the example motion that was attached to the April 18 Report. Those clauses note the Oath of Office and Code of Conduct, both of which require integrity and respectful conduct, and then specify:

AND WHEREAS every council member has the responsibility to consider the well-being and interests of the municipality and its community as per the Community Charter;

AND WHEREAS Mayor Paull has damaged the relationship between the City and the Lhtako Dene Nation and surrounding Indigenous communities;

- [142] The City submits that nothing turns on whether Mayor Paull had actually recommended the Book, or encouraged anyone to read it. The City's submission on this point was a bit inconsistent; counsel argued at one point that it does not matter what happened at the March 22, 2024 Cariboo Regional District meeting; then at another point, argued that it is significant that Mayor Paull had the Book at that meeting, regardless of whether he was promoting it or talking about it as a subject of a potential ban. The City said that it is not correct that the censure of Mayor Paull is based upon him recommending the Book, and that his purpose in having the Book with him on March 22, 2024 is irrelevant.

[143] With respect to the procedural fairness of the April 30, 2024 resolutions, and specifically the adequacy of notice, the City says that:

- a) Mayor Paull received the text of the April 18 Report at 5:30 p.m. on April 18, 2024 which was twelve days prior to the April 30 meeting;
- b) He received the balance of the materials constituting the April 18 Report - most of which he probably already had - on April 19, 2024 which was 11 days prior to the April 30 meeting;
- c) After having had an opportunity to speak with his legal counsel, Mayor Paull said on April 22, 2024 that he was "okay to proceed with April 30 regular meeting of Council", which the City submits was a waiver of his right to 14 days' notice of a Code of Conduct hearing; and
- d) In any event, any reduction in length of notice is a technical irregularity, no substantial wrong or miscarriage of justice has occurred, and Mayor Paull has not identified any specific prejudice to him or anything he would have done differently had he had the extra time.

[144] With respect to the argument that the April 18 Report did not provide adequate notice that resolutions of censure and sanction would be made at the April 30 meeting, the City submits:

- a) In the "Procedure" section of the April 18 Report, shortly after stating that if Council wished to pursue sanctions, it would have to "indicate to staff what sanctions it would like to consider", the Report also included a sentence stating that "Council could proceed in the current meeting";
- b) With respect to the resolution of censure, the text of the resolution ultimately passed was included as an "example" resolution in an attachment to the agenda, and there is no requirement that the text of a resolution be in the text of the agenda itself; and
- c) Although there was no text of a resolution with respect to sanctions, the April 18 Report did contain a section headed "Potential Sanctions" that included a list of sanctions that could be brought.

[145] The City further submits that the April 24 Memo that Mayor Paull circulated to Council was intended as a response to the April 18 Report, and the opening sentence of the memorandum indicates that he understood the April 18 Report was "regarding my proposed censure". In the April 24 Memo, Mayor Paull acknowledges that:

As I understand it, the report alleges that I "attempted to distribute" the Book at a CRD meeting at which I was represented the City.

Mayor Paull then went on to rebut that allegation. The City says that is clear from this that Mayor Paull not only had, but in fact took up, the opportunity to respond to the allegations made.

[146] In any event, the City submits that there is an obligation to raise any procedural violation at the earliest opportunity. Even if Mayor Paull was unaware prior to the April 30 meeting that other Councillors intended to introduce resolutions of censure and sanction at the meeting, he clearly became aware during the course of the meeting of Councillor Elliott's intention to do so. Because he failed to raise any procedural fairness objections in the course of the meeting, he is barred from raising those concerns on judicial review.

[147] Thus, the City says that Mayor Paull:

- a) Knew the issues before Council;
- b) Was provided a meaningful opportunity to make submission to Council on those issues; and
- c) Made submission on those issues.

[148] With respect to the reasonableness of the April 30 resolutions, the City says that the question is not whether the Court would have come to the same conclusions as Council. Rather, the question is whether there is any reasonable basis on which Council could have come to the conclusion it reached.

[149] For the reasons set out above, the City argues that Council did not act based on any conclusion as to what actually happened at the Cariboo Regional District meeting on March 22, 2024, and whether Mayor Paull was actually promoting the Book at that meeting. Because Council did not censure Mayor Paull on that basis, there was no need to resolve any factual issues with respect thereto. Rather, as noted above, Council censured the Mayor because of a lack of leadership and accountability. As noted, the City submits that those are inherently political concepts, not suitable for review by a court.

Analysis

[150] I will begin with the question of waiver. It is well established that waiver requires both full knowledge of rights and an unequivocal and conscious intention to abandon them. Neither of these is made out in the email correspondence that the City relies upon.

[151] It is noteworthy that, pursuant to the Procedure Bylaw, part of the Mayor's responsibility is to set the agenda for Council meetings. An inquiry as to whether an item is to go on the agenda could well reflect an exercise of that responsibility.

[152] If the City had been seeking a waiver of rights under the Procedure Bylaw, it should have identified to Mayor Paull that the information that was provided to him was too late to meet the mandatory timelines in the Code of Conduct, but that the City wanted to know whether he would abandon his right to object to the shortened timelines. It did not ask those questions, and a general response that it was okay for the April 18 Report to go on the agenda does not demonstrate waiver.

- [153] In any event, for the reasons I set out below, it was not clear from the April 18 Report that a motion of censure was going to be made at the April 30 meeting. Without that being clear on the face of the Report, it could not in any event be said that Mayor Paull was waiving his right to 14 days' notice.
- [154] I turn to more general questions of procedural fairness. As noted above, I must consider whether in all the circumstances the decision-maker acted fairly.
- [155] With respect to the April 18 Report, it is noteworthy that the April 2 resolution requesting the Report sought information on "what censure means for council and what sanctions council can levy against the mayor". It is clear on the whole of the Report that what was sought was an informational document, rather than a document setting out the allegations that would underlie a motion of censure. The City in fact relies on this informational nature of the Report in its argument that the April 2 resolution did not affect the rights, privileges or interests of Mayor Paull.
- [156] The April 18 Report begins by noting that it is in response to a direction for a report that "discusses whether and how Council could sanction the Mayor for his actions in distributing/promoting" the Book. The Report then goes on to summarize, by way of four bullet points, what staff apparently understood to be the events underlying the concerns of some Councillors with respect to Mayor Paull. The term "Events" was defined to refer to those four bullet points. The Report also summarized information received from local First Nations, then discussed in a general sense the sorts of sanctions that are open to a council to impose. All of this content is informational in nature.
- [157] The view that the Report was informational in nature would appear to be confirmed by the "Recommendation" section of the Report itself, which simply recommends:

That Council provides direction to staff regarding next steps on this issue.

- [158] All of this is confused by the section headed "Procedure", which arguably supports a contrary view. As noted above, it states:

The procedure by which Council can consider sanctions arises from the law of procedural fairness. In the context of Council discipline, this requires that the person against whom discipline is being considered be given reasonable advance notice of the fact that discipline is being contemplated and the information to be relied upon by Council, and an opportunity to make reasonable representations to Council in response. This report was sent to the Mayor on April 18th. Thus, should Council wish to pursue sanctions against the Mayor, it would need to indicate to staff which sanctions it would like to consider. Council could proceed in the current meeting, or take the deliberation of sanctions to a future Regular or Closed meeting of Council.

While a draft resolution of censure is attached to this report, it is to provide assistance to Council on the potential form of a resolution, and does not have to be used by Council unless it so resolves.

- [159] Although parts of the Report consider censure and sanctions separately, this portion of the Report seems to conflate the two. The first two sentences are again informational in nature. The procedural requirements discussed in those sentences would, in accordance with the legal principles set out above, apply to both a motion of censure and to the imposition of sanctions.
- [160] The third sentence references the fact that the Report was sent to the Mayor on April 18. Nothing in the Report references the minimum 14 days' notice of any proceedings under the Code of Conduct, nor is there any assertion that there has been a waiver of such requirement. The sentence stands alone without context.
- [161] The fourth sentence is confusing in that it refers only to sanctions and not to censure. That said, it again indicates that direction to staff would be required should Council wish to proceed further. It is consistent only with the view that the April 18 Report was informational and not intended to constitute charges giving rise to a hearing into whether censure or sanction is justified.
- [162] It is the final sentence of the first paragraph that particularly gives rise to confusion. Standing alone, it suggests that Council "could proceed in the current meeting" with "deliberation" in respect of sanctions. Read without regard to the previous sentences in the paragraph, it might be read as suggesting that Council could vote to adopt resolutions of sanctions without any further steps. However, in the context of the request in the previous sentence that Council "would need to indicate to staff what sanctions it would like to consider", an equally plausible interpretation of the sentence is that staff request instructions as to what to include in a final package to come before Council prior to any censure or sanction of Mayor Paull.
- [163] In my view, this paragraph is both confusing and ambiguous.
- [164] The April 18 Report does not meet the procedural fairness requirements owed to Mayor Paull in these circumstances. The Report is not a clear and unambiguous document setting out the allegations that would underlie a motion of censure and sanction - that is, the "case to be met". Mayor Paull has deposed as to his understanding of the April 18 Report - the relevant paragraphs from his affidavit are quoted at para. 54 above. Namely, he understood the Report to be an informational document setting out general advice and a possible process were Council to pursue censure and sanction against him. He was not challenged through cross-examination, and I am unable to say that his understanding was unreasonable.
- [165] In any event, even if the April 18 Report was intended to reflect the full "case to be met" by Mayor Paull, it is my view that the "case" set out in the Report is substantially different than the basis on which the majority of Council proceeded when it passed the disputed resolutions on April 30, 2024. It is implicit in the legal principles governing procedural fairness in such matters that the decision-making body, when it concludes it cannot proceed on the basis for decision on which it gave notice and with respect to which the

subject party responded, cannot then proceed on a different basis. That is what Council has done here.

[166] With respect to that, I note that the introductory paragraph to the April 18 Report makes clear that the Report provides information with respect to potential censure and sanction of the Mayor "for his actions in distributing/promoting" the Book. The Report goes on to set out four bullet points describing what are defined as the "Events" underlying the Report - they are:

- a) The distribution of the Book by Mayor Paull's wife;
- b) The fact that the CAO informed the Mayor that the Lhtako Dene Nation was upset about the actions of Mayor Paull's wife;
- c) The fact that Mayor Paull said he had seen the Book at his home but had not opened it; and
- d) A report in the Quesnel Observer "that the Mayor himself attempted to distribute the Book at a Cariboo Regional District meeting".

[167] The first three of these Events were not disputed. However, the first two of these Events relate to the actions of persons other than the Mayor, and the third (the fact that he had seen the Book but not opened it) is uncontroversial. It is not clear why the CAO chose to include them in the April 18 Report, and they simply add to the confusion arising from the document.

[168] It seems clear that the only substantive and active allegation against Mayor Paull in the April 18 Report was that he had personally "attempted to distribute the Book at a Cariboo Regional District meeting".

[169] The defined term "Events" is used in the "Strategic Objective" portion of the April 18 Report, which reflects the understanding of staff that "Council is concerned that the Events" may harm the City's relationships with local Indigenous Nations. It also notes that "Should Council choose to sanction the Mayor because of his role in the Events", it may assist with repairing those relationships.

[170] I note that the "example" resolution attached to the April 18 Report does not refer to the defined term Events, or to any of the four items falling within that defined term. Rather, it simply contains wording that the Mayor be censured "for his actions". The word "actions" is not further defined in the example resolution. The final "Whereas" clause contained in the example resolution suggests that the Mayor had "damaged the relationship" between the City and local Indigenous communities, without specifying how he had done so.

[171] In my view, to the extent the April 18 Report provides notice of allegations against the Mayor, the only allegations it gives notice of are the four Events. While there is discussion about the reaction of others, including the Lhtako Dene Nation, to the Events, it is the Events that are the underlying facts.

- [172] The April 24 Memo proffered by Mayor Paull addressed the fourth of the Events - that is, the allegation that he had attempted to distribute the Book at the Cariboo Regional District meeting. He disputed the allegation, and said that he had written confirmation supporting his version of events from one of the two people he was alleged to have spoken with. It appears that he anticipated bringing that written confirmation forward at an appropriate time - presumably when Council actually embarked on a hearing into the allegations.
- [173] The April 24 Memo raised a factual issue. The fourth Event relied on by the April 18 Report was based on third-hand reports found on a news website. Even if the April 18 Report had been intended to recommend Council go directly to a censure hearing, that the reported facts were controverted gave rise to circumstances in which Council had no reasonable way to resolve those controverted facts.
- [174] The bulk of Council appears to have reacted to this by pivoting to a new theory of the case against the Mayor - that the Book does not matter, but that something had to be done to improve the relationship with the Lhtako Dene Nation and other Indigenous bodies that deteriorated as a result of the "Mayor's actions". There were calls for "accountability" and "leadership", but those were divorced from any specific allegations of misconduct. This new theory was the basis on which Council decided to censure and sanction Mayor Paull.
- [175] In my view, the City failed to observe procedural fairness by:
- a) Failing to provide the required two weeks' notice of proceedings pursuant to the Code of Conduct;
 - b) Purporting to censure and sanction the Mayor based on a report that was at best ambiguous and confusing, and could be properly read as merely inviting input as to a process to be followed; and
 - c) Deciding to censure and sanction the Mayor based on alleged misconduct (or shortcomings other than misconduct) different from the "Events" that were set out in the April 18 Report.
- [176] I will deal briefly with the City's position that Mayor Paull is barred from raising procedural objections on review given that he did not object when, during the course of the meeting, it became clear that Councillor Elliott intended to introduce a motion of censure that evening. Mayor Paull did not have legal counsel with him at the meeting. He said - in evidence on which he was not challenged - that he was surprised that censure and sanction resolutions were going to be introduced that evening. The April 24 Memo, presumably drafted with the assistance of counsel, clearly seemed to contemplate a future hearing into the merits of the one of the Events underlying the April 18 Report - the allegation of distributing the Book. The procedural issues in this case are complex, the ground rules changed as the meeting progressed, and I do not think it reasonable that an individual without counsel should have been expected to be able to identify and raise those evolving issues at the time of the meeting.

[177] Given my conclusion on procedural fairness, I do not specifically need to address the question of reasonableness with respect to the April 30 resolutions. Given the submissions of the City, however, I propose to make a few comments, which are clearly in the nature of obiter dicta, about the nature and scope of reasonableness review in circumstances like this.

[178] The ability of a municipal council to censure and sanction a member of that council for misconduct is well established in the authorities I have cited. In most cases, the underlying misconduct will be easily connected to actions or omissions that violate municipal bylaws, policies or governing statutes. I accept that there may also be cases in which misconduct that is not directly in violation of such policies, bylaws or statutes can appropriately give rise to censure and, in appropriate cases, sanctions. To use the words of Justice Crawford in *Skakun*, in interpreting 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.

[179] It is not clear to me that cases in which other members of a council claim more generally that one of their colleagues has failed to show leadership, or has failed to be accountable, in circumstances that are divorced from any misconduct (or in which allegations of misconduct have been made but abandoned) can reasonably give rise to censure.

[180] The powers of a municipal council are to be considered in light of the governance scheme in which they operate. Members of councils are elected by their communities to represent the citizenry. In some cases, there will be elected councillors who do not get along. The power to censure and sanction a fellow member of a council is rooted in s. 114(4) of the Community Charter, which provides power to do necessary things that are "incidental or conducive to the exercise or performance of" a council's power, duty and function. A power to censure for actual misconduct is clearly incidental and conducive to council's power, duty and function. However, as noted by Justice Crawford in *Skakun*:

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.

[181] I do not mean to suggest that there was any attempt in this case to misuse powers for cheap political gain. It appears to me that the actions of Council in this case are more likely attributable to a confusing and ambiguous staff report, the difficulty of ascertaining facts given the information presented by Mayor Paull in the April 24 Memo, and the sense that clearly motivated several of the Councillors to believe that immediate action was required in order to preserve important relationships.

[182] I do not need to decide whether the actions of Council violated the reasonableness standard. I leave open the possibility that in a future case, resolutions of censure and sanction absent any finding of misconduct might be subject to reasonableness review.

[183] I turn finally to the April 2 resolution, which requested a report from staff. In my view, that resolution was spent when staff presented the April 18 Report, and even if it was subject to judicial review, no purpose can be served in proceeding with such review.

Conclusion

[184] The three subject resolutions adopted on April 30, 2024 for the censure and sanction of Mayor Paull are quashed on grounds of procedural fairness.

[185] I acknowledge that the petitioner sought further orders related to board and committee positions. In my view, I do not have enough information with respect to the potential impacts of any such order. If there is a dispute about consequential impacts of the order I have made quashing the above-noted resolutions, the parties may seek further direction from me.

[186] Unless there is some ground to depart from the usual rule, the petitioner is entitled to his costs of the proceeding on Scale B. If either party wishes to advance a submission for a different order as to costs, that submission should be provided to me through Supreme Court Scheduling within 45 days of these reasons for judgment, with any responsive submissions to come within two weeks of the initial submission.

"Veenstra J."

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