COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

QBG 105 of 2020 – JCMJ

Jerry Baron Kaiser v Rural Municipality of Baildon No. 131

Cloudesley J. Hobbs	for the plaintiff, Jerry Kaiser
Lauren J. Wihak	for the defendant, Rural Municipality of Baildon No. 131

FIAT - MARCH 8, 2022 - CROOKS J.

[1] There is a lengthy history between these two parties. Mr. Kaiser owns property in the Hamlet of Baildon within the Rural Municipally of Baildon [R.M.].

[2] In the present application, Mr. Kaiser provided numerous letters addressed to the R.M. Council [Council] regarding his complaints of unkempt buildings and junked vehicles on his neighbour's property. On receiving his letters, Mr. Kaiser was placed on the agenda for his complaints to be heard during multiple R.M. Council meetings. On July 15, 2020, the Administrator for the R.M. responded to Mr. Kaiser's concerns, stating in part:

> A review of the current Zoning Bylaw 08-2015 in regards to your nuisance complaint at the last regular Council meeting has been completed. Counsel will follow the guidelines set out in 4.7.c attached.

[3] The parties suggest that Council made a "decision" to follow the *Zoning Bylaw* (Rural Municipality of Baildon No. 131, Bylaw No. 08-2015, *Zoning Bylaw*) and seek interpretation of this decision by the court. Mr. Kaiser interprets this correspondence as a "decision" not to interfere with the storage of vehicles on his neighbour's property. However, I am not satisfied this is a decision subject to judicial review. In fact, it is my view that the decision regarding the enforcement of the *Zoning Bylaw* has not yet been made. That is within the delegated responsibilities of the Development Officer.

[4] The *Zoning Bylaw* for the R.M. of Baildon provides at clause 3.1 that the R.M.'s Administrator shall be the Development Officer responsible for the administration and enforcement of the *Zoning Bylaw*.

[5] In my view, the correspondence did not engage the Administrator in her capacity as a Development Officer. Instead, Mr. Kaiser opted to raise this as a discussion item at numerous Council meetings. He did not direct his complaints to the Development Officer, nor did he seek a decision from her in this capacity. Rather, he was specific that he wanted to address Council on this issue.

[6] In fact, a review of the Certified Record confirms that all correspondence regarding this nuisance complaint was directed to the Council and responses were sent by the Administrator on Council's behalf and not in her role as Development Officer.

[7] Mr. Kaiser was provided multiple opportunities to outline his concerns before Council. However, Mr. Kaiser effectively chose to bypass the process set out under the *Zoning Bylaw* by circumventing the Development Officer and the appeal process by taking his complaint directly to Council.

[8] I recognize that both parties may prefer this matter to be resolved by judicial review. While it may seem more expeditious for this court to make an assessment as to how the *Zoning Bylaw* should be enforced, to wade into these waters would be perilous. There are 296 rural municipalities in the province. To take on the judicial review of decisions at this premature stage, based solely on representations to Council and without following a well-established process, would open flood gates whereby the court would be intervening at a preliminary stage in matters that are better left to the administration of the respective rural municipality.

[9] Put plainly, there is no decision which is the appropriate subject of judicial review.

[10] As the Federal Court of Appeal noted in *Canada (Border Services Agency) v C.B. Powell Limited*, 2010 FCA 61, [2011] 2 FCR 332:

> [30] The normal rule is that parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted. The importance of this rule in Canadian administrative law is well-demonstrated by the large number of decisions of the Supreme Court of Canada on point: *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561; *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3; *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706 at paragraphs 38-43; *Regina Police Association Inc. v. Regina (City) Board of Police Commissioners*, [2000] 1 S.C.R. 360, 2000 SCC 14 at paragraphs 31 and 34; *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, 2001 SCC 44 at paragraph 14-15, 58 and 74; *Goudie v. Ottawa (City)*, [2003] 1 S.C.R. 141, 2003 SCC 14; *Vaughan v. Canada*, [2005] 1 S.C.R. 146, 2005 SCC 11 at paragraphs 1-2; *Okwuobi v. Lester B. Pearson School Board*, [2005] 1 S.C.R. 257, 2005 SCC 16 at paragraphs 38-55; *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30 at paragraph 96.
>
> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation

> of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.
>
> [32] This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway: see, e.g., *Consolidated Maybrun, supra* at paragraph 38; *Greater Moncton International Airport Authority v. Public Service Alliance of Canada*, 2008 FCA 68 at paragraph 1; *Ontario College of Art v. Ontario (Human Rights Commission)* (1992), 99 D.L.R. (4th) 738 (Ont. Div. Ct.). Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker's findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience: see, e.g., *Consolidated Maybrun, supra* at paragraph 43; *Delmas v. Vancouver Stock Exchange* (1994), 119 D.L.R. (4th) 136 (B.C.S.C.), aff'd (1995), 130 D.L.R. (4th) 461 (B.C.C.A.); *Jafine v. College of Veterinarians (Ontario)* (1991), 5 O.R. (3d) 439 (Gen. Div.). Finally, this approach is consistent with and supports the concept of judicial respect for administrative decision-makers who, like judges, have decision-making responsibilities to discharge: *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 48.

[11] From the Certified Record and the application before me, the Council meeting appears to be a forum in which concerned ratepayers may bring forward their individual concerns or community issues for consideration by their elected representatives. The Council has clearly provided a flexible process under which Mr. Kaiser has been provided an opportunity to voice his input and raise his concerns.

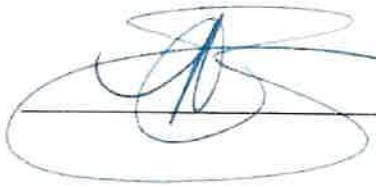
[12] If there was a decision made by Council, it was simply to follow the *Zoning Bylaw*. However, the enforcement of the *Zoning Bylaw* lies with the Development Officer. Here, Mr. Kaiser has opted to bring his concerns directly to

Council. However, he has not availed himself of the administrative process clearly set out in the *Zoning Bylaw*, including the appeals process.

[13] Mr. Kaiser's application is dismissed.

[14] Were I incorrect in my assessment and the Administrator was, in fact, responding in her capacity as Development Officer, I would still dismiss this judicial review application as Mr. Kaiser did not follow the appeal process set out in the *Zoning Bylaw*.

[15] As the R.M. has been the successful party, I award costs in the amount of $6,000.00, which reflects an appropriate amount for the steps taken under Column II of the Tariff of Costs and includes the preparation of affidavit evidence and case management previously undertaken.



J.
N.D. CROOKS