

QUEEN'S BENCH FOR SASKATCHEWAN

Date: 2021 05 18
Docket: QBG 68 of 2019
Judicial Centre: Moose Jaw

BETWEEN:

THE RURAL MUNICIPALITY OF
BAILDON NO. 131 AND ITS DEVELOPMENT
OFFICER

APPLICANT

- and -

JERRY BARON KAISER

RESPONDENT

Appearing:

Lauren J. Wihak
Jerry Kaiser

for the applicant
self-represented

FIAT
May 18, 2021

KEENE J.

[1] Mr. Kaiser brings this Notice of Application under Rule 6-5 of *The Queen's Bench Rules* to quash the following resolution passed by the Rural Municipality of Baidon No. 131 [RM] on February 13, 2021:

6/21 Shorthand: That Council recoup the outstanding unpaid invoices issued to Jerry Kaiser by deducting them from his Councillor Remuneration payments until they are paid in full, for the following:

Building Inspections as listed below

September 4, 2019 for \$257.25

And

January 27, 2020 for \$505.00

Carried

[2] I note Mr. Kaiser used the existing style of cause but actually is the applicant in this application and the RM is the respondent. The Development Officer is not a party to this particular application.

[3] Mr. Kaiser should have proceeded by way of an originating application under Rule 3-49(1) because this looks like a request for a judicial review to determine whether the subject resolution should be quashed seemingly because the resolution may have been unlawful. I am prepared to hear this application in its present form because of the minimal amount at stake (\$257.25), Mr. Kaiser is unrepresented by legal counsel and also to give effect to the Foundational Rules that speak of proportionality and the need to adjudicate matters expeditiously without driving up the legal cost to the parties. I believe enough of the record has been placed on the file in the affidavit material and therefore I am prepared to proceed with the application at this time.

[4] I will not go into the facts in much detail. This application is a companion to the ongoing controversy between Mr. Kaiser and the RM that is encompassed in the sizable file under this court file number and also in another judicial review ongoing between the parties in MJC 105 of 2020. Suffice to say Mr. Kaiser objects to paying for the report prepared by Professional Building Inspections, Inc. on the basis the report was "inadequate". It looks as though the RM went ahead and paid the \$257.25 and then turned around and expected Mr. Kaiser to reimburse the RM. Perhaps there was an agreement to this effect, but I will not make that determination here. Mr. Kaiser did not feel he should have to pay for this report and has told the RM. However, the RM has never sued him (presumably this could be done in small claims court) or proceeded in any other fashion to adjudicate the matter and therefore Mr. Kaiser has never had a chance to have the issue decided. The majority of the RM councillors decided he should

pay this bill out of his stipend as an elected councillor and ergo the above resolution was passed.

[5] Counsel for the RM refers to Mr. Kaiser having missed different limitation periods to “appeal” decisions that were made. Indeed, counsel in her letter dated April 26, 2021 sent to the Local Registrar states that “Mr. Kaiser has not sought to appeal that Resolution pursuant to s. 358 of *The Municipalities Act*”. In this regard *The Municipalities Act*, SS 2005, c M-36.1 states:

Quashing bylaws

358(1) Subject to subsections (2) and (3), any voter of a municipality, any owner or occupant of property or a business within the municipality or the minister may apply to the court to quash a bylaw or resolution in whole or in part on the basis that:

- (a) the bylaw or resolution is illegal in substance or form;
 - (b) the proceedings before the passing of the bylaw or resolution do not comply with this or any other Act; or
 - (c) the manner of passing the bylaw or resolution does not comply with this or any other enactment.
- (2) An application pursuant to this section must be made to the court within six months after the bylaw or resolution is passed.
- (3) No application may be made pursuant to this section to quash a bylaw described in section 167.
- (4) A judge of the court may require an applicant to provide security for costs in an amount and manner established by the judge.
- (5) A judge of the court may quash the bylaw or resolution in whole or in part and may award costs for or against the municipality and determine the scale of costs.
- (6) If no application is made pursuant to subsection (1), the bylaw or resolution is binding, notwithstanding any lack of substance or form in the bylaw or resolution, in the proceedings before its passing or in the time or manner of its passing.

[6] The above section does not refer to an “appeal” but rather refers to an application to be brought within six months of the passing of the impugned resolution – which I find Mr. Kaiser has done. Therefore, any concerns about other missed limitation periods are moot because all I am concerned with is s. 358 of *The Municipalities Act* as it pertains to the resolution.

[7] To round all of this out, I find that I am only to deal with a determination of whether the resolution should be quashed and not to adjudicate the controversies surrounding this account. Therefore, I will take a look at the resolution and apply such parts of the background as necessary only to provide the court with context in making the decision on this singular issue.

[8] I believe I can make a decision on this particular controversy without citing volumes of caselaw or lengthy passages from the authorities pertaining to the legality of resolutions passed by elected bodies. I find that the subject resolution offends the principles of natural justice and lacks procedural fairness and puts the RM in a conflict of interest and should be quashed. I say this because what the RM in effect has done is strip away Mr. Kaiser’s right to contest a debt by simply circumventing the usual processes of civil procedure found in a lawsuit and replaced this process with a resolution to get paid. I asked counsel for the RM if she had found any precedent for such an approach and she candidly admitted she had not. The court has also been unable to find any precedent. Mr. Kaiser may or may not have a valid argument regarding the payment of the \$257.25 and I am in no way making any such determination. However, this resolution affectively took away his right to challenge such indebtedness without any recourse to any sort of adjudicative process or civil procedure. I find that offends the principles of natural justice and lack procedural fairness and I have no choice but to quash the resolution on that basis.

[9] There shall be no order as to costs.



J.
T.J. KEENE